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EMAIL TRANSMISSION

November 7th, 2016

Brett Maracle

Panel Manager

Canadian Environmental Assessment Agency

Brett.Maracle@ceaa-acee.gc.ca

RE: Metlakatla comments on the draft Environmental Impact Statement (dEIS) Guidelines for the proposed Pacific Futures Energy Project

Dear Brett Maracle,

Thank you for your letter on October 7th. The Metlakatla Stewardship Society (MSS) appreciates the details that CEAA provided to us regarding the next steps in the Environmental Assessment (EA) process. Though we are pleased that a federal EA will be conducted, we feel that CEAA should have sought Metlakatla's views and input prior to determining that an Independent Review Panel was the most suitable option for assessing this project. MSS believes that the Independent Review Panel process provides fewer opportunities for relationship building and collaborative problem solving among First Nations, the proponent, federal and provincial subject matter experts and CEAA. We are looking forward to meeting with you in mid-November to discuss these issues further; we also look forward to gaining a better understanding of the province's involvement in this EA process.

As requested, we have reviewed 1) CEAA's summary of potential adverse impacts of the project on Metlakatla's Aboriginal rights and interests and 2) CEAA's draft Environmental Impact Statement (dEIS) Guidelines. We have prepared comments on the two documents in the attachments below. As you will note in the attachments, MSS has a number of outstanding concerns with the documents and the EA process.

One of MSS' main concerns is the shipment of oil and potential shipment of other refined products by rail through Metlakatla territory. The rail line that will be used to ship oil is adjacent to highly sensitive environments and culturally important areas and ecosystems. Currently the draft EIS Guidelines do not identify the shipment of oil or other refined products by rail as a 'project component', however, with the potential for accidents and malfunctions, Metlakatla asserts that potential impacts from this activity must be fully assessed in the EA. Similarly, the two marine export terminal options, the pipelines required to transport refined products to the terminal, and the shipping operations have not been identified in the dEIS as project components. Given the potential impacts of these activities during all phases of the project, these components must be included in the scope of the EA.

Another gap that MSS identified in the dEIS Guidelines is the lack of any assessment of socio-economic impacts from the proposed project to reserve communities. The dEIS only identifies that socio-economic changes from environmental effects need to be assessed. This should be broadened to ensure that impacts to infrastructure and services on reserves from the project are properly assessed and that any expected residual effects are mitigated for. Given that reserves are federal jurisdiction, Metlakatla

expects that the dEIS Guidelines will be adjusted to provide direction to the proponent on how these issues will be assessed. MSS has compiled these as well as our other concerns in the attachment below.

We look forward to continuing to work with CEAA so that Metlakatla's concerns are well documented and addressed in the EIS and so that a well-designed and rigorous EA is completed.

Please do not hesitate to contact me should you have questions. I may be reached at <email address removed> or by phone at <contact information removed>.

Sincerely,
<Original signed by>

Erin Mutrie
Metlakatla Environmental Assessment Manager

Cc: Chief Councillor Harold Leighton, Metlakatla First Nation
Ross Wilson, Executive Director, Metlakatla Stewardship Society
Rob Hajdu, Project Manager, Canadian Environmental Assessment Agency

Attachment 1: MSS' comments on CEAA's summary of potential adverse impacts of the project to Metlakatla First Nation

Attachment 2: MSS' comments on CEAA's dEIS Guidelines for the proposed Pacific Futures Energy Project

Attachment 1: MSS' comments on CEAA's summary of potential adverse impacts of the project on Metlakatla First Nation

CEAA's letter from October 7th included an attachment (named Attachment #1) that outlined the summary of information used to develop CEAA's consultation approach. MSS has reviewed this information and has identified several gaps.

On the first and second page of CEAA's Attachment #1, CEAA provided a list of the nature and extent of Metlakatla's rights and interests with respect to this project. This list should also include the following points:

- The rail line that would be used to ship oil to the refinery site near Kitimat overlaps with Metlakatla's territory and passes through very sensitive areas that have high cultural and ecological value to Metlakatla.
- Metlakatla's traditional territory includes the marine area around Triple Islands. Three of Metlakatla's reserves are located within 5-15km of the proposed shipping route for Option #1- Marine Export Terminal in Kitimat. The proposed shipping route for Option #1 passes through sensitive marine areas that have high cultural and ecological value to Metlakatla.
- Metlakatla's traditional territory includes the area that the proposed diesel and gasoline pipelines would cross through to get to the Marine Export Terminal at Nasoga Gulf for PFEC's Option #2. The proposed Nasoga Gulf Marine Export Terminal for Option #2 is also within Metlakatla Territory.
- The rail line that would be used to ship refined petroleum products from the refinery site near Kitimat to markets in Western Canada or to the existing export terminal in the Lower Mainland of BC for Option #3 overlaps with Metlakatla's territory and passes through very sensitive areas that have high cultural and ecological value to Metlakatla.

