



August 26, 2019

Ms. Jocelyne Beaudet, Panel Chair
Roberts Bank Terminal 2 Project Review Panel
Canadian Environmental Assessment Agency
160 Elgin Street, 22nd Floor
Ottawa, ON K1A 0H3

Dear Ms. Beaudet,

Re: Closing Remarks to the Review Panel on the Roberts Bank Terminal 2 Project

GCT Global Container Terminals Inc. ("GCT") provides these closing remarks in relation to the Roberts Bank Terminal 2 Project ("RBT2" or the "Project") proposed by the Vancouver Fraser Port Authority (the "VFPA" or the "Proponent"). GCT's comments relate to the significant adverse environmental effects of the Project and perspective on the types of mitigation measures, conclusions, or recommendations the Panel should consider.

In consideration of the attached submission, we are of the view that based on the current record, the Panel recommend to the Minister of Environment and Climate Change that the Project will result in significant adverse environmental effects that cannot be mitigated and are not justified in the circumstances.

GCT appreciates the opportunity to provide this submission to the Review Panel before providing its recommendations to the Minister.

Thank you for your consideration.

Sincerely,

<Original signed by>

Doron Grosman
President and Chief Executive Officer
GCT Global Container Terminals Inc.

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Executive Summary

Over 23 days of public hearings, the Review Panel heard submissions on a wide variety of environmental, community, economic, and public policy issues. The Panel also received concerns in relation to construction of the Project that will cause significant adverse environmental effects that cannot be mitigated.

GCT, leaning on its experience as a container terminal operator, developer of successful port infrastructure, and a local stakeholder, makes this concluding submission that based on the current record, the Panel recommend to the Minister of Environment and Climate Change that the Project will result in significant adverse environmental effects that cannot be mitigated and are not justified in the circumstances.

Alternatively, GCT submits the Panel not close the record and require the Proponent to obtain further information as highlighted in this submission before making recommendations to the Minister of Environment and Climate Change.

The information deficiencies include:

- lack of supporting analysis to justify the purpose of the Project;
- ongoing uncertainty of the environmental impacts of the Project, including as they relate to biofilm;
- impacts to Aboriginal and treaty rights, and their traditional uses of lands and water which can only be assessed through further consultation;
- an inadequate assessment of alternative means, including locating the Project east of the causeway to leverage existing infrastructure and minimizing the Project's footprint;
- an unknown terminal operator for the Project, and concerns regarding the implementation of appropriate operating procedures to address the environmental impacts of the project;
- uncertainty as to how the Project will be financed and its economic impact; and
- the lack of a cumulative effects study.

The lack of a proper alternative means assessment, as required by the *Canadian Environmental Assessment Act*, ("CEAA 2012"), is a critical deficiency. The Proponent, relying on outdated and incomplete information, has dismissed the possibility of construction east of the causeway, on the basis that there exists a project development prohibition due to environmental sensitivities. No such prohibition exists.

The Public Hearings, including submissions by the Department of Fisheries and Oceans ("DFO"), do not support the Proponent's position that there is a prohibition. The Proponent itself commissioned a study in 2017 which reached that same conclusion. The Proponent

withheld that study from the Review Panel, and it only came to light during the Public Hearings, when GCT was first able to share it.

The VFPA, in its conflicting roles as a permitting authority and Proponent for RBT2, has refused to explore alternative project locations east of the causeway. Contrary to CEAA 2012, the Proponent has not conducted an analysis of alternative means of carrying out the designated Project that are technically and economically feasible and the environmental effects of any such alternative means.

Introduction

The Proponent submitted the initial Roberts Bank Terminal 2 project description in 2013, so that the Canadian Environmental Assessment Agency (“CEAA”) could begin the formal review process. Indigenous groups, and impacted stakeholders, local community members, and environmental organizations have participated in this open and transparent process.

The Proponent has failed to address or develop appropriate mitigation measures for a number of concerns and issues which would cause significant adverse effects on the environment that, in the opinion of GCT, cannot be justified in the circumstances.

The Proponent must not do any act or thing in connection with the carrying out of the Project, in whole or in part, if that act or thing may cause an environment effect referred to in either subsection 5(1) or subsection 5(2) of CEAA 2012.

Recommendations

GCT asks that, based on the current record, the Panel recommend to the Minister of Environment and Climate Change that the Project not be approved due to the significant adverse environmental effects which cannot be mitigated and are not justified in the circumstances. GCT submits that this recommendation is further supported by the fact that the Project does not have an adequate or justifiable project rationale and does not meet requirements from a technical, strategic, commercial and economic perspective, amongst other facts.

Alternatively, the Panel ought not to close the record and submit a report to the Minister of Environment and Climate Change. GCT submits that instead the Panel require the Proponent to obtain further information as highlighted in this submission for the environmental assessment and, in particular, GCT suggests that prior to closing the record, the Panel:

1. Require an independent comprehensive alternative means assessment of all technically and economically feasible Projects within the Proponent’s jurisdiction.

