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Subject: Rail activities incidental to GCT's proposed DP4 Project

Canadian National Railway Company (CN) has reviewed the Draft Joint Guidelines issued for public consultation by IAAC and the EAO for Global Container Terminal's (GCT) Deltaport Expansion, Berth Four Project (the Project or DP4).

Existing railway regulations and legislation

CN is a railway company under federal jurisdiction and regulated by the Canadian Transportation Agency (CTA) and Transport Canada. Under statutory obligations, CN is required by law to provide service to customers. CN is not the proponent of this Project but is expected to serve this facility if the Project is approved. As such, CN is expected to operate all railway movements as per normal railway operations, providing appropriate service as required by customer demand.

There exists a very robust federal legislative and regulatory framework governing rail infrastructure and activity in Canada to which CN must comply with. The construction and operation of railway infrastructure, for example, is regulated - for federally regulated railway companies, like CN - by the CTA pursuant to the *Canadian Transportation Act*, *Railway Safety Act* and regulations. The transportation of dangerous goods is also subject to federal regulation and provincial legislation. All rail activity associated with container traffic through the Port of Vancouver is already subject to this robust legislative and regulatory framework. This legislative and regulatory framework directly addresses the issues typically raised in IA/EA processes related to rail activity, including noise, safety (e.g., at crossings), conflict with road traffic (i.e., rules about maximum time an at-grade crossing can be blocked), and prevention of and response to accidental events. The legislative and regulatory framework also establishes processes and mechanisms for the public to raise issues and have them

addressed through the CTA, e.g., the noise complaint process and the at-grade crossing dispute resolution process. The IA/EA process need not and should not duplicate this comprehensive legislative and regulatory framework.

No additional railway activity

The proposed Project will not result in any new railway activity that is different from the rail activity already occurring (and authorized, through the robust legislative and regulatory framework noted above) throughout the rail corridor. There would be no new or different types of effects.

Level of rail activity

The level of rail activity through the rail corridor is highly variable, with the number of trains moving through the area changing with customer demand, economic conditions (e.g., seasonal peaks in demand and goods movement) and environmental conditions (i.e., weather). The additional rail traffic associated with the Project is within the normal general fluctuating range of existing railway traffic volumes in any given period, particularly at a distance from the port. CN holds all regulatory approvals to provide this service.

Rail activity - scope of assessment

GCT will not own or operate the container trains serving the Roberts Bank terminals and has no care and control of the trains outside the terminal footprint. The train movements to and from the terminal are therefore not part of the proposed project. While the rail traffic may be considered an incidental activity associated with the Project, the scope of assessment of the incidental rail activity should be narrowly focused, particularly geographically/spatially, where that activity *may* result in a material change in infrastructure or activity (i.e., in close proximity to the project itself) that may have consequential environmental effects (as defined). Issues associated with road and rail traffic at a distance from the port/Roberts Bank are not attributable solely to a single project, like DP4 or the specific trains that may serve DP4. Rather, such issues arise from the totality of road and rail traffic and are best managed through the other legislative and regulatory mechanisms that apply to the road and rail network, as well as through regional approaches (see next point).

Project-specific impact assessment not the appropriate forum to address regional, non-project matters

The issue of road and rail traffic in the Lower Mainland and beyond is a regional issue of cumulative effects, to which many existing and potential projects and activities contribute, not all of which are subject to impact assessment (federally or provincially). The burden of addressing regional cumulative effects should not be borne by any one project proponent (GCT) or operator (such as CN). Such issues should be addressed through regional multi-stakeholder initiatives. This has already been recognized in relation to other projects both in the Lower Mainland and elsewhere. For example, in the Lower Mainland, the Gateway Transportation Collaboration Forum was established to bring key stakeholders together to identify and address road and rail issues related to the Pacific Gateway (of which port and rail infrastructure are a critical part). Elsewhere, in the recent (January 2021) federal decision regarding the "inland port" of the Milton Logistics Hub Project, the Government of Canada acknowledged the regional, cumulative nature of effects on air quality and committed to a multi-stakeholder regional approach to addressing the issue. Broadening the scope of a project-specific impact assessment to

address regional-scale issues is not an appropriate substitute for a regional approach, particularly when one considers that the conditions that can be imposed on a specific project through the IA process can only be imposed on the project proponent, not on other parties, such as railway operators.

Conditions arising from IA should not undermine competitive fairness

The imposition of mitigation on a project-related activity must not create a burden on a specific proponent or operator that would place that activity or operator at a competitive disadvantage relative to other proponents or operators conducting the same activity in the same area, who do not have to comply with those conditions. For example, it would be unfair to require a railway company to implement a mitigation measure that applies to some of its railway traffic that does not apply to all of its railway traffic, or to require a railway company to implement a measure that other railway companies do not have to implement. This reinforces that a project-specific IA of a port project is not the appropriate forum for addressing issues related to regional road and rail traffic which could provide competitive advantage to the proponent of CN's competitors.

Project-specific IA cannot purport to indirectly regulate all railway activity

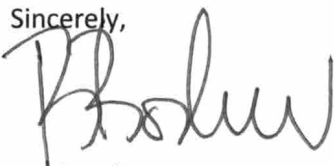
Measures to manage rail traffic are applied network-wide, not to specific trains or locomotives. Thus, any condition or measure that might be contemplated through a project-specific IA process to address an effect of incidental rail traffic would have implications for all rail traffic on that (rail company's) network. That would be an inappropriate regulatory over-reach into activities that are fully regulated by other legislative and regulatory frameworks which will remain applicable once approval is granted to this project.

Project-specific IA not the appropriate venue to address existing road and rail traffic

If rail traffic associated with the port project is included in the scope of the project for the purposes of IA, the scope of that assessment should be focused on the incremental effect of only the additional rail traffic that would result from the project. The existing railway network in the Lower Mainland and its operation are not the subject of the IA or decision-making pursuant to either the IAA (federally) or EAA (provincially), and a project-specific IA should not be used as a vehicle to attempt to impose measures on the legal and legitimate operation of that network.

Although CN understands and supports the need for a thorough and complete assessment of the proposed Project, the Joint Guidelines should be issued in a manner and scope that enables the Agencies and proponent to conduct an impact assessment that is robust, complete and results in Conditions and mitigation measures that are directly applicable, accountable and within the care and control of the Project proponent.

Sincerely,



Brad Bodner
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