

**GCT Deltaport Expansion – Berth Four
Meeting with Malahat Nation**
DRAFT January 27th, 2022 – 10:30am to 12:00pm PST
MS Teams Meeting

Participants	
<p>IAAC – Analise Saely, Charles Gauthier, Susan Laewen</p> <p>BCEAO – Jessie Hannigan, Mabel Martinez-Dussan</p> <p>GCT - Marko Dekovic, Lyle Viereck, Aurora Van Buren, Farron Rickerby-Nishi, Jeff Rempel, Chunny Varaich</p>	<p>Malahat Nation – Tristan Gale, Shannon Ralfs, Kate Richey, Desiree Bulger, Kevin Simpson</p>
Action Items	
<ul style="list-style-type: none"> • The Agency to send Malahat’s Section 13 of the Joint Guidelines that includes the live edits from the meeting today, as well as the meeting notes. Malahat to approve and add any additional edits/comments prior to the Agency posting the documents on the Registry. • The Agency to send the Joint Indigenous Engagement and Partnership Plan (JIEPP) to Malahat for comments. • Malahat to send the Agency and BCEAO a framework for methodology in their Section 13 within the next week or two. • GCT to schedule a meeting with Malahat to discuss funding. • GCT noted that they are not currently involved with EMSA, but will raise this with the BC Chamber of Shipping and ask them for more details on it. • GCT to send Malahat analysis on the size of vessels projected to call at DP4. • GCT to re-send Malahat the email including information on fieldwork engagement. 	

Introduction

- Roundtable introductions.
- Malahat noted that projects like DP4 come with a great deal of uncertainty. There needs to be an acknowledgement that we are working in uncertainty, and a precautionary principle needs to be applied. Uncertainty itself is an impact to Malahat. Malahat communicated the need to be able to plan and access resources. Malahat has been developing tools to work through this uncertainty.
- Malahat stated that they understand the need for a project like DP4, and that there are ways to manage the impacts of this project within the carrying capacity of the ecosystem.

BCEAO or IAAC to provide context around the project and limitations of the discussion (reference material available here: [Agency and EAO Joint Presentation for the December 2021 Indigenous Nations Information Sessions](#))

- GCT provided a quick overview of their presentation attached to the meeting invite. The proposed project, DP4, would be located at Roberts Bank. GCT built their third berth (DP3) in 2010. DP4 would be the next incremental expansion. GCT stated they plan to straighten out their existing rail yard, as it wasn’t aligned previously. GCT noted that the Joint Guidelines are currently being drafted, and that they expect to be in the Impact Statement (IS) stage by April, 2022.

- Malahat asked GCT what the projected increase in key use is over a 50 year time period?
 - GCT responded that currently they have a 2.4 million TEU capacity, and DP4 would be an additional 2 million TEUs, equaling 4.4 million TEUs in total.
 - Malahat asked what are the size of vessels projected to be calling at DP4 over a 50 year time period?
 - GCT responded that currently their terminal is equipped to manage the largest vessels available, and they expect the trend of vessel upsizing to continue. Currently, they have a 10,000 – 13,000 TEU capacity and 5 years ago they had a 5,000 – 10,000 TEU capacity. GCT noted that the largest vessels are engaging in trade between Asia and Europe. The vessels conducting trade between Asia and the West Coast are between 13,000 – 20,000 TEUs. Over the next decade, GCT expects to see more of these larger vessels due to trade in Asia and North America. If DP4 is approved, the terminal would have 4 berths, which would allow flexibility if vessels keep upsizing. GCT noted they can follow-up with Malahat on this analysis.
- GCT must identify specific thresholds for impacts that the project is committed to staying within ahead of seeking project approval. Only then can First Nations have meaningful input on whether that level of impact is reasonable or can be supported by the ecosystem. Furthermore, GCT must commit ahead of project approval to concrete actions that will be taken if these thresholds are exceeded. These actions should adopt proven approaches to mitigate any impacts that are beyond the designated threshold.
- Malahat asked GCT from an environmental or a First Nation perspective, what does GCT think their number one mitigation measure built into the project is?
 - GCT responded that their incremental growth, and one berth approach leads to the lowest possible footprint delivering this capacity, and this is their biggest mitigation factor. Further, avoidance of disturbing and building a footprint over a larger space is their number one mitigation. GCT stated that they already have the most dense operations in North America at Deltaport in terms of amount of capacity and use, and want to continue down this path. GCT further explained that they have done this before with their railyard, their capacity increased 50% within the existing footprint. GCT stated there are many other factors to look at, such as construction of the berth and how to mitigate impacts from dredging.
 - Malahat stated that the framing of a lesser impact is still an impact, not an avoidance classification. Malahat communicated the need to have a balance between the environment and economics.
 - GCT gave an overview of their Value Components (VCs), noting that intermediate components will inform biological and socio-economic VCs. GCT stated that a new VC that is being proposed in the Joint Guidelines is, “Wetlands and Marine Vegetation”.
- Malahat Nation appreciates the inclusion of the ecosystem approach and looking forward to exploring this further as a management tool.
- The Agency gave a process overview, explaining that DP4 is being assessed under the Agency’s new Impact Assessment Act (2019). A unique feature of this Act is the incorporation of Impacts on Rights directly as a factor. The Agency noted that DP4 is currently in the planning phase, with the goal to set out a correct frame for the next few years of the assessment. The next phase will be the Impact Statement (IS) phase, where GCT will address what is laid out in the Joint Guidelines. A Panel will then be chosen and terms of reference will be developed within the next year or two. The Panel’s report will inform decision making, which has a new framework under the new Act. There is now a set of public interest determinations, and Governor and Council will need to determine whether the project is in the public’s interest. The Agency explained that right now the focus is on the Joint Guidelines and getting them right. Later in the process, the

