The Shared Decision Making in BC project is an independent initiative of the Simon Fraser University (SFU) Centre for Dialogue, which is investigating the emergence of non-treaty agreements related to the management of land and resources, and which have been developed through negotiations between the Province of British Columbia and individual or groups of First Nations.

SDM agreements have the potential to serve as examples of innovative approaches to the management of land and resources in complex, socio-ecological systems, informing practitioners in BC and with potential transferability to other jurisdictions.

The overarching goal of the SDM in BC project is to support and inform the development and effective implementation of SDM arrangements in BC. Specifically, the project is intended to:

- Improve awareness and understanding of the scope and intent of SDM arrangements in BC;
- Facilitate the exchange of information and experience among practitioners currently involved in the development and implementation of SDM arrangements;
- Undertake detailed case study analyses of selected SDM arrangements, in collaboration with those directly involved;
- Assist in the development of tools and identification of best practices to support the negotiation and implementation of SDM arrangements in BC; and,
- Develop information products summarizing efforts to establish SDM arrangements in BC.

This document presents a summary and preliminary analysis of 25 semi-structured interviews conducted with First Nation and provincial practitioners involved in the development and implementation of Shared Decision Making (SDM) agreements in British Columbia, a term used to refer to both Strategic Engagement Agreements (SEAs), and Reconciliation Protocols (RPs).

Disclaimer
The views and opinions presented in this summary report reflect the individual opinions of the interviewees, and in no way represent the formal position or perspective of the First Nation or the provincial organization that they represent.

While efforts were made to arrange for interviews with representatives involved in the negotiation and implementation of each of the ten SDM agreements approved to date, the coverage of the interviews varied considerably.

Photo: Evan Leeson, Flickr
EXECUTIVE SUMMARY

Interview Highlights

Practitioners view SDM agreements as representing a modest but positive step in the right direction. In general, the benefits include greater predictability for consultation and engagement processes, opportunities for First Nations to exert greater influence over land and resource management decisions, improved working relationships and greater cooperation between provincial agencies and First Nation departments, and funding support for capacity building. Overall, SDM agreements appear to be shifting the climate of the relationships between the parties involved, for the better.

Interview results offer insight into the dynamics of the negotiation of SDM agreements, highlighting the role of individuals who act as brokers and convenors on behalf of each party, and who frame the dialogue and establish the necessary space for productive negotiations to begin. Other insights include the importance of ‘readiness,’ the scope of support needed for negotiations teams, and the significant need for internal briefings and constituency building by both parties as the negotiations proceed.

There are modest variations in terms of the scope of SEAs and RPs respectively, and evidence that more recent SDM agreements have built upon the templates provided by those that came before. Many agreements refer to the New Relationship and the Transformative Change Accord, offer an incremental step toward reconciliation of interests, and highlight the importance of respectful government-to-government relationships. The exact nature of linkages between SDM agreements and treaty settlements (or interim treaty agreements) remain somewhat ambiguous, and is recognized as a key topic for further discussion. The definition of intended outcomes appears to be somewhat more precise in later agreements. A few of the SDM agreements are closely linked to land use plans and it is suggested that this greatly assists in implementation.

Interview results suggest that stakeholders with an interest in land and resource management, such as industrial development proponents, have variable degrees of knowledge and awareness of SDM agreements. This varies by region and among industrial sectors, with both knowledge and support for such agreements tending to improve with exposure over time. Some practitioners have suggested that more outreach to stakeholders would be useful. Local non-aboriginal communities within the areas affected by an SDM agreement have very limited knowledge or awareness of SDM agreements, although this is considered somewhat typical of other aspects of Crown-aboriginal relationships. Some efforts have been made to inform local governments about SDM agreements in more densely populated areas. There is considerable variation among SDM agreements in terms of the G2G structures that have been created, with a senior G2G forum established in most cases, and a range of different standing management or technical bodies, or support roles defined for coordinating engagement processes. Interview results suggest that the senior forums are generally functioning well, and provide an important venue for dialogue on strategic issues, leading to improved working relationships, the building of trust, and greater problem solving capacity. Some challenges were reported however with regard to effective representation of all provincial agencies through this venue. Practitioners have also highlighted the importance of retaining institutional memory and building on the trusted working relationships from those provincial and First Nations representatives that have been involved in G2G discussions for some time.

The processes established under SDM agreements for engagement on specific resource development applications are also functioning well to moderately well, although some challenges have been experienced in terms of available technical capacity for First Nations, engagement volume and timelines, and inconsistent follow through on authorizations. There is some reported variability among particular agencies and between regions in terms of the effectiveness of these engagement processes.

First Nations generally perceive that while SDM agreements fall short of placing them on an equal footing with provincial statutory decision makers, they do provide an opportunity to exert greater influence over resource management decisions. This is achieved because of the stature of the G2G agreement in some instances, and also because the consultation process has been more clearly defined, with greater predictability and transparency, and in some cases an opportunity to work toward consensus recommendations on each application. There are also various accountability mechanisms built in to SDM agreements, which tend to act as incentives for statutory decision makers to respect the recommendations generated through G2G engagement. Notwithstanding these positive features of engagement, interview results suggest that there is variability between regions and among different Crown agencies in terms of degree to which First Nations feel that their input actually affects decisions on a day-to-day basis. Overall, interview results also suggest that decisions made through G2G engagement processes are better informed and are likely more durable, although they are not always made more quickly or with less effort on the part of Crown agencies.

Several practitioners have also acknowledged that while mechanisms for consultation have improved substantially, there is a more limited ‘accommodation toolbox’ for provincial decision makers. As a result, some statutory decision makers are left unclear as to how they can respond to issues that have been raised through engagement under an SDM agreement at either the strategic or operational level.

The impact of SDM agreements in terms of achieving environmental and social objectives is more difficult to assess, in part because implementation remains at a relatively early stage in many cases:
Preliminary Analysis of Interview Results

In the opinion of SDM in BC and based on interviews, there is moderate to strong support for SDM agreements in BC among practitioners and a sense that such agreements are worth the investment of effort required for implementation. Opinions on specific aspects vary by region and there are modest differences of perspective between First Nation and provincial representatives in some cases. Nonetheless, the overall picture is positive and there is optimism for continued success. One of the stated intentions of SDM agreements is to foster reconciliation of the respective interests of the signatory parties and to establish enduring and respectful government-to-government relationships. Interview results suggest that this is being achieved in a variety of ways:

- At the interpersonal level, practitioners commented favourably on the working relationships established through the senior G2G Forums. In many cases this has led to the building of trust. Practitioners referred to a positive shift in the climate among those involved in implementation, and the growing importance of informal relationships, through which problem solving has often occurred.
- At the strategic level through the G2G Forums, and the operational level via the engagement model, practitioners indicate a significant improvement in the scope of information shared between First Nations and Crown agencies. There has been a marked improvement in the level of understanding of each party’s interests.

There is less clarity with regard to the linkage between SDM agreements and more formal processes for reconciliation, most notably the treaty process in BC. In a few cases, there has been close involvement of treaty negotiators in the development and implementation of these agreements. For the most part however, interaction between these different processes has been limited to periodic briefings. Many practitioners have speculated on the longer term trajectory of SDM agreements in the post treaty environment, not least because what is available through these non-treaty arrangements appears to be ‘out in front’ of current provincial and federal treaty mandates. This issue continues to be of significant interest for all parties. It is also significant to note that the Dispute Resolution provisions included within all SDM agreements have yet to be triggered, which is perhaps a positive indicator of their perceived worth.

Interview results suggest that SDM agreements have contributed substantially to improved land and resource management decision making in BC. This has been achieved by providing a forum for constructive engagement on strategic issues through the forum, and because of greater predictability through the engagement model. Resource management decisions are not always made any faster or with fewer resources or less effort. Practitioners have suggested however, that many decisions are better informed and more durable as a result. From that perspective, SDM agreements appear to be delivering on the elusive goal of improved certainty.
Priorities for Further Research

Based on the summary of interviews and the preliminary analysis presented in earlier sections of this report, and subject to further discussion with project partners, the SDM in BC Project Team has proposed that further research be focused on some or all of the following topic areas (in no particular order of priority):

| Capacity building | • What are the best practices for capacity building for SDM agreement implementation?  
|                   | • At what scale are such strategies best deployed (e.g., community level, regional level, provincial level)? |
| Funding          | • How can long-term funding support be provided to support SDM agreement implementation?  
|                  | • What are the prospects for revenue sharing arrangements to address longer term funding needs? |
| Accommodation tools | • How can the accommodation toolbox for provincial agencies be strengthened and expanded, to the extent this is needed?  
|                  | • What strategies can be developed to address cumulative impacts constructively? |
| Engagement models and portals | • How can continued improvement in engagement tools and processes be supported?  
|                  | • What are the best practices in terms of on-line portals and other information management tools and how can these be integrated smoothly into operations and workflows? |
| Linkage to land use plans or resource management frameworks | • What are the advantages of linking SDM agreements to land use plans?  
|                  | • Where land use plans are not available, to what degree can SDM agreements be ‘spatialized’ effectively and at minimal cost? |
| Linkage to EA | • How can effective linkages be established between the parallel processes used for environmental assessment and SDM implementation? |
| Regional and local dynamics | • What has been learned from experience to date in terms of managing the dynamics between a regional coordinating function and multiple First Nations that are signatories to an SDM agreement?  
|                  | • What are the implications in terms of the scope of future SDM agreements or the support needed at different scales? |
| Monitoring and evaluation | • What are the best practices in terms of performance management for SDM agreement implementation?  
|                  | • How can the efficiency and effectiveness of monitoring and evaluation procedures be improved and perhaps standardized? |
| Replicability | • Are SDM agreements replicable at scale as currently framed?  
|                  | • If not, what are the implications for future efforts aimed at reconciliation and shared decision making in BC? |
| Linkage to treaty | • How can the linkages between SDM agreements and treaty settlements or interim treaty agreements be clarified? |
| Resilience | • What experience can be gained from collaborative management arrangements in Canada or other jurisdictions in terms of improving the resilience of structures and processes established under SDM agreements? |
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1. INTRODUCTION

1.1 Background

The Shared Decision Making in BC project is an independent initiative of the SFU Centre for Dialogue,1 with funding support from the Gordon and Betty Moore Foundation (GBMF).2 The project is investigating the emergence of agreements related to the management of land and resources that have been developed through negotiations between the Province of British Columbia and individual or groups of First Nations.

As used in this document, the term ‘Shared Decision Making’ (SDM) agreements is used to refer to a suite of ‘Strategic Engagement Agreements’ (SEAs) and ‘Reconciliation Protocols’ (RPs) that are intended as mechanisms for respectful engagement on land and resource matters, and as a step toward longer-term reconciliation.

SDM agreements have a range of stated objectives, including:

- establishing government-to-government (G2G) relationships between the signatories, in the spirit of the New Relationship and the Transformative Change Accord;
- increasing certainty and reducing conflict over land and resource use; and,
- establishing effective and efficient mechanisms for coordinated decision making by provincial agencies and First Nations governments, as well as other institutional structures.

This document presents a summary and preliminary analysis of 25 interviews conducted with First Nation and provincial practitioners involved in the development and implementation of Shared Decision Making Agreements in British Columbia.

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1. The purpose of the Centre for Dialogue is to utilize dialogue in classrooms, corporations, non-profits, government, and community settings to develop leadership and communication skills, conduct strategic planning, inspire organizational change, and thoughtfully engage public audiences around controversial issues. sfu.ca/dialogue/

2. GBMF’s Environment Conservation Program (ECP) is providing funding support for this project. The ECP has initiated a number of other ‘Learning Projects’ within regions where conservation funding has been deployed, as a mechanism to examine durable and effective ecological governance arrangements. It is expected that the results of ECP Learning Projects will be of primary benefit to those engaged in the regions where research is being undertaken, as well as generate research products and tools that may be transferable to other regions and jurisdictions. moore.org

Photo: Stella Blu, Flickr
This document presents a summary and preliminary analysis of 25 interviews conducted with First Nation and provincial practitioners involved in the development and implementation of Shared Decision Making agreements in British Columbia. SDM agreements do not resolve outstanding jurisdictional questions. However, SDM agreements and their associated implementation arrangements do provide opportunities for First Nations to confirm the scope and nature of their Aboriginal rights and interests, and to exert greater influence as decision makers over development activities within their traditional territories. SDM agreements also provide efficient mechanisms by which the Province and First Nations can fulfill their respective duties related to consultation and accommodation, and establish more predictable processes for such transactions. Finally, SDM agreements also have the potential to transform working relationships and provide a stable platform for on-going engagement between the Parties on both strategic issues as well as operational management matters.

In a broader context, SDM agreements have the potential to serve as examples of innovative approaches to the management of land and resources in complex, socio-ecological systems—generally referred to as ‘ecological governance”—informing practitioners in BC and with potential transferability to other jurisdictions.

1.2 Research Approach

The approach adopted for collaborative research for the SDM in BC project is outlined in detail in the document, Overview of Collaborative Research Approach: Shared Decision Making in BC, available from the Project Team.

1.2.1 RESEARCH GOALS AND OBJECTIVES

Goals

The overarching goal of the SDM in BC project is to support and inform the development and effective implementation of SDM arrangements in BC. More specifically, the project is intended to:

- improve awareness and understanding of the scope and intent of SDM arrangements in BC;
- facilitate the exchange of information and experience among practitioners currently involved in the development and implementation of SDM arrangements;
- undertake detailed case study analyses of selected SDM arrangements, in collaboration with those directly involved;
- assist in the development of tools and identification of best practices to support the negotiation and implementation of SDM arrangements in BC; and,
- develop information products summarizing efforts to establish SDM arrangements in BC.

1.2.2 RESEARCH METHODOLOGY

The scope of the research effort is limited to SEA and RPs only, and is dependent on information available in the public realm or otherwise made available through the voluntary involvement of collaborative research partners.

The analytical approach is based on a conceptual model (see Figure 1, next page) and a suite of research questions, both of which draw from various literatures, including collaboration theory, resilience and adaptation, and consensus based decision making, as well as practitioner experience. It is expected that the scope of research questions will be modified over time, based on the priorities and interests of research partners.

Objectives

The research objectives of the SDM in BC project are as follows:

1. Develop an understanding of the genesis, scope and intent of SDM agreements in British Columbia.
2. Assess current and emerging SDM arrangements in terms of their ability to
   - achieve their stated goal of reconciliation over the short and long term;
   - support improved, collaborative land and resource management decision making; and,
   - contribute to the achievement of environmental, economic, and social objectives for First Nations and local communities;
3. Explore the extent to which SDM arrangements demonstrate resilience and adaptability in the face of changing social, economic and ecological conditions, and thus represent examples of innovative and durable models of ecological governance for socio-economic systems.
4. Identify tools and best practices to support the implementation of SDM arrangements in BC and to inform innovation in ecological governance in other jurisdictions.


1.2.3 INTERVIEW APPROACH: FEBRUARY-APRIL 2013

In addition to reviewing publicly-available background information related to SDM agreements, the Project Team arranged phone interviews with First Nation representatives and provincial agency staff involved in the negotiation and implementation of SDM agreements across BC. In total, 25 interviews were completed between late February and late April 2013, each lasting 60-120 minutes. A list of interviewees is included in Appendix B.

To ensure the research approach was undertaken respectfully and to protect sensitive or confidential information, the Project Team established a Research and Information Gathering Protocol, completed by each First Nation/organization before interviews began. Each interviewee was invited to sign an Information Letter and Consent Form and was provided an opportunity to review and edit a written transcript of their interview before results were incorporated into the Project Team’s analysis.

1.3 Disclaimer

This document summarizes the results of a limited number of interviews with practitioners involved in the negotiation and implementation of SDM agreements in BC. The views and opinions presented in this summary report reflect the individual opinions of the interviewees, and in no way represent the formal position or perspective of the First Nation or the provincial organization that they represent.
2. SUMMARY OF INTERVIEW RESPONSES

This section provides a summary of responses to interview questions, organized according to the themes explored in the research question set (see Appendix A). Responses are unattributed, but quotes are used extensively to illustrate key points. Quantitative data is reported where available (N=25).

2.1 Benefits of SDM Agreements & Overall Value

As an introduction to the interview, all respondents were invited to comment on the key benefits and overall value of an SDM Agreement based on their own experience.

2.1.1 BENEFITS OF SDM AGREEMENTS

Respondents identified a wide variety of benefits of an SDM agreement, including those summarized under headings below (in no particular order of priority). Several of the themes highlighted are explored in greater detail in the later sections of this report.

It should also be noted that several respondents acknowledged that given the early stage of implementation and the diversity among SDM agreements across the province, the true benefits that might accrue from such agreements have yet to be determined.

A Step Toward Reconciliation

Several interview respondents noted that SDM agreements represent only a modest step toward reconciliation. For example, one respondent stated that “[t]hese agreements can begin to scratch at the unrealized expectations around reconciling jurisdictions. This is the ultimate constitutional question. These agreements are a small, incremental step toward that very big question.” A similar note of caution was expressed as follows: “Through these agreements we are able to unravel some of the complexity around authority and decision making, but we are still at an early stage. This is not all about getting to an end point, but instead, getting to a beginning point!”

Yet another respondent commented on consistency with prevailing provincial policy on reconciliation noting that, “these are tools to begin to achieve reconciliation of aboriginal and non-aboriginal interests and closing the socio-economic gap—the New Relationship and Transformative Change Accord.”

A Vehicle for Strategic Dialogue

One provincial respondent noted that while there is considerable focus within provincial agencies on the engagement models created through SDM agreements, perhaps the most significant benefit is derived from the creation of a senior G2G forum. This respondent noted that such forums provide “a place to have conversations that you cannot have effectively when you are working in a consultation framework or mindset. Before we had SEAs, we did not have a place for higher level, strategic level conversations. We ran into those kind of issues constantly, but we never seemed to have a place to talk or the right people at the table.” Another respondent echoed these sentiments, noting that a G2G forum allows their First Nation to bring forward their interests, concerns or issues, independent of individual applications.

One other provincial respondent commented on the value of creating a standing G2G platform “that is able to respond to the various issues that arise between the two parties. In the absence of that platform, the relationship is on a referral basis, an issue by issue basis, or even a fight by fight basis if it comes to that.” This respondent also noted that an SDM agreement provides a mechanism for signatory parties to seize opportunities together that might otherwise pass them by: “Without an agreement, the opportunity cost is that the good intentions of the parties to capitalize on opportunities get lost. If you have a platform—an anchor for a relationship—and if the parties are of one mind… they can pluck opportunities out of the air as they come by and can make something of them.”

Certainty and Predictability

Several respondents commented on the value of SDM agreements in terms of improving certainty over land use both for signatories and third parties, and providing greater predictability with regard to the process and timelines for resource management decisions. As one provincial respondent stated, “[t]he main benefit of these agreements is that they provide the elusive certainty over the use of land and the purposes for which the land can be used. The majority of land in BC is in public ownership. All of that land is subject to aboriginal claims. It is fundamental that these issues get clarified so that those wishing to make use of the land have an idea of what is possible or not.” One First Nation respondent commented that, “[w]ith exploration going on, and without people on the land able to address what is going on… in that context, an agreement like this is of great benefit. Business as usual was just not working.”

Several other respondents highlighted the potential for SDM agreements to offer significant improvements when compared to the referrals process, by engaging both parties in more substantive discussions regarding a particular application, and achieving greater efficiencies through more streamlined engagement and information exchange.

First Nations Influence Over Decision Making

Several respondents noted that SDM agreements provide a means for First Nations to “have a voice in natural resource management in their territory.” As one First Nation respondent commented, “[i]t gives us a lot of clout in dealing with outside parties, including government and industry. It also gets our foot in the door to express our concerns with government, which we
were not able to do as effectively before.” Another respondent noted that closer and more systematic involvement in decision making also allows their First Nation to keep track of what is happening on the land: “We can get a sense of cumulative impacts based on the number and type of referrals in our territory.”

**Improved Working Relationships and Cooperation**

Several respondents commented on the practical value of SDM agreements in terms of improved working relationships, and cultivating mutual respect.

One respondent noted that the SDM agreement creates mechanisms for closer cooperation with resource agencies, and improved access to agency staff members who are “more receptive to our inquiries than they ever had been in the past.” Another commented that such agreements allow the signatories to deal with common issues in detail, “getting down to brass tacks.” Yet another highlighted the value of such agreements in terms of fostering collaboration: “Before the [SDM agreement], there was an ebb and flow of cooperation with BC, varying over time from willing cooperation to more isolation and assertions of individual FN authority... I do not really understand why that ebb and flow happened historically, but I feel we are now on an upswing of cooperation and collaboration. The [SDM agreement] shines a light on the need for collaboration.”

Finally, one provincial respondent commented on changes in attitude and behaviour that is occurring as a result of an SDM agreement, noting that working relationships “are in a completely different ballpark as a result. It’s also about establishing ‘recognition’ and ‘respect.’ I am not using these terms in their strictest legal sense, but in a more colloquial context. When I look at the provincial folks, they realize that simply sending a referral letter and waiting for a result is not enough. As a result of these agreements, we on the provincial side are now acting differently.”

**Coordination and Alignment of Effort**

A few respondents highlighted the importance of SDM agreements in terms of improved coordination between resource agencies and First Nations’ departments. One interviewee commented that “[i]t is better than a shotgun approach for First Nations trying to be engaged with BC. It provides a place for long term direction, for priority setting, and for challenging First Nations and government to work together, rather than at cross purposes.” Another respondent highlighted the opportunity for closer alignment of effort, noting that “[p]reviously, BC would get up to speed on something without our involvement, and then just deliver it to us. In other cases, we as a First Nation would get out front and then deliver something to BC, but they could not respond. Because of the level of communication and working together, SDM agreements create the opportunity for collaboration and an awareness of what is going on in each other’s worlds.” Other respondents offered a more cautious view, suggesting that, “[i]t is important to understand that provincial agencies are not necessarily well organized to implement such agreements efficiently.” From this individual’s experience, there are multiple agencies and in some cases several different regions that are involved in implementation, and coordination “has not always been smooth.”

