

GCT Deltaport Expansion - Berth Four Project

Matsqui First Nation Consultation Meeting

Location: MS Teams

January 21, 2022

1:00 – 3:00pm PST

Participants	
IAAC – Charles Gauthier, Jane Stringham and Analise Saely	Matsqui – Stan Morgan, David Harper, Cindy Collins and Alice McKay
BCEAO – Mabel Martinez-Dussan, Brendan Mather	
Action Items	
<ol style="list-style-type: none">1. Matsqui will look at section 13 of the draft Joint Guidelines. IAAC will provide a word version of the section 13 of the draft Joint Guidelines.2. IAAC will notify Matsqui when Musqueam Indian Band posts their comments on the draft Joint Guidelines.3. Matsqui will review and comment on the work plans for studies that the proponent shared.	

DP4 Update

- BCEAO gave an update about the planning phase. The public comment period is closing on January 7, 2022 and it will be 45 days. There have been comments received from the public, the proponent and other Indigenous nations. Currently, there are more comments planned to come in from Indigenous nations. Simultaneously, BCEAO and IAAC are reviewing comments received so far and then will implement some of them.
- BCEAO is working on the consensus-seeking piece, which is mostly a process. BCEAO does this by meeting with Indigenous nations and going over comments and concerns. The planning phase is going to finalize and the relevant documents will potentially be ready by April 14, 2022. This is subject to change, but this is the current plan.
- Matsqui noted that the proponent has begun doing research before the planning phase has concluded. IAAC clarified that they have started to plan their spring field work season and that they understand the risk of beginning this work before the planning phase has ended. BCEAO shared that this is not uncommon because proponents are trying to get as many study seasons as possible.
- Matsqui shared they told the proponent to do some analysis on train and truck traffic, as it is a concern for their nation. Matsqui does not see train or truck traffic on the work plans and studies that the proponent shared with them. Matsqui has not talked to the proponent about this yet.
- IAAC stated that they are independent of the proponent’s decisions. IAAC is still seeking comments about rail because there has not been a decision on the extent to include it as an incidental activity to the terminal. The proponent’s work plans will not influence this decision.
- Matsqui shared that rail traffic currently runs through their territory. BCEAO shared that the proponent may increase the work once the scope of road and rail is determined by the regulators. Matsqui stated that transportation is not incidental to this project, rather, DP4 is a transportation

~~project that it is the project because it~~ requires the increased movement of vehicles and railstrains. Matsqui shared that saying road and rail is a problem for someone else ~~does not work~~ is not acceptable. The proponent needs to assess the transportation because DP4# is a transportation project.

Significance Determination and Public Interest

- IAAC provided the context that decision-making under the new *Impact Assessment Act* (the IAA) has not been done yet, so this is all hypothetical. The IAA provides parameters around what regulators have to assess for decision-making on a project. Sections 62 and 63 of the IAA, specifically. For this project, the information will go to the Governor in Council (GiC) because this is an assessment by a review panel. The GiC is made up of federal cabinet ministers and they will look at the review panel report and make a public interest decision. The GiC must consider factors such as, sustainability and effects under federal jurisdiction that are significant.
- Matsqui noted that the term 'cultural heritage' is broad and was interested in how that definition/concept was developed. IAAC shared the context that this term started in 1992 when the first version of the current piece of legislation was created. The IAA is from 2019 and had a lot of Indigenous nations involved while it was being developed and drafted. The Minister of Environment and Climate Change Canada created an independent review panel to gather advice. There was input from all across Canada and from Indigenous nations. Indigenous nations asked to keep the term 'cultural heritage' in and to add impacts on rights.
- IAAC facilitated a discussion about the types of effects or concerns Matsqui would like covered in the project assessment. The extent of significance will be important for health, social and economic effects. IAAC has not developed guidance on how to determine the extent of significance under the IAA. There is guidance for determining the extent of significance under the *Canadian Environmental Assessment Act, 2012* (CEAA, 2012). IAAC will be developing new guidance for significance determinations, public interest and decision-making under the IAA.
- Matsqui shared that they feel that project proponents are reluctant to ~~determine rate impacts~~ being significant significance. Matsqui believes that there may be too many criteria needed for a project effect to be considered significant. Matsqui shared that doing the probability analysis after rating significance would ~~be a solution~~ improve the process and that the cost of mitigation should not be a consideration in rating significance ~~in the decision-making~~. Matsqui believes that it is the regulators' jobs to deliver an environmental assessment that is unbiased to best reflect the public interest.
- IAAC clarified that the extent rating of significance does not carry the same weight under the IAA as it did under the CEAA, 2012. ~~By nature of~~ Because this project being referred to a review panel, the decision-making materials will go to the GiC regardless of the significance determinations.
- IAAC referred to the Assessment of Potential Impacts on the Rights of Indigenous Peoples guidance and the methodology diagram. The assessment of the level of impacts on rights is very similar to looking at the extent of significance. Matsqui's priorities will be different and that not all the criteria listed need to be used. Not all characteristics need to be met within one category in order for an outcome to be considered highly impacted. Only some or one of the criteria can be met and it can

