



## AGENDA - SPECIAL VICTORIA CITY COUNCIL

Tuesday, October 2, 2018, 11:30 A.M.

Council Chambers, City Hall, 1 Centennial Square

Located on the traditional territory of the Esquimalt and Songhees People

Council is committed to ensuring that all people who speak in this chamber are treated in a fair and respectful manner. No form of discrimination is acceptable or tolerated. This includes discrimination because of race, colour, ancestry, place of origin, religion, marital status, family status, physical or mental disability, sex, sexual orientation, gender identity or expression, or economic status. This Council chamber is a place where all human rights are respected and where we all take responsibility to create a safe, inclusive environment for everyone to participate.

Pages

A. APPROVAL OF AGENDA

B. READING OF MINUTES

C. UNFINISHED BUSINESS

C.1 Bylaw Amendments: 888 Government Street and 811-813 Wharf Street, and 727-729 Johnson Street

1

*A report providing information and recommendations regarding an amendment to the tax exemption bylaws to provide clarity as to the start date of the ten (10) year tax exemption and the requirement of the issuance of an occupancy permit.*

D. REPORTS OF COMMITTEES

E. NOTICE OF MOTIONS

F. BYLAWS

F.1 Bylaws for Heritage Tax Incentive Program Applications for 888 Government Street and 811-813 Wharf Street, and 727-729 Johnson Street

12

A report recommending:

- Rescinding 3rd reading and adoption of:  
Tax Exemption (888 Government Street and 811-813 Wharf Street)  
Bylaw No. 18-063
- 3rd reading of:

- Tax Exemption (888 Government Street and 811-813 Wharf Street) Bylaw No. 18-110, as amended
- Rescinding 3rd reading and adoption of: Tax Exemption (727-729 Johnson Street) Bylaw No. 18-062
- 3rd reading of: Tax Exemption Bylaw (727-729 Johnson Street) Bylaw No. 18-109, as amended

**G. CORRESPONDENCE**

**H. NEW BUSINESS**

**H.1 Reconsideration of Trans-Mountain Pipeline Expansion Project**

16

*A Council member motion regarding the Trans-Mountain Pipeline Expansion Project.*

**I. ADJOURNMENT**



**Council Report**  
For the Meeting of October 2, 2018

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**To:** Council **Date:** October 1, 2018  
**From:** Jonathan Tinney, Director, Sustainable Planning and Community Development  
**Subject:** **Bylaw Amendments: 888 Government Street and 811-813 Wharf Street, and 727-729 Johnson Street**

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**RECOMMENDATION**

That Council consider the following in relation to the proposed bylaws for Heritage Tax Incentive Program Application No. 00029 for 888 Government Street and 811-813 Wharf Street, and Heritage Tax Incentive Program Application No. 00028 for 727-729 Johnson Street:

Tax Exemption (888 Government Street and 811-813 Wharf Street) Bylaw No. 18-063

- a. Rescind third reading that occurred on July 26, 2018, and adoption of Tax Exemption (888 Government Street and 811-813 Wharf Street) Bylaw No. 18-063 that occurred on August 9, 2018.
- b. Amend Contents of Tax Exemption Bylaw (No. 18-063) No. 18-110 by replacing Section 4 "Effective date" with the term "Coming into force."
- c. Amend Tax Exemption Bylaw (No. 18-063) No. 18-110 by amending the tax exemption in Section 3 and effective date in Section 4 to read:

**Tax exemption**

- 3 (1) If the conditions of tax agreement #18-0048 are fulfilled, 51.59% of the assessed value of the Land is exempt from property taxes imposed under section 197(1)(a) of the *Community Charter* for a period of 10 consecutive calendar years, beginning either:**
- (a) in the calendar year following the year this Bylaw comes into force on or before October 31; or**
  - (b) in the second calendar year following the year this Bylaw comes into force after October 31.**

**Coming into force**

- 4 This Bylaw comes into force on the day the City issues an occupancy permit for the residential portion of the improvements on the Land.**
- d. Give third reading to Tax Exemption Bylaw (No. 18-063) No. 18-110, as amended.

Tax Exemption (727 Johnson Street) Bylaw No. 18-062

- a. Rescind third reading of Tax Exemption (727-729 Johnson Street) Bylaw No. 18-062 that occurred on July 26, 2018.
- b. Amend Contents of Tax Exemption Bylaw (No. 18-062) No. 18-109 by replacing Section 4 "Effective date" with the term "Coming into force."
- c. Amend Tax Exemption Bylaw (No. 18-062) No. 18-109 by amending the tax exemption in Section 3 and effective date in Section 4 to read:

**Tax exemption**

- 3 (1) If the conditions of tax agreement #18-0046 are fulfilled, the Land is exempt from property taxes imposed under section 197(1)(a) of the *Community Charter* for a period of 10 consecutive calendar years, beginning either:**
- (a) in the calendar year following the year this Bylaw comes into force on or before October 31; or**
  - (b) in the second calendar year following the year this Bylaw comes into force after October 31.**

**Coming into force**

- 4 This Bylaw comes into force on the day the City issues an occupancy permit for the residential portion of the improvements on the Land.**

- d. Give third reading to Tax Exemption Bylaw (No. 18-062) No. 18-109, as amended.

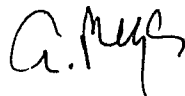
**BACKGROUND**

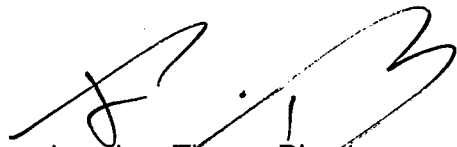
An amendment to the tax exemption bylaws is required to provide clarity as to the start date of the ten (10) year tax exemption and the requirement of the issuance of an occupancy permit. The permit will trigger the Bylaw to come into force and thus activate the start of the tax exemption in the calendar year following the year the Bylaw comes into force on or before BC Assessment's deadline of October 31; or in the second calendar year following the year the comes into force after October 31. To rectify this situation the recommendation will rescind the previous bylaws and provide the necessary language to then introduce and adopt the amended bylaws.

The staff recommendation provided for Council's consideration reflects the amended Tax Exemption (888 Government Street and 811-813 Wharf Street) Bylaw No. 18-110 and Tax Exemption (727-729 Johnson Street) Bylaw No. 18-109, with revised wording shown in bold.

Respectfully submitted,

  
Merinda Conley  
Senior Heritage Planner  
Development Services Division



  
Jonathan Tinney, Director  
Sustainable Planning and Community  
Development Department

Report accepted and recommended by the City Manager:

*Carolyn Jenkins*

Date:

*Oct 1, 2018*

**List of Attachments:**

- Attachment A: Tax Exemption (888 Government Street and 811-813 Wharf Street) Bylaw No. 18-063 (Rescinded)
- Attachment B: Tax Exemption (888 Government Street and 811-813 Wharf Street) Bylaw No. 18-110
- Attachment C: Tax Exemption (727-729 Johnson Street) Bylaw No. 18-062 (Rescinded)
- Attachment D: Tax Exemption (727-729 Johnson Street) Bylaw No. 18-109.

NO. 18-063

**TAX EXEMPTION (888 GOVERNMENT STREET AND 811-813 WHARF STREET)****BYLAW****A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to assist in the preservation and rehabilitation of the heritage building located at 888 Government Street and 811-813 Wharf Street, including the seismic upgrading and residential use of the heritage building, by exempting it from municipal property taxes for 10 years.

**Contents**

- 1 Title
- 2 Definitions
- 3 Tax exemption
- 4 Effective date

Under its statutory powers, including section 225 of the *Community Charter*, the Council of the Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited as the "TAX EXEMPTION (888 GOVERNMENT STREET AND 811-813 WHARF STREET) BYLAW".

**Definitions**

- 2 In this Bylaw,

"improvements"

means all of the Land's improvements that exist at any time during the 10-year period that section 3 is in effect;

"Land"

means the land, including its improvements, located at civic address 816 Government Street and 811-813 Wharf Street in Victoria, British Columbia, and legally described as:

PID: 030-378-974

LOT A SECTION 18 VICTORIA CITY PLAN EPP69462

**Tax exemption**

- 3 (1) Fifty-one decimal fifty-nine percent (51.59%) of the assessed value of the Land is exempt from property taxes, imposed under section 197(1)(a) of the *Community Charter*, for a period of 10 consecutive calendar years, beginning in the year that this section comes into effect.

- (2) The exemption under subsection (1) is subject to the conditions established by tax exemption agreement #18-0048.

**Effective date**

4 The tax exemption in section 3 comes into effect either:

- (a) in the calendar year following the year this Bylaw is adopted on or before October 31; or
- (b) in the second calendar year following the year this Bylaw is adopted after October 31.

READ A FIRST TIME the 26<sup>th</sup> day of July 2018.

READ A SECOND TIME the 26<sup>th</sup> day of July 2018.

READ A THIRD TIME the 26<sup>th</sup> day of July 2018.

ADOPTED by at least 2/3 of all members of the Council on the 9<sup>th</sup> day of August 2018.

RESCINDED on the day of 2018.

CITY CLERK

MAYOR

NO. 18-110

**TAX EXEMPTION (888 GOVERNMENT STREET AND 811-813 WHARF STREET)****BYLAW****A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to assist in the preservation and rehabilitation of the heritage building located at 888 Government Street and 811-813 Wharf Street, including the seismic upgrading and residential use of the heritage building, by exempting it from municipal property taxes for 10 years.

**Contents**

- 1 Title
- 2 Definitions
- 3 Tax exemption
- 4 Coming into force

Under its statutory powers, including section 225 of the *Community Charter*, the Council of the Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited as the "TAX EXEMPTION (888 GOVERNMENT STREET AND 811-813 WHARF STREET) BYLAW".

**Definitions**

- 2 In this Bylaw,

"improvements"

means all of the Land's improvements that exist at any time during the 10-year period that section 3 is in effect;

"Land"

means the land, including its improvements, located at civic address 816 Government Street and 811-813 Wharf Street in Victoria, British Columbia, and legally described as:

PID: 030-378-974

LOT A SECTION 18 VICTORIA CITY PLAN EPP69462

**Tax exemption**

- 3 (1) If the conditions of tax exemption agreement #18-0048 are fulfilled, 51.59% of the assessed value of the Land is exempt from property taxes imposed under section 197(1)(a) of the *Community Charter* for a period of 10 consecutive calendar years, beginning either:



- (a) in the calendar year following the year this Bylaw comes into force on or before October 31; or
- (b) in the second calendar year following the year this Bylaw comes into force after October 31.

