



TSLEIL-WAUTUTH NATION

People of the Inlet



Our ref: 13_097

July 14, 2016

Sent via E-mail and Hardcopy

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The Honourable Rich Coleman
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Dear Ministers Polak and Coleman,

Re: Tsleil-Waututh Nation's submissions to the Ministers on the issuance of an Environmental Assessment Certificate for the Eagle Mountain - Woodfibre Gas Pipeline Project

INTRODUCTION

We write to inform you of Tsleil-Waututh Nation's ("**Tsleil-Waututh**") current opposition to the issuance of an environmental assessment ("**EA**") certificate for FortisBC Energy Inc.'s (the "**Proponent**") Eagle Mountain - Woodfibre Gas Pipeline Project (the "**Project**").

Our current opposition is grounded in our view that important assessment work required under the Application Information Requirements (the "**AIR**") and the order issued under section 11 of the *Environmental Assessment Act* on November 5, 2013 (the "**Section 11 Order**") for the Project, as well as meaningful consultation and accommodation with Tsleil-Waututh, remain outstanding.

These matters must be addressed and resolved before any decision is made on the issuance of an EA certificate for the Project. A failure to do so would jeopardize any subsequent regulatory approvals processes required by the Project and, ultimately, the Project itself.

To be clear, we are not outright opposed to the Project, provided that these deficiencies are addressed. We are committed to working with the Province, the Environmental Assessment Office (“**EAO**”) and the Proponent to ensure that the matters of concern to us are effectively remedied.

OUR TITLE, OUR CONSENT

The Indian River Watershed – which includes the Indian River and the Indian River Valley – is located in the core of Tsleil-Waututh’s Territory. We have witnessed firsthand the intensive industrial development of, and corresponding adverse effects on, the Indian River Watershed, which include past actions and developments by the Proponent and its predecessors. Such development activities have adversely affected and damaged numerous aspects of the environment, impacting our ability to use and protect the Indian River Watershed, and thereby our Territory in which we have lived since “time out of mind”.

We have spent decades diligently working to remedy these adverse effects through our Marine Stewardship Program, habitat restoration initiatives and other activities. We are adamant that all future activities proposed to occur within our Territory, such as the proposed Project, are only carried out (i) in a sustainable manner, (ii) in a way that reflects the best land-use decisions, and (iii) in a way that meets our Nation’s laws, policies and plans. These are the parameters that we have set as preconditions to providing our consent to activities proposed within our Territory, and the standard that applies to the Project and all approval applications associated with it.

To date, this standard has not been met due to the deficiencies of concern to us. These deficiencies create significant risks that the Project will negatively impact and irreversibly infringe upon our Aboriginal title, rights and interests. As such, we are currently unable to consent to the Project proceeding in our Territory.

As was recently recognized by the Supreme Court of Canada in *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44 (“**Tsilhqot’in**”), if the Province permits a project to begin without our prior consent, the Province may be required to cancel such project upon establishment of Aboriginal title if its continuation would unjustifiably infringe our title.

We possess Aboriginal title within the Indian River Watershed and are currently engaged in processes designed to formally establish the extent of such title. Our title to this area is based, in part, on our members’ and ancestors’ continuous presence and use, and our extensive oral history, and is further supported by archaeological evidence, recorded current use activities and knowledge of unrecorded current use activities throughout this area.

Our Aboriginal title within the Indian River Watershed is described in detail in the report titled “*A summary of Tsleil-Waututh Nation’s Strength of Claim Evidence for the Indian River Watershed*” prepared by Jesse Morin, PhD, and included in this letter as **Attachment “A”**. Taken together, this evidence clearly establishes the requisite sufficiency, continuity and exclusivity (shared with our neighboring Nations in some circumstances) of our occupation to ground Aboriginal title.

