



Q'ICAY
FIRST NATION
...Land of the Moss

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July 9, 2021

The Honourable Jonathan Wilkinson
Minister of Environment and Climate Change
House of Commons
Ottawa, Ontario K1A 0A6
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cc: Impact Assessment Agency of Canada, ceaa.information.acee@canada.ca

Re: Request for Designation of a Proposed Projects Under the *Impact Assessment Act* – Canadian Pacific Projects in Pitt Meadows, BC

Dear Minister Wilkinson,

Q'icay (Katzie First Nation) writes to request Ministerial review and designation of the projects currently proposed by Canadian Pacific Rail ("CP") within our core territory and in the City of Pitt Meadows – the Logistics Park Vancouver Project ("LPV Project") and the Pitt Meadows Road and Rail Improvements Project ("PMRRI Project") (the "Projects")– pursuant to Section 9(1) of the *Impact Assessment Act* ("IAA"). We make this request based on:

- The potential for adverse impacts on our rights and interests, which include the protection, restoration, and stewardship of S'q'ay'c'aya?ł státlaw (Katzie Slough) as critical rearing habitat in the Lower Fraser River watershed and as a culturally significant travel artery for Q'icay prior to the colonization and industrial use of the area;
- Support from the Lower Fraser Fisheries Alliance (LFFA) to ensure that potential impacts of the Projects on critical off-channel rearing habitat in the Lower Fraser River be assessed through the cumulative lens in keeping with the LFFAs efforts to manage our fisheries in a way that is supportive of our cultural and spiritual traditions for future generations.
- The need for a fair engagement and assessment process with reasonable timelines to meaningfully assess the potential impacts to our rights and interests, and to ensure that these impacts are responded to in the proposed project design and mitigation measures.
- Extensive Public opposition to the LPV Project, including by the City of Pitt Meadows.
- The Projects in combination with historic, existing, and reasonably foreseeable rail and other industrial uses in the region (including the transportation of hazardous goods) pose a high risk of potential adverse cumulative effects on Q'icay rights and interests and irreversible harm to S'q'ay'c'aya?ł státlaw; and
- The LPV Project, by itself, is very near a threshold set in the IAA's Designated Project List. The LPV project involves the expansion of a railway yard by 41 hectares. The existing Vancouver



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Intermodal Facility is 89 hectares in size. Based on publicly available information, the rail improvement components of the PMRRI Project collectively comprise an area of approximately 14 hectares. Both Projects are undertaken by CP, located within close proximity of each other in Sq'áycəya?ł státləw, and are rail expansions to the Vancouver Intermodal Facility aimed at increasing and supporting CP's capacity and throughput for incoming products.

As noted, our request for designation is supported by the Lower Fraser Fisheries Alliance ("LFFA"). The LFFA is an affiliation of 23 First Nations from Yale BC to the mouth of the Fraser River. The LFFA is a voice for Lower Fraser First Nations working collaboratively on conservation and fisheries management initiatives, habitat restoration, policy analysis, and preservation of cultural traditions for future generations. A letter of support from the LFFA is enclosed with this letter, and LFFA delegates, and co-chairs have been copied on this correspondence.

Neither of the Projects have substantially begun nor has a federal authority exercised a power or performed a duty or function that would permit the projects to be carried out. Therefore, the Minister is not prohibited from designating the Projects for a combined assessment under the IAA. While CP is separating the review and assessment of the Projects, Q'ícəy sees these projects, which are both expansions lead by CP to the Vancouver Intermodal Facility within the culturally and environmentally significant Sq'áycəya?ł státləw as connected with related impacts. Collectively, the Projects impact Q'ícəy rights and title and are in the same geographical location as each other, with the same rail capacity expansion objectives. However, even if the Minister does not agree that the Projects should be reviewed together as geographically proximate CP rail capacity expansion projects under the IAA, the LPV Project alone poses enough of a potential impact to Q'ícəy rights (and against the backdrop of cumulative effects to the Lower Fraser River), and is close enough to the Project List threshold, to warrant a s. 9 designation.

Given the concerns described in this letter, we propose two options for moving forward in a manner that fosters reconciliation with Indigenous peoples, meets constitutional obligations and upholds the honour of the Crown:

1. Designate the LPV Project AND the CP lead rail components of the PMRRI Project as one project pursuant to Section 9(1) of the IAA, or
2. Designate the LPV Project pursuant to Section 9(1) of the IAA, and mandate that the cumulative effect of the PMRRI Project, along with the cumulative effects of other land uses in the area are considered under the assessment.



PROJECT BACKGROUND

Proponent Information

<i>Proponent Name</i>	Canadian Pacific Railway Company
<i>Corporate Address</i>	7550 Ogden Dale Road Southeast Calgary, Alberta T2C 4X9
<i>Contact Information</i>	888.333.6370
<i>Company website</i>	https://www.cpr.ca/en/
<i>Principal Contact Person</i>	Joe Van Humbeck

LPV Project

The LPV Project is a significant expansion to the existing CP Vancouver Intermodal Facility and mainline rail corridor in Pitt Meadows through the development of a new transload centre with railway support and other supporting infrastructure, creating a road and rail super centre with potential room for continued expansion.

The LPV Project, by itself, is very near a threshold set in the Project List. The LPV project involves the expansion of a railway yard by 41 hectares. The existing Vancouver Intermodal Facility is 89 hectares in size. Under the *Physical Activities Regulation, SOR/2019-285, s. 55*, railway yard expansions to an existing railway yard are a reviewable project if the expansion would result in an increase of its total area by 50% or more and a total area of 50 ha or more.

The LPV Project has three major rail and transload components:

- An Agricultural hub where Canadian agricultural products will be received by rail and transloaded to shipping containers for distribution in custom allotments around the world.
- An Auto lot to receive, by rail, North American-made automobiles destined for local distributors and specifically designed to accommodate electric vehicles.
- A Liquids transload and rail facility for transportation fuels and ethanol mainly to serve demand in Metro Vancouver.

The LPV Project would transform 101 acres of land within Sq̓áyc̓əyaʔ státləw into an asphalt and granular lot. This would have significant impacts to Q̓ícəy stewardship rights and devastate local flora, fauna, and the general environmental ecosystem of Sq̓áyc̓əyaʔ státləw with additional negative downstream effects on the Pitt and Fraser Rivers.

