

# Ministers' Reasons for Decision

## *Tilbury Marine Jetty Project*

*Proposed by Tilbury Jetty Limited Partnership*

On March 27, 2024, pursuant to Section 17(3)(c) of the *Environmental Assessment Act* (2002), we, the Ministers of Environment and Climate Change Strategy and Transportation and Infrastructure, issued an Environmental Assessment Certificate for the Tilbury Marine Jetty Project (TMJ). This document sets out the reasons for our decision.



## 1. NATURE AND SCOPE OF THE DECISION

Tilbury Jetty Limited Partnership (TJLP), is proposing to construct, operate and decommission TMJ, a new marine jetty that would provide berthing and loading facilities for Liquefied Natural Gas (LNG) carriers and bunker vessels with a carrying capacity of up to 100,000 cubic metres (m<sup>3</sup>). The TMJ site would be located on Tilbury Island (adjacent to and in the Fraser River) approximately 21 kilometres (km) from the mouth of the South Arm of the Fraser River at the Sand Heads Lighthouse (Sand Heads). The Environmental Assessment Office (EAO) conducted an environmental assessment (EA) of TMJ, which began in 2015 and concluded on October 11, 2022, and included the establishment of an advisory Working Group, consultation with Indigenous Groups and engagement with the public.

TMJ was subject to an EA under British Columbia's (B.C.) *Environmental Assessment Act* (2002) [the Act (2002)] and *Canadian Environmental Assessment Act, 2012* (CEAA 2012). On July 20, 2015, the federal Minister of Environment and Climate Change approved the substitution of the federal EA process by the B.C. EA. The substituted process administered by the EAO was required to meet the requirements of CEAA 2012, in keeping with the Memorandum of Understanding between the Canadian Environmental Assessment Agency (now known as the Impact Assessment Agency of Canada [the Agency]) and the EAO on the Substitution of Environmental Assessments (2013) (the MOU).

In accordance with the MOU, the EAO considered effects that TMJ may have in relation to environmental effects described in Section 5(1) and 5(2) of CEAA 2012, as well as the *Species at Risk Act* (SARA) Section 79(2), provided opportunities for the public to meaningfully participate in the EA, conducted consultation with Indigenous Groups (listed under Section 2.3 *Indigenous Engagement and Views* below) that may be affected by TMJ, provided opportunities for the Agency to participate in consultation, and provided an Assessment Report to the federal Minister that included the findings and conclusions of the EA with respect to CEAA 2012 and SARA factors. The EAO's Assessment Report will inform separate provincial and federal decisions. A federal decision on TMJ has not yet been issued.

On October 11, 2022, the EAO referred TJLP's application for an EA Certificate (Application) to us for a decision. Section 17(3) of the Act (2002) requires that ministers consider the Assessment Report, and any recommendations accompanying the Assessment Report, and may consider any other matters that they consider relevant to the public interest in making their decision on an application. Ministers must decide whether to issue an EA Certificate with any conditions they consider necessary, to refuse to issue an EA Certificate, or to order that further assessment be carried out.

We considered the documents provided by the EAO (the Assessment Report, the Summary Assessment Report, the Recommendations of the Chief Executive Assessment Officer (CEAO), the proposed EA Certificate Conditions and Certified Project Description, and the EAO's recommended Key Mitigation Measures (KMMs) under CEAA 2012); the separate submissions and letters provided by Indigenous Groups, including letters of support; the information provided in meetings with Indigenous Groups post-referral; materials respecting currently available and future paths for marine transportation decarbonization; and letters from TJLP regarding potential future use of alternative marine fuels.

## 2. MINISTERS' CONSIDERATIONS

### 2.1. THE EAO'S ASSESSMENT

The EAO, in collaboration with the Agency, and with the advice from the advisory working group (Working Group) and Indigenous Groups, reviewed TJLP's Application and provided its detailed findings in the Assessment Report. The EAO also prepared a Summary Assessment Report, which summarized the Project, key issues that arose during the assessment process, the results of the assessment of impacts on valued components, the results of the assessment of impacts to Indigenous Groups, and conclusions regarding the EA.

As described in the Assessment Report, the EAO worked closely with provincial and federal ministries and agencies, local governments, and Indigenous Groups throughout the EA process to identify issues and seek ways to address issues and concerns, including those raised by the public. The EAO provided a proposed Certified Project Description and 20 proposed EA Certificate Conditions for our consideration. The EAO also recommended a total of 181 KMMs under CEAA 2012 (including 11 recommended "plans" and six follow-up programs) to the Agency to inform federal condition development, as captured in Appendix 1 of in the Assessment Report for TMJ.

The EAO advised us that it was satisfied that the proposed EA Certificate conditions, recommended KMMs under CEAA 2012, and the project design requirements set out in the proposed Certified Project Description would prevent or reduce potential adverse environmental, social, economic, heritage or health impacts from TMJ, such that no significant residual project effects are expected.