Agency would like to have conversations with Malahat on the terms of reference and Panel appointment.

- Malahat noted that consultation without hard commitments is difficult and inherently not going to result in clear answers.

GCT must commit ahead of project approval to concrete actions that will be taken if these thresholds are exceeded. These actions should adopt proven approaches to mitigate any impacts that are beyond the designated threshold.

- The Agency stated that there is more flexibility to have these discussions earlier in the process, even in the form of conditions prior to the Panel.
- BCEAO gave a process overview. BCEAO noted that a key part of their new provincial legislation is consensus seeking. BCEAO explained that they primarily rely on the federal Panel review to satisfy the requirements of the provincial EA. BCEAO stated that they are working collaboratively with the Agency on the Joint Guidelines, and would like to see comments from Malahat to ensure that Malahat's voice is represented and heard in this document.
- Malahat asked BCEAO to elaborate on the consensus seeking process.
- BCEAO responded that at any major milestone or decision point in the provincial EA, BCEAO seeks consensus with participating Indigenous Nations on the determination of the Project. This includes whether there is consensus or not on the development of a document or a decision being made. Consensus seeking ensures there is an open dialogue that is continued throughout the EA, and that it is well documented. BCEAO noted there is also dispute resolution options included in the consensus seeking process.
- Malahat stated that this is time intensive for nations who intend to participate fully. While Malahat has received capacity funding from provincial agencies and the proponent to date, they need to know exactly what the timelines are for capacity support. Having bits and pieces of information doesn't work, and risks further impacts to Malahat. Having small contracts and part-time staff impacts Malahat's ability to contribute if they can't onboard full-time staff over a long period of time.
- Malahat noted they have submitted a proposed budget, and are looking for a long-term plan on what kind of funds they can expect so they are able to plan accordingly. Malahat asked, will we receive scheduled disbursements or milestones that result in new funding?
- BCEAO responded that they do not provide funding past early engagement. The EAO expects the proponent to provide capacity funding for the remainder phases of the assessment process to ensure participating Indigenous nations fully and meaningfully participate.
- The Agency responded that Malahat has accepted grants for the planning phase. The next set of funding would be for the review of the Impact Statement, and then for the review and participation in the Panel process, conditions, and follow-up discussions post-Panel hearings. The Agency stated that funding for the review of the sufficiency of the Impact Statement will be approximately \$25,000, and funding for the Panel phase will be approximately \$50,000. The Agency noted these phases are a few years away. For Malahat's internal planning, the Agency estimated the next set of funding disbursements will be \$25,000 (Impact Statement Review), \$50,000 (Engagement with the Panel), and \$20,000 (Post-Panel – conditions and follow-up).
- GCT responded saying they want to discuss capacity funding to ensure Malahat can meaningfully participate in this process. GCT noted they have an initial capacity funding agreement which covers the early engagement and readiness decision phase, and they are open to discussing what is required for this next phase as we get to the Impact Statement. GCT stated they are ready to begin the process of a framework agreement, and are committed to work towards an MBA with Malahat. GCT further stated that how Malahat wishes to discuss

Indigenous Knowledge and conduct studies can also be included in this framework. GCT stated they will reach out to Malahat to set a meeting to discuss this.

