NATIONAL ENERGY BOARD
OFFICE NATIONAL DE L'ÉNERGIE

Hearing Order OH-001-2014
Ordonnance d'audience OH-001-2014

Trans Mountain Pipeline ULC
Trans Mountain Expansion Project

Trans Mountain Pipeline ULC
Projet d'agrandissement du réseau de Trans Mountain

VOLUME 35

Hearing held at
L'audience tenue à

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2nd floor, 4331 Dominion Street
Burnaby, British Columbia

January 29, 2016
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OH-001-2014

IN THE MATTER OF Trans Mountain Pipeline ULC
Application for the Trans Mountain Expansion Project

HEARING LOCATION/LIEU DE L'AUDIENCE

Hearing held in Burnaby, British Columbia, Friday, January 29, 2016
Audience tenue à Burnaby (Colombie-Britannique), vendredi, le 29 janvier 2016

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- Ms. Lesley Matthews

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- Ms. Maegen Giltrow
- Ms. Alison Steward

Township of Langley
- Ms. Maegen Giltrow

Kwantlen First Nation
- Councillor Tumia Knott
- Mr. Tim Dickson
- Councillor Les Antone

City of Abbotsford
- Ms. Maegen Giltrow
- Mr. Don Beer

Regional District of Fraser-Fort George and Village of Valemount
- Ms. Maegen Giltrow

Calvin Taplay
- Mr. Calvin Taplay

National Energy Board/Office national de l'énergie
- Ms. Nicole Godbout
- Mr. Asad Chaudhary

TABLE OF CONTENTS/TABLE DES MATIÈRES

Description	Paragraph No./No. de paragraphe
Opening remarks by the Chairman	18772
Final argument by the Fraser Valley Regional District	
- Presentation by Ms. Giltrow	18784
- Questions by the Board	18843
- Presentation by Ms. Giltrow, continued	18875
- Questions by the Board	18906
- Presentation by Ms. Giltrow, continued	18916
- Questions by the Board	18943
Final argument by the Township of Langley	
- Presentation by Ms. Giltrow	18966
- Questions by the Board	19061
- Presentation by Ms. Giltrow, continued	19067
- Questions by the Board	19076
Final argument by the Kwantlen First Nation	
- Presentation by Mr. Dickson	19086
- Questions by the Board	19162
- Presentation by Mr. Dickson, continued	19167
- Questions by the Board	19218
Opening remarks by the Chairman	19255
Final argument by the City of Abbotsford	
- Presentation by Ms. Giltrow	19261
- Questions by the Board	19313
- Presentation by Ms. Giltrow, continued	19318
- Questions by the Board	19341
- Presentation by Ms. Giltrow, continued	19345
- Questions by the Board	19366
- Presentation by Ms. Giltrow, continued	19369
- Questions by the Board	19382
Final argument by the Regional District of Fraser-Fort George and Village of Valemount	
- Presentation by Ms. Giltrow	19399
Final argument by Mr. Calvin Taplay	19476

LIST OF EXHIBITS/LISTE DES PIÈCES

No.	Description	Paragraph No./No. de paragraphe

--- Upon commencing at 9:01 a.m./L'audience débute à 9h01

18772. **THE CHAIRMAN:** Good morning. And welcome to this morning's session here in Burnaby, which is part of the National Energy Board's hearing regarding the Trans Mountain Expansion Project.

18773. We will continue to hear intervenor summary oral argument. We acknowledge today being on the traditional land of the Coast Salish people.

18774. My name is David Hamilton. I am the Chair the Panel. And with me to my left is Ms. Alison Scott and to my right is Mr. Phil Davies. And together we are the Panel assessing Trans Mountain Expansion Project application.

18775. One brief housekeeping matter that I would like to cover, as I have done every day. To ensure in the event that we hear a hotel fire alarm, the procedure will be to exit the hearing room using the entrance you came in. Once you are outside of the hearing room, there are two evacuation routes. The first is directly to your left when you exit the hearing room doors, and the second is located beside the registration desk where some of you received your lanyard. Uniformed security guards will be at both locations to facilitate your exit. Please follow their instructions.

18776. Once outside the building, proceed to the hotel muster point located on the northwest corner of the Delta Burnaby Hotel and Conference Centre property where Sumner Avenue and Manor Street intersect. At the hotel muster point, please ensure all members of your party are accounted for and await further instructions from the Delta Burnaby representatives.

18777. I think, Ms. Giltrow, you've been advised on our system, our timing system, and you're familiar with it so I won't repeat that this morning.

18778. This morning we will hear from Fraser Valley Regional District, followed by the Township of Langley, and concluded before lunch with the Kwantlen First Nation.

18779. I'd ask if Trans Mountain's counsel would introduce themselves to the witnesses, please.

18780. **MS. OLENIUK:** Good morning. My name is Terri-Lee Oleniuk and

I'm counsel to Trans Mountain. With me is Lesley Matthews and she is the regulatory lead for the expansion project.

18781. **THE CHAIRMAN:** Thank you. And good morning, Ms. Oleniuk and Ms. Matthews.

18782. Before we begin with the Fraser Valley Regional District, I'm interested if there are any preliminary matters this morning from anybody. I see none. Therefore, we're ready to hear on behalf of the Fraser Valley Regional District.

18783. Ms. Giltrow?

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE FRASER VALLEY REGIONAL DISTRICT:

18784. **MS. GILTROW:** Thank you, Chair Hamilton. Good morning, Panel.

18785. As an overview for today, there will be -- there's a group of four local governments who are appearing before you today. And as you'll know, they've submitted a joint written argument. So that's Fraser Valley Regional District, Township of Langley. This afternoon you'll hear from City of Abbotsford, and then the Fraser-Fort George Regional District with Valemount, which is the affected municipality in Fraser-Fort George.

18786. I just wanted to give a general overview, and I'll use a couple of minutes of the time allotted to Fraser Valley Regional District to provide the overview of that joint argument and the process by which a joint argument came to be filed.

18787. Each of those local governments determined independently the need to intervene in this proceeding, and operated largely independently as intervenors in this proceeding. But when it came to the time to put final arguments in, there was obviously a recognition that there are a lot of joint or common issues between the local governments.

18788. So as a matter of efficiency, the local governments have together put in a joint written argument, which sets out their joint position on several issues and then speaks to the particular unique circumstances of each where necessary.

18789. I am not going to be repeating arguments for each local government over the course of the day. The approach we've taken instead is to split up some of the major issues that are addressed in the joint argument under each of the local government's time.

18790. So for instance, for Fraser Valley Regional District, I am going to be speaking to you about air quality matters, briefly about water quality issues although that will be addressed later in the day, and issues about the framing of conditions and the framing of the plans that are to come and the need for local government involvement in the future in the development of plans.

18791. Later on, for instance, the City of Abbotsford this afternoon will be focusing in particular on emergency response issues because of the particular evidence that Abbotsford has put before you.

18792. So I'll set out before the beginning of each local government's submissions what issues we'll be talking about there.

18793. But as a general set of introductory remarks that start at the beginning of our joint submissions, it should be pointed out that the Trans Mountain Expansion Project will cross through dense residential areas over and around existing local government infrastructure such as buried utilities, under municipal streets and highways, parks and recreation sites, agricultural areas, fish-bearing rivers and streams including the Sumas Canal, Salmon River, Swift Creek and other important tributaries that flow into the Fraser River, sensitive riparian zones and across vulnerable drinking water aquifers.

18794. So the construction and operation of the pipeline will impact all of the local governments, and some of these impacts will be felt in common by the local governments and some will be unique to each.

18795. The common position of the local governments at this point in the process, having reviewed the application and the evidence of intervenors, is that the local governments submit to the Board that it would not be in the public interest to allow the expansion project to be developed and operated at the expense of the local communities that would host the pipeline.

18796. And second, that the project cannot be found to be in the public interest without conditions that ensure that no additional cost, or burden, or unnecessary risk is placed upon the local governments by the expansion project.

18797. As will be submitted today, the local governments have each independently determined what has become the joint position of all. And that's four points:

18798. That the Applicant has failed to identify important risks and impacts to local governments;

18799. The Applicant has failed to identify or sufficiently describe measures to adequately mitigate risks and impacts that would be borne by local governments;

18800. The Applicant has not fully recorded for the Board all commitments it has made to the local governments to date;

18801. And certain draft conditions that have been circulated for intervenor comment do not, as currently drafted, ensure that measures to protect the public interest are in place and are specifically enforceable.

18802. It's not in the public interest to hope that future plans will solve problems and impacts that are identified today. For instance, through emergency management and response, plans to prevent impacts on fish-bearing watercourses and aquifers, the reclamation of forest, trees and parks post-construction, the restoration of riparian zones.

18803. Or another example, the location of main line block valves and spill prevention measures that will be fundamental to protecting the local communities from harm, or measures to ensure air quality does not worsen and harm human health.

18804. All of these examples address issues that will fundamentally impact local governments. It's uncontroverted that these plans musts be developed. However, a key outstanding issue which will be determinative of whether impacts of the proposed project are actually mitigated is, in the local governments' position, just how these plans will be developed.

18805. The fundamental submission that I'll be making on behalf Fraser Valley today, which is jointly held by the local governments, is that based on the conditions are currently phrased they are not specific enough to ensure the safety of the public and environment or the public interest.

18806. So if these plans -- if the regulatory mechanism is to allow for these plans to be developed in the future, it is essential that local governments have a place at the table in the development of these plans.

18807. And this submission is made because it will assist the Board. It will assist the Board in meeting its mandate to protect the safety of the public, protect the environment, and ensure that the mitigation and management plans meet the public interest because local governments are the local experts in the areas through which the pipeline will pass. They'll in many cases have professional engineers, planners, biologists, other professional staff who are not only experts in their subject matter areas but they're experts in the local geographical areas to which they apply their expertise.

18808. This information will be essential to determining whether the plans that are to be developed in the future actually mitigate, prevent or compensate for risk and harm.

18809. Second, in addition to the local governments having to have a secure place in their future regulatory framework, there must be independent regulatory oversight of these plans to determine the sufficiency of the plans.

18810. You'll hear my submissions later on that not only must the Proponent in the development of its plans deal with local governments on matters that affect local governments, but the Board has to have direct access to the input of local governments, and must determine if there is a conflict.

18811. If the local governments have not signed off on a plan that is filed by the Proponent with the Board, the Board must have -- must give the local governments an opportunity to prevent -- present evidence, make argument and leave it in the hands -- if that is the scheme, the plans will be developed in the future, there needs to be a regulatory moment where it is determined whether a plan is specific enough, is effective enough and is framed in enforceable enough language to meet the public interest. The Board has to have local government input before it can make that decision.

18812. So I'll turn now specifically to the Fraser Valley Regional District.

18813. The FVRD consists of six municipalities, including Abbotsford and Chilliwack. So Abbotsford's an intervenor and Chilliwack was a commenter in

this proceeding. It is approximately 14,000 square kilometres in size and about 146 kilometres of new pipeline will come through the Fraser Valley Regional District; through the City of Abbotsford and City of Chilliwack, the District of Hope as well, and the electoral areas B, D and H.

18814. I'll just say a couple of words about regional districts, because they are a particularly British Columbian method of governance.

18815. Regional districts provide residents in the vast rural areas of British Columbia with an effective form of local government, while also representing the municipal residents on regional issues. They -- one of their primary functions is to ensure that all residents have access to commonly-needed services, no matter where they live.

18816. The services provided by regional districts vary by regional district, and they'll usually determine through consultation with the residents and the district in terms of what they need and what shall be provided by the regional district, but tend to include such services as fire protection and emergency programs, recreation, libraries, water supply and waste disposal systems.

18817. It's important for the Board to understand the variation in services along the proposed corridor for the pipeline, especially in light of the assumptions inherent in Trans Mountain's application about being able to call upon and rely upon local government services.

18818. The key issues of concern for Fraser Valley Regional District that are set out in the written argument -- I'll just go over those in a moment. I'll say briefly first, Fraser Valley Regional District has, in this process, expressed its concern, in common with others in this process, about fundamental issues such as the scoping out of down -- upstream and downstream climate impacts associated with the project, and will not repeat those concerns here.

18819. The key concerns that Fraser Valley Regional District has identified in its written argument and that I will be touching on briefly here are the air quality concerns as a result of the construction of the Trans Mountain pipeline and the rise in air pollution from increased marine tanker traffic.

18820. B: Trans Mountain's emergency response planning. So not only -- so under that there's the local emergency response capabilities in the remote areas of the Fraser Valley Regional District, which is a significant area of concern. The

lack of emergency response integration with local first responders, and that's something that I'll go into more detail about in Abbotsford's presentation this afternoon. And then also the cost impacts that are placed upon local emergency responders during construction of the pipeline and pipeline-related emergencies.

18821. There's also a real concern in Fraser Valley Regional District about the lack of understanding of geotechnical hazards, particularly landslides in the Popkum Bridal Falls area and the impact that these hazards may have on the pipeline's integrity and on emergency response measures.

18822. Fraser Valley Regional District is also concerned about the insufficient identification of baseline indicators in the assessment of impacts of the project, and as a particular example, there are no baseline indicators that will effectively demonstrate the impacts, whether positive or negative, the socio-economic impacts on the Fraser Valley Regional District from the project.

18823. And finally, Fraser Valley Regional District will make submissions to you about its concerns about the overall consultation methods to date and the company's failure to communicate with or incorporate Fraser Valley's feedback on important matters that will impact the FVRD.

18824. This will also link into Fraser Valley Regional District's concern about the absence of commitments that it has seen to be have been made that aren't showing up in the commitment tracking table, and a concern about -- if that's revealing itself now in a process where we all have our eyes on the application and on the process under this directed process, there's a concern about the capacity to put faith in the Proponent's future conduct, in terms of regulating the safety of the pipeline commitments that have been made and the seeing through of commitments that have been made.

18825. I'll start first with air quality. I'll address briefly first the issue of air quality, which is a matter of very particular concern to the Fraser Valley Regional District because of the very particular nature of its airshed.

18826. The Fraser Valley airshed lies east of where we are now, obviously. The air flows in from the ocean, flows from west to east and then the Coquihalla region's mountains pop up at the eastern end of the Fraser Valley. And they limit the airflow -- the pollutants that flow in from west to east through the airshed, they are limited from dispersing horizontally because of the mountains and -- excuse me -- yes, horizontally because of the mountains.

18827. And then there's a thermal inversion that kicks in at the end of the airshed that prevents the proper dispersion, if there is a proper dispersion of pollutants. But the horizontal dispersion isn't working effectively in the airshed and the vertical dispersion is inhibited by this thermal inversion that occurs at the end of the airshed.

18828. So the conditions are unfortunately ideal for trapping pollutants in the region. So Fraser Valley Regional District identifies this as an area of significant concern, not only with respect to the Trans Mountain pipeline application. It's one -- it's a concern to which Fraser Valley Regional District devotes significant time, attention and expertise.

18829. The airshed is recognized by FVRD, by Metro Vancouver, by the B.C. Ministry of Environment, Environment Canada and Port Metro Vancouver as being volatile organic compound limited, which means that there needs to be a reduction in overall VOCs in order to reduce the ground-level ozone formation and concentrations in the airshed.

18830. There's a real concern about the human health impacts of VOCs -- well, the ozone, that the ground-level ozone that's developed through increased VOCs -- such as respiratory, cardio-vascular, central nervous system and reproductive impacts, as well as increased mortality.

18831. There's also impacts from ground-level ozone on crop productivity, which adversely affects the FVRD with its strong agricultural economy, and there are simply impacts to visibility, which affects everyone; everyone who lives there, tourism. It's a very significant issue.

18832. The application predicts at least a seven percent VOC increase just from the operations at the Burnaby terminal, and Fraser Valley has raised in this proceeding its concerns that that is likely an underestimate. But I leave that issue aside for the moment.

18833. Fraser Valley's fundamental concern is that while ground-level ozone is one of the most high-profile, well-studied and significant air criteria contaminants in the lower Fraser Valley airshed, ozone was not included in the human health risk assessment of Trans Mountain's application.

18834. And in the Regional District's submission, that is a fundamental

omission. It fails to identify and evaluate a key risk of the project and that's a question that must be asked and answered before it can be determined that this project is in the public interest.