However, the EAO concluded that there are significant cumulative effects from current development on Southern Resident Killer Whales (SRKW) and on Cultural Heritage (under CEAA 2012 Section 5(1)(c)(ii)) values associated with SRKW. The EAO also concluded that there are significant cumulative effects from current development on Cultural Heritage for some Indigenous Groups, and to the availability of resources, access, and quality of experience for the fishing component of Current Use of Lands and Resources for Traditional Purposes ("Current Use") (under CEAA 2012 Section 5(1)(c)(iii)) for some Indigenous Groups that currently harvest in the lower Fraser River and preferentially harvest at Swiftsure Bank.

Although the EAO concluded that the residual effects from TMJ alone would not be significant, TMJ would interact with the effects of current development and those from reasonably foreseeable projects in a cumulative manner. The EAO concluded that there would be moderate-to-serious to serious cumulative impacts on Tsawwassen First Nation's Treaty rights (serious impacts on cultural well-being/stewardship aspirations; moderate-to-serious on fishing), minor-to-moderate and moderate-to-serious cumulative impacts on Maa-nulth First Nations' Treaty rights (moderate-to-serious on cultural heritage; minor-to-moderate on fish and aquatic plant harvesting), and moderate-to-serious impacts to fishing rights and the other cultural interests related to SRKW for some Indigenous Groups. We agree with the EAO's conclusions.

## 2.2. RECOMMENDATIONS OF THE CHIEF EXECUTIVE ASSESSMENT OFFICER

The EAO's CEO recommended that an EA Certificate be issued for TMJ. The CEO also recommended, while outside of her statutory mandate, that the Province of British Columbia (the Province) make commitments to meaningfully address and manage cumulative effects in partnership with federal and regional/local governments as well as Indigenous Groups in the lower Fraser River. The EAO's CEO further advised that she was satisfied that the Crown's duty to appropriately consult and accommodate Indigenous Groups had been discharged for TMJ.

## 2.3. INDIGENOUS ENGAGEMENT AND VIEWS

We have considered the EAO's consultation with Indigenous Groups for TMJ and the submission provided by Indigenous Groups directly to us.

Potential effects of TMJ would occur within some Treaty areas and in the Traditional Territories of the following Indigenous Groups (listed alphabetically), with whom the EAO consulted deeply throughout the EA:

Schedule B	Schedule D (Marine Shipping Assessment Area)
<ul style="list-style-type: none"> <li>• Cowichan Tribes;</li> <li>• Halalt First Nation;</li> <li>• Kwantlen First Nation;</li> <li>• Lyackson First Nation;</li> <li>• Musqueam Indian Band;</li> <li>• Penelakut Tribe;</li> <li>• Semiahmoo First Nation;</li> <li>• Snuneymuxw First Nation<sup>1</sup>;</li> <li>• Squamish Nation;</li> <li>• Stz'uminus First Nation;</li> <li>• Tsawwassen First Nation;</li> <li>• Tsleil-Waututh Nation;</li> <li>• Ts'uubaa-asatx (Lake Cowichan First Nation);</li> </ul>	<ul style="list-style-type: none"> <li>• Ditidaht First Nation;</li> <li>• Esquimalt Nation;</li> <li>• Maa-nulth First Nations: <ul style="list-style-type: none"> <li>o Huu-ay-aht First Nations;</li> <li>o Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations;</li> <li>o Toquaht Nation;</li> <li>o Uchucklesaht Tribe;</li> <li>o Yuuʔuʔifʔath (Ucluelet) First Nation;</li> </ul> </li> <li>• Malahat Nation;</li> <li>• Pacheedaht First Nation;</li> <li>• Pauquachin First Nation;</li> <li>• Scia'new (Beecher Bay) First Nation;</li> <li>• Songhees Nation;</li> <li>• T'Sou-ke (Sooke) First Nation;</li> <li>• Tsartlip Indian Band;</li> <li>• Tsawout First Nation; and,</li> <li>• Tseycum Indian Band</li> </ul>

<sup>1</sup> Snuneymuxw First Nation was added to Schedule B of the Section 11 Order on January 19, 2022, for the remaining portion of the EA process, related to the assessment of TJLP's proposed operating scenario, the Bunker Vessel Scenario (as described on page 5).

In addition, the EAO shared information and notification of key project milestones with Katzie First Nation and Stó:lō Communities (Stó:lō Nation, Stó:lō Tribal Council, and People of the River Referrals Office) (Schedule C Indigenous Groups). The EAO also consulted with the Métis Nation British Columbia on behalf of the Agency, as part of the substituted assessment at the lower end of the consultation spectrum (Schedule C Indigenous Groups). Kʷikʷəłəm (Kwkwetlem First Nation) was added to Schedule C of the Section 11 Order on January 19, 2022, and consulted on the Bunker Vessel Scenario<sup>2</sup>.

Submissions were also provided directly to us from Kwantlen First Nation, Maa-nulth First Nations, Musqueam Indian Band, Quw'utsun Nation, Snuneymuxw First Nation, Tsawwassen First Nation, and Tseil-Waututh Nation. We have read and carefully considered these submissions and offered meetings to directly hear and discuss their concerns. We met with representatives of Maa-nulth First Nations, Musqueam Indian Band, Quw'utsun Nation, and Tsawwassen First Nation. We note that Esquimalt Nation, Musqueam Indian Band, Pacheedaht First Nation, Pauquachin First Nation, Sc'ianew First Nations, T'Sou-ke Nation, Maa-nulth First Nations, and Snuneymuxw First Nation have expressed support for the project.

