Metlakatla Stewardship Society

P.O. Box 224, Prince Rupert, BC, V8J 3P6
Phone: (250) 622-2816

July 11, 2025

John Antill
Project Assessment Director
Environmental Assessment Office
PO Box 9426 Stn Prov Govt
Victoria, BC V8W 9V1

By Email: john.antill@gov.bc.ca

Re: Ksi Lisims LNG Environmental Assessment – Notice of Non-Consent and Initiation of s. 29 Dispute Resolution

Dear Mr. Antill:

Metlakatla First Nation is making this submission regarding the pending Environmental Assessment Office ("**EAO**") referral of the Ksi Lisims LNG Project ("**Project**") to: (i) the provincial ministers for decision under subsection 29(4) of the *Environmental Assessment Act*, SBC 2018, c 51 (the "**EA Act**"); and (ii) the federal minister for decision under sections 60 and 63 of the federal Impact Assessment Act, SC 2019, c 28, s 1 (the "**IAA**").

A. Notice of Non-Consent

For the reasons set out in the submission attached as **Schedule "A"** to this letter, and further to its letter of January 31, 2025, Metlakatla does not and cannot currently consent to the proposed Project.

EAO has not reached consensus with Metlakatla on the referral package or the sustainability recommendation under s. 29 of the EA Act. Metlakatla completed a dispute resolution process with EAO under s. 28 of the EA Act. However, EAO failed to address Metlakatla's key concerns.

B. Initiation of Dispute Resolution

In advance of the EAO's referral decision under EA Act, s. 29(1), Metlakatla hereby refers the matter to dispute resolution pursuant to s. 5(2) of the EA Act for the reasons set out in the submission attached as **Schedule "A"** to this letter.

Despite the compressed and unreasonable timelines imposed by EAO to provide these materials, Metlakatla has made all reasonable efforts to achieve consensus on EAO's s. 29 referral decision prior to triggering dispute resolution. Chief Robert Nelson's June 10, 2025 letter to EAO requesting more reasonable timelines for meaningful consultation with Metlakatla on the referral package and sustainability decision is attached as **Schedule "B"** to this letter. Although EAO responded to the letter, it did not agree to reasonable timelines.

In summary, it is premature for EAO to refer the proponent's application to the ministers. For the reasons set out in the submission attached as **Schedule "A"** and in Metlakatla's Rights Impact Assessment, the environmental assessment for the Project is flawed and must be revisited and revised.

In addition, before making a recommendation respecting the ministers' decision, EAO is required to seek to achieve consensus with Metlakatla with respect to EAO's sustainability recommendation (EA Act, s. 29(3)). EAO has not yet completed this required step. Metlakatla has serious outstanding concerns with EAO's sustainability analysis. In summary, as proposed, the Project would be manifestly unsustainable.

C. Submission and Materials

All materials referenced within this letter and the attached submission are considered part of the materials provided by Metlakatla to EAO and the ministers, as all materials are available online and/or posted on EAO's Project Information Centre (EPIC) website and/or otherwise in the possession of the Crown/and or EAO and the proponent Nisga'a Nation. Metlakatla therefore asks that EAO advise of any instances where it believes this is not the case.

Sincerely,

Ryan Leighton
Executive Director
Metlakatla Stewardship Society

Cc:

Stephanie Huddlestan, Environmental Assessment Manager, Metlakatla Stewardship Society
Edwin Hubert, British Columbia Environmental Assessment Office, Regional Engagement Lead
Katherine Manickum, Impact Assessment Agency of Canada, Senior Consultation Analyst
Minister of Energy and Climate Solutions, the Honourable Adrian Dix (EMLI.minister@gov.bc.ca) Minister of Environment and Parks, the Honourable Tamara Davidson (ENV.Minister@gov.bc.ca) Minister of Environment and Climate Change Canada, the Honourable Julie Dabrusin (ministre-minister@ec.gc.ca)

A. Issue

Metlakatla First Nation is making this submission to set out reasons it continues to withhold consent respecting the Ksi Lisims LNG Project ("**Project**") and in connection with the pending referral to: (i) the provincial ministers for decision under subsection 29(4) of the *Environmental Assessment Act*, SBC 2018, c 51 (the "**EA Act**"); and (ii) the federal minister for decision under sections 60 and 63 of the federal *Impact Assessment Act*, SC 2019, c 28, s 1 (the "**IAA**").

B. Executive Summary

Metlakatla does not and cannot consent to the Project for the following reasons:

(a) Project Electrification and GHG Emissions:

Without grid electrification, the Project will undermine federal and provincial climate commitments and severely impact Indigenous rights and the environment. Achieving electrification by a reasonable date is therefore required.

(b) Transmission Line on Mylor Peninsula:

The Project proposes an electrical transmission line on lands where Metlakatla has an active Aboriginal title claim the courts have assessed as strong. This creates a dishonorable, "no-win situation" in which Metlakatla either: (i) endures an infringement of its Aboriginal title from an inadequately assessed transmission line which it has not consented to; or (ii) if the transmission line is not constructed to electrify the Project, endures severe impacts from emissions indefinitely.

(c) Marine Shipping:

Instead of assessing alternative means to avoid serious impacts to Indigenous rights, sensitive fisheries, and species at risk, the assessment only looked at navigation and pilotage services and proceeded to assess a route that is already heavily transited and causing cumulative impacts.

(d) Species at Risk Act requirements not met

Noise from marine shipping will radiate at a level known to harm marine mammals into the protected critical habitat of the northern resident killer whales. The requirements of the federal *Species At Risk Act* have not been complied with.

(e) Indigenous Legal System

The Project is being proposed by a nation that has been Metlakalta's neighbor for millennia, the Nisga'a Nation. That gives rise to obligations to Metlakatla on the part of the Nisga'a Nation under the Indigenous legal system applicable to both nations. Those obligations have not been complied with by the Nisga'a Nation, and the project review process does not take that into account. As well, conferring a potential economic benefit to the Nisga'a while imposing severe impacts on Metlakatla is not reconciliation and not honourable.

(f) IAA public interest factors and sustainability

Under the EA Act, the Project is not consistent with the promotion of sustainability. Under the IAA, the Project would have significant adverse effects within federal jurisdiction that would not be

mitigated by the proposed provincial and federal conditions. Such significant adverse effects are not justified in the public interest. The duty to consult Metlakatla has also not been met.

It is premature for EAO to refer the proponent's application to the ministers for an environmental assessment certificate. As set out in this submission, the environmental assessment for the Project is flawed and must be revised. In addition, before making a recommendation respecting the provincial ministers' decision, EAO is required to seek to achieve consensus with participating First Nations, including Metlakatla, with respect to EAO's recommendation regarding sustainability (EA Act, s. 29(3)). EAO has not yet completed this required step. EAO therefore has not meaningfully consulted with Metlakatla on the sustainability and Metlakatla has serious outstanding concerns with EAO's existing sustainability analysis.

In order for the Project to be consistent with the promotion of sustainability under the EA Act, s. 29(2)(b)(1), it must both protect the environment and foster a sound economy and the well-being of British Columbians and their communities. As set out in this submission, the Project fails to meet these requirements.

Accordingly, given the legal errors present in the Project assessment and the inadequacy of consultation, the Project cannot be approved as proposed or assessed. If the Project is approved as-is, it will be vulnerable to legal challenge.

As the Supreme Court stated in *Clyde River*, "any decision affecting Aboriginal or treaty rights made on the basis of inadequate consultation will not be in compliance with the duty to consult, which is a constitutional imperative. Where challenged, it should be quashed on judicial review."[1] The Supreme Court was similarly clear in *Clyde River* that prematurely approving a project is a step that is at odds with reconciliation: "[n]o one benefits — not project proponents, not Indigenous peoples, and not non-Indigenous members of affected communities — when projects are prematurely approved only to be subjected to litigation."[2]

As a result, Metlakatla requests that:

1. EAO not refer the matter to the ministers for a decision until EAO has revised the flaws in the assessment and satisfied the requirement to work to achieve consensus with Metlakatla with respect to the recommendation on sustainability.

2. the provincial Minster of Energy and Climate Solutions withdraw the letter relating to net-zero requirements dated March 21, 2025 and require the Project to provide a credible plan to achieve net-zero by a reasonable date;

In the event that EAO insists on prematurely referring the proponent's application to the ministers, Metlakatla reiterates its request that the Minister withdraw its March 21, 2025 letter and requests:

1. that the provincial Ministers either refuse to issue the EA certificate, or propose a mechanism, which could include a revision to the EA Act, that would allow the Ministers to refer the assessment back to EAO for reconsideration to remedy the flaws in the environmental assessment process identified in this submission; and

[1] *Clyde River* at para. 24.
[2] *Clyde River* at para. 24.

2. the federal Minister of Environment and Climate Change determine that the Project is not in the public interest, and accordingly issue a decision statement under IAA, s. 65 refusing to approve the Project.

C. Discussion

(a) Ksi Lisims LNG - Project Background

The Ksi Lisims LNG Project, proposed by the Nisga'a Nation with Rockies LNG and Western LNG, submitted an Initial Project Description on July 2, 2021, under the EA Act and the Canadian *Impact Assessment Act*, (SC 2019, c 28, s 1) ("**IAA**"). Detailed Project Descriptions followed on April 25 and July 8, 2022.

