



Huu-ay-aht First Nations | Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations | Toquaht Nation | Uchucklesaht Tribe | Yuułu?if?ath Government

November 21, 2024

Hon. Steven Guilbeault

Minister, Environment and Climate Change
House of Commons
Ottawa, ON K1A 0A6

ministre-minister@ec.gc.ca

Dear Minister:

Re: DESIGNATION REQUEST Regarding the Duke Point Expansion Project (the “Project”)

I write as President of the Maa-nulth Treaty Society, on behalf of Huu-ay-aht First Nations, Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe and the Yuułu?if?ath Government, collectively known as the Maa-nulth First Nations (“Maa-nulth”). Maa-nulth, Canada and British Columbia are parties to the *Maa-nulth First Nations Final Agreement* (the “Maa-nulth Treaty”).

Designation Request

Maa-nulth submit that the Project is a designated project within the meaning of the *Impact Assessment Act* (the “Act”) and a full assessment of the Project is required under the Act. Section 53 of the *Physical Activities Regulations* designates marine terminal projects where construction of a new berth is required. The Project, in substance, would add a new berth and Canada should recognize it as adding a new berth, consistent with other Crown laws and policies.

In the alternative, in accordance with section 9(1) of the *Impact Assessment Act* (the “Act”), Maa-nulth hereby request that the Minister designate and require a full assessment of the Project under the Act. In accordance with the Impact Assessment Agency of Canada’s Operational Guide, Maa-nulth provide the following information to initiate the request.

Project Description

The Project is a proposed expansion of the Duke Point Shipping Terminal in Nanaimo, British Columbia to facilitate increased trade both domestically and internationally. The proponent is DP World Nanaimo Inc., with an office at 750 Jackson Road Suite 1, Nanaimo, British Columbia V9X 1J2.

The Project, if it proceeds, would

- expand and lengthen the existing berth at the Terminal by 79%, from 182 m to 325 m, to enable simultaneous berthing for container vessels and barges and to accommodate the anticipated use of the site by deep-sea vessels, and



THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY
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- expand and upgrade on-land Terminal facilities, including storage areas, handling equipment, and buildings.

Consistent with the Act and prior federal assessments of marine terminal projects, including Trans Mountain, Roberts Bank Terminal 2, Delta Port Berth 4, Tilbury Marine Jetty, and Delta Grinding, Maa-nulth submit that marine shipping is a component of the Project. Once operational, vessels calling at the Project would pass through our respective territories.

Maa-nulth understand the Project would take approximately 2 years to construct and that construction has not yet commenced.

Provincial Authorizations

Maa-nulth intend to work with British Columbia, as Treaty Partners, to understand what provincial authorizations may be required in relation to the Project. At this time, to Maa-nulth's understanding, no provincial authorization processes have been initiated.

Potential Effects

Maa-nulth have been requesting additional information regarding the Project since 2022 and continuing into 2024. To date, Maa-nulth have not been provided sufficient information to assess the effects of the Project on our rights and interests.

Maa-nulth remain concerned about potential effects from both the Project footprint and the marine shipping component of the Project on our aboriginal and treaty rights and interests, including our harvesting rights, our cultural rights, our governance rights, our well-being, the environment within our territories, our economies, and cumulative effects.

The marine shipping component of the Project would contribute to an increase in vessel traffic on the West Coast, at a time when there is already significant vessel traffic and vessel traffic has already been recognized as having significant cumulative effects on marine resources and Indigenous rights and interests. Increased vessel traffic poses a significant threat to Maa-nulth both during regular operations and in the event of an accident or malfunction, for example due to vessel discharges, invasive species, underwater noise, interference with the exercise of rights, collisions and spills.

Notification

Contrary to 22.2.0 of Chapter 22 Environmental Assessment and Environmental Protection of the Maa-nulth Treaty and the Crown's duty to consult with and, where appropriate, accommodate Maa-nulth, Canada did not notify Maa-nulth of the Project. Maa-nulth became aware of the Project through their own monitoring of proposed marine terminal projects.

No Prohibition

Maa-nulth submit that you are not prohibited under section 9(7) of the Act from making the designation. The only decision made by a federal authority was under section 82 of the Act, not another Act.

Maa-nulth further submit that proceeding with the section 82 decision was contrary to the Maa-nulth Treaty as it was made after Maa-nulth invoked the Dispute Resolution Chapter of the Maa-nulth Treaty in relation to the Project. The Maa-nulth Treaty has the force of law under the federal *Maa-nulth First Nations Final Agreement Act*, and requires Canada to engage in collaborative negotiations in good faith when the Dispute Resolution Chapter is invoked.

Maa-nulth request a pause in any further federal decision-making on the Project pending the outcome of the Maa-nulth Treaty Dispute Resolution process and this designation request.

Please contact Mark Stephens, the CAO of the Maa-nulth Treaty Society, at cao@maanulth.ca or (250) 228-2820 with any questions.

Yours truly,

<Original signed by>

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

cc: Brad Johnson, Huu-ay-aht First Nations
Ben Gillette, Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations
Kevin Mack, Toquaht Nation
Wilfred Cootes, Uchucklesaht Tribe
Charles McCarthy, Yuułu?ił?ath Government
Ian Ketcheson, Impact Assessment Agency of Canada