

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

**Notes for Oral Summary Argument
of the Intervenor Georgia Strait Alliance**

January 23, 2016

Notes to interpreter and court reporter:

Names:

- William (Bill) Andrews
- Dr. Alexandra Woodsworth
- SPARC BC
- Jason Copas
- Matthew Waugh
- Scott Graham
- Musqueam
- Squamish
- Tsleil-Waututh
- M/V Marathassa
- Lac-Mégantic
- ECHO Program. Enhancing Cetacean Habitat and Observation Program

Exhibits that may be referred to:

- C138 series. Georgia Strait Alliance evidence and arguments
- C138-8-1. Georgia Strait Alliance final written argument
- B444-2 Trans Mountain Revised Final Written Argument, December 2015

Acronyms:

- CEAA 2012. Canadian Environmental Assessment Act 2012
- SARA. Species at Risk Act.
- MRSA. Marine regional study area.
- CPCN. certificate of public convenience and necessity
- WCMRC. Western Canada Marine Response Corporation

1. (Intro, GSA, Position)

Mr. Chairman, members of the Panel. I am William Andrews, counsel for Georgia Strait Alliance in this proceeding.

With me is Dr. Alexandra Woodsworth, energy campaigner for the GSA.

I acknowledge and thank the Musqueam, Squamish and Tsleil-Waututh first nations for allowing us to have this meeting on Coast Salish traditional territory.

Georgia Strait Alliance is a registered charity.

For 25 years, GSA has worked to protect and restore the marine environment – and coastal communities – of the Georgia Strait and adjoining waters.

This geographic focus coincides directly with the Project-related marine shipping project area.

The Alliance has some 7,000 members and supporters who live, work and recreate within Project marine area.

Georgia Strait Alliance respectfully submits that the Trans Mountain Expansion Project is not in the public interest under section 52 of the *NEB Act*, and that the Panel should recommend that it not be approved.

Further, GSA submits that the Panel should conclude under *CEAA 2012*, and recommend to the Minister of Natural Resources, that the Project will likely have significant adverse environmental effects -- including significant adverse effects on the endangered southern resident killer whale population -- and that these effects cannot be justified in the circumstances.

2. (outline of argument)

To give you an outline of what I will cover, I will begin with the Panel's environmental assessment of the Project under *CEAA 2012*.

My primary focus will be on the Project's significant adverse effects on the Southern Resident Killer Whale and why those effects cannot be justified.

Next, I will summarize why GSA says the Project is not in the public interest under the *NEB Act*.

I will briefly describe the expert evidence GSA filed on coastal local governments in the marine project area.

Then I will summarize at a high level GSA's comments on the Board's draft terms and conditions.

I will conclude with GSA's views of this process itself.

3. (CEAA 2012)

Under CEAA 2012, the Panel's report to the Minister of Natural Resources must provide two findings:

first, whether the Project with mitigation is likely to cause significant adverse environmental effects; and

second, if the Project with mitigation is likely to cause significant adverse environmental effects, whether the significant adverse environmental effects can or cannot be justified in the circumstances.

Subsection 19(1) of CEAA 2012 requires the Panel to take into account a broad range of factors in making these findings.

The list of factors begins of course with the environmental effects of the Project. Notably, the federal Species at Risk Act requires particular rigour in your evaluation of the Project's effects on species at risk. Here, that means the endangered Southern Resident Killer Whale and other species.

Subsection 19(1) requires the Panel to take into account “the environmental effects of malfunctions or accidents associated with the Project.” That means, among other things, oil spills.

Subsection 19(1) requires the Panel to take into account “any cumulative environmental effects that are likely to result from the Project in combination with other physical activities that have been or will be carried out.” That means, among other things, other marine shipping negatively impacting the endangered Southern Resident Killer Whale.