On August 6, 2021, the BC Environmental Assessment Office ("**EAO**") requested substitution from the Impact Assessment Agency of Canada ("**IAAC**") under the IAA and the Canada-BC Impact Assessment Cooperation Agreement. After a comment period from August 10 to September 24, 2021, IAAC responded to EAO on April 6, 2023 confirming substitution approval. With reference to the Project Descriptions, the purposes of the IAA and relevant IAA guidance, IAAC defined the Project's scope as including: (i) marine shipping within Canada's 12-nautical-mile territorial sea limit; (ii) supporting marine traffic to/from the Project site and Gingolx or Prince Rupert; and (iii) a submarine electrical transmission line to the Project site across Portland Canal.

The Minister's Notice of Substitution Approval confirmed substitution approval because, among other things, BC committed to meeting the requirements of the IAA, including assessing factors under subsection 22(1) and conditions under subsections 33(1) and (2), taking into account the definition of effects within federal jurisdiction.

The Notice also confirmed the Minister's satisfaction that EAO would meet the following conditions: (i) the designated project is "the construction, operation, and decommissioning of a floating natural gas liquefaction facility and marine terminal and any incidental physical activities"; (ii) assess impacts of marine shipping and the transmission line; (iii) federal policies in the Strengthened Climate Plan; and (iv) address commitments in Canada's 2030 Emissions Reduction Plan, including oil and gas sector emissions caps and best-in-class guidance.

Ksi Lisims LNG submitted an Application to EAO on October 16, 2023, and a Revised Application on September 4, 2024. These confirm the Project requires 4,700 GWh of electricity annually. On November 12, 2024, EAO's draft Assessment Report highlighted uncertainty in BC Hydro's ability to supply sufficient power to electrify the Project. Without electrification, Project-related emissions will jeopardize BC's 2030 targets, despite any proponent efforts to minimize emissions.[3]

On October 4, 2021, Metlakatla First Nation wrote to EAO to confirm that it intended to be a "Participating Indigenous Nation" in the environmental assessment process for the Project. Metlakatla has actively participated in the Project review process and prepared a detailed Rights Impact Assessment. From February to June 2025, Metlakatla was engaged in dispute resolution under ss. 5(2) of the EA Act with respect to the s. 28 environmental assessment. A report was issued by the facilitator of that process.[4]

[3] Draft Assessment Report, pp. 498-499.
[4] See Section 28 Dispute Resolution Report and Section 29 Dispute Resolution Report.

On March 21, 2025, while that process was still ongoing, the provincial minister abruptly issued a letter stating that LNG projects like Ksi Lisims do not need a plan for net-zero emissions by 2030, if grid electricity is unavailable due to circumstances beyond the proponent's control.

For the reasons set out in this submission, Metlakatla has continued to withhold consent respecting the Project.

(b) The substituted environmental assessment process and the duty to consult

The Crown's duty to consult and accommodate arises when (i) the Crown has knowledge, real or constructive, of the potential existence of an Indigenous right or title and (ii) contemplates conduct that (iii) might adversely affect it.[5] The duty emanates from the honour of the Crown, a constitutional principle, and exists on a spectrum; where a strong claim is established, the right and potential infringement is of high significance, and the risk of non-compensable damage is high, "deep consultation, aimed at finding a satisfactory interim solution" is required.[6]

For the reasons set out in this submission and the Rights Impact Assessment, deep consultation was required on all aspects of the Project given the presence of these factors. For the reasons explained in section (g) below, the Crown was also required to apply the Articles of the *United Nations Declaration on the Rights of Indigenous Peoples* ("**UNDRIP**") to the consultation process.

The Crown may rely on regulatory processes such as those available under the EA Act and the IAA to discharge the duty, if Indigenous peoples have been given notice of the Crown's intent to do so and "the agency's statutory duties and powers enable it to do what [the Crown's duty to consult and accommodate] requires in the particular circumstances."[7]

Regardless of the process relied on, the Crown is always required to ensure the requirements of the honour of the Crown are met. Where the regulatory process being relied upon "does not achieve adequate consultation or accommodation, the Crown must take further measures to meet its duty. This might entail filling any gaps on a case-by-case basis or more systemically through legislative or regulatory amendments … or, it might require making submissions to the regulatory body, requesting reconsideration of a decision, or seeking a postponement in order to carry out further consultation in a separate process before the decision is rendered."[8]

Where the Crown seeks to rely on an environmental assessment process, the focus is on impacts to Indigenous rights, as opposed to environmental effects.[9] The EA Act and the IAA also each expressly require a focus on impacts to the rights of Indigenous peoples recognized and affirmed under s. 35 of the *Constitution Act, 1982* and those recognized by the Articles of UNDRIP.[10]

In all circumstances, environmental legislation is to be interpreted and applied "in a manner that will counteract the ability of immediate collective economic and social forces to set their own

[5] *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43 at para. 31.
[6] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 44.
[7] *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, 2017 SCC 40 ("*Clyde River*"); *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41.
[8] *Clyde River* at paras. 22, 30.
[9] *Clyde River* at para. 45.
[10] EA Act, ss. 2(2)(ii)(D), 25(2); IAA, preamble, ss. 2(e). 6(2), 9(2)(b), 16(2)(c), 22(1)(c).

environmental agendas. It must be regarded as something more than a mere statement of lofty intent. It must be a blueprint for protective action."[11]

(c) Project electrification and GHG emissions

i. Summary of Issue

The Project has an enormous annual electricity requirement of 4,700 GWh.[12] Without grid electrification, the Project will emit 1,867,992 tonnes of CO_2 per year. This puts provincial and federal emissions goals at serious risk if grid electrification is not achieved in a timely manner. Ongoing emissions of this magnitude also means ongoing impacts to Metlakatla's title and rights.

On March 21, 2025 the Minister of Energy and Climate Solutions issued a letter which purports to allow the Project to be authorized even if there is no plan for grid electrification. Sustainability is a required consideration under s. 29(4) of the EA Act and s. 63(c) of the IAA. Metlakatla has withheld consent because the Project is, by definition, unsustainable unless required to be fully grid electrified by a specific date. Approving the Project without such a requirement would compromise federal and provincial climate commitments and severely impact Metlakatla's title and rights.

ii. Provincial and Federal GHG emissions

Sections 25(1)(h) of the EA Act and 22(1)(i) of the IAA require assessments to consider effects on the Province and Canada's ability to meet emissions and climate change commitments. The Notice of Substitution Approval underscores this requirement.

Under the *Climate Change Accountability Act*, the Province has committed to reducing total provincial GHG emissions to 40% below 2007 levels by 2030, 60% by 2040, and 80% by 2050. Under the federal 2030 Emissions Reduction Plan, Canada is required to reduce its emissions by 40% to 45% from 2005 levels by 2030.[13]

Metlakatla has raised many concerns respecting climate change and impacts to tile and rights arising from Project emissions.[14] As is acknowledged throughout the application materials and draft Assessment Report, the Project currently cannot be connected to the grid, there is no transmission line capable of doing so for hundreds of kilometers in any direction, and no timeline or commitment for one to be constructed. Despite this, the existence of a transmission line is referred to as the "base case scenario" throughout the Project materials.

As an "alternative case scenario" the Project proposes to use "temporary" power barges to generate the 4,700 GWh of electricity the Project needs annually. These barges will emit 1,867,992 tonnes of CO_2 per year. That volume of emissions represents 12.29% and 0.86% of provincial and federal emissions from the oil and gas sectors in 2022, respectively, and 2.91% and 0.26% of total provincial and federal emissions in 2022, respectively.[15]

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[11] *Labrador Inuit Assn v Newfoundland (Minister of Environment and Labour)* (1997), 152 DLR (4th) 50, 1997 CanLII 14612 (NL CA) ("*Labrador Inuit Assn*") at paras 11–12. See also *Friends of Davie Bay v. Province of British Columbia*, 2012 BCCA 293 ("*Friends of Davie Bay*") at para. 35.

[12] Technical Data Report— Greenhouse Gases, application materials, s. 4.2.4, p. 24.

[13] EAO Draft Assessment Report, p. 496.

[14] Metlakatla Rights Impact Assessment, Appendix G: Issues Tracking Table.

[15] EAO Draft Assessment Report, pp. 495-496.

As set out in greater detail below, further compounding these issues, uncertainties, and impacts, is the fact that an essential segment of the transmission line is proposed to traverse lands subject to an active Aboriginal title claim by the Coast Tsimshian (Metlakatla and Lax Kw'alaams).

Curiously however, this segment of this essential component of the Project was omitted from the Detailed Project Description (listed instead as a "third-party project"),[16] then included in the Process Order as part of the Project but not assessed to the same standard as other Project components, only as a broad area within which a transmission line may be developed, as opposed to a specific location.[17]

These circumstances combine to create a "no-win situation" in which Metlakatla either: (i) endures an infringement of its Aboriginal title by way of an inadequately assessed transmission line which it has not consented to; or (ii) if the transmission line is not constructed, endures severe impacts from unsustainable emissions indefinitely. As the Supreme Court stated in *Haida Nation*: "[w]hen the distant goal of proof is finally reached, the Aboriginal peoples may find their land and resources changed and denuded. This is not reconciliation. Nor is it honourable."[18]

This "no win situation" is manifestly incompatible with the honour of the Crown and an important reason Metlakatla continues to withhold consent.

iii. The Minister's March 21, 2025 GHG policy "clarification" letter

As set out above, a letter sent by the responsible provincial minister to EAO dated March 21, 2025 states that an LNG project proponent does not need a credible plan to achieve net-zero if the proponent finds it cannot connect their project to the electrical grid. The letter appears to thus suggest the Project could be authorized to emit an enormous 1,867,992 tonnes of CO_2 per year.

