



THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

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August 3, 2023

Via Email: EAO.DisputeResolution@gov.bc.ca

Attention:

Tara Narwani
Director, Strategic Initiatives and Effectiveness
Environmental Assessment Office
Government of British Columbia

Dear Ms. Narwani:

**Re: BC Environmental Assessment Office (the “BCEAO”)
Proposed Dispute Resolution Regulations (the “Proposed Regulations”)**

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?ił?ath Government, collectively known as the Maa-nulth First Nations (“**Maa-nulth**”), in response to the Proposed Regulations.

Thank you for the opportunity to comment on the Proposed Regulations. The United Nations Declaration on the Rights of Indigenous Peoples (“**UNDRIP**”) requires our free, prior and informed consent for projects that may impact our rights and interests. A dispute resolution process is critical where consent cannot be achieved.

Shared Priorities Framework

We provide the following initial comments on the Proposed Regulations. Fundamentally, further engagement is required on the Proposed Regulations to adhere to UNDRIP and the Shared Priorities Framework with Modern Treaty Nations endorsed by your Premier (the “**Shared Priorities Framework**”). In the Shared Priorities Framework, British Columbia committed to meaningful participation by Modern Treaty Nations in the Province’s legislative and policy initiatives and to a whole of government approach to treaty implementation. Below are some examples where more work is needed to adhere to these commitments.



ANCIENT SPIRIT, MODERN MIND



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

Early Engagement

- We understand that the BCEAO has been engaging extensively with the First Nations Leadership Council (“FNLC”) on the Proposed Regulations for over a year; whereas, the BCEAO only initiated engagement on the Proposed Regulations with Maa-nulth in April. Maa-nulth has communicated to British Columbia several times that the FNLC does not speak on behalf of or represent Maa-nulth. Direct and early engagement, either before or at the same time as the FNLC, is key our Treaty partnership and was committed to in the Shared Priorities Framework. Please ensure your colleagues are aware of and adhere to this commitment, going forward. Please also see attached a copy of the Maa-nulth Engagement Protocol to guide engagement on future legislative and policy initiatives led by the BCEAO.

Timelines

- The proposed timelines (i.e., enactment of the Regulations this Fall) do not allow for meaningful engagement. We propose co-developing new timelines that enable meaningful engagement, as contemplated in the Shared Priorities Framework, and ensure our rights and interests as Modern Treaty Nations are reflected in the Regulations. There is no need to rush the Regulations. An interim approach is already in place to guide dispute resolution pending enactment of the Regulations, and at least two dispute resolution processes were concluded in the absence of Regulations.

Funding

- The proposed funding (i.e., \$250 for meeting attendance and \$5000 for written submissions) does not allow for meaningful engagement. Requests to engage on legislative and policy initiatives must include the financial resources necessary to support Maa-nulth participation in that engagement. Maa-nulth face an increasing volume of requests for engagement. While we appreciate and fully expect to be engaged on legislative initiatives, we cannot undertake the background legal and policy analysis necessary to meaningfully engage without adequate resources to allow us to build that capacity. A request for engagement without adequate compensation for the financial and human resources costs of that engagement is a barrier to our participation and is not in the spirit of reconciliation. Ensuring treaty implementation is fully resourced was also committed to under the Shared Priorities Framework. We propose revisiting the funding offer from the BCEAO to enable meaningful participation by five independent, self-governing Modern Treaty Nations.

Draft Regulations

- We confirm our interest in reviewing a draft of the Regulations as soon as they are ready. The Discussion Paper provided helpful background and insight into the Proposed Regulations and was a welcome first step in the co-development process. Having an opportunity to comment on a draft of the Regulations is also a fundamental step. The



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Discussion Paper outlined broad policy considerations; whereas, draft legislation will provide detail on how British Columbia proposes to address our rights and interests.

Integration

- We seek further information and discussion on how British Columbia intends to integrate the dispute resolution process in the Regulations with other existing dispute resolution processes, including dispute resolution processes under the Maa-nulth Treaty and the Government-to-Government Agreement between British Columbia and Maa-nulth.

Anticipated Decisions

- The Act provides that a dispute resolution process may only be initiated before a provincial decision is made on the matter under dispute. In light of this, Maa-nulth would like to explore inclusion of a provision that would require British Columbia to provide participating Indigenous nations notice of anticipated decisions under the Act, with sufficient detail and time to resolve the matter informally or initiate a dispute resolution process.

Standing

- Maa-nulth agree it is not British Columbia's role to prescribe a process for dispute resolution as between Indigenous nations. However, a dispute resolution process initiated by another Indigenous nation under the Act could impact the rights or interests of Maa-nulth. To ensure Maa-nulth have a voice in such dispute resolution processes, consistent with UNDRIP, Maa-nulth would like to explore inclusion of a provision that would
 - require British Columbia to provide Maa-nulth notice of a dispute resolution process initiated under the Act that could impact the rights or interests of Maa-nulth, and
 - provide Maa-nulth standing to participate in the dispute resolution process, upon request.

Proponent Participation

- Maa-nulth agree it may be beneficial for a proponent to participate in dispute resolution processes initiated under the Act. Maa-nulth would like to explore inclusion of a provision that would require a proponent to participate, upon request by British Columbia, a participating Indigenous nation or the facilitator.

Adaptability

- We seek further discussion to ensure the dispute resolution process in the Regulations is adaptable to all potential projects and parties and incorporates Maa-nulth approaches to dispute resolution, upon request, where Maa-nulth are a party to the dispute.



Please keep our three sacred principles in mind as you consider our comments and undertake this important work:

- ʔiisaak – respect for all things,
- hišuk c̓awak – the interconnectedness of a thing or everything is one,
- ʔuuʔaʔuk – taking care of the world.

Also, please note that this response does not preclude a Maa-nulth First Nation from seeking to engage with British Columbia regarding the Proposed Regulations, bilaterally or through other forums, including the Alliance of British Columbia Modern Treaty Nations. If you have any questions or wish to discuss this response, please contact the chief administrative officer of the Maa-nulth Treaty Society, Mark Stephens at cao@maanulth.ca or 250-228-2820.

Yours truly,



Charlie Cootes
President of the Maa-nulth Treaty Society
on behalf of the Maa-nulth First Nations

cc: Maa-nulth First Nations

