November 27, 2020

Via Email: Brett.maracle@canada.ca

Impact Assessment Agency of Canada
160 Elgin St., 22nd Floor
Ottawa, ON KIA OH3
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.

Sc'ianew 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 Sc'ianew First Nation ("Sc'ianew") and our objectives in this consultation process.

Sc'ianew is a small but progressive community located in Beecher Bay, 30 km southwest of Victoria on Vancouver Island. Our traditional territory encompasses lands and waters around the Metchosin - Sooke District and the Capital Regional District of Southern Vancouver Island, as well as Washington State.

Sc'ianew has constitutionally protected Douglas treaty rights and aboriginal rights, including aboriginal title. Sc'ianew is also a member of the Te'mexw Treaty Association, which is in negotiations with Canada and British Columbia under the BC treaty process. An Agreement in Principle was reached in those negotiations on April 5, 2015.

Although we inhabit and utilize resources from the land, we are and have always been Ocean people known as the Salmon people. Our territorial waters have sustained us through its resources and have been our highways, serving as trade routes and connecting us to our relatives in Washington State.

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 aboriginal and treaty rights. This Project and a multitude of other projects are seeking to utilize our traditional waters at a time when the Ocean and its resources are already at a breaking point. Collapsing steelhead, chinook and resident killer whale populations are

just three examples that suggest an imbalance in the marine environment and real long-term problems with the health of the Ocean.

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 trade. 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, 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 our culture. Where there has been harm, steps must be taken to address that harm, and Sc'ianew must be compensated for any cultural 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. Thus, the project must not only minimize economic harm to our communities. Sc'ianew 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. **Aboriginal and Treaty Rights** - The project must recognize, thoroughly assess its impacts on and not unjustifiably infringe our aboriginal and treaty rights. The project must also recognize the importance of ensuring our aboriginal and 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 aboriginal and treaty rights are too great, the project should not proceed.

Concerns

Based on information provided in the Initial Project Description and our experience in other environment assessments, Sc'ianew 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 may have on
   a. species that utilize the Fraser River estuary which Sc'ianew have aboriginal and treaty rights to harvest, including Fraser River sockeye salmon, Chinook salmon and Coho salmon,
   b. the exercise of our aboriginal and treaty rights, including resource harvesting and traditional practices, 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 territory, from ballast water, the hull of the ships or cargo on the ships,
   1. our culture and heritage sites,
   j. the exercise of our aboriginal and treaty rights, including resource harvesting and cultural practices,
   k. safety in our waters,
   1. 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 aboriginal and treaty rights, including resource harvesting and cultural practices,

j. the health of our people, both physical and mental,
k. our 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 territory 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 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 territory;
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 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 territory, 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, Sc'ianew 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, Sc'ianew submits that the assessment should be led by the federal government under the federal Impact Assessment Act. Sc'ianew 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.

A key interest of Sc' ianew in scoping the impact assessment will be to ensure the Project includes marine shipping to the 200 nautical mile limit of the Exclusive Economic Zone. Sc'ianew 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. 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 t);tlly,

<Original signed by>

Ch uss Chipps
Sc'ianew First Nation

cc: Bernice Millette, Council
Traci Pateman, Council
Trina Sxwithul'txw, Project Manager