The first problem with the Minister's letter is that it was issued without any jurisdiction. Although s. 19(6) of the EA Act provides that potential effects "must take into account and reflect government policy identified for the chief executive assessment officer, during the course of the assessment" the letter was not issued "during the course of the assessment" at all. As noted, two separate s. 28 EA Act dispute resolution processes regarding the Project with Metlakatla and Lax Kw'alaams were ongoing when the Minister issued the letter.

Further, the substance of the letter was not "clarificatory" in nature. Rather, and unlike the prior policy letter dated May 31, 2024, which requires that proponents provide "a credible plan for their Project to achieve net-zero greenhouse gas emissions by 2030, in the case of LNG facilities", the March 21, 2025 letter removes any requirement for a credible plan to connect the Project to the electrical grid whatsoever. Curiously, the March 21, 2025 letter responds nearly exactly to the relevant finding in the earlier EAO draft Assessment Report.[19]

The March 21, 2025 letter also cannot belatedly modify or override the statutory requirement to assess impacts to commitments under ss. 25(1)(h) of the EA Act and 22(1)(i) of the IAA, the latter of which is also a condition of the substitution decision. Most importantly, the letter also cannot

[16] Detailed Project Description, s. 2.4.2.
[17] Ksi Lisims LNG: Natural Gas Liquefaction and Marine Terminal Project: Appendix F: Updated Transmission Line Assessment Area Supplemental Information (August 2024).
[18] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 at para. 33.
[19] Draft Assessment Report, pp. 498-499.

remove the requirements of the honour of the Crown and the obligations the Crown owes to Metlakatla in respect of impacts to its rights and the related requirement to accommodate.

As set out above, environmental legislation is intended to be interpreted and applied "in a manner that will counteract the ability of immediate collective economic and social forces to set their own environmental agendas" and demands "a blueprint for protective action."[20] The minister's letter actively and inappropriately looks to undermine these important objectives by removing any requirement for a "blueprint for protective action" whatsoever.

Finally, as also noted above, the letter was issued without any consultation and looks to influence an ongoing Project assessment in an irregular, improper, and procedurally unfair manner.

For these reasons, the minister should not have issued the March 21, 2025 letter because it contravenes all of the EA Act, the Province's climate change commitments and the conditions set out in the Notice of Substitution. Furthermore, as set out above, it works to set up and reinforce the untenable and dishonorable "no-win" situation with impacts to Metlakatla's title and rights hanging in the balance. The letter should be withdrawn, and the Project should be required to provide a credible plan to achieve net-zero by a reasonable date.

(d) Terrestrial transmission line on Mylor Peninsula

i. Summary of Issue

As noted throughout this submission, the Mylor Peninsula is subject to an active Aboriginal title claim brought by the Coast Tsimshian (Metlakatla and Lax Kw'alaams). The B.C. Supreme Court has already found this to be a "strong" claim. The inadequate assessment of the transmission line on these specific lands is puzzling given that, as noted above, Canada included the marine component of the transmission line at the time the substitution decision was made. The importance of the transmission line cannot be overstated: without it, for the reasons set out above, the Project will emit millions of tonnes of greenhouse gases annually for an indefinite period, severely impacting Metlakatla's title and rights.

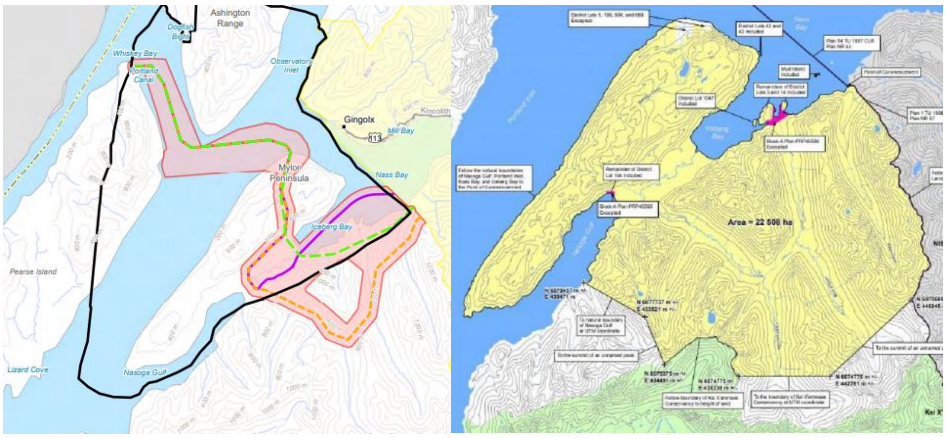
The implications of this omission are two-fold: (i) the Crown cannot rely on the regulatory process in respect of discharging the duty to consult Metlakatla because, due to its required length and voltage, the contemplated transmission line will never be subject to a full environmental assessment, placing Metlakatla's Aboriginal title and rights at risk of unassessed, and unmitigated impacts; and (ii) this adds further risk to the Project being connected to the grid in a timely manner.

Metlakatla has continued to withhold consent for the Project because the requirements of the EA Act, IAA, and the honour of the Crown have not been met respecting the transmission line.

ii. The transmission line was not adequately assessed

The Detailed Project Description states that "[i]n the event of a delay in connection to the BC Hydro grid, the Project will be powered by temporary alternative source (i.e., power barges)" and characterizes the transmission line as "<u>not only a requirement to achieve emission targets, but it is also one of the key features of the Project for its investors and customers</u>".[21]

[20] *Labrador Inuit Assn* at paras 11–12; *Friends of Davie Bay* at para. 35.
[21] April 29 and July 19, 2022 Detailed Project Description, pp. 29-30.



Notwithstanding this characterization of the transmission line as "one of the key features of the Project for its investors and customers" and Canada's inclusion of the submarine component in the scope of assessment,[22] the Detailed Project Description advocates to exclude the terrestrial component, while also admitting that if this were done, the length and voltage of the proposed line mean that no separate provincial or federal assessment would ever be required.[23]

Ultimately, the transmission line was not assessed to the same standard as other Project components. A cursory assessment does not address Metlakatla's concerns. Allowing the Project to be split in this manner is also inconsistent with the requirements of the EA Act and IAA, the Notice of Substitution, and the requirements of the honour of the Crown. This gap in the Project assessment is another reason Metlakatla continues to withhold consent respecting the Project.

iii. Metlakatla's Aboriginal title and rights in and around the Mylor Peninsula

In recent years, the Nisga'a Nation has attempted to buy Crown title to the Mylor Peninsula and add it to Nisga'a Lands over Coast Tsimshian objections. Despite this, and despite the Nisga'a Nation being a party to the Coast Tsimshian title claim currently before the courts, the Project application's information on "Indigenous interests" makes no mention of it whatsoever.[24]

Both the Crown and the Nisga'a Nation are aware from the evidence Metlakatla has already provided as part of those consultations and related litigation, and as part of the Rights Impact Assessment (RIA) Metlakatla filed as part of the Project assessment, that Metlakatla members intensively use the Mylor Peninsula and its environs for travel, harvesting, camping, spiritual and other purposes.[25] It is also home to two *spanaxnox* (supernatural beings). Metlakatla members' use of this important area is set out in the following two maps included with the RIA, which are from two larger traditional land use studies in 2014 which the Crown has already been provided:[26]

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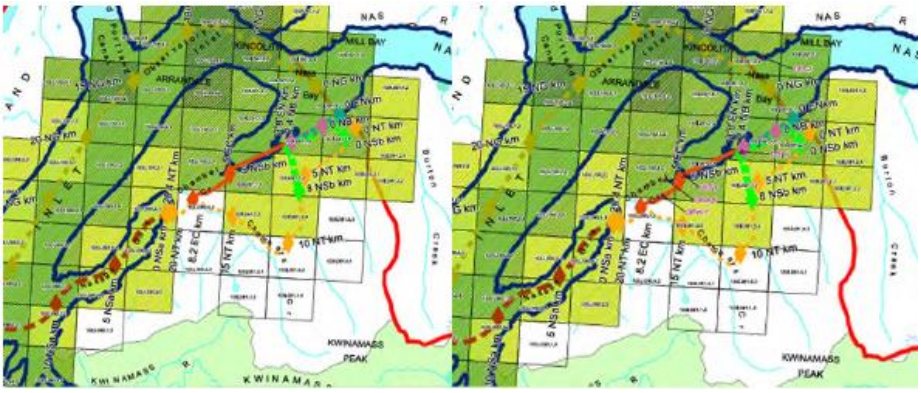
[22] April 6, 2023 e-mail from IAA to EAO regarding the Notice of Substitution Approval.
[23] April 29 and July 19, 2022 Detailed Project Descriptions, pp. 29-31.
[24] Appendix F: Updated Transmission Line Assessment Area Supplemental Information (August 2024) at F-43-F48.
[25] Firelight Research Inc. with the Metlakatla Stewardship Society, *Metlakatla First Nation: Rights Impact Assessment of Ksi Lisims LNG* (31 January 2025) [submitted to British Columbia Environmental Assessment Office];
[26] See *Metlakatla First Nation Traditional Land Use and Ecological Knowledge of TransCanada Pipelines Limited's Proposed Prince Rupert Gas Transmission Project Final Report* (2014) and *Metlakatla First*



In a decision to issue an injunction that halted the sale of the Mylor Peninsula to the Nisga'a Nation, the B.C. Supreme Court found Metlakatla's Aboriginal title claim to the Mylor Peninsula "a strong claim to aboriginal title".[27] Although the B.C. Court of Appeal reversed the B.C. Supreme Court's decision to issue the injunction on other grounds, it considered a number of arguments made by the Province and the Nisga'a Nation, and specifically stated that it had no reason to assume that the chambers judge who heard the matter had erred in her assessment of the strength of the title claim.[28] The chambers judge's analysis is therefore still valid and persuasive.

