



Pacheedaht First Nation

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VIA EMAIL - deltaport@iaac-aeic.gc.ca

Assessment of the GCT Deltaport Expansion - Berth Four Project
c/o Impact Assessment Agency of Canada / Government of Canada
160 Elgin Street
22nd Floor
Ottawa, Ontario K1A 0H3

Dear Sirs/Mesdames:

**Re: Deltaport Expansion Berth Four Project
Pacheedaht First Nation Comments on Planning Phase Documents**

On behalf of the Pacheedaht First Nation (Pacheedaht), I am writing to provide comments on draft documents relating to the Planning Phase of the EAO and the Agency's review of the Deltaport Expansion Berth Four Project (the Project).

Draft Joint Guidelines

General comment: Marine shipping

By way of a general comment on the draft Joint Guidelines, Pacheedaht continues to have serious concerns with the extent to which impacts from the marine shipping component of the Project are going to be considered and addressed through the assessment.

As the EAO and the Agency will be aware, Pacheedaht has recently been required to devote considerable time and resources to the review of two similar marine shipping projects through their marine territory: the Trans Mountain Expansion Project and the Roberts Bank Terminal 2 Project. As with Global Container Terminals' proposal, these projects involved bringing more vessels and larger vessels through the Juan de Fuca Strait and through the heart of Pacheedaht's marine territory at Swiftsure Bank, their hereditary fishing ground which have been historically and continue to be heavily used by Pacheedaht for cultural and economic fisheries and to support cultural activities. Throughout the review of these projects, Pacheedaht expressed concerns with the way in which the marine component of the projects were treated in the assessment. Specifically, that the

impacts from marine shipping were not taken as seriously by the proponents as the impacts from the rest of the projects.

While Pacheedaht understands that Global Container Terminals does not intend to carry out the marine shipping themselves, rather than being considered incidental to the Project, Pacheedaht is looking for assurance that the EAO and the Agency will be requiring the proponent to fully consider the impacts from the marine shipping throughout their assessment.

In reviewing other draft Planning Phase documents, including the draft Joint Indigenous Engagement and Partnership Plan and the draft Joint Assessment Plan, Pacheedaht has noticed that the way the Project is described in these documents does not currently reference marine shipping. For example, the draft Joint Indigenous Engagement and Partnership Plan states the following at page 2 by way of a description of the Project:

GCT Canada Limited Partnership (the proponent) is proposing to expand its existing GCT Deltaport Container Terminal, a container storage and handling facility located in Delta, British Columbia (B.C.). The GCT Deltaport Expansion - Berth Four Project (the project) would add a fourth berth on the east side of the Roberts Bank Causeway, and include an expansion of the intermodal rail yard along the causeway (Roberts Bank Way) and dredging to provide safe access for ships. The additional land-based container storage and handling facilities would provide capacity for an additional two million 20-foot long storage containers per year at the existing terminal.

Marine shipping is not referenced in this description despite being an integral part of the Project. In the draft Joint Guidelines, when discussing the scope of the assessment at page XXI, the Agency and the EAO describe marine shipping as “activities that are relevant to the assessment of the project”. In the Marine Shipping section of the draft Joint Guidelines, marine shipping is described as an activity incidental to the Project.

The proponent is applying to expand the Deltaport terminal precisely so that it can accommodate more and larger container ships. In their Detailed Project Description, the proponent included predictions that the existing seven shipping services calling at the Deltaport terminal each week would increase to eight as a result of the Project. This represents an increase of 104 vessel transits per year through Pacheedaht’s territory. The proponent also plans to accommodate increasingly large vessels at the Deltaport terminal and to ultimately have 25% of the vessels calling at the terminal to be Ultra Large Container Vessels. The additional noise created by these enormous vessels is of significant concern to Pacheedaht, and their size increases the safety risk to Pacheedaht’s vessels while they are out using the marine territory.

From Pacheedaht’s perspective, it is not methodologically supportable to consider these same container ships as anything other than an integral part of the Project. In their view, marine shipping is not “relevant to” or “incidental to” the Project. Rather it represents the very purpose of the Project. Pacheedaht’s experience has been that when the marine shipping component of a project is treated as incidental, the impacts it causes are not given sufficient consideration within the assessment, either in terms of identifying the full extent of impacts, including cumulative impacts, or sufficiently identifying avoidance or mitigation measures.

