



# Snuneymuxw

First Nation  
www.snuneymuxw.ca

October 14, 2021

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## 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.

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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.

In keeping with the spirit and intent of the Treaty of 1854, our Section 35 rights and interests, the Free, Prior, and Informed Consent ("FPIC") required under the United Nations Declaration of the Rights of Indigenous Peoples ("UNDRIP"), the BC Declaration on the Rights of Indigenous Peoples, and our Government-to-Government comprehensive reconciliation agreements with the Province of British Columbia, Snuneymuxw First Nation has established rights which warrant participation in the review of the Deltaport Expansion Berth 4 (the "Project" or "DP4").

Given the aforementioned details, please accept this as Snuneymuxw First Nation's request to be added as a participating Indigenous Nation in the DP4 Project's assessment.

The Initial Project Description was filed separately with the Impact Assessment Agency of Canada ("IAAC") and British Columbia Environmental Assessment Office ("EAO") on September 18, 2020. The BC EAO approved the Initial Project Description ("IPD") and Engagement Plan ("EP") on September 28, 2020, marking the beginning of the Early Engagement phase in which the BC EAO would work with the IAAC in accordance with the federal and provincial Cooperation Agreement. Snuneymuxw First Nation was not included in GCT's IPD and EP and was not engaged by the BC EAO or the IAAC. Since that time the IAAC has engaged with numerous First Nation groups in the Planning Phase for commentary on the Initial Project Description and made applications for Participant Funding available until February 10, 2021. Snuneymuxw First Nation has not been engaged on any of these processes by the BC EAO or the IAAC, despite our ongoing Treaty relationship and continued exercise of Section 35 rights and interests and Treaty of 1854 rights in the area of the Project and the marine shipping routes.

The letter filed on December 23, 2020 with the IAAC and BC EAO's Joint Summary of Issues indicates that GCT has up to one year to submit the Detailed Project Description from the issuance of the Joint Summary. The BC EAO also advised in this letter that they expect GCT to engage with Indigenous nations during the development of the Detailed Project Description. On January 5, 2021 GCT requested a time limit suspension on the Planning Phase for the Impact Assessment in order to "facilitate ongoing alignment of the timelines of the federal and provincial assessment processes, and to provide GCT further time to prepare and consult on the DP4 Detailed Project Description"<sup>1</sup>. GCT requested that the time limit resume upon the Agency accepting the Detailed Project Description. The IAAC suspended the 180-day time limit on January 6, 2021.

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<sup>1</sup> GCT request for time limit suspension IAAC reference number 81010

Despite the lack of engagement, to date, on behalf of the BC EAO and IAAC, the time limit suspension can be utilized to ensure that Snuneymuxw First Nation can participate in the regulatory process for GCT's DB4 project. This will ensure that the Crown, as represented by the Province of British Columbia, can assess and consider Snuneymuxw First Nation's Section 35 rights and interests, and Treaty of 1854 rights, protect our rights from further infringements, and address the current lack of consent from our Nation. To accomplish this Snuneymuxw First Nation requests to be recognized as a participant in DB4's regulatory review and to receive capacity funding from the IAAC, BC EAO and the proponent to participate in the Project's assessment process.

It is our expectation that we will initiate work with the IAAC, the BC EAO, and GCT to ensure that fulsome assessment of impacts to our Section 35 rights and interests is completed prior to Project approval.

Sincerely,

<Original signed by>

Chief Mike Wyse

cc. Desiree Thomas, Lands Clerk, Snuneymuxw First Nation  
Councillor Erralyn Joseph, Snuneymuxw First Nation