18835. The second concern with respect to air quality is the failure to monitor and manage key air contaminants. And I won't go into detail about which contaminants are at issue. Those are identified in detail in the written argument. But for -- one example is the -- for instance, the current condition 23(d) doesn't contemplate monitoring of diesel particulate matter and speciation of fine particulate matter.

18836. This is of real concern to Fraser Valley, because diesel particulate matter has been shown to be the dominant contributor to lifetime cancer risk in the lower Fraser Valley and FVRD from air pollution. And that's cited to the 2007 Lower Fraser Valley air toxics emission inventory and health risk assessment.

18837. It is essential that key pollutants, key air contaminants are monitored, baseline levels are established, they're monitored and that there are clear and enforceable mitigation measures in place should identified monitoring criteria be met or exceeded.

18838. And to meet that goal, to meet a situation where the impacts of air quality are being sufficiently understood, monitored and mitigated, the position of the local governments and Fraser Valley in particular is that the air in fugitive emissions monitoring and management plans must be developed in consultation with the key agencies, and they must be made for approval by the Board.

18839. And in that approval process, the Board must hear from and consider the evidence and views of these key agencies. The key agencies in particular are Environment Canada, B.C. Ministry of Environment, Metro Vancouver, Fraser Valley Regional District, the Health Authorities, and Port Metro Vancouver.

18840. So this condition can only -- with that framework, this condition could only be satisfied if the plan is approved as meeting the safety environmental requirements and being in the public interest. If that condition can't be met under those circumstances -- that is, with the input and the considered evidence of those key agencies -- if the plan can't meet their expert criteria and be met to their satisfaction, then the condition isn't met. And that's got to be a fundamental regulatory control over this project if it's going to proceed.

18841. Our submissions today are on how to deal with conditions, as I have said. This isn't a position about whether or not the project writ large is in the public interest, but what we can say is it can't be in the public interest to allow the project to proceed with these key air quality issues unknown, insufficiently monitored and without the expert independent advice of key air quality regulatory agencies informing the plan and with an independent determination. Not a Proponent driven determination, an independent determination at the end of the line as to whether the plan will effectively meet the key criteria of safety, environmental protection and public interest.

18842. The Fraser Valley also have heard that ---

18843. **THE CHAIRMAN:** If you would entertain a question. And it will probably be throughout all of the submissions that are coming, is the condition compliance.

18844. And your submissions is the -- when -- third party and but this comes to the Board and the Board makes the final determination. Is that how -- I'm presuming that's what your proposing throughout this because I found the theme that they're cyclical. We have to start at the beginning, involve everybody, and come back to where we need to be at the end with those regulatory approvals. And that should be in the hands of the Board once all of -- as you have submission -- all those involved, third party things and then the compliance part of it and condition that; am I correct?

18845. **MS. GILTROW:** Yes, that is correct. And it is a theme throughout the submission. That was a common concern by all the local governments in reviewing the conditions is that -- I'm going to speak generally sort of because we are talking about a pattern, and a pattern of submission that we are making to you in response to a pattern that was observed in the conditions is that in many cases the conditions are worded so as to identify end goals.

18846. But in the local governments' submission, without detailed mechanisms by which to measure whether those goals are appropriate, and whether they're met and how they'll be met, they're not clearly enough articulated to be enforceable in any sort of meaningful way that protects the public interest.

18847. So the answer to that then is if not now -- if we're not at that position

now with the draft conditions as they're worded, well, we have to be at some point. The project can't proceed based upon essentially the level of vagueness in the wording and the conditions now. So what the local governments have said is, "Well, if not now then later, but before the project is constructed."

18848. And the second tier to that submission is that -- because of course there is, under the current framework there is a level of Board oversight over some conditions under the on-shore pipeline safety regulations. But it's important to look at that regulatory framework and see how it's not meeting the interest or the concerns that are being articulated by the local governments.

18849. So first of all, if you take section 5 of the regulation it says that where a plan must be filed by the regulation then it must be filed. And if the Board looks at it and says, "I don't think this meets safety requirements or environmental protection requirements or it's not in the public interest" you have the statutory power to require amendment to the plan.

18850. Well, just starting with that process, that process leaves no in for local government. For a local government air quality expert, for instance, if that's the issue. Or a riparian management expert if that's the issue to say, "Whoa, hold on a second here. This plan doesn't come close." We have" -- say it's a riparian zone. "We have a very particular riparian issue here, and that plan without a high value fish-bearing stream that plan doesn't come close. We really need to tell the Board this."

18851. There's no statutory or regulatory mechanism for you to have that information and evidence put before you at that time. So we're saying that if these plans are going to be developed in the future, as the conditions currently contemplate, you need to at least make a formal provision to hear that evidence, to hear those submissions.

18852. But then that only covers the plans that are required by regulation. Not all the plans that are proposed in the current draft conditions are required by regulation. So then there's even less formal approach. The Board presumably -- well, although if you haven't said it has to be for approval and if you haven't -- and if it's not one of the ones covered under section 5, it appears that on the face that's a plan that can simply be filed and will never be reviewed for its quality by the Board or by any independent regulator. It will be on the word of the Proponent. "Here's our plan; we say it's good enough," and there isn't any apparent formal mechanism for review.

18853. So that's why throughout our comments we have said, "Look, at the very least these plans have to be for approval." I appreciate that in some circumstances that may be redundant to your jurisdiction to require amendment under section 5, but it's not always clear. And there's no apparent reason why you wouldn't make it clear that each of these plans has to be for approval, needs to have independent third party oversight, regulatory oversight. But then added to that is my submission that that oversight has to take into account with respect to issues that impact local governments, the expertise and evidence of local governments.

18854. **THE CHAIRMAN:** And maybe perhaps my questions may be coming too early because you may get to a lot of this in your other things. But I think I want you to address that as you go forward is your comment on enforceable -- to protect public interest. And is there -- would you, in your submission to us, suggest that there's a public -- in developing the plans and making comment on the plans, third party.

18855. But do you also feel that once it comes to the Board, is there an element of review, public review, scrutiny by the Board in a process, some type of process where it would be open to hear views from those affected by the plan, for example?

18856. **MS. GILTROW:** Well, with the public interest point, that comes straight out of the regulation. That's the standard under section 5 in the regulation. So you are bound under the statute when you receive plans that are required under the regulation to look at them to see if they satisfy safety, environment criteria and the public interest. So that's the statutory language. So that's where the public interest, evaluation and determination endures past this proceeding.

18857. But my concern is just what you've identified. I have to say in response, is there currently under the statutory framework a mechanism by which you have a hearing and make that determination? It doesn't appear so, not at least for this project. Not as I read the regulation, not as I see the conditions drafted.

18858. But our submission is that that is required. If these are going to be sort of -- if this is going to be the nature of the conditions that go forward at what is essentially the absence of detail that the local governments say would be required to ensure safety environmental protection and public interest then you do need

that future process.

18859. **THE CHAIRMAN:** Thank you.

18860. Ms. Scott has a follow-up.

18861. **MEMBER SCOTT:** I believe you're aware of our leave to open process, and that is the time when condition compliance is evaluated. Can you address the adequacy of that process in light of your submission regarding the need for independent evaluation at that stage? We are aware that in that process it is largely a paper process in most cases.

18862. So any comments you have or advice you wanted to offer on that I'd appreciate it.

18863. **MS. GILTROW:** Certainly. So that's a condition compliance process. What I am making submissions on is the establishments of the conditions, that process.

18864. So we've got -- let's call this stage one. And if the current model is what prevails, there is going to have to be a robust condition establishment process in terms of what those plans contain. And then there's the third stage, which is the condition compliance process, which will look back at what, if stage two happens properly, will be the robust and detailed plans that are filed.

18865. **MEMBER SCOTT:** So you're essentially proposing a third stage review between leave to open and Certificate of Convenience, which your suggesting is absent in our process now.

18866. **MS. GILTROW:** So my primary submission is, just logically following, the local government's position is it cannot be in the public interest to allow the project to proceed based upon the conditions as they're framed right now. There are not enough safeguards in place to ensure safety, environmental protection, and public interest.

18867. So that's the primary submission. But I anticipate that the Panel would be interested in views on how -- unless A, as we've acknowledged before, you're bound to put some conditions forward no matter what. Even if you accept my submission, accept the submission of others, it just cannot proceed based upon either A, the evidence that's before you or B, on the conditions that -- what the

conditions can capably achieve right now. You still have to put some conditions forward.

18868. So I'm making the perhaps alternative submission that, well, those conditions at the very least have to have this process attached to them. Otherwise, they're just going to fail at the job they have to complete for this regulatory process to work.

18869. **MEMBER SCOTT:** I guess what I was looking for was how well-developed your thinking was about that approval process which happens sometime between the approval process of the plans between the leave to open and the Certificate of Convenience.

18870. But I think you've answered it and I would take it as a suggestion that perhaps there is another procedural step that the Board itself could put in place to carry out the kinds of evaluations that you're talking about. But that's probably for another day.

18871. **MS. GILTROW:** Yes, I submit it probably is. And it stems from -- just to repeat myself -- from the primary submission that it won't be in the public interest to proceed without something. And this is the suggestion of the local governments. But it will be complex, obviously, but something that could be accomplished through conditions, in our submission.

18872. **THE CHAIRMAN:** Thank you for indulging our questions as we go through. I think it's important, you know, that we have this discussion.

18873. So proceed with your oral summary argument.

18874. **MS. GILTROW:** Thank you. Thank you.

18875. So just a couple more comments briefly on air quality, the last two comments I was going to make before the exchange.

18876. The Fraser Valley Regional District does note its agreement with what Metro Vancouver pointed out in its submission to you that no amount of spill response and containment can deal with air quality impacts of a spill.

18877. And finally, I'll address this a little bit more further. But Fraser Valley disagrees with Trans Mountain's assertion that it has addressed the concerns

raised to date by the Lower Fraser Valley Air Quality Coordinating Committee. And those concerns have not been addressed. Trans Mountain has asserted that they have.

18878. But I'm going to deal with that more in the context of communication and consultation between the Proponent and key agencies such as the Air Quality Committee and local governments.

18879. I'll say a few words on water quality now. I'll be dealing with this more, I anticipate, likely in the submissions of Township of Langley and also touching on them again with the Fraser-Fort George Regional District, which has an issue of a very sensitive aquifer.

18880. But I must point out that water quality obviously has -- as the province has recognized in its submissions, there's two main aspects to the water quality concerns. There's going to be water quality impacts that impact fish, fish-bearing streams, and the ecosystems that go with that. And then there's the drinking water quality concerns. And these local governments share both of those and have significant concerns about all of that.

18881. It's noted that Condition 81 -- and this is in our final argument -- but it omits -- which requires consultation reports for the protection of municipal water sources. It omits regional districts, which operate water systems that draw upon both ground and surface water that could be impacted by the project. So regional districts have to be included in any mitigation framework that requires consultation with local government.

18882. The City of Chilliwack -- I'll just draw your attention because the City of Chilliwack wrote an extensive letter of comment. Chilliwack is a member of the Fraser Valley Regional District. And in its letter of comment, it articulated its concerns about impacts on the Vedder River corridor.

> *"The Vedder River corridor offers exceptional aquatic and terrestrial ecosystem values, including [the five types] of Pacific salmon [...] as well as cutthroat and steelhead trout. [It is a] habitat for species at risk, including the salish sucker, Cultus Lake sockeye salmon, [the] great blue heron, [the] western painted turtle, [and the] Oregon forest snail, [and more]."*

18883. The Browne Creek Wetlands and the Peach Creep Ponds they're in that corridor. And they're also both directly within the path of Trans Mountain Pipeline. And they contain extensive spawning grounds.

> *"The Great Blue Heron Nature Reserve also lies adjacent to the Vedder River downstream of the Trans Mountain pipeline crossing."*

18884. And Chilliwack has also expressed its concern about the important of protecting the Sardis-Vedder Aquifer.

18885. Abbotsford has expressed its concern about erosion and sediment control in streams. And it relies upon senior government to exercise its oversight and jurisdiction in that, but it has registered its concerns. And this all feeds into the submissions that the environmental protection plans that are to be developed must have the input of both senior government but also local expert knowledge in determining what will safely protect these important waterways.

18886. So local governments -- so along exactly the same lines, I won't go into that. But what we were talking about earlier -- the local governments have to have input into the development of those plans because these matters, the protection of drinking water sources, are a fundamental concern to the local governments. And they have to be effectively protected.

18887. Emergency response. So Fraser Valley Regional District is familiar with spills. Five of the spills listed in Trans Mountain's spill chart occurred in Fraser Valley Regional District. So from beginning in 1988, the spill in Chilliwack; three at the Sumas Station and Tank Farm; and then the 2013 spill east of Hope.

18888. As I've said, the City of Abbotsford will be making its submissions focused largely on emergency response and issues with that. But there are two points I wanted to make that are quite particular to the Fraser Valley Regional District with respect to emergency response.

18889. One is the issue of remote areas. So Fraser Valley Regional District has extensive rural areas that would be impacted by the pipeline. And many first responders -- and this will be true too when you hear this afternoon from Fraser-Fort George Regional District. Many first responders in rural areas such as electoral areas, do not have the training or the equipment to respond to pipeline

emergencies.

18890. In FVRD, the District of Hope Fire Department is not equipped or trained for pipeline or dangerous goods emergency response. And there are no fire departments adjacent to this region with this capacity.

18891. It's important to note that there is no local government fire protection for a 45 kilometre stretch of land in Electoral Area B between Othello Fire Protection Area and the Coquihalla Summit. The Popkum Volunteer Fire Department is also not equipped or trained for pipeline or dangerous goods emergency response, and these services are outside the scope of the department, which is a scope established by the elected government.

18892. So it's very important that the Board be aware of that. As we know -- and we'll talk about this more this afternoon -- but the Proponent has said that it will be relying upon municipal first responders in the event of emergency. And we also know that that's inevitable. We know from the lived experience of what's gone before that local government first responders are necessarily relied upon in emergency response.

18893. It's important that the Board appreciate that it cannot be assumed that in many of these areas that there's any such capacity for response, and that this isn't a problem that money can fix, necessarily. There just isn't the capacity for response.

18894. So when the question of safety, environmental protection comes up, the Board has to make that determination, keeping in mind that the assumption of local first response is just not a valid assumption over many parts of the pipeline.

18895. The second issue is geotechnical risk, and the Fraser Valley Regional District has submitted that one of the conditions that deals with quantitative geohazard frequency assessment needs to specifically deal with the Bridle Falls Area and needs to address some fairly particular technical but fundamentally important issues.

18896. The assessment has to identify the nature and characteristics of the geotechnical features that -- the geotechnical features called the Timber Camp linears and Bridal Falls escarpment so that there is a clear understanding of the risk associated with these features, and that can be developed and communicated.

18897. Previous reviews, the working knowledge that we do have, is that these features present the potential for catastrophic landslide hazards, and in Fraser Valley's submission, these have not been sufficiently identified, appreciated or certainly assessed in the application, and that this is fundamentally important information for the Board and for the Applicant and for the communities that would be involved in emergency response.

18898. The assessment has to identify the probability or frequency of occurrence of catastrophic and localized landslides associated with the features so that a clear understanding of risk can be developed and communicated.

18899. And the assessment has to deal with the issue of mapping the lateral, the side to side extent of a landslide. And there needs to be not only an assessment of the risk, but an assessment of what emergency response will look like in the case of a catastrophic landslide in that area.

18900. Where there is the scope for extensive lateral slope movement and landslide, there is a very real possibility or a factor to contend with that the location of block valves to prevent continuing spill if the pipeline gets damaged in a slide -- the location of valves can quite easily be lost track of when you've got very extensive lateral movement in a landslide.

18901. And this is a practical concern, but a fundamentally serious concern and one that has to be properly assessed and planned for in the event of the pipeline proceeding through that area.

18902. I'll move to the issue of baseline, the method. The Fraser Valley's concern with the method of the assessment and the lack of key baseline indicators and monitoring, the work that monitoring does in the application and in the draft conditions right now.

18903. The fundamental submission is, monitoring needs to have a certain starting point, so that means that there have to be known baseline indicators to know where you're starting from, for monitoring to be any use at all, and it can't be a dead end. And it has to lead to effective, wherever possible, pre-identified mitigation measures, or if the mitigation measures can't be identified in advance because the thing monitoring is revealing something that was unanticipated, there needs to be an effective expert-driven process to determine proper mitigation measures or compensation measures. And that has to have independent regulatory oversight.

