



Mr. Robin Silvester
President and Chief Executive Officer
Vancouver Fraser Port Authority
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Dear Mr. Silvester:

Thank you for the Vancouver Port Authority's (VFPA) August 19, 2020, letter requesting a timeline extension be put in place for the decisions I need to make under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) in relation to the Roberts Bank Terminal 2 Project (the Project). I appreciate that the VFPA recognizes the value in ensuring decisions are based on the best available science and evidence.

On March 27, 2020, I received the Federal Review Panel Report for the Project. Since then, the Impact Assessment Agency of Canada (the Agency) has been consulting with Indigenous groups and expert federal departments including Fisheries and Oceans Canada, and Environment and Climate Change Canada on the findings of the Review Panel.

As you are aware, taking into account mitigation measures, the Review Panel determined that significant adverse effects to fish and fish habitat, including species at risk, human health, and current use of lands and resources for traditional purposes, among others, were likely. I must, as part of the decision making process under section 52 of CEAA 2012, take into account the implementation of mitigation measures that I consider appropriate in deciding whether the Project is likely to cause significant adverse environmental effects, including those to fish and fish habitat. I must also consider the requirements of section 79 of the *Species at Risk Act* when making decisions under section 52 of CEAA 2012.

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After considering the Federal Review Panel Report and consulting with expert departments, I have determined that receipt of this additional information is required from the VFPA before I make my decisions under CEAA 2012 for the Project.

In order to effectively determine the feasibility of potential mitigating measures, as well as potential cumulative impacts to fish, fish habitat and species at risk, more specific information is required. In particular, gaps in information remain as to how VFPA plans to offset impacts from the proposed Project during the construction phase and throughout the Project lifetime.

As such, pursuant to subsection 47(2) of CEAA 2012, I require the VFPA to provide the following information:

Regarding Fish and Fish Habitat Offsetting Plan:

Describe all potential projects that are being considered by the VFPA for the Project fish and fish habitat offsetting plan, all contingency projects, and all other available offsetting opportunities, including:

- physical description of offset (e.g., habitat type, creation, restoration, or enhancement and size);
- preliminary designs and specifications;
- characterization of current habitat characteristics and function (fish use) of sites proposed for restoration or enhancement;
- description of the benefit of the proposed offset to fish, including habitat function for specific species and life stages;
- assessment of the technical feasibility of the offset, including a summary of technical investigations (surveys, engineering reports, archeological investigations). Provide technical reports;
- information on land tenure, access and evaluation of potential interactions with other land uses; and
- summary of effectiveness of past offsetting projects built by the VFPA and any remedial actions taken.

Provide a proposed fish and fish habitat offsetting plan for the Project, including:

- propose an offsetting plan that would directly address the habitat loss and potential disruption of juvenile salmon migration that would be caused by the proposed Project;
- identify and provide an analysis of how Project impacts to juvenile Chinook salmon habitat and migration will be fully offset; and
- provide an analysis of how the proposed offsetting plan will counterbalance residual effects of the Project on fish and fish habitat.

Regarding Avoidance and Mitigation Measures for Project Construction:

- describe any technically feasible Project design options (e.g., reduced footprint) that would reduce effects to fish and fish habitat. Describe the effects to fish and fish habitat that would be avoided for each option;
- identify whether there are alternatives to impact pile driving in support of construction of the Project. Indicate if these alternatives are feasible. If not, provide a rationale for why alternatives are not feasible;
- provide a plan that times construction activities to avoid potential effects on the Southern Resident Killer Whale based on seasonal habitat use;
- provide a contingency plan should Southern Resident Killer Whales be present outside of anticipated seasonal habitat use;
- provide detailed description of the sound dampening technologies that would be used should impact piling occur (e.g., bubble curtains, coffer dams) and a description of their potential effectiveness;
- for all noise generating activities, develop a Southern Resident Killer Whale exclusion zone based on potential for behavioural disturbance, methods to detect Southern Resident Killer Whale entry into the exclusion zone, and stop work procedures should Southern Resident Killer Whales enter the exclusion zone; and
- provide any additional operational mitigations (e.g. lighting or noise) or terminal and causeway design options (e.g. breaches) that could avoid or mitigate habitat loss and potential disruption of juvenile salmon migration that would be caused by the proposed Project.

Regarding Avoidance and Mitigation Measures for Project Operation and Marine Shipping associated with the Project:

- update estimates of sound exposure levels for Southern Resident Killer Whales from Project operations and marine shipping associated with the Project based on analysis of ship source level noise measurements and predicted composition of older and newer vessels calling to the Project over its operational period and especially during the initial phase of operation when full transition to newer vessels has not been achieved;
- confirm the projections for container vessel traffic associated with the Project. The information shall include numbers of ship calls, capacity of container vessels calling on the Project. Projections beyond 2035 shall be included;
- update assessment of behavioural response rates of Southern Resident Killer Whales to continuous noise exposure from vessels during operations and marine shipping associated with the Project to address uncertainties identified in Gomez et al 2016; Gomez, C., Lawson, J.W., Wright, A.J., Buren, A.D., Tollit, D., Lesage, V. 2016. A systematic review on the behavioural responses of wild marine mammals to noise: the disparity between science and policy. *Canadian Journal of Zoology*, 2016, 94(12): 801-819, <https://doi.org/10.1139/cjz-2016-0098>;