The LPV Project Area on the south side of the existing facility and CPs mainline bisects Sq̓áyc̓əyaʔ státləw. Currently, the LPV Project requires an Application to Construct a Railway Line to the Canadian Transportation Agency under Section 98 (“s.98”) of the *Canada Transportation Act* (“CTA”) which is expected to be filed by CP near the end of 2021. Q̓ícəy has significant concerns that the regulatory processes are insufficient to meaningfully assess and account for the cumulative impacts of the LPV Project on Q̓ícəy rights, which includes the protection, restoration, and stewardship of Sq̓áyc̓əyaʔ státləw.



Additional information about the LPV Project can be found in the following documentation:

- <https://vancouverlogisticspark.ca/about-the-project/>
- https://vancouverlogisticspark.ca/wp-content/uploads/2020/12/Draft-Project-Description_02122020.pdf
- <https://vancouverlogisticspark.ca/wp-content/uploads/2021/04/CP-Logistics-Park-Vancouver-Community-Discussion-Guide-20201214-2.pdf>
- <https://vancouverlogisticspark.ca/wp-content/uploads/2021/06/CP-VLP-June-2021-Community-Discussion-Guide-v06-20210608-WEB.pdf>

PMRRI Project

The Vancouver Fraser Port Authority (“VFPA”) and CP are working together on the PMRRI Project, which is intended to address current and future road and rail related traffic in Pitt Meadows. The PMRRI Project involves road improvements being led by the VFPA and rail improvements being led by CP.

The VFPA led road improvements are to eliminate the rail crossings at Harris and Kennedy Roads, two of the biggest rail crossings in the lower mainland. This requires a new four-lane underpass below the CP main rail crossing at Harris Road, and a new two-lane overpass on Kennedy Road over the main rail line entrance to CP’s Vancouver Intermodal Facility. For clarity, we are not requesting that the VFPA led road work to be included in this Sec.9 IAA designation request.

Qíçāy has considered the potential impacts of the VFPA led road project and has reached the conclusion that the road component will likely have limited potential for impacts to Sqáýçāya?ł státlāw. Trains however, have been disrupting and blocking emergency vehicle and community access to southern Pitt Meadows including Katzie IR1 at Harris & Kennedy Road for some time. This is of great concern to Qíçāy, and Qíçāy is in support of this being addressed under the current VFPA led consultation process, that is occurring wholly separate from the CP led rail improvement part of the PMRRI Project. Qíçāy continues to engage and consult with the VFPA on the road improvement project. Making these types of informed decisions and determining when projects in our territory are in the interests of Qíçāy is our governance and stewardship right as a Nation. It is pursuant to these rights that we are submitting this designation request to ensure that proper assessments are undertaken to inform our position on the Projects.

We are requesting that the CP led rail improvements under the PMRRI Project be included in the Sec.9 IAA designation request. The rail improvements aim to enable train staging close to the Pitt River Bridge. This requires a new rail siding track (approximately 10,000 feet or 3.05 km) on the north side of the existing tracks between Kennedy and Harris Roads with a new rail bridge over Sqáýçāya?ł státlāw, as well as an extension (approximately 6,000 feet or 1.83 km) of the existing lead track to the CP Vancouver Intermodal Facility east across Harris Road. Based on publicly available information, it appears that the rail improvement components collectively comprise an area of approximately 14 hectares. Collectively, with the LPV Project, the footprint of these CP lead Projects (which are both expansions to the Vancouver Intermodal Facility aimed at increasing rail capacity and throughput) in Sqáýçāya?ł státlāw, exceed the *Physical Activities Regulation*, SOR/2019-285, s. 55, project list threshold.



Currently, the PMRRI Project requires a *Fisheries Act* Authorization given the new rail bridge over Sq'ayc'aya?l st'atlaw as part of the rail improvement components of the project. The *Fisheries Act* application for the new rail bridge over Sq'ayc'aya?l st'atlaw is expected to be filed in July 2021.

Additional information about the PMRRI Project can be found in the following documentation:

- <https://www.portvancouver.com/projects/road-and-rail/pitt-meadows-road-and-rail-improvements/>
- <https://www.portvancouver.com/wp-content/uploads/2019/05/2019-05-30-One-Pageer-Not-Designed-Pitt-Meadows-Road-and-Rail-Upgrades.pdf>
- https://www.youtube.com/watch?v=An9AD3xAY_M

Q'icay's Perspective: The Projects are related, geographically proximate, and should be assessed together.

Based on communications to date, CP identifies the Projects as separate on the basis that the PMRRI Project started in 2017 under the Gateway Transportation Collaboration Forum's Greater Vancouver Gateway ("GVG") 2030 initiative and is partly funded by the National Trade Corridor Fund, whereas the LPV Project is solely funded and initiated by CP. The objective of the GVG2030 process is to remove bottlenecks impeding the growth of trade in the region while addressing community impacts of goods movement and population growth.

CP identifies that the objective of the PMRRI Project is to reduce train (and vehicle) congestion, whereas the LPV Project is aimed at increasing loading capacity to support more trains, trucks (and product) passing through the Vancouver Intermodal Facility. Ultimately, the LPV Project will allow CP to support more trains and increase road and rail traffic, and the PMRRI Project is designed to address existing and future increases in road and rail traffic to minimize congestion.

While the PMRRI Project and the LPV Project are funded by different sources and are started under different processes, from Q'icay's perspective, the nature of the funding for the Projects has nothing to do with the question of cumulative impacts of the Projects on our rights and interests and ignores the Projects' shared and complementary objectives to increase CP's rail capacity.

Engaging with Q'icay on a project-by-project basis, despite the interconnected purposes and geographic proximity of the Projects, lead by CP, limits our ability to consider the cumulative effects on our rights and interests (including S'q'ayc'aya?l st'atlaw and the Lower Fraser River watershed) and undermines our stewardship and governance rights.