In considering whether Malahat can support the proposed project, it will be critical to understand the commitments made by the proponent to impact thresholds, and have contingency plans in place if the thresholds are exceeded.

The Agency stated that the goal is to have the Joint Guidelines finalized by mid-April. The Agency noted that they have heard concern from Malahat previously on breaking things into boxes in documents, and that this was not an acceptable way to accept Indigenous Knowledge. The Joint Guidelines try to take a holistic approach, encompassing requirements of the IA under Indigenous Interests, which also includes impacts on rights. There is the option for nations to articulate how they want to present their information, and how they want it to be treated in the process. Each nation has their own individual section in the Joint Guidelines where they can detail what is important to them, and what their interests are. The Agency noted that some nations have their own methodology for GCT to follow to work with them to assess their interests, while other nations want the Crown more involved throughout the process. The Indigenous Interests lens gives more flexibility, and more room for collaboration while the Impact Statement is being written.

- Malahat noted that it is nice to see the implementation of their views reflected in the Joint Guidelines.
- Malahat stated that this is good movement in the right direction. However, Malahat noted that there exists friction, as they need funding for capacity to engage in the process. Malahat further expressed that the ability for them to put pen to paper is limited when funding is limited. Malahat stated that meetings where the proponent and all levels of the government are involved is the best path moving forward for them. This way, Malahat will not need to distribute the same information to multiple agencies and the proponent. For now, until the capacity problem is fixed, having all parties on the call together is the most efficient approach for Malahat.
- The Agency responded that they are happy to use this approach moving forward, and added that it is possible to set meetings where some parties can be present for the first half of a meeting, and leave for the second half.
- Malahat asked if there is the opportunity to adjust Malahat specific frameworks as they get more capacity throughout the process? Can Malahat revise and add to this framework at later stages of consultation?
- The Agency stated there is room in the Joint Guidelines for flexibility. The Agency noted that Musqueam put in their own methodology in their section of the Joint Guidelines for how they would like GCT to work with them, and that Tsawwassen is looking at doing this as well. The Agency suggested that the focus turn to the Joint Guidelines, and ensure that topics of importance to Malahat are captured.
- Malahat noted that within the next week or two, they can look at putting something like the methodology mentioned above into the Joint Guidelines.
- Malahat noted that today's meeting is included as part of Malahat's input on the Joint Guidelines.

Malahat Section 13 of the Guidelines

- Malahat and the Agency conducted live edits within Malahat's Section 13 of the Joint Guidelines. This section will be posted on the registry following approval of the edits from

Malahat. Malahat gave the Agency the following bulleted list of overarching considerations to add to their Section 13 of the Joint Guidelines:

- If effects are uncertain or unknown, the uncertainty has real impact on Malahat's ability to plan, manage and rely on natural resources;
 - ~~Engagement capacity needs to be intertwined with the Crown's duty to consult and acknowledge the Proponent may be incurring impacts to Malahat Nation by proposing a project that requires significant amount of staff time and resources to comment on;~~
The section above has been addressed through a contract with GCT, and can be removed from the document.
 - Malahat Nation has been stewards of natural resources throughout the Salish Sea since time immemorial managing **human impacts** within the carrying capacity of the natural ecosystem, contemplation of proposed project based on a percentage increase **in impacts** to the natural environment are inappropriate and should be framed as how projects can ensure that impacts remain within the carrying capacity of the ecosystem from all perspectives;
 - Malahat has a right to participate in the economic benefits derived from the use of natural resources that Malahat has rights and title to continued use for future generations, beyond just construction activities but also including operation and decommissioning of any proposed projects; and,
 - Malahat will encourage the alignment of regional business with the rights and title of Malahat Nation. To enact the right for Malahat Nation to economically participate in business that occurs in Malahat's territory (CCP Value 1 Objective 3) Malahat will also consult with All levels of government on systems that align the needs of business, First Nations and the environment. Hold Canada accountable for the systemic issues that have historically disadvantaged Malahat and seek to improve and reimagine those systems to ensure fair benefit¹
- Malahat noted that thresholds and definition of carrying capacity will be developed as Malahat goes through this process, the idea being that if a project is proposing increased shipping transits/movement of TEUs through Malahat territory – there is a need to look at the carrying capacity of the environment to move TEUs. There needs to be analysis on how many transits can be supported by the ecosystem, including: underwater noise studies, risk of spills from transits and risk calculations. **The Precautionary** principle needs to be applied, not just risk management. Malahat noted that the preliminary list of effects under Indigenous Interests is framed by carrying capacity.
 - Malahat emphasized that any amount of uncertainty is an impact itself.
 - Malahat noted that they have a lot of expertise that can inform these conversations as we move out of potential to actual expected impacts. Malahat further communicated they are ramping up their Quiet Vessel Initiative (QVI) with hydrophones that are monitoring underwater noise and vessel movements. There is currently lots of Malahat presence on the water, and they are using a holistic approach to managing impacts. Malahat are on the water hundreds of days of the year with a lot of qualified members. They are using this data to inform conversations like today.
 - GCT noted they were curious of Malahat's perspective of carrying capacity from a social perspective, specifically looking at social resilience, restoration and language.

