

Vancouver Fraser Port Authority
100 The Pointe
999 Canada Place
Vancouver, BC V6C 3T4

Attention: Jim Crandles

Dear Mr. Crandles,

Re: Project Review Process Evaluation

This document sets out the results of our research, analysis and recommendations regarding the Vancouver Fraser Port Authority (doing business as Port Metro Vancouver, “PMV”) Project Review Process.

We understand from our discussions that PMV intends to implement, in whole or in part, all of the recommendations. If we can be of any further assistance during this implementation phase please do not hesitate to let us know.

LEGAL AND POLICY FRAMEWORK

It is important to recognize from the outset the legal context in which the Vancouver Fraser Port Authority’s (doing business as Port Metro Vancouver, “PMV”), consideration of project applications and related environmental assessments occur, as this is the backdrop against which policies, practices and expectations must be assessed. In our view, this context is not always fully or clearly understood, particularly by parties that are external to the PMV organization but who nonetheless have interests in and perspectives on project reviews. For that reason, we summarize briefly below the key points.

Constitution Act, 1867

Under Canada's constitution, different categories of legislative powers are allocated to federal and provincial governments. The federal government’s powers include the ability to pass legislation regarding federal public property and navigation and shipping. While there is potential for these powers to overlap with provincial legislative powers, various constitutional doctrines have been developed to deal with such overlaps. They include the principle that federal legislation is paramount to provincial legislation in the event of a conflict, and the principle that certain core aspects of jurisdiction are “immune” from overlapping authority.

Canada Marine Act and Regulations

Pursuant to its constitutional authority, the federal government has passed the *Canada Marine Act*. The preamble to that act describes it as follows:

An Act for making the system of Canadian ports competitive, efficient and commercially oriented, [and] providing for the establishing of port authorities...

It is, of course, under this act that PMV was established, by Letters Patent.

Section 4 of the *Canada Marine Act* sets out its purposes. It states:

4. In recognition of the significance of marine transportation to Canada and its contribution to the Canadian economy, the purpose of this Act is to

(a) implement marine policies that provide Canada with the marine infrastructure that it needs and that offer effective support for the achievement of national, regional and local social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;

(a.1) promote the success of ports for the purpose of contributing to the competitiveness, growth and prosperity of the Canadian economy;

(b) base the marine infrastructure and services on international practices and approaches that are consistent with those of Canada's major trading partners in order to foster harmonization of standards among jurisdictions;

(c) ensure that marine transportation services are organized to satisfy the needs of users and are available at a reasonable cost to the users;

(d) provide for a high level of safety and environmental protection;

(e) provide a high degree of autonomy for local or regional management of components of the system of services and facilities and be responsive to local needs and priorities;

(f) manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbour is located;

(g) provide for the disposition, by transfer or otherwise, of certain ports and port facilities; and

(h) promote coordination and integration of marine activities with surface and air transportation systems.

While most of these stated purposes appear to relate to the facilitation of trade, it is also important to note that they include providing for a high level of environmental protection, being responsive to local needs and priorities, and managing in a manner that takes into account input from users and the community in which a port is located. It is within the context of these potentially competing interests that PMV's project review process must be assessed.

Other relevant provisions of the *Canada Marine Act* include the power of a port to make bylaws in section 30, the management of property in sections 44-45 and the requirement for a development of a land use plan in section 48, and the ability to fix fees in section 49.

Further, the *Port Authorities Operations Regulations*, established under the *Canada Marine Act*, also contain some provisions relevant to the project review process. Section 25 states:

If, by entering into a contract or lease or granting a licence, a port authority authorizes an activity set out in column 1 of the activity list that has or is likely to have any of the results prohibited under section 5 the port authority shall stipulate as a condition of the contract, lease or licence that the person with whom the contract or lease is made or to whom the licence is granted shall take measures designed to mitigate or prevent the result, if technically and economically feasible.

The section 5 requirements include a number of things that may arise in issues during project reviews. They state that “no person shall, by act or omission, do anything or permit anything to be done in a port that has or is likely to” – among other things – cause a nuisance or adversely affect soil, air or water quality.

Section 28 of that Regulation goes on to state that a person seeking authorization from a port authority must provide to the port “information relevant to the proposed activity and required by the port authority to assess the likelihood of the occurrence of any of the results prohibited under section 5”.

Put simply, the *Canada Marine Act* and related regulations provide PMV with considerable autonomy and powers to conduct port operations and facilitate the movement of goods, but at the same time contain meaningful requirements concerning consideration of environmental factors and other local interests.

Lafarge Decision

An important case involving the Vancouver Port Authority and the *Canada Marine Act* recently went all the way to the Supreme Court of Canada. Specifically, in *British Columbia (Attorney General) v. Lafarge*, 2007 SCC 23, the Supreme Court of Canada had to consider whether an integrated ship offloading/concrete patching facility on the waterfront was subject to a requirement for a permit from the City of Vancouver, under provincial legislation.

While it is beyond the scope of our assignment to review the decision in detail, the following are important points that are relevant to the present discussion:

- The Supreme Court of Canada fully recognized the unique and important nature of ports to Canada's economy;
- The port's approval was sufficient for the project to proceed, even in the absence of a permit from the City of Vancouver, and even though the Court concluded that (as Schedule "C" land)¹ the site was not on Federal land, on the basis of "paramountcy"; and
- The ability of the port to rely on the paramountcy doctrine was premised on the fact that the port had developed a land-use plan, pursuant to its powers and obligations under the *Canada Marine Act*, which addressed matters similar to what would normally be addressed by a City of Vancouver permit.

At the risk of oversimplification, the relevance of this decision to the present discussion is that, provided PMV meaningfully and in good faith exercises its authorities in relation to environmental considerations and local input (discussed above), it is likely that courts would be inclined to leave regulation of such matters to PMV rather than having overlapping provincial legislation apply. Further, the majority of PMV's land is Schedule B (Federal real property). To the extent that the principles in *Lafarge* apply to Schedule C land, they should be expected to apply even more so to land in Schedule B.

BC Environmental Assessment Act

The British Columbia *Environmental Assessment Act* applies only to "reviewable projects". In general terms, these will include projects listed in the *Reviewable Projects Regulation* or otherwise declared a reviewable project by the Minister of Environment.

The types of projects that are included in the reviewable projects regulation vary, but in general they are only projects of a very substantial size with significant potential environmental impacts. They include, for example, chemical or fertilizer plants producing 100,000 or more tonnes per year, new mines that will produce 250,000 or more tonnes per year of coal, or power plants with a capacity of 50 MW or more. Put simply, the legislature of the province of British Columbia has taken the position that, to the extent matters are within its jurisdiction, it is only very large projects that must undergo a full environmental assessment.

Even if a project does not trigger the threshold of the regulation, any party may ask the Minister to declare it reviewable. Any such decision is of course up to the Minister and, while it is not common for projects to be declared reviewable on this basis, it can occur.

¹ Schedule B and C lands are categories of lands under the Letters Patent for the Vancouver Fraser Port Authority. Schedule B lands are Federal real property, whereas Schedule C lands are other real property occupied and held by the authority.

Canadian Environmental Assessment Act, 2012

The *Canadian Environmental Assessment Act, 2012* (the “CEAA 2012”) sets out a comprehensive process for the environmental assessment of major projects. Like its provincial counterpart, the environmental processes established by this act apply only to large projects that are designated by regulation. These designations are similar, although not identical, to the thresholds used by the province. But the bottom line is that the government of Canada has stated, through this act and supporting regulations, that only large-scale projects are to be “designated” as requiring an environmental assessment under the act. Similar to BC, projects can also be designated for review by the Minister, though that is not likely to be a common occurrence.

At the same time, this piece of legislation also includes several sections that apply to projects on federal lands, even if they are not “designated projects” to which the environmental assessment requirements of the legislation otherwise apply. Specifically, sections 66 to 71 require, in essence, that federal authorities such as PMV ensure projects they are approving do not result in “significant adverse environmental effects” (or if it does then the Governor in Council must determine if the project is considered justified). This is a rather interesting requirement given that this is ultimately the same test that is applied when a full environmental assessment is undertaken in respect of the designated project, yet the vast majority of the CEAA 2012, which provides guidance only in respect of major projects, has no application. Under the former version of this act, some guidance was provided under a regulation specifically applicable to ports, but that regulation has been repealed.