Accordingly, the views of the B.C. Supreme Court and Court of Appeal must be taken into consideration. As the Supreme Court of Canada held in the *Vavilov* decision, "any precedents on the issue before the administrative decision maker or on a similar issue will act as a constraint on what the decision maker can reasonably decide."[29] *Vavilov* further provides that the correctness standard applies to the issue of Aboriginal title and rights because "the scope of Aboriginal and treaty rights under s. 35 of the *Constitution Act, 1982*, and other constitutional matters require a final and determinate answer from the courts."[30]

Given the relevant finding by the courts, consequential considerations apply. The Supreme Court of Canada has stated that "[w]here a claim is particularly strong — for example, shortly before a court declaration of title — appropriate care must be taken to preserve the Aboriginal interest pending final resolution of the claim."[31] The Mylor Peninsula is part of the the Khutzeymateen Grizzly Bear Zone and has critical habitat.[32] It should have been properly assessed.

This deficient approach to assessment also adds to the existing risk that connecting the Project to the grid will be delayed and the risk associated with the current lack of consent.

For example, if or when the B.C. Supreme Court eventually issues a declaration of Aboriginal title over the Mylor Peninsula in favor of the Coast Tsimshian, the Project may need to be cancelled and any Project components installed on the Mylor Peninsula removed. The Supreme Court of Canada has stated that "[o]nce title is established, it may be necessary for the Crown to reassess

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Nation Traditional Land Use and Ecological Knowledge of Spectra Energy Corp.'s Proposed Westcoast Connector Gas Transmission Project Final Report (2014) both provided to Crown on several occasions.

[27] *Reece v Canada (Attorney General),* 2022 BCSC 865 ("*Reece*") at paras. 93, 110.

[28] *British Columbia (Attorney General) v. Reece*, 2023 BCCA 257 ("*Reece BCCA*") at para. 38.

[29] *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 112.

[30] *Vavilov* at para. 55.

[31] *Tsilhqot'in* at para. 91.

[32] Appendix F (April 2024) at Figure F-2, e.g. the Marbled Murrelet, a species listed under the federal *Species at Risk Act*, SC 2002, c 29.

prior conduct in light of the new reality in order to faithfully discharge its fiduciary duty to the title-holding group going forward. For example, if the Crown begins a project without consent prior to Aboriginal title being established, it may be required to cancel the project upon establishment of the title if continuation of the project would be unjustifiably infringing [on Aboriginal title]."[33]

Metlakatla continues to withhold consent because the approach to the transmission line does not meet the requirements of the EA Act, IAA, and the honour of the Crown.

(e) Marine shipping

i. Summary of issue

The EA Act and IAA each require a thorough assessment of technically and economically feasible alternative means for the Project. In the context of marine shipping, this required assessment of alternative shipping routes, especially given the potential to impact Indigenous rights in Chatham Sound and Brown Passage, sensitive fisheries, and marine mammal critical habitat.

However, after only examining the availability of navigation aids and marine pilotage services, the Project review abruptly concluded that no other route other than an existing one ("Route A") could be used. EAO has proposed measures that might allow the proponent to change routes later, apparently at the proponent's option. However, this does not meet the requirements in ss. 25(2)(i) of the EA Act and 22(e) of the IAA to assess alternative means and look to mitigate or accommodate impacts to Metlakatla's before the Project is approved.

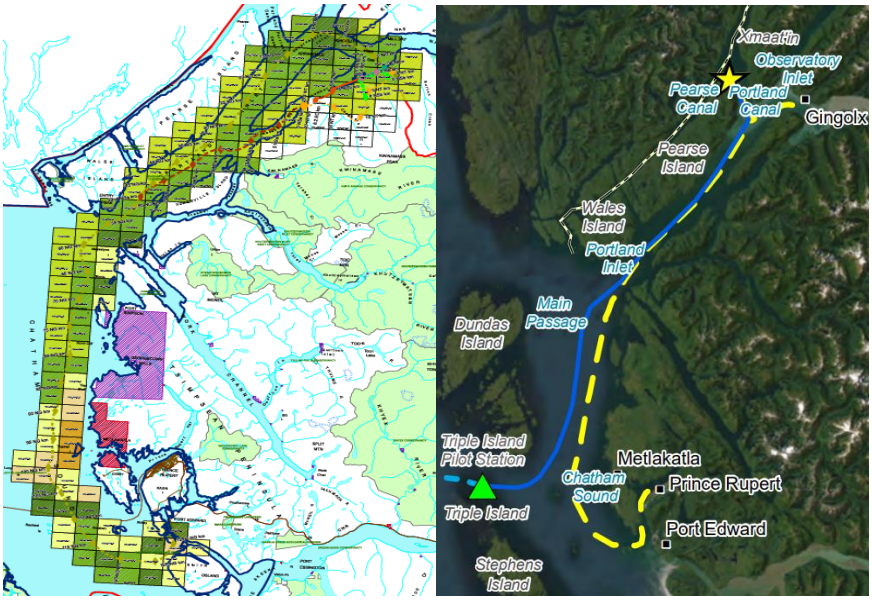
This lack of a proper alternative means assessment has precluded the examination of important potential means of accommodating Metlakatla's rights such that Metlakatla could even consider whether to provide informed consent. In view of these omissions, Metlakatla continues to withhold consent for the Project.

ii. No reasonable alternative means analysis with respect to marine shipping

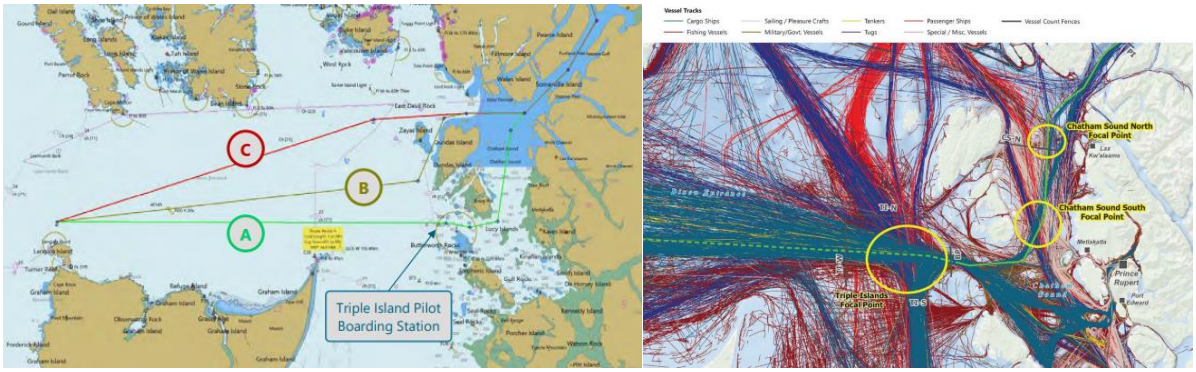
The Project contemplates about 468-520 new marine transits annually during the construction phase and 208 new marine transits annually during the operations phase by vessels providing materials and supplies to the Project, between Prince Rupert and the Project site via Chatham Sound.[34] It also contemplates between 140-160 new marine transits to and from the Project site and the open ocean by large marine tanker vessels shipping LNG, again via Chatham Sound.[35]

As outlined in the RIA, Metlakatla members have intensively and extensively harvested marine resources throughout Chatham Sound since time immemorial,[36] as is also documented by prior traditional use reports known to the Crown for many years (see below).

[33] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 ("*Tsilhqot'in*") at para. 92.
[34] Project Application, section 1.4.6.3.
[35] Project Application, section 1.4.6.3.
[36] Metlakatla Rights Impact Assessment, Appendix C.



Avoiding impacts to the exercise of these rights and to areas of importance to the related fisheries and to marine mammals is therefore of central importance to Metlakatla, particularly in view of the cumulative effects associated with existing marine shipping conditions in the area contemplated by the default "Route A", which is already heavily transited (see below illustrations).



A useful illustration (above, right) of the current marine "focal points" for marine traffic appears in the Project's Navigation Safety Assessment, which makes the following relevant observation regarding Route A: "[f]ishing vessel movements are concentrated in Chatham Sound and near Prince Rupert … the most likely locations for interactions with fishing vessels is in Chatham Sound, and to a lesser extent, Brown Passage."[37]

The Marine Resources Valued Components Effects Assessment also acknowledges that "[t]he Marine Shipping [open water assessment area] overlaps many [fisheries important areas] as well as designated critical habitat for northern resident killer whales. In addition, the Marine Shipping [regional assessment and open water assessment areas] overlap six [Ecologically and Biologically Significant Areas]"[38] including in Chatham Sound. It also notes that "First Nations in

[37] Navigation Safety Assessment at p. 21.
[38] Marine Resources Valued Components Effects Assessment, page 7.9-23.

the vicinity of the Project have provided information through engagement on the use and importance of many fish species for both traditional and subsistence fisheries."[39]

Accordingly, throughout the review process, Metlakatla has advocated for a fulsome assessment of the "Route C" pictured above as a potential means of accommodation, capable of reducing or avoiding serious, cumulative impacts to the exercise of title and rights, especially fishing, and to sensitive fisheries and marine mammals. This is noted in the Project Application materials.