The Supreme Court of Canada stated in *Tsilhqot’in* that, while Aboriginal title claims are being pursued in such a manner, “appropriate care must be taken to preserve the Aboriginal interest pending final resolution.” Accordingly, it is imperative that the Province act in a manner that ensures that the EA process for the Project is carried out with a view to preventing irreparable harm to our Territory,

including to the critical Indian River Watershed, as we seek to finalize the formal recognition of the extent of our Aboriginal title to this particular area.

LEGAL DEFICIENCIES IN THE EA OF THE PROJECT

We have reviewed the EA of the Project from our Nation's stewardship perspective. That perspective is incorporated into our Stewardship Policy (published in January 2009). In so doing, we have holistically taken into consideration certain areas, resources and values that appear to be excluded from the scope of the Project or the study area identified from the Proponent's or the EAO's perspective.

We consider these additional elements as necessary to any assessment of the impact and footprint of the Project based on our guiding principles. Our guiding principles recognize effects associated with proximity and interconnectedness. Put simply, they recognize that if one element is affected, others will be as well. By applying such a holistic approach to the matter, we have concluded that the EA of the Project must include Woodfibre LNG Limited's proposed LNG processing and export facility owing to the direct relationship between these two projects, both of which are proposed within our Territory.

Starting from this perspective, and after reviewing the draft Assessment Report and related materials prepared by the EAO, we have identified the following legal deficiencies:

1. Inadequate assessment of, and protection from, adverse Project effects on Work Avoidance Zones (as defined below);
2. Inadequate and insufficient draft EA certificate conditions;
3. Failure to meaningfully consult Tsleil-Waututh; and
4. Outstanding accommodation for Project impacts on our Aboriginal title, rights and interests.

These matters are described in further detail below. While they remain outstanding, any issuance of an EA certificate for the Project is unlawful and highly subject to legal challenge.

1. Inadequate assessment of, and protection from, adverse Project effects on Work Avoidance Zones

Contrary to the requirements of section 3.1 of the Section 11 Order, proper assessments of the potential adverse environmental, economic, social, heritage, and health effects of the Project, and of the potential adverse effects on our Aboriginal title, rights and interest, have not yet occurred. Adverse effects associated with the Project threaten areas of key cultural, spiritual or environmental significance to us. However, such adverse effects have not been adequately assessed through the EA process, and practical means to avoid, minimize or otherwise manage such potential adverse effects have not been guaranteed by way of enforceable conditions to the EA certificate for the Project (if issued).

Over the course of the EA, we have identified and described a number of areas of specific concern in the Indian River Watershed that are culturally, spiritually and environmentally significant to us and to the overall integrity of the watershed (the "**Work Avoidance Zones**"). The Work Avoidance Zones are depicted along with the Project's proposed routing in a map included as **Attachment "B"** to this letter. Consideration of how the pipeline routing associated with the Project may be constructed, and the micro-routing options in these areas, has been included in a series of location-specific studies that we

have worked on with the Proponent (the “**Feasibility Studies**”). The Feasibility Studies include maps and careful analyses of different options and impact trade-offs.

The Feasibility Studies are a first step in the right direction to obtaining our confidence that the Proponent is meaningfully seeking to address our concerns in relation to the Work Avoidance Zones. I can further advise that on June 15, 2016, we received a letter from the Proponent in which it committed to conducting a deeper investigation of our preferred micro re-routing and construction methods in respect of the Work Avoidance Zones.

We welcome these commitments and the information that will be gained from further investigation; however, these commitments do not provide us with sufficient formal assurance that (i) all possible efforts will be taken in respect of impacts to the Work Avoidance Zones, and (ii) where it is not technically possible to avoid the Work Avoidance Zones, the Proponent will seek our consent to the routing and construction methods proposed. These assurances can only be met if the EAO requires the detailed assessment work to be completed prior to the issuance of any EA certificate for the Project, or alternatively, that requirements to conduct such works are attached as clear and enforceable conditions to the Project EA certificate (if issued).