While TMJ was assessed under the Act (2002), the EA was conducted in the spirit of the *Environmental Assessment Act* (2018) [the Act (2018)]. We have considered that a purpose of the Act (2018) is to support reconciliation with Indigenous peoples in B.C. by supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and that B.C. has committed to implement the UN Declaration and enacted the *Declaration of the Rights of Indigenous Peoples Act*. We are of the view that the EAO has engaged in meaningful consultation with the impacted Indigenous Groups to attempt to achieve consensus on issues of concern and that the EA process, including the decision we made, was consistent with the UN Declaration.

We are aware of the following views on TMJ:

- Kwantlen First Nation stated that TMJ is contrary to Kwantlen Law and expressed outstanding concerns around cumulative effects and the ability to harvest traditional foods, climate change, and upstream impacts of LNG.
- Maa-nulth First Nations indicated that they support TMJ but expressed concerns about the effects of TMJ and the cumulative effects of this and other marine shipping projects on their Treaty rights and interests. Maa-nulth First Nations proposed additional accommodations related to economics, cumulative effects, and regulations regarding the marine environment and co-governance, in relation to TMJ and other marine shipping projects.

<sup>2</sup> During the EA, TJLP proposed an assessment of an operating scenario, the Bunker Vessel Scenario, of up to 365 LNG vessel calls per year (on average, one call daily). This scenario was based on increased demand for LNG as a marine fuel in the Port of Vancouver and recent announcements of plans to build bunker vessels with a smaller cargo capacity. As such, TJLP conducted additional analysis (captured in TJLP's Bunker Vessel Scenario Assessment Report), assessing 365 vessel calls in a year (a total of 730 trips inbound and outbound), with a vessel mix of 307 bunker vessel calls and 58 LNG carriers calls. Both the Application Scenario and Bunker Vessel Scenario were considered in the EA.

- Musqueam Indian Band expressed support for the issuance of an EA Certificate and stated that it has an equity partnership with TJLP. Musqueam Indian Band expressed concerns about the recognition of rights and consultation with other Indigenous Groups within Musqueam territory, and cumulative effects and the project-by-project approach.
- Quw’utsun Nation stated that they withhold consent to TMJ. Quw’utsun Nation expressed concerns about the title claims at the *Tl’uq̓tinus* village site across the river, impacts on fishing rights, cumulative effects, and uncertainty of the proposed provincial conditions and lack of accommodation.
- Snuneymuxw First Nation expressed concerns about the timing and scope of consultation, conclusions in the EAO’s Assessment Report, and requested more time in the EA process to complete studies and assess impacts to their Section 35 rights. Following the referral of TMJ for our decision, Snuneymuxw First Nation wrote to us indicating its consent to and support of the issuance of an EA Certificate.
- Ts’uubaa-asatx have expressed to the EAO that while Ts’uubaa-asatx considers that TMJ would have a positive role in transitioning bunkering of marine fuel in the Port of Vancouver, Ts’uubaa-asatx has concerns related to TMJ’s contribution to cumulative effects in the Fraser River and lack of a regional vessel management plan.
- Tsawwassen First Nation has expressed to the EAO serious concerns with its ability to practice Treaty Rights, cumulative effects, and that mitigation and accommodation do not sufficiently mitigate impacts to Tsawwassen First Nation’s Treaty Rights. Tsawwassen First Nation communicated that if TMJ is approved without further action from the Crown, it would undermine the commitments in the *Declaration on the Rights of Indigenous People Act* Action Plan in several areas, including harvesting, stewardship, cultural, and economic rights and constitute a breach and infringement of the Tsawwassen First Nation Final Agreement (“Tsawwassen Final Agreement” or “Treaty”).
  - We are aware that Tsawwassen First Nation's position is that the best course of action for the Lower Fraser River and for Tsawwassen First Nation's Treaty rights is for TMJ to not proceed. We are also aware that Tsawwassen First Nation and the Province have co-developed an accommodation proposal that aims to address the outstanding impacts of TMJ on Tsawwassen First Nation’s Treaty Rights, and should the proposal be fully mandated and implemented, Tsawwassen First Nation considers the commitment as a genuine and satisfactory effort by the Province to accommodate Tsawwassen regarding TMJ and a testament to collaborative relationship building through Treaty.
- Tseil-Waututh Nation have expressed to the EAO outstanding concerns related to cumulative effects, climate change and upstream impacts, and cultural heritage and transmission.

We are aware that throughout the EA, many Indigenous Groups voiced their strong concern regarding cumulative effects of marine shipping, and some noted that aspects of the existing regulatory framework are inadequate. This is an area under federal jurisdiction and we expect the Federal government will continue to work with Indigenous Groups to discuss and address their concerns regarding marine shipping, and we have written to our federal colleagues and strongly encouraged the federal government to do so.

The Provincial Crown will also continue to have government to government conversations with these Indigenous Groups regarding provincial initiatives relevant to cumulative effects in the marine environment.

