

# Ministers' Reasons for Decision

## *Roberts Bank Terminal 2 Project*

*Proposed by Vancouver Fraser Port Authority*

On September 28, 2023, pursuant to Section 17(3)(c) of the *Environmental Assessment Act* (2002), we, the Minister of Environment and Climate Change Strategy and the Minister of Transportation and Infrastructure, issued an Environmental Assessment Certificate for the Roberts Bank Terminal 2 Project. This document sets out the reasons for this decision.



## 1.0 NATURE AND SCOPE OF THE DECISION

Roberts Bank Terminal 2 Project (RBT2 or the Project) is a proposed new marine container terminal that would be located next to existing port facilities at Roberts Bank in Delta, British Columbia (B.C.), approximately 35 kilometres south of Vancouver, B.C. RBT2 would be located adjacent to Tsawwassen First Nation Lands and near the community of Tsawwassen. RBT2 would increase the container handling capacity at Roberts Bank by 2.4 million twenty-foot equivalent units.

RBT2 was subject to an environmental assessment (EA) under British Columbia's (B.C.) *Environmental Assessment Act, 2002* (the Act (2002)) and the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). On January 7, 2014, the federal Minister of the Environment referred RBT2 to an independent federal Review Panel (the Panel). On December 19, 2014, in her order under section 14 of the Act (2002), the provincial Minister of Environment directed the Environmental Assessment Office (EAO) to rely principally on the Panel environmental assessment (EA), and the consultation with Indigenous nations conducted by the Impact Assessment Agency of Canada (the Agency) for the provincial EA. The report from the Panel was used to develop materials to inform separate federal and provincial decisions. On April 20, 2023, the Government of Canada approved RBT2 subject to 370 conditions outlined in the Decision Statement.

On August 16, 2023, the EAO referred the Vancouver Fraser Port Authority's (VFPA) 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 prepared by the EAO or hearing panel, 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 materials prepared for the federal EA and those provided to us by the EAO, including the Summary Assessment Report, the Recommendations of the Chief Executive Assessment Officer (CEAO), the proposed EA Certificate Conditions and Certified Project Description, the Crown Consultation and Accommodation Report, and the separate submissions provided to us by Indigenous nations.

We recognize that RBT2 will be almost entirely developed on federal Crown land, under the jurisdiction of the VFPA, and that the Project must adhere to the requirements of the federal Decision Statement. We note that while the Act (2002) applies to RBT2, the scope of the provincial EA is limited to matters of provincial jurisdiction, and the Act (2002) cannot be used to prohibit the development of the Project. Therefore, a consideration for us is that if we chose to decline the Project it would have no practical effect other than to prevent us from imposing conditions that address matters of provincial interest. With that understanding, we focused our decision on matters of provincial jurisdiction.

## 2.0 MINISTERS' CONSIDERATIONS

### 2.1 THE EAO'S ASSESSMENT

The EAO coordinated the EA process with the Agency under the Canada-British Columbia Agreement on Environmental Assessment Cooperation (2004), which provides for a cooperative environmental assessment when a project is subject to review pursuant to both the CEAA 2012 and the Act (2002).

The EAO focused on areas where B.C. has jurisdiction and required assessment matters (also referred to as Provincial Interests), including but not limited to effects on Indigenous nations; public and local government interests; public health; economic interests; Crown land including foreshore and submerged land; provincially managed wildlife and fish species; permits and authorizations needed for RBT2; and authorities delegated to B.C. by the Government of Canada.

The EAO consulted with Indigenous nations, a Provincial Review Team (provincial and local government advisors), and the public in the development of the Certified Project Description and Table of Conditions prior to referral to us. The EAO proposed 16 provincial conditions to avoid, minimize, or offset the potential adverse effects of RBT2. 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. We agree with EAO's conclusion and acknowledge that there will likely be significant adverse environmental effects from RBT2.

### 2.2 RECOMMENDATIONS OF THE CHIEF EXECUTIVE ASSESSMENT OFFICER

The CEAO recommended that an EA Certificate be issued for RBT2. The CEAO provided us the Summary Assessment Report, the proposed EA Certificate Conditions and Certified Project Description, and the Crown Consultation and Accommodation Report. The CEAO further advised that adverse effects on the Indigenous Interests have been avoided, minimized, and adequately accommodated through VFPA's commitments, federal conditions, and the proposed provincial conditions. The CEAO agreed with the EAO's conclusion that there are outstanding effects related to RBT2, in particular, regarding cumulative effects.

