

PO Box 10114 701 West Georgia Street Suite 410 Vancouver, British Columbia V7Y 1C6

Boite postale 10114 701 rue Georgia ouest Bureau 410 Vancouver (Colombie-Britannique)

January 7, 2014

Chief Wayne Sparrow and Councillors Musqueam Indian Band <contact information removed>

Dear Chief Sparrow and Councillors,

Re: Roberts Bank Terminal 2 Project - consultation approach for the federal environmental assessment

The Honourable Leona Aglukkaq, federal Minister of the Environment, announced today that the proposed Roberts Bank Terminal 2 Project (the Project) will undergo an environmental assessment by a review panel.

The purpose of this letter is:

- (1) to share a summary of the information we currently have regarding the potential adverse impacts of the Project on your potential and established Aboriginal rights so that you may review it and provide comments;
- (2) to share with you the draft consultation workplan which outlines the consultation approach for this Project so that you may review it and provide comments; and
- (3) to respond to your comments on the scope of the environmental assessment.

The proposed consultation workplan is based on information we currently have regarding the potential adverse impacts of the Project on your potential and established Aboriginal rights. This information is outlined in Attachment 1. Please review this information and provide us with any additional information that you feel would contribute to this analysis.

Based on this information, the Agency has determined on a preliminary basis that the depth of the duty to consult with the Musqueam Indian Band in relation to the Project is at the moderate end of the consultation spectrum. The Agency therefore is proposing a consultation workplan as outlined in Attachment 2.

.../2





The Agency's Participant Funding Program is a limited fund and, with respect to Aboriginal groups, is meant to assist groups to prepare for and participate in Aboriginal consultation activities and key participation opportunities associated with federal environmental assessments. The Agency will contact the Musqueam Indian Band to inform you when the funding application period will begin. To obtain additional information on the program in advance of the application period, please visit the Agency's web site or contact Carrie Crull at 613-957-0573 or by email at Carrie.Crull@ceaa-acee.gc.ca.

As well, you will find attached the final EIS Guidelines (Attachment 4). Your comments were taken into account while finalizing these EIS Guidelines and responses to your comments have been provided (Attachment 3). These EIS Guidelines have been provided to the proponent, who will prepare the EIS based on the Guidelines. The EIS identifies the potential adverse environmental effects of the Project including cumulative effects, the measures to mitigate those effects measures, and evaluates whether the Project is likely to cause any significant adverse environmental effects.

Information that you provide to the Agency is considered public and may be 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 me to discuss.

I will follow up with you in the coming weeks to discuss the proposed consultation approach. As well, you can contact me directly at 604-666-9162 or by email at Analise Saely@ceaa-acee.gc.ca to discuss any questions or matters related to the environmental assessment or Aboriginal consultation.

Sincerely,

<original signed by>

Analise Saely Crown Consultation Analyst, Review Panels

Attachments:

#1 - Summary of information used to develop the consultation approach

#2 – Proposed consultation approach

#3 – EIS Guidelines response table

#4 - EIS Guidelines

c.c.: Chris Hamilton, B.C. Environmental Assessment Office Cliff Stewart and Jemma Scoble, Port Metro Vancouver Carrie Crull, Participant Funding Program June Yoo Rifkin, Environment Canada Byron Nutton, Fisheries and Oceans Canada Gina Aitchison, Transport Canada Kathy McPherson, Natural Resources Canada Carl Alleyne, Health Canada

Attachment 1

Summary of information used to develop the consultation approach

The information the Agency considered in developing its consultation approach is provided below:

- The traditional territory asserted by the Musqueam includes the mouth of the South Fraser River, as well as a portion of the Roberts Bank area. The proposed project has the potential to adversely affect a moderate portion of this asserted traditional territory. [Note: The Crown's understanding of the Musqueam's asserted traditional territory is based on the Writ of Summons filed with the Supreme Court of British Columbia on December 9, 2003].
- Some key potential impacts to potential and established Musqueam rights may include:
 - impacts to Musqueam reserve lands from changes to air and water quality, changes to intertidal and delta foreshore areas and increased noise levels;
 - impacts to fishing and marine harvesting from environmental effects such as loss of marine habitat and physical changes to coastal areas:
 - impacts to gathering plants from environmental effects such as loss or contamination of vegetation; and
 - o impacts to hunting wildlife and migratory birds from environmental effects such as loss of food sources and habitat.

As stated above, the Agency has determined on a preliminary basis that the depth of the duty to consult with the Musqueam Indian Band in relation to the Project 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 and established Aboriginal rights, please provide this information to the Agency so that the consultation approach may be adjusted as necessary.

Attachment 2 Proposed Consultation Approach – Musqueam Indian Band

Based on the information summarized in Attachment 1, 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.

