

Boundary Bay Conservation Committee
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The Boundary Bay Conservation Committee (BBCC) was established in 1988 to enhance public awareness of the Fraser River delta and estuary in British Columbia. We have worked with other conservation groups to obtain protection and recognition for this world class ecosystem.

August 26, 2022

Failure to post and incorporate important public comments on proposed LNG Marine Terminal on the Fraser River led to an inappropriate BC Substitution Assessment process

Note: comments do not include consultation with Aboriginal Groups

Outline

1. Project Description and US ownership
2. Initial public commentary to the environmental assessment, May 22, 2015 -June 24, 2015
 - a) public comments are not posted on Project websites
 - b) comments not sufficiently incorporated into the decision for a BC Substitution Assessment process
 - c) consequential failure to provide a proper scope and type of assessment
3. Second public commentary period, November 20, 2015 – December 21, 2015
 - a) comments not appropriately posted on BC Environmental Assessment Office website
 - b) importance of second public commentary period to assessment of Valued Components
4. Failure to seriously consider public input to the Tilbury LNG Marine Terminal Project
5. Limited scope avoids environmental assessment of plans for full-scale Tilbury LNG operations
 - a) project splitting of Tilbury LNG Operations
 - b) failure to meet requirements of the *Canadian Environmental Assessment Act, 2012*
 - c) B.C. Substitution Assessment Process contravenes *CEAA 2012* requirements
 - d) limited scope of B.C. Substitution Process avoids federal accountability to environmental effects of high importance to the public

Attachment: Chronology of documents relevant to public commentary, April 30, 2015 to Aug. 15, 2022

**Tilbury Marine Jetty Project #80105 - B.C. Substitution Environmental Assessment Process
May 6, 2015 – present day (August, 2022)**

1. Project Description and US Ownership

Tilbury Jetty Limited Partnership, a partnership between affiliates of FortisBC and Seaspan, proposes the construction and operation of a new LNG marine terminal facility located on Tilbury Island, along the South Arm of the Fraser River in Delta, British Columbia.

The Project is 21 km upstream from the Fraser River estuary, famous for sockeye and chinook salmon as well as Canada’s major stopover for millions of waterfowl and shorebirds of the Pacific Flyway.

As proposed, the Tilbury Marine Jetty Project includes the loading of liquefied natural gas (LNG) onto LNG carriers and barges for export to local and global markets. The facility is expected to operate for a minimum of 30 years.

FortisBC, Seaspan and affiliates intend to export LNG produced at the FortisBC Tilbury liquefaction and storage plant on the adjacent property.¹

On May 7, 2015, the National Energy Board of Canada granted WPMV, Delaware, USA, a licence to export 3.5 million tonnes of Tilbury LNG annually for 25 years²:

“Obtaining the requested Licence is an important step in the development of the WesPac LNG Marine Terminal and further expansion of LNG export production capacity at the Tilbury LNG Plant.”³

WesPac Midstream-Vancouver LLC(WPMV), is a registered company in Delaware, USA:

- 85% owned by Highstar Capital, Delaware
- 7.5% owned by Primoris Services Corporation, Delaware
- 7.5% owned by Management⁴

¹ National Energy Board of Canada, Decision Letter to grant export licence to WesPac Midstream – Vancouver LLC, May 7, 2015, Scrolled page 7/9

[A69890-1 NEB - Decison - WesPac Midstream - Licence to Export Natural Gas.pdf \(cer-rec.gc.ca\)](#)

² National Energy Board of Canada approves WesPac Midstream LNG export licence,

[National energy board of Canada approves WesPac midstream LNG export license. – Tilbury Pacific](#)

³ National Energy Board of Canada, Decision Letter to grant export licence to WesPac Midstream – Vancouver LLC, May 7, 2015, Scrolled pages 1&9

[A69890-1 NEB - Decison - WesPac Midstream - Licence to Export Natural Gas.pdf \(cer-rec.gc.ca\)](#)

⁴ National Energy Board, Application of WesPac Midstream-Vancouver LLC, June 20, 2014, Scrolled page 4/12

[Microsoft Word - Final Wespac Licence Application.DOCX \(cer-rec.gc.ca\)](#)

The Tilbury LNG Marine Terminal Project is undergoing an environmental assessment under the B.C. Substitution environmental assessment process. The Process was initiated May 6, 2015 and continues.

2. Initial public commentary to the environmental assessment, May 22, 2015 -June 24, 2015

a) public comments are not posted on Project websites

The federal government held a public comment period from May 22, 2015 to June 24, 2015. The government requested public comments on:

- the Project Description submitted by the Proponent
- whether there was need for a federal environmental assessment
- the BC Government's request for a BC Substitution Environmental Assessment
- potential effects on the environment

The Notice stated that all comments received will be considered public.

It seems the public submitted over a thousand comments expressing serious environmental, social and economic concerns. The submitted comments are not posted on either the federal or the provincial Project website. No Report on the comments is posted on either website.

On request, the federal Impact Assessment Agency of Canada provided a link to the comments. The source of this link is unclear. There is no transparency as to the location of this information which can be provided only on request.

<https://drive.google.com/file/d/1DDjJTIX-fFnTLkZ4PIOi1jDTNMRFkSkP/view?usp=sharing>

The link opens to about 186 pdf files so it is too difficult to find out how many submissions were made and what the public had to say.

As there is no information about this public comment period on the provincial website, how can the public request information for which they have no knowledge? Also, there is no information on the federal website about receipt of the comments and how they were incorporated. There is only the announcement of the public comment period.