The Canadian Environmental Assessment Agency has however created an Operational Policy Statement² to provide guidance to federal authorities with respect to projects on federal lands. We note the following key points from this document:

- Authorities have full discretion as to how to conduct their analysis towards making a determination in respect of significant adverse environmental effects. They are, however, bound by section 5 of the CEAA 2012, which describes the environmental effects that are to be taken into account.
- Each authority is encouraged to develop or utilize elements of a known environmental management process that meets its mandate and unique circumstances. The approach and depth of analysis is flexible and should be commensurate with the risk and likelihood of significant adverse environmental effects associated with carrying out the project.
- In determining whether a project will likely cause significant adverse environmental effects, an authority should take into account potential mitigation measures. The determination of significance is made after assessing how these measures are likely to reduce environmental effects. As the circumstances warrant, authorities are encouraged to take into consideration public concerns related to projects on federal lands and outside Canada.

² See <http://www.ceaa.gc.ca/default.asp?lang=En&n=22CA364E-1>

Having regard to the legal and policy framework discussed above, a number of important principles emerge which are relevant to the project review process. We would describe these as follows:

- PMV's principal responsibilities under the *Canada Marine Act* are to facilitate transportation and trade, and PMV has extensive powers and autonomy to do so, which the Supreme Court of Canada has recognized even where that conflicts with provincial legislation that would otherwise overlap.
- Notwithstanding the above, there are certain environmental and local interest requirements under the *Canada Marine Act* and regulations and CEEA 2012 that must be considered, both because the acts and regulations require this and also because they are important to the port's autonomy under the Court's reasoning in *Lafarge*.

The environmental requirements set out under the *Canada Marine Act*, its regulations, and sections 66 to 71 of the CEEA 2012 are not insignificant. At the same time, it is essential to note that they are not as comprehensive or onerous as the processes that would be applied in respect of projects that have been designated as requiring environmental assessment under the federal or provincial environmental assessment legislation.

CURRENT PMV PROJECT REVIEW PROCESS

The current PMV process is set out in a number of policy documents.³ While overall responsibility for project permitting rests with Planning & Development, staff from Environmental Programs and Community & Aboriginal Affairs, which are part of the Corporate Social Responsibility division, are also involved.

In basic terms, the process may be summarized as follows:

- Proponents must submit an application form and provide a project description, rationale, drawings and other information considered appropriate by PMV staff.
- A project application undergoes either a Planning Review or a Planning Review with Consultation.
 - Planning Reviews generally involve minor new structures or modifications to existing structures. The fee for a Planning Review is \$500.
 - A Planning Review with Consultation will occur for projects with high public interest or that involve major new structures. The type of consultation will vary depending on the project and may include a public notice, information meetings,

³ These include the "Guide to Project Review" and the Project Review web page at <http://www.portmetrovancover.com/en/projects/ProjectReviewAndPermits.aspx>,

open houses or workshops. First Nations consultation is a separate and distinct process. The fee for a Planning Review with Consultation is \$2500.

- The Planning & Development department will prepare a project report with a recommendation about whether the project should be approved and forward it to the Project Review Committee (or its delegate). The Project Review Committee (or delegate) will in turn assess the report and advise the VP Planning & Operations who then decides whether to approve or decline the project.
- If a project is approved, a Project Permit is issued.
- Not all projects must undergo the project review process and receive a Project Permit.
- All proposed works must undergo PMV's Environmental Assessment Procedure, which will run concurrently with and is a component of the project review process.
- Conditions of approval for both the project review process and Environmental Assessment Procedure are provided in a Project Permit. Where a Project Permit is not required, the Environmental Programs department provides the outcome of the Environmental Assessment Procedure with any conditions directly to the proponent.

RESULTS OF INTERVIEWS WITH LOCAL GOVERNMENTS

During the evaluation of PMV's project review process, interviews were undertaken with senior staff from Metro Vancouver and several local governments: City of North Vancouver, City of Vancouver, City of Richmond, City of Port Moody and the Corporation of Delta. The following key ideas emerged from these interviews:

- Most regional and local governments expressed a desire for more clarity regarding PMV's project review process, including documentation about specific technical, environmental and consultation requirements of applicants, and a clear outline of the process required for an applicant to obtain approvals.
- Some local governments requested earlier involvement in PMV's project review process, which they said would allow for early identification of potential issues, and provide local governments with input into the consultation process for projects. Some local governments noted a lack of consistency regarding project review consultation requirements, with some projects not requiring any consultation, and other similar projects requiring an abundance of consultation.
- Several local governments suggested that PMV consider triggers to define the scope and nature of project reviews, based on the size and scope of the project, public interest and other key criteria.

- Some local governments expressed appreciation to PMV for undertaking the project review process evaluation, stating that they saw a desire and opportunity for improvement. Some noted that if they could improve their processes to align with PMV's, they would be willing to meet with PMV to try and do so.
- Some local governments noted that they do not have as much involvement with PMV's project review process as they thought they should have.
- One local government wanted more involvement in projects that are located outside of its municipal boundary but which could have effects on its residents and businesses through impacts to air quality, noise, light and other effects.
- One local government stated that they thought PMV does not currently consult with local government appropriately or properly refer projects to local government.

RESULTS OF INTERVIEWS WITH PMV TENANTS/PROJECT PROPONENTS

Interviews were also conducted with representatives from several PMV tenants and project proponents, many of whom were undergoing or had recently undergone a project review. Interviews were undertaken with representatives of DP World Vancouver, Forrest Marine Limited, Fraser Surrey Docks, Milltown Marina, Neptune Terminals, Pacific Coast Terminals, Richardson International, Viterra and Westshore Terminals. The following are key ideas that emerged from the interviews:

- Many interviewees noted a general lack of clarity and guidelines concerning PMV's project review process, with many stating that technical, environmental and consultation requirements need to be better defined at the outset of the review process, and then adhered to.
- Many interviewees said that it seems as though PMV makes changes to the project review process as it moves along. Several interviewees stated that revisions or further technical work was requested during the process, which could have been requested at the outset of the review. They said that this led to unnecessary delays and additional costs to their projects.
- Several interviewees suggested that PMV establish levels of project review, so that the most straightforward projects could be screened out of the review process or dealt with appropriately and efficiently. For larger and more complex projects, they said applicants want a clear understanding of the most comprehensive review requirements.
- Some interviewees suggested that PMV should set reasonable timelines, clearly communicate them to all parties involved in the project review process – PMV, the applicant, local government and the public – and clearly identify each party's opportunities for input within the established timelines.

- Several interviewees suggested that PMV needs to encourage staff to familiarize themselves with tenants' businesses so that they are better able to assist applicants in navigating the project review process.
- One interviewee suggested that PMV should establish a tenants' group or committee that could be asked to provide input and advice when and as required regarding the project review process.

RESULTS OF INTERVIEWS WITH OTHER AGENCIES

Interviews were conducted with a number of external agencies including Fisheries and Oceans Canada (DFO), Transport Canada, the Vancouver Coastal Health Authority and the Fraser Health Authority. The following key ideas emerged from these interviews:

- There is a very limited understanding of PMV's mandate to review proposed projects under governing legislation, and how that relates to the statutes and regulatory responsibilities of other entities. Instead, there was a high degree of focus on general interests, ability or inability to "work together" and a discussion of relationship issues.
- The nature of the relationship with other regulatory entities varied significantly. Some, have a high degree of trust in the work of PMV, and appear to defer to it considerably. However, one expressed a profound degree of mistrust and frustration with PMV.
- There was very limited understanding by other agencies of existing PMV policies related to project review.
- There appeared to be considerable confusion among some agencies about the fact that environmental review under the PMV project review process applies to projects that are not large enough to trigger federal or (where applicable) provincial environmental assessment.

RESULT OF INTERNAL PMV STAFF INTERVIEWS

Interviews and meetings were conducted with 22 staff within PMV, including members of the Executive Leadership Team, Planning & Development, Environmental Programs and Community & Aboriginal Affairs. This included a workshop with 14 staff from those departments directly involved in administering the project review process.