The Feasibility Studies also provide important new information relevant to several of the requirements of the EA, as set out in the following provisions of the AIR:

- s. 1.3 – Applicable Authorizations;
- s. 1.4 – Alternative means of undertaking the Proposed Project;
- s. 4.1 – Environmental Effects Assessment: Geophysical;
- s. 4.3 – Environmental Effects Assessment: Water;
- s. 4.4 – Environmental Effects Assessment: Fish and Fish Habitat;
- s. 4.7 – Environmental Effects Assessment: Wildlife;
- s. 6.2 – Social Effects Assessment: Land and Resource Use;
- s. 7.1 – Heritage Effects Assessment: Heritage;
- s. 9.0 – Accidents and Malfunctions;
- s. 10 – Effects of Environment on the Project;
- s. 12 – Aboriginal Interests;
- s. 13 – Other Matters of Concern to Aboriginal Groups; and
- s. 14 – Summary.

The EAO must consider the new information contained in these Feasibility Studies and our perspective in the matter, and meaningfully consult with us as to the subsequent steps required to incorporate that information in the Project review process.

To date, the draft Assessment Report and draft Technical Report prepared by the EAO have not been adequately revised based on this new information. In correspondence to us in July 2016, the EAO

informed us that it had carefully reviewed the Feasibility Studies and made revisions to Part C of its draft Technical Report. However, as the Feasibility Studies contain information that must be incorporated into the EA itself, this approach is neither appropriate nor sufficient.

Additionally, and despite our attempts to productively work with the EAO in relation to the Project review process, the current draft proposed conditions remain inadequate. For example, the proposed condition #28 still lacks the requirement that our consent be obtained prior to any activities being carried out in the Work Avoidance Zones. The EAO must meaningfully consult with Tsleil-Waututh on how the new information contained in the Feasibility Studies is to be incorporated into (i) the EA for the Project, (ii) the EA certificate conditions (if issued), and (iii) the overall decision-making process.

Significant problems also exist within Part C of the EAO's draft Technical Report – for example:

1. The impact assessment is limited to past and present use, which omits Project impacts on our Aboriginal title, rights and interests associated with future and desired uses of the Indian River Watershed. This limited approach does not align with the holistic approach that we take to environmental assessments of proposed activities in our Territory. The impact assessment must be revised to take into account Project impacts on our Aboriginal title, rights and interests associated with future and desired use of the Indian River Watershed.
2. The impact assessment is limited to site-specific locations where our members exercise some of their Aboriginal rights. This approach similarly fails to take into account the physical and spiritual connections *between* specific sites, as well as the preferred means by which we exercise our Aboriginal rights. It also suggests, incorrectly, that our Aboriginal title is limited to specific locations, rather than broadly covering an area within which our members regularly use their Aboriginal rights – notably, this site-specific approach was expressly rejected by the Supreme Court of Canada in *Tsilhqot'in*. The assessment must be revised to take into account the effects of the Project on the areas between site-specific locations to which we hold Aboriginal title and within which our members exercise Aboriginal rights.
3. Section 18.2, entitled “Resources or Values That May No Longer be Available for Future Generations” is limited to mitigation strategies, and does not incorporate adaptive management measures. Adaptive management measures can improve the resilience of the ecosystem, thereby ensuring that the Project contributes to sustainability rather than merely avoiding or mitigating adverse effects. Adaptive management measures are particularly essential in view of the heavy reliance on follow-up programs throughout the draft Assessment Report. Adaptive management measures must be specified as a mandatory requirement for all management plans required in conditions attached to the EA certificate (if issued).
4. Other portions of section 18.2 are misleading as they are not supported by enforceable EA certificate conditions. As we have repeatedly indicated to both the Proponent and the EAO, clear and enforceable commitments for obtaining our consent are essential and required. At minimum, EA certificate conditions must require (i) avoidance of Work Avoidance Zones (unless not technically feasible), (ii) Tsleil-Waututh consent prior to any activities within Work Avoidance Zones (if such activities cannot be avoided), and (iii) prior Tsleil-Waututh consent for

micro-routing, stream crossings and construction methods in and around these zones (again if such activities cannot be avoided).

