

## **Frequently Asked Questions**

### **Zincton Formal Proposal Open House**

Due to the large number of questions received during the Zincton Formal Proposal Virtual Public Open House held on October 21, 2021, this frequently asked questions (FAQ) document identifies and summarizes the most common questions posed to the Mountain Resorts Branch (MRB) regarding the First Nations Consultation Process, the All-Seasons Resort Project Review Process, cumulative effects, MRB and government mandate.

**Please note:** The proponent, Zincton Farms Limited, has produced their own FAQ document answering questions regarding the Formal Proposal, environment, remediation, safety, and wildlife which can be found via a link on the MRB website (to be posted in future updates when available). The hyperlink and reference to proponent's FAQ document is provided for information only. The MRB is not responsible for the content or reliability of the linked website and the provision of the link shall not be construed as MRB's endorsement of the responses provided by Zincton Farms Limited.

This FAQ document from the Zincton Formal Proposal Virtual Public Open House is supplemental to the existing MRB's Zincton FAQ document which is available on the MRB website: [Zincton FAQ Document](#).

#### [Table of Contents](#)

<b>Mountain Resorts Branch Information .....</b>	<b>1</b>
<b>All-Seasons Resort Planning Process .....</b>	<b>2</b>
<b>Zincton Virtual Public Open House.....</b>	<b>6</b>
<b>Land Use Planning / Cumulative Effects.....</b>	<b>7</b>
<b>Existing Interests .....</b>	<b>7</b>
<b>First Nations.....</b>	<b>8</b>

## [Mountain Resorts Branch Information](#)

### **1. What is the mandate and role of Mountain Resorts Branch?**

- MRB is responsible for the administration of Regional and Destination Mountain Resorts on Crown land under the *All-Seasons Resort Policy*. The *All-Seasons Resort Policy* and Guidelines provide a framework for review and development of resort projects and community ski areas in B.C. This work includes:

- Major project reviews for a new resort development applications and expansion of existing resorts.
- Adjudicating applications for land and timber tenures and authorizations within Controlled Recreation Areas (defined resort areas).
- Monitoring compliance with contractual commitments.
- Some of Mountain Resorts Branch's key business functions include:
  - **Authorities** under the *Land Act*, *Forest Act*, *Forest and Range Practices Act*, *Resort Timber Administration Act* and the *Ministry of Lands, Parks and Housing Act*.
  - **Consideration and/or Approval** of new resort and ski area Master Development and Operating Agreements.
  - **Coordinating consultation** with government agencies, stakeholders, First Nations and the public on all resort/ski area Crown land applications and Master Plan reviews.
  - **Collection of revenues** to the Province, from resort and ski areas on Crown land.

## 2. What was the purpose of Mountain Resorts Branch's presentation during the Open House?

- The purpose of the presentation was to provide the public and stakeholders with information about the Zincton Resort proposal and to provide an overview of the regulatory framework which guides all-season-resorts applications and to clearly outline where we are at in this process and next steps.
- Each step in the all-seasons resort process requires public engagement to inform the decision-making process about the issues to be considered and resolved as part of the planning process. This commitment to public and stakeholders groups is referenced in *All-Seasons Resort Policy*, [Appendix 3 - Public Consultation Process for Each Stage of the Review Process](#)

## All-Seasons Resort Planning Process

### 3. How are environmental, cultural and social impacts assessed in this process?

- Environmental, socio-economic, cultural heritage, health and other implications of the proposal are progressively assessed throughout the three-stage resort development planning process. All relevant material, including information received from the applicant, First Nations, local and provincial government agencies, referral responses, stakeholders and the public will be considered during decision making.

- Following completion of the major project review at this stage, the Province (Mountain Resorts Branch) will make a decision regarding the Zincton Formal Proposal and Interim Agreement application. A detailed reasons for decision will be posted on the Application, Comments and Reasons for Decision (ACRFD) website <https://comment.nrs.gov.bc.ca/applications#splash> (search for File # 4406015).
- After review, if the Formal Proposal is accepted by the Province, an Interim Agreement is issued. An interim agreement provides the proponent with a 5-year temporary licence to allow investigative studies that will be required as part of the Resort Master Plan development and approval process. No permanent structures or improvements may be placed on the land.

