

ROBERTS BANK TERMINAL 2 PROJECT

RECOMMENDATIONS OF THE CHIEF EXECUTIVE ASSESSMENT OFFICER

With Respect to

the Application by the Vancouver Fraser Port Authority

for an Environmental Assessment Certificate

pursuant to the *Environmental Assessment Act*, S.B.C. 2002, c.43

August 16, 2023

INTRODUCTION

The Vancouver Fraser Port Authority (VFPA) has applied to the Environmental Assessment Office (EAO) for an Environmental Assessment Certificate (EAC) to construct and operate the Roberts Bank Terminal 2 Project (RBT2 or the Project). The VFPA indicated that it does not plan to decommission or abandon RBT2. RBT2 would result in a new three-berth marine container shipping terminal at Roberts Bank in the City of Delta (Delta), British Columbia (B.C.). RBT2 would be located next to existing port facilities at Roberts Bank in Delta, B.C., approximately 35 kilometers (km) south of Vancouver, B.C. and adjacent to Tsawwassen First Nation territory, near the community of Tsawwassen.

The three main components of RBT2 are: a new three-berth marine container terminal (marine terminal); the widening of the existing Roberts Bank causeway to accommodate additional rail infrastructure, road connections, and utilities; and the expansion of the existing Roberts Bank tug basin to accommodate additional tugs for assisting in container vessel arrivals and departures. RBT2 is not predicted to result in an increase in container vessels transiting to and from the marine terminal.

The environmental assessment (EA) of RBT2 began on January 7, 2014, when the federal Minister of the Environment referred RBT2 to an independent Federal Review Panel (the Panel). On November 4, 2014, the Executive Director of the EAO issued an order under Section 10 of the *Environmental Assessment Act* (2002) (the Act (2002)), which referred RBT2 to the Minister of Environment for a determination under Section 14 of the Act (2002). In her order, dated December 19, 2014, the Minister of Environment directed the EAO to rely principally on the Panel process, and the consultation with Indigenous nations conducted by the Impact Assessment Agency of Canada (the Agency) for the provincial EA. On November 8, 2022, the Chief Executive Assessment Officer (CEAO) of the EAO ordered that the provincial EA was to continue under the Act (2002), given the advanced stage of the RBT2 federal EA.

The Federal Review Panel Report (Panel Report) was completed on March 27, 2020. Following the Panel Report, federal Minister of Environment and Climate Change Canada issued an [Information Request](#) (IR) requiring the VFPA to provide additional information related to container vessel traffic, fish habitat offsetting, mitigation measures, effects to Southern Resident Killer Whales, biofilm and migratory birds, and effects to Indigenous nations. On April 20, 2023, the Government of Canada approved RBT2 subject to 370 conditions outlined in the Decision Statement. The provincial EA was completed on August 16, 2023 with referral of decision materials to the provincial Minister of Environmental and Climate Change and Minister of Transportation and Infrastructure (the Ministers).

With this document, I am providing the Ministers with my recommendations for RBT2 and the reasons for my recommendations, as provided in Section 17(2) of the Act (2002). In making my recommendations, I have considered that RBT2 would be developed on federal land under the jurisdiction of the VFPA, and that the project must adhere to the requirements of the federal Decision Statement. With respect to the development of the project on federal land, ministers stated in their reasons on the Vopak project: “while

the [EA] Act applies to projects on federal land like the [Vopak] Project, it cannot be used to prohibit the development of federal property.”¹ This rationale applies to RBT2 as it is also a project being developed on federal land. In addition, I considered that RBT2 is a federal undertaking: it is a port facility devoted to serving marine shipping.

In recommending provincial conditions for the draft EAC, I considered areas where the federal government generally takes the lead when it comes to addressing issues given its legislative authority – that is, areas of primary federal jurisdiction. Provincial conditions are intended to address provincial interests within provincial jurisdiction.

