



## HWLITSUM FIRST NATION

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**VIA SUBMISSION UPLOAD:**  
[iaac-aeic.gc.ca/050/evaluations/proj/80054](http://iaac-aeic.gc.ca/050/evaluations/proj/80054)

Impact Assessment Agency of Canada  
160 Elgin Street, 22<sup>nd</sup> Floor  
Ottawa, Ontario  
K1A 0H3

Dear Sirs/Madams

**RE: Robert Bank Terminal 2 Expansion Project**

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The Vancouver Fraser Port Authority (hereinafter the “VFPA”) is proposing to expand its operations by constructing a new three-berth marine container terminal located at Roberts Bank in Delta, British Columbia known as the “RBT 2 Expansion Project”.

We request that the Impact Assessment Agency of Canada (the “IAAC” or the “Agency”) reject any approvals required for the RBT 2 Expansion Project as this project will have adverse residual and cumulative effects to the environment and the people of Hwlitsum First Nation.

The RBT 2 Expansion Project would negatively impact the already delicate ecosystem in the area because this particular project would be built next to the existing Deltaport and Westshore Terminals and because this project will increase traffic by moving and shipping the equivalent of another 2.4 million twenty-foot containers per year throughout this sensitive ecosystem.

Since time immemorial, the people of Hwlitsum First Nation have lived and exercised our Aboriginal rights at Canoe Pass. We have and continue to live off the land at Canoe Pass, however, our way of life continues to be eroded and impacted because of all of the current and historical industrial and residential developments that have taken place over the years in our traditional homeland.

The Impact Assessment Agency of Canada (previously the Canadian Environmental Assessment Agency) (the “IAAC” or the “Agency”) implements and manages projects pursuant to the *Impact Assessment Act*<sup>1</sup>. The Government of Canada which includes the IAAC has committed to bring all Canadian laws including the *Impact Assessment Act* in compliance with the United Nation’s

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<sup>1</sup> *Impact Assessment Act*, S.C.. 2019, c. 28, s. 1 [hereinafter the “*Impact Assessment Act*”]



## **Hwilitsum First Nation**

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Declaration on the Rights of Indigenous Peoples (“UNDRIP” or the “UN Declaration”). As a result, Canada is committed to ensuring that all of its departments including the IAAC meaningfully consults, engage, involves and partners with Indigenous Peoples during all phases of federal environmental assessments.

Over the past eight years, the RBT 2 Expansion Project has undergone an environmental assessment by a federally appointed independent review panel. The independent review panel record closed in early August 2019 and because of this review, in August of 2020, the Minister of Environment and Climate Change required the VFPA to provide more information regarding VFPA’s proposed mitigation measures for the RBT 2 Expansion Project. The VFPA responded by claiming that their response was developed based on relevant government policies, the *Impact Assessment Act* and consultation with Indigenous groups and other federal agencies.

The VFPA claims to have consulted with Indigenous groups, however, the VFPA have not consulted with the people of Hwilitsum First Nation.

The VFPA has stated that over the past year, the VFPA “have taken a reiterative aspect approach to consultation with Indigenous groups on the development of our [its] responses” to the Minister’s information requests. However, how can the VFPA make such a claim when the VFPA has failed to adequately consult with all Indigenous People which includes the Hwilitsum First Nation.

The VFPA have failed to adequately consult with the Hwilitsum First Nation, notwithstanding that Canada states that its laws will be brought in line with the UN Declaration which requires adequate consultation with Indigenous People like Hwilitsum First Nation.

We are in an era of Truth and Reconciliation with Indigenous People. Canada cannot claim to have meaningful Reconciliation without the Truth. The reality or Truth of the matter is that not only has the VFPA failed to consult with the people of Hwilitsum First Nation, the science VFPA has included and in their response to the Minister’s information request is reflective of a modern-day baseline that totally disregards the cumulative effects to date of the many major projects developed on Lower Fraser River Estuary over the past 100 years. Many recent developments like the George Massey Tunnel, the Tsawwassen B.C. Ferry Terminal, Roberts Bank Terminal and the Dykes and Treated Sewage all have had a dramatic effect on the marine habitat and our Aboriginal rights.

Canada has stated that all departments including the IAAC are committed to implementing the objectives of the UN Declaration and that Canada seeks to work with Indigenous People in a way that advances reconciliation, respects the rights and culture of Indigenous People, and protects and ensures consideration of Indigenous knowledge prior to the approval of any further developments in the Lower Fraser River. However, if the Canada’s Crown consultation activities regarding the impact assessment process is guided by the principle of the Honour of the Crown and the objective of reconciliation with Indigenous People, how can VFPA proceed without consulting with Hwilitsum First Nation.

