

November 21, 2018

Merle B. Jefferson, Sr.
Natural Resources Department Director
Lummi Nation

Subject: Comments received on the proposed Roberts Bank Terminal 2 Project

Dear Mr. Jefferson,

Thank you for your letter of October 3, 2018 on behalf of the Lummi Nation concerning the Environmental Impact Statement (EIS) and the Marine Shipping Addendum (MSA) for the proposed Roberts Bank Terminal 2 Project (the Project). The letter raises several matters with respect to the potential environmental effects of the Project and the environmental assessment process.

Public Participation and Consultation

The Agency maintains an Internet site that is available to the public to announce participation opportunities in federal environmental assessments taking place in Canada: <https://www.canada.ca/en/environmental-assessment-agency.html>. In addition, the Review Panel posts all documents related to the review of the Project on the Canadian Environmental Assessment Registry (the Registry) for the Project available at: <https://www.ceaa-acee.gc.ca/050/evaluations/proj/80054>, including public notices that offer opportunities to participate in the review. You are encouraged to check the Registry on a regular basis to view new information regarding the environmental assessment of the Project.

The Review Panel for the Project is responsible for gathering and reviewing the information provided by the Proponent and other participants during the course of the environmental assessment. The Review Panel is also mandated to provide opportunities for the public to comment on the information made available on the Registry, hold hearings in a manner that offers interested parties an opportunity to participate, and write a report that sets out its conclusions, rationale and recommendations to the Minister of Environment and Climate Change (the Minister). The Review Panel is required to provide a summary of the information received from participants in the Panel Report.

The duty to consult rests with the Government of Canada which relies on the review panel process established under the [Canadian Environmental Assessment Act, 2012](#) (CEAA 2012) to gather information from Indigenous groups about potential environmental effects of the Project, including information about their rights under section 35 of the *Constitution Act of 1982*, in order to fulfill the government's duty to consult.

Scope of the Assessment

How the Review Panel conducts the review is largely determined by CEAA 2012 and the Panel's [Terms of Reference](#) (Doc #176) established by the Minister, which sets out the scope of the Project, the scope of the review, the powers and duties of the Review Panel, as well as the timelines of the review. Paragraph 19(1) of CEAA 2012 sets out the factors that must be taken into account by the Review Panel in carrying

out the environmental assessment of the Project. On April 17, 2015 the Minister used her authority under Section 19(1)(j) of CEAA 2012 to amend the Review Panel's Terms of Reference to include marine shipping associated with the Project which is beyond the care and control of the Proponent and extending to the 12 nautical-mile limit of Canada's territorial sea ("marine shipping associated with the Project") as an additional factor to be considered in the environmental assessment. Including marine shipping as a factor to be considered in the environmental assessment enables the Review Panel to gather information on the potential environmental effects and make recommendations to the federal Government.

Impacts of the Terminal and Transboundary Effects

The Review Panel appreciates the information you have provided that identifies the Lummi Nation's preliminary concerns with respect to the potential environmental effects of the Project and the marine shipping associated with the Project, which includes, among other matters, transboundary effects and how those effects may impact the Lummi Nation. Your letter has been posted to the Registry and is now part of the official record for the Project. The Review Panel gives careful consideration to all submissions that are part of the record and relevant to its mandate.

The Review Panel is aware of the proximity of the Project to the Canada-United States of America (USA) international border and the potential for transboundary effects resulting from the designated Project and increased shipping associated with the Project. The Review Panel is mandated to consider environmental effects of the Project, which include, a change that may be caused to the environment that would occur outside of Canada as per section 5(1)(b) of *Canadian Environmental Assessment Act, 2012*. The Review Panel has asked a number of questions of the Proponent and government departments and agencies (Information Requests) on topics identified by the Lummi Nation, including questions on juvenile salmon, accidents and malfunctions, marine mammals, the wave environment and cumulative effects.

There are 2 documents on the registry that may assist your Nation's participation in the review: Document #934 <https://ceaa-acee.gc.ca/050/evaluations/document/117491?culture=en-CA> is a compilation of all the information that has been requested by the Review Panel as well as the Proponent Responses to date. Document #999 <https://ceaa-acee.gc.ca/050/documents/p80054/119578E.pdf> contains links to many of the resource documents and submissions.

Traditional Ecological Knowledge

The Review Panel understands that traditional ecological knowledge is held by the Indigenous peoples and communities within the area of the proposed project and its associated marine shipping. The Review Panel recognizes that each group and the circumstances which may cause an impact to a group are unique. The input of traditional ecological knowledge can strengthen the environmental assessment process and inform the Panel Report that will be submitted to the Minister. As such, the Lummi Nation is encouraged to communicate its views to the Review Panel and provide relevant information about the potential effects of the Project on current use, as well as ways to mitigate any potential effects.