As noted above, in the recommendation from the CEO of the EAO, it was brought to our attention a need for the Province to make commitments respecting an approach to meaningfully address and manage cumulative effects in partnership with federal and regional/local governments as well as First Nations in the Lower Fraser River. Following careful consideration after the EAO referred TMJ to us for decision, we decided that an additional provincial condition was needed for TMJ to address concerns respecting cumulative effects. The condition would require TJLP's participation in any cumulative effects assessment of the Lower Fraser River, carried out jointly by First Nations and the Province, or by First Nations, the Province and the federal government, if required by the EAO. TJLP would be required to carry out monitoring and mitigation measures that result from any consensus recommendations of a cumulative effects assessment, where the monitoring or mitigation measures relate directly to the construction or operation of TMJ to the satisfaction of the EAO.

We are also aware that FortisBC has committed to Tsawwassen First Nation its support for a stewardship partnership initiative through a planned contribution, which Tsawwassen First Nation views as a necessary part in advancing an initiative that can facilitate financial contributions from project proponents regarding non-project specific cumulative effects.

We are of the view that consultation has been carried out in good faith and that the process of seeking to understand and address outstanding issues and project impacts was reasonable. We are also of the view that the potential for TMJ-specific adverse effects on the asserted or established Aboriginal rights, including title (Aboriginal Interests) and Treaty Rights of Indigenous Groups have been appropriately avoided, minimized or otherwise accommodated to the extent possible through TJLP's commitments, the provincial conditions, and the recommended KMMs under CEAA 2012. We agree with the EAO's conclusion that there is a potential for the effects of TMJ to combine with already significant cumulative effects at baseline, which was a major consideration in our decision, and the addition of a new condition, for this project.

## 2.4. ADVERSE EFFECTS AND MITIGATION MEASURES

The EAO examined whether TMJ would have adverse environmental, economic, social, heritage or health effects to a wide range of valued components. The EAO identified key residual adverse effects would include impacts to fish and fish habitat, marine mammals, including SRKW, Indigenous Groups' Current Use (for fishing) and Cultural Heritage, risk of accidents and malfunctions, and increased Greenhouse Gas (GHG) emissions. The EAO proposed 20 EA Certificate conditions, which we closely reviewed. We also note that the EAO recommended 181 KMMs under CEAA 2012 (including 11 recommended "plans" and six follow-up programs).

The EAO has also provided information on the provincial and federal permits and regulatory requirements that TMJ would require or be subject to. After considering the proposed EA Certificate conditions, which would become legally binding as parts of the EA Certificate; the federal KMMs, which will directly inform

the federal conditions; and the permitting and other regulatory requirements that TMJ would be subject to, the EAO determined that all residual adverse effects would not be significant. We have also written to the federal Ministers of Environment and Climate Change and Transport to communicate our expectation that issues that were raised during the EA that are within federal jurisdiction, and that were communicated to the federal government by the EAO through the EA, will be appropriately addressed, either through adoption of federal conditions based on the EAO's recommended KMMs, or through ongoing dialogue with Indigenous Groups to discuss and address their concerns, including regarding marine shipping.

Having considered the suite of mitigation measures that address the wide range of effects, we concur that the conditions proposed by the EAO are comprehensive and appropriate for TMJ. We also considered the small footprint of the Project (i.e., less than ~ 23 ha of habitat loss anticipated due to construction and operation of the jetty). While we are satisfied that TMJ would not have significant residual effects, we gave substantial consideration to cumulative effects, SRKW, fish and fish habitat, and impacts to Treaty rights and Aboriginal rights related to fishing. Our considerations on these topics, as well as other topics of high importance to the Working Group and Indigenous Groups follow.

#### **2.4.1. CUMULATIVE EFFECTS**

We are aware that several Working Group members expressed concerns about regional cumulative effects, particularly in the lower Fraser River and Salish Sea. Indigenous Groups have expressed that, from their perspective, the existing cumulative effects on many of the valued components are already significant, so that any TMJ-related effects, even if incremental, compounds the existing cumulative conditions. Indigenous Groups also expressed that these existing cumulative effects limit the ability of Indigenous Groups to adequately exercise their rights in the area (further discussed below).

While TMJ itself is not expected to cause significant adverse effects, we agree with the EAO's conclusions that the predicted residual effects from TMJ, in combination with the effects of past, existing, and reasonably foreseeable projects, would cause significant adverse cumulative effects to SRKW due to underwater noise, and the fishing component of Current Use and Cultural Heritage. However, having considered the suite of mitigation measures that address the wide range of effects, we concur that the provincial conditions and recommended KMMs under CEAA 2012 are comprehensive and appropriate for TMJ, and we are satisfied with the EAO's conclusions regarding residual and cumulative effects.

During the EA, the EAO received requests from Working Group members that Federal and Provincial governments conduct regional environmental assessments for the Fraser River estuary and Salish Sea, and for that information be used to develop a long-term environmental management plan for the Fraser River Delta and Salish Sea to guide future conservation efforts and sustainable development in the region. We consider that the EAO has worked collaboratively with Indigenous Groups, relevant agencies, and TJLP to develop a suite of mitigation measures to address TMJ-related effects, and, where possible, has identified opportunities to address the cumulative effects of the Fraser River and Salish Sea. We are also aware that currently there are several existing regional Government of Canada initiatives (e.g., Oceans Protection Plan initiatives, Whales Initiative, the Vancouver Fraser Port Authority-led Enhancing Cetacean Habitat and Observation (ECHO) Program) that are working towards a better understanding of cumulative effects in



the Salish Sea and Fraser River.