**Funding Support for Capacity Building**

Several respondents commented on the practical benefits of SDM agreements in terms of supporting capacity building within First Nations communities and their regional coordinating bodies:

- One respondent noted that, “the agreement would not work without the capacity to implement such an agreement. This capacity support has allowed me to develop tools that I have wanted to develop for many years—such as policy development, and capacity development of staff.” Another stated bluntly that “[i]f you don’t have the ability [capacity] to bring information forward, then all the aboriginal interests in the world do not help you engage in the process.”
- Other First Nations respondents commented that in some cases, implementation arrangements have allowed for additional staff to be hired at the community level. This in turn improves awareness and understanding, increases the opportunity for knowledgeable individuals to contribute to informed decisions, and results in “more people engaged and knowing what is happening on the land within our traditional territory.”
- Finally, one respondent noted that the establishment of an SDM agreement had enabled multiple First Nations communities to coordinate their own working relationships, noting that, “if this is organized well enough, an SEA can bring together communities in a way that we had certainly not anticipated. For [the three] communities involved, we are becoming a single decision maker. That alignment happened more quickly and more strongly than we had expected. That also leads to capacity building in each of the communities, and at the community level in particular.”

**Reduced Risk of Litigation**

One respondent noted that the creation of SDM agreements reduces the likelihood of either party resorting to the courts to resolve their differences.

### 2.1.2 OVERALL RATINGS OF VALUE

Respondents were also invited to rate the overall value of an SDM agreement from 1 (very little value) to 10 (very high value). Acknowledging the very general nature of this question and the caveats summarized below, the average rating for all respondents was 7.7/10 (77%) as shown in Figure 2. On average, ratings were slightly higher from provincial respondents (8.4/10 or 84%) than for First Nations respondents (6.9/10 or 69%).
Several respondents qualified their answers or offered mixed responses, as follows:

- One First Nation respondent noted that he was sceptical at the outset, but has been pleasantly pleased and impressed with the progress achieved since the SDM agreement has been in place.
- Several First Nations respondents noted that SDM agreements do not offer what, in their opinion, is needed for true sharing of decision making, meaning equal decision making authority for First Nations and the Crown. One First Nation respondent who rated their agreement as 10/10 qualified their rating, noting that “we are still locked into a provincial decision maker making final decisions” but added that “[g]iven this constraint of the agreement, it is nonetheless extremely good.” Another First Nation respondent echoed a similar qualification for their rating (6/10), commenting that “[i]n advance of true shared decision making, this provides more certainty rather than the conventional way… [and] a better path for engaging with a First Nation.” A third First Nation respondent was more direct however, noting that “[t]he current form of SDM is an enhanced consultation model. As such, it has the potential to improve information exchange, dialogue, and exploration of options to address First Nation interests. BC still retains their decision making authority however, and it’s not clear to me yet that the SDM arrangements materially affect BC’s decision on contentious issues where BC has a strategic interest, i.e., mines, oil and gas, forestry.”
- Another First Nations respondent commented on the need for tempered expectations in terms of what an SDM agreement can actually deliver, suggesting that “none of these agreements are dealing with the underlying issues, which are title and jurisdiction. That is not necessarily a criticism of the SDM agreements themselves. In fact, judging them against their stated intent of reconciliation, their value is actually lower, say a 5. But that is too lofty a goal to ask of SDM agreements alone. There are many other things needed to go from an SDM agreement to some kind of self-government, or to a place where our respective interests are reconciled. There needs to better processes, treaty or legal processes, to take these extra steps. These SDM agreements are just an interim step.”
- Another First Nations expressed a note of caution about SDM agreements, noting that, “the danger for us is around becoming co-opted by the other governments because of a lack of institutional capacity. There is a bit of uncertainty, because we are building that capacity and we have to maintain it also.”

- One provincial respondent noted that the ratings of overall value vary from as low as 2 to as high as 8, commenting that “[t]hey vary in value because of the differing levels of energy with which they have been implemented. That applies as much to the community level for First Nations and also within the operational level within government.” He added that “it is the delivery of these agreements that takes the effort—the negotiation of an agreement is just one step.”
- One respondent commented on the need for some degree of consistency and for thoughtful analysis of the successes and failures of SDM agreements, stating that “[t]he intent is very high, but there is a bit too much ‘scatter’ and not enough ‘rigour.’ By that I mean the concept is very elastic and it means different things to different people. There are many opinions about what these models should be. By rigour, I mean where is the conversation happening about the pros and cons of these agreements?”
- One respondent noted that any assessment of the value of SDM agreements needs to be considered in their regional context, and that the purpose and scope of an agreement needs to be well tailored to the specific problems that is seeks to address: “It is tough to speak about this outside of a given context and what the parties have agreed that they want to accomplish. There can be circumstances where an agreement like this is a Band-Aid patch—an attempt to deal with an aggravating issue. On the other hand, a different agreement could be a game changer, a springboard for a relationship.”
2.2 Genesis and Strategic Intent

2.2.1 GENESIS OF SDM AGREEMENTS
It is widely acknowledged among interview respondents that the earliest SDM agreements were developed (a) with the Nanwakolas, through a clearing house pilot project (2007-2009) that was intended to bring greater rationality to the referrals process, (b) with the Tsilhqot’in (2009), in response to the on-going conflicts over forestry and other development in the Chilcotin region, and then (c) with the Ktunaxa (2010), in an effort to coordinate multiple G2G initiatives and to assist in defining a strategic vision for development in the Elk Valley. (There is in fact some friendly rivalry among those who have been responsible for negotiating such agreements regarding who pioneered the various components that are incorporated into these and subsequent agreements, which perhaps speaks positively to the perception of their value).

Regardless of the sequence in which they were completed, each of the SDM agreements has emerged under its own, unique circumstances. In some cases, an SDM agreement was developed as a tool to overcome conflict and to stabilize working relationships even in the face of litigation (e.g. Tsilhqot’in) or to respond to court rulings (e.g., Taku River Tingit, Gitanyow). In other cases, an SDM agreement was one element of a series of G2G agreements and initiatives that were negotiated to establish a broader partnership relationship between First Nations and the Crown to oversee regional development and conservation (e.g., Tahltan, Ktunaxa). In yet other cases, an SDM agreement was developed as a mechanism to reduce the complexity involved in managing referrals in areas where development pressures are high and where there is a mosaic of First Nation territorial boundaries (e.g., Nanwakolas, Sto:lo SEA Pilot).

In all cases, the New Relationship (NR) vision statement is widely acknowledged to have been critical, in terms of changing the climate for G2G dialogue and engagement. It has also been suggested that the failed attempt to pass the Recognition and Reconciliation Act spurred the development of Reconciliation Protocols on the BC Coast (e.g., Coastal First Nations, Haida).

Some interview respondents also highlight the importance of earlier negotiated agreements and collaborative management arrangements in terms of providing examples from which to draw practical experience, including the Treaty 8-BC Consultation Process Agreements in NE BC, the Muskwa-Kechika Advisory Board, and others.

2.2.2 STRATEGIC INTENT OF SDM AGREEMENTS
Each of the parties that have entered into an SDM agreement has done so with intent to achieve one or more strategic objectives. Some of these objectives are captured in the text of the agreement itself, typically in the ‘Whereas’ recitals, or in the form of a stated purpose or desired outcomes.

Strategic Objectives for First Nations
For First Nations, interview respondents have suggested that the strategic objectives to be achieved through SDM agreements include one or more of the following:

- Securing formal recognition of their territory;
- A mutually respectful, government-to-government relationship consistent with the New Relationship vision statement;
- Implementing a land use plan, or creating mechanisms to ensure that fish and wildlife or cultural values are conserved;
- Securing a more influential role in resource management decision making;
- Securing resource revenue from development activities occurring within their territory;
- Improving coordination among multiple First Nations as they each consider development applications not only within their own territory but also in areas of shared territory or ‘overlaps’; and,
- Building capacity and strengthening internal policy and governance arrangements.

Despite commonality among the strategic objectives for the short to medium term listed above, First Nation respondents often found it more challenging to define clearly the longer-term outcomes that their nation sought to achieve, and to describe how an SDM agreement might represent a step in that direction. At the broadest level, several First Nations respondents referred to vision statements articulated by their respective nations, several of which speak to concepts such as self-government and sustainability. Some respondents also referred to more advanced decision making arrangements, in which the First Nation would have greater decision making authority, including an equal say over development decisions. A few First Nations respondents also referred to resolution of title as the ultimate goal, although the nature of the decision making relationship with the Crown in practical terms if that goal was to be achieved was unclear.

Some First Nation respondents ventured that the core components of an SDM agreement—a senior level G2G forum to address strategic issues and an engagement model that promotes information sharing and collaborative decision making on individual applications—could be retained as elements of a treaty settlement, although it was acknowledged that discussions on this topic remain at an early stage (see also Section 2.4.4).

Strategic Objectives for the Province
For the Province, interview respondents have suggested that the strategic objectives to be achieved through SDM agreements include one of more of the following:

- Breathing life into the New Relationship and delivering on the Transformative Change Accord (TCA), through tangible steps toward reconciliation and by closing the gap between aboriginal peoples and other Canadians;
• Reducing conflict with First Nations over land and resource management decisions, and in some cases stabilizing a situation where relationships has become strained;
• Creating greater certainty and a more robust economic climate for investment and development;
• Encouraging regional models of engagement with First Nations;
• Offering support for strengthening First Nations capacity and governance arrangements;
• Improving the efficiency and effectiveness of engagement, by directing consultation effort toward the decisions with greatest significance; and,
• Improving the coordination of consultation activities among various provincial resource agencies.

Two respondents also suggested that the relative emphasis among these strategic objectives has shifted for the Province since the earliest SDM agreements, with a higher priority being placed in recent years on the efficiency of transactions under the engagement model. One respondent suggested that while priorities may have shifted politically, ‘at the front line, we still need to address issues that are of concern to First Nations and that are reflected in the TCA and the NR, and the United Nations Declaration on the Rights of Indigenous Peoples, which relates to free, prior and informed consent.’

Several provincial respondents also suggested that while it is hoped that the benefits attained from SDM agreements so far continue to be realized, the longer-term trajectory for SDM agreements is unclear, particularly in the context of possible future treaty settlements. As one provincial informant noted, ‘[i]t is hoped that the SEA can help to identify areas of land, major economic priorities, and maybe cementing a self-government and national government structure within the [First Nation]—the ‘heavy lifting’ that is usually involved with a treaty. If we can do some of this before a treaty negotiation, it would make a treaty negotiation more compressed. It is a stepping-stone, reflecting a phased notion of moving forward. We are using all the available tools to scratch at the jurisdictional issues... And the pace of us moving forward has yet to be determined.’ (For further discussions of linkages to treaty, see also Section 2.4.4)

2.3 Negotiating an SDM Agreement

Respondents were invited to comment on their experience developing an SDM agreement, commenting on topics such as:
• Pre-conditions for negotiations;
• Role of convenors or other key players;
• Dealing with contested territorial boundaries;
• Negotiating mandates;
• Terms of Reference or other tools to manage the negotiations process;
• Support for negotiating teams;
• Technical analysis needed to support negotiations, whether undertaken individually or jointly;
• Funding support for negotiations; and,
• Interim measures.

2.3.1 PRE-CONDITIONS FOR SDM AGREEMENTS

All interview respondents were asked if there were any special conditions that needed to be in place before an SDM agreement could be developed, and to clarify under what circumstances an SDM arrangement might be inappropriate.

Convenors and Brokers
A few respondents suggested that negotiations would be very challenging if working relationships between First Nations and provincial agencies had been strained or even fractured. Under these circumstances, it was suggested that efforts would be needed to establish a baseline of trust, and to cultivate the willingness to work together toward a meaningful agreement. In such situations, or even in cases where conflict has been largely avoided, it was noted that one or two key individuals in leadership roles for each side were often needed to engage with one another and to take incremental but bold steps to shift the climate between the parties and to lay the groundwork for negotiations. Several respondents were able to name specific individuals who had played such a role. Many of these ‘convenors’ or ‘brokers’ had established respectful working relationships already through previous projects and were reportedly capable of setting realistic expectations and framing the challenging work ahead in a constructive light. In some cases, these efforts led to the drafting of a high level ‘vision statement’ or a set of guiding principles that defined the space within which more detailed discussions could begin.

Readiness

Several respondents highlighted the importance of ‘readiness’ on the part of both the First Nation and the Province. Various different elements of readiness were highlighted, including:
• Available technical capacity and capabilities within the First Nation(s) to engage in negotiations and to sustain involvement over an extended period;
• Effective governance arrangements within the First Nation(s), particularly at the regional level in those cases where multiple First Nations express an interest in being involved and where coordinated engagement is required—both in the negotiation phase and for implementation; and,
• An understanding of the existing regulatory system in British Columbia, or a willingness to build an understanding of this system.
Building on Past Experience
Several respondents suggested that some past experience of working together is important for those seeking to negotiate an SDM agreement successfully. In particular, shared experience from land use planning projects or collaborative resource management initiatives were considered crucial in terms of providing an opportunity for face-to-face relationships to be developed and for understanding one another’s interests.

As one respondent stated, “[t]here was a long-term build up to the negotiations through particular individuals. [Several individuals] were instrumental; we had connected with them through a variety of processes. This experience allowed us to get to know each other a bit, over a couple of years. We understood who they were and they understood who we were and how we do things. It allowed us time to think about whether they seemed to be in a position to offer something we were interested in doing. The lesson is get to know your partner before you jump into bed with them! Don’t rush into this! Know the character of the people and make sure it is a good match, rather than just have the carrot tossed out in front of you. This is the ‘research side’ of starting a relationship. After all, it is a business kind of relationship.” Another highlighted the importance of continuity at the initial stages, suggesting that “[t]he lesson here is that having some trust built from other work is helpful—even if that is a transition role for a member of the team who is there to help with start-up but who does not necessarily continue.” Yet another respondent noted that importance of the patient and sometimes difficult groundwork leading up to formal negotiations, noting that “[w]e had a lot of off the record discussions with First Nations before we committed to an agreement... We had years of respectful—difficult sometimes, but respectful—relationships with First Nations. We talked a lot off the record about what ‘could be.’”

One respondent also noted that “[t]ypically, there needs to be a ‘genesis moment,’ where an honest ‘coming together’ occurs. This could be through intermediaries, but there needs to be a shared recognition that both parties want things to be different and are willing to explore new tools, to find new ways of doing things.” Another emphasized the same point, noting that both parties have to be willing to “look at things differently. There has to be buy-in from both parties.”

Negotiations in the Face of Active Litigation
One respondent noted that during the earlier stages of developing SEAs, there had been concerns within the Province that it would not be possible for a First Nation and the Crown to negotiate an SDM agreement successfully in the face of active litigation. Several respondents echoed this concern, suggesting that it would be difficult to complete an SDM agreement if the two negotiating parties were actively involved in a court action. One other respondent pointed out however that the completion of the Tslhqot’in agreement suggests that litigation may in fact not be a barrier to SDM negotiations, at least in that one example.

Settings Where SDM Agreements Might Be Inappropriate
Several First Nation respondents cautioned that engaging in negotiations would have been inappropriate if the mandates for provincial negotiators were limited simply to improvements in the consultation process, or failed to provide opportunities for other benefits to be secured for the First Nation. Furthermore, another First Nation respondent suggested that SDM agreements should not continue if evidence suggests that they are not delivering on their intended outcomes: “If this agreement becomes tested and it is not achieving what we set out to achieve (or worse, is working against us) then it would be inappropriate. We have given BC interim certainty. Right now, BC may be taking this somewhat for granted in a couple of places. If the cost benefit analysis does not add up, then it would be inappropriate.”

One provincial respondent noted that an SDM agreement is not an appropriate tool to address all problems: “Fundamentally, it will fail if one party alone is trying to drive it for some reason. It’s also about whether there is a shared interest and a common desire to take the risk of living the New Relationship on the one hand, or alternatively a positional relationship which is very conflictual, whether that conflictual relationship is litigious or not. A model like this [an SDM agreement] will not solve that kind of relationship problem. There can be legal issues to sort out, or a political problem to sort out. Whatever it is, an interest-based discussion will not work if these problems persist. In summary, this is a good tool, but it’s not a panacea.”

2.3.2 DEALING WITH CONTESTED TERRITORIAL BOUNDARIES
With the notable exception of the Haida, all of the SDM agreements are located in areas where there are either shared territories or where there are disputed territorial boundaries, or both. For all SDM agreements to date, no direct attempt was made to resolve these territorial issues in any substantive manner.

Where several First Nations are involved, most agreements have adopted a ‘one window’ model that relies on a single regional body to coordinate engagement on behalf of all signatory First Nations who have territory within the external geographic boundary for the agreement. This approach has meant that First Nations are free to organize their own information sharing and shared or individual assessment processes behind the scenes, while still allowing engagement with BC to be undertaken in an efficient manner. As one provincial respondent commented, “Prior to the agreement, we had to deal with shifting boundaries, and frequently we did not even get the referrals to the right place. The [current engagement] model puts all those issues ‘behind the First Nation curtain’. It is very efficient for BC.”

In all cases, provincial agencies continue to issue referrals to other First Nations that are not a signatory to the SDM agreement but that have asserted territorial claims with the area of the agreement. (In other words, where there is a one window
arrangement, provincial agencies use that one window to consult with any participating First Nations whose territory falls within the agreement boundary, but it also maintains its obligations to consult with non-participating First Nations whose territory the decision also falls within.) Several respondents pointed out that this approach is entirely consistent with prevailing consultation policy, under which the Province reserves the right to fulfill its consultation and accommodation duties on a bilateral basis within the asserted territorial boundaries for each First Nation.

As one respondent noted, there is also now at least one example of SDM agreements in neighbouring regions (Tahltan and Taku) that cover some of the same land base. It was suggested that it is perhaps too early to determine if there will be any additional complexities for implementation as a result of this arrangement.

### 2.3.3 Defining Negotiating Mandates

Interview results indicate that a diversity of approaches have been used to define the mandates for negotiation of SDM agreements.

**Provincial Mandates**

Provincial negotiators reported that they were equipped with well-defined Cabinet mandates. In fact, several mandates were required in some cases: for initial scoping; for negotiating an agreement; and then for approval and implementation. A separate Treasury Board approval was also required for the funding commitments outlined in SDM agreements. Cabinet mandates are confidential and have not been shared with the SDM in BC Project Team, but provincial respondents have made clear that these documents are precise and yet provide ‘bounded flexibility’ within which negotiators can operate. Provincial negotiators also invested considerable time and effort in briefing resource agencies as the negotiations progressed.

One provincial respondent speculated that provincial mandates may become more precise in the future, noting that “[a]s we see more agreements developing, we are seeing things tighten up quite a bit. Now that agencies can see what might emerge from these type of agreements, the resource agencies are keen to lay out some parameters up front.”

**First Nation Mandates**

Most First Nations respondents reported that they operated under a broad mandate, granted to them by leadership or by their citizens, in whatever manner was consistent with their internal governance procedures. First Nation respondents also noted that in several cases, the precise scope of the SDM agreement was actually being sorted out as the negotiations were underway, and so a series of briefings with First Nations leaders were required to report on progress and to secure further direction for the next stage of the negotiations as details emerged. In many cases, First Nations negotiating teams also arranged for detailed briefings with community members, in an effort to build awareness and understanding of the evolving negotiations at the grassroots level, and in an effort to avoid the possible rejection of the final negotiated agreement due to a lack of familiarity with the concept of SDM or because of the intent of the agreement was misunderstood. This grassroots level engagement work was both crucial and also time consuming. As one respondent noted, “we produced the shared vision in both languages. A lot of Elders could recognize place names and concepts in their own language, and this helped it all make sense to them. There was also language related to recognition and reconciliation in the shared vision, which helped to explain our intent. It was also made clear that the [SDM agreement] could be a bridging step, but was not intended to resolve title.”

Interview results suggest that the challenge of describing what was to be included within the scope of an SDM agreement were more acute for First Nations that developed the first few agreements in 2009-2010. In more recent years however, First Nations have had access to completed SDM agreements to use as templates and to illustrate the scope of what is being attempted. Despite these examples now being available, several respondents noted that it remains difficult to articulate clearly what an SDM agreement actually means in practice and to manage expectations accordingly.

### 2.3.4 Managing Negotiations

**Process Management Tools**

Interview results suggest that there is no standard toolkit for defining the scope and timelines and for managing the process for the negotiation of an SDM agreement. One or several of the following tools and approaches have reportedly been used to date:

- Some negotiations were undertaken under the broad direction of a Framework Agreement that defined the common interests of the parties as well as the scope and objectives of their joint work (e.g., Taku, Sto:lo, Tahltan). In all cases, these Framework Agreements were formally approved prior to the start of substantive negotiations.
- In other cases, provincial negotiators developed an internal Project Charter or similar that was approved at the Assistant Deputy Minister level. That Project Charter, which was generally not shared with the First Nation in its full form, defined objectives, deliverables and timelines and effectively operationalized the Cabinet mandate. Other respondents report that a joint Project Proposal document was developed (e.g., Sto:lo).
- A jointly developed Terms of Reference was used in some cases (e.g., Ktunaxa).
- In yet other examples, the negotiating teams adopted a less formal approach, using a combination of lists of deliverables, a rolling critical path/Gantt chart, a ‘dashboard’ or other project management tools to guide their work together.
As noted above, in some cases the work completed at the earliest stages in the G2G negotiations by convenors or brokers had also generated a shared vision statement, guiding principles or similar (see Section 2.3.1).

Regardless of the format, interview results suggest that common elements defined within Terms of Reference, Project Proposals or through various project management tools include:

- A vision statement or high level guiding principles or written materials defining the scope of each party’s interests;
- Specific objectives for the G2G negotiations and key deliverables, including if needed a listing of topics that are to be discussed following completion of an SDM agreement,
- A draft Table of Contents for the completed SDM agreement;
- Timelines for the completion of negotiations and interim milestones;
- Details outlining the representation of each party at the negotiating table;
- Meeting conduct guidelines;
- An outline of the responsibilities of negotiators, including obligations for reporting to their respective decision makers to secure staged approvals as needed; and,
- Details of funding support and other resourcing requirements for the negotiations process.

One respondent noted the importance of a clearly agreed timetable for the negotiations, commenting that “[it is important to have] a ‘best before date.’ We had to finish the negotiations by a certain deadline. There was an imperative to finish the work by a given date. Some negotiations, such as some treaty negotiations, can be interminable! If you want to land these kind of agreements, and avoid a ‘go-nowhere negotiation,’ you have to have a clear deadline.”

**Representation at the Negotiating Table**

First Nations were reportedly frustrated at times by the absence of representatives at the negotiating table from the resource agencies that have statutory authority for land and resource management decisions. One First Nation respondent noted that, “MARR was having to go back and forth with the various line ministries. It seemed at first that they could agree to something, but then they’d go and check, and then come back with other messages from the line ministries. They had a lack of a clear mandate and it cost us valuable time and effort.” Another provincial respondent conceded that, “decision making inside the province is quite fractured, when it comes right down to it. When there was strong direction from the Premier’s office, it went fairly well. But where support had to be built within a number of agencies, it was slow and difficult.”