¹ This bullet point was added in later in the meeting.

- Malahat stated this was a great question. Malahat noted that carrying capacity is not a single point in time, but iterative based on the availability of new information. We need to look at if this impact is above the carrying capacity, and if it is, then it the project should not happen. If it is within the carrying capacity, then following a cap and trade system is a well proven way to manage impacts within the carrying capacity.
- Malahat noted that the Indigenous Interests in the Joint Guidelines have been captured well, noting that some items are large buckets, a lot of specific factors will fall within these broad items. Malahat stated that they are not seeing too many gaps, and that the Indigenous Interests captures a lot of factors Malahat is interested in protecting. Malahat asked to what degree of specificity do we need to go into for this document?
- The Agency stated that for the purpose of the Joint Guidelines, broad topics and general ideas are the focus. The Agency noted that there is direction in Section 5 of the Joint Guidelines on how GCT will work with Malahat to gather information. If there is something that falls under culture or governance that was missed in this section, Malahat can insert comments here.

Flagged for later discussion

Existing work Malahat is involved in such as Cumulative Effects of Marine Shipping

- The Agency asked Malahat if there is anything from their work, such as CEMS they would like to see in the Joint Guidelines? **Malahat has documents relating to CEMS that the Nations is willing to share, but they are not formatted to be included in the Joint Guidelines.**
- ~~Malahat noted that this is challenging, as it gets into a scenario where Malahat is offering resources to help a project move through an approval process. If there isn't any covering of the cost of this work from Malahat, then it does not make sense for Malahat to share this work. Malahat noted that they are investing massively at significant expense. To ask Chief and Council to prioritize talking about this project during a pandemic is a huge ask. This work is being done at Malahat's dime because a for-profit company wants to make more money, this framework needs to change.~~
- Malahat communicated they have been clear on what a good system would be for their nation, and have proposed a transparent breakdown of this system. Malahat is not asking Chief and Council to spend a lot of time on these projects. Capacity funding needs to be in place for Malahat to provide their expertise, time, etc. Sending a newsletter to their members is not meaningful engagement. Malahat noted they had asked for 3-day trips to bring nation members to the project location and engage in a meaningful way.
- GCT stated that they would gladly coordinate with Malahat to set up doing a tour and briefing of DP4 with nation members, and would cover the expense of this as well as build this into agreements with Malahat moving forward.
- Malahat provided more information on the proposed site visits: 3 site visits at \$1,500.00 each. Malahat intends to bring families and elected leadership over where they can set foot on the proposed site and engage directly, attending by water on Malahat's vessel. Malahat sees these visits as informal. Bringing families, providing lunch, going to a site that is important for work being done in the region. Malahat sees this as a holistic approach of engagement, and is more meaningful than just text on a page.
- GCT noted they have received the letter from Malahat detailing these site visits, but had not received a proposed budget. Malahat noted they would re-send the budget to GCT.
- Malahat shared their recently published video on YouTube: [Marine Stewardship at Malahat Nation | Building Capacity through the Salish Sea Initiative](#)