While there were a number of perspectives raised, and not all staff commented on the same matters, there was a considerable convergence of views on many issues and many valuable ideas offered. The following are the key ideas and suggestions provided during the interviews and workshop:

- Many PMV staff identified the need for an enhanced policy framework to support the review process and decision making.
- Many PMV staff noted a need to ensure consistency and transparency in the documentation of the process, to allow for most information to be posted on the PMV website for the public, potential applicants and others to easily access and understand.
- Many PMV staff suggested that PMV needs to refine existing categories of projects, based on transparent criteria, which would allow for the screening out of smaller, straightforward projects. They said this would allow for the dedication of greater resources to more complex projects. Several staff suggested that the categories could be clearly defined to enhance consistency while preserving some flexibility and professional judgment for variation, where warranted.
- Several PMV staff suggested that there should be a clear guide available to applicants, so that they are aware of what is expected of them regarding technical, environmental and consultation requirements in the project review process.
- PMV staff said they would welcome an external evaluation (periodic or annual) of PMV's environmental and permitting processes to ensure effectiveness of the process, including decisions.
- PMV staff felt that the quality of environmental review is very high, and that staff are committed and competent but that they (and everyone) would benefit from enhanced policies and better public understanding of what they do.
- PMV staff noted that this project review process evaluation, and related enhancements to policy, could help address what is sometimes perceived as an inherent conflict in PMV's dual mandate to facilitate trade and act as a regulator and decision maker on project reviews.
- Some PMV staff noted that PMV needs to take additional steps and dedicate additional resources to enforce project permit conditions, suggesting that requirements for proponents to undertake monitoring and report back to PMV be included in permit conditions.
- Some PMV staff noted that they frequently hear concerns about a lack of consistency in public consultation requirements for various projects and uncertainty as to whether the applicant or PMV is responsible for leading the consultation process. Some suggested that the scope of consultation should be defined for each level of project review, to provide greater clarity for applicants, local government and the public.
- Some PMV staff suggested the creation of a dedicated PMV unit to administer the project review process, which could be augmented by consultant resources during peak workloads. They suggested such a unit, and the additional resources, could enable a more

timely and efficient completion of reviews and could be funded in part or in full by a project review application fee.

BEST PRACTICES RESEARCH

To undertake an analysis of regulatory best practices used by other levels of government and ports in other jurisdictions, we reviewed a vast number of policies, procedures and related documentation. A list of this material is provided in Appendix A. It includes legislation and policy guidance from federal, provincial and state agencies, as well as other port organizations in Canada and the US. The subject matter of these materials included project review processes, environmental assessment, health impact assessments, risk management and aboriginal consultation.

EVALUATION CRITERIA

There are of course many evaluative criteria against which the existing project review process could be assessed, but based on our review of the legislation, discussions with PMV officials and other interested stakeholders and regulatory bodies, we believe the following are the principal criteria that should be used.

Clarity – the process should be clear to the people who administer it as well as applicants who go through it or third parties who are involved with it.

Effectiveness – the process must be effective in allowing PMV to fulfill its obligations under the *Canada Marine Act* and regulations and section 67 of the CEEA 2012, and meet legal requirements of reasonableness and procedural fairness.

Transparency – interested parties should be able to obtain information about projects and decisions (with due respect for third-party confidentiality and business interests).

Efficiency – the process should ensure that resources are used in the most efficient and effective manner possible.

Accountability – roles and responsibilities must be clear, and performance measures must be tracked to ensure accountability.

Responsiveness – the process should be responsive to individual circumstances and to changing circumstances.

There are of course inherent tensions among some of these evaluation criteria. For example, responsiveness to individual circumstances can come into tension with clarity and transparency. Similarly, there may be inherent tensions even within an individual evaluation criterion such as effectiveness, which must be measured against PMV's various purposes, including facilitating trade and ensuring environmental protection. The fact that there may be such competing tensions

does not undermine the use of these evaluation criteria, but rather points to the need for an open and constructive discussion of them.

Our analysis and recommendations are of course also informed by our own professional backgrounds and experience. This includes previous experience running the BC Environmental Assessment Office (Robin Junger) and extensive experience in stakeholder engagement (Judy Kirk).

RECOMMENDATIONS AND RATIONALE

Having regard to all of the analysis above, and all of the information obtained in discussions undertaken throughout this review process, we offer the following recommendations for consideration by PMV, along with a summary of our rationale for each.

1. Overarching Commitments and Principles

Establish, at the executive level, a set of commitments and principles PMV will adhere to in its project review process and articulate these in a single document that is publicly-available. Indicate that these commitments and principles may be updated or revised by PMV as necessary.

Rationale

This document would provide PMV with a benchmark against which staff and management can make day-to-day decisions regarding project review, and any modifications to policies or continuous improvement initiatives. It is consistent with the evaluative criteria of clarity, transparency and accountability.

The BC Environmental Assessment Office's "Fairness and Service Code" is an example of this kind of document. The Fairness and Service Code lists a number of principles that guide the Environmental Assessment Office ("EAO") in carrying out its roles, and includes fairness, transparency, inclusiveness, comprehensiveness and efficiency. The code also sets out specific service standards for proponents, First Nations and the public around aspects of the review process relevant to each group.

2. Comprehensive Application Guide

Develop a comprehensive Project Review Application Guide (the "Application Guide") which – in a single and user-friendly document – explains the materials that must be provided, the process that will be used and the individuals and departments that will be involved in project reviews. Relevant forms and templates could be attached as appendices so that the Application Guide serves essentially as the primary and ongoing reference for applicants as reviews proceed.

This Application Guide should be made available publicly and should be used by tenants and other interested parties. It should also clearly explain the extent and limits of PMV's ability to assist applicants in working their way through the process. It should explain PMV's expectations and decision-making process regarding matters such as information requirements, scope of

March 27, 2014

Page 12

review, public engagement and aboriginal engagement, all discussed further below. The environmental assessment procedure (EAP) should be described as being *part of* the project review process, where relevant, rather than as being “run concurrently” with it, which the present “Guide to Project Review” states. The Guide should also explain when and how the review process may be modified in respect of projects on PMV lands that have already undergone an environmental assessment under federal or provincial environmental assessment legislation.

Preparation of this document could be based in part on the existing guide, but significant additions or changes would be required if or to the extent the recommendations below are accepted.

Rationale

Development of the Application Guide is consistent with the evaluative criteria of clarity, effectiveness and efficiency by providing tenants and the public with a clear guidance as to the nature of PMV’s project review process. Developing a comprehensive Application Guide would also address criticism from tenants and other stakeholders that PMV is “making it up as they go”.

Development of the Application Guide is consistent with best practices of leading jurisdictions, which have clear and publicly-available policies regarding project review. For example, the BC EAO’s in-depth “EAO User Guide” describes the role of the EAO, the applicable legal framework and the various states of the process, as well as discusses the scope of assessments, information requirements and unique situations such as the suspension of a review. Similarly, the Alberta government department responsible for environmental assessments and the Canadian Environmental Assessment Agency have developed substantial guidance documents for various aspects of their review processes.

3. Internal Guidance Materials

Review and revise internal guidance documents so that they track with the Application Guide and provide supporting internal guidance on matters related to the operational processing of documents, discretionary decision-making, drafting of decisions and other matters associated with the project review process. Preparation of these materials could be based in part on existing documents such as the Project Review Process Directive (C-008) and Environmental Policy (B-007), as well as the Canadian Environmental Assessment Agency Operational Policy Statement respecting projects on federal lands (discussed earlier), but substantial additions or changes would be required, if or to the extent the recommendations below are accepted.

Rationale

During the internal interviews with PMV, various staff noted that PMV would benefit from a comprehensive guidance document or fully developed set of policies regarding project review. The development of these internal guidance documents is consistent with the evaluative criteria of clarity, effectiveness and efficiency.

Clear internal guidance and policies for staff carrying out the day-to-day activities associated with administering project reviews is a best practice we identified in our review of other jurisdictions.