It is a goal for Q'icay, through this s.9 designation request, to ensure that the cumulative effects of these two Projects (and as against the backdrop of CP's existing facilities and other land uses in S'q'ayc'aya?l st'atlaw) on Q'icay rights are thoroughly assessed and meaningfully integrated into the Projects' design and mitigation measures. Q'icay was already left out of engagement at the regional planning level for the PMRRI Project under the GVG 2030 process. This is despite the fact that Q'icay had specifically asked the VFPA and CP to be included in the GVG 2030 initiative. Now, Q'icay is being engaged at the project design and approval phase of this regional planning effort to expand transportation capacity, which to



date, has identified close to 40 projects to enhance the movement of goods in the Greater Vancouver region, including Q'ícəy territory. Various expansion projects are being considered separately from the 40 individual GVG2030 projects including the LPV Project, Fraser Surrey Dock Expansion Project, Roberts Bank Terminal 2 Project, etc. however, if approved these expansion projects, will rely on transit capacity expansions being led under the GVG2030 regional planning initiative. Having not been engaged or consulted in the GVG2030 at the regional planning level, this limits our free, prior, and informed consent on various port and rail expansion projects.

It is out of concern for these cumulative effects, and concern with the continued proposal for consultation on a project-by-project level without proper consideration for regional impacts on the rights of Indigenous peoples, that Q'ícəy seeks a thorough review of the Projects under the IAA, which specifically takes into account these impacts. Additionally, as identified above, the CP lead LPV Project and PMRRI rail improvement component collectively cover a project area of approximately 55 hectares, which is above the 50-hectare threshold for an expansion of an existing rail yard under the *Physical Activities Regulation* of the IAA (s. 55). Both Projects are expansions to the Vancouver Intermodal Facility aimed at increasing and supporting CP's rail capacity proposed within Sq'áyčəyaʔ státləw.

In the event that the Minister does not agree that these Projects and their shared objectives and impacts should be assessed under a single IAA assessment, the LPV Project, by itself should have an IAA assessment. The LPV Project alone represents a project footprint of 41 hectares within Sq'áyčəyaʔ státləw. An IAA assessment of the LPV Project would properly include a regional and cumulative effects analysis of other road and rail and infrastructure projects in Sq'áyčəyaʔ státləw and Q'ícəy's larger territory.

POTENTIAL FOR ADVERSE AND CUMULATIVE IMPACTS ON Q'ÍCƏY RIGHTS AND INTERESTS

The Projects are located in core Q'ícəy territory and have the potential to impact Q'ícəy's rights – which include land and resource use in our unceded territory, title, governance, self-determination, and cultural and environmental stewardship – and our interests in the protection and restoration of Sq'áyčəyaʔ státləw and the Lower Fraser River watershed for the protection of our salmon. These interests are relevant and directly related to our ability to exercise our rights in our territory.

Sq'áyčəyaʔ státləw was once productive rearing habitat for juvenile salmon preparing for life at sea and provided a bounty for harvesting of our culturally significant plants including Wapato. As is the case with much of the critical rearing off-channel habitat throughout the Lower Fraser River, this once rich and biodiverse habitat has been diked, de-watered, gated, channelized, rip-rapped, dredged, and developed. The marsh, riparian and upland habitat that once supported Sq'áyčəyaʔ státləw, has transformed into an urban landscape of agriculture, rail, and other uses. What is left of aquatic habitat, no longer flushes with tidal ebbs, and flows, and instead serves to drain the urban landscapes, resulting in poor water quality conditions, and a breeding ground for invasive species.

Juvenile salmon emerging from the Pitt, Alouette, and Fraser River watersheds rely on off-channel rearing habitat in the Lower Fraser River Estuary including the lower Fraser and Pitt River Chinook populations that have been designated as threatened, special concern, and endangered populations. This is where they feed and grow before they begin their life cycle at sea. Much of the off-channel



habitat in the Lower Fraser River is blocked by non-fish friendly pump stations and dikes however, juvenile salmon are still trying to get there, despite the obstacles and poor habitat conditions. Those that do float in when pumps are not running will be impacted by the poor habitat conditions, or unable to pass the pumps and carry on in their migration to the sea. Juvenile endangered salmon that are not able to access the off-channel habitat are being flushed to sea before there are physiologically ready, ending their life cycle just as they are beginning.

That said, Just downstream, at Colony Farm and in a few other locations in the region, fish access and habitat quality in this critical off-channel habitat have been successfully restored and our Juvenile salmon are once again thriving in these areas. The eco-cultural integrity of Sq̓áyc̓əyaʔl státləw, and the Lower Fraser River Watershed is suffering death by a thousand cuts from the cumulative effects of urban industrial land uses. If we are to meaningfully address the state of crisis that our salmon are currently facing, we must take every opportunity to consider how the cumulative effects of land use on critical rearing habitat can be reversed, and habitat and access restored.

QíCəy's rights and interests, including our waterways and their fisheries, have already been significantly impacted by the cumulative effects of land development and uses within our territory. This includes past and ongoing developments and land uses by CP within our territory – the existing Vancouver Intermodal Facility, Pitt River Rail Bridge, mainline tracks, multiple bridges spanning Sq̓áyc̓əyaʔl státləw, and associated facilities are all located in our core territory. CP has operated in Pitt Meadows since 1886. Barriers to fish access to Sq̓áyc̓əyaʔl státləw and impacts on habitat quality must be considered through the cumulative lens. For QíCəy people, salmon is a sacred animal and focal point to our culture. Salmon are more than fish; they are our family. As this important resource continues to be heavily impacted by incremental development in our territory and the cumulative effects, so too does our ability to maintain this sacred relationship and our cultural connections. QíCəy has communicated with CP on the importance of ensuring that any impacts to fish or fish habitat resulting from the Projects must be considered through a cumulative lens, and that habitat offsetting and enhancement needs to focus on restoring, not entrenching, the cumulative and incremental impacts to Sq̓áyc̓əyaʔl státləw, given the ecological and cultural importance of this waterway.