18904. There's a concern, again speaking on a general level, about -- the conditions that there will be -- there are several calls for monitoring in the conditions, but then it goes nowhere. Monitoring is only effective: a) if it's effective monitoring, so known baseline, known criteria, agreed-upon criteria. But then it's only effective too if it leads to an outcome. If monitoring reveals a problem, there must be a compelled obligation to act and act effectively in response to the problem.

18905. And there is the real concern. As I've said in our exchange earlier in response to your questions, there's a real concern that the conditions just don't get us there, in many cases.

18906. **THE CHAIRMAN**: Can I -- if I may follow up, because I mentioned -- you mentioned earlier under water quality and water courses and it's on page 51 of your argument-in-chief, citation 53 -- 153.

> *"There needs to be a mechanism for local government concerns to be raised and acted on by the NEB on a priority basis if drinking water concerns are not adequately addressed by Trans Mountain."*

18907. Is that sort of the -- what you're talking about? At what stage would that happen if there's something happening immediately? How do you deal with it and who gets involved then to deal with that situation? Is that an example of what you're -- you just suggested?

18908. **MS. GILTROW**: Well again, that's an example that, I guess, it was twofold. But that's an example that comes after you've developed an appropriate plan to monitor and mitigate drinking water. So we say that's a prior problem that needs to be addressed.

18909. But then local governments just have a very urgent concern about their drinking water supplies. I mean, the aquifers that are at issue here are just fundamental to some of these communities. So there's sort of -- there's two outcomes.

18910. One is, we get a plan that's okay, right, that's developed in a future process and that meets public safety, environmental and public interest criteria, so it's approved, so that condition is met and the Board has determined that it's okay

and that's through the robust -- the need for a further and robust process that I've already spoken about.

18911. But then we have a situation where that plan is in place, but my monitoring reveals that there is a problem and there is not a sufficient response to that problem. Local governments need to have a clearly-articulated course of conduct that can allow rapid response, because this is the drinking water that's at issue.

18912. So there's the failure to meet the obligations already set out in the plan, and of course, a failure to meet a condition can invite sanctions. We know that. But sanctions aren't particularly interesting to a local government that's trying to immediately protect its drinking water source. So there needs to be a clear understanding of what a local government does in that circumstance.

18913. But then, if there is an ambiguity, or if there's a problem that's revealed that might not be covered by the plan, local governments similarly need to know, because it's highly anticipable that there will be a dispute between local government and the Proponent at that point about how serious the problem is or what should be done. There may be no dispute and there may be no need, but there needs to be a clear line to regulatory oversight that can compel action to protect the safety of the public in that circumstance.

18914. And based upon the local governments' current understanding of the regime, both of those aspects are not clear or are missing, and are of significant concern to them in their endeavour to protect drinking water.

18915. **THE CHAIRMAN**: Thank you.

18916. **MS. GILTROW**: Oh, there's -- I'm just going to address this issue of the failures in commitment tracking, because this gets back to the core need for a regulator to be overseeing this, the future plan for how all these risks and impacts might be mitigated and managed.

18917. So Fraser Valley Regional District is concerned about the failure by Trans Mountain to track and record commitments it has made to local governments in this process. We've -- all the local governments have attached an Appendix A to their submissions.

18918. Some of the commitments that they've noticed -- just -- that they had

-- because they're keeping their own tables as they hear from Trans Mountain and as meetings occur, et cetera. Some of these things are of obviously fundamental concern to local governments, so they're keeping track, and it became apparent that commitments that the local governments thought had been established were not showing up on the commitment tracking table through Trans Mountain. And even accounting for the different filing times for the commitment tracking table, local governments have still noticed lacks, where commitments just aren't showing up.

18919. Well, commitments are obviously -- the Board is obviously contemplating making commitments a key regulatory tool if this project proceeds. Condition 2 of the draft conditions say that unless the NEB otherwise directs, Trans Mountain must implement all of the commitments it has made in its project application, or as otherwise agreed to in the evidence it filed during the proceeding or in its related submissions.

18920. And then Condition 8, the Board compels Trans Mountain to track those commitments.

18921. But some of the commitments that our clients have seen that haven't showed are, for instance, the commitment that the provincial standard for drinking water protection under the *B.C. Drinking Water Protection Act* will be captured in the updated environmental protection plan.

18922. Like, that's an example of a clear standard that we can understand and we can point to. A commitment was made to capture those because of course it's provincial and so it's always useful with legislation that comes -- or with standards that are established under provincial legislation, whether it's provincial standards or standards established by by-law.

18923. It's certainly always helpful if the Proponent will simply commit to meeting those standards so we don't have to get into a legal tussle later about whether they apply of their own right or not, whether they go to the core of the undertaking. I mean, that is obviously a complex area that nobody wants to spend a lot of time and money arguing about in the future. So if we can get commitments to meet the actual tangible practical standards embodied in some of that legislation that's a great thing.

18924. And in this case, the local government thought they had one and then it didn't show up in the commitment tracking table. That can probably be remedied

quite quickly here. I mean, obviously raising it in submissions will help. Perhaps it's oversight. This submission doesn't go beyond saying though that the lack of consistent tracking of commitments, putting the faith in Trans Mountain that it will be their job to make commitments and then track them and then those become enforceable. Well, if they're not clearly tracked then their enforceability comes into question, and local governments just don't know what ground they're standing on in terms of protecting the public interest from their own perspective.

18925. And as I said earlier, that's one thing in this proceeding, when we have staff time that has been dedicated in an annual budget to be spending time looking at the Trans Mountain application process, and doing the double-checking and doing the due diligence.

18926. But as you'll hear in a submission later on today, there's a lot of staff time that goes into dealing with the fact of the presence of the Trans Mountain pipeline in local jurisdictions. To expect staff to constantly have to be checking things like this, and having the regulatory mechanism putting the trust and the faith in the Proponent that it will always be fully diligent, fully thorough in its commitment tracking is, in Fraser Valley's experience so far, one that is concerning that it won't be a robust enough mechanism.

18927. You couple it with -- some of the other examples were a commitment to provide Fraser Valley Regional District with odour and air quality complaint records at least quarterly, and that hasn't shown up. Now those records, odour complaint records and air quality records, those are complaints about those matters. Those are of fundamental concern to what impacts this project is having in a community. They need to have those records of commitment. To provide them is a matter of significance.

18928. So those are just some practical examples of what's missing. You couple that with Fraser Valley's concern about how consultation has been treated by the Proponent so far -- and this is raised because several of the commitments as they're currently framed say, well, and in developing this plan the Proponent must consult with "X" agency or local government or municipality.

18929. But consultation as left is a vague term there. The local governments don't know what that means to the Board, and they're concerned about what that may mean to the Proponent. And yet that will be the standard by which the Proponent is measured on the conditions as they're currently framed.

18930. Two examples are ---

18931. **THE CHAIRMAN:** I just note that you have five minutes, less than five minutes remaining.

18932. **MS. GILTROW:** Two examples are -- consultation with the health authority was one of them. We raised this in our written argument. Where in February 2015, upon an information request by Fraser Valley Regional District -- so prompted by an information request that came from FVRD -- Trans Mountain said that it would work with the Fraser Health Authority regarding project construction activities to identify resolutions to concerns about protection of drinking water supplies in the Fraser Valley Regional District.

18933. Well, what happened with that, what that "working with" meant was that Trans Mountain met with the Fraser Health Authority and Vancouver Coastal Health Authority for approximately a two-hour introductory meeting.

18934. Oh, sorry, this happened in 2013. I read 2013 with my eyes but I must have said 2015. My apologies.

18935. So what that meeting was -- Fraser Health Authority said it was a meeting to elicit concerns only. There was no offer to the health authorities to work with the Proponent on the issues that had been identified, and neither was there further follow-up dialogue between the Proponent's consultants and the health authorities.

18936. There's a real concern that if that's what working with a key agency looks like, and the only sort of enforceable condition is that they must consult with key agencies -- if that's consultation, if the Proponent thinks that's consultation and the Board accepts that that's consultation, going back to what I've been saying earlier, the measure of practical enforceable standards taking into account local expertise and concern, there's no scope for any of that to happen and to build a truly robust plan that deals with impacts.

18937. Another example is with the air quality issue I mentioned earlier where Trans Mountain had asserted that it had met the concerns of the Lower Fraser Valley Air Quality Control Committee, and that the committee had declined to provide any further comments. That's just fundamentally not what happened.

18938. The committee -- and this is set out in our written argument, and I

know I'm tight for time. But the committee wrote to Trans Mountain on behalf of all of the key air quality agencies expressing concerns with respect to the insufficient time allowed to develop and review the modelling plan that was at issue between them to establish emission scenarios and cumulative cases.

18939. There was fundamental lack of the scope, methodology, and meteorological emission scenarios that could allow for a meaningful engagement between experts to come up with a good plan. And so it said it could not respond on the timeline provided to the questions put to them given those constraints. That is not meeting their concerns, and that is not them declining to comment.

18940. That is a group of expert local agencies pointing out fundamental methodological issues that have to be solved for meaningful engagement to occur to develop a truly robust and defensible plan that will meet the public interest, environmental and public safety protection.

18941. So these closing submissions really get at the Fraser Valley Regional District's concern that the future regulatory model cannot be built on a "trust us" model.

18942. I see a red light blinking. But you've heard my concerns, my submissions about the need for clear enforceable terms, and that where we're at right now doesn't get us there. And an obligation to consult and work with language, that it's that level of vagueness is not -- based upon the experience that the local governments have had so far -- going to be sufficient to meet the very real standards that the Board has to assure itself are met.

--- (Applause/Applaudissements)

18943. **THE CHAIRMAN:** Thank you, Ms. Giltrow. We may have -- I'm sure you'll allow us to ask questions through the other presentations because they are all integrated as a joint submission. So no reflection if we miss something now. We'll have a chance to, and I'm sure you'll entertain questions later on.

18944. I may have one question though again under the same water quality and watercourses, same section, 153. Where further to the part I read earlier, you talked about local governments submit that Trans Mountain be required to fund and operate an online accessible database of issues related specifically to drinking water, aquifers, ground water and well water supplies that the NEB and local governments can access at any time to input and track concerns.

18945. That's an example of immediate availability, sharing of information, and being able to respond. Is that an example of what you would recommend that we consider as a condition?

18946. **MS. GILTROW:** In terms of transparency and availability of crucial information for local communities, the local governments say that that is an example of something that is absolutely essential.

18947. It doesn't accomplish the task that we've been speaking about for much of my presentation here in terms of establishing proper monitoring, mitigation, and response plans. That's a separate issue. But we certainly say that a measure like that is essential.

18948. **THE CHAIRMAN:** With that, we thank you.

18949. And perhaps you may wish to recognize from the District who you brought with you sitting beside you at the table. I think it will be good for the record.

18950. **MS. GILTROW:** I apologize. I actually had it written at the top of my paper. This is Allison Stewart, who is the manager of strategic planning and who has been the staff lead for the Fraser Valley Regional District throughout and who is well-versed in all of the evidence and materials that have been filed before the Board in this proceeding.

18951. **THE CHAIRMAN:** Great, thank you for your attendance today.

18952. Perhaps, Ms. Giltrow, if you could -- we're concluded with you on this particular submission.

18953. I would like to recognize another intervenor who wishes -- so if you could -- the microphone to come forward. I understand that Mr. Dickson, who is counsel for the Kwantlen First Nation, would like to make a submission.

18954. **MR. DICKSON:** Thank you, Mr. Chairman. Just quickly, Tim Dickson for Kwantlen First Nation.

18955. We have not made a request for additional representatives and so we just have two on the list. But we do have an additional councillor present today

who would like to attend. His name is Les Antone. He gave evidence at the oral traditional evidence proceeding. And so I would ask that you allow him to attend.

18956. **THE CHAIRMAN:** Thank you. We'll regard that as an oral motion then.

18957. **MR. DICKSON:** Thank you.

18958. **THE CHAIRMAN:** Your motion has been granted and will Mr. -- sorry, Les ---

18959. **MR. DICKSON:** Antone.

18960. **THE CHAIRMAN:** --- Antone will be able to attend and we'll talk to our process advisor.

18961. So Ms. Comte, can I have a ruling on that?

18962. **THE REGULATORY OFFICER:** It will be Ruling 119.

18963. **THE CHAIRMAN:** Thank you.

18964. With that, we'll take a short break. We'll return at 10:15 when we'll hear from the Township of Langley. Thank you.

--- Upon recessing at 10:02 a.m./L'audience est suspendue à 10h02
--- Upon resuming at 10:16 p.m./L'audience est reprise à 10h16

18965. **THE CHAIRMAN:** Now we are prepared to hear from the joint submission but particular from the Township of Langley. Ms. Giltrow.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE TOWNSHIP OF LANGLEY:

18966. **MS. GILTROW:** Thank you, Chair Hamilton.

18967. Although he's not able to be with me today, the lead staff for this review at the Township of Langley is Mr. Roeland Zwaag, who has been instrumental in reviewing and understanding the evidence and the impacts on the Township of Langley.

18968. The Township of Langley is located 45 kilometres east of Vancouver and has an area of about 316 kilometres. It's bordered by the Fraser River to the north, the United States border to the south, and then the cities of Surrey and Langley to the west and Abbotsford is its eastern neighbour. It has a population of about 113,000.

18969. So I've explained this morning about the joint submission. I'll just state briefly for the record with respect to the Township of Langley, that the Township has, along with other local governments, made its submission jointly with the governments of Abbotsford, Fraser Valley Regional District, Fraser-Fort George Regional District, and Valemount.

18970. And so you have before you the written representation of all of those jointly that deals with issues that are identified to be impacts held in common by those municipalities, but also the particular impacts that each of the local governments will face.

18971. The Township of Langley in addition to the joint position taken by the local governments in the written submission, expresses a particular position with respect to process, and at the outset does want to address the issue of the failure to truly consider an alternate route.

18972. The Township submits that before the Board can properly find that the Trans Mountain Expansion Project is in the public interest, the Board must determine based upon full evidence and analysis that this proposed route is the best one among considered alternatives, which is not possible based upon the evidence before the Board to date.

18973. Trans Mountain has chosen to pursue approval for the Trans Mountain Expansion Project through the most densely populated corridor it could have chosen, between Alberta and the Pacific Ocean.

18974. The Township submits that neither the Proponent's application nor this process has provided an appropriate or adequate assessment of alternative routes, including routes that would not place the significant burdens and risks on the communities that you're going to hear about today. The Township has never had an opportunity to make submissions about the public interest or the appropriateness of selecting a route as dense as that which goes through the Township of Langley.

18975. With that said, the Township at the very least shares the joint position advanced in common with the other local governments, that it cannot be in the public interest to impose costs and risks of the pipeline on local communities.

18976. The failure to assess alternative routes is essential to determining whether building this pipeline here is in the public interest. But if you are going to consider building a pipeline here, you must do so with complete intellectual honesty. You must do so with the complete assessment of all of the true costs, all of the costs of pursuing a route here through these dense urban communities.

18977. And the pipeline cannot proceed -- it is not in the public interest to do -- without measures that go as far as possible to prevent harms to the local communities. And when the limits of that prevention are reached, there must certain and enforceable mechanisms in place to ensure compensation so that residual costs are borne by the company, not the communities that must host the pipelines.

18978. The key concerns that Township of Langley has identified are set out at page 5 of the submission. That is the environmental impacts and in particular the protection of Langley's sensitive aquifers and drinking water supply during construction, operation, and pipeline emergencies.

18979. And the Township notes in particular that there's no spill response scenario for drinking water aquifers right now in the application or in evidence. And that's a matter of significant concern to the Township. And also the restoration and protection of Langley's wetlands and riparian areas during construction and operations of the pipeline.

18980. The Township is also very, very concerned about the cost implications for the municipality and the Trans Mountain's disruption to city infrastructure and road crossings. And that will be much of the focus of my submission today on behalf of the Township of Langley.

18981. As you'll be aware, the Township of Langley and the City of Abbotsford jointly, along with other municipalities, commissioned expert evidence from a professional engineer that identifies the added costs that these municipalities bear now because of the present pipeline in their regular infrastructure maintenance and operation activities, and the projected costs that the new pipeline would put upon these municipalities. And that will be the focus

on my submissions today for Langley.

