

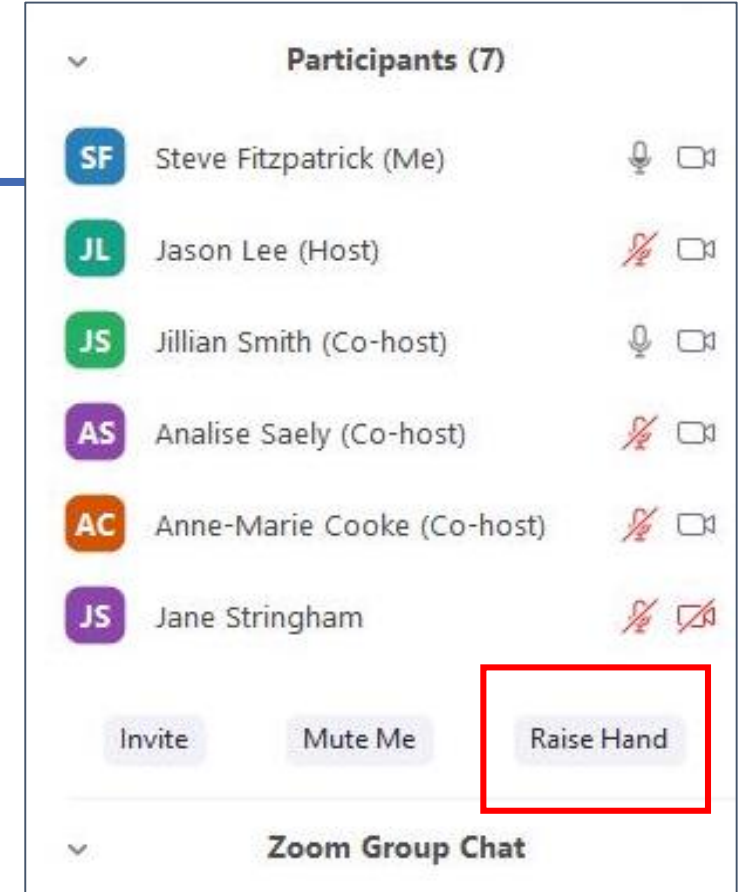
# Impacts on Indigenous Rights and Interests Workshop- GCT Deltaport Expansion, Berth Four Project

April 27, 2021

Presentation by Impact Assessment Agency of Canada and the BC  
Environmental Assessment Office

# To Ask a Question

- Click the “raise hand” function, or type the question into the chat
- If you are on the phone, press \*9 to ask a question
- Please mute your microphone unless speaking



The screenshot shows the Zoom Participants panel for a meeting with 7 participants. The participants listed are:

Initials	Name	Microphone	Video
SF	Steve Fitzpatrick (Me)	On	On
JL	Jason Lee (Host)	Muted	On
JS	Jillian Smith (Co-host)	On	On
AS	Analise Saely (Co-host)	Muted	On
AC	Anne-Marie Cooke (Co-host)	Muted	On
JS	Jane Stringham	Muted	Muted

At the bottom of the panel, there are three buttons: "Invite", "Mute Me", and "Raise Hand". The "Raise Hand" button is highlighted with a red rectangular box.



The screenshot shows the Zoom mobile app bottom toolbar. The buttons from left to right are: "Mute" (highlighted with a red box), "Stop Video", "Security", "Participants", "Chat" (highlighted with a red box), "Share Screen", "Record", and "Reactions".

# Objective and Agenda- Ask questions as we go!

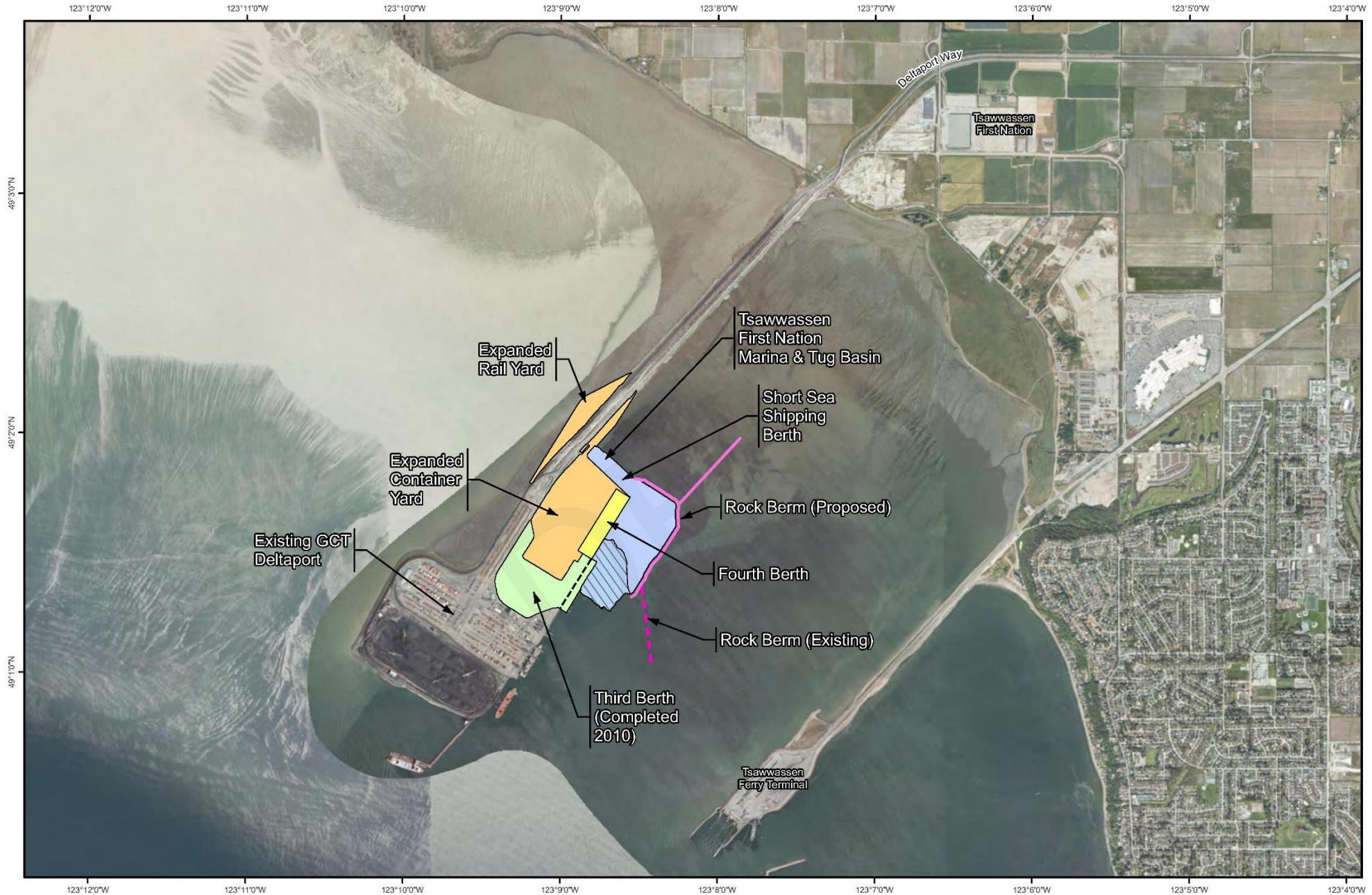
**Workshop Objective:** To share information about Indigenous consultation requirements for the GCT Deltaport Expansion, Berth Four Project assessment process. This workshop will give an overview of assessing impacts on Indigenous rights and interests for all Indigenous groups involved in the assessment.

## **Agenda 9:30 to Noon**

- Welcome
- Introductions by Indigenous groups, GCT, IAAC and EAO. Other participants are observers for this session.
- Presentation on process and impacts on rights policy context and guidance (IAAC and questions welcomed throughout)
- **10 min BREAK**
- Presentation on process and assessing effects to Indigenous Nations (EAO and questions welcome throughout)
- Next steps and closing (IAAC and EAO)

Figure 1 GCT Deltaport Expansion, Berth Four Project Area.

**DRAFT**



**Legend**

- Project Area
- Third Berth
- Fourth Berth
- Dredge Pocket
- Existing Third Berth Dredged Area
- Rock Berm (Existing)
- Rock Berm (Potential)

National Topographic System (NTS) map number: 092G03



0 200 400 600 800 m

Scale: 1:30,000

Projection: NAD 1983 UTM Zone 10N

Data Sources:  
 a) Project area and components, Ausenco 2021.  
 b) GeoEye-1 50 cm, 17 July 2018, Esri Online Service.