### 2.3 INDIGENOUS ENGAGEMENT AND VIEWS

We have considered the consultation with Indigenous nations coordinated between the Agency and the EAO as documented in the Crown Consultation and Accommodation Report, the EAO's consultation on the draft provincial materials, and submissions provided directly to us by Indigenous nations.

Potential effects from RBT2 would occur within Treaty areas and in the Traditional Territories of the following Indigenous nations (listed alphabetically):

Indigenous nations – Roberts Bank (consulted on impacts from the terminal and from marine shipping)	Indigenous nations – Fraser River (consulted on impacts from the terminal only)	Indigenous nations - marine shipping (consulted on impacts from marine shipping only)
<ul style="list-style-type: none"> <li>• Cowichan Tribes;</li> <li>• Halalt First Nation;</li> <li>• Huu-ay-aht First Nations;</li> <li>• Ka:'yu:'k't'h'/Che:k'tles7et'h';</li> <li>• Lyackson First Nation;</li> <li>• Malahat First Nation;</li> <li>• Musqueam Indian Band;</li> <li>• Pauquachin First Nation;</li> <li>• Penelakut Tribe;</li> <li>• Semiahmoo First Nation;</li> <li>• Stz'uminus First Nation;</li> <li>• Toquaht Nation;</li> <li>• Ts'uubaa-asatx First Nation;</li> <li>• Tsartlip First Nation;</li> <li>• Tsawout First Nation;</li> <li>• Tsawwassen First Nation;</li> <li>• Tseycum First Nation;</li> <li>• Tseil-Waututh Nation;</li> <li>• Uchucklesaht Tribe; and</li> <li>• Yuułu?it?ath First Nations.</li> </ul>	<ul style="list-style-type: none"> <li>• Aitchelitz First Nation;</li> <li>• Chawathil Band;</li> <li>• Cheam First Nation;</li> <li>• Kwantlen First Nation;</li> <li>• Kwaw-kwaw-Apilt First Nation;</li> <li>• Leq'á:mel First Nation;</li> <li>• Matsqui First Nation;</li> <li>• Popkum First Nation;</li> <li>• Seabird Island Band;</li> <li>• Shxw'ow'hamel First Nation;</li> <li>• Shxwhá:y Village;</li> <li>• Skawahlook First Nation;</li> <li>• Skowkale First Nation;</li> <li>• Skwah First Nation;</li> <li>• Soowahlie First Nation;</li> <li>• Sq'éwlets First Nation;</li> <li>• Squiala First Nation;</li> <li>• Sumas First Nation;</li> <li>• Tzeachten First Nation;</li> <li>• Yakwekwioose First Nation; and</li> <li>• Yale First Nation.</li> </ul>	<ul style="list-style-type: none"> <li>• Ditidaht First Nation;</li> <li>• Esquimalt Nation;</li> <li>• Pacheedaht First Nation;</li> <li>• Scia'new First Nation;</li> <li>• Snuneymuxw First Nation;</li> <li>• Songhees Nation; and</li> <li>• T'Sou-ke Nation.</li> </ul>

In addition, the Agency and the EAO engaged with the Hwlitsum family, the Tribes of Washington State (the Suquamish Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribes), and Lummi Nation during the EA.

We understand that throughout the EA, Indigenous nations expressed views and raised concerns about RBT2. Indigenous nations participated in the RBT2 EA in different ways, including submitting information to and working directly with the VFPA, providing information to the Panel and participating in hearings, and engaging directly with the Agency and EAO.

The Crown Consultation and Accommodation Report reflected the views and concerns expressed by Indigenous nations, many of which relate to the following topic areas:

- Harvesting;
- Culture;
- Stewardship;
- Road and rail effects;
- Anchorages;
- Cumulative effects; and
- Procedural concerns.

We understand that in response to these concerns, the Agency and the EAO considered commitments from the VFPA, proposed federal and provincial conditions, and other related federal and provincial initiatives underway (for example marine monitoring and protection programs). The conclusions of potential impacts on rights and interests are summarized in the Crown Consultation and Accommodation Report, which contains specific chapters for each Indigenous nation. We have read that report and understand that there are outstanding concerns for several nations. We appreciate the effort that all Indigenous nations, as well as the Agency and the EAO, put into that report.

