

Summary of Federal Incidental Activities and Provincial Required Assessment Matters Analysis

GCT DELTAPORT EXPANSION – BERTH FOUR PROJECT

June 30, 2022

1. Introduction

Under the *Impact Assessment Act* (IAA), a designated project includes one or more physical activities that are listed in the [Physical Activities Regulations](#) (commonly known as the Project List), as well as any physical activity incidental to those listed activities. An incidental activity is an activity that is likely to happen in conjunction with a project proposed by a proponent, meaning that it becomes part of the designated project and must be assessed. Incidental activities are considered in the federal decision-making phase, including the federal public interest determination, and if a project is allowed to proceed, incidental activities can be subject to conditions in a decision statement.

The B.C. *Environmental Assessment Act* (B.C. Act) describes a reviewable project as “the facilities at the main site of the project, any off-site facilities related to the project and any activities related to the project that the chief executive assessment officer or the minister may designate.” As such, any activity relating to the project may be included in the project scope and assessed per section 25 of the B.C. Act, required assessment matters. For the purposes of this joint assessment, incidental activities and any other activities included in the provincial scope of the project will be considered in the provincial decision-making phase.

During the Planning phase for GCT Canada Limited Partnership’s (the proponent) GCT Deltaport Expansion – Berth Four Project (the project), the Impact Assessment Agency of Canada (the Agency) and the British Columbia Environmental Assessment Office (EAO) reviewed and analyzed the documentation provided by the proponent including, but not limited to, the [Initial Project Description](#) and [Detailed Project Description](#), as well as comments received from Indigenous nations, the public, government authorities, and other participants. Following that review, the Agency and EAO determined which activities should form part of the project to be assessed (i.e. incidental activities), including the geographic extent of those activities. The Agency and EAO also determined which activities are not considered incidental to the project, but will be included in the project scope and assessed in accordance with the required assessment matters under the B.C. Act. The Agency and the EAO worked together to ensure a coordinated planning process and jointly determined the scope of the assessment.

The purpose of this summary is to explain the criteria and considerations made in determining whether an activity is incidental to the project and the associated geographic extent of those activities. This summary also describes other activities that are included in the project scope and to be assessed in accordance with the required assessment matters considered under the B.C. Act.

2. Criteria for determining which physical activities are incidental to the designated project

For the project, the physical activities identified by the regulations include the expansion of the terminal footprint and intermodal yard, and all of the physical works and activities that take place within the proponent's lease boundary.

The Agency and EAO analyzed whether four potential additional activities were incidental to the designated physical activity¹:

1. Marine shipping of container vessels;
2. Rail transportation outside of the lease boundary;
3. Road transportation outside of the lease boundary; and
4. Activities associated with the operation of the Tsawwassen First Nation Marina.

Federal considerations

The Agency's [Guide to Preparing an Initial Project Description](#) outlines five criteria to be taken into account in determining which physical activities are incidental to the designated project:

- nature of the proposed activities and whether they are subordinate or complementary to the designated project;
- whether the activity is within the care and control the proponent;
- if the activity is to be undertaken by a third party, the nature of the relationship between the proponent and the third party and whether the proponent has the ability to "direct or influence" the carrying out of the activity;
- whether the proposed physical activities are solely for the benefit of the proponent or is available for other proponents as well; and
- the federal and/or provincial regulatory requirements for the activity.

In addition, the Agency also considers the purposes of the IAA broadly when applying the criteria above. In particular, the Agency strives to balance the purposes around fair and timely assessments with the

¹ In its Detailed Project Description, GCT Canada Limited Partnership (the proponent) also identified the movement of short sea shipping barges and tugs as a potential incidental activity. On May 4, 2022 GCT advised that they were removing the short sea shipping berth from the project description, and therefore, it has not been considered in this analysis.

purposes around promoting communication and cooperation with Indigenous peoples, and ensuring respect for the rights of Indigenous peoples.

Under the IAA, the potential impacts of a designated project on the rights of Indigenous peoples must be considered as a factor during the assessment. In making a decision on the project, the Government of Canada must also consider how the designated project, including any incidental activities, could potentially interfere with the exercise of Indigenous rights.

Project-specific considerations are taken into account when analyzing whether an activity is incidental to the project. Therefore, the inclusion of an incidental activity and the associated geographic extent are specific to the unique circumstances of a particular project and not determinative for future assessments.