In order to avoid these concerns with the review of the Project, Pacheedaht requests that the proponent be given specific guidance to consider the movement of container ships through the Juan de Fuca as part of the Project for the purposes of their assessment to the extent they are calling at Deltaport’s terminal.

Part 8.8 - Cumulative Effects Assessment

Pacheedaht has concerns about the references to “residual effects” that can be found in the cumulative effects section of the draft Joint Guidelines.

Section 8.8 begins as follows:

Cumulative effects are defined as changes to the environment, health, social, cultural and economic conditions, as a result of the project’s residual effects combined with the effects of other past, existing and future projects and physical activities.

The draft Joint Guidelines go on to request that the proponent identify VCs where residual effects are expected.

As the Agency and the EAO will be aware, Pacheedaht has serious concerns about cumulative impacts from the Project. Pacheedaht members consider that the acceptable threshold for the amount of vessel traffic in the shipping lanes has already been exceeded, such that any additional effects would further degrade already unacceptable conditions. In particular, the existing number of large vessels travelling along shipping routes over Swiftsure Bank have created significant risks and threats to Pacheedaht’s Aboriginal rights and title. Any additional traffic brings significant additional risks. These concerns are exacerbated by the proponent’s proposal to accommodate increasingly large vessels, which as described above is to ultimately have 25% of the vessels calling at the Deltaport terminal be Ultra Large Container Vessels.

At the heart of Pacheedaht’s concern on this issue is the methodology to be used by the proponent as well as the EAO and the Agency in assessing and addressing cumulative effects. Specifically, if only residual effects are carried through into the cumulative effects assessment, and if proponents are allowed to make the determination themselves about the sufficiency of potential mitigation, it is possible that cumulative impacts of key concern to Pacheedaht will never be carried through to the cumulative effects assessment and no meaningful assessment of cumulative effects will occur.

On this point, Pacheedaht has had experience in the review of other projects involving marine shipping where the proponent has relied on broad and ongoing regional initiatives such as the SSI (Salish Sea Initiative) and the OPP (Oceans Protection Plan) to conclude that the impacts from marine shipping have been sufficiently mitigated and that therefore no residual effects need to be carried through into the cumulative effects assessment. In their engagement with the proponent in relation to this Project, Pacheedaht has already seen the proponent relying on the SSI as addressing impacts in the marine environment. Pacheedaht is of the strong view that the proponent is not well placed to comment on the extent to which the SSI has addressed the impacts from marine shipping in Pacheedaht’s territory. From Pacheedaht’s perspective the existing impacts remain unaddressed, which is what makes cumulative impacts such a serious concern for the Nation.

In relation to the proponent’s obligation to describe mitigation measures proposed for cumulative effects, the draft Joint Guidelines state at page 45:

... in cases where measures to mitigate these effects are beyond the control of the proponent, identify any parties that have the authority to act on these measures. In such cases, the Impact Statement must

summarize any commitments by the other parties regarding implementation of the necessary measures and any associated plans, including communication plans;

In Pacheedaht's view, in order to avoid the issues experienced in previous assessments in terms of the overreliance on regional initiatives to address the cumulative effects of marine shipping, the statement above should be changed to prevent the proponent from relying on measures that are beyond their control as mitigation for impacts to Indigenous interests unless the Indigenous group in question is in agreement that the measure will be effective.

Pacheedaht notes that section 8.7 of the draft Joint Guidelines contains a clause which would be helpful in terms of addressing the concerns regarding the methodology for assessing cumulative effects. This clause is as follows:

If an Indigenous nation identifies that there are residual effects to their interests, those effects should be carried through for residual effects analysis.

Pacheedaht suggests the same clause be added to Section 8.8, along these lines:

If an Indigenous nation identifies that there are residual cumulative effects to their interests, those effects should be carried through to the cumulative effects assessment.

The EAO will be aware that it is incredibly important that cumulative effects be adequately considered in decision-making. This was recently emphasized by the British Columbia Supreme Court in the decision of *Yahey v British Columbia* (2021 BCSC 1287). This decision underscores the need for decision makers to consider and address the cumulative impacts of resource development on Aboriginal and treaty rights before allowing further impacts to take place.

Section 13 - Nation-specific Assessment

Pacheedaht has the following comments on the Pacheedaht-specific section of the draft Joint Guidelines, and specifically Table 13.13.