We received submissions directly from Snuneymuxw First Nation and Kwantlen First Nation. We carefully considered those submissions. In February 2023, Snuneymuxw First Nation requested us to either deny the RBT2 approval or require the Agency, EAO, and the VFPA to work with Snuneymuxw First Nation to collect whole and accurate information regarding RBT2-related impacts to Snuneymuxw First Nation. We understand that in subsequent meetings between Snuneymuxw First Nation, the EAO and the Agency, Snuneymuxw First Nation expressed an interest in being more engaged on RBT2. To respond to this, we decided to include Snuneymuxw First Nation in the category entitled Indigenous nation – Roberts Bank in the provincial Table of Conditions. This will mean Snuneymuxw will be consulted on development of management plans required for the provincial EA Certificate.

Kwantlen First Nation highlighted ongoing concerns with the rapid industrialization of the Fraser River and its impacts to Kwantlen’s traditional access to food and the ability to engage in cultural practices. Kwantlen First Nation communicated their generational approach to decision making and encouraged similar long-term thinking in provincial decision making. We responded to Snuneymuxw First Nation and Kwantlen First Nation’s letters in September 2023 and considered their concerns alongside our understanding of the support and/or non-objection to RBT2 of 26 Indigenous nations.

We understand that there are outstanding impacts identified by Indigenous nations and as RBT2 proceeds, federal and provincial authorities will continue consultation and engagement with Indigenous nations. 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 RBT2 impacts was reasonable. We agree with the EAO that the potential adverse effects on the Indigenous Interests of Indigenous nations have been minimized and accommodated. We acknowledge that a number of Indigenous nations continue to express there are ongoing concerns about the impact of RBT2.

## 2.4 ADVERSE EFFECTS AND MITIGATION MEASURES

In the Summary Assessment Report, the EAO provided the findings of the Panel as they related to Provincial Interests, and identified federal conditions and proposed provincial conditions to mitigate these effects. The Panel found that RBT2 would result in residual and cumulative adverse effects in the following areas:

- Wetlands;
- Salmon;
- 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.

To mitigate effects in these areas, the EAO proposed 16 conditions should an EA Certificate be approved, in addition to the 370 conditions required by the federal Decision Statement.

### 2.4.1 WETLANDS

RBT2 has the potential to adversely affect provincially listed communities of marine vegetation because the physical footprint of RBT2 will overlap those communities. To mitigate these effects, we have imposed a condition requiring a Wetlands Management and Offsetting Plan and a Terrestrial Vegetation and Wildlife Management Plan. We are also aware of related federal conditions, including the development, implementation, and effectiveness monitoring of a wetland compensation plan. These measures include consultation with provincial authorities and Indigenous nations, monitoring the effects of RBT2 on intertidal marsh communities for the first 10 years of the operation of the Project and compensating for residual adverse effects observed during that time. We believe these mitigations appropriately respond to the effects of RBT2 on wetlands.

### 2.4.2 FISH AND FISH HABITAT

The Panel concluded that RBT2 would have adverse effects on juvenile chum and chinook salmon due to light and underwater noise. We understand there are a number of federal conditions to mitigate effects on fish and fish habitat, including a requirement for the VFPA to develop offsetting plan(s) related to the alteration, destruction or disturbance of fish and fish habitat, in consultation with Indigenous nations and federal and provincial authorities.

The EAO was satisfied that the federal conditions and VFPA's commitments will address potential adverse effects to juvenile salmon and has not proposed any related provincial conditions. We agree with this determination.

### 2.4.3 HUMAN HEALTH (AIR QUALITY AND NOISE)

Adverse effects to human health would occur due to air quality changes associated with exposure to nitrogen dioxide. The effects would impact individuals located in immediate upland areas of approximately 80 square kilometers in western Delta, Tsawwassen First Nation Lands, Tsawwassen community, and

Point Roberts. We are aware that federal conditions are in place to mitigate adverse effects to air quality from RBT2, in consultation with the Ministry of Environment and Climate Change Strategy, local governments, and Indigenous nations. Because of the federal conditions in place, the EAO has not proposed any related provincial conditions. We agree with this determination.

The health of individuals would also be affected by continuous nighttime noise and low frequency noise from RBT2. We are aware that federal conditions are in place to mitigate adverse effects caused by noise and vibration from RBT2. Provincial conditions also require Construction and Operation Environmental Management Plans to mitigate adverse effects from noise and vibration.

