

**National Energy Board
Hearing Order OH-001-2014
Trans Mountain Pipeline ULC
Application for the Trans Mountain Expansion Project**

**Written Argument-in-Chief
of the Intervenor Georgia Strait Alliance**

January 8, 2016

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1 **1. Introduction**

2 **1.1 Georgia Strait Alliance**

3 Georgia Strait Alliance (GSA) is a registered charity established in 1990. GSA is the only
4 organization focused on protecting and restoring the marine environment and promoting the
5 sustainability of the Georgia Strait, its adjoining waters and communities. GSA is committed to a
6 future for the region that includes clean water and air, healthy wild salmon runs, rich marine
7 life and natural areas, and sustainable communities.

8 **1.2 Procedural Chronology**

9 In May 2013, Trans Mountain filed a Project Description for the Trans Mountain Pipeline
10 Expansion Project with the National Energy Board under the *National Energy Board Act*.¹

11 In December 2013, Trans Mountain submitted a Facilities Application² to the National Energy
12 Board.

13 On April 2, 2014, the NEB issued Hearing Order OH-001-2014.³ The Order stipulates that Board
14 will hold a public hearing to consider whether to recommend approval of the Project under the
15 *NEB Act*. In addition, the Order confirms that the Project is a “designated project” under the
16 *Canadian Environmental Assessment Act, 2012*⁴ and that the Board will conduct an
17 environmental assessment of the Project under *CEAA 2012*.

18 On February 11, 2014, Georgia Strait Alliance applied to participate as an intervenor in the
19 proceeding.⁵

20 On February 25, 2015, Georgia Strait Alliance filed an Information Request No. 2B to Trans
21 Mountain.⁶

22 On March 17, 2015, Trans Mountain filed responses⁷ to GSA’s IR 2B.

23 On May 27, 2015, Georgia Strait Alliance filed evidence⁸ comprised of

- 24 • expert evidence⁹ and curriculum vitae,¹⁰ and

¹ RSC 1985, c. N-7.

² Exhibit B-1, [A3S0Q7](#), *et seq.*

³ Exhibit A15-3, [A3V6I2](#).

⁴ SC 2012, c. 19, s. 52.

⁵ Exhibit C138-0-1, [A3U2L5](#).

⁶ Exhibits C138-1-1, [A4I4Z2](#); C138-1-2, [A4I4Z3](#)

⁷ Exhibits B355-8, [A4J7J5](#); B355-9, [A4J7J6](#); B355-10, [A4J7J7](#); B355-11, [A4J7J8](#).

⁸ Exhibit C138-2-1, [A4Q1K0](#).

- 1 • GSA Supporter evidence.¹¹
- 2 On August 12, 2015, the NEB issued Procedural Direction No. 17 with revised draft conditions.¹²
- 3 On August 14, 2015, GSA filed affidavits¹³ adopting GSA’s evidence.
- 4 On August 21, 2015, the NEB suspended the regulatory timetable.¹⁴
- 5 On September 4, 2015, GSA filed comments¹⁵ in response to August 28, 2015 submissions by
- 6 counsel for Trans Mountain.
- 7 On September 24, 2015, the Board re-established a revised regulatory timetable.¹⁶
- 8 On December 15, 2015, Trans Mountain file a revised final argument.¹⁷
- 9 Georgia Strait Alliance will file this written argument on or before the January 12, 2016
- 10 deadline. GSA is scheduled to make a summary oral submission to the Panel on January 23,
- 11 2016, in Burnaby, BC.

12 **1.3 Trans Mountain Pipeline Expansion Project**

13 The Project includes expansion of the Trans Mountain’s existing 1,150-kilometre pipeline
14 between Strathcona County, Alberta and Burnaby, B.C. and its Westridge Marine Terminal in
15 Burnaby. The proposed pipeline expansion, if approved, would create a second pipeline that
16 would increase the nominal capacity of the system from 300,000 barrels per day to 890,000
17 barrels per day. The proposed marine terminal expansion, if approved, would add three new
18 berths and would increase the number of marine oil tankers loaded at the terminal from
19 approximately five per month to approximately 34 per month. Upon departure from the
20 Westridge Terminal, the tankers travel through Second Narrows and Burrard Inlet, across the
21 Georgia Strait, through the Gulf and San Juan Islands, around the southern tip of Vancouver
22 Island, and through the Strait of Juan de Fuca to the open ocean (the “marine shipping route”).

23 **1.4 Organization of Argument**

24 In Part 2, GSA’s position opposing the Project is set out. In Part 3, the views of GSA’s supporters
25 are described. In Part 4, GSA’s expert evidence by SPARC BC on coastal local government

⁹ Exhibit C138-2-2, [A4Q1K1](#).

¹⁰ Exhibit C138-2-3, [A4Q1K2](#).

¹¹ C138-2-4, [A4Q1K3](#).

¹² A199-3, [A4S1G2](#).

¹³ C138-4-1, [A4S2K8](#).

¹⁴ A208-1, [A4S8Y8](#).

¹⁵ C138-5-1, [A4T1K1](#).

¹⁶ A217-1, [A4T5R5](#).

¹⁷ B444-2, [A4W6L8](#).

1 marine oil spill preparedness and response is summarized. Recommendations are highlighted.
2 In Part 5, comments are provided on the Board's Draft Conditions. Part 6 is a conclusion.

3 **2. Georgia Strait Alliance's Position**

4 Georgia Strait Alliance respectfully submits that the Trans Mountain Expansion Project is not in
5 the public interest under the *NEB Act*, and that the Panel should recommend that it not be
6 approved. Further, GSA submits that the Panel should conclude under *CEAA 2012* that the
7 Project would have significant adverse environmental effects, including significant adverse
8 environmental effects on the endangered southern resident killer whale population, and that
9 these effects cannot be justified in the circumstances.

10 The Project would inevitably cause serious harm to BC's marine environment and coastal
11 communities that is not outweighed by any potential benefits. Moreover, construction of the
12 proposed Project would 'lock in' transportation infrastructure for diluted bitumen and other
13 carbon intensive fossil fuels. This would impede action to reduce GHG emissions from the
14 extraction, transportation and combustion of fossil fuels. Approval of the Project would run
15 counter to Canada's commitment to make the transition to a low-carbon economy that is
16 necessary for our collective health, security, and prosperity.

17 **2.1 Oil Spill Risks And Impacts Are Unacceptable**

18 Oil spills do happen, despite measures to prevent them. The existing Trans Mountain pipeline
19 has experienced numerous spills, both land-based and into the marine environment. Three of
20 these occurred in the past 10 years. The 2007 rupture resulted in a 15-metre geyser of oil
21 forcing the evacuation of homes in a Burnaby neighbourhood, and significant quantities of oil
22 ending up in Burrard Inlet.¹⁸

23 City of Vancouver evidence shows that Trans Mountain has under-estimated the risk of a spill,
24 and that there is a substantial likelihood of a spill at the Westridge Marine terminal or in
25 Burrard Inlet over the Project's lifetime.¹⁹

26 A major oil spill resulting from Project-related shipping would devastate the marine
27 environment, coastal communities, the regional economy and BC's international image for
28 decades to come. Evidence shows that a major oil spill along the tanker route would kill some
29 100,000 seabirds and shorebirds and further jeopardize the endangered southern resident killer
30 whale population,²⁰ that it would expose up to one million residents to unsafe levels of toxic
31 chemicals such as benzene,²¹ and that it would cause financial losses to Vancouver's marine

¹⁸ C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#).