18982. The Township is also concerned about design and alignment issues, although those will be addressed later on this afternoon under the submissions, likely Fraser-Fort George and Valemount. And then Langley fundamentally shares the concerns that are expressed by and demonstrated through the evidence that's been filed by the city of Abbotsford. And those will be addressed in the Abbotsford submissions.

18983. The Township's position is that these concerns haven't been addressed by Trans Mountain to date in the application or in the evidence or in the response to information requests, and that the Draft Conditions do not address the shortfalls, as they're currently worded, that the Township has identified.

18984. I'll start first with the issue of water quality. The local governments urge the Board, as I've said this morning -- and I can summarize some of my submissions on water quality here because we've discussed it earlier this morning. But the local governments jointly urge the Board to require Trans Mountain to implement the most stringent, environmentally prudent and precautionary measures to protect local drinking water supplies from impacts during construction or from a spill or a leak.

18985. And the protection of Langley's sensitive aquifers and drinking water supply during construction, operations, and emergencies, is of paramount importance. And that includes -- and so Langley has identified fundamental gaps that exist right now, including the insufficient baseline data on ground water, well water, and aquifer systems in Langley. So that's what I was saying earlier this morning. We can't monitor if we don't have sufficient baseline data for the existing water conditions right now.

18986. The monitoring techniques need to ensure that the impacts from Trans Mountain's activities to Langley's water systems are measured and accounted for, and the Pipeline Integrity and Emergency Response Measures are developed in advance to protect Langley's aquifers in the event of a spill.

18987. The current Condition 80, the Water Well Inventory is an example of something I was talking about this morning. And it's insufficient, Langley says, because it merely requires Trans Mountain to gather information about the water wells for no apparent purpose on the face of the condition other than to provide a repository of data. There's no requirement that Trans Mountain proactively act

on this information by collecting necessarily baseline data in order to determine the impacts it has on water well quality, or to implement subsequent mitigation measures to address these potential impacts.

18988. That goes to the core of what we were talking about this morning, about what robust and effective plans would do. The current conditions don't meet those requirements and the need for an informed process that has the input from local experts and local governments to develop plans that will actually prevent harm and implement mitigation and require effective compensation where required.

18989. Another example of a failing in the plan to test and monitor for wells is, Trans Mountain says that it will test and sample wells 10 metres or less in depth. And that's based on the rationale that during construction -- Trans Mountain says, without evidence -- the impacts of the pipeline construction are unlikely to extend to greater depths than 10 metres.

18990. Trans Mountain has provided no scientific or empirical basis for this assertion and has just arbitrarily, in the eyes of the Township of Langley, limited its proposed testing to a 10 metre depth, the shallow wells. There is no basis for this. And the Township of Langley does not stand before you today with a submission of just how deep we should be going in the well testing.

18991. This is a submission that goes to the failing in the process at this point to identify what the necessary and appropriate monitoring would be to detect impacts that are likely to impact the population in Langley.

18992. And this was done also on this risk-based scenario that Trans Mountain has advanced in terms of the assessment of risks. And you've heard many submissions about this to date, more with respect to assessment of marine spill risk. But Trans Mountain has provided no basis for the inherent proposition that risk should be monitored with reference to the arbitrary standard of the likely impacts to wells as opposed to looking at the risk as being a product of Hazard-Times-Consequence Model that has been advanced by several witnesses and intervenors before you. Not only the probability but the severity of the incident must be considered in determine risk mitigation strategies such as monitoring.

18993. Obviously from the Township of Langley's perspective, contamination of its aquifers, drinking water aquifer -- while we don't know the probability of that, the consequence and severity of that event is very, very significant for the

Township of Langley. And so to fail to provide, for instance, a spill recover model for aquifers -- so to properly in advance identify if there a spill in an aquifer of any size, how will we respond to -- how will we have emergency response measures in place that will effectively deal with that spill? What does dealing with that spill look like?

18994. All of that information is currently not known to Langley. And yet, as I've said already, the protection of drinking water is a matter of urgent concern to the local governments.

18995. Trans Mountain has also made no commitment to monitor ground water wells during pipeline operations. It has said in response to information requests that it will test water quality following construction if it is requested by a landowner and if it's warranted. But this shifts the onus onto landowners and doesn't take the sort of proactive monitoring approach that in the Township of Langley's submission would be required to truly be proactively and certainly monitoring to protect water sources.

18996. Getting away from drinking water but looking at, for instance, fish-bearing streams -- and of course these things, they all tie together. But it is helpful to sort of categorically recognize when we're talking about fish-bearing issues and when we're talking about drinking water issues. Condition 100 allows Trans Mountain to self-select the crossing method to be used for fish-bearing streams and to summarize how it will address any adverse consequences, any concerns that are raised.

18997. But self-selected -- we heard helpful submissions from the Salmon River Enhancement Society that reveal two things that were very illustrative. One was you had the evidence of Marvin Rosenau who spoke about repairing remediation from the looping project from 2009. And he talked to you about going up and looking at what a remediated riparian zone looked like up there. And he said: *"To the layperson it looks quite tidy, might look okay."*

18998. But to an expert in riparian zones, that was a riparian dead zone that he was observing. That's the problem when you leave it to -- taking that submission -- and this is a situation where we're listening to intervenor evidence; we're not in a position to go much further than to hear the evidence of an expert in the area.

18999. But from the Township of Langley's perspective -- and this is consistent with everything I've said this morning -- that's a precise example

where if you leave an environmental protection plan to be devised by the Proponent without a robust oversight mechanism that is tested by outside expertise that has important local knowledge, you can end up with a situation with a riparian restoration situation that might on its face, to a layperson, look okay but be absolutely ineffective from an ecological perspective.

19000. The other issue that the Salmon River Enhancement Society raised was that many of the concerns that they were raising with respect to the crossing of fish-bearing streams and the very significant impacts that will flow from the many significant fish-bearing streams that are going to be affected by this, that much of this could be alleviated through trenchless construction, where you back up far enough and you well enough under the stream. But as the conditions are currently framed, there is no regulatory might applied to the question of whether trenchless construction will be used on particular streams and particular crossings.

19001. The City of Abbotsford has been very concerned about the crossing of the Sumas Canal, for instance, and doesn't have a clear understanding of when -- by what criteria the feasibility of trenchless construction is being evaluated, when it will be known, and the fundamental question, what if an expert disagrees?

19002. We're left in a stage that's really premature in terms of knowing whether an environment protection plan -- which perhaps crossing methods wouldn't be captured under an environmental protection plan, but I'm using the term more loosely -- a measure to protect the environment. Trenchless construction has been identified as one that might significantly alleviate some of the concerns here.

19003. But as the conditions, the regulator scheme, is framed, this is left to the Proponent to do its own feasibility testing without outside oversight, without input from local governments or senior governments, depending on where the expertise is best drawn from, and the assurance of protection of the environment is left to hang. And that is of significant concern to the Township of Langley and the other local governments.

19004. Trans Mountain -- I spoke earlier too about -- it would be very helpful if the Proponent would agree to the objective standards that are set out in provincial legislation or bylaws that protect some of these issues.

19005. So for instance, the Township of Langley has, through its bylaws, identified riparian management zones and has identified measures in place that if

there's going to be construction around a riparian management zone certain measures have to be met. Those are locally determined measures based upon expertise and local knowledge and it's not apparent to Langley why those should not be enforceable inside the jurisdiction -- inside of the area over which Langley has jurisdiction.

19006. There is an acknowledgement by Trans Mountain that riparian management zones will be identified using the "B.C. Riparian Area Management Guidebook". And there is an acknowledgement; Township of Langley acknowledges that there might be some overlap that's helpful there. But it's an example where, you know, local governments are managing how they manage their trees and tree replacement in the ordinary course of development.

19007. There is no apparent reason that local government standards should not be made to apply inside the local government jurisdictions, leaving aside -- by "no apparent" -- I mean it has not been established that these sorts of standards we're talking about in terms of riparian restoration, replanting of trees, vegetation, that sort of thing -- there's no -- it's not established that these go to the core of the federal undertaking and having to comply with these particular standards would somehow undermine the undertaking of Trans Mountain.

19008. And that's an example of something that could be worked out on a very practical level if the conditions require local government input into the standards that will be applied for environmental protection. This -- we might very well be able to avoid conflict if there is a requirement for local government involvement and then robust oversight to ensure that the plans themselves on a detailed level meet the goals of environmental protection and protection of public safety.

19009. So as a broad overview, those are my submissions with respect to water, water quality, and the need for local government involvement in the development of the plans to protect those very important values.

19010. I'll shift now to my submissions about the cost implications for municipalities from the presence of the pipeline. You heard at the outset of these hearings from the City of Surrey on the cost implications. And those are set out in the Martin Report. The Martin report was commissioned by the municipalities of Abbotsford, Township of Langley, City of Surrey, City of Coquitlam and City of Burnaby to identify what costs municipalities bear from the presence of the existing Trans Mountain pipeline, and then to project what costs, what additional

costs the municipalities will bear from the future expansion pipeline if it were to proceed.

19011. Trans Mountain acknowledges that the pipeline will impact planning and infrastructure development for municipalities. It notes that these impacts will be long-term and continuous, but says that the overall impact is not significant. This is a demonstrable minimization of the impacts the municipalities currently face from the existing pipeline, and those that they will face from the new pipeline if it's built.

19012. And the municipalities have demonstrated this. The Martin Report, which was commissioned jointly, demonstrates that the pipelines have a significant -- excuse me -- that there is a significant interface between the infrastructure, municipal infrastructure and the pipeline.

19013. It's demonstrated that the municipalities already incur additional costs related to the existing Trans Mountain pipeline crossing municipal lands and utilities. The Martin Report demonstrates that the Township of Langley incurs on average an additional cost of approximately $440,000 because of the existing pipeline, and that it will face future infrastructure maintenance and replacement costs estimated at about $256,000 annually for the Township of Langley. This amounts to $12.8 million over the next 50 years for the Township of Langley.

19014. The numbers for the other municipalities are also worth nothing. Abbotsford now incurs 560,000 and will incur an additional 337,000 from the new pipeline. Coquitlam incurs $1.6 million now annually on average because of the existing pipeline, and will incur an additional $432,000 from the new pipeline. Surrey incurs $1.1 million now, and it will add $320,000 annually from the new pipeline. And Burnaby incurs $1.2 million now and will add $234,000 from the new pipeline.

19015. These numbers are of course annual averages over a number of years. The point that the Board is to take from these submissions -- we're not asking you to drill down into the details of the numbers; the numbers themselves are uncontested on the evidence -- but the point is that these costs are real and they are significant. Moreover, there's no basis in law or in the fair distribution of benefits and burdens that these costs should be borne by the municipalities rather than by the company.

19016. The costs arise from the municipalities' ordinary activities. The sort of

infrastructure issue that we're talking about is buried utilities such as water, sewer, and storm systems, roads, boulevards, sidewalks, bike lanes, and overland drainage which is ditches.

19017. For example, the pipeline intersects the Fraser Valley Regional District's water supply infrastructure in at least five locations. And Chilliwack's letter of comment talks about several interactions along the South Sumas Road with the pipeline.

19018. So it's through building road and utility infrastructure to expand and accommodating increasing populations and the maintenance on existing roads, sewers, and ditches that the municipalities come into contact with the pipeline.

19019. Surrey's examples that it gave to you were when it needed to build an underpass at Highway 1 at 156 Street, it required the lowering of the existing Trans Mountain pipeline. And TransCanada, under the position it holds, the position of advantage it holds under the legislation, would only agree to lower the pipeline if the City of Surrey paid the whole cost of doing this, which was $1.7 million.

19020. The other example City of Surrey gave that informs the concern of all the local governments is that Kinder Morgan required City of Surrey to pay all the costs associated with re-instating an existing support structure for the pipeline, totalling about $390,000. And the City of Surrey's evidence was that these costs could have been avoided if the existing Trans Mountain pipeline had been designed to accommodate a future road above it and future utilities in proximity to it.

19021. So it's important to take note of that last point because the municipalities' submission to you is that the first step in this -- well, the first step is recognizing that this is a real and significant and costly issue for municipalities. Second, it can be avoided by mitigation measures that have been identified now and are set out in the submissions and are identified in the Martin Report; design features and other steps that can be taken that can avoid these costs. And that should be the first step.

19022. But thirdly, where the costs cannot be avoided, the submission of the municipalities is they are not fairly or in law properly the cost to be borne by the municipality. There needs to be a mechanism in place that allocates this cost and allows the municipalities to recover them from the pipeline. These are costs the

municipalities would not bear but for the pipeline.

19023. Township of Langley -- the City of Surrey's examples are really illustrative. Township of Langley has also experienced increasing costs from issues as mundane perhaps as the delay factor in just getting their ordinary operation and maintenance work done.

19024. Township of Langley has found this particularly vexing, and it has found it to be an unnecessary draw on municipal staff, time and resources. Township of Langley has -- and this is set out in the Martin Report -- have undertaken routine maintenance work that is outside the regulated zone, the zone regulated under section 112 of the NEB Act.

19025. And yet, Trans Mountain has several times taken the position that its permission is nevertheless required for these activities. Township of Langley has performed its due diligence, has determined that these are not regulated activities, that they're safe, but more importantly that they're not the ones that are captured by the regulation. And it's faced these disputes and the Board has, on more than one occasion, taken Trans Mountain's side without providing Township of Langley a meaningful opportunity to provide evidence, make submissions or represent its position.

19026. There hasn't been a clear process for efficient resolution of what might seem like minor disputes, but these have sucked up a significant and inappropriate amount of Langley staff time. And that's in the context of minor issues in which Langley is being diligent, has systems in place, and knows where the pipeline is and knows how to avoid it. And so essentially these are situations where it's not even coming into contact with the pipeline and it's still costing the municipality money.

19027. The operation, construction and maintenance activities that bring municipalities into contact with the pipeline are not-for-profit activities. They are essential to the serving of the public interest by the municipalities. The municipalities represent the public interest at the most immediate and local levels. They variously oversee, administer, and are responsible for the infrastructure essential to economically healthy communities, the parks and greenspaces that are essential to human and environmental health, and the emergency response systems necessary for rapid and effective harm prevention and mitigation.

19028. These responsibilities are met through limited revenue sources. There

is no defensible basis upon which the municipalities should be subsidizing the true costs of the privately held benefit the Trans Mountain Expansion Project would bring to the Applicant company.

19029. So Langley and the other local governments take the position before the Board that it is not in the public interest to impose these costs on the municipalities.

19030. As Coquitlam put it in its written submission, a causal cost recovery mechanism is necessary to ensure Trans Mountain's private interests are not being paid for -- excuse me, are being paid for by Trans Mountain's beneficiaries, not the beneficiaries in whose interest municipalities hold and manage public assets. So a clear cost allocation recovery mechanism is an essential condition of the project -- excuse me, a condition of the project.

19031. However, Trans Mountain disputes this, so if you turn to its final argument, it deals with this at page 116 of its final argument.

19032. Trans Mountain says, okay, it's reasonable to reimburse municipalities for modifications to existing municipal infrastructure that has to be modified or moved to accommodate the new project. Okay, so that's agreed and that doesn't seem like a particularly radical proposition.

19033. They also say that they're willing to work with municipalities to minimize impacts and accommodate reasonably foreseeable plans for municipal infrastructure.

19034. So that's helpful, because it recognizes that municipalities do make future development plans. Those are available now. Many of them are reasonably foreseeable. Growth patterns and locations can be anticipated and so if there is true collaborative design efforts made to avoid putting or doing the pipeline in a place or way that's going to cost the municipality a lot of money when it comes time to, as it inevitably will have to, expand into particular areas -- if that's done in an effective way, that's a good measure.

19035. However, what Trans Mountain says is, once the pipeline is in, it's in, basically. At that point, municipalities will have to plan around it, and if there is a need to modify the pipeline to accommodate new municipal infrastructure, then Trans Mountain will make the municipalities pay for the modifications to the pipelines.

19036. And I note they now say in their final argument, they make them pay, whereas they previously said in the black line version, that they would look to the municipalities for full reimbursement.