#### **2.4.4 ACCIDENTS AND MALFUNCTIONS**

The VFPA identified that there are about 1,800 hazardous and noxious substances (excluding oil products) that are transported in packaged form in container vessels. We are aware that consequences have the potential to be severe if spills of hazardous and noxious substances reach the marine environment, particularly for vulnerable species such as juvenile salmon, Southern Resident Killer Whale (SRKW), and migrating shorebirds and harvesters of marine resources.

To address the risks of accidents and malfunctions, federal conditions require the VFPA to implement a variety of mitigation measures to prevent accidents and malfunctions from occurring, and to mitigate adverse effects. As accidents and malfunctions can interact with Provincial Interests, we have imposed a condition requiring Construction and Operation Environmental Management Plans, including emergency response and spill prevention and mitigation measures that would be implemented if a spill occurs.

#### **2.4.5 GREENHOUSE GAS EMISSION**

RBT2 would contribute 140,000 tonnes per year (t/y) of Greenhouse Gas (GHG) emissions from terminal operations and 129,000 t/y from shipping related to the Project. To address this increase, federal conditions set requirements for VFPA to develop GHG management plans to improve energy efficiency and reduce greenhouse gas emissions during the construction and operation of RBT2.

We have also imposed a condition requiring a Greenhouse Gas Reduction Plan, that would require the VFPA to address emissions from RBT2. The plan must include an estimation of projected GHG emissions, consideration of provincial emission reduction targets and policies such as 2030 and 2040 targets and the CleanBC Roadmap to 2030, an analysis of best available technologies to minimize GHGs with an explanation of technologies and measures implemented and not implement, and how net-zero GHG emissions will be achieved by 2050. We also set a requirement for the plan to be updated in consultation with Indigenous nations and the Climate Action Secretariat every five year.

We have considered the GHG emissions of RBT2 in the context of the CleanBC Roadmap to 2030 and government policy and are of the view that the Province's climate legislation, regulations and policies, and the implementation of a required GHG reduction plan, would ensure that RBT2 aligns with B.C.'s GHG emission targets.

### **2.4.6 CUMULATIVE EFFECTS**

We understand that during the EA, many concerns were raised about existing significant adverse cumulative effects in the Fraser River estuary and Salish Sea. We are aware that requests were made for the federal and provincial governments to conduct regional environmental assessments and develop long-term environmental management plans for the Fraser River estuary and Salish Sea to guide conservation efforts and sustainable development.

In response to these concerns, the Government of Canada and B.C. provincial ministries highlighted initiatives underway, designed to collect habitat and monitoring information and to inform management measures or to help address cumulative effects. We understand that the Province has committed to working with Indigenous, federal, and local governments to facilitate coordination between these initiatives.

### **2.4.7 OTHER CONSIDERATIONS**

The EAO highlighted additional considerations that were relevant for our decision, including the loss of resources or values in the Fraser River estuary, a culturally important, ecologically productive, and sensitive area of coastal B.C. We recognize the work ahead to support reconciliation and the ability of Indigenous nations to exercise rights and stewardship aspirations.

We also acknowledge the impact of cumulative effects in the Lower Mainland region, and the limitations of project specific EAs to respond to cumulative effects. While there is no simple solution to cumulative effects, we believe that the mitigations established for RBT2, and federal and provincial government initiatives planned or underway, will help address cumulative effects.

The EAO also noted key economic development findings from the Review Panel, highlighting that RBT2 is consistent with Canada's role as a trading nation. We have considered the projected economic benefits to Canada and B.C. that would come from an increase in terminal capacity, including direct and indirect employment opportunities, and revenue (taxes and fees). We believe RBT2 has a role to play in a supporting a strong, inclusive and sustainable economy and good jobs in B.C.

## **2.5 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 several locations in the Lower Mainland and on Vancouver Island. Following the conclusion of the Panel process, the Agency consulted with the public on materials, including supplemental information from the VFPA and draft federal conditions from December 2021 to March 2022. The EAO held a 30-day public comment period that closed in June 2023, 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 EAO's public comment period included: impacts on fish and fish habitat (including salmon), species at risk (marine and terrestrial wildlife and their habitat), human health (air quality, noise, light), socio-economic conditions, accidents and malfunctions (including potential



spills), and potential for increases to commercial vehicle traffic and traffic congestion in the region. Some commenters emphasized that the success of B.C.'s ports is essential for maintaining a competitive economy that attracts investment and generates quality employment opportunities for workers, while others expressed concerns about the potential effects from automation on local job opportunities.