In response, the Project Application states that the assessment of marine shipping routes "relies on recent discussions with government agencies and a TERMPOL Review completed in the early [1980s]."[40] Relying on this decades-old information, the Project Application then concludes that "[c]arriers should not transit Route C due to the navigation hazards. Consideration of other factors, including effects on the environment and Indigenous rights and interests are presented in Table 1.9-4; however, based on safety considerations, only Route A is presented as the preferred option."[41] The Project Application goes on to note Indigenous concerns regarding cumulative impacts from marine shipping in Chatham Sound, and that "[d]uring engagement with Indigenous Nations it was noted that the shipping route to the north of Dundas Island was more direct and avoided fishing grounds in Chatham Sound."[42]

Finally, the Project Application refers to the Navigation Safety Assessment, which in turn simply states that "[t]he vessel traffic patterns assessed in this report support the conclusion that the routes north of Dundas Island should not be used. There are no large cargo vessels using the alternative routes. Using the alternative routes would result in significant changes to regional traffic patterns and existing pilotage services."[43] To similar effect, the Marine Route report simply states "Route C is also navigable by the design vessels and is shorter than Route B and Route C has no other significant benefits."[44]

This approach is grossly insufficient. In the face of serious, cumulative impacts to a multitude of Indigenous rights, sensitive fisheries, critical habitat, and species at risk, Route C was dismissed without proper assessment; specifically, the statutory requirements to assess alternative means under the EA Act and the IAA were not followed.

iii. Alternative means assessment requirements

Section 25(2)(i) of the EA Act and Section 22(e) of the IAA require assessing technically and economically feasible alternative means, including best available technologies, and their potential effects, risks, and uncertainties. EAO guidance mandates: (i) identifying the preferred means; (ii) describing all considered alternatives; (iii) describing methods and criteria for comparing alternatives and selecting the preferred means, considering environmental, economic, social, cultural, health effects, Indigenous rights, studies, Indigenous knowledge, diverse populations, GHG emissions, and risks.[45] It must address effects, risks, and uncertainties of feasible

[39] Marine Resources Valued Components Effects Assessment at pages 7.9-28-37.
[40] Project Application, s. 1.9.1.2.
[41] Project Application, s. 1.9.1.2.
[42] Project Application, s. 1.9.1.2.
[43] Revised Project Application, Appendix E, at section 2.7, page 21.
[44] Navigation Safety Assessment, Marine Route, page 4.
[45] EAO Guidelines, pages 12-13.

alternatives, discuss how best available technologies were considered, and summarize the potential effects, risks and uncertainties of the preferred means and how these are addressed.[46]

Federal IAA guidance requires an alternatives analysis to start during the Planning Phase with the Initial Project Description, focusing on: (i) project components and activities; (ii) positive and adverse effects of potential alternative means, including mitigation; (iii) status of valued components impacted; (iv) potential to enhance positive effects; and (v) Indigenous and public views.[47] The assessment is to consider alternative locations, methods, routes, designs, technologies, mitigation, and ways to enhance positive effects.[48]

This analysis was not applied; in particular, impacts to Indigenous rights and the environment were not meaningfully considered. Rather, as set out above, the Project Application materials simply make cursory observations and conclusory statements regarding the availability of navigation safety and pilotage services, after which the proponent comes very quickly to the conclusion that only Route A is worth exploring, and indeed proceeds to only assess Route A.

In response to Indigenous concerns, EAO has proposed to remove the marine shipping route from the Certified Project Description and update a series of conditions requiring the proponent to submit a project change in the event it one day pursues an alternative shipping route.[49]

It is unclear what this step would accomplish. However, it does not excuse or replace the statutory requirement of a proper alternative means analysis. The proponent would not be required to assess other marine shipping routes, and there is no reason to think that the proponent will ever consider such routes when the evidence is that the pilots strongly prefer and would indeed choose the marine route they are used to (Route A).[50] EAO's proposed step is therefore irrelevant. Ill-defined or voluntary measures that do not accommodate or mitigate impacts at the time a Project is approved, even where they take the form of future plans, do not qualify as accommodation or mitigation measures.[51] Nor do efforts which relate to future research and development.[52]

Given the impacts to Metlakatla's title and rights and to several keystone fisheries, threatened species, and species at risk, it was essential that alternative means be properly assessed before approving the Project.

Because the Crown is relying on the regulatory process to discharge its duty to consult Metlakatla, meeting statutory requirements is a basic expectation. The deficient approach to assessing

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[46] EAO Guidelines, pages 12-13.
[47] IAA Guidance: "Need for", "Purpose of", "Alternatives to" and "Alternative means" at section 2.
[48] IAA Policy Context: "Need for", "Purpose of", "Alternatives to" and "Alternative means" at section 5.
[49] Certified Project Description for the Ksi Lisims LNG – Natural Gas Liquefaction and Marine Terminal (Draft) [Schedule A to Environmental Assessment Certificate # XXX-XX]
[50] "Response to Questions on What Would Need to be Considered for Alternative Preferred Routes" prepared by Transport Canada, dated March 31, 2025, p.2: "It must be noted that there are currently no established vessel routing systems in Dixon Entrance, such as a Traffic Separation Scheme, two-way routes, or recommended tracks. This means that the Vessel Master ultimately has discretion to choose their route based on what they deem to be most safe and efficient. For the Ksi Lisims LNG Project, the NSAP report found that it would be highly likely that a Vessel Master would choose a direct route (proponent's preferred Route 'A') to Triple Island Pilot Boarding Station, where the project carriers would be required to pick up a pilot for the Compulsory Pilotage Area."
[51] *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 ("*Tsleil-Waututh*") at para. 661.
[52] *Pembina Institute for Appropriate Development v. Canada (Attorney General)*, 2008 FC 302 ("*Pembina*") at para. 25.

marine shipping routes has removed an important form of potential accommodation from any consideration whatsoever, inherently frustrating the possibility of informed consent.

(f) Species at Risk Act ("SARA") requirements not met

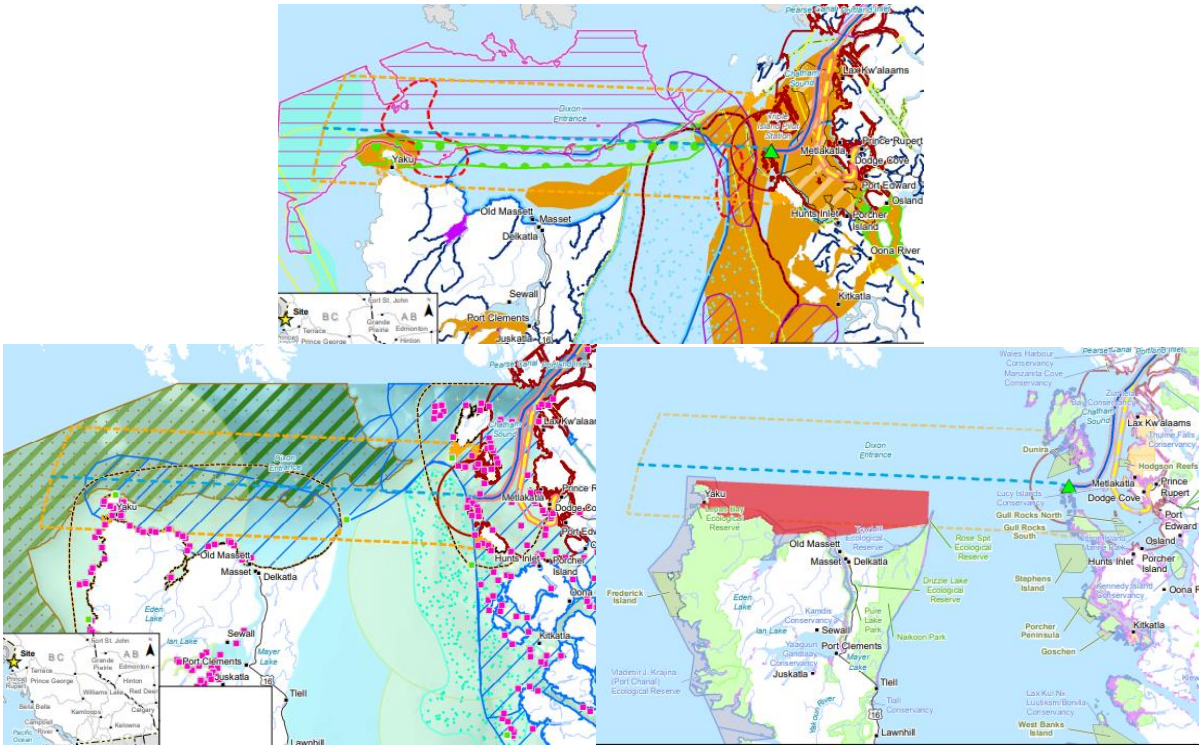
i. Summary of Issue

As noted in the above sections, the assessed marine Route A transits several areas designated as important to sensitive fisheries and marine mammals. Noise from marine shipping will exceed levels associated with causing harm to marine mammals. This will harm northern resident killer whales (a keystone species for Metlakatla and a threatened species under SARA) and their protected critical habitat, which lies a mere 5 to 10km south of Route A. This issue went entirely unidentified in the Project Application materials.[53]

Project marine shipping therefore triggers the process set out under ss. 73 and 79 of SARA, which includes a requirement for a permit. This circumstance also further emphasizes the missed opportunity to conduct a proper alternative means assessment respecting other potential marine shipping routes. This is another reason that Metlakatla continues to withhold consent.

ii. Marine shipping risks effects, including cumulative effects, on critical habitat

Killer whales are a keystone species for Metlakatla. As noted in the Metlakatla Rights Impact Assessment, Metlakatla's relationship with the orca is a central part of their culture, spirituality, and connection with the ancestral landscape.[54]



[53] Project Application, Table 1.9-4, p. 1-62: "As the shortest route [Route A], expected to have the least potential for potential interactions with marine mammals."
[54] Metlakatla Rights Impact Assessment, section 5.2.3.

