

To: Regional and Corporate Services Committee  
From: Kate Fenton, Planner I, Indigenous Relations

Date: 2024-04-11  
File No: 3100-01

**Subject: Provincial Land Management Legislative Updates related to the Declaration on the Rights of Indigenous Peoples Act**

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### INTENT

This report is intended to advise the Fraser Valley Regional District Board of information pertaining to **legislative updates that will align British Columbia's laws with the United Nations Declaration on the Rights of Indigenous Peoples**. Staff is not looking for a recommendation and has forwarded this information should members want more clarification or to discuss the item further.

### BACKGROUND

The *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) has been an enabling piece of legislation since unanimously passed by the British Columbia Legislative Assembly in 2019. DRIPA does not formally implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) into provincial law, but it provides a process to achieve that ultimate objective.

For UNDRIP to have legal standing in BC, individual pieces of legislation need to be updated and amended accordingly. As outlined in the [DRIPA Action Plan](#), DRIPA contributes to the implementation of the broader UNDRIP in BC by:

- » Requiring the Province, in consultation and cooperation with Indigenous Peoples, to take all measures necessary to ensure the laws of BC are consistent with UNDRIP (Section 3)
- » Enabling agreements with Indigenous Governing Bodies<sup>1</sup>, including joint or consent-based decision-making agreements that reflect free, prior, and informed consent (Sections 6 and 7)

### DISCUSSION

Substantial legislative and policy adjustments are needed by the Province to integrate UNDRIP into provincial frameworks. To support individual ministries as they develop specific policies and legislative changes, the Province created [the Declaration Act Secretariat](#) which is a centralized entity dedicated to steering this whole-of-government initiative.

There are currently dozens of projects underway to ensure provincial laws and policies are updated to be consistent with UNDRIP. There have been 11 Bills that have been introduced as a result of this

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<sup>1</sup> [Indigenous Governing Bodies](#) "means an entity that is authorized to act on behalf of Indigenous Peoples that hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*".

process. The [DRIPA website](#) gives a detailed overview of all 89 actions identified in the DRIPA Action Plan, which outlines the Province's priorities for 2022-2027. Appendix I highlights the action items with the most relevance to land management, while Appendix II highlights actions relevant to local government. Two pieces of legislation that have recently been brought forward by the Province with updates are:

- » *The Land Act*
- » *The Heritage Conservation Act*

## Land Act

Crown land is a valuable public resource that is an important contributor to the Province's economy and supports a wide range of species and ecosystems, while also providing recreational opportunities. The Province has a responsibility to manage Crown land to optimize benefits for all residents. This is done by providing policy and legislative direction for its allocation, management, and various regional land programs.

Out of the nearly 100 million hectares of land in BC, approximately 95% is considered Crown land. Crown land governance in BC falls under the purview of the *Land Act*. The current *Land Act* gives final decision-making powers (to issue leases and licences for land use) only to the Minister in charge. However, given that most of the First Nations in BC never signed treaties with the Crown, there was no legal transfer of land to the Crown, meaning that Crown land is unceded territory.

In January 2024, the Ministry of Water, Land, and Resource Stewardship shared its intentions of amending the *Land Act* to make space for the recognition and implementation of First Nations governance rights in relation to land and resource development on the unceded land in their territories. This was to be facilitated through the establishment of agreements under Sections 6 and 7 of *DRIPA*. These changes were intended to serve as tools to enable agreements<sup>2</sup> with Indigenous Governing Bodies to share decision-making over Crown land and bring the *Land Act* in line with *DRIPA*. The ministry highlighted that **this would not constitute as "veto" power, but rather the objective was to bring First Nations into discussions on land use at the same time as the government and allow provisions in the legislation to facilitate joint decision-making.**

The Province had planned to bring a draft bill to the legislature in spring 2024, but following public feedback, the Minister has put a [hold on the proposed changes](#). The Ministry has indicated that more engagement about these legislative changes will take place in the future. At this point in time staff are not certain when this engagement will take place.