Subsection 19(1) requires the Panel to take into account “alternative means of carrying out the designated project...” Significantly, the Board has allowed Trans Mountain to file only the most perfunctory and dismissive evaluation of alternative means of carrying out the project. This leaves a large gap in the record, despite the thousands of pages of evidence.

Subsection 19(1) requires the Panel to take into account comments by interested parties, such as Georgia Strait Alliance and the dozens of other interveners.

Subsection 19(1) requires the Panel to take into account technically and economically feasible mitigation measures that would mitigate any significant adverse environmental effects of the Project. Here, Trans Mountain has provided evidence and acknowledged in argument that there are no technically and economically feasible mitigation measures that would mitigate the significant adverse effect of the Project on the Southern Resident Killer Whale.

Subsection 19(3) allows the Panel to take into account community knowledge and Aboriginal traditional knowledge. GSA strongly urges the Panel to do so in the present environmental assessment.

Section 5 of CEAA 2012 sets out the “environmental effects” that must be considered. It specifically includes aquatic species as defined in subsection 2(1) of the Species at Risk Act – such as the Southern Resident Killer Whale.

The legislative purposes of CEAA 2012 provide the framework for the Panel’s findings of both “significance” and “justification.”

First and foremost, the stated purpose of CEAA 2012 in section 4(1)(a) is:

“to protect the components of the environment that are within the legislative authority of Parliament from significant adverse environmental effects caused by a designated project.”

I note the Panel is required to apply CEAA 2012 for the purpose of protecting the environment in all areas of federal jurisdiction and not just within the Board’s own jurisdiction to regulate pipelines.

4. (focus on Southern Resident Killer Whale)

In my remarks today I am going to focus on the Project’s effects on the Southern Resident Killer Whale.

Before I go there, I would emphasize that there are numerous other aspects of the environment on which the Project would have unjustifiable significant adverse effects. One example is the effects of a pipeline or project-related marine shipping oil spill in or near the Fraser River or Salish Sea on Chinook salmon.

These have been addressed comprehensively by the Living Oceans Society and Rainforest Conservation Foundation, and Friends of Ecological Reserves. I commend to the Panel the final written arguments by those interveners. GSA endorses those submissions.

5. (“significance”)

I will make five points regarding “significance”:

First, southern resident killer whales are listed as Endangered under Schedule 1 of the federal *Species at Risk Act*. This is a legal fact. It is not contestable. Nor is it contested by Trans Mountain.

The Southern Residents population is not merely “sensitive” or “vulnerable.” It is “endangered.” There were only 82 individuals in the population when the evidence was filed, as Trans Mountain’s experts acknowledge. There are encouraging signs that the population is at least holding its own. But its long term survival remains precarious.

Section 79(2) of the Species at Risk Act requires you, the Panel, as the federal authority under CEAA to provide special analysis and protection for the Southern Resident Killer Whale and its critical habitat.

[[79(2) The person must identify the adverse effects of the project on the listed wildlife species and its critical habitat and, if the project is carried out, must ensure that measures are taken to avoid or lessen those effects and to monitor them. The measures must be taken in a way that is consistent with any applicable recovery strategy and action plans.]]

For an excellent analysis of this crucial aspect of the Panel's mandate, I refer you to and endorse the final written argument of Living Oceans Society and Rainforest Conservation Foundation, Part IV, Legal requirements of CEAA 2012, SARA and the NEB Act are not met. Pages 78 to 104.

Second, there is a direct overlap between Project's geographic zone of influence and the geographic area of the critical habit of the Southern Resident Killer Whale.

"Critical habitat" is a key concept in the Species at Risk Act. As the preamble states, "the habitat of species at risk is key to their conservation."

The critical habitat of the Southern Resident Killer Whale has been scientifically established in the Recovery Strategy for the Southern Resident Killer Whales" Reference: Exhibit C291-1-4.