Despite this significant concern to QíCəy, CP is currently proposing fish habitat offsetting for the PMRRI Project outside of Sq̓áyc̓əyaʔl státləw. While CP has indicated that they are willing to use Sq̓áyc̓əyaʔl státləw as a starting point for offsetting for the Projects, CP has communicated that because Sq̓áyc̓əyaʔl státləw is currently used for agricultural purposes, and because there is an existing non-fish friendly pump, offsetting will likely largely have to occur at alternative sites (i.e., Sq̓áyc̓əyaʔl státləw is currently not productive enough to use for fish offsetting). This approach only serves to entrench QíCəy's concerns that continued projects in the area will erode both the current meaningful exercise of QíCəy's stewardship and governance rights over Sq̓áyc̓əyaʔl státləw, as well as foreclose the reclamation of this sacred place for QíCəy in the future. Mitigation measures that properly take into account the Projects' impacts on this culturally significant place that is Sq̓áyc̓əyaʔl státləw, must be focused on Sq̓áyc̓əyaʔl státləw and address barriers to fish access and rearing success in Sq̓áyc̓əyaʔl státləw.

The City of Pitt Meadows owns this flood infrastructure and pumps and is in opposition to the LPV Project. CP needs to engage in further relationship building and collaborative work (even if this will slow



down application timelines) to ensure that mitigation and off-setting can occur in Sq'áyčəyaʔ státləw, where the Projects are situated. This is a non-starter. If these impacts to the irreplaceable and culturally significant Sq'áyčəyaʔ státləw cannot be properly addressed by mitigation and design measures in Sq'áyčəyaʔ státləw then these are impermissible adverse effects, and the Projects should not proceed in the public interest and in the interests of reconciliation. We simply cannot watch this sacred place deteriorate under the cumulative impacts of the industry any longer. The fact that the area is not currently productive habitat for fish, does not provide a free pass to deteriorate Q'ícəy stewardship rights further.

Q'ícəy is of the opinion that the IAA process can be used to consider how the Projects might further entrench existing barriers to fish passage, productivity, and habitat quality in Sq'áyčəyaʔ státləw, and how these impacts can be effectively mitigated with the goal of the future restoration of Sq'áyčəyaʔ státləw, and the future meaningful exercise of our rights in this sacred place. The current review and engagement process for the Projects, including the CTA s. 98 process, does not account for this type of cumulative and forward-looking impacts analysis on Indigenous rights and does not allow for the timelines and processes needed for collaboration and relationship building to address the deterioration of Sq'áyčəyaʔ státləw. While similar habitat has been restored directly downstream, we cannot sit by knowing that further industry in Sq'áyčəyaʔ státləw that does not adequately address fish habitat issues will only entrench these concerns and potentially foreclose the potential for recovery as our pacific salmon stocks continue to decline towards extinction.

The Cultural Importance of Sq'áyčəyaʔ státləw

Q'ícəy's cultural attachment to the sloughs in our territory is ancient and inseparable. - sq'áyčəyaʔ xacaʔ ("Lake of Q'ícəy", or Pitt Lake) is the literal and figurative heart of Q'ícəy's territory, and the sloughs its veins and arteries. Like a heartbeat, the ebb and flow of the tides move water through the sloughs giving life and character to a rich and varied eco-cultural landscape. Q'ícəy's origin stories tell of how our powerful benefactor, Swaneset, gifted the sloughs to us:

*As [Swaneset] stood on Sheridan Hill, his gaze wandered over what is now called Pitt Meadow, and he thought of all the berries and roots that might grow there if only the land were drained. He remembered what He Who Dwells Above had said to him: 'I did not finish my work here. You finish it and make sloughs.' Straightaway, therefore, he dressed himself in his proper costume and drew the course of different sloughs on his face with red ochre. Then he raised his eyes in prayer to the Lord Above and lifted his hand. First arose Sturgeon Slough, the 'short cut' that runs from Pitt Lake to Pitt Meadow, exactly as he had drawn it on his face. From Sturgeon Slough, he made a number of branching sloughs, to each of which he gave a name. Next, he created the Alouette River and named it sa'ndsaʔ (the place where people go to fish), and from this river to Sturgeon Slough he created two other sloughs, sxwta'qwsdt (the short cut) and sqa'lqdle'ld (the place where people shall work in the mud like muskrats as they drag their canoes across). **Finally, he made a slough from Alouette River to Q'ícəy [Q'ícəy Slough] but left the last 300 yards unfinished lest it should drain into the Fraser River... Satisfied with his work, he returned to his people on Sheridan Hill and announced that he had reshaped the land so that it would provide them with an abundance of Indian potatoes, cranberries, and other foods"** (Old Pierre in Jenness, 1955:12 emphasis added).*



Prior to dyking by settlers looking to claim lands for western agricultural purposes, the slough routes provided “short cuts” into the resource rich inland areas. Easily capable of accommodating a fully loaded canoe, the calm waters of the inland slough routes provided Q'ícəy families easy access between Q'ícəy's villages and facilitated trade with First Nations from as far afield as present-day Vancouver Island, Lillooet, and Yale (Suttles, 1955). S'q'əy'cəy'ə?ł státləw was particularly vital as it provided direct access from the back of the village on the Fraser River to villages located in inland reaches of Q'ícəy's territory. For Q'ícəy, the fact that S'q'əy'cəy'ə?ł státləw ends 300 m short of the Fraser River, and that water flows north toward the Alouette rather than south toward the Fraser, are proof of Swaneset's purposeful planning. S'q'əy'cəy'ə?ł státləw continues to be an integral part of an eco-cultural landscape that defines Q'ícəy cultural identity, in the past, present, and future.

Q'ícəy laws are grounded in and expressed through acts of reciprocity. This means that, according to Q'ícəy law, anyone taking from S'q'əy'cəy'ə?ł státləw and the territory must also give something back. The fact that S'q'əy'cəy'ə?ł státləw is 'endangered', insofar as it is so heavily compromised that it is unable to 'give' to Q'ícəy in the way that Swaneset intended, means that the onus to repair the balance rests squarely on the shoulders of those who have impacted it and intend to do so in the future. Given the state of reciprocal imbalance evidenced by the current condition of S'q'əy'cəy'ə?ł státləw, re-balancing efforts are both vital and urgent. Actions that constitute meaningful efforts to re-balance the reciprocal relationship with S'q'əy'cəy'ə?ł státləw must be identified in consideration of the cumulative impacts that have created a “reciprocity deficit”. Thus, the potential impacts to S'q'əy'cəy'ə?ł státləw, and the larger eco-cultural landscape of which it is an integral part, must be considered within this broader socio-cultural context.

