

**Reasons for Decision**  
**Order under section 10.1 of the *Land Act***  
**When no application for Crown land may be made**

**Purpose:** This document explains my decision to make an order under section 10.1 of the *Land Act*.

**Delegated Authority:** I am a Director, Authorizations with delegated authority to make decisions under section 10.1 of the *Land Act*.

**Decision:** I order that no application for Crown land may be made with respect to a Crown grant or lease, for intensive agriculture, extensive agriculture, or shoreland residential purposes in the Omineca Natural Resource Region. The order is made under authority of section 10.1 of the *Land Act* [RSBC 1996] Ch.245 and is effective as of April 1, 2023 and will remain in effect until March 31, 2025, or until it is cancelled.

**Decision Date:** 21 March 2023

**Reasons for Decision:** Section 10.1 of the *Land Act* states:

(1) The minister may, by order, specify that no application for Crown land may be made in respect of one or more of the following:

- (a) an area of the province;
- (b) an activity;
- (c) a use;
- (d) a period of time;
- (e) a class of applicant.

(2) An order made under subsection (1) must be published by the minister for the term of the order on a publicly accessible website maintained by or on behalf of the minister.

(3) An order made under subsection (1) does not apply to an application that was received by the minister prior to the making of the order.

Section 10.1 does not include a specific decision test. In the absence of a specific test, I considered the more general decision test in section 11 of the *Land Act*, “as the minister (or delegate) considers advisable in the public interest”. There is also no specific policy or procedure guidance for the application of section 10.1 and I considered the more general guidance provided in the Strategic Policy – Crown Lands Allocation Principles. These principles are:

1. Crown land values are managed for the benefit of the public.
2. Economic, environmental, and social needs and opportunities are identified and supported.
3. The interests of First Nations’ communities are recognized.
4. Decisions are timely, well-considered and transparent.
5. Public accountability is maintained during the allocation of Crown land.

The Province's commitment to a strong, sustainable economy that works for everyone, is a clear expression of the public interest and includes economic recovery from the impact of Covid-19, and diversification of the rural economy. The impacts of global events and weather events related to climate change have resulted in inflation, supply chain issues and food security concerns. The economy in the Omineca Region has been dominated by the forest sector for many years but it is in decline with falling timber harvest volumes and reduced employment.

The agriculture sector is an important contributor to the regional economy, diversification, and food security objectives. Land with high capability for agriculture is limited and access to this land is a key driver for the agriculture sector in the region. Areas of high agricultural capacity have also seen cumulative impacts from forest harvesting and broad scale clearing for agriculture. Cumulative and climate change impacts on landscapes and watersheds, are now the subject of significant public interest. Lakeshore residential lands support the social and economic interests of the region by providing diverse, attractive recreation and residential opportunities. The building, maintenance and improvement projects and activities associated with these properties contribute to the service and commercial economy in the region. These were key considerations in my decision.

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). The duty stems from court decisions and is consistent with the Province's commitment to building a new relationship with First Nations. The Province has made strong commitments to lasting and meaningful reconciliation with Indigenous people, implementing the United Nations Declaration on the Rights of Indigenous Peoples, and enacted the *Declaration on the Rights of Indigenous Peoples Act*. I consider these to be strong expressions of the public interest and that managing Crown land to support reconciliation is in the public interest.

The courts have ruled that the duty to consult and accommodate is proportional to the impact of the proposed decision or activity on First Nations interests. Recent cases have highlighted the need to consider reconciliation objectives and the cumulative impacts of land use decisions on First Nations rights. First Nations have consistently identified agricultural and lakeshore land dispositions as having high impact since they are long-term and involve extensive alteration of the land. First Nations in the Omineca Region oppose these applications citing the extensive private holdings in the area and the additional impacts of proposed dispositions on their rights. Agriculture applications often overlap areas that are highly productive for traditional use of plants and wildlife. Lakeshore traditional use sites have attributes that are also attractive to applicants for residential purposes.

The Province has made provisions for financial accommodation of First Nations for high value, typically commercial (industrial) dispositions, but very limited accommodations for lower value agricultural or lakeshore residential dispositions. In many cases this has placed the Omineca Lands program in the position of having a duty to accommodate but minimal ability to do so. As a result, many applications have been placed 'On Hold' while negotiations and efforts to explore options for accommodation continue without success or progress. This situation is detrimental to reconciliation and relationship efforts with First Nations. It is also detrimental to client service

and confidence in government, as applicants wait with no apparent path to success. Regional staff bear the brunt of challenging conversations and criticism from all sides with negative effects on staff recruitment, retention, and engagement.

I acknowledge the important economic and social benefits of agriculture and lakeshore residential land dispositions. The legal duty to consult and, where required, accommodate First Nations and the lack of accommodation mechanisms has seriously constrained the Province's ability to proceed with these dispositions. Farmers who wish to expand their operations are, in some cases, able to access additional land through private business arrangements or by more fully developing their current holdings. Lakeshore residential Crown grants can only be applied for by existing lease holders, and they can maintain their use and occupation of the land through their current or replacement leases. I also considered that the making of this order preserves future options, while agricultural or lakeshore residential dispositions at this time would preclude most future options.

Having considered the balance between aspects of the public interest, I weigh in favor of reconciliation. I have decided to make an order under section 10.1 of the *Land Act* that no application for Crown land may be made with respect to a Crown grant or lease for intensive agriculture, extensive agriculture, or shoreland residential purposes in the Omineca Natural Resource Region. This order responds to clearly and consistently expressed concerns from First Nations and aligns with the Province's commitment to lasting and meaningful reconciliation with Indigenous people and implementation of the United Nations Declaration on the Rights of Indigenous Peoples. While some economic and social benefits may be precluded by the order, the duty to consult and, where required, accommodate First Nations currently prevents most of these dispositions from proceeding. Other options to realize these benefits are available.

The order applies only to the Omineca Natural Resource Region and is specific to Crown grants and leases for intensive agriculture, extensive agriculture, and lakeshore residential purposes. This order replaces the previous order that took effect on March 28, 2022, and takes effect on April 1, 2023. It does not apply to applications received up to and including December 1, 2020. The order will remain in effect until March 31, 2025, or until it is cancelled. Should circumstances change or new considerations come to light, the order can be cancelled by myself or another delegated decision maker for section 10.1 of the *Land Act*.



Dave Francis  
Director, Authorizations