One hundred percent of the designated southern resident killer whale critical habitat in Canadian waters falls inside the boundaries of the Marine Regional Study Area. And the US portion of the Marine Regional Study Area is designated as critical habitat for the Southern Resident Killer Whale under the US *Endangered Species Act*. These are facts acknowledged by Trans Mountain's own experts.

Geographically, the Project's impact on the Southern Resident Killer Whale is not a "glancing blow" on the periphery of the critical habitat. Rather, the Project's impact lands squarely within the endangered species' critical habitat. The entire population spends much of its time in the Project's Marine Regional Study Area.

Counsel for Trans Mountain told you in Calgary that "It's a situation where an endangered species' primary area is located pretty much smack dab in the middle of some of the busiest shipping lanes in Canada." Reference: T25 Line 12285.

I submit that the Species at Risk Act requires you as a Panel to reframe that:

Trans Mountain is proposing a five-fold increase in oil tanker traffic smack dab in the middle of the critical habitat of the endangered Southern Resident Killer Whale.

Third, the normal, routine operation of Project-related marine shipping would have significant adverse effects on the Southern Resident Killer Whale.

Trans Mountain's own experts candidly acknowledge that the Project would harm the southern resident killer whale population because of sensory disturbance to the whales caused by underwater noise from Project-related marine traffic.

Acoustic disturbance reduces the amount of time the whales spend feeding.

In addition, acoustic disturbance also acts additively with other stressors in the environment.

These effects are rated -- by Trans Mountain's consultants -- as negative, long-term, high magnitude, high probability and significant.

The Project would have significant adverse effects on the Southern Resident Killer Whale even without taking oil spills into account.

Fourth, Trans Mountain's own evidence is that the Project's adverse effects on the Southern Resident Killer Whale would be significant. The Trans Mountain consultants state, in so many words:

"the potential effects of increased Project-related marine vessel traffic are determined to be significant for southern resident killer whales." Reference: Exhibit B18-29, page 8A-323.

I note that despite its own evidence, Trans Mountain's legal argument flip flops on whether the Project would like cause significant adverse environmental effects.

At line 12137 of transcript 25, Counsel for Trans Mountain told you that:

"Trans Mountain submits this evidence demonstrates the project is not likely to cause significant adverse environmental effects as defined in CEAA 2012"

Later, at line 12169, counsel allowed that the effects "may" be significant.

And at line 12201, counsel said that:

"The only predicted significant adverse environmental effects are for the southern resident killer whale..."

It is instructive that counsel for Trans Mountain did not take any exception when the Chairman characterized Trans Mountain's position as follows, starting at line 12280:

"Trans Mountain, you know, has acknowledged the significant adverse effects in relation to two areas. One, in relation to residual effects on the southern resident killer whale associated with increased project related marine vessel traffic; and two, in relation to traditional use associated with the southern resident killer whale."

And the company has also stated that there are no feasible mitigation measures to address these significant effects. ..."

Fifth, a project-related oil spill in critical habitat would necessarily have a significant adverse effect on the Southern Resident Killer Whale. The magnitude of the negative effect would of course depend on the size of the spill, the location, the weather and water conditions, the time of year and numerous other factors outside the control of Trans Mountain.

Furthermore, a project-related oil spill would necessarily have a significant adverse effect on the Southern Residents' crucial food supply, the Chinook salmon.

In conclusion regarding "significance," the Panel must find that the Project is likely to have a significant adverse effect on the Southern Resident Killer Whale. I respectfully submit that any other finding on this point would not be reasonable.

6. ("justification")

There is no valid justification for the Project's significant adverse effects on the endangered southern resident killer whale population.

There is a very real prospect that these adverse effects could push the Southern Resident Killer Whale toward extinction.

The killer whale is an icon and a cherished part of the British Columbian and Canadian identity.

The killer whale is an indicator species. It is at the top of the food chain. As goes the Southern Resident Killer Whale, so goes innumerable other species crucial to a healthy marine ecosystem.

