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**SENT VIA EMAIL**

Esther Reese  
President  
Southeast Alaska Indigenous Transboundary Commission  
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**Subject: Engagement on Proposed Amendment to the *Environmental Assessment Act* Related to Participation of U.S. Tribes**

Dear President Esther Reese,

I am writing to inform you that the Province of British Columbia is initiating engagement on a proposed legislative amendment to the *Environmental Assessment Act* (2018) (EAA) that would preventing U.S.-based Indigenous groups (U.S. Tribes) from being participating Indigenous nations under the EAA.

The Environmental Assessment Office (EAO) is requesting any feedback by February 17, 2026 regarding this potential legislative change.

**Background**

As you may know, between 2023 and 2025, several U.S. Tribes notified the Province of their intent to participate as participating Indigenous nations in several EA processes in British Columbia.

In 2024 and 2025, the Province issued four orders under section 7 of the *Environment and Land Use Act* (ELUA Orders) preventing certain U.S. Tribes from being participating Indigenous nations for specific EA processes. The ELUA Orders support the ability of the EAO to consult with U.S. Tribes, where applicable, in a manner that differs from how the EAO consults with

First Nations based in British Columbia. These orders are in force until September 15, 2027.

The ELUA Orders, as well as these intended legislative changes to the EA Act, in no way restrict the Province's ability to meet any constitutional obligations to consult U.S. Tribes on proposed decisions that may affect a U.S. Tribe's asserted rights under Section 35 of the *Constitution Act, 1982* (Section 35 Rights) or to engage on potential transboundary effects in accordance with the EAO's longstanding practice. As communicated in previous correspondence from the Ministry of Water Land and Resource Stewardship regarding consultation on the ELUA Order (May 10, 2024 and June 27, 2024) and within the EAO's letters of [April 24](#) and [July 3](#) 2024, the EAO discharges any consultation obligations owed to U.S. Tribes on relevant EA projects outside of the participating Indigenous nation framework in a manner consistent with *Haida Nation v. British Columbia* and with the statement in *R v. Desautel* that consultation with US Tribes may differ from consultation with Indigenous groups in Canada.

## **Policy Discussion**

### R. v. Desautel

As you know, the 2021 Supreme Court of Canada (SCC) decision in *R. v. Desautel* (Desautel Decision) found that the "aboriginal peoples of Canada" under Section 35(1) of the *Constitution Act, 1982* are the modern successors of those Aboriginal societies that occupied what is now Canada at the time of European contact, and this may include Aboriginal groups that are now outside of Canada.

While the Desautel Decision clarified that Aboriginal groups located outside of Canada with a credible claim to Section 35 rights may be owed a duty to consult, the SCC raised complex and significant considerations regarding the scope and approach of this consultation and how it may need to be distinct from the Province's consultation with Canada-based First Nations. For example, the SCC noted that consultation is part of the process of reconciliation that arises from the Crown's assertion of sovereignty, but that Aboriginal groups located outside Canada "are not implicated in this process to the same degree" and, as such, "the scope of the Crown's duty to consult with them, and the manner in which it is given effect, may differ." The SCC also stated that, "Integrating groups outside Canada into consultations by the Crown with groups inside Canada may involve discussions within Aboriginal communities and with the Crown."

## Related Initiatives

The Ministry of Water, Land and Resource Stewardship (WLRS) is currently developing a Consultation Policy which will clarify how the Province consults with U.S. Tribes who have asserted or established rights in British Columbia, which you will be notified of in the near future.

## Next Steps

In light of the considerations outlined in this letter, the EAO is proposing to make legislative changes consistent with the approach taken in the ELUA Orders to differentiate the approach to consultation between U.S. Tribes and BC First Nations and carry out this consultation outside the PIN framework.

If you have any comments or feedback regarding the proposed legislative amendment, please respond by **Tuesday, February 17, 2026**.

Sincerely,



Julie Chace  
Senior Executive Director

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