# IMPACT ASSESSMENT

## Process Engagement

### Deltaport Expansion Berth 4



early engagement

consensus

self determination

economic inclusion

# Impact Assessment Agency of Canada

## Impacts on Rights Policy Context: Key Principles

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The process for assessing impacts on rights should:

- Respect, protect and uphold the rights of Indigenous Peoples
- Work in partnership and aim for consensus
- Develop methodology collaboratively
- Consider Indigenous knowledge appropriately
- Take context into account at outset
- Apply a broad and holistic approach
- Use community-defined thresholds and measures
- Use both qualitative and quantitative analysis
- Ensure transparency
- Aim to develop mutually agreeable measures to avoid or minimize adverse impacts

Act according to the honour of the crown

mutually agreed outcomes

UNDRIP



Rights of Indigenous Peoples  
RESPECTED · PROTECTED · SYNTHESIZING

"Nothing about us without us."



community indicators

INDIGENOUS KNOWLEDGE

Free, Prior and informed CONSENT

INDIGENOUS CULTURE

LINKED TO PROTECT TO PROJECT

Impact assessment process



# IMPACTS ON RIGHTS ANALYSIS

VALIDATE &

1 IDENTIFY & UNDERSTAND THE RIGHTS

preferred location times means



Dialogue at every step with openness & humility

2 UNDERSTAND THE community's CONTEXT



FOLLOW UP

3 IDENTIFY community VALUES



4 DIALOGUE on ways to ADDRESS IMPACT



TWO-WAY DIALOGUE to remedy the potential impact



5 ASSESS LEVEL of impact

ESTABLISH CRITERIA



Assess PROJECT IMPACTS on exercising RIGHTS  
-resources  
-access  
-experience

ON ASSESSMENT

OUTCOMES

PARTNERSHIP collaboration

TRANSPARENT

AHAI! GRAPHIC FACILITATION

CONSENSUS

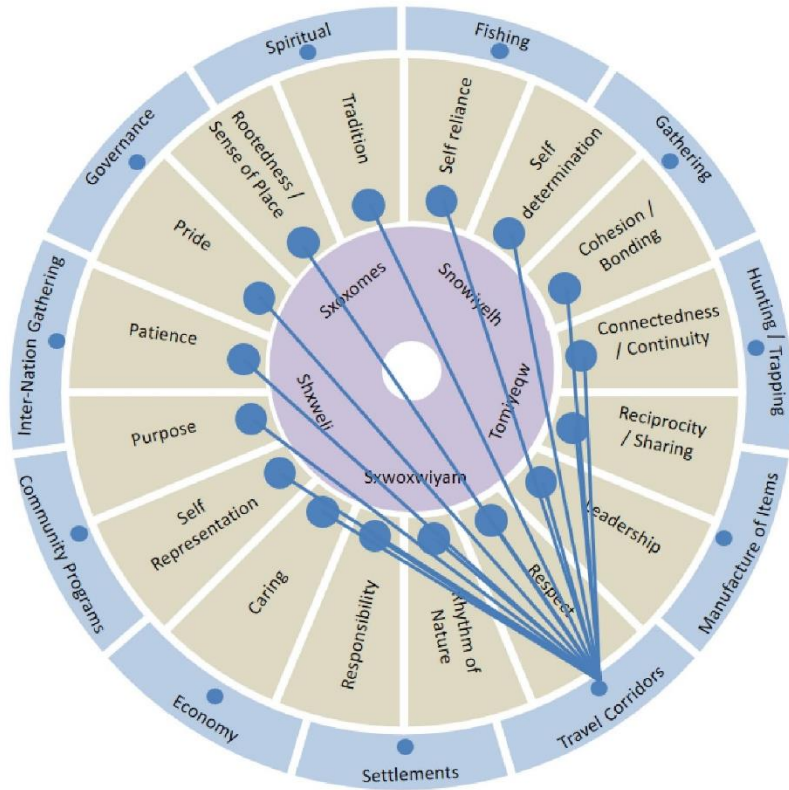
# UNDERSTANDING CUMULATIVE IMPACTS



## Step 2: Understand the context in which impacts on rights would occur

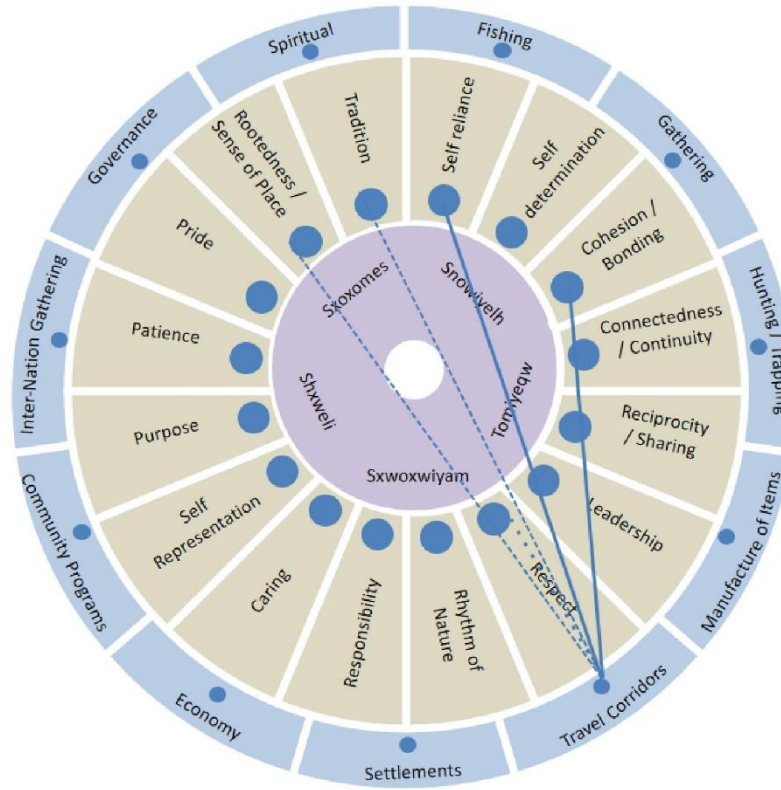
Evaluate how current environmental and socio-economic conditions, including changes in those conditions, may be constraining or supporting a community's ability to exercise its rights. Determining this will establish the state of the particular right as exercised and identify cumulative impacts on the exercise of a right. Establishing the context of existing cumulative impacts must be completed before considering project-specific impacts.





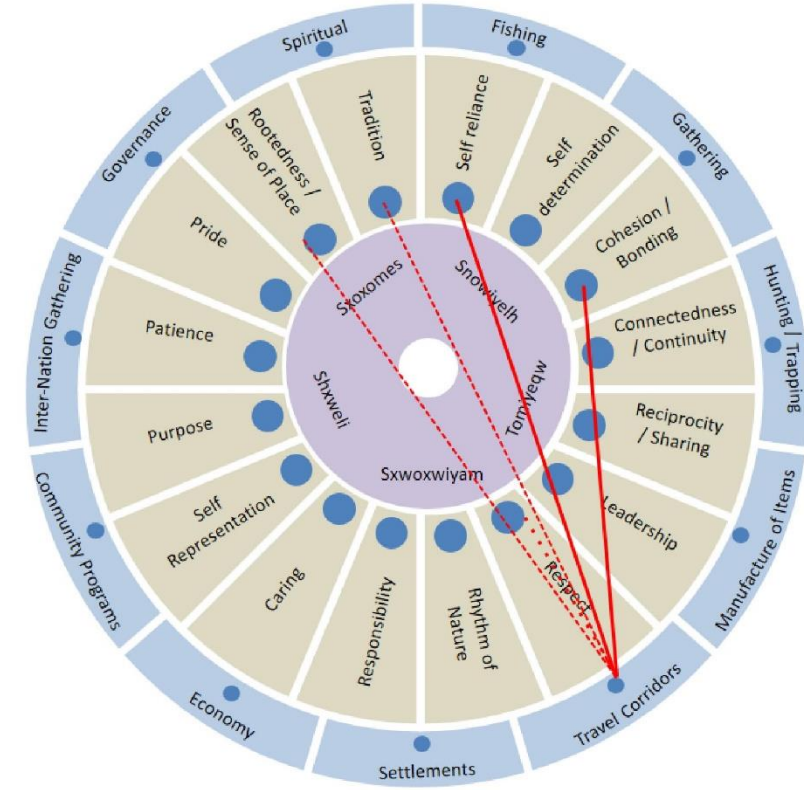
Strong direct link to value	—————
Still common activity, but there are fewer places to carry out activity or fewer people carry out the activity	- - - - -
Only very few people carry out activity or very few places to carry out this activity	.....

FIGURE 9-1: CULTURAL VALUES ASSOCIATED WITH HISTORIC TRAVEL CORRIDORS



Strong direct link to value	—————
Still common activity, but there are fewer places to carry out activity or fewer people carry out the activity	- - - - -
Only very few people carry out activity or very few places to carry out this activity	.....

