



April 17, 2015

Chief Arliss Daniels and Councillors
Pacheedaht First Nation
PO Box 170
General Delivery
Port Renfrew, British Columbia
V0S 1K0

Re: Roberts Bank Terminal 2 Project – Aboriginal consultation approach for marine shipping within the federal environmental assessment process and follow-up to comments on the draft Terms of Reference

Dear Chief Daniels and Councillors,

Port Metro Vancouver (the Port) proposes to construct and operate a new three-berth marine container terminal (the Project) located at Roberts Bank in Delta, British Columbia (B.C.). Located next to the existing Deltaport and Westshore Terminals, the Project would provide an additional 2.4 million twenty-foot equivalent units of container capacity per year at Roberts Bank, doubling the container capacity of the terminal.

The Port expects that up to an additional 260 ships per year could call on Roberts Bank Terminal 2 by 2030. These ships would use the main shipping route from Juan De Fuca Strait to Vancouver (see map in attachment #1).

On January 7, 2014, the Honourable Leona Aglukkaq, federal Minister of the Environment (the Minister) referred the proposed Roberts Bank Terminal 2 project to an environmental assessment (EA) by a review panel, based on the potential of the project to cause significant adverse environmental effects.

The Minister announced today that the Terms of Reference (<http://www.ceaa-acee.gc.ca/050/documents/p80054/101301E.pdf>) for the Review Panel assessing the proposed Roberts Bank Terminal 2 have been finalized. Based on feedback received during the comment period on the draft Terms of Reference, the Minister has identified two additional matters to be taken into account in the environmental assessment. These two additional factors are:

- The potential effects on the environment of container ships coming and going from the proposed terminal through Juan de Fuca Strait and the Strait of Georgia. This is referred to as "the environmental effects of marine shipping associated with the project which is beyond the care and control of the proponent and within the 12 nautical mile limit of Canada's territorial sea. Consideration includes the environmental effects of malfunctions or accidents and any cumulative environmental effects, the significance of those effects, suggested mitigation measures and the possible requirements of any follow-up program that may be required"; and,

- The potential economic, social, heritage and health effects of the project, including cumulative effects that may not be encompassed by the definition of environmental effects under CEEA 2012, and practicable means to mitigate such potential adverse effects.

The Agency has asked Port Metro Vancouver to provide information on marine shipping associated with the project between the extent of the care and control of Port Metro Vancouver and to the 12 nautical mile limit of Canada's territorial sea.

As part of this process, we have asked the Port to talk to your Nation and describe any concerns or suggestions that you might have with respect to the proposed increase in shipping container traffic.

For more information on the addition of marine shipping to the factors to be considered in the environmental assessment (EA), please see the Information Sheet (attachment #1): *Additional Factors to be Considered in the Environmental Assessment*.

On the matter of the potential increase in marine shipping due to the Project, the federal government would like to understand what concerns you have related to any potential impacts of shipping on your potential or established Aboriginal rights or Treaty. This information can be provided to the Review Panel once it has been established. In addition, the Review Panel can collect information from your Nation about any potential or established Aboriginal or Treaty rights you feel may be impacted by marine shipping associated with the Project. We encourage you to participate in the Review Panel process by bringing those issues and concerns to the Review Panel.

We would like to take this opportunity to let you know that the information that you provide to the Agency and the Review Panel is considered public and can be posted to the public registry. It is also subject to public access-to-information requests. Should you have any documents that contain confidential or sensitive information that you believe should be protected from release to the public, please contact the Agency to discuss prior to submitting the information.

Regarding the consultation with your Nation by the federal government during this EA process, the discussions will focus on the potential impacts of any increased marine shipping associated with the Roberts Bank Terminal 2 project on potential or established Aboriginal or Treaty rights. This can include understanding the potential impact of the incremental increase in marine shipping associated with the project, including the cumulative effects of this incremental increase. The federal government will rely on the EA process to the extent possible to collect information on the potential impacts of any increased marine shipping associated with the project on the exercise of potential or established Aboriginal or Treaty rights. You will find attached the federal government's preliminary depth of consultation assessment for your Nation and proposed consultation workplan as attachments #2 and #3 to this letter.

To assist you to prepare for and participate in Aboriginal consultation activities and key participation opportunities associated with federal environmental assessment, the Agency's Participant Funding Program can provide you with limited funding. The Agency will follow up with you shortly regarding funding.

The Agency would like to thank you for your comments on the draft Terms of Reference. A summary of how your comments were considered in finalizing the Terms of Reference is included as attachment #4.