As illustrated in the above images from the Project Application materials, Route A transits several DFO recognized areas of critical importance to keystone fisheries and species at risk (at left and top). It also transits 5 to 10 km away from critical habitat of the northern resident killer whales as protected under the *Species at Risk Act* (at right).[55] Astonishingly, the Project Application erroneously concludes that Route A is "the shortest route, expected to have the least potential for potential interactions with marine mammals."[56]

This is at odds with the Marine Resources document, which states that "the Marine Shipping [Regional Assessment Area and Open Water Assessment Area] overlap DFO [Important Areas] for several marine mammal species, including northern resident killer whales … Northern resident killer whale distribution is highly seasonal and follows that of its prey … A designated critical habitat for northern resident killer whales exists in Dixon Entrance to the north of Haida Gwaii."[57]

The Marine Resources document also states that the northern residents "rely heavily on acoustic communication and prey detection" and acknowledges that "[t]here is a high likelihood that underwater noise levels from marine shipping will exceed the 120 dB re 6 1 µPa threshold for marine mammal disturbance."[58]

It further confirms that the critical habitat for northern resident killer whales will be harmed by noise from marine shipping, because the critical habitat will "[overlap] the area of exceedance of the 120 dB re 1 µPa rms [sound pressure level] behavioural threshold … This critical habitat extends approximately 90 kilometres east to west along the north end of Haida Gwaii and begins approximately 5 to 10 km away from the shipping route."[59] Problematically, the projected acoustic disturbance extends well into the critical habitat at a radius of 20.8 km at 16 knots and 28.2km at 14 knots from Route A.[60]

Despite the presence of this serious issue, the Marine Resources document avoids and minimizes it by stating that the sound disruption would "not overlap the entirety of the critical habitat."[61] Confusingly, the Acoustic Valued Components assessment contains an irreconcilable statement that acoustic effects of marine shipping need only be assessed within 3 km because "noise emanating from the facility and marine vessels will attenuate to background levels within 3 km."[62]

iii. Species at Risk and alternative means requirements

There are several provisions in SARA directed to the protection of listed species and their critical habitat, several of which are found along Route A. This is another reason that a proper alternative means assessment was required, to avoid harming these species and their critical habitat.

Section 79(1) of SARA requires the person assessing a project, here EAO, to notify the responsible federal minister "without delay" if a project is likely to affect a listed wildlife species or its critical habitat. EAO must identify adverse effects on listed species and their critical habitat and ensure measures are taken to avoid or lessen those effects and monitor them, consistent with

[55] See e.g. Marine Resources, Figures 7.9-6, 7.9-9, and 7.9-10.
[56] Project Application, Table 1.9-4, p. 1-62.
[57] Marine Resources, p. 7.9-38-39.
[58] Marine Resources, p. 7.9-141.
[59] Marine Resources, p. 7.9-142.
[60] Marine Resources, p. 7.9-141.
[61] Marine Resources, p. 7.9-142.
[62] Acoustic Valued Components Assessment, pages 7.3-6, 7.3-38.

applicable recovery strategies and action plans. Section 58(1) of SARA specifically prohibits destruction of the critical habitat of a threatened species.[63]

Section 73(1) allows the Minister to authorize activities affecting a listed species, critical habitat, or individual residences, by issuing a permit or entering into an agreement only if the preconditions in s. 73(3) are met: (i) all reasonable alternatives to the activity that would reduce impacts have been considered and the best solution adopted; (ii) all feasible measures will be taken to minimize the impacts of the activity on the species, habitat, or residences; and (iii) the activity does not jeopardize species survival or recovery. In this case, the preconditions have not been met.

As set out above, and throughout the Metlakatla RIA and Project assessment materials, Route A transits several DFO recognized areas of critical importance to keystone fisheries and species at risk. The Marine Resources document admits that the harm to northern resident killer whales and their critical habitat from noise from Project-related marine shipping would go on for decades and be cumulative in nature, because "the ambient soundscape in the Marine Shipping RAA is already at or in exceedance of the behavioural disturbance threshold of 120 dB re 1 µPa."[64]

The *Recovery Strategy for the Northern and Southern Resident Killer Whales* applicable under SARA states that principal among threats from human activity "are environmental contamination, reductions in the availability or quality of prey, and both physical and acoustic disturbance."[65] The Recovery Strategy also states that critical habitat requires an "[a]nthropogenic noise level that does not interfere with life functions and is sufficient for effective acoustic social signaling and echolocation to locate prey; anthropogenic noise level that does not result in loss of habitat availability or function."[66]

As discussed above, the Project materials readily admit that Route A overlaps with Fisheries and Oceans Canada ("**DFO**") important areas. It also plainly sets out that marine shipping will emit harmful levels of acoustic disturbance well into SARA-protected critical habitat. The requirements of ss. 79 and 58 of SARA are therefore triggered, further highlighting the importance of a proper alternative means assessment.

However, nothing has been proposed to mitigate effects on the northern resident killer whales and their critical habitat, save for federal condition 3.15, which is not a mitigation measure, but merely requires an underwater noise impact study for LNG carriers. Again, as noted above, ill-defined measures that do not accommodate or mitigate impacts at the time a Project is approved, even if they take the form of future plans, do not qualify as accommodation or mitigation measures.[67] Nor do efforts which relate to future research and development.[68]

This flawed approach to species at risk further underscores the importance of a proper alternative means assessment and is another reason Metlakatla continues to withhold consent.

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[63] See also *Critical Habitat of the Killer Whale (Orcinus orca) Northeast Pacific Northern Resident Population Order*, SOR/2018-279.
[64] Marine Resources, p. 7.9-141-142.
[65] Fisheries and Oceans Canada. 2018. *Recovery Strategy for the Northern and Southern Resident Killer Whales (Orcinus orca) in Canada*. Species at Risk Act Recovery Strategy Series, Fisheries & Oceans Canada, Ottawa ("**Recovery Strategy**")., p. vi (Executive Summary).
[66] Recovery Strategy, p. 52.
[67] *Tsleil-Waututh* at para. 661.
[68] *Pembina* at para. 25.

(g) Indigenous legal system

i. Summary of Issue

As noted throughout this submission, the Project is being proposed by a nation that has been Metlakalta's neighbor for millennia, the Nisga'a Nation. That gives rise to obligations to Metlakatla on the part of the Nisga'a Nation under the Indigenous legal system applicable to both nations. Those obligations have not been complied with by the Nisga'a Nation, and the project review process does not take that into account.

The Crown is well aware of the existence and requirements of the common legal system between the two nations, the existence of an active dispute regarding the Mylor Peninsula, and the fact that the nations have addressed territorial boundary issues before, for example when the Nisga'a Nation concluded its treaty.[69] In view of the adoption of UNDRIP into federal law, the honour of the Crown required that the Indigenous legal system be incorporated into the consultation and decision-making process, including in the context of seeking Metlakatla's consent to the Project.

Reconciliation is also a required consideration under s. 29(4) of the EA Act and appears in the preambles of the IAA and the *Impact Assessment Cooperation Agreement Between Canada and British Columbia*. As proposed, the Project disregards the Indigenous legal system completely while granting a potential economic benefit in favour of the Nisga'a Nation and setting up the "no-win" situation for Metlakatla described above. The Project would cause extensive and severe impacts on Metlakatla's title, rights, and the environment for decades. This approach inappropriately seeks to circumvent the Indigenous legal system's requirement that the Nisga'a Nation deal with Metlakatla under their own Indigenous legal system regarding the Project.

ii. Indigenous legal system and requirements of the honour of the Crown

As set out above, the Project is subject to a substituted federal-provincial process. The EA Act and the IAA each include language committing the Crown to implementing UNDRIP in the context of environmental/impact assessment,[70] as does the underlying cooperation agreement.[71]

In a recent decision, *Kebaowek First Nation v. Canadian Nuclear Laboratories*, the Federal Court found that "UNDRIP is a contextual factor that gives rise to an enhanced obligation to consult … the adoption of the UNDRIP into Canadian law now requires more."[72]

The Federal Court found that the federal legislative adoption of UNDRIP through the *United Nations Declaration on the Rights of Indigenous Peoples Act*, and particularly the concept of free, prior, and informed consent ("**FPIC**"), "requires an enhanced and more robust process to ensure that consultation processes [are] tailored to consider … Indigenous laws, knowledge, and practices, and that the process [is] directed towards finding mutual agreement."[73]

Kebaowek was a case that dealt with Article 29 of UNDRIP, but the Federal Court's reasoning applies with equal force to all rights recognized by the Articles of UNDRIP.