In relation to Table 13.13, Pacheedaht suggests the following edits for clarity and completeness:

Effects on fish and mammals relied on by Pacheedaht **which** could avoid the area due to the increased noise and disturbance caused by the vessels.

And:

Effects on historical and contemporary preferred harvesting sites from changes to the accessibility of culturally **importance important** harvesting areas and sites, such as shoreline and intertidal zones within Pacheedaht First Nations' marine territory.

And:

Effects on air quality from large marine vessels' emissions **which are** predicted to be greatest within

the Juan de Fuca Strait due to the longer transit time and greater average speed of ships in that segment affecting air quality in Pacheedaht's territory.

And:

Effects of shipping on Pacheedaht First Nations' ability to safely access and use culturally important sites, including historic and contemporary preferred harvesting sites. This includes the accessibility and adverse effects **of on** open water, shoreline and intertidal culturally important harvesting sites due to shipping interference with navigation, **interruption of fishing and harvesting activities**, destruction of fishing gear, and wake effects.

And:

Effects of shipping noise and the ability for Pacheedaht First Nations to effectively exercise Indigenous harvesting rights.

And:

Effects of shipping on Indigenous and economic rights to marine fisheries due to proximity of shipping lanes to preferred harvesting areas, **interruption of fishing and harvesting activities**, destruction of gear, and ability to safely access harvesting sites.

And:

Effects on Pacheedaht First Nation's cultural and spiritual well-being due to project effects on culturally important marine species, especially orcas due to the interconnections to Pacheedaht **governance rights**, traditions, cosmology, and mythology.

And:

Effects on Pacheedaht First Nation culture and traditions linked to the well-being and survival of many marine species especially orcas, which are central to cultural practices and interconnected within Pacheedaht First Nation **governance rights**, cosmology and mythology.

Pacheedaht also suggests adding the following to Table 13.13 in relation to impacts to "Indigenous Governance Systems":

Interference with Pacheedaht Aboriginal title and governance rights should the Project proceed without Pacheedaht's consent.

Similarly, Pacheedaht suggests the following be added under "Harvesting and Subsistence Activities":

Damage and contamination to the resources and habitat that support Pacheedaht's Aboriginal rights through discharges, leaks, and spills.

Section 15 - Accidents and Malfunctions

Pacheedaht's recent experience with the ZIM Kingston, which lost over 100 containers overboard in Pacheedaht's marine territory and later caught fire near the entrance of the Strait of Juan de Fuca, has heightened the level of community concern in relation to shipping accidents from the Project. Pacheedaht and their members are extremely concerned about the potential for a vessel calling at the Deltaport terminal becoming disabled in the Juan de Fuca and risking running aground or colliding with Pacheedaht's fishing vessels or other marine traffic.

In the guidance provided at section 15.1 of the Joint Guidelines (Risk Assessment), the proponent is asked to use a methodology to describe risk which assigns rankings to the likelihood and consequence of adverse event.

In Pacheedaht's view, in assessing potential accidents and malfunctions from marine shipping, the proponent should be provided with the guidance that even if an adverse event is assigned a low likelihood, if it has high consequence - which would characterize any accident or malfunction involving large vessels in Pacheedaht's marine territory - the adverse event must be considered high risk. In other words, high-consequence events must not be dismissed or discounted in the assessment on the basis that the proponent considers them to have a low likelihood.

The risk assessment also needs to consider Pacheedaht's ability to respond to an emergency in their marine territory, which continues to remain inadequate.

Section 16.2 - Existing Conditions

In terms of assessing impacts to the Valued Components, it is essential that Pacheedaht's knowledge be used to inform the assessment in terms of describing current conditions. As described below, Pacheedaht would like to work with the proponent to develop a holistic VC for Swiftsure Bank, and in Pacheedaht's view this approach would help to facilitate a clear understanding of the existing conditions at Swiftsure Bank.

Appendix 1 - Valued Components

Pacheedaht has the following comments on the Valued Components, elements, and spatial boundaries proposed by the proponent as set out in Appendix 1.

Table A1.1 - Proponent valued components selection

Under the column entitled "Topics to be Captured by the Assessment", for Marine Mammals Pacheedaht suggests adding "Prey availability" to the bullet list given the importance of this issue to the wellbeing and survival of these species.