2. Await the conclusions of the Port Modernization Review before making its recommendations to the Minister. Particularly, as it relates to the many public submissions provided on port governance.
3. Seek an opinion and input from the Competition Bureau to further understand the market conditions of west coast container trade and the economic risks associated with greater intra-port competition or require that the Proponent submit an independent report relating to competition to support its project rationale.
4. Require the Proponent to consult with local First Nations and work with existing terminal operators to conduct a comprehensive cumulative effects study (including treaty rights, biofilm, crabbing) before the Project can be approved.
5. Require the Proponent to engage in consultation with the Tsawwassen First Nation ("TFN") to assess whether there is an alternative that would likely reduce the adverse impacts on TFN's Treaty Rights.
6. Require the Proponent to meaningfully engage with the existing terminal operators in order to develop capacity, prior to beginning any construction of the Project, as per standard historic and current practice exemplified in the Port of Montreal.
7. Require the Proponent to articulate what mode of operations the terminal operator for the Project will use to operate the Project in order to properly understand the comprehensive socio-economic impacts of the Project.

Should the Panel proceed to close the record and make a recommendation to approve the Project, in addition to recommendations 1-7 above, GCT asks that the Panel make the following recommendations and suggested conditions in its report to the Minister of Environment and Climate Change:

8. Environment and Climate Change Canada ("ECCC") and DFO work with the Proponent to gather additional data to model and determine whether the Proponent's predictions and conclusions about environmental impacts of the Project are justified, particularly as they relate to biofilm.
9. DFO work with the Proponent to ensure that the boundaries and license requirements provide effective mitigation for the loss of preferred crabbing grounds in relation to TFN Treaty Rights.
10. The Proponent must require the terminal operator for the Project to negotiate the mode of their operations directly with labour in order to limit their impact on job creation.

RBT2 Project Rationale

Purpose of the Project

There are significant challenges with the Proponent's Project Rationale, particularly as it relates to container volume statistics and forecasted economic impact. The Canadian Pacific Consulting Services ("CPCS") report dated November 30, 2016 ([CEAR #1863](#)) and the Black Quay Consulting ("Black Quay") report dated January 22, 2019 ([CEAR #1856](#)) revealed contradictory container volume statistics compared to those presented by the Proponent which significantly undermines the Proponent's project rationale.

Both reports confirm there is sufficient west coast container capacity until the early or mid-2030's if the Panel is to rely upon the Proponent's base case scenario. Growth has been primarily trending at or just below the base case scenario and when we have downturns in the economy, the volumes dip below the low case scenario.

Assessing all known container capacity expansion projects on the west coast of Canada, Black Quay's report concluded that:

1. Known, announced and largely permitted projects by Dubai Ports World in Prince Rupert and Vancouver and GCT projects in the Port of Vancouver deliver plenty of container capacity to early 2030s should the container growth rate maintain the trajectory along the VFPA's base case forecast scenario;
2. In order to maintain capacity utilization at or below 85 percent, new capacity on the west coast will only be needed in the early 2030s; and
3. Under a low trade growth scenario, neither RBT2 nor an expansion of Deltaport is required until after 2050.

The Proponent disputed these numbers by pointing to uncertainties regarding expansion at GCT Vanterm and alleged changes in the Prince Rupert Port Authority's expansion plans that are misleading. GCT is unsure why the Proponent would question GCT Vanterm expansion as we are jointly actively working on the project, [it was publicly announced](#), and a number of project related equipment has already arrived or been ordered.

The Proponent's project rationale claims that approval of RBT2 and its operation by a new terminal operator will provide additional competition in the marine shipping industry and create economic opportunities. However, the evidence demonstrates that the project will make the Port of Vancouver less competitive. For example, the necessary rents required to support a \$3B greenfield project without a very large tax payer subsidy, will actually

increase costs to shippers and make the Port of Vancouver less cost competitive on a global scale.¹

Musqueam Indian Band, Semiahmoo First Nation, T'Sou-ke First Nation, key stakeholders and community members such as the City of Delta, ILWU, Against Port Expansion, Roger Emsley, Bird Studies Canada, David Jones and Don Paulson, all raised similar concerns regarding the purpose and appropriateness of the Project throughout the CEAA Hearings.

These issues regarding project purpose are especially concerning in the context of the unknown terminal operator; with questions remaining regarding the implementation of appropriate operating procedures to address the environmental effects of the Project.

Market Conditions

GCT's previous comments about the dangers of overcapacity should be considered by the Panel when making its recommendations to the Minister. The negative economic impacts of intra-port competition remain and will threaten the viability of the west coast supply chain.

Examples from other jurisdictions show that overcapacity has the potential to result in terminal closures and underinvestment in terminal facilities. For example, poor capacity utilization has been reported as contributing to the 2016 bankruptcy of a terminal operator and subsequent terminal closure in Oakland. The Zeebrugge International Port container terminal of PSA in Western Europe was also temporarily halted for the same reason and Terminal 5 in Seattle sits furloughed.

The CPCS report, Port Performance and Terminal Operator Number ([CEAR #1855](#)), challenges the validity of the Proponent's view that port performance is enhanced through increasing the number of operators. Regardless of the size of fragmentation, the CPCS report concluded that there was no established correlation between port performance and the number of terminal operators.