Musqueam Indian Band PROPOSED CONSULTATION WORK PLAN

Environmental Assessment of the Proposed Roberts Bank Terminal 2 Project January 7, 2014

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 (the Project). 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 Musqueam Indian Band. 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 Musqueam Indian Band regularly during the environmental assessment of the proposed Project.

2. Description of the Proposed Roberts Bank Terminal 2 Project

The proponent proposes to construct and operate a new three-berth marine container terminal located at Roberts Bank in Delta, British Columbia, approximately 35 kilometres south of Vancouver. The proposed project would provide an additional 2.4 million units of container capacity at Roberts Bank per year. The full project description and summary can be downloaded at www.ceaa-acee.gc.ca (Registry reference number 80054).

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

Jemma Scoble

Manager, Project Development, Port Metro Vancouver 100 The Pointe, 999 Canada Place Vancouver, BC Canada V6C 3T4 direct: 604.665.9562 main: 604.665.9000 fax: 1.866.284.4271 Jemma.Scoble@portmetrovancouver.com



Figure 1: Regional Setting for the Proposed Roberts Bank Terminal 2 Project

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 proposed Project, on the basis that existing or potential Aboriginal or Treaty rights and interests may be affected by the proposed 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.

- Tsawwassen First Nation
- Musqueam First Nation
- Semiahmoo First Nation
- Tsleil-Waututh Nation
- Stz'uminus First Nation
- Cowichan Tribes
- Halalt First Nation
- Lake Cowichan First Nation
- Lyackson First Nation
- Penelakut Tribe
- Métis Nation British Columbia

- Stó:lō Tribal Council (Seabird Island First Nation, Scowlitz First Nation, Soowahlie Band, Kwaw'Kwaw'Apilt First Nation, Kwantlen First Nation, Shxw'ow'hamel First Nation, Chawathil First Nation, Cheam Indian Band)
- Stó:lō Nation (Aitchelitz First Nation, Leq'a:mel First Nation, Matsqui First Nation, Popkum First Nation, Skawahlook First Nation, Skowkale First Nation, Shxwha:y Village, Squiala First Nation, Sumas First Nation, Tzeachten First Nation, Yakweakwioose Band)

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 adversely impacted Aboriginal groups about the Project and the way in which it may affect potential or established Aboriginal or Treaty rights and related interests throughout 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 Musqueam Indian Band and the proponent to respond to specific questions and requests regarding issues raised related to the Project.

 To listen carefully to concerns raised by Musqueam Indian Band and meaningfully consider your feedback, perspectives and issues in order to inform decision-making.

5. Musqueam Indian Band Consultation Objectives

This section is intentionally left blank as the federal government would like to invite the Musqueam Indian Band to share your consultation objectives. You may also communicate your objectives directly to Analise Saely at analise.saely@ceaa-acee.gc.ca or 604-666-9162

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 Musqueam Indian Band should receive, have access to or expect from the Agency, on behalf of the federal Crown, and what the Musqueam Indian Band could share and provide to the environmental assessment process.

Environmental assessments conducted by review panel 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 Musqueam Indian Band, 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. Some issues and concerns may best be discussed and addressed in other ways, for instance, through the regulatory approvals process that may follow the environmental assessment.

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 Musqueam Indian Band should receive, have access to or expect FROM the federal Crown	What the Musqueam Indian Band may provide TO the federal Crown/ Review Panel (or DO)
Panel Terms of Reference (TOR) (or joint review panel agreement, if required)	The Agency conducts a public comment period on the terms of reference (or joint review panel agreement if required).	Advance notice of the public comment period.	Comments on the TOR (or joint review panel agreement, if required).
Government Environmental Impact Statement (EIS) Completeness Review	The Agency assesses the completeness of the proponent's EIS. The EIS identifies potential adverse environmental effects of the Project, identifies feasible mitigation measures, evaluates whether the Project will result in any significant adverse environmental effects, and describes a follow-up program.	 Opportunity to review and comment on the completeness of the proponent's EIS and supporting studies; Opportunity to review and comment on the completeness of the proponent's responses to issues raised by Aboriginal groups, the public, federal and provincial agencies. 	 Comments on the EIS and the supporting studies and the completeness of the proponent's responses to your concerns; Provide your thoughts on the accuracy of the proponent's information about issues you have raised and your opinion on any proposed ways of addressing those impacts.
Panel Environmental Impact Statement (EIS) sufficiency review	The review panel assesses the sufficiency of the EIS as required by the Terms of Reference.	 Provision of information on panel process; Notice of public hearings held by the panel (provided directly by the review panel). 	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.	 Formal standing before the review panel as an interested party (if permitted by the review panel). 	 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.