Provincial considerations

The EAO's Planning Process Policy describes what should be considered when deciding the scope of a provincial environmental assessment, requiring "decisions on the scope of projects for the EA advance the purposes of the Act and consider matters of provincial interest." The EAO's determination of which facilities and activities should be included in the project scope are made in consideration of the following six provincial criteria:

- the nature of potential effects in areas of provincial interest;
- the nature of potential effects on Indigenous nations and their rights;
- any available information regarding public concern with respect to the potential effects of facilities and activities related to matters of provincial interest;
- the geographic extent that it would be reasonable to attribute potential effects to a facility or activity;
- the ability of the proponent to control a facility or activity of the project, and its ability to provide information concerning a facility or activity; and
- the extent to which the potential effects of the project would be considered and mitigated through other regulatory and EA processes, including permitting, or strategic or regional EAs (under sections 35 and 73 of the B.C. Act).

3. Marine Shipping

The Agency and EAO have determined that marine shipping activities are incidental to the project. The geographic extent of marine shipping activities includes the likely marine shipping routes from the proposed project at Roberts Bank up to the outer limits of Southern Resident Killer Whale critical habitat; this is referred to as the “marine shipping area”. The geographic extent also includes the Maa-nulth Domestic Fishing Area Barkley Sound and the Maa-nulth Domestic Fishing Area Kyuquot Sound-Che:k'tles7et'h' Bay, as established under the *Maa-nulth First Nations Final Agreement*.

A summary of the reasons for including marine shipping activities as incidental to the project are outlined below:

- Marine shipping is a key component of the project and the project would not be able to proceed without moving goods by ship.
- The proponent stated that the project would result in an additional 52 vessel calls per year at GCT Deltaport when the project reaches full capacity. It is expected that, in general, the vessels would be larger than the vessels currently calling at GCT Deltaport. Considering the number of vessel calls, potential effects from marine shipping may be measurable and attributable to the project.
- There is relevant jurisprudence and experience on previous assessments in the region that favour the inclusion of marine shipping as an incidental activity.
- Marine shipping associated with the project has the potential for effects on the Southern Resident Killer Whale, which is listed as Endangered on Schedule 1 of the *Species at Risk Act*. A portion of the currently established marine shipping lanes intersects with the federally designated critical habitat for the species. A purpose of the IAA is to protect the components of the environment, and the health, social, and economic conditions that are within the legislative authority of parliament. Including the designated critical habitat for Southern Resident Killer Whale within the geographic extent of marine shipping will facilitate meeting this purpose of the IAA for the project, particularly in consideration of the number of additional vessel calls resulting from the project that have the potential for effects on the Southern Resident Killer Whale and the ability for such effects to be measurable and attributable to the project.
- The geographic extent allows for an assessment of potential impacts from the project on the rights of Indigenous nations. It will allow for an assessment of the majority of waters, such as Swiftsure Bank, where many Indigenous nations have indicated that they often practice their rights and for which they have expressed concerns in the past.
- The geographic extent will also help uphold the spirit and intent of the *Maa-nulth First Nations Final Agreement*, and British Columbia’s and Canada’s obligations as partners in that Agreement. Additionally, it will allow British Columbia and Canada to meet their statutory requirements, including the duty to consult, and, where appropriate, accommodate.

One of the purposes of the IAA is to establish a fair, predictable, and efficient process for conducting impact assessments. The Agency is aware that marine shipping associated with the project is not within the care and control of the proponent. Therefore, the Joint Guidelines are tailored to reflect the key issues raised by parties with respect to marine shipping. For the Maa-nulth Domestic Fishing Area, the requirements of the assessment are focused on the issues raised by Maa-nulth First Nations.

4. Rail Transportation

The Agency and EAO have determined that rail transportation is incidental to the project. The geographic extent of rail transportation incidental to the project includes the rail lines that will be used by project-related rail traffic between the Deltaport terminal, up to Spuzzum, British Columbia at the northern boundary of S'ólh Téméxw or Stó:lō Territory.