FIGURE 9-2: CULTURAL VALUES ASSOCIATED WITH CONTEMPORARY ROADS AND TRAVEL CORRIDORS



RED	Highly Significant Adverse Effect
YELLOW	Moderate Significant Adverse Effect
GREEN	Positive Effect
GREY	No Effect Not Significant Effect

FIGURE 9-3: POTENTIAL TMEP IMPACTS TO TRAVEL CORRIDORS

# Assessing Potential Effects of Deltaport Expansion Berth Four Project on Indigenous Nations and Their Interests

April 27, 2021



BRITISH  
COLUMBIA

**EAO**

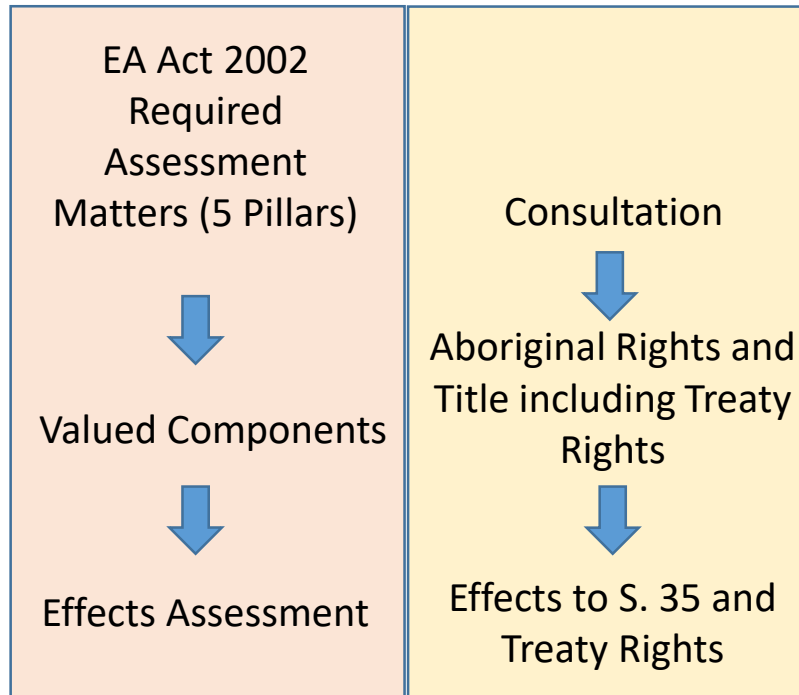
Environmental  
Assessment Office

# Context

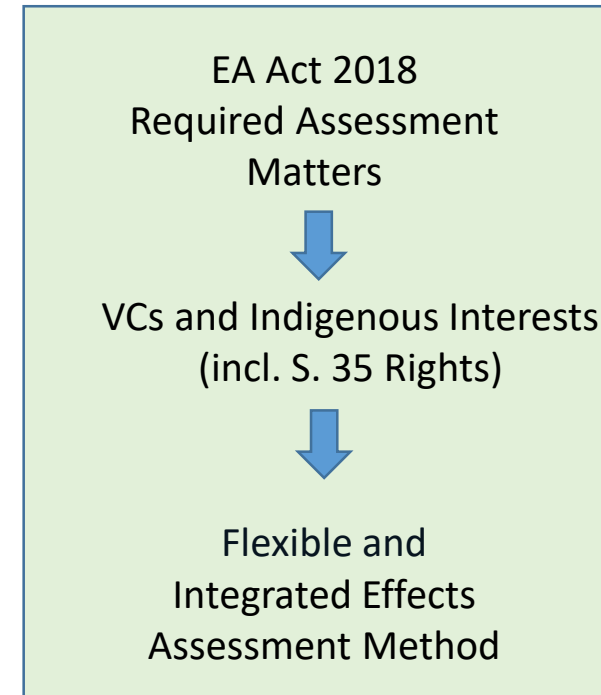
- B.C.'s *Environmental Assessment Act* (2018) introduced a new purpose of the EAO regarding reconciliation with Indigenous nations and new collaboration and consensus-seeking processes
- The Act includes:
  - Recognition of the jurisdiction of Indigenous nations
  - Requirement that all EAs must assess effects on Indigenous nations and rights recognized and affirmed by section 35 of the [Constitution Act, 1982](#)
  - Opportunities to tailor assessment and align with an Indigenous nations' approach to governance and assessments in support of Indigenous decision-making and their right to self-determination
  - An Indigenous nation can choose to undertake the assessment of potential effects of a project on the nation and its rights, utilizing nation-specific information and methods for undertaking the assessment

# Evolution of EA Methods for Assessing Impacts to Indigenous Nations

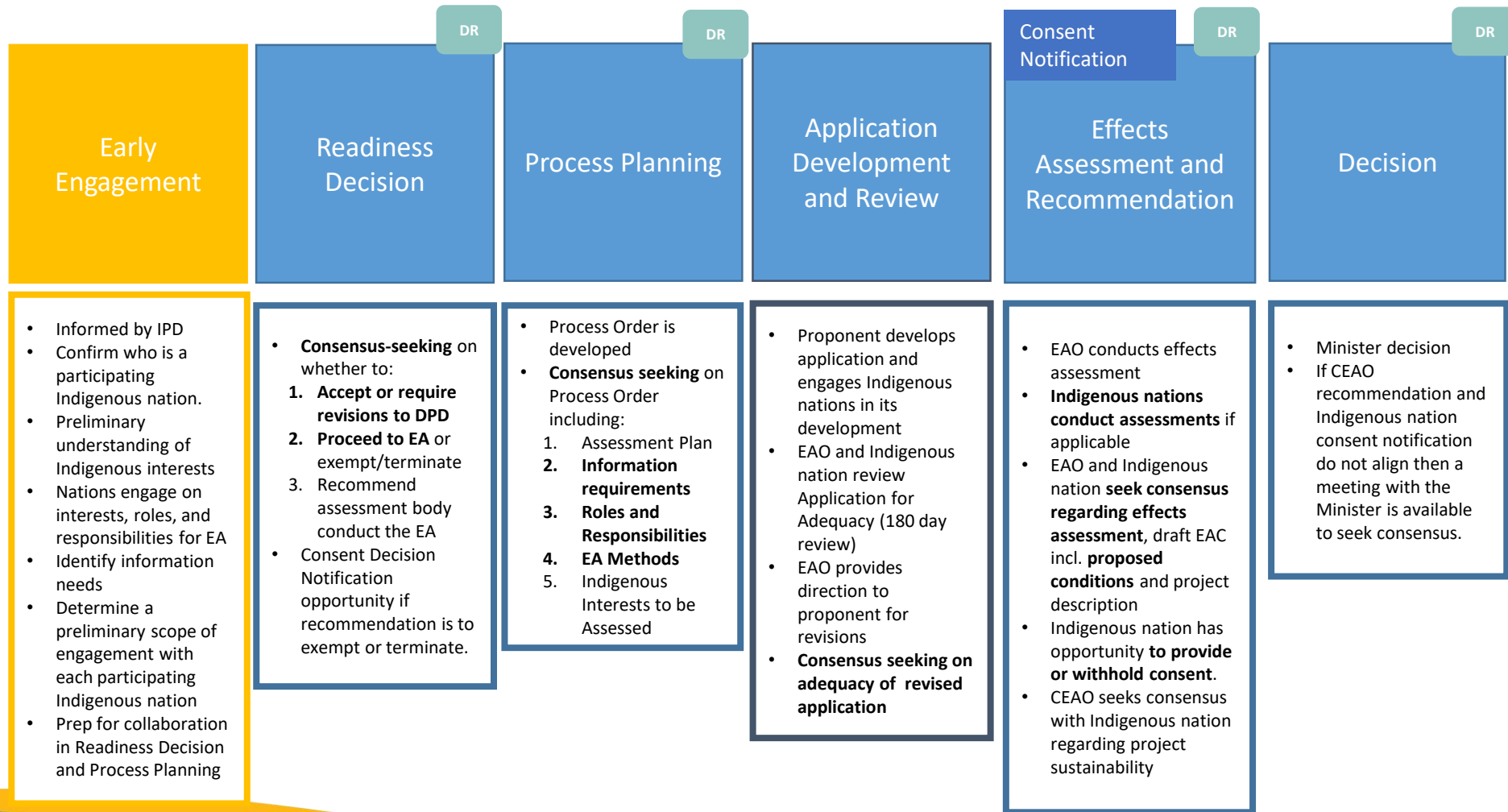
## EA Act 2002 Parallel Model



## EA Act 2018 Integrated Model



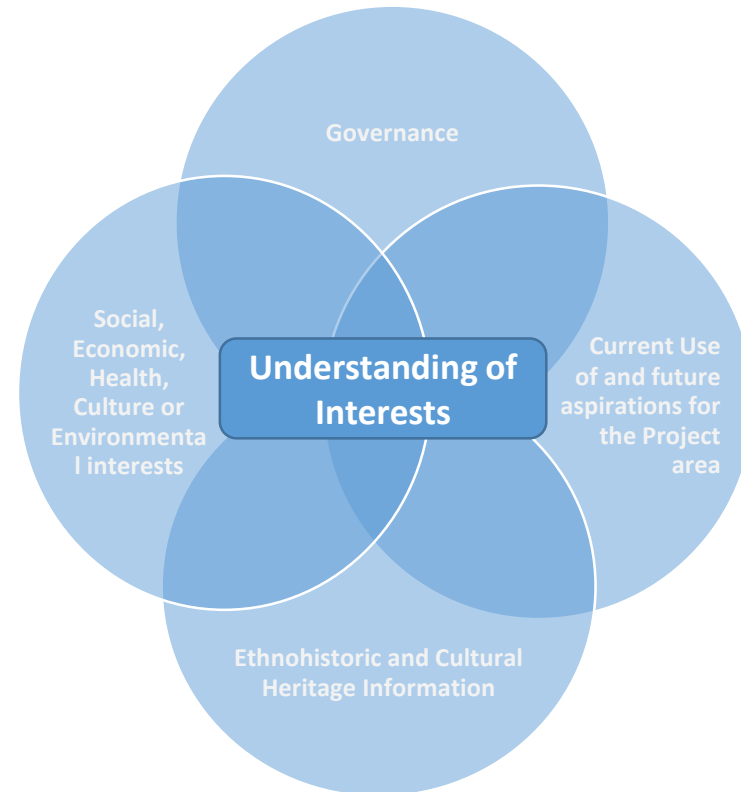
# Engagement Throughout the EA Process



# What are Indigenous Interests for the purpose of an EA

*INTERESTS RELATED TO AN INDIGENOUS NATION INCLUDING RIGHTS RECOGNIZED AND AFFIRMED BY SECTION 35 OF THE CONSTITUTION ACT, 1982.*