Environmental Assessment Step	Description of the Environmental Assessment Step/Phase	What the Musqueam Indian Band should receive, have access to or expect FROM the federal Crown	What the Musqueam Indian Band may provide TO the federal Crown/ Review Panel (or DO)
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 programs. 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.	Opportunity to review and comment on the panel report.	Comments on the panel report.
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.	 An opportunity to be consulted during the development of potential conditions to be included in the decision statement, should the project be allowed to proceed; Notification of the Minister's EA decision. 	Comments on draft potential conditions.
Throughout the Environmental Assessment		 Exchange of information, notifications and correspondence; Opportunity for traditional knowledge about the environment and possible effects to be used in the assessment; 	 Share information regarding the potential adverse impacts of the project on your Aboriginal rights and traditional uses; Provide any traditional knowledge

Environmental Assessment Step	Description of the Environmental Assessment Step/Phase	What the Musqueam Indian Band should receive, have access to or expect FROM the federal Crown	What the Musqueam Indian Band may provide TO the federal Crown/ Review Panel (or DO)
		 Opportunities to identify issues to be addressed, as appropriate, through consultation on all aspects of the environmental assessment; Written reasons for federal Crown decisions when requested; 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; Opportunity to collaborate to generate 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 the federal Crown to address concerns as appropriate. 	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.

7. Federal Agencies Roles and Responsibilities

Environmental assessment type: Environmental assessment by review panel

<u>Potential decisions by federal agencies (information to be confirmed as environmental assessment progresses):</u>

Federal Agencies Roles and Responsibilities

Federal Agency	Roles and Responsibilities
Canadian Environmental Assessment Agency Name: Analise Saely Email: analise.saely@ceaa-acee.gc.ca Phone: 604-666-9162	Crown Consultation Analyst responsible for coordinating federal Crown consultation and the environmental assessment
Environment Canada Name: June Yoo Rifkin Email: June.Yoo.Rifkin@ec.gc.ca Phone: 604-666-7829	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.
	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.
Transport Canada Name: Gina Aitchison Email: gina.aitchison@tc.gc.ca Phone: 604-666-1741	Potential Federal Authority responsible for <i>Navigable Waters Protection Act</i> , Section 5 authorization.
	Potential expert advice on navigation and regulatory issues under the Navigable Waters Protection Act.

Fisheries and Oceans Canada Name: Byron Nutton Email: Byron.Nutton@dfo-mpo.gc.ca Phone: 250-756-7221	Potential Federal Authority responsible for <i>Fisheries Act</i> , Section 32 and 35(2) Authorization Potential expert advice on fish and fish habitat.
Natural Resources Canada Name: Kathy McPherson Email: Kathy.McPherson@NRCan- RNCan.gc.ca Phone: 250-363-6463	Potential expert advice on geotechnical, geohazards, and coastal geomorphology and seabed stability.
Canadian Transportation Agency Name: John Woodward Email: John.Woodward@otc-cta.gc.ca Phone: 819-953-8353	Potential Federal Authority responsible for <i>Canada Transportation Act</i> , Section 98 authorization.
Health Canada Name: Carl Alleyne Email: Carl.Alleyne@hc-sc.gc.ca Phone: 604-666-4693	Potential expert advice on the health impacts of proposed development projects (which involve the federal government) with a focus on the biophysical environment, including: air quality, country foods contamination, drinking and recreational water quality, radiation effects, electric and magnetic fields, and noise.

Attachment 3: Federal Responses to Musqueam Indian Band Comments

Thank you very much for your comments. Below is a table providing some feedback on where information can be found in the EIS Guidelines about the issues that you raised, as well as rationale for why certain comments could not be incorporated into the EIS Guidelines.

Musqueam Comment	Federal Response
Studies were not done on how the additional terminal may impact the shore along the river, as well as the possibility of creating a stagnant area between the terminals and the shore. This will impact habitat – rearing grounds for all salmon and their feeding area and their migration route; crab and shellfish, migratory and resident bird populations.	Direction on assessing cumulative effects is provided in section 12.1.2 <i>Cumulative Environmental Effects</i> , which directs the proponent to provide a narrative of existing projects, including the ferry and Deltaport Third Berth Section 9.1.5 <i>Fish and Fish Habitat</i> requires a characterization of fish populations, and crabs and bivalves (shellfish) were added to this section as examples to ensure they are captured by the proponent. Fish habitat is also addressed in this section.
Adverse effect on Musqueam's ability to fish Physical and cultural heritage: i. Musqueam has been a fishing community since time immemorial, and it is a part of Musqueam's culture. Taking that the ability to fish will be removing an integral part of our culture.	Section 9.1.6 <i>Birds, Wildlife and their Habitat</i> includes coastal and migratory bird and their habitat. CEAA 2012 specifies that the environmental effects to be taken into account in the review includes an change that may be caused to the environment on physical and cultural heritage and the current use of lands and resources for traditional purposes. In addition, Section 9.2 <i>Potential or Established Aboriginal</i>
Fishing in the Fraser River has been essential to the Musqueam since time immemorial.	and Treaty Rights and Related Interests directs the proponent to include information on each group's potential or established rights (including geographical extent, nature,