**Coming into force**

4 This Bylaw comes into force on the day the City issues an occupancy permit for the residential portion of the improvements on the Land.

READ A FIRST TIME the	day of	2018.
READ A SECOND TIME the	day of	2018.
READ A THIRD TIME the	day of	2018.
 ADOPTED by at least 2/3 of all members of the Council on the	 day of	 2018.

CITY CLERK

MAYOR

NO. 18-062

**TAX EXEMPTION (727-729 JOHNSON STREET) BYLAW****A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to assist in the preservation and rehabilitation of the heritage building located at 727-729 Johnson Street, including the seismic upgrading and residential use of the heritage building, by exempting it from municipal property taxes for 10 years.

***Contents***

- 1 Title
- 2 Definitions
- 3 Tax exemption
- 4 Effective date

Under its statutory powers, including section 225 of the *Community Charter*, the Council of the Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited as the "TAX EXEMPTION (727-729 JOHNSON STREET) BYLAW".

**Definitions**

- 2 In this Bylaw,

"improvements"

means all of the Land's improvements that exist at any time during the 10-year period that section 3 is in effect;

"Land"

means the land, including its improvements, located at civic address 727-729 Johnson Street in Victoria, British Columbia, and legally described as:

PID: 005-137-993  
Lot 33, Victoria City

**Tax exemption**

- 3 (1) The Land is exempt from property taxes, imposed under section 197(1)(a) of the *Community Charter*, for a period of 10 consecutive calendar years, beginning in the year that this section comes into effect.
- (2) The exemption under subsection (1) is subject to the conditions established by tax exemption agreement #18-0046.

**Effective date**

4 The tax exemption in section 3 comes into effect either:

- (a) in the calendar year following the year this Bylaw is adopted on or before October 31; or
- (b) in the second calendar year following the year this Bylaw is adopted after October 31.

READ A FIRST TIME the **26<sup>th</sup>** day of **July** 2018.

READ A SECOND TIME the **26<sup>th</sup>** day of **July** 2018.

READ A THIRD TIME the **26<sup>th</sup>** day of **July** 2018.

RESCINDED on the day of 2018.

ADOPTED by at least 2/3 of all members of the Council on the day of 2018.

CITY CLERK

MAYOR

NO. 18-109

**TAX EXEMPTION (727-729 JOHNSON STREET) BYLAW****A BYLAW OF THE CITY OF VICTORIA**

The purpose of this Bylaw is to assist in the preservation and rehabilitation of the heritage building located at 727-729 Johnson Street, including the seismic upgrading and residential use of the heritage building, by exempting it from municipal property taxes for 10 years.

**Contents**

- 1 Title
- 2 Definitions
- 3 Tax exemption
- 4 Coming into force

Under its statutory powers, including section 225 of the *Community Charter*, the Council of the Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited as the "TAX EXEMPTION (727-729 JOHNSON STREET) BYLAW".

**Definitions**

- 2 In this Bylaw,

"improvements"

means all of the Land's improvements that exist at any time during the 10-year period that section 3 is in effect;

"Land"

means the land, including its improvements, located at civic address 727-729 Johnson Street in Victoria, British Columbia, and legally described as:

PID: 005-137-993  
Lot 33, Victoria City

**Tax exemption**

- 3 (1) If the conditions established by tax exemption agreement #18-0046 are fulfilled, the Land is exempt from property taxes imposed under section 197(1)(a) of the *Community Charter* for a period of 10 consecutive calendar years beginning either:
  - (a) in the calendar year following the year this Bylaw comes into force on or before October 31; or

(b) in the second calendar year following the year this Bylaw comes into force after October 31.

**Coming into force**

**4** This Bylaw comes into force on the day the City issues an occupancy permit for the residential portion of the improvements on the Land.

READ A FIRST TIME the day of 2018.

READ A SECOND TIME the day of 2018.

READ A THIRD TIME the day of 2018.

ADOPTED by at least 2/3 of all members of the Council on the day of 2018.

CITY CLERK

MAYOR

**TAX EXEMPTION (888 GOVERNMENT STREET AND 811-813 WHARF STREET)**

**BYLAW**

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to assist in the preservation and rehabilitation of the heritage building located at 888 Government Street and 811-813 Wharf Street, including the seismic upgrading and residential use of the heritage building, by exempting it from municipal property taxes for 10 years.

***Contents***

- 1 Title
- 2 Definitions
- 3 Tax exemption
- 4 Coming into force

Under its statutory powers, including section 225 of the *Community Charter*, the Council of the Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited as the "TAX EXEMPTION (888 GOVERNMENT STREET AND 811-813 WHARF STREET) BYLAW".

**Definitions**

- 2 In this Bylaw,

"improvements"

means all of the Land's improvements that exist at any time during the 10-year period that section 3 is in effect;

"Land"

means the land, including its improvements, located at civic address 816 Government Street and 811-813 Wharf Street in Victoria, British Columbia, and legally described as:

PID: 030-378-974

LOT A SECTION 18 VICTORIA CITY PLAN EPP69462

**Tax exemption**

- 3 (1) If the conditions of tax exemption agreement #18-0048 are fulfilled, 51.59% of the assessed value of the Land is exempt from property taxes imposed under section 197(1)(a) of the *Community Charter* for a period of 10 consecutive calendar years, beginning either:

- (a) in the calendar year following the year this Bylaw comes into force on or before October 31; or
- (b) in the second calendar year following the year this Bylaw comes into force after October 31.

**Coming into force**

4 This Bylaw comes into force on the day the City issues an occupancy permit for the residential portion of the improvements on the Land.

READ A FIRST TIME the                    day of                    2018.

READ A SECOND TIME the                    day of                    2018.

READ A THIRD TIME the                    day of                    2018.

ADOPTED by at least 2/3 of all members of the Council on the                    day of                    2018.

CITY CLERK

MAYOR

**TAX EXEMPTION (727-729 JOHNSON STREET) BYLAW**

A BYLAW OF THE CITY OF VICTORIA

The purpose of this Bylaw is to assist in the preservation and rehabilitation of the heritage building located at 727-729 Johnson Street, including the seismic upgrading and residential use of the heritage building, by exempting it from municipal property taxes for 10 years.

**Contents**

- 1 Title
- 2 Definitions
- 3 Tax exemption
- 4 Coming into force

Under its statutory powers, including section 225 of the *Community Charter*, the Council of the Corporation of the City of Victoria enacts the following provisions:

**Title**

- 1 This Bylaw may be cited as the "TAX EXEMPTION (727-729 JOHNSON STREET) BYLAW".

**Definitions**

- 2 In this Bylaw,

"improvements"

means all of the Land's improvements that exist at any time during the 10-year period that section 3 is in effect;

"Land"

means the land, including its improvements, located at civic address 727-729 Johnson Street in Victoria, British Columbia, and legally described as:

PID: 005-137-993  
Lot 33, Victoria City

**Tax exemption**

- 3 (1) If the conditions established by tax exemption agreement #18-0046 are fulfilled, the Land is exempt from property taxes imposed under section 197(1)(a) of the *Community Charter* for a period of 10 consecutive calendar years beginning either:
  - (a) in the calendar year following the year this Bylaw comes into force on or before October 31; or



(b) in the second calendar year following the year this Bylaw comes into force after October 31.

**Coming into force**

**4** This Bylaw comes into force on the day the City issues an occupancy permit for the residential portion of the improvements on the Land.

READ A FIRST TIME the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

READ A SECOND TIME the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

READ A THIRD TIME the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

ADOPTED by at least 2/3 of all members of the Council on the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

CITY CLERK

MAYOR



**Council Member Motion  
For the Special Council Meeting of October 2, 2018**

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**Date:** October 1, 2018  
**From:** Councillor Ben Isitt, Councillor Jeremy Loveday and Mayor Lisa Helps  
**Subject:** Reconsideration of Trans-Mountain Pipeline Expansion Project

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**Background:**

On September 20, 2018, the Government of Canada referred the Trans-Mountain Pipeline Expansion Project application back to the National Energy Board (NEB) for reconsideration, responding to the recent Federal Court of Appeal decision in *Tsleil-Waututh et al v. Canada* (2018) (see Attachment 1). The NEB has 155 days to complete this reconsideration, resulting in an expedited process, with an initial deadline of October 3 for apply to participate in the public hear and provide comment on topics D to E outlined in the letter.

The City of Victoria has participated actively and consistently in the process relating to the NEB's review of the Trans-Mountain Pipeline Expansion Project, including participating in the public hearings in Burnaby in January 2016 and submitting the attached Letter of Comment, where the City adopted the position of opposition to the project, on the grounds that: "The Project is not in the public interest because the risk to communities located along the tanker shipping route far outweigh any potential benefits." (See Attachment 2).

It is therefore recommended that Council reaffirm its opposition to the Trans-Mountain Pipeline Expansion Project and direct staff to respond to the NEB by the October 3 deadline.

**Recommendations:**

That Council:

- (1) Reaffirms the City of Victoria's position of opposition to the Trans-Mountain Pipeline Expansion Project, on the grounds that the Project is not in the public interest because the risk to communities located along the tanker shipping route far outweigh any potential benefits.
- (2) Directs staff to respond to the National Energy Board by the October 3 deadline, confirming the City of Victoria's interest in participating in the public hearing for the Reconsideration and providing comment on the topics identified in the letter.

Respectfully submitted,

Handwritten signature of Councillor Ben Isitt in blue ink.

Councillor Isitt

Handwritten signature of Councillor Jeremy Loveday in blue ink.

Councillor Loveday

Handwritten signature of Mayor Lisa Helps in blue ink.

Mayor Helps

Attachments:

1. Letter from National Energy Board, September 26, 2018
2. City of Victoria Written Argument to National Energy Board, January 7, 2016



File OF-Fac-Oil-T260-2013-03 59  
26 September 2018

To: All intervenors in the OH-001-2014 Certificate hearing for the Trans Mountain Expansion Project<sup>1</sup>  
Trans Mountain Pipeline ULC ([regulatory@transmountain.com](mailto:regulatory@transmountain.com))  
All Indigenous peoples and groups on the Crown Consultation List in the OH-001-2014 Certificate hearing  
All interested persons and groups

**Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project (Project)  
National Energy Board (Board) reconsideration of aspects of its Recommendation Report (Report) as directed by Order in Council (OIC) P.C. 2018-1177  
MH-052-2018**

**Application to Participate process; and comment process on the draft List of Issues, the draft Amended Factors and Scope of the Factors for the Environmental Assessment under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), and the design of the hearing process**

## A. Overview

On 20 September 2018, through [OIC P.C. 2018-1177](#), the Governor in Council (GIC) referred aspects of the Board's [Report](#) for the Project back to the Board for reconsideration (Reconsideration). The GIC's direction follows a 30 August 2018 [decision](#)<sup>2</sup> of the Federal Court of Appeal that quashed the GIC's approval of the Project. The GIC has imposed a time limit of 155 calendar days for the Reconsideration. Therefore, the Board must complete the Reconsideration process and issue its Reconsideration report no later than **22 February 2019**.