Finally, our technical team has reviewed the most recent draft Assessment Report and associated materials provided by the EAO. The depth of this review was constrained by the short timeframe set by the EAO; as such, it is limited to the expression of certain key high-level concerns and we therefore retain the right to raise further concerns in the future. Specific comments provided by our technical team on their review of the draft Assessment Report and associated materials are attached to this letter as **Attachment “C”**.

2. Inadequate and insufficient draft EA certificate conditions

We have already provided considerable input on the draft EA certificate conditions for the Project. Although the EAO has proposed some changes, those changes do not sufficiently address our concerns nor are they reflective of the recommendations that we have provided. Clear and enforceable conditions that satisfy the following actionable requirements must be included in the EA certificate for the Project (if issued):

- Requirement to obtain our consent for the Project in its entirety, as well expressly in relation to any activities that will be carried out within the Work Avoidance Zones;
- Provision of appropriate timelines for meaningful consultation, including sufficient time for us to prepare our views on the possible impacts of the Project on our Aboriginal title, rights and interest;
- Establishment of issue resolution processes specific to us;
- Creation of management strategies for any new circumstances encountered during Project planning, development and operation;
- Development of parameters to guide the relationship between the Project and/or any existing or future related projects;
- Creation of binding assurances that appropriate accommodation measures will be provided to us;
- Creation of project-specific frameworks for reporting on social, economic and environmental corporate responsibility;
- Requirements and strategies to remove wastes encountered and generated during construction and operations;
- Development of restoration plans and activities for the Indian River Watershed, as directed by us;
- Development of appropriate measures to address our specific fish and fish habitat concerns (e.g. work windows, treatment of riparian crossings, anadromous fish access to parts of the river);
- Selection, funding and retention of a Tsleil-Waututh environmental monitor that possesses appropriate authority;
- Requirements to conduct pre-construction surveys of large-tree species in the Indian River Watershed;
- Requirements to survey wildlife and take associated wildlife protective measures;

- Observance of Tsleil-Waututh hunting windows;
- Requirements to conduct additional riparian surveys at sensitive watercourse crossings;
- Creation of access management requirements for temporary access locations, vegetation reclamation and non-motorized access;
- Assessment of watershed-wide terrain LIDAR;
- Creation of timber salvage strategies;
- Monitoring of red and blue-listed plant species in the areas in and around the Project, including the regional study area;
- Monitoring of water quality in the Indian River Watershed;
- Provision of support for socio-cultural expression plans and programming; and
- Provision of support for deeper cumulative effects assessment in the Indian River Watershed.

We have proposed draft conditions on all of the above topics, which we have previously shared with the EAO and discussed with the Proponent. If these conditions are not incorporated into any EA certificate that is ultimately issued for the Project we may be forced to impose our own conditions on approvals or decisions made in accordance with our indigenous laws that apply to our Aboriginal title lands, including the Indian River Watershed.

3. Failure to meaningfully consult Tsleil-Waututh

As outlined above, the Project is being proposed in an area in which we have a strong claim to Aboriginal title. Consequently, because the Project carries with it the potential to cause significant adverse impacts to our Aboriginal title, rights and interests, the Province's duty to consult with us regarding the Project lies at the high end of the *Haida* consultation spectrum.

Additionally, however, because the Project is being proposed at a time when we are on the cusp of formalizing the recognition of our title, as stated above the Supreme Court of Canada made clear in *Tsilhqot'in* that "appropriate care must be taken to preserve the Aboriginal interest pending final resolution" of our claim.

To date, the Province, by way of the EAO, has failed to discharge its obligations to us in that regard. Specifically, the Province has not fulfilled its legal obligation to carry out deep consultation with us from the outset of the EA process with the intention of substantially addressing our concerns, making changes based on information that emerges during the consultation process, and ensuring that we have the opportunity to provide meaningful input into the decision-making process.