We will follow up with you in the coming weeks to discuss the proposed consultation approach. In the meantime, you can contact Candace Anderson at 613-957-0459 or by email at RobertsBank@ceaa-acee.gc.ca to discuss any questions or matters related to the environmental assessment or Aboriginal consultation.

It would also be appreciated if you would provide the details for an appropriate contact person within your Nation for the purposes of communications on Aboriginal consultation matters during this environmental assessment process.

Sincerely,

<Original signed by>

Candace Anderson and Analise Saely
Crown Consultation Coordinators, Review Panels
Canadian Environmental Assessment Agency
(613) 957-0459
Candace.anderson@ceaa-acee.gc.ca

Attachments:

- #1 – Information Sheet: Additional Factors to be Considered in the Environmental Assessment
- #2 – Preliminary Depth of Consultation Assessment
- #3 – Proposed Consultation Workplan
- #4 – Responses to Comments on draft Terms of Reference

c.c.: Chris Hamilton, B.C. Environmental Assessment Office
Bryan Nelson, Port Metro Vancouver
research@pacheedaht.ca

Attachment 1 - Information Sheet: Additional Factors to be Considered in the Environmental Assessment

Additional Factors to be Considered in the Environmental Assessment

The Project

The proposed Project is:

- the construction and operation of the Roberts Bank Terminal 2 expansion,
- the marine shipping in the immediate area of the existing Roberts Bank Terminals and north toward the mouth of the Fraser River, and
- the road and rail transportation from the terminal to where the causeway meets the land.

The Federal Review Panel

The federal Minister of the Environment has decided that an independent panel of experts will assess the environmental effects of this project. The Minister has established the Terms of Reference for the Review Panel giving the Panel directions on what to assess and setting out the process it will follow.

Based on comments heard during the public comment period on the draft Terms of Reference, the Minister has decided to add two factors or issues to be taken into account by the Review Panel during the environment assessment process.

What the environmental assessment will address

The potential effects to the environment if the Project is built and used will be considered, such as changes to fish habitat, for example. For this environmental assessment, the Minister will require the Review Panel to take into account additional factors. These additional factors are the environmental effects of marine shipping associated with the project and certain social, economic, heritage and health effects that would typically be assessed by the province of British Columbia under its environmental assessment process.



Inclusion of two additional factors to the environmental assessment

The information on marine shipping that Port Metro Vancouver is required to provide is set out in section 17 of the Updated Environmental Impact Statement Guidelines: <http://www.ceaa-acee.gc.ca/050/documents/p80054/101303E.pdf>.

The potential effects on the environment of container ships coming and going from the proposed terminal through Juan de Fuca Strait and the Strait of Georgia will be taken into account (see map above). This is referred to in the Terms of Reference as "the environmental effects of marine shipping associated with the Project which is beyond the care and control of the proponent and within the 12 nautical mile limit of Canada's territorial sea." An example of potential environmental effects from the container ship movement could be noise impacts on wildlife migration routes.

In section 18 of the Guidelines, Port Metro Vancouver has been directed to provide information on social, economic, heritage and health effects of the Project that are not already included in the federal environmental assessment.

Once the Review Panel is appointed, it will gather information from people who want to share their knowledge and concerns about the possible environmental effects of the project and the two additional factors. Expert federal departments - such as Transport Canada, Fisheries and Oceans Canada and the Canadian Coast Guard - can provide expert information, including information on marine shipping. Aboriginal groups and other stakeholders are invited to provide information and concerns to the Agency or to the Review Panel once it is established.

The Review Panel will write a report based on the information received throughout the process. The Panel report will describe its rationale, conclusions and recommendations, including any mitigation measures and follow-up program, and a summary of comments received during the process. The Panel report will also summarize information on the potential effects of marine shipping associated with the project and the provincial issues, and it may include recommendations on how to prevent or reduce any adverse effects on these factors that the panel identifies.

Consultation with Aboriginal groups on the issue of marine shipping

The federal government will use the environmental assessment process to the extent possible to consult with Aboriginal groups whose Aboriginal rights may be impacted by the Roberts Bank Terminal 2 Project or by marine shipping associated with the Project.

The government would like to understand concerns Aboriginal groups may have about any increase in marine shipping in their territory resulting from the Roberts Bank Terminal 2 Project. The Review Panel can collect information from participants in the process about any potential or established Aboriginal or Treaty rights that may be impacted by marine shipping associated with the Project, what those impacts may be and suggestions to avoid or reduce impacts.

The federal government's EA decision about the Project

The Minister of the Environment must decide whether or not the Roberts Bank Terminal 2 Project is likely to cause significant environmental effects. This decision and any conditions for Port Metro Vancouver, should the government allow the Project to go ahead, would be based on the consideration of the potential environmental effects of the construction and operation of the Project.