While we recognize the regional initiatives are not intended to mitigate or accommodate TMJ's potential contributions to pre-existing significant cumulative effects specifically, we consider these programs as relevant context to understanding cumulative effects in the region. Furthermore, as part of the EAO's recommended KMM under CEAA 2012, TJLP would also be required (where possible and operationally feasible) to identify how it is participating in regional environmental management measures and cumulative effects monitoring to protect SRKW, as well as in any other regional initiatives related to the Current Use of Lands and Resources for Traditional Purposes.

As noted above, given the concerns raised about cumulative effects, including as part of discussions that took place with Indigenous Groups and federal agencies, and the complexity of the pre-existing development and the potential impacts of further development, following the referral of the Application to us for decision we decided to add an EA Certificate condition (Condition 21) to address cumulative effects from TMJ. The Cumulative Effects EA Certificate condition would require TJLP to participate in any cumulative effects assessment of the Lower Fraser River carried out jointly by First Nations and the Province, or by First Nations, the Province and the Federal government, if required by the EAO. TJLP would also be required to carry out monitoring and mitigation measures that result from any consensus recommendations from those assessments, where the monitoring or mitigation measures relate directly to the construction or operation of TMJ to the satisfaction of the EAO.

#### **2.4.2. FISH AND FISH HABITAT**

Activities associated with the construction, operation and decommissioning of TMJ could result in fish habitat loss and alteration and potential behavioural changes of fish from underwater noise. There is also the potential for injury or mortality to sturgeon from vessel strikes; however, we note that residual effects to fish or fish habitat from TMJ were not predicted beyond Sand Heads or in the Marine Shipping Assessment Area.

Indigenous Groups and members of the Working Group raised concerns regarding potential impacts to fish and fish habitat during the EA. To address concerns, the EAO has recommended 31 KMMs under CEAA 2012 for fish mitigations to reduce harm and mortality, a fish habitat offset plan, and a follow-up program for effectiveness of fish and fish habitat mitigations. The recommended KMM for the fish mitigations to reduce harm and mortality would be developed in consultation with Fisheries and Oceans Canada (DFO) (through the *Fisheries Act* authorization process), Indigenous Groups and the Ministry of Water, Land, and Resource Stewardship. We note that the Fish Habitat Offset Plan KMM requires offsetting habitat to provide a higher value than the fish habitat it is replacing, a monitoring program to assess the effectiveness of offsetting measures and a description of contingency measures to be put into place if the offsetting measures are not successful. These contingency measures would be developed and implemented in consultation with Indigenous Groups, including a role for Indigenous participation in monitoring.

We also note that TJLP has committed to contribute up to \$2 million to the First Nations Fisheries Legacy Fund, which is a program led by several Indigenous Groups<sup>3</sup> that supports recovery programs for chinook salmon, eulachon and sturgeon in the Fraser River and Salish Sea. We are aware that the proposal has been shared with the Working Group and we also understand that TJLP has conveyed this commitment to members of the fund. Although this commitment is not considered mitigation, the proposed contribution to the fund is working towards TJLP fostering better long-term relationships with Indigenous Groups by supporting stewardship activities that are led by those specific Indigenous Groups.

We agree with the EAO's conclusions that TMJ would not have significant adverse residual or cumulative effects on Fish and Fish Habitat and are satisfied that the recommended KMMs under CEAA 2012, and existing regulatory requirements, including DFO's review process that would be undertaken as part of the *Fisheries Act* authorization process, will effectively manage project impacts.

#### **2.4.3. SOUTHERN RESIDENT KILLER WHALE**

TMJ-related vessels could result in impacts to SRKW due to underwater noise and vessel strikes. SRKW is listed as endangered under SARA, and TMJ-related vessels would transit in the established shipping lanes, which go through SRKW critical habitat established under SARA. Members of the Working Group and Indigenous Groups raised concerns about potential project effects related to persistent organic pollutants and vessel strikes to SRKW. To address concerns, the EAO has recommended a vessel traffic management KMM under CEAA 2012 that includes a requirement that TMJ identify its participation, where possible and operationally and/or economically feasible, in regional environmental management measures and cumulative effects monitoring to protect SRKW, such as the federal Oceans Protection Plan and the federal Whales Initiative. The KMM would also require vessels calling at the jetty to participate in the Vancouver Fraser Port Authority-led ECHO Program seasonal slowdown initiatives and use the Whale Report Alert System to aid in the detection of whales.

We agree with the EAO's conclusions that TMJ would not have significant adverse residual effects to SRKW; however, the predicted residual effects from TMJ, in combination with the effects of past, existing, and reasonably foreseeable projects, would cause significant adverse cumulative effects on SRKW due to underwater noise.