still be considered as highly impacted rights. Each Indigenous nation can describe how their rights are being impacted in conjunction with cumulative effects. If there are cumulative effects, it is considered as starting from a highly impacted point. The other criteria can be worked on to determine definitions and the significance of each criteria being potentially impacted further. Perception of an impact on rights is now considered and proponents must use this guidance document.

- Matsqui requested that IAAC share the links to the relevant guidance documents. The link are as follows:
 - [Policy Context: Public Interest Determination under the Impact Assessment Act - Canada.ca](#)
 - [Impact Assessment Act \(justice.gc.ca\)](#)
 - [Determining Whether a Designated Project is Likely to Cause Significant Adverse Environmental Effects under the Canadian Environmental Assessment Act, 2012 - Canada.ca](#)
 - [Guidance: Assessment of Potential Impacts on the Rights of Indigenous Peoples - Canada.ca](#)
- Matsqui asked what the criteria are and how are they going to be applied. BCEAO stated that the significance of biophysical valued components are determined and then severity of impacts on rights will be similar because of the overlap. There is an ability to have conversations about the severity and the categories being used when assessing impacts to rights. The guidance is a starting place and approach. If there is a Matsqui way of doing this, then the regulators would like to learn about it and consider how it can be used in the assessment of this project. Matsqui agreed that when and if they introduce some their own criteria or needs for the assessment, it will require agreement and consensus.
- IAAC stated that the term 'Indigenous interests' being used for the assessment of this project is a combination of the Section 35 rights from the *Constitution Act, 1985*, effects within federal jurisdiction and the *BC Environmental Assessment Act*. For this project, IAAC and BCEAO have tried to bring all these components together to help the proponent and Indigenous nations do holistic and relevant assessments. There is a possibility for Matsqui to apply their own criteria as **theyit applies** to impacts of the project on Matsqui's rights. Matsqui can articulate criteria and definitions and IAAC and BCEAO are ready to have conversations to understand and support Matsqui. Matsqui was happy to hear this and that they can articulate their needs.
- BCEAO provided a summary of how provincial decision-making would work for this project's assessment. BCEAO will send a referral package with an assessment report, recommendations and matters of assessment to their decision-makers. The assessment report includes information about Indigenous nations and rights and positive direct and indirect effects.
- Matsqui stated that they would like to be able to submit their views and concerns just once. Matsqui understands generally how the processes works, but their focus needs to be on the structure of the studies and how Matsqui can identify and communicate their interests. The proponent is simultaneously sending **thingsdocuments**. There is a lot of potential for confusion and inefficiencies. One point of contact and source of funding would be valuable in improving the effectiveness of these processes.