The assessment of potential environmental effects of marine shipping associated with the Project, as well as matters related to the potential social, economic, heritage and health effects associated with the Project will be informed by information collected in the environmental assessment process and summarized by the Panel in its report. This information will be considered by decision makers after the Panel Report is submitted.

Attachment 2

Summary of information used to develop the preliminary depth of consultation assessment

- The traditional territory asserted by the Pacheedaht First Nation includes the lands and marine areas stretching 50 km to the south and 25 km north of their main community (western Vancouver Island, at the mouth of the Gordon River, in Port San Juan). The marine areas are within the Strait of Juan de Fuca. The First Nation has indicated that this marine area includes Swift Sure banks as a key harvesting area. The Crown's understanding of the Pacheedaht First Nation asserted traditional territory is based on the Writ of Summons filed with the Supreme Court of British Columbia on December 8, 2003. The marine shipping associated with the proposed project could potentially affect a small portion of your asserted traditional territory. The vessels bound for the proposed Roberts Bank Terminal 2 are expected to transit through your territory for a short period of time.

- Some potential impacts to potential or established Pacheedaht First Nation rights resulting from marine shipping associated with the project may include:
 - o increased marine traffic that may interfere with the ability to practice marine harvesting (including fishing) rights in your preferred manner;
 - o environmental effects on marine environment and species; and
 - o cumulative effects from increased ship traffic in the region.

The federal government has determined on a preliminary basis that the depth of the duty to consult with the Pacheedaht First Nation in relation to marine shipping associated with Roberts Bank Terminal 2 is at the moderate end of the consultation spectrum.

If you have information with regard to: 1) the potential impacts of the project on the exercise of your rights; or 2) your potential or established Aboriginal rights, please provide this information to the Agency so that the consultation approach may be adjusted as necessary.

The federal government will use the environmental assessment process to gather information about the potential impacts of the project to the exercise of potential or established Aboriginal or Treaty rights and further refine the assessment shared above. We encourage you to participate in the process and provide any information you feel is relevant to allow the federal government to better understand your Aboriginal rights and concerns related to marine shipping associated with the Roberts Bank Terminal 2 project.

Attachment 3
Proposed Consultation Approach – Pacheedaht First Nation

Based on the information summarized in Attachment #2, the Agency has outlined the following consultation approach. The features in this proposal can be modified, and we invite your input to assist us in refining the approach as necessary. If you have additional questions, or believe that consultation with your community could be enhanced by adding to this section, please contact me at your earliest convenience.

Pacheedaht First Nation
PROPOSED CONSULTATION WORK PLAN
Environmental Assessment of the Proposed Roberts Bank Terminal 2 Project
April 17, 2015

1. Introduction

This proposed Aboriginal consultation work plan is intended to guide federal Crown-Aboriginal consultation activities during the environmental assessment of the proposed Roberts Bank Terminal 2 Project and associated marine shipping. It communicates the federal Crown's objectives for consultation, the proposed structure for integrating consultation into the environmental assessment process, and the proposed consultation activities for the Pacheedaht First Nation. This document is intended to be a "living document" that will be updated by the Canadian Environmental Assessment Agency (the Agency) and reviewed with the Pacheedaht First Nation regularly during the environmental assessment of the proposed project.

2. Description of the Proposed Roberts Bank Terminal 2 Project

Port Metro Vancouver wants to construct and operate a new three-berth marine container terminal (the Project) located at Roberts Bank in Delta, British Columbia (B.C.). Located next to the existing Deltaport and Westshore Terminals, the Project would provide an additional 2.4 million twenty-foot equivalent units of container capacity per year at Roberts Bank, doubling the container capacity of the terminal.

The Port expects that up to an additional 260 ships per year could call on Roberts Bank Terminal 2 by 2030. These ships would use the main shipping route from Juan De Fuca Strait to Vancouver (see map).

For additional information on the proposed Roberts Bank Terminal 2 Project, we encourage you to contact Port Metro Vancouver (the proponent), at:



Bryan Nelson
Manager, Project Development- Aboriginal Consultation, Port Metro Vancouver
100 The Pointe, 999 Canada Place Vancouver, BC Canada V6C 3T4
phone: 604665-9633 email: Bryan.Nelson@portmetrovancover.com

3. Aboriginal Groups

The following is a list of Aboriginal groups that have been identified by the federal government for consultation related to the environmental assessment of the marine shipping associated with the project, on the basis that existing or potential Aboriginal or Treaty rights and interests may be affected by the marine shipping associated with the project. This list may change as more information becomes available throughout the process. The Crown will consult with any Aboriginal groups who have asserted or established Aboriginal or Treaty rights which may be impacted by the proposed project.