- Includes but is not limited to Aboriginal or Treaty rights
- Matters that are of central importance to the Indigenous nation that have the potential to be affected by the project
- May include but are not limited to: biophysical, environmental, social, economic, cultural, spiritual, and governance



# Assessment of Potential Effects on a Nation and its Interests

(CONCEPTS FROM 2020 EFFECTS ASSESSMENT POLICY)

- Different approaches:
  1. building on assessment of other Valued Components
  2. defining and assessing additional Valued Components
  3. following a different Indigenous-defined assessment approach
- Combinations possible
- Approach could be different for each interest
- Always assessing potential effects of DP4 project (and potential cumulative effects)

# IMPACT ASSESSMENT

Process Engagement  
Deltaport Expansion  
Berth 4 Project



Governmental Agencies and Community inquire

**PROJECT PROPOSED**  
By the...



**PROONENT**

Planning

Analysis of Project Impact

Impact Assessment

Decision Making

Post Decision

Monitoring



DECISION on the PROJECT



More



impact statement  
Satisfactory?



Who should be involved in the Assessment

How each community would like to be involved

How indigenous knowledge will be incorporated

**RIGHTS** Values Interests



Community engagement **PLAN**

Guidelines for the Proponent

is an **ASSESSMENT** required?

What will the potential impacts be over time?

What will be evaluated?

What studies should be done?

**RIGHTS**

Traditional uses



Cumulative impacts

Build Relationships and share Indigenous Knowledge

economic benefit

Wild life health

Culture

Access ROAD & RAIL IMPACTS Noise & Light

**DISCUSS** Project Design

Proponent writes



Community Feedback



WEAVE

INDIGENOUS KNOWLEDGE & SCIENCE IN EVERY STEP ...

early engagement

consensus

self determination

economic inclusion



# Next steps

[analise.saely@canada.ca](mailto:analise.saely@canada.ca)

[Andrew.1.Green@gov.bc.ca](mailto:Andrew.1.Green@gov.bc.ca)

## **Impacts on Indigenous Rights and Interests Workshop – GCT Deltaport Expansion, Berth Four Project**

**Workshop Objective:** To share information about Indigenous consultation requirements for the GCT Deltaport Expansion, Berth Four Project assessment process. This workshop will provide an overview of assessing impacts on Indigenous rights and interests for all Indigenous groups involved in the assessment.

### **Agenda:**

- 1- Welcome
- 2- Introductions by Indigenous groups, GCT, IAAC and BC EAO. Other participants are observers for this session.
- 3- Presentation on process, impacts on rights policy context and guidance (IAAC and questions welcomed throughout)
- 4- Presentation on process, assessing effects to Indigenous Nations (BC EAO and questions welcome throughout)
- 5- Next steps and closing (IAAC and BC EAO)

The Regulatory Teams provided the content for the workshop:

Federal: Impact Assessment Agency Canada (IAAC) – Analise Saely, Angeles Albornoz, Jane Stringham and Stefan Crampton

Provincial: British Columbia Environmental Assessment Office (BC EAO) – Andrew Green, Jessie Hannigan and Mabel Martinez-Dussan

The Proponent (GCT) was attending this workshop; however, they were not asked to present. The workshop was intended to introduce the process that the Federal government and Provincial government are undertaking with regard to the impact assessment of the Deltaport Expansion, Berth Four Project.

GCT members present: Marko Dekovic, Mike McLellan, Jennifer Campbell, Lyle Thompson and Lyle Viereck

Indigenous Nations attending (listed in alphabetically order):

1. Cowichan Tribes -
2. Ditidaht First Nation -
3. Esquimalt First Nation (No'ilung Si'em 'i' sche'le'chu) -
4. First Nations of the Maa-nulth Treaty Society -
5. Halalt First Nation -
6. Kwantlen First Nation -
7. Lyackson First Nation -
8. Malahat First Nation -
9. Matsqui First Nation -
10. Métis Nation British Columbia -
11. Musqueam Indian Band -

12. Pacheedaht First Nation -
13. Pauquachin First Nation -
14. Scia'new (Beecher Bay) First Nation -
15. Seabird Island First Nation -
16. Semiahmoo First Nation –
17. Songhees First Nation -
18. Tsawwassen First Nation -
19. Tsleil-Waututh First Nation -
20. Ts'ubaa-asatx -

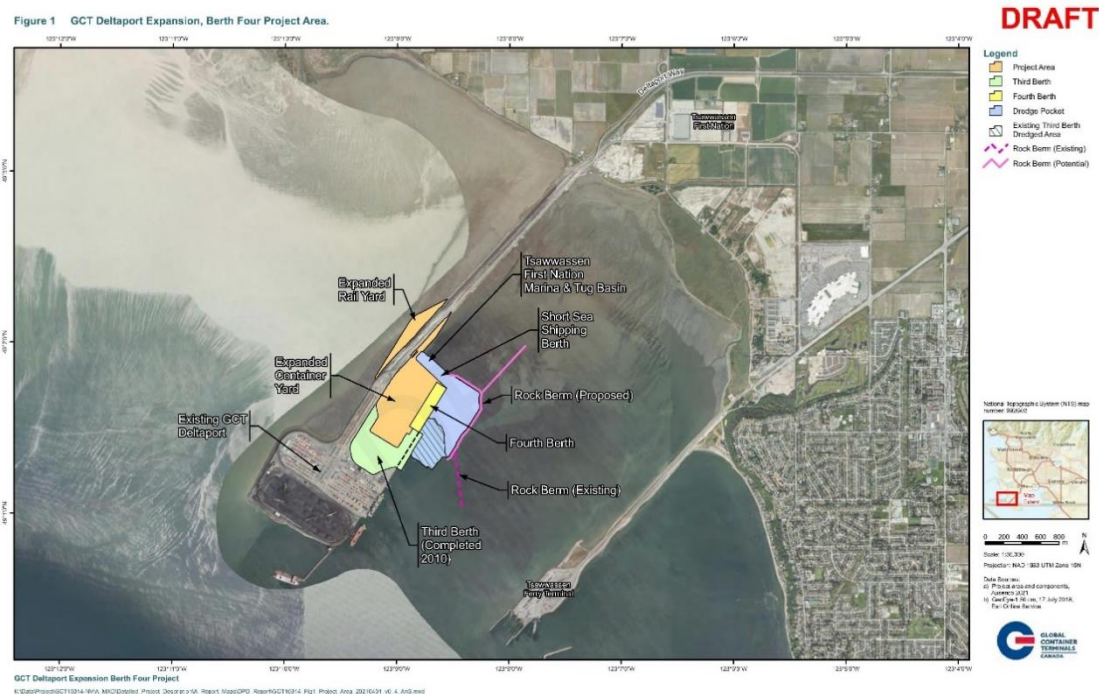
### Summary:

- The workshop was attended by approximately 98 participants;
- Tsawwassen First nation offered a Prayer to open the virtual meeting space with the purpose of sharing useful knowledge for everyone;
- Main themes that motivated comments from participants:
  - Comparison between RBT2 and GCT Deltaport Expansion project
  - Capacity funding and capacity building
  - Cumulative impacts
  - Transboundary impacts
  - Consensus seeking process in the provincial assessment
  - Indigenous Knowledge
  - Use of information already provided for other projects in the area to avoid duplication of efforts by the Nations.
- The presentation was sent with the workshop invite, but it can be provided upon request by emailing Angeles Albornoz (Senior Consultation Analyst, IAAC) at [angeles.albornoz@canada.ca](mailto:angeles.albornoz@canada.ca);
- IAAC and BC EAO offered to connect with Nations individually to follow up on questions, or for those Nations that could not attend the workshop;
- Next steps for the impact assessment of the Project is to discuss information on interests, values and rights with IAAC, BC EAO and the Proponent.

### Presentation by the Impact Assessment Agency of Canada and the BC Environmental Assessment Office.

The proponent, GCT Canada Limited Partnership (GCT), is proposing to expand its existing GCT Deltaport Container Terminal, a container storage and handling facility located in Delta, British Columbia (BC), approximately 35 kilometres south of Vancouver. As proposed, the GCT Deltaport Expansion, Berth Four (DP4) Project would add a fourth berth on the east side of the Roberts Bank Causeway, include an expansion of the intermodal rail yard along the causeway (Roberts Bank Way) and dredging to provide safe access for ships. The additional land-based container storage and handling facilities would provide an additional two million 20-foot-long storage containers (otherwise referred to as 20-foot equivalent units or TEUs) per year at the existing terminal.