¹⁹ C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#).

²⁰ C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#), p. 47, lines 17 to 18.

²¹ C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#), p. 52.

1 economy of \$1.2 billion and an additional \$3 billion in brand damage.²² These potential impacts
2 of the Project are simply unacceptable to GSA and its supporters.

3 **2.2 Emergency Planning And Response Is Inadequate**

4 There is a shortage of resources to respond adequately to a major oil spill on BC's West Coast.
5 Western Canada Marine Response Corporation is currently required to be capable of handling
6 only a 10,000 tonne spill – a quarter of the amount spilled by the *Exxon Valdez*, and a tenth of
7 the capacity of Project-related tankers. WCMRC has the capacity to recover only 10-20% of a
8 worst case Project-related oil spill on BC's South Coast,²³ even under favourable weather and
9 sea conditions. Moreover, spill response operations are impeded or not possible during adverse
10 weather and environmental conditions, which occur a substantial percentage of the time along
11 the tanker route, especially during the winter.²⁴ Worse, these marine oil spill response
12 challenges would be significantly exacerbated in the event of a spill of the diluted bitumen that
13 would be transported by the Project, because the bitumen component is prone to sinking
14 beneath the surface, in either marine or fresh water.²⁵ Finally, inadequate funds are available to
15 pay for the costs of responding to a major Project-related marine oil spill,²⁶ and the likelihood
16 of eventual reimbursement is uncertain at best. British Columbians and Canadians would be at
17 considerable financial risk if the Project is approved.²⁷

18 Canada's West Coast oil spill response regime is characterized by poor communication, a lack of
19 transparency, and a lack of clarity about roles and responsibilities. This was highlighted by the
20 communication breakdowns that occurred during the flawed response to the *M/V Marathassa*
21 spill in Vancouver's English Bay in April 2015.

22 Georgia Strait Alliance is particularly concerned about the deficit of local community
23 involvement in oil spill planning and response in the Project marine area, as set out in GSA's
24 evidence filed with the Board.²⁸ Local governments are generally unprepared and unable to
25 engage effectively in marine oil spill preparation and response activities, despite having an
26 important role to play in a coordinated response. The weakness in local governments' oil spill

²² C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#), p. 92.

²³ C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#), p.64, lines 10-11.

²⁴ C77-31-2 - Appendix 68 - Part 1 - [A4L9F1](#), p. vi (pdf p.8).

²⁵ C77-28-1 - Written Evidence of the City of Vancouver - A4L7K6, [A70261](#), p.45.

²⁶ Trans Mountain's own evidence is that there is (only) a total of approximately \$1.3 billion (CAD) in funding available to address the costs of emergency response, clean up and compensation in the event of an oil spill from a tanker. B18-33 - V8A_5.5.2_F5.5.2_TO_5.6.2.2_MAR_TRANS_ASSESS, [A3S5Q3](#), p. 8A-612.

²⁷ Note that Trans Mountain argues that it is not the Responsible Party in the event of a tanker-based spill. Trans Mountain Final Argument, B444-2 - Trans Mountain Revised Final Argument clean - [A4W6L8](#), p.426, lines 7633-7634.

²⁸ Exhibit C138-2-2, [A4Q1K1](#).

1 response capabilities is due in part due to a lack of engagement and communication on the part
2 of senior spill response partners. Moreover, citizens are not consulted at all, and are given no
3 recognized voice in spill planning or oversight.

4 Finally, GSA is very concerned about Trans Mountain's ongoing failure to publicly disclose an
5 un-redacted copy of its emergency response plans during these proceedings, including to the
6 Province of British Columbia.

7 In summary, even with the enhancements proposed by Trans Mountain, the West Coast marine
8 oil spill response regime would not be sufficient to respond adequately to a major spill of
9 Project-related diluted bitumen. Furthermore, an effective response to any spill of diluted
10 bitumen would be all but impossible during the adverse weather and sea conditions that occur
11 frequently within the Project marine area. Local governments have responsibilities and
12 resources that would be crucial for successful marine oil spill planning and response. However,
13 local governments in the area are generally unprepared and unable to participate effectively in
14 marine oil spill preparation and response activities due to weak engagement by senior spill
15 response partners.

16 **2.3 Significant Unjustified Adverse Effects on Endangered Southern Resident Killer** 17 **Whales**

18 The scientific evidence establishes that the Project would have significant adverse effects on
19 the endangered southern resident killer whale population.²⁹ Trans Mountain acknowledges
20 this.³⁰ The Project would harm the southern resident killer whale population particularly
21 because of sensory disturbance to the whales caused by underwater noise from Project-related
22 marine traffic. These effects are rated by Trans Mountain's consultants as negative, long-term,
23 high magnitude, high probability and significant.³¹

24 Trans Mountain's consultants report the following:

- 25 • Southern resident killer whales are listed as Endangered under Schedule 1 of the *Species at*
26 *Risk Act*³² (SARA). This is due in large part to their small population size of only 82
27 individuals. A large portion of the Marine regional study area (RSA) has been designated as
28 critical habitat under SARA. One hundred percent of the designated southern resident killer
29 whale critical habitat that has been identified in Canadian waters falls inside the boundaries

²⁹ "Whale, Killer (*Orcinus orca*) Northeast Pacific southern resident population," Schedule 1, Part 2, Endangered Species, SARA.

³⁰ Trans Mountain states that "the potential effect of sensory disturbance on southern resident killer whale based on the existing status of that species" is an exception to its argument that "the Project as a whole is not likely to cause significant adverse environmental effects after taking into account mitigation measures." B444-2 - Trans Mountain Revised Final Argument clean - A4W6L8, p. 72, lines 1255-1258.

³¹ B18-29 - V8A_4.2.12.2_TO_T5.2.2_MAR_TRANS_ASSESS - [A3S4Y3](#), p. A8-320

³² SC 2002, c. 29.

