

Brief Delivered to:

The House of Commons of Canada's Standing Committee on Transport, Infrastructure and Communities in view of its study on Railway Safety

Date: February 8, 2022**Prepared by:**

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The Brief is intended to provide further information on several matters that Kitselas First Nation has faced with respect to rail safety, Consultation, and risk. Although Kitselas is not outright opposed to industrial development, the Nation expects that any such changes are consistent with the wants and needs of the community. These changes to the physical landscape and/or community makeup that occur as a result of industry must ultimately be weighed against a number of factors, and information is absolutely necessary if these impacts are to be assessed and subsequently mitigated or prevented.

Lack of Information & Duty of Care

Access to information and clear articulation of the lines of responsibility have been extraordinarily difficult to obtain. For Kitselas and other nations to appropriately study and understand the multitude of effect in their Territory, there needs to be increased accountability on the part of regulators, and the railroad companies to collect and provide data in a transparent way. For instance, with respect to Traffic, discrete data is available, however, specific information such as traffic volume for a particular line is not. A community/municipality can qualify for PD36 Dangerous goods information, but this does not provide a true sense of the growth in traffic volume over time. The implication of traffic structure changes is significant as outlined by our risk assessment.

More than raw data, the lack of clarity around who is responsible for what in the event of a derailment or other significant disaster is highly unclear. We understand that Transport Canada enforces the Railway Safety Act, but who is responsible for rapid response, spill prevention and clean up? There are many nebulous responsibilities between the parties at play including the municipality, TC, CANUTEC, the Province, the railroad companies and the shippers. The responses to these questions focus on "who responds" but these are rather simple answers. Where we find ourselves asking questions is, "who is responsible"? For Kitselas and other Nations that rely on the Skeena River, who would be responsible for an event similar to Cheakamus River (2005). CN has stated that ultimately, the shipper of the good would bear the responsibility.

A clear dialogue needs to take place with affected communities across Canada on this particular issue. There are no clear sight lines, and instead, there seems to only be judicial policy making in a post-disaster environment.

Consultation and Incorporation of Rail Components into Environmental Assessment

Consultation on rail related matters has been extremely limited, particularly with regard to the impacts of increasing traffic either as result of new or expanding industrial projects, or the subsequent Key Route Assessments that are triggered by said traffic increases.

In 2019, TC informed Kitselas that CN had notified TC they anticipate transporting more dangerous goods in the future and this corridor will likely become a key route. Accordingly, CN prepared to conduct their risk assessment in Quarter 2 of 2020. We were informed that it was a timely opportunity for us to provide input with our safety and security concerns through the CN portal on their publicly accessible website. We were informed that this is the tool for consultation that is in place to address the requirements for Rules respecting Key Trains and Key Routes. Further we were informed by TC that the company is “required to acknowledge or, for example, communicate how the risks identified have been mitigated.” It was clarified that risk assessments prepared by railway companies are not public documents and that while the department reviews CN's risk assessment conducted under the Key Trains/Key Routes rule periodically, the risk assessment belongs to CN. We were directed to the portal and told to draft something to paste into the appropriate field. We then found out there is a limit of 512 characters including spaces. Both myself and my staff developed a letter for this submission that was reduced to 4 sentences. Both a screen shot of the submission and the letter are provided below. CN has never responded or reached out to discuss Key Routes.

Kitselas also understands clearly, that Consultation is ultimately not CN’s responsibility and rather that of the Crown. Which is why we were extremely disappointed that the Vopak Pacific Canada project was not designated as a reviewable project by CEAA. After significant effort, the BC Environmental Assessment Office committed to scoping in aspects of Rail into their assessment, however, were later informed by TC that this was not within their jurisdiction. Any consideration of the massive increase in rail traffic proposed by this project died at that moment.