Figure 1



This Project is subject to the federal *Impact Assessment Act* and the provincial *Environmental Assessment Act (2018)*. IAAC and the BC EAO are working cooperatively in a coordinated process for engagement.

IAAC presented an overview of the federal Impact Assessment process for the DP4 project. This process is illustrated in the graphic below. Please note that this graphic is under revision and the updated version will be shared in the coming weeks.

Currently, the impact assessment process is still in the planning phase, which will determine whether an assessment is required and what type of assessment is needed. IAAC is gathering information for the assessment, planning for how Indigenous knowledge will be incorporated, what an Indigenous-lead assessment might look like and the capacity requirements of each Nation. Once it is determined whether an assessment is required, and if so, what type, the information gathered in the planning phase will feed into the guidelines that will guide the proponent in the preparation of the Impact Statement report (this takes place in the Impact Statement Phase).

Woven into the assessment to allow for a more holistic approach is the cumulative impacts. This is done with open communication with Nations. Perspectives on different ways that values, such as culture and the economy, are impacted should come from the Nations themselves. The proponent will produce an Impact Statement that should reflect Nations' values, concerns, and rights in the Nations own words. The Agency will compare the Impact Statement against the requirements in the guidelines issued to the proponent. When the review of the Impact Statement is complete and accepted, an Impact Assessment Report will be prepared for decision-makers at both the provincial and federal levels.

Figure 2



## Questions and Feedback

1. **Halalt Nation - How does the federal process interact with the provincial process, now that the provincial process allows for Indigenous-led Assessments?**

IAAC response – The Impact Assessment Process Engagement graphic (see above) includes the provincial process and the federal process. For Nations that want to lead parts of the assessment we will need to talk about that while setting the guidelines for the proponent and work through that on a Nation-by-Nation basis as the process unfolds.

2. **Scia’new Nation – There is a burden or hurdle between the translation of Western science to Indigenous Knowledge. How will you guarantee that you will listen, understand, and use that Indigenous Knowledge? We have seen scientists that live on land making decisions for people that live on the water and that has to stop.**

IAAC response – We want to see Nations participating and doing parts of the assessment. If you are interested in drafting parts of the assessment, such as those sections that tie into Indigenous Knowledge, please let us know. We need transparency about what information is used and in

what way. We can do this by sharing information and analysis in draft form early on with Nations. This sharing will allow Nations to review to ensure we have been listening and understanding Indigenous Knowledge correctly. We can present both views to decision-makers to ensure one kind of knowledge is not superseding the other.

- 3. Ts'uubaa-asatx Nation – There are other projects that have information that is relevant to this one. We are specifically looking for an analysis that looks at the differences between the projects. The analysis should explain the differences between the projects and which project is a better option. We need the proponents to provide this information for us as well because our capacity is limited. We do not have the time and resources to do this analysis.**

- **Halalt Nation, Scia'new Nation and Kwantlen Nation agree that having a similar project come into the process so soon after Roberts Bank has their technical staff feeling like they are repeating work. Anything IAAC can do to use information already provided to lessen that burden would be beneficial.**

IAAC and BC EAO – This helps us understand what the needs are of the Indigenous decision-makers. Throughout the process, we can find the best sources for this type of information. We will get back to Nations on this point soon.

- 4. Halalt Nation – It is important for IAAC and BCEAO to demonstrate how they are providing cultural training for their decision-makers. Providing all this information to a decision-maker that does not understand what they are reading is a waste of time. In the past, community members have been hurt and disappointed from communication they have provided to the regulators only to have it misunderstood. This has become an engagement hurdle for us. It is critical that we see clear steps from the regulators and decisions-makers that they understand the information provided.**

- **Seabird Island Nation agrees that this is needed.**

IAAC – That will be something we will follow-up on. Thank you for this direction.

- 5. Tseil-Waututh Nation – Is it likely that this Project will undergo an impact assessment by a review panel?**

IAAC – We are currently seeking feedback from participants on that. If Nations feel that a review panel is the best form of assessment, we would appreciate that feedback either during this workshop or via formal email / letter.

- 6. Seabird Island Nation – While in the planning stages, it would be good to have structure in place to enforce First Nations' wants and needs. Specifically, ensuring that there is enforcement and consequences for not adhering to what First Nations want and how things are done. Currently, we are not supported with enforcement actions or consequences. We want to make sure people are doing the things they are supposed to be doing. There needs to be a follow through process. We have previously experienced setting guidelines and then people doing whatever they want because there are no real consequences. We set guidelines with seven generations in mind - we are sitting at the table for all people.**

IAAC – There are two key documents to make sure this happens. One is the Tailored Impact Statement Guidelines referred to as the Joint Guidelines in this process, which can help make sure the process gathers the information you need to have assessed. The second piece would be at the end of the process where we draft conditions with Nations' concerns in mind and these conditions are legally enforceable. The conditions have all sorts of tools, such as fines and stop work orders.

7. **Malahat Nation – There should be a requirement to highlight the need for the proponent to make commitments on what impacts they are anticipating. There should be enforceable items and follow up actions if those commitments are not met. Early commitment to this would mean that specific impacts can be discussed.**

Malahat's comments from the chat: "Rather than just having GCT suggest that impacts will be low/not significant, they should set measurable targets with contingency plans in case the targets are exceeded. Also, key to set these targets early so that the specifics can be discussed as part of the consultation process. For example, a commitment to no more than 100dB of GCT related ship-source underwater noise in the SRKW communication frequencies between 100Hz and 15kHz measured at specific hydro acoustic listening stations throughout the international shipping route. If these targets are exceeded for more than a cumulative 15 minutes over the span of a month then GCT will provide monetary incentive to shippers to reduce speed which will be tracked by AIS."

IAAC – Thank you for the suggestion, we can consider this in the guidelines.

8. **Ditidaht Nation – Are we in the planning stages of how we are determining topics or areas?**

IAAC – We are one step before that. We are gathering information to determine whether we need an assessment and what type of assessment we need. The Joint Guidelines will set out the topics and the areas that should be covered in the Impact Assessment report that the proponent will write. We are in the early stages.

**Ditidaht Nation – How do we stop ourselves from going in every direction? Is that taken into consideration? How will we unpack areas and categories of impacts?**

IAAC – That will be determined in the Joint Guidelines. We can set up focused sessions to unpack the values that each Nation would like to see assessed. For technical thresholds, we would discuss the geographic scopes for the effects. The Joint Guidelines will keep us focused on project effects so that Nations can make informed decisions on the project.

**Ditidaht Nation - Is it feasible to combine the findings from other projects? We cannot have parties not sharing information. This is for the betterment of the First Nations. Are all those involved willing to share information? It would be ideal if they would .**

IAAC – We are hearing the need for the consideration of other project findings, so we are going to have to figure this out.

## IAAC: Impacts on Rights Policy context - Key Principles

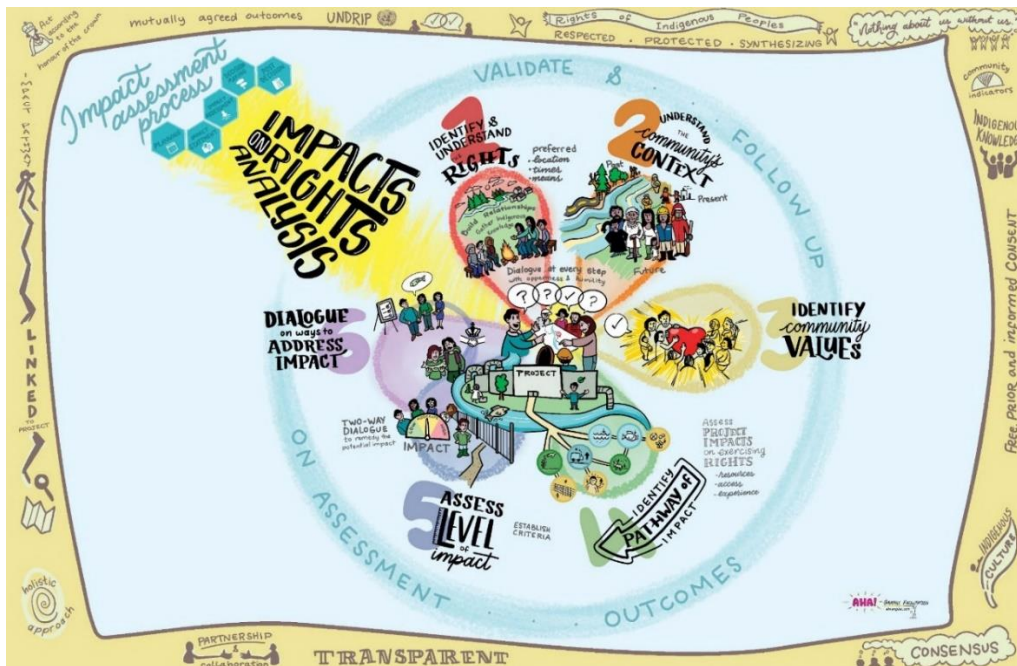
The process for assessing impacts on rights should:

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>• Respect, protect and uphold the rights of Indigenous Peoples</li> </ul> | <ul style="list-style-type: none"> <li>• Work in partnership and aim for consensus</li> </ul>                                       |
| <ul style="list-style-type: none"> <li>• Develop methodology collaboratively</li> </ul>                          | <ul style="list-style-type: none"> <li>• Consider Indigenous knowledge appropriately</li> </ul>                                     |
| <ul style="list-style-type: none"> <li>• Take context into account at outset</li> </ul>                          | <ul style="list-style-type: none"> <li>• Apply a broad and holistic approach</li> </ul>   |
| <ul style="list-style-type: none"> <li>• Use community-defined thresholds and measures</li> </ul>                | <ul style="list-style-type: none"> <li>• Use both qualitative and quantitative analysis</li> </ul>                                  |
| <ul style="list-style-type: none"> <li>• Ensure transparency</li> </ul>  | <ul style="list-style-type: none"> <li>• Aim to develop mutually agreeable measures to avoid or minimize adverse impacts</li> </ul> |

When working with Nations, we understand that the rights are yours and we want to see Nations take the lead when it comes to assessing impacts on rights. IAAC is shifting into a place where Nations would do a lot of the assessment.