Another challenge mentioned by one First Nations respondent was the level of experience or seniority of the provincial negotiators at the table: “There were challenges however in terms of how much authority these regional negotiators might have. They needed the skills to bring our interests forward and find ways at senior levels within BC to meet them creatively. You can’t be working with people ‘low on the food chain.’ We convinced BC that we needed someone more senior.”

**Internal Reporting Mechanisms**

Interview results have also highlighted the importance of reporting relationships between negotiators at the table and their respective decision makers and constituencies. This was identified as a challenge for both provincial negotiators, who were obliged to brief multiple resource agencies and various inter-agency committees, and for First Nation negotiators who faced the challenge of briefing their leadership and informing community members. In several cases, respondents have suggested that such briefings demanded far more time than was originally anticipated. One provincial respondent offered a candid description of these challenges as follows: “[It] was all new. There were new terms and definitions... There were so many issues that the amount of issues was an issue in itself! We put a lot of horsepower into this, with a lot of briefing notes, and a lot of committees.” Another provincial respondent stated that “[w]orking internally was certainly the biggest challenge. There was a lot of fear. We had assembled a Steering Committee made up of different agencies... There was a great deal of resistance to the change, in terms of impact on staff workload, and workflows. There was a lot of pounding of fists and herding of cats! So the biggest challenge was trying to get buy in for the change we were trying to achieve. The negotiations with the First Nation were easy when compared to that!”

One respondent speculated that the challenges of internal communications might be more acute in those instances where multiple First Nations are engaged in negotiations as an aggregated group, “because it is the rights holders that have to agree with the agreement and yet they may not be at the table themselves.”

### 2.3.5 SUPPORTING NEGOTIATING TEAMS

Several respondents commented on the importance of providing adequate support for those at the negotiating table.

**Support for First Nations Negotiating Teams**

For First Nations representatives, the following kinds of support were highlighted:

- Advice from experienced individuals who have negotiated similar agreements in the past—“people there that you can rely on, that have experience, and that know what they are doing”;
- Access to timely and reliable legal advice;
- An ability to review critically other examples of completed agreements and if possible, an opportunity to consult other First Nations about their own experiences with negotiating similar agreements;
- Access to those who have experience with implementation:
Support for Provincial Negotiating Teams

In addition to highlighting many of the same kinds of support listed above for First Nations negotiating teams, provincial respondents suggested that other support needed for successful negotiations includes the following:

- Clear mandates;
- Clear lines of reporting to senior decision makers;
- Adequate funding support not only for the negotiating team and legal advisors, but also for extensive community engagement and frequent liaison with First Nations leaders or decision making bodies (see Section 2.3.9).

Several respondents also suggested that First Nations need to approach the negotiation of an SDM agreement well prepared and with a clear sense of what can be realistically be achieved. In this context, one First Nation respondent suggested that, “First Nations need to be very conscious of what the government’s intention is, and make sure that the First Nations don’t get steamrolled by BC’s intentions, as opposed to getting out of these agreements what they need to address their interests. We are not where we had hoped to be with this agreement. [Our SDM agreement] does provide some valuable financial resources. But First Nations need to very aware of their own interests and needs.” Another First Nations respondent offered a similar perspective on SDM agreements, stating that, “strategically, its starting point is an imbalance of power. Others should be aware that in negotiating an SDM agreement. It really requires recognizing your position, your lack of privilege really, and the position in the negotiation from which you start. It therefore requires ‘sticking to your guns’ to craft an agreement that is comfortable for you and that has the context that you want, particularly in the face of an effort by BC that may be seen to box you in to a template agreement. The strategy for negotiation is to anticipate an uphill battle. At the same time, there are opportunities—quite important ones—that you can unlock or that can be taken advantage of.”

One First Nation respondent also cautioned that the fine details of each agreement discussed during negotiations can become very significant during implementation, stating that, “there are going to be many details that do not seem like they are a big deal when you are negotiating. But these are in fact much more significant when you are involved in implementation. You can end up dealing with constant efforts by BC to ‘downgrade’ the agreement. I recognize that there needs to be give and take, but even the little things can have big implications in the end.”

One First Nation respondent also acknowledged that the negotiations can be particularly tough on individuals: “On the BC side, they need to have some folks with experience and some thick skin, who can deal with the first few reactions and rejections—because First Nations have a much higher set of expectations early on. It can take quite a while until the pragmatic side of [SDM agreements] become clear, and before the First Nation recognizes the net benefit, even if this is less than half of what they want. BC therefore needs some people with depth, background and with an ability to ride the ups and downs. The same probably goes for the First Nation.”

Legal Analysis

Several respondents highlighted the need for both parties to have access to their own legal advice during the course of the negotiations. In at least one case, the respective legal counsel for both BC and the First Nations were present in the final negotiating sessions.

One respondent noted that there is now a suite of completed agreements from which negotiating teams can draw examples and insight, and suggested that the availability of these documents might reduce—although not eliminate—the need for detailed legal analysis for subsequent negotiations.

Understanding the Regulatory Context

Several respondents commented on the importance of developing a shared understanding of the current regulatory approach for land and resource management decisions in British Columbia. In particular, it was suggested that First Nations needed to be provided with a catalogue of the types of statutory decisions that are being made within their territory, and to gain an appreciation for how an SDM agreement might reshape decision making processes.

In some cases, provincial negotiating teams arranged for statutory decision makers to attend one or more negotiating sessions in person, so that they could be involved directly in bilateral discussions. As one respondent noted, “[w]e brought government reps that actually worked with each of these statutes into the room, to explain the kind of authorizations
that we were dealing with, and to clarify what rights were involved in a given decision. We were learning together, and that really helped. We got into a very prescriptive approach to consultation and we all had a better understanding of how we could create a hierarchy of when we wanted to engage deeply, and when engagement was not required.”

Several respondents also noted that First Nations were provided with a list of the referrals in their territory, by type, from one or more of the preceding years. As one respondent noted, “[t]his allowed us to anticipate what might fall into what ‘level’ of the engagement process.”

Spatial Analysis
Interview respondents noted that GIS was also used to support some SDM negotiations. For example, in at least one case (BC-Kaska), provincial negotiators provided a map of the area to be encompassed by the agreement, showing the location of all statutory decisions by type over a given period. First Nation respondents readily acknowledged the value of this kind of information as it provided a clear picture of the development pressures in their territory. One respondent also noted that “[t]his was very helpful in many ways. It helped with trust building. And it helped to explain the realities of the actual development picture, with real numbers. And maps are always very helpful in building the relationship.”

In some examples, spatial information was reportedly used to identify areas of greater sensitivity to disturbance, based on cultural or conservation values. Where land use planning was being undertaken concurrently with the negotiation of the SDM agreement, for example in the Taku, advanced spatial modelling was also available. In some cases, such data were subsequently used to inform the development of a ‘sensitivity reference layer,’ which was incorporated into the SDM agreement as a tool to help determine appropriate engagement levels.

Other First Nations reportedly chose not to attempt to distinguish areas of greater or lesser sensitivity at all, or included that task as one element of the implementation workplan. In some cases such as the Nanwakolas, a sensitivity layer has reportedly been completed by for the participating First Nations and is used internally for assessing development proposals, but this is considered confidential and it has not been shared with provincial agencies.

Economic Analysis
Some respondents indicated that one or both parties involved in the negotiation of an SDM agreement undertook their own economic analysis, in an attempt to understand the implications of a new decision making arrangement, or to establish a clear business case for final approval.

2.3.7 OVERCOMING BARRIERS TO AN AGREEMENT
All interview respondents were able to identify one or more significant challenges that arose during the course of the negotiations. In several instances, it was suggested that these challenges were sufficiently serious to raise questions as to whether an SDM agreement could in fact be completed. In some cases negotiations were suspended temporarily so that mandates could be adjusted, or other solutions found.

Some of the examples of challenges faced by negotiators included the following:

• Inclusion of aboriginal terms and concepts: In some cases, First Nations proposed including within the SDM agreement terms or concepts in an aboriginal language that had particular cultural significance, but which were unfamiliar to the Province and introduced potential ambiguities for interpretation. For example, referring explicitly to the concept of Wilp sustainability was reported to have been a challenge in the BC-Gitanyow negotiations. The concept of khustixh (Tlingit ‘way of life’) also needed to be precisely defined in the BC-Taku River Tlingit negotiations.

• Funding Support: The level of funding support available for implementation of the SDM agreement was highlighted as a very challenging issue in several examples (see Section 2.7).

• Definition of Shared Decision Making: Several respondents noted that for First Nations, having to consider a model of decision making that fell short of their hopes and expectations was the most significant issue confronted during the negotiations. In the case of the Nanwakolas negotiations for example, discussions were suspended while efforts were made through senior political levels to expand the mandate provided to the provincial negotiators in this regard. As one respondent noted, “[t]here were negotiations underway with Coastal First Nations and Haida and it seemed… that BC was willing to go further with other First Nations—this created tension. There was a lot of frustration with government because BC’s approach felt uneven.” The efforts of the Nanwakolas ultimately proved to be unsuccessful and the negotiations continued once the mandates available for the negotiations had been confirmed.

• Impact on Consultation Duties: In the BC-Kaska negotiations, legal concerns surfaced that an SDM agreement might result in a First Nation ‘signing away its consultation rights. These concerns were ultimately resolved, but dealing with them reportedly demanded significant time and resources, and caused a temporary delay in completing the agreement.

• Authority and Jurisdiction: In some cases, framing the respective positions of the negotiating parties with regard to authority and jurisdiction proved to be very challenging. Various tools have reportedly been used to address this concern, such as including parallel assertion statements, and in some cases, agreeing to be silent.
on some of the implications of contested jurisdiction.

- **Scope of Resource Management Decisions:** Several First Nations respondents suggested that one of the most significant challenges was reaching agreement that certain resource management decisions were to be excluded from the SDM agreement, most notably applications for an environmental assessment certificate under the Environmental Assessment Act. (For further discussion of this issue, see Section 2.4.3).

### 2.3.8 THIRRD PARTY FACILITATION

Based on information provided by the respondents interviewed for this project, it appears that third party facilitation was only used for negotiating an SDM agreement in one case (Tsilhqot’in). One respondent commented on the pros and cons of using independent facilitation for such negotiations, stating that “[t]hat could be useful perhaps, although at times a facilitator tends to neutralize things a bit. Sometimes you need to let the rub happen, to get issues out on the table.”

In the Taku example, an independent facilitator was used to guide stakeholder and local community workshops for related land use planning discussions, but these workshops did not discuss the SDM agreement in any detail.

### 2.3.9 FUNDING SUPPORT FOR NEGOTIATIONS

As noted above, interview responses clearly indicate that funding support for First Nations involved in the negotiation of an agreement is required not only to cover time and travel for the negotiating team (whether internal or contracted from outside), but also for legal advisors, extensive community engagement, and frequent liaison with First Nations leaders or decision making bodies. Technical support, such as GIS analysis may also be required in some circumstances. In some cases, First Nations have limited access to external funding sources that are capable of supporting such a process, and must rely heavily on provincial contribution agreements.

Provincial respondents have readily acknowledged that such funding support is needed for the negotiation of an SDM agreement. As one provincial negotiator commented, “[t]o have meaningful participation, there needs to be appropriate funding for appropriate expertise. That varies in different situations. Ultimately, the province is looking for certainty. That requires adequate capacity on the First Nations side, which must be provided.”

Estimates vary of the appropriate level of funding required. Various respondents estimated that the costs they actually incurred ranged from $75K-$300K per year, which in almost all cases was substantially more than was available from provincial sources. One respondent commented that the costs involved might be in fact be a surprise for First Nations that have not been involved in similar processes before: “[It is going to cost] more than you think! [It was] certainly more expensive and time consuming than any of us expected at the end. Anticipate double whatever cost you might think!”

Several respondents noted that funding needs are highly context specific, not only in terms of the complexity of issues and the level for technical expertise required, but also in terms of where the negotiation sessions are actually held and the time and costs involved for travel. For obvious reasons, negotiations in more remote Northern communities can reasonably be expected to be more costly as a result.

The duration of the negotiations is also a key consideration. One respondent suggested that the minimum time required for the negotiation of such an agreement, given the need to build community support and maintain in close contact with leaders, is probably in the range of 18 months.

One First Nation respondent noted that unexpected delays in the negotiations process can also be costly, noting that, “[t]here were times where the Province would not commit to things but went on meeting, and we ended up spending resources still. There were times when BC negotiators did not have a clear mandate but we had to keep on meeting. That felt like wasted money.”

Another First Nation respondent noted that the Province seemed to have used the pre-negotiation of funding support “in part to gauge the level of commitment and interest—if we were willing to do it with little funding, then perhaps they could read this as commitment, as evidence that we really wanted it. Conversely, if we had been only willing to do this with large amounts of funding, that might have been a different kind of indicator.”

### 2.3.10 RAMPING UP FOR IMPLEMENTATION

One First Nation respondent commented on the need to begin to build capacity for implementation at an early stage, while the negotiations are still underway, suggesting that, “[t]here also has to be an interim agreement to provide for increased staffing, while the negotiations are going on. We had some funding to help build the staff up, to a degree. We needed to be dealing with referrals as we were going along. We could then adapt the agreement to build in what we wanted. By the time the agreement was completed, we had bilateral agreements with companies, and we had our portal already built. If you did not have these in place, it might be better to have an interim agreement so that people can get started, and can build their own processes. Otherwise ramping up once the agreement is signed is very challenging.”

Another provincial respondent commented on the same issue, stating that taking the time to negotiate an agreement in timeframes that allow all parties to understand its scope and implications is crucial. This individual offered a comparison of two different agreements, stating that in one example, “[w]e had training done before signing the agreement, and when
the agreement was finally in place, we were all ready to go and the system was up and running when we ‘hit the on switch’. In contrast, for [another SDM agreement] we spent a year negotiating a 100-page document that clarified what the agreement meant. People got upset. Instead of being able to turn on the lights, we had more work to do. The lesson: there are no shortcuts! You have to get things underway well at the beginning. And the problem is that we tend to leave a bitter taste in people’s minds if things do not start out well, which is a problem over the longer term.”

2.3.11 FEDERAL INVOLVEMENT IN SDM AGREEMENT NEGOTIATIONS

Interview results confirm that there has been no substantial federal involvement to date in the negotiation of SDM agreements, although several provincial respondents have indicated that discussions on this topic are continuing with MARR. In some instances, briefings or presentations related to the development of SDM agreements were reportedly provided to treaty negotiators, for information.

2.4 Scope of SDM Agreements

2.4.1 CLARITY OF OUTCOMES

Both interview results and a review of the written SDM agreements suggest that there is considerable variation in terms of the specificity of the outcomes the signatories seek to achieve. (‘Outcomes’ are referred to here as resulting changes in conditions or relationships, rather than simply deliverables or process outputs).

In general terms and with some exceptions (e.g., Sto:lo SEA Pilot), more recent agreements have included a list of substantive outcomes (for example related to increased land use certainty, sustainable management of land and resources, a reduction in conflicts between the parties, strengthened relationships among the parties and with local communities or stakeholders). In contrast, interview respondents have suggested that earlier SDM agreements offered only broader statements outlining results. It is unclear whether this is simply a matter of style, a result of improvement over time, or whether the signatory parties for earlier agreements were simply satisfied with a less definitive statement of desired outcomes.

Many interview respondents could not immediately recall if detailed outcomes had been defined in their SDM agreement. Several noted that outcomes were implied in the content of the ‘Whereas’ recitals or reflected in a shared vision statement. Several others acknowledged that the description of outcomes is “a bit vague” or expressed only in “higher level language.” One First Nation respondent noted that “[t]here is a cautionary piece there for us... If [the statement of outcomes] is left up to interpretation, that can be problematic.” Another respondent conceded that “[o]ver the longer term, the vision [we are seeking to achieve] is not as clear. There are clear commitments to immediate deliverables in the agreements. But there is not perhaps a line of sight between these agreements and a long-term vision.”

Several respondents also noted that first and foremost, SDM agreements are “process agreements,” suggesting for example that “[t]he shared vision began to scratch at the kind of outcomes we were looking for, but it is a ‘means to achieve outcomes.’” One respondent noted that the lack of more clearly defined outcomes presented a challenge in terms of securing approvals for the SDM agreement: “[T]he lack of clear criteria for outcomes to be achieved is another wart on this agreement structure. We had an implementation plan. It had some kind of milestones but it was under-developed in this regard. Because the agreement could not enable specific outcomes, for example around forest tenures or wildlife management or land use planning, and because these are difficult to achieve, the First Nation had a tough time selling the benefits of the agreement internally. We have achieved some outcomes through implementation, but they are not necessarily politically visible.”

Several respondents noted that their SDM agreement either included a framework for performance management, or identified the development of a performance management framework as one activity in the implementation workplan. Where performance management methods have already been established however, interview results suggest that these tend to focus on transactions under the engagement model rather than an assessment of broader outcomes defined in that agreement. In some cases (e.g., Kaska, Taku), respondents have reported that in addition to reviewing these metrics, the senior government-to-government forum also reviews progress toward the achievement of broader outcomes, although such an assessment is based primarily on qualitative data (see also Section 2.7).

One First Nation respondent commented that, “[t]he depth to which we assess each achievement varies however: on the surface, we assess whether we have developed the product, and then there is a deeper assessment of whether it is actually working. This means using both quantitative and qualitative measures.”

One provincial respondent commented on the evolution of approaches for assessing the achievement of outcomes in various SDM agreements, and the challenges involved doing so: “The best example is the Nanwakolas, which is now in its third generation. But you need to distinguish between ‘implementation’ success (doing what you said you would do) and success in terms of ‘effectiveness.’ We tend to be good at tracking and monitoring implementation, but I am not sure we are as good at assessing effectiveness. It is also much harder to assess. For example, has human well being improved? I am not sure you can tell. Either way, there are no specific criteria established for effectiveness in the three agreements I worked on.”
Another respondent suggested that the priority placed on assessment criteria may offer insight into the state of the relationship between the parties: “You can get into lots of detail on the indicators, but we have not yet got to that point. Moreover, what we decide the indicators are may itself be an indicator of the state of the relationship—if we need hard indicators, to determine exactly how well or how badly things are going, then perhaps it suggest we are looking for hard evidence on which to base a decision whether or not to keep going. If we can go skinny on the indicators, and are comfortable with that, it suggests something else about how the relationship is going.”

2.4.2 RECOGNITION OF FIRST NATIONS TITLE, RIGHTS AND LAWS

Several respondents highlighted the importance of mutual recognition language contained in SDM agreements. In many cases, the agreements include an acknowledgment of differing perspectives on rights and title and in some cases, parallel assertion statements.

Several respondents also commented on the delicacy of this issue. As one provincial respondent noted that, “[you] have to go back to the fundamental point here—we agreed to be silent on the question of jurisdiction. Put simply, we agreed not to try to agree. There is a provision in the General Provisions on this… [The] agreement reflects an understanding that First Nations have laws. We danced on the head of a pin on this issue. And in my opinion, poking too hard at this issue [of jurisdiction, laws, what they mean, how and where they apply], or making it central to the negotiations, puts the prospect of an agreement and the agreement itself at risk. If you force this issue, there are risks involved.”

One First Nation respondent described the situation in a less complimentary light, noting that some SDM agreements offer recognition in the ‘Whereas’ recitals or other opening sections, but then qualify and thus limit the significance of that same recognition elsewhere in the text: “It’s a catch 22! In the ‘Whereas’ section we say all sorts of nice things but in the General Provisions they take it all away! We put forward that relationship as well as stating that [our First Nation] laws and management approaches are important. The province acknowledges it here, but then the details in the General Provisions qualify all of those statements and effectively take it all away.”

One First Nation respondent highlighted the particular importance of language in the Gitanyow agreement, set out in a special section dedicated to recognition, which affirms the outcomes of the (2000) BC Supreme Court ruling recognizing the Wilp system of governance and acknowledging the First Nation’s strength of claim: “This is important because when you do not have a treaty, there are a lot of grey areas/ambiguity about strength of claim and therefore about potential impacts on aboriginal rights and title.

But when the strength of claim is documented, or as in our case, determined by a court ruling, you are no longer just operating at the whim of government. As these recognition statements have been agreed to Ministers, it gives us more leverage in decision making, although on a case by case basis, it seems we still have to clarify that there is the burden of consultation for the Crown.”

Another respondent noted that the agreement also gives explicit recognition to Gitanyow laws and cultural practices: “[In our [Reconciliation and Recognition Agreement], there are definitions of certain aspects of our laws. For example, ‘Ayookxw’; which relates to ownership of land and resources, the holding of our rights and responsibilities, and other things like this. Other terms include ‘Gitanyow Lax’yip,’ ‘Gwelx ye’enst’ and several others. These definitions were a bit watered down in the agreement and were carefully qualified, which was a bit contentious.”

When asked whether SDM agreements ‘include clauses that allow it be adapted over time to ensure consistency with evolving case law;’ the majority of respondents suggested that while this was not stated explicitly, the amendment provisions and the carefully constructed language of the General Provisions provide a suitable mechanism for agreements to be updated as needed to ensure consistency with evolving legal precedent. Several respondents added that in fact, one of the key features of SDM agreements is that they are intended to be flexible, so that they can adapt to changing circumstances over time.

2.4.3 SCOPE OF LAND AND RESOURCE MANAGEMENT DECISION MAKING UNDER SDM AGREEMENTS

Interview respondents confirmed that the scope of SDM agreements is intended to include all land and resource management decisions or ‘proposed activities’ on public land, with the notable exception of applications for an environmental assessment (EA) certificate. Respondents also noted that some agreements (e.g., Kaska, Tahltan) also exclude decisions that fall within the authority of the Oil and Gas Commission (OGC), which is identified in the Kaska agreement as a ‘non-participating agency.’ The Sto:lo SEA Pilot also has a more limited scope, with the option to expand if the parties agree to develop a full SDM agreement once the initial 18 month pilot period has been completed.