19037. But there's no indication or evidence that this will be anything other than what they've done in the past, which is that they will be looking to the municipalities for full reimbursement.

19038. And in a response to an Information Request from Surrey, Trans Mountain said, you know, asking if there -- if they would be indemnifying municipalities for these costs, Trans Mountain said, no, they were quite satisfied with the current arrangement, which isn't surprising, because the current arrangement has them fully reimbursed by the municipalities for the costs of moving or dealing with the pipeline when the municipalities have to do their infrastructure work.

19039. As Mr. Capuccinello from Surrey explained -- and he took you through in detail how this problem has been dealt with by legislation elsewhere, both provincially, but at the federal level in the context of railways and telecommunications -- this is a unique privilege enjoyed by Trans Mountain. This problem has long been fixed in the context of provincially-regulated pipelines as well as in the federal industries I've talked about.

19040. What Trans Mountain says in opposition to the municipalities' position, that a cost allocation mechanism must be a condition of any approval is that the municipalities are asking to be indemnified, and I'm quoting:

> *"For future speculative, additional costs related to operations and maintenance, future modifications and installation of additional municipal infrastructure."*

19041. And that these, b) -- that's sort of a) -- b) is that these are over and above the revenues they already receive in the form of taxes, which Trans Mountain asserts, without evidence, are in excess of the costs of municipal services required and received by Trans Mountain.

19042. So there's two really fundamental issues there. This issue about these being future speculative additional costs -- the municipalities aren't asking for a cheque right now. We're not asking the Board to order Trans Mountain to pay the

prospective $336,000 that the City of Abbotsford, for instance, will incur annually over the next 50 years from the project.

19043. That evidence is before you, as I said earlier, to demonstrate that these costs are real and that they are significant. They will be costs that are known when they are incurred. These aren't speculative costs; they will be incurred and they will have a known value when that time comes.

19044. The problem is, and the point is, that there needs to be an enforceable mechanism to have those costs borne by the company and not by the municipalities. That's what needs to come out of this proceeding.

19045. So then the second issue is Trans Mountain's position that we shouldn't be forced to pay these costs because we're already paying property taxes that are in excess of the services that Trans Mountain requires and receives from municipalities.

19046. So I want to address that issue, and it's addressed in detail, first in the City of Coquitlam's submissions, but the response on this taxation position has been adopted by the municipalities jointly.

19047. And the starting premise -- I mean, just as an overview, paying property taxes does not buy Trans Mountain the right to create an additional, in some cases $1 million annual burden on a municipality who has to work around the pipeline in operating its infrastructure. That is not what property taxes buys for Trans Mountain.

19048. Trans Mountain relies on the bare assertion first, we should deal with that, that it pays taxes that are in excess of the cost of municipal services required by Trans Mountain. There's no evidence to support this. There is no evidence of what services Trans Mountain draws upon, nor the costs thereof. There's no evidence of what portion of its municipal tax remittances are, as a matter of law, passed on directly to other agencies like B.C. Assessment Authority, Municipal Finance Authority, school board, regional district, TransLink.

19049. So these property taxes are collected and the municipalities are, as a matter of law, bound to transmit that tax. And Coquitlam put in evidence, in its case, it was 30 percent of its total tax received from Trans Mountain was sent off to other agencies.

19050. So that's not money that's paying for the impacts of a pipeline, operating infrastructure around a pipeline in the community, as money is serving a very different purpose.

19051. But more fundamentally, as a matter of understanding taxation and services and compensation as for impacts as a distinct concept, Trans Mountain fundamentally misunderstands the relationship.

19052. Taxes are not a fee for service charge. That is a fundamental distinction. That's -- it's a matter of law -- the Supreme Court of Canada precedent referring to the EUrig Estate case and Catalyst Paper.

19053. Taxes are not a fee-for-service charge. Property taxation is based on the assessed value of land or improvements and then the usage calculation of that land, so whether it's residential, commercial or industrial, and has no direct relationship to the occupier's actual or intended use of general municipal services.

19054. And Coquitlam helpfully points out that, for example, homeowners cannot opt out of paying some or all of their assessed taxes because they choose not to use the municipally-funded library or recreation services, or because they were fortunate enough to not be the victims of property crime in a particular year or a fire, requiring police or fire suppression services the previous year.

19055. And arguably, the differing intensities with which diverse land use draws on the general municipal services is reflected in the different taxation rates applied to each property classification. That's what taxation covers.

19056. In its own words, Trans Mountain identifies the benefits of the Trans Mountain project as follows:

"The main benefits of the project resulting ---"

19057. Well, let me -- sorry, let me first make the point that in terms of the question of the burden of utilities -- I mean, municipalities are used to having utilities come through them, right? But the cornerstone of the relationship between the taxation on utilities, other utilities are coming through, is -- in the legislation, it recognizes that there -- many of those utilities serve the local community, so taxation rates are set based upon the level of service in the local community.

19058. So under the *Local Government Act*, now section 644, just amended, the statutory scheme recognizes the localness of the utility and calculates rates based upon how many residents are served by the particular utility at all, et cetera.

19059. And Coquitlam makes this point most fundamentally, but I want to raise it because the Township of Langley has also adopted this position, that the main benefits of the project are identified by Trans Mountain as resulting -- they alleviate the current shortage of pipeline capacity, diversifying market access and providing option value to producers. The project will enable Western Canadian producers to realize higher prices throughout the life of the project.

19060. The municipality -- oh, four minutes.

19061. **THE CHAIRMAN**: You have, but we'll stop it because Mr. Davies has a question.

19062. **MEMBER DAVIES:** I'm sorry to interrupt your flow, but the question relates to what you're talking about right now. So under BC law, do municipalities and regional districts have the flexibility, under their taxing authority, to differentially charge different users of -- or different ratepayers?

19063. For instance, in the case you're making, you're suggesting that the external costs associated with the Trans Mountain line currently and in the future impose an extra burden on your client.

19064. And what I'm wondering is, is there authority or is there flexibility under the taxing to pass that back to the entity that's causing that? And it might apply to transmission companies, electric power transmission companies, telecoms et cetera. So I saw you shake your head. Can I have the longer answer?

19065. **MS. GILTROW:** Sure. The longer answer to my head shake is, "No."

19066. On a strict property taxation analysis, no. The classification schemes are set as a matter of provincial regulation. And so then within that scheme there is a constraint. So there would not be a mechanism to say, "Trans Mountain, you as a particular occupier under this classification scheme are just costing us too much money so your taxes go up." That isn't permitted under provincial taxation legislation.

19067. So I mean, to sum up these submissions -- I think you have my submissions on this -- the fundamental position of the municipalities is that as a general principle, in determining the appropriate conditions to be attached to any approval of the proposed project, no increased financial burdens should be put on any local government due to the construction or operation of the Trans Mountain Expansion Project. Local communities should not bear costs that would not arise but for the construction and operation of the pipeline.

19068. So there's currently no draft condition that would require Trans Mountain to track the cost impacts to taxpayers and local governments for both the short-term construction period and the long-term operation of the pipeline. These costs, as we've demonstrated and as I've submitted, will be ongoing over the life of the project and will be disproportionately borne by local governments unless Trans Mountain is required to compensate and monitor for these costs.

19069. Excuse me just a moment; my cold is setting.

19070. Thank you. I avoided sneezing into the microphone which I think was a moment of particular dignity.

19071. So at this point, I mean, I just want to reiterate what I've said before, that the first step in this analysis is properly monitoring and identifying and tracking the impacts. But also, now we know -- we have evidence before you; we have -- I mean, municipalities are not sort of bastions of radical thought. Like, these submissions come from professional planners and engineers who have looked at how the existing pipeline works, how it interacts with urban planning, with municipal planning, and has said, "You know, what? There's things we can identify now in terms of pipeline location, thickness, valve location, depth, soil cover."

19072. And I won't go into detail, but this is the evidence before you. And we say if you impose obligations for sensible construction that takes into account the fact that this pipeline proposes to go through some of the most dense urban communities possible on this route, that that will get us some distance of the way to saving us all some money. But insofar as that can only go so far and we know these future costs will be borne, then we say that there has to be a clear cost allocation mechanism in the conditions, and that that has to be expressly imposed by the Board.

19073. This isn't something that will voluntarily be put by the Proponent in its

socio-economic monitoring plan. Like, right now Condition 17 contemplates measures for socio-economic impacts being identified by the Proponent. In my submission, I think it's pretty clear the Proponent is not going to voluntarily suggest that it compensate for these socio-economic impacts. This has to be a clear condition.

19074. I won't repeat the helpful submissions of the City of Surrey, but those submissions establish that the Board has the jurisdiction to do this, that it's necessary -- and by necessary I mean it's not currently being taken care of by the regulatory scheme, by the legislation, or the regulations. And so this is just a fundamental premise. And returning to the original point, it cannot be in the public interest to allow this pipeline to proceed on the backs of the municipalities that would have to host it. And these submissions have been aimed at suggesting a solution to that problem.

19075. And subject to questions, those are my submissions for Langley.

19076. **THE CHAIRMAN:** Mr. Davies.

19077. **MEMBER DAVIES:** Can you remind me in connected with the Martin Report whether Trans Mountain challenged the report through IRs?

19078. **MS. GILTROW:** To my recollection, they did not. They filed reply evidence, but the reply evidence didn't challenge the substance of the report. It raised this issue about it not taking into account the property tax they already pay and it being speculative costs. But beyond that, that's the answer that we've seen from Trans Mountain.

19079. **MEMBER DAVIES:** So there was no challenging of the report through IRs in your recollection.

19080. **MS. GILTROW:** In my recollection, no. And I can't concede that I would have forgotten about that. But I can check over the lunch hour just to make sure.

19081. **MEMBER DAVIES:** Okay. Thank you.

19082. **THE CHAIRMAN:** With that, we have no further questions at this time for your joint submissions or for the Township of Langley.

19083. We will take a 10 minute break and we will return with the Kwantlen First Nation.

--- Upon recessing at 11:00 a.m./L'audience est suspendue à 11h00
--- Upon resuming at 11:12 a.m./L'audience est reprise à 11h12

19084. **THE CHAIRMAN:** Mr. Dickson, nice to see some face that we've seen already in front of us from the oral traditional evidence in Chilliwack. So on behalf, the Board is ready to proceed to hear the Kwantlen First Nation's oral summary argument.

19085. Mr. Dickson.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE KWANTLEN FIRST NATION:

19086. **MR. DICKSON:** Thank you, Mr. Chairman.

19087. Before I begin, if I may, I have two pages of confidential evidence, evidence that was filed confidentially, that I would like to hand up to you because I don't wish to have it on the screen. And as I say, it has all been filed with you already; this is not new evidence at all. This is two extracts. I have a copy for my friends and a copy for staff, if need be.

19088. **THE CHAIRMAN:** Just give us a second just to ensure that there's -- procedure here.

--- (A short pause/Courte pause)

19089. **THE CHAIRMAN:** Perhaps before we consider seeing it, if Trans Mountain have any objections to -- my understanding would be that if -- depending on Trans Mountain's reaction -- it would only be the Panel and Trans Mountain would have access to see it. It wouldn't be able to anybody else because we've already ruled on its confidentiality.

19090. Am I understanding that correct, Mr. Dickson?

19091. **MR. DICKSON:** That's correct, Mr. Chairman. It has been filed with the Board confidentially. Trans Mountain has it; they did sign an

undertaking. I will share the extract with Trans Mountain's counsel right now and it would be made available to the Board. And obviously I'm doing this because if it weren't filed confidentially, I'd be putting it up on the screen, but that doesn't make any sense.

19092. **THE CHAIRMAN:** Perhaps I'll -- and if Ms. Oleniuk hasn't seen it yet, perhaps I'll give her a chance to look at it and then she can decide how -- her participation.

--- (A short pause/Courte pause)

19093. **THE CHAIRMAN:** Ms. Oleniuk?

19094. **MS. OLENIUK:** Thank you, Chair.

19095. As Mr. Dickson knows, the confidential documents were provided to us in paper so I can't actually confirm if they are the same ones that our office did receive. So if Mr. Dickson can confirm that these are in fact identical to what we received, Trans Mountain has no objection to using these at this time.

19096. **THE CHAIRMAN:** Perhaps I'll allow our Regulatory Officer to speak to Mr. Dickson first just to ensure that we are -- have the correct document.

19097. **MR. DICKSON:** Well, Mr. Chairman, just in reply, let me affirm for the record of course these are true accurate copies of what was filed. The cover page is different obviously.

19098. And what I have put in here are just two pages from a larger document; they're just extracts. And of course if they were not confidential, I would just be showing two extracts from that document up on the screen. So it's just meant to serve that same purpose but be confidential.

19099. **THE CHAIRMAN:** If I am correct, Ms. Oleniuk, if that was acceptable then -- I'm seeing an indication that's fine. Then the Board finds that acceptable as well. So when you come to that in your evidence we will have it in front of us.

19100. **MR. DICKSON:** Thank you, Mr. Chairman, I appreciate that.

19101. So let me begin then. Again, for the record, my name is Tim Dickson.

I'm on for Kwantlen First Nation.

19102. And with me is Tumia Knott, who is a Kwantlen councillor as well as their general legal counsel, and Les Antone who is also a Kwantlen councillor.

19103. And we'd like to begin by thanking the Squamish, Tsleil-Waututh and Musqueam for hosting us on their traditional territory.

19104. So let me give you a big of a roadmap of what I would like to address with you today. I want to start by giving you some background on Kwantlen, and taking you through some of the evidence that we have filed relating to their community, their territory and their title and rights.

19105. And as I do so, I would ask you to keep in mind our position that Kwantlen not only has very strong claims to rights and title through its territory, but also that the evidence placed before you in this proceeding establishes that Kwantlen indeed has certain Aboriginal rights and that it has Aboriginal title over definite tracts of land comprising the pipeline route.

19106. And we say that you must examine that evidence, and if you agree, as we say you ought to, that the evidence makes out those rights and title, then you must make those findings. That is our submission, and I'll be coming to that.

19107. And that's the second broad topic that I wish to address with you today, and that's the legal framework. How do you address evidence of Aboriginal rights and title within the context of this proceeding? And a part of that, a second part of that legal framework, is the duty to consult.

19108. And I want to touch on that issue. I heard some of the debate that you had last Thursday with counsel for Squamish and counsel for the Stó:lō collective, and I would like to add my thoughts to that discussion as well. And I wish to relate them as well to the transition plan that the federal government came out with two days ago.

19109. And my third topic will be the deficiencies in this process, and particularly the inadequacy of the funding provided to Kwantlen First Nation to allow it to participate to a meaningful and sufficient extent.

19110. And then the fourth and last topic relates to the infringement of Kwantlen's rights and title, and the lack of justification over those infringements.

19111. And so that's quite a lot to get through, and so I will launch in.

19112. And again, the first topic relates to Kwantlen, its community, its territory and its rights and title. I'm sure you're broadly familiar with where Kwantlen is situated. And indeed, it's apt that we are following the Township of Langley because that is right in the heart of Kwantlen's territory.

19113. So just to refresh you. Kwantlen's main residential reserve is on McMillan Island in the middle of the Fraser River across from Fort Langley. And if we can bring up, please, Exhibit C198-11-1, PDF page 39, please. That's it.

19114. And this is a map of Kwantlen's reserves, and of course the river there is the Fraser River. And the one on the left is their main residential reserve, and that's right across from Fort Langley. And as is obvious from the placement of their reserves on the Fraser and on the Stave, Kwantlen are people of the Fraser River.

19115. It's been the backbone of their culture since time out of mind, and it's indeed emblematic of their profound relationship with the Fraser River that their main residential reserve is situated in the middle of the river itself.

19116. And of course it is, if you look at the evidence that we've submitted, amply established that fishing, travelling and harvesting other resources all on the Fraser River and its tributaries and the lakes were integral to Kwantlen's pre-contact culture. That can't be controversial at all.

19117. But Kwantlen also depended on far more than just the river, of course. They use wide tracks of land on either side of the Fraser, as seen in their territory map. And if we could bring up the next exhibit, that's C198-11-1, PDF page 41.

19118. This is the map of Kwantlen's territory. And Kwantlen were in fact famed hunters, and they had important uses for the land, of course, that included gathering plants for food and medicine, and engaging in spiritual activities. Those are established and set out on the evidence.

