



Snuneymuxw

First Nation
www.snuneymuxw.ca

March 30, 2023

Canadian Impact Assessment Registry
deltaport@iaac-aeic.gc.ca

Re: Snuneymuxw First Nation and GCT Deltaport Expansion – Berth Four Project

On December 23, 1854 at Xwsolexwel (Nanaimo harbour), the Snuneymuxw People entered the Snuneymuxw Treaty of 1854 with the Crown to protect Snuneymuxw villages, enclosed fields, waterways, harvesting and gathering, and the right to hunt and carry-on fisheries as formerly. The Council of Snuneymuxw First Nation have the authority to preserve and protect these constitutional collective rights and title to Snuneymuxw territory and are protected by Section 35 of the *Constitution Act, 1982* (known as “Section 35 rights and interests”). Within our Section 35 constitutional protections are the right to self-govern, to practice Snuneymuxw culture, to speak Hul'q'umin'um', and any right flowing from these aspects (e.g., passing on knowledge and language to the next generation; gathering needed resources to participate in ceremony).

The spirit and intent of the Snuneymuxw Treaty of 1854 is to preserve and protect, forever and always, all Snuneymuxw villages, fields, waterways, gathering and harvesting sites for the Snuneymuxw people. These rights and title are determined by Snuneymuxw People and consent to impact our rights and title can only be given by Snuneymuxw First Nation. Unfortunately, immediately following the signing of the Treaty, the Crown unlawfully took away or disposed of Snuneymuxw lands, waters, and resources without the consent of our Nation, and did not take the necessary steps required to honour their constitutional obligations. Continued development and lack of Snuneymuxw consent throughout the Project area has led to an erosion of our territory and infringements on our Section 35 rights and interests including Treaty of 1854 rights.

On December 9, 2021 Snuneymuxw First Nation received confirmation from the BC EAO that we have been approved as a Participating Indigenous Nation (“PIN”) in the assessment of the Global Container Terminals’ (“GCT”) Deltaport Berth 4 Expansion Project (“DP4” or the “Project”)¹. As part of the Environmental Assessment (“EA”) planning processes, Snuneymuxw First Nation has reviewed the draft Review Panel Terms of Reference (the “ToR”) and the draft Cooperation Agreement. Snuneymuxw’s comments are attached as appendices for the British Columbia Environmental Assessment Office (“EAO”) and Impact Assessment Agency of Canada’s (“IAAC”) consideration.

¹ Via Email correspondence

It is our expectation that the information and comments provided in this document by Snuneymuxw First Nation will inform the Coordinated Review Process in a manner that respects Snuneymuxw rights, interests, and priorities.

Sincerely,

<Original signed by>

Chief Mike Wyse

cc. Desiree Thomas, Lands Clerk, Snuneymuxw First Nation
Councillor Erralyn Joseph, Snuneymuxw First Nation
Germaine Conacher, Partner, MNP
Mary Ellen Turpel-LaFond, Legal Counsel

Appendix A: Comments on the Draft Terms of Reference

Information Source <i>(Clause of Cooperation Agreement or Terms of Reference)</i>	Comment or Requested Change	Rationale
<p>Terms of Reference – Scope of the Assessment by the Review Panel Section 3.13(a)(ii)</p>	<p>This section requires the Review Panel to take into account “any cumulative effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out...”</p> <p>With respect to Project interactions with reasonably foreseeable activities, particular attention should be paid to the Roberts Bank Terminal 2 Project (the “RBT2 Project”), which has recently completed its assessment through a Review Panel in Coordination with the IAAC and BC EAO. The RBT2 Project is proposed in the same area as the DP4 Project.</p>	<p>Communication has been unclear to this point with respect to the consequences of the potential RBT2 Project’s approval on the need for this Project, and whether that will affect the DP4 Project’s approval. If the RBT2 Project is approved, it is unclear whether the DP4 Project could be approved. The assessment process for the RBT2 process was long and required significant time for additional information requests to be fulfilled with respect to potential RBT2 Project-related impacts and the proponent’s proposed mitigations and offsets. Notably, Snuneymuxw had minimal engagement and participation throughout the RBT2 assessment; the only input opportunities available to Snuneymuxw were comments on the additional information request responses and comments on the Crown Accommodation and Recommendation Report. As such, the IAAC and EAO lack an understanding of impacts to Snuneymuxw’s Section 35 rights and interests to inform the RBT2 Project’s decision-making. While Snuneymuxw has been engaged earlier in the process for the DP4 Project, it is important to Snuneymuxw that potential DP4 Project interactions with the RBT2 Project are</p>

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		thoroughly assessed and understood.
Terms of Reference Section 4.29(a) and (b)	<p>These sections indicate that the Review Panel may post draft sections of its report to the Public Registry for review from Indigenous nations. Indigenous nations would have 21 days to review the draft and provide comments.</p> <p>More time will be required for Snuneymuxw First Nation to review the appropriate draft sections of the Review Panel's Report. Similarly, as currently written, Section 4.29 states that the Review Panel may post draft sections of its Report to the Public Registry. Snuneymuxw First Nation requests that the opportunity to review the draft Report be non-optional and that 60 days be provided for review and feedback.</p>	<p>During the information session held on March 15, 2023, by the IAAC and EAO related to this public comment process, the IAAC and EAO heard from many Indigenous nations that 21 days is an insufficient amount of time to review and provide feedback on the appropriate sections of the Review Panel's draft Report. While the IAAC and EAO recognized this was a tight period of time, they also indicated that this brief review period is the result of tight regulatory timelines. Similarly, it was confirmed that posting draft sections of the Review Panel's Report is currently provisioned as <u>optional</u> in order to account for any potential timeline challenges the Review Panel may face while developing its Report. This current approach disadvantages participating Indigenous nations. In essence, Indigenous nations' time to comprehensively review and validate the Review Panel's Report is being compromised for the sake of the Review Panel's time. It is essential that space be set aside in the regulated timeline for a draft Report to be released, and for Indigenous nations to adequately review and validate the Report.</p>

Appendix B: Comments on the Draft Cooperation Agreement

Information Source <i>(Clause of Cooperation Agreement or Terms of Reference)</i>	Comment or Requested Change	Rationale
<p>Canada-British Columbia Cooperation Agreement on the Coordination of the Environmental and Impact Assessment Process for the GCT Deltaport Expansion – Berth Four Project</p> <p>6 Engagement and Consultation</p>	<p>Section 6.4 states:</p> <p>“Should dispute-resolution be initiated by a Participating Indigenous Nation under the B.C. Act, the EAO will advise the Agency of the process to be undertaken and will keep the Agency informed as the dispute-resolution process progresses. The Agency will, to the extent possible, adjust its process and/or timelines to maintain process alignment with the Province until the dispute-resolution process is concluded.”</p> <p>More clarity is required regarding the EAO’s dispute resolution process during a coordinated assessment between the EAO and IAAC.</p>	<p>Each party’s roles and responsibilities during the dispute resolution are currently unclear. Should dispute resolution be necessary, it will be important for participating Indigenous nations to understand the exact process for dispute resolution with a proponent and the EAO where the IAAC is also involved.</p>