The record clearly establishes that the EAO has failed to:

- a) meaningfully take our submissions into account;
- b) provide clear and direct responses to how our concerns have been addressed, or alternatively why they could not be addressed;
- c) ask the Proponent to provide required, but missing, information identified from time to time by us (including, for example, with respect to the Feasibility Studies);

- d) provide reasonable extensions of time for us to review and comment on materials prepared as part of the EA of the Project; and
- e) meaningfully incorporate the detailed feedback we have provided in relation to the Assessment Report and the executive director's recommendation(s).

Curiously, we also note that the EAO appears to be discharging its consultative and accommodative duties with respect to the Project differently with the Squamish Nation, who is included with Tsleil-Waututh on Schedule B of the Section 11 Order. For example, as a result of proposed changes to the Project identified by the Proponent based on discussions with the Squamish Nation, the EAO agreed to legally enforceable changes to the alternative trenchless crossing method for the Squamish River estuary, and a potential alternative site for the Squamish compressor station. We applaud this approach, and raise no concerns with the EAO's discharge of its legal duties to the Squamish Nation as it has. However, the EAO's ongoing refusal to adopt a similar approach in the discharge of its duties to us is patently illogical and unreasonable.

Further, the EAO's assessment of our strength of claim to Aboriginal title, rights and interests runs counter to the approach mandated by the Supreme Court of Canada in *Tsilhqot'in* inasmuch as it does not consider our perspective and fails to use a culturally sensitive approach to assess the constituent elements associated with claims to Aboriginal title (i.e., sufficiency, continuity and exclusivity).

Finally, we note that the EAO has also failed to recognize and deal with us as an independent government with inherent jurisdiction and authority over the Project proposed within our Territory. In *Tsilhqot'in*, the Supreme Court held that Aboriginal title confers incidental ownership rights, including the right to decide how the land will be used; the right of enjoyment and occupancy of the land; the right to possess the land; the right to the economic benefits of the land; and the right to proactively use and manage the land. In so doing, the Court explicitly recognized that decision-making authority and the right to manage the land are part of the incidental bundle of rights that are afforded to Aboriginal title holders.

As discussed above, Tsleil-Waututh is in the process of achieving a formal recognition of Aboriginal title over all or portions of the Indian River Watershed. As such, "great care" must be demonstrably taken to protect our interests pending that outcome, and further, any Project approvals that may issue without proper consultation and/or our consent are highly vulnerable to cancellation on the establishment of title.

In the circumstances, we wish to impress upon you that shared decision-making between the Province and Tsleil-Waututh would significantly minimize the risk that Project-related decisions may be later overturned and the Project cancelled. We therefore strongly recommend that the Province immediately seek to meaningfully consult with us on how to effectively remedy the deficiencies and failures associated with the Project review process, as identified in this letter and in our previous correspondence.

4. Outstanding accommodation for Project impacts on our Aboriginal title, rights and interests

There also remains a lack of certainty as to whether appropriate accommodation will be made in relation to Project impacts to our Aboriginal title, rights and interests. Our Stewardship Policy requires us to secure a formal assurance that accommodation measures, including appropriate economic

benefits, will be provided to our Nation prior to the issuance of an EA certificate for activities proposed within our Territory. To date, neither the EAO nor the Proponent has provided us with this requisite assurance. Appropriate accommodation terms for Project impacts on Tsleil-Waututh's Aboriginal title, rights and interests must be secured before any decision is made on the EA for the Project.

CONCLUSION

For the reasons set out above, issuing an EA certificate for the Project at this time would be a legal error.