As several respondents pointed out, this broad scope for most SDM agreements therefore includes any proposed land or resource activity for which provincial authorization is sought, any decision or activity contemplated by a participating provincial agency that may have adverse impacts aboriginal rights, and any other decision or activity that the parties agree should be addressed under the processes set out in the agreement. Respondents referred to the various ‘Activity Tables’ included as appendices in many SDM agreements, which summarize the many decisions to be addressed through engagement, usually organized by provincial statute.
One First Nation respondent noted that despite the broad sweep of decisions to be considered under engagement models, based on their first hand experience, some decisions or activities with potential impacts on aboriginal rights are not in fact ‘referred’ to affected First Nations. For example, it was suggested that filming permits under the BC Parks Act are excluded from consultation: “[The Province has] agreed to fast track all applications for the film industry—and that means applications for everything from a few minutes of filming on the roadside for a brief news story, to a 90-day filming project for a major movie (which can have very significant impact, in terms of land clearing, construction of sets, traffic and disturbance). BC has just been choosing not to refer these decisions, as they assume that either [the First Nation] cannot meet their streamlined timelines, or they assume that we might hold things up which would undermine their interest in promoting the film industry. They appear to have no other logic for why these kind of applications are excluded.” As a result of such concerns in this and other cases, some First Nations have contested the use of a ‘notification’ category at all within the engagement process.

One respondent noted that while the Ministry of Community Services is not considered one of the ‘dirt ministries’ responsible for land and resource management decisions, in the case of the Ktunaxa SEA, this agency is exploring ways to utilize the shared decision making arrangements established under that agreement. Another respondent noted that the Ministry of Transportation and Highways is also included under the Ktunaxa SEA.

Decisions Pursuant to the BC Environmental Assessment Act
Several respondents commented on the rationale for exclusion of decisions pursuant to the BC Environmental Assessment Act from SDM agreements:

- A few respondents suggested that engagement model adopted in SDM agreement is fundamentally incompatible with the independent and objective role of the Environmental Assessment Office (EAO).
- Other respondents noted that engagement processes related to the issuance of an EA certificate are defined under statute and are therefore non-negotiable. It was also suggested by several respondents that the EAO considers their existing processes to be both effective and sufficient to deliver on the Crown’s consultation and accommodation duties with respect to EA-related decisions; in this context, it was reported that EAO had concerns that their involvement under an SDM agreement would result in duplication, and could also lead to a lack of consistency in assessment processes used in different parts of the province.
- One respondent suggested that the Oil and Gas Commission has had similar concerns over duplication of effort, noting that there are various existing Consultation Process Agreements (CPAs) already in place in the NE of BC.

A few respondents acknowledged that many of the permitting decisions for a large project that are needed, both prior to the issuance of an EA certificate and afterwards, are in fact considered under the engagement model. Despite this, many First Nation respondents expressed frustration and concern that the issuance of an EA certificate—a decision that arguably has some of the greatest potential impacts on aboriginal rights and title—is not considered under the umbrella of the same government-to-government relationships that both BC and the First Nations have worked so hard to establish. Some First Nation respondents noted however, that some of the largest projects proposed within their territory have been so contentious that it has been strategically better for the First Nation to deal separately and directly with EAO, and not to risk undermining evolving relationships with other provincial agencies under an SDM agreement by grappling with such controversial proposals.

Several First Nation respondents who have had recent experience engaging with EAO also stated that the linkages between EA processes and the engagement processes established under their SDM agreements have been confusing and frustrating. In some SDM agreements, efforts have been made to define clearer linkages between these different processes, for example through provisions enabling the creation of a joint working group, or creating a mechanism for discussions between EAO and the senior G2G forum. Several First Nation respondents have suggested however that this aspect of SDM agreements remains problematic and deserves further attention.

Provincial respondents offered a slightly different view, suggesting that determining how best to undertake G2G engagement on major projects remains a work in progress, with one individual noting that, “[t]he G2GF can sit down and have a conversation about how provincial agencies want to engage, and yet we still respect the integrity of the EA Act and the authority of EAO. There are good reasons for that. It took some time for everyone to get their minds around this issue. It’s still early days, and we still need to get to use the G2GF for strategic issues, but we are not there yet. Having first established a single point of engagement, and now having the engagement model developed, the last phase... is to begin to use the G2GF for bigger strategic conversations, like Timber Supply Review, energy projects, and major projects.”

Setting Aside of Contentious Issues
In at least two cases, respondents noted that specific, highly controversial issues confronting the negotiating parties were set aside. For example, in the case of the Tsilhqot’in agreement, protracted conflict over the Prosperity Mine and potential impacts on Fish Lake, and the fact that the two governments were engaged in active litigation led to this project being explicitly excluded from the bilateral negotiations. In the case of the Taku agreement, and in light of a long history of conflict over the Tulsequah Chief mine and a proposed access road through
the Taku watershed, the SDM agreement outlined a special process that would be used in the event that an application for construction of such access was to be considered. As one respondent noted, that process was in fact triggered shortly after the completion of the BC-Taku SDM agreement and led to the establishment of a ‘Level 4 Working Group,’ but did not ultimately result in consensus recommendations coming forward.

2.4.4 LINKAGES TO TREATY OR OTHER RECONCILIATION PROCESSES

Both First Nation and provincial respondents noted that while the wording of many SDM agreements refers to ‘a step towards longer term reconciliation of their interests through treaty or other arrangements,’ the actual linkages between shared decision making as it is expressed under SDM agreements and treaty agreements are far from clear. One respondent highlighted that this is despite the fact that there is often standardized wording included within SDM agreements to the effect that “government-to-government relationship described in this Agreement may serve as a basis for addressing any commitment that may be included in a treaty on a relationship between the Parties with respect to the management of lands, water and resources.”

In some cases, there has already been close interaction between treaty negotiations and SDM negotiations, including regular briefings between the respective processes. In at least two reported cases (Ktunaxa, Kaska), individual members of the negotiating teams were also directly involved in treaty negotiations. Moreover, in at least one case, when a challenging issue arose in the late stages of the negotiation of an SDM agreement related to the concept of recognition, it was at the treaty table that this was ultimately resolved. One respondent also noted that in at least the case of the Ktunaxa SEA, the implementation plan includes a commitment to continue discussions aimed at clarifying the scope and nature of shared decision making.

Several respondents also noted that one of the benefits of SDM agreements is that they create opportunities for relationship building, and particularly for capacity building and the strengthening of governance with First Nations in the interim, while treaty negotiations continue. As one provincial respondent stated, “[t]he G2G forums are providing an excellent opportunity to develop the collaborative and strategic relationship between the parties for land and resource management. This will assist in facilitating a seamless transition to treaty implementation.”

From a broader policy perspective however and looking to the longer term, interview results suggest that much is still in flux with regard to the linkages between SDM agreements and treaty. Provincial respondents acknowledge that this topic is actively being explored within MARR, particularly in the context of revisiting policy mandates as a new government takes the reins following the May 2013 election. As one provincial respondent stated, “[w]e’re still assessing how this agreement helps us [in the context of treaty]. How these processes are carried over into our governing relationships has yet to be seen, but it gives us something positive to build on.” Another provincial respondent commented that, “[I] work with the agency that is primarily involved with reconciliation of interests. The agreements provide a path, in addition to the ultimate expression of reconciliation, which is a treaty. The [SDM] agreements are relationship type agreements—they allow us to coexist. They set up precursors, that help us be better equipped for a final discussion on the reconciliation of title and rights. Looking back over a decade or more, we have dealt with land use, then reconciliation. I can now see treaty being advanced.” Another framed the question as follows: “[A]re these SEAs and RPs simply interim arrangements, or do they survive treaty and are they incorporated into final settlements?”

Some respondents also noted that the mandates provided to provincial and federal negotiators appear to be more limited than what is currently available through an SDM agreement, particularly in the context of decision making for land and resources off treaty settlement lands. One First Nation noted however, that the emergence of SDM agreements has in fact allowed treaty negotiators to explore new approaches for collaborative management for off treaty settlement lands, adding that “[t]his is very promising. We have thus brought the idea of SDM into the treaty as a new chapter... I am quite optimistic about this.” Another First Nation respondent offered a more cautious assessment, stating that “[t]reaty chapters are [currently] framed in terms of a division of authorities, or overlapping authorities. The tenor of the language is almost offensive... For many FNs working on SDM outside of treaty, more is being achieved creatively...It is possible that the emergence of SDM will either precipitate a real soul-searching in terms of treaty related mandates for BC and Canada, or it will be one more nail in the coffin of those processes.”

One First Nation respondent speculated that SDM agreements may in fact be used as a catalyst for treaty negotiations already underway or as an enticement for First Nations currently outside of the treaty process, suggesting that “it appears that the [SDM agreement] has been offered as a carrot to facilitate more functionality at the treaty table. Treaty tables were very much stalled. It has been suggested that perhaps the [SDM agreement] was in part offered as a way to help move things along. It has been stated that non treaty groups would not be considered for these SEA agreements, which perhaps substantiates this view.” (BC respondents have countered this suggestion, noting that there are in fact several First Nations who are signatories to SEAs and that are not engaged in treaty negotiations (e.g., Nanwakolas, several of the Coastal First Nations, Haida and several of the Sto:lo nations).

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1. Kaska-BC SEA, Section 8.1. Similar wording is also included in the Ktunaxa-BC SEA, Section 9(1).
Respondents did not offer any comments on linkages to other reconciliation initiatives, such as the Truth and Reconciliation Commission.

2.4.5 Linkages to Land Use Planning

Interview results suggest that there is considerable variation in the strength of linkages between SDM agreements in various parts of the province and strategic land use planning products. These linkages range from examples where land use planning largely preceded the establishment of SDM arrangements (e.g., Nanwakolas, Central Coast), where a land use plan was jointly negotiated in parallel with the SDM agreement (e.g., Taku), where components of one or more land use planning products have been consolidated and reaffirmed through an SDM agreement (e.g., Kaska, Gitanyow), where linkages to existing land use plans are notably absent (e.g., Tahltan SDM agreement and Cassiar Iskut Stikine LRMP), or examples where there is no strategic land use plan in place at present (e.g., Sto:lo). As noted above, in some cases such as the Kaska SDM agreement, information from existing land use plans (SRMPs) has been incorporated into some kind of sensitivity layer, which is used in the determination of engagement levels.

Several respondents noted that the consideration of individual applications by BC and the First Nation(s) is made much easier if there is a land use plan in place that provides a common and agreed reference point. One provincial respondent suggested that a shared vision for land use, is in fact a necessary element of any effective SDM agreement, stating that “[t]he necessary precursor to SDM agreements is a common vision and agreement on land use... The common vision for the land makes implementation of a SDM much easier—if you don’t have that common vision, it is very difficult.”

Other respondent suggested however that land use plans might not always provide the information that is needed. One stated that “[a land use plan] is not always the right tool and it may not always be feasible—the more dynamic the problem, the more you need an iterative solution and more flexibility. Given the landscape we are dealing with, I am not sure a land use plan is the right tool.”

In several cases, respondents noted that those involved in the implementation of SDM agreements have already anticipated the need for further work to ‘spatialize’ the agreement, or update existing land use planning data as new information becomes available.

2.4.6 Other Collaborative Management Arrangements & Joint Initiatives

Respondents reported that under most SDM agreements, the signatories have established a number of other standing committees, working groups, or project initiatives related to different aspects of land or resource management. The number and scope of these initiatives varies on a case by case basis, but have included:

- Collaborative initiatives for fish and wildlife management;
- Collaborative management planning for protected areas;
- Planning for regional energy development;
- Regional or landscape level land use planning;
- Forestry;
- Placer mining;
- Research and monitoring; and,
- Archaeology.

In some cases, the SDM agreement has served to consolidate committees that had been established under earlier MOUs or other G2G agreements, or has simply brought them under the overall umbrella of a G2G Forum.

A few respondents commented on the significant resourcing demands that involvement in such initiatives places on both First Nations and provincial agencies. Two First Nation respondents also noted that it has been somewhat more difficult to make progress on key issues of concern through these various committees and working groups, perhaps because the SDM agreement included a ‘process commitment’ to establish such working groups or initiatives, but did not always define clearly the precise outcomes to be achieved. Several of those who commented on this issue also conceded however that it is as yet “very early days,” and some of these initiatives are only just getting underway.

2.4.7 Resource Revenue Sharing

Interview results suggest that many SDM agreements include enabling provisions related to the negotiation of resource revenue sharing agreements. One provincial respondent noted however, “[w]e would need mandates in place before these could be negotiated however. [These are therefore just] a ‘door opening clause.’”

In a few cases, a standing committee on resource revenue sharing has been created, operating under the direction of the G2G Forum. In other cases, respondents indicated that discussions on resource revenue sharing have stalled because of concerns on the part of the First Nation over the current framework for BC’s Economic and Community Development Agreements (ECDAs) or Forest Consultation and Revenue Sharing Agreements (FCRSAs).

Several respondents noted that over the long term, establishing a durable funding model for SDM agreements—through revenue sharing agreements or some other means—is essential (see also Section 2.7).

Substantial economic accommodation is also included in several of the Reconciliation Protocols, most notably in the Haida RP, Coastal First Nations RP and the Nanwakolas RP.
2.4.8 **Dispute Resolution**

Interview results confirm that all SDM agreements include provisions related to dispute resolution, or in one case a commitment that such a provision should be developed. (It should be noted that a distinction is made in some instances between the term ‘dispute resolution,’ used to refer to disputes related to the interpretation of the SDM agreement, and ‘issue resolution,’ used in some agreements to refer to processes used to resolve disputes related to the substance of recommendations developed under the engagement model and related to specific applications.)

Based on interview responses, there is as yet no instance of the dispute resolution provisions in an SDM Agreement being used. Several respondents noted that this is not perhaps surprising given the early stage of implementation of many agreements. Others noted that representatives of the parties have tended to use informal mechanisms to discuss problematic issues as they arise, rather than invoke formal dispute resolution clauses in the SDM agreement. One provincial respondent described their experience as follows: “Informally, when people are concerned about things they pick up the phone. For example, I tend to get involved if there are operational challenges within government—for example, if people are not following the agreement or are not doing things as they should according to the agreement. If there are strategic issues or concerns, [senior First Nations representatives] tend to contact [their BC counterpart] and give them a ‘heads up’. At this level, there are many discussions underway when issues come up. There are long standing relationships at that senior level, and so people call one another, to try to understand what might be happening and what can be done about it.”

2.5 Public Awareness and Constituencies of Support

Interview respondents were invited to comment on the level of awareness of support among stakeholders in the region where one or more SDM agreements have been implemented, and among non-aboriginal local community members.

2.5.1 **Stakeholder Awareness and Support**

Interview responses suggest that the level of awareness of SDM agreements within the resource industry and among other stakeholders varies considerably between regions and by industry sector (see Figure 3). Several themes are apparent from comments on this topic:

- It is clear that BC and First Nations have chosen to negotiate SDM agreements without involving third parties directly. It was suggested by several respondents that this approach was adopted in the interests of streamlining the negotiation process, and also reflected the fundamental nature of the government-to-government relationship.
- Limited effort appears to have been made to date to share information with most stakeholders regarding the emergence of SDM agreements, although some effort has reportedly been made to inform representatives of the provincial resource industry associations or some of the larger companies operating in a given region. In particular, it was suggested that, “[w]hen Nanwakolas, Tsilhqot’in, Haida and CFN all got concluded within a relatively short period of time, stakeholders came to government and expressed concern… Those groups were briefed at the regional level and they also received briefings at the Executive level with what was then ILMB.” Despite these early efforts, several respondents indicated however that a more systematic approach to stakeholder engagement is still needed, although this could demand significant time and resources. As one provincial representative stated, “[a] lot of good work could be done improving on this one.” In the meantime, proponents reportedly became aware of SDM agreements on a case-by-case basis, as their individual applications are considered under the engagement model.

Interview results also suggest that there is a somewhat consistent pattern in terms of which industry sectors is currently only poorly or well-informed about SDM agreements:

- Several provincial and First Nation respondents (variously representing several different regions of BC) suggested that forest licensees tend to be relatively more informed about SDM agreements than other stakeholders. It was suggested by one respondent that this is both because
of the spatially extensive nature of forestry operations, and also because MOF staff are in fact more conversant with First Nations consultation issues.

Several respondents suggested that the mining sector is "only slowly becoming more aware of SDM agreements. Some mining companies are very fluent in the SDM agreement in this region and have established strong relationships and are doing well. Other mining proponents have resisted the agreement and are paying the price."

• Several respondents commented that oil and gas proponents are relatively less well informed than other major industry groups, and suggested that guide outfitters or tourism operators generally have an even more limited knowledge of the agreements or what they mean.

• Several respondents suggested that even in those cases where industry stakeholders are aware of the agreement, their understanding of its implications varies. One First Nation respondent suggested that the new engagement model and the subtle changes in the decision making relationship it represents between the Crown and a First Nation "leaves a few stakeholders mystified." Another provincial respondent noted that, "[p]roponents or business owners are a little uncertain about what government is doing with First Nations in general. They are simply looking for efficient ways to do business on Crown land. The complexities around First Nations engagement is a head scratcher for many of them!" Yet another provincial respondent noted that, "[s]takeholders’ tendency will be to ignore the relationship piece, and focus on the timelines for engagement, which is the piece that affects them."

• Opinions vary as to the degree of support for SDM agreements from those stakeholders who are aware that such agreements exist. For example, one First Nation respondent suggested that stakeholders are not particularly supportive, suggesting that, "[f]or many proponents who are interested in development in our territory, they see this simply as an encumbrance for their business. They might disagree with me, but from a practical perspective, this is the reality." Other First Nation respondents offered a different view, suggesting for example that, "[f]or those who are aware of it, they like it. It takes a lot of onus from them." Another individual echoed this view, suggesting that "[t]he licensees recognize that they get a better product, things work better now we have more staff in place, there is less confrontation." One provincial respondent suggested that the degree of support from stakeholders simply "depends on their interests and their philosophical orientation, their views about ‘Indians’ or First Nations or however they see the world... For the key stakeholders—those who have the opportunity understand the agreement and what it represents, and who can grasp how it affects their ability to create relationships, and provide predictability—yes, I think they support the agreement."

• In some instances, respondents have suggested that awareness has improved over time, most noticeably in those regions where SDM agreements have been in place for several years.

• Several First Nation respondents pointed out that they tend to engage themselves, face to face, with major proponents at an early stage and are therefore "educating them about the SDM agreement. We have taken this on, rather than relying on BC agencies." Moreover, one First Nation respondent suggested that not only proponents but also provincial agency employees rely upon First Nations staff to clarify the implications of the SDM agreement. This individual contended that "[t]he Province does not seem to be good at explaining it. We get a lot of calls from proponents [and BC Line Ministry Staff] who want us to explain this to them because they are confused about what they have been told by MARR." Other provincial respondents suggest that there are in fact more systematic efforts being made by front line agency staff to share information about SDM agreements, noting that, "[o]n an application by application basis, we provide copies of the agreement to proponents, or refer them to it, and explain what it means, and how it works. We refer people to the [SDM agreement] and encourage them to contact [the First Nation] directly."

2.5.2 LOCAL COMMUNITY AWARENESS AND SUPPORT

Interview responses suggest that the level of awareness of SDM agreements among non-aboriginal local community members is generally low, averaging only 1.9/5 (on a scale of 1-5, low to high) across all respondents and all regions (see Figure 4).

Figure 4: Awareness of SDM Agreements within Local Communities

The majority of respondents suggest that local community awareness fairly reflects the amount of effort that has been invested in sharing information about SDM agreements. As several respondents pointed out, other than limited press coverage at the time each SDM agreement was signed, there have been few other opportunities to introduce such agreements to
members of the public or to explain their scope and intent. For the most part, interview respondents were not overly concerned about the lack of awareness or understanding among non-aboriginal community members. One respondent suggested for example, that there is little incentive for a local resident to take the time to understand any of the complexities of consultation and accommodation, as “[p]eople only pay attention to things that affect them.” Another respondent commented as follows: “I wonder what the value of them knowing would be anyway. I am not sure there is actually a risk. Why would we do it anyway? I am not sure I see that this is a problem.” Finally, one First Nation respondent suggested that, “[f]or local citizens, if their interests are not affected they generally do not make the effort to find out what we are doing—that is, unless they are making an application to the province, in which case they find out fast.”

One provincial respondent summarized the situation as follows: “There is support [for SDM agreements] from those who are directly involved, or those who are personally interested and who like to know what is going on. This is particularly true if they have a stake in the game. But for the average ‘Joe Citizen’, who is not involved in aboriginal issues or resource management, they would not have an opinion. We probably need greater public outreach. In my opinion, public awareness and outreach is definitely an area for improvement.”

In more densely populated regions, such as the East Kootenays and the Lower Fraser Valley, more effort has reportedly been made to engage with local government officials or other community groups, to introduce SDM agreements. As one First Nation respondent noted, “[w]e have made a presentation to the Fraser Valley Treaty Advisory Committee... and have had ad hoc liaison with senior staff at the Fraser Valley Regional District. That is probably more important than trying to cover all the potential public interests that might want to be informed.”

One respondent suggested that local communities become more aware of an SDM agreement in those places where the agreement is being negotiated concurrently with a G2G land use planning process involving local community and stakeholder workshops, for example in Atlin for the BC-Taku agreement.

Several respondents in more Northern areas noted that there are in fact few non-aboriginal communities within their region in any case, and noted that their own outreach and engagement effort is focused on their own First Nation members.

### 2.6.1 Senior G2G Forum and Other Structures

Interview respondents were invited to assess how well the various G2G structures established under an SDM agreement operate in practice. These structures vary from a single G2G Forum supported by staff on an as needed basis, to multi-tiered structures with a senior Executive forum, a standing working group at the managerial level, and various technical committees. The nomenclature for these different structures also varies on a case-by-case basis.

Ratings offered were consistently high with an average of 4.13 (on a scale of 1-5, low to high). About half of the First Nation respondents did not offer a rating however, as many did not participate in G2G structures, or only participated at one level among several G2G structures (see Figure 5).

One provincial respondent summarized the situation as follows: “There is support [for SDM agreements] from those who are directly involved, or those who are personally interested and who like to know what is going on. This is particularly true if they have a stake in the game. But for the average ‘Joe Citizen’, who is not involved in aboriginal issues or resource management, they would not have an opinion. We probably need greater public outreach. In my opinion, public awareness and outreach is definitely an area for improvement.”

Several themes emerged from interview responses on this topic:

- Trust and working relationships: Several respondents noted that the G2G structures had led to the steady strengthening of working relationships over time. As one provincial respondent stated, “[i]t is remarkable to see the increase in mutual respect and professionalism—in fact, this is one of the greatest benefits is the maturing of the relationship on all sides.” Another provincial respondent commented on the relationships developed at both operational and more senior levels, noting that “[i]t is all about relationships. Before we started, it was uncommon for staff to meet with First Nations directly. It was intimidating at first, but now people can talk with one another and trouble shoot. At the [senior forum] level, relationships have really moved forward as well, and there is also a level of trust.”