The public has no credible access to the comments: how many public comments were submitted; what information was provided by the public; and how the information was incorporated into the decision for a BC Substitution environmental assessment.

A member of the public facilitated a number of public comments to the process and kept a record which shows that at least **991 submissions** called for an assessment by the federal government. Most of the submissions stated:

- the need for a federal environmental assessment by the federal government, particularly a Review Panel assessment
- opposition to a BC Substitution process due to mistrust of a fair process
- the need for a federal assessment to include all aspects of the Tilbury LNG operations: from fracking - to processing - to transporting - to end use
- safety concerns of LNG - the location contravenes international safety standards published by the Society of International Gas Tanker and Terminal Operators
- concerns about effects on human and wildlife health
- concerns about the effects of LNG shipping on fish (including endangered species) and whales, particularly the endangered southern resident killer whales

These were only some of the submissions; so, it appears there were more than 1,000 submissions.

The following are two excerpts from hundreds of submissions expressing the need for the highest level of environmental assessment, a federal Review Panel Assessment:

“The proposed project must be subjected to a full Canadian Environmental Assessment by a Panel Review Process and a BC Environmental Assessment Review as the potential risks and the cumulative environmental impacts of this project are so wide ranging. There must be no substitution of one process for the other.”⁵

“... As these numerous species are listed under the *Species at Risk Act*, and as CEAA is accountable under the Precautionary Principle, the Project should be reviewed by a CEAA Panel Review and a B.C. Environmental Assessment.”⁶

b) comments not sufficiently incorporated into the decision for a BC Substitution Assessment process

Without posting any comments, or feedback, on July 6, 2015, the federal government announced the need for a federal environmental assessment, and, on July 10, 2015 announced approval of the BC Substitution Environmental Assessment process.

⁵ Submission to Tilbury Marine Jetty Project, Boundary Bay Conservation Committee, June 10, 2015

⁶ Submission to Tilbury Marine Jetty Project, June 11, 2015

The federal Minister of Environment, The Honourable Leona Aglukkaq, sent a letter to the BC Minister of Environment, The Honourable Mary Polak, stating approval of the BC Substitution Environmental Assessment process. The federal Minister claims she considered comments received from both the Aboriginal Groups and the public. She referenced numerous comments relating to the environmental effects of marine shipping and added an additional condition to the process:

“the consideration of the environmental effects of marine shipping activities associated with the Project, and beyond the care and control of the proponent, along the designated shipping route within the South Arm of the Fraser River, from the Project’s marine terminal to the pilot station at Sands Heads.”

Note: These boundaries proved to be insufficient and in July, 2019, the boundaries were extended to the 12-nautical-mile limit of Canada’s territorial sea and to the Point Grey disposal-at-sea site. This was not in response to public concern, but a response to court decisions ruling that the federal government had significant accountability to effects of shipping.

No other public concerns were acknowledged or addressed, which raises the question of how much information was imparted to the federal Minister of Environment. It appears she was not sufficiently informed about the public comments.

The current BC EAO Assessment Report (July 13, 2022) states that this initial engagement was prior to, and outside, the formal EA process. This is extraordinary as the process had already begun and the Proponent had already submitted the Project Description.⁷ The Government of Canada’s invitation for public comments on the most important issue – level and type of assessment - is now described in the BC EAO as outside the assessment:

“Initial engagement was conducted from May 2014 to June 2015, prior to and outside the formal EA process. The purpose of initial engagement was to identify key stakeholder, inform the development of project website and information brochures, and to identify preliminary concerns and questions that need to be addressed during project development.”⁸

The ‘purpose’ stated above does not correlate with the important invitation by the Impact Assessment Agency of Canada which invited comments on the need for a federal assessment; the option for a BC substitution process; the Project Description; and environmental effects. The Notice also stated that, “All comments received will be considered public.”

Now that public comment period is being characterized as, “prior to, and outside, the formal EA process”!

⁷ BCEAO Project Description, April 30, 2015

<https://projects.eao.gov.bc.ca/api/public/document/5886b0d4e036fb01057695d9/download/Project%20Description%20for%20the%20proposed%20WesPac%20Tilbury%20Marine%20Jetty%20Project%20dated%20Apr%2030%2015.pdf>

⁸ BCEAO Draft Assessment Report, July 13, 2022, scrolled page 68/827 [EPIC \(gov.bc.ca\)](https://www.epic.gov.bc.ca)

If the assessment does not include receipt and incorporation of public comments received prior to the establishment of the Substitution process, then the assessment does not meet the requirements of *CEAA 2012* - meaningful public participation in a formal public commentary period and access to environmental assessment records.⁹

Additionally, failure to properly incorporate and post the public comments does not meet the requirements of the B.C. Public Consultation Policy Regulation. Under Access to Information, the executive director must order public access to information on the project information centre. The information includes:

“(d) any public notice given during an assessment;

...