- Tsawout First Nation
- Pauquachin First Nation
- Tsartlip First Nation
- Tseycum First Nation
- Malahat First Nation
- Beecher Bay Indian Band (Scia'new First Nation)
- Esquimalt Nation (No'ilung Si'em 'i' sche'le'chu)
- Songhees First Nation
- T'sou-ke First Nation
- Pacheedaht First Nation
- Ditidaht First Nation
- Maa-nulth First Nations (Huu-ay-aht First Nations, Ka:'yu:'k't'h'/Che:k'tles7e'h First Nations, Toquaht Nation, Uchucklesaht Tribe, and Ucluelet First Nation)
- Tsawwassen First Nation
- Semiahmoo First Nation
- Stz'uminus First Nation
- Cowichan Tribes
- Halalt First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Penelakut Tribe
- Metis Nation British Columbia

4. Federal Crown's Consultation Objectives

The federal Crown has identified the following as key objectives to achieve throughout the consultation and environmental assessment process:

- To establish a positive and productive working relationship with Aboriginal groups during the environmental assessment and regulatory phases related to the project.
- To communicate and listen to potentially impacted Aboriginal groups about the project and how it may affect potential or established Aboriginal or Treaty rights and related interests during the environmental assessment and regulatory phases.
- To create an environment that facilitates the identification of potential or established Aboriginal or Treaty rights and related interests that may be adversely impacted by the project so that the proponent can consider options to avoid, mitigate or accommodate adverse impacts to those Aboriginal or Treaty rights where appropriate.

- To work with Aboriginal groups to identify potential effects of changes to the environment from the project on: current use of lands and resources for traditional purposes; health, cultural and socio-economic conditions; and potential or established Aboriginal or Treaty rights; and to consider options for avoiding or mitigating adverse impacts where appropriate.
- To respond to specific requests by potentially impacted Aboriginal groups, address topic-specific issues related to the project, if possible, and to gather input from potentially impacted Aboriginal groups regarding their concerns about the project.
- To cooperate with the Province of British Columbia on Aboriginal consultation.
- To guide the proponent to gather information about potential adverse impacts from the project on established or potential Aboriginal or Treaty rights; and to work with the proponent to avoid or mitigate as many impacts as possible through revisions during the project planning stage.
- To work with the Pacheedaht First Nation and the proponent to respond to specific questions and requests regarding issues raised related to the project.
- To listen carefully to concerns raised by Pacheedaht First Nation and meaningfully consider your feedback, perspectives and issues in order to inform decision-making.

5. Pacheedaht First Nation Consultation Objectives

This section is intentionally left blank as the federal government would like to invite Pacheedaht First Nation to share your consultation objectives. You may also communicate your objectives directly to Analise Saely 604-666-9162 or Candace Anderson 613-957-0459 or by email at RobertsBank@ceaa-acee.gc.ca

6. Integrating Consultation into the Environment Assessment

Table 1 provides a description of the main steps in the federal environmental assessment process and a description of how the federal Crown proposes to integrate consultation activities into those steps. This table describes what the Pacheedaht First Nation should receive, have access to or expect from the Agency, on behalf of the federal Crown, and what the Pacheedaht First Nation could share and provide to the environmental assessment process.

Environmental assessments conducted by review panels are subject to timelines under the *Canadian Environmental Assessment Act, 2012*. An environmental assessment by review panel must be completed and an environmental assessment decision statement issued by the Minister of the Environment within 24 months of the referral of a project to a review panel.

The Roberts Bank Terminal 2 project is currently in the 24 months period as described. The Minister of the Environment referred the project to review panel on January 7, 2014. Consultation activities with Pacheedaht First Nation, as proposed, are in keeping with these timelines.

While information and concerns relating to many issues associated with the potential impacts of the project may be brought forth and addressed during the various stages of

the environmental assessment process, it may not be feasible to address all of these concerns through this process.

