

September 20, 2021

Attention: Fern Stockman, Executive Project Director
Environmental Assessment operations (EAO)
Government of BC
PO Box 9426 Stn Pro Govt
Victoria, BC V8W 9V1

Via Email to: Fern.stockman@gov.bc.ca

Dear Sirs/Mesdames:

Re: Further Particulars of Notice by Lax Kw'alaams of intent to be a Participating Indigenous Nation in the Assessment of Ksi Lisims LNG (the "Project")

I write on behalf of Lax Kw'alaams Band ("Lax Kw'alaams"). On September 8, 2021 Lax Kw'alaams provided notice, according to s.14(1) of the *Environmental Assessment Act* (SBC 2018 c.51), that Lax Kw'alaams intends to participate in the assessment of the Project. In response, on September 13, 2021 you asked for additional information to assist in developing a preliminary understanding of Lax Kw'alaams' interests in the Project area. The following sections provide further particulars in response to your request.

Lax Kw'alaams has also prepared some comments on the Initial Project Description, Engagement Plan and Baseline Field Program. Those comments are attached to this letter as **Annex "A"**.

(a) *A description of the entity or representatives chosen by the Lax Kw'alaams Band collective with rights under Section 35 of the Constitution Act, 1982, that will represent Lax Kw'alaams Band throughout the EA process and decision-making in relation to Ksi Lisims LNG.*

Lax Kw'alaams will represent itself in the EA Process and decision-making related to the Project. A working group including Lax Kw'alaams elected leadership, administrative staff, technical and legal advisors will lead Lax Kw'alaams' participation in the process, with direction from Mayor and Council where appropriate.

(b) *A preliminary description of the Lax Kw'alaams Band's governance role in relation to the area affected by the proposed project including any arrangements or protocols with*

neighbouring Indigenous nations or any arrangements with other governments that provide clarity regarding Indigenous decision-making in the area; and,

The Lax Kw'alaams have never ceded or surrendered any of their territory or any of their interests in their territory (see Annex "B"). As such, the Lax Kw'alaams retain their aboriginal rights and title interests to the lands, waters and resources throughout our territory. The Lax Kw'alaams' aboriginal rights and title interests are protected by section 35 of the *Constitution Act*, 1982. When the lands, waters and/or resources in our territory will be affected by development of any sort, Lax Kw'alaams must be consulted with respect to any potential infringement of its constitutionally-protected interests and an accommodation of these interests arrived at.

The Project is located on Pearse Island and is within Lax Kw'alaams territory and is subject to Lax Kw'alaams aboriginal rights and title. As such, the Project cannot proceed without Lax Kw'alaams full consent. Although portions of the project would occur on lands that the Nisga'a Lisims Government claim to own in fee simple, the fact is that much, if not most of the Project and its impacts would occur over Lax Kw'alaams territorial waters, and that all of Pearse Island is subject to Lax Kw'alaams unextinguished aboriginal title land rights which underlie any Crown grants of fee simple.

The *Lut'ak dil Loomsk Txanii Laxyuup Ksi'aaks dil Laxsüülda* – Interim Land and Marine Resources Plan of the Allied Tribes of Lax Kw'alaams ("*Laxyuup Plan*"), sets out the management direction for this area of Lax Kw'alaams territory.

Historically, Lax Kw'alaams has been marginalized from decisions that have impacted the environment, Lax Kw'alaams culture and the exercise of their rights. Concurrent with a decline in resources, Lax Kw'alaams has also observed a shift in the economy in Lax Kw'alaams territory from resource extraction to one centered around international change. Both environmental pressures and the changing economy threaten Lax Kw'alaams mode of life and continued existence as distinct Indigenous peoples. As such, Lax Kw'alaams 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 Lax Kw'alaams traditional practices or Lax Kw'alaams deep connection to the ocean, land and its resources. Harm

to the land and ocean and their respective resources is harm to Lax Kw'alaams. Where there has been harm, steps must be taken to address that harm, and Lax Kw'alaams must be compensated for any cultural interference, disconnection or loss suffered as a result of the harm.

3. **Economic** – As Lax Kw'alaams secures its place in the current economy of the west coast, Lax Kw'alaams requires an economic base from which to provide economic security to its people. Thus, the project must not only minimize economic harm to Lax Kw'alaams. Lax Kw'alaams 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. **Rights** – The project must recognize, thoroughly assess its impacts on and not unjustifiably infringe Lax Kw'alaams title and rights interests. The Project must also recognize the importance of ensuring Lax Kw'alaams title and 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 Lax Kw'alaams rights are too great, or are not well understood, the Project should not proceed.

