



THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

<personal information removed>
Phone: <personal information removed> ♦ Fax: <personal information removed>
Website: www.maanutlth.ca

November 27, 2020

Via Email: Brett.maracle@canada.ca

Impact Assessment Agency of Canada
160 Elgin St., 22nd Floor
Ottawa, ON K1A 0H3
Tel: 613-292-5479

Attention: Brett Maracle, Crown Consultation Coordinator

**Re: Deltaport Expansion Berth 4 Project (the “Project”)
Comments on Initial Project Description**

We write in response to your letter of October 2, 2020 advising that a comment period on the Initial Project Description for the Project has been triggered with a deadline of November 27, 2020.

Maa-nulth Rights, Interests and Objectives

As this is our first written correspondence with the Impact Assessment Agency of Canada (“IAAC”) on the Project, we will start with a brief summary of the Maa-nulth First Nations (“Maa-nulth”) and our objectives in this consultation process.

Maa-nulth are five distinct First Nations with territories around Barkley Sound and Kyuquot Sound and Checklesah Bay, on the west coast of Vancouver Island. In 2011, we entered into a modern treaty with British Columbia and Canada which we refer to as the Maa-nulth Treaty. Pursuant to the Maa-nulth Treaty, we have numerous constitutionally-protected treaty rights, including governance rights, resource harvesting rights, trade and barter rights, culture and heritage rights and consultation rights.

Since time immemorial, the Ocean and its resources have been an integral part of the culture and way of life of Maa-nulth people. “Maa-nulth” means villages along the Coast, a reflection of the interconnectedness between the Ocean, its resources and our people. The Ocean is as much our home as the land.



ANCIENT SPIRIT. MODERN MIND



Huu-ay-aht First Nations | Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations
Toquaht Nation | Uchucklesaht Tribe | Yuułu?if?ath Government

For years though we have been marginalized from the economy of the West Coast, and from decisions that have impacted the environment, our culture and the exercise of our rights. This Project and a multitude of other projects are seeking to utilize our traditional waters as an economic highway, at a time when the Ocean and its resources are already at a breaking point. Collapsing steelhead, chinook and resident killer whale populations and the invasion of green crabs are just a few examples that suggest an imbalance in the marine environment and point to tangible long-term problems with the health of the Ocean. Traffic on the economic highway cannot be unlimited or our resources will continue to decline.

Concurrent with a decline in our resources, we are also observing a shift in the economy of the West Coast from resource extraction to one centered around international change. Both environmental pressures and the changing economy threaten our way of life and continued existence as distinct Indigenous peoples.

As such, we have four objectives in this process and every other marine-related consultation process:

1. **Environmental** – Potential impacts of the project on the environment, including cumulative effects, must be thoroughly assessed prior to a decision being made on the project. Baseline data must be gathered to assess those impacts and enable effective monitoring over the life of the project. Negative impacts to the environment must be avoided or mitigated to the greatest extent possible and steps must be taken to rehabilitate the environment where harm is done. Where the impacts or risks to the environment are too great, or are not well understood, the project should not proceed.
2. **Cultural** – The project must not unreasonably interfere with our traditional practices or our deep connection to the Ocean and its resources. Harm to the Ocean and its resources is harm to us. Where there has been harm, steps must be taken to address that harm, and Maa-nulth must be compensated for any cultural interference or loss suffered as a result of the harm.
3. **Economic** – As we secure our place in the current economy of the West Coast, we require an economic base from which to provide economic security to our people. This was one of the foundations on which the Maa-nulth Treaty was entered into. Thus, the project must not only minimize economic harm to our communities. Maa-nulth must also receive a share of the wealth generated from the project and preferential access to jobs, training and business opportunities stemming from the project.
4. **Treaty Rights** – The project must recognize, thoroughly assess its impacts on and not unjustifiably infringe our treaty rights. The project must also recognize the importance of ensuring our treaty rights have meaning over time, and show a willingness to adapt to new circumstances as they arise. Where the impacts or risks to

the exercise of our treaty rights are too great, or are not well understood, the project should not proceed.

In addition to these objectives, our participation in this process will be guided by our core principles: ʔiisaak (utmost respect), ʔuuʔaʔuk (taking care of) and hišuk ma c̓awak (everything is one).