- 1 of the Marine RSA. The portion of this transboundary area that falls under US jurisdiction
2 was designated as critical habitat under the US *Endangered Species Act* in 2006.³³
- 3 • Increases in sensory disturbance may also act additively with other stressors in the
4 environment. One of the primary concerns associated with the effects of acoustic
5 disturbance is that it can reduce the amount of time spent feeding.³⁴ [T]he endangered
6 status of southern resident killer whale is assumed to represent a currently-existing
7 significant adverse cumulative effect... Even though the Project contribution to overall
8 sensory disturbance effects is small, the potential effects of increased Project-related
9 marine vessel traffic are determined to be significant for southern resident killer whales.³⁵
- 10 • For southern resident killer whales, it was determined that the current status of that
11 population meant that any residual effect beyond current levels was undesirable, and
12 furthermore, the entire population spends much of its time in the Marine RSA. For that
13 reason, effects on southern resident killer whales were determined to be significant.³⁶
- 14 Evidence filed by the Raincoast Conservation Foundation shows that the Project would intensify
15 the existing threats to the southern resident killer whale population, accelerating the rate of
16 decline and possibly leading to complete extinction.³⁷
- 17 Trans Mountain argues that the Project’s significant adverse effects on the southern resident
18 killer whales and on traditional use are justified in the circumstances “in accordance with
19 section 52(2) of *CEAA 2012*.”³⁸ Significantly, however, Trans Mountain does not directly state
20 why these effects would be justified. Instead, it lists numerous factors it implies should be
21 considered.³⁹ None of these, it is submitted, justify significant adverse effects on the southern
22 resident killer whale population.
- 23 • Trans Mountain states that “neither Trans Mountain nor the NEB has direct control over
24 marine vessel activity within the southern resident killer whale critical habitat.” This is
25 clearly irrelevant to whether the Project’s adverse effects on an endangered species are
26 justified. However, it does highlight that neither Trans Mountain nor the NEB are in a

³³ Exhibit B18-29 - V8A 4.2.12.2 TO T5.2.2 MAR TRANS ASSESS (December 17, 2013) ([A3S4Y3](#)), p. 8A-320

³⁴ Exhibit B18-29 - V8A 4.2.12.2 TO T5.2.2 MAR TRANS ASSESS (December 17, 2013) ([A3S4Y3](#)), p. 8A-322

³⁵ Exhibit B18-29 - V8A 4.2.12.2 TO T5.2.2 MAR TRANS ASSESS (December 17, 2013) ([A3S4Y3](#)), p. 8A-323, underline added.

³⁶ Exhibit B18-29 - V8A 4.2.12.2 TO T5.2.2 MAR TRANS ASSESS (December 17, 2013) ([A3S4Y3](#)), p. 8A-324-325, underline added.

³⁷ C291-1-6 - Attachment_E_to_written_evidence_of_Raincoast_-_Population_Viability_Analysis_-_Dr_Lacy_et_al., [A4L9G2](#). In addition to underwater noise from Project-related shipping, the Project would negatively impact the southern resident killer whale population through ship strikes and oil spills.

³⁸ B444-2 - Trans Mountain Revised Final Argument clean - [A4W6L8](#), p. 72, lines 1259 to 1260.

³⁹ B444-2 - Trans Mountain Revised Final Argument clean - [A4W6L8](#), pp. 310-311.

- 1 position to eliminate the adverse effects on the endangered population if the Project is
2 allowed to proceed.
- 3 • Trans Mountain states that “the Project will only slightly increase existing levels of marine
4 shipping in this area.”⁴⁰ Here, Trans Mountain is effectively trying to deny the established
5 evidence that the Project’s effect on the endangered population would be significant.
 - 6 • Trans Mountain states that “the shipping lanes that will be used by Project-related vessels
7 already exist, are well utilized and are subject to strict regulation by federal authorities.”
8 The existing shipping is one of the factors contributing to the southern resident killer whale
9 being endangered. Adding Project-related marine shipping would increase the existing
10 pressure on the endangered killer whales. As the authors of the Lacy, *et al.*, report state: “It
11 is abundantly clear that under status quo conditions the [southern resident killer whale]
12 population cannot withstand additional negative pressures, recover from its current
13 endangered status, and persist.”⁴¹
 - 14 • Trans Mountain states that “the shipping lanes will continue to host marine vessel traffic
15 with or without the Project.” Again, this is an attempt to deny that the Project’s effect on
16 the endangered population would be significant.
 - 17 • Trans Mountain states that “the impact will continue to be significant with or without the
18 project.” This is pure semantics. The impact of shipping on the endangered southern
19 resident killer whale population would be worse with the Project than without the Project.
 - 20 • Trans Mountain states that “there is no clear solution that has been identified to alleviate
21 the residual adverse effects mentioned above.” With respect, this is patently incorrect. It is
22 abundantly clear that refraining from adding a new source of significant adverse effects is a
23 measure that alleviates the pressure on the endangered population.
 - 24 • Trans Mountain states that “Any justification decision should consider Trans Mountain’s
25 commitment to work collaboratively with all interested parties and stakeholders, including
26 existing shippers, to find solutions to adverse effects on the southern resident killer whale.”
27 This would not prevent the harm, and it does not justify the harm. Trans Mountain itself
28 acknowledges that it “was not able to identify any technically and economically feasible
29 mitigation or compensation measures that would offset Project-specific residual effects of
30 underwater noise from marine vessel traffic on the endangered southern resident killer
31 whale population, or the associated traditional use of this population.”⁴²
- 32 In conclusion on this point, there is no valid justification for the Project’s significant adverse
33 effects on the endangered southern resident killer whale population. The killer whale is an icon

⁴⁰ *Ibid.*, underline added.

⁴¹ C291-1-6 - Attachment_E_to_written_evidence_of_Raincoast_-_Population_Viability_Analysis_-_
_Dr_Lacy_et_al._ - [A4L9G2](#), p.2, underline added.

⁴² B444-2 - Trans Mountain Revised Final Argument clean - [A4W6L8](#), p.310, lines 5470-5573

1 and a cherished part of the British Columbian and Canadian identity. The killer whale has
2 significant cultural heritage value to First Nations. The killer whale is a significant draw for
3 tourism and recreation in the Georgia Strait. The *Species at Risk Act* confirms that the
4 Government of Canada is committed to conserving biological diversity. Georgia Strait Alliance
5 respectfully submits that the Panel should recommend to the Governor in Council that the
6 Project's significant adverse effects on the endangered southern resident killer whale
7 population are not justified in the circumstances.

8 **2.4 Project Has No Net Economic Benefit to Canada**

9 Trans Mountain attempts to justify the Project as being of economic benefit to Canada.
10 However, this claim is contradicted by the intervener evidence filed in the proceeding. Trans
11 Mountain has over-estimated the financial benefits of the Project by, among other things,
12 considering gross rather than net benefits, and through unrealistic assumptions about future oil
13 prices. The expert evidence filed by Living Oceans Society estimates that when externalized
14 costs are accounted for the Project would result in a net \$7.4 billion cost to Canada.⁴³

15 Trans Mountain's claim of Project economic benefit is further discredited when compared to
16 the economic cost of the Project harming the health of the Salish Sea. A Project-related oil spill
17 would jeopardize the significant jobs and revenue generated by tourism, outdoor recreation,
18 sport fishing and other sectors.

19 GSA submits that the Board should conclude that Trans Mountain has not proven that the
20 Project would provide net economic benefits to Canada. The Project is not required.

21 **2.5 Project is on the Wrong Path for Canada and the World**

22 The Project would install infrastructure for the transportation of particularly carbon-intensive
23 fossil fuels: diluted bitumen. This would exacerbate the greenhouse gas emissions associated
24 with extraction and combustion of the fuels as well as with the transportation itself. The Project
25 would push Canada further down the path of climate destabilization, rather than towards the
26 increasingly accepted goal of transitioning to a low carbon economy. GSA is concerned that the
27 Project would perpetuate Canada's over-reliance on the fossil fuel industry and hinder the
28 development of Canada's clean energy economy. Measures to limit greenhouse gas emissions
29 are becoming increasingly stringent at the provincial, federal and international levels. It is
30 important that Canada not lose out on domestic and international opportunities in the clean
31 energy economy of tomorrow, or suffer consequences for being economically dependent on
32 fossil fuels. In GSA's view, the Project is contrary to the public interest based on climate change

⁴³ C214-30-2 - Replacement for Attachment F to written evidence of Living Oceans -
Public Interest Evaluation - Dr Gunton et al - [A4W0R4](#)

1 impacts alone, in addition to the other environmental, community and economic problems with
2 the Project.