(g) comments in respect of the following that are received by the executive director during a formal public comment period from persons and organizations:

(i) the proponent’s application for an environmental certificate;”¹⁰

This accountability is documented in the Procedural Order Under Section 11 for the Tilbury Marine Terminal Project.¹¹

The Public Notice, submitted comments, and Report on the Comments from the Public Commentary period, May 22, 2015 to June 24, 2015 is not disclosed on the BC EAO Project website thereby denying public access to all records.

c) consequential failure to provide a proper scope and type of assessment

Why was the first stage of public input into this controversial Project dismissed and ignored? The initial public comment period is key to the determination of type, level, and scope of assessment:

“Scoping establishes the parameters of the EA and focuses the assessment on relevant issues and concern.”¹²

“The public comments received at this stage may also inform whether or not the designated project is recommended for referral to environmental assessment by review panel.”¹³

⁹ Chapter 4 – Implementation of the *Canadian Environmental Assessment Act, 2012*, 2014 Fall Report of the Commissioner of the Environmental and Sustainable Development, Office of the Auditor General of Canada, Section 4.56.

https://www.oag-bvg.gc.ca/internet/English/parl_cesd_201410_04_e_39851.html

¹⁰ *Environmental Assessment Act*, Public Consultation Policy Regulation, B.C. Reg. 373/2002, 6 Access to Information, Scrolled page 3/5

https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/acts-and-regulations/2002-act-regulations-documents/2002_-_public_consultation_policy_regulation.pdf

¹¹ Order Under Section 11, July 24, 2015, Environmental Assessment of the WesPac Tilbury Marine Jetty Project, Section 19.4

<https://projects.eao.gov.bc.ca/api/public/document/5886b0ebe036fb01057695dc/download/Enclosure%20-%20Section%2011%20Order.pdf>

¹² Guidelines for the Preparation of an Environmental Impact Statement pursuant to the *Canadian Environmental Assessment Act, 2012*, 3. Scope of the Environmental Assessment, 3.22 Factors to be considered [Final Environmental Impact Statement Guidelines - Canada.ca \(ceaa-acee.gc.ca\)](https://www2.gov.bc.ca/assets/gov/environment/assessment/guidelines/final_environmental_impact_statement_guidelines_-_canada.ca_(ceaa-acee.gc.ca))

¹³ Public Participation in Environmental Assessment under the CEAA 2012, Part 2

<https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/public-participation-environmental-assessment-ceaa2012.html>

The BC Substitution Process is supposed to include the same factors as the federal process. However, right from the outset, the federal policy of early engagement and public participation is dismissed by the BC Environmental Assessment Office (EAO). It is clear that the BC Substitution Environmental Assessment of the Tilbury Marine Terminal Project process does not meet *CEAA 2012* requirements.

Pursuant to the federal Guidelines:

“Meaningful public participation is best achieved when all parties have a clear understanding of the proposed project as early as possible in the review process.”¹⁴

The public clearly did not want a BC Substitution Environmental Assessment process and stated mistrust of the BC process due to the B.C. Government’s deep investment in LNG. It is clear that if the public comments had been credibly incorporated, the federal government would have acknowledged that the far-reaching effects of the LNG marine terminal Project needed to include a much broader scope of assessment and federal accountability. This would have led to a decision for the highest level of environmental assessment by a Review Panel. That is what the public stated was needed.

The B.C. Substitution environmental assessment is the wrong level of assessment for the broad scope of effects of Tilbury LNG operations and federal accountability for important factors. The Project requires assessment of all activities associated with the Tilbury LNG operations:

“Canadian Environmental Assessment Act, 2012

Factors To Be Considered

Factors

19 (1) The environmental assessment of a designated project must take into account the following factors:

- (a)** the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;
- (b)** the significance of the effects referred to in paragraph (a);
- (c)** comments from the public — ... — that are received in accordance with this Act;¹⁵

¹⁴ Guidelines for the Preparation of an Environmental Impact Statement pursuant to the *Canadian Environmental Assessment Act, 2012*, 2.2 Public Participation

[Final Environmental Impact Statement Guidelines - Canada.ca \(ceaa-acee.gc.ca\)](https://www2.ec.gc.ca/info_nfo/index.cfm?lang=eng&nav=ceaa-acee)

¹⁵ Canadian Environmental Assessment Act, 2012

<https://www.canlii.org/en/ca/laws/stat/sc-2012-c-19-s-52/latest/sc-2012-c-19-s-52.html>

As noted above, the public expressed concerns about the environmental effects of all interactive, interdependent Tilbury LNG operations.

3. Second public commentary period, November 20, 2015 – December 21, 2015

a) comments not appropriately posted on BC Environmental Assessment Office website

A second public commentary period, Nov. to Dec. 21, 2015 was managed by the B.C. Environmental Assessment Office (BC EAO). The public was invited to comment on Valued Components - environmental, economic, social, heritage and health effects of the Project. The public was asked to provide feedback about required studies and information. The draft Valued Components document was prepared by the Proponent.

The public comments are not located under ‘Commenting’ on the BC EAO Project website where the comments for subsequent public comment periods are posted. The comments for the second public comment period are found in a Report which is not easily located – amidst several hundred documents.¹⁶ It is a mystery why it is not clearly posted under ‘Commenting.’

b) importance of second public commentary period to assessment of Valued Components

Numerous public submissions expressed multiple concerns including safety; need for a federal Review Panel environmental assessment; inclusion of all Tilbury LNG operations from fracking to end use; serious hazards of LNG; impacts of dredging; impacts on farmland from proposed power lines; emissions; effects on the Fraser River and Salish sea ecosystems; effects on human and wildlife health, contravention of international safety standards; and cost to taxpayers.

As with the previous public comment period, this was information vital to the process – public comments on the valued components. The BC EAO reported 791 submissions.

The Proponent submitted a report on the public comments.¹⁷ The responses were pigeon-holed into topics with the response that they will be addressed. The response to concerns about lack of inclusion of all the Tilbury LNG operations was that the Scope had already been determined and the LNG marine terminal was a separate project from all the other Tilbury LNG operations.

Comments about the holistic value of the Fraser River and Salish Sea ecosystems, and the need for protection and restoration were ignored.