Concerns

Based on information provided in the Initial Project Description and our experience in other environment assessments, Maa-nulth raise the following initial concerns with the Project:

1. **Market Projections** – the accuracy of market projections for the container shipping industry;
2. **Alternatives** – how alternatives to the Project have been and will be assessed;
3. **Project Site Impacts** – impacts construction and operation of the Project, or an accident or malfunction at the Project site, may have on
 - a. species that utilize the Fraser River estuary which Maa-nulth have treaty rights to harvest, including Fraser River sockeye salmon, Chinook salmon and Coho salmon,
 - b. the exercise of our treaty rights, including resource harvesting and trade and barter rights, and
 - c. the overall health of the Ocean and its resources;
4. **Marine Shipping Impacts** – impacts marine shipping from the Project may have on
 - a. water quality,
 - b. fish,
 - c. shellfish,
 - d. marine mammals,
 - e. aquatic plants,
 - f. wildlife,
 - g. birds,
 - h. the introduction of invasive species in our traditional territories, from ballast water, the hull of the ships or cargo on the ships,
 - i. our culture and heritage sites,
 - j. the exercise of our treaty rights, including resource harvesting, culture and heritage and trade and barter rights,
 - k. safety in our waters,
 - l. our economic interests,
 - m. the overall health of the Ocean and its resources;
5. **Accident or Malfunction Impacts** – impacts a collision, allision, grounding, loss of cargo or other accident or malfunction involving a container ship from the Project may have on

- a. water quality,
 - b. fish,
 - c. shellfish,
 - d. marine mammals,
 - e. aquatic plants,
 - f. wildlife,
 - g. birds,
 - h. our culture and heritage sites,
 - i. the exercise of our treaty rights, including resource harvesting, culture and heritage and trade and barter rights,
 - j. the health of our people, both physical and mental,
 - k. our treaty lands,
 - l. our economic interests,
 - m. the overall health of the Ocean and its resources;
6. **Cumulative Effects** – cumulative effects of this and all other projects using or seeking to use our traditional territories and our ability to participate meaningfully in the management of those effects;
 7. **Emergency Preparedness and Response** – ensuring governments, response organizations and volunteers are sufficiently prepared and have sufficient capacity to respond to an accident or malfunction at the Project site or involving a container ship from the Project, including ensuring
 - a. there is sufficient information regarding the types of cargo container ships may carry, whether the cargo is hazardous and how the response may vary depending on the type of cargo,
 - b. there are clear lines of authority and responsibility in the event of an accident or malfunction, and
 - c. we have sufficient power and capacity to meaningfully participate in response efforts within, or with the potential to impact, our traditional territories;
 8. **Emergency Compensation** – ensuring we are adequately compensated for any impacts stemming from an accident or malfunction at the Project site or involving a container ship from the Project, including compensation for cultural interference or loss where applicable;
 9. **Economic Interest** – ensuring we receive an appropriate share of the wealth from Project and preferential access to jobs, training and business opportunities stemming from the Project, given its proposed use of our traditional waters;
 10. **Scope of Impact Assessment** – ensuring the impact assessment for the Project is properly scoped, to enable a comprehensive assessment of the Project on our rights and interests, and ensure any mitigation measures, accommodation measures or Project conditions can be extended to our traditional territories, where appropriate (more on this below).

We look forward to fleshing out and discussing how these concerns will be avoided, mitigated, accommodated or addressed.

Process

In response to your question as to whether an impact assessment should be required for the Project and, if so, what type of assessment process should apply, Maa-nulth submits that the Project clearly triggers an assessment under both the federal Impact Assessment Act and the provincial Environmental Assessment Act. As the Project interacts with a number of matters under federal jurisdiction, Maa-nulth submits that the assessment should be led by the federal government under the federal Impact Assessment Act. Maa-nulth further submits that it is in the public interest to refer the Project to a Review Panel under that Act, similar to the process for the Roberts Bank Terminal 2 Project (“RBT2”).

As noted above, a key interest of Maa-nulth in scoping the impact assessment will be to ensure the Project includes marine shipping to the to the 200 nautical mile limit of the Exclusive Economic Zone. Maa-nulth strongly disagree with the scoping of other similar environmental assessments to the 12 nautical mile limit of the territorial sea, and with rationale previously provided by Canada for this scoping. As illustrated on the enclosed maps, which were provided to us by Canada in the RBT2 environmental assessment, our Domestic Fishing Areas extend significantly beyond the 12 nautical mile limit and container traffic follow a distinct path through both of our Domestic Fishing Areas. We seek to further discuss and resolve this concern as soon as possible in the early planning phase, given the implications of scoping later in the process.