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**Figure 5: Assessment of How Well G2G Structures Operate in Practice**

Several themes emerged from interview responses on this topic:

- Trust and working relationships: Several respondents noted that the G2G structures had led to the steady strengthening of working relationships over time. As one provincial respondent stated, “[i]t is remarkable to see the increase in mutual respect and professionalism—in fact, this is one of the greatest benefits is the maturing of the relationship on all sides.” Another provincial respondent commented on the relationships developed at both operational and more senior levels, noting that “[i]t is all about relationships. Before we started, it was uncommon for staff to meet with First Nations directly. It was intimidating at first, but now people can talk with one another and trouble shoot. At the [senior forum] level, relationships have really moved forward as well, and there is also a level of trust.”
• Executive level representation: One provincial respondent noted that the proliferation of G2G structures is a challenge for provincial agencies, in that each senior forum demands Executive-level representatives. As this individual pointed out, “If the senior decision makers were to receive a call from all of these agreements at the same time, it would be challenging to say the least! And if we had 50 such agreements, all with an Executive level decision making structures, we would not have the capacity in Victoria to deal with them all. That is a problem.” Another provincial respondent suggested that the lower frequency of meetings for more senior forums presents challenges for those representing each party at that level, noting that, “I am a bit nervous though, because some of the folks in Victoria tend to forget that there might be a role for them at a later date! To be honest, I am unsure whether they are going to be fully up to speed when they are needed.” One First Nation respondent expressed a similar concern, noting that while the operational level forum functions well, “there are Chiefs sitting at [the senior forum level] who have not yet built their capacity and they are less used to dealing with [issues] on a day to day basis. It can be hard to bring them up to speed, so that there can be productive discussion.”

• Availability for all agencies: One provincial respondent noted that the senior forum has not perhaps functioned in practice as originally intended, stating that, “[i]t was originally envisioned as a regional forum, where all the natural resource agencies could come and address concerns. In reality, at the working level, it is more about personal relationships with individual staff, which is hugely beneficial and can defuse issues. But it has not resulted in agencies being able to use the G2G structures as a vehicle to deal with new initiatives, as originally intended. These other agencies tend to rely on their own staff. The G2GF is not being used as a regional forum, therefore. People tend to stick with what they know.”

• Resolving issues and representation of statutory decision makers: Some First Nations representatives suggested that while the senior forum provides an opportunity for strategic issues to be identified and discussed, there has been less success in coming to a final resolution on those same issues:
  1. One individual stated that “[t]he forum can become a vehicle for ‘catch up,’ serving as a place for all problems to be identified, and increasingly simply a place where we raise issues but they cannot be resolved. In our experience, the issue just gets passed on to other provincial decision makers. When this happens, the issues never get resolved. We may need to push harder to work toward consensus at the [senior forum level] as a way to improve things.”
  1. Another First Nation respondent complained that several of the key statutory decision makers were not at the table and suggested that, based on their own experience, MARR representatives have a limited ability to hold other agencies to commitments made at the table, which undermines confidence in the authority of the G2G forum overall. As another individual noted, “MARR seems to be a bit weak within government... [W]hen we bring things to the table, we seem to hit a dead end. MARR does not seem to be able to bring our issues and concerns forward effectively to the rest of government.” Yet another respondent stated that, “the [senior forum] is becoming disappointing... perhaps because of the number of large projects we are dealing with in our territory. It becomes a conduit only, rather than a decision making body... We raise issues but they cannot be resolved at that [forum], and the BC reps just agree to bring it back to more senior people or the appropriate statutory decision makers in the appropriate agency.”

One First Nation respondent expressed frustration that some provincial representatives at the table fail to make “recommendations from the perspective of the committee, rather than from the perspective of an agency. The provincial committee members are often caught by their own mandates or fettering issues. We have been wrestling with the fettering issue—and we have been trying to keep that issue out of our deliberations. What is holding us back is the ability of the province to define fettering more clearly—it is so open ended!”

In one case, it was suggested that arrangements had been made for statutory decision makers to attend G2G Forum meetings, without the concern that their active participation in discussions at the table would result in the fettering of their authority. One respondent suggested that this approach had improved the effectiveness of the forum significantly (see Section 2.6.3).

Keys to Success
Some of the key features identified by interview respondents that help to ensure G2G structures operate well included the following:

• The right people at the table: Several respondents suggested that the success of a G2G structure depends very heavily on the individual personalities at the table, and their understanding of the interests of the parties. As one respondent explained that, “[y]ou gotta have the right people! Ideally, you have people at the table that understand, inside out and backwards, the agreement itself and the reasons behind it. They have to be bought into the idea of relationship and be willing to put that at the forefront. The more you have people able to work collaboratively, and focus on the relationship, even when things are difficult, the more successful you will be.” One provincial respondent added that success has been achieved in part because “[t]he people that are there have a commitment to the interests of their respective parties, but also have a bona fide interest in the relationship. If these structures were viewed as places to push, and squeeze and grind, at the expense of the other party, it would be a different story. People who are there believe in the work.”

• Continuity: One First Nation respondent noted that the senior
forum for their agreement is “[w]orking well because we have retained good institutional memory from the negotiations phase, which provides a good foundation for implementation. We have developed good working relationships, and have built on a lot of trust. We now have an ability to work through issues creatively at the table and among staff who support the forum’s work, although some of this ability is being lost as there is turnover among agency staff and as new provincial representatives come on board that do not have the same history or working relationships.” One provincial respondent also commented on this issue: “People who know each other and who have worked together for a while can have discussions and decide what approach would be best. People can have candid conversations. If these relationships were not in place, it would all have to be more formal. There is real value in the stability of such relationships. Obviously people change jobs, but there are perhaps opportunities for people to stay connected with First Nations with whom they have worked for a long time.” Finally, one First Nation representative suggested that, “[t]he lesson here is not to lose the history of how we got there. You need some continuity and also need to bring people in that learn from these relationships.”

• **Clear mandates, roles and responsibilities:** One First Nation respondent noted that the effectiveness of G2G structures depends in part on understanding clearly what each forum or committee is intended to achieve. This individual added that “having as much structure as possible is important, so that the JRGF is not just a dumping ground for issues.” Other respondents echoed this theme, noting for example that “[w]ithin each body, clarity of membership and good leadership is important”—knowing who is involved, and them being clear on roles and responsibilities. 

• **Importance of informal dialogue:** One provincial respondent highlighted the importance of informal discussions away from the forum table, noting that “[e]ncouraging dialogue is also key. We need to talk in between times and informally. We engage and communicate on a weekly basis. We try to demystify any rumours that are going on. We are taking the G2G function beyond its formal intent and focusing on relationships.”

• **Opportunities for sharing information and operational experience:** One respondent noted that one of the keys to success in their experience is providing opportunities for staff from provincial agencies and First Nations’ departments to meet and discuss particular kinds of applications or other operational issues, face to face: “It’s about the linkages back to operational staff in communities and operational staff in agencies. We have realized the need for building understanding among [First Nation] and agency staff, including building working relationships. We have had several sectoral meetings, such as those related to the Water Act; another for forestry. This was preferred instead of a day-long training session on how the [SDM agreement] works. Sectoral meetings allow for personal relationship building and there are a lot of ‘Aha moments.’”

They suddenly realize that the [First Nation] and provincial agencies have some common interests, for example, concerns about the quality of information provided in an application.”

### 2.6.2 Engagement Model

Respondents were invited to comment on how well the engagement established under the SDM agreement was working in practice, when compared to the conventional referrals system. The average rating from all respondents was 3.82/5 (on a scale of 1-5, low to high), with provincial respondents rating the engagement model slightly higher on average (4.13/5) than First Nation respondents (3.56/5) (see Figure 6).

![Figure 6: How Well Does the Engagement Model Work in Practice?](image)

**Implementation of the Engagement Model**

Respondents offered the following commentary on successes and failures experienced with implementation of the engagement model:

• **Implementation Capacity:** Several respondents commented on the challenges involved in staffing up to deal with engagement, and the need for technical training and other capacity building. As one respondent noted, “[i]t is really important for a FN to identify the tools that are needed to implement the agreement, and to have the ability to put those tools in place. For example, you need GIS capacity, a land agency to coordinate the work, etc.”

• **Tracking tools:** One First Nation respondent explained that considerable time and effort was spent at the outset investigating various information management tools to track applications processed under the engagement model. Although based on that exercise, no one tracking tool stood out as being obviously superior, it was noted that several First Nations operating under a SDM agreement in one region ultimately decided to use the same tool, which has made implementation easier.
• **Volume and response timelines**: Several First Nation respondents commented on the challenges involved in processing several hundred applications, and suggested that there needs to be greater flexibility in terms of meeting response timelines. One provincial respondent suggested that the engagement model has not in fact resulted in improved efficiency, because “First Nations receive the referrals and then they wait until the end of the defined time period to provide comments. It has not necessarily resulted in speedier responses. However the consistency in the process has been a positive.” It was also noted that in some cases, First Nation engagement staff need to seek direction on a particular application from their Chiefs and Council or other leaders, who might only meet as a group infrequently, for example on a monthly basis; as a result, it was noted that a First Nation can get significantly behind on response timelines.

• **Understanding of strength of claim**: One provincial respondent explained that in some cases, First Nations staff operating under the engagement model do not have a good understanding of the implications of strength of claim in terms of the province’s consultation duty. As a result, it was suggested, “some of the responses [developed under the engagement model] are not as useful as they could be.”

• **Reflecting joint recommendations in permit conditions**: One First Nations respondent noted that First Nations have been frustrated at times to discover that detailed recommendations generated under the engagement model have not been reflected in the conditions attached to provincial permits or other authorizations. This was reportedly an issue for mineral exploration and mining projects in particular.

• **Advanced mineral exploration and mining**: Several respondents noted that engagement has been challenging in particular for more advanced mineral exploration, or mining projects at a scale just below the threshold for EA. As one provincial respondent noted, “[there are a number of factors here: There is a lot of distrust about mining, which relates back to the [First Nations] experience with [other major projects in the past]. There are volumes of information generated for major mines projects, which are very technically detailed. The parties come at this from very different places—provincial folks focus on science and technical details, while First Nation members have a more general, sometimes gut level reaction because of concerns about loss of access to land or impacts on wildlife. We are simply not coming at this from the same starting place.” Another suggested that, “[we are] continuing to come up against... mining. BC wants to streamline process, rather than get miners to behave differently on the landscape. There is a built-in attitude to promote mining, and it is difficult to expect them to give much credence to how [the First Nation] wants mining to happen. This is a big one that causes me to not have a lot of faith in successful implementation of agreement.”

Notwithstanding these challenges, one First Nation respondent acknowledged the depth of commitment from provincial agencies to make the engagement model work in practice, noting that, “I am pleasantly surprised by how well it works. I see government really trying to make it work. At a meeting in [one of the regional offices], we had 60 government people in the room to be briefed on the [SDM agreement] last fall. They are trying to get a better understanding of [First Nation] rights values and interests, and to try to accommodate us. They are coming to an understanding that we are not going anywhere, and neither are they, and so we had better work it out.”

**Elevating Engagement Levels, Issues Resolution and Maintaining Momentum**

Several respondents commented on the various mechanisms available within engagement models to ‘elevate’ engagement to a higher level for more complex applications, or to invoke ‘issue resolution processes’ when operational staff are unable to arrive at consensus recommendations within agreed timelines. Various opinions were offered, as follows:

• Several respondents noted that much conflict has been avoided by building into the engagement model a provision that allows either party to elevate the engagement level, without the need to negotiate or reach an agreement that elevation is required. One respondent described this as a series of ‘relief valves’ built into the model. As one respondent commented, “[t]he one key feature that helps [engagement models] to work well is that you don’t get stuck on an issue (land use or referral) at the technical level. You need to discuss it, agree to disagree if necessary, and then elevate. You cannot afford delays at the technical level.”

• Despite the advantages of uncontested elevation, one provincial respondent noted that the extended timelines required for higher-level engagement or for issue resolution processes involving more senior representatives for both parties could be problematic. This respondent noted that, “[b]y the time it gets on to a senior decision maker’s agenda, things could have changed, or frustration could have built up for a proponent or licensee. Applications that do not result in an agreement through the engagement model needs to be moved up the system in a timely way.”

• Furthermore, one provincial respondent suggested that successful engagement also requires that representatives at each level are genuinely committed to finding solutions, noted that, “[t]he senior structures [need to be] well supported by subordinate structures. The senior forum can address strategic issues, as a result, as was intended. Everyone is finding solutions at the level at which they work. They do not do immediately bump things up to a higher level when the going gets tough.”
Portals and Online Information Management Tools
Several First Nations have developed portals for the management of information related to land and resource management applications (e.g., Nanwakolas, Tsihqot'in). It was noted that the most recent of these has been developed by the Sto:lo, using a social networking type approach. The purpose of this web portal, known as ‘Sto:lo Connect,’ is to enable multiple First Nations to coordinate their review of applications within a regional area of interest and to eliminate redundancies and conflicts on responses to referrals. As one respondent explained, this web portal enables proponents and government to input information about a given proposed activity. This is done just once, but the information can then be viewed by multiple Sto:lo member bands (whether or not they are signatories to the Sto:lo SEA Pilot). Within the online environment of the portal tool, each Sto:lo band makes its own, internal decision on whether to respond substantively to the application, based on the nature of the proposed activity or the location of the proposed activity. As this respondent noted, under this approach, some bands may choose not to respond if they see others have already responded substantively. The portal also enables multiple levels of dialogue, in relative confidence where required; for example, several bands can sort out among themselves who should respond on a given application, discuss the issues involved in the proposed development, or share information regarding different potential responses. The web portal also allows for a second level of dialogue, between First Nations and BC agencies.

One respondent noted that a portal approach like Sto:lo Connect, “helps us to make sure that we do not repeat questions again and again. Users see other users and what actions they are taking, so they can decide when to step in and when they need to back off. It creates a common tracking mechanism. We can also share documents, information, and GIS data. It is spatially based, with a mapping interface. We provide more limited access to outside users, but provide the full suite of values and data (including confidential data related to cultural values) for the First Nations.” Another commented on the value of Sto:lo Connect as follows: “Our collective interests are presented to the SEA pilot ‘table,’ but we work things out between us behind the veil of our own process. We have a framework and a process for dealing with things internally, in a way that is culturally authentic; dealing with land and resources as s’olh Temuxw [meaning ‘our world’]. It is not about territorial boundaries that are lines on a map. Instead, it is about relationship to land or resources, in light of property rights or other aboriginal concepts. We are willing to deal with BC through the agreement on a collective basis as one territory, but behind the veil of the Sto:lo we deal with this in our own way.” It was also noted that Sto:lo Connect has been developed independently by the Sto:lo themselves, and is entirely separate from the SEA Pilot. There are also more bands using Sto:lo Connect than are signatories to the SEA Pilot.

2.6.3 FIRST NATIONS INFLUENCE OVER DECISIONS
Interview respondents were asked to comment on whether, under the engagement model in their SDM agreement, First Nations are provided with an opportunity to exert greater influence over decisions occurring within their territory.

Many respondents stressed first and foremost, the importance of understanding what decision making leverage an SDM agreement actually provides for First Nations, and what it does not. As several First Nation respondents pointed out, what they are seeking in terms of shared decision making is “[t]he ability to engage with BC on an equal footing on land and resource management decisions. And more specifically, the ability to say “no” to projects and authorizations that would have too great an impact on their interests.” Several respondents acknowledged however, that under most SDM agreements, provincial statutory decision makers still make the final decision on a given application and it is the Crown that issues a formal authorization under provincial law. As one respondent noted therefore, for most SDM agreements, “the title ‘shared decision making’ is not appropriate. Instead, it is a process by which First Nations agree to support the existing decision making process.” Several respondents also noted that there are two exceptions:

- In the Haida RP, the Haida Gwaii Management Council (HGMC) has delegated authority to make certain decisions on behalf of the two governments; this is the only such ‘joint decision making’ arrangement in BC at the present time. Neither BC nor the Haida can overrule the decisions of the HGMC.
- Other SDM Agreements do acknowledge that the signatory First Nation(s) will also be making a decision on any given matter at hand; for example, in the BC-Taku SDM agreement, the engagement model acknowledges that recommendations are submitted to both to the relevant provincial statutory decision maker and also to the Taku River Tlingit First Nation decision maker for their respective consideration. A similar arrangement is defined within the Coastal First Nations RP, whereby both Parties will “review recommendations made by the Representatives or the forum Working Group and will make and implement decisions in accordance with their respective laws, regulations, policies, customs and traditions” (Appendix B, Section 5.4).

Other First Nations reiterated that SDM Agreements do not resolve questions of jurisdiction, and in most cases represent “an enhanced consultation model, not joint decision making.” One respondent added that “an SEA does not grant full certainty and it does not define aboriginal rights and title. But there is a process in place where we have an opportunity to discuss with government and identify areas that have value for us, where mitigation is needed, or where development should be prevented. It engages government and a FN in dealing with land and resources.”
Notwithstanding these qualifications, the majority of respondents indicated that First Nations can exert considerably more influence over land and resource management decisions in several different ways, as described below.

**Stature of a G2G Agreement**

Some respondents noted that in the eyes of many development proponents, simply having negotiated a formal agreement with the Crown on a government-to-government basis elevates the influence of a First Nation within their own territory. These respondents suggested that proponents are more likely to engage directly with the First Nation as a result. As one First Nation respondent explained, “[t]his agreement brings us a lot more clout. We carry a lot more weight, and are being recognized by the Province. When we are dealing with third parties, they appreciate that we have an agreement with BC and they respect this fact. Having an Agreement gives us more influence... [even if] right now, I don’t think we have been able to test exactly how much influence we actually have.”

**Defining the Process of Engagement**

Some respondents noted that First Nations have greater influence because through an SDM agreement they have a contractual agreement defining how consultation will be carried out. It was suggested that this in turn has several advantages:

- One First Nation respondent suggested that because of the SDM agreement, there is “a common engagement framework, and common terminology. That increases the influence we can have over provincial decisions. It also informs our own [First Nations’] decision makers’ process. It provides a framework for communicating information.”
- Other respondents noted that the engagement model also enables First Nations to share information more directly and more efficiently about their interests and their perspectives on a given land or resource management matter. As a result, it was suggested that there is a higher probability that statutory decisions will fairly reflect First Nations interests. Another respondent countered however that providing information in itself does not mean that exerting greater influence, stating that, “we have no greater assurance that BC statutory decision makers will consider our responses in any different way. We can provide better information, but the question is about the nature of accommodation.”
- One respondent also noted that a more defined engagement model provides greater transparency with regard to the process by which any statutory decision maker arrives at a given decision.
- One provincial respondent noted that most SDM agreements also enable First Nations to initiate engagement themselves, and therefore define the scope of strategic issues to be discussed on a G2G basis.

**Seeking Consensus Recommendations**

Several respondents highlighted the fact that under most engagement models, representatives from the First Nation and provincial agencies are encouraged to work together and to seek consensus recommendations on a given application, for consideration by the decision maker. It was noted that as a result, the First Nation is the last group that a statutory decision maker hears from before a decision is made. As one respondent commented, “[w]hen we are about to make the decision, we do not invite the proponent to come and influence the statutory decision maker just before the decision is made—that opportunity is only afforded to the First Nation.” Another commented that, “[w]e recognized that there is a statutory decision maker, but we wanted to be ‘sitting outside the Minister’s door when they made their decision.’”

Several respondents also noted that the process of generating joint recommendations affords First Nations a significant opportunity to define the scope of conditions that might be applied to a provincial authorization:

- As one respondent observed, “[o]nce things are written and spoken and communicated, it is harder to ignore. A statutory decision maker then has to consider this information. If you are well resourced and can put issues forward they are simply harder to ignore.”
- Another noted that the opportunity to craft consensus recommendations reaches considerably beyond what is legally required: “The obligation to seek consensus on recommendations does not exist in a common law context. The courts have said we should try to resolve issues and if needs be, accommodate. What the engagement framework does though is more than that: Rather than a series of one-way back and forth information flows, of having the First Nation provide information to BC, and then having us sit down and try to figure out accommodations and perhaps sharing that information back, the parties are together in the process. The First Nation is involved in crafting solutions with us. The fact that we are reaching consensus recommendations that are implemented in many cases suggests that the First Nations are in fact exerting influence.”
- Another provincial respondent put it more simply, stating that “[t]he commitment to seeking consensus on recommendations is miles ahead of the status quo.”

Some First Nations respondents noted however, that they have had mixed experience in terms of recommendations being accepted by statutory decision makers and fully reflected in provincial authorizations. It was suggested that this is in part because statutory decision makers reserve their right to make decisions without undue fettering, and it may also be a reflection of the commitment of individual decision makers to the spirit and intent of the SDM agreement. As one individual
stated, “once we go through the review process, and our report goes to decision makers, it is a bit of a black box. We don’t know how much our influence actually matters to statutory decision makers! This part of the process is not transparent.” Another First Nation respondent noted that, “[a]s it turns out, there is not an expectation of consensus in practice. My staff suggest changes to applications. They deal with local land staff, who tend to come back and say that ‘their hands are tied’ and that they cannot do anything to accommodate our concerns. It can be very frustrating.” Several respondents also commented that there has been less evidence to date of joint recommendations related to mineral exploration and mining showing up in permit conditions than is the case for other resource sectors.

In the case of the Kaska Natural Resources Council, arrangements have been made to have statutory decision makers participating in discussions directly at the table. Interview results suggest that this is a somewhat unique situation. As one respondent noted, “[w]e had to work on administrative law to enable us to have decision makers in the room, without fettering. They are in the room for the discussion, and they remove themselves when the recommendation actually gets drafted. The statutory decision makers are excited—or at least, are not against participating—because it helps them understand. They know the SEA process has been legally reviewed and so they know that they are not fettering themselves by being involved. And some of the decision makers come from the perspective that you can only fetter yourself—they have come from a forestry background where perhaps legal understanding is more refined.”