Table 2: Integrating Consultation into the Environmental Assessment (Adapted from the BC First Nations Environmental Assessment Technical Working Group Toolkit Workshop)

Environmental Assessment Step	Description of the Environmental Assessment Step/Phase	What the Pacheedaht First Nation should receive, have access to or expect FROM the federal Crown	What the Pacheedaht First Nation may provide TO the federal Crown/ Review Panel (or DO)
Panel Environmental Impact Statement (EIS) sufficiency review	The review panel assesses the sufficiency of the EIS as required by the Terms of Reference.	<ul style="list-style-type: none"> • Provision of information on panel process; • Directions on how to participate in the comment period on the EIS (provided directly by the review panel); • Notice of public hearings held by the panel (provided directly by the review panel). 	<ul style="list-style-type: none"> • Decide if you want to participate in the panel sufficiency review process.
Public Hearing	The review panel will hold a public hearing in a manner that offers any interested party an opportunity to participate in the environmental assessment.	<ul style="list-style-type: none"> • Directions on how to request to participate in the hearing and confirmation of participation, if applicable (provided directly by the review panel). 	<ul style="list-style-type: none"> • Decide if you want to present your views to the review panel; • Provide information in writing to the review panel and, if permitted by the review panel, in person, on any issue within the panel's mandate.
Panel Report	The review panel completes its report which includes its conclusions, recommendations and rationale regarding the significance of the adverse environmental effects, mitigation measures, and follow up program. Depending on the review panel's terms of reference, its report may include accommodation measures related to any potential adverse impacts on potential or established Aboriginal or Treaty rights.	<ul style="list-style-type: none"> • Opportunity to review and comment on the panel report. 	<ul style="list-style-type: none"> • Comments on the panel report.

Environmental Assessment Step	Description of the Environmental Assessment Step/Phase	What the Pacheedaht First Nation should receive, have access to or expect FROM the federal Crown	What the Pacheedaht First Nation may provide TO the federal Crown/ Review Panel (or DO)
Minister's EA Decision	The Minister of the Environment determines whether the project is likely to cause significant adverse environmental effects, taking into account mitigation measures, and, if significant adverse environmental effects are likely, the federal Cabinet decides whether these effects are justified in the circumstances. A decision statement is issued that sets out the decision and, as necessary, associated conditions with which the proponent must comply should the project be allowed to proceed.	<ul style="list-style-type: none"> • Notification of the Minister's EA decision. 	
Throughout the Environmental Assessment	<ul style="list-style-type: none"> • Exchange of information, notifications and correspondence; • Opportunity for Aboriginal traditional knowledge about the environment and possible effects to be used in the assessment; • Opportunities to identify issues to be addressed, as appropriate, through consultation on all aspects of the environmental assessment; • Opportunity to collaborate to identify potential adverse impacts to Aboriginal rights, traditional uses, and generating options for changes to the project plan or other forms of accommodation; • Consideration of changes to proposed government action (e.g. attaching terms and conditions to permits or authorizations, where possible and appropriate); • Opportunities for additional meetings with 	<ul style="list-style-type: none"> • Share information regarding the potential adverse impacts of the project on your Aboriginal rights and traditional uses; • Provide any traditional knowledge that may improve the environmental assessment; • Make recommendation on how to avoid, mitigate or compensate for impacts to your Aboriginal rights; • Request one-on-one meetings with federal representatives to discuss your issues of concern; • Request reasons for federal Crown decisions. 	

Environmental Assessment Step	Description of the Environmental Assessment Step/Phase	What the Pacheedaht First Nation should receive, have access to or expect FROM the federal Crown	What the Pacheedaht First Nation may provide TO the federal Crown/ Review Panel (or DO)
		the federal Crown to address concerns as appropriate.	

7. Federal Agencies Roles and Responsibilities

Federal Agency	Roles and Responsibilities
<p>Canadian Environmental Assessment Agency Name: Analise Saely Email: Analise.Saely@ceaa-acee.gc.ca Phone: 604-666-9162</p> <p>Name : Candace Anderson Email: Candace.Anderson@ceaa-acee.gc.ca Phone: 613-957-0459</p>	<p>Crown Consultation Coordinator responsible for coordinating federal Crown consultation and the environmental assessment</p>
<p>Environment Canada Name: June Yoo Rifkin Email: Phone: 604-666-7829</p>	<p>Potential Federal Authority responsible for <i>Species at Risk Act</i> (SARA), Section 73(1) or 74 and <i>Canadian Environmental Protection Act</i>, Section 127 (Disposal at Sea) authorization.</p> <p>Potential expert advice on migratory birds, <i>Species at Risk Act</i>, water quality, wetlands, greenhouse gases and air quality and climate impacts on the project.</p>
<p>Canadian Coast Guard Name: Lindsay Funk Email: Lindsay.Funk@dfo-mpo.gc.ca Phone: (250) 480-2669</p> <p>Name : Tanya Alvaro Email: Tanya.Alvaro@dfo-mpo.gc.ca Phone: 613-998-1411</p>	<p>The Canadian Coast Guard is the operational arm of the Government of Canada's marine safety system and is available to provide expertise on maritime shipping matters as they relate to the review of the proposed project.</p>
<p>Transport Canada</p> <p>Name: Danielle Wensauer (Marine Shipping) Email: danielle.wensauer@tc.gc.ca Phone: 604-666-2587</p> <p>Name: Gina Aitchison (Environmental Assessment) Email: gina.aitchison@tc.gc.ca Phone: 604-666-1741</p>	<p>Transport Canada administers a comprehensive marine safety system that applies to ocean-going vessels operating in Canadian waters. The Canadian regulatory scheme is based on international conventions adopted and promoted by the International Maritime Organization, and includes provisions to:</p> <ul style="list-style-type: none"> • prevent accidents • minimize ship source pollution • prepare for and respond to ship-source oil spills • address liability and compensation for damages caused by ship source oil pollution

