



Pacheedaht First Nation

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May 13, 2022

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 (the Project)
EAO and IAAC Response to Pacheedaht First Nation Comments on Draft Joint Guidelines**

On behalf of the Pacheedaht First Nation (Pacheedaht), I am writing in relation to the EAO and the Agency's response to our comments on the draft Joint Guidelines for the Project.

On May 3, Pacheedaht was provided with a revised Section 13.13 (Pacheedaht-specific section) and an Excel table setting out some responses to comments Pacheedaht had provided on the draft Joint Guidelines by way of a letter on January 14, 2022.

Our January letter included comments on the methodology for assessing the marine component of the Project, the methodology for assessing cumulative effects (Part 8), the Pacheedaht-specific section (Part 13), accidents and malfunctions (Part 15), existing conditions (Part 16), and comments on the proposed Valued Components set out in Appendix 1. Pacheedaht understands that revisions to the draft Joint Guidelines beyond what has been provided cannot be shared before the Joint Guidelines are finalized due to legislated timelines.

We have some concerns about the adequacy of the response that has been provided to our comments on the draft Joint Guidelines. Our comments are set out below.

General

It is not clear to us how our comments on accidents and malfunctions or existing conditions have been

addressed as no response has been provided to these comments. If these comments have been addressed elsewhere in the revisions to the draft Joint Guidelines, please let us know.

Section 13.13 - Pacheedaht-specific section

Additions have been made to Section 13.13, including the need to comprehensively assess impacts from the marine shipping component of the Project and the need for a Swiftsure Bank holistic VC. As the Joint Guidelines are issued to the proponent to guide them in preparing their assessment, our concern is that more clarity is needed in terms of the methodology to be used by the proponent in assessing impacts from the marine component of the Project. This concern is based on our experience in the review process for the RBT2 Project, where from our perspective the impacts from marine vessels have been both inadequately considered and inadequately addressed, especially in terms of cumulative impacts.

In our January letter we had provided some suggestions for addressing this issue in the context of the Project, including by requiring the proponent to assess the additional vessel traffic as a Project component rather than as an activity “incidental to” or “relevant to” the Project. Early guidance document such as the Joint Guidelines represent an incredibly important opportunity to set the proponent on the right path, and we are concerned that in not providing more clarity on the methodology to be used in assessing impacts from the marine vessels this opportunity is once again being missed.

We do not see any specific response to the first two pages of our January letter which discuss our concerns about the way marine shipping is to be treated in the review of the Project. As we have not had the opportunity to review any other sections of the revised draft Joint Guidelines, we would appreciate hearing from the EAO and the Agency how this concern has been addressed. We note the reference in the first line of the Excel table that has been provided to the “marine shipping incidental to the project” which raises concerns that an opportunity to improve the methodology for assessing the impacts from vessel traffic, and ultimately the reliability of the assessment, is being missed.

Finally, in the section on “Indigenous Governance Systems” at Table 13.13, please note the addition we had requested for this section was:

Interference with Pacheedaht First Nation Aboriginal title and governance rights should the Project proceed ~~within~~ **without** Pacheedaht First Nation’s consent.

Excel table

In this table, the EAO and the Agency reference a number of comments from our January letter and provide some notes in response.

In response to our concerns about the cumulative impacts of increased large vessel traffic, there is a reference to a direction provided to the proponent in Section 16 of the Joint Guidelines to describe the anticipated maximum increase in vessels as well as the type, size, and capacity of the vessels. As we have not had the opportunity to review Section 16, the following guidance needs to be provided to the proponent: they must seek and incorporate Pacheedaht’s views on the effectiveness of any proposed mitigation before applying it to impacts or cumulative impacts to Pacheedaht. As set out in our January letter, we are very concerned about going through another review process where broad federal initiatives are relied upon to address impacts to us

which from our perspective on the water do not bear out.

In the Excel table we also see the reference to Section 8 where Indigenous groups can themselves identify residual effects to be carried through to the cumulative effects assessment. In our view rather than having the proponent come to one conclusion on residual impacts and require Pacheedaht to present their own conclusion, the stronger approach would be to require the proponent to carry all potential impacts to Pacheedaht through to the cumulative effects analysis unless Pacheedaht agrees the impacts will be mitigated by steps taken directly by the proponent or otherwise.

We note the references to the Review Panel in the Excel table, and while Pacheedaht looks forward to participating in the Review Panel process, we do not believe these important issues such as the methodology to be used to assess cumulative impacts should be left until the Review Panel is appointed and actively reviewing the Project. The proponent needs proper guidance now on these important issues.

Conclusion

Given the outstanding issues we have identified with the draft Joint Guidelines, we suggest arranging for a time to meet to discuss.

Yours truly,

PACHEEDAHT FIRST NATION

<Original signed by>

Kristine Gatzke, Referrals Coordinator

cc. Jocelyn Harrington, IAAC (<email address removed>)
Brendan Mather, EAO (<email address removed>)