- re-assess total masking of Southern Resident Killer Whale's echolocation from continuous noise exposure from vessels during operations and marine shipping associated with the Project by assessing noise signal masking for more than one frequency, including frequencies where vessel noise is more prominent;
- explain whether the capacity of the terminal could be controlled in order to limit vessel transits associated with the Project to reduce or avoid potential effects to Southern Resident Killer Whales;
- provide an avoidance and mitigation plan for underwater noise due to operational activities (e.g., berthing, vessel movements, and maintenance activities within the VFPA's jurisdiction) as well as, to the extent possible, for marine shipping associated with the Project within the marine shipping area, that would address impacts to Southern Resident Killer Whales (e.g., behavioural disturbance, communication and echolocation masking). If not feasible provide the rationale;
- describe potential measures (e.g., vessel slow downs) to reduce risk of vessel strikes for the Project bound vessels within VFPA's jurisdiction and within the international shipping lanes;
- provide a plan using vessel slow downs or other measures to reduce risk of vessel strikes within VFPA's jurisdiction and within the international shipping lanes;
- indicate which measures in the mitigation plan are within the control and/or authority of VFPA to implement and how; and
- for those measures outside VFPA's control and/or authority, describe how VFPA intends to work collaboratively to carry out the mitigation measures.

Regarding Biofilm and Effects to Migratory Birds:

If alternate on-site design options are being considered for the Caisson–Pile and Deck Wharf, the Caisson–Flow Passage Channel, or other components of the Project in consideration of fish and fish habitat mitigation measures referenced above, undertake a geomorphological assessment of each of the technically feasible on-site design alternatives. The geomorphological assessments shall:

- model the change in salinity over Roberts Banks. Modelling shall be conducted using the same approach as was used in the Environmental Impact Statement;

- show statistical summaries of predicted salinity changes, including mean, median, minimum, maximum, standard deviation, 90th percentile, 95 Upper Confidence Limits for Means for the range of current salinity concentrations, and the predicted changes with the alternate project designs. These summaries shall be predicted under both freshet and non-freshet conditions;
- present results as in Table IR-02-3 and related figures, and using the spatial extent shown in Figures 9.7-3, 9.7-4, 9.7-9 and 9.7-10 in Section 9.7 of the Environmental Impact Statement;
- characterize the magnitude, geographic extent, duration and frequency of any change in the salinity regime;
- describe the relative difference in measured change in the salinity regime (as described in the bullets above) to the current design option and the other design alternatives under consideration; and
- characterize the magnitude, geographic extent, frequency and reversibility of any change in other coastal processes, including erosion and deposition, wave height and tidal flow.

The Proponent shall provide all raw data used in each of the geomorphological assessments.

Regarding Effects to Indigenous Peoples:

Provide any additional information from ongoing consultation led by the VFPA with Indigenous groups, or consultation that has occurred since the Panel hearings concluded, on the effects to current use of lands and resources for traditional purposes and human health identified in the Review Panel Report. Specifically:

- Are there additional details regarding the extent of current use of Indigenous groups who traverse the shipping lanes to practice traditional activities?
- How would health effects documented in Section 21 of the Panel Report affect vulnerable sub-groups of each Indigenous group?
- For Indigenous groups that have indicated they harvest crab for the purpose of consumption, how will Project effects, including loss of abundance and loss of access, affect food security?
- For nearby residents, including members of Tsawwassen First Nation, how may the contributions of the Project's additional stress and annoyance affect individuals?

Present any new information, if available, specific to each Indigenous group. The information shall, where appropriate, consider socio-economic and gender differences within individual communities.

Regarding Consultation with Indigenous Groups on New Information from These Requests:

- Provide details regarding the outcomes of consultation with Indigenous groups on all the information provided in response to the requests contained herein, including details of which groups have been consulted on the new information, the nature of feedback, and how the activities described in this new information would impact or intersect with the exercise of rights by Indigenous peoples. Present the above noted information specific to each Indigenous group.

Additionally, if the VFPA would like to bring forward updated employment estimates or other relevant information prior to government decision making, it can also be provided along with the responses to the information request. This may include updated analysis of the economic benefits of the Project such as employment, labour income, gross domestic product, economic output, government revenue; and the volumes, origins and destinations of container traffic, taking into account the economic impacts of the global pandemic, the recent trend towards full employment in the construction and transportation sectors in Metro Vancouver and British Columbia, generally, and trends towards higher degrees of automation in port operations.

In accordance with paragraph 48(c) of the CEAA 2012, the federal timeline within which a decision must be made is paused as of August 24, 2020, and will resume once the information provided satisfies this information request. As result, the federal timeline for decision-making will be extended by virtue of this information request.

I would like the VFPA to provide the Agency with an anticipated schedule for the provision of responses to the information request by August 28, 2020. The Agency will contact you to arrange a follow-up meeting with relevant federal experts, at your earliest convenience, to discuss this information request.

Sincerely,

<original signed by>

The Honourable Jonathan Wilkinson, P.C., M.P.

Cc
Mr. Duncan Wilson, VP Environment
Cliff Stewart, VP Infrastructure
Minister Garneau
Minister Qualtrough
Minister Jordan