A smart, phased approach that expands existing terminal footprints over time can provide the right type of port capacity at the right time. The cost of building a large greenfield project carries significant risk to the Canadian taxpayer and is an unnecessary risk given the container volume statistics presented in the report by Black Quay and CPCS. The Proponent itself conceded that "*a large influx of container capacity does present the risk of driving down handling rates below sustainable levels.*" Undertaking #51 ([CEAR #1932](#))

¹ Exhibit 39 - Document presented by GCT Global Container Terminals on May 31, 2019 - CPCS Assessment of Policy Options to Satisfy Canadian West Coast Container Port Capacity Needs (CEAR #1863)

The Proponent's Project Rationale ([CEAR #1341](#)) claims that *"... expanding Deltaport would mean one terminal operator would control a significant majority of the market for container terminal services. Healthy competition is necessary to ensure users continue to pay reasonable rates for reliable service."* The Proponent's conclusion was made with no evidence to support this claim.

In fact, evidence would suggest that healthy competition exists, and existing terminal operators have been very successful attracting new business and winning market share from other North American ports.

GCT also calls into question the appropriateness of building a project that requires the Proponent to *"manage the downward pressure on throughput rates"*² inevitably created by the Project.

GCT submits that the Proponent should engage with the existing terminal operators to assess the need for capacity and the available options to develop the capacity for the Port of Vancouver, prior to beginning any construction of the Project. This would be consistent with standard historic and current industry practice, exemplified most recently in the Ports of Prince Rupert and Montreal.

Intra-Port Competition

The trend of consolidation and vessel upsizing GCT presented during the May 30 CEEA Hearings is changing the character of competition in the industry and calls into question the Proponents arguments. This was also highlighted by Organization for Economic Co-operation and Development (OECD) report which indicated: *"Ports with three terminals and calls from three alliances can find themselves confronted with three alliances that predominantly use two terminals. Other ports might have two terminal operators that will have to deal with cargo from three alliances. Often the outcome of such dynamics is a "winner takes all" phenomenon, where one terminal is over-utilised whereas the competing terminals will be underutilised."*³

GCT submits that the Panel seek an opinion and input from the Competition Bureau to further understand the market conditions of west coast container trade and the economic risks associated with greater intra-port competition.

Feasibility of the Project

² Exhibit 51 - Response to Exhibits 38, 39, 40, and 41 from GCT Global Container Terminals (CEAR #1932)

³ The Impact of Alliances in Container Shipping, International Transport Forum, OECD/ITF 2018, page 63

The common aspect across all possible financial structures presented by the Proponent is that the Project will require a large federal subsidy and/or tax payer support to make the commercial structure viable.

In Undertaking No. 6 ([CEAR #1835](#)), the Proponent presented numerous alternative commercial structures, however, they have presented no evidence that the Project is commercially viable. Nor have they presented any structure that can be privately financed without a very large government guarantee or subsidy.

At the CEA Hearing on May 16, 2019, Mr. Cliff Stewart confirmed that no funding has been secured.

THE CHAIRPERSON: I have a question for the proponent. Are there any funds for this project taken from the infrastructure fund?

MR. STEWART: There are -- you've asked us to provide you with a funding layout, which we're working on. There are not at this point any funds source -- funding sources approved or finalized, including the CIB or any other lender. ([CEAR #1755](#), page 532)

When the Proponent labels capital as coming from "Infrastructure Developer", that capital must be supported by either an implicit or explicit federal guarantee or other form of tax-payer support. The "Infrastructure Developer Capital", while coming from private markets, depends upon federal/taxpayer guarantees and thus is effectively subsidized capital.

To date, the Proponent has spent ~\$200M+ on RBT2, which is being subsidized by the current terminal operators in the Proponent's jurisdiction across all terminals and commodities.

In the capital allocation noted in Undertaking #6, Table UT6-1 (Structure #10) ([CEAR #1835](#)), the Proponent identifies 10-30% of the capital coming from the Proponent, which as we noted, is effectively taxpayer capital since they are an agency of the federal government. In addition to the "VFPA Capital", it should be noted that "Infrastructure Developer Capital", is proposed as 45-65%, so in sum, in example Undertaking #6 (Structure #10) ([CEAR #1835](#)), 55-95% of the capital allocation depends either directly or indirectly upon tax payer/federal government guarantee or subsidy.

Referring to Build-Operate-Transfer (BOT) Structure #12, up to 100% of the capital allocation is either from the Proponent or dependent upon tax payer/federal government guarantees.

RBT2 or any new container capacity being delivered on the West Coast needs to be cost effective to preserve the existing competitive cost differential that Canadian terminal operators and railways can offer when compared to other continental ports.

This cost differential was referenced by Mr. Stewart in the Panel proceedings. GCT would ask that the Panel strongly consider that context and the socio-economic impacts of the Project. The stated expected cost would likely make RBT2 the most expensive new container capacity ever built in North America – and well out of line with previous and current expansions at the Port of Prince Rupert or the Port of Montréal that range in the \$400-750 per TEU of capacity.