**Accountability Mechanisms**

Several respondents suggested that the various ‘accountability mechanisms’ included within most engagement models also enable First Nations to exert considerable influence over any given decision. These mechanisms vary by agreement, but respondents noted that in several cases, statutory decision makers are obliged to report back (to the G2G Forum or directly to the First Nation) in the event that they arrive at a decision that is counter to a joint recommendation—an arrangement described by one respondent as the “red face test” and by another as “holding the decision maker’s feet to the fire.” As a result, there is an incentive for statutory decision makers to accept joint recommendations. One respondent noted that accountability mechanisms apply not only to decisions related to individual applications, but also apply in some cases to strategic issues raised at the G2G Forum level by the First Nation. As one respondent noted, “[t]he provincial statutory decision makers have to show how the [First Nations’] interests were addressed. There is therefore a ‘feedback loop,’ requiring provincial decision makers to report on how interests were addressed, and this is required in writing.” In one case (Gitanyow), it was suggested that, “[w]here a statutory decision maker does not adopt consensus, they have to give us a chance to reply and state our interest— they have to pause and wait before the statutory decision is made.”

**More Influence at Higher Engagement Levels**

One respondent noted that the degree of influence a First Nation can effectively exert over a given decision tends to increase at more elevated engagement levels. As this individual explained, “[a]t the very top level [of engagement], we have a great deal of influence. Our degree of influence actually gets less as we go down the scale. For example, we have had lots of engagement for... strategic issues that have been addressed. At level 1 (notification), we have less influence, which is fine, as we don’t want to deal with a lot of these smaller, less significant decisions.”

**Joint Land Use Planning**

One provincial respondent pointed out that the BC-Taku River Tlingit SDM Agreement is somewhat unique “in that the TRTFN has an enormous influence over resource management, because we also have a jointly developed land use plan. We need to see the G2G Agreement in that context. The fact that the TRTFN approved that plan developed through a jointly managed process is evidence of the influence they have been able to exert at the strategic scale.” Other provincial representatives noted that a similar situation exists on the BC coast.

### 2.6.4 Clarity, Certainty and Predictability for Economic Development

Respondents were invited to comment on the degree to which SDM agreements ‘had delivered clarity, certainty and predictability for economic development interests in your region.’ One a scale of 1-5 (low to high), the average response from interview respondents was 3.6/5, with ratings higher on average from provincial respondents (4.3/5) compared to First Nation respondents (3.1/5). Many respondents (10/25) indicated that they did have the necessary information on which to base an opinion (see Figure 7).

![Figure 7: Delivering Clarity, Certainty and Predictability for Economic Development Interests](image-url)
One provincial respondent commented on the definition of these various terms as follows: “The government hoped that an agreement like this would provide a stable platform, and ‘predictability.’ (People often refer to ‘certainty’ but I cringe at that term because I am not sure it always means the same thing to different people). Stability is the key, by which I mean an ability to know how a process will go, that the proceeds of that process will add value to decision making and to the resolution of issues that might arise, and that the these efforts can preserve the relationship and lead to good decisions.”

Several additional themes were highlighted in the interview responses:

- Several respondents suggested that the degree to which an SDM agreement has delivered certainty, clarity and predictability varies considerably by region and by resource sector. One First Nation respondent suggested that the degree of certainty, clarity and predictability achieved also depends on the degree to which provincial agencies responsible for the various resource sectors act as advocates for an SDM agreement behind the scenes. Furthermore, this individual suggested that there are consistent differences between different regions, with some provincial offices (e.g., Smithers) being more effective in terms of explaining SDM agreements and their potential benefits than others.

- One First Nation respondent suggested that this is in part a matter of timing and stage of implementation, noting that while the SDM agreement is expected to lead to greater certainty over the longer term, “in the interim, it led to more questions, and more issues being up in the air.”

- One First Nation respondent noted that there appears to be some confusion among mining industry stakeholders regarding the scope and implications of SDM agreements and revenue sharing agreements (e.g., Economic and Community Development Agreements, ECSAs), which undermines certainty and clarity to a degree.

- One provincial respondent compared the situations in which SDM agreements do or do not include a ‘spatial reference layer’ or similar, noting that, “[y]ou get so much more clarity and predictability when you have a spatial component accompanying the G2G Agreement” (see also Section 2.4.5).

- One provincial respondent commented on the nature of the benefits that an SDM agreement provides, noting that “[a]t the end of the day, this is much better than protests and delays. Shared decision making under these agreements is not faster or cheaper, but offers durability. To that extent it supports certainty in the region.” Another provincial respondent added that “[d]ecisions are being made without direct action or disobedience in the wake of the [approval of the SDM agreement], and this was not happening before. We are getting letters of support from some industry folks.”

- Another provincial respondent qualified her high rating (5/5), noting that, “I would say this is in the context of the very complicated relationships that government has with First Nations in general. For proponents, there is still a lot of uncertainty about where we are headed. That makes people anxious. This is particularly the case for forestry which covers large areas.”

- One First Nation respondent also commented on what is meant by ‘certainty,’ stating that, “[w]e don’t want this agreement to be a blank cheque for the province, or to make industry and others feel that they have increased certainty when it comes to their projects. What we offer is engagement, enabling them to participate in our processes when it comes to analyzing and assessing land development proposals. It provides process certainty.”

Several respondents noted that it is too early to tell whether SDM agreements are delivering certainty, clarity and predictability. One provincial respondent stressed that not only is it difficult to assess the impact of an SDM agreement on certainty, clarity and predictability, but much is also dependent on the relationship between the proponent and the First Nation. Moreover, this individual noted that is important to understand the baseline for such an assessment and compare the influence of an SDM agreement against the scenario when no such arrangement was in place.

2.6.5 IMPROVING CONSERVATION OUTCOMES

Interview respondents were invited to rate, on a scale of 1-5 (low to high), the extent to which their particular SDM agreement had resulted in modified development proposals or other changes to land and resource management decisions that have in turn led to improved environmental outcomes.

The majority of respondents did not offer a quantitative response to this question, either because the data on which to make such an assessment did not exist, or in some cases because implementation was still at an early stage.

Several respondents also noted that the achievement of environmental conservation objectives is not included within the performance management framework for SDM agreements. Some respondents noted however that discussions are underway as a result of the SDM agreement related to monitoring of implementation success and effectiveness (see Section 2.8.2).

Among those who did respond, ratings varied widely, as illustrated in Figure 8 (next page).

The comments offered by respondents suggest that there is considerable variability between agreements and between regions:

- In some instances, First Nation respondents indicated that there has been very limited success in terms of conserving environmental values in the face of development proposals. One First Nation respondent suggested that, “[f]or a lot
of the smaller projects and land use decisions... I get the feeling that provincial staff do not want to rock the boat too much, when it comes to development. They will incorporate our interests if it’s easy to do, for example dealing with archaeology, which is governed under existing legislation anyway. Where there are other kinds of concerns, they tend to dig in their heels and come up with many reasons why they cannot incorporate changes. This is frustrating for our staff.”

• Other First Nation respondents offered a more optimistic view, reporting that they had succeeded in modifying development proposals for several mining applications within their territory. As one of these respondents explained, “we protected a large wetland area where a mining block had been proposed. It depends on a given project and the values in an area, but we can have success in protecting environmental values and wildlife, calving grounds, and areas of particular cultural and traditional value. In this case, we presented the information and agreed on how we could move forward. The project was not stopped but we were able to address our values and interests.”

• Two First Nation respondents noted that their respective SDM agreements had supported the achievement of social well being objectives for the First Nation or for local communities. Of those respondents who offered an opinion (15/25), there was considerable variability among responses, as illustrated in Figure 9.

2.6.6 ACHIEVING SOCIAL WELL BEING OBJECTIVES

Respondents were invited to rate the degree to which SDM agreements had supported the achievement of social well being objectives for the First Nation or for local communities. Of those respondents who offered an opinion (15/25), there was considerable variability among responses, as illustrated in Figure 9.

The commentary offered by respondents included the following:

• Many respondents noted that the impact of SDM agreements on social well being is both modest and indirect, for example by providing some additional employment for those managing engagement processes. This is in part because the agreements are focused primarily on land and resource management issues, and were never intended to address social or health issues at the community level.

• Some respondents noted that the economic development benefits offered in RPs, and to a lesser degree in the SEAs, also contribute to social well being. Other countered however that the primary vehicles through which economic support will flow to communities is through an ECDA or FCRSA, which only some First Nations have chosen to negotiate, or other future revenue sharing arrangements.

• Several respondents also noted that SDM agreements are at such an early stage that it is unrealistic to expect there to be significant benefits in terms of social well being. As one individual noted, “[t]he scale and scope of the problem is such that we need to walk before we can run.” Another suggested that, “there has been some, but not a remarkable improvement. It is getting there, but there are long-standing issues and we are dealing with incremental change.”

• Two First Nation respondents noted that their respective SDM agreements provide improved conditions for community
It was also noted that the BC-Tahltan SDM agreement attempted to create clearer linkages between land and resource management and the socio-cultural aspects of development. It was acknowledged that implementation of this agreement is still at a very early stage, and so tangible results have yet to be generated.

2.6.7 SUPPORTING CAPACITY BUILDING

Interview respondents were invited to comment on the extent to which SDM agreements had supported capacity building within First Nations or local communities, on a scale of 1–5 (low to high). As illustrated in Figure 10, opinions varied among the (20/25) respondents who offered a rating for this question, with the average rating at 3.5/5 and slightly higher average responses among provincial respondent (4/5) compared to First Nations (3.29/4).

Figure 9: SDM Agreements and the Achievement of Social Well Being Objectives

members to continue traditional practices on the land, which could be construed as a social benefit. One provincial respondent also noted that the land use plan and a G2G agreement that were negotiated successfully “allow us to consider land based practices of the [First Nation] when dealing with applications, to ensure that those aboriginal practices are not impacted or that impacts are managed appropriately... In the [land use plan], there are cultural sites, RMZs, Protected Areas, etc. I would hope that those are seen, universally, as having a profoundly positive effect on social and cultural well being of the [First Nation].”

• Several First Nation respondents commented on the positive impact of having negotiated a G2G agreement and the shift in the climate at the community level that occurred as a result:
  • One individual noted that “[t]he fact that there is a land use plan and a G2G agreement has calmed some of the angst in the community, and there is less animosity amongst us.”
  • Another respondent offered a similar comment, suggesting that, “the initiation of a G2G process that provides for decision making has in itself begun to empower the community. It is very early days, but the communities experience this through the work of their individual representative, who looks at each and every application... they see that are included and that government is coming to them, and are inviting them to participate. The communities have seen the change.” This view was echoed by another individual, who noted that, “anything that increases engagement is key for social well-being. This helps to attach people, and brings people into more direct roles in decision making on land and resource management.”
  • One other respondent noted that, “The SDM [agreement] creates the opportunity for other kinds of things to happen—breeding a better climate internally.”

Figure 10: SDM Agreements and Support for Capacity Building

The Complex Challenge of Capacity Building

Several respondents acknowledged that one of the primary purposes of the implementation funding provided under the SDM agreement is to bolster the capacity of the First Nation(s) involved, so that they have the technical staff needed to manage the engagement process, and support strategic discussions at the G2G Forum level. In many cases, funding support enabled the First Nation to hire an engagement coordinator, and in some cases hire additional staff in each member community and even cover the costs for engaging elders or others knowledgeable about the areas where development activities have been proposed.

Several First Nations respondents noted however that capacity building is a longer-term, complex challenge, and suggested that improvements to date have been relatively modest:

• One respondent noted that some of the skill sets needed to support implementation of the SDM agreement are not immediately available among First Nations members,
Several First Nation respondents highlighted the people at the regional level, let alone at the community level.”

On First Nation respondent noted that, “[t]here are only so many people that can be hired in our community. You can’t just hire consultant who does not know our culture. We have a fishery biologist who has worked with us for 13 years, and that individual is irreplaceable, because of the knowledge and experience with our people that they have gained. Capacity is not always tied to funding. We need better strategies to develop capacity among our own [First Nation] members.”

Another respondent noted that, “[w]e have built capacity in one respect. However, the new structures have replaced something else. There is a question about net gain therefore.”

Another individual noted that capacity has been increased, but the workload involved in implementation has far outstripped what is available, leading to increased pressure on departmental staff overall.

Several First Nation respondents highlighted the importance of involving youth from their communities in the implementation of an SDM agreement. As one individual stated, “[o]ur Chiefs often talk about grooming younger people to take on responsibilities. The [SDM agreement] is a good mechanism for this process. We need to continue to grow this capacity.” Others commented on the challenge of getting youth engaged, and expressed concern that this is not yet happening as had been hoped.

**Capacity Building at the Local and Regional Level**

Several respondents also highlighted some of the challenges involved in building the necessary capacity to coordinate engagement at the regional level for a group of signatory First Nations, while also supporting capacity building at the local level within each member community. In several instances, respondents suggested that significant capacity deficits remain at the community level as a result. As one First Nation respondent commented, “[w]e could not allocate the funding [to the member communities] and still have enough resources to deal with this at the regional scale. This has been challenging. Even supervision of staff people can be difficult in a small band office. There cannot be just a traditional referrals worker! We need someone that can set up agreements, deal with economic development, who can work on developing proposals, and who can be familiar with many different resource sectors—we need a structural shift in approach. It’s tough to get the multi-skilled people at the regional level, let alone at the community level.”

2.6.8 **ADJUSTING TO NEW WAYS OF DOING BUSINESS**

Both provincial and First Nation respondents were asked to describe some of the challenges that confront their respective resource agencies or departmental staff involved in the implementation of SDM agreement. Several themes emerged, as discussed below.

**Managing the Process of Change**

Several respondents commented on the fact that SDM agreements represent a significant departure from the status quo and that this has required substantial adjustments to new ways of doing business:

- As one respondent stated, “[c]hange is challenging, for both BC agency reps and for the First Nation folks involved. This all comes along with the opening up of dialogue and communications. While consensus is our objective, there are certainly real and substantial differences that need to be addressed and resolved.”
- Another First Nation respondent pointed out that “cultural change is hard for both sides.” This individual expressed the view that “that these agreements will succeed or fail based on the willingness on both sides to make it work... We are overcoming decades of conflict, which simply takes time. Face to face time is critical.”
- One other respondent put it more bluntly suggesting that, “for the First Nations, we are moving away from the traditional, ‘this is my land, get the f**k out of here!’ attitude. I understand where that comes from, but we are trying to work toward reconciliation, even though this is very difficult for some of us. That is a big shift to make! For the BC resource managers, it depends on the individual. Most of them are coming to grips with this new way of doing business... Some of the folks near retirement are reluctant to change. By and large, some of the younger guys are much more intrigued, when compared to those who have been engaged for years.”

Several respondents also commented on the pace of change, and the need to manage expectations. One First Nation respondent conceded that “[our First Nations] team had higher expectations about how quickly things could change; we didn’t have a full understanding of how complex every decision is, and this has been hard for us.”

One provincial respondent commented on the nature of transition and need for tools to manage the process of change: “It is a different model. The challenge of adjustment is just the nature of transition. There needs to be change management to support this. So far, we have not faced insurmountable challenges, or problems that will persist deep into the implementation phase. But it does take time. This is a new way of doing things. You need a process in place to move that process of transition along, and an ability to manage issues if they create a risk for the relationship. And we...”
have to bear in mind that we have a contractual relationship, and the honour of the Crown is at stake. Provincial representatives understand that this is the way we now need to do business.”

Another provincial respondent noted that the new processes and structured established under SDM agreements ‘did not appear in a vacuum,’ and pointed out that “[t]he new solutions we have introduced replaced old structures.” This individual also suggested however that success breeds commitment, noting that, “if the model works well, it ‘develops its own legs.’ The word gets out on the street and the model starts to sell itself. That is a hallmark of whether something is working.”

**Change at the Frontlines**

Several provincial respondents noted that coping with change has been particularly difficult for Front Counter BC staff, who have been required to adjust to very different workflows when compared to the conventional referrals model. In some cases, staff are required to process applications under 5 or 6 different SDM agreements within the same region, each with small but significant differences in approach.

Respondents also explained that these challenges are exacerbated because of relatively frequent staffing changeovers. As one individual stated, “[t]here is enough turnover at the operational staff level that these agreements are always new to somebody! The Agreements therefore have to be bolstered by continuous training programs, so staff know what is required and are familiar with the particulars of the different agreements... Maintaining momentum through time is the main challenge.”

First Nation respondents also commented on the need for training and capacity building for their staff members, who are required to get up to speed on the complexities of the provincial regulatory system. One provincial respondent also commented on this challenge, noting that, “[t]he really big thing here is understanding the business of governing the use of land and natural resources. It is sophisticated and complicated. People need to understand the difference between a lease or a license. If people don’t understand this, it is difficult to reach agreement about different consultation levels. There are no shortcuts. You have to build understanding, working relationships, and capacity on the First Nations side.”

**Change at the Community/Grassroots Levels**

At the local level, First Nation respondents also explained that there have been challenges explaining to individual community members that staff from First Nations’ departments are obliged to respond according to agreed-upon timelines. There have also been challenges in some instances ensuring that leaders from multiple bands who are signatories to an SDM agreement understand the implications of the agreement and are willing to work through the engagement model, even when this proves to be challenging, rather than resorting to other means to exert pressure on the province, for example through direct lobbying at senior levels within a line ministry or raising concerns through the media.

**Adjusting to Regional Models for First Nation Cooperation**

One respondent also noted that the building of capacity at the regional level (providing a coordinating function for a group of First Nations) might result in employment opportunities shifting away from individual communities. As a result, there could be some resistance to the implementation of an SDM agreement.

Another respondent noted that the shift to a regional approach also demands new levels of cooperation among multiple, related bands within a region: “It is also hard to overcome entrenched positions of Indian Act communities, in which the definition and control of land and resources is framed according to the Act, rather than in terms of a cultural view. There has been a long history of influence that has caused people within [our First Nation] communities to become divided. It has led to a preoccupation with ‘what is mine,’ rather than an emphasis on a wider set of relationships, interconnected interests, and on cooperative efforts at a fuller, territorial level. Coming from such a harsh history of divide and conflict, we are trying to move back to more interconnectedness between communities. All very challenging.”

2.6.9 **CONFRONTING NEW ISSUES AND TOOLS FOR ACCOMMODATION**

One provincial respondent noted that SDM agreements have created new demands for provincial agencies to deal with issues in a different manner, noting that, “[a] lot of our provincial resource managers did not really know how to handle aboriginal interests being put forward in such a comprehensive, holistic manner. We have struggled to make the shift from a decision-by-decision viewpoint, but it has brought forward the cumulative effects issues. We are being forced to find solutions to those kind of problems, which is actually a good thing for everyone.”

Other respondents suggested that while SDM agreements offer significant improvements in terms of consultation processes, the provincial approaches for accommodation are not as well developed: “As one provincial respondent noted, ‘[our] biggest challenge is the ‘mandate gap.’ This exists in a broader consultation context: we consult, we engage, and we use impact analysis tools to determine the extent of infringement on FN rights—but then what? The legislative framework to say ‘no’ to proponents is very limited, and so we are dealing mostly with mitigation. The toolbox to deal with these things is light. We have to get approval from senior levels to deal with issues like this. In practice, we have limited ability to deal with impacts on rights. At the level of cumulative effects, we are nowhere with this! This will be the straw that will break the back of these agreements. We need a better toolbox to mitigate and accommodate, so that FN rights are dealt with honourably.”
2.7 Funding Support for Implementation

As noted in Section 2.3.4, several respondents noted that the question of funding support for implementation was one of the most challenging issues to be addressed in the negotiation of SDM agreements.

In many cases, respondents indicated that the question of funding was addressed in part through the development of a draft budget offering a breakdown of anticipated implementation costs for the First Nation(s) involved.

**First Nations’ Perspectives on Funding Levels**

The majority of First Nation respondents reported that the agreed level of funding provided under their SDM agreement is not in fact sufficient for effective implementation, based on experience to date:

- One respondent suggested that not only did the funding levels not meet the budget projections tabled in the negotiations, the actual costs for implementation have been far higher in practice than had been anticipated. This individual stated that, “my staff person dealing with the process side needs more support. We need another staff person. Each application can become projects within themselves. One application can turn out to require a lot of work, with a great deal of correspondence and meetings. It all adds up!”

- Another First Nation respondent noted that many applications considered under the engagement model require the establishment of G2G working groups. In Northern areas in particular, this results in very substantial travel for First Nations staff to meet at regional offices in places such as Smithers, Prince George or Fort St. John.

- Another First Nation respondent explained that they are currently dealing with multiple EA applications, for which funding is provided under separate agreements with the proponent. It was pointed out that multiple ‘Level 4’ applications will need to be processed in the future under the engagement model, demanding a level of effort that is expected to outstrip the limited funding support provided directly through the SDM agreement.

- Other First Nation respondents noted that funding is needed at both the community and regional levels, and suggested that funding for grassroots engagement in particular has been too limited.

- Finally, one First Nation representative suggested that budgets for implementation should include not just staffing and technical support, but should also include funding to enable the First Nation to establish a database system on par with that available for provincial agencies, and also for the training First Nations staff to work with the Province’s complex regulatory system.

Where additional funding support for implementation is needed, First Nations reportedly access other funding sources, such as the BC Capacity Initiative, to supplement what is available under the agreement itself. In some cases, First Nations have also created non-profit societies as platforms for engaging with external partners, to raise funds for capacity building over the long term, and to provide additional technical services to assist First Nations (e.g., T’akhu Á Tién Conservancy for the Taku River Tlingit, Dena Kayeh Institute for the Kaska Dena Council). Provincial representatives have also reportedly provided letters of support to assist with external funding proposals, referring to the benefits of the SDM agreement. Finally, some First Nations also reported that they were able to access funding through agreements negotiated with development proponents operating in their territory (e.g., exploration agreements with mining companies).

One First Nation respondent suggested that current funding levels are in fact sufficient, noting that “[i]f the funding was more, it might not actually improve effectiveness. Throwing money at a problem does not necessarily solve it! On an interim basis, we get [several thousand dollars] per year. That still puts the First Nation under pressure to get other funding from other sources. We can leverage what BC gives us to make our budget larger.”

In one example, it was noted that the negotiating parties had not come an agreement on funding at the time that the agreement was ratified and before joint implementation efforts began. As one respondent noted, moving ahead with the work despite this represented a significant risk for both parties, “[but] we agreed to deal with it when we ran out of money. We built into the framework a mechanism to address this issue when it arose, which was about 6 months into the project.” (One First Nation respondent explained that this issue was finally resolved when the First Nation arranged for a meeting with the Minister and senior ministry staff, and secured their support for a significant increase in funding levels.) In another case, the parties agreed on a slower ramping up of activity as a strategy to deal with what the First Nation viewed as a significant shortfall in available funding.

Representatives from some of the First Nations who have SDM agreements that will be expiring in the near future also suggested that the increased funding for implementation will be a key consideration in terms of whether to extend the agreement for a further term.