<p>Fisheries and Oceans Canada Name: Holly Pulvermacher Email: Holly.Pulvermacher@dfo-mpo.gc.ca Phone: 250-619-3479</p>	<p>Potential Federal Authority responsible for <i>Fisheries Act</i>, Section 35(2)(b) Authorization and for Section 73(1) or 74 of the <i>Species at Risk Act</i> (SARA) in relation to aquatic species.</p> <p>Potential expert advice on fish and fish habitat</p>
<p>Natural Resources Canada Name: Kathy McPherson Email: Kathy.McPherson@NRCan-RNCan.gc.ca Phone : 250-363-6463</p>	<p>Potential expert advice on geotechnical, geohazards, and coastal geomorphology and seabed stability.</p>
<p>Health Canada Name: Yota Hatziantoniou Email: yota.hatziantoniou@hc-sc.gc.ca Phone: 604-666-5720</p>	<p>Potential expert advice on the health impacts of proposed development projects (which involve the federal government) with a focus on the bio-physical environment, including: air quality, country foods contamination, drinking and recreational water quality, radiation effects, electric and magnetic fields, and noise.</p>

Roberts Bank Terminal 2

Attachment 4 - Consideration of Pacheedaht First Nation's Comments on the draft Terms of Reference

Thank you for your comments on the draft Terms of Reference for the Roberts Bank Terminal 2 environmental assessment. The Minister of the Environment has issued a final Terms of Reference, letter and available here: <http://www.ceaa-acee.gc.ca/050/documents/p80054/101301E.pdf>. In the responses to your comments on the draft Terms of Reference, the section numbers used are those in the final Terms of Reference for ease of locating the relevant sections within the document. Please feel free to contact the Agency if you have any questions or outstanding concerns based on the responses.

Excerpt from the draft Terms of Reference	Comment	Response
Crown Consultation	Despite the fact that the Project is this far advanced in the environmental assessment process and the fact that the proposed container shipping route is located directly within Pacheedaht's traditional territory, Pacheedaht only recently became aware of the Project through informal, non-government channels. The government has not notified Pacheedaht of this Project, nor initiated a consultation process with Pacheedaht in respect of the Project, despite the fact that Pacheedaht stands to be adversely affected by this Project.	Please see the attached draft consultation plan for the federal government's proposed consultation process with Pacheedaht for this Project.
Part 2 – Factors to be considered		
2.1. The environmental assessment by the Review Panel must take into account the following factors listed in subsections 19(1) and 19(3) of CEAA 2012:	The TOR must require the Review Panel to consider and assess impacts to potentially impacted First Nations' aboriginal and treaty rights. The TOR must require an assessment of impacts from marine shipping activities	The Minister of the Environment has required that the environmental effects of marine shipping associated with the Roberts Bank Terminal 2 (RBT2) project be considered under section 19 (1)(j) of the <i>Canadian Environment Assessment Act, 2012</i> (CEAA 2012). This requirement is reflected in Section 2.3 a of the Final Terms of Reference. This would include any cumulative effects resulting from residual effects of the project and any accidents or malfunctions
2.3 The scope of the factors to be considered in the environmental assessment are outlined in the Guidelines for the Preparation of an	Pacheedaht is also concerned the TOR limits the Review Panel's mandate to assessing the impacts	