To date, the Proponent has failed to secure a terminal operator for the Project. Originally, the Proponent publicly announced that a terminal operator procurement process was to conclude in the fall of 2016. Previous attempts by the Proponent in the mid-2000's to secure a terminal operator for the then proposed RBT2 also failed.

The Proponent's inability to secure a terminal operator raises significant doubts as to the Project's commercial viability. It suggests that the other experienced terminal operators who participated in the Proponent's procurement process may not have been convinced that RBT2 can provide financial rates of return to support sustainable operations at competitive prices which will keep the Proponent the preferred destination for discretionary inland cargo.

Sufficiency of Information and Alternative Means

The Proponent has not conducted a sufficient analysis on the alternative means of carrying out the Project that are technically and economically feasible and the environmental effects of any such alternative means.

Development into the E1 Area

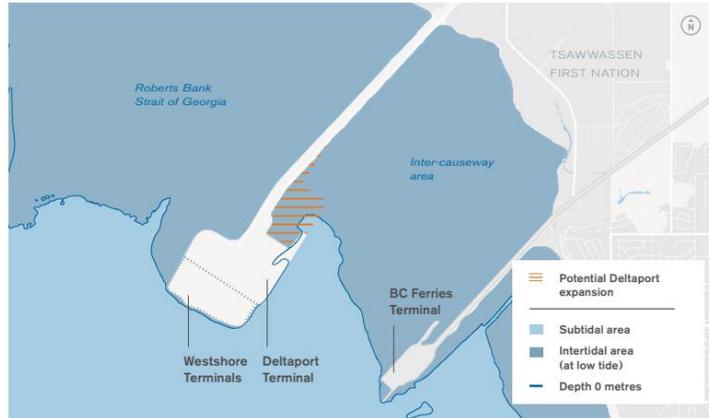
The lack of consideration of expansion into the east of the causeway area (the "E1 area") is well documented on the record ([CEAR #1839](#)). The Proponent's position is that locating the Project in the E1 area was not a technically and economically feasible alternative means of carrying out the Project because of two reasons:

*"At Roberts Bank, expanding the existing Deltaport container terminal is not an option for two main reasons. First, Fisheries and Oceans Canada **has prohibited** further land reclamation inland from Deltaport, due to environmental sensitivity.⁴ The graphic below shows how further expansion at Deltaport would have to be*

⁴ The "prohibition" refers to an April 23, 2003 letter from DFO to the Proponent (the "2003 DFO Letter").

built almost entirely in the sensitive intertidal habitat within the inter-causeway area. Second, expanding Deltaport would mean one terminal operator would control a significant majority of the market for container terminal services." ([CEAR #1341](#), page 21)

Figure 3 Existing terminals and area of environmental sensitivity



(Figure from October 2018, *Updated RBT2 Project Overview and Rationale*, dismissing East Causeway development)

As described, the Proponent's assertions are false and misleading and were relied upon to summarily dismiss an alternative means of carrying out the Project's purpose. This has meant the dismissal of an alternative terminal location which could meet the Project's object and purpose and:

- (a) be completed with a smaller total footprint;
- (b) developed incrementally, and timed to meet demand as it actually arises;
- (c) be completed at less cost; and
- (d) potentially lower environmental effects.

Important and Relevant Information Relating to East Causeway Development

On May 31, 2019, GCT filed with the Review Panel the Hemmera "Summary Review of Regulatory Considerations regarding East Causeway Development" ([CEAR #1864](#)). The Proponent withheld this relevant report and it should have been shared prior to the public hearing to determine the sufficiency of the alternative means assessment. GCT provided the report to the Review Panel, and the public, as soon as it was able to do so:

DORON GROSMAN (GCT): The VFPA retained Hemmera, in the context of a non-disclosure agreement between the VFPA and GCT, sharing information relating to the proposed DP4 project. The non-disclosure agreement expired yesterday on May 30th. GCT was not permitted to share this Hemmera report until today, in light of that non-disclosure agreement which has now expired. I'm pleased that we were able to share the Hemmera report today

because it is an important information for this Panel to consider. In particular, considering whether there are economic and technically feasible alternative means, and whether the VFPA has undertaken an appropriate alternative means assessment. ([CEAR 1859](#), page 3818)

The Hemmera Report addresses and contradicts the Proponent's assertion that there exists a "prohibition" on development east of the causeway:

It is our opinion that DFO's use of "critical fish habitat" in written correspondence was deliberately undefined for the purposes of strategic ambiguity. The critical value habitat that DFO alluded to in correspondence was repeatedly referred to during meetings between Vancouver Port Authority and DFO as the eelgrass habitat within the inter-causeway area. As such, it is our opinion that the decision by DFO not to name eelgrass habitat specifically as critical was most likely influenced by the fact that for Deltaport Third Berth to proceed, eelgrass habitat would be displaced. The DFO Letter's undefined 'critical habitat' therefore enabled DFO to reject some terminal layout options in the inter-causeway outright (such as Container Terminal 2), while preserving their ability to provide an Authorization for other projects they deemed suitable in the same area (such as Deltaport Third Berth). This approach also preserved the integrity of Fisheries Act Authorizations issued previously for projects in the area displacing eelgrass habitat. ([CEAR #1864](#), page 8)

As Hemmera notes, Deltaport Third Berth was indeed constructed within the E1 area, notwithstanding the 2003 DFO Letter. That alone evidences that alternate configurations within the E1 area are possible, and ought to have been adequately investigated by the Proponent.