The killer whale has significant cultural and spiritual value to First Nations, as they have eloquently expressed to the Panel.

The killer whale is a significant draw for tourism and recreation in Georgia Strait.

Trans Mountain characterizes the Project's impact on the Southern Resident Killer Whale as a purely local matter. Counsel for Trans Mountain told the Panel at line 12102 that:

"So regardless of the clamour, the authorities are clear that a specific individual's or locale's interest must be weighed against the greater public interest. And if a project is in the greater public interest, the specific interests must give way."

The Species at Risk Act is a full answer to this argument. It officially recognizes that wildlife has value to Canadians and is part of Canada's and the world's heritage.

The threat to the endangered Southern Resident Killer Whale is a threat to the greater Canadian public interest. It is not merely a specific local interest.

As for the “clamour” that Trans Mountain complains about, the Species at Risk Act states:

- all Canadians have a role to play in the conservation of wildlife in this country, including the prevention of wildlife species from becoming extirpated or extinct,

Trans Mountain states, as expected, that the Project’s significant adverse effects on the southern resident killer whales and on traditional use are justified in the circumstances. Reference: Exhibit B-44-2, page 72.

Significantly, however, Trans Mountain does not directly state why these effects would be justified.

Instead, Trans Mountain lists numerous factors it implies should be considered. Reference: Exhibit B-44, p. 310-311.

None of these, it is submitted, justify significant adverse effects on the southern resident killer whale population.

- Trans Mountain states that “neither Trans Mountain nor the NEB has direct control over marine vessel activity within the southern resident killer whale critical habitat.”

This is clearly irrelevant to whether the Project’s adverse effects on an endangered species are justified. However, it does highlight that neither Trans Mountain nor the NEB are in a position to eliminate the adverse effects on the endangered population if the Project is allowed to proceed.

- Trans Mountain states that “the Project will only slightly increase existing levels of marine shipping in this area.”

Here, Trans Mountain is effectively trying to deny the established evidence that the Project’s effect on the endangered population would be significant.

- Trans Mountain states that “the shipping lanes that will be used by Project-related vessels already exist, are well utilized and are subject to strict regulation by federal authorities.”

The existing shipping is one of the factors contributing to the southern resident killer whale being endangered. Adding Project-related marine shipping would increase the existing pressure on the endangered killer whales.

As the authors of the Lacy, *et al.*, report state: “It is abundantly clear that under status quo conditions the [southern resident killer whale] population cannot withstand additional negative pressures, recover from its current endangered status, and persist.”

Reference: Exhibit C291-1-6, page 2.

- Trans Mountain states that “the shipping lanes will continue to host marine vessel traffic with or without the Project.”

Again, this is an attempt to deny that the Project’s effect on the endangered population would be significant.

- Trans Mountain states that “the impact will continue to be significant with or without the project.”

With respect, this is pure semantics. The impact of shipping on the endangered southern resident killer whale population would be worse with the Project than without the Project.

- Trans Mountain states that “there is no clear solution that has been identified to alleviate the residual adverse effects mentioned above.”

This is patently incorrect. It is abundantly clear that refraining from adding a new source of significant adverse effects is a measure that alleviates the pressure on the endangered population.

- Finally, Trans Mountain states that “Any justification decision should consider Trans Mountain’s commitment to work collaboratively with all interested parties and stakeholders, including existing shippers, to find solutions to adverse effects on the southern resident killer whale.”

This would not prevent the harm, and it does not justify the harm.

When counsel for Trans Mountain was appearing in Calgary, Mr. Chairman, you asked how the Panel should weigh the Project’s significant impacts on the Southern Resident Killer Whale in making the public interest assessment.

The response of Counsel for Trans Mountain was to refer to its intention to involve itself in Port Metro Vancouver’s ECHO program, which stands for Enhancing Cetacean Habitat and Observation Program.

Counsel then made the audacious claim at Line 12287 that because Trans Mountain would be involved in the ECHO program, “if the project were to be approved ... there may be an actual benefit ... in protecting this species.”