KEY CONCLUSIONS OF THE ENVIRONMENTAL ASSESSMENT

POTENTIAL EFFECTS OF THE PROJECT

The EA of RBT2 considered a full range of potential environmental, economic, social, heritage and health effects, including cumulative effects that may not be included in the definition of environmental effects under the *Canadian Environmental Assessment Act*, 2012, and means to mitigate potential adverse effects. As part of the assessment, the Panel, the Agency and the EAO considered the potential effects of RBT2 on Indigenous rights and title as well as on any broader interests related to an Indigenous nation (collectively, “Indigenous Interests”). The Agency and the EAO worked directly with Indigenous nations on the assessment to Indigenous Interests and the development of mitigations to potential effects.

The Panel, the Agency and the EAO also consulted the public on the potential effects of RBT2 to ensure consideration of public input and community views, and to convey information about the Project and the EA process.

The Panel Report provided the results of the Panel’s assessment of the potential environmental effects of RBT2, including marine shipping activities incidental to the Project. The EAO’s Summary Assessment Report provides an overview of the findings of the Panel Report, additional information provided by the VFPA in their IR response, and Indigenous nations’ assessments. That report is dated August 16, 2023.

I note that the Panel identified residual and cumulative adverse effects that would result from the construction and operation of RBT2, including effects on the following areas of provincial interest:

- Wetlands;
- Salmon;

¹https://projects.eao.gov.bc.ca/api/public/document/6283c84908d84100228db00d/download/Vopak_Ministers%20Reason%20for%20Decision_20Apr2022_FINAL%20SIGNED.pdf at p. 14.

- Barn owl;
- Human health (air quality and noise effects);
- Daytime and nighttime visual resources;
- Outdoor recreation;
- Agricultural land use;
- Accidents and malfunctions (spills affecting the marine environment); and,
- Greenhouse gas emissions.

The key positive effect of RBT2 would be economic benefits to Canada and the region stemming from an increase in terminal capacity, employment opportunities, and revenue (taxes and fees).

The EAO has proposed a project description and provincial conditions to mitigate the adverse effects and enhance positive effects of RBT2. Should an EAC be issued, the Certified Project Description (Schedule A to the draft EAC) describes the project that the VFPA would be legally authorized to construct and operate, and the Table of Conditions (Schedule B) contains 16 conditions that the VFPA would be required to follow. The EAO consulted with Indigenous nations, provincial ministries, and the public in the development of the Certified Project Description and Table of Conditions prior to referral to the Ministers. Finally, the EAO notes that if RBT2 receives an EAC, it would be subject to conditions associated with the federal Decision Statement and federal permits and authorizations.

After considering the proposed mitigation measures, the EAO determined that not all effects would be fully mitigated including effects on wetlands and wetland function, salmon, human health (air quality) and greenhouse gas emissions.

I agree with the conclusions reached by the EAO. If Ministers elect to issue an EAC for RBT2, I recommend including the proposed Certified Project Description and Table of Conditions in the EAC.

IMPACTS TO INDIGENOUS INTERESTS, INDIGENOUS ENGAGEMENT AND ACCOMMODATION

Throughout the EA, the EAO coordinated consultation with the Agency, including sharing information and co-drafting the impact on rights assessment reports, conducting joint consultation meetings, and drafting a federal and provincial Crown Consultation and Accommodation Report (CAR). The CAR describes the consultation or engagement process for RBT2, the key issues of concern raised by Indigenous nations, potential mitigations, and a summary of the Crown's assessment of potential impacts of RBT2 on Indigenous nations' rights and interests. Following the finalization of the CAR and federal decision, the EAO engaged Indigenous nations on the EAO's draft referral materials, including the Summary Assessment Report, Table of Conditions, and Certified Project Description.