Funding

- Matsqui was concerned about why they are required to participate in this exercise driven by the proponent and that it requires a lot of resources to do this work. Matsqui has capacity concerns and cannot become overcommitted. Matsqui would like the funding to be built into this work. IAAC shared that they have minimal resources, but can provide some support. IAAC suggested that Matsqui should build in funding requirements for the project into their section of the draft Joint Guidelines. IAAC requested that Matsqui update them as to whether or not the proponent is funding them and if not, IAAC can connect with the proponent.
- Matsqui stated they are frustrated with the capacity support on a project-by-project basis. Matsqui would prefer having the human resources and equipment to do this work to be more stable, rather than sporadically needed to respond to projects. The projects come along at **intense magnitudes irregular intervals** and Matsqui then has to spend a lot **effort and** money and the work is often outsourced. This requires a lot of Matsqui's time and energy. Matsqui would prefer to have the capacity and resources stable enough to **keep the work ongoing maintain adequate capacity**, rather than one-offs for projects. IAAC asked if Matsqui is a part of IAAC's rights and recognition tables. Other Indigenous nations have taken advantage of that to support capacity and resources in their communities.
- Matsqui stated that ongoing resources and capacity would be in support of reconciliation. IAAC agreed that it is important not to equate involvement with input in impact assessments. Indigenous nations across Canada have stated that project-by-project basis is not working, there needs to be dedicated resources. The federal level definition of 'capacity' is different from how Indigenous nations define it. Creating capacity would mean Indigenous nations are provided the same tools as the Crown. Matsqui stated that consultants help as much as they can and that they are still learning the technical aspects.

Draft Joint Guidelines

- BCEAO asked if Matsqui would like to comment on their section 13 of the draft Joint Guidelines to provide more guidance to the proponent. Matsqui stated that they will review that section and include information about their interests within their territory and broader. Matsqui would like assurance that as the studies are done, there is room to adapt their concerns based on the results.
- Matsqui will look at section 13 of the draft Joint Guidelines again and maybe think of more questions now that they have more materials to read (i.e., work plans from the proponent and guidance from IAAC). IAAC will provide a word version of the section 13 of the draft Joint Guidelines.
- IAAC will notify Matsqui when Musqueam Indian Band posts their comments on the draft Joint Guidelines. Musqueam Indian Band's work would be helpful for Matsqui to review.

Cumulative Effects

- Matsqui provided a presentation about cumulative effects in environmental assessments. The icons below link to the complete presentation, discussion and summaries of the work shared. Double click on the icons to open the materials.



February 17, 2021



May 6, 2021



Matsqui EA Review
Summary March 2021

Next Steps

- Matsqui will review section 13 of the draft Joint Guidelines.
- Matsqui will review and comment on the work plans for studies that the proponent shared.
- The next meeting will be February 18, 2022 from 1:00-3:00pm PST with the proponent and regulators.

Appendix 1

The screenshot shows a Microsoft Word document with a table of contents or index on the right side. The document text includes:

the factors referred to in section 63 and the extent to which those effects are significant, in the public interest; or

- o (b) refer to the Governor in Council the matter of whether the effects referred to in paragraph (a) are, in light of the factors referred to in section 63 and the extent to which those effects are significant, in the public interest.

63 The Minister's determination under paragraph 60(1)(a) in respect of a designated project referred to in that subsection, and the Governor in Council's determination under section 62 in respect of a designated project referred to in that subsection, must be based on the report with respect to the impact assessment and a consideration of the following factors:

- (a) the extent to which the designated project contributes to sustainability;
- (b) the extent to which the adverse effects within federal jurisdiction and the adverse direct or incidental effects that are indicated in the impact assessment report in respect of the designated project are significant;
- (c) the implementation of the mitigation measures that the Minister or the Governor in Council, as the case may be, considers appropriate;
- (d) the impact that the designated project may have on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed, by section 35 of the *Constitution Act, 1982*; and
- (e) the extent to which the effects of the designated project hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in

Comments on the right side of the document:

- David Harper**
What if the project detracts from sustainability?
- David Harper** December 02, 2021
Please explain the distinction between effects on "federal jurisdiction" and other effects? Why "direct or incidental" rather than the well-tested direct, indirect, and induced impacts?
- David Harper**
So the new process still considers significance. What criteria are applied to this determination?
- David Harper**
What is the process by which this "appropriateness" will be determined?