So, a five-fold increase in oil tanker traffic – which Trans Mountain acknowledges would have a significant adverse effect on the Southern Residents -- would actually benefit the endangered Southern Resident Killer Whale.

With respect, the Panel can and should quickly dismiss that argument.

Significantly, the one argument that Trans Mountain has not explicitly made is that the putative financial benefits of the Project justify deliberating adding to the stresses that have already pushed the Southern Resident Killer Whale to Endangered status.

But that really is what the Company's position comes down to: The large amounts of money that Trans Mountain as the shipper and oil companies as the owners of the diluted bitumen say they would make if the pipeline expansion is built outweighs the significant adverse effects on the Southern Resident Killer Whale, and on the traditional use associated with the southern resident killer whale.

Georgia Strait Alliance urges the Panel to reject that crass calculus.

In conclusion on this point, there is no justification for deliberating adding to the stresses that have already pushed the Southern Resident Killer Whale to Endangered status.

7. (NEB Act, CPCN oil spill risk, planning inadequate)

Turning to the CPCN application, the test is a broad public interest test.

Trans Mountain would have you see the public interest test through the lens of the Board's role as an energy regulator.

That approach is long outdated. Under the Species and Risk Act and CEAA 2012 the Panel has additional legal mandates to protect biodiversity and to conduct environmental assessment.

I have five points on the application of the public interest test to the Project.

First, The Project's Oil Spill Risks And Impacts Are Unacceptable.

Oil spills do happen, despite measures to prevent them.

Counsel for Trans Mountain told you in his final oral argument in Calgary at line 12179 that "Oil sands products have been safely transported by Trans Mountain pipeline for decades."

That, with respect, is simply wishful thinking.

The existing Trans Mountain pipeline and the extension to the Westridge Terminal have experienced numerous spills, both land-based and into the marine environment. Three of these occurred in the past 10 years. The 2007 rupture resulted in a 15-metre geyser of oil forcing the evacuation of homes in a Burnaby neighbourhood, and significant quantities of oil ending up in Burrard Inlet. Reference: Exhibit C77-28-1.

Counsel for Trans Mountain also told you in Calgary that "The risk of an oil spill in the region if the project is approved will be fundamentally the same as it is today."

With respect, that argument defies common sense. The Project would entail a five-fold increase in oil tanker traffic from the Westridge Terminal. Obviously that would increase the risk of a marine oil spill.

The Panel should accept the City of Vancouver's evidence that Trans Mountain has underestimated the risk of a spill, and that there is a substantial likelihood of a spill at the Westridge Marine terminal or in Burrard Inlet over the Project's lifetime.

A major oil spill resulting from Project-related shipping would devastate the Southern Resident Killer Whale, the marine environment, coastal communities, the regional economy and BC's international image for decades to come.

Trans Mountain takes a 'blame the messenger' approach to this. Counsel said at Line 12114:

"Trans Mountain is well-aware that the timing of this project has coincided with heightened public awareness of the risks associated with energy development and the transportation of petroleum products."

At Line 12115 he said:

"Panel, a heightened awareness does not change the nature of the risks of pipelines. Those risks are well-understood and have long been successfully managed..."

What this apparently means is that in Trans Mountain's view, the problem is the "heightened public awareness" not the risk and consequences of an oil spill.

I submit that the Panel should be concerned, not reassured, by Trans Mountain's nostrum that "the risks are well-understood and have long been successfully managed." That is exactly the kind of approach that led to the Lac-Mégantic disaster. And, closer to home, to the M/V Marathassa spill in English Bay.

Second, emergency planning and response in the project marine area is inadequate.

GSA commends to the Panel the report of Nuka Research and Planning Group commissioned by the City of Vancouver, Tsleil-Waututh Nation and Tsawout First Nation. Reference: Exhibit C77-31-2.