¹⁶ Collected Public Comments, Draft Valued Component Selection Document, December 21, 2015
[WesPac Tilbury Marine Jetty- Collected Public Comments - VC Selection Document - 20151221.pdf \(gov.bc.ca\)](#)

¹⁷Public Consultation Report #1 by WesPac Tilbury Marine Jetty Project, July 2016
[Microsoft Word - Public Consultation Report 1 - 2016.07.19 \(gov.bc.ca\)](#)

The response to concerns about the effects of LNG shipping was the claim that it is not the Proponent's problem:

“Operational shipping activities from the Project site to Sand Heads will be considered in the Application as per section 3.1.3 of the Section 11 Order available on EAO's website¹³, but these activities are not considered directly linked to the Project as LNG carriers and barges will not be under the care and control of the Proponent.”¹⁸

The BC EAO also wrote a Report in response to the public input but, instead of addressing specific concerns with substantive, scientific-based information, the BC EAO accepted the report by the Proponent as sufficient response to the public. The EAO Report listed key themes of concern and stated the Proponent had addressed the majority of the concerns in the tracking table:

“The Proponent has addressed the majority of the comments in the comment tracking table. This document provides EAO's responses for comments related to the EA process that were received during the public comment period. All public comments, including those related to the issues above, are considered through the course of EAO's assessment.”¹⁹

The BC EAO was satisfied with the Proponent's tracking table which is a list of environmental assessment topics with promotional comments and a list of intentions.

It is clear the Proponent is managing the assessment and the public comments with endorsement of the BC Environmental Assessment Office (EAO). There is no meaningful response, or incorporation of public concerns. Questions have not been answered.

Comments from the public offered valuable information and expertise which was not appropriately incorporated. Valued Components were reduced to lists in boxes with subjective descriptions and statements of intent.

The narrow scope of the low-level BC Substitution environmental assessment process set limiting parameters on this assessment. This has empowered the Proponent and the B.C. Environmental Assessment Office to dismiss most public concerns as beyond the scope of this assessment.

4. Failure to seriously consider public input to the Tilbury LNG Marine Terminal Project

According to records, there have been 5 public commentary periods to date for the Tilbury Marine Terminal Project. The BC EAO refers to 4 public commentary periods omitting to include the first, and most important public input from May 22, 2015 to June 24, 2015. It is the most important because the early-stage process determined the type of assessment and the scope of assessment. The public were clear in their mistrust of the B.C. Substitution Environmental Assessment Process and requested a federally-run assessment; in particular, a Review Panel Environmental Assessment.

¹⁸ Public Consultation Report #1 by WesPac Tilbury Marine Jetty Project, July 2016, Scrolled page 29/87
[Microsoft Word - Public Consultation Report 1 - 2016.07.19 \(gov.bc.ca\)](#)

¹⁹ BC Environmental Assessment Office Response to Public Comments Regarding the Environmental Assessment Process for the Proposed WesPac Tilbury Marine Jetty Project – Pre-Application Review Stage, July 28, 2016, Scrolled page 2/7
[EAO response to public comments in Pre-Application Review Stage..pdf \(gov.bc.ca\)](#)

The public comments have been clear that the adjacent Tilbury LNG Plant, its operations; sources; expansion plans; and end-use should be included in the scope of assessment. The public comments reveal an understanding that there has been deliberate Project-Splitting to avoid a federal Review Panel assessment. The public comments have been clear about concerns of health and safety, and degradation of the lower Fraser River and Salish ecosystems.

The BC Environmental Assessment Office (EAO) has permitted the Proponent, Tilbury Jetty Limited Partnership, to manage the public process and response to public input.

Due to the narrow scope of assessment, response to most comments from the public are dismissed as beyond the scope of the assessment. The Proponent's responses to public submissions are mostly evasive and dismissive. Where the Proponent is accountable, the response claims that the Application meets all requirements and adverse effects will be mitigated with plans and monitoring:²⁰

- Response to concerns about effects from the full cycle of LNG: *LNG is a clean burning fuel*
- Response to concerns about fracking, transport, and end use: *beyond the scope of this assessment*
- Response to concerns about expansions of adjacent Tilbury LNG plant: *separate projects*
- Response to concerns about the effects of LNG shipping: *is being assessed but is beyond the accountability of the Proponent because the Proponent is accountable to only onsite activities*
- Response to concerns about significant dredging for the Project creating a massive hole in the river thereby altering flows, sediment and the salinity regime: *The existing deep sea and domestic lanes are routinely dredged under an established dredging policy*
- Response to concerns about safety: *will implement on-site safety measures; not accountable beyond site operation*
- Response to concerns about wildlife, habitat and ecosystems: *are being assessed and there will be mitigation measures*

Note: identified, scientifically-proven mitigation measures are not provided

- Response to concerns of loss of shoreline habitat which is identified as “highly productive habitat”: *wetland habitat will be restored*
- Response to concerns about air quality: *not significant*
- Response to concerns about the fact that LNG is methane and the full cycle results in the same greenhouse gas emissions as coal: *The Tilbury marine jetty has an important role to play in reducing greenhouse gas (GHC) emissions in B.C. and around the world.*

²⁰ WesPac Responses to Comments from Application Review, June 19, 2019
https://projects.eao.gov.bc.ca/api/public/document/60f83c4e4222de00226ef2e8/download/20210713_WesPac_Public%20Comments%20Tracking.pdf

- Response to concerns about process: *defers to B.C. EAO which does not directly address the concerns. The EAO states the Proponent has addressed the issues:*

“The Proponent has addressed the majority of the comments in the comment tracking table. This document provides EAO’s responses for comments related to the EA process that were received during the public comment period. All public comments, including those related to the issues above, were considered through the course of EAO’s assessment of WesPac.”²¹

Then the EAO lists the steps in the process.

