



Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

160 Elgin St., 22nd floor
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December 8, 2023

Mike McLellan
Vice-President, Project Development
GCT Canada Limited Partnership
400 – 2945 Virtual Way
Vancouver, BC

<Contact information removed>

SUBJECT: Follow-up on the interim administration of the *Impact Assessment Act*

Dear Mike McLellan:

As you are likely aware, the Supreme Court of Canada recently rendered its decision on the constitutionality of the *Impact Assessment Act* (IAA) and the Physical Activities Regulations. The Supreme Court of Canada affirmed the constitutional authority of the Government of Canada to put in place impact assessment legislation, but stated the federal legislation is open to overly broad interpretation and needs more explicit focus on areas of federal jurisdiction.

The Impact Assessment Agency of Canada (the Agency) recognizes the importance for you, as a proponent of a major project, to have clarity regarding the implications of the decision on the impact assessment of projects that are described under the *Physical Activities Regulations*. On October 26, 2023, the Government of Canada released the *Statement on the Interim Administration of the Impact Assessment Act Pending Legislative Amendments* to provide guidance until targeted and meaningful amendments to the IAA can be made. This guidance can be found on the Agency's website at: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/statement-interim-administration-impact-assessment-act-pending-legislative-amendments.html>

The Supreme Court of Canada's decision constitutes authoritative guidance on the constitutionality and interpretation of the IAA, and the Government of Canada has



stated its intent to amend the legislation quickly to ensure the IAA is consistent with that decision. Advancing projects through the impact assessment process, while legislative amendments are pending, is at the discretion of proponents.

In addition to the interim measures posted to the Agency's website, we would like to take this opportunity to provide you with further insight into measures that will be taken during this interim period should you choose to continue to advance the assessment of GCT Deltaport Expansion – Berth Four Project (the Project).

In light of the Supreme Court of Canada's decision, effective October 13, 2023, the time limits in the IAA will not be enforced during this interim period while legislative amendments are pending. However, the Agency intends to continue its activities in line with its internal service standards and with the time limits set out in the IAA to ensure an efficient and timely process.

The Agency is of the opinion that the Project, as identified by you in your Initial Project Description and Detailed Project Description, appears to involve activities falling under a federal head of power or activities likely to have clear impacts on a federal head of power, which could result in adverse effects on:

- fish and fish habitat as defined in subsection 2(1) of the *Fisheries Act*;
- federal lands; and
- impacts on Indigenous groups.

The Agency will review this opinion once amendments to the IAA are in force.

The Agency will continue to support you as you prepare the impact statement for the Project and will continue to work collaboratively with the British Columbia Environmental Assessment Office throughout the assessment.

The Agency will continue to meaningfully engage and consult with Indigenous Peoples through the assessment process, including on the potential adverse impact of designated projects on Aboriginal and Treaty rights as recognized and affirmed in section 35 of the *Constitution Act, 1982*. The amended IAA will remain consistent with the United Nations Declaration on the Rights of Indigenous Peoples, and will continue to provide opportunities for meaningful engagement and participation of Indigenous Peoples in the assessment process, with the aim of securing their free, prior and informed consent.

The Agency remains ready to collaborate with you to advance the assessment of the Project and discuss the information required to support the assessment. To this end, we



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would like to propose a meeting in the near future to discuss the next steps in order to confirm your intent to continue to advance the assessment of the Project.

Furthermore, to increase efficiency and timeliness, we encourage you to consider working concurrently on complementary federal regulatory processes that may be required for the Project. The Agency is available to liaise with federal authorities to coordinate these processes. Additional information can be found on the Agency's website at: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/coordination-federal-authorizations-impact-assessment-process.html>.

If you have any questions, please do not hesitate to contact me by phone at
<Contact information removed>

Sincerely,

<Signature removed>

Kate Witherly
Agency Review Manager

cc: Marko Dekovic, Vice President, Public Affairs, GCT Canada Limited Partnership

Ian Cowan, Project Assessment Director, British Columbia Environmental
Assessment Office