Furthermore, the Proponent's reliance on a 2003 letter ignores the substantial legislative and regulatory changes since 2003, including amendments to the *Fisheries Act*. By conveniently relying on outdated feedback by regulators, the Proponent failed to conduct a sufficient risk analysis, as highlighted at the May 31, 2019 Hearings:

MEMBER STEYN: Would you include regulatory risk in such an analysis?

SHARON SINGH: The response is very simple. Yes, a risk analysis would include regulatory risk. It would do so in consideration of the legislation that is in place at the time, the policies in place at the time and future risk in terms of regulatory framework that is impending. So it wouldn't look at, in my experience and in the experience of GCT, something from 10 or further years ago. It would include relevant current and upcoming knowledge that would be relevant.

MEMBER STEYN: So effectively, since the proponent has indicated they moved away from that as an alternative means because of what I interpreted to be regulatory risk, you're saying that your calculation of regulatory risk would be different than theirs.

MS. SINGH: Sharon Singh. Dr. Steyn, I would say this, and if I can characterize it correctly, we're talking about the Roberts Bank Terminal 2 Project and if we're to take any other project that we would be submitting as part of an Environmental Impact Statement or entering a CEAA process of any sort, you would look at as part of leading up to any submission the regulatory risk in place at the time and any historical knowledge, but you would also update that knowledge. And hindsight is a great thing, but I understand that when I say this. However, in my experience, clients and proponents typically rely upon current knowledge as well and they also look at policies that are coming in place to give an overall holistic picture to the regulatory risk rather than just historical. So I understand that proponents have had discussions in the past. But as you are well aware and you've raised this previously, that things do change and with that our information is gathered, studies are conducted, the regulators themselves in this forum, if we're talking about this project, have confirmed that there have been a lot of changes since 2003 leading up to 2010, 2011, 2012. The Fisheries Act wasn't sprung on us in 2013. It was discussed quite before that time as well. So I understand what you're asking. I hope I'm answering that question. And I'm not saying that you would dismiss historical feedback that you would get from regulators, but you would add to that current feedback and you would add to that upcoming regulatory changes as well. That's based on my experience. ([CEAR #1859](#), page 3837)

The Proponent must comprehensively assess all technically and economically feasible alternative means of delivering the Project within the Proponent's jurisdiction to meet the Project's stated purpose, prior to closing the record for the environmental assessment and preparing and submitting a report to the Minister.

Comments by the Department of Fisheries and Oceans

Expansion Along the East Side of the Causeway

GCT contends that development in the E1 Area east of the causeway was not sufficiently explored by the Proponent and recommends the Panel direct an independent comprehensive alternative means assessment of all technically and economically feasible projects within the Proponent's jurisdiction.

During the May 31, 2019 hearings, the Proponent reiterated its assertion that the 2003 DFO letter "prohibited" them from exploring expansion into the E1 area.

DFO, however, affirmed that there is no blanket prohibition on expansion along the east side of the Roberts Bank causeway and that the 2003 letter continually referenced by the Proponent provided feedback to a project that was larger in size and scope. In addition, the feedback was provided under a different legislative and regulatory framework at that time. ([CEAR #1859](#), page 3843)

Specifically, the Department of Fisheries and Oceans stated at the May 22, 2019 Review Panel hearing ([CEAR #1797](#)):

PANEL MEMBER LEVY: Okay. Given that the world has changed a lot since 2003, we have a new habitat policy, we have a new Fisheries Act that's in front of the Senate right now, is it still DFO's position that development in the inter-causeway would be unacceptable?

MR. MAGNAN (DFO): And again, I just want to reference that the letter indicated that particular project based on a footprint and a time and a review, the legislation then, that development would not have been approved or issued an authorization. The letter was not meant to indicate that there was any kind of blanket statement in terms of any development in that area. It was very specific to that project. So -- and again, each project is weighed and based on the application received, the current legislation and the current policies. So in future, should a project come in, DFO will review the application and make a decision based on the information that's presented to us.

Since 2003, the Proponent has not provided evidence of any additional studies on the viability of expansion east of the causeway.

Further Review of Alternative Means and Project Design

Further evidence of the need for alternative means was presented by DFO on May 22, 2019 where DFO agreed that a change in footprint would be necessary to provide an authorization.

MEMBER LEVY: Are the -- is the offsetting commensurate with the magnitude of the loss in habitat productivity?