A summary of the reasons for including rail transportation as incidental to the project are outlined below:

- Rail transportation is subordinate to the project, and the project would not be able to proceed without moving goods by train. The majority of the containers coming to the project will be transported by rail.
- Preliminary information from the proponent indicates that the project is expected to result in an additional eight (8) train movements per day (i.e. four (4) individual trains) once the project is fully operational in 2057.
- There is a high degree of federal jurisdiction over rail transportation, which supports it being included as part of the designated project. Goods from the project will be moved by federally-regulated railways that are subject to a broad Canadian and legislative regulatory framework, including the *Railway Safety Act*, the *Transportation of Dangerous Goods Act, 1992* and the *Locomotive Emissions Regulations*. Transport Canada's regulatory regime over rail transportation is largely focused on ensuring safety under the *Railway Safety Act*.
- The Crown has heard from Indigenous nations that rail transportation associated with the project could have potential adverse impacts on Indigenous interests, including on harvesting and cultural practices, health, well-being and safety. Including rail transportation to the boundary of S'ólh Téméxw as an activity incidental to the project will allow for an assessment of the majority of the area where Indigenous nations have raised concerns with respect to rail and where they have indicated they practice their rights.
- The impact assessment process will provide a mechanism to hear concerns and will allow the government to identify potential measures that go beyond the care and control of the proponent that could inform the decision regarding the project, including the potential impacts of the project on Indigenous rights.

One of the purposes of the IAA is to establish a fair, predictable, and efficient process for conducting impact assessments. The Agency is aware that much of the information related to rail transportation is held by the rail companies, and may be proprietary. The Joint Guidelines therefore are tailored to reflect the key issues raised by Indigenous nations with respect to rail transportation, and provide flexibility for the proponent should it not be able to access the required information.

5. Road Transportation

The Agency and the EAO determined that road transportation associated with the project is not incidental to the project, but must be assessed as an additional factor to be taken into account under paragraph 22(1)(t) of the IAA. Under the B.C. Act, road transportation is an activity to be included in the project scope and assessed as per section 25, required assessment matters. The Crown has heard from Indigenous nations that road transportation associated with the project could have potential adverse impacts on Indigenous interests, including on health, well-being and safety, increased dust emissions and noise, and disturbance to communities. As such, the EAO deemed road transportation a required assessment matter under section 25 of the B.C Act.

The geographic extent of road transportation associated with the project includes the area up to and including:

- a. the South Fraser Perimeter Road between Highway 99 and Highway 91;
- b. Highway 99 at the George Massey Tunnel; and
- c. the following roads between Highway 99 and the South Fraser Perimeter Road: Highway 17A north of Highway 99, 62b Street, River Road, and 96 Street.

Including road transportation as an additional factor to be considered in the assessment will allow the review panel to collect information and consider it in the assessment. It will also allow the province to use the information collected for its environmental assessment purposes.

A summary of the reasons for not including road transportation as incidental to the project are outlined below:

- The proponent stated that truck traffic growth attributable to the project would occur beginning in 2033. At peak operation, the proponent estimates that if the project is constructed, truck movements would increase by 2,900 per day and other road movements (such as staff travelling to work) would increase by 1,700 per day. The information provided by the proponent indicates that the relative contribution of project-related traffic is likely to quickly become imperceptible against the volume of regular traffic on roads in the area.
- Road transportation is not within the care and control of the proponent, and any ability the proponent may have to direct or influence the truck operators is likely constrained.
- The proponent is not the only party benefiting from the movement of goods by road transportation.
- Road transportation falls exclusively within provincial and municipal jurisdiction. The lack of federal jurisdiction weighed heavily in the determination that road transportation is not incidental to the designated physical activity under the IAA.

Given that road transportation is not considered incidental to the project and does not form part of the federal definition of a designated project under the IAA, if the project is allowed to proceed, the federal

decision statement would not include any conditions relating to road transportation activities. A separate provincial decision statement would consider road transportation in accordance with the required assessment matters.

6. Tsawwassen First Nation Marina

The Tsawwassen First Nation Marina will be located on the proponent's leased lands, and its construction forms part of the designated project.

The Agency and EAO examined whether the activities associated with the operation of the Tsawwassen First Nation Marina, such as users accessing the marina to launch vessels and their activities on the water, should be incidental to the project. The Agency and EAO concluded that the activities associated with the Tsawwassen First Nation Marina are not incidental to the project. Activities associated with the Tsawwassen First Nation Marina will not be assessed under paragraph 22(1)(t) of the IAA, or section 25 under the B.C. Act, and will not be conditioned.

A summary of the reasons for not including the Tsawwassen First Nation Marina as incidental to the project are outlined below:

- The marina is not subordinate to the project, meaning the operation of the terminal is not dependent on the construction of the marina.
- Marina users would not be within the care and control of the proponent when they are out on the water.
- The proponent would not be the only party benefiting from the marina.
- The marina is expected to largely facilitate the movement of recreational and commercial fishing vessels. There are existing regulatory processes for individuals engaging in recreational and commercial activities including licences to fish recreationally or commercially and to operate a pleasure craft.