These issues are reflected in the Summary Assessment Report and federal and provincial conditions are in place to mitigate adverse effects. We are of the view that meaningful public consultation was undertaken for RBT2.

## 2.6 LOCAL GOVERNMENT CONSULTATION

Local governments participated in public consultation opportunities throughout the EA process. In addition, local government staff from the City of Delta, City of Richmond, and Metro Vancouver were part of the EAO's Provincial Review Team, alongside provincial government staff. They provided technical advice to the EAO, including identifying outstanding gaps or concerns, reviewing the Panel Report, and EAO's provincial materials.

Key concerns raised by local governments included potential environmental, transportation, socioeconomic (e.g., community infrastructure and services, safety, and agricultural lands) and other impacts (such as cumulative impacts and potential hazards of impacts from accidents and malfunctions) of RBT2, including increased container rail and truck traffic through and beyond the Lower Mainland. To address these concerns, federal and provincial conditions require VFPA to prepare detailed plans to mitigate impacts from RBT2 and to avoid or respond to any accidents and malfunctions. We are aware that leadership for both Delta and Richmond have indicated they do not support RBT2 as currently proposed but understand that they will be consulted on the development of these plans. We are of the view that their concerns have been appropriately considered during the EA and will continue to contribute to related provincial and federal environmental management plans including work on cumulative effects.

## 2.7 PROVINCIAL, COMMUNITY, AND SOCIAL BENEFITS

We acknowledge that RBT2 would provide local, regional, and provincial benefits coming from an increase in terminal capacity, direct and indirect employment opportunities, and revenue (taxes and fees). As noted by the Panel, the expansion of terminal capacity is consistent with Canada's role as a trading nation. To ensure that economic benefits are shared with Indigenous Peoples, we have imposed a condition requiring an Indigenous Training, Employment and Procurement Plan.

We are aware that the VFPA entered into Mutual Benefit Agreements with 26 Indigenous nations (or groups) that would provide meaningful and tangible benefits to the signatory communities. We understand that further engagement is underway to operationalize these agreements.

## 2.8 FEDERAL MATTERS

While RBT2 requires both provincial and federal decisions, many of the residual and cumulative effects

predicted for RBT2 would be the primary jurisdiction and responsibility of Canada (e.g., fish and fish habitat, access to fishing rights, marine navigation, and underwater noise impacts to SRKW). This is reflected in the 370 conditions of the federal Decision Statement.

We are aware that the as part of the Decision Statement, the federal Minister of Environment and Climate Change determined that RBT2 is likely to cause significant adverse environmental effects. With that consideration, the Governor in Council decided that the significant adverse environmental effects that RBT2 is likely to cause are justified in the circumstances. We will continue to work with the federal government to ensure that strong protections within its jurisdiction are put in place and enforced.

We also acknowledge that Lummi Nation and Ecojustice, representing the David Suzuki Foundation, Georgia Strait Alliance, Raincoast Conservation Foundation and the Wilderness Committee, have filed applications for judicial review of the federal government's decision to approve RBT2. We have considered the timing of our decision in this regard, and have concluded that delaying it until the judicial reviews are complete would not be preferable. First, a judicial review of a federal decision does not, of course, bar us from issuing a certificate. Our decision is independent of the federal approval of the Project. Further, however, as we note above, while the Act (2002) applies to RBT2, the scope of the provincial EA is limited to matters of provincial jurisdiction, and the Act (2002) cannot be used to prohibit the development of the Project. In that context, we do not think that a delay to our decision would be of utility. We have made our decision at this time to address provincial interests, and mitigate the effects on them within our ability to do so.

### 3.0 CONCLUSION

Having regard to our responsibilities under the Act (2002), the Crown's obligations to consult and accommodate Indigenous Groups, and the scope of federal and provincial jurisdiction, we have issued an EA Certificate for RBT2. We are of the view that it is important for us to ensure that we exercise our ability to add conditions that address provincial interests. We understand the likely adverse environmental effects from RBT2 and issue this certificate to provide provincial oversight, mitigation measures, and requirements for the Project to proceed.



Honourable George Heyman  
Minister of Environment and Climate Change  
Strategy



Honourable Rob Fleming  
Minister of Transportation and Infrastructure

Signed this 28 day of September 2023