MR. MAGNAN: Okay, good. Al Magnan again. Based -- and again, as described in our previous presentation, it's DFO's opinion at this time, based on the uncertainty and with the model, the EwE model, and the type and size of offsetting proposed, that **based on this information today, it's our opinion that there would be either need for reduction in the footprint** or an increase in size and type of

offsetting in order to ensure we met our policy objectives as part of issuing a Fisheries Act authorization. ([CEAR #1797](#), page 1599)

Comments by Environment and Climate Change Canada

Environment and Climate Change Canada (“ECCC”) continues to highlight that the Proponent's modeling was incorrect. In Undertaking #41 the ECCC recommended that more than one year of meteorology be used to permit a comprehensive determination of model bias as outlined in ECCC’s written submission. ([CEAR #1969](#))

ECCC continues to recommend that more than one year of meteorology be used to permit a comprehensive determination of model bias as outlined in ECCC’s written submission ([CEAR #1637](#))

In Undertaking #29, ECCC provided further evidence that the construction of the Project would negatively impact the biofilm on mudflats where a salinity-associated trigger is either naturally absent. This environmental impact cannot be mitigated and, contrary to the assertions of the Proponent, the Project would significantly interfere with the production of lipid-rich marine diatoms required by Western Sandpipers during northward migration to the breeding grounds.

*“Predicted changes due to the Project includes a substantial change in the salinity regime at Roberts Bank, particularly in those areas of highest importance to shorebirds. **These changes are not minor, and would result in an overall regime shift in salinity across the intertidal areas...**”* ([CEAR #1947](#))

Subsequently after being asked by the Panel to further analyze the Proponent's research and positions taken, ECCC submitted a Undertaking #29 to the RBT2 Panel in June 2019 that states: *“In summary, ECCC maintains that only intertidal mudflats in a more natural estuarine condition within the Fraser River Estuary and delta are able to provide Western Sandpipers with the essential nutrients they require during northward migration. The inference from current patterns of usage is that biofilm on mudflats where a salinity-associated trigger is either naturally absent (Boundary Bay) or removed by modified hydrological regimes (Sturgeon Bank), such as predicted to result from RBT2, cannot provide the lipid-rich marine diatoms required by Western Sandpipers during northward migration to the breeding grounds.”* ([CEAR #1947](#))

Comments from Blair Hammond of ECCC on May 31, 2019 also support the recommendation for a further review of alternative means or design of the Project *“...what we're looking for is a project redesign that would not result in those geomorphological processes being altered, in a way that's going to affect the biofilm and present that risk to shorebirds.”* ([CEAR #1859](#), page 3843)

It is important to note that no relevant amounts of biofilm are identified on the east side of the causeway in the E1 area, yet the Proponent completely failed to consider expansion in that area. An alternate means assessment should include an assessment of the impacts of biofilm as it relates to the Project and any alternatives to the Project, including those on the east side of the causeway.

At this advanced stage of the planning process, more detailed and updated mitigation plans may be warranted. For example, deficient mitigation measures identified by Environment and Climate Change Canada ([CEAR #581](#)) in relation to potential changes to biofilm assemblage composition were never fully rectified and a suitable alternative was not offered by the Proponent. ECCC indicates that any changes to salinity would affect shorebirds and could never be mitigated and, therefore, GCT suggests that the Proponent consider construction location alternatives. ECCC advises that *“the proposed follow-up monitoring, and adaptive mitigation are not credible given that no method currently exists to mitigate the changes in biofilm which would likely be immediate and irreversible”*.

ECCC contradicted the Proponent's assertion that the marshes have expanded – stating that marshes had actually declined. *“And our data indicates marshes have indeed receded between 1989 and 2011, which **does not agree with the proponent's view** that marshes on Sturgeons Bank and Roberts Bank have expanded.”* ([CEAR #1812](#), page 2169)

The ECCC position regarding western sandpipers and shorebirds stated at the public hearing was: *“ECC maintains that predicted project-induced changes to Roberts Bank constitute an unmitigable species-level risk to western sandpipers, and shorebirds more generally, due to the predicted disruption to the salinity regime that supports fatty acid production from biofilm.”*

*“Continuing with the offsetting conversation and mitigating, **it is not technically feasible, in our view, to re-create shallow subtidal sand flat habitats**, and offsetting measures other than like for like would need to be considered to address residual effects. And there's insufficient supporting scientific and technical information to demonstrate that offsetting for intertidal mud flat habitat can result in conditions that will support biofilm of the type important to western sandpipers and other shore birds.”* ([CEAR #1807](#), page 2171)

Dr. Peter Beninger of B.C. Nature also supported ECCC's comments and raised concerns about the modeling and conclusions drawn by the Proponent, noting it lacked context: *“From a scientific point of view, the 2019 Proponent Biofilm report cannot be used as evidence in support of proceeding with RBT2.”* ([CEAR #1818](#), page 2791)

Further studies are required to correctly model the environmental impacts of the Project, particularly as they relate to biofilm.

Impacts Upon Indigenous Groups

The impacts of the Project on the habitat are extensive, particularly as they relate to crabbing, biofilm and eelgrass.