3 **3. Georgia Strait Alliance Supporters' Views on the Project**

4 **3.1 Online Survey**

5 With 7,000 members and supporters, Georgia Strait Alliance represents the voices of many
6 coastal communities in southwest British Columbia. In this capacity, GSA wishes to provide the
7 National Energy Board with the views of GSA's supporters regarding the Project. To do this, GSA
8 created a survey on its website. The survey consisted of an open ended question asking
9 respondents to share their views on the proposed Project. In addition, respondents were asked
10 where they live, whether they own a business in the Georgia Strait region, whether they
11 regularly visit the region for vacation or recreational opportunities, whether overall they
12 support or oppose the Project, and whether they would prefer to submit their name along with
13 their comments to the Board or to remain anonymous. GSA promoted the survey to its
14 supporter email list, and via its website and social media channels. The survey was closed on
15 May 19, 2015, with 95 responses received.

16 **3.2 Survey Respondents**

17 The GSA supporters who responded to the survey have substantial connections to the Georgia
18 Strait region:

- 19 • 85% live in the Georgia Strait region: 38% on Vancouver Island, 30% in the Lower
20 Mainland, 10% in the Gulf Islands, and 7% on the Sunshine Coast;
- 21 • 92% regularly vacation or take up recreation opportunities in the region; and
- 22 • 21% own a business in the region.

23 **3.3 GSA Supporters' Views**

24 GSA supporters are deeply opposed to the Project, and they call on the Board to reject it. GSA
25 supporters are directly affected by the marine shipping component of the Project by virtue of
26 where they live, do business, or recreate. Their concerns centre on oil spill impacts and climate
27 change. GSA supporters believe the Project has an unacceptably high risk of oil spill impacts due
28 to Project-related tanker traffic. They consider the spill response capability to be inadequate.
29 They oppose the Project because of the damage an oil spill in the Georgia Strait would do to
30 wildlife and the environment, jobs and the economy, and recreational opportunities. GSA
31 supporters also oppose the Project because it is inconsistent with the urgent need to reduce
32 fossil fuel production and consumption in order to avoid dangerous climate change. They

1 support investments in clean energy instead. GSA supporters believe the Project is not in the
2 public interest and should not be approved.⁴⁴

3 **4. GSA Expert Evidence – Coastal Local Government Marine Oil Spill Preparedness and**
4 **Response**

5 This Part begins with an explanation of GSA’s focus on coastal local governments within the
6 present proceeding. In section 4.2, the SPARC BC report is introduced. The purpose and
7 methodology are summarized in section 4.3. In section 4.4, the key findings from the interviews
8 are set out. The results of the comparison of the Georgia Strait Region and two US West Coast
9 areas are provided in section 4.5. SPARC BC’s conclusions are listed in section 4.6. In sections
10 4.7 and 4.8, recommendations by SPACA BC and GSA are presented.

11 **4.1 GSA Focus on Coastal Local Governments**

12 GSA has broad concerns about the impact of the proposed Trans Mountain Expansion Project
13 on the sustainability of Georgia Strait, adjoining waters and communities. GSA is aware that
14 other intervenors are actively addressing issues about the Project that are also of concern to
15 GSA. In order to prevent duplication of the evidentiary contributions of other parties, GSA
16 chose a specific focus for its participation in this proceeding.

17 In particular, GSA’s focus in this proceeding is on the relationship between the Project and
18 coastal local governments with coastlines on the Georgia Strait and adjacent waters in terms of
19 local governments’ involvement in oil spill incidents, before, during and after a spill. GSA’s
20 primary emphasis is on coastal local governments outside the Lower Mainland which are not
21 intervening in this proceeding.

22 To be clear, GSA does not speak for the coastal local governments. Rather, GSA looks to local
23 governments to fulfill a unique and important role in maintaining the sustainability of Georgia
24 Strait and adjoining waters and communities – along with many other parties. By focusing its
25 efforts in this proceeding on the role of coastal local governments, GSA does not imply that
26 local governments are the most important component of oil spill preparedness. Nor does GSA
27 imply that spill preparedness is a substitute for spill prevention.

28 **4.2 GSA Commissioned Report by SPARC BC**

29 To provide evidence for this proceeding, Georgia Strait Alliance commissioned independent
30 research and expert opinion by the Social Planning and Research Council of British Columbia
31 (SPARC BC). SPARC BC is a non-profit society and registered charity. SPARC BC was established
32 in 1966. It specializes in social science research, community planning and development, and

⁴⁴ C138-2-4 - GSA Supporter evidence final, [A4Q1K3](#).

1 evaluation. SPARC BC’s mission is to work with communities in building a just and healthy
2 society for all.

3 SPARC BC’s May 2015 report “An Assessment of Coastal Local Government Marine Oil Spill
4 Preparedness and Response Capability in the Georgia Strait Region” (SPARC Report) is filed as
5 Exhibit C138-2-2 [A4Q1K1], as noted above. The authors of the Report are:

- 6 • Jason Copas BA, MSc: Mr. Copas has over twenty years of experience working with local
7 governments on applied research and local planning projects. He has expertise in the
8 design and conduct of mixed methods research and planning process assessments.
- 9 • Matthew Waugh BA, MA, PhD (Candidate): Mr. Waugh has over ten years of qualitative
10 and quantitative research and analysis experience. He has particular expertise in
11 thematic and statistical analysis.
- 12 • Scott Graham, BEd, MA, CE: Mr. Graham has over ten years of local government
13 planning and implementation research experience. He is a Credentialed Evaluator with
14 the Canadian Evaluation Society and has expertise in the design and conduct of program
15 evaluations and assessments.

16 **4.3 Purpose and Methodology**

17 The SPARC Report assesses the marine oil spill preparedness, response, and recovery capability
18 of local governments in the Georgia Strait region. Through interviewing local government
19 emergency management personnel and comparing the marine oil spill response regime in the
20 Georgia Strait region to comparable regimes in Washington and California, the report identifies
21 gaps in British Columbia’s coastal community marine oil spill response capability and offers
22 recommendations for improvement.

23 The Report’s authors conducted interviews with emergency planning personnel from coastal
24 local governments in the Georgia Strait region, and in other jurisdictions that have had
25 experience with a marine oil spill. In addition, the authors compared the oil spill preparedness,
26 response and recovery capability of coastal local governments of the Georgia Strait region of BC
27 with that of two US west coast areas, San Francisco and Seattle. These three case studies were
28 informed by publicly available documentation regarding marine oil spill preparations and
29 response in each of the focus jurisdictions.

30 **4.4 Key Findings From Interviews**

31 The major theme from the interview component of the research was that coastal local
32 governments desire clarity with regard to roles and responsibilities of the various partners, as
33 well as regular and robust communication from senior oil spill response partners. A second
34 major theme was that local governments are unprepared and unable to effectively engage in
35 marine oil spill preparation and response activities.