19119. Now, prior to contact and prior to the assertion of sovereignty, the Kwantlen were a large group on the Fraser. They were originally centered at and around New Westminster, including on the Pitt River. And across the Fraser from New Westminster they had an important village, Kikait, where in fact Simon

Fraser visited them in 1808.

19120. But prior to that visit, decades before in roughly the 1770s, Lower Fraser groups -- as you may know -- were hit with a devastating smallpox epidemic. It was actually their first contact with the Europeans that -- that smallpox came up from the south through the American states and visited -- hit them before them before they had ever seen a European. And many lower groups were decimated, and lands were vacated as a result.

19121. And Kwantlen expanded up river, filling the vacuum, amalgamating with smaller groups, taking over lands that were now absent. And the result is that Kwantlen, which began as a large group on the Fraser with a large territory came to own and control and occupy a vast territory on the Lower Fraser.

19122. And as set out in some detail, substantial detail in our evidence, one of the territories Kwantlen came to own was the Salmon River. And that empties into the Fraser River at Fort Langley, right across from McMillan Island. And we can see that at C198-11-3, PDF page 27.

19123. I wonder if we could try and get that to fill the screen, please. I'm sorry, I realize I don't have that laser pointer. Thank you.

19124. So there is Fort Langley, and that's the Salmon River, as you may know. And that river had been owned by a group called the Snokomish. And their territory included Kanaka Creek on the other side, the Salmon River, and then the Nicomekl and Serpentine Rivers all the way down into Mud Bay.

19125. The Snokomish became essentially extinct in the epidemic of the 1770s, and the Kwantlen took over Kanaka Creek and the Salmon River portions of their territory. And the Salmon River became core territory of the Kwantlen. And we see that in map after map, historical maps and present day.

19126. And so if we turn, please, to C198-11-6, PDF, page 12, this is a map completed in 1859 by Lieutenant Mayne and it is an extract of a larger map. It is showing here in this extract McMillan Island. It's probably hard perhaps to read there, but it says, "Indian Village." That's Kwantlen. That's the Salmon River emptying out -- it should actually be up here a little bit. But of course Lieutenant Mayne understands that this is Kwantlen territory and he labels it as such.

19127. If we turn to the next map, C400-8-5, PDF, page 19, this is Augustus

Petermann's map. He was a famous cartographer and he's drawing this up the following year in 1860. And down here we've got the Kwantlen Indians right there, right across the Fraser River, of course, because that's where they were centred at that time.

19128. And then the next map, C198-11-2, PDF, page 19, this is Wilson Duffs's map, obviously a famous anthropologist in British Columbia, showing Kwantlen territory there. Now, this map is criticized -- his analysis is criticized as curtailing Kwantlen's territory -- criticized by other ethnographers, not just by Kwantlen -- because it breaks up and attributes to separate groups territory that actually belongs to Kwantlen. For instance, Wannock is an integral part of Kwantlen. But the core of it is right where the Salmon River is and that is my point just here.

19129. And then that extract that I handed up to you -- this is -- again, these are two pages from a Cultural Heritage Overview Assessment that Kwantlen prepared for the purposes of this proceeding, the only outside expert evidence that it was able to afford in this whole proceeding. And the first page is a hodgepodge map showing the data relating to the pipeline route through their territory.

19130. You can see intensity of use there. And in the middle -- that lobe there is the Salmon River -- we turn over the page, you can see a detail of that area. And the Salmon River is of real importance to the Kwantlen historically and in present day and of course the pipeline route is driving right through it.

19131. **THE CHAIRMAN:** Just to confirm. Give us the exhibit number just so that we know for the record even though I know it is confidential. Or is it on the front? I apologize if it is.

19132. **MR. DICKSON:** I don't have it on the front, Mr. Chairman. And this may be my error -- I'm not aware of the exhibit number. And that's just because it's not filed electronically and if I was notified of an exhibit number then I have lost touch of that. I can if ---

19133. **THE CHAIRMAN:** It's fine. We can -- we will -- Ms. Oleniuk is going to help out the Board.

19134. **MS. OLENIUK:** That's a big expectation you just put on my shoulder, sir. I was thinking perhaps maybe we could just identify the title and the figures that we're looking at for the record. I think that might be helpful.

19135. **THE CHAIRMAN:** That would be fine. Mr. Dickson.

19136. **MR. DICKSON:** Certainly. The title is "A Cultural Heritage Overview Assessment of the Proposed Kinder Morgan Pipeline through Kwantlen Territory". And the two pages that are referred to here comprise pages 6 and 40, and those are Figures 3 and 19, respectively.

19137. **THE CHAIRMAN:** That's perfect. Thank you.

19138. **MR. DICKSON:** Now, we also have -- among the extensive evidence we have on this area in the record, is important historical evidence from 1824 when a scouting party for the Hudson's Bay Company travelled from the Columbia River up to the Fraser River and they were looking to establish a trading post, which of course they ultimately did, it being Fort Langley.

19139. And they got to the Fraser River by going up the Nicomekl River, which I showed you, from Mud Bay northeast, and then portaging across to the Salmon River and down the Salmon River and then into the Fraser. And the party was led by James McMillan, and of course his name became attached to the island where Kwantlen is largely situated.

19140. And the party included a man named John Work whose journal survived. And in it he noted that at the end of the party's portage from the Nicomekl to the Salmon River, some Kwantlen people came and visited them. And they told the party that their people were in detached winter quarters along the Salmon River and that the Fraser River was not far off.

19141. And so we have through that historical document obviously settlement use of the Salmon River in 1824 and it's consistent with the ownership, the control, the occupation, the current evidence of Kwantlen's use and ownership of the Salmon River.

19142. And in our evidence we've identified other areas that show particular intensive Kwantlen occupation along the pipeline route. But given the time limitations, I just wanted to focus on the Salmon River. And I say that it is very clear from the extensive evidence put in the record before you, that Kwantlen regularly and exclusively used and controlled the Salmon River for many decades leading up to 1846. They owned it; it was known to other nations and to settlers as being theirs. And I say it is clear that they have Aboriginal title to the Salmon

River and to the surrounding area. And of course the pipeline route goes right through that.

19143. So that brings me to the second topic I wish to address, which is the legal framework. And essentially the question here is, "What do you do with this evidence? What do you do with the evidence of Aboriginal rights and title for the purposes of this proceeding?"

19144. You know of course that you must make your recommendations within the dictates of the Constitution, including section 35 as the Supreme Court of Canada told you in 1994 in the *AG Quebec* case. But how do you do that?

19145. Well, in my submission, there are three components to the answer I want to put before you. And the first point is that the Board has clearly stated that it does not itself engage in consultation and I don't challenge that proposition. But I do say that you must consider accommodating claimed Aboriginal rights and title.

19146. When the evidence supports *prima facie* claims to Aboriginal rights or title that might be adversely impacted by the project, then you have the duty to specifically consider those rights and the impacts to them and whether and how they need to be accommodated. So that's a relative easy proposition, I would say.

19147. The second point, however, is that when the evidence goes further and establishes on the record the existence of Aboriginal rights or title, then you must make those findings for the purposes of this proceeding. You are a court of record; you have full jurisdiction over matters of fact and law for the purposes of your Act. And so you have the power and you have the responsibility to adjudicate those matters within the bounds of this proceeding.

19148. Where the evidence demonstrates on a balance of probabilities that a First Nation regularly and exclusively used a definite tract of land, for instance, then you must find that title has been made out in this proceeding for the purposes of this proceeding.

19149. Now, it doesn't mean of course that that First Nation now has a declaration of title such as the Supreme Court of Canada made in respect of the *Tsilhqot'in*. Your jurisdiction doesn't run that far. Section 12(2) of your Act gives you:

> *"...full jurisdiction to hear and [decide] all matters, whether of law or of fact..."*

19150. But it expressly states only for the purposes of the NEB Act.

19151. And so the effects of your findings of Aboriginal rights and title would be limited to this project, this proceeding. But of course, it is crucially important to the Kwantlen that you do exercise your jurisdiction and do recognize their titles.

19152. The federal Crown has chosen to rely on this quasi-judicial adversarial proceeding and the Kwantlen have participated in it to the extent possible, given the limitations I'll discuss, by putting in evidence of their title.

19153. And it would be, in my submission, entirely contrary to the Constitution and to your statutory mandate, were you simply to assume that the Salmon River is only subject to a claim of Aboriginal title, when you have evidence before you and you have the statutory mandate to find that that Aboriginal title actually exists there.

19154. Now, let me move to my third point with respect to the legal framework, if I can, and that's that you have the duty to determine, by relying on this proceeding -- oh, sorry -- you have the duty to determine whether the Crown can discharge its duty to consult by relying on this proceeding. And that duty is what might be called a *Rio Tinto* duty, referring to the Supreme Court of Canada decision, of course.

19155. And this is the issue that you were discussing with Squamish and the Stó:lō collective last week.

19156. And I'll turn to that discussion in a moment, but first I just want to acknowledge that of course, the federal Court of Appeal has recently held, in *the Chippewas of the Thames* case, that the Board did not have such a duty in relation to the Line 9B Reversal.

19157. But that was a very different proceeding, because there, the Crown had not stated that it would rely on that proceeding to discharge its duty, and the Crown did not participate in the proceeding and did not tender any evidence of its consultation plan or anything else.

19158. And the Federal Court of Appeal expressly relied on the Crown's non-participation to negate the existence of a *Rio Tinto* duty. That was the whole nub of its decision in that regard.

19159. Well, here in this proceeding, the facts are, of course, are exactly the opposite, and the necessary conclusion I submit to you is -- must also be the opposite.

19160. The Crown has said, in the evidence that it has placed before you, that to the extent possible, it will rely on this process to discharge its duty, and so you need to determine whether it can and whether -- and to what extent.

19161. You are statutorily obliged to make your recommendation to the Crown.

19162. **THE CHAIRMAN**: If you would permit a question, Mr. Dickson?

19163. **MR. DICKSON**: Of course.

19164. **THE CHAIRMAN**: The clock will stop. Ms. Scott.

19165. **MEMBER SCOTT**: Is it relevant to your argument that the Crown has, in fact, identified a process beyond ours for its consultation? I'm trying to understand the implications of our determination that they can or they can't rely on our process when they've already said they're not going to; or are they relying on it to the extent possible, but they're going to go beyond that?

19166. **MR. DICKSON**: That's right, Ms. Scott. They've said that they are going to rely on it to the extent possible, and then they have had a three-month process after; now it is seven months. That's Phase III.

19167. And so there are a number of points that need to be considered in reply to that.

19168. The first is that it is clear and it is obvious that the heavy lifting in assessing this project is meant to be undertaken in this process. The seven-month process that the Crown now has is no substitute at all for the technical assessment going on here. That is -- there are no additional studies, no opportunity for additional studies that have been identified in that process.

19169. We have had years, almost, of assessment before this Board. We have had limited but some mechanisms for asking Trans Mountain questions about its process. There is nothing like that identified yet in Phase III and there's no assurance at all that there will be. There is -- what there is meant to be, it appears, is direct engagement between First Nations and the Crown.

19170. The other point is one that Squamish was raising with you, and it is well-founded and you, Mr. Davies and Ms. Scott, raised questions in reply, and that is the role of conditions. Of course, conditions are a major mechanism that could be used to some degree to accommodate Aboriginal rights and title. And it is you who frames the conditions. The Federal Crown has no ability to frame those conditions and that's set out very clearly in section 54(1).

19171. It is true, I believe, as you raised, Mr. Davies, that under section 53, it is possible for the Federal Crown to ask you to reconsider terms and conditions or your report more generally or some other issue.

19172. But if that's what's being relied upon, if that's what needs to be done to discharge the duty to consult and accommodate, to allow for this process to be sound constitutional basis to deal with Aboriginal rights and title, then you need to say that, and you need to say that this proceeding as it is now is not going to be sufficient, and I'll be coming to the reason why it isn't sufficient.

19173. But my point is, you cannot rely on some speculative possibility in the future that you will be asked to do a subsequent process in which First Nations will have a meaningful opportunity to participate and frame conditions, for instance.

19174. And just to return to the basic point, you are statutorily obliged to make your recommendation to the Crown as to whether this project should be approved, and you are constitutionally obliged to respect section 35.

19175. If this process cannot discharge the Crown's duty to consult, then you need to say that, and you must not recommend approval without that duty being discharged.

19176. Now, it may be that the Crown will believe that its subsequent process can discharge it, but if this process cannot do it, then your recommendation has to be that the project not be approved until the duty to consult is discharged. You cannot recommend that the Crown approve the project unless doing so would

comply with the honour of the Crown as well as fulfil all the other statutory requirements.

19177. So let me turn, if I can, to the deficiencies in this process that we submit to you, render this process unable to discharge their duty to consult. And of course you're aware that intervenors have objected on many grounds to this process and we share those objections.

19178. But the one I wish to focus on is the lack of capacity funding to enable Kwantlen's meaningful participation. And I want to be very upfront about the funding that Kwantlen has received. Like most First Nations, I believe, Kwantlen received some money from Kinder Morgan to do its TLU report, and that's, as I identified earlier, that's the cultural heritage overview assessment.

19179. And some of the funding it received, it was able to get a very, very limited review of the application from an environmental consultant very early on. But none of the funding from Kinder Morgan was directed towards its actual participation in this proceeding.

19180. For this proceeding, Kwantlen received $40,000 from the federal government. Now, in other contexts, that might enable meaningful consultation, but in the context of this proceeding, and this project, it is a sad joke. It really is a sad joke.

19181. It is so inadequate; it almost need not be said how inadequate it is, but I'm not willing to take that risk, so I'm going to give you some context.

19182. And before I do that, I want to say that in this quasi-judicial adversarial proceeding with written, and indeed sworn evidence and final written submissions and formal motions and legal argument and reams of technical studies, it is fantasy to think that intervenors can meaningfully participate without professional expertise. And of course expertise costs money.

19183. So let’s just take reading the application for a moment, the very start to this whole process. Well, that application spanned 15,000 pages of highly technical material. It’s not even possible for me as Kwantlen’s legal counsel to read the application for the amount of funding Kwantlen received. Not even read it. At a low rate of $300 an hour, say. That’s a low rate for a lawyer. It’s a sad state of affairs but that’s true. I would have to read 110 pages of technical material every hour for 133 hours.

19184. And that's just to read the application. But of course that's just the tip of the iceberg of the material. I don't know how many pages have been put on the record, but with Northern Gateway, when the federal government made its decision, it said that it had reviewed 175,000. Comparable proceeding.

19185. And of course in order to participate, Kwantlen doesn't just have to read the material; it needs to bring motions and make information requests and give evidence and write submissions and deliver them orally. And all of that takes time and time for which there is no funding.

19186. Take the information requests, for instance. We decided we couldn't do the second round because to ask information requests you have to be able to spend time pouring through the application, which we couldn't afford. And in any event, in the first round Kinder Morgan would say in response to our information requests, "Well, go see the answer that we gave to someone else." And then we go over there to see that answer and it is vague or it is a non-response.

19187. And to ask the second information requests in a way that would be at all meaningful, you not only have to know the application; you also have to know what was asked and answered in the first round.

19188. And so even if information requests were an effective process, which they are not, we simply couldn't afford to use them. Not the second round, anyway.

19189. And we also couldn't afford to retain environmental consultants to advise us and to give us expert evidence.

19190. Given the enormous funding restraints, we had to focus our efforts on putting in evidence of Kwantlen's rights and title and completely forgo a technical assessment.

19191. We were unable to do an assessment of the impacts on Kwantlen's rights and title from an expert technical assessment perspective at all. We couldn't commission a technical assessment of the impacts on the Salmon River, for instance, their Aboriginal title lands, some of the few that are in Crown hands. We couldn't assess the extent of the oiling to McMillan Island if there's a spill into the river up from them. The impacts to those constitutionally protected

interests have just not been assessed from a technical standard.

19192. And those are just two specific examples. But as a broad statement, Kwantlen has not had the kind of technical expertise that would allow it to tell you from that perspective and for you to assess what the impacts on their rights and title will be.

19193. And we know that Kwantlen is not the only First Nation that is centrally impacted by this project, of course. We know that providing all of those First Nations with adequate funding to allow them to meaningfully participate would add up. But it wouldn't add up to much in the context of this project.