#### **4. What is the project review timeline?**

- The timeline for the entire project review will vary (depending on the complexity at each stage) and it is highly dependent on a number of factors. This is a three stage, multi-year process with the third stage, the Master Plan, being the longest in duration due to the intensity of engagement and planning.

#### **5. At what stage in the planning process does the multi-agency committee assess and discuss the proposal?**

- Ministry's program area representatives, government agencies and subject matter experts are identified at the Expression of Interest (EOI) stage and provided with the opportunity to identify issues and to further inform planning process. The same opportunity is provided at the Formal Proposal stage.
- A formal Multiagency Technical Review Team is established at the Master Plan development stage which is the third stage of the resort planning process.
  - This team will assess the environmental, social, economic, cultural heritage, and health implications of the project while considering all relevant material, including information received from the applicant, First Nations, local and provincial government agencies, referral responses, stakeholders and the public. The information is reviewed and considered in the light of relevant legal requirements and government policies including government direction, Crown land use objectives, strategic and operational policies such as the Crown Land Allocation Principles.
  - At this stage the proponent is expected to work with the Multiagency Technical Review Team participants to address key impacts and resolve issues to the extent that the proposed measures are acceptable and/or possible. This may include provisions to provide additional information, commitment to specific actions, additional mitigation measures and changes to the Master Plan should

they be required. This stage typically takes more than twelve months and is highly dependent on the proponent's ability to respond to requests, identified issues and information requirements in a timely manner.

- For further information please refer to the [All Season Resort Process Flowchart](#)

**6. Why has the proposal advanced to the Formal Proposal stage when there was overwhelming negative feedback received during the Expression of Interest stage?**

- The public comment period (at the EOI stage) is not intended to be a survey of level of opposition or support for a project proposal. It is meant to provide the public with project proposal information and to provide the opportunity for public to identify issues, concerns and interests to inform project proposal review and future decision making on the project.
- Kootenay-Boundary Land and Resources Management Plan (KB LRMP) and associated legally established land use objectives provide direction for natural resource stewardship and management across the natural resource sector ([Kootenay-Boundary Land Use Plans](#)). The ministry is legally obligated to consider all permit applications for a Crown land use which are not in direct conflict with legally established objectives. MRB reviews proposals to assess community, cultural, economic, environmental and social risks, impacts on First Nations and adjacent resorts, and consistency with Provincial objectives.
- During the adjudication process for a variety of permit applications, ministry statutory decision-makers (SDM) must adhere to principles of administrative law and independently exercise good judgment in decision making that balances sound environmental stewardship with responsible development. SDMs are expected to ensure that they are not improperly influenced in their decision-making. Durable decisions need to be based on three essential elements:
  - A clear understanding of relevant statutes, regulations and legally established government land use objectives;
  - Procedural fairness; and
  - Appropriate public participation and First Nations consultation.
- Adherence to these essential elements in decision making will provide for a fair and transparent process for reconciliation of variety of public interests and avoidance of serving just one group of interests.

**7. What happens if the vast majority of groups, public and experts oppose the Zintcon project? Is there any way to stop the approval of the Formal Proposal?**

- There are multiple opportunities throughout the phased review for either the proponent or the Province to decide not to proceed with the proposal. The review process is not

based on the number of people or groups that might express support or opposition for a project but instead on the issues raised and the extent to which they can be addressed.

**8. Is it possible to amend (only grant part of the tenure) or reject the proposal in its entirety?**

- If at any time during the review process, the proposal is not considered to represent the best use of the land or if suitable mitigation strategies are not possible, the All-Season Resorts Policy (ASRP) provides the Statutory Decision Maker with authority to disallow the application or the right to change or modify Formal Proposal to meet any conditions it deems necessary in order that an interim agreement can be entered into with the proponent.
- In addition, to define public interest among many other factors and considerations there has to be a clear transparent process and opportunities for input in which participants can reach consensus and reconcile values and actions before the Province can enter into an agreement. That is why all-season resort development planning is a three-stage planning process whereby the opportunity is given to the proponent to revise the original proposal and address concerns and issues identified through an open and transparent planning process.

