



THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

5091 Tsuma-as Drive Port Alberni V9Y 8X9
Phone: (250) 724-1802 ♦ Fax: (250) 724-1852
Website: www.maanutlth.ca

March 30, 2023

Via Email: deltaport@iaac-aeic.gc.ca

Assessment of the GCT Deltaport Expansion - Berth Four Project
c/o Impact Assessment Agency of Canada / Government of Canada (the “Agency”)
160 Elgin Street 22nd Floor
Ottawa, Ontario K1A 0H3

Dear Agency representatives:

**Re: Deltaport Berth 4 Project (the “Project”)
Review Panel Terms of Reference
Federal-Provincial Coordination Agreement**

Thank you for the opportunity to comment on the proposed Review Panel Terms of Reference and Federal-Provincial Coordination Agreement for the Project (the “Process Documents”).

I write as President of the Maa-nulth Treaty Society, on behalf of the five Maa-nulth First Nations, namely: Huu-ay-aht First Nations, Ka:’yu:’k’t’h’/Che:k’tles7et’h’ First Nations, Toquaht Nation, Uchucklesaht Tribe and Yuułu?if?ath First Nation (“Maa-nulth”), in regard to those Documents.

Below are our comments on the Process Documents:

- **Distinct Treaty Rights and Interests** – The opening paragraph in Part 3 (Mandate) of the Review Panel Terms of Reference should be updated to recognize Canada’s commitment to meet its obligations under modern treaties, confirmed in the recent federal Collaborative Modern Treaty Implementation Policy, and to require the Review Panel to consider our distinct rights and interests as modern treaty nations.
- **Timelines** – The Process Documents contemplate a time limit of 600 days for the impact assessment phase and 90 days for the decision-making phase. They also contemplate a maximum of 21 days for participating Indigenous groups to review and comment on a draft of the Review Panel’s report. Maa-nulth are concerned with these timelines.



huu ay aht

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

- The Crown’s duties to Maa-nulth, as your Treaty partner, require that we be provided an opportunity to review and respond to elements of the impact assessment relevant to our rights and interests, and that the Crown seek our consent at key points in the impact assessment.
 - While 600 days seems long on its face, when the impact assessment phase is broken into its various components, including a review panel hearing, a review panel report and co-development of conditions, 600 days may not be sufficient. Past experience from projects such as the Trans Mountain Expansion Project, the Roberts Bank Terminal 2 Project and the Tilbury Marine Jetty Project has shown that longer than 600 days is likely needed for a fulsome assessment of potential impacts to our rights and interests.
 - The proposed timeline of up to 21 days to review and comment on a draft of the Review Panel’s report is grossly inadequate and contrary to the principles of UNDRIP and your Treaty partnership with us.
 - A decision-making phase of 90 days is also inadequate. 90 days would not allow sufficient time for government-to-government meetings, as Treaty partners, to resolve outstanding matters following the impact assessment phase.
 - In response to concerns raised regarding timelines during an information session on March 16, 2023, Agency representatives noted that there are legislated timelines under the new federal Impact Assessment Act that limit what the Agency can do. Maa-nulth acknowledge the Act establishes timelines but notes that there are tools available under the Act to extend those timelines. These provisions should be relied on to establish realistic timelines, in further consultation with Maa-nulth.
- **Review Panel Report** – The Review Panel Terms of Reference do not require the Review Panel to make relevant sections of their draft report available for review and comment before they are finalized. In addition to extending the timeframe for reviewing them, it should be mandatory that the Review Panel make relevant sections of their draft report available to Maa-nulth for review and comment prior to finalization.
 - **Consensus and Consent-Seeking Points** – The Process Documents should be updated to more clearly articulate consensus and consent-seeking points with us throughout the process. Outside the Process Documents, further work is needed to clarify our dispute resolution processes, in the event consent cannot be achieved.
 - **Incidental** – As previously articulated, Maa-nulth do not view marine shipping as an “incidental” component of the Project, rather an integral component of the Project.
 - **Preferred Means of Participation** – Maa-nulth is pleased to see language in the Review Panel Terms of Reference requiring the Review Panel to “make meaningful attempts to accommodate requests of an Indigenous nation regarding their preferred means of participation.”



ANCIENT SPIRIT, MODERN MIND



Maa-nulth look forward to further consultation on the Process Documents, as well as on our preferred means of participation in the Review Panel process, when that phase of the impact assessment commences. Please contact our chief administrative officer, Mark Stephens, at <contact information removed> with any questions or to set up a meeting to discuss this letter.

Yours truly,

<Original signed by>

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

