

January 28, 2022

Impact Assessment Agency of Canada
160 Elgin Street
22nd Floor
Ottawa, Ontario K1A 0H3

Dear Jane Stringham,

I write in technical support of the S'ólh Téméxw Stewardship Alliance to provide feedback on the document "Draft Joint Assessment Plan: GCT Deltaport Expansion – Berth Four Project (DP4)" (Ref. 141800E). This letter is a technical response, as communicated via the People of the River Referrals Office (PRRO). Please find enclosed a copy of the Draft Joint Assessment Plan with embedded comments in the PDF file. Here, I draw attention to some key areas in need of revision.

1. Lack of attention to Indigenous rights and upholding Bill C-15 and Provincial Bill 41.

"Indigenous interests" (pIV) are defined in relation to section 35 of the Constitution and the BC Environmental Assessment Act. "Participating Indigenous Nations" are "afforded specific procedural rights" (pV). Despite these definitions, within the main body of the Joint Assessment Plan there is no attention to upholding Indigenous rights in practice and in line with Bill C-15 and Provincial Bill 41. There is a lack of attention to cultural processes and First Nations governance within engagement, and there is a lack of attention to Indigenous laws. Indigenous engagement related to the duty to consult *and* accommodate. Engagement is not just about receiving views (p10), but ensuring that First Nations knowledge and requirements are addressed. Federal and Provincial governments are legally bound to uphold the rights of Indigenous peoples. This means addressing any impacts on unceded lands. Engagement should be about recognizing, protecting, and upholding those rights, such as by addressing First Nations needs, not just "gathering views". The tables indicating participant responsibilities should include IAAC and BC EAO responsibilities to take action to uphold commitments to the rights of Indigenous peoples (Bill C-15 and Bill 41, respectively), where appropriate. Indigenous Nations responsibilities in section 5.3 might include raising cases where Indigenous rights have been impacted through the impact assessment or might be impacted by the proposed works, therefore contravened Bill 41 and/or Bill C-15; and Indigenous Nations should be provided opportunity to suggest actions that could be taken to remedy such infringement. In section 5.4, the "objective" of Indigenous engagement does not align with Bill 41 nor Bill C-15. Recognizing and upholding Indigenous rights would mean that First Nations whose territories are affected by the works would have further decision-making

opportunities and powers. It would also mean providing opportunities to apply Indigenous laws in decision-making processes.

2. Lack of clarity and details concerning “meaningful” engagement.

This document does not define what “meaningful engagement” or “meaningful participation” actually means. From our First Nations perspective, it would mean applying Indigenous laws within the review process. Section 3 does not read like “meaningful” engagement, but rather standard information sharing. But since “meaningful engagement” is not defined, it is difficult to know what the IAAC benchmark is. As per point 1 above, “meaningful engagement” goes beyond gathering input to fully implement a duty to consult, accommodate and act in order to protect Indigenous rights.

3. Lack of attention to ethical protocols for protecting Indigenous knowledges, including in line with guidelines commissions and drafted by the Federal Government.

Despite requesting that Indigenous nations volunteer their knowledge, the Joint Assessment Plan fails to address any ethical considerations of First Nations knowledge and data governance. Please address this important omission, including with attention to OCAP (Ownership, Control, Access, and Possession) principles and the First Nations Data Governance Strategy (published by the First Nations Information Governance Centre). The later was even commissioned by the Federal Government, which has provided further financial commitments in the 2021 budget to advance this strategy. The IAAC has drafted an Indigenous Knowledge Policy Framework relating to the Impact Assessment Act, and yet draft joint assessment plan does little to address an issues concerning Indigenous knowledges.

4. The need for an Indigenous monitoring committee.

Section 6 of the Draft Joint Assessment Plan proposes two provincial committees: a technical advisory committee, and a community advisory committee. Please add a third committee: a First Nations-led and managed Indigenous monitoring committee. Please clarify that this will be resourced so that First Nations do not have to “rely on the advice of the TAC” (p17).

In response to the specific query on p4 regarding challenges that may constrain participation opportunities, capacity barriers remain an issue, particularly in responding to Federal timelines. The IAAC and EAO establish review timelines, which can often not be met. This is particularly the case when our internal governance processes must be adhered to in order to receive appropriate direction and approvals from leadership. It would be useful to propose solutions to this limitation, such as a co-design approach to participation and engagement, enabling First Nations to contribute milestones of their own to enable

independent contributions on their own terms (thereby going further to upholding Indigenous Rights in line with Bill 41 and Bill C-15).

Should you have any questions about these comments or those in the enclosed PDF, please do not hesitate to contact me directly or via PRRO. Otherwise, we look forward to receiving the revised Joint Assessment Plan.

Yours sincerely,

<Original signed by>

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