The potential and real environmental and socio-economic effects resulting from increased rail traffic, associated with either a proposed project or expansion of an existing project, are not assessed or addressed under current legislation. In our experience, the rationale for excluding rail traffic from the scope of environmental assessments relates to a lack of jurisdiction: proponents typically lack “care and control” over the products being transported by rail, while the Province must defer to Transport Canada as the lead regulator of rail transportation. However, Transport Canada’s legislation and regulations exclusively govern the safe operation of rail traffic, typically in the form of an emergency response action plan (ERAP). As such, the potential impacts resulting from increased rail traffic – including increased noise, wildlife strikes, air emissions, impediments to access, and potential accidents and malfunctions – are

overlooked. For Kitselas and many other Indigenous communities that are intersected and/or directly adjacent to the railway, this represents a significant regulatory gap that must be addressed.

Rail and Road Transportation Risk Assessment

In 2021, Kitselas First Nation commissioned a desktop investigation into rail and road transportation risks that could affect its Traditional Territory and people. This work was undertaken by Oboni Riskope Associates Inc. (www.riskope.com), a leading global risk assessment consulting firm and supported by Arrowsmith Gold Inc., a leading global community health and safety consulting firm. This segment of the brief below provides an overview of the work completed and recommendations for the Committee's consideration.

Approach: The investigation was based on publicly available documentation and written information provided by Kitselas to the assessment team.

Risk assessments generally consider two main components:

- 1) the likelihood of an incident occurring, and
- 2) its related consequences (illness, injury, death etc.).

In this investigation, ***incidents focused on accidents that could potentially generate harm to the public*** (e.g. victims of rail road and highway traffic) ***and/or the environment*** (areas of particular value to Kitselas).

The investigation has also looked into potential interactions between the rail line and road traffic as it was identified there are significant stretches of infrastructure alignment where the rail line is adjacent to Highway 16. This is important as a potentially negative interaction between the two traffic infrastructure categories could result in critical accidents especially under increased traffic conditions.

Data included: After describing the transportation network and the general environment, the study reviewed the various projects slated to be commissioned or planned in the area, estimating subsequent RR and highway traffic needs and increases (based on available data and information). Specific parameters of the transportation network such as gradients, bridges, tunnels were identified and mapped using a GIS database.

Potential impacts considered are those associated with:

i) populations, ii) environment and niche areas, iii) industrial and public targets. Populations can be impacted directly (e.g. traffic accident) or indirectly (e.g. industrial accident impacting the way of living, long term survivability). Through GIS analysis it is possible to visualize how natural and man-made hazards combine to deliver an image of potential "hot spots" along the RR and highways. These "hot spots" reflect increasing concentration of hazards and potential consequences along the railway at 10 meter intervals. Criteria associated with the identification hazards included if the railway at 10 meter intervals is:

- Within the area of an historical avalanche

- Within a 100 buffer zone of an historical rail incident
- Involved a bridge or a tunnel
- Within the zone of an historical wildfire
- Within the tsunami zones
- Involves a slope from the railway to the riverbed higher than 25 degrees

This study concluded that harm to people is already at the verge of international societal risk acceptability thresholds if both railroad and highway accidents are considered. In other words, the context of rail and road safety is at a tipping point and it is safe to say that an incident will happen that will harm people and/or the environment is a matter of 'when' and no longer 'if'.

Recommendations:

- 1) ***Scope in rail and highway risk into project environmental assessments as a normal part of EA procedures.*** Rail and highways can be viewed as ancillary facilities associated with the project and if there is an increased burden on the infrastructure, this needs to be captured as it poses a direct risk to people. If there is no assessment on this topic, the required upgrades/improvements to the network will never be captured.
- 2) **More specific traffic data along the highways, with particular reference to the number of passages per day, with more detail on those transporting dangerous goods is needed.** This would be useful to update the results of this study and to prepare the associated emergency plans in case of possible future accidents.
- 3) **Enhance transparency related to: substances being transported within and through populated areas** (without knowledge, it is impossible for communities to prepare for potential emergency scenarios.); internal rail company investigations; methods for triggering investigation and/or lowering the threshold such that more frequent/thorough/key/smaller incidents and near-misses are investigated and reported at regional scale, and; distance thresholds for rail operations (e.g. yards/storage/exchange areas) from key targets (e.g. hospitals, schools etc.)
- 4) **Undertake an emergency preparedness and response capacity assessment associated with the transportation of dangerous goods within populated areas** and ensure local emergency response providers have access to both the necessary equipment and training to respond effectively and safely.
- 5) **Support a mutually beneficial program consisting of awareness raising amongst the local population and adequate signaling at paths and spurs RR crossings and highway intersections.** If this is not undertaken, risks will amplify, especially if the RR and highway traffic increase as predicted and articulated in proponent documents.