The B.C. EAO does not offer comments on the evasive and unsubstantiated responses by the Proponent.

5. Limited scope avoids environmental assessment of plans for full-scale Tilbury LNG operations

a) Project splitting of Tilbury LNG Operations

Due to the limited scope of assessment, the public is not afforded an appropriate environmental assessment of the plans for the massive full-scale Tilbury NG operation which includes expansions at the Tilbury LNG plant and construction of the Tilbury LNG Marine Terminal.

The B.C. and federal governments have split the environmental assessment of the plans for the full-scale Tilbury LNG operation into two Projects: the Tilbury LNG Marine Terminal and the adjacent Tilbury LNG plant expansion plans.

While the governments state the two Projects are separate, the public comments state the two projects are interconnected and interdependent and should be assessed as one Tilbury LNG Project. Also, the owner promotes the plans as one LNG operation:

“Tilbury Island LNG Terminal is an operating LNG terminal in Delta, British Columbia, Canada. Expansions to the facility have been proposed...

...Tilbury Island LNG Terminal is an export terminal in Delta, British Columbia, Canada...The facility is owned by FortisBC...

...Phase 1 and Phase 2 expansions to the facility have been proposed...The facility would provide LNG to the proposed Tilbury Marine Jetty LNG project which is co-owned by FortisBC and Seaspan.”²²

²¹ BC Environmental Assessment Office Response to Public Comments Regarding the Environmental Assessment Process for the Proposed WesPac Tilbury Marine Jetty Project, June 25, 2019 Scrolled page 2/7
https://projects.eao.gov.bc.ca/api/public/document/60f8a3bfb10a400228f6986/download/WesPac_EAO%20Response_Memo_App_Review_PCP_20190625.pdf

²² Tilbury Island LNG Terminal, Global Energy Wiki Monitor,
https://www.gem.wiki/Tilbury_Island_LNG_Terminal

The single Project is reinforced in the local news:

“In 2019, FortisBC completed a \$400 million expansion of the plant’s production and storage capacity, and announced a second phase expansion – one that includes a new marine jetty to be used to load LNG carriers for export, and marine bunkering vessels.”²³

Furthermore, an LNG export licence²⁴ granted to WesPac Midstream on May 7, 2015, was based on all Tilbury LNG operations. The licence was based on information in the Application:

Note: WPMV refers to the company applying for the export licence, WesPac Midstream Vancouver

“10. Engineering and site analyses have confirmed that the Tilbury site is capable of accommodating further LNG export production expansion of approximately 462 million cubic feet per day of natural gas equivalent LNG production. The timing of further expansion will be largely driven by market demand for LNG export capacity and the receipt of regulatory approvals to construct and operate new liquefaction and storage equipment. The applied-for export licence volume corresponds to 400 million cubic feet per day of natural gas equivalent LNG production.

11. Obtaining the requested Licence is an important step in the development of the WesPac LNG Marine Terminal and further expansion of LNG export production capacity at the Tilbury LNG Plant. More specifically, the Licence will facilitate WPMV’s ability, and the ability of others on whose behalf WPMV will act as agent, to enter into long term LNG export market supply agreements to underpin such development and expansion.”²⁵

e) failure to meet requirements of the *Canadian Environmental Assessment Act, 2012*

With governments refusing to assess the obvious overall plan, the public is being denied due process as the physical needs and activities of the Tilbury LNG operations are linked. *CEAA 2012* requires assessment of linked operations and activities.

The *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* states:

19 (1) The environmental assessment of a designated project must take into account the following factors:

(a) the environmental effects of the designated project, including the environmental effects of malfunctions or accidents that may occur in connection with the designated project and any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out;

(b) the significance of the effects referred to in paragraph (a);²⁶

²³ Musqueam, FortisBC ink deal on Tilbury LNG, Nelson Bennett, Business in Vancouver, August 10, 2022 <https://biv.com/article/2022/08/musqueam-fortisbc-ink-deal-tilbury-lng>

²⁴ National Energy Board, Issue of export licence to WesPac Midstream – Vancouver LLC, May 7, 2015 [A69890-1_NEB - Decison - WesPac Midstream - Licence to Export Natural Gas.pdf \(cer-rec.gc.ca\)](https://www.cer-rec.gc.ca/A69890-1_NEB_-_Decison_-_WesPac_Midstream_-_Licence_to_Export_Natural_Gas.pdf)

²⁵ National Energy Board, Application of WesPac Midstream – Vancouver LLC, June 20, 2014, Sections 10 & 11 [Microsoft Word - Final Wespac Licence Application.DOCX \(cer-rec.gc.ca\)](https://www.cer-rec.gc.ca/Microsoft_Word_-_Final_Wespac_Licence_Application.DOCX)

²⁶ *Canadian Environmental Assessment Act, 2012* <https://www.canlii.org/en/ca/laws/stat/sc-2012-c-19-s-52/latest/sc-2012-c-19-s-52.html>

c) B.C. Substitution Assessment Process contravenes *CEAA 2012* requirements

The B.C. Substitution Assessment of the Tilbury LNG Marine Terminal has failed to meet *CEAA 2012* requirements of meaningful early engagement; posting of all public notices, comments and responses; and appropriate access to information.

B.C. Environmental Assessment Office (EAO) responses to public comments fail to incorporate federal accountability; fail to provide scientific data and information to the public; fail to insist on providing scientifically-proven mitigation measures; and fail to be a neutral facilitator by accepting and posting promotional and leading statements of the Proponent. One example is the simple, incomplete response to concerns about greenhouse gas emissions from the full cycle of LNG operations. The response, “*The Tilbury marine jetty has an important role to play in reducing greenhouse gas (GHC) emissions in B.C. and around the world,*” does not address the submitted comments on this issue.