The Impact on Rights Analysis approach involves six key pieces, which is illustrated in the graphic below.

Figure 3





## Questions and Feedback

- 9. Ditidaht Nation – It is hard to take leadership when decision making does not lie with us. We are always looking for capacity building (i.e., marine and fisheries management). The idea is for First Nations to patrol the waters and have certain capacities that DFO can benefit from. We want to keep an open dialogue with DFO.**

IAAC – The sooner we can establish that dialogue on ways we can address project impacts into the assessment processes, the better. If you know there is an issue and have a solution, bringing up those solutions early in the assessment process means that the federal family can begin the discussion on how to unpack all the required actions for the solution to take place at the decision phase. Some good questions to start with would be:

- What are the capacity requirements?
- Who would you work with?

These discussions allow for building in the time required to set up these capacities and factor them into the process while assessment report is being written.

- 10. Ditidaht Nation – Why is it that all proponents do not invite us in at the onset of projects? First Nations should be thought of as partners, not participants. When decision making does not lie with us, is our input going to be taken as recommendations or decisions?**

IAAC – We agree. If building capacity into that information piece is the direction the First Nations want to go, we can look at how that fits into the Impact on Rights Assessment. Regarding the recommendations and decision-making, this is a new federal process and we do not know exactly what it will look like. Under this new legislation, Impacts on Rights is part of the public interest determination. The information that comes out of the Impacts on Rights Analysis goes into the federal decision-making process that Ministers must consider.

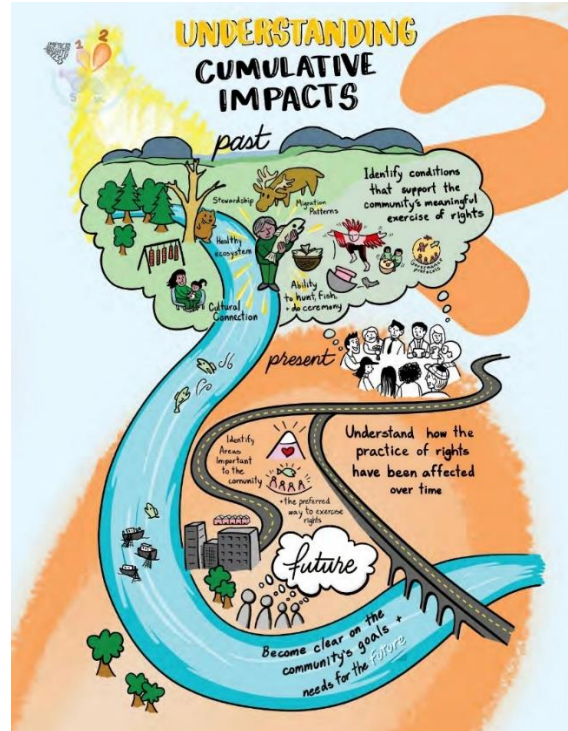
Under the new legislation, if Nations voice that a project would considerably impact their rights, this would have weight in the decision about the project. This is built into the decision-making process through the Impacts on Rights analysis. We are unsure of exactly what it will look like. If you have an idea of how we could structure this, we are open to suggestions. Also, how each Nation's decision-making can feed into it.

## IAAC: Understanding Cumulative Impacts

Understanding cumulative impacts means evaluating how current environmental and socio-economic conditions, including changes in those conditions, may be limiting or supporting a community's ability to exercise its rights (see graphic below). Determining this will establish the state of a particular right as exercised and identify cumulative impacts on the ability to exercise it. Establishing the context of existing cumulative impacts should be completed before considering project-specific impacts.

This is specific to Indigenous rights. If the project were to be approved, what would that mean to the ability for the Nation to practice their rights in their preferred manner? What are the existing barriers to Nations practicing their rights? How does this project fit into future goals?

Figure 4



One method used to articulate the context of rights during a previous project was the Stó:lō Cultural Model (see Figure 5 below). It was developed to help portray the relationship between cultural activities and the state of Stó:lō culture. The report from which the model was taken can be found here: [Stolo-Chapter-1-to-11-Integrated-Cultural-Assessment-for-TMEP-March-2014.pdf \(theheg.com\)](https://www.theheg.com/Stolo-Chapter-1-to-11-Integrated-Cultural-Assessment-for-TMEP-March-2014.pdf).

The Stó:lō Cultural Model illustrates what rights might be more fragile and how are they tied or impacted by a project activity. Displaying this interconnectedness can create space for discussion.

The figure below on the left looks at those connections in terms of travel corridors and how they were tied to values of the Nation. The middle figure shows what it looks like today and there are less ties to the values. The figure on the right shows project impacts to those already stressed systems, revealing there would be high project impacts on these rights that are not resilient right now due to the current context.

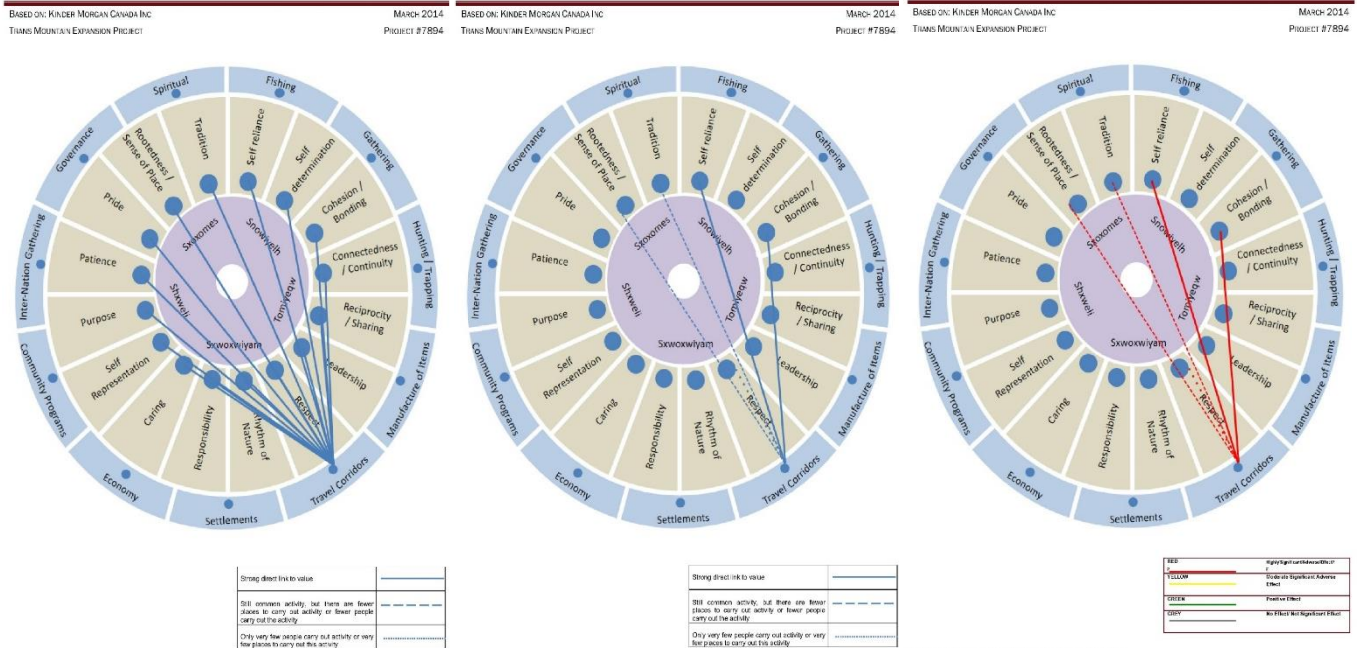


FIGURE 9-1: CULTURAL VALUES ASSOCIATED WITH HISTORIC TRAVEL CORRIDORS

FIGURE 9-2: CULTURAL VALUES ASSOCIATED WITH CONTEMPORARY ROADS AND TRAVEL CORRIDORS

FIGURE 9-3: POTENTIAL TMEP IMPACTS TO TRAVEL CORRIDORS

Source: [Stolo-Chapter-1-to-11-Integrated-Cultural-Assessment-for-TMEP-March-2014.pdf \(theheg.com\)](#)

Figure 5

Questions and Feedback

**11. Tsleil-Waututh Nation— We are hearing from the Provincial and Federal governments today. Will GCT be answering any questions or is this just regarding the impact assessment processes?**

IAAC – Today, we are just talking about the federal and the provincial assessment processes.