#### **2.4.4. CURRENT USE AND CULTURAL HERITAGE**

Construction and operations of TMJ, in particular TMJ-related vessels in transit, could affect Indigenous Groups who fish in, or in proximity to, the navigational channel or shipping lanes in the Fraser River and it is assumed that Indigenous mariners and fishers would likely avoid the marine terminal area (20 hectares), in particular when vessels would be berthing, loading, or de-berthing at TMJ (approximately once a day at full capacity, under the Bunkering Vessel Scenario). Beyond Sand Heads, TMJ-related LNG carriers enroute to international markets through the Salish Sea could also affect Indigenous Groups that preferentially fish at Swiftsure Bank, a portion of which is overlapped by the established shipping lanes.

<sup>3</sup> The First Nations Fisheries Legacy Fund involves the following Indigenous Groups – Katzie First Nation, Kwantlen First Nation, K'ik'wəłəm (Kwikwetlem First Nation), Musqueam Indian Band, Tsawwassen First Nation, and Tsleil-Waututh Nation.

Indigenous Groups raised concerns about existing cumulative effects due to already high levels of marine traffic in the south arm of the Lower Fraser River and at Swiftsure Bank, which contributes to reduced access and quality of experience for fishing and increased safety concern for Indigenous mariners. We are also aware that some Indigenous Groups reported not being able to access fisheries resources or use the region for fishing in their preferred manner, and that these baseline conditions could interact cumulatively with residual effects predicted for TMJ.

To address these concerns, the EAO recommended a Marine Access and Transportation Plan and Marine Communication Plan under CEAA 2012 that would identify marine uses and navigation in the TMJ area, including Indigenous fishing areas and harvesting areas, and how TJLP would coordinate TMJ activities and communicate with other marine users and regulators. The Marine Access and Transportation Plan would be developed in consultation with Indigenous Groups identified in Schedule B of the orders issued during the EA under Sections 11 and 13 of the Act (2002), and include requirements related to Indigenous monitoring for mitigation effectiveness during food, social, and ceremonial fishing windows.

Impacts to Cultural Heritage, including cultural places and practices, could be affected by visual and noise disruptions from the TMJ site or through Indigenous Groups avoiding the marine terminal area when vessels are berthing, loading or de-berthing due to safety protocols. TMJ-related vessels could also impact Cultural Heritage through diminishing the experience of cultural practices, via impacts from underwater noise to SRKW and through perceived or actual shipping-related safety risk from vessels. Some Indigenous Groups identified the areas near the TMJ site as being important for knowledge transfer and teaching, cultural continuity, heritage, and archeological resources.

To address these concerns, we have imposed conditions related to Indigenous Cultural Awareness, Recognition and Mitigation, Cultural and Archaeological Resources Management, and have recommended a Cultural Heritage KMM under CEAA 2012. As part of the Cultural Heritage KMM under CEAA 2012, TJLP would be required to consider developing or contributing to Indigenous-led programs to preserve and enhance cultural heritage. We have also imposed provincial conditions and recommended KMMs under CEAA 2012 related to air quality, light, noise, and visual quality management measures that would reduce impacts in the marine terminal area from TMJ on both Cultural Heritage and Current Use for fishing near the TMJ site.

While TMJ was not found to have significant adverse effects to Current Use and Cultural Heritage, we agree with the EAO's conclusions that the predicted residual effects from TMJ, in combination with the effects of past, existing, and reasonably foreseeable projects, would cause significant adverse cumulative effects to the fishing component of Current Use and Cultural Heritage for some Indigenous Groups.

#### **2.4.5. ACCIDENTS AND MALFUNCTIONS**

During construction, operation, and decommissioning of TMJ, unplanned malfunction or accidents associated with TMJ activities could arise, resulting in potential effects to environmental, economic, social, heritage or health values. We acknowledge that there is a high level of public, government and First Nation concern regarding public safety risks associated with LNG activities.

During the EA, the Working Group, Indigenous Groups, and the public raised concerns about the potential risks and consequences of accidents and malfunctions both at the jetty site, and from marine shipping.

In response to these issues, we are imposing the following conditions:

- Construction Environmental Management and Operations Management Plans, which include emergency response and spill prevention measures in the marine terminal area.

We note that the EAO recommended KMMs under CEAA 2012 for accidents and malfunctions including:

- An Emergency Response Plan for the TMJ site, which would describe emergency response training, measures to mitigate adverse effects and operating procedures to prevent potential accidents and malfunctions, and integrated response planning and equipment requirements between TJLP and government agencies, local government and emergency response departments;
- A Marine Shipping Emergency Response Outreach Program which would describe the equipment TJLP could provide to assist with a marine shipping spill or emergency response associated with TMJ-related LNG vessels; and
- A Marine Access and Transportation Plan which would include safety training for Indigenous Groups and other measures to address the safety of marine users, fishers and construction personnel and minimize the likelihood of vessel collisions during construction and operations.

We note that public safety risk from activities at the jetty site would be examined further following additional design, analysis, and review of potential mitigations during the B.C. Energy Regulator permitting process, and that there are existing federal requirements regulating marine shipping, both of which are designed to reduce the risk of and ensure appropriate response to malfunctions and accidents. We agree with the EAO's conclusions that the potential malfunctions and accidents associated with TMJ have been adequately identified, assessed, and mitigated for the purposes of the TMJ EA.

