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SENT VIA EMAIL

David McGovern
President
Impact Assessment Agency of Canada
22nd Floor, Place Bell
160 Elgin Street
Ottawa ON K1A 0H3
david.mcgovern@iaac-aeic.gc.ca

Dear David McGovern:

I am writing to request substitution pursuant to the *Impact Assessment Act* (IAA) and in accordance with the Impact Assessment Cooperation Agreement Between Canada and British Columbia (the Cooperation Agreement) for the Ksi Lisims LNG Natural Gas Liquefaction and Marine Terminal Project (Ksi Lisims LNG).

Ksi Lisims LNG is proposed by the Nisga'a Nation and its project partners, Rockies LNG Partnership and Western LNG LLC (collectively the "proponents") and would be located on Category A Lands, as defined in the [Nisga'a Final Agreement](#), owned by the Nisga'a Nation in fee simple.

The Nisga'a Nation, as represented by Nisga'a Lisims Government, is a party to the Nisga'a Final Agreement, along with Her Majesty the Queen in right of Canada and Her Majesty the Queen in right of British Columbia. The Nisga'a Final Agreement is a treaty and land claims agreement within the meaning of Sections 25 and 35 of the *Constitution Act, 1982* and represents the first modern treaty in British Columbia. The Nisga'a Final Agreement sets out the Nisga'a Nation's rights under Section 35 of the *Constitution Act, 1982*.

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Chapter 10 – Environmental Assessment and Protection of the Nisga’a Final Agreement (Chapter 10) sets out the obligations of the Parties to the Nisga’a Final Agreement in respect of, among other things, ‘environmental assessments’ conducted for ‘projects’, as these terms are defined in the Nisga’a Final Agreement. Paragraph 1 of Chapter 10 sets out that, upon request of one or more of the Parties, the Parties will negotiate and attempt to reach agreement to “coordinate any Nisga’a, federal and provincial environmental assessment requirements that will meet the Parties’ legal requirements concerning environmental assessments” and “avoid duplication of environmental assessment requirements.”

Based on the location of Ksi Lisims LNG, the project is likely to be subject to federal and provincial assessments and will be subject to the environmental assessment (EA) requirements under Chapter 10 of the Nisga’a Final Agreement. Nisga’a Lisims Government has indicated its support of a substitution request by the Environmental Assessment Office (EAO), in accordance with the spirit and intent of paragraph 1 of Chapter 10 to “avoid duplication of environmental assessment requirements” and to coordinate the conduct of EA of projects with its Treaty partners.

The proponents have indicated a preference that the EAO request substitution, noting an intent to avoid duplication and shared support for the federal and provincial governments’ “one-project, one-assessment” principle.

Observing that the Nisga’a Final Agreement guides parties to “negotiate and reach agreements” on matters to “avoid duplication of environmental assessment requirements” and in accordance with the IAA and the Cooperation Agreement, the EAO submits this request for substitution.

Coordination with the Agency

Ksi Lisims LNG is reviewable under the British Columbia Reviewable Projects Regulation (BC Reg. 607/2019) and will require an EA under the *Environmental Assessment Act* (2018) (the Act).

I understand that the Impact Assessment Agency of Canada (the Agency) accepted an Initial Project Description for Ksi Lisims LNG on July 16, 2021 and intends to conduct a joint public comment period with the EAO. In accordance with the Cooperation Agreement, I am submitting this request for substitution at this time to allow the Agency to consult the public and Indigenous groups on the substitution request as part of the planned comment period. I am aware that the Agency must determine whether an assessment is required, in order for the Minister to respond to this request for substitution.

As per the Cooperation Agreement, the EAO has been working closely with the Agency on the development of a joint early engagement and planning phase to enable coordinated engagement, facilitate common requirements and issue joint documents where possible. The EAO is committed to this cooperative approach with the Agency in the review of the Ksi Lisims LNG.

The EAO understands that Ksi Lisims LNG has the potential to cause direct and cumulative effects to areas of federal interest and acknowledges that an assessment of these effects is required in a substituted process. Should substitution be approved by the Minister, the EAO plans to fully assess these areas. The following paragraphs describe the EAO's experience and approach in some of these areas:

Meeting the Chapter 10 requirements of the *Nisga'a Final Agreement*

Nisga'a Lisims Government has indicated its support for the substitution of an impact assessment of Ksi Lisims LNG to British Columbia. Along with Nisga'a Lisims Government and Canada, the EAO understands that the proposed Ksi Lisims LNG would be subject to the environmental assessment requirements in Chapter 10 of the Nisga'a Final Agreement, in addition to the requirements under the IAA and the Act. The substituted assessment process would gather the necessary information to inform Canada's assessment of the potential effects of the project on the Nisga'a Nation treaty rights and interests, as Canada is required to do under the Nisga'a Final Agreement. At the conclusion of the substituted assessment, Canada would make its own determination of whether the requirements under Chapter 10 of the Nisga'a Final Agreement have been met. The EAO understands that the federal Minister of Environment and Climate Change would issue a Nisga'a Final Agreement Project Recommendation based on this determination at the same time as the issuance of the impact assessment decision for the project.