## Heritage Conservation Act

Objects and land, covered by water or not, that have value to British Columbia, a community, or an Indigenous People, are protected by the *Heritage Conservation Act* (HCA). There are over 62,000

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<sup>2</sup> An example is the [Declaration Act Consent Decision-Making Agreement for Red Chris Porphyry Copper-Gold Mine Project](#)

protected heritage sites in BC, of which 90% are of First Nations origin. The purpose of the HCA has always been to encourage and facilitate the protection and conservation of heritage and archeological sites in BC, but the HCA has not been updated in 20 years, though several amendments were brought before the legislature in 2019. Despite these amendments, the HCA still does not align with UNDRIP, nor does it adequately protect sacred, cultural, ceremonial, and spiritual heritage. UNDRIP highlights the inherent right of Indigenous Peoples to manage archaeological and historical sites in [Article 11](#):

*Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature.*

To address this, the Archaeology Branch of the Ministry of Forests launched the [Heritage Conservation Act Transformation Project](#) in 2021. The enactment of any changes to the HCA is not anticipated for several years. As of February 2024, the Archaeology Branch has released a [summary report](#) from the second round of engagement. Once the new HCA is enacted, staff will assess the implications for the FVRD and report to the Board. In response to feedback from engagement sessions, the Archaeology Branch is delaying the introduction of legislative amendments to ensure that the proposed changes better reflect input from First Nations and stakeholders.

## **COST**

Not applicable.

## **CONCLUSION**

Aligning provincial legislation and applicable policies with DRIPA is a whole-of-government initiative that is being guided by the Declaration Act Secretariat. The DRIPA Action Plan highlights key pieces of legislation that are being targeted for reform for 2022-2027. Of these priority items, staff anticipates that changes to the *Land Act* and the *Heritage Conservation Act* have the potential to impact the FVRD, though it is unclear how at this stage. Staff are monitoring the progress of ongoing projects and will inform the Board of any legislative changes.

## **COMMENTS BY:**

David Urban, Deputy Director of Regional Services: Reviewed and supported.

Stacey Barker, Director of Regional Services/Deputy CAO: Reviewed and supported.

Kelly Lownsbrough, Director of Corporate Services/CFO: Reviewed and supported.

Jennifer Kinneman, Chief Administrative Officer: Reviewed and supported.

## Appendix I – DRIPA Action Plan Actions and related Legislative Changes relevant to Land Management

Legislation	DRIPA Action Plan Action Item	Ministry Responsible	Legislative Amendment
<i>Land Title and Property Law Amendment Act</i> (Bill 13)	Theme 1 – Self-determination and Inherent Right to Self-Government.	Ministry of Indigenous Relations and Reconciliation  Ministry of Land, Water and Resource Stewardship	The Land Title and Property Law Amendment Act was introduced to the legislature and read for a first time on April 2, 2024. This legislation proposes administrative changes to the ways First Nations can acquire, hold, and register fee simple land in B.C. Currently, unless enabled by specific legislation (treaties or other federal legislation) the majority of First Nations in B.C. are unable to acquire, hold and dispose of land in their own names. To buy or hold land, most First Nations must undertake the additional administrative processes of setting up a corporation or use alternative arrangements, for example, proxies, federal trust, societies and individual members (for example, <b>Leq'á:mel, Matsqui, and Semá:th having to</b> create the LMS society in order to receive Crown land from the Province). The amendments will give First Nations the ability to purchase and hold fee simple land directly, just as individuals and corporations have long been able to do.
<i>Emergency and Disaster Management Act</i> (Bill 31)	1.10 - Co-develop modernized emergency management legislation (replacing the <i>Emergency Program Act</i> ) with First Nations.	Emergency Management BC	In alignment with the <i>DRIPA</i> , and in recognition that Indigenous peoples have the right of self-determination, Indigenous Governing Bodies are recognized as decision-makers in emergency management. The legislation enables agreements with Indigenous Governing Bodies for joint or consent-based decision-making, using a framework established by the <i>DRIPA</i> . The legislation also authorizes agreements with Indigenous Governing Bodies to coordinate the exercise of emergency powers as well as plans, policies and programs related to the response and recovery phases. To promote cooperation and collaboration, the Province may enter other forms of emergency management agreements with Indigenous Governing Bodies or Indigenous entities. Recognizing the benefits of sharing emergency management responsibilities,