#### **2.4.6. GREENHOUSE GAS EMISSIONS**

TMJ has the potential to emit GHGs throughout all phases of TMJ; however, only the GHG emissions that occur during operations were considered in the EAO's assessment, as annual GHG emissions are expected to be largest during this phase. The maximum GHG emissions associated with TMJ-related vessels traveling from the TMJ site to the 12 nautical miles limit of Canada's territorial sea may range from up to 29.22 to 31.64 kt CO<sub>2</sub>e/yr, depending on the mix of domestic and international vessels. Total TMJ emissions, including only domestic vessels, are expected to range from 15.25 kt CO<sub>2</sub>e/yr to 17.91 kt CO<sub>2</sub>e/yr, which increase B.C.'s provincial GHG emissions by 0.02 percent over 2019 levels.

Upstream natural gas production-related GHG emissions are outside the scope of the TMJ EA and are included here for context only. TJLP communicated to the EAO that TMJ does not represent a new source of demand for upstream production; rather, TMJ represents an alteration of transportation method for existing LNG production from the Tilbury LNG Plant. With respect to the proposed Tilbury LNG Plant Phase 2 Expansion and associated upstream GHG emissions, we understand that the capacity of Tilbury LNG Plant Phase 2 would exist regardless of TMJ, and that TMJ is not FortisBC's only path to serve LNG customers. TJLP stated that LNG remains a vital fuel to reduce emissions in sectors that are difficult to

decarbonize such as global shipping and industrial processes.

TJLP confirmed that TMJ does not require any of the Phase 2 expansion to proceed and that the storage tank for Tilbury Phase 2 would proceed whether the TMJ is built or not. TJLP's upstream GHG assessment analysis concluded that upstream annual GHG emissions would range from 1,750 – 2,164 kt CO<sub>2</sub>e in 2023 to 1,689 – 2,414 kt CO<sub>2</sub>e in 2053. These values include all emissions upstream of Tilbury LNG Plant, including all extraction, pipeline transport and processing of natural gas into LNG.

We considered that the GHG emissions profile for TMJ is low with anticipated increases in B.C.'s provincial GHG emissions by 0.02 percent over 2019 levels and TJLP has also outlined its conceptual approach to be net zero by 2050 for TMJ. We noted that TMJ is a distinct project from the Tilbury LNG Plant Phase 2 Expansion Project, which will require an EA Certificate under the Act (2018) and must follow applicable GHG legislation.

During the EA, concerns were raised by the Working Group, Indigenous Groups and the public related to TMJ's impact on GHGs and climate change. In response, we have required a Greenhouse Gas Reduction Plan, which includes requirements for TJLP to reduce GHGs during operations, including the development of triggers that would cause TJLP to take corrective action to reduce GHGs, and to describe how TMJ would achieve any municipal, provincial, national, or international government GHG regulations or objectives that are made mandatory for TMJ.

Following referral of the TMJ Application to us for decision, we made two additions to the GHG Reduction Plan condition requiring TJLP to consider emission reduction targets and schedules as set out in relevant provincial statutes and supporting policies, and requiring TJLP to describe and analyze how it will utilize best available technologies and best environmental practices in achieving the GHG reductions, or provide a rationale for technologies or practices not being adopted. The GHG Reduction Plan condition would work in tandem with legislation governing GHG emissions and the CleanBC Roadmap to 2030, which sets out a series of actions for B.C. to meet the 2030 emissions reduction target. We have considered the Province's announcement to develop and implement an Energy Action Framework, including the intention to put in place a regulatory emissions cap for the oil and gas industry.

We are aware that TJLP has stated that LNG remains a vital fuel to reduce emissions in sectors that are difficult to decarbonize such as global shipping and industrial processes. For example, a study commissioned by TJLP for TMJ found that LNG from the Tilbury LNG Plant (operated by FortisBC) could reduce GHG emissions in ships by up to 22 to 27 percent compared to conventional marine fuel, depending on the type of marine engine used. This anticipated reduction in GHG emissions in ships is because TMJ can offer LNG from the Tilbury LNG Plant, which has lower facility carbon intensity than the global average LNG, since it is powered by electricity from renewable sources. We are aware that FortisBC is a provider of renewable natural gas (RNG), which in certain circumstances can be a lower carbon to carbon-neutral form of energy that can be used as a fuel to lower carbon intensity. Regarding alternative fuels, such as hydrogen, we understand that the design of TMJ would not preclude the handling of another gaseous fuel, such as hydrogen.

Following the referral of TJLP's Application to us for decision, we conducted a review of materials respecting currently available and future paths for marine transportation decarbonization and considered the importance of global GHG emission reductions. The review indicated that LNG may play a role in marine transportation decarbonization in short- to medium-term and that there is demand from vessels that could bunker in the Port of Vancouver or elsewhere, and that not all of the concerns about sources of high emission LNG marine fuel are relevant to B.C. Through the review, we were also made aware that although the demand and supply for renewable fuels do not currently exist, they are the preferred and necessary longer-term choice. We note that the most readily available lower GHG emitting marine bunkering fuel is LNG. Until fully renewable, lower or zero carbon alternatives become more widely available, TMJ would serve to support decarbonization of marine bunkering in the Port of Vancouver. As a result, we have added a Renewable Marine Fuels EA Certificate condition (Condition 22).