**12. Ts’uubaa-asatx Nation – Would Stó:lō allow us to use the figure as an example?**

IAAC – Yes, please credit them.

## BC EAO: Assessing Potential Effects of Deltaport Expansion Berth Four Project on Indigenous Nations and their Interests

B.C.'s *Environmental Assessment Act* (2018) introduced a new purpose of the BC EAO regarding reconciliation with Indigenous Nations and new collaboration and consensus-seeking processes.

The Act includes:

- Recognition of the jurisdiction of Indigenous Nations
- Requirement that all EAs must assess effects on Indigenous Nations and rights recognized and affirmed by section 35 of the [Constitution Act, 1982](#)
- Opportunities to tailor assessment and align with an Indigenous Nations' approach to governance and assessments in support of Indigenous decision-making and their right to self-determination
- An Indigenous Nation can choose to undertake the assessment of potential effects of a project on the Nation and its rights, utilizing Nation-specific information and methods for undertaking the assessment

Interests is intended to cover a broader suite when it comes to Indigenous Nations, including rights. The new provincial legislation is intended to support overall purpose of reconciliation and all of the steps under the new *Environmental Assessment Act 2018* provincially are intended to reinforce Indigenous governance, recognition and increase role that Indigenous Nations play in the decision-making process from beginning all the way through.

The process is designed to systematically build throughout the assessment of a proposed project towards the free, prior, and informed expression of consent or non-consent that the decision-making Ministers must take into consideration.

### Questions and Feedback

#### **13. Tsleil-Waututh Nation – Is the difference between the BCEAO and IAAC process that BCEAO is more for consent-basis instead of consensus?**

BC EAO – In our new *Environmental Act* we make a distinction between consent and consensus. Capital “C” consent is that at the end of the whole assessment, the Nation can express its views on the project. It can be as simple as “yes we support” or “no” or it can be more nuanced “we accept this project as long as the following conditions are met.” The content of the consent is up to the Nation to express. This consent reflects the Nation as a whole view on the project. The Provincial Ministers making the Provincial decision are obligated to take that into account, however, they do not have to come to the same decision.

All the way through the process, people implementing the process must seek consensus with participating Nations. This continual seeking of consensus on all the little decisions along the way is intended to build up towards the free and informed consent or non-consent expression at the end.

IAAC – Federally, we aim to secure consent from Indigenous Nations throughout the process. It is key to keep Nations informed with early planning and guidelines. As we go through the process, we are looking for Nations to provide consent for the process and information that feeds into the decision-making in the end. The degree of consent required will vary with circumstances and the degree of serious impacts on each Nation at the end of the process. We are looking to have consent-based conversations regarding serious impacts and ideally resolving issues as we go.

**14. Ditidaht Nation – How do we get funds to gather membership input? The concern is that we do not have the funds to gather memberships input. Are there funds for community engagement?**

BC EAO – Both processes include capacity funding. Some funding has already been provided by both the Federal and Provincial bodies. The expectation is that the Provincial process and the proponent will assist with funding as well. If Nations deem this as an issue, we can talk more about it in our one-on-one sessions because each Nation may have a different set of circumstances in terms of what resources are necessary.

**15. Scia’new Nation – We have been talking about how we can support projects. Can we talk about how these projects support us? I will support the one that supports us.**

BC EAO – Understood

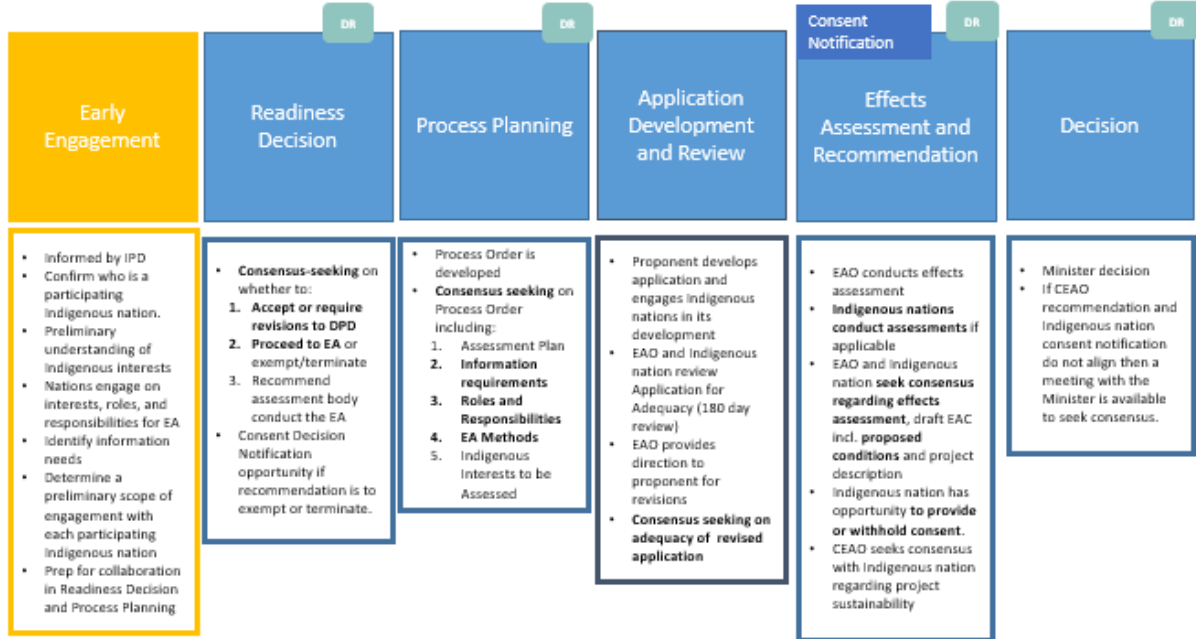
## Evolution of EA Methods for Assessing Impacts to Indigenous Nations

Under the previous provincial Act, the BC EAO delivered its consultation obligations in parallel to the federal environmental assessment process. While there was significant overlap between the two processes, consultation was a distinct and separate process. In some cases, it proved difficult to ensure consultation was fully informed. Often, information requirements for consultation were considered later in the environmental assessment process.

Under the new provincial Act:

- Effects are assessed more broadly to Indigenous interests that includes rights (as opposed to a rights focused approach)
- The methods for assessing effects are more integrated
- There is a high degree of flexibility under the Act for how the BC EAO and Indigenous Nations work together to structure and scope the environmental assessment

## Engagement Throughout the Environmental Assessment Process (Figure 6)



The provincial and federal processes are trying to work together to find a way to deliver a well coordinated and cooperative process. The figure above includes Provincial titles. The overall objective of the process is to seek consensus with the Indigenous Nations that are participating all the way through the processes.

## Questions and Feedback

### 16. **Tsleil-Waututh Nation** - The dispute resolution process allows for Nations to bring their concerns to the BCEAO during this process. How is that built in so that the BC EAO has all of our information prior to making a decision?

BC EAO – The idea is that we are seeking consensus throughout the entire process. Hopefully, if we reach a point where we need to use dispute resolution, we have discussed it many times throughout the process already.

### 17. **Matsqui Nation** – Environmental Assessments that are designed to reach a preordained conclusion are a waste of time. If the project is to proceed regardless, we are talking about reduced damage rather than whether the project should proceed at all. With the new process there is maybe some hope it would be relieved. However, the timeline and project description indicate that permitting will start before the impact assessment is even completed. It casts doubt about whether and how the impact assessment process will affect decisions about whether the project proceeds. Any advice in terms of how involved in the process we want to be?

BC EAO - Proponents are allowed to start the permitting process. However, no permits can be issued until a positive certification from the impact assessment process is made. The proponent takes on that risk if the project is declined.

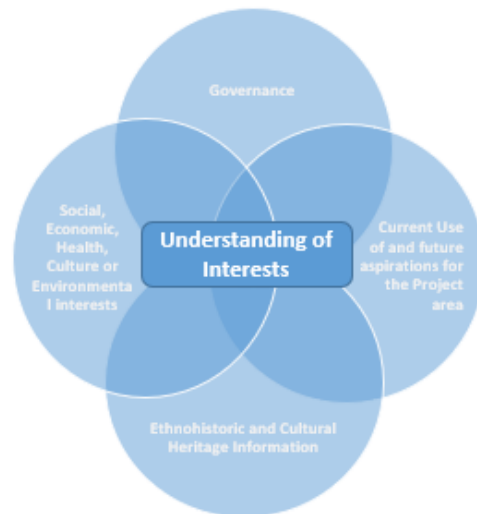
IAAC – Federally, we have prohibitions in our act where proponents cannot start without the impact assessment Decision Statement. This prevents any shovels in the ground. Your input does inform that decision.