INSUFFICIENCY OF THE S.98 CTA PROCESS TO MEANINGFULLY ASSESS POTENTIAL IMPACTS TO Q'ÍCƏY

Q'ícəy has serious concerns about the ability of the s.98 CTA application process and the Canadian Transportation Agency (“the Agency”) to meaningfully and adequately assess the potential impacts of the LPV Project to Indigenous rights and interests. The Agency is an independent regulatory tribunal that openly states that there are few determinations within its jurisdiction that would be expected to affect Indigenous rights and interests¹. Thus, it is assumed and expected that the Agency's experience in assessing the potential impacts to Indigenous rights and interests is limited. Moreover, the guidance provided by the Agency to proponents, including CP, for consultation on how Indigenous rights and interests may be impacted is extremely limited, leaving ample room for interpretation on the part of the proponent.

Significant strides have been made in terms of general recognition of Indigenous rights and interests, and in both the federal and provincial (British Columbia) environmental impact assessment legislation in terms of how Indigenous peoples participate in these assessment processes and expectations for how impacts to Indigenous peoples are assessed. This includes the development of important policy and guidance on:

¹ Canadian Transportation Agency (2021). *Consultation with Indigenous Peoples, and the Accommodation of their Rights and Interests, in the Context of Canadian Transportation Agency Determinations*: <https://otc-cta.gc.ca/eng/publication/consultation-indigenous-peoples-and-accommodation-their-rights-and-interests>.



- The nature of potential and asserted Indigenous rights that extend beyond simply the 'current use of lands and resources for traditional purposes, the proxy used for Indigenous rights in assessment processes prior to these important legislative changes; and
- The importance of considering how pre-existing impacts and cumulative effects are already interfering with the exercise of Indigenous rights and cultural practices to address the injustice of a shifting baseline approach when assessing impacts to Indigenous peoples.

This new policy and guidance were developed to enable assessments to be undertaken in a manner that fosters reconciliation with Indigenous peoples, meets constitutional obligations, and upholds the honour of the Crown. There is no indication that the ideology of these important legislative and policy developments has also been applied to the s.98 CTA process and associated guidance from the Agency to ensure that the process is undertaken in a similar manner. With the Royal Assent of the *United Nations Declaration on the Rights of Indigenous Peoples Act* on June 21, 2021, arguably the CTA and associated processes need review. In the interim, the federal IAA process offers a viable alternative to ensure a meaningful assessment of the potential impacts of the CP project(s) on Q'ícəy.

CP's Approach to Assessing Potential Impacts on Indigenous Rights under s.98 of the CTA for the LPV Project & Sec. 35 of the Fisheries Act Authorization (FAA) PMRRI Project

Q'ícəy has communicated to CP the importance of applying the guidance associated with the IAA to the assessment process for the Projects for a meaningful and fair assessment, specifically in terms of:

- Applying a broader definition of 'current use' beyond 'present day use' or 'recent use' when looking at Indigenous land and resources use;
- Assessing the potential impacts on Q'ícəy's rights beyond simply our traditional land and resource use, including by taking into account our governance and stewardship rights over our territory and the uses it is put to; and
- Looking at the cumulative effects that have already impacted Q'ícəy's rights and interests².

Q'ícəy also requested that CP align the timelines for the Projects to consider the cumulative effect of these interrelated projects. However, CP has continued to assert that they are separate projects and that the PMRRI will require approval under sec. 35 FAA and the LPV project will require approval under s.98 of the CTA. This results in a narrow scope and a compartmentalized approach to their assessment, particularly in terms of Q'ícəy rights.

For the PMRRI Project, the scope for CP's assessment continues to be focused on impacts to current fish habitat productivity, without taking into account the past and potential future use of Sq'áyčəyaʔ státləw as productive fish habitat. As has been noted, it is not appropriate to assume that current limitations on

² As noted previously, past, and ongoing CP operations and land uses in Q'ícəy's territory have already impacted our ability to exercise our rights and interests. Q'ícəy now stands on the edge of urban, the net result of which has been an exponential decrease in the availability of lands and resources for traditional sustenance and cultural practice. Once surrounded by farmlands that supported a somewhat restricted yet still accessible range of traditional resources, residential and industrial development has all but eradicated both the resources and the sloughs that provided access. Consequently, Q'ícəy people are in an increasingly vulnerable situation where the pressures of urban encroachment may outstrip our ability to mitigate the physical and spiritual impacts to our cultural landscape.



fish and habitat productivity in Sq'ayc'aya?l státlaw cannot be mitigated, when they have been successfully mitigated less than a few kilometers downstream.

For the LPV Project, the scope of CP's assessment continues to be on the current use of lands and resources for traditional purposes, ignoring our title, governance, self-determination, and cultural and environmental stewardship rights. CP has also made predetermined conclusions about Q'icay's land and resource use in the vicinity of the LPV Project, stating that LPV Project lands are "developed agricultural lands which have not been usable for traditional purposes for some time, and which are very unlikely to be usable for traditional purposes in the foreseeable future".

From Q'icay's perspective, it is not appropriate for CP to make assumptions of our past, present and future use of lands in our core territory without supporting information from Q'icay directly and to use these assumptions to inform the temporal boundaries of the assessment³. Moreover, this is ultimately pre-determining the outcomes of the assessment on our traditional land and resource use. If this narrow scope of the assessment and interpretation of Q'icay rights is being driven by the guidance (or lack thereof) from the CTA in terms of assessing the potential impacts to Indigenous rights and interests, then this only further supports our concern that the s. 98 CTA process will not sufficiently and meaningfully consider Q'icay rights and interests in line with emerging best practices reflected in the IAA and associated policy and impact assessment processes that are grounded on the principles of reconciliation.

While Q'icay strives to consult in good faith and would like to engage our community members to provide information on our land and resource use in the vicinity of the Projects, this is not afforded by the currently proposed LPV Project and PMRRI Project timelines for application submission to the CTA and *Fisheries Act*. In March 2021 we entered into a capacity agreement with CP to support meaningful engagement on the Projects, the first step of which was to finalize consultation plans. These consultation plans have not been finalized because CP and Q'icay have not been able to reach an agreement on how a Q'icay lead assessment of Project impacts in our territory can be used to inform the Projects' design and mitigation measures.