			local authorities, Indigenous Governing Bodies, and the Province may create or join multijurisdictional emergency management organizations. The <i>Emergency and Disaster Management Act</i> was introduced in October 2023, and came into effect on November 8, 2023.
	2.4 - Negotiate new joint decision-making and consent agreements under section 7 of the Declaration Act that include clear accountabilities, transparency and administrative fairness between the Province and Indigenous Governing Bodies. Seek all necessary legislative amendments to enable the implementation of any section 7 agreements.	Ministry of Indigenous Relations and Reconciliation  Ministry of Land, Water and Resource Stewardship	No legislative updates.
	2.7 - Collaborate with First Nations to develop and implement strategies, plans and initiatives for sustainable water management, and to identify policy or legislative reforms supporting Indigenous water stewardship, including shared decision-making. Co-develop the Watershed Security Strategy with First Nations and initiate implementation of the Strategy at a local watershed scale.	Ministry of Land, Water and Resource Stewardship	No legislative updates.
<i>Forests Statutes Amendment Act</i> (Bill 23)	2.10 - Reform forest legislation, regulations and policy to reflect a shared strategic vision with First Nations that upholds the rights and	Ministry of Forests	The Minister of Forests introduced this statute on October 20, 2021, as Bill 23. Passed into law on November 23, 2021, the bill amended the <i>Forests Act</i> , the <i>Forest and Range Practices Act</i> , and the <i>Forest Practices Code of British Columbia Act</i> . These amendments establish the framework for an

	objectives of the UN Declaration.		approach that is more focused on ecological and cultural values. A key part of this will be replacing forest stewardship plans, which are currently developed by industry, with forest landscape plans developed by the Province with First Nations, local communities and other partners, which will create new opportunities for shared decision-making between the Province and First Nations.
	4.35 - Work with First Nations to reform the <i>Heritage Conservation Act</i> to align with the UN Declaration, including shared decision-making and the protection of First Nations cultural, spiritual, and heritage sites and objects.	Ministry of Forests  Ministry of Tourism, Arts, Culture and Sport)	No legislative updates.  The <i>Heritage Conservation Act</i> Transformation Project has just finished the second round of engagement.

## Appendix II – Other DRIPA Action Plan actions and related Legislative Changes relevant to Local Government

Legislation	DRIPA Action Plan Action Item	Ministry Responsible	Legislative Amendment
<i>Human Rights Code Amendment Act</i> (Bill 18)	3.6 - Introduce anti-racism legislation that addresses Indigenous-specific racism.	Ministry of Attorney General	The Attorney General introduced this statute on November 17, 2021, as Bill 18. The bill, which was passed into law November 23, 2021, amended the provincial Human Rights Code to further uphold Indigenous human rights and advance reconciliation with Indigenous Peoples by adding Indigenous identity as a protected ground against discrimination.
<i>The Anti-Racism Data Act</i> (Bill 24)			Passed June 2, 2022, the <i>Anti-Racism Data Act</i> allows data to be collected that will help identify gaps in programs and services and ensure government can better meet the needs of Indigenous, Black and other racialized British Columbians. The act is one of the first pieces of legislation to be co-developed with Indigenous Peoples under the <i>Declaration on the Rights of Indigenous Peoples Act</i> . Since the legislation came into effect, an anti-racism

			data committee has been formed to bring together community members to collaborate with government to determine key research priorities and how to gather and use data to identify and eliminate systemic racism in the public sector. The Act requires the Province to work with Indigenous Peoples on data initiatives related to anti-racism including data standards and research priorities.
<i>Interpretation Amendment Act</i> (Bill 29)			The Attorney General introduced this statute on November 17, 2021, as Bill 29, which was passed into law on November 23, 2021. This bill added a universal non-derogation clause to the <i>Interpretation Act</i> , making it explicit that provincial laws uphold, and do not abrogate or derogate from, the rights of Indigenous Peoples under Section 35 of the <i>Constitution Act</i> , 1982. Bill 29 also amended the <i>Interpretation Act</i> to provide that all provincial acts and regulations must be read to be consistent with UNDRIP.
<i>Accessible British Columbia Act</i> (Bill 6)	4.9 - As a part of the implementation of the <i>Accessible British Columbia Act</i> , support the identification, prevention and removal of barriers for Indigenous persons with disabilities. This includes ensuring that the development of accessibility standards considers the rights recognized and affirmed by the UN Declaration.	Ministry of Social Development and Poverty Reduction	The Minister of Social Development and Poverty Reduction introduced the new legislation on April 28, 2021, as Bill 6. The <i>Accessible British Columbia Act</i> , passed into law June 3, 2021, establishes the legal framework to identify, prevent and remove barriers to accessibility including for Indigenous people.