The Board will hold a public hearing in carrying out the Reconsideration. The Chair of the Board has assigned a Panel of three [Board Members](#) (Lyne Mercier – presiding, Alison Scott, and Murray Lytle) to conduct the Reconsideration.

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<sup>1</sup> Those remaining in the hearing process at the time that the Board issued its Recommendation Report in May 2016, as listed in Appendix 6 of the Report.

<sup>2</sup> *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153.

As detailed in this letter, the Board is now seeking public comments on:

- 1) whether, “on a principled basis,”<sup>3</sup> Project-related marine shipping should be included in the “designated project” to be assessed under the [CEAA 2012](#);
- 2) the draft Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012 (Appendix 1), and the draft List of Issues to be considered in the Reconsideration hearing (Appendix 2); and
- 3) the design of the hearing process to be used for the Reconsideration;
- 4) which government departments or bodies that the Board should require information from during the hearing.

Directions on how to file comments with the Board on the above matters are provided in Part G below.

This letter also provides background and guidance on how those interested in participating in the hearing as an intervenor can apply or register to do so.

**The deadline for filing all comments, and for applying or registering to participate, is 3 October 2018.**

Once the Board has considered the filed comments and Application to Participate (ATP) forms, it will:

- release a Hearing Order setting out the hearing process that will be followed;
- confirm the Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012, and the List of Issues for the Reconsideration hearing; and
- announce the intervenors that will be participating in the hearing.

In determining the Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012 and the List of Issues for the Reconsideration hearing, in addition to considering the comments received, the Board will be guided by the GIC’s direction, the Federal Court of Appeal’s decision, and relevant provisions of the CEAA 2012 and the *National Energy Board Act* (NEB Act).

## **B. Background**

On 19 May 2016, the Board issued its Report for the Project, which recommended that the GIC approve the Project.

On 29 November 2016, the GIC accepted the Board’s recommendation and issued OIC P.C. 2016-1069. That OIC directed the Board to issue a certificate of public convenience and necessity approving the construction and operation of the Project, subject to the conditions recommended by the Board, which the Board did on 1 December 2016 ([Certificate OC-064](#)).

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<sup>3</sup> *Tsleil-Waututh Nation v. Canada (Attorney General)*, *supra* note 2 at para. 770.

On 30 August 2018, the Federal Court of Appeal overturned the GIC's approval of the Project, in part because, in the Court's view, the Board unjustifiably excluded Project-related marine shipping from the definition of the "designated project" under the CEAA 2012. The Court noted that this resulted in successive deficiencies, including limiting the Board's consideration of mitigation measures and of section 79 of the *Species at Risk Act* (SARA). The Court noted that the Board had considered Project-related marine shipping under the NEB Act, and that this was adequate for the purposes of informing the GIC of the effects of Project-related marine shipping on Southern resident killer whales and their use by Indigenous groups, as well as of the significance of these effects.

The Federal Court of Appeal quashed OIC 2016-1069, rendering Certificate OC-064 a nullity. The Court stated that the issue of Project approval should be remitted to the GIC for redetermination, and, in that redetermination, the GIC must refer the Board's recommendations and its terms and conditions back to the Board for reconsideration. At paragraph 770 of its judgment, the Court stated:

Specifically, the Board ought to reconsider on a principled basis whether Project-related shipping is incidental to the Project, the application of section 79 of the [SARA] to Project-related shipping, the Board's environmental assessment of the Project in the light of the Project's definition, the Board's recommendation under subsection 29(1) of the [CEAA 2012] and any other matter the [GIC] should consider appropriate.

In OIC 2018-1177 dated 20 September 2018, the GIC, on the recommendation of the Minister of Natural Resources, pursuant to section 53 of the NEB Act and section 30 of the CEAA 2012:

- a) refers back to the National Energy Board for reconsideration the recommendations and all terms or conditions set out in its May 19, 2016 report entitled *Trans Mountain Expansion Project OH-001-2014* that are relevant to addressing the issues specified by the Federal Court of Appeal in paragraph 770 of *Tsleil-Waututh Nation v. Canada (Attorney General)* (2018 FCA 153), including conditions 91, 131 to 134, 144 and 151;
- b) directs that the Board conduct the reconsideration taking into account the following factors:
  - i) the environmental effects of Project-related marine shipping in view of the requirements of the *Canadian Environmental Assessment Act, 2012*, and
  - ii) the adverse effects of Project-related maritime shipping on species at risk, including the Northeast Pacific southern resident killer whale population, and their critical habitat, in view of any requirements of section 79 of the *Species at Risk Act* that may apply to the Project; and
- c) directs that the Board complete its reconsideration within 155 calendar days after the day on which this Order is made."

**C. Including Project-related marine shipping as part of the “designated project” under the CEAA 2012**

The Board invites public comments on whether, on a principled basis, Project-related marine shipping should be part of the “designated project” under the CEAA 2012, and the rationale for why or why not. More specifically, comments should address whether Project-related marine shipping is “incidental” to Project physical activities, as that term is used in the definition of “designated project” in subsection 2(1) of the CEAA 2012.

The Board is also seeking comments on a draft Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012 (Appendix 1), which reflects a scenario where the Board determines that Project-related marine shipping is part of the “designated project” under the CEAA 2012.

**D. Government departments or bodies that the Board should require information from during the hearing**

Pursuant to paragraph 20(a) of the CEAA 2012, the Board intends to request specialist or expert information or knowledge from each of Fisheries and Oceans Canada, Environment and Climate Change Canada, and Transport Canada in relation to the Reconsideration.

The Board is seeking comments about which other government departments or bodies, if any, that the Board should require information from during the hearing.

**E. Draft List of Issues for the Reconsideration hearing**

The Board invites public comments on the appropriate List of Issues to be considered in the Reconsideration hearing. A draft List of Issues for the Reconsideration hearing is provided in Appendix 2.

**F. Hearing process design**

The Board invites public comments on the design of the hearing process that it should use to carry out its Reconsideration. Comments regarding the hearing process design should include a description of the hearing steps that are appropriate, the timing of these steps, and whether they should be written or oral.

Comments must take into account the **time limit and the limited focus** of the Reconsideration process, and that a portion of the time will be required by the Board to collect and consider comments in determining its hearing process and focus, and to prepare its Reconsideration Report. The Board’s hearing process will be, in accordance with subsection 11(4) of the NEB Act, carried out as expeditiously as the circumstances and considerations of fairness permit, but, in any case, within the time limit imposed by the GIC.

Given what will be an expedited hearing process, **all Parties, including individuals, groups and government departments and bodies, that intend to participate as intervenors, are strongly encouraged to start preparing any additional evidence immediately, based on the draft List of Issues for the Reconsideration hearing.** The Board intends for the entirety of the record filed in the OH-001-2014 Certificate hearing to be included as part of its record for the Reconsideration. **Parties will not be required to re-file or re-test evidence that was filed during the OH-001-2014 Certificate hearing.**

**G. How to file comments**

**The deadline for filing all comments pertaining to Parts C to E above is 3 October 2018.**

Comments can be filed online using the Board's [e-filing tool](#) (when asked to choose a project name, choose "Trans Mountain Expansion Project – Reconsideration – MH-052-2018").

All filings must refer to **Hearing Order MH-052-2018** and **File OF-Fac-Oil-T260-2013-03 59**, and be addressed to:

Ms. Sheri Young  
Secretary of the Board  
National Energy Board  
Suite 210, 517 Tenth Avenue SW  
Calgary, AB T2R 0A8  
Facsimile 403-292-5503 (toll-free 1-877-288-8803)

Alternatively, comments may be mailed or faxed to the Board using the contact information above. **The Board does not accept filings by email.**

Anyone filing comments with the Board should also provide a copy to Trans Mountain at [regulatory@transmountain.com](mailto:regulatory@transmountain.com).

All comments received, and any future filings related to this Reconsideration hearing, will be found in the Board's online [public registry](#).

## H. How to apply or register to participate in the Reconsideration hearing

The Board's Reconsideration hearing will involve:

- the participation of **intervenors**, which typically may file and challenge relevant evidence and submit final argument; and
- gathering **letters of comment from the public** – related to the final List of Issues for the Reconsideration Hearing or the Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the CEAA 2012 – by a deadline to be set by the Board at a later time.

Only those seeking to participate as an **intervenor** in this hearing are required to file an ATP form. Anyone wanting to file a letter of comment by this future deadline does **not** need to file an ATP form.

### *Intervenors in the OH-001-2014 Certificate hearing*

Intervenors in the OH-001-2014 Certificate hearing at the time that the Board issued its Recommendation Report are **guaranteed intervenor status** in this Reconsideration hearing, should they choose to participate. These intervenors must file an ATP form as a means of "registering" only, though a number of the steps can be skipped.

The purpose of this registration process for these intervenors is to ensure that the Board and Parties to the hearing have their current contact information for the purpose of serving documents.

In the case of a **group** that was granted intervenor status during the OH-001-2014 Certificate hearing, the Board notes that intervenor status was tied to the **group** that participated; **not** to the representative(s) of that group. In other words, **only the group is guaranteed intervenor status** in this Reconsideration hearing. Any individual that represented a group and who wants to participate on his/her own as an individual must file an ATP form for the Board's consideration and decision.

### *Other interested persons or groups seeking intervenor status*

Any other member of the public (individuals or groups) may apply to participate in this Reconsideration hearing as an intervenor. The Board will assess all filed ATP forms and decide who will be allowed to participate as an **intervenor**. Intervenor status will be granted to those who, in the Board's opinion, are directly affected or have relevant information or expertise. Applicants must demonstrate how they meet this criteria as they relate to the draft List of Issues for the Reconsideration hearing.

Those not granted intervenor status – as well as any other interested person or group – will be able to file a letter of comment by a deadline to be set by the Board at a later time.