4. Communication of Mandate

As a preamble to the Application Guide and/or the Overarching Commitments and Principles document, clearly articulate the statutory responsibilities of PMV and its place within federal and provincial legal structures so as to minimize differences of understanding or reliance on personal views as to what the role of PMV should be. Acknowledge that PMV has a mandate to facilitate trade and recover certain costs. In other words, acknowledge and embrace this “tension” as something Parliament has deliberately given PMV responsibility for to address and properly manage any related concerns or criticism.

Rationale

We heard a recurring theme regarding concerns about how to address the duality of PMV’s role as both a facilitator of trade, and a decision maker on project reviews. Addressing PMV’s mandate in a straightforward, public manner will, in the context of project review specifically, help proponents and the public to understand the nature of PMV’s priorities and responsibilities. This is consistent with the evaluative criteria of clarity, transparency and accountability.

Ports as well as governmental agencies inevitably have multiple interests, which can, in some cases, be seen as conflicting. As a best practice, such matters should be addressed openly. The validity of project review or environmental assessments can and should be sustained through the solid and objective nature of their analysis rather than through the “independence” of the entity conducting them.

5. Categories of Review

Review existing guidelines regarding the types of projects that do not require a project approval at all (i.e. extremely low-risk projects such as the replacement of a piling) and improve these guidelines where necessary.

For projects that do require approval, establish a set of project categories that would each be subject to a different but well-defined project review process and ensure that steps taken to address environmental and aboriginal matters are commensurate with the risk and potential impact. However, complement that set of categories with discretion for an appropriate PMV decision-maker, early in the application process, to move a project to a higher or lower process category if the decision-maker believes, based on the consideration of certain principles, that this is appropriate for any particular case. Ensure that both the initial categorization and the residual discretion are clearly described in the Application Guide.

When describing the projects, it would likely be prudent to avoid describing them in any single qualitative manner, such as low-risk or high-risk. Instead, it would likely be more beneficial to simply use terms such as Category A, Category B and Category C. PMV could then develop a

list of project types within each of those categories. In establishing the project types, it would be helpful to consider a range of things, such as the size or capital expenditure, PMV's history with particular types of projects and PMV's understanding of public sensitivity concerning matters such as air quality or water quality. It would not be necessary to set out the rationale for initial categorizations in the Application Guide, but it would be necessary to include some criteria against which PMV staff would make any discretionary decisions to require a project to undergo a category of assessment that is different from its preliminary listing. For example, the Application Guide could indicate that despite the fact that a project is listed in Category B, the proponent may be directed to undertake a Category C process if, in the opinion of a specified PMV decision maker, that is appropriate, having regard to a number of principles, such as whether the project has some unique or novel attributes, whether the applicant has requested a higher level assessment and the anticipated degree of public interest.

Rationale

Through our internal PMV interviews as well as those with PMV's tenants, we heard the need for PMV's review process to match the scale and potential impacts of the project under consideration. Implementing a broad, scaled system of project categories is consistent with the evaluative criteria of clarity, effectiveness, efficiency and responsiveness. It is also consistent with the federal Operational Policy Statement discussed earlier.

In our review of other jurisdictions, we identified the streamlining of lower impact, routine projects, coupled with the ability to elevate the intensity/scrutiny of the review if necessary, as a best practice. Such scalability recognizes that "one size does not fit all" projects. For example, the Ontario project review regime includes a streamlined assessment process for routine projects that have predictable environmental effects which can be readily managed. Electricity projects, for example, are grouped by regulation into three categories, based on their level of risk to the environment – those that are exempt from assessment requirements, those that are exempt but must complete a screening process and those that require a full "individual" environmental assessment process. For projects in the second category – subject to a screening process only – there is an opportunity for the public to request that a project be elevated to a full environmental assessment following the screening process. Following an elevation request, a designated official will consult with appropriate parties and may take a number of actions, including requiring further studies, requiring that a full assessment be undertaken or denying the request.

6. Information Requirements

Ensure that information requirements are established as early and clearly as possible in the process. This may include, for example, establishing clear lists of information that will *generally* be required for certain types of projects. Such an advance listing approach would be the most appropriate for small-scale and simple projects, or for certain types of information that is typically required for large-scale projects, even if such information is not necessarily the limits of all that is required. At the same time, recognizing that it will never be possible or prudent to establish conclusively what information requirements exist before a project is even considered – particularly a major project – include in the process and the Application Guide clear indication as to when and how discretionary decisions will be made to require additional information. This

March 27, 2014

Page 15

could include, for example, guidance as to when and how a health impact assessment should be included in the review process.

To encourage proponents to commence the project review process when they have a fulsome and complete project proposal, consider mechanisms such as fees to address situations where additional information is required from proponents that reasonably should have been included at the application stage.

Rationale

We consistently heard from various parties that the nature of information required from a proponent could be clearer. The development of information requirements is consistent with the evaluative criteria of clarity, effectiveness and efficiency.

The communication of information requirements is done with success in other jurisdictions and typically holds project proponents to a specific standard of project information at certain stages of the review process. The BC EAO has developed an Application Information Requirements Template that assists proponents in determining information requirements relatively early in the process. Similarly, Alberta makes four different sets of industry-specific sample standardized terms of reference available for proponents, and federally, both a regulation and a guide mandate the contents of a project description. We also note that the Port of Los Angeles may require proponents to complete a number of “questionnaires” relating to project proposals at the outset of a project review depending on the nature of the project; this includes a project application, an environmental assessment questionnaire, a site assessment questionnaire and a risk management analysis questionnaire, which help establish information requirements relatively early in the process.

7. Public Engagement

For the different categories of projects, specify in the Application Guide what, if any, public engagement is expected in relation to those categories of projects, as well as the timing and process by which an appropriate PMV staff member may modify the public engagement requirements for a particular project. In developing these guidance materials, consider a range of different public engagement practices, including posting of information online, seeking comments online, and, in appropriate cases, holding open houses where the public and stakeholders can come to ask questions and gain information about a project and provide their views, questions and concerns. Make clear in the reference materials what role the proponent and PMV will play in such activities and what if any consideration PMV will give to consultation activities undertaken by proponents in advance of or outside of PMV’s project review process.

Appendix B contains a chart with a proposed breakdown of consultation steps that could be taken in relation to Category A, B and C projects. This chart is not intended to be definitive, and could be further refined as policy development occurs. It could also be augmented by development of detailed best practices to assist staff and proponents who undertake those activities (e.g. best practices to use when organizing and running open house sessions).

Rationale

Clear articulation of public engagement policies fulfills the evaluative criteria of clarity, transparency, efficiency and responsiveness.

Public engagement or consultation policies are common in other jurisdictions. The BC EAO has a “Policy on Public Comments”, which sets out guidelines around public comments in terms of suitable language, third-party quotes, petitions, non-written comments and personal information. The policy makes clear that comments will not be accepted outside of formal public comment periods within the pre-application and application stages. Alberta has developed a guide specifically addressing public comments at the information requirements stage, which includes criteria that will be considered before comments are incorporated into the final information requirements for a project.

We also note from our review of the practices of Canadian ports that the Toronto Port Authority has a “Public Consultation Policy” available on its website. The policy, applicable to initiatives that will have a significant impact on port users and surrounding communities, is brief – two pages – and makes very general commitments while reserving the right to make any decisions it believes necessary.

8. Scope of Assessment

For the different categories of projects, establish an initial set of scoping rules to identify the physical spatial extent of the activity being assessed and the spatial extent of the environmental impacts being considered. Complement this initial scoping with an ability on the part of a specified PMV decision-maker to modify the scope in relation to any particular project if sufficient reasons exists, having regard to a set of principles set out in the Application Guide.

Rationale

Many parties expressed the need for clear policy around project scoping. The development of scoping rules within project categories responds to the evaluative criteria of clarity, effectiveness, efficiency and responsiveness.

A best practice around scoping is simply the clear communication of scoping criteria. For example, the BC *Environmental Assessment Act* contains a non-exhaustive list of project components, procedures and methods which may be included in a scoping procedural order. Federal environmental assessment legislation also requires clear identification of scope of assessment early in the review process.

9. Allowance for (Limited) Changes in Process

In the Application Guide, provide clear guidance as to the steps to be taken in any circumstances where a PMV staff member believes that the scope of the assessment, the information that is required or the extent and manner of public engagement may be changed further along in the process. Establish a principle to limit such alterations in the review of the project as much as

possible and to ensure that where it is truly required, such decisions are made in a manner that is fair to the proponent, with reasons given.