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
<p><u>Environmental Impact Statement for the Roberts Bank Terminal 2 Project (EIS Guidelines)</u> that were issued by the Minister on January 7, 2014.</p>	<p>from the construction and operations at the terminal. If the TOR is not revised, a fundamental component of the Project will not be within the scope of the Review Panel's environmental assessment: specifically, potential impacts, including cumulative impacts, of increased marine shipping activities related to the Project.</p> <p>The container ship traffic associated with the Project has the potential to cause "environmental effects" as defined in this section, including to fish and fish habitat; aquatic species listed under SARA including killer whales; migratory birds; health and socio-economic conditions of Pacheedaht members; Pacheedaht's physical and cultural heritage; Pacheedaht's current use of lands and resources for traditional purposes; and historical and archaeological sites.</p> <p>More specifically, the container ships could affect the environment and impact Pacheedaht in the following ways:</p> <ul style="list-style-type: none"> - The increase in the number of large vessels within Pacheedaht's 	<p>including spills.</p> <p>To the extent possible, the Crown will use the environmental assessment (EA) process to gather information about any potential impacts on potential or established Aboriginal or Treaty rights of marine shipping associated with the RBT2 Project, and potential mitigation or accommodation measures, where appropriate.</p> <p>The Minister of the Environment will not make a decision under CEAA 2012 on whether marine shipping activities associated with the RBT2 project that are beyond the care and control of Port Metro Vancouver are likely to cause significant adverse environmental effects (see details available here from Port Metro Vancouver: http://www.ceaa-acee.gc.ca/050/documents/p80054/100532E.pdf).</p> <p>The marine shipping associated with the RBT2 project would also not be subject to conditions to the proponent, should the Minister issue a decision statement that allows the project to proceed.</p> <p>At the end of the process, the appropriate federal departments will consider any potentially outstanding issues associated with marine shipping and consult and accommodate with potentially impacted Aboriginal groups regarding these impacts.</p> <p>Please see the attached letter and Information Sheet: Additional Factors to be Considered in the</p>

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
	<p>traditional territory would create safety concerns for Pacheedaht members traveling by boat to reach harvesting areas including when they are harvesting by boat in areas of open water and along shore lines;</p> <ul style="list-style-type: none"> - Vessel noise is likely to have negative effects on marine resources that are culturally important to Pacheedaht, including fish and marine mammals; - The risk of vessel strikes with marine mammals, including killer whales will increase; - Wakes from the increased ship traffic could damage intertidal and shoreline habitat, which is where Pacheedaht members harvest many preferred species; - Vessel wakes have the potential to make it unsafe for Pacheedaht members to harvest on the shorelines in their traditional territory; - Vessel wakes have the 	<p>Environmental Assessment on how marine shipping will be considered in the environmental assessment and Aboriginal consultation process for this Project.</p> <p>We have made the proponent and federal departments aware of your concerns and we encourage you to bring these concerns to the Review Panel once it has been established. These concerns were also taken into account in the preliminary depth of consultation assessment for Pacheedaht.</p> <p>The Review Panel has a mandate to hear from Aboriginal groups how potential effects from the Project might impact the exercise of your rights and consider any suggestions you may have to avoid or mitigate these identified impacts. We encourage you to fully participate in the review panel process and bring your concerns to the Review Panel.</p>

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
	<p>potential to damage shoreline archaeological sites in Pacheedaht's traditional territory;</p> <ul style="list-style-type: none"> - Container traffic may destroy fishing gear, such as the nets and lines that Pacheedaht members set; - Container traffic has the potential to disturb Pacheedaht's connection to the lands and waters; - Container traffic has the potential to contaminate or damage resources and habitat relied upon for the exercise of Pacheedaht's harvesting rights in the event of an accident or malfunction resulting in the release of bunker fuel or other contaminants; and - Container traffic has the potential to affect Pacheedaht members' ability to transfer traditional knowledge to younger generations. <p>For all of these reasons, effects from marine shipping activities associated with the Project must be included</p>	

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
	<p>within the scope of review set out in the TOR, including in relation to both routine operations and accidents and malfunctions.</p> <p>Amend the TOR by requiring assessment of direct, indirect and cumulative impacts relating to the container shipping activities associated with the Project, in the context of both operations and accidents and malfunctions.</p>	
	<p>Pacheedaht has serious concerns about the limited scope of the Review Panel's mandate under the proposed TOR. Currently, the TOR only includes the construction and operation of the Project terminal. As a result, the proposed TOR would not provide the Review Panel with the authority to consider and assess potential impacts to Pacheedaht's s. 35 Rights arising from the container shipping activities, despite the fact that Pacheedaht will be adversely affected by those activities. Additionally, Pacheedaht is concerned that under the proposed TOR, the Review Panel would not have the mandate to assess impacts and make recommendations to avoid, minimize and mitigate</p>	<p>The Review Panel will now consider marine shipping associated with the Project, beyond the care and control of Port Metro Vancouver.</p>