***How to file an ATP form***

The ATP form for this Reconsideration hearing can be found on the Board's [website](#).

If you require a hard copy of the ATP form, please contact a Process Advisor (see Part J below).

**I. Participant funding**

Participant funding is available to facilitate eligible intervenors' participation in this hearing. A simplified funding process will be used for this hearing to reduce administrative burden. Eligible groups may request up to \$80,000, and individuals up to \$12,000.

For information about participant funding and eligible costs, please visit [www.neb-one.gc.ca/pfp](http://www.neb-one.gc.ca/pfp) or contact a Participant Funding Program Coordinator at 1-800-899-1265.

The Participant Funding Request Form is found at the link above, and also attached to this letter as Appendix 3.

**J. Where to find additional information**

As information becomes available or is released regarding the Reconsideration hearing, the Board's will update its Project [webpage](#).

If you require additional information about this letter, including information on how to file an ATP form or comments, please contact a Process Advisor by phone at 1-800-899-1265 (toll-free) or by email at [TMX.ProcessHelp@neb-one.gc.ca](mailto:TMX.ProcessHelp@neb-one.gc.ca).

Trans Mountain is directed to serve this letter on its list of interested parties.

Yours truly,

*Original signed by*

Sheri Young  
Secretary of the Board

Attachments

## Appendix 1

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### **Draft Amended Factors and Scope of the Factors for the Environmental Assessment pursuant to the *Canadian Environmental Assessment Act, 2012*<sup>4</sup>**

#### **1.0 INTRODUCTION**

On 16 December 2013, Trans Mountain Pipeline ULC (Trans Mountain) filed an application with the National Energy Board (Board or NEB) proposing to construct and operate the Trans Mountain Expansion Project (Project). As the Project would require more than 40 kilometres of new pipeline and would be regulated under the *National Energy Board Act* (NEB Act), it is a designated project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and requires a CEAA 2012 environmental assessment for which the NEB is the Responsible Authority. On 20 September 2018, through [OIC P.C. 2018-1177](#), the Governor in Council (GIC) referred aspects of the Board's [Report](#) for the Project back to the Board for reconsideration.

For the purposes of the environmental assessment under the CEAA 2012, the designated project includes the various components and physical activities as described by Trans Mountain in its 16 December 2013 application submitted to the NEB. The Board determined that Project-related marine shipping between the Westridge Marine Terminal and the 12-nautical-mile territorial sea limit is also part of the “designated project” under the CEAA 2012. ~~The Board has determined that the potential environmental and socio-economic effects of increased marine shipping activities to and from the Westridge Marine Terminal that would result from the designated project, including the potential effects of accidents or malfunctions that may occur, will be considered under the NEB Act (see the NEB's Letter of 10 September 2013 for filing requirements specific to these marine shipping activities). To the extent that there is potential for environmental effects of the designated project to interact with the effects of the marine shipping, the Board will consider those effects under the cumulative effects portion of the CEAA 2012 environmental assessment.~~

As noted in the List of Issues (attached to Hearing Order [OH-001-2014](#)), the Board does not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by the pipeline.

In accordance with paragraph 79(2)(b) of the CEAA 2012, the following provides a description of the factors to be taken into account in the environmental assessment under the CEAA 2012 and of the scope of those factors.

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<sup>4</sup> Deletions from the original Scope of Factors are shown with in ~~black strikethrough~~ text, while draft additions are shown in red underlined text. While this document indicates that Project-related marine shipping is part of the designated project on a draft basis, the Board will consider comments on this issue.

## **2.0 FACTORS AND SCOPE OF THE FACTORS**

### **2.1 Factors to be considered**

The CEAA 2012 environmental assessment for the designated project will take into account the factors described in paragraphs 19(1)(a) through (h) of the CEAA 2012:

- (a) the environmental effects<sup>5</sup> 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 or any interested party received in accordance with the CEAA 2012;
- (d) mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the designated project;
- (e) the requirements of the follow-up program in respect of the designated project;
- (f) the purpose of the designated project;
- (g) alternative means of carrying out the designated project that are technically and economically feasible and the environmental effects of any such alternative means; and
- (h) any change to the designated project that may be caused by the environment.

In addition, the environmental assessment will also consider community knowledge and Aboriginal traditional knowledge.

### **2.2 Scope of the factors to be considered**

The environmental assessment will consider the potential effects of the designated project within spatial and temporal boundaries within which the designated project may potentially interact with and have an effect on components of the environment. These boundaries will vary with the issues and factors considered, and will include, but not be limited to:

- construction, operation and maintenance, foreseeable changes, and site reclamation, as well as any other undertakings proposed by the proponent or that are likely to be carried out in relation to the physical works proposed by the proponent, including mitigation and habitat replacement measures;
- seasonal or other natural variations of a population or ecological component;
- any sensitive life cycle phases of species (e.g., wildlife, vegetation) in relation to the timing of Project activities;

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<sup>5</sup> Section 5 of the CEAA 2012 further describes the environmental effects that are to be taken into account.

- the time required for an effect to become evident;
- the area within which a population or ecological component functions; and
- the area affected by the Project.

Any works and activities associated with additional modifications or associated with the decommissioning or abandonment phase of the Project would be subject to a future application under the NEB Act and assessed in detail at that time. Therefore, at this time, any works or activities associated with these phases of the Project will be examined in a broad context only. As indicated above, the environmental assessment will consider cumulative environmental effects that are likely to result from the designated project in combination with effects from other physical activities that have been or will be carried out.

Subsection 2(1) of the CEAA 2012 provides definitions potentially relevant to the scope of the factors, including:

“environment” which means the components of the Earth, including

- (a) land, water and air, including all layers of the atmosphere;
- (b) all organic and inorganic matter and living organisms; and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b);

and

“mitigation measures” which means measures for the elimination, reduction or control of the adverse environmental effects of a designated project, and includes restitution for any damage to the environment caused by those effects through replacement, restoration, compensation or any other means.

## Appendix 2

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### Draft List of Issues for the Reconsideration Hearing

The Board's Reconsideration hearing will consider any necessary changes or additions to its May 2016 Report, in light of the inclusion of Project-related marine shipping in the "designated project" under the CEAA 2012. This includes issues related to factors described in paragraphs 19(1)(a) through (h) of the CEAA 2012 and to section 79 of the SARA:

- 1) The environmental effects of Project-related marine shipping, including adverse effects on species at risk, and the significance of those effects.
- 2) Measures that are technically and economically feasible, and that would mitigate any significant adverse environmental effects of Project-related marine shipping. *Given that the Board found four significant adverse effects related to Project-related marine shipping in its original assessment<sup>6</sup> (i.e., greenhouse gas emissions, Southern resident killer whale, traditional Aboriginal use associated with Southern resident killer whale, and the potential effects of a large or credible worst-case spill), the consideration of mitigation measures will focus on these four matters. This will include consideration of whether the mitigation measures will change the Board's previous significance findings.*
- 3) Alternative means for carrying out Project-related marine shipping that are technically and economically feasible, and the environmental effects of such alternative means.<sup>7</sup>
- 4) Requirements of any follow-up program in respect of Project-related marine shipping.
- 5) Measures to avoid or lessen the adverse effects of Project-related marine shipping on SARA-listed wildlife species and their critical habitat, including monitoring, and consideration of how the undertaking of such measures could be ensured. *The Board's original assessment identified the SARA-listed marine fish, marine mammal, and marine bird species that could be found in the area of, or affected by, Project-related marine shipping,<sup>8</sup> providing a focus for this issue. Any marine species that have been newly listed, or any species that have seen a change to their designation, since the issuance of the Board's Report and that could be affected by Project-related marine shipping would also require consideration under the SARA.*
- 6) Whether there should be any changes or additions to the Board's recommendations for the Project, or recommended terms or conditions, in light of the above issues.

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<sup>6</sup> See the Board's Report at pages 337, 350-351, 363, 378, and 397-398.

<sup>7</sup> For greater clarification, the Board does not intend to reconsider alternate locations for the Westridge Marine Terminal as this was previously considered.

<sup>8</sup> See the Board's Report at pages 338, 341, and 352.

The consideration of the above issues will be limited to Project-related marine shipping between the Westridge Marine Terminal to the 12-nautical-mile territorial sea limit.

**The Board is of the view that certain issues described above, in particular Issue #1, were thoroughly canvassed in the OH-001-2014 Certificate hearing and may not require additional evidence. The Board is particularly interested in new, additional evidence (including comments from the public, community knowledge, and Indigenous traditional knowledge) on Issues #s 2 to 5.**

**Appendix 3 Participant Funding Request Form**

**MH-052-2018 – Participant Funding Request Form**

The National Energy Board (NEB) administers a Participant Funding Program (PFP) independently of the hearing process. Funding is available for eligible intervenors, including Indigenous groups, individuals with a direct local interest, as well as non-industry not-for-profit groups. A simplified funding process has been approved for this hearing to reduce administrative burden. Eligible groups may request up to \$80,000, and individuals up to \$12,000, to participate in this hearing. For more information about the PFP and reimbursement of eligible costs, go to [www.neb-one.gc.ca/pfp](http://www.neb-one.gc.ca/pfp) or contact a PFP Coordinator at 1-800-899-1265.

If you want to request funding, please return a completed form **on or before [ATP Deadline]** to the PFP by email [pfppafp@neb-one.gc.ca](mailto:pfppafp@neb-one.gc.ca) or by fax 1-877-288-8803.

**1. Funding Applicant**

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Legal name of entity or individual applying for funding

---

CRA Business # or Band #

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Address 1 [apt.; street; city]

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Address 2 [province; postal code, zip code; country]

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Phone

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Fax

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Website

**2. Funding requested**

Please specify the amount of funding you are requesting: \$

Eligible groups may request up to \$80,000, and individuals up to \$12,000.

**3. Primary contact for funding**

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Name and title of person the PFP will contact about funding

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Phone

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Fax

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Email

#### 4. Signing authority for funding

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Name and title of person authorized by the applicant to sign funding agreement

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Phone

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Fax

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Email

#### **Important**

Once a complete form is received, PFP staff will send you a contribution agreement to be signed. Once signed by both parties, the information provided will be used to administer funding in accordance with the NEB's PFP program, including public disclosure of the award. PFP is a reimbursement-based program, you must submit claims for eligible expenses incurred in order to receive payment.

