

TLINGIT & HAIDA



Central Council of the Tlingit & Haida Indian Tribes of Alaska

February 17, 2026

SENT VIA EMAIL

Laanas Tamara Davidson

Minister of Environment and Parks

Province of British Columbia, Canada

Re: Engagement on Proposed Amendment to the Environmental Assessment Act Related to Participation of U.S. Tribes

Minister Davidson,

On behalf of the Central Council of the Tlingit & Haida Indian Tribes of Alaska (Tlingit & Haida) and the more than 38,000 Tribal citizens we represent, I submit the following comments in response to the Province of British Columbia's January 27, 2026 letter regarding proposed amendments to the *Environmental Assessment Act* (2018) that would exclude U.S. Tribes from engaging as "participating Indigenous nations" in provincial environmental assessment processes.

British Columbia's request for feedback on a legislative amendment that would formalize the exclusion of U.S. Tribes presumes a level of recognition and meaningful consultation that, in practice, has not occurred. For example, engagement with Tlingit & Haida to date has been ad hoc, procedurally constrained by unilateral provincial decisions, conducted outside any co-developed framework, and lacking recognition of U.S. Tribes as governments with inherent sovereignty. Against this reality, the proposed amendment appears less a clarification of process and more a retroactive justification for an existing consultation deficit.

The province characterizes the amendment as a technical differentiation between British Columbia (B.C.) First Nations and U.S. Tribes. In practice, the distinction is substantive. Removing U.S. Tribes from the "participating Indigenous nation" framework:

- eliminates access to structured, resourced, and transparent engagement;
- places consultation wholly within provincial discretion;
- limits the ability of U.S. Tribes to engage within the governance of shared resources; and

- delays identification and mitigation of transboundary impacts until after key decisions are made.

These impacts are particularly significant given the longstanding presence of the Ɓingít and Ǫaadas peoples across what is now Southeast Alaska and northern British Columbia. Archaeological evidence places our presence in the region for at least 10,000 years, with complex governance systems rooted in shared watersheds, salmon rivers, and marine corridors. Our clan system connects families across vast distances, meaning the modern international boundary cuts directly through living kinship networks, sacred sites, and ancestral territories.

The Ɓingít and Ǫaadas people have been here since time immemorial. The U.S.–Canada border was imposed over our homelands without Indigenous consent and has divided our people politically—not culturally or by our own laws. Our obligations to these lands and waters predate, and therefore cannot be confined by, modern jurisdictional boundaries.

The province’s reliance on the ELUA Orders and proposed amendments as merely procedural adjustments is inconsistent with Canadian constitutional law. The Supreme Court of Canada has repeatedly affirmed that the duty to consult arises from the honor of the Crown and must be meaningful, undertaken in good faith, and capable of influencing outcomes. In *Haida Nation v. British Columbia (Minister of Forests)*, the Court made clear that consultation must occur early, before decisions are effectively made, and must be proportionate to the seriousness of potential impacts. Consultation conducted outside the primary decision-making framework—without equivalent access to information, timelines, or participation mechanisms—risks becoming informational rather than substantive. *Haida* does not support removing Indigenous Nations from the very processes in which decisions are shaped.

Similarly, the province’s reliance on *R. v. Desautel* is incomplete. While the Court recognized that consultation with Indigenous groups outside Canada may differ in form, it also affirmed that such groups may hold Section 35 rights and that the Crown’s obligations flow from those rights. The decision does not authorize categorical exclusion, nor does it endorse the creation of a secondary consultation track controlled unilaterally by the province. Rather, *Desautel* confirms that cross-border Indigenous Nations remain rights-bearing peoples whose territorial relationships predate the international boundary.

The province’s approach is also difficult to reconcile with its statutory and policy commitments. B.C.’s *Declaration on the Rights of Indigenous Peoples Act* (DRIPA) affirms implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and requires laws to be interpreted consistently with Indigenous rights, including consultation and cooperation to obtain free, prior, and informed consent before adopting measures affecting Indigenous lands and resources. Nothing in DRIPA suggests that these commitments end where Indigenous Nations demonstrate longstanding territorial connections that extend across the border.

Recent jurisprudence reinforces the need for early, meaningful Indigenous engagement. In *Gitxaala Nation v. British Columbia*, the B.C. Court of Appeal held that the province’s mineral tenure regime was inconsistent with UNDRIP principles because it permitted mineral claims to be granted without prior consultation with affected Indigenous Nations. The decision confirms that provincial decision-making frameworks must incorporate Indigenous participation at the earliest stages—not after rights

and impacts have already been set in motion. That principle applies equally in transboundary contexts, where upstream decisions in B.C. can directly affect the traditional salmon systems, marine environments, and cultural landscapes relied upon by Alaska Native people.

Excluding U.S. Tribes from core environmental assessment processes does not reduce complexity. It shifts even more risk downstream, increasing the likelihood of conflict, litigation, and environmental harm. Consultation structures that are unequal from the outset undermine both reconciliation and sound governance.

For these reasons, Tlingit & Haida does not accept the premise that legislative exclusion is an appropriate or lawful response to the complexities of transboundary Indigenous rights. Before advancing amendments to the *Environmental Assessment Act*, the Province must:

- engage in government-to-government dialogue with affected U.S. Tribes;
- co-develop a consultation framework that reflects shared stewardship of transboundary territories; and
- acknowledge that meaningful consultation cannot occur where participation is structurally diminished from the outset.

Absent these steps, the proposed amendment appears less a reconciliation measure and more an effort to insulate provincial decisions from meaningful Indigenous participation.

We offer these comments with respect, and with the clear understanding that Indigenous sovereignty does not end at an international border—nor does our responsibility to one another as Indigenous leaders.

Gunalchéesh/Háw'aa,



Chalyee Éesh

Richard J. Peterson

President