The Agency and the EAO shared draft impacts on rights assessment reports with Indigenous nations in June and July 2020 and met with Nations to discuss and seek input. The key conclusions from the impact on rights

assessment reports were included in the CAR, which was also provided to the Indigenous nations for review and input prior to being finalized in February 2023. Capacity funding to support Indigenous nations' participation in the EA process was provided by the Agency. Additional capacity funding for Indigenous nations was also provided by VFPA.

During the EA, Indigenous nations raised concerns about the impacts on the current use of resources and harvesting rights from RBT2 because of its potential effects on fish and fish habitat, wetlands, archaeological sites, terrestrial and marine spills, increases to road and rail traffic (which was outside the scope of the EA), and existing cumulative effects. To mitigate effects to each of these values, the Agency and the EAO engaged with Indigenous nations on the development of the federal and provincial conditions that would be required should the project proceed.

During engagement with Indigenous nations on the draft provincial materials from May through July 2023, the EAO received comments and concerns, including the following areas:

- Timelines during the EA, including timelines for finalizing the CAR and federal and provincial conditions;
- Limitations of the provincial conditions, including the focus on areas of provincial interests;
- Duplication of the federal conditions and provincial conditions that could create challenges and potentially a burden for consultation; and
- Ongoing concerns related to cumulative effects.

As part of finalizing the provincial materials, the EAO considered all comments from Indigenous nations and met with Indigenous nations as requested. To address comments and concerns, the EAO revised the provincial materials where reasonable and practical, provided responses to Indigenous nation's comments and concerns, shared the revised provincial Table of Conditions, and offered to provide a separate submission to Ministers.

The Suquamish Tribe, the Swinomish Indian Tribal Community and the Tulalip Tribes (Tribes of Washington State) and Lummi Nation from the United States identified their interests as being potentially affected by RBT2, including transboundary effects and effects within the portion of the Salish Sea and international shipping lanes located within Canada during the Panel process. The Crown's engagement with Lummi Nation and the Tribes of Washington State focused on understanding interests and concerns with respect to RBT2 and integrating them into the assessment process. The Crown has worked to be responsive to the concerns raised, recognizing that potential project impacts may affect their communities.

I have considered the information in the Consultation and Accommodation Report (CAR), and concerns raised by Indigenous nations. I am satisfied that the potential RBT2-specific adverse effects on the Indigenous Interests have been avoided, minimized and accommodated to the extent possible through VFPA's commitments, federal conditions required from the Government of Canada's Decision Statement,

and the proposed provincial conditions.

The EAO is also of the view that the EAO has fulfilled its obligations for consultation and accommodation to Indigenous nations relating to the issuance of an EAC for RBT2. I agree with the EAO's conclusion that there are outstanding effects related to RBT2, in particular regarding cumulative effects.

PUBLIC CONSULTATION

The RBT2 EA included multiple opportunities for public engagement. The Panel held public orientation sessions and a public hearing in 2019, consisting of 24 hearing days in different locations. The Agency consulted with the public on additional information provided by the VFPA and on the draft federal conditions from December 2021 to March 2022. The EAO held one public comment period, on the draft Summary Assessment Report, Table of Conditions and Certified Project Description and received 802 submissions.

The key issues raised by the public during the EA process that overlap with areas of provincial interests were the potential effects of RBT2 on fish and fish habitat (including salmon), species at risk (terrestrial wildlife and their habitat), human health (air quality), socio-economic conditions, and accidents and malfunctions, including potential spills. These issues have been reflected in the Summary Assessment Report. In addition to the federal conditions in place for RBT2, the EAO has proposed provincial conditions to mitigate the adverse effects raised by the public. I am of the view that meaningful public consultation was undertaken for RBT2.

RECOMMENDATIONS

In accordance with the provisions of Section 17(2)(b) of the Act (2002), and upon the consideration of the Summary Assessment Report and with regard to the complete decision package before you, I recommend that an EAC be issued to the VFPA in connection with its Application for RBT2.

Submitted by:



Elenore Arend

Chief Executive Assessment Officer and Associate Deputy Minister, Environmental Assessment Office