The Review Panel will undertake to fulfill its mandate in three distinct stages; review the sufficiency of the EIS and MSA and its technical merit, conduct a public hearing, and prepare and submit a report to the Minister. The Review Panel is currently reviewing the EIS and MSA and requesting additional information where needed. The objective of this stage of the environmental assessment is for the Review Panel to obtain sufficient information to have meaningful discussions of the issues identified in the course of the review at a public hearing. Although traditional ecological knowledge can be brought into the environmental assessment at any time, the Review Panel would appreciate receiving any additional information not currently on the Registry that Lummi Nation may wish to provide. The Review Panel also welcomes input from the Lummi Nation regarding the information that has been submitted by the Vancouver Fraser Port Authority or any other participant in the process.

The Review Panel notes your comment with respect to valued components and cultural heritage, and the need to consider tangible and intangible cultural resources and properties in the marine shipping area. The Agency's *Technical Guidance for Assessing Physical and Cultural Heritage or Structure, Site or Thing that is of Historical, Archeological, Paleontological or Architectural Significance under CEAA 2012*¹ helps guide the Review Panel in its review of cultural and heritage resources that include, but are not limited to physical objects, sites or places and attributes (e.g. language, beliefs).

Participation in the Environmental Assessment

Finally, you requested to be designated an "interested party" and be made aware of activities relative to the environmental assessment process for the Project. The Review Panel maintains a distribution list of people who have expressed interest in participating in the environmental assessment. The Lummi Nation has been added to the distribution list for the Project and will receive updates and notifications directly from the Review Panel as the process proceeds.

The Review Panel will consider all submissions within the scope of the review, and relevant to its mandate. This can include information on your traditional activities, current use of lands and resources for traditional purposes, and cultural heritage that may be affected by the Project or the marine shipping associated with the Project, and on measures to avoid or mitigate potential adverse effects. As per article 3.8 of its Terms of Reference, the Review Panel does not have the mandate to make any conclusions or recommendations as to:

- the validity of potential or established Aboriginal or Treaty rights asserted by an Aboriginal group or the strength of such claims;
- the scope of the Crown's duty to consult an Aboriginal group;
- whether the Crown has met its respective duty to consult or accommodate in respect of rights recognized and affirmed by section 35 of the *Constitution Act, 1982*;
- whether the project would be an infringement of potential or established Aboriginal or Treaty rights; and
- any matter of Treaty interpretation (historic or modern).

¹ <https://www.canada.ca/en/environmental-assessment-agency/services/policy-guidance/technical-guidance-assessing-physical-cultural-heritage-or-structure-site-or-thing.html>

For the purpose of the public hearing the Review Panel will consider a participant to include any person who is an interested party as defined under CEAA 2012², who has already participated in the environmental assessment of the Project, and anyone who is directly affected by the marine shipping associated with the Project or has relevant information or expertise relevant to the marine shipping associated with the Project. Once the Review Panel determines it has sufficient information to proceed to the public hearing, the Review Panel will issue a Notice of Hearing³ and contact those that may wish to participate, including the Lummi Nation, announcing the timing and location(s) of the hearing sessions. The Lummi Nation will have the opportunity to register as a participant to present its views to the Review Panel at that time.

Next Steps

The Review Panel is expecting the Proponent to submit additional information in the coming month. All responses to Information Request will be made available on the Registry. Once the Review Panel receives this additional information, the Review Panel will hold a public comment period inviting comments on the Proponent's responses before determining sufficiency and proceeding to a public hearing. The Lummi Nation will be notified through the distribution list, once the timing of the public comment period is determined. Any person, group or organization potentially affected by the Project, including those located in the USA, are encouraged to participate in the environmental assessment process and make their views known to the Review Panel for its consideration.

In the meantime, I encourage the Lummi Nation to provide the Review Panel with relevant information about the potential effects of the Project and how those environmental effects may affect your traditional activities or current use of lands and resources for traditional purposes.

Please be advised that where a submission includes a link to a website, the documents accessible through that link will not be considered to form an official part of the record. Participants are encouraged to summarize the information as it relates to their own evidence.

If you have any questions regarding the environmental assessment process please do not hesitate to contact me at 1-866-582-1884 or Panel.RBT2@ceaa.gc.ca.

Sincerely,
<Original signed by>

Cindy Parker

² Interested party means any person directly affected by the carrying out of the designated project or if, in the Review Panel's opinion, the person has relevant information or expertise.

³ Notice of Hearing – A public notice issued by the Review Panel and posted on the Canadian Environmental Assessment Registry announcing the commencement of the public hearing phase of the review.

Cc. Kurt Russo, Lummi Nation
Jocelyne Beaudet, Panel Chair
David Levy, Panel Member
Douw Steyn, Panel Member
Jason Boisvert, Crown Consultation