Please ensure that the identified interests above inform the development of CEAA's consultation approach.

In addition to the gaps identified above, several potential adverse environmental effects on Metlakatla's interests were not captured or specific enough on page 2 of CEAA's Attachment #1 from their October 7th letter. The following gaps were identified for potential adverse environmental effects of the proposed project on Metlakatla:

- Adverse effects to current use of lands and resources as a result of sensory disturbance (light, noise, smell, visual quality) from the refinery and shipping operations;
- Adverse effects to current use of lands and resources and/or health because of changes to the perceived health of resources by members (caused by both shipping and the refinery activities and operations);
- Adverse effects to current use of lands and resources from changes to the real and perceived personal safety of members as a result of transiting ships and associated vessel wakes from the project;

- Adverse effects to human health as a result of impacts to country foods from accidents and malfunctions in the marine environment;
- Adverse impacts to human health and current use of lands and resources from the introduction of invasive species to the marine or terrestrial environment from equipment or marine vessels; and
- Cumulative environmental effects related to:
 - Air quality,
 - Greenhouse gases, and
 - Increased marine traffic in Prince Rupert Harbour or Nasoga Gulf area.

In addition, there is nothing in CEAA's Attachment #1 identifying that this project may impact socio-economic conditions for people living on the Metlakatla Village reserve. Given that reserves are under federal jurisdiction, MSS would like to discuss further how these socio-economic issues on the reserve will be identified, assessed and mitigated.

Attachment 2: MSS' comments on CEAA's dEIS Guidelines for the proposed Pacific Futures Energy Project

PART 1- Key considerations

2. GUIDING PRINCIPLES

2.4 Application of the precautionary approach (page 3)

It is not clear what CEAA means when referring to 'precautionary approach'. Please define the term 'precautionary manner' in the definitions section of this document.

3. SCOPE OF THE ENVIRONMENTAL ASSESSMENT

3.1. Designated Project (page 4)

MSS is concerned with how limited the proposed list of project components scoped into the assessment are. Coarse project components that are missing from the list on page 4 of the dEIS that MSS believes need to be fully assessed include the:

- Shipment of oil by rail through Metlakatla territory;
- Proposed pipeline(s) from the refinery to the marine terminal (Option 2);
- Marine terminal and associated infrastructure (including the shipping of refined fuels through Metlakatla Territory (Option 2&3)
- Shipment of refined petroleum products through Metlakatla territory by rail from Kitimat to other markets (Option 3).

A major gap in the dEIS Guidelines is that the shipment of oil or other refined fuels (for Option 3) by rail has not been identified by CEAA as a project component to be scoped into the assessment. Metlakatla is very concerned about the impacts of this potential new activity should an accident or malfunction ever occur. The proposed rail line passes through highly sensitive environments and culturally important areas and ecosystems (i.e. the Skeena River, the Lakelse River and Lakelse Lake etc). Metlakatla asserts that this aspect of the project must be fully assessed in the in the 'Accidents and Malfunctions' section of the EIS Guidelines document and throughout the Environmental Assessment. Metlakatla is also concerned about the proposed project design for Option #2. Option #2 would require multiple pipelines to carry refined petroleum products through sections of Metlakatla's territory to a marine terminal at Nasoga Gulf, which is also in Metlakatla territory. All impacts of this activity need to be fully assessed in the EA.

Similarly, if the marine terminal at Nasoga Gulf is a viable option for PFEC, all phases of this project component need to be scoped into the EA. Metlakatla expects there to be a number of potentially serious concerns and impacts related to the construction and operation of such a facility.

Finally, should Option #1 or #2 be selected as the most viable path forward for PFEC, MSS expects there to be potential adverse impacts to Metlakatla's use of marine resources for traditional purposes and health and socio-economic situation as a result marine shipping. Marine shipping and any support required from other marine vessels for construction,

operation and decommissioning, must be added to the description of the designated project in the EIS and fully assessed in the environmental assessment.

3.2. Factors to be considered

3.2.2. Valued components to be examined (page 5-6)

The final list of VCs to be included in the EIS by the proponent should be verified with MSS before being finalized to ensure that Metlakatla's concerns and potentially impacted values will be properly assessed under the selected VCs. It will be imperative for the proponent to engage with MSS early on to identify values of concern to Metlakatla.