#### **Privacy notice statement**

Your personal information is being collected to process your request to the PFP pursuant to the *National Energy Board Act*. Providing this information is voluntary however, missing information may affect our ability to communicate with you and assess your application. Your personal information will be protected in accordance with the *Privacy Act*. You have the right to access and correct any of your personal information held by the NEB. For more details contact the NEB's Access to Information and Privacy Coordinator at [DLATIPCoordinator@neb-one.gc.ca](mailto:DLATIPCoordinator@neb-one.gc.ca) and cite Personal Information Bank NEB PPU 025.



**Hearing Order OH-001-2014  
Trans Mountain Pipeline ULC (Trans Mountain)  
Application for the Trans Mountain Expansion Project**

**Written argument-in-chief of the City of Victoria**

**Table of Contents**

<b>Summary.....</b>	<b>2</b>
<b>Victoria’s Interest in the Project .....</b>	<b>3</b>
<b>Project Risk .....</b>	<b>4</b>
Marine oil spill probability .....	5
Potential marine oil spill effects - general .....	6
Potential marine oil spill effects - Victoria .....	13
<b>Project Benefits.....</b>	<b>23</b>
<b>Comments on Draft Conditions .....</b>	<b>24</b>
<b>Conclusion .....</b>	<b>25</b>

## Summary

1. This is the final written argument of the Corporation of the City of Victoria (“Victoria”) with respect to Trans Mountain’s application to the National Energy Board (the “Board”) for a certificate of public convenience and necessity for the Trans Mountain Expansion Project (the “Project”).
2. For the reasons outlined below, Victoria submits that the Board must recommend that Trans Mountain’s application be dismissed because the Project is not in the public interest.<sup>1</sup>
3. The public interest is defined in the Board’s Strategic Plan as “inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society’s values and preferences evolve over time.”<sup>2</sup> The Project is not in the public interest because the risk to communities located along the tanker shipping route far outweigh any potential benefits.
4. The Board has identified twelve issues that will be considered during the hearing. The issue that is most relevant to Victoria and has been the focus of Victoria’s participation in the hearing to date is issue #5: “the potential environmental and socio-economic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur.” This submission will also focus on this issue.

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<sup>1</sup> Section 52(2) of the [National Energy Board Act](#) outlines the considerations that the Board may take into account in making its recommendation regarding an application, including “any public interest that in the Board’s opinion may be affected by the issuance of the certificate or the dismissal of the application.”

<sup>2</sup> Found at <https://www.neb-one.gc.ca/bts/whwr/gvrnnc/strtgcpIn-eng.html>

5. The lack of submissions on the other eleven issues identified by the Board does not mean that Victoria has no concerns related to those issues or with the broader issues associated with the Project, such as the Project's contribution to climate change.

### **Victoria's Interest in the Project**

6. Victoria is located on the southernmost tip of Vancouver Island. The shipping lanes for tankers carrying petroleum products from the Trans Mountain pipeline pass offshore within several kilometres of Victoria.
7. Victoria was incorporated on August 2, 1862 and is the Capital City of British Columbia.
8. Victoria is an urbanized municipality of 19.47 square kilometres, which serves as the metropolitan core for the Capital Region. According to the most recent federal census, in 2011, Victoria had a population of 80,017. The Capital Region had a population in 2011 of 344,615 and a land area of 2,340.48 square kilometres.<sup>3</sup>
9. If the Project is approved, the volume of product and number of tankers off the shores of Victoria will dramatically increase.
10. Victoria residents and Victoria City Council are very concerned about the environmental and socio-economic impacts to Victoria, its residents and businesses from Trans Mountain's proposed increase in tanker traffic, and particularly the impact of an oil spill.
11. Victoria City Council is responsible for:
  - providing for good government of its community,
  - providing for services, laws and other matters for community benefit,

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<sup>3</sup> Exhibit C84-2-2 – City of Victoria Evidence Submission ([A4L8Y1](#)) at page 2, paragraph 2.

- providing for stewardship of the public assets of its community, and
  - fostering the economic, social and environmental well-being of its community.<sup>4</sup>
12. A marine oil spill from a project tanker off the coast of Victoria will result in significant harm to the community's public assets and its economic, social and environmental well-being.
13. Public engagement conducted for purposes of this hearing clearly showed that Victoria residents are opposed to the Project.<sup>5</sup> On April 30, 2015, Victoria formally expressed "its opposition to the proposed Trans Mountain Pipeline Expansion Project in light of the substantial risk to the economy and ecology."

### **Project Risk**

14. Victoria's environment, economy and social well-being will be placed at great risk if the Project proceeds. Risk is often expressed as the probability of an event multiplied by its consequence. If the Project proceeds, the probability of a marine oil spill will increase significantly and the consequences could be catastrophic.
15. Victoria does not agree with Trans Mountain's assertion that the marine oil spill risk will remain the same if the Project is approved. It is clear that an increase in tanker traffic leads to an increased risk of an accident. Trans Mountain's own evidence indicates that the probability of a marine oil spill along the tanker route will increase significantly because of the Project from 1 spill in 309 years to 1 spill in 46 years.<sup>6</sup>

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<sup>4</sup> As outlined in section 7 of the [Community Charter](#), the provincial legislation governing British Columbia municipalities.

<sup>5</sup> Exhibit C84-1-2 – City of Victoria Kinder Morgan Trans Mountain Pipeline Expansion Proposal Engagement Summary ([A4G3E6](#)) at page 38.

<sup>6</sup> Exhibit B18-30 – V8A 5.2.5 to F5.3.2 MAR TRANS ASSESS ([A3S4Y4](#)) at page 1.

16. Victoria also does not agree that the current level of risk posed by tankers loading products from the existing pipeline is either acceptable or consistent with the public interest. If, as Trans Mountain suggests, the risk of an accident will be significantly reduced by its proposed enhanced risk control measures, those measures should be implemented now, regardless of whether the Project is approved.

#### Marine oil spill probability

17. Evidence presented by other intervenors demonstrates that even Trans Mountain's anticipated seven-fold increase underestimates the increased probability of a marine spill if the Project were to proceed.
18. An expert review of Trans Mountain's Marine Transport Risk Analysis commissioned by the Cowichan Tribes finds that "key conclusions drawn from the analysis are incomplete and misleading."<sup>7</sup> The authors of the review identify a number of weaknesses associated with Trans Mountain's marine spill probability assessment, including the use of underlying data and inputs based on data and operating practices in the North Sea in the 1990's, rather than newer, local data and a failure to consider higher probability, lower consequence incidents. They conclude that "risk in the system is likely underpredicted."<sup>8</sup>
19. A report prepared for the Tsawout First Nation, Upper Nicola Band and Tsleil-Waututh Nation compares spill risk estimates using various accepted methodologies and concludes that:

*Given the weaknesses in the methodology used in the TMEP application and the fact that this estimate is an outlier significantly below the estimates based on other methods,*

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<sup>7</sup> Exhibit C86-12-5 – Appendix G to Written Evidence of Cowichan Tribes ([A4L9Z8](#)) at page 2.

<sup>8</sup> Ibid. at page 3.

*the tanker spill risk estimate NewCase1c in the TMEP application is an inaccurate and unreliable estimate of tanker spill risk.*<sup>9</sup>

Potential marine oil spill effects - general

20. An oil spill along the tanker route will have significant, and potentially catastrophic, environmental, economic and social impacts to communities in the vicinity of the spill.
21. Trans Mountain identifies the following impacts that would result from a marine oil spill:
- environmental impacts on shorelines and near shore habitats, marine fish communities, marine birds and marine mammal and their respective habitats
  - economic impacts, such as impacts on commercial fishing, tourism and recreation and property damage
  - acute and chronic impacts on human health, and
  - impacts on community well-being, including psychological effects, impacts on cultural and heritage resources, aboriginal culture and subsistence use and local infrastructure and services.<sup>10</sup>
22. Victoria disagrees with Trans Mountain's conclusion that these environmental, economic and social impacts are not significant because they are not likely. It is clear that the Board considers likelihood of an adverse effect to be a separate determination from the effect's significance. The Board Filing Manual provides the following guidance to applicants evaluating the significance of environmental and socio-economic effects:
- Evaluating environmental and socio-economic effects consists of assessing:*
- *whether the effects are adverse;*
  - *whether the adverse effects are significant; and*

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<sup>9</sup> Exhibit C355-15-27 – Tsawout First Nation Expert Report. An Assessment of Spill risk for the TMEP ([A4Q1G5](#)) at page 5.

<sup>10</sup> Exhibit B18-33 – V8A 5.5.2 F5.5.2 to 5.6.2.2 MAR TRANS ASSESS ([A3S5Q3](#)) at pages 4 to 26.

- *whether the significant adverse effects are likely.*

.....

*The following criteria may be useful in assessing the significance of a project's adverse effects:*

- *magnitude;*
- *duration;*
- *frequency;*
- *geographic extent;*
- *ecological context; and*
- *reversibility or degree of permanence.*

....

*Assessing the likelihood of significant adverse effects must be based on the probability of occurrence and state the level of scientific uncertainty.<sup>11</sup>*

23. It is also clear from the language used to frame issue #5, that the Board must consider all “potential” effects of marine shipping activities in making its recommendation, and not just those that are “likely.”
24. If the criteria outlined by the Board in its Filing Manual are used in assessing the significance of the Project's adverse effects, it is clear from Trans Mountain's own evidence that the potential effects of a marine oil tanker accident or malfunction are significant because they will be widespread, long-lasting and permanent.
25. Serious adverse socio-economic effects identified by Trans Mountain include permanent loss of critical heritage resources:

*Heritage resources could be affected by a spill in a number of ways. Oil and clean-up activities can directly damage artifacts and sites or disturb their context, which may result in permanent loss of information critical to scientific interpretation.<sup>12</sup>*

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<sup>11</sup> [NEB Filing Manual](#) at page 86

<sup>12</sup> Exhibit B18-33 – V8A 5.5.2 F5.5.2 to 5.6.2.2 MAR TRANS ASSESS ([A3S5Q3](#)) at page 9.

26. Trans Mountain indicates that social impacts of a spill can persist for years and include an increase in destructive behaviours, such as drinking, drug abuse and domestic violence and an increase in serious medical conditions, such as depression, anxiety and post-traumatic stress disorder:

*Research has shown that in the event of an oil spill, affected communities and individuals may experience a number of psycho-social effects. Culture is an important factor that affects the potential psycho-social effects of a spill. Documented effects include: declines in traditional social relations with family members, friends, neighbours and coworkers; a decline in subsistence production and distribution activities; perceived increases in the amount of and problems associated with drinking, drug abuse, and domestic violence; and a decline in perceived health status and an increase in the number of medical conditions verified by a physician including depression, anxiety and post-traumatic stress disorder. These effects may be short-term or persist for years in individuals or groups most directly affected by a spill.<sup>13</sup>*

27. Trans Mountain also identifies serious environmental impacts associated with a marine oil spill. For example, Trans Mountain indicates that death of fish, birds, seals, sea lions, whales and otters should be expected from a spill at Race Rocks, a provincially-designated Ecological Reserve, which is located close to Victoria and selected for spill modeling purposes as “Location G.”