Rationale

The need for principled adaptability in PMV's process was identified by many parties in the interview process. Developing and providing public guidance about the principled adaptability of the project review process responds to the evaluative criteria of effectiveness and responsiveness.

Changes to the scope or methods of a review are contemplated by the regulatory or policy framework of leading jurisdictions. For example, under the BC *Environmental Assessment Act*, the Executive Director of the EAO has the discretion to vary the scope, procedures or methods of a particular project review in order to take into account project modifications or, more broadly, if the Executive Director believes that a variation is necessary to complete an effective and timely assessment. At the same time, because midstream changes can cause delays, additional costs and uncertainty, they should be used only in limited and truly necessary cases, with appropriate reasons given, so that affected parties can understand and – if necessary, challenge – any such decisions.

10. Referrals

Ensure that when applications are sent to different PMV departments or external agencies for referral, the nature of the review process and the input sought is made clear. For example, develop a standardized cover note along with checklists where applicable. Consult relevant departments / external agencies in the development of such templates to consider their views and perspectives of those agencies as to what information should be included in a referral package.

Rationale

It became evident through our internal interviews that a number of departments have input into the review of a project and that this process could be better harmonized within PMV for the benefit of both staff and proponents. The development of clear and perhaps even standardized referral packages for departmental referrals is consistent with the evaluative criteria of clarity, effectiveness, efficiency and accountability.

11. Consistency in Decision Drafting

Develop a standard form decision template with annotated guidance to assist decision drafters. This annotated template could be based, in large measure, on the existing samples presently used by Environmental Programs staff. The annotated template should also guide decision drafters to ensure appropriate references are made to relevant statutory requirements and provisions of PMV's land use plan.

Rationale

A need for more consistent documentation of decisions was identified through our internal and external interviews. As a best practice, project review decisions and reports are often standardized in other jurisdictions. The use of templates will ensure the increased clarity, efficiency, transparency and consistency of PMV's decision-making in the project review process.

We note that in general, PMV's Environmental Assessment Procedure decision documents are very well drafted.

12. Aboriginal Consultation

With respect to aboriginal consultation:

- (i) Continue to provide training in PMV policies regarding aboriginal consultation to all staff involved in project review;
- (ii) Ensure that all relevant PMV staff fully appreciate the nuances between the Crown's legal "duty to consult" (regarding asserted rights and treaty rights) and broader relationship building, and that staff understand the relationship and common opportunities between the two;
- (iii) Ensure that all relevant PMV staff have a clear understanding of what it means for "procedural aspects" of consultation to be delegated to proponents, are familiar with the relevant PMV guidelines for delegating to proponents and know when delegation may or may not be appropriate; and
- (iv) Ensure that PMV staff who are involved with aboriginal consultation know when it would be appropriate to seek legal advice on matters such as aboriginal consultation or constitutional jurisdiction issues.

Rationale

We note that PMV's aboriginal consultation policies and template documents are well-drafted and meet or exceed the best practices of other jurisdictions, and that a process is in place for front-line project review staff to discuss projects case-by-case with legal counsel on a bi-weekly basis. We also note that PMV's existing internal guidelines for aboriginal consultation include guidance around when to involve legal counsel. However, we heard from some internal interviews that staff could benefit from more guidance on how PMV's aboriginal consultation materials are implemented on a practical level during project review, and that there could be clearer policy about when to draw aboriginal consultation to a close. Ensuring staff have a firm grasp on the aspects of aboriginal consultation listed above is consistent with the evaluative criteria of clarity, effectiveness and transparency.

Best practices regarding aboriginal consultation involve a solid understanding of the nature of the duty to consult by staff carrying it out and the presence of clear policies or guidance around consultation. The BC EAO User Guide includes a section discussing practical aspects of the duty to consult and lists general consultation principles that have emerged from relevant case law. The BC EAO has also published Proponent Guides for both treaty and non-treaty first nations, which offer guidance to proponents around meeting expectations relating to potential impacts of a project on asserted or treaty rights.

13. Project Review Lead

Establish a mechanism to determine a Project Review Lead so as to ensure that applicants have a single, primary point of contact in respect of their application, even if PMV staff from various PMV departments may become involved in aspects of the project review.

Rationale

We heard from tenants that they are not always clear about who to contact at PMV for certain aspects of project review. Having a Project Review Lead fulfills the evaluative criteria of clarity, efficiency and accountability.

It is a best practice to have clarity between the proponent and regulators in terms of who is responsible for various aspects of the review process, and in the case where multiple entities are involved, to have a single person designated as the lead. For example, both the Canadian Environmental Assessment Agency and the BC EAO assign “project leads” at the outset of a review.

14. Organizational Structure and Reporting

Review existing organizational structures and reporting relationships to ensure that staff supporting the Project Review Lead with a particular project have some form of reporting relationship to that person.

Such reporting relationships could occur either through:

- (a) Changes to organizational structure in which all parties involved in the project review are brought within one branch, including Planning & Development, Environmental Programs, Environmental Assessment and Permitting and Community & Aboriginal Affairs; or
- (b) “Dotted-line” reporting relationships for project reviews, where staff from Corporate Social Responsibility who support project reviews report to the Project Review Lead for the purposes of the project review (albeit not for all employment purposes such as performance planning, budgeting, etc.).

If organization structures are not modified as it relates to project reviews and dotted-line reporting is used, then ensure a clear and transparent mechanism exists for issues to be raised

with senior staff if in any case a staff member feels the dotted-line directions from the Project Review Lead are not in keeping with policy direction from Corporate Social Responsibility or otherwise require some senior management attention.

Rationale

Because the project review process involves different disciplines and areas of expertise, it is inevitable that various individuals will be involved in the process. At the same time, it is necessary to ensure that clear accountabilities and reporting relationships exist so that timely and consistent decision-making can occur. This is particularly true in circumstances where the decision making often involves an exercise of discretion and judgment. In the present circumstances, it is not always clear how the different people involved in the process relate to one another, and in particular who has ultimate decision-making authority regarding the various procedural decisions made in the course of the review process. While this uncertainty has been managed rather effectively through constructive internal working relationships, that is not itself likely enough to ensure optimal efficiencies and effectiveness, and to ensure necessary accountability overall.

Both methods set out in the recommendation are viable options and are consistent with the evaluative criteria of clarity, efficiency, accountability and responsiveness. Both are also in keeping with practices that have been undertaken (and varied at times) by federal and provincial agencies such as the BC EAO.

15. Fee Review

Within one year of the implementation of any or all of the recommendations in this report, review and assess PMV's project review fee model to better ensure cost recovery. Consider, having regard to the recommendations in this report and their results, whether a fuller cost-recovery mechanism for project review is a desirable model for both PMV and proponents.

Rationale

In our internal interviews, the question of PMV's current fee structure and its ability to meet a growing volume of projects was a key theme. Furthermore, tenants expressed a willingness to pay cost-recovery fees provided the process was efficiently and effectively administered, although they do not necessarily believe that point had been reached yet. As such, this recommendation would allow for some time to further refine and implement process and policy improvements before reviewing the fee structure. Such changes would, in due course, be consistent with the evaluative criteria of effectiveness, efficiency, responsiveness and accountability.

Project review fees that allow for full or partial cost recovery are common in other jurisdictions. Under the CEAA 2012 and the *Cost Recovery Regulations*, proponents are responsible for substantial costs associated with review panels. The City of Vancouver uses a fee schedule in which the fees associated with permits vary depending on the nature of a particular project.

16. Internal Project Review Committee

Develop enhanced terms of reference for the internal PMV Project Review Committee (PRC), and develop criteria by which a project would be referred to that committee before any approvals are granted. For example, refer any project in excess of a specified amount of capital costs to the committee, or provide that Project Review Lead may refer a project to the committee in his or her discretion.

Rationale

Although an internal project review committee presently exists, there is an opportunity to improve understanding of the role it plays, and when projects are referred to it. By clarifying these matters and providing clear terms of reference, the committee can better support, but not displace, the Project Review Lead's role. Such changes would be consistent with the evaluative criteria of effectiveness, efficiency and accountability.