3.2.3. Spatial and Temporal boundaries (page 7)

The delineation of spatial and temporal boundaries is a critical step in an environmental assessment. The language in the first paragraph in this section should be strengthened to state 'The proponent *must solicit input from* the Agency, federal and provincial government departments and agencies, local government and Indigenous groups, and take into account public comments when defining and *finalizing* the spatial and temporal boundaries used in the EIS'.

4. PREPARATION AND PRESENTATION OF THE ENVIRONMENTAL IMPACT STATEMENT

4.2. Use of information

4.2.1. Government expert advice (page 8)

Metlakatla requests that experts from federal or provincial agencies participating in the process, whenever possible, are representatives who have local knowledge specific to the project site and surrounding waters.

4.2.3. Existing information (page 8)

MSS requests that proponents attempt to get information with respect to impacts to Aboriginal rights and title directly from Indigenous groups rather than seeking out existing information. Proponents often attempt to incorporate information relating to impacts on First Nations from past EAs- this information is often mischaracterised or incomplete. Metlakatla prefers to supply project-specific information relating to impacts to their uses directly to proponents.

4.3. Study strategy and methodology (page 10-11)

The proponent should be asked to explain how they plan to measure such variables as "resilience". Metlakatla agrees that resilience of species, populations and habitats is an extremely important factor in environmental assessments, but recognizes that measuring resilience in some cases may be challenging. The proponent should be asked to justify how their methods address the question of resilience at an ecosystem level, and the working group should be given opportunity to evaluate whether maintaining resilience while advancing the project is possible.

4.5. Summary of the Environmental Impact Statement (page 11-12)

In the second bullet, Indigenous groups should have the opportunity to review and approve the summary of engagement prior to its inclusion in the EIS. Indigenous groups should be given a reasonable amount of time to conduct their review. Please adjust the wording in this section to reflect this.

PART 2- Content of the EIS

1. INTRODUCTION AND OVERVIEW

1.4. Regulatory framework and the role of government (page 14)

The third bullet could be expanded or a new bullet should be created to specifically detail that the EIS will identify ‘policies relating to efforts to reduce BC and Canada’s contribution to climate change through emissions reductions’.

2. PROJECT JUSTIFICATION AND ALTERNATIVES CONSIDERED

2.2. Alternative means of carrying out the project (page 15)

The working group should have an opportunity to provide criteria against which the proponent carries out their alternatives assessment. The working group should also be given an opportunity to review and provide feedback on the alternatives assessment after it is executed.

In addition to what is written in this section, MSS believes that the alternatives assessment should be more inclusive and should examine alternative timing for project development, size of terminal and shipping options. This section of the EIS should not only assess different energy sources to power the project site(s), but it should also assess the feasibility of different technologies to power the project sites.

3. PROJECT DESCRIPTION

3.1 Project components (page 15)

For the first bullet point in this section, the additions MSS suggested above in Part 1 section 3.1 also need to be incorporated.

3.2 Project Activities (page 16-17)

3.2.1 Site preparation and construction

This section needs to include a description of the construction of the marine terminal and associated infrastructure; the construction of the refinery and associated infrastructure; and the construction of pipelines and associated infrastructure.

5. ENGAGEMENT WITH INDIGENOUS GROUPS AND CONCERNS RAISED

5.1. Indigenous Groups & Engagement Activities (page 20)

This section outlines that “*The EIS will describe all efforts, successful or not, taken to solicit the information required from groups to support the preparation of the EIS*”. In addition, the Proponent should describe all efforts that have occurred to date to resolve outstanding issues.

6. EFFECTS ASSESSMENT

6.1. Project setting and baseline conditions

6.1.1. Atmospheric Environment (page 22-23)

In addition to considering historical records, the EIS should analyze *predicted* values for precipitation, mean, max and min temperatures considering climate change.

6.1.6. Marine environment (page 24- 25)

In this section, CEAA should add wording outlining that the proponent is required to consult First Nations to ensure culturally significant species are included in the baseline conditions assessment. Habitats for all life stages of these marine species should be identified and assessed for their role in maintaining healthy stocks.

6.1.8. Migratory birds and their habitat (page 26)

In this section, CEAA should add wording outlining that the proponent is required to consult with First Nations to ensure culturally significant species are included in the assessment.

6.1.10. Aboriginal peoples (page 26-27)

In addition to describing traditional uses currently and recently practiced, the EIS should identify and describe historical and potential future uses of lands, waters and resources by Aboriginal peoples in order to comprehensively capture impacts of the project in subsequent sections of the EIS.

6.3. Predicted Effects on Valued Components

6.3.3. Marine Plants (page 32)

The bullet should read "*any effects to* marine plants, including all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.