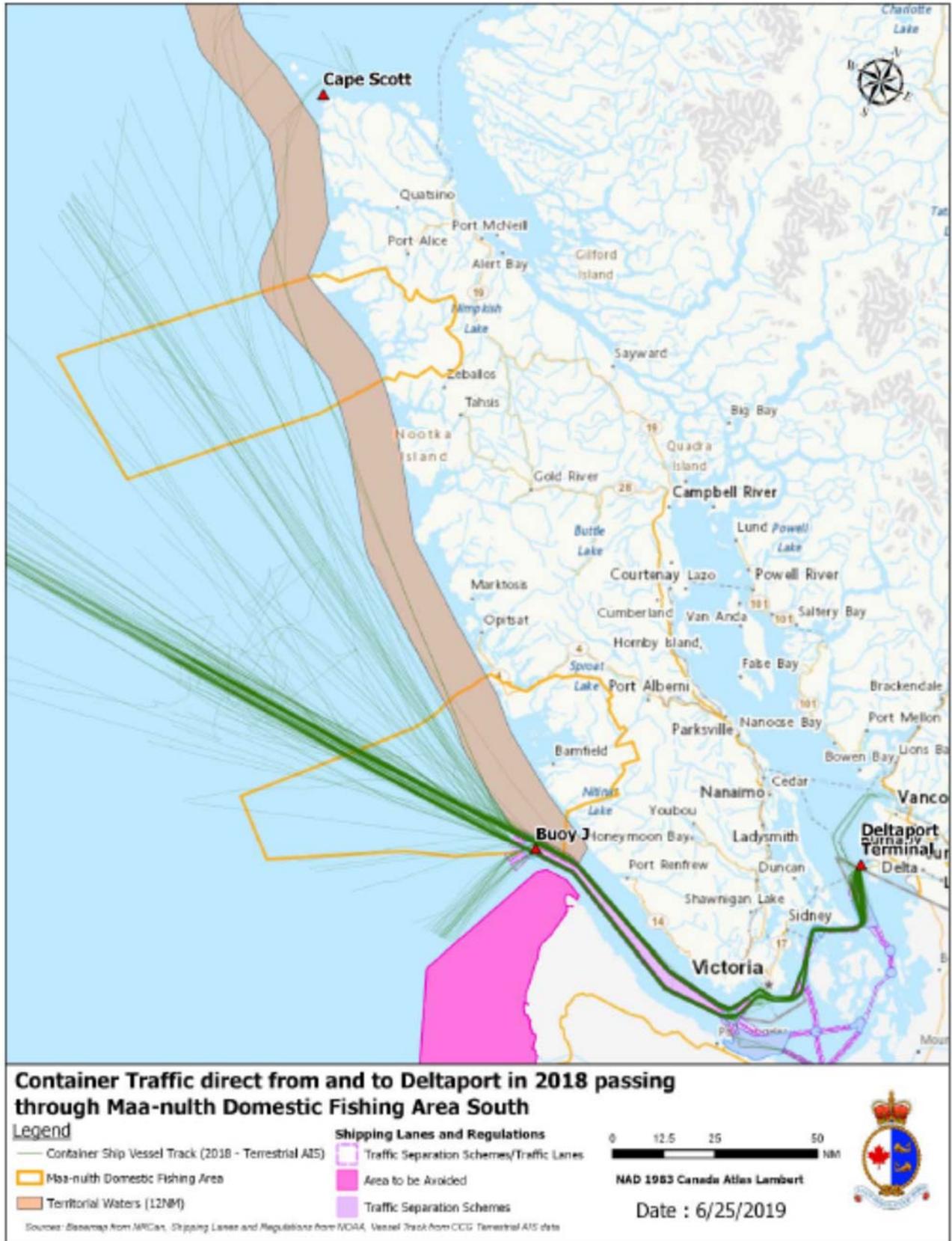
Funding

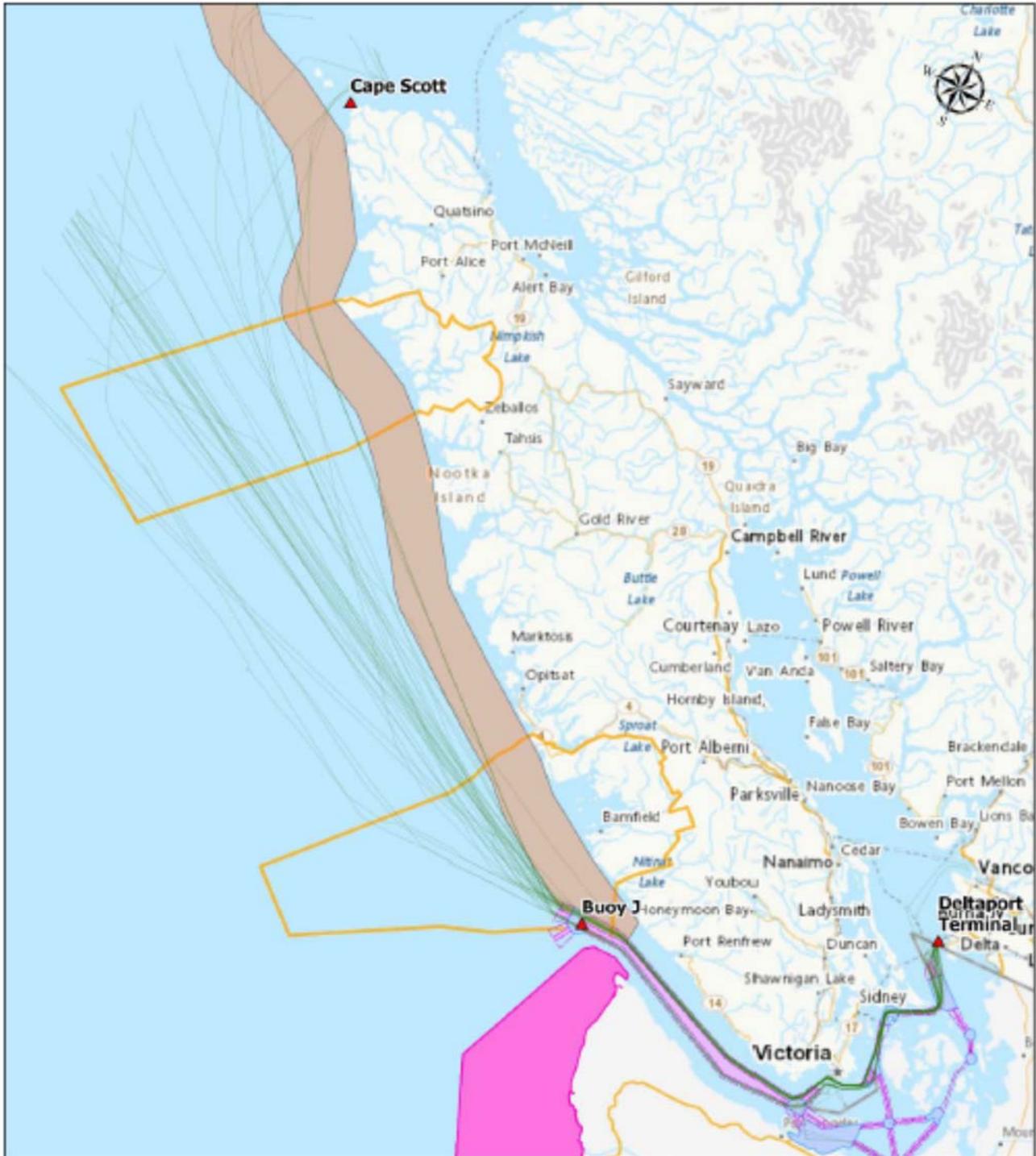
While we appreciate funding being made available by IAAC for our participation in the early planning phase, we submit that the amount provided was insufficient, given the importance of this phase in framing the balance of the impact assessment. We seek access to additional funding to ensure we can meaningfully participate in the early planning phase, and are not out of pocket for this participation.

Yours truly,

<Original signed by>

Charlie Cootes, President
Maa-nulth Treaty Society and on behalf of the Maa-nulth First Nations
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Container Traffic direct from and to Deltaport Terminal in 2018 passing through Maa-nulth Domestic Fishing Area North

Legend

- | | |
|--|--|
| Container Ship Vessel Track (2018 - Terrestrial AIS) | Traffic Separation Schemes/Traffic Lanes |
| Maa-nulth Domestic Fishing Area | Area to be Avoided |
| Territorial Waters (12NM) | Traffic Separation Schemes |

0 12.5 25 50 NM

NAD 1983 Canada Atlas Lambert

Date : 6/25/2019



Sources: BaseMap from NRCAN, Stoppage Lanes and Regulations from NOAA, Vessel Track from CCG Terrestrial AIS data