*Shorebirds generally have low sensitivity to oiling when compared to other guilds... Heavily oiled individuals would probably die; however, and even lightly oiled individuals could transfer sufficient oil to eggs to cause egg mortality, if exposure occurred shortly before or during the period when eggs were being incubated. .... the potential for environmental effects on shorebirds of crude oil exposure from an accidental spill at this site is high.<sup>14</sup>*

....

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<sup>13</sup> Ibid. at page 10.

<sup>14</sup> Exhibit B18-35 – V8A 5.6.2.3.1 to T5.6.2.23 MAR TRANS ASSESS ([A3S4Y8](#)) at pages 11 and 12.



*There is a relatively high probability of exposure for aquatic birds in the event that an oil spill occurs. ... it is likely that seabirds would be exposed to oil, and would die as a result of that exposure, so that the effect magnitude would be high.*<sup>15</sup>

....

*There is a relatively high probability of exposure for seals and sea lions in the event of an accidental oil spill. While some level of negative effect would be expected for animals exposed to oil, the effects would not likely be lethal, except in the case of weaker animals such as pups or older and diseased animals.*<sup>16</sup>

....

*There is a relatively high probability of exposure for whales should an oil spill occur at this location. Some level of negative effect would be expected for animals exposed to oil, but the effects would not likely be lethal, except in the case of weaker animals such as calves or older and diseased animals, or animals that were exposed to heavy surface oiling and inhalation of vapours from fresh oil, as could occur in the immediate vicinity of the spill location.*<sup>17</sup>

....

*There is a relatively high probability of exposure for some of otters along the marine transportation route, in the event of an oil spill. Some level of negative effect would be expected for animals exposed to oil. Exposure during the winter season would be more stressful than exposure during the summer, but in either case, the combination of hypothermia and damage to the gastro-intestinal system caused by oil ingested through grooming the fur would have the potential to cause death.*<sup>18</sup>

28. Evidence from other intervenors supports the conclusion that the potential effects of an accident or malfunction associated with a Project-related tanker would be significant.
  
29. Fisheries and Oceans Canada's "Recovery Strategy for the Northern and Southern Resident Killer Whales (*Orcinus orca*) in Canada" clearly states that the impact of an oil spill on the killer whale population could be catastrophic:

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<sup>15</sup> Ibid. at page 12.

<sup>16</sup> Ibid. at page 16.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

*While the probability of either northern or southern resident killer whales being exposed to an oil spill is low, the impact of such an event is potentially catastrophic. Both populations are at risk of an oil spill because of the large volume of tanker traffic that travels in and out of Puget Sound and the Strait of Georgia (Baird 2001, Grant and Ross 2002) and the proposed expansion of tanker traffic in the north and central coast of BC.*

.....

*Killer whales do not appear to avoid oil, as evidenced by the 1989 Exxon Valdez oil spill in Prince William Sound, Alaska. Less than a week after the spill, resident whales from one pod were observed surfacing directly in the slick (Matkin et al. 1999). Seven whales from the pod were missing at this time, and within a year, 13 of them were dead. This rate of mortality was unprecedented, and there was strong spatial and temporal correlation between the spill and the deaths.<sup>19</sup>*

30. A report filed by BC Nature and Nature Canada shows that a catastrophic marine bird mortality event could result from a marine oil spill:

*As an example, the Fraser River Estuary, which includes Boundary Bay, Roberts Bank and Sturgeon Bank, provides important habitat for hundreds of thousands of migratory birds during the spring migration period. If an oil spill resulted in oiling of these areas during the spring migration period, a catastrophic marine bird mortality event involving hundreds of thousands (or more) birds could potentially ensue. Further, many of the marine bird species involved in this mortality event would be species at risk. This is one of several potential worst-case ecological oil spill scenarios, in terms of marine birds, yet this possibility and its potential effects were not assessed in the proponent's PQERA. Although this is a low probability scenario it is one of extremely high consequence; estimates of ecological consequences and recovery times following a worst-case ecological scenario such as this are warranted.<sup>20</sup>*

31. The City of Vancouver commissioned independent expert evidence to provide an assessment of the potential economic cost of an oil spill in the Burrard Inlet on key ocean-dependent economic activities within the City of Vancouver. Professor Sumalia

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<sup>19</sup> Exhibit C356-2-8 – DFO 2011 Recovery Strategy for the Northern and Southern Resident Killer Whales in Canada ([A3W8G5](#)) at page 47.

<sup>20</sup> Exhibit C24-12-2 – BC Mature and Nature Canada Written Evidence ([A4L8K8](#)) at page 15.

estimates that, if a 16,000 m<sup>3</sup> hydrocarbon spill were to occur in Burrard Inlet, Vancouver's ocean-dependent activities could suffer total losses up to \$1,230 million in output value, 12,881 person years of employment and \$757 million in GDP.<sup>21</sup>

32. The examples cited above are only a small sampling of the evidence filed by intervenors that demonstrates the significant environmental and socio-economic impacts associated with a marine oil spill.
33. The perceptions of members of the public also provide a useful measure of the significance of the environmental and socio-economic assets that will be affected in the event of a marine oil spill.
34. Evidence presented by both Victoria and other intervenors demonstrates that members of the public highly value the assets that may be impacted by a marine oil spill and would consider any damage to those assets to be significant.
35. Victoria residents are very concerned about the possible consequences of a marine oil spill. Top concerns for respondents to a City-hosted survey were:
  - impacts to marine mammals and birds (93% very concerned)
  - impacts to fish populations (92% very concerned)
  - impacts to water quality (90% very concerned)
  - impacts to human health (74% very concerned), and
  - damage to cultural and historic resources (74% very concerned).<sup>22</sup>
36. Individual survey responses demonstrate that Victorians feel the impact of a marine oil spill will be significant:

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<sup>21</sup> Exhibit C77-27-1 – Written Evidence of the City of Vancouver ([A4L7V8](#)) at pages 92 to 94.

<sup>22</sup> Exhibit C84-1-2 – City of Victoria Kinder Morgan Trans Mountain Pipeline Expansion Proposal Engagement Summary ([A4G3E6](#)) at page 62.

- *A spill would be terrible for the south island especially the impact on wildlife, birds, fish and other sea and shore creatures*<sup>23</sup>
- *A spill could ruin our coastline tourism and all the economic benefits related to the ocean that we currently enjoy*<sup>24</sup>
- *Nothing, no amount of riches or goods, can make up for losing the beauty and health of our home. It should never be risked.*<sup>25</sup>
- *I have small children and when I think of what we are risking for the sake of the dollar it makes me very sad. We live in an ecological paradise and we're willing to throw it all away for NOTHING.*<sup>26</sup>
- *Regardless of how much money this project brings in, once there is an oil spill the environment is destroyed forever. We live in the most beautiful area of Canada and tourism is an important part of our economy.*<sup>27</sup>
- *At worst a spill would catastrophically undermine the integrity of our invaluable natural marine resources.*<sup>28</sup>

37. As self-governing peoples with aboriginal rights and title, the perspectives of First Nations communities are particularly important when considering the values that may be affected by a marine oil spill and the significance of those values to individual communities. For example, the Matsqui First Nation presented as evidence its own assessment of impacts under various potential spill events, which focused on key Matsqui First Nation values and found that the impacts of a spill on those values would be very significant:

*We see these values as an expression of who we are and of what it means to be a self-governing people. The values are an expression of our aboriginal rights and title: to use and occupy, manage, govern and rely upon our lands, waters and resources. They are also an expression of our human rights: to be physically and emotionally healthy, to have positive relationships within our community and with the communities around us, and to*

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<sup>23</sup> Ibid. at page 54.

<sup>24</sup> Ibid. at page 66.

<sup>25</sup> Ibid. at page 69.

<sup>26</sup> Ibid. at page 69.

<sup>27</sup> Ibid. at page 73.

<sup>28</sup> Ibid. at page 73.

*maintain our culture and our traditions while pursuing growth and economic self-sufficiency.*

.....

*The Impact Assessment concludes that not only are spills more likely than predicted by the Proponent, but that the impacts of such spills on Matsqui First Nation values would be very significant. Rather than purely a theoretical analysis, the use of scenarios enabled us to understand what a major oil spill would actually mean to our way of life.*

*Not surprisingly, the most profound impact would be a spill of oil that reaches our fishing area at the Fraser River or that otherwise affects the Matsqui fishery. The Impact Assessment describes the potentially devastating implications of the loss of the fishery on our way of life. While the precise implications of a spill of diluted bitumen on fish and fish habitat is still uncertain, the scenarios demonstrate the risk that is expected to be borne by our community, which is so heavily dependent on fishing and fish to sustain our culture and to feed our people.*

*In its description of the losses associated with potential spill scenarios, the Impact Assessment seeks to address one of the fundamental challenges that Matsqui First Nation faces in participating in the NEB process and others like it. It is extremely difficult to describe the impacts on Matsqui First Nation values in a way that can inform a traditional cost-benefit or "public interest" analysis. For example, how do we explain the extent of the loss to our community of having our fishery shut down for a year? Or explain why buying replacement food at the grocery store could never be sufficient to address that loss?<sup>29</sup>*