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[69] See e.g. 1996 MOU referenced in *Reece v. Canada* paras. 150-151.
[70] EA Act, preamble, s. 2(2)(ii); IAA, preamble.
[71] Impact Assessment Cooperation Agreement Between Canada and British Columbia, preamble.
[72] *Kebaowek First Nation v. Canadian Nuclear Laboratories*, 2025 FC 319 ("*Kebaowek*"), at para. 124. (Emphasis added.)
[73] *Kebaowek* at para. 133.

UNDRIP provides that Indigenous peoples have the right to:

- Maintain their spiritual connection with traditionally owned or used lands, territories, waters, and resources, and uphold responsibilities to future generations (Article 25);

- Have their land, territory, and resource rights recognized through a fair, transparent process respecting their laws, traditions, and tenure systems (Article 27);

- Determine development priorities for their lands and resources, with states required to consult and obtain their free, informed consent prior to approving projects affecting these areas (Article 32); and

- Access just, fair, and prompt dispute resolution processes with states or others, considering their customs, rules, and legal systems, and international human rights, with effective remedies for rights violations (Article 40).

The EA Act and related processes focus to some extent on obtaining the consent of Indigenous nations in the context of project assessments.[74] Given the above Articles of UNDRIP, where the Crown seeks to rely on the EA Act and substituted process, the relevant consent requirements ought to require processes necessary to give rise to informed consent. For example, the lack of a proper alternative means assessment, as detailed at length above, has operated to exclude important forms of potential accommodation from consideration and thereby deprived Metlakatla of a proper opportunity for informed consent.

The requirements of the Indigenous legal system which Metlakatla shares with the Project proponent, the Nisga'a Nation, are an important part of this context because, as noted above, important parts of the Project are being proposed on lands and waters claimed by the Coast Tsimshian.[75] This circumstance and the related disregard for the Indigenous legal system is noted throughout the Metlakatla Rights Impact Assessment.[76]

For example, the Indigenous legal system or *adaawx* details a powerful supernatural being, Ts'oode, carving a protected path for Coast Tsimshian people to access the eulachon fishery at the mouth of the Nass River.[77] Route A mirrors this safe route and imperils it.

The *adaawx* also details the painting of a pictograph on the Mylor Peninsula signifying in the Indigenous legal system, among other things, Coast Tsimshian territorial control.[78] These claims have gone unchallenged by the proponent Nisga'a Nation in their shared Indigenous legal system. Rather than deal with Metlakatla as that legal system dictates, the Nisga'a Nation has instead chosen to circumvent it by proposing the Project under the EA Act and IAA. Accordingly, as proposed, the Project actively looks to undermine both the Indigenous legal system and UNDRIP.

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[74] See e.g. ss. 16(4)(b), 16(5)(b), 17(6), 29(2)(c), 29(5), 29(7).
[75] The Tsimshianic legal system has been described in detail to the Province and Canada in a series of reports by Dr. Andrew Martindale titled *Exploring the Nine Tribes-Nisga'a Territorial Dispute with Reference to Tsimshianic Legal Principles from Published and Archival Sources*, in the context of litigation in Aboriginal title litigation (BCSC Court No. S217708) and in the course of consultation. The Crown is also aware that a 1996 MOU was reached between the Coast Tsimshian and Nisga'a Nation regarding the *Nisga'a Final Agreement* and respecting territorial boundaries.
[76] Metlakatla Rights Impact Assessment, ss. 5.3.3 and 5.4.2.
[77] Metlakatla Rights Impact Assessment, ss. 4.1.2 and 5.2.1 and Appendix D, citing Martindale.
[78] Metlakatla Rights Impact Assessment, ss. 4.1.2 and 5.2.1 and Appendix D, citing Martindale.

Although the preamble to the *Nisga'a Final Agreement* commits the Nisga'a Nation to following this Indigenous legal system, it has chosen to sidestep the obligation to deal directly with Metlakatla on the Project and instead attempt to rely on the EA Act and actions of the Crown.[79]

The facilitator appointed to oversee Metlakatla's s. 28 dispute resolution process with EAO provided the following relevant recommendation:

> *Recommendation*: When a project is being proposed in an area where there are multiple Indigenous nations with overlapping interests, consider the order in which discussions take place. Where the project proponent involves an Indigenous nation, this includes asking the proponent to resolve any disagreements amongst its neighboring nations prior to project application and before environmental assessment begins on a project. This step is especially critical when one nation (the Nisga'a Nation) is a proponent and has vested interest in the project moving forward AND there is/are active title and rights claims to the lands on which the project is being proposed.

The facilitator also recommended that "[a]t all stages of discussion, make explicit how Indigenous laws are being taken into consideration. Ensure that any decision taken clearly demonstrates how that consideration impacts the decision."[80]

Metlakatla's position is that the Crown is required to set up processes that acknowledge and incorporate the applicable Indigenous legal system as part of seeking Metlakatla's consent and as part of any decision made regarding the Project. This is another important gap that exists in the existing process, and another reason Metlakatla continues to withhold consent.

D. Conclusion and Remedy

(a) Conclusion

Metlakatla continues to withhold consent to the Project in view of the concerns set out in this submission. The Project has not undergone a complete environmental assessment and the requirements of the EA Act, the IAA, and the honour of the Crown have not been met.

The courts have been clear that a decision-maker cannot rely on a flawed assessment report.[81] The material deficiencies in the environmental assessment for the Project do not permit the provincial Ministers or the federal Minister of Environment and Climate Change to make an informed decision about the significant adverse impacts/effects of the Project nor properly determine whether the Project is sustainable or in the public interest.

Furthermore, the Supreme Court of Canada has held that "the duty to consult, being a constitutional imperative, gives rise to a special public interest that supersedes other concerns typically considered by tribunals tasked with assessing the public interest … A project

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[79] *Nisga'a Final Agreement*, preamble, "WHEREAS the Parties acknowledge the ongoing importance to the Nisga'a Nation of the *Simgigat* and *Sigidimhaanak* (hereditary chiefs and matriarchs) continuing to tell their *Adaawak* (oral histories) relating to their *Ango'oskw* (family hunting, fishing, and gathering territories) in accordance with the *Ayuuk* (Nisga'a traditional laws and practices)"

[80] Facilitator's Dispute Resolution Report regarding s. 28, page 8.

[81] *Tsleil-Waututh* at paras. 469-471.

authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve the public interest."[82]

The flawed environmental assessment therefore results in the following conclusions:

Under the EA Act, for the reasons set out above, the Project is not consistent with the promotion of sustainability, which requires "protecting the environment and fostering a sound economy and the well-being of British Columbians and their communities" (EA Act, s. 29(2)(b)(i)). The Project is expected to release greenhouse gas emissions indefinitely, which is manifestly unsustainable.

Without electrification, the Project will undermine federal and provincial climate commitments and severely impact Indigenous rights and the environment. The impact of greenhouse gas emissions from the Project on the environment, and on British Columbians and their communities cannot result in a conclusion that the Project promotes sustainability. The Projects' anticipated impacts to species at risk and Indigenous rights are also inconsistent with protecting the environment or the "well-being of British Columbians and their communities". The Project, as currently proposed, is simply unsustainable.

As set out above, environmental legislation is intended to be interpreted and applied "in a manner that will counteract the ability of immediate collective economic and social forces to set their own environmental agendas" and demands "a blueprint for protective action."[83] Approving the Project in its current state would run against these objectives while providing no blueprint for protective action whatsoever.

EAO therefore should not refer the Project application to the ministers for a decision, and the ministers should certainly not approve the Project, unless and until EAO can remedy the flaws in the assessment process identified in this submission.

(b) IAA public interest factors

Under the IAA, as described above, the Project would also have significant adverse effects within federal jurisdiction that would not be mitigated by the proposed provincial and federal conditions. Such significant adverse effects are not justified as being in the public interest based on the factors set out in IAA, s. 63:

i. impact of likely Project effects on Indigenous groups and their rights;

The potential for the Project to confer "economic reconciliation" benefits on the Nisga'a Nation is both a flawed conception of reconciliation and outweighed by the significant adverse impacts of the Project on Metlakatla's title and rights, including the "no-win" situation outlined above.

ii. contribution of likely Project effects on Canada's ability to meet environmental obligations and climate change commitments

The Project would undermine Canada's ability to meet its environmental obligations and commitments in respect of climate change, most notably net zero commitments.

iii. the extent to which likely Project effects contribute to sustainability

[82] *Clyde River* at para. 40.
[83] *Labrador Inuit Assn* at paras 11–12; *Friends of Davie Bay* at para. 35.

Unless the Project is required to be fully electrified by a reasonable date, the marine shipping route is properly assessed (and potentially changed to Route C), and the related issues associated with impacts to rights, fisheries, and species at risk are resolved, the Project is not sustainable.

In light of the above factors, and because the Crown's duty to consult and accommodate Metlakatla has not been met, the Project is not in the public interest and cannot be approved.