17. External Project Review Process Advisory Committee

Establish an external Project Review Process Advisory Committee (PRPAC), consisting of representatives of other regulatory agencies, local governments and tenants to provide input regarding the development and implementation of project review procedures. To ensure effectiveness and efficiency, detailed terms of reference should be established by PMV, in consultation with potential committee members.

Rationale

One of the key themes that emerged from our interviews with regulatory agencies, local governments and tenants is confusion around the nature of their role in PMV's project review process and a desire to have meaningful input into it. The establishment of a Project Review Process Advisory Committee would work to address these issues and is consistent with the evaluative criteria of transparency and accountability. The committee would also help address some of the limitations on interagency communication that have arisen since the dissolution of the Burrard Inlet Environmental Action Program and the Fraser River Estuary Management Program.

The Toronto Port Authority has established a somewhat different Community Liaison Committee to provide port neighbours with a forum for discussing issues related to a commercial airport operated by the port. The committee meets four times a year, and was formed after a proposed framework setting out the committee's membership, funding model and mandate was provided for public consultation. While the recommendation above is limited to other agencies and local governments, it is understood that local governments would represent the interests of their constituents and that individuals and stakeholders would still be provided input into project review processes and consultation in accordance with the policies discussed earlier.

PMV presently has three committees, the Port Community Liaison Committee – Delta, the North Shore Waterfront Liaison Committee and the East Vancouver Port Lands Plan and Liaison

Group, which would complement the external Project Review Process Advisory Committee but which serve different roles and functions.

18. Website Presence

Establish a designated website to provide public information about project reviews, and establish policies to ensure principled and consistent practice in terms of what information is made available. The amount and nature of such information would vary among the different categories of project review.

Rationale

We heard a number of concerns about the nature of PMV's website as it relates to project review. Creating a separate website dedicated to projects with consistent practices in terms of content would address these concerns and would be consistent with the evaluative criteria of clarity and transparency. It would also be consistent with provisions of CEAA 2012 which requires that PMV make information about its activities under section 67 of the act available to the public.

The BC EAO's highly-regarded e-PIC, or Electronic Project Information Centre, is an example of a comprehensive project registry where current and certified projects may be listed by project status, industry or even displayed geographically on map. Each project contains a profile with consistent categories of project review documents. Similarly, the Canadian Environmental Assessment Agency maintains a registry where the public can browse or search for ongoing and completed project reviews. Each project has a profile page with high-level introductory information and links to categories of project review documents. While these two registries may be more expansive and complex than necessary for projects that are not at the threshold of federal and provincial environmental assessment, they could nonetheless provide helpful guidance in developing a revised website presence around project reviews.

19. Complaint Process

Formalize a complaint review process by which proponents or any party who feels aggrieved by the project review process could request an internal review of the process and/or decisions relative to PMV's policies and guiding principles. In developing such a process, have regard to the public report prepared by the BC Office of the Ombudsperson entitled "Developing an Internal Complaint Review Process".⁴ Be clear in the documentation of this process that it does not constitute a general "appeal" process.

Rationale

An internal complaint review process can help minimize disagreements, foster continuous improvement and (in appropriate cases) substantiate decisions of officials even if they may at times be unwelcome by certain parties.

⁴ See http://www.ombudsman.bc.ca/images/resources/reports/Public_Reports/Public%20Report%20No%20-%2040.pdf

As the Office of the Ombudsperson has stated in the above-noted public report:

An internal complaint mechanism (ICM) gives agencies a second chance to provide quality service. It allows them the opportunity to correct errors before external agencies, politicians or the media become involved. At the same time, data gleaned from complaints may highlight opportunities to improve policies, programs or service delivery.

The purpose of this document is to offer some guidance for developing an ICM. This document will also identify and discuss some of the factors you may wish to consider in designing a system that will best meet the needs of the people you serve and the needs of your organization.

A complaint review process of this nature would fulfill the evaluative criteria of transparency, accountability and responsiveness.

20. Compliance Monitoring

Develop an improved compliance monitoring system based on a combination of self-reporting, inspections, audits and cooperation with other regulators. Develop that system with due regard for the BC Auditor General's recent recommendations to the BC EAO regarding such matters and recent related developments in the CEAA 2012.

Further, when permits are granted, include terms and conditions which make clear that the authorization is contingent upon compliance with those terms and conditions and that if there is a failure to do so, PMV may suspend the authorization until the compliance is remedied, or in appropriate cases, revoke it entirely.

Rationale

We heard from PMV staff that additional measures should be taken to ensure permit conditions are complied with.

Establishing a compliance monitoring system to address these issues is consistent with the evaluative criteria of effectiveness, accountability and responsiveness. It is also consistent with the CEAA Operational Policy Statement concerning section 67 which states as follows:

Under CEAA 2012, there are enforcement provisions to ensure the implementation of mitigation measures specified within the EA decision statement for designated projects. For projects on federal lands an EA decision statement is not issued. However, authorities who make a determination on whether or not a project should be carried out on federal lands will, in most cases, issue a permit or authorization, and/or prepare some other form of agreement, to which mitigation measures can be linked. The proponent would have to implement mitigation measures in order not to contravene the terms of the authorization or agreement.

For example, if an authority requests that mitigation measures be implemented and they are not carried out for a particular project, a proponent could be in contravention of the permit or agreement that was signed. Any enforcement mechanisms would be specific to the legal regime that governs the issuance of the permit or the approval of the agreement.

Due regard for compliance is of course a best practice of other agencies that provide environmental reviews and authorizations. In Ontario, an environmental assessment must include a monitoring framework, and proponents must provide annual compliance monitoring reports to the relevant ministry. In BC, proponents who obtain an environmental assessment certificate are typically required as a condition of the certificate to provide compliance reports on a specified basis.

At the same time, it must be recognized that enforcement resources are not unlimited, and there may be various interested agencies and a range of compliance activities that can be taken. As such, any resulting policy should have due regard for the role of other agencies or other representatives of PMV working together with project review staff to efficiently promote compliance and to utilize the range of tools that may be available. Some of these tools and the circumstances in which escalating activities may be undertaken are discussed in the Auditor General's report referred to above.

21. Amendments

Develop policy or guidance for applications to amend existing project approvals, having regard to the nature of such amendments and the wide range of circumstances in which amendments may be requested. Given the nature of these issues, the policy or guidance should not be particularly prescriptive, but it should provide that the requirements for any particular amendment process will be determined, on a discretionary basis, by the Project Review Lead at the beginning of the amendment application process, and that the Project Review Lead may seek input from the external Project Review Process Advisory Committee in respect of Category B and C projects before providing that direction.

Rationale

PMV staff identified the need for a system to address and accommodate the amendment of projects that have already received PMV approval. Developing policy or guidance around project amendments that allots considerable discretion to the Project Review Lead is consistent with the evaluative criteria of clarity, effectiveness, efficiency and responsiveness.

Leading jurisdictions have a formal mechanism for the amendment of approvals or certificates issued for a project. The BC *Environmental Assessment Act* provides that the holder of an environmental assessment certificate may apply to have the certificate amended, and the Executive Director must provide a decision, varying, deleting or attaching new conditions as necessary, or refuse the amendment.

22. Performance Management

Establish target timeframes for each category of review and ensure that information is tracked to assess the degree to which timeframes are met or, where they are exceeded, the reasons for that. Track this information in a form that supports ongoing performance measurement that can be used in turn as the basis for continuous improvement and responsiveness. Similarly, track data concerning the manner and degree to which proposed projects have been adjusted or plans changed in response to PMV expectations regarding environmental, social or aboriginal matters.

Rationale

We heard from our internal PMV interviews about the crucial importance of performance management to the project review process, and the need for a long-term, sustained and comprehensive method of tracking projects. Developing performance management measures fulfils the evaluative criteria of clarity, effectiveness, efficiency, accountability and responsiveness.

Other jurisdictions typically establish timelines around project review or various stages within the review process. Irrespective of whether those timeframes are legislative or guidelines, having information about them is essential, given the adage “you cannot manage what you don't measure”.