Even with the enhancements proposed by Trans Mountain, the West Coast marine oil spill response regime would not be sufficient to respond adequately to a major spill of Project-related diluted bitumen.

Inadequate funds are available to pay for the costs of responding to a major Project-related marine oil spill. I note that Trans Mountain argues that it is not the Responsible Party and would not be financially liable in the event of a tanker-based spill.

Furthermore, the likelihood of eventual reimbursement of costs incurred in responding to Project-related marine oil spill is uncertain at best.

British Columbians and Canadians would be at considerable financial risk if the Project is approved.

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

Georgia Strait Alliance is particularly concerned about the deficit of local community involvement in oil spill planning and response in the Project marine area, as set out in GSA's evidence filed with the Board. Reference: Exhibit C138-2-2

Local governments are generally unprepared and unable to engage effectively in marine oil spill preparation and response activities, despite having an important role to play in a coordinated response. This is due in large part to a lack of engagement and communication on the part of senior spill response partners. Moreover, citizens are not consulted at all, and are given no recognized voice in spill planning or oversight.

Third, the Panel should conclude that the Project has no net economic benefit to Canada.

GSA submits that the Panel should reject Trans Mountain's claim that the Project would have vast financial benefits.

Trans Mountain's evidence exaggerates the financial benefits and fails to take into account the direct costs and opportunity costs of the Project.

In addition, Trans Mountain's evidence fails to take into account the potentially enormous economic cost of the Project harming the health of the Salish Sea. A Project-related oil spill would jeopardize the significant jobs and revenue generated by tourism, outdoor recreation, sport fishing and other sectors.

GSA commend to the Panel the report prepared by Dr. Gunton and associates. Reference: Exhibit C214-30-2.

Fourth, the Project is contrary to Canada's new commitment to transition to a low-carbon economy

Construction of the Project would 'lock in' transportation infrastructure for diluted bitumen and other carbon intensive fossil fuels.

This would exacerbate the GHG emissions associated with extraction and combustion of the fuels as well as with the transportation itself.

It would perpetuate Canada's over-reliance on the fossil fuel industry and hinder the development of Canada's clean energy economy.

The Project would push Canada further down the path of climate destabilization, rather than towards the new Canadian Government commitment to transition to a low carbon economy.

Fifth, as I stated earlier, the Panel should determine under CEAA 2012 – and bearing in mind the Species at Risk Act -- that Project's adverse effects on the Southern Resident Killer Whale are not justified in the circumstances.

This determination should be given substantial weight in supporting a decision that the Project is not in the public interest under the *NEB Act*.

8. (GSA Expert Evidence – Coastal Local Government Marine Oil Spill Preparedness and Response)

I am turning now to GSA's expert evidence on Coastal Local Government Marine Oil Spill Preparedness and Response.

GSA commissioned the Social Planning and Research Council of British Columbia (SPARC BC) to prepare the report filed as Exhibit C138-2. The authors are Jason Copas, Matthew Waugh and Scott Graham.

The focus is on local governments with coastlines on the Georgia Strait and adjacent waters. The primary emphasis is on coastal local governments outside the Lower Mainland which are not intervening in this proceeding.

The authors interviewed local government emergency management personnel, and compared the marine oil spill response regime in the Georgia Strait region to comparable regimes in Washington and California.

The authors concluded that the local governments in the Georgia Strait region who participated in the study generally see themselves as unprepared for a marine oil spill.

The respondent local governments are mostly unclear about their roles before, during and after a marine oil spill. They feel unsupported in their efforts to gain clarity about their roles.

Documented procedures for local government involvement in activities regarding marine oil spills in the Georgia Strait region are largely absent.

The local governments reported little or no engagement with WCMRC or other marine oil spill regime leaders.

The authors report that this is in stark contrast with the practices and protocols of the two US regimes that they examined.