(c) Remedy

As a result, as noted above, Metlakatla requests that:

1. EAO not refer the matter to the ministers for a decision until EAO has revised the flaws in the assessment, and satisfied the requirement to work to achieve consensus with Metlakatla with respect to the recommendation on sustainability; and

2. the provincial Minster of Energy and Climate Solutions withdraw the letter relating to net-zero requirements dated March 21, 2025 and require the Project to provide a credible plan to achieve net-zero by a reasonable date.

In the event that EAO insists on prematurely referring the Project application to the ministers, Metlakatla reiterates its request that the Minister withdraw its March 21, 2025 letter and requests:

1. that the provincial Ministers either refuse to issue the EA certificate, or propose a mechanism, which could require a revision to the EA Act, that would allow the Ministers to refer the assessment back to EAO for reconsideration to remedy the flaws in the environmental assessment process identified in this submission; and

2. the federal Minister of Environment and Climate Change determine that the Project is not in the public interest, and accordingly issue a decision statement under IAA, s. 65 refusing to approve the Project.

Metlakatla Governing Council

P.O. Box 224, Prince Rupert, BC, V8J 3P6
Phone: (250) 622-2816

June 10, 2025

John Antill
Project Assessment Director
Environmental Assessment Office
PO Box 9426 Stn Prov Govt
Victoria, BC V8W 9V1

By Email: john.antill@gov.bc.ca

Re: Ksi Lisims LNG Environmental Assessment – EAO Dispute Resolution and Referral Timelines Update

Dear Mr. Antill:

I am writing on behalf of Metlakatla First Nation ("**Metlakatla**"), in response to the BC Environmental Assessment Office's ("**EAO**") email at 4:21pm on Thursday June 5 regarding the ongoing dispute resolution processes ("**DR**") and EAO's anticipated referral update timeline for the ongoing environmental assessment for the proposed Ksi Lisims LNG project (e-mail enclosed as **Schedule "A"**).

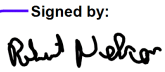
As you are aware, Metlakatla and Lax Kw'alaams are each participating in separate DR processes with EAO under the *Environmental Assessment Act*. The timeline in your email states that the referral package will be prepared before the two DR processes end on June 30, 2025. It also sets out dates for EAO to consult with Indigenous nations on the updated referral package, all while DR with Metlakatla remains ongoing. Setting such aggressive deadlines for review and consultation on an updated referral package, before the two DR processes even end, raises the acute concern that EAO is not approaching this matter with an open mind, and instead treating it as an opportunity for Metlakatla to "blow off steam" before EAO does what it intended to do all along respecting this project.

Specifically, Metlakatla has assumed that participating in the DR process could lead to changes in connection with the project to address our concerns. Accordingly, Metlakatla needs sufficient time to consider and revise its Rights Impact Assessment (RIA) based on the outcome of the DR process, including with respect to any newly proposed or revised conditions. Given this, it seems unreasonable for EAO to demand RIA revisions and a high-level summary of Metlakatla's views on the project until after both DR processes end. Further, the suggested 11 calendar days (June 30 – July 11) is an unreasonably short window in which to accomplish all of this, much less allow the finished product to be meaningfully considered and properly incorporated into the relevant referral materials.

Lastly, unless EAO has already decided to not to address Metlakatla's concerns whatsoever, it is unclear how EAO could move to consult with other parties on an updated referral package prior to the completion of all DR processes, which could change the contents of the referral package, including draft conditions, and/or other important aspects of the project and project review.

Metlakatla is deeply troubled by the proposed timeline and approach, and EAO's failure to uphold the honour of the Crown in the circumstances. Please provide a revised timeline that reflects an open mind on the part of the Crown by beginning the important steps being proposed only after both DR processes end, and allowing adequate time for meaningful consultation and accommodation.

Sincerely,

Signed by:

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Chief Robert Nelson
Metlakatla First Nation

Schedule "A"
June 5, 2025 E-mail from EAO

From: Tavakoly Nabavy, Niloofar EAO:EX <Niloofar.TavakolyNabavy@gov.bc.ca>
Sent: June 5, 2025 4:21 PM
Cc: Antill, John EAO:EX <John.Antill@gov.bc.ca>; Hubert, Edwin EAO:EX <Edwin.Hubert@gov.bc.ca>; Ostman, Kyle EAO:EX <Kyle.Ostman@gov.bc.ca>; Hart,Victoria (IAAC/AEIC) <victoria.hart@iaac-aeic.gc.ca>; Neil,Ross (IAAC/AEIC) <ross.neil@iaac-aeic.gc.ca>; Leung,Emily (IAAC/AEIC) <emily.leung@iaac-aeic.gc.ca>; Manickum,Katherine (IAAC/AEIC) <Katherine.Manickum@iaac-aeic.gc.ca>; Kee,Heather (IAAC/AEIC) <heather.kee@iaac-aeic.gc.ca>
Subject: Ksi Lisims LNG - Dispute Resolution and Referral Timelines Update

Hello,

I am writing to provide updates on the dispute resolution processes and anticipated referral timeline for the Ksi Lisims LNG environmental assessment (EA).

Dispute Resolution
On May 27, 2025, the dispute resolution facilitator notified Lax Kw'alaams, Metlakatla and EAO that the respective dispute resolution process timelines have been extended and will conclude on June 30, 2025, when the facilitator submits their final report to EAO. This notice is now posted on the EAO website.

Review of Referral Package Changes
As a result of ongoing discussions with participating Indigenous nations, provincial and federal agencies and the DR processes, EAO is proposing some updates to the provincial Table of Conditions, Certified Project Description and Assessment Report. IAAC has also made some additional changes to the federal conditions. The updates to the Table of Conditions and Certified Project Description are in addition to the changes provided for review and comment on April 2, 2025.

While the potential federal conditions prepared by the Impact Assessment Agency of Canada (IAAC) are not part of the provincial referral package or subject to the EAO request for consent decision making, EAO recognizes they form a potential key response from the federal government regarding critical issues identified during the environmental assessment, and we will be sharing updates to the potential federal conditions as well.
To support consensus seeking and to provide an opportunity to revise consent notices, EAO will be sharing these updates with all Participating Indigenous Nations for a 10-day review on June 16, 2025, with feedback requested for June 23, 2025. Additional details describing the updates will be provided when we send the information package. EAO will be asking that you only spend time reviewing and providing feedback on the updates to the materials and not the material that has previously been shared. EAO anticipates that this round of review will be the final request to review referral materials for the Ksi Lisims LNG EA. EAO will look to schedule meetings with participating Indigenous nations the week of June 23, 2025, to discuss any comments received on the updated Table of Conditions, Certified Project Description and Assessment Report.

Conclusion Section of the Assessment Report
In Section 11 Conclusions of the Assessment Report, there is a placeholder for each First Nation to provide a very high-level summary or conclusion of their views of the project. If you wish to do so, **can you please provide this high-level summary for your First Nation by June 23rd**. This is an early heads up to give additional time to work on this and corresponds to reviewing the referral package starting on June 16th. The EAO is happy to assist in this in anyway we can. As an example, this was last done on Cedar LNG (see Part D – Conclusions on page 772).

Following the conclusion of the DR processes, EAO is planning to send the final referral package to all participating Indigenous nations by July 2, 2025, to provide an opportunity to update consent notices by July 11, 2025. These consent notices will be posted to the EPIC site for Ksi Lisims, as well as updating Section 12: Notifications of Consent or Lack of Consent by participating Indigenous nations that will list the consent notices received and if the participating Indigenous nations consent to the project or not.

Please note that feedback on the updated Table of Conditions, Certified Project Description and Assessment Report will inform the final versions that EAO will provide following the conclusion of dispute resolution. This final referral package that the EAO will send will be considered the final version that will be sent to Ministers for their decision making on whether to issue an Environmental Assessment Certificate for Ksi Lisims LNG.

EA Referral and Meeting with the Minister
EAO is planning to refer Ksi Lisims LNG to Ministers by July 14, 2025.
The Ministers will have 30 days to consider whether to issue an Environmental Assessment Certificate. During this 30-day period, EAO can support scheduling meetings between participating Indigenous nations and Minister Davidson. **Please confirm to EAO by June 23, 2025, if a meeting with the Minister is requested.**

Next Steps
In summary here are the tentative key next steps in the DR and EA process:

- June 16 – 23, 2025, participating Indigenous nations review of updated referral package and potential federal conditions
- June 23 – 27, 2025, EAO and participating Indigenous nations meetings on updated referral package
- June 30, 2025, dispute resolution processes conclude
- July 2 – July 11, 2025, final referral package sent to participating Indigenous nations to provide an opportunity to update their consent notice
- July 14, 2025 – EAO referral of Ksi Lisims LNG to Ministers
- July 14 – August 13, 2025, Ministers review of referral package, potential meetings with interested participating Indigenous nations and decision.

Please feel free to contact me if you have any questions.

Thank you for your continued support in this environmental assessment process,

NILOOFAR TAVAKOLY NABAVY (She/Her)
Project Assessment Officer
Environmental Assessment Office
Government of British Columbia
OFFICE: 250 387-0892
MOBILE: 778 679-6595
Twitter.com/BC_EAO

EAO Environmental Assessment Office

The EAO respectfully acknowledges that it carries out its work on the territories of First Nations throughout British Columbia.