**9. What happens when a tenure such as an Operating Agreement (OA) or Master Development Agreement (MDA) is transferred to a new owner?**

- After the third and final stage in the resort development planning process is completed, if the Resort Master Plan is approved, FLNRORD will enter into an MDA or OA with the proponent based on the development concepts in the approved Resort Master Plan. The MDA is a 60 year, and the OA is a 30 or 60 year, contractual agreement that sets out the conditions under which the resort will be built over time. It includes tenure conditions and proponent commitments to ensure responsible resort development and has provisions for future land tenuring, pricing, and events of default as well as obligations of the Developer.
- The MDA and OA serve as administrative instruments for the issuance of tenures within a resort's Controlled Recreation Area. Subsequent tenures will be issued based on the phasing schedule identified in the Resort Master Plan.
- The procedures to apply for and acquire MDA and OA tenures (and fee simple dispositions that are part of the contractual rights contained in an MDA if applicable) are described in those agreements.
- The Developer is responsible for obtaining all permits and approvals from all agencies that regulate the use and development of the land. Assignment is the transfer of the tenure holder's interest in the land to a third party by sale, conveyance or otherwise.

Sub-tenuring means an interest in the Crown land granted by a tenant of that Crown land rather than the owner (the Province).

- Assignment or sub-tenuring requires the prior written consent of FLNRORD. The assignee or sub-tenure holder must meet eligibility requirements. FLNRORD may refuse the assignment of existing tenures if the details of the assignment or sub-tenure are not acceptable to the Province (e.g. the use is for a purpose not permitted in the MDA). Standard fees apply.
- Investigative and temporary permits cannot be sub-tenured or assigned.
- Assignment is bound to conditions/requirements outlined in the OA/MDA.

**10. What long-term assurances are in place that the resort tenure holder will not change the approved Master Plan?**

- In addition to the answer provided above, if a resort has an approved Master Plan and Operating Agreement and chooses to sell or divest the resort, the new tenure holder is bound by all the conditions outlined in the approved Master Plan and Operating Agreement. If the agreement/tenure holder would like to make changes, they will have to submit an updated Master Plan for review and approval by FLNRORD.

## Zincton Virtual Public Open House

**11. Why did the open house end 15 minutes early and leave some questions unanswered?**

- This was due to both the high volume of questions as well as technological issues as we had transitioned from Skype to Zoom. To keep the virtual open house interactive as much as possible, it was decided that aiming to answer received questions formally during and after the session would be more effective and productive instead of receiving and responding to questions in real time.

**12. Why was the open house held virtually?**

- An in person public open house wasn't an option at the time due to the current public health orders and the recommendations of the Provincial Health Officer.
- A virtual open house supports increased public accessibility and further information sharing as a recording of the open house is available on the MRB website for those people who could not attend the live session or would like to watch it again.
- The virtual open house recording can be found: [Zincton Virtual Open House Recording](#)

**13. Why does this proposal only have one open house?**

- Under the [All-Seasons Resort Policy](#) – Appendix 3, only one open house is required at this stage.

- If the proposal moves to the third stage of the resort process, the Master Plan stage, there will be two or more public open houses.

## Land Use Planning / Cumulative Effects

### **14. How are the cumulative effects of the Zincton and other proposals in the area considered in decision making? Is land use planning being considered for the area?**

- The provincial government is currently assessing broader landscape level planning and Cumulative Effects Framework (CEF) values assessment needs across the province including the Kootenay-Boundary region. To further government's commitment to reconciliation, FLNRORD is working on land use plans in areas identified as a high priority by First Nations. Priority areas for the Kootenay-Boundary Region are focused on land use planning for the South East Wildlife Corridor and the Qat'muk (Jumbo) Indigenous Protected and Conserved Area. This process is expected to unfold over a number of years and requires dedicated resources. The current demand for land use planning exceeds capacity and for that reason some areas such as the Highway 31A corridor are not expected to be addressed in the near term. Where and when a CEF report becomes available, current condition and trend for values of concern can be obtained from that report. The Zincton Formal Proposal Project Review Team will utilize any relevant CEF reports as they become available.
- The all-seasons resort major project review process will, however, consider the existing land use objectives established in the Kootenay Boundary LRMP and existing interests and activities in the area that have been identified previously at the Expression of Interest stage and during the Formal Proposal review process.
- Once the process is underway, the Zincton Project Review Team and proponent will assess the environmental, social, economic, cultural heritage, and health implications of the project while considering all relevant material, including information received from the applicant, First Nations, local and provincial government agencies, referral responses, stakeholders and the public. The information will be reviewed and considered in the light of any legal requirements and government policies including government direction, Crown land use objectives and strategic and operational policies, including the Crown Land Allocation Principles.