### 18. Matsqui Nation - Who are the parties involved in potential "consensus"?

BC EAO – In terms of requirement of the Provincial *Environmental Assessment Act*, it is the BC EAO that needs to seek consensus with participating Nations. In the provincial process, there is a formal designation of a Participating Indigenous Nation (PIN), whereby early in the process your Nation had the opportunity to raise their hand and request to be a PIN. There is provincial capacity funding to support those participating Nations. It is not too late to become a PIN. Technically, the consensus seeking is between the BC EAO and PINs.

## What are Indigenous Interests for the Purpose of an Environmental Assessment?

- Includes but is not limited to Aboriginal or Treaty rights
- Matters that are of central importance to the Indigenous nation that have the potential to be affected by the project
- May include but are not limited to: biophysical, environmental, social, economic, cultural, spiritual, and governance



The Provincial Act requires every environmental assessment to assess the effects of a project on Indigenous Nations and their Section 35 rights.

Indigenous interests are those interests related to an Indigenous Nation and their rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*, including Treaty rights and Aboriginal rights and title that may be impacted by a proposed project (Indigenous interests).

This scope of assessment is meant to ensure that Indigenous and provincial decision-makers are fully informed of how a project may affect an Indigenous nation. This will require that the BC EAO and proponents work collaboratively with Indigenous nations to identify and assess the matters that are of central importance to the Indigenous nation and could be affected by the project. Of key importance will be those interests that pertain to constitutionally protected rights as well as matters that inform the Indigenous nation's decision regarding whether or not to consent to the project proceeding. Each Indigenous nation may have different priorities and concerns. The collaborative process to identify Indigenous interests to assess should happen concurrently to the identification of valued components (VCs) for the project. It is recommended that these discussions begin as early as possible to ensure that proponents can submit any relevant project-specific tailoring of the Application Information

Requirements Guidelines with their Detailed Project Description (DPD). The required Indigenous interests to assess will be confirmed through a consensus seeking process between the EAO and the Indigenous nation and outlined in the Process Order.

## Assessment of Potential Effects on a Nation and its Interests

Different approaches:

1. Building on assessment of other Valued Components
2. Defining and assessing additional Valued Components
3. Following a different Indigenous-defined assessment approach

Combinations are possible. The approach could be different for each interest. Always assessing potential effects of DP4 project (and potential cumulative effects).

## Questions and Feedback

### **19. Tsleil-Waututh Nation - Timelines are different for each process. Is there a diagram of how these timelines are going to meet? Are they expected to work at the same pace?**

BC EAO – We are sorting that out. We have not figured out how to piece it together. Yes, we do have something in the works, so stay tuned. We will be bringing you a draft of how we see the timeline working and asking for your feedback. It will have to be developed in discussion with each Nation.

### **20. Ts'uubaa-asatx Nation – Indigenous Nations have a holistic worldview about how different projects can impact the same area. Past, present and potential projects. We are trying to look at a holistic view. Looking forward to discussing that. We are concerned about proponent's skating around cumulative effects by using the term "residual". Suggesting there were no cumulative effects if there was residual effects. I would like a clear understanding of what is going to be assessed, and how it will be assessed when we talk about cumulative. Under the old Federal legislation, cumulative effects was robust and clear. Then it got watered down even before the change and now you have changed it again. I want a VERY clear understanding of what we are talking about when we talk about cumulative effects .**

IAAC – One of the changes in the new guidance we have federally is that the cumulative effects come at the beginning. There is the first step of understanding Nation rights, and then there is a piece on the barriers where rights have been unable to be practiced in the manner they want. In the context of process, that is a big shift and it is considering the current stressors within the system before the impacts of the proposed project. This is different because we are talking about that chain of residual and cumulative effects at the beginning and the end rather than just at the end.

### **21. Semiahmoo Nation- In speaking with IAAC and BC EAO with regard to this project, I want to ensure that as a transboundary First Nation our rights flow in the waters that are both**



**Canadian and US. We are in a unique position and this is an unfortunate stressor with regard to process. We saw with RBT2 we were involved with beginning of the process, but it was cut off as per a regulatory body decision to cut off at the boundary line as a result of configuration. This result has caused huge impacts, residual effects, cumulative effects, and adverse effects. The valued components of our concern were not included. The regulatory body informed the proponent it did not need to include these concerns because they were in US waters. However, traditional territory does not recognize international boundary lines. Very important thing for us to know - is this going to be different in this project? All of the studies done by the proponent for RBT2 did not include information pertaining to cumulative effects. We want to ensure that these projects recognize our whole territory and we want to be included in discussions.**

BC EAO – I know sometimes that the BC EAO and IAAC considering projects separately is a problem. In this case, there may be an advantage. Those questions, such as ‘what the scope of the assessment is’, gets decided case-by-case for each project. All of that is still on the table for the DP4 environmental assessment and we will be seeking consensus for developing those things. It will be in the Joint Guidelines.

### Comments Heard Throughout the Workshop on the Chat:

- Tseil-Waututh Nation :  
Will it be possible to get a video of the presentation after?
- IAAC:  
We weren't planning on recording it today, but happy to do a repeat performance for Tseil Waututh, if you'd like
- Tseil-Waututh Nation:  
Thanks. No worries and we can definitely discuss a follow up later
- Maa-nulth Treaty Society :  
Agree with Ts' uubaa-asatx --need GCT-RBT2 comparison
- Scia' new Nation :  
I agree on a comparative between the projects so that we can make meaningful decisions moving forward
- Seabird Island Nation :  
I agree thank you
- Ts' uubaa-asatx Nation:  
We will need an analysis of the difference between the two projects, why there are differences, which project components are better, Ts'FN will not have the time to carry out that analysis
- Kwantlen Nation :  
I agree with the requests that compare GCT and RBT2. We are also worried about both projects getting approved, and each have their own set of impacts to consider, but the cumulative impacts of both projects together are a lot to consider.
- Ts' uubaa-asatx Nation:  
Ts' uubaa-asatx First Nation has advocacy policies for lower mainland projects, we will share those with the proponent and Crown Agencies. These policies are critical in that they manage the First Nations and consulting time to a reasonable level. We expect the proponent and the Crown agencies develop the project and demonstrate to us that it's components meet or exceed our advocacy points. If there are gaps between our advocacy points and project components,

we invite such feedback. For example, climate change, geomorphology, etc. Further, Wednesdays are Ts'FN days for major projects, please contact me for a time to go over our policy documents at your convenience.

- Malahat Nation :

"Rather than just having GCT suggest that impacts will be low/not significant, they should set measurable targets with contingency plans in case the targets are exceeded. Also key to set these targets early so that the specifics can be discussed as part of the consultation process. (e.g., a commitment to no more than 100dB of GCT related ship-source underwater noise in the SRKW communication frequencies between 100Hz and 15kHz measured at specific hydro acoustic listening stations throughout the international shipping route. and if these targets are exceeded for more than a cumulative 15 minutes over the span of a month then GCT will provide monetary incentive to shippers to reduce speed which will be tracked by AIS)."

- Cowichan Tribes :

It's hard to take leadership when the ultimate decision-making doesn't lie with us

**\*\* IAAC answered by explaining the Impact on Rights Analysis \*\***

- Ts'uubaa-asatx Nation:

- Planning and the intent for developing capacity building needs to start at the beginning. It is not sufficient to leave it to construction notification for employment, training and contract procurement. Monitoring, Marine Mammal Observer Training, all the aspects of the study needs to be considered at the outset.

- GCT (Project proponent) :

As noted today is led by the Regulators. But we are here - always ready and open to receive questions. Never hesitate to contact me mdekovic@globalterminals.com or 604.506.3757.

- Ts'uubaa-asatx Nation:

My comments are also for the proponent and you may contact me

- Scia'new Nation :

Question on the last presentation. So sorry I couldn't speak as I'm having terrible allergy effects due to the pollen at the moment! I'm wondering what the timeline is for the impact assessment process? This will take a fair bit of work in community to clearly be able to express what the community context and values are.

- IAAC :

To answer your question, timelines for impact assessments federally are the following: 180 days for Planning phase (currently suspended since Jan 6 at request of proponent); up to 3 years to prepare Impact Statement; and then up to 300 days for a standard IA or up to 600 days for a Review Panel IA.

- Semiahmoo Nation :

Please advise if this presentation is being recorded today and if so, can someone supply a link.

- IAAC :

it is not being recorded but we can come and do any relevant parts to Semiahmoo if you'd like?

- Semiahmoo Nation :

Hello, thanks, I will email you a request.

- Matsqui Nation :

Who are the parties involved in potential "consensus"?

**\*\* BCEAO answered in Question 19. \*\***

- IAAC :

Funding Announcement: The Agency has approved additional grant funding to provide Indigenous groups with an additional \$5,000 in grant funding to support your review of the proponent's draft Detailed Project Description. To confirm your interest in receiving this grant

funding, please email Joelle Houde, Senior Funding Officer (Joelle.Houde@Canada.ca) and cc. Angeles Albornoz (Angeles.Albornoz@Canada.ca). Once Joelle receives your confirmation email, she will be able to transfer the funds to you via direct deposit within a few business days. We will also be following up with this information via email. Thank you!

Anonymous :

Can we get a copy of the presentation?

- IAAC :

yes, we will send a copy of the presentation to all participants