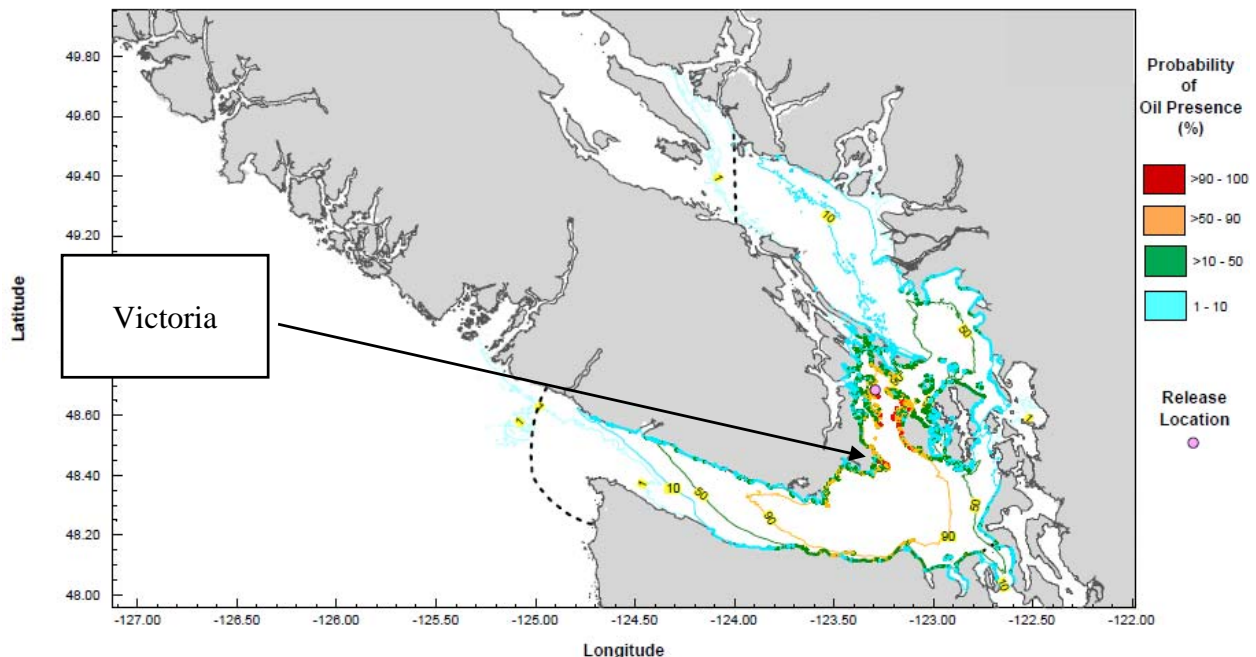
#### Potential marine oil spill effects - Victoria

38. Because of its extensive marine shoreline, sensitive marine ecosystems and marine-based economy, Victoria is particularly at risk of significant impacts from a marine oil spill.

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<sup>29</sup> Exhibit C227-7-1 – Matsqui First Nation Letter to NEB re Written Evidence ([A4L8I8](#)) at pages 3 and 4.

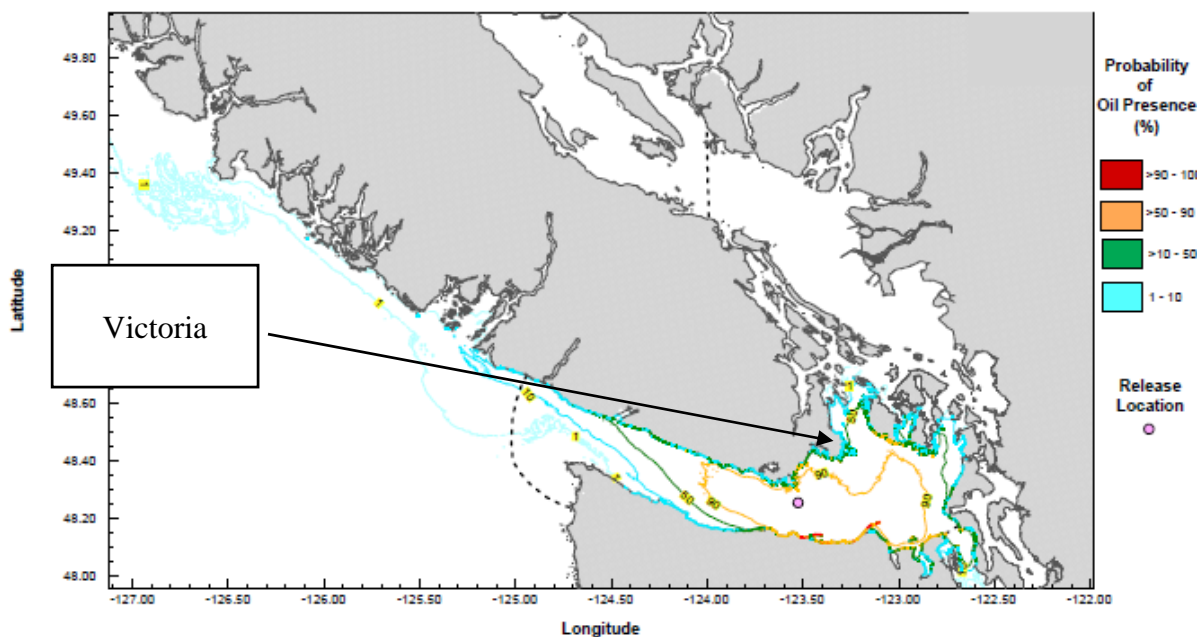
39. Although any spill in the waters off Victoria could have disastrous impacts, these impacts will be greatest if oil reaches Victoria shorelines. Victoria has a total shoreline length of 24.2 km, which includes natural areas and parks, homes, regional transportation facilities, businesses and industry.
40. It is evident from Trans Mountain's oil spill studies that Victoria shorelines will likely be oiled if a spill were to occur at any of the three locations selected by Trans Mountain for oil spill modelling: Arachne Reef, Race Rocks or the Strait of Georgia.
41. A map included with Trans Mountain's evidence and reproduced below shows a 90% probability that Victoria's shorelines will be oiled if a spill occurred at Arachne Reef.<sup>30</sup> Trans Mountain indicates that a spill at this location would quickly reach shorelines and would result in about 309 km of shoreline affected.<sup>31</sup>



<sup>30</sup> Exhibit B18-36 - V8A 5.6.2.4.1 F5.6.2.9 to F5.7.3.3 MAR TRANS ASSESS ([A3S4Y9](#)) at page 1 (Victoria locational marking added for emphasis).

<sup>31</sup> Exhibit B315-14 – Trans Mountain Response to City of Victoria IR No. 2 ([A4H8L0](#)) at page 15.

42. Trans Mountain's evidence also shows a 50% probability that Victoria's shorelines will be oiled if a spill occurred at Race Rocks. As can be seen from the map reproduced below, in this scenario, there is also a 90% probability that the waters off Victoria will be oiled.<sup>32</sup>



43. A possible accident location closer to Victoria was also identified by Trans Mountain: Location "F" - Brotchie Pilot Boarding Area. However, Trans Mountain states that this location was not selected for spill modeling because a possible collision with another vessel is a low probability event. A request from Victoria for spill modelling at that location was denied by Trans Mountain.<sup>33</sup>

44. Although Trans Mountain provides no evidence specific to the impacts of an oil spill on Victoria, the evidence presented by Victoria clearly demonstrates that any marine oil spill

<sup>32</sup> Exhibit B18-35 – V8A 5.6.2.3.1 to T5.6.2.23 MAR TRANS ASSESS ([A3S4Y8](#)) at page 2 (Victoria locational marking added for emphasis).

<sup>33</sup> Exhibit B315-14– Trans Mountain Response to City of Victoria IR No. 2 ([A4H8L0](#)) at page 15.

would have a significant impact on the economic, social and environmental well-being of the community.

45. Victoria is located in one of the most biologically rich and diverse bioregions in North America.

46. As described in this excerpt from Victoria's Official Community Plan,<sup>34</sup> the natural environment has a significant impact on Victoria's economy and well-being:

*Human well-being and nearly all economic activity depend on a healthy natural environment, both locally and globally. Even in a modified urban environment such as Victoria's, the natural environment provides essential ecosystem services, the fundamental life supports upon which human settlements and a wide variety of plants and animals depend. These services include clean air and water, waste decomposition, nutrient cycling and carbon sequestration. Victoria's spectacular setting and unique ecosystems are part of the community's identity, and support sectors such as recreation and tourism.*<sup>35</sup>

47. Victoria encompasses several sensitive shoreline ecosystems that may be particularly affected by an oil spill occurring off its coastline. This includes two sensitive "Coastal Bluff" ecosystems, which are considered ecologically important because they support a large number of plant and animal species that have adapted specifically to this harsh environment. Coastal Bluff ecosystems are rare and contain highly specialized habitats for many species unique to these areas.<sup>36</sup>

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<sup>34</sup> An Official Community Plan is one of the most important guiding documents for a community. It is a 30-year plan that provides direction for growth and change. Victoria's new Official Community Plan was adopted by Council in 2012 after two and a half years of public consultation with more than 6,000 people.

<sup>35</sup> Exhibit C84-2-2 – City of Victoria Evidence Submission ([A4L8Y1](#)) at page 9, paragraph 23.

<sup>36</sup> Ibid. at page 9, paragraph 25.



48. Victoria's Outer Harbour has also been assigned a high to very high harbor ecological rating. A "Very High" rating is attached to the most ecologically valuable shore units in the harbour, with very little human alteration and high diversity and importance to species.<sup>37</sup>
49. Victoria's shorelines support several protected plant and wildlife species that may be impacted by an oil spill. The entire Victoria shoreline is included within the Victoria Harbour Migratory Bird Sanctuary, which was established in 1923.<sup>38</sup> Two plant species protected under the Federal *Species at Risk Act* can be found along the shoreline of Beacon Hill Park.<sup>39</sup>
50. The waters off of Victoria are included in the Federal Government-designated southern resident killer whales' critical habitat.<sup>40</sup> This means that the waters off of Victoria have been recognized as being necessary for the survival of this species.
51. There will also be significant social impacts to Victoria from a marine oil spill.
52. Victoria's shoreline parks and other public spaces, in particular, are major contributors to the community's well-being that are at significant risk. Victoria's Official Community Plan describes the important role that parks play in the community:

*Parks, open spaces and recreational facilities serve many different uses in an urban environment. They help to improve the livability of densely developed areas, enable active lifestyles and personal health, provide spaces for respite and contemplation, highlight historic and cultural landscapes, and provide indoor and outdoor gathering*

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<sup>37</sup> Ibid. at page 10, paragraph 26

<sup>38</sup> Ibid. at page 10, paragraph 28

<sup>39</sup> Ibid. at page 10, paragraph 27

<sup>40</sup> Ibid. at page 10, paragraph 29

places. Many parks and open spaces also play an important role in providing animal and plant habitat and maintaining ecosystem services.<sup>41</sup>

53. As shown in the map below, City-owned parks comprise close to half of Victoria's total shoreline.<sup>42</sup>



<sup>41</sup> Ibid. at page 13, paragraph 31. Quote is from Victoria's Official Community Plan.