On June 24, 2019, the Musqueam Indian Band outlined concerns related to the impact of the Project on fishing and crabbing areas. *"...the direct impacts on Musqueam's rights space uses in that area is the causeway and terminal footprint itself is 180 hectares, permanent destruction of that existing marine environment at Roberts Bank. During the six years of construction, an area -- and this is including the 130-hectare terminal area, of 480 hectares navigation closure area for commercial crabbing."* ([CEAR #1975](#))

In Undertaking #68, the Musqueam Indian Band confirmed that the fishing and crabbing areas depicted in the Figure 2 map are still in use and are anticipated to be used into the foreseeable future unless adversely impacted or displaced by the Proposed Project and/or related industrial activities. ([CEAR #1985](#))

- The utilization of these areas by FSC fishermen exceeds 90% and these areas account for 25 to 75% of fishermen's total harvest (depending upon the fishermen)
- High quality habitat and a preferred FSC crab fishing area will be permanently lost within Terminal 2 footprint area.
- Additional measures are required to offset and mitigate the loss of FSC crab fishing area (i.e., Terminal 2) and ensure availability to the resource, without competition with the commercial fishery.

Tsawwassen First Nation also had similar concerns related to traditional crab harvesting and the navigational closure area, which was referenced multiple times most recently in their August 15, 2019 submission ([CEAR #1639](#)) where they stated that *"Reduced access to crab on top of the diminishing access to salmon would have serious impacts on our nation."* ([CEAR #1860](#), page 3950)

TFN does not believe that the proponent has given an adequate reason for not assessing an alternative that would likely reduce the adverse impacts on TFN's Treaty rights. ([CEAR #1860](#), page 3952)

TFN also has significant concerns about the Project's negative impact on crab and crab habitat. *"Based on our independent crab study, we believe that the project will cause a net loss of optimal and accessible crab fishing area."* ([CEAR #1860](#), page 3954)

"The quality of crab harvesting experience in the local assessment area is clearly impacted by competition with the commercial fishery and constraints imposed from federal regulations/Harvest Document conditions. If a FSC crabber follows the two-float Harvest Document requirement in the current NCA, they increase the risk of losing gear, time, and food

fish while also having a reduced fishing area with the current NCA; or if they use the one-float method or the no float method in the current NCA, they increase the risk of non-compliance with Harvest Document requirements, resulting in financial fines, gear loss, and food fish loss.” Undertaking #17 ([CEAR #1890](#))

“TFN is not satisfied that the full range of alternative means have been sufficiently analysed, including the use of uplands adjacent to the existing terminals to construct a facility for container storage and sorting that would reduce the project footprint in the intertidal zone.” ([CEAR #1639](#))

GCT, through ongoing discussions with TFN, engaged PGL Consultants who produced a report showing RBT2 would also result in a closure/no float area of ~232ha and temporary additional closure of 120ha during the five-year construction period. ([CEAR #1865](#))

Given these considerations, GCT believes that further consultation by the Proponent and input from DFO is required to ensure that the boundaries and licence requirements provide effective mitigation for the loss of preferred crabbing grounds.

The Proponent should work with local Indigenous groups and existing terminal operators to conduct a comprehensive cumulative effects study before further projects at Roberts Bank or in the Salish Sea are approved or advanced.

Impacts Upon Labour

The Proponent cannot sufficiently assess its impact on labour or advertise job numbers without a reliable terminal operator and a defined mode of operation for the Project.

On May 16, 2019, Tom Doron of ILWU expressed this concern with the impact of the project on labour indicating *“...we believe that the net economic impact of this project has not been adequately addressed or assessed, particularly as it relates to the impact of automation on our industry and our communities”* and *“the Proponent boldly states that its newly built project will feature state-of-the-art automation...”* ([CEAR #1755](#))

At the CEAA Hearings on May 16, 2019, Mr. Cliff Stewart suggested there is no difference in the labour between automated and fully manual:

THE CHAIRPERSON: To what extent T2 will be automated? Is it as you just presented with you'll have full automation for loading and unloading ships, I would presume, and the transfer of containers, possibly?

MR. STEWART: I think what we learned from Rotterdam is that on the loading and unloading of ships, the labour -- for fully automated and fully manual,

there's no difference in the labour. So it's -- the answer is it doesn't matter from a labour perspective. ([CEAR#1755](#), page 409)

We challenge the above statement and contend that there is very much a *difference in the labour*. Before approval of the Project, the Proponent should define the mode of operation and negotiate with labour to fully understand the impact of automation on the labour force before the Project can proceed.

We concur with the recommendations of ILWU that the Proponent "*require these companies to negotiate the mode of their operations to ensure tax dollars do not fund the indiscriminate destruction of middle-class employment.*" ([CEAR #1755](#), page 519)

Selection of Terminal Operator

Most recently, on May 16th, 2019, the Proponent confirmed that they have yet to identify a terminal operator.

Because the RBT2 terminal operator has not been publicly identified, GCT has specific questions about the reality and enforceability of the Proponent's full environmental mitigation approach. The selection of a terminal operator is a critical component with the ability to positively or negatively affect the cumulative environmental and community impacts of the RBT2. There is an expectation from the community, Indigenous groups and other stakeholders that RBT2 meet and exceed specific environmental standards.