In addition to tracking timeframes for completion of project reviews, it is also important to have some manner of measuring the changes, mitigation measures and accommodation measures that occur throughout the project review process. In many cases, it is difficult for third parties to be fully aware of those, and in many cases regulatory agencies and proponents do not get sufficient credit for the high standards that a project must appear to. For example, the BC EAO is at times criticized for “rejecting” only a very small number of projects, but it is rarely noted how many additional mitigation measures and design changes are required in respect of projects that are approved, nor is it very clearly noted that something in the order of a quarter of projects that enter into the BC environmental assessment system do not make their way through and instead are discontinued even in the absence of a formal “rejection”.

23. Continuous Improvement

Establish continuous improvement processes to ensure that relevant input from the Project Review Process Advisory Committee, the complaint review process and individual project reviews are identified, shared among staff and incorporated into ongoing policy refinement. This could, among other things, instituting a requirement for the Project Review Lead to identify and share any relevant lessons learned in the case of Category A and B projects, and in the case of Category C project holding a debriefing session with other project review staff to share insights and experiences.

Instituting this practice would require designating a staff member to have responsibility for tracking and sharing this information, and organizing debriefing sessions for Category C

projects. It would also be necessary to ensure that any relevant information obtained from the complaint review discussed above is included in the continuous improvement process.

Rationale

Instituting a system of continuous improvement will allow PMV to effectively respond and adapt to issues that arise in project review. It will also allow PMV to meet the needs of its current and future tenants, as well as other project review stakeholders, and fulfils the evaluative criteria of efficiency, effectiveness, accountability and responsiveness.

CONCLUSION

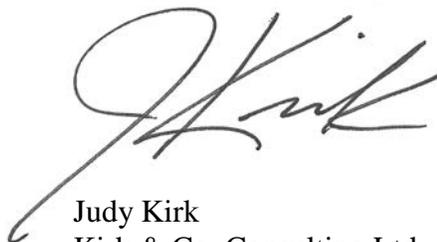
We thank you again for the opportunity to undertake this work, and to engage extensively with you, your colleagues and other interested parties during the course of this project. The time and degree of engagement put forth by all parties is greatly appreciated, as we have received constructive comments from a wide range of people within and outside of the PMV organization.

For any project review process, different people will inevitably have various perspectives. It is common that some will want more detailed and intensive scrutiny of projects while others will argue that a given process is overly intensive (particularly in respect of projects that the federal government has not considered large enough to “designate” under CEEA, 2012 and the province has not designated as reviewable under the BC Environmental Assessment Act). Finding that appropriate balance, in the face of competing views and within the unique legislative mandate of a port authority, is inevitably a challenging task, but we hope these recommendations will further assist PMV in achieving these goals and its commitment to a process of continuous improvement.

Sincerely,



Robin Junger
McMillan LLP
1055 West Georgia St., Suite 1500
Vancouver, BC, V6E 4N7



Judy Kirk
Kirk & Co. Consulting Ltd.
402 – 1250 Homer Street
Vancouver, BC, V6B 1C6

APPENDIX A

Materials reviewed in connection with best practices analysis

List of policies, procedures, web pages and related documentation reviewed to undertake an analysis of regulatory best practices used by other levels of government and ports in other jurisdictions.

1. CEEA 2012
 - a. CEEA 2012
 - b. Former *Canada Port Authority Environmental Assessment Regulations*
 - c. Projects on Federal Lands and Outside Canada under the *Canadian Environmental Assessment Act, 2012*
 - d. *Prescribed Information for the Description of a Designated Project Regulations*
 - e. Guide to Preparing a Description of a Designated Project under CEEA 2012
2. Provincial/State Legislation, Regulations and Policy
 - a. BC
 - i. *Environmental Assessment Act*
 - ii. *Reviewable Projects Regulations*
 - iii. *Prescribed Time Limits Regulation*
 - iv. *Public Consultation Policy Regulation*
 - v. *Concurrent Approval Regulations*
 - vi. EAO User Guide
 - vii. Guidelines for Preparing Project Descriptions
 - viii. The Fairness and Service Code
 - ix. Proponent Guide for providing First Nation Consultation Information - Treaty First Nations
 - x. Proponent Guide for providing First Nation Consultation Information - Non-Treaty First Nations
 - xi. Policy on Public Comments
 - xii. Application Information Requirements (AIR) Template
 - xiii. Valued Components Guideline
 - b. Alberta
 - i. *Environmental Protection and Enhancement Act*
 - ii. *Environmental Assessment Regulation*
 - iii. *Mandatory and Exempted Activities Regulation*
 - iv. Alberta's Environmental Assessment Process
 - v. Guide to Preparing Environmental Impact Assessment Reports in Alberta
 - vi. Preparing Disclosure Documents for Environmental Assessment Screenings
 - vii. Preparing for and Submitting an Environmental Impact Assessment Report
 - viii. Guide to Providing Comments on Proposed Terms of Reference
 - ix. Guide to Reviewing Environmental Impact Assessment Reports
 - x. Guide to Using the Project Summary Table
 - xi. Frequently Asked Questions
 - xii. Standardized Terms of Reference

- xiii. Industrial Plant Terms of Reference
 - xiv. At a Glance - Status of Current Projects
 - xv. Environmental Assessment Program Statistics
 - xvi. Environmental Impact Assessments
 - xvii. List of Completed EIAs by Activity
 - xviii. List of Completed EIAs by Date
 - xix. List of Completed EIAs by Proponent
 - xx. Summary of Environmental Assessment Activity - Current Projects
 - xxi. Summary of Environmental Assessment Activity - Historical Projects
 - xxii. 3PC Contractors
 - xxiii. 3PC Model - Final Evaluation Report and Action Plan
 - xxiv. What Contractors Should Know
 - xxv. What Proponents Should Know
- c. Ontario
- i. *Environmental Assessment Act*
 - ii. *Electricity Projects Regulation*
 - iii. *Waste Management Projects Regulation*
 - iv. *Transit Projects Regulation*
 - v. *Deadlines Regulation*
 - vi. Environmental Assessments in Ontario
 - vii. Environmental assessment process
 - viii. Frequently Asked Questions
 - ix. Code of Practice - Preparing and Reviewing Terms of Reference for Environmental Assessments in Ontario
 - x. Code of Practice - Preparing and Reviewing Environmental Assessments in Ontario
 - xi. Code of Practice - Consultation in Ontario's Environmental Assessment Process
 - xii. Code of Practice – Preparing, Reviewing and Using Class Environmental Assessments in Ontario
 - xiii. How to make a Part II Order request
 - xiv. Streamlined Environmental Assessments
 - xv. Electricity Projects information page
 - xvi. Guide to Environmental Assessment Requirements for Electricity Projects
 - xvii. Transit Projects web-based information page
 - xviii. Transit Project Assessment Process Guide
 - xix. Waste Management Projects information page
 - xx. Guide to Environmental Assessment Requirements for Waste Management Projects
- d. Washington State
- i. *State Environmental Policy Act* (Chapter 43.21C RCW)
 - ii. SEPA Rules (Chapter 197-11 WAC)
 - iii. SEPA Model Ordinance (Chapter 173-806 WAC)
 - iv. SEPA Rule Revisions
 - v. Chapter 43-21 RCW State Environmental Policy
 - vi. SEPA Environmental Checklist
 - vii. SEPA Focus sheet
 - viii. SEPA Handbook