Another example is the posting of a convoluted explanation of how the Tilbury LNG Marine Terminal Project and the FortisBC LNG plant expansions are independent Projects.

“The EAO understands that the capacity of Tilbury Phase 2 would exist regardless of TMJ, and that TMJ is not FortisBC’s only path to serve LNG customers. TJLP confirmed that the existing facilities and Tilbury Phase 1 expansion (approved via provincial Order in Council) would produce LNG that would be shipped through TMJ, and that TMJ does not require any of the Phase 2 expansion to proceed. The storage tank for Tilbury Phase 2 would proceed whether the TMJ is build or not, as the purpose of Phase 2 is to improve gas delivery system resiliency after recent no-flow events.”²⁷

It is unclear how the federal government managed to legally approve the B.C. Substitution Assessment process when the substitution process was not permitted for projects which were regulated under the jurisdiction of the National Energy Board and the *Canada Oil and Gas Operations Act*. For such Projects:

“33 The Minister must not approve the substitution of a process in relation to a designated project”²⁸

As documented above, on May 7, 2015, the National Energy Board granted an LNG export licence to WesPac Midstream – Vancouver LLC. Under this licence, the Proponent, is regulated by the National Energy Board and the *Canada Oil and Gas Operations Act*. The act outlines federal accountability to protection of the environment, safety of navigation, and duties related to the management of LNG. Due to accountability to energy laws and regulations, it appears the federal Minister must not approve the BC Substitution Assessment process.

²⁷ BC Environmental Assessment Office (BCEAO), Draft Assessment Report for Tilbury Marine Jetty Project, Project Description and Location, July 13, 2022, Scrolled page 33/827

[TMJ Assessment Report Draft for PCP 20220713.pdf \(gov.bc.ca\)](https://www2.gov.bc.ca/gov/content/industry/energy/tilbury/TMJ_Assessment_Report_Draft_for_PCP_20220713.pdf)

²⁸ *Canadian Environmental Assessment Act, 2012, Sections 33(a); 15(b)*

<https://www.canlii.org/en/ca/laws/stat/sc-2012-c-19-s-52/latest/sc-2012-c-19-s-52.html>

d) Limited scope of B.C. Substitution Process avoids federal accountability to environmental effects of high importance to the public

By approving the B.C. Substitution Assessment process, the federal government is avoiding a proper cumulative effects assessment of federal responsibilities: protection of federal waterways; impacts to fish habitat and populations; species at risk; shipping; transportation; dumping at sea; dredging of federal waterways; federal energy laws and regulations; safety; and emissions. These are the issues identified in public comments to the process and, summarily dismissed in responses as beyond the scope and responsibility of the Proponent.

The public submissions from Day One have expressed concern of the effects of the Tilbury LNG plans on factors that are federal responsibilities. The public submissions state the B.C. Substitution Assessment fails to address these concerns and call for a federal Review Panel assessment of the full Tilbury LNG operations and expansion plans, as well as the LNG Marine Terminal. Instead of responding appropriately, the federal and B.C. Governments have been ignoring the public input. There has been no meaningful public participation.

Tilbury LNG Marine Jetty Project #80105 – Chronology April 30, 2015 – August 15, 2022

Chronology of documents relevant to public commentary

Tilbury Jetty Limited Partnership proposes the construction and operation of a new LNG marine terminal facility located on Tilbury Island, along the South Arm of the Fraser River in Delta, British Columbia. As proposed, the Tilbury Marine Jetty Project includes the loading of liquefied natural gas (LNG) onto LNG carriers and barges for export to local and global markets. The facility is expected to operate for a minimum of 30 years.

The Project is undergoing an environmental assessment under the B.C. Substitution environmental assessment process.

Environmental Assessment under B.C. Substitution Environmental Assessment Process

Impact Assessment Agency of Canada (IAAC) website for Tilbury Marine Jetty Project 80105
<https://iaac-aeic.gc.ca/050/evaluations/proj/80105>

18 documents are posted on the federal website

B.C. Environmental Assessment Office (BC EAO) website for Tilbury Marine Jetty Project 80105
[EPIC \(gov.bc.ca\)](http://epic.gov.bc.ca)

August 19, 2022 – 292 documents are posted on the BC EAO website - latest is Draft Assessment Report for the Tilbury Marine Jetty Project dated July 13, 2022

Note: Impact Assessment Agency of Canada prior to 2019 was named the Canadian Environmental Assessment Agency of Canada (CEAA)

Documents posted on both IAAC and BC EAO websites:

- Apr. 30, 2015 BC website – Documents - Initial Project Description, Section 10, Pre-Application, Project Description submitted by WesPac Midstream, April, 2015
[Microsoft Word - 1314220049-010-R-Rev0-WesPac Project Description 30APR 15.docx \(gov.bc.ca\)](#)
- May 6, 2015 BC website - Documents – Section 10 – Project to undergo an Environmental Assessment, Pre-Application, Order Under Section 10(1)(c) – legal document stating the Project requires an environmental assessment
[IN THE MATTER OF THE ENVIRONMENTAL ASSESSMENT ACT \(gov.bc.ca\)](#)
- May 6, 2015 BC website – Project Details - WesPac Midstream-Vancouver LLC has entered into the environmental assessment process with the proposed Marine Jetty Project. – View Documents opens up the Order Under Section 10(1)(c)
[EPIC \(gov.bc.ca\)](#)
- May 6, 2015 BC website – Documents – Section 10 Order – Notification letter to Proponent
“The Project Description outlines the proposal for constructing a marine terminal for berthing and transferring liquefied natural gas (LNG) to marine barges and carriers at Tilbury Island on the Fraser River. The Project Description also describes the construction of LNG infrastructure and safety and control systems to transfer processed LNG from the existing adjacent FortisBC Tilbury LNG Plant to marine carriers berthed at the proposed marine jetty.” [Telephone: 250-387-1543 \(gov.bc.ca\)](#)

