

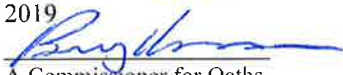


Vancouver Fraser Port Authority
100 The Pointe, 999 Canada Place
Vancouver, B.C. Canada V6C 3T4
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January 30, 2019

Mr. Jeff Scott
President & CEO
Fraser Surrey Docks LP
11060 Elevator Road
Surrey, British Columbia V3V 2R7

This is Exhibit "A" referred to in the
Affidavit of Elizabeth Gabel affirmed
before me this 29th day of March,
2019


A Commissioner for Oaths
in and for the Province of Alberta

Barry Robinson
Barrister & Solicitor

Dear Mr. Scott:

Re: **VFPA PER No. 2012-072-1: Permit Cancellation**
Fraser Surrey Docks LP – Direct Transfer Coal Facility

I am writing further to our letter dated November 22, 2018 and our meeting of December 14, 2018 regarding the above Project and Condition No. 81 of PER No. 2012-072-1, and prior letters dated April 13, 2018 and May 31, 2018 on the same matter.

The purpose of this letter is set out VFPA's decision concerning cancellation of project permit No. 12-072-1 (the "**Permit**"): Fraser Surrey Docks ("**FSD**") - Direct Transfer Coal Facility ("**DTCF**"). The issue that must be addressed is whether FSD is in compliance with Permit Condition No. 81. Condition No. 81 states:

The approved works must commence by November 30, 2016 (the "Commencement Date") and be complete no later than November 30, 2020 (the "Completion Date"). **The applicant must demonstrate substantial progress on construction of the authorized works prior to November 30, 2018 to the satisfaction of VFPA.** For an extension to the Commencement Date, the applicant must apply to VFPA in writing no later than 30 days following that date. For an extension to the Completion Date, the applicant must apply in writing to VFPA no later than 30 days prior to that date. Failure to apply for an extension as required may, at the sole discretion of VFPA, result in termination or modifications to this approval. (Emphasis added)

The specific question to be addressed is whether FSD is able to demonstrate "substantial progress" on construction of authorized works, as of November 30, 2018.

The Permit does not contain a definition of "substantial progress". The matters relevant to determination of "substantial progress" are referenced in this letter.

Substantial Progress Definition

The Oxford English Dictionary (OED) defines '**Substantial**' as follows:

1. *Of considerable importance size or worth;*
2. *Concerning the essentials of something.*

The OED defines '**Progress**' as follows:

Advance towards completion, maturity or perfection.

Combination of the terms "**substantial**" and "**progress**" would imply a state that is advancing towards completion and contains both characteristics of being substantial (i.e. considerable size and worth, and concerns the essentials).

It is important to consider the purpose of Permit Condition No. 81. VFPA, considering its statutory mandate and interests of all stakeholders, must be in a position to ensure that permitted projects proceed on a reasonable schedule. Where market or other conditions make timely completion of a permitted project impossible or unlikely, VFPA must be able to consider potential alternative projects. The rights granted under the Permit cannot continue in a situation where the DCTF will not proceed, where it is uncertain whether the DCTF will proceed, or where the DCTF, if it proceeds, will not be completed within the required timeframe. The date referenced, November 30, 2018, is 24 months before required completion of the DCTF.

Our expectation for meeting the requirement of Permit Condition No. 81 as it pertains to 'substantial progress', is for FSD to have completed at least 30% of the physical works and activities that were authorized under the Permit, or approximately one third of the DCTF. A specific percentage of construction cannot be adopted as an absolute requirement. But percentage completion is an important indicator of "substantial progress".

Construction Undertaken to Date

The works approved by VFPA for the DCTF Project are as follows:

- Installation of new rail track and realignment of existing track within the FSD lease area, across an adjacent VFPA roadway, and within the Port Authority Rail Yard (PARY) to the east of the terminal;
- Construction of a new coal receiving/unloading facility including a receiving pit for unloading bottom-dump rail cars, conveyor systems and associated structures and enclosures;
- Construction of a new ship loading system at FSD Berths 2 and 3, including conveyors, a ship loading system equipped with a telescoping spout and spoon, 12 new fender piles (steel pipe piles), and a land-based barge winching system;
- Construction of a new covered conveyor system between the new unloading and loading facilities;
- Installation of dust suppression systems along the unloading, loading and conveyor systems;
- Installation of Site drainage management systems
- Construction necessary to mitigate certain potential adverse environmental effects associated with the Project, including installation of monitoring equipment, riparian restoration and planting, and development of new riparian fish and wildlife habitat to mitigate the effects of streamside construction associated with the Project;
- Removal (demolition) of Shed 4 at the FSD facility and the valve station corresponding to the building;
- Realignment of existing access to the adjacent eastern parcel from Elevator Road to Robson Road;
- Realignment of existing Bekaert Canada access from Elevator Road to Robson Road;
- Relocation of portions of Elevator Road to the south west;
- Installation of A fire suppression system;
- Installation of Lighting on all structures; and
- Installation of any necessary utility connections.