## Existing Interests

### **15. What will happen to existing tenures that fall within the proposed tenure area?**

- The proponent is required to take the existing tenures and interest into account and consider ways in which that tenure interest may be reconciled with the proposed development. Compatibility of uses is a primary objective of the Ministry in its land allocation process.

- The proponent, under direction of FLNRORD, is responsible for contacting the tenure holders to determine all feasible options to reconcile the existing tenure interests and present those options for consideration to FLNRORD within their formal application or proposal.
- Reconciliation of existing tenure interests may be achieved by:
  - continuation of the existing tenure as a legal prior right in any disposition granted to the proponent;
  - continuation of the existing tenure under modified terms and conditions (e.g. remove conflict area, negotiate a joint use agreement); or
  - termination of the existing tenure by mutual agreement negotiated by the parties and agreed to by FLNRORD.
- FLNRORD will review the options presented and will give preference to the options which are based on the mutual written agreement negotiated by the parties providing such an agreement is acceptable to FLNRORD. Actions taken by FLNRORD will be done with fully consideration of the existing tenures, the rights granted with tenures under which the land is allocated, and the Province's legal obligations.
- For more information please refer to the [All-Seasons Resort Policy](#) – Section 13.4 - Resolution of Existing Tenure Interests and the [Zincton Formal Proposal](#) – Section 2.4 Existing and Adjacent Land Use.

## First Nations

**There were a number of questions regarding the Province's obligation to consult with First Nations.**

- The Province of British Columbia has a duty to consult and where required, accommodate First Nations whenever it proposes a decision or activity that could impact treaty rights or aboriginal rights (including title) - claimed or proven. Mountain Resorts Branch is following all legal requirements and provincial policies, procedures and process agreements regarding consultation with First Nations. For more information please refer to [Consulting With First Nations](#).

### **16. Will the Autonomous Sinixt be acknowledged and consulted with for this project?**

- The Lakes Tribe of the Colville Confederation of Tribes is the legally recognized rights holder the Province consults with on Sinixt Aboriginal rights as per the Desautel Supreme Court decision.

### **17. Is the Province committed to implementing the Truth and Reconciliation Committee Calls to Action, the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act) and**



**United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) regarding this project?**

- British Columbia is the first province in Canada to have enacted legislation recognizing the UNDRIP through the [Declaration Act](#) which received royal assent in November 2019. The Declaration Act establishes the framework for reconciliation and sets out the process to align and harmonize B.C.'s laws with the UNDRIP. In consultation and co-operation with Indigenous peoples, the Province is working to develop and implement an action plan. For more information on the Declaration Act Action Plan please visit [Declaration Act – Government of British Columbia](#).

**18. How do project teams advance truth and reconciliation with this work?**

- A broad range of reconciliation and related agreements (e.g. Economic and Community Development Agreements, Forest Consultation and Revenue Sharing Agreements (FCRSA), Natural Gas Benefits Agreements, Strategic Engagement Agreements, collaborative stewardship agreements) have been developed to achieve reconciliation and address concerns associated with development on traditional territories with a large number of them focused on closing socio-economic gaps that separate Indigenous people from other British Columbians. Some of the signatories to those agreements include nations whose territories this proposal lies within (e.g. Ktunaxa Nation, Secwepemc First Nation, Okanagan Nation Alliance and affiliated member bands).
- Mountain Resorts Branch will continue to be guided by a variety of agreements while following all provincial legal requirements, policies, procedures and other process agreements regarding consultation with First Nations. The goal of engagement and consultation is to identify and address interests, mitigate impacts and, where required, reach an agreement with First Nations.