While CP has suggested that they would support Q'icay in undertaking a comprehensive impact assessment study that considers past, present, and future intended land use to support the LPV Project, CP clarified that if Q'icay was not able to complete this assessment in advance of CP's intended application submission date of December 2021, that the assessment could be provided as a later supplement to the CTA. Under the CTA process, the proponent's initial application includes detailed and technical information on project design and plans. Completing this design and submitting this design to the CTA to begin its review without any consideration of the results of a Q'icay lead impacts assessment relegates our rights and title interests to an afterthought and provides no commitment that the findings from our assessment will be incorporated into the Project design or mitigation measures. This is

³ Q'icay people continue to hunt, fish, and gather traditional plant resources throughout the territory. Our Elders and community members have previously reported that the farmers and Q'icay people struck a cooperative relationship that lasted well into the 1990s. Q'icay people frequented local farms for duck hunting and had farmers' permission to sustain traplines. In this manner, Q'icay continued to assert our title and rights relatively consistently throughout the territory, though the resource base, and access to it, was restricted.



different from the IAA process, which is iterative, and involves a conversation between the proponent and impacted Indigenous nations throughout the assessment and project design process (including the identification of mitigation measures and actual involvement in the design of the assessment process).

Ensuring that Q'ícəy has adequate time to conduct a meaningful impact assessment of the Projects on our rights and interests is extremely important. Q'ícəy recognizes that longer timelines are needed to: conduct an impacts assessment that takes into account community and cultural knowledge; for collaboration on identifying appropriate mitigation measures; and ensuring that results of a Q'ícəy lead assessment are actually used to inform Project design. Q'ícəy acknowledges that the IAA process would afford this time and the level of communication and collaboration needed to address the cumulative impacts to Sq'áycəya?ł státləw.

We acknowledge that CP attempted to engage Q'ícəy in early 2020; however, we were in an active state of emergency from the Covid-19 pandemic and managing active outbreaks up until very recently, significantly challenging our capacity to meaningfully engage. Providing information is not meaningful consultation, this starts when Q'ícəy has the capacity to consider, respond and engage in a two-way dialogue, this started in March 2021 on the Projects. We have asked all proponents in the past year, including CP, to accommodate our constraints to engage during this global pandemic, in line with the provincial guidelines⁴ that state that proponents need to consider if First Nation are able to participate meaningfully in consultation activities during the pandemic. This respectful accommodation grounded in the principles of reconciliation has proven difficult. Q'ícəy deserves a fair engagement and assessment process with reasonable timelines and scope on these interrelated projects to meaningfully engage our community members and adequately assess the potential impacts to our rights and interests. We do not feel that the s.98 CTA process will provide this, nor will compartmentalizing these Projects into separate scopes wherein impacts to fish habitat will not be considered through the cumulative lens.

We also acknowledge that while CP timeline for application for approval under Sec. 98 of the CTA for the LPV Project (December 2021) and Sec. 35 of the FAA for the PMRRI Project (July 2021) does not provide the adequate time or opportunity to consider the cumulative impacts on Q'ícəy's rights and interests, that the Crown will carry a duty to consult under the CTA and FAA approval processes. That said, as discussed, we remain concerned with the CTA's experience in engaging with Indigenous Nations and the level of consideration that the CTA process affords, and how if the scope of the CTA approval does not consider proposed rail improvements under the PMRRI Project, what mandate the CTA will have to consider this cumulative impact on our rights. We are also concerned that the CTA will rely on this CP industry led consultation process that has not proven to be meaningful to date for Q'ícəy. While Fisheries and Oceans Canada seemingly has a renewed mandate under the 2019 *Fisheries Act* to engage and consult meaningfully with Indigenous groups, by compartmentalizing these Projects this limits the ability to examine the cumulative effects of fish habitat across the Projects, and within the Lower Fraser River.

⁴ Province of British Columbia (2020). *Government Consultation Bulletin: Consulting During the Covid-19 Emergency*: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/bulletin_fn_consultations_covid-19.pdf.



PUBLIC CONCERN

Public concern about the LPV Project is well documented, with organized efforts to attempt to stop the proposed expansion including:

- Pitt Meadows City Council is unanimously and vehemently opposed to the LPV Project and prepared a media release on December 3, 2020, to explain their concerns and perspectives⁵
- Pitt Meadows Council has created an Opposition to the Proposed CP Logistics Park webpage⁶
- Pitt Meadows Council approved the spending of \$50,000 to \$75,000 for an environmental study to determine associated health and environmental impacts of CP's operations along the rail corridor in Pitt Meadows in December 2020
- A Stop CP Rail webpage⁷ developed by concerned residents and citizens that includes a template letter⁸ that can be sent to local, provincial, and federal government representatives.
- A Pitt Meadows Intermodal Expansion – Concerned Residents Facebook page⁹ has been established.
- A change.org petition¹⁰ to stop the LPV Project has been established with 2,353 signatures to date.
- A petition to the Government of Canada was started in December 2020, with 1620 signatures received by the February 2021 petition closure.
- Media coverage related to the opposition and associated concerns and perspectives:
 - <https://www.mapleridgenews.com/news/from-the-natural-place-to-the-industrial-place/>
 - <https://www.mapleridgenews.com/news/pitt-meadows-city-hall-and-residents-oppose-new-cp-rail-operation/>
 - <https://www.mapleridgenews.com/news/cps-logistics-yard-brings-new-level-of-fire-hazard-to-pitt-meadows/>
 - <https://www.mapleridgenews.com/news/cps-logistics-yard-brings-new-level-of-fire-hazard-to-pitt-meadows/>
 - <https://www.mapleridgenews.com/news/farmers-oppose-destruction-of-pitt-meadows-farmland/>
 - <https://www.mapleridgenews.com/news/pitt-meadows-challenges-cps-process-for-choosing-logistics-park-site/>
 - <https://www.mapleridgenews.com/news/port-authority-puts-pause-on-pitt-meadows-overpass/>

⁵ See <https://www.pittmeadows.ca/our-community/news/media-releases/council-opposed-cp-s-proposed-expansion-intermodal-facility>.

⁶ See <https://www.pittmeadows.ca/our-community/opposition-proposed-cp-logistics-park>

⁷ See www.STOPCPRAIL.com.

⁸ See <https://www.pittmeadowsrailyardexpansion.com/template-letters>.

