

Minister's Reasons for Decision

IN THE MATTER OF AN APPLICATION TO EXEMPT THE MUD BAY NATURE-BASED FORESHORE ENHANCEMENTS PROJECT PROPOSED BY THE CITY OF SURREY FROM AN ENVIRONMENTAL ASSESSMENT UNDER THE *ENVIRONMENTAL ASSESSMENT ACT* (2018)

JULY 3, 2024



EAO

Environmental
Assessment Office

1.0 NATURE AND SCOPE OF THE DECISION

On July 3, 2024, pursuant to Section 17(2) of the *Environmental Assessment Act (2018)* (the Act), I, the Minister of Environment and Climate Change Strategy, issued an Exemption Order for the Mud Bay Nature-Based Foreshore Enhancement Project (the Project). This document sets out the reasons for this decision.

The City of Surrey (the Proponent) is proposing to construct and monitor a new shoreline modification project in Surrey, British Columbia (B.C.). The Project is a response to sea level rise that uses nature-based climate change adaptations to increase coastal flood control by gradually increasing the elevation of natural marshes lining Boundary Bay. It is predicted to modify approximately 790 metres linear shoreline and may result in approximately 8.19 hectares of foreshore disturbance. The Environmental Assessment Office (EAO) conducted a review of the Proponent's request for an exemption from the requirement for an environmental assessment certificate.

The Chief Executive Assessment Officer (CEAO) referred the Project to me with a recommendation that I issue an exemption order. Section 17(2) of the Act requires that I consider the sustainability purpose referred to in Section 2(2)(b)(i), the reconciliation purpose referred to in Section 2(2)(b)(ii) and the prescribed matters, if any. I have also considered materials provided by the EAO, which include the EAO's Certificate Exemption Report, proposed Exempted Project Description, and proposed Table of Conditions.

2.0 MINISTER'S CONSIDERATIONS

2.1. The EAO's Certificate Exemption Report

I considered the EAO's detailed findings from the review of the Detailed Project Description (DPD) and note that the EAO's Certificate Exemption Report describes the Proponent's broad and deep engagement with the participating Indigenous nation (Semiahmoo First Nation) and other First Nations, as well as federal and provincial government ministries and local governments, to identify issues and seek ways to address issues and concerns. The EAO has also engaged with Semiahmoo First Nation and other First Nations, including a United States Tribe, and technical advisors in the review of the Proponent's DPD.

The EAO advised me that it was satisfied that the proposed Exemption Order conditions and the Project design requirements set out in the proposed Exempted Project Description would prevent or reduce potential adverse environmental, economic, social, cultural and health effects from the Project, such that no significant effects are expected. I agree with the EAO's conclusion.

2.2. Recommendations of the CEAO

The EAO's CEAO considered the Certificate Exemption Report, proposed conditions, the proposed Exempted Project Description, and the notifications of consent or lack of consent from participating Indigenous nations in the development of her recommendation. The CEAO provided me with her recommendation to issue an Exemption Order. In making her recommendation, she considered whether the project will:

- Not have a significant adverse environmental, economic, social, cultural or health effect, or;
- Not have serious effects on an Indigenous nation or the rights recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

2.3. Indigenous Engagement and Notifications of Consent or Lack of Consent

I affirm that a purpose of the Act is to support reconciliation with Indigenous peoples in B.C. by supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) and that B.C. has committed to implement the UN Declaration and passed the *Declaration of the Rights of Indigenous Peoples Act*. Guided

by these objectives, I have considered the EAO's consultation with First Nations for the Project and the opportunity for Semiahmoo First Nation to provide a notice of consent as part of the EA process.

Potential effects from the Project would occur in the core territory of Semiahmoo First Nation and the traditional territories of the Katzie, Kwantlen, Stó:lō, and Tsawwassen First Nations. Semiahmoo First Nation was the only participating Indigenous nation for the Project. The EAO engaged with Semiahmoo First Nation throughout its process, including through reviews of the EAO's draft report. The EAO sought and achieved consensus with Semiahmoo First Nation at the Readiness Decision, including the EAO's recommendation to issue an exemption order. I have considered Semiahmoo First Nation's review of the report and verbal notification of consensus with the EAO's recommendation to issue an exemption order.

Lummi Nation, an American Tribe based in Washington State, wrote to the EAO requesting an opportunity to review and provide comments on Project documents. On March 14, 2024, the EAO shared the draft Certificate Exemption Report and Exemption Order with Lummi Nation for review and feedback.