The ability to access the river and to fish for food, social, and ceremonial purposes is a necessity for the community. This project, poses a risk to Musqueam's ability to fish, as it increases the tanker traffic, and creates another structure within the congested river, which impedes the aquatic resources ability to move upstream. This will impact the actual practice of going out and fishing and catching – Musqueam's ability to take youth out on the water and teaching them the cultural practices and traditions– if these structures continue to be built in the river we will not be able to do that in the future.	frequency, timing), including maps and data sets (e.g. fish catch numbers) when this information is provided by a group to the proponent. In addition, Section 10.2 Adverse Impacts on Aboriginal and Treaty Rights and Related Interests requires a description of potential adverse impacts of the Project on Aboriginal rights. Additionally Section 9.1.8 Aboriginal Peoples includes reference to places and access for activities such as fishing and Section 10.1.3 Effects of Changes to the Environment requires a description of how the changes to the environment caused by the Project would affect Aboriginal peoples' current use of lands and resources for traditional purposes which would include the harvest of marine fish.
Access and other resources will be negatively impacts; crab, shellfish, migratory and resident birds.	As stated above, impacts from the project to access for conducting traditional practices, including for hunting migratory and resident birds, is captured in Section 9.1.8 Aboriginal Peoples and Section 10.1.3 Effects of Changes to the Environment.
This project area wouldn't allow for continuous water flow and would affect the hydrology, which could potentially create a domino effect for all aquatic resources.	Section 9.1.5 Fish and Fish Habitat requires a description of the hydrology, marine ecology, freshwater and marine biota, fish species, associated habitats and habitat distribution. In addition, Section 10.1.2 requires the proponent to describe in the EIS any change that may be caused by the project on the environment, which is defined as the components of the Earth.
Very little information on the eulachon and sturgeon populations in the river – unsure as to what the	Section 7.2 <i>Project Activities</i> includes an emphasis on Project activities with the greatest potential to have

degree of impacts of their habitats would be – as there are no specific studies done on either of these species. Sturgeon are on the species at risk at and eulachon is very close to being placed on that list.	environmental effects and those activities that are likely to affect species at risk or their critical habitat. Section 9.1.5 requires the EIS to include a characterization of fish populations found in or migrating through the local and regional study areas. This should include species abundance, distribution, and life stage, and also include seasonal and annual variations. This section also requires the EIS to include information regarding aquatic species at risk that are likely to be affected by the project.
 Health: The increased tanker traffic in the river due to this project poses a risk to Musqueam fishers safety, as the river is currently at maximum capacity for traffic and creates unsafe fishing situations. Health and social economic change – habitat changes could reduce ability to harvest aquatic resources. 	Health implications from safety and country foods (such as aquatic resources) are addressed in Section 9.1.8 Aboriginal Peoples as is current use of waterways and Section 10.1.3 Effects of Changes to the Environment as a change of the project on the environment that would affect Aboriginal peoples health.
Structures, sites or things of historical, archaeological, pathological or architectural significance: i. This project has the possibility of negatively impacting historical fishing areas; as well as access egress to village sites, significant archaeological sites, and resources nearby.	Section 9.1.8 Aboriginal Peoples and Section 10.1.3 Effects of Changes to the Environment address any effects of any changes to the environment on physical and cultural heritage and archaeological resources, which would include access to the sites listed in your comment. Section 9.1.8 was also revised to include village sites.
It is important to note that there may be additional impacts revealed by preliminary EA studies.	The Agency agrees and encourages you to work with the proponent to ensure all relevant impacts are included in the EIS submitted by the proponent. Further, section 3.1 Scope of the Project indicates that it is understood that some elements of the project must still be defined and that

	it will be necessary to include in the scope of the project, among other things, the environmental mitigation and compensation measures that would require the construction and management of works that may cause effects
The Canadian Environmental Assessment Agency should provide copies and or summaries of any preliminary studies done to date and provide consultation funds for the Musqueam Indian Band to review.	Section 9.2 Potential or Established Aboriginal and Treaty Rights and Related Interests directs the proponent to ensure that Aboriginal groups have access to timely and relevant information that they require in respect of the project and how the project may adversely impact them. The Agency will be in touch with you shortly about participant funding under our Aboriginal Funding Envelope for this Project.

Attachment 4: EIS Guidelines

See attached PDF