19194. The Board's funding for intervenors -- not just First Nations with constitutionally protected rights, but all intervenors -- was capped at $3 million. To put that in perspective, Trans Mountain budgeted $5.4 billion to construct this project. It's more like $7 billion in today's dollars, but let's stick with the original budget. The 3 million in participant funding is -- I want to get this right -- 0.0005 percent of that construction budget.

19195. Trans Mountain says that the federal government will received $10.2 billion in increased tax receipts over the first 20 years of the pipeline's operation. And yet, the Crown capped the participant funding at $3 million and the Board gave only 40,000 of that to Kwantlen with the result that we could not meaningfully participate.

19196. How can this be honourable? The Crown admits that its duty to consult Kwantlen is at the highest end. And of course it's relying on this process to discharge its duty to the extent possible. How can it be honourable to expect Kwantlen to spend its own very limited funding to be here so that the Crown can try to fulfil its duty to consult Kwantlen?

19197. Kwantlen has huge needs, huge economic needs: housing, education, health, social development. And it has a very small budget. It has spent what it can to be here to try to protect itself from a project it sees as highly threatening. But this situation cannot be honourable. If the Crown has a constitutional duty to consult, then it must have a duty to provide adequate funding to allow that First Nation to meaningfully participate in the process.

19198. So we say that this process has been fatally defective, and we have tried to raise this concern again and again. But we have got nowhere and now

we're at the end of the process. And we say we have not been afforded a meaningful opportunity to be here and to speak to assess the project's impacts, to speak to them, to help to frame conditions. We have the right to do that and we've been denied it.

19199. So let me turn to the last topic, the fourth and final topic, and that is the inability for the infringements of Kwantlen's rights and title to be justified.

19200. If you find, as I say you must, that Kwantlen has Aboriginal title to the Salmon River, then for it to be constitutional for the pipeline to cross through those lands, Kwantlen must either give its consent or that trespass on its title lands must be justified under the *Tsilhqot'in* test.

19201. And I wanted to state very clearly on the record that Kwantlen does not give its consent. Kwantlen opposes this project. It regards this project as posing very serious threats to its land and its cultural continuity, and it sees no significant benefits either to Kwantlen specifically or to British Columbians on balance.

19202. We've set out Kwantlen's concerns at length in our written submissions and so I'm going to leave those with you. And I want to turn just to three reasons why I say that the infringements to the rights and title cannot be justified through this process.

19203. And I want to focus on the test for title, for justifying infringements to title. And there, of course, that was set out in *Tsilhqot'in*. And the test of course, as I'm sure you know, requires a number of things. First it requires due consultation and accommodation. Second, it requires a compelling and substantial objective. And three, it requires compliance with the Crown's fiduciary duty. And there's a number of components to that.

19204. One is that the Crown's objective be respectful of future generations. And the second broadly is proportionality and there are three sub-components to that. And the important one that I wish to address is proportionality of impacts, that the expected benefits not be outweighed by the adverse impacts on the Aboriginal interest.

19205. And then another requirement for justification of infringement of Aboriginal title was set out in *Delgamuukw* and that's compensation because of course Aboriginal title is an economic interest, interest in the land itself and to the

economic benefits of it.

19206. So there's a lot that could be said here on the lack of justification. But I am just going to focus on three points given the time.

19207. And the first point should be obvious, which is that there has not been adequate consultation and accommodation here at all for the reasons I've addressed with you. At this stage, you cannot find justification of the infringement. Discharging the duty to consult and accommodate is an absolute requirement for justification of infringement of title. And that has not been discharged yet. And I say it's not going to be able to if what is being relied on is this process plus seven months of Stage 3.

19208. Second, there's no compensation here. There are some vague promises by Trans Mountain of employment and contracting opportunities -- they're general -- open to Aboriginal peoples, but nothing that Kwantlen is actually in position to take advantage of, nothing that is meaningful for Kwantlen.

19209. The pipeline will run over Kwantlen's title lands. It will run through other parts of its territory over which it has strong claims to title. It will put the Fraser and Kwantlen's culture and its future, its cultural continuity, at risk.

19210. If this thing gets approved, Trans Mountain will make billions. The federal Crown will made billions. But Kwantlen will get nothing except for the risk. How is that honourable? How can that be right?

19211. Indeed, in order to win support of some First Nations, Trans Mountain sets up a Hobson's choice: "Support our project and we'll give you some millions; oppose our project and you get nothing and the project's going to go through anyway." How can the Crown let that happen? It is economic coercion pure and simple.

19212. My third point relates to the proportionality of impact. In order for that step to be made out, again the benefits to the broader community of the infringement of the Aboriginal interest must, in my submission, be clear and substantial. If you're going to go through Aboriginal title lands, if you're going to despoil it, if you're going to use it without First Nations consent, for that to be justified the benefits better be very obvious and very large.

19213. And here that is utterly lacking. Every municipality either opposes or

takes no position. But the majority of them strongly oppose this project. Citizens groups oppose, environmental groups oppose, most First Nations oppose. Even the Province of British Columbia opposes. The only groups that support, as far as I can see, are Alberta, for obvious reasons; industry groups, for obvious reasons; and those First Nations who have signed Benefit Agreements with Trans Mountain.

19214. And given the Hobson's choice I've just spoken of that Trans Mountain presents to First Nations, it is completely understandable why many First Nations would feel that they need to take the money so that they have something to offset against the risks of this project. But you cannot put any real stock in that in terms of support for this project.

19215. So for all of these reasons, the infringements of Kwantlen's rights and title cannot be justified. This project does not have Kwantlen's consent. It does not have the broader community's consent. It is not consistent with the honour of the Crown. It's not in the public interest. And you must, in my submission, recommend against approval.

19216. And unless there are any questions, those are my submissions.

--- (Applause/Applaudissements)

19217. **THE CHAIRMAN:** We will take a very -- a five minute short recess to consider a question.

--- Upon recessing at 12:00 p.m./L'audience est suspendue à 12h00
--- Upon resuming at 12:05 p.m./L'audience est reprise à 12h05

19218. **THE CHAIRMAN:** Thank you, Mr. Dickson. Ms. Scott has a question about the Panel.

19219. **MEMBER SCOTT:** I'm still not clear about the Panel's obligation to assess Crown title if I accept that we have the obligation for the sake of argument.

19220. **MR. DICKSON:** Crown consultation?

19221. **MEMBER SCOTT:** Sorry. If we accept that you have -- yeah, assessed Crown consultation. Your argument has been that we have a duty to assess Crown consultation. And you've posited that you have established enough

on our record to, for our purposes, establish Aboriginal title. And flowing from the establishment of Aboriginal title is the Crown's obligation to justify.

19222. Now, we've heard from the Crown in this process and other First Nations frankly, that there are things happening in terms of Crown consultation that are not on our record. So I wonder about the reliability of us making or drawing any conclusions at this stage about what the level of accommodation is since we are aware nobody -- and indeed it's been confirmed in some cases -- that there are processes taking place outside ours.

19223. So what is the reliability of -- or are we relying on a good record when we assess the title for our purposes, as you describe it, and prescribe accommodations on the basis of that? Because we're just not aware of what else is going on.

19224. **MR. DICKSON:** Yes, thank you for the question, Ms. Scott.

19225. So let me tell you two things, two main points in reply to that. The first is you should focus on this proceeding. The Crown has told you, again right from the get-go, that it's going to rely on this proceeding. Now, it is true that there is going to be, according to its plan, consultation after. So this isn't going to be the sum total of all of the consultation on the ---

19226. **MEMBER SCOTT:** Yes, but other First Nations have described, I believe on our record that consultations outside our processes are happening now. I don't know about particular -- whether or not you've had them or not; I've heard you say that you haven't or that this First Nation hasn't and I have no reason to challenge that. But my point is, we don't have a complete record about either the consultation or even the response that the Crown may have about the reliability of the information that you've put in front of us about title.

19227. **MR. DICKSON:** Okay. Well, those are two different issues, I believe, that last point that you have made about the reliability of evidence of title.

19228. **MEMBER SCOTT:** No, they go to the same point, and that is the reliability of our record to make the kind of assessment that you want. And it's the existence of consultation outside our process that I want to know -- how that affects any judgements we might come to about whether or not the duty has been discharged. And the secondly recognizing that we have one side of an argument about title; we don't have two sides.

19229. For the sake of argument maybe we'll just set that aside because I can anticipate your answer is going to be, "Well, that's not my problem and you should just assume that it's been established for the purposes of this proceeding because the Crown had the opportunity to do that." But they didn't. So let's just set that aside.

19230. Go back to the question of the consultation and the fact that our record may not be complete.

19231. **MR. DICKSON:** Well, I know you wish me to set that point about establishing title aside, but if I can address it quickly it's only 10 after 12:00 ---

19232. **MEMBER SCOTT:** I can't stop you.

19233. **MR. DICKSON:** Yeah, thank you. And we have a little time.

19234. So let me address that because here Kwantlen is with evidence of its Aboriginal title, coming forward, putting it before you, a court of record, full jurisdiction the Crown -- the Parliament has given you that jurisdiction. Crown has said it's going to rely on this process. Crown has participated in this process. It is entirely open to them to see our evidence all the way through. What are we to do?

19235. Why should Kwantlen be relegated to the status of simply claiming title when it can prove it? If we go and want to start a court challenge, they're going to come along and say, "Hey, that's a collateral attack."

19236. You're now, like, in the *Sam* case, you're now challenging -- your main aim is to aside the Certificate of Public Convenience and Necessity. That's a collateral attack through your title claim. You should have raised that in the National Energy Board. Well, here we are. We're doing it.

19237. If they want to rely on this quasi-judicial proceeding then they don't get to stick their heads in the sand and simply not respond to the evidence.

19238. So that's my response to that.

19239. **MEMBER SCOTT:** And I think it is as I thought it would be.

19240. **MR. DICKSON:** Indeed. But I want that on the record because this is a very important issue for First Nations. So much of this work now is being done through regulatory processes like these, and the Crown is relying on so-called neutral independent processes such as these.

19241. And they cannot shunt us into mere consultation land when we have the evidence to prove that we have title. That can't be right.

19242. **MEMBER SCOTT:** All right. Now if you could focus on ---

19243. **MR. DICKSON:** Yes.

19244. **MEMBER SCOTT:** --- the question I asked about the reliability of our record and determinations we make on the basis of it when we're aware that the record itself may not be complete.

19245. **MR. DICKSON:** Right. Well, what I'm asking of you is to assess the adequacy of this process in terms of discharging. You know that they're going to rely on it. You don't know the exact extent to which they're going to do so. I understand that basis for your question.

19246. But you know that they're going to rely on it and you know it is a "has to be". It has to be the most substantial element of that process because, again, this is where the heavy lifting is done and because again this is where the conditions are framed.

19247. And so you need to look at this process and say, "Does this discharge?" And discharge to the extent of what this process is intended to be. You know, it's not direct consultation with the Crown. I obviously understand that.

19248. But if there is a fundamental defect in this process, as I say there clearly is on the record -- the inability of First Nations to meaningfully participate in it because of a lack of funding -- then you need to say that. That is right before you. You have that. You don't need -- there's no gap in the evidence on that point.

19249. And if you have questions, if you're troubled by the notion that, well, maybe the Crown was consulting in a very vigorous way all along, well, ask them

and ask us, and let's get that out there. And the answer will be no. But if you're troubled by that, you have the power to ask them and you have the duty to figure this out. You do. You have the power and the duty to answer questions of law.

19250. You told Burnaby that their by-law is invalid, inapplicable on constitutional grounds. You can sort out this question as to whether the duty to consult is going to be relied upon, discharged.

--- (Applause/Applaudissements)

19251. **MEMBER SCOTT:** Thank you, Mr. Dickson.

19252. **THE CHAIRMAN:** With that, the Board thank you for your participation today. And recognize Ms. Knott and Mr. Antone for their attendance today as well.

19253. With that. we will recess until one o'clock, sorry 1:30, when we will hear from the City of Abbotsford, followed by the Regional District of Fraser-Fort George and Village of Valemount, and concluding today with Mr. Taplay.

19254. With that we're adjourned to 1:30.

--- Upon recessing at 12:15 p.m./L'audience est suspendue à 12h15
--- Upon resuming at 1:30 p.m./L'audience est reprise à 13h30

19255. **THE CHAIRMAN:** Good afternoon. And welcome to the last afternoon of the session here in Burnaby.

19256. And again, we acknowledge being on the traditional land of the Coast Salish people.

19257. My name is David Hamilton; I am the Chair of the Panel. And with me to my left is Ms. Alison Scott and to my right Mr. Phil Davies, and together we are the Panel assessing the Trans Mountain application.

19258. Ms. Giltrow, I think you're quite well aware of our timing system and everything else that we have in front of us.

19259. This afternoon we will hear first from the City of Abbotsford, then

from the Regional District of Fraser-Fort George and the Village of Valemount, and we will conclude with Mr. Calvin Taplay this afternoon.

19260. With that, Ms. Giltrow, we are prepared to hear the City of Abbotsford's oral summary argument.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE CITY OF ABBOTSFORD:

19261. **MS. GILTROW:** Thank you very much, Chair Hamilton.

19262. With me from the City of Abbotsford I have Fire Chief Don Beer. And Chief Beer's evidence is a matter of record before the Panel and before the Board, and is something that I will be addressing extensively in my submissions today on behalf of the City of Abbotsford.

19263. I'll start -- actually, just before I start with Abbotsford, can I just pick on closing off the loop on a question that we addressed this morning with respect to -- Panel Member Davies, you asked whether there had been information requests put to -- sorry ---

19264. **THE CHAIRMAN:** We'll allow you to turn off the clock so that you can have that extra time to do justice to the City of Abbotsford and the Chief.

19265. **MS. GILTROW:** I appreciate that. I had budgeted a few seconds for this, but I thank you.

19266. The question about whether information requests have been put to the Martin Report, the answer is -- I confirm it's no. There weren't any information requests put by Trans Mountain.

19267. And then I had recounted to you the nature of their reply evidence, and I do stand by it. I hit on the high points. There was one other point they said in reply, which was that the Martin Report failed to account for land compensation payments that were made to the cities for where the pipeline passes through.

19268. And I'll just say briefly that those land compensation payments will apply to fee simple lands but they don't apply to utilities, to public utility right of ways, so they don't -- those compensation payments don't apply to the stretches of land that are at issue when we're talking to you about the increased

infrastructure costs which happen in utility and highway corridors.

19269. So that's all I need to say about that. Thank you.

19270. So now, with respect to the City of Abbotsford, let me just orient you in terms of the City of Abbotsford. It's a city with a population of 139,000 people with a -- and it's growing. It's got a projected of 200,000 by the year 2035.

19271. It's the largest municipality by area in the Lower Mainland. It's 370 square kilometres. And it is located within the Central Fraser Valley and it has extensive agricultural areas, but then of course quite dense urban areas in it too. And the pipeline crosses through both.

19272. The footprint of the Trans Mountain Expansion Project with the Abbotsford city limits includes the construction of 30 kilometres of pipeline within the existing pipeline right of way, adding a 28,000 cubic metre storage tank on the Sumas Mountain. There's already the storage tanks on Sumas Mountain, and this would add.

19273. And then the upgrading the pump facilities at McDermott Road. So Abbotsford has the pipeline but it of course is in the situation of having the associated storage and pump facilities within its jurisdiction too.

19274. And I'll just say for the record, as I did with the Township of Langley after my initial submissions on behalf of the Fraser Valley Regional District, that Abbotsford's written submissions have been made jointly with other municipalities.

19275. Each municipality determined independently that it had to intervene in this process and acted essentially independently as intervenors, but in the final analysis decided to put in a joint written argument for efficiency and because of the recognition of many common issues between local governments, but also that there are particular stories and issues for each local government to tell.

19276. And as I said this morning, the joint position of those local government -- so that's Abbotsford, Township of Langley, Fraser Valley Regional District, Regional District of Fraser-Fort George, along with the Village of Valemount is that the local governments submit that it would not be in the public interest to allow the Trans Mountain pipeline to be developed and operated at the expense of the local communities that would host the pipeline. And the project

cannot be found to be in the public interest without conditions that ensure that no additional costs, or burden, or unnecessary risk is placed upon the local governments by the Trans Mountain pipeline.

