

Proposal to enable Land Act decisions to be made with Indigenous Governing Bodies

Virtual Consultation Session

Presented by the Ministry of Water, Land and Resource Stewardship



The Declaration Act

- In 2019, the Province unanimously passed the Declaration Act as the framework for implementing the UN Declaration on the Rights of Indigenous Peoples.
 - The UN Declaration recognizes the right of Indigenous peoples to participate in decision-making in matters that affect them.
- Declaration Act sections 6 and 7 *enable* the Province to enter into agreements with Indigenous Governing Bodies (IGBs), which can give IGBs *a formal role* in the decision-making, and modify how a decision is made under another Act.
- The Declaration Act **does not** give legal effect to these modifications to decision-making power(s) so amendments are required to the Act the legislation containing the decision-making power(s).
- Agreements under the Declaration Act that provide a formal role for decision-making, are *judicially reviewable* and must meet the principles of administrative fairness.



The Land Act – An Overview

- Land Act is one of several natural resource statutes within the Province.
- Land Act allows for access and use of public land for 25 separate programs
 to support industry, recreation and research and includes such things as
 grazing, communication towers and clean energy projects.
- Land Act contains several other aspects related to administration of Land Act tenures and land management, as well as other operational matters.
- Currently, the Province is *legally required* to consult with affected First Nations on all *Land Act* decisions.
 - Where the Province **does not adequately consult** or accommodate impacted First Nation rights, **decisions can be challenged and overturned in court**.



What is not proposed

- The proposed amendments will not lead to broad, sweeping, or automatic changes.
 - There is no impact from the proposed amendments to the public's ability to access Crown land, to existing tenures or existing decisionmaking processes.
- There are no changes contemplated to any provisions of the Land Act beyond the proposed amendments that enable decision-making agreements.
- There are **no changes** to existing Crown land policies, such as permissions, which provide for public access to Crown land.



What is proposed

- The proposed amendments to the Land Act enable the use of the tools set out in the Declaration Act.
 - Nothing requires the Province to enter into a decision-making agreement.
 - The public interest *will be a critical part* of any provincial government decision to enter into a negotiation of an agreement.
- Any practical change to Land Act decision making that could result from an agreement would be considered before commencing negotiation of decision-making agreement.
 - Where a future agreement contemplates any changes or impacts to the public or third-party interests, *full consultation will be* undertaken and any impacts will be considered.



Decision-making Agreements – the why

- Joint or consent-based decision-making Agreements are an important tool in the Declaration Act that:
 - brings stability to decision-making with First Nation partners;
 - improves predictability and transparency for how decisions are made; and
 - can improve competitiveness and economic opportunities.
- Agreements do not provide a 'veto' and require due process.
 - Any person affected by decisions made under joint or consent-based agreements will
 continue to be able to seek review of the decision by the courts.
 - Ensures that both the Province and First Nation are accountable for having clear and transparent decision-making processes that meet the test of administrative fairness.

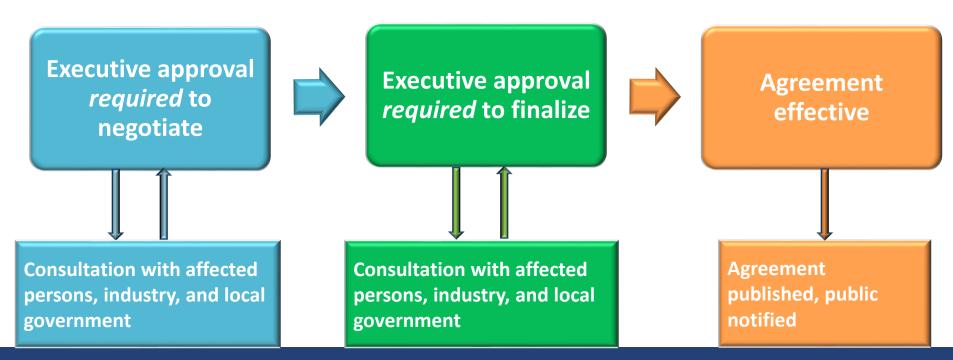


Is this new?

- Prior to and since the implementation of the Declaration Act, the Province has amended legislation to enable implementation of Declaration Act agreements:
 - Environmental Assessment Act (pre-2019)
 - Tahltan Declaration Act consent decision agreement in place for Environmental Assessment Certificate decision for Eskay Creek and Red Chris project
 - Emergency and Disaster Management Act
 - Child, Family and Community Services Act
 - Adoption Act
 - Forest and Range Practices Act (not yet in force)
- The Declaration Act Action Plan *includes commitments* to negotiate agreements under the Act (Action #1.3) and to amend legislation to enable agreements (Action #2.4)



Decision-making Agreements – the how





Questions

For comments/input:

https://engage.gov.bc.ca/govtogetherbc/engagement/land-act-amendments/

<u>LandActamendments@gov.bc.ca</u>

For information on development of proposed legislation:

https://www.leg.bc.ca/parliamentary-business/bills-and-legislation