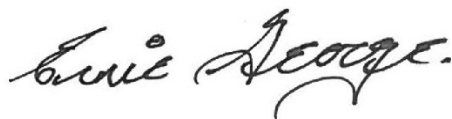
The key steps that you need to require the EAO and/or the Proponent to take in order to address our concerns and the fundamental legal deficiencies with the EA of the Project are summarized as follows:

1. **New Information in Feasibility Studies** – Meaningfully consult with us on the new information contained in the Feasibility Studies and how it is to be incorporated into the EA;
2. **EA Certificate Conditions** – Incorporate the Proponent's commitments regarding further investigations of our preferred micro re-routing and construction methods in respect of Work Avoidance Zones as enforceable EA certificate conditions, and work with us to implement our recommendations on the draft EA certificate conditions;
3. **Revisions to EAO reports** – Work with us to ensure the issues identified in this letter, in Attachment "C" hereto and on further review by us are promptly and adequately addressed and incorporated into the EAO reports; and
4. **Accommodation** – Ensure appropriate accommodation for Project impacts on Tsleil-Waututh's Aboriginal title, rights and interests are secured before issuing an EA certificate for the Project.

While these steps remain outstanding, you must refuse to issue an EA certificate to the Proponent for the Project in accordance with section 17(3)(c)(ii) of the Act. In the alternative, and without prejudice to our primary position that an EA certificate cannot be issued, you must order that further assessments be carried out to address the matters discussed in this letter and in our previous correspondence to you and the EAO in accordance with section 17(3)(c)(iii) of the Act.

We remain committed to working with you, the EAO and the Proponent, to ensure these important issues are addressed in a timely and mutually beneficial way. Please have your staff contact Tanya Smith at (604) 924-4150 or tsmith@twnation.ca to arrange a date and time for a face-to-face meeting with you, and key staff from the EAO, including ADM Jardine, to discuss how our concerns can be addressed in a timely manner while also reducing the potential for delays and regulatory uncertainty. We look forward to your response to the issues raised in our letter.

Respectfully,



Ernie George
Director, Treaty, Lands, and Resources Department
Tsleil-Waututh Nation

cc: Kevin Jardine, Environmental Assessment Office
Michael Sheppard, Environmental Assessment Office
Alanya Smith, Environmental Assessment Office
Art Kanzaki, FortisBC Energy Inc.
Doug Stout, FortisBC Energy Inc.

Attachment “C”

Tsleil-Waututh Nation’s Technical Review of draft Assessment Report and associated materials

Draft Assessment Report

1. Tsleil-Waututh’s perspective and concerns are not represented or incorporated. The summary of key issues and concerns raised in section 4 are limited to a) impact of the proposed compressor stations, 2) business disruptions in the District of Squamish, and 3) grizzly bears. This limited list excludes all of the major concerns that Tsleil-Waututh has raised over the last two years about potential adverse Project effects to the Indian River Watershed; this is a grave omission substantively and in respect of Tsleil-Waututh’s relationship with EAO and the Proponent. This section must be updated to reflect Tsleil-Waututh’s perspective.
2. Tsleil-Waututh disagrees with the EAO’s conclusion that the Project will have negligible to minor impacts to Tsleil-Waututh’s Aboriginal title, rights and interests. Tsleil-Waututh has consistently asked for sufficient Project design information to assess whether, and to what extent, the Project may cause serious adverse impacts to Tsleil-Waututh’s title, rights and values in the Indian River Watershed. Tsleil-Waututh has not yet received this information in sufficient detail or form, and has been repeatedly told that this information will come at the permitting stage. Tsleil-Waututh requires the requested Project design information *prior to* the issuance of an EA certificate for the Project. Notably, the Proponent and the EAO have fulfilled similar requests of others (such as the Squamish Nation), and Tsleil-Waututh expects equal treatment of our concerns.

With respect to Work Avoidance Zones with high fishing values, the EAO acknowledges that “potential impacts may be minor to moderate in the event that these areas are not avoided, however these impacts would be lessened with successful implementation of EAO’s proposed conditions and mitigation” (page 11). Tsleil-Waututh disagrees with this statement in regards to our current and planned restoration work; we have low confidence in the proposed mitigations.