Pacheedaht has serious concerns about the ability of their members to safely access parts of their marine territory, including Swiftsure Bank, given the increase in vessel size and frequency of transits proposed as part of the Project. In order to ensure these impacts are meaningfully considered in the assessment, Pacheedaht suggests that "Indigenous marine use" be included as a subcomponent under the "Marine Use" Valued Component. Pacheedaht also suggests that "Access" be added as a subcomponent under the "Human Health" Valued Component in order to capture impacts to the health of Pacheedaht members as a result of not being

able to safely access marine resources.

In terms of any Indigenous Nation identified VCs, Pacheedaht is of the view that in order to ensure a holistic assessment is achieved that weaves together the broader impacts of the Project in Part 8 and the Pacheedaht-specific assessment in Part 13, Swiftsure Bank should be designated as a Pacheedaht-specific VC. Pacheedaht's view is that a Swiftsure Bank VC is necessary to capture the unique intersection of impacts being experienced by Pacheedaht in the area. These include the impacts from increased marine shipping and larger vessels including socio-economic impacts, health impacts, impacts to Pacheedaht's cultural and governance rights, impacts to species of significance to Pacheedaht including Southern Resident Killer Whales, and safety issues. Pacheedaht intends to offer to work directly with the proponent to develop a methodology for assessing impacts to Swiftsure Bank as a holistic VC.

Tables A1.4 and A1.5 - Spatial boundaries for elements and VCs proposed by the proponent

As the EAO and the Agency are aware, a key concern for Pacheedaht in terms of the assessment of the Project is that it include a thorough and comprehensive assessment of impacts from the marine shipping component of the Project on Pacheedaht's marine territory. Given the central role of Swiftsure Bank to Pacheedaht rights, culture, and identity, the spatial boundaries for the elements and VCs of concern to Pacheedaht must include the entirety of the Swiftsure Bank ecosystem.

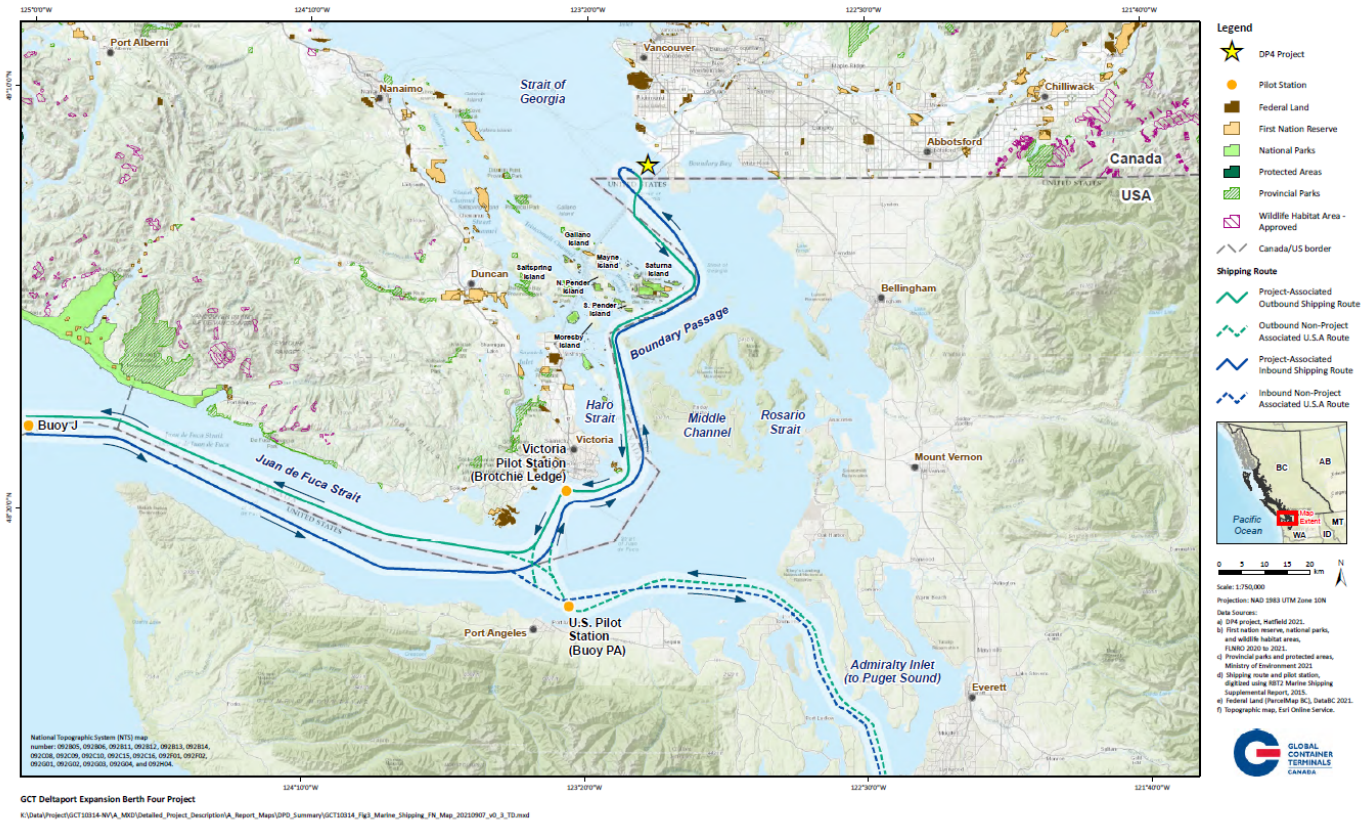
At Table A1.4, the spatial boundaries for some elements of concern to Pacheedaht are described as extending "to Swiftsure Bank".