1 The interviews with emergency planners from local governments in BC resulted in the following
2 key findings:

- 3 • All respondents expressed concerns about the effects of a marine oil spill on the
4 environment or on specific facets of the environment including marine life, beaches and
5 shoreline;
- 6 • All respondents indicated that their local government has an all-hazards emergency plan
7 in place, but only half said their local government’s plan addresses marine oil spills;
- 8 • All but one respondent reported either limited preparedness or complete non-
9 preparedness in the event of a marine oil spill;
- 10 • Most respondents indicated that the rules/regime governing what local governments
11 should do to prepare for a marine oil spill was not clear;
- 12 • No respondents reported that their local government had been consulted by Western
13 Canada Marine Response Corporation (WCMRC) in terms of providing feedback on
14 geographic response strategies;
- 15 • All but one respondent indicated that a protocol document with WCMRC was not in
16 place, and said there is a need for strengthened engagement between WCMRC and
17 their local government;
- 18 • All the respondents agreed with the proposition that their local government has
19 insufficient resources to respond adequately in the event of a marine oil spill; and,
- 20 • The most frequently stated impediments to strengthening preparedness for a marine oil
21 spill were a lack of capacity to respond, a lack of financial resources, and the absence of
22 jurisdictional authority.

23 **4.5 Key findings From Analysis of the Georgia Strait Region and Two US West Coast**
24 **Areas (San Francisco and Seattle)**

25 The study authors analyzed oil spill regimes in the Georgia Strait region and the two US
26 jurisdictions. They compared 15 types of activity performed by, or potentially performed by,
27 local governments regarding marine oil spills. These types of activity were grouped into:
28 Preparation and Planning, Response, and Recovery.

29 For each jurisdiction, the authors examined whether each type of activity is “*formalized*” and/or
30 “*operationalized*.” These terms are defined as follows:

- 31 • An activity of local government is *formalized* when the local government is mentioned in
32 an official government or response organization document available to the public.
- 33 • An activity of local government is *operationalized* when it is mentioned in an official
34 government or response organization document available in the public domain, and it is

1 structured by clear procedures that describe specific boundaries, authorities, roles and
2 tasks.

3 The oil spill regimes in both countries have federally appointed agencies mandated to address
4 oil spills within their respective jurisdictions. However, the comparative analysis also found
5 clear differences between the US and Canadian regimes. In the US, local governments articulate
6 and specify the role they would take with regard to many of the potential local government
7 activities associated with a marine oil spill. In contrast, BC local governments are less able to do
8 so. BC local governments also have far less documentation (policies and procedures) of the
9 roles they would play across a range of marine oil spill activities than do the US local
10 governments examined.

11 The documents reviewed within the US regimes typically contained step-by-step procedures for
12 carrying out specific response activities and can often be publically viewed in their respective
13 Emergency Management departments. The Response Organization-based regime within BC
14 lacks this type of documentation and does not articulate the boundaries, authorities, roles, and
15 tasks of local governments.

16 The findings from the comparative analysis, most notably the relative absence of formalized
17 and operationalized language attributing responsibilities for potential local government
18 activities in relation to marine oil spills, are also reflected in the results of the interviews, with
19 coastal local governments expressing a strong desire for greater clarity with regard to roles and
20 responsibilities of the various spill partners, including, most immediately, local governments
21 themselves.

22 **4.6 SPARC Report Conclusions**

23 **4.6.1 Coastal local governments' role in marine oil spill regimes**

24 In the marine oil spill regimes of both BC and the two US areas (San Francisco and Seattle)
25 studied, the lead responsibility for most activities is taken by designated response
26 organizations, the Coast Guard, agencies of senior governments and the responsible party
27 ("spiller"). However, local governments do have important roles to play. Local governments
28 provide a lead or support role regarding:

- 29 • identification of priority areas to protect;
- 30 • communication to residents about emergency matters;
- 31 • declaring a state of local emergency;
- 32 • coordinating volunteers; and,
- 33 • coordinating and housing evacuees.

34 Local governments provide a support role or require regular briefings regarding:

- 1 • management of traffic;
- 2 • police services;
- 3 • fire services;
- 4 • ambulance services;
- 5 • coordination of housing for response crews; and,
- 6 • participation in Unified Command.

7 Local governments require regular briefings regarding:

- 8 • oil containment and clean-up;
- 9 • oily waste disposal; and,
- 10 • logistics (heavy equipment and crews).

11 The US marine oil spill regimes examined in the SPARC BC study display clear, publically
12 available documentation about how local governments are involved in the preparation for,
13 response to and recovery from a marine oil spill. In San Francisco and Seattle, local
14 governments are actively engaged in regular preparations for a marine oil spill. Planning
15 documents specify the activities that local governments are responsible for and provide specific
16 procedures to ensure local governments are clear about their role as it relates to other lead and
17 coordinating agencies.

18 In contrast, in the marine oil spill response regime applicable to the Georgia Strait region, local
19 governments are mentioned only briefly in publically available documents and their roles and
20 responsibilities are not identified in detail or at all. Even regarding the roles of senior partners,
21 the BC marine oil spill regime lacks clear, public documentation specifying the boundaries of
22 involvement, authorities, roles and specific tasks. Local government representatives within the
23 Georgia Strait region who were interviewed also expressed a lack of clarity regarding the roles
24 of both local governments and senior partners, along with a desire for improved
25 communications with senior partners.

26 **4.6.2 The realities of coastal local government involvement in a marine oil spill from** 27 **communities that have experienced one**

28 Study respondents from local governments that have experience with a marine oil spill
29 underscored that their local government knew too little about the spill response framework
30 before the spill occurred. Gaps they identified included:

- 31 • inadequate designation of parties for specific activities;
- 32 • failure to assess the equipment needed for spills of different sizes;

- 1 • absence of an acceptable time limit for responding to the spill; and,
- 2 • absence of funding for testing and remediation during the recovery process.

3 In general, local governments with marine oil spill experience have greater knowledge of the
4 working mechanics of an oil spill response process and are able to see the gaps. In the case of
5 the two US regimes studied, these gaps have been largely addressed by the collaborative work
6 of all stakeholders. In BC, a lack of clarity regarding the role of local government continues to
7 limit local government involvement in preparing for, responding to and recovering from a
8 marine oil spill.

9 **4.6.3 Ability of local governments in the Georgia Strait region to participate in the**
10 **preparedness and response efforts led by other agencies**

11 The authors of the SPARC Report identify 15 activities in which local governments may
12 participate regarding a marine oil spill (before, during and after). Knowledge of the degree to
13 which Georgia Strait local governments do and will carry out these activities is limited by the
14 lack of defined formalized and operationalized roles and responsibilities for local governments.
15 Despite this limitation, the interviewed local governments said they could contribute in various
16 ways based on their unique knowledge of local realities. Examples include participating in the
17 incident command structure, identifying sensitive marine and shoreline areas for priority
18 protection, disseminating emergency information through their local networks, coordinating
19 volunteers, managing evacuation if it becomes necessary, controlling access to shorelines as
20 required, and providing facilities and staging locations for responders.