3. Tsleil-Waututh supports the inclusion of Musqueam Nation on Schedule B of the Section 11 Order. Accordingly, the current conclusion of Project impacts to the Musqueam Nation is not the result of a full and fair assessment involving adequate consultation with the Musqueam Nation. Without the Musqueam Nation’s inclusion as a Schedule B First Nation, the EA of the Project is incomplete.
4. The Report repeatedly references the Proponent’s commitment to, and the EAO’s expectation that, the Proponent will actively consult with Tsleil-Waututh on final routing decisions in the Indian River Watershed. Tsleil-Waututh expects to not only be meaningfully consulted, but that the Proponent and the EAO will seek Tsleil-Waututh’s free, prior and informed consent before any final routing decisions are made. This is the standard set by Tsleil-Waututh through its laws and policies, and is the standard mandated by the United Nations Declaration on the Rights of

Indigenous Peoples, which principles Canada has recently committed to grounding its efforts to developing a renewed, Nation-to-Nation relationship with Indigenous peoples.

Weighing of Impacts to Aboriginal Interests with Other Interests

5. (page 11). The discussion of weighing the impacts to Aboriginal title, rights and interests with other interests is highly problematic. To begin, the three bullet-points listed that the EAO recommends the Minister to consider are not balanced – two out of the three reference economic concerns. Consideration given to environmental or social concerns and impacts to Tsleil-Waututh's Aboriginal title, rights and interests are inappropriately limited despite what Tsleil-Waututh has clearly communicated throughout the course of the EA of the Project.
6. (page 12). With regards to "Benefits to affected Aboriginal Communities", the report states that the Proponent has offered capacity funding to support consultation activities. This is not a benefit to First Nations; this is an *obligation* of any third party who seeks to carry out development activities in our Territory, and thereby requires our consent.
7. (page 12). Reference to the Proponent's pursuit and/or engagement of long-term benefit agreement negotiations with Aboriginal Groups needs to be qualified with a recognition of the limited progress to date; no substantive progress in negotiating a project agreement between Tsleil-Waututh and the Proponent has been made to date. Moreover, Tsleil-Waututh does not have any confidence that the Proponent will engage with it in good faith in the long term.

Draft EAO Technical Report

Part A

6. (Section 2.2.2 Project Components, pages 16-20). Tsleil-Waututh has continually expressed disagreement with the limited Project components included within the scope of the EA. Tsleil-Waututh has always held that the Indian River estuary, barge landing site (at the Indian River estuary), Woodfibre LNG facility and associated marine shipping must be considered as Project components. All of these components are mutually dependent on one another financially, economically and physically. The exclusion of these important Project components is 'project splitting', and a breach of Tsleil-Waututh assessment standards and laws.
7. (Section 2.5.2, Community and Social Benefits of Proposed Project, page 24, lines 27-29). Heritage assessments are listed in this section as a Project benefit because they provide additional studies for the area. In appropriate circumstances, these may be qualified as a benefit; however, Tsleil-Waututh cautions that they must be used to specifically benefit Tsleil-Waututh's cultural-base, rather than to benefit the Proponent in a) locating Heritage sites and b) making them easier to extract. It is not a Project benefit if the sole purpose of locating heritage sites is to extract them, when avoidance would otherwise be possible.

Part B

8. (Section 5.3, Greenhouse Gas Emissions, paged 46-51). The EA does not take into account upstream greenhouse gas (“GHG”) emissions as a result of the Project. The Canadian federal government has recently required that upstream GHG analyses be applied to environmental assessments; Tsleil-Waututh expects the EAO to conduct the same level of diligence on projects that are directly contingent on federal approval. The Province has committed to various emissions targets, and Tsleil-Waututh expects that the EAO will do its part in helping observe and achieve these commitments through proper assessments of GHG emissions and their corresponding environmental effects, as well as the imposition of appropriate mitigation measures to address such adverse effects.
9. (Section 5.6, Soils and Terrain, paged 68-79). Without conducting a full watershed LIDAR assessment of the terrain stability, Tsleil-Waututh does not have confidence in the findings of this section. Tsleil-Waututh expects that the appropriate assessment will be done in respect to the high occurrence and potential of landslides, and changing terrain, within the Indian River Watershed. Tsleil-Waututh must be meaningfully consulted on this work.
10. (Section 5.7, Wetland Function, page 72). The standard use of “no net loss” for wetland functions is inappropriate. In addition, this analysis is not in-line with Tsleil-Waututh’s Stewardship Policy, which mandates net gain. The practice of “no net loss” is particularly concerning for areas where Tsleil-Waututh has, or plans to carry out, restoration projects.