⁹ See <https://www.facebook.com/groups/178264717289471>.

¹⁰ See https://www.change.org/p/pitt-meadows-intermodal-expansion-stop-cp-rail-intermodal-expansion-in-pitt-meadows?recruiter=11619481&utm_source=share_petition&utm_medium=facebook&utm_campaign=psf_combo_share_initi al&utm_term=share_petition&recruited_by_id=9bd3ca00-c3a9-012f-fe11-4040aa777426&utm_content=fht-26216186-en-ca%3A2&fbclid=IwAR3YsaziWebrxVg3oY31NjqPtQYjx39QZ0X-M37CyYjMG9P5MXFwjBgFLA&use_react=false.



- <https://www.mapleridgenews.com/news/stopcprail-group-would-stop-all/>
- <https://www.nationalobserver.com/2021/02/01/news/proposed-rail-expansion-pitt-meadows-would-eat-100-acres-farmland>

Key public concerns voiced to date include:

- Local and regional environmental impacts:
 - Damage to Waterways including the, Sq'áyčəyaʔt státləw, Pitt River, and Fraser River
 - Permanent loss of viable agricultural land
 - Damage to surrounding farms.
 - Permanent loss of vital habitat for local and sensitive wildlife
 - Flooding
- Serious health and safety concerns:
 - Serious and potentially fatal fire hazards
 - Air pollution
 - Exposure to chemical toxins including diesel fumes leading to an increased risk of cancer.
 - Noise and light pollution
 - Exposure to extreme vibrations
 - Sleep disruptions leading to serious physical and mental health issues.
 - Significant impacts on quality of life because of shunting from the building of trains in residential areas
- Additional concerns:
 - Ability to remove land from the Agricultural Land Commission without due process.
 - Increased truck traffic in locations already suffering from congestion issues.
 - Residences within metres of the heavy industrial rail yard
 - Disregard for community amenities in proximity such as the Pitt River Greenway Dike trail and municipally owned BMX track

Another important concern raised is the lack of respect for proper public engagement:

No advance notice was provided for the public engagement process and CP chose to do “engagement” during a pandemic with public health orders preventing public gatherings while people are in the midst of Christmas preparations. They took full advantage of a public health crisis and abused the process that is in place to hear and address residents’ concerns. They may be fulfilling their requirements of the process to the letter, but they are not fulfilling their duty to the spirit in which it was intended¹¹.

¹¹ See <https://www.pittmeadowsrailyardexpansion.com/public-concerns>.



PROPOSED OPTIONS FOR MOVING FORWARD

Given the concerns described in this letter, we propose two options for moving forward in a manner that fosters reconciliation with Indigenous peoples, meets constitutional obligations and upholds the honour of the Crown:

1. Designate the LPV Project AND the CP lead rail components of the PMRRI Project as one project pursuant to Section 9(1) of the IAA, or
2. Designate the LPV Project pursuant to Section 9(1) of the IAA, and mandate that the cumulative effect of the PMRRI Project, along with the cumulative effects of other industrial uses in the area are considered under the assessment.

Sqáycəyaʔ státləw is our cultural lifeline that once connected to the heart of our territory. This lifeline has suffered, as have our rights to govern and steward our unneeded territory since contact. Where it was once a productive place for harvesting traditional agriculture, transport, and trade though out our territory, the LPV Project and PMRRI Project threaten to entrench the long suffering that our lifeline has endured. Our fish family can still be found in Sqáycəyaʔ státləw and the banks in some places continue to support culturally significant species such as Wapato. We have all heard how the Fraser River Estuary is suffering from death by a thousand cuts, and here we have an opportunity to heal the wounds that our people, our plant and animal relatives, and our culture have suffered.

Minister Wilkinson, your January 15, 2021, Mandate Letter indicates that “there remains no more important relationship to [you] and to Canada than the one with Indigenous Peoples...and [you] remain committed to moving forward along the shared path of reconciliation.” If this is, in fact, the case, we urge you to designate the LPV Project and the rail components of the PMRRI Project for consideration under the IAA.

Respectfully,

<Original signed by> <Original signed by> <Original signed by> <Original signed by>

Chief Grace George, Councillor Rick Bailey, Councillor David Kenworthy, Councillor Lisa Adams
Qícəy First Nation



Q'ICƏY

FIRST NATION

...Land of the Moss

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Cc:

Joe VanHumbeck, System Manager, Environmental Assessment CP Rail
Mike LoVecchio, Director of Indigenous Relations and Government Affairs, CP Rail
Morgan Tanner, Indigenous Engagement Support CP Rail, Hemmara
Client CP Rail, Hemmara
Sally Hope, Lower Fraser Fisheries Alliance Co-Chair, Shxw'ow'hamel First Nation
Ken Malloway, Lower Fraser Fisheries Alliance Co-Chair, Tzeachten First Nation
Angie Bailey, Lower Fraser Fisheries Alliance Delegate, Aitchelitz First Nation
Norman Florence, Lower Fraser Fisheries Alliance Delegate, Chawathil First Nation
Bruce Douglas, Lower Fraser Fisheries Alliance Delegate, Cheam First Nation
Kim Charlie, Lower Fraser Fisheries Alliance Delegate, Sts'ailes First Nation
Ken Malloway, Lower Fraser Fisheries Alliance Delegate, Kwakwa'apilt First Nation
Les Antone, Lower Fraser Fisheries Alliance Delegate, Kwantlen First Nation
Lower Fraser Fisheries Alliance Delegate, Kwikwetlem First Nation
Phil Sherwood, Lower Fraser Fisheries Alliance Delegate, Laq'a:mel First Nation
Brenda Morgan, Lower Fraser Fisheries Alliance Delegate, Matsqi First Nation
Laura Sparrow, Lower Fraser Fisheries Alliance Delegate, Musqueam First Nation
Norma Webb, Lower Fraser Fisheries Alliance Delegate, Peters First Nation
Harry Murphy, Lower Fraser Fisheries Alliance Delegate, Popkum First Nation
John Williams, Lower Fraser Fisheries Alliance Delegate, Scowlitz First Nation
Jim Harris, Lower Fraser Fisheries Alliance Delegate, Seabird First Nation
Kevin Cook, Lower Fraser Fisheries Alliance Delegate, Semiahmoo First Nation
Robert Gladstone, Lower Fraser Fisheries Alliance Delegate, Shxwha:y First Nation
Maureen Chapman, Lower Fraser Fisheries Alliance Delegate, Skawahlook First Nation
James Archie, Lower Fraser Fisheries Alliance Delegate, Skowkale First Nation
Lester Mussel, Lower Fraser Fisheries Alliance Delegate, Skwah First Nation
Garry Commodore, Lower Fraser Fisheries Alliance Delegate, Soowahlie First Nation
Al Jimmie, Lower Fraser Fisheries Alliance Delegate, Squiala First Nation
Dalton Silver, Lower Fraser Fisheries Alliance Delegate, Sumas First Nation
Mike Baird, Lower Fraser Fisheries Alliance Delegate, Tsawwassen First Nation
Michael George, Lower Fraser Fisheries Alliance Delegate, Tsleil-Waututh First Nation
Kevin Garner, Lower Fraser Fisheries Alliance Delegate, Union Bar First Nation
Natasha Joe, Lower Fraser Fisheries Alliance Delegate, Yakwekwioose First Nation
Dominic Hope, Lower Fraser Fisheries Alliance Delegate, Yale First Nation
Murray Ned, Lower Fraser Fisheries Alliance, Executive Director
Rosalie Hope, Lower Fraser Fisheries Alliance, Program Manager
Ian Hamilton, Lower Fraser Fisheries Alliance, Department Head of Habitat and Restoration
Aidan Fisher, Lower Fraser Fisheries Alliance, Fisheries Biologist
Rebecca Reid, DFO Regional Director General
Jennifer Davis, FLNRORD, Fish and Aquatic Habitat Branch Resource Stewardship
Jennifer Nener, DFO Director of Salmon Management & Client Services
Sheldon Evers, A/Aboriginal Affairs Advisor, DFO
Elan Park, DFO A/Resource Manager



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Terri Bonnet – DFO, Fraser and Interiors Area Director
Honorable Minister Bernadette Jordan
Robin Silvester, President, and Chief Executive Officer, Vancouver Fraser Port Authority
City of Pitt Meadows Mayor and Council

Encl: Letter of Support from the Lower Fraser Fisheries Alliance



June 23, 2021

To Whom It May Concern,

Re: CP Rail proposed project in Katzie First Nation territory

The Lower Fraser Fisheries Alliance (LFFA) is an affiliation of Nations from Yale BC to the mouth of the Fraser River, approximately 200 kms. The LFFA is a voice for Lower Fraser First Nations, and we work collaboratively on conservation and fisheries management initiatives, habitat restoration, policy analysis and preservation of cultural traditions. Twenty three of thirty First Nations have executed the LFFA Governance Protocol which provides the mandate for advocacy, coordination, technical support, and formal responses related to fisheries and resource management in the Nations' territories.

Lower Fraser First Nations have occupied and utilized their traditional territories, including the Fraser River and tributaries, to harvest salmon since time immemorial. Historically, Fraser Salmon were a major component of our dietary requirements societal practices and cultural ceremonies. Fraser Salmon abundance and the ability for Lower Fraser First Nations to meet their Food, Social and Ceremonial (FSC) needs for Salmon, Steelhead, Sturgeon and Eulachon has been in a state of crisis for the last few decades. Food security and retention of our cultural practices related to the fishery are drastically diminished with each passing year. Our language, cultural identity and way of life is intimately connected to our territories, and in particular the Fraser River and all living beings that rely on it.

The Lower Fraser Fisheries Alliance fully support Katzie First Nation in their request to the federal Minister of Environment and Climate Change, the Honorable Jonathan Wilkinson, that the:

CP Rail Vancouver Logistics Park Project (41ha), and the CP Rail Pitt Meadows Improvement Project (14ha) (the Projects); or the

CP Rail Vancouver Logistics Park Project, with clear consideration for cumulative effects.

under the power defined in Section 9(1) of the Impact Assessment Act be designated as a project(s) that may cause adverse effects within federal jurisdiction, adverse direct or incidental effects, and public concerns related to those effects warrant the designation on Katzie Slough and the Lower Fraser River watershed.

Katzie Slough is a place of cultural significance to Katzie First Nation that provides critical rearing habitat in the Lower Fraser River. CP Rails proposed work, if these impacts are permitted, will have adverse and lasting effects on habitat and the cultural well-being of Katzie and their members. Fish access to much of the critical off-channel habitat throughout the Lower Fraser River watershed has been impacted by current land use, however access and habitat is being restored in other similarly impacted areas within the watershed.

The Lower Fraser Fisheries Alliance works collaboratively and holistically to manage our fishery and to support our cultural and spiritual traditions for future generations. On behalf of the Nations, the LFFA has concluded a habitat and restoration strategy and prioritization framework for the Lower Fraser Region, which complements the LFFA Strategic Plan (2020-2022). It is of great concern when major projects, such as CP Rail, propose to further entrench the cumulative impacts on habitat in the Lower Fraser River.

We compel the Federal Minister to ensure that a fair and reasonable process, as defined under the Impact Assessment Act guidelines is applied to the Projects to ensure that adequate assessment and impact mitigation measures meet the expectations of Katzie First Nation, and their indigenous fisheries rights are fully considered. Further, the Nations strongly recommend that government be responsive to their commitment to the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and the Declaration on the Rights of Indigenous Peoples Act (DRIPA), and that free, prior and informed consent is obtained from the Katzie First Nation.

The LFFA remains committed to supporting Lower Fraser First Nations and would welcome any subsequent engagements and dialogue in support of Katzie First Nation.

Sincerely,

<Original signed by>

<Original signed by>

Sally Hope, LFFA Co-Chair

Ken Malloway, LFFA Co-Chair

Cc Lower Fraser First Nations
Rebecca Reid- DFO, Regional Director General
Jennifer Davis – FLNRORD, Fish and Aquatic Habitat Branch, Resource Stewardship
Terri Bonnet – DFO, Fraser and Interiors Area Director
Honorable Minister Bernadette Jordan
Jennifer Nener, Director of Salmon Management & Client Services
Sheldon Evers, A/Aboriginal Affairs Advisor, DFO
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