- May 11, 2015 federal website - Project Description of a Designated Project, Document #5
This is the Project Description submitted by WesPac Midstream. April, 2015.
“The purpose of the Project is to transfer LNG to carriers and barges for delivery to both offshore export markets and local fuel markets... The Project will receive processed LNG for transfer to LNG carriers and barges from the Tilbury LNG Plant... (scrolled page 23/130) <https://iaac-aeic.gc.ca/050/documents/p80105/101701E.pdf>”
- May 11, 2015 federal website - Summary of a Project Description of a Designated Project, May, 2015 submitted by WesPac Midstream. Document #3.
<https://iaac-aeic.gc.ca/050/documents/p80105/101699E.pdf>
- May 14, 2015 BC website – Documents – Letter from the BC Associate Deputy Minister to the President of Canadian Environmental Assessment Agency requesting a BC Substitution environmental assessment process.
“I am aware that the Agency must first accept the Project Description and determine whether a federal EA is required before it can respond to this request for substitution.”
[file:xxxxx-xx/Project - 10 \(gov.bc.ca\)](file:xxxxx-xx/Project-10.gov.bc.ca)
- May 14, 2015 federal website – receipt of letter, dated May 14, 2105, from the BC Associate Deputy Minister of Environment requesting a B.C. Substitution environmental assessment process for the Tilbury Marine Jetty Project. Document #4
<https://iaac-aeic.gc.ca/050/documents/p80105/101700E.pdf>

Public Comment Period #1 – Not posted – over 1,000 submissions

Public Comments from Comment Period, May 22, 2015 – June 24, 2015: number of comments not posted but sources indicate over 1,000 submissions seeking a federal environmental assessment by the federal government, specifically a Review Panel Assessment. The public stated mistrust of a B.C. Substitution Assessment due to the B.C. Government’s deep investment in LNG

- May 22, 2015 federal website - Notice inviting public comment on the Project – need for federal environmental assessment and the Request for Substitution Process, May 22, 2015, Comment period: May 22, 2015 to June 15, 2015, Document #1
<https://iaac-aeic.gc.ca/050/evaluations/document/101781>

May 22, 2015 — As part of the strengthened and modernized *Canadian Environmental Assessment Act, 2012* (CEAA 2012) put in place to support the government's Responsible Resource Development Initiative, the Canadian Environmental Assessment Agency (the Agency) must decide whether a federal environmental assessment is required for the proposed WesPac Tilbury Marine Jetty Project, located in British Columbia (B.C.). To assist it in making its decision, the Agency is seeking comments from the public on the project and its potential effects on the environment.

Substitution Request

The Government of B.C. has requested to substitute the B.C. environmental assessment process for the CEAA 2012 process if it is determined that an environmental assessment is required. The Agency is also seeking comments on this request.

- May 22, 2015 federal website - News Release inviting public comment on the Project, [Document #2 News Release - Public Comments Invited on a Summary of the Project Description and Request for Substitution - Canada.ca \(iaac-aeic.gc.ca\)](#)
- June 11, 2015 federal website - Extension of time for the public comment period. The comment period was extended to June 24, 2015. [Document #6 Public Comment Period Extended on a Summary of the Project Description and Request for Substitution - Canada.ca \(iaac-aeic.gc.ca\)](#)
- July 6, 2015 federal website - Notice of Environmental Assessment Determination. The notice stated a federal environmental assessment is required. [Document #8 Notice of Environmental Assessment Determination - Canada.ca \(iaac-aeic.gc.ca\)](#)
- July 10, 2015 federal website - Notice of Commencement of an Environmental Assessment and Substitution Approval, [Document #7 Notice of Commencement of an Environmental Assessment and Substitution Approval - Canada.ca \(iaac-aeic.gc.ca\)](#)
- July 13, 2015 BC website Documents – Federal Response to Request for Substitution – Substitution Approved. Letter from federal Minister of the Environment, The Honourable Leona Aglukkaq. Project entered the Substitution Assessment Process
- “I also considered comments received from both Aboriginal Groups and the public in respect of the request during a recent comment period, including the numerous comments relating to the environmental effects of marine shipping associated with the Project in areas of federal jurisdiction... I have included an additional condition for the substituted assessment: the consideration of the environmental effects of marine shipping activities associated with the Project, and beyond the care and control of the proponent, along the designated shipping route within the South Arm of the Fraser River, from the Project’s marine terminal to the pilot station at Sands Heads.”
- [Letter dated Jul 10 15 from Minister Leona Aqlukkaq \(Environment Canada\) to Minister Mary Polak \(MOEBC\) re the proposed WesPac Tilbury Marine Jetty Project and Substitution..pdf \(gov.bc.ca\)](#)
- July 24, 2015 B.C. Section 11, Procedural Order establishing the formal scope, procedures and methods of the environmental assessment
<https://projects.eao.gov.bc.ca/api/public/document/5886b0ebe036fb01057695dc/download/Enclosure%20-%20Section%2011%20Order.pdf>
- Nov. 13, 2015 Invitation to comment on Draft Valued Components of the Assessment prepared by the Proponent
[Environmental Assessment of the Proposed \(gov.bc.ca\)](#)