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
	those impacts, in relation to the container shipping activities of the Project, despite the adverse effects of these activities.	
Part 3 – Mandate of the Panel		
<p>3.4. The Review Panel will not make any conclusions or recommendations as to:</p> <p>a. the validity of potential or established Aboriginal or Treaty rights asserted by an Aboriginal group or the strength of such claims;</p> <p>b. the scope of the Crown's duty to consult an Aboriginal group;</p> <p>c. whether the Crown has met its respective duty to consult or accommodate in respect of rights recognized and affirmed by section 35 of the Constitution Act, 1982;</p> <p>d. whether the Project would be an</p>	<p>The TOR must require the Review Panel to consider and assess impacts to s. 35 Rights</p> <p>Pacheedaht is extremely concerned about the proposed approach in the TOR, given that it does not require any assessment of Project impacts on s. 35 Rights. Pacheedaht is particularly concerned that the TOR does not require the Review Panel to consider and assess the impacts of the Project on its s. 35 Rights and provide recommendations to avoid, minimize or mitigate impacts.</p>	<p>The Crown is relying on the Review Panel to the extent possible to collect information from Aboriginal groups on the potential impacts of the Project on potential or established Aboriginal rights or Treaty as outlined in Sections 3.9 to 3.11 of the Terms of Reference.</p> <p>The Review Panel has been mandated by the Minister of the Environment to conduct an environmental assessment, which will include providing analysis, conclusions and recommendations on topics such as the environmental effects of the marine shipping associated with the Project, including effects on current use of lands and resources for traditional purposes by Aboriginal peoples. This work by the</p>

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
<p>infringement of potential or established Aboriginal or Treaty rights; and e. any matter of Treaty interpretation (historic or modern).</p>	<p>Additionally, Pacheedaht is concerned that the TOR is narrowly scoped and does not address significant issues that need to be addressed in the environmental assessment of the Project. According to the TOR, the Review Panel will not be required to make any conclusions or recommendations regarding:</p> <ul style="list-style-type: none"> a) the validity of potential or established aboriginal or treaty rights asserted by an aboriginal group or the strength of such claims; b) the scope of the Crown's duty to consult; c) whether the Crown has met its duty to consult or accommodate in respect of rights recognized and affirmed by s.35 of the Constitution Act, 1982; and d) whether the Project would infringe potential or established aboriginal and treaty rights. <p>If the TOR is not revised to require the Review Panel to assess or make</p>	<p>Review Panel can inform the federal government's understanding of potential impacts to the exercise of Aboriginal rights. The federal government is responsible for ensuring that the government satisfies its duty to consult with Aboriginal groups. In doing so, the government intends to rely to the extent possible on the Review Panel process.</p> <p>The environmental assessment is an iterative process, built upon information exchanges between participating parties. Information Pacheedaht provides into the environmental assessment process will be collected and considered by the federal departments as the process unfolds. The depth of consultation assessment shared with you in this letter will be reconsidered as the process proceeds, and a revised version will be shared with you once the Review Panel has issued its report, including what impacts the federal government has identified and may be required to consult on further with Pacheedaht and other parties participating in the review panel process.</p> <p>Please see the handout Aboriginal Consultation and Environmental Assessment for more details on the assessment of impacts to Aboriginal rights: http://www.ceaa-acee.gc.ca/050/documents/p80054/100180E.pdf</p>

Roberts Bank Terminal 2

Excerpt from the draft Terms of Reference	Comment	Response
	<p>recommendations regarding the above enumerated issues, Pacheedaht is concerned about: (i) who will address these issues; (ii) when these issues will be addressed; and (iii) what the process will be to address these issues. It is imperative that a clear and transparent process be developed to ensure Pacheedaht's s. 35 Rights are properly considered and assessed. Currently, the TOR does not allow for this. If the TOR is not revised to address these issues, another process will need to be developed.</p> <p>Furthermore, Pacheedaht is concerned that the TOR limits the Review Panel's mandate to merely receiving information that relates to the potential adverse impacts of the Project on s. 35 Rights. The TOR should specify that the Review Panel must assess impacts to s. 35 Rights, not just receive information on those impacts. The Review Panel process must be more than just a forum for First Nation's to "blow of steam"-an approach the Supreme Court of Canada has strongly warned against.</p>	

Roberts Bank Terminal 2

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	<p>Providing a process that allows for the adequate assessment of Project impacts on aboriginal rights and interests is particularly important if the Crown intends to rely on the review process as part of consultation.</p> <p>Therefore, Pacheedaht requests that the Agency redraft the TOR to expressly require the Review Panel to: (i) meaningfully consider and assess the potential adverse impacts of the Project on aboriginal and treaty rights and interests; and (ii) make recommendations to avoid, minimize or mitigate the adverse impacts on the Project on aboriginal and treaty rights and interests in its final report.</p> <p>Amend the TOR to expressly require that the Review Panel assess (not just receive information on) impacts to aboriginal and treaty rights and interests and provide recommendations regarding avoidance, minimizing and mitigation of impacts to those rights and interests.</p>	