Part C

11. (Section 12). The final paragraph of the EAO Consultation Process Overview mentions the July 5, 2016 version of the draft EAO Technical Report and accompanying materials. Tsleil-Waututh received these revised materials, with ‘track-change’ edits, which we were forced to sift through to determine how, if at all, our comments on the May 24 package (dated June 27, 2016) were considered and addressed. On July 6, we received a letter from the EAO allegedly seeking to address concerns in our June 27 letter. As a result of timelines arbitrarily set by the Province, we have been forced to submit this letter to you a mere six working days later. Our comments herein have not been sufficiently considered in the final version of the EAO’s report.
12. (Section 16). In general, the EAO’s assessment of the potential impacts of the Project on Aboriginal Interests is fundamentally deficient as it relies on hypothetical and unsubstantiated mitigation measures. Tsleil-Waututh is not comfortable with the application of mitigation measures, absence of adaptive measures and high-level treatment of these issues. More information is required on exactly how the proposed mitigation measures will lessen the impacts to Tsleil-Waututh’s Aboriginal title, rights and interests. It is not sufficient to leave this information as ‘to be developed’ in the Management Plans.

13. (Section 16.1.5). Information presented in Attachment “A” to this letter, titled “*A summary of Tsleil-Waututh Nation’s Strength of Claim Evidence for the Indian River Watershed*”, must be considered and addressed within this section.

Where reference is made to proposed mitigation measures to avoid and minimize potential Project effects (lines 36-44), the mention of the Feasibility Studies is excluded. Tsleil-Waututh requires these studies to be meaningfully considered and incorporated; not treated as a mere after-thought.

14. (Section 17.2.2). Information presented in Attachment “A”, titled “*A summary of Tsleil-Waututh Nation’s Strength of Claim Evidence for the Indian River Watershed*”, must be considered and addressed within this section based on discussions with Tsleil-Waututh.
15. (Section 17.2.3). The reference to the Proponent-TWN Impact Benefit Agreement on page 28 does not acknowledge the challenges and time hiatus that have ensued. We do not have confidence that an agreement can and will be achieved prior to an EA certificate being issued for the Project; this undermines the provision of accommodation to Tsleil-Waututh.
16. (Section 17.2.3). Contrary to the requirements under sections 3.1.1 and 3.1.2 of Section 11 Order, the information contained in the Feasibility Studies has not been incorporated into the assessment of Project effects; instead, this information has merely been described. Summarizing the studies does not constitute meaningful consideration and consultation thereon.
17. (Section 17.2.3) Contrary to the requirements under sections 3.1.1 and 3.1.2 of Section 11 Order, there have been insufficient assessments of Project effects on the Cascades Work Avoidance Zone, the Hixon Creek Crossing Work Avoidance Area and the Headwaters Work Avoidance Area. Additionally, where new routes and construction methods are identified, Part C must clearly require further investigation thereof.
18. (Section 17.2.3). Where Tsleil-Waututh’s concerns on Addendum 4 are summarized, the EAO’s analysis and assessment of how the Proponent responded to these concerns is absent. This does not constitute meaningful consultation, nor a complete assessment by the EAO.
19. (Section 17.2.4.1). Tsleil-Waututh rejects the proposed condition requiring an Indian River Watershed mitigation and management plan as currently drafted; as drafted the proposed condition does not ensure Tsleil-Waututh consent and final right of approval regarding (i) the feasibility studies, (ii) a gap analysis between the Indian River Watershed Integrated Stewardship Plan and the Project, (iii) a visual quality assessment, and (iv) further terrain stability and geo-hazard assessments.