The Crown has a legal duty to consult with Indigenous Peoples as part of the impact assessment process while ensuring respect and protection of the Aboriginal rights of the Indigenous Peoples as recognized and affirmed in Section 35 of the *Constitution Act*, 1982. However, the failure of the VFPA to meet the mandates of the Canada’s duty to consult with all Indigenous Peoples is another example of the failure by Canada to advance reconciliation, while respecting the rights and culture

## **Hwlitsum First Nation**

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of all Indigenous People. The IAAC has also failed to uphold the “honour of the Crown” by omitting the Hwlitsum First Nation from the list of First Nations that are owed a duty to be consulted.

The Hwlitsum First Nation was an active participant in the consultation process with the Canadian Environmental Assessment Agency including submitting closing remarks in a letter dated August 26, 2019, to the Canadian Environmental Assessment Agency on this project. However, since 2019 when the IAAC was created, the Hwlitsum First Nation has not been included in the consultation process and this is not acceptable nor is it correct in law.

The developments to date have had a significant detrimental effect on the environment of the Lower Fraser River Estuary particularly at Canoe Pass on Hwlitsum First Nation members and our way of life. The modified tidal flow caused by the re-shaped natural course of the main river has increased siltation in the river resulting in shallower waters which means warmer water temperatures, all detrimental to fish and their habitat. The causeways from the B.C. Ferry terminal, Roberts bank terminal and the training walls that define the main arm of the Fraser River jutting out to the Sand Heads, have altered the saltwater wedge.

The end result is that the saltwater has moved further away from the shoreline and does not reach as far up river as it once did and has directly affected the type of habitat in the Lower Fraser River Estuary. What was once a robust inter-tidal habitat is now a mere canal.

It seems as if Hwlitsum First Nations Indigenous knowledge is less valuable than that of the Musqueam Indian Band, who is north of us or Tsawwassen First Nation who are south of us. Both Musqueam Indian Band and Tsawwassen First Nation are our neighbours and have been since time immemorial. The proponent, the VFPA has “ignored our valuable input even though we are located in between them at Brunswick Point the mouth of Canoe Pass. As both the IAAC and VFPA have ignored its duties to consult with Hwlitsum First Nation notwithstanding that the IAAC, Canada and industry all promote reconciliation and respect for Indigenous People. As a result, the IAAC, Canada and industry have under their own policies continue to employ selective, discriminatory policies and practices that do not enable all Indigenous People to be adequately consulted, especially in respect to VFPA’s current proposed project. Therefore, this project should be dismissed until the Hwlitsum First Nation has been adequately consulted because this project on its own merit, policies aside, based on what we have read, will dramatically impact the people of Hwlitsum First Nation and impact our way of life.

The mitigation measures proposed by VFPA are piece meal at best and should only be considered as a starting point to compensate for past developments. The estuary has not yet found a balance from these past developments. The IAAC needs to address these impacts before any further developments take place. There was no consultation process with Indigenous people in the past. Consultation should be done with the true custodians of the territory. Instead of focussing on this modern baseline of the habitat, consultation should be conducted based on the Indigenous people who have lived here and can attest to the devastation of the industrialization that has taken place to date. The Indigenous people who can speak to a historic baseline are the people of Hwlitsum First Nation. A baseline learned from the Indigenous knowledge of our elders and our oral history. Only then can the truth be known as to what has actually been lost and what needs to be done to preserve and restore the habitat in a meaningful manner.

The VFPA is proposing some potential mitigation projects based on their science. The VFPA’s “offsetting plan” suggest developing 86 hectares of offsetting development which is three times the amount of habitat conceptually proposed in the environmental impact statement considered

## **Hwlitsum First Nation**

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by the review panel. However, our oral history and Indigenous knowledge suggest that this is drop in the bucket compared to the natural habitat lost from the building of the original Roberts Bank Terminal. Before the riprap dykes were built, the entire shoreline from Wellington Point to Brunswick Point were grassy tidal habitat. The Offsetting plans proposed Westham Island Canoe Pass Tidal Marsh Project is a mere postage stamp compared to what was historically there. The proposed Finn Slough Enhancement Project design featuring steel pilings would increase the turbidity of the water along the pilings and barrier along the shore of Gilmore Island. The fast-flowing water would make it more difficult for any fish, particularly any young salmon fry to enter the reclaimed habitat. Hwlitsum First Nation questions how steel pilings are considered a restorative measure?

In closing, we reiterate that we ask that this project not be approved until consultation and reconciliation has occurred with the people of Hwlitsum First Nation. We look forward in meeting with the IAAC to be consulted with and having our knowledge heard before any approvals are given by Canada for this project.

Respectfully on behalf of the,

**HWLITSUM FIRST NATION**

**Chief Jim Hornbrook**