- 6) **The expected increase of accidents should lead to the execution of a mutually beneficial program of accident reduction** between the stakeholders, including local populations, the RR, Ministry of Transportation, Transport Canada and the involved cities and First Nations.
- 7) **Given the paucity of precise and verifiable data it is paramount that the situation be monitored and updated on a regular basis, with particular attention to climate change events.** Monitoring results should be transparent and made available to local community leaders and emergency response personnel.
- 8) **Emergency and rescue operations should be planned** considering possible hindrances due to road and RR closures, loss of telecom and possibly power.

Key Route Assessment

We experienced a technical difficulty while processing your request. Your data may not have been correctly saved.

Full Name:	Chris Apps	*
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Department:	Kitselas Lands and Resources Department (KLRD)	*
Phone Number:	250-922-5871	*
City:	Terrace	*
Province/State:	British Columbia	*
Message:	<p>Kitselas is experiencing unprecedented industrial development. Trains pass through our community every day. Requesting information directly from CN related to the safety of our people has been challenging. There is no transparency regarding numbers and timing of rail traffic, or measures we need to take if an incident occurs. This is an official request indicating our expectation to participate in a Key Route assessment to ensure risks to our communities are fully understood and mitigated appropriately.</p>	*



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expectation to participate



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February 3, 2020

Canadian National Railway (CN)
Montreal (Headquarters)
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Montreal, Quebec, Canada
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RE: Official Registration of Request for more Robust Engagement Regarding Health and Safety Risks

Kitselas First Nation is an Indigenous Nation in North Western British Columbia, Canada near the city of Terrace. Our Traditional Territory is bifurcated by CN's route from Prince George to Prince Rupert, with our communities located along Highway 16. In several cases, CN's line crosses through our Reserve Lands.

Kitselas is currently experiencing unprecedented industrial development in our Territory and in May of 2019, we commissioned a community health and safety risk assessment associated with these industrial activities. CN was flagged as an industrial actor in the area whose business potentially poses risks to Kitselas people for the following reasons:

Data from Transport Canada indicates a 7% increase in Canadian rail accidents between 2017 and 2018, with a 10% increase as compared to the previous 10-year average. The number of rail line fires and explosions have increased more than 200% over the last 10 years, with 12 occurring in 2008 and 34 occurring in 2018.¹ This number has increased again with 49 fires and explosions occurring in the first 5 months of 2019 (between January and May).² This data indicates that there is an increase in the transport of flammable and explosive substances, and safety procedures and protocols may not be fully in place.

For Kitselas, CN has trains that pass through our communities daily. The experience in requesting information directly from CN related to the safety and health of our people has been challenging. There has been a lack of transparency regarding the volume and timing of rail traffic, and the appropriate measures we need to take if a spill or incident occurs. At present, Kitselas does not have predictable emergency preparedness and response capacity, nor specialized training related to a spill or management of hazardous material. Our emergency services in the area are overstretched due to the LNG Canada and Coastal Gaslink Pipeline.

Our Nation is affected by what we would consider a "Key Route", and this is an official request outlining our expectation to participate in Key Route assessments to ensure risks to our communities are fully understood and appropriately mitigated.

Sincerely,

Chris Apps
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¹ Transportation Safety Board of Canada (2018). Rail transportation occurrences in 2018. Available online at: <http://www.bst-tsb.gc.ca/eng/stats/rail/2018/sser-ssro-2018.html>

² Transportation Safety Board of Canada (2019) Monthly railway occurrence statistics. May 2019. Available online at: <http://www.bst-tsb.gc.ca/eng/stats/rail/2019/05/r2019-05.pdf>