Many of the interviewed local governments in BC see themselves as well suited to contribute to particular activities regarding marine oil spills.

However, the limited engagement by senior partners with local governments has led to a situation in which local governments lack clarity about their roles in the marine oil spill response regime applicable to the Georgia Strait region.

The SPARC BC report reinforces the broader conclusion that marine oil spill planning and response capability in the Project area is inadequate at the present time.

The report concludes with recommendations aimed at strengthening the marine oil spill regime applicable to the Georgia Strait region.

GSA urges the Panel to adopt these recommendations as terms and conditions within the package of terms and conditions that the Panel is required provide under paragraph 52(1)(b) of the NEB Act.

I will highlight the following recommendations.

First, the federal government should ensure that all oil spill response plans, including those of WCMRC, the Canadian Coast Guard, provincial and local governments, and industry, are available in the public domain. They are not, currently.

Second, senior response partners should improve their communication and engagement with local governments regarding marine oil spill planning and training in the Georgia Strait region.

Third, Trans Mountain should be required to fund an independent Regional Citizens' Council for the B.C. South Coast. The Regional Citizens' Council would provide citizen oversight of marine oil spill planning and response. The Council would ensure that the activities and policies of Trans Mountain and other oil handlers/shippers, WCMRC and government regulatory bodies are accountable to local communities.

9. (GSA Comments on NEB Draft Conditions)

Georgia Strait Alliance has provided detailed comments in its written argument on the Board's draft terms and conditions. I will summarize them now.

First, where the terms and conditions refer to the "Project" this should explicitly include Project-related marine shipping.

Second, where the terms and conditions refer to consultation regarding matters associated with Project-related marine shipping the description of the parties to be consulted should explicitly include coastal local governments and community stakeholders.

Third, the terms and conditions must go beyond merely required Trans Mountain to implement the marine commitments it has already made.

10. (conclusion)

Georgia Strait Alliance wishes to put on the record that it is very dissatisfied with the present proceeding. GSA has chosen, optimistically, to continue to participate fully and actively.

However, many other interveners have expressed their frustration with the process by dropping out or scaling back their efforts within the proceeding.

GSA believes that the Panel made a fundamental error in ruling that it would not assess the environmental impacts of the oil industry upstream of the Project or of the processing and combustion of the shipped product downstream of the Project.

At the same time as the Board hears the Company's assertions about the putative financial benefits of the Project on the whole economy, the Board is deliberately closing its ears to any evidence of the GHG emissions consequences of the incremental upstream and downstream activities that the Project is expressly designed to facilitate.

This is an anachronistic approach.

In GSA's view, it is absurd to imagine that the Panel can make a balanced, well-informed decision on whether this oil pipeline Project is in the public interest without fully considering the Project's impact on climate change.

The current process has substantially failed to provide adequate engagement and consultation with numerous First Nations whose Aboriginal rights and title may be adversely affected by the Project.

The overriding objective of the Crown's duty to consult is reconciliation.

Unfortunately, the present proceeding was an opportunity for reconciliation that has gone largely unfulfilled.

Georgia Strait Alliance is deeply troubled by the Panel's exclusion of hundreds of well-informed, engaged citizens from participating as interveners in this proceeding.

The Panel's interpretation of "directly affected" is, with respect, out of sync with the modern reality that all Canadians, regardless of where they live, are directly affected by a Project that would:

- adversely impact an endangered species such as the Southern Resident Killer Whale, and

- exacerbate greenhouse gas emissions.

In conclusion, the Panel should recommend rejection of the Project. It would inevitably cause serious harm to BC's marine environment and coastal communities that is not outweighed by any potential benefits. The Project's significant adverse effects on the Southern Resident Killer Whale – classified as endangered under SARA – cannot be justified. The Project runs directly counter to Canada's transition to a low-carbon economy. A recommendation to reject the Project would go a long way toward restoring public confidence in the National Energy Board.

Subject to any questions, those are my submissions.

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