The EAO is also committed to working collaboratively with the Agency in relation to meeting the applicable obligations under the Nisga'a Final Agreement.

Potential transboundary effects

The EAO's [Effects Assessment Policy](#) (2020), developed to support implementation of the Act, describes that spatial boundaries may extend to areas outside of B.C. in cases where transboundary effects are expected. This builds from the EAO's practice of considering potential transboundary effects under the previous *Environmental Assessment Act* (2002).

During the assessment, the EAO would seek, manage and rely on the advice of members of the Technical Advisory Committee (TAC), including representatives from federal authorities, in establishing information requirements for the assessment, assessing the potential effects of the project, and assessing the adequacy of any proposed mitigation measures. Representatives from United States' (U.S.) federal and state agencies would also be invited to participate as members of the TAC. The EAO would engage Alaskan Tribes as well.

Marine shipping

An assessment of marine shipping effects informs provincial ministers and supports federal decision-making and any potential federal conditions in a Decision Statement under the IAA. An assessment of marine shipping effects is currently being undertaken in a number of substituted projects.

To ensure that the assessment of marine shipping effects is sufficient to inform provincial and federal decision-making, the EAO would, at a minimum, seek and incorporate expertise from federal authorities, including Fisheries and Oceans Canada, Transport Canada, and the Canadian Coast Guard, to ensure robust consideration of Indigenous Knowledge and concerns, provide a rigorous evaluation of potential cumulative effects, and derive key mitigation measures to address the full range of potential effects.

Engagement with U.S. Federal and State Agencies and Native American Tribes

In cases where project effects have the potential to extend beyond Canada's border to the U.S., the EAO routinely engages with U.S. Federal and State agencies and Native American Tribes, as guided by U.S. regulators. Indeed, a [MOU](#) between the State of Alaska and the Province of B.C. establishes, among other items, reciprocal procedures for interested governmental representatives to participate in EAs and develop opportunities for interested Indigenous nations and Tribes to access information and provide meaningful input about development projects affecting transboundary waters. As noted above, the EAO will invite representatives from U.S. federal and state agencies to participate on the TAC and will engage with Alaskan Tribes.

Conclusion and next steps

In accordance with the IAA and the Cooperation Agreement, British Columbia requests that Canada's Minister of Environment and Climate Change (Minister) approve the substitution of B.C.'s assessment process for the proposed Ksi Lisims LNG, should an impact assessment be required under the IAA, and should the project proceed to an EA under the Act. The substitution request is also in accordance with the spirit and intent of paragraph 1 of Chapter 10 of the Nisga'a Final Agreement and is supported by Nisga'a Lisims Government.

If substitution is approved by the Minister, British Columbia commits to meeting the legislative requirements of both Canada and British Columbia and fulfil the conditions for substitution set out in Section 7 of the Cooperation Agreement. The EAO will take into account the factors set out under subsection 22(1) of the IAA, including effects within federal jurisdiction as defined in Section 2 of that Act, when conducting the assessment and providing an Assessment Report with findings and conclusions to the Agency. The EAO also commits to gathering the necessary information to inform Canada's assessment of the potential effects of the project on the Nisga'a Nation treaty rights and interests, as Canada is required to do under the Nisga'a Final Agreement, and to allow Canada to make its own determination of whether the requirements under Chapter 10 of the Nisga'a Final Agreement have been met.

Additionally, if the Minister approves the substitution request, consultation with Indigenous groups and federal authorities, and engagement with the public, will be carried out by the EAO in accordance with the Cooperation Agreement and the Act. The EAO will work with the Agency to coordinate engagement with Indigenous groups. The EAO will also work with the Agency on the preparation of a permitting plan, including federal requirements, for Ksi Lisims LNG.

I look forward to hearing from you as soon as possible regarding the Minister's decision on this request for substitution.

Sincerely,

<Original signed by>

Elenore Arend
Associate Deputy Minister
Environmental Assessment Office

cc: Scott Bailey, Assistant Deputy Minister
Environmental Assessment Office
Scott.Bailey@gov.bc.ca

Heidi Gibson, Executive Project Director
Environmental Assessment Office
Heidi.Gibson@gov.bc.ca

Fern Stockman, Project Assessment Director
Environmental Assessment Office
Fern.Stockman@gov.bc.ca

Quincy Leung, Project Manager
Impact Assessment Agency of Canada
quincy.leung@iaac-aeic.gc.ca