(c) *A preliminary description of the Lax Kw'alaams Band's interests and how Indigenous nation believes the proposed project could interact with or impact these interests.*

Based on the available information and knowledge at this time an exhaustive and detailed list of impacts is not possible. However, since time immemorial, the ocean and its resources have been an integral part of the culture and way of life of Lax Kw'alaams people. The ocean is as much the home of Lax Kw'alaams people as the land. This Project and a multitude of other projects are seeking to utilize Lax Kw'alaams traditional lands and waters as an economic highway, at a time when the ocean and its resources are already at a breaking point. Traffic on the economic highway cannot be unlimited or Lax Kw'alaams resources will continue to decline.

Based on information provided in the Initial Project Description and Lax Kw'alaams experience in other environment assessments, Lax Kw'alaams raise the following initial concerns with the Project:

1. **Market** – the accuracy of market projections for the LNG industry and the necessity of the Project;
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 region proximate to the Project.
 - b. the exercise of Lax Kw'alaams aboriginal 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 Lax Kw'alaams traditional territories, from ballast water, the hull of the ships or cargo on the ships,
 - i. Lax Kw'alaams culture and heritage sites,
 - j. the exercise of Lax Kw'alaams rights, including resource harvesting, culture and
 - k. heritage and trade and barter rights,
 - l. safety in Lax Kw'alaams waters,
 - m. Lax Kw'alaams economic interests,
 - n. the overall health of the ocean and its resources;
5. **Accident or Malfunction Impacts** – impacts a collision, allision, grounding, or other accident or malfunction involving a 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. Lax Kw'alaams culture and heritage sites,
 - i. the exercise of Lax Kw'alaams rights, including resource harvesting, culture and heritage and trade and barter rights,
 - j. the health of Lax Kw'alaams people, both physical and mental,
 - k. Lax Kw'alaams lands,
 - l. Lax Kw'alaams 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 Lax Kw'alaams traditional territories and Lax Kw'alaams 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 ship from the Project, including:

- a. there are clear lines of authority and responsibility in the event of an accident or malfunction, and
 - b. Lax Kw'alaams has sufficient power and capacity to meaningfully participate in response efforts within, or with the potential to impact, its traditional territory.
8. **Emergency Compensation** – ensuring Lax Kw'alaams is adequately compensated for any impacts stemming from an accident or malfunction at the Project site or involving a ship from the Project, including compensation for cultural interference, disconnection or loss where applicable.
 9. **Economic Interest** – ensuring Lax Kw'alaams 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 Lax Kw'alaams traditional waters;
 10. **Scope of Assessment** – ensuring the assessment for the Project is properly scoped, to enable a comprehensive assessment of the Project on Lax Kw'alaams rights and interests, and ensure any mitigation measures, accommodation measures or Project conditions can be applied appropriately to Lax Kw'alaams traditional territory.

Thank you,

A handwritten signature in black ink, appearing to read 'Jeffrey R. Nicholls', written in a cursive style.

Jeffrey R. Nicholls
JRN/mal

ANNEX “A”

A. LAX KW’ALAAMS BAND PRELIMINARY COMMENTS ON THE KSI LISIMS LNG PROJECT DRAFT INITIAL PROJECT DESCRIPTION, ENGAGEMENT PLAN AND BASELINE FIELD PROGRAM

1. Initial Project Description: Questions and Comments

Preliminary Issues and Concerns

1. The proposed Project and shipping route is located within the boundaries of Lax Kw’alaams traditional territories
 - a. Specifically, the proposed LNG facility is located in Gitlan Tribal Territory and is adjacent to a Gitlan trapline
 - b. The Project therefore has the potential to adversely affect Lax Kw’alaams’ Indigenous rights
2. The Project is located in the vicinity of known Lax Kw’alaams traditional use values, including, but not limited to:
 - a. Salmon fishing
 - b. Crab harvesting
 - c. Ground fish harvesting
 - d. Seal and sealion hunting
 - e. Shellfish harvesting
 - f. Deer hunting
 - g. Trapping
3. Effects of marine shipping on fish and marine mammals.
 - a. The number of LNG shipments is estimated to be between 140 and 160 annually. This will disturb marine mammals and other wildlife.
 - b. The IPD identifies the Nass River as the largest salmon-producing river in the region under the heading of “Freshwater Communities and Species”. Table 8, which is a summary of baseline studies to be undertaken identifies that freshwater fish and habitat studies are a priority. These studies need to include all anadromous fish in the area and potential effects on those species.
4. Effects of marine shipping on Indigenous use of the area
 - a. Several Indigenous communities utilize this area for marine harvesting activities. The presence of large LNG carriers is likely to affect this use.
 - b. Lax Kw’alaams members’ use of Portland Inlet includes seal and sealion hunting, shellfish harvesting, salmon fishing, and other cultural uses.
5. Loss of high-quality habitat in the tidal areas.
 - a. Tidal areas include high-quality nursery habitat for fish and other marine species. Development in the Water Lot will remove this habitat. These effects need to be considered in depth.