It is not clear that the Proponent can meet or exceed these specific environmental standards without the terminal operator being identified and fully integrated in a comprehensive assessment.

Port Modernization Review

In March of 2018, Minister Garneau announced a ports modernization review to help shape the future of Canada's port system. The review focuses on how ports can best advance five key objectives:

- Supporting the competitiveness of Canada's economy by facilitating the movement of goods and passengers
- Strengthening relationships with Indigenous peoples and local communities
- Promoting environmentally sustainable infrastructure and operations
- Enhancing port safety and security

- Optimizing governance and accountability, including with respect to financial management

As it was presented in the Environmental Impact Statement and various submissions during the hearings, it is evident that Proponent will act as a permitting authority for RBT2 while it is also a project proponent. GCT presented on May 31, 2019 ([CEAR #1839](#)) that the Proponent has failed to undertake a comprehensive alternative means assessment and excluded certain information in the interest of advancing its own project. This has exposed an inherent conflict of interest that exists under the current governance model for port authorities.

As such, GCT is supportive of the Port Modernization Review to decouple the current conflicted governance model of port authorities.

As outlined in the submission to the Port Modernization Review, GCT strongly encourages the activation a national review of port competitiveness to ensure that the Proponent's methodologies and preference for baring or allowing terminal operators are serving Canada's national interest and providing desired benefits to both government and industry partners.

The Proponent has used its position as a landlord and the primary regulator of GCT to act as a competitor by advancing this Project and stalling others. This creates an undeniable competitive relationship between the Proponent and GCT. This is relevant to the issue raised before this Panel about the conflicting roles of the Proponent and sufficiency of an alternative means analysis.

GCT recommends the Panel consider the intentions outlined by the Minister of Transport in the Port Modernization Review and the many public submissions provided on the issue of port governance before making their recommendations to the Minister.

About GCT Global Container Terminals Inc.

Established in Vancouver in 1907, GCT is a majority Canadian-owned company with three major institutional investor shareholders, namely the Ontario Teachers' Pension Plan (OTPP), British Columbia Investment Management Corporation (BCI) and IFM Investors (IFM). With a combined portfolio value of \$361 billion, our shareholders are long-term, experienced infrastructure investors committed to GCT and the overall growth of the trade infrastructure sector. The Canadian shareholders in particular support nearly one million Canadian public sector employees and retirees who are members of these two plans.

Our two West Coast terminals provide customers and ocean carriers with reliable and convenient access to all the major Asia-Pacific trade lanes. Beyond operating these

facilities, GCT Canada has also played a major role in developing Canada's Pacific Gateway and is currently the largest maritime employer in Canada.

GCT Deltaport first opened on the Roberts Bank peninsula in 1997 as a two-berth container terminal operating on Pod 4 at the site. Increased volume subsequently necessitated expansion to Pod 3 in 2003, and development of the GCT Deltaport Third Berth (DP3) on Pod 5 in 2010. The existing facility consists of a three-berth, 85-hectare (ha) site and is today operating with an annual capacity of 1.8+ million Twenty-Foot-Equivalent Units (TEUs) which will grow to 2.4 million TEU by 2022 upon completion of the Intermodal Yard Reconfiguration Project as part of the Deltaport Terminal, Road and Rail Improvement Project (DTRRIP).

Today, GCT plays a critical role in meeting Canada's container traffic needs in a highly competitive marketplace through its strategic, efficient, and continued deployment of capital, expertise and operational resources. Furthermore, through our operations on the West and East Coasts of North America, GCT is actively engaged with the majority of the top 20 container ocean carriers and has an advanced understanding of customer needs today and in the future.

GCT's high standards, customer focus, leadership in safety and innovation have led to stable, long-term relationships with the majority of the world's largest carriers. All three of GCT's shareholders are signatories to the United Nations Principles for Responsible Investment (UN PRI). As signatories, OTPP, IFM, and BCI each adhere to responsible investing principles that consider environmental, social, and governance factors in all portfolio companies, as reflected in their investment and strong support of GCT.

In 2014, GCT joined Green Marine, a voluntary, environmental certification program for the North American Marine Industry. As a participant, GCT has individually certified its facilities with a commitment to strengthen the North American marine sector's environmental performance through continuous improvement, stronger relations with stakeholders, and increased overall awareness of the marine industry's activities and environmental benefits.

In 2018, GCT Canada became a Climate Smart certified business - a greenhouse gas emission (GHG) reduction program. Results showed that from 2014-2017, GCT achieved a 5.9% emissions reduction per 1,000 TEUs, even as our volumes grew by 6.1% during the same period. As the largest tenant in the Port of Vancouver, we have committed to multi-year recertification, enabling us to not only train our staff through the program and track our emissions, but also set targets for continued emissions reduction.

To review GCT's environmental performance please refer to <https://green-marine.org/> and <https://climatesmartbusiness.com>.

For further information on GCT's history, ownership, leadership team, and operations please see www.globalterminals.com.