- The Agency asked Malahat if they would be able to post this video on the registry. Malahat agreed to this, with the caveat that this video does not encompass all capacity available.
- Malahat noted that access to information Malahat is gathering without a clear path on how this benefits Malahat in negotiations may be challenging.
- Malahat gave an overview of their work on CEMS. They are working on a regional salmon assessment that has a habitat-focused lens. They are also working on a sub-regional assessment with Transport Canada, where they have completed a terms of reference and work-plan. They are now planning to go to the next phase, which will entail hiring a contractor to complete the assessment. Malahat noted they are working off the side of their desks, and do not have enough time to properly contribute to this.
- Malahat further emphasized that EMSA is a valuable initiative, and is a one-spot to put in a great deal of information and metrics including maps of historical trade routes, where vessels are, historical EIS data, important habitats, cultural areas and real time weather and vessel positions.
- BCEAO asked if through EMSA you are able to see where ships are anchored?
- Malahat responded that you are able to see this, and where the buffer is supposed to be around the anchor point. You are able to zoom in on the actual vessel, get the fix where the ship was, where it was trying to turn, etc.
- The Agency asked GCT if they are involved with the EMSA initiative, and if not if they are planning on using it in the future?
- GCT noted that they are not currently involved with EMSA, but will raise this with the BC Chamber of Shipping and ask them for more details on it. GCT noted that they are a terminal operator, and ocean carriers are their customers. GCT further stated that they do not own ships or containers themselves.
- Malahat noted that it is important to take a holistic approach to all potential impacts that would be facilitated through the project.
- GCT stated that they are open to discussions on how to support studies that will lead to a meaningful Impact Statement.
- Malahat communicated that through the QVI, they have purchased hydrophones that can be temporarily in place on the sea floor, and eventually want this to be permanent with an underwater cable. These hydrophones could triangulate ship positions, the noise of the ships and real time awareness of marine mammals near vessels which could eventually evolve into an alert system. This would be a solution to reduce impacts.
- GCT noted they are interested to hear more about this, and asked if this data is a part of the ECHO program?
- Malahat noted that this is in addition to ECHO, as it is a general purpose system, not just focused on marine mammals.
- Malahat noted that there is a need to set reasonable limits to work within, and have certainty on what is happening in the real world if this project goes ahead. Bringing in technology that is available today can bring pragmatic solutions to impacts.
- This technology can include space based monitoring and semi-real time satellite imagery that can track notable ecosystem changes. For example if we are seeing changes in kelp in a specific area, and seeing erosion in this area, can look at putting kelp beds back in that area to help with erosion.
- Malahat drafted another bullet point to be inserted in their Section 13 of the Joint Guidelines:
 - Malahat will encourage the alignment of regional business with the rights and title of Malahat Nation. To enact the right for Malahat Nation to economically participate in business that occurs in Malahat's territory (CCP Value 1 Objective 3) Malahat will also

consult with All levels of government on systems that align the needs of business, First Nations and the environment. Hold Canada accountable for the systemic issues that have historically disadvantaged Malahat and seek to improve and reimagine those systems to ensure fair benefit

- The Agency noted they will send these edits back for Malahat approval before posting on the registry.

Next Steps in the DP4 Process

- The Agency noted they will flip Malahat's Section 13 back with the edits made today for Malahat's review and input. The Agency further communicated that the Joint Indigenous Engagement and Partnership Plan (JIEPP) is also currently out for comment, this document sets out the relationship between the Crown and nations on this project. The Agency noted there is flexibility on timelines for comments on this document.
- GCT stated that they will set-up a meeting with Malahat on putting together a funding agreement.
- BCEAO touched on consensus seeking, noting that it can take different forms, and the priority currently is to ensure that the Joint Guidelines are hitting the mark, and that they do not leave out anything of importance to Malahat.
- GCT stated that they have recently sent Malahat an email listing a number of field work-plans in which they are looking for engagement on. Malahat noted they did not see this email in their inbox, and GCT stated they will re-send this email. GCT noted they are hoping to start field-work as early as March.
- Malahat expressed that the importance of collecting baseline data is paramount, and that it is near impossible for a First Nation to talk about whether a certain level of impact makes sense if it just *might* happen. Malahat emphasized that baseline data is critical.
- Malahat clarified the proper email addresses that GCT should be reaching out to, and noted that <email address removed> should be included on any email that GCT, the Agency and BCEAO send to Malahat.
- Malahat concluded the meeting by noting that there are win-win solutions available, and if we look outside the box they are achievable.

Action Items:

- The Agency to send Malahat's Section 13 of the Joint Guidelines that includes the live edits from the meeting today, as well as the meeting notes. Malahat to approve and add any additional edits/comments prior to the Agency posting the documents on the Registry.
- The Agency to send the Joint Indigenous Engagement and Partnership Plan (JIEPP) to Malahat for comments.
The Nation has not received the above mentioned Joint Indigenous Engagement and Partnership Plan (JIEPP)
- Malahat to send the Agency and BCEAO a framework for methodology in their Section 13 within the next week or two. **Malahat is developing an engagement framework based on the recently negotiated capacity funding to be provided to Malahat Nation by the proponent**
- GCT to schedule a meeting with Malahat to discuss funding.

- GCT noted that they are not currently involved with EMSA, but will raise this with the BC Chamber of Shipping and ask them for more details on it.
- GCT to send Malahat analysis on the size of vessels projected to call at DP4.
- GCT to re-send Malahat the email including information on fieldwork engagement.

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