<sup>42</sup> Ibid. at page 13, paragraph 33

54. Oiling of park shorelines would not only cause harm to the natural environment and any shoreline archaeological features in these parks, but also significantly impact recreational use.
55. The park that will be most significantly impacted by an oil spill is Beacon Hill Park, which is considered the crowning jewel in Victoria's park system. Beacon Hill Park and its adjoining parks and beaches include approximately 5 km of shoreline and are popular destinations for both residents and visitors for their natural environment, manicured gardens, recreational opportunities and archaeological and heritage features.<sup>43</sup>
56. Victoria will also experience significant negative economic impacts from a marine oil spill.
57. As described in the excerpt from Victoria's Official Community Plan reproduced below, Victoria's economy is closely tied to its marine environment. Victoria's harbour is a prized asset and is a means to supporting green transportation, connectivity, vibrancy and investment downtown:

*Victoria's economy is largely based on government, tourism and commercial activities serving the local population. The Inner Harbour functions as an economic gateway with marine and air transportation that support the city's role as the provincial capital and tourist destination while the Outer and Upper Harbour continues to host waterfront industries.<sup>44</sup>*

58. Victoria's tourism industry, in particular, will be decimated by a marine oil spill. Victoria's shoreline and marine environment are essential parts of its tourism appeal.

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<sup>43</sup> Ibid. at page 13, paragraph 35

<sup>44</sup> Ibid. at page 15, paragraph 37.

59. Tourism is the second largest private sector employer in Greater Victoria. It is a \$1.9 billion dollar industry in Greater Victoria with more than 21,700 people directly employed in the tourism sector.<sup>45</sup>
60. The experience in other communities that have experienced marine oil spills shows that all of these employees and businesses will be put at risk if the Project is approved. A study of the impact of the Deepwater Horizon oil spill in the Gulf of Mexico estimated a \$22.7 billion impact over a period of three years to US coastal economies. A review of disasters affecting tourism destinations conducted as part of that study revealed that the impact endures beyond the resolution of the crisis itself due to brand damage and ongoing traveler misperceptions.<sup>46</sup>

### **Marine spill response capacity**

61. The lack of sufficient, effective marine oil spill response capacity increases the possible consequences of a marine oil spill, both in Victoria and other coastal communities along the tanker route.
62. A variety of agencies are involved in responding to marine oil spills, including local government emergency responders. Victoria recognizes that Trans Mountain and Western Canada Marine Response Corporation (WCMRC) are not solely responsible for marine emergency response in BC coastal waters and that any gaps in current marine spill response capacity cannot be attributable to, or resolved by, those two entities alone. Nonetheless, these gaps are relevant to the Board review of the Project because they increase the potential negative effects of any marine oil spill from a Project-related tanker.

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<sup>45</sup> Ibid. at page 15, paragraph 40.

<sup>46</sup> Ibid. at page 15, paragraph 41.

63. The only way to ensure an effective response to an oil spill is through comprehensive multi-agency planning and training, followed by testing and exercising to identify any gaps.
64. None of these activities have occurred in Victoria. There are no coordinated oil spill response plans in place for Victoria's harbour or offshore waters. Victoria's emergency responders have had no marine oil spill response training. Other than one marine oil spill table-top emergency exercise several years ago, Victoria staff have not participated in recent memory with WCMRC or the Province of British Columbia in any table-top or on-water emergency response exercises.<sup>47</sup>
65. Other municipalities intervening in this hearing have also indicated that they have not been included as participants in marine oil spill response planning, training or exercises and that plans for responding to a marine oil spill near their communities are insufficient.
66. The City of Vancouver has only been invited to participate in exercises as an observer. Observations made by Vancouver staff during those exercises raised concerns that there is insufficient capacity to respond to the current risk.<sup>48</sup>
67. The City of Port Moody's Fire Chief indicates that their Fire Department has been given no guidance or information from Trans Mountain about how to respond to an oil spill that enters Port Moody waters.<sup>49</sup>
68. The North Shore Emergency Management Office, serving the District of North Vancouver, the City of North Vancouver and the District of West Vancouver, indicates

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<sup>47</sup> Ibid. at page 17, paragraph 47.

<sup>48</sup> Exhibit C77-27-1 – Written Evidence of the City of Vancouver ([A4L7V8](#)) at page 54, lines 11 to 21.

<sup>49</sup> Exhibit C74-11-2 – Evidence of Remo Faedo Port Moody ([A4L7Q5](#)) at page 3, lines 6 to 8.

that no table top exercises have been done by WCMRC specifically with the North Shore municipalities.<sup>50</sup>

69. The response to the April 8, 2015 Marathassa Oil Spill in Vancouver's English Bay shows how the lack of preparedness and coordination among all interested stakeholders reduces the effectiveness of marine oil spill response efforts. Evidence from the City of Vancouver and the North Shore Emergency Management Office show that the ability of local government emergency responders to launch an effective response to that incident was compromised by a lack of planning and coordination. Issues included:

- Delays in the notification process - Vancouver was not notified of the spill until more than 12 hours after it was reported.<sup>51</sup> North Shore Emergency Management Office was notified 14 hours later.<sup>52</sup>
- Delays in obtaining necessary information - The Canadian Coast Guard waited four hours before informing the North Shore Emergency Management Office that the spill had reached 500 m from the West Vancouver shoreline.<sup>53</sup>
- Gaps in Incident Management Team and Incident Command System Implementation – There was a very uneven level of proficiency among federal agencies and other partners in the Incident Command Post.<sup>54</sup>
- Gaps in Spill Science and Environmental Protection – Shoreline Cleanup and Assessment Technique teams did not fully survey all necessary shoreline areas,

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<sup>50</sup> Exhibit C73-5-1 – Affidavit of Dorit Mason ([A4L6L4](#)) at page 4, paragraph 4.1.

<sup>51</sup> Exhibit C77-27-1 – Written Evidence of the City of Vancouver ([A4L7V8](#)) at page 40, lines 3 to 5.

<sup>52</sup> Exhibit C73-5-1 – Affidavit of Dorit Mason ([A4L6L4](#)) at page 5, paragraph 5.1.

<sup>53</sup> Ibid. at page 5, paragraph 5.2.

<sup>54</sup> Exhibit C77-27-1 – Written Evidence of the City of Vancouver ([A4L7V8](#)) at page 40, lines 10 to 20.

shoreline assessment maps were incomplete and inaccurate and insufficient environmental sampling and monitoring was conducted.<sup>55</sup>

## **Project Benefits**

70. Any benefits of the Project are vastly outweighed by the significant risks.
71. Trans Mountain cites a variety of general economic benefits to Canada, British Columbia and Alberta associated with the Project, including an increase in the GDP, an increase in taxes and an increase in job opportunities. Victoria is unable to comment on whether these anticipated benefits are realistic or achievable.
72. However, it is clear from Victoria's evidence that the environmental, economic and social values that are at risk from an accident or malfunction are of far greater significance and value to the community than any purely financial benefits that will be achieved from the Project.
73. This disparity between risk and benefit is particularly true for coastal communities, such as Victoria, that will bear all of the risk associated with a marine oil spill and receive no direct financial benefits from the Project.
74. Victoria asked Trans Mountain to provide information regarding the specific benefits that businesses and residents of Victoria and the Capital Regional District could expect from construction and operation of the Project. Trans Mountain was unable to identify a single, tangible financial benefit that would accrue specifically to Victoria or the region from the Project.<sup>56</sup>

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<sup>55</sup> Ibid. at page 41, lines 8 to 19 and page 42, lines 1 and 2.

<sup>56</sup> Exhibit B315-14 – Trans Mountain Response to City of Victoria IR No. 2 ([A4H8L0](#)) at pages 3 to 5.

## Comments on Draft Conditions

75. Victoria has reviewed the draft conditions that directly relate to marine shipping and provides the following comments.
76. Victoria is in support of the following draft conditions:
- #77 – Plan for implementing, monitoring and complying with marine shipping-related commitments
  - #114 – Marine shipping-related commitments
  - #115 – Updated Tanker Acceptance Standard
  - #137 – Ongoing implementation of marine shipping-related commitments
77. With regard to draft condition #128 – Marine Mammal Protection Program, Victoria submits that item a) under the list of program requirements be revised as follows: “the goals and objectives of the program, determined in collaboration with appropriate government authorities, any potentially affected stakeholders and Aboriginal groups, including a discussion on how they align with the applicable Fisheries and Oceans Recovery Strategies and Action Plans.” Without input and review from other agencies and stakeholders, it is unclear how the Board will be able to determine whether the goals and objectives set out by Trans Mountain in its Marine Mammal Protection Program will be meaningful or effective.
78. Victoria submits that an additional condition or conditions must be added to address the current gaps with respect to marine oil spill preparedness outlined in this argument. Similar to conditions #119 and #120, this condition should require that Trans Mountain file the following documents with the Board prior to commencing operations:



- Copies of local marine oil spill emergency response plans for communities located along the tanker route, developed by WCMRC in collaboration with local government emergency responders and other agencies, and
- A description, and schedule of, emergency response exercises that WCMRC has conducted with local government emergency responders and other agencies and WCMRC's plans for future exercises to test a variety of scenarios during the Project's operational life.

## **Conclusion**

79. In making its recommendation, the Board must consider “the potential environmental and socio-economic effects of marine shipping activities that would result from the proposed project, including the potential effects of accidents or malfunctions that may occur.” The potential effects to communities located along the marine oil tanker route are numerous and significant.
80. If the Project is approved, the volume of product and number of tankers off the shores of Victoria will dramatically increase.
81. Victoria's environment, economy and social well-being will be placed at great risk. The probability of a marine oil spill will increase significantly and the consequences could be catastrophic.
82. Because of its extensive marine shoreline, sensitive marine ecosystems and marine-based economy, Victoria is particularly at risk of significant impacts from a marine oil spill. There is a high probability that a marine oil spill from a Project-related tanker will reach Victoria's shorelines.

83. The lack of sufficient, effective marine oil spill response capacity increases the possible consequences of a marine oil spill, both in Victoria and other coastal communities along the tanker route. If the Project is approved, conditions must be put in place to ensure that Trans Mountain and WCMRC address these gaps in marine oil spill preparedness.
84. The Project is not in the public interest because the risk to communities located along the tanker shipping route far outweigh any potential benefits. Victoria itself will receive no direct benefits, while incurring significant risk.
85. For these reasons, Victoria submits that the Board must recommend that Trans Mountain's application be dismissed.