



TSLEIL-WAUTUTH NATION

People of the Inlet



March 5, 2021

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Dear Nathan, Meaghan, and Beth-Anne,

RE: BC EAO's Analysis of the National Energy Board Reconsideration Report for the Trans Mountain Expansion Project EA Certificate #E17-01 Review of BC's Draft Report on Trans Mountain EA Certificate

We are writing to provide comment on the current draft of the BC EAO's Reconsideration Report on the Trans Mountain Expansion Project ("the Project").

Background

As you are aware, the Project will unjustifiably infringe upon and visit long-term and irreparable impacts to Tsleil-Waututh Nation's (TWN) Aboriginal title, rights, and interests. TWN maintains the position that even if concerns that fall within provincial jurisdiction are addressed in this process, they will not address the very serious concerns that TWN has regarding the impacts to, and unjustified infringements of, TWN's Aboriginal title and rights identified in TWN's independent Trans Mountain Assessment Report, and in the expert reports and documents that TWN has filed with the National Energy Board and Canada during two rounds of Phase III consultation. TWN's Trans Mountain Assessment Report is available online at www.twnsacredtrust.ca/assessment-report-download/.

Moreover, TWN maintains its position that the provincial Ministers' decision to issue the Environmental Assessment certificate (EAC) is an unjustified infringement of TWN's Aboriginal title and rights. TWN's participation in any consultation process in relation to amendments to the EAC conditions should not be

construed as TWN acquiescing to the Province's lack of constitutional authority to issue the EAC in the first instance, given TWN's legal position that in doing so the Province unjustifiably infringed TWN's Aboriginal title and rights.

Residual Issues & Concerns

TWN has been engaged with the Province in reviewing and commenting on the Trans Mountain EA Certificate conditions for over a year. Over many meetings and written submissions TWN has identified outstanding concerns that fall within provincial jurisdiction and are not adequately addressed in the NEB reconsideration report, as well as ways the Province can address those concerns. TWN, the Squamish Nation, and the City of Vancouver have jointly proposed new conditions and recommendations to avoid or mitigate these risks. Regrettably, despite this hard work, it is TWN's view that this report is not ready to be submitted to the Ministers.

Shoreline protection from the risk of spill and from erosion from marine shipping has not been adequately addressed. The response from the Province does not meet our standards for protection of the coast. The concerns that TWN has raised have been met primarily with the Province pointing responsibility towards other jurisdictions and existing programs in the NEB conditions. TWN reminds the Province that in your own words to the NEB in the [Hearing Order MH-052-2018](#), you outlined in detail how these jurisdictions and programs did not address risk. For example, the Province identified that "the Enhanced Response Regime falls short of meeting world-leading standards" and listed specific examples of the shortfalls in Transport Canada's standards, WCMRC's capacity, and in the Oceans Protection Plan. Without revisions, this report will leave the coast of British Columbia vulnerable to the risks of a spill from this Project.

The Province must ensure provincial resources are sufficiently protected and hold Trans Mountain and the federal government agencies to account by explicitly identifying the outstanding risks and gaps in coverage for spill response and preparedness and impacts from marine shipping as outlined in your previous evidence to the NEB.

TWN further requires the Province to complete the "Options for Resolution" column in Appendix B of the report provided February 25, 2021 with an opportunity for TWN and others to comment. We expect strong and specific recommendations to mitigate the risks and impacts of the project as well as a clear commitment to work with Trans Mountain and the federal agencies to implement the recommendations.

Following up re: Impacts to Shoreline and Cultural Heritage

To further support the conditions and recommendations jointly proposed by TWN, Squamish Nation and the City of Vancouver, Tsleil-Waututh submits the recently-published report on vessel wave wake in Burrard Inlet as referred to in previous meetings and correspondence. This study directly connects marine shipping, shoreline erosion, and the Province's responsibilities under the Heritage Conservation Act. Results show that vessel wakes significantly increase the overall wave energy in Burrard Inlet beyond natural wind-generated waves within proximity to sites that are important to TWN, including the south shore near the Westridge Marine Terminal and the foreshore at IR 3 and environs. This has significant impacts on archaeology and cultural heritage. The report, Tsleil-Waututh Nation Wave Monitoring, and Central Harbour Wave Climate Study – Summary and Discussion of Findings, can be found [here](#) and is attached with this correspondence.

The NEB concluded that Project-related vessel wake would not be detectable from existing wave conditions, based on Trans Mountain's desk-top analysis. This TWN research provides site-specific scientific evidence that

contradicts the findings of the NEB and corroborates the knowledge and lived experience of Tsleil-Waututh Elders and community members.

Registered archaeological sites in the study area that fall under Provincial jurisdiction have been impacted by wave-generated erosion. Together, the results from this study and the information on cultural heritage resources should inform EAC conditions to help address or mitigate impacts to shoreline and cultural heritage resources within provincial jurisdiction.

Conclusion

It is TWN's view that this report is not ready to be submitted to the Ministers.

It is our expectation that the Province incorporates this new data in setting the conditions and recommendations for the EAC. The conditions and recommendations proposed by Squamish Nation, the City of Vancouver and TWN in the Reconsideration Report provide an opportunity for the Province to address these significant outstanding concerns, and should be endorsed by BC. Further, it is our expectation that the Province add commitments to address the gaps and shortcomings that remain in the existing NEB conditions leaving BC's coastline and TWN's Indigenous rights, title and interests at risk.

Sincerely,



Erin Hanson
Policy Advisor, Treaty, Lands and Resources Department
Tsleil-Waututh Nation

Encl: Tsleil-Waututh Wave Monitoring report & Summary Memo (PDF)

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