**Provincial Perspectives on Funding Levels**

Provincial respondents offered a diversity of opinions on the adequacy of funding support under SDM agreements:

- One provincial respondent described their experience of the funding situation for First Nations as follows: “When I looked at their budget, and even after knocking it down in the negotiations, I would still say we are underfunding them.”
I am not sure the First Nation is actually able to come to the table with sufficient funding. There are [several] communities, and at minimum they need one person at the regional level to coordinate... I am challenged by this, but the current level of funding is probably only sufficient to support implementation to the extent that the [particular First Nation we are dealing with] are a government—we both have severe constraints, and we share the problem that neither of us has enough money to do everything we want. We are in the same boat, and that is probably a good thing in the end.” Another noted that, “there are [several First Nation] communities. Each community has its own natural resource management institution. Then there is [a regional coordinating] structure and a central decision making structure, through a council of chiefs. From my perspective, we are getting a hell of a deal, with that in mind! It would cost a lot more for our government to do the same thing.”

• Other provincial respondents suggested that the funding provided to First Nations was in fact sufficient for implementation, in their opinion. One noted that, “[w]e have had great discussions, and have built budgets from the bottom up. It is sharing that sense of accountability for performance that is important. It is much better to assess the costs of work that has to be done, and then work from there.”

• One provincial respondent also suggested that there are challenges in determining appropriate funding levels in light of changing needs under an engagement model on a season-by-season basis, or as the cycles of investment affect development in a given region. This individual stated that “[t]here could also be problems if the level of funding was standardized and was transactionally-based, because in practice the volume of work required for engagement in any given area is cyclical, reflecting changing levels of activity and therefore decisions—there should not be fluctuating levels of support simply because in a given season there are less decisions to deal with. There needs to be more stability for staffing. But as I said, we do not have a robust approach to this question within government.”

2.8 Monitoring, Evaluation & Adaptation

Interview respondents were invited to comment on any monitoring and evaluation procedures that have been established to assess implementation success and the achievement of desired outcomes defined within an SDM agreement.

2.8.1 COMMON APPROACHES FOR MONITORING AND EVALUATION

Several respondents noted that while one or more provisions related to monitoring and evaluation have been written into their particular SDM agreement, the necessary mechanisms and procedures to deliver these functions have yet to be developed. In the majority of cases however, interview results suggest that a suite of approaches for monitoring are currently being used including one, or more commonly several, of the following:

- **Checklist for implementation:** Several respondents explained that the staff members responsible for implementation are keeping track of timelines and deliverables using a basic inventory, a checklist, or some kind of project dashboard.

- **Performance Management Framework:** In several cases, respondents explained that they have developed, or are in the process of developing a performance management framework for the implementation of their SDM agreement. While the scope of these frameworks was not always described in detail through the interviews, several respondents noted that they tend to focus on transactions under the engagement model (e.g., # and type of applications considered at what level, # of applications for which engagement level was
elevated, adherence to engagement timelines, # of times issue resolution required, # of engagement requests initiated by First Nation). In some cases, efforts are being made to automate the reporting of engagement transactions, so that Engagement Coordinators can provide these to the G2G Forum for review these on a periodic basis, with little additional effort. As one respondent noted, “[t]he reports on transactions are very helpful in terms of putting our ‘finger on the pulse’ of referrals in the system. They are informing our process as we build it and giving us insight in terms of what could be changed and done better.” A few respondents also expressed caution however, about a preoccupation with transaction statistics rather than broader measures of success. As one individual noted, “[w]e are not just focusing on achievement of timelines. Everyone measures that all time! But we are more interested in measuring whether the relationship is working well, or whether our shared vision statement is being achieved.”

- **Annual Progress Review:** In many cases, respondents suggested that the G2G Forum had agreed to review implementation progress and success annually or semi-annually, including engagement transactions and success in dealing with strategic level issues raised at the table.

- **Independent Evaluation:** Some respondents also noted that there are provisions in several of the SDM agreements enabling the parties to undertake a more comprehensive evaluation of the SDM agreement and its implementation every 3 years, or as otherwise agreed. In some cases, it was stipulated that this evaluation was to be undertaken by an independent party.

Several respondents indicated that they hoped to invest more time and effort into monitoring and evaluation in the coming years. As one respondent noted, “[c]ontinuous improvement is key. We are also going to get better and better as we develop these agreements. We will be able to avoid pitfalls, and the quality of the agreement and the implementation will continue to go up. We are constantly implementing, evaluating, adjusting and negotiating. It’s a cyclical thing. These are living agreements!”

One respondent cautioned however that while “we probably do need to do something more rigorous... [w]e do not want this to become bureaucratic, however. It is sometimes hard to put... time into evaluation and monitoring in the face of other priorities, but there is probably value going forward.” Another pointed out that parties involved in the implementation of an SDM agreement need to place priorities on the most important things first, and then address other issues such as monitoring and evaluation. This individual noted that, “I am a real believer in a phased implementation approach. Now that people understands the basics, we can turn our attention to other things.”

2.8.2 **MONITORING LAND USE PLAN IMPLEMENTATION AND COMPLIANCE**

For some of the more recent SDM agreements that are closely tied to strategic land use planning products, arrangements have also been made for the monitoring of land use conditions and to assess the achievement of management goals and objectives:

- In the case of the BC-Gitanyow agreement, the parties have agreed to appoint a part-time Monitor, who is responsible for analyzing how the land use plan is being implemented, whether it is proving effective, and whether desired outcomes are being achieved. The signatory parties agreed upon the Terms of Reference for this position, and the Monitor is to be jointly appointed, but supervised by the Gitanyow on a day-to-day basis. The Monitor is charged with delivering recommendations to the senior G2G Forum.

- For the BC-TRT agreement, the parties created the Joint Research and Monitoring Initiative (JRMI), which will develop an agreed Research Plan and a set of standards for research and monitoring. The JRMI does not include commitments by either party to undertake research or monitoring however, but does oblige the G2G Forum to review the results of any research or monitoring undertaken in a manner consistent with the standards and that addresses agreed research priorities.

- For the BC-Kaska agreement, significant efforts are being made to assess whether permit conditions are in fact being complied with consistently, through improved compliance and enforcement. This is referred to in the SDM agreement and in the accompanying implementation guide as ‘collaboratively managing the implementation of shared decisions.’ The monitoring arrangements under development in this instance include a commitment to have ‘boots on the ground,’ an assessment of the past performance of operators, and systematic reporting procedures back to the senior G2G Forum.
2.8.3 ADAPTABILITY

In the interest of exploring the adaptability of SDM agreements, interview respondents were invited to comment on their level of confidence (on a scale of 1-5, low to high) that the signatories to their SDM agreement could make significant adjustments if needed to match changing circumstances. Opinions varied considerably on this issue, as illustrated in Figure 11.

Several First Nation respondents also noted that the flexibility that might be available for further refinement of SDM agreements would be significantly affected by the policy priorities of the new government, following the May 2013 election.

One First Nation respondent suggested that each of the SDM agreements was negotiated in a unique set of circumstances, with a particular set of political or economic drivers at play. In this context, it was suggested that the willingness of the Province in particular to make further refinements to an SDM agreement might depend in large part on the strength of the business case for such changes.

2.9 Summary Reflections

Interview respondents were invited to offer summary remarks on the experience of negotiating and implementing shared decision making approaches and some of the key features of the SDM agreements. These comments are presented under the headings below.

2.9.1 PESSIMISM VS OPTIMISM

Interview respondents were invited to comment overall on their degree of pessimism or optimism (on a scale, 1-5) regarding the likely success of their SDM agreement. As illustrated in Figure 12, responses were generally optimistic, with an average of 3.82/5, with the ratings of provincial respondents (4/5) marginally higher than First Nation respondents (3.73/5).

Several respondents noted that the amendment provisions that have been included within most SDM agreements provide the signatory parties with defined procedures for reaching agreement on changes that might be needed over time. It was pointed out however, that the ability of the parties to make adjustments would depend on several factors, including the perceived benefit of the proposed changes, and degree to which these were consistent with their respective mandates for approval of the original agreement. As one individual noted, “[w]e could do ‘friendly adjustments,’ but even that would be tricky. Both we and BC would be reluctant to make more substantial changes unless those changes very obviously led to an improvement.”

One respondent suggested that the latitude to make changes also depends on the strength of the working relationships established for implementation, which varies substantially by agreement. It was also suggested that it would likely be harder to make adjustments to the Haida agreement “because of the formality of the agreement, and because of how far along the spectrum of shared decision making it sits.”

Figure 11: Adapting SDM Agreements to Match Changing Circumstances

Some respondents reported that minor adjustments have already been made to their SDM agreements during the course of implementation, for example clarifying the procedures for determining engagement levels, or re-negotiating standard engagement levels for certain types of decisions. For some of the earlier SDM agreements (e.g., Nanwakolas, Coastal First Nations, Tsilhqot’in), changes were also reportedly agreed upon when the agreements were renewed or expanded.

Figure 12: Overall Views on the Likely Success of SDM Agreements
2.9.2 MANAGING EXPECTATIONS & SHIFTING ATTITUDES
Several respondents noted that the establishment of SDM agreements has set the parties off on a new path toward reconciliation in the pre treaty environment. As one respondent noted, “[a]t the end of the day, we are married now! There is no going back. The consequences of getting out of this deal are politically and functionally very difficult. We can only go forward.” Another suggested that, “[i]t is better than anything we have ever had with the province. It’s not perfect, but it is a step in the right direction.”

Some respondents also suggested that on-going efforts are needed to manage expectations on all sides in terms of what can be achieved and over what timeframes, and to support the challenging, gradual work of shifting attitudes:

- One respondent noted that SDM agreements “are trying to breathe life into the New Relationship, and to establish a collaborative decision making approach in non-treaty environment. They’re at cutting edge of what is possible given current laws and politics. People need to understand that these agreements are shifting the way BC and FNs deal with one another—they really are changing things.”
- Many respondents noted however that SDM agreements are just a “starting point for a long term relationship,” and stressed that they are not “the end all and be all...[but instead] are a step in the right direction. One respondent noted that, “[SDM agreements represent] such a complex undertaking. They are a step in the right direction, but these agreements won’t do everything... Cultural change is hugely difficult.” The value of a G2G relationship was highlighted in many cases, as was the creation of a durable and robust forum for strategic dialogue.
- One respondent suggested that while the pilot SDM agreement in their region had delivered less than the First Nation had originally hoped for, an incremental approach was in fact needed, “because of the kind of relationships we have in this area, the density of interests, and the complexity of land use. Perhaps it might grow over time. And we might not have had as many signatories—and as many bands on board—if we had tried to achieve more in this first step.”
- Another noted that, “[w]e have trained First Nations to a very passive form of engagement since Delgamuuk—letter writing and tick boxes. There is a certain institutional culture within some First Nations that is difficult to step beyond. There has to be someone on the First Nations side that knows what this might look like.”
- Another respondent suggested that it is important to compare what is available under an SDM agreement to the status quo: “What are our alternatives? At least with this process, we have a process to engage with, there is cohesion among the First Nations, and the [refinement and renewal of SDM agreements] is an iterative process with government. Before this, we only had options to use litigation or direct action. Now we have a space for dialogue, and we are not extinguishing our title and rights in the meantime.”
- One provincial respondent commented on the success of SDM agreements within the context of efforts to achieve reconciliation over several decades: “I look at the progress we have achieved over the span of a decade, and I am quite optimistic... With a sense of distance, we have made tremendous progress. You have to look at a longer timescale—on the order of decades. Compared to where we were in the early 1990s to now... there is a huge difference. From the IMA in Clayoquot to now, we have come a long way.”

2.9.3 A REALISTIC UNDERSTANDING OF WORKLOAD
Several First Nation respondents stressed that others contemplating the establishment of an SDM agreement should be fully aware that the workload involved in implementation has turned out to be far higher than was originally expected:

- One individual noted that, “we all underestimated what we were getting ourselves into,” and another suggested that, “[i]t really is a lot of work! It takes on a lot of stuff, in terms of policy development. It mushrooms out very quickly. It is much bigger than you initially think it is.”
- Several other respondents noted that the effort required for implementation actually represented a significant increase over what was needed in the past. As one First Nation respondent stated, “These agreements will not resolve everything. Many things get clarified, but the interactions actually get more challenging not easier, because the parties have actually agreed to do something! BC had hoped that this would streamline engagement, but in fact, in my experience, it results in more engagement and more work required on both sides. It leads to better products, but may not reduce the referral effort. If strategic issues are addressed (e.g. in a land use plan), BC may not be need to consult on minor issues, but the applications that we do deal with are on large projects and morph into committees and more complex initiatives. It takes more man hours not less!”
- Another provincial respondent echoed this point, suggesting that creating an SDM agreement “does not make it easier or quicker, but it makes the end decision stronger—more enduring decision making ability. A lot of people think that this is going to be a cookie cutter approach, allowing decisions to be cranked out a better pace. In my opinion, it helps the parties to bring their respective interests forward so that a decision, when it is made, is stronger.”
2.9.4 SUSTAINING COMMITMENT TO IMPLEMENTATION

Several respondents underlined the importance of both parties maintaining a deep commitment to implementation of SDM agreements, to ensure that their full promise can be achieved in practice:

• One individual noted that, “[t]he focus and the energy required to implement is the critical thing. It is too easy and too convenient—within First Nations and for BC—to announce the conclusion of a big agreement and then move on. It is my view, in terms of our relationship, we have done very well in our joint ability to negotiate agreements. But we have not put that same effort into delivery and implementation of the agreements we have developed... Delivery and implementation does not get headlines and probably does not galvanize energy at the community level, but it is the fundamental thing we need to work on.”

• Another provincial respondent also highlighted the potential weakness of existing implementation arrangements, stating that “[t]here needs to be more thought and more commitment about implementing these agreements, from the provincial side at least. There are not enough resources or commitments or structures, or even a clear understanding of what it takes to implement these things. Implementation tends to be tricky at the back end. That is one thing we need to pay attention to.”

A second provincial respondent offered a similar perspective, noting that “[t]he success of these agreements is wholly contingent on not just MARR’s ability, but the ability of the natural resource sector (within government) as a whole to implement them in a proactive, progressive and forward looking way. That is currently very challenged by our own capacity limitations (particularly for FNLRO, MEM). A lot more horsepower is going to be needed to achieve the lofty goals that these SDM agreements have.”

Several other provincial respondents also noted that sustaining support for SDM agreements at senior levels is crucial for longer-term success.

• One other respondent suggested that considerable success achieved to date will only be sustained “[i]f we continue to be diligent and continue to put energy into this. If we do not put energy into this, it is doomed to fail. If we make it a priority it will continue to excel.”

One First Nation respondent also pointed out that the wording of the BC-Taku agreement calls upon both governments not simply to implement the agreement but to ‘apply their respective laws and policies in a manner that will fulfill the purposes and achieve the intended outcomes of this agreement.’

It was suggested that this subtle reframing is significant in that it encourages both the Province and the First Nation not simply to implement the agreement to the extent that it is possible to do so under the status quo, but instead to be creative in finding ways “to make the agreement come to life.”

2.9.5 INDIVIDUALS AND CONTINUITY

Several respondents noted that the success or failure of such agreements depends in large part on the individual people involved. In particular, the importance of skilled and competent individuals who are committed to the SDM Agreement was highlighted. As one respondent stated, “[t]he energy with which they are implemented is the limiting factor, in my view.”

Two respondents highlighted the importance of retaining institutional memory from the negotiation phase, and ensuring there is continuity among those involved in implementation:

• One respondent commented that, “many folks within government agencies or First Nations who were not involved in the negotiations can miss (or misunderstand) the nuances that were said but not written, or that were understood by the negotiators but not clearly articulated in writing. You need to put people in key positions that can stay for a while.”

• One First Nation respondent stated, “I am sometimes nervous that if key players stepped away from the table, then I am not sure what would happen. We can get off track if some of the people who have been involved for a while do not help to remind people of the benefits of this collaborative approach... When people are frustrated and when some of the chiefs are tempted to throw in the towel, then people that have been around for a while can remind them of the positive side of all of this. Mistrust is very deeply entrenched and so these kinds of fears and concerns come up fairly regularly... There needs to be people on both sides that remember what it is like before.”

• Another respondent noted that, “[i]f things are going to work out, it will be about the people who sit at the table. If you have government staff people who view their role as being contained, then you do not get far. On the other hand, if there is someone that can hear what you are saying and then, take it back—someone who can push the envelope rather than toe the line—then you have more success together.”

Finally, one provincial respondent underlined the importance of relationships, suggesting that SDM agreements “need to be centred in the relationship. The metrics around how many engagements are going through at what level, and how many ‘issues’ [cases of issue resolution] are triggered, are all indicators of relationship in the end. The thing won’t work if the relationships components are not in place. These relationships can be personal but in the end it is about an institutional relationship between the parties, regardless of who cycles through different roles.”

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6. Wóoshitin Yan Too Aat: Land and Resources Management and Shared Decision Making Agreement, Section 2.4
2.9.6 ENCOURAGING REFLECTION AND LEARNING
Several respondents spoke in favour of continued experimentation, reflection and innovation among SDM agreements:

- One provincial respondent noted that regular, scheduled calls among provincial negotiators had been helpful in terms of problem solving and stimulating creativity. This individual suggested that perhaps First Nations could also benefit from a similar arrangement.
- One respondent commented on the importance of continued experimentation with regard to SDM agreements, rather than striving to achieve consistency prematurely: “It is not a ‘cookie cutter’ approach. We are pioneering. We need to continue to look for variance, rather than a standard model. It is important that we see different types of agreement. I think government is still in the creative thinking stage about what the agreements could be.”
- Another provincial respondent supported further assessment of the successes and failures of SDM agreements to date, noting that, “[w]e are in a period of time when reflection and research is useful in terms of looking at where this is all going. There was direction when the agreements were first rolled out. We were encouraged not to be programmatic and not to standardize the agreements, but instead to tailor them to the circumstances. I think going forward, we need to assess where we are now at, and strive to understand that factors that have allowed us to make progress, and to identify what leads to success or not.”
- Finally, another respondent advocated for further experimentation and innovation in the years ahead, suggesting that, “I can confidently say that several [SDM agreements are] already successful… We have done what we said we would do. But there is a different scale: These are early vehicles to test-drive a new way of doing business. We are still in the early days. Just 6 years ago we were not able to talk about revenue sharing and shared decision making! Nowadays we use these words very generally. The point here is that these agreements have been successful and we are now looking ahead to how these things link to treaty. We are not at shared decision making; we only have a certain form of shared decision thus far. The storyline is about the ability to move forward and advance different forms of shared decision making. And [each SDM agreement] is like a petri dish—we are experimenting.”

2.9.7 A NEED FOR RESILIENCE
One respondent noted that the durability of SDM agreements has yet to be fully tested, particularly in those contexts where major development projects have the potential to reignite conflict between one or more First Nations and the Crown (e.g., if the Federal government were to approve Prosperity Mine, or of road construction into the Tulsequah Valley were to begin). Under this scenario, it was suggested that the relationships established under the agreement would be under “a tremendous amount of pressure… I do not know if the [SDM agreement] could withstand that.”

Another respondent echoed a similar concern, and highlighted the need for resilience in the face of the unexpected: “We have built a platform for the relationship that provides stability and a place, actually a number of places for important conversations to happen... If the current attitudes and the current process continue to be implemented, I don’t see what could get in the way of continued success. But the world is complex. There could be changes in political perspectives. There could be major issues that arise. It is about resilience. It is not just that things might come out of the woodwork and knock these agreements down; it is a question about whether they can get back up! There has to be recognition of the value of an enduring relationship. There will be places where inevitably we cannot come to agreement on specifics. Any marriage is like that. The question is, do you want to be right or do you want to be happy! No one is going anywhere and so we need to work together. The phrase ‘We are all here to stay’ is key. So how do you want that to go? Even if the agreement is terminated, we still need to talk together and work through things after all.”
3. PRELIMINARY ANALYSIS OF RESULTS

The sections that follow offer a preliminary analysis of the interview results prepared by the SDM in BC Project Team. The themes explored below reflect the project stated research objectives (see Section 1.2.1). It is anticipated that further analysis and interpretation of the interview results presented in this report will be undertaken in collaboration with project partners.

3.1 Levels of Support for SDM Agreements

Interview results suggest that there is currently moderate to strong support for SDM agreements in BC among practitioners and a general sense that such agreements have merit and are worth the considerable investment of effort required for implementation. Opinions on specific aspects of these agreements vary by region and there are modest differences of perspective between First Nation and provincial representatives in some cases. Nonetheless, the overall picture is positive and there is optimism for continued success.

Beyond the bilateral, G2G relationship between the signatory parties, awareness and support for SDM agreements is more mixed. Only limited efforts have been made to ensure stakeholders understand the scope and intent of such agreements, particularly industrial proponents that are directly involved in land and resource developments. Current levels of awareness and understanding also vary by sector, and it has been suggested that the forestry sector is the most well informed to date when compared to other major sectors, most notably mineral exploration and mining. In practice, development proponents, whether large or small, tend to be exposed to SDM agreements when they are made aware by provincial agencies or by First Nations themselves that their applications are to be processed under the G2G engagement model. This prospect may lead to some initial consternation for stakeholders, but practitioners have suggested that over time, the potential benefits of SDM agreements have become better understood and appreciated.

There is very limited understanding of SDM within non-aboriginal communities that are located within the area defined in each agreement. In the case of some Northern regions, these communities are in fact few and far between. In other parts of the province, the level of awareness is likely not dissimilar to other aspects of First Nations consultation policy, with only those who are keenly interested or whose interests are directly affected becoming informed. More substantial efforts have reportedly been made to inform local governments about SDM agreements in more densely populated regions, such as the Lower Fraser Valley or the East Kootenays.

