



THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

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April 4, 2022

Impact Assessment Agency of Canada
Crown Consultation Operations Directorate
Attention: Stephen Fitzpatrick, Senior Consultation Analyst

Via Email: Stephen.Fitzpatrick@canada.ca

Dear Mr. Fitzpatrick:

**Re: Roberts Bank Terminal 2 Project
Response to Federal Information Request and Draft Federal Conditions**

We write in response to the draft federal conditions and the Vancouver Fraser Port Authority's (the "Port's") response to the federal information request for the Roberts Bank Terminal 2 Project (the "Project"). We previously communicated our preliminary comments on these documents to your colleagues and are following up with our final comments, as discussed with those colleagues.

IR Response

We do not have any further comments on the Port's response to the federal information request. Our comments on the response are reflected in our letters to the Port dated June 8, 2021 and June 14, 2021. We will forward your team copies of those letters under separate cover, in case you have not yet seen them or been informed of their contents.

Draft Conditions

Our comments on the draft conditions are as follows:

- We remain concerned with the characterization of the Maa-nulth First Nations ("Maa-nulth") as marine shipping-only impacted Indigenous groups (condition 1.24) with the result that Maa-nulth are not required to be consulted on certain conditions relevant to our treaty rights and interests ("Interests"). As previously articulated, Maa-nulth have treaty rights to harvest fish and migratory birds and have cultural connections to species that utilize the Fraser River watershed.



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The Review Panel concluded that the Project would have significant cumulative effects on some of those interests, including chinook salmon and SRKW. Assessments of Maa-nulth Interests must also be guided by our sacred principles: ʔiisaak (utmost respect), ʔuuʔaʔuk (taking care of) and hišuk ma c̓awak (everything is one). We are thus concerned about and have a duty to be consulted not only on the effects of marine shipping on our Interests, but also the effects of the Project footprint on our Interests.

- Applying this comment to the draft conditions, it is good to see a requirement that Maa-nulth be consulted on some conditions related to fish and fish habitat (7.3, 7.10, 7.11, 7.14), marine mammals (8.2, 8.3) and accidents and malfunctions (19.2, 19.3 19.7). However, given our Interests, the following conditions should be amended to require consultation with Maa-nulth: conditions related to GHG emissions (3.2,3.3), the potential breach of the causeway (7.1, 7.2), underwater noise and SRKW (8.1, 8.4, 8.5, 8.6, 8.9), marine birds and migratory birds (10.2, 10.14, 10.17, 10.18) and Indigenous health (13.1).
- Condition 2.13 (information sharing) should be amended to require the Port to notify Maa-nulth regarding publication of the specified reports, plans and results.
- It is unclear whether the phrase “operation of the marine terminal” is intended to include marine shipping. A plain reading of the phrase would suggest that it includes marine shipping as marine shipping is a necessary component of marine terminal operations. However, Maa-nulth understand the intention is not to include marine shipping as there are some conditions where marine shipping is expressly referenced following the phrase (e.g. condition 13.3). If not intended, the first sentence in condition 3.2 (GHG emissions) should be expanded to include marine shipping. To have a clear understanding of climate change impacts associated with the Project, it is critical that any GHG planning, measures and monitoring include emissions from Project-related vessels. The Port has access to information regarding and means to influence these emissions. They are thus appropriate to include as a Project condition. (Maa-nulth acknowledge that condition 3.2.1 requires the proponent to identify sources of indirect GHG emissions. However, the broader planning requirement should apply to marine shipping.)
- Maa-nulth support condition 8.3 requiring Project-related vessels to participate in the Enhanced Cetacean Habitat and Observation (“ECHO”) program and any future equivalent program. However, Maa-nulth ask that the purpose of the condition be amended to reflect a purpose of reducing potential effects on our treaty rights, in addition to potential effects on marine mammals. As you know, the ECHO program recently implemented a vessel slowdown trial at Swiftsure Bank, a key fishing area to Maa-nulth. In addition to mitigating underwater noise and vessel strikes, slowdowns at Swiftsure could help improve our experience and safety exercising out harvesting rights at Swiftsure, as we would have more time to maneuver around and there