- ix. Frequent Questions
 - x. Court Decisions
 - xi. SEPA Guide for Project Applicants
 - xii. SEPA Guide for Citizens
 - xiii. Gateway Pacific Terminal at Cherry Point Proposal
3. Other Canadian Ports
- a. Belledune Port Authority
 - i. Security and Environment
 - ii. Annual Reports
 - b. Halifax Port Authority
 - i. Environmental Policy Statement
 - ii. Environmental Management System
 - iii. Port Practices and Procedures Manual
 - iv. Gateway Infrastructure Projects
 - v. Annual Reports
 - c. Hamilton Port Authority
 - i. Social Responsibility web pages
 - ii. Nature web page
 - iii. Property Development
 - iv. December 2011 press release
 - v. Hamilton Harbour Remedial Action Plan (RAP)
 - d. Montreal Port Authority
 - i. Permits and Other Documents
 - ii. Environment
 - iii. Environmental Policy Statement
 - iv. Environmental Management System
 - v. Sustainable Development Policy
 - vi. PortInfo Magazine
 - e. (Nanaimo Port Authority
 - i. Harbour Operations Environmental Protection
 - ii. Permits and Applications.
 - iii. Practice and Procedures Manual
 - iv. Property Development
 - v. News release
 - f. Oshawa Port Authority
 - i. Land Use Plan
 - ii. Settlement Agreement
 - g. Port Alberni Port Authority
 - i. Practice and Procedures
 - ii. Administration
 - iii. Lease Portfolio
 - iv. Port Alberni Waterfront North Study
 - h. Prince Rupert Port Authority
 - i. Environmental Stewardship Policy Statement
 - ii. Practice and Procedures Manual
 - iii. Port Carbon Assessment Report
 - iv. Marine Risk Assessment Report
 - v. Economic Impact Study

- vi. Land Use Management Plan
- vii. Special Examination Summary Report
- viii. The Westview Terminal Redevelopment Project Environmental Assessment screening report (July 20, 2012).
- ix. Fairview Terminal Phase II Expansion Project Comprehensive Study Report (September, 2012)
- x. The Canpotex Potash Export Terminal and Ridley Island Road, Rail, and Utility Corridor Comprehensive Study Report (September 2012)
- xi. Section 6.0 Planning Districts and Development Policies
- i. Quebec Port Authority
 - i. Practice and Procedures Manual activities that require port approval
 - ii. Annual Report 2012
- j. Saguenay Port Authority
 - i. Environmental Policy Statement
- k. Saint John Port Authority
 - i. Practice and Procedures Manual
 - ii. Land Use Plan
 - iii. Environment web page
- l. Sept-Îles Port Authority
 - i. Excerpt from the Port of Sept-Îles Environmental Policy
 - ii. 2012 Annual Report
 - iii. Practice and Procedures
 - iv. Land Use Plan
- m. Thunder Bay Port Authority
 - i. Environmental Pledge
 - ii. Annual Reports 2006-2012 – unlike some other ports, the annual reports do not contain any relevant information.
 - iii. Economic Impacts of the Great Lakes St. Lawrence Seaway System
- n. Toronto Port Authority
 - i. Policies and Procedures
 - ii. Public Consultation Policy
 - iii. Noise Barrier Environmental Assessment Materials
 - iv. Billy Bishop Toronto City Airport Proposed Lakefill Environmental Assessment Materials
 - v. Removal and Relocation of the Airport Administration Building Environmental Assessment Materials
 - vi. Proposed Lakefill Within Marine Exclusion Zone Environmental Assessment Materials
 - vii. Proposed Pedestrian/Services Tunnel & Perimeter Road Environmental Assessment Materials
 - viii. Draft Report: BBTCA Air Quality Assessment
 - ix. Draft Report: BBTCA Noise Impact Assessment
 - x. Annual Report 2012
 - xi. Proposed Framework discussion paper for the Billy Bishop Toronto City Airport
 - xii. News releases
- o. Trois-Rivières Port Authority
 - i. Policies and Procedures

- ii. Directive for Access to the Port
 - iii. Directive related to the Management for Violations to the Security and Safety Regulations
 - iv. On Course for 2020 Summary Document (Strategic Planning 2008 Summary)
 - v. Annual Report 2012
 - vi. Economic Benefits 2011
 - p. Windsor Port Authority
 - i. Info Source
 - ii. Environmental Policy
 - iii. Practices and Procedures
 - iv. Economic Impacts of the Great Lakes St. Lawrence Seaway System (2011)
 - v. Waterfront Construction Permit Application Form
 - vi. 2013 Annual General Meeting Chairman Address
 - vii. 2012 Annual General Meeting Chairman Address
- 4. US Ports
 - a. Long Beach
 - i. Green Port Policy
 - ii. Clean Air Action Plan
 - iii. San Pedro Bay Standards
 - iv. Water Resources Action Plan
 - v. Sediment Management Plan
 - vi. Draft HIA Scoping document for the Ports of Los Angeles and Long Beach.
 - vii. Ports of Los Angeles and Long Beach Joint Comments on Draft HIA Scoping Document
 - viii. Air Quality and Risk Assessment Analysis Protocol for Proposed Projects at the Port of Long Beach
 - ix. Final Environmental Impact Report for the TTI Grain Export Terminal
 - x. Final Environmental Impact Report for the Gerald Desmond Bridge
 - b. Los Angeles
 - i. Flow chart of port EIR process
 - ii. Environmental Assessment Questionnaire
 - iii. Application for Discretionary Permit Form
 - iv. Site Assessment Questionnaire
 - v. Risk Management Analysis Questionnaire
 - vi. Port of Los Angeles Community Advisory Committee
 - vii. CEQA/EIR Projects and Public Notices

APPENDIX B

Suggested Consultation Requirements for Category A, B and C Projects

	Category A	Category B	Category C
Project Permit Application Submitted			
Communications and Consultation Plan	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Applicant to develop for PMV approval 	<ul style="list-style-type: none"> • Applicant to develop for PMV approval
Consultation Requirements (Applicant-Led)	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Consultation materials outlining proposed project, potential impacts and mitigation measures • Feedback Form (Hardcopy and Online) • Open Houses (number to be proposed by applicant in Communications and Consultation Plan) • Minimum one week notification of consultation opportunity (two weeks preferred) • Notification to applicant's existing stakeholder database, and letter/postcard mail drop to residents and businesses within 2-3 blocks/500 metres of project • Minimum duration of two weeks for consultation period 	<ul style="list-style-type: none"> • Consultation materials outlining proposed project, potential impacts and mitigation measures • Feedback Form (Hardcopy and Online) • Open Houses (number to be proposed by applicant in Communications and Consultation Plan) • Small Group Meetings (number to be proposed by applicant in Communications and Consultation Plan) • Other consultation methods, as recommended by applicant in Communications and Consultation Plan • Minimum two weeks notification of consultation opportunity • Notification to applicant's existing stakeholder database, letter/postcard mail drop to residents and businesses within 2-3 blocks/500 metres of project

	Category A	Category B	Category C
			<ul style="list-style-type: none"> • Newspaper advertising in community paper(s) • Minimum duration of four weeks for consultation period • Consideration of multiple rounds of consultation
Consultation Reporting (Applicant-Led)	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Produce and post report summarizing consultation input 	<ul style="list-style-type: none"> • Produce and post report summarizing consultation input (following each round, where applicable)
Consideration of Input	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Provide document outlining how input was considered, including examples of changes made to project or mitigation measures (where applicable) 	<ul style="list-style-type: none"> • In cases of multiple rounds of consultation, include information about how input was considered in subsequent consultation materials • Provide document outlining how input was considered, including examples of changes made to project or mitigation measures (where applicable)
Web Posting of Permit Application (PMV-Led)	<ul style="list-style-type: none"> • Web Posting of Permit Application and Public Comment through written submissions • Comment period should be 14 days 	<ul style="list-style-type: none"> • Web Posting of Permit Application and Public Comment (following other consultation) through written submissions • Comment period would be between 14 and 30 days 	<ul style="list-style-type: none"> • Web Posting of Permit Application and Public Comment (following other consultation) through written submissions • Comment period would be 30 days or more
Notification of Opportunity to Comment on Permit Application (PMV-Led)	<ul style="list-style-type: none"> • Letter to First Nations and Local Government 	<ul style="list-style-type: none"> • Letter to First Nations and Local Government • Notification to existing stakeholder database, and letter/postcard mail drop to residents and businesses within 2-3 	<ul style="list-style-type: none"> • Letter to First Nations and Local Government • Notification to existing stakeholder database, letter/postcard mail drop to residents and businesses within 2-3

	Category A	Category B	Category C
		blocks/500 metres of project	blocks/500 metres of project <ul style="list-style-type: none"> • Newspaper advertising in community paper(s)
Response to Written Submissions (PMV-Led)	<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Applicant would be required to review and respond to interests and considerations with appropriate mitigation 	<ul style="list-style-type: none"> • Applicant would be required to review and respond to interests and considerations with appropriate mitigation