3.2 Achieving Reconciliation

One of the stated intentions of SDM agreements is to foster reconciliation of the respective interests of the signatory parties and to establish enduring and respectful government-to-government relationships. Interview results that this is being achieved in a variety of ways:

- At the interpersonal level, practitioners commented favourably on the working relationships established through the senior G2G Forums. In many cases, this has led to the building of trust. Practitioners also referred to a positive shift in the climate among those involved in implementation, and the growing importance of informal relationships, through which problem solving has often occurred.
- Both at the strategic level through the G2G Forums, and at the operational level via the engagement model, practitioners have indicated that there has been a significant improvement in the scope of information shared between First Nations and Crown agencies, in both directions. As a result, there has been a marked improvement in the level of understanding of each party’s interests.
- There is less clarity with regard to the linkage between SDM agreements and more formal processes for reconciliation, most notably the treaty process in BC. In a few cases, there has been close involvement of treaty negotiators in the development and implementation of these agreements. For the most part however, interaction between these different processes has been limited to periodic briefings. Many practitioners have speculated on the longer term trajectory of SDM agreements in the post treaty environment, not least because what is available through these non-treaty arrangements is considered by many to be ‘out in front’ of current provincial and federal treaty mandates. This issue continues to be of significant interest for all parties.
- It is also significant to note that the Dispute Resolution provisions included within all SDM agreements have yet to be triggered, which is perhaps a positive indicator of their perceived worth.
3.3 Supporting Improved Decision Making

Interview results suggest that SDM agreements have contributed substantially to improved land and resource management decision making in BC. This has been achieved by providing a forum for constructive engagement on strategic issues through the forum, and because of greater predictability through the engagement model. Resource management decisions are not always made any faster or with fewer resources or less effort. Practitioners have suggested however, that many decisions are better informed and more durable as a result. From that perspective, SDM agreements appear to be delivering on the elusive goal of improved certainty.

It is also clear that most SDM agreements fall short of the aspirations of First Nations, many of whom who seek an arrangement whereby they are placed on an equal footing with provincial statutory decision makers, and have the opportunity to say ‘no’ to certain proposed developments if needed. With the notable exception of the HGMC, most SDM agreements do not provide such an arrangement. SDM agreements do offer considerably more than the status quo referrals model however, and are therefore viewed by many of the First Nations interviewed as representing the ‘most that can be achieved in the current political and legal climate,’ and as a ‘step in the right direction.’

In more specific terms, First Nations practitioners have identified a variety of mechanisms by which their nations can exert influence over land and resource management decision making:

- It was suggested that the stature of a G2G Agreement is such that it prompts development proponents to engage more constructively with each First Nation.
- SDM agreements have defined the manner in which consultation will occur, thereby offering a more transparent and more predictable process, and more opportunities for First Nations to provide substantive input to decisions.
- The consensus seeking nature of the engagement model provides an opportunity for First Nations to work directly with agency staff in an attempt to reach agreement on the conditions under which resource activities will be undertaken. The availability of ‘issue resolution’ processes also creates an incentive for agreement to be reached, so that delays in permitting approvals are avoided.
- Several SDM agreements also provide some form of accountability mechanism by which statutory decisions makers are obliged to offer a rationale to First Nations in the event that they make a decision that is contrary to the consensus recommendations generated under the engagement model.

In practice, First Nation practitioners report mixed success in terms of influencing provincial authorizations, with some suggesting that there is less willingness on the part of certain statutory decision makers to accept recommendations if doing so would result in curtailing economic development opportunities. The somewhat ambiguous nature of ‘fettering’ also continues to be an aggravation for many. Other First Nation respondents report substantial success at influencing decisions, particularly at higher engagement levels. There is also some reported variation among agencies in terms of their perceived responsiveness to First Nations engagement under SDM agreements, with the Ministry of Energy and Mines singled out as being less cooperative to date. Both First Nation and provincial practitioners also report challenges in dealing with cumulative impacts.

Several provincial practitioners have also acknowledged that while mechanisms for consultation have improved substantially, there is a more limited ‘accommodation toolbox’ for provincial decision makers. As a result, some statutory decision makers are left unclear as to how they can respond to issues that have been raised through engagement under an SDM agreement at either the strategic or operational level.

3.4 Achieving Environmental, Economic, and Social Objectives for First Nations and Local Communities & Capacity Building

The SDM in BC Project Team was encouraged by First Nations partners to explore the extent to which SDM Agreements have delivered on environmental, economic and social objectives. Many practitioners agree that it is ‘very early days’ in terms of the implementation of SDM agreements. In this context, it is therefore challenging to assess whether the desired environmental, economic or social outcomes have yet been achieved. Furthermore, practitioners have acknowledged that there is considerable variability among SDM agreements in terms of how precisely such outcomes have been defined.

Nonetheless, to the extent that information is available, interview results suggest the following:

- **Environmental Outcomes:** Where land use plans have been developed jointly, conservation outcomes have been substantially achieved through the creation of protected areas, and by defining more clearly the conditions under which resource activities can be undertaken. Standing committees created for collaborative management of fish
and wildlife resources were also identified as evidence of improved environmental management. For operational decisions however, and in keeping with the varied experience with shared decision making arrangements discussed above, First Nations practitioners report a mix of experience with regard to conserving environmental values in the face of potential development impacts.

• Economic Outcomes: Practitioners suggest that SDM agreements have had a net positive benefit in terms of providing certainty, clarity and predictability for economic development. As noted above however, awareness and understanding of SDM agreements varies by region and among different resource sectors. The scope of economic benefits flowing directly to First Nations communities as a result of completed SEAs is viewed as being quite limited, with more substantial economic accommodation being available through RPs, consistent with provincial mandates.

• Social Well Being: SDM agreements are viewed as having only modest impact in terms of advancing social well being at the community level. Some practitioners noted that funding for capacity building supports more local employment, which is a positive social benefit. It was also suggested that SDM agreements have resulted in more engagement by First Nations community members on land and resource matters as a result of applications being considered and assessed. Some practitioners also suggested that the establishment of a respectful G2G relationship has reduced angst and animosity, and that because provincial agencies are seen to be engaging and responding to local interests, this has contributed to a sense of community empowerment.

One of the central features of SDM agreements is the funding support provided for capacity building within First Nations departments. In many cases, First Nations have hired engagement coordinators at the regional level and in some cases, additional engagement staff within each of several communities. Practitioners also noted however that implementation capacity remains a key concern, and it may ultimately prove to be one of the limiting factors for the success of SDM agreements. In particular, the technical capabilities required for implementation are not always available in local communities, and it has been reported that the workload involved has outstripped capacity in many cases. There is also some concern that capacity building efforts have been primarily focused, by necessity, at the regional level, rather than at the local community level. This pattern plays into a more complex dynamic of relationships among individual First Nations and the regional structures that they have created together to coordinate engagement under SDM agreements.

3.5 Monitoring, Evaluation, Adaptation and Resilience

While diligent efforts have been made in many cases to track implementation success, performance management frameworks by which assess the effectiveness of SDM agreements remain at an earlier stage of development. In several cases, procedures are already in place to track engagement transactions, sometimes automatically, although several practitioners have suggested that such statistics can be misconstrued and fails to reflect other important aspects of implementation success, most notably improved working relationships and the quality and durability of resource decision making. It is perhaps not unexpected that significant attention has yet to be placed on monitoring and evaluation, as initial implementation efforts have been focused on other priorities, such as the building of shared decision making structures and processes, and developing solid working relationships. Attention has now begun to turn toward such frameworks however, with the prospect that more searching evaluations of the impact of SDM agreements may be available in the coming years.

In some cases, practitioners have placed an emphasis on the monitoring of land use plan implementation, and the consistency of compliance with the conditions of permit approvals. In one case, such arrangements include the appointment of an independent monitor, jointly appointed, who reports to the senior G2G Forum.

There is also some considerable interest in the degree to which SDM agreements can be resilient in the face of a crisis, such as a high profile conflict over a major project, and the degree to which they can adapt to meet changing circumstances. Little work on these topics has yet been completed.
3.6 Key Factors for Success

Based on the interviews completed for this report, a number of consistent themes emerge that represent key factors for the success of SDM agreements:

- **Managing expectations:** As the number of SDM agreements has grown over time, the knowledge and awareness of their scope and intent has gradually improved. Despite this, there remains a risk that those involved in implementing existing SDM agreements, or negotiating new ones, continue to hold to different opinions as to what such agreements can actually provide, particularly in terms of shared decision making. Continued efforts to align expectations on this issue are essential.

- **Realistic understanding of workloads:** Related to the above, those involved in the implementation of SDM agreements have almost universally reported that the workload involved has far exceeded their expectations. In this light, setting realistically ambitious targets for what can be achieved will be essential to maintain a positive climate of success.

- **Funding:** There are concerns among many First Nations that current funding levels for the implementation of SDM agreements are not sufficient. Moreover, there is considerable uncertainty over future funding support for such agreements, given mixed success negotiating revenue sharing agreements and with a new government taking hold of the reins in May 2013. Improving certainty with regard to long term funding is likely to be important for continued success.

- **Capacity building:** As noted above, ensuring that First Nations have both the necessary capacity and the technical capabilities needed to implement SDM agreements is essential for the longer-term success of SDM agreements. Focused efforts are needed to identify best strategies for capacity building, which may include efforts at the local or regional level, and perhaps improved sharing of skills and experience among multiple First Nations across the province.

- **Sustained support for implementation:** Several practitioners have expressed concern that the potential of SDM agreements could be undermined because of faltering support for implementation. In particular, an emphasis was placed on strengthening support among a wider range of provincial ministries and ensuring that the appropriate agency horsepower and continues to be dedicated to implementation tasks, with annual workplans and budgets adjusted accordingly. As noted above, further work may also be needed to strengthen the ‘accommodation toolbox.’

- **Continuity:** In several cases, practitioners highlighted the critical roles played by those involved in the implementation of SDM agreements who have developed trusted working relationships with their counterparts, and who hold institutional memory. One of the keys to success will be ensuring that there is a balance between the training of new staff and the retention of these individuals in key roles.

- **Reflection and continued experimentation:** Several practitioners have urged that the necessary latitude be preserved in policies and programs to allow for further experimentation and refinement, as SDM agreements are implemented in the coming few years. It is acknowledged that this may be challenging in an environment where provincial agencies are anxious to establish greater consistency and standardization. Creating appropriate venues for shared reflection and learning would also likely contribute to longer-term success.
4. **Suggested Priorities for Further Research**

Based on the summary of interviews and the preliminary analysis presented in earlier sections of this report, the SDM in BC Project Team has proposed that further research be focused on some or all of the following topic areas (in no particular order of priority). It is anticipated that this list of research priorities will be refined in cooperation with research partners.

| Capacity building | What are the best practices for capacity building for SDM agreement implementation?  
|                  | At what scale are such strategies best deployed (e.g., community level, regional level, provincial level)? |
| Funding          | How can long-term funding support be provided to support SDM agreement implementation?  
|                  | What are the prospects for revenue sharing arrangements to address longer term funding needs? |
| Accommodation tools | How can the accommodation toolbox for provincial agencies be strengthened and expanded, to the extent this is needed?  
|                  | What strategies can be developed to address cumulative impacts constructively? |
| Engagement models and portals | How can continued improvement in engagement tools and processes be supported?  
|                  | What are the best practices in terms of on-line portals and other information management tools and how can these be integrated smoothly into operations and workflows? |
| Linkage to land use plans or resource management frameworks | What are the advantages of linking SDM agreements to land use plans?  
|                  | Where land use plans are not available, to what degree can SDM agreements be ‘spatialized’ effectively and at minimal cost? |
| Linkage to EA | How can effective linkages be established between the parallel processes used for environmental assessment and SDM implementation? |
| Regional and local dynamics | What has been learned from experience to date in terms of managing the dynamics between a regional coordinating function and multiple First Nations that are signatories to an SDM agreement?  
|                  | What are the implications in terms of the scope of future SDM agreements or the support needed at different scales? |
| Monitoring and evaluation | What are the best practices in terms of performance management for SDM agreement implementation?  
|                  | How can the efficiency and effectiveness of monitoring and evaluation procedures be improved and perhaps standardized? |
| Replicability | Are SDM agreements replicable at scale as currently framed?  
|                  | If not, what are the implications for future efforts aimed at reconciliation and shared decision making in BC? |
| Linkage to treaty | How can the linkages between SDM agreements and treaty settlements or interim treaty agreements be clarified? |
| Resilience | What experience can be gained from collaborative management arrangements in Canada or other jurisdictions in terms of improving the resilience of structures and processes established under SDM agreements? |
5. APPENDICES

Appendix A: Research Questions

The question set used for interviews with First Nations representatives and advisors is included below. A similar question set was used for interviews with provincial representatives, with the wording of some questions adjusted to match the organizational context of the Ministry of Aboriginal Relations and Reconciliation. Letter codes shown were used simply for reference during the analysis process.

B. OVERVIEW
Ba In a few short sentences, how would you describe the benefits of an SDM agreement?
Bb Overall, how would you rate the value of an SDM agreement, on a scale of 1 (very little value) to 10 (very high value)? Please explain your rating.
Bc In your opinion, what is the most important thing about SDM agreements and their implementation arrangements that you would want others to know?

C. GENESIS AND STRATEGIC INTENT
Ca Where did the idea to develop your own SDM agreement come from?
Cb What did your Nation/organization hope that an SDM agreement would achieve?
Cc Can you describe what it is that your Nation/organization hopes to achieve over the long term, and to what extent an SDM agreement represents a step in that direction?
Cd Based on your own experience, were there any special conditions that needed to be in place before an SDM agreement could be developed?
Ce Under what circumstances would an SDM arrangement have been inappropriate and why?
Cf How did the negotiations begin? In particular, were there key individuals that helped bring the parties together so that good faith negotiations could begin?

D. NEGOTIATING AN SDM AGREEMENT
Da Are there contested territorial boundaries (i.e., ‘shared territories,’ or ‘overlaps’) within the area covered by your SDM agreement?
  □ No
  □ Yes. If yes, how were these contested territorial boundaries dealt with in the negotiations?
Db Did your Nation/organization develop a formal negotiating mandate before engaging in direct negotiations?
  □ No
  □ Yes. If yes, was this negotiating mandate shared with the other party and in what form?
Dc Did your Nation/organization adjust its negotiating mandate during the course of the negotiations in an effort to reach an agreement?
Dd Many negotiation processes establish a Terms of Reference to help provide structure for all those involved. Did the negotiations that led to your own SDM agreement have a TOR or something similar?
  □ No
  □ Yes. If yes, would you be prepared to share a copy of those TOR with the research team?
De In your opinion, what were two or three of the most important elements of those TOR?
  (a) ______________
  (b) ______________
  (c) ______________
Df Can you describe the most significant challenge that arose during the negotiation of your SDM agreement? If you can, please explain how this challenge was addressed?
Dg Based on your own experience, what is the most important kind of support that is needed to assist those involved in the negotiation of an SDM agreement?
Dh What funding support is necessary for a First Nation to participate fully and meaningfully in the negotiation of an SDM agreement?
Di In your negotiations, did the parties involved need to secure additional data or analysis of any type?
  □ No
  □ Don’t Know
  □ Yes. If yes, what kind of data or analysis was needed and how was this need addressed?
Dj In your negotiations, was there an agreement in place to ensure that values or interests were not degraded while the negotiations were underway (for example, some kind of ‘interim measures’)?
  □ No
  □ Don’t Know
  □ Yes. If yes, can you describe the scope of those interim measures or side agreements?

E. SCOPE AND INTENT OF SDM AGREEMENT
Ea Does your SDM agreement define specific outcomes to be achieved?
Eb How will you be able to assess whether these outcomes have been achieved in practice? For example, have criteria been established for such an assessment?
Ec To what extent do the outcomes defined in your SDM agreements represent tangible steps toward your First Nation’s/organization’s long term vision? Please describe that vision if you can.
Ed Does your SDM agreement include clauses requiring respect for First Nations’ laws?
Ee Does your SDM agreement include clauses that allow it to be adapted over time to ensure consistency with evolving case law?
Ef What kind of land and resource management decisions are included within the scope of your SDM agreement?
Eg Are there particular types of land and resource management decisions that are not included within the scope of your SDM agreement (for example, Environmental Assessment)?
- No
- Don’t Know
- Yes. If yes, please explain what types of decisions are excluded and why.

Eh Was the Federal Government involved in any way in the negotiation of your SDM agreement?

Ei Are there linkages between your SDM agreement and treaty negotiations, or other processes aimed at reconciliation?

Ej Is your SDM agreement linked to a land use plan or some kind of resource management framework?
- No
- Don’t Know
- Yes. If yes, please explain the linkages as best you can.

Ek Does your SDM agreement include procedures to help resolve disputes related to the implementation of the agreement?
- No
- Don’t Know
- Yes. If yes, have these procedures ever been used and were they effective?

El Does your SDM agreement provide funding support for implementation?
- No
- Don’t Know
- Yes. If yes, is that support sufficient for effective implementation? Please explain.

F. PUBLIC AWARENESS AND CONSTITUENCIES OF SUPPORT

Fa On a scale of 1 (low) to 5 (very high), to what degree are key stakeholders with interests in land or resource management aware of your SDM agreement in your region? In your opinion, do those who are aware of the SDM agreement understand its scope and intent?

Fb In your opinion, is there support for your SDM agreement among stakeholders in your region?

Fc On a scale of 1 (low) to 5 (very high), to what degree are local community members aware of your SDM agreement in your region? Please explain.

Fd In your opinion, is there support for your SDM agreement among local community members in your region?

Fe Based on your own experience, how is support for your SDM agreement, or the lack of support for the agreement, expressed by stakeholders or local community members?

Ff On a scale of 1 (low) to 5 (very high), to what degree has your SDM agreement delivered clarity, certainty and predictability for economic development interests in your region? Please explain.

G. IMPLEMENTATION AND RESULTING OUTCOMES

Ga Most SDM agreements have established government-to-government (G2G) structures to assist in implementation. Can you describe those structures for your own SDM agreement?

Gb On a scale of 1 (poor) to 5 (excellent), how well do these G2G structures operate in practice? Please explain.

Gc In your opinion, what are the key features of the G2G structures that ensure they operate well, or that prevent them from operating well?

Gd Most SDM agreements have established an engagement model to deal with applications, which replaces or augments the typical ‘referral system.’ On a scale of 1 (poor) to 5 (excellent), how well is the engagement model working under your SDM agreement? Please explain.

Ge Under the engagement model in your SDM agreement, does the First Nation have an opportunity to exert greater influence over decisions? Please explain.

Gf To what extent does the engagement model in your SDM agreement enable consensus based decision making?

Gg Can you offer any other comments on how the engagement model is working in practice?

Gh Does your SDM agreement include provisions related to the implementation of a land use plan or resource management framework?
- No. Please move on to question Gk
- Don’t Know
- Yes. If yes, please explain.

Gi For your SDM agreement, who is responsible for implementing the land use plan or resource management framework?

Gj As a result of the SDM agreement, have First Nations or provincial resource managers faced any challenges in adjusting to new ways of doing business?
- No. Please move on to question Gk
- Don’t Know
- Yes. If yes, please describe these challenges and how they have been addressed.

Gk Does your SDM agreement establish other collaborative planning or management arrangements, (e.g related to wildlife management or protected areas planning and management)?
- No
- Don’t Know
- Yes. If yes, have these other arrangements been effective?

Gl Does your SDM agreement include provisions related to economic development or revenue sharing?
- No. Please move on to question Gk
- Don’t Know
- Yes. If yes, to what extent have these provisions fully addressed the interests of your First Nation/organization?

Gm On a scale of 1 (not at all) to 5 (very much), to what extent has your SDM arrangement resulted in modified development proposals or other changes to land and resource management decisions that lead to improved environmental outcomes? Please explain.
Gn  Does your SDM agreement establish mechanisms to track improvements in conservation outcomes?
Go  On a scale of 1 (not at all) to 5 (very much), to what extent has your SDM agreement supported the achievement of social well being objectives for the First Nation or for local communities? Please explain.
Gp  On a scale of 1 (not at all) to 5 (very much), to what extent has your SDM agreement supported capacity building within First Nations or local communities? Please explain.
Gq  What, if any, are the additional resources identified by your First Nation/organization that are necessary for effective implementation of your SDM agreement?

H. MONITORING AND EVALUATION
Ha  What, if any, monitoring and evaluation procedures have been established within your SDM agreement to assess implementation success and the achievement of desired outcomes?
Hb  In practice, how are the results of monitoring and evaluation considered and acted upon?
Hc  On a scale of 1 (not at all) to 5 (very), what extent have these monitoring and evaluation procedures proven effective?
Hd  Other than the monitoring and evaluation procedures established under the SDM agreement and undertaken jointly, is your First Nation/organization doing any of its own monitoring and evaluation?
  □ No
  □ Don’t Know
  □ Yes. If yes, please describe.
He  What mechanisms are in place, if any, that allow for shared reflection on the results of monitoring and evaluation by all signatories to the SDM agreement?
Hf  Are you aware of any mechanisms in place that allow for the collective review of the effectiveness of SDM agreements across the province?
  □ No
  □ Don’t Know
  □ Yes. If yes, please describe.
Hg  For your SDM agreement, are there examples where the signatories have agreed to make changes on the basis of the results of monitoring and evaluation?
  □ No
  □ Don’t Know
  □ Yes. If yes, please describe.
Hh  On a scale of 1 (not at all) to 5 (very much), how confident do you feel that the signatories could make significant adjustments to your SDM agreement in light of changing circumstances? Please explain.

WRAP UP QUESTIONS
Ia  On a scale of 1 (very pessimistic) to 5 (very optimistic), how do you feel overall about the likely success of your SDM agreement? Please explain.
Ib  Are there other aspects of your SDM agreement that you would like the Project Team to know about?
Ic  Do you have any other input or comments for the Project Team?
Id  Are you willing to be listed as an informant for the SDM in BC Project?
  □ No
  □ Yes.

Appendix B: List of Interviewees

A total of 25 individuals were interviewed during the period February – April, 2013, including the following:

FIRST NATIONS REPRESENTATIVES AND ADVISORS
Bryan Evans, Consultant to Taku River Tlingit First Nation
Craig Paskin, Ktunaxa National Council
Dave Crampton, Consultant to Kaska Dena Council
Dave Schaepe, Stó:lō Research and Resource Management Centre
Jessica Morrison, Stó:lō Research & Resource Management Centre
Joel Starlund, Office of the Gitanyow Hereditary Chiefs
Julian Griggs, Consultant to Taku River Tlingit First Nation
Nalaine Morin, Tahltan Central Council
Norm Maclean, Consultants to Kaska Nation
Steve Jakesta, Kaska Natural Resources Society
Susan Carlick, Consultant to Taku River Tlingit First Nation
Tara Marsden, Office of the Gitanyow Hereditary Chiefs

PROVINCIAL REPRESENTATIVES
Leah Sheffield, MARR
Pam Cowtan, MARR
Lindsay Jones, MARR
Peter Jones, MARR
Maggie Marsland, MARR
Karen McDowell, MARR
Luigi Sposato, MARR
Justin Calof, MARR
Mike Gash, MARR
Tony Pesklevits, MARR
The SDM in BC collaborative research project examines the emergence of non-treaty agreements that create new mechanisms for engagement on land and resource matters at strategic and operational levels, as a step toward longer-term reconciliation.