21 The Report's authors concluded that until communication and engagement is improved, and
22 until the roles and responsibilities of local governments are better articulated, the unique
23 strengths of local governments to enhance the overall marine oil spill regime will remain
24 underutilized. As stated above, the interviewed local governments expressed appreciable
25 urgency in calling for these improvements.

26 **4.6.4 Adequacy of engagement and communication from senior marine oil spill response**
27 **partners with local governments**

28 Local governments in the Georgia Strait region reported little or no engagement with WCMRC
29 or other marine oil spill regime leaders regarding local government involvement in preparation
30 for, response to, and recovery from a marine oil spill. This is in stark contrast with many of the
31 observed practices and protocols of the two regimes that were examined in the US. Many of
32 the interviewed local governments in BC see themselves as well suited to contribute to
33 particular activities regarding marine oil spills. However, the limited engagement by senior
34 partners with local governments has led to a situation in which local governments lack both
35 clarity and specificity about the roles they could play within the broader marine oil spill
36 response regime applicable to the Georgia Strait region.

1 **4.6.5 Coastal local governments in the Georgia Strait region – adequacy of preparation for**
2 **a marine oil spill**

3 The local governments in the Georgia Strait region who participated in the SPARC BC study
4 generally see themselves as unprepared for a marine oil spill. They are mostly unclear about
5 their roles before, during and after a marine oil spill. They feel unsupported in their efforts to
6 gain clarity about their roles. Operationalized procedures for local government involvement in
7 activities regarding marine oil spills in the Georgia Strait region are largely absent, presenting
8 barriers for local governments to being prepared for involvement in a marine oil spill.

9 **4.7 SPARC BC Report Recommendations**

10 The authors of the SPARC BC report provided the following recommendations aimed at
11 strengthening the marine oil spill regime applicable to the Georgia Strait region by enhancing
12 local government preparedness and improving the definition and understanding of the roles
13 and responsibilities of local governments as partners with federal and provincial agencies,
14 WCRMC, First Nations and others.

15 **4.7.1 Recommendation 1: Public Access to Oil Spill Response Plans**

16 The WCRMC Oil Spill Response Plans should be available in the public domain in BC. Currently
17 they are not. In contrast, similar types of plans in areas such as San Francisco and Seattle are
18 publically available.

19 **4.7.2 Recommendation 2: Senior Response Partners' Communication**

20 Senior response partners should improve their communication and engagement with local
21 governments regarding marine oil spill planning and training in the Georgia Strait region.

22 **4.7.3 Recommendation 3: Consultative Committee**

23 The federal government should take a lead role in creating a committee of representatives from
24 WCMRC, federal and provincial agencies, coastal local governments, First Nations and key
25 stakeholders. The Committee's mandate should be to clearly identify the roles and detailed
26 operational responsibilities of all the relevant agencies, governments and entities, including
27 local governments, regarding preparation for, response to and recovery from a marine oil spill
28 in the Georgia Strait region. Coastal local government representatives should be provided with
29 resources to participate in the work of the Committee to ensure their effective participation.

1 **4.7.4 Recommendation 4: Delineation of Roles and Responsibilities**

2 Following proper consultation (see Recommendation #3), the roles and responsibilities of all
3 the involved parties, including local governments, should be clearly documented (i.e., both
4 formalized and operationalized) in the plans of WCMRC, federal and provincial agencies, First
5 Nations and local governments, with protocol agreements between the parties as necessary, in
6 order to define a robust and effective marine oil spill regime for the Georgia Strait region.

7 **4.7.5 Recommendation 5: Local Government Action**

8 Local governments in the Georgia Strait region should ensure that their emergency response
9 plan addresses marine oil spills and that the plans provide operational detail about all the types
10 of activities the local government is responsible for (whether in a leadership role or support
11 role) before, during and after a marine oil spill. Additional resources should be provided to local
12 governments to facilitate planning for and delivering activities related to marine oil spills.

13 **4.7.6 Recommendation 6: Funding by Senior Response Partners**

14 Senior response partners should ensure that lack of funding is not a barrier to local government
15 participation in marine oil spill planning and training exercises.

16 **4.8 GSA Recommendations**

17 Georgia Strait Alliance endorses all of the recommendations set out in the SPARC report and
18 summarized above. In addition, GSA makes the following further recommendations.

19 **4.8.1 Recommendation 7: Public Access to Oil Spill Response Plans**

20 The federal government should ensure that all oil spill response plans, including those of
21 WCMRC, the Canadian Coast Guard, provincial and local governments, and industry, are
22 available in the public domain in their entirety, including local, operational level detail.

23 **4.8.2 Recommendation 8: Regional Citizens' Council**

24 Trans Mountain should be required to fund the development and ongoing activities of an
25 independent Regional Citizens' Council for the South Coast. The Regional Citizens' Council
26 would provide citizen oversight of marine oil spill planning and response. The Council would
27 ensure that the activities and policies of Trans Mountain and other oil handlers/shippers,
28 WCMRC and government regulatory bodies are accountable to local communities. A US model
29 that could be modified for the Canadian context is the Prince William Sound Regional Citizens
30 Advisory Council (PWSRCAC). The establishment and funding of the PWSRCAC is a legal
31 requirement for the operation of the Alyeska Pipeline.

1 **4.9 Conclusion re Coastal Local Government Marine Oil Spill Preparedness and Response**

2 GSA urges the Board to endorse the recommendations set out above aimed at strengthening
3 the marine oil spill regime applicable to the Georgia Strait region. Implementation of these
4 recommendations would be highly beneficial regardless of whether or not the Project is
5 approved and constructed. Further, while GSA submits that the Board should conclude that the
6 Project is contrary to the public interest, if the Board does recommend approval of the Project
7 then GSA submits, in the alternative, that the recommended approval should be conditional on
8 implementation of each of the marine oil spill recommendations by the relevant authorities
9 prior to the Project commencing operations.

10 **5. GSA Comments on NEB Draft Conditions**

11 **5.1 Comments Are “In the Alternative”**

12 The Board is required by section 52(1)(b) of the *NEB Act* to provide the Governor in Council with
13 terms and conditions regardless of whether the Board recommends that a certificate should be
14 issued for the Project. In that context, on August 12, 2015, as stated above, the NEB issued
15 Procedural Direction No. 17 with revised draft terms and conditions.⁴⁵ GSA’s comments on the
16 Board’s draft conditions are set out in this section.

17 To be clear, GSA’s position is that the Project should not be approved and would not be in the
18 public interest even if GSA’s proposed improvements to the terms and conditions are adopted
19 by the Board. The following comments are expressly “in the alternative.”

20 **5.2 GSA Comments on Terms and Conditions**

21 In GSA’s view, the Board’s proposed draft conditions regarding marine shipping-related matters
22 are inadequate. Georgia Strait Alliance has the following comments on the NEB’s August 2015
23 Draft Terms and Conditions, focusing on marine-shipping related matters.

24 The following comments are in the numerical order of the Draft Conditions.

25 **5.2.1 Draft Condition 17, “Socio-Economic Effects Monitoring Plan”**

26 Draft Condition 17 would require Trans Mountain to file with the NEB for approval prior to
27 construction a plan for monitoring potential adverse socio-economic effects of the Project
28 during construction.

