

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 decision-making 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.

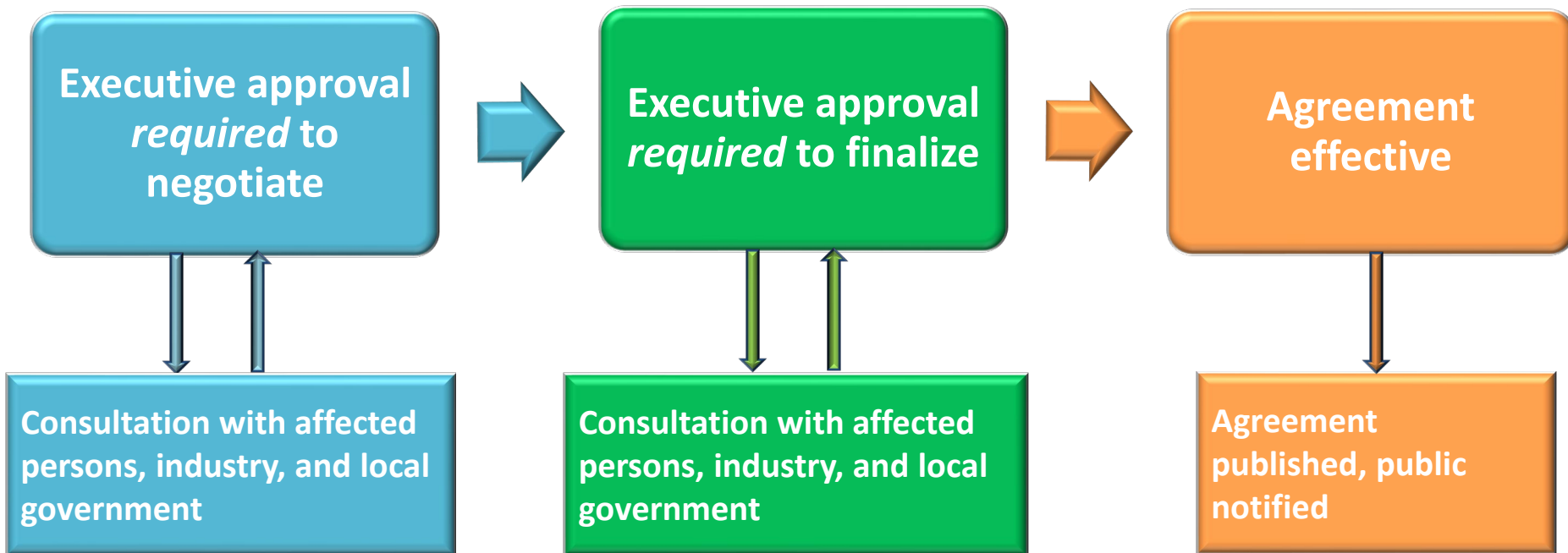
Decision-making Agreements – the why

- 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/>

LandActamendments@gov.bc.ca

For information on development of proposed legislation:

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