2.4. Contribution of the Mud Bay Nature-Based Foreshore Enhancements Project to Sustainability in B.C.

My decision must also consider the sustainability purpose referred to in Section 2(2)(b)(i) of the Act. The EAO's Certificate Exemption Report states that the Proponent developed a Coastal Flood Adaptation Strategy to help prepare for a changing climate and increase the resilience of its coastal communities. Nature-based flood defenses can be a more sustainable method of mitigating the effects of climate change-related sea level rise and is an approach that supports important marine ecosystem functions. The Project is intended to align with strategies to mitigate coastal squeeze from sea level rise and is one of 13 coastal flood adaptation projects identified in the Proponents's Disaster Mitigation and Adaptation Fund (DMAF) Program. The DMAF received funding from the Government of Canada's Disaster Mitigation and Adaptation Fund.

The Proponent has also committed to using best practices for managing protected and invasive species and coastal development, employing science-based approaches that minimize the impacts of new developments and restore shoreline ecosystem function.

3.0 KEY CONSIDERATIONS

3.1.1. Adverse Effects

I note that the Project is a new shoreline modification project located in Surrey, B.C. I considered matters brought forward by technical advisors regarding potential social, environmental, economic, cultural and health effects of the Project.

The EAO's Certificate Exemption Report describes that after considering technical advisor feedback, reviewing the potential impacts described in the Detailed Project Description, proposed mitigations, and intended outcomes of the Project, the EAO is satisfied that there is sufficient regulatory oversight through permitting and authorizations as well as cooperation through the Roundtable that the Project will not have significant adverse effects, including environmental, economic, social, cultural or health effects.

I note that the Project is located within the Boundary Bay Wildlife Management Area (WMA) administered by WLRS and under the *Wildlife Act*, activities that involve the use of land or resources in a WMA require written permission from the WLRS's Regional Manager. An Memorandum of Understanding (MOU) for the Project was developed and signed by the City of Delta, the City of Surrey, and the Government of B.C. to secure permission and regulate the development of the Project within the WMA. The Mud Bay WMA is designated for the purpose of conserving critical, internationally significant habitat for year-round, migrating and wintering waterfowl populations, along with important fish and marine mammal habitat.

I have considered the issues and concerns shared by Federal and Provincial government ministries and Local governments on the DPD, including feedback from Environment and Climate Change Canada (ECCC) and Ministry of Water, Land and Resource Stewardship (WLRS) on shorebird habitat, surveys, and potential impacts to biofilm. ECCC and WLRS actively participate in the Boundary Bay Living Dike Roundtable (Roundtable) and support adaptive management and research throughout the duration of the project. I note oversight by WLRS established in a MOU and engagement with ECCC through the Roundtable provide ongoing opportunities to address the concerns raised by ECCC and WLRS.

The MOU between the Proponent and WLRS requires the proponent submit to the Province a Project proposal describing the proposed works in detail for review and approval before the project can proceed. Included in the MOU is the requirement for a Construction Environmental Management Plan (CEMP) to be developed to establish mitigation measures and an adaptive management approach to reduce potential adverse effects, and the appointment of a Qualified Environmental Professional to monitor the project's compliance with environmental laws and implementation of the CEMP.

3.1.2. Public Engagement

I note that the EAO made efforts to ensure residents of the City of Surrey, communities in proximity to the Project and the public were provided with meaningful opportunities to understand and participate in the review. The EAO held a public comment period on the Project's Initial Project Description and Engagement Plan and the comments and the Proponent's responses are appropriately considered during the process as reflected in the EAO's Certificate Exemption Report.

3.1.3. Other Regulatory Processes

I note that the EAO has determined that no other assessment of the Project, meaning an assessment under this Act of a reviewable project's potential effects, has been or will be conducted. While regulatory reviews will be conducted for permitting, tenures, and authorizations, no other environmental assessment will be conducted. Permits, tenures, and authorizations for the Project are required under the province's *Heritage Conservation Act*, *Water Sustainability Act*, *Dike Maintenance Act*, *Wildlife Act*, *Agricultural Land Commission Act*, and the *Land Act*. Permits may also be required by federal authorities who participated as technical advisors during the EAO's review and are members of the Roundtable. The EAO's Certificate Exemption Report states that as the Project is located within the Boundary Bay WMA, activities therein will be governed by the *Wildlife Act*.

4.0 CONCLUSIONS

I have considered the EAO's Certificate Exemption Report, the recommendations of the CEO, the proposed Exempted Project Description and Table of Conditions, and expression of consensus from Semiahmoo First Nation with the recommendation to exempt the project. I believe that potential effects of the Project can be adequately addressed by permits and authorizations issued by other regulatory authorities and that an assessment of the Project under the Act is not needed. I have decided to issue an exemption order for the Mud Bay Nature-Based Foreshore Enhancements Project.

The Exemption Order includes conditions that the Proponent must abide by. These give me the confidence to conclude that the Mud Bay Nature-Based Foreshore Enhancements Project will be carried out such that no significant adverse effects are likely to occur.

A handwritten signature in blue ink, reading "G. Heyman", is written over a horizontal line.

Honourable George Heyman
Minister of Environment and Climate Change Strategy

Signed this 3rd day of July 2024