6. Clearing of old-growth and mature forests.
 - a. The project includes clearing forests to build several structures and linear development. Lax Kw'alaams is concerned about any clearing of old-growth and mature forests that provide unique ecosystem services to species they support.
 - b. Loss of Lax Kw'alaams land-based use values on Pearse Island.
7. Alteration or destruction of wetlands
 - a. It is not clear if the upland site includes wetland ecosystems, though Proposed Baseline studies listed in Table 8 includes wetlands. Wetland ecosystems often include culturally important plants, including medicines.
8. The Proponent's preliminary assessment of potential impacts to Indigenous groups is very narrow
 - a. The section characterizes impacts on Indigenous interests as occurring indirectly through environmental changes. This does not align with current legislation, which requires the assessment of direct and indirect effects
 - b. The section does not identify potential intangible and cultural impacts, such as knowledge transmission, cultural continuity, sense of place and psychosocial impacts
 - c. The section does not acknowledge that the Project has the potential to impact Indigenous rights (other than Nisga'a Nation's Treaty rights)

Required information and studies

1. The site-specific effects of dredging on the marine environment, including release and settling of sediments and how this affects habitats for various marine species.
2. Effects of shipping on marine mammals, including effects of acoustic masking, potential vessel strikes, and avoidance behaviors.
3. Effects to valued components identified by Indigenous groups.

2. Engagement Plan: Questions and Comments

1. The Engagement Plan does not identify a plan to collect and integrate Indigenous Knowledge into project planning and environmental assessment.
 - a. Lax Kw'alaams' IK must be considered early and at all stages in the EA/IA process.
 - b. Lax Kw'alaams' IK can inform project design, EA/IA studies and EA/IA methods, as well as potential impacts on Lax Kw'alaams rights
 - c. Lax Kw'alaams should be provided with appropriate funding to conduct its own IK study
 - d. Lax Kw'alaams requires an IK Sharing Agreement with the Proponent to ensure the appropriate collection, use and protection of its IK
2. Lax Kw'alaams will need to engage with its membership to identify priority values, issues and concerns in relation to the project

- a. Lax Kw'alaams requires the Proponent to participate in community engagement to describe the project and answer questions
 - b. Lax Kw'alaams requires appropriate funding to conduct community meetings and prepare a consultation report for the Proponent
 - c. Lax Kw'alaams requires that the results of early community engagement meaningfully inform the EA/IA, such as selection of VCs, definition of assessment boundaries, identification of mitigation measures and project benefits
3. Lax Kw'alaams requires an Engagement Protocol with the Proponent
 - a. The specifics of the Engagement Protocol are to be developed, but would address topics such as capacity funding, engagement methods and anticipated outcomes

3. Baseline Field Program Review

1. Some studies were scheduled to begin in June, July – August 2021. Methods appear to have been finalized without sufficient time for Lax Kw'alaams review and input.
2. Planned baseline studies should be cross-referenced with uses identified by Indigenous groups.
3. Socio-community baseline data focuses on the Nisga'a community. It does not include any baseline information collected on any other communities who use the area or may be employed by the project.
4. While there are some references to culturally important species (e.g., "*plant species of importance to the Nisga'a Nation for traditional cultural uses... as identified by Burton (1992) will be documented during the rare plant surveys*") there is no clear plan for engagement on what these species are, or how they should be surveyed.
5. Lax Kw'alaams would like the Proponent to share anticipated sampling sites, including the justification for the selection of those locations and justification for level of sampling effort.
6. There is no discussion on Indigenous knowledge-based indicators of health or quality.
7. There appears to be an identified role for Nisga'a Nation in baseline studies (e.g. on the field crews), but not for other communities.

4. EA/IA next steps

Detailed Project Description

1. Lax Kw'alaams requires involvement in development of draft VCs
 - a. Draft VCs must be informed by the results of Lax Kw'alaams community engagement
2. Lax Kw'alaams requires involvement in the review of draft study and modeling plans
 - a. This may include Lax Kw'alaams-led studies

Application Development

1. Lax Kw'alaams requires support for Lax Kw'alaams-led studies. Such studies may include, but not be limited to:
 - a. Indigenous Knowledge and Land Use Study
 - b. Culture and Rights Impact Assessment Study
 - c. Cumulative Impacts Study
 - d. Socio-economic Impact Assessment Study
2. Lax Kw'alaams requires the option, with appropriate funding, to write sections of the Application/IS that pertain to Lax Kw'alaams, in particular:
 - a. Assessment of impacts on Lax Kw'alaams' rights and interests
 - b. Lax Kw'alaams will review for inclusion of its issues and incorporation of its IK
 - c. Lax Kw'alaams will rely on the drafts to prepare its own assessments of project impacts

ANNEX "B"