For example, the RAA for the Underwater Noise element is described as follows:

The Salish Sea encompassing the project shipping route (as shown in DPD Figure 5) from Sturgeon Bank through the Strait of Georgia to Swiftsure Bank at the western entrance to the Juan de Fuca Strait (the 12 nm limit of Canada's territorial sea), excluding Puget Sound.

Figure 5 from the proponent's Detailed Project Description includes the following map at Figure 5:

Figure 5: Marine Shipping Routes for Container Ships.



The same RAA is proposed for the following other elements of concern to Pacheedaht:

- Marine Water and Sediment Quality
- Coastal Geomorphology
- Light

The same RAA is used for the following Valued Components at Table A1.5 which are of concern to Pacheedaht:

- Marine Fish and Habitat
- Marine Mammals
- The Marine Birds subcomponent of the Birds VC
- Marine Use
- Human Health

Pacheedaht wishes to confirm that by describing the RAA as “to Swiftsure Bank”, the proponent intends to include the entirety of Swiftsure Bank in their assessment. Pacheedaht would be happy to work with the EAO, the Agency, and the proponent to demarcate this area as in Pacheedaht’s knowledge it extends beyond the area currently depicted on the map at Figure 5 of the DPD.

Pacheedaht also has the following specific comments about the spatial boundaries being proposed for the proponent’s elements and VCs:

- In relation to Table A1.4, the “Visual Resources” element needs to include the marine shipping area and the entirety of Swiftsure Bank because of the visual interference caused by large marine vessels when Pacheedaht is using their marine territory and the corresponding disruption to Pacheedaht’s sense of quiet and solitude that supports their spiritual connection to the area and their harvesting activities.
- In relation to Table A1.5, the “Social Determinants of Health” VC needs to include the marine shipping area and the entirety of Swiftsure Bank in order to assess the health, social, and socio-economic impacts to Pacheedaht from reduced access to their marine resources caused by increased vessel traffic.
- Also in relation to Table A1.5, Pacheedaht’s view is that the assessment area for impacts to SRKW should not be limited to the 12 nm limit of Canada’s terrestrial sea, but rather needs to include the entirety of SRKW critical habitat in order to ensure a comprehensive assessment of impacts to this species from the Project.

Joint Indigenous Engagement and Partnership Plan

Pacheedaht has the following comment on the draft Joint Indigenous Engagement and Partnership Plan. At page 3, there is a reference to engagement with Indigenous nations that in Pacheedaht’s view needs to include a reference to Indigenous legal traditions as follows:

...engage and work with Indigenous nation partners as governments, with their own jurisdiction and authority, and establish a collaborative approach to evaluate the project. Part of that engagement and work as governments is building a shared understanding of the connection of the Indigenous nation to the lands, waters and resources in issue, grounded in the Indigenous nation’s **laws**, history, culture, and tradition, and situating the project proposal within how the Indigenous nation has determined its priorities and visions into the future;¹

Conclusion

Thank you for the opportunity to provide Pacheedaht’s comments on the draft Process Planning documents. I look forward to continuing to work with the EAO and the Agency in relation to the review of the Project.

Yours truly,

PACHEEDAHT FIRST NATION

<Original signed by>

Kristine Gatzke, Referrals Coordinator

¹ Draft JIEPP at page 3.