Public Comment Period #2: 791 submissions

- Dec. 21, 2015 The BC EAO posted a document of all the public comments, ‘Collected Public Comment – Draft Valued Components Selection Document.
[WesPac Tilbury Marine Jetty- Collected Public Comments - VC Selection Document - 20151221.pdf \(gov.bc.ca\)](#)

- July 28, 2016 Public Consultation Report prepared by the Proponent. The Report listed topics of concern and responded that these concerns will be addressed in the assessment.
<https://projects.eao.gov.bc.ca/api/public/document/5886b1b1e036fb01057695f9/download/Public%20Consultation%20Report%20%231%20dated%20July%202016.pdf>
- July 28, 2016 EAO Response to Public Comments
[EAO response to public comments in Pre-Application Review Stage..pdf \(gov.bc.ca\)](#)
- Nov.15, 2018 The EAO posted that the Application was not accepted.
[Notification letter from EAO to WesPac in regards to application screening decision \(7\).pdf](#)
- Mar. 20, 2019 The EAO posted acceptance of the Application
- Mar. 26, 2019 EAO posting of Public Comment and Open House on Application.
<https://projects.eao.gov.bc.ca/p/58851208aaecd9001b829b58/project-details?pageSizeActivities=26¤tPageActivities=1>
- Apr. 2, 2019 EAO posting of Public Comment Period, April 2, 2019 – May 17, 2019. The public invite is posted on the website but unable to locate published advertisement. View Documents link just opens to website.
<https://projects.eao.gov.bc.ca/p/58851208aaecd9001b829b58/project-details?pageSizeActivities=26¤tPageActivities=1>

Public Comment Period #3: 485 submissions

Public Comments from Comment Period, April 2, 2019 – May 17, 2019: 485 submissions

- May 17, 2019 Posting under ‘Commenting’ – public comments on the Application, April 2, 2019 to May 17, 2019
<https://projects.eao.gov.bc.ca/p/58851208aaecd9001b829b58/cp/5c8aea58d69ab9002440610e/details;currentPage=1;pageSize=10;sortBy=-datePosted;ms=1661301886742>
- June 19, 2019 EAO posting of WesPac Responses to Public Comments on the Application, April 2, 2019 to May 17, 2019. Comments are documented on a Tracking Table
https://projects.eao.gov.bc.ca/api/public/document/60f83c4e4222de00226ef2e8/download/20210713_WesPac_Public%20Comments%20Tracking.pdf
- June 25, 2019 Posting of EAO Response Memo to Public Comment Period on Application, April 2, 2019 to May 17, 2019f
https://projects.eao.gov.bc.ca/api/public/document/60f8a3bfb10a400228f6986/download/WesPac_EAO%20Response_Memo_App_Review_PCP_20190625.pdf
- July 5, 2021 Posting of Tilbury Jetty Limited Partnership’s Unconventional Offset Proposal
- July, 29, 2021 Posting of Public Comment Period, August 5, 2021 to September 7, 2021 – invitation to comment on Draft Assessment documents, Certified Project Description, and potential federal conditions

Public Comment Period #4: 137 submissions

Public Comments from Comment Period, August 5, 2021– September 7, 2021: 137 submissions

Sept. 7, 2021 Under ‘Commenting’: Posting of Public Comments for August 5, 2021 to September 7, 2012. Comments on Draft Assessment documents, Certified Project Description, and potential federal conditions
<https://projects.eao.gov.bc.ca/p/58851208aaecd9001b829b58/cp/61033d326039490022dd761f/details;currentPage=1;pageSize=10;sortBy=-datePosted;ms=1661301775550>

There doesn’t appear to be any response to this public comment period.

Dec. 1, 2021 Letter from Tilbury Jetty Ltd. Partnership – changes to bunker vessel traffic with change in type and frequency of vessels calling at the marine terminal.
https://projects.eao.gov.bc.ca/api/public/document/61a7c06190fb52002298bf95/download/20211123_TJLP_to_EAO_Bunker_Demand_Scenario_Supplemental_Assessment_Proposal.pdf

Dec. 2, 2021 Signed Section 24(4) Order for Time Extension to complete a supplemental assessment of change in Application to more vessels.
https://projects.eao.gov.bc.ca/api/public/document/61a94f4c54e25a002250f59c/download/Section%2024%284%29%20Order_20211202.pdf

Jan. 19, 2022 Section 13 Order, stating new information respecting the number and type of vessels that will utilize the terminal.
https://projects.eao.gov.bc.ca/api/public/document/61e862476fee890022086418/download/TMJ_Section13Order%235_VaryingTheProceduralOrderfortheEA_20220119.pdf

July 7, 2022 Posting of Advertisement for Public Comment Period #4 (note: actually #5), July 14, 2022 to August 15, 2022.
https://projects.eao.gov.bc.ca/api/public/document/62c773d1a4b8bc0022cebd3a/download/TMJ_EAO_public_comment_period_4_advertisement.pdf

Public Comment Period #5: 145 submissions

Public Comments from Comment Period, July 14, 2022 – August 15, 2022: 145 submissions, including a letter of concern with 2,016 signatures

Aug. 15, 2022 Under ‘Commenting’: Posting of Public Comments, July 14, 2022 – Aug. 15, 2022
<https://projects.eao.gov.bc.ca/p/58851208aaecd9001b829b58/cp/62c74f4d78d9cf0022cf755b/detail;currentPage=1;pageSize=10;sortBy=-datePosted;ms=1661468329470>