The only works completed to-date are the Port Authority Rail Yard ("**PARY**") rail track works detailed under the first bullet point above. Completion of this one element would

not, on a fair assessment, constitute 30% of the value/cost of the full works approved under the Permit for the DCTF.

In association with the approved Fraser Grain Terminal ("**FGT**") project, works commenced on January 8, 2019 on the removal of Shed 4 (8th bullet point). Those works are anticipated to take 3 – 4 weeks to complete. Further, work to re-align an existing access road (9th bullet point) is anticipated as part of the FGT project. These works are being undertaken by FGT's contractors on behalf of FSD. Even if these works were considered as part of the evaluation of "substantial progress on construction", this would not add materially to the determination noted above. Accordingly, the approximate 30% threshold would not have been met, and certainly not by the date required in the Permit condition.

Construction Schedule

FSD's April 2018 letter stated that the schedule submitted to VFPA as part of the DTCF project permit amendment application assumed that the majority of construction would commence between December 1, 2018 and June 1, 2019.

The schedule submitted as part of the project permit amendment application indicated all works would be completed in 2017. VFPA has no record of having received an updated construction schedule from FSD following approval of the Permit.

While an updated schedule was enclosed for information as part of FSD's Condition 81 response letter in July 2018, VFPA has no record of FSD having formally submitted an updated construction schedule, as required under Condition No. 77 of the Permit.

Projects Impacted by DTCF Project

Two projects are known to be impacted by the DTCF project:

- Fraser Grain Terminal – Grain Export Facility Project: The FGT project is reliant on certain elements of the DTCF project in order for the grain export facility construction and operation to proceed, including Shed 4 demolition and the construction of a new vehicular access to the site from Robson Road. Shed 4 needs to be removed in order to allow for FGT's rail tracks to be constructed and the access road is the proposed vehicular access point for the grain export facility. Both activities need to be undertaken in order for the facility to function. Rescinding the DTCF permit would, therefore, impact the FGT Project by removing the approval for these two components. This would necessitate an appropriate authorization by VFPA to incorporate these previously approved elements in the FGT project.
- BHP Billiton – Potash Export Facility Project: The rail track alignment proposed as part of the BHP potash project represents a significant physical conflict with the approved DTCF rail track alignment. As a result, the review of the BHP project has been put On Hold until this issue can be resolved by way of a revised rail design. VFPA understands from BHP that there is no known rail design solution, and that a change in the design of the DTCF rail layout by way of a permit amendment would be required unless BHP were to completely reconfigure its proposal.

FSD's commitment to the DTCF Project

FSD's July 13, 2018 letter states that FSD is continuing to review the Project and work with customers to assess feasibility. In addition, at a December 2018 meeting FSD confirmed that the Project currently has no customer. The fact that FSD is continuing to review feasibility of the DTCF, well into the construction period, is inconsistent with the Permit.

It is important to the integrity of VFPA's permit process that a permitted project proceed as reasonably promptly as possible. A project permit cannot be retained as an option, while the party holding the permit assesses whether to go ahead with the project.

Further, there are a number of pre-commencement conditions attached to the Permit that remain outstanding and these conditions must be met prior to works commencing in support of the Permit.

This lack of progress on FSD's part on advancing permit condition submissions, the lack of a customer and the lack of substantial construction works are at odds with the claim that FSD has made substantial progress on construction and therefore has satisfied Permit Condition No. 81.

Conclusion

FSD is not in compliance with basic conditions and requirements contained in the Permit. Further, the ongoing uncertainty related to the development and operation of this project is frustrating the efforts of adjacent tenants/projects due to infrastructure conflicts and incompatible designs. Delay in these other projects is causing considerable hardship and holding back the development of the Port generally.

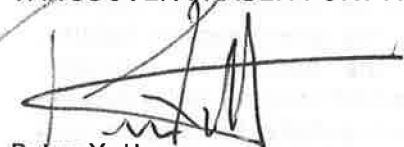
For those reasons, VFPA hereby cancels Project Permit No. 2012-072-1.

Our records indicate that we hold a documentation deposit related to the submission of record drawings on the Project. We have received satisfactory record drawings for the portions of the Project that were constructed (works in the PARY) and as a result are in a position to refund that documentation deposit, with interest.

Should you have any question regarding the above, please feel free to contact me at 604-665-9000 or Peter.Xotta@portvancouver.com.

Yours truly,

VANCOUVER FRASER PORT AUTHORITY



Peter Xotta
Vice President, Planning & Operations, VFPA

cc Greg Yeomans, Director, Planning and Development, VFPA