6.3.6. Aboriginal peoples (page 33-34)

Metlakatla is concerned that there will not be a full assessment of the potential health impacts that could be created by the project, including social determinants of health. Metlakatla expects the proponent to provide a thorough assessment of social impacts on health resulting from the proposed project, and expects regulators to develop a strategy to effectively review and regulate the potential impacts of the project on the health of local and First Nations populations.

In addition to what is listed in this section, the proponent should be directed to consider, explore and assess the ways in which First Nation resource users' perception of their environment may change as a result of the project. For example, if there is no evidence that there will be a predicted increase in contamination of traditionally harvest resources, or no predicted impact to navigator safety, but First Nations resource harvesters and navigators perceive a change to their food quality or safety, impacts of the project will still be real and impactful and must be fully considered in the assessment.

Lastly, MSS identified that the dEIS Guidelines do not instruct the proponent to carry out any assessment of socio-economic impacts to reserve communities. The EIS only identifies that socio-economic changes related to environmental effects need to be assessed. This assessment should be broadened to ensure that impacts to infrastructure and services on reserves as a result of the project are properly assessed and that any expected residual effects are mitigated for. Given that reserves are federal jurisdiction, Metlakatla expects that the EIS Guidelines will be adjusted to provide direction to the proponent on how these issues will be assessed.

6.4 Mitigation (page 34-35)

In this Section the proponent should be encouraged to consult Aboriginal Groups early on when developing potential mitigation measures. Aboriginal Groups can provide advice to proponents on feasibility and also provide proponents with mitigation suggestions.

6.5. Significance of residual effects (page 35-36)

The proponent should directly involve Metlakatla in the determination of significance for environmental effects, especially those with a direct impact on the Metlakatla community and resources. The EIS should also contain a section that explains how First Nation views were incorporated into the determination of significance.

In the last paragraph, in addition to the proponent identifying the probability and uncertainty related to data and methods, it would also be useful for the proponent to communicate uncertainty in terms of a range of possible outcomes, for clearer understanding by First Nations and other reviewers.

6.6. Other effects to consider

6.6.1. Effects of potential accidents or malfunctions (page 36)

In the last paragraph of this section, MSS is pleased to see that the proponent must describe the safeguards that have been established to respond to accidents and malfunctions as well as the contingency plan and emergency response procedures that would be put in place if an accident were to occur. In addition to what is written, the proponent should assess the capacity of local resources and institutions to respond effectively to emergencies, both immediately following and for as long as impacts will be experienced. For example, are geographic response plans in place that ensure environmentally and culturally sensitive areas can be prioritized for protection in the event of a marine accident? Are First Nation communities equipped to be first responders? MSS believes these types of questions should be detailed and assessed in the EIS.

Accidents or Malfunctions Related to Marine and Rail Transportation (page 37)

In the second paragraph under this section, the guidelines state *“If serious accidents or malfunctions are likely to occur and if the necessary data are available, the proponent will determine whether it is necessary to carry out an assessment of the probability that such an event occur and an assessment of its consequences, taking into account the contributing factors such as weather conditions or external events.”* Please provide further guidance to the proponent regarding the term *“likely to occur”*. This term is very subjective. Aboriginal

groups, the public, PFEC and CEAA may have different views on what levels of likelihood are acceptable.

6.6.3. Cumulative effects assessment (page 37-38)

With regard to the cumulative effects assessment, First Nations should be consulted to determine the list of past, present or future physical activities. In addition, MSS argues that not just “physical activities” should be assessed, but also ongoing initiatives that may not have a physical project associated should be considered. Projects that have not been fully planned out or designed to date should also be recognized in some capacity in the document, even if their full predicted effects cannot be incorporated into the assessment.

MSS would like to highlight the need for a non-project-specific, strategic level cumulative impact assessment encompassing the numerous projects underway and proposed for BC’s North Coast. The assessment should include a rigorous analysis of the impacts of these project developments on Metlakatla title, rights, and community wellbeing.

8. FOLLOW-UP AND MONITORING PROGRAMS (page 40)

MSS would like to emphasize the importance of having a detailed monitoring program designed **before** the completion of the EA. The Agency should ensure expectations for monitoring planning are clear to the proponent early on in the EA process. Further, MSS would like to emphasize the importance of First Nation involvement in follow up and monitoring, the need for third party verification and enforcement, and the importance of including plans to address unforeseen and emergency situations.

8.1. Follow-up Program (page 40)

The second last bullet point should be reworded to read “*opportunity for the proponent **to solicit input from** Indigenous groups on the affected territory, during the development and implementation, **and evaluation** of the follow-up programs.*”

8.2. Monitoring (page 41)

For the monitoring programs, a third party (approved by the working group) should be required to be responsible for monitoring the effects predictions and mitigation actions. Metlakatla must be involved in all follow up activity that occurs in their territory.