The Renewable Marine Fuels condition requires third-party reporting with respect to the demand and supply of renewable marine fuels in the Port of Vancouver. If a viable demand for and supply of renewable marine fuels in the Port of Vancouver is identified, TJLP must apply to for an amendment to authorize modifications to TMJ so that it is able to provide fueling services for renewable marine fuels to the extent that the demand and supply exist. This condition would allow for the jetty to transition to renewable marine fuels alongside fossil-based fuels, or in place of them if they are phased out. The construction of TMJ does not preclude its use for clean fuels, although an amendment to the EA Certificate to transport clean fuels would be required. We understand that TJLP has committed to continuing to review the clean fuel market to understand the needs of prospective customers.

We agree with the EAO's conclusions that TMJ would not have significant residual effects on GHG emissions management, and that the implementation of TMJ's GHG Reduction Plan, and TJLP's approaches to manage residual GHG emissions, would ensure that TMJ aligns with B.C.'s longer-term GHG emission targets and also serve as platform for the delivery of renewable fuels in the future when demand and supply exists.

## 2.5. PUBLIC CONSULTATION

We are aware of the opportunities for the public to submit comments during the four public comment periods held during the EA, including two comment periods on the EAO's draft decision materials. In total, over the course of the four public comment periods and four open houses, the public had 136 days of direct consultation to review the materials and submit comments, resulting in 6,189 written comments, including 1,576 individual comments, and 4,613 submissions from letter writing campaigns.

Members of the public identified concerns related to air quality and human health, economic benefits and viability of the project, potential threats to public safety, overall concern regarding the health of the Fraser River including cumulative effects, effects to fish and marine mammals, impacts to Indigenous rights, upstream effects related to natural gas extraction activities, contributions to climate change and greenhouse gas emissions, government oversight, and the EA and public consultation processes. We note also that these comments, and TJLP's and the EAO responses, were appropriately considered during the EA as reflected in the EAO's Assessment Report, the EA Certificate Conditions and recommended KMMs under CEAA 2012.

## 2.6. PROVINCIAL, COMMUNITY, ECOLOGICAL AND SOCIAL BENEFITS

We are aware that TMJ would provide local, regional and provincial benefits including:

- Capital expenditures would range between \$154 million and \$260 million during construction;
- Generate a total of \$22.8 million in tax revenues during construction;
- A peak workforce of up to 1,083 full-time equivalent workers (FTEs) during the four-year construction phase; and
- Approximately seven direct FTEs would be required during operations, which would be filled by existing Fortis employees.

We have imposed a condition requiring TJLP to develop an Indigenous Training, Employment and Procurement Plan, which would include: methods for communicating training, employment and procurement opportunities; measures that TJLP would carry out to provide training opportunities for Indigenous monitors and to promote the hiring and retention of Indigenous Groups and their members; and measures that TJLP would use to support the procurement of goods and services from businesses owned by Indigenous Groups. We have also imposed a condition requiring Indigenous Monitors, which would include TJLP and Indigenous Groups working together to identify opportunities for Indigenous Groups to participate in monitoring activities during construction and operations.

According to TJLP, TMJ would also support the Port of Vancouver in its ambition to support the sustainability of the port and that providing LNG as a lower-emission / lower-carbon alternative to oil-based marine fuel in the Port of Vancouver would reduce harmful air pollutants, improve human health, and reduce GHG emissions. TJLP also asserts that TMJ would reduce the potential for oil spills by displacing the use of oil in the Port of Vancouver with LNG, would attract new LNG-powered vessels that would feature technology to improve efficiency and would reduce underwater noise.

As noted above, we are aware that TJLP has proposed to provide up to \$2 million of funding to the First Nations Fisheries Legacy Fund that is led by several Indigenous Groups<sup>3</sup>. We are also aware that TJLP have agreements with Esquimalt Nation, Pacheedaht First Nation, Sc'ianew First Nations, T'Sou-ke Nation, Maa-nulth First Nations, and Snuneymuxw First Nation, and that TJLP and other Indigenous Groups are in discussions regarding relationship agreements and that would provide direct benefits to Indigenous Groups. We are also aware TJLP has a benefit sharing agreement with Musqueam Indian Band that, subject to approvals and certain conditions precedent, includes options for Musqueam to acquire equity ownership in the Tilbury LNG Projects, which includes TMJ. Considering the EA Certificate conditions, we agree that there are important benefits of TMJ.

## 3. CONCLUSION

The EA Certificate includes conditions and specifies design parameters that the Certificate Holder must abide by. If TMJ receives federal approval it would also be required to abide by numerous federal conditions. A number of these measures include effectiveness monitoring, adaptive management, and

contingency plans to be developed consultation with Indigenous Groups and the relevant agencies. This gives us the confidence to conclude that TMJ will be carried out such that no significant adverse project effects are likely to occur.

We are of the view that the benefits of TMJ outweigh the costs and, with the application of the required conditions, it is in the public interest.



Honourable George Heyman  
Minister of Environment and Climate Change  
Strategy



Honourable Rob Fleming  
Minister of Transportation and Infrastructure

Signed this 27 day of March, 2024.