29 First, “the Project” in the Socio-Economic Effects Monitoring Plan should be defined to include
30 Project-related marine shipping.

⁴⁵ A199-3, [A4S1G2](#).

1 Second, the plan should be expanded to include effects of the Project during operations, not
2 just during construction. Other draft conditions apply to operations, as well as construction. An
3 example is Draft Condition 50, “Rare Ecological Community and Rare Plant Population
4 Management Plan,” which applies to habitats “that are potentially affected by the Project
5 during construction or operations.” [underline added]

6 Third, clauses g) and h) of Draft Condition 17 refer to “potentially affected communities,
7 Aboriginal groups, local and regional authorities, and service providers.” It should be made
8 clear that this includes coastal local governments and community stakeholders in the Georgia
9 Strait area.

10 **5.2.2 Draft Condition 44, “Wildlife Species at Risk Mitigation and Habitat Restoration** 11 **Plans”**

12 Draft Condition 44 would require Trans Mountain to file with the NEB for approval Wildlife
13 Species at Risk Mitigation Plans for “each species whose draft, candidate, proposed, or final
14 critical habitat is directly or indirectly affected by the Project.”

15 The “Project” here should include Project-related marine shipping.

16 Without limitation, this condition should require Trans Mountain to file with the NEB for
17 approval a Species at Risk Mitigation Plan for the endangered southern resident killer whale
18 population, and other species listed as endangered, threatened or special concern under SARA.

19 In addition, the Board should add a condition requiring Trans Mountain to provide a post-
20 commencement of operations annual report on implementation of the Wildlife Species at Risk
21 Mitigation and Habitat Restoration Plans.

22 **5.2.3 Draft Condition 46, “Navigation and navigation safety”**

23 Draft Condition 46 would require Trans Mountain to file with the NEB prior to construction: “an
24 updated list of navigable waterways that may be affected by the Project (including the pipeline,
25 power lines, marine terminal, temporary or permanent bridge crossings, or other ancillary
26 works that are physically or operationally connected to the Project); ...”

27 The “Project” here should include Project-related marine shipping.

28 **5.2.4 Draft Condition 62, “Facilities Environmental Protection Plan”**

29 Draft Condition 62 is like many of the Draft Conditions in that it would merely require Trans
30 Mountain to file plans or documents confirming Trans Mountain’s commitment to or
31 implementation of commitments made by Trans Mountain during the proceeding.

32 With respect, GSA is concerned that in the absence of conditions over and above the
33 Company’s existing commitments this approach amounts to ‘rubber stamping.’

1 **5.2.5 Draft Condition 77, “Plan for implementing, monitoring, and complying with marine**
2 **shipping-related commitments”**

3 Draft Condition 77 states:

4 “Trans Mountain must file with the NEB, at least 60 days prior to commencing
5 construction, a plan describing how it will implement, monitor, and ensure
6 compliance with its marine shipping-related commitments identified in
7 Condition No. 114. The plan must be prepared in consultation with Transport
8 Canada, the Canadian Coast Guard, the Pacific Pilotage Authority, Port Metro
9 Vancouver, British Columbia Coast Pilots, Western Canada Marine Response
10 Corporation, and Fisheries and Oceans Canada.” [underline added]

11 This condition should be revised to require Trans Mountain to prepare the plan in consultation
12 with potentially affect marine coastal local governments and community stakeholders.

13 **5.2.6 Draft Condition 78, “Updates under the *Species at Risk Act*”**

14 Draft Condition 78 would require Trans Mountain to file with the NEB various updates under
15 the *Species at Risk Act* “for species that have the potential to be affected by the Project.”

16 The “Project” here should include Project-related marine shipping. And, as stated above
17 regarding Draft Condition 48, this should certainly include the southern resident killer whale
18 population, and other species listed as endangered, threatened or special concern under SARA.

19 **5.2.7 Draft Condition 114, “Marine Shipping-Related Commitments”**

20 Draft Condition 114 requires Trans Mountain to file confirmation of implementation of a list of
21 the Company’s prior commitments associated with marine shipping. GSA is dissatisfied that this
22 list is limited to commitments already made by Trans Mountain during the proceeding.

23 In GSA’s respectful view, the Board should define marine shipping-related conditions that go
24 substantially beyond Trans Mountain’s prior commitments.

25 GSA submits that the marine shipping-related conditions should include the following at a
26 minimum:

- 27 • participation and funding of coastal local governments in oil spill planning, training and
28 response,
- 29 • action plans to ensure improved communication, engagement and clarity about roles
30 and responsibilities among marine oil spill response partners,
- 31 • public availability of all oil spill response plans for all agencies and authorities that would
32 be involved in a spill along the marine shipping corridor,

- 1 • enhanced research on the properties, trajectories, fate and behavior of products to be
2 transported,
- 3 • demonstration of the ability to *effectively* recover these products from the marine
4 environment, and
- 5 • establishment of a Regional Citizens' Council for BC's South Coast, with ongoing industry
6 funding, allowing for independent community oversight of oil transportation operations,
7 and oil spill planning and response.

8 **5.2.8 Draft Condition 116, "Pre-operations full-scale emergency response exercises"**

9 Draft Condition 116 should be expanded to require Trans Mountain to complete full-scale
10 exercises for a third scenario: a credible worst case release volume spill of diluted bitumen from
11 a Project-related tanker at the worst case location in Georgia Strait.

12 In addition, the Condition 116 should specify that these emergency responses exercises must
13 include the participation of coastal local governments and community stakeholders.

14 **5.2.9 Draft Condition 117, "Reporting on improvements to Trans Mountain's Emergency
15 Management Program"**

16 Draft Condition 117 would require Trans Mountain to report to the NEB on procedural steps it
17 has taken toward achieving improvements to its emergency management plans that are
18 required by Draft Condition 122. Item (c) of Draft Condition 117 requires Trans Mountain to
19 provide "A summary of interested parties that were consulted and how their comments and
20 feedback were considered in improving the program." [underline added]

21 GSA submits that the wording of Draft Condition 117 (c) should be revised to specify that
22 "interested parties" includes coastal local governments and community stakeholders
23 potentially affected by Project-related marine shipping.

24 **5.2.10 Draft Condition 119, "Emergency Preparedness and Response Exercise and Training
25 Program"**

26 As currently worded, the scope of the "Emergency Preparedness and Response Exercise and
27 Training Program" required by Draft Condition 119 is limited to the pipeline, the terminals and
28 the Westridge Marine Terminal.

29 First, the Emergency Preparedness and Response Exercise and Training Program should be
30 extended to include Project-related marine shipping.

31 Second, Draft Condition 119 should specify that Trans Mountain must include coastal local
32 governments and community stakeholders in this emergency exercise and training program.

1 **5.2.11 Draft Condition 120, “Notification and reporting on emergency response exercises”**

2 Draft Condition 120 would require Trans Mountain to notify the Board before, and report to the
3 Board after, conducting emergency response exercises under the Program required by Draft
4 Condition 119.

5 The condition should specify that the report must address the participation of local coastal
6 governments and community stakeholders.