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would be less wake from a slower vessel. If the Port does not intend to continue slowdowns at Swiftsure, we ask that that such slowdowns be made a condition of the Project. We also ask that slowdowns be added at La Perouse Bank, either through the ECHO program or as a Project condition. Like Swiftsure, La Perouse is a key fishing area to Maa-nulth and critical habitat for orcas. Finally, we wish to emphasize that any conservation measures developed by Canada as a result of data collected through the ECHO program must be developed in partnership with Maa-nulth.

- It is unclear to Maa-nulth why the consideration and confidentiality of Indigenous knowledge was singled out for condition 8.8 (marine mammals). The principles in this condition should apply generally to all conditions.
- The communication plan (condition 11) should apply to all Indigenous groups, not just lower mainland Indigenous groups, and not be limited to effects within the local assessment area. Maa-nulth, like lower mainland Indigenous groups, have an interest in timely information regarding construction and operation of the Project, including the marine shipping component.
- Maa-nulth are pleased to see condition 13.3 requiring the Port to develop a process for Maa-nulth to resolve concerns relating to our commercial Interests. However, Maa-nulth submit that the process should apply to all of our Interests, not just our commercial Interests, and should apply for the life of the Project, not just the first five years. Such a broadening is supported by the Review Panel's finding that marine shipping associated with the Project would result in adverse cumulative effects on our current use of lands and resources. Like the Panel found for our neighbors Pacheedaht and Ditidaht, Maa-nulth submit that those effects would be significant given the importance of Swiftsure and La Perouse to our fishing Interests. If condition 13.3 is expanded as requested, perhaps the condition is a better fit within Part 12 (current use). However, Maa-nulth remain concerned with the term current use as our treaty rights are not dependent on current use.
- In addition to the process above, Maa-nulth support the Port's proposal to add a new condition in Part 12 (current use) requiring the Port to develop a follow-up program, in consultation with Maa-nulth and other Indigenous groups, to verify the predictions of the environmental assessment as it pertains to changes in container vessel traffic as a result of the Project.
- Condition 15.1 should be amended to require the Port to retain Indigenous monitors for the life of the Project, not just during construction, and to consult with Maa-nulth regarding the retention of those monitors. Maa-nulth should be provided an opportunity to participate any condition monitoring within our territories (e.g. conditions 8.4 and 8.9 regarding marine mammals). We



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have long been stewards within our territories, and we all have guardian programs in place with current and growing capacity to undertake such monitoring.

- The Indigenous Advisory Committee (condition 17.1) should also be broadened to enable Maa-nulth participation. As you are aware, marine shipping Indigenous groups play an active and, in our view, critical role in the Indigenous Advisory Committee for the Trans Mountain Expansion Project. If a similar Committee is created for this Project, Maa-nulth should be provided an opportunity to participate on that Committee.
- We remain concerned regarding the scoping of the marine shipping component of the Project to 12nm and the resulting limitation on the scope of Project conditions relating to that component (e.g. conditions 8.4 and 8.9 regarding marine mammals and condition 19.1 regarding accidents and malfunctions). As you know, Maa-nulth proposed scoping this and similar marine shipping projects to the outer limits of the Exclusive Economic Zone (200nm not 12nm).

Accommodation Measures

As discussed with your colleagues, in addition to the above changes to the Project conditions, Maa-nulth seek a commitment from the Crown to additional accommodation in the following broad areas: economic accommodation, cumulative effects accommodation and regulatory accommodation. We also seek a comparative analysis of this Project and the proposed Deltaport Berth 4 Expansion Project before a decision is made on either project. We look forward to fleshing out the required accommodation in consultation with your team.

Yours truly,

<Original signed by>

Charlie Cootes
President of the Maa-nulth Treaty Society
on behalf of the Maa-nulth First Nations



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