7 **5.2.12 Draft Condition 121, “Evacuation Plans”**

8 Draft Condition 121 would require Trans Mountain to file with the NEB prior to operations “an
9 Evacuation Plan for people present in areas potentially affected by an incident at each of Trans
10 Mountain’s Edmonton, Sumas, and Burnaby tank facilities.”

11 This should be expanded to include coastal communities potentially affected by an incident
12 involving Project related marine shipping, such as a marine oil spill.

13 The minimum requirements of each Evacuation Plan are particularly apt in the context of coast
14 local governments, as highlighted in the SPARC BC Report discussed above. In particular,
15 paragraphs iv, v and vi of Draft Condition 121 require that each Evacuation Plan:

16 “iv) be prepared in consultation with local municipalities and first responders;

17 v) state how input from local municipalities and first responders was considered
18 in preparing the plan;

19 vi) define the roles, responsibilities, and jurisdictional authority all parties
20 involved in implementing an evacuation;...”

21 In addition, Draft Condition 121 should be expanded beyond “evacuation” to include all
22 appropriate emergency response activities. In the case of Project-related marine oil spills, this
23 would include consultation with coastal local governments regarding identification of priority
24 areas to protect, communication to residents about emergency matters, declaration of a state
25 of local emergency, coordination of volunteers, and coordinating and housing evacuees.

26 **5.2.13 Draft Condition 122, “Implementing improvements to Trans Mountain’s Emergency
27 Management Program”**

28 Draft Condition 122 would require Trans Mountain to file details of revisions to emergency
29 response plans prior to commencing operations. These plans include the one for the Westridge
30 Marine Terminal required by Draft Condition 124. Comments on Draft Condition 124 are
31 provided in the next paragraph.

1 **5.2.14 Draft Condition 124, “Emergency Response Plan for the Westridge Marine Terminal”**

2 Draft Condition 124 would require Trans Mountain to file an emergency response plan for the
3 Westridge Marine Terminal prior to commencing operations. Eleven topics to be addressed are
4 specified.

5 GSA submits that Draft Condition 124 should be expanded to require Trans Mountain to
6 provide an emergency response plan for Project-related marine shipping, in addition to the
7 Westridge Marine Terminal. Both the original and the expanded condition 124 should go
8 beyond verification of Trans Mountain’s compliance with its existing commitments. The
9 expanded condition 124 should require Trans Mountain’s emergency response plan for Project-
10 relate marine shipping to “demonstrate geographic familiarity with the area and the response
11 needed to prepare for, respond to, recover from, and mitigate the potential effects of
12 emergencies of any type and must include [items (a) to (k)],” following the wording of draft
13 condition 124.

14 GSA would emphasize the importance of Trans Mountain’s emergency response plan for
15 Project-related marine shipping including the following two items from Draft Condition 124:

16 “(h) A discussion of how the results of research initiatives such as the Scientific
17 Advisory Committee work noted in Trans Mountain’s response to NEB
18 Information Request No. 1.63 (Filing A3W9H8) and other oil fate and behavior
19 research noted during the OH-001-2014 proceeding, have been considered and
20 incorporated into Trans Mountain’s emergency response planning;

21 (j) A discussion of how the plan considers, and would allow coordination with,
22 relevant provincial and municipal disaster response plans;”

23 **5.2.15 Draft Condition 126, “Marine Public Outreach Program”**

24 Draft Condition 126 would require Trans Mountain to file a report on its Marine Public
25 Outreach Program prior to commencing operations.

26 GSA submits that the scope of this program should be expanded to explicitly include prevention
27 and response to Project-related marine oil spills.

28 **5.2.16 Draft Condition 128, “Marine Mammal Protection Program”**

29 Draft Condition 128 would require Trans Mountain to file with the NEB prior to operations a
30 “Marine Mammal Protection Program that focuses on effects from the operations of Project-
31 related marine vessels.”

32 As stated above, GSA’s position is that the Board should conclude that the Project would have
33 significant adverse environmental effects on marine mammals, including the endangered

1 southern resident killer whale population, and that these effects cannot be justified in the
2 circumstances.

3 Draft Condition 128 should require confirmation that the Marine Mammal Protection Program
4 is aligned with recovery strategies in place or under development regarding the southern
5 resident killer whale population and other species listed as endangered, threatened or special
6 concern under *SARA*.

7 Second, coastal local governments and community stakeholders should be included in the
8 required “summary of consultation with appropriate government authorities any potentially
9 affected stakeholders and Aboriginal groups.”

10 Third, the Board should add a condition requiring Trans Mountain to provide a post-
11 commencement of operations annual report on implementation of the Marine Mammal
12 Protection Program.

13 **5.2.17 Draft Condition 136, “Full-scale emergency response exercises during operation”**

14 Draft Condition 136 would require Trans Mountain to complete, within five years of
15 commencing operation, full-scale exercises to test emergency response to five specified
16 scenarios.

17 GSA submits that the list of scenarios should be expanded to include a credible worst case
18 release volume spill of diluted bitumen from a Project-related tanker at the worst case location
19 in Georgia Strait. This corresponds to GSA’s comment above regarding Draft Condition 116,
20 “Pre-operations full-scale emergency response exercises.”

21 **5.2.18 Draft Condition 137, “Ongoing implementation of marine shipping-related
22 commitments”**

23 Draft Condition 137 would require Trans Mountain to file annually after commencement of
24 operations a report “documenting the continued implementation of Trans Mountain’s marine
25 shipping-related commitments noted in Condition No. 114, any non-compliances with the
26 requirements of these commitments, and the actions taken to correct these non-compliances.”
27 Draft Condition 137 would also require Trans Mountain to provide a copy of this report to
28 “Transport Canada, the Canadian Coast Guard, the Pacific Pilotage Authority, Port Metro
29 Vancouver, British Columbia Coast Pilots, Western Canada Marine Response Corporation, and
30 Fisheries and Oceans Canada.”

31 GSA submits that this list of parties to be copied on the report should be expanded to include
32 coastal local governments that have asked to receive a copy of this annual report.

1 **6. Conclusion**

2 For the reasons set out above, Georgia Strait Alliance urges the Panel to conclude and
3 recommend that the Trans Mountain Expansion Project is not required in the public interest
4 under the *NEB Act* and should not be approved by the Governor in Council.

5 Further, Georgia Strait Alliance respectfully submits that the Panel should conclude under *CEAA*
6 *2012* that the Project would have significant adverse environmental effects on marine
7 mammals, including the endangered southern resident killer whale population, and that these
8 effects cannot be justified in the circumstances.

9 GSA has provided eight recommendations aimed at strengthening the marine oil spill regime
10 applicable to the Georgia Strait region by enhancing local government preparedness and
11 improving the definition and understanding of the roles and responsibilities of local
12 governments as partners with federal and provincial agencies, WCRMC, First Nations and
13 others. GSA asks the Panel to consider and endorse these recommendations.

14 In GSA's respectful view, the Board's August 2015 Draft Terms and Conditions are inadequate
15 regarding marine shipping-related matters. GSA has provided specific suggestions for
16 improvement, in the text above.

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18 ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th DAY OF JANUARY, 2016



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William J. Andrews, Barrister & Solicitor
Counsel for Georgia Strait Alliance