19277. And I'll be speaking in particular about the issue of risk and emergency management and emergency response over the next 36 minutes.

19278. Abbotsford has a number of key concerns about the Trans Mountain pipeline. Of course first and foremost, what you'll hear about from me today is the emergency response and planning that's evidenced in the application.

19279. So the sub points there are the local emergency response capabilities, and Abbotsford's concerns stem from the historical failures to respond adequately to spills in Abbotsford by Trans Mountain; the lack of emergency response integration with local first responders; the cost impacts of the strain placed on local emergency responders during construction of the pipeline and pipeline related emergencies; equipment contact; the location of the OSCAR units, the content of those units; and very importantly, first responder access to and training to use the contents of those units. And also, the location placement and number of remote mainline block valves that enable shut off of portions of the pipeline to reduce the impact of the spill.

19280. I anticipate that last point I'll be dealing with more in my subsequent submissions on behalf of Fraser-Fort George Regional District.

19281. Trans Mountain -- or excuse me, Abbotsford very clearly shares the concerns and adopts the submissions that I made this morning on behalf of the Township of Langley with respect to disruption to city infrastructure, road crossings, and the additional cost that is borne by the city because of that. And I won't repeat those submissions, but they are very much shared by the City of Abbotsford. And of course the evidence that supports those submissions was jointly submitted by Abbotsford and Langley, along with others.

19282. The City is also concerned -- and I won't say more than this about it because it's dealt with in our written application -- or excuse me, our written summation. But the City is very concerned that there has to be an appropriate communication system in place during construction.

19283. The City anticipates that there is going to be a lot of calls. There's going to be a significant disruption to areas of the community that are heavily

used by the public, and the City is very concerned that it not be burdened with having to field those calls without a strong communication plan in place. And it should essentially be for Trans Mountain to put in place a communication plan that absorbs the burden of those complaints, inquiries, all of those questions that are going to be -- wouldn't arise but for the Trans Mountain Expansion Project, that Trans Mountain must have a plan in place to deal with that so that it doesn't burden city resources.

19284. So overall, Abbotsford's fundamental position is that there should be no cost implications to the City and no unnecessary risk borne by the City. The City should not be subsidizing the company's pipelines or its facilities, but as submitted this morning, the evidence is that it does substantially do so.

19285. And also, the company should be required to enter into crossing agreements with the city as a clear and enforceable condition of approval so that responsibilities of the party are clear, certain and known in advance. And that all harkens back to my submissions this morning that dealt with that in more detail on behalf of the Township of Langley, and I refer also back to the submissions of the City of Surrey on that point.

19286. With that, I want to move to the question of emergency management and response.

19287. Effective emergency response capacity capability and plans are fundamental to any approval of the proposed Trans Mountain Expansion Project. Trans Mountain has said that it will be relying on local government and local agency first response organizations for prompt and effective emergency response. I refer, for example, to an information request response to the Township of Langley, Exhibit A3X6UZ, where Trans Mountain says:

> *"In the event of an emergency, [Trans Mountain will be relying] on municipal first responders and municipal employees to enter into Unified Command, close roads, redirect traffic, order and manage evacuations, manage public transit and transportation-related infrastructure."*

19288. Emergency response plans and documents must be submitted to the NEB for approval. The Proponent cannot self-regulate with respect to emergency response.

19289. Emergency response plans and documents must be developed by the Proponent with demonstrable and meaningful input from local government and emergency response organizations so that the true local conditions and capacity are developed and accounted for in the plans.

19290. And that's consistent with my submissions this morning with respect to independent regulatory oversight that must evaluate the quality of final detailed plans to ensure that they meet the requirements of safety, environmental protection, and public interest, and that that oversight and that deliberation and determination must be informed by the local expertise and knowledge that comes from emergency first responders in the communities that would be affected.

19291. Also, all specialized training and equipment necessary for adequate spill response must be provided by the Proponent to local government and emergency response organizations and it must be done at the Proponent's expense.

19292. Now, I pause to note that that last requirement, to meet public safety, environmental protection goals, that will apply where we're talking about a local government that's in a position to take on that additional role, to take on the training, learn how to use the equipment stashes and the materials that it would need to have access to effectively respond to emergency.

19293. As I've said, that's not going to be the case for all communities. Remote and rural communities, communities that operate under volunteer fire departments or the stretches or pipeline that just have no fire protection -- obviously, that's not going to be a situation where funding local response capacity is going to suffice because the capacity is just not there. But this requirement does apply in a situation like a dense urban centre like Abbotsford that does have existing emergency response capacity and bodies in place, and that has several times already responded to spills from Trans Mountain facilities.

19294. These emergency responders must have full access to the equipment that's necessary to effectively respond to emergencies. It's going to be inevitable that they will be among the first on scene. So the training and equipment availability needs to reflect that. And that has to be a condition of any approval allowing this project to proceed.

19295. So the consecutive spills in Abbotsford is an example of the Proponent's failures in response. Fire Chief Don Beer's affidavit that is

submitted before the Panel in this proceeding, attests to what has happened in the past in Abbotsford, and it illuminates why the project cannot proceed based on any vague wording or stated intentions or promises of the Proponent. It has to be subject to rigorous regulatory oversight, clear and enforceable wording, that is determined independently of the Proponent and is enforceable.

19296. And here's why. In 2005 there was a spill -- what's referred to as the Ward Road Spill -- in which Terasen Pipeline staff were dispatched to odour complaints from local residents on more than once occasion. However, Trans Mountain staff were unable to locate the source of the odour. It was not until Abbotsford Fire Rescue Services were subsequently dispatched to the site that they discovered oil product in the creek which was traced back to a fracture in the existing pipeline.

19297. Trans Mountain thereupon activated an Emergency Response Centre in which the Abbotsford Fire Rescue Service participated to respond to the spill. There was a gap of at least a week between the spill starting, the initial odour complaints, and then Abbotsford Fire and Rescue Service ultimately being the ones who were able to detect the source of the spill. Trans Mountain didn't detect the spill, couldn't find its source in that period of a week. And this is something the province has taken issue with in its final arguments.

19298. So in this incident, Trans Mountain relied upon the local first responders, relied upon Abbotsford Fire and Rescue Service first to detect the source of the oil spill. Then it was Abbotsford Fire and Rescue Service that initially contained the pollutant. And then they were also relied upon to participate in the Emergency Operation Centre.

19299. So leaving aside the impact of the spill, the extent of the spill, all of that, the point of this submission is to look at what happened next. So we had a negative event; we had a spill. And this illustrates the role that Abbotsford Fire Rescue Service had to play in identifying, containing, and responding to the spill.

19300. As a result of that, it was agreed between Abbotsford Fire Rescue Service and Trans Mountain that work needed to be done, that the two needed to be able to work cooperatively together to plan to better respond to the next spill. Trans Mountain and Abbotsford Fire and Rescue Service worked as partners to improve the spill response capacity so that the same sort of delay in detection and containment didn't happen.

19301. And I just want to point out here, this is a situation where the parties agreed that something more needed to be done. Many of my submissions this morning about needing clear, enforceable conditions were to fend off the eventuality of when the parties disagree about what's required. But this is a case where the parties agreed.

19302. So together as partners additional command training and tabletop exercises were planned for and established by Kinder Morgan. And the City of Abbotsford participated as a partner during these training events.

19303. However, despite these coordinated command training and tabletop exercises, there weren't any full-bore exercises, but there were tabletop exercises and discussions.

19304. The next time that there was a spill from Kinder Morgan infrastructure within the City of Abbotsford, virtually none of the protocols for communication and emergency response that had been developed between the City and Kinder Morgan were actually carried out by Kinder Morgan employees.

19305. On January 24th, 2012, oil was accidentally released from Tank 121 at the Sumas Tank Farm. Kinder Morgan advised the City that approximately 500 barrels of oil or approximately 80,000 litres was released that day. However, that advice didn't come at that time; that was subsequently communicated to the City. It wasn't communicated during any of the initial emergency response time when information as crucial.

19306. So even though just several months prior to the 2012 Sumas Tank Farm release -- even though just a few months prior tabletop emergency preparedness exercises had been conducted by Kinder Morgan and the City of Abbotsford, it didn't play out. Just a very few short months later none of that mattered. All of the training and the tabletop exercises for emergency response did not lead to proper notification of the City of Abbotsford as was required to work as partners in emergency response.

19307. The release was detected by residents in the area, who called 9-1-1 based on the odour, and Abbotsford Fire and Rescue Service was the first to respond.

19308. Kinder Morgan's Operations and Emergency Response staff did not share immediate and accurate information with the City's emergency responders

despite the fact that in the tabletop exercises the City had participated in, a requirement for such notification had been established as a protocol for emergency response. Instead, City staff were forced to rely on media information to know what was happening at the tank farm.

19309. The only reliable basic information about the incident was received several hours into the incident through the City of Abbotsford making contact with the B.C. Ministry of Environment.

19310. The City of Abbotsford Emergency Management and Emergency Services were first provided information about the release through Kinder Morgan's manager for external relations at the same time as information was shared with the new media.

19311. Fire Chief Beer's observation was that the Kinder Morgan staff who were provided the training in tabletop exercises that they had been working with, were not the same staff that were relied on with respect to the on-the-ground emergency response with the Tank 121 release.

19312. A related observation based on his experience was that the City of Abbotsford was not notified of the incident by Kinder Morgan despite the communication protocols established through the tabletop exercises. This was particularly problematic because of the many complaints the city from residents who were reporting serious concerns and illnesses, complaints of headaches, nausea, breathing problems and even chest pain arising from the strong petroleum odors.

19313. **THE CHAIRMAN:** I wonder, Ms. Giltrow, if I could ask through you or who could advise, probably from Chief Beer, on the existing pipeline -- and I've read the incidents that you've had throughout a number of years with Trans Mountain and the tank farm and various other parts of it -- was the City -- did the City have available, and was able to review, the existing emergency plans that Trans Mountain have?

19314. Did you have -- receive a copy? Do you have a copy and has any exercises occurred with the existing pipeline, not the new one?

19315. **MS. GILTROW:** I have some information. So the City has had the emergency management plans. They have been updated. They have -- they had the plans in 2012 and the emergency response exercises had been done based on

those. But there has been there emergency response training together based upon the updated plans.

19316. And the plans are held in an unredacted form. They -- nothing's blacked out but they're provided on a confidential understanding; so they're received in hardcopy and they're held under that understanding.

19317. **THE CHAIRMAN:** Thank you for that. I'm just trying to build the existing -- and what the experiences have been and what -- what you are proposing on behalf of the City that should be going forward. Thank you.

19318. **MS. GILTROW:** So on that, on the going forward, that incident and the learning that happened from the initial incident in 2005 -- then the agreed need to improve, the tabletop exercises and the discussions, the thought that there had been some improvement, and then the revelation that really things had not improved as everybody had thought by 2012 -- reveals that one of the things that's essential to proper emergency management and response is going to have to be a very robust preparedness regime and training regime that includes full-bore response exercises with key emergency response organizations.

19319. Tabletop exercises are just not sufficient to close off the vagaries of what happens on the ground. And this is supported -- this is certainly the position of Abbotsford.

19320. It's nice to see people hugging behind me. Sorry.

19321. This is the position of Abbotsford but the evidence that we have put on the record in support of really -- absolutely the need for compelled full-bore responses -- or full-bore preparation for emergency response comes from the Township of Langley and the evidence of Ginger Sherlock who is the Emergency Program Coordinator for the Township of Langley.

19322. And Ms. Sherlock paints a helpful distinction between what discussion-based exercises, which are also known as tabletop exercises, versus operation-based exercises which are full-scale exercises.

19323. And I -- I'm just going to read through the point form from her evidence because I think it's helpful for the Panel because it get to -- I think it further illustrates the point that specific wording and detail matter and it can't be left to the Proponent to self-police whether it should be a discussion-based or an

operation-based exercise to prepare for proper emergency management, because there is a world of difference between to the two and discussion-based exercises did not meet the needs of the City of Abbotsford in the transition from the 2005 spill to the 2012 spill.

19324. So Ms. Sherlock explains:

> *"Discussion-based exercises are focused on theorizing concepts of operations, talking through a scenario and the steps taken by the different personnel positions and agencies engaged, and building functional and inter-agency awareness and understanding."*

19325. The key points of discussion-based exercises include that:

> *"...the focus is on discussion between the players; stress level is low; there are few time constraints during the exercise; the equipment is used"* -- excuse me -- *"no equipment is used except for pens papers, papers, maps and plans; they are inexpensive to develop and implement; and they're usually the first within a series of exercises conducted."*

19326. So they're just a starting point; they're not sufficient.

> *"Operation-based exercises (also known as full-scale exercises) test the theories developed and reviewed through discussion-based exercises, by validating the training..."*

19327. And I pause on that term, "by validating the training", because that's exactly what she fears observation was, was that training under a discussion-based model with certain staff, like management -- as Ms. Sherlock attests, in her experience, it's often management staff at the discussion exercises. Well, you need to validate the training.

19328. And by that, it means do the people who are actually on the ground, who are going to be in a position to execute the prompt responses that are needed for safe emergency management -- you have to validate the training. You have to make sure that those people are trained and there is no gap in understanding between management, internally at Trans Mountain management, and the people on the ground, and no gap in understating between the people on the ground, for

instance, at the Sumas Tank Farm and the emergency response organization that's local to it, like Abbottsford Fire and Rescue Service.

19329. And it also validates the plans and procedures through -- how personnel will be deployed and then how equipment and other resources will be used.

19330. The goal and focus is to have all the players -- they have to display for one another. They're on -- they are put to the test of displaying for one another a level of competency at specific tasks that really matter in the urgency of the moment. And that is evaluated against established standards and metrics. So there's an objective assessment that flows from the operation-based exercises.

19331. So the key points of operation-based exercises include:

> *"They are used to validate training, resources, plans and procedures; they are conducted within real time restrictions, which creates higher stress; they often identify gaps or weaknesses in emergency response plans; they identify best practices (what is working well); they provide an opportunity for emergency response personnel to interact with other agencies with which they will need to interact in an emergency; they improve the performance and competency of individuals; they require more time, resources and funds than discussion-based exercises; and they follow on discussion-based exercises."*

19332. So they are a necessary follow-up to discussion-based exercises.

19333. Another issue -- and this was identified by District of West Vancouver with respect to marine response but it's also very much a reality for Abbotsford, and that is so, in Chief Beer's experience. It's very important that first responders know what materials they are having to respond to.

19334. So varying materials can be flowing through the pipeline at different times. And it's not necessarily the case that first responders need to in an instant always know what's passing through their community when but they have to have a functional understanding of what the variants are of the various liquids that they could be responding to in the case of a rupture in an emergency.

19335. And they need to have a general sense of what they need to be prepared for. They need to be absolutely trained with respect to the each of the varieties of chemical or petroleum or what have you that's flowing through the pipeline, but they also need to know relatively, "What should we tend to expect and what might be more rare but we have to be prepared for?" They have a general sense of what they have to be expected to work with when they're responding to a chemical or petroleum spill.

19336. So the position of the municipalities is founded on Abbottsford's experience and also draw upon Ms. Sherlock's evidence for Langley. A comprehensive emergency response exercise program includes the progression of both discussion-based exercises and operation-based exercises to establish an agency's capability through validated concepts, tested functions and staged operational activities.

19337. Discussion-based exercises are relatively inexpensive to develop and implement, whereas operation-based exercises require more time. To do this properly will be a draw upon both Trans Mountain, who should be required to pay for municipal time involved in developing operation-based exercises and carrying them through.

19338. It's going to be a tremendous burden on the municipalities too. Even if their time is paid for, which in the municipalities' submission, it absolutely must be on the model that applies for municipalities generally, that when they are called upon by private residents or developers to engage in activities that go outside the ordinary scope for which they budget, for which they build their municipal budget, those private entities are sent an invoice for the -- municipalities can be available.

19339. They have staff and expertise in varying contexts and there's evidence on the record before you from the Township of Langley that sort of explains how this works. But they -- municipalities can be available to supply staff and personnel to extraordinary occurrences, but that's not something that's budgeted for and the typical practice is, when it's a private entity that's requiring this extraordinary time from city staff and personnel, that they get invoiced.

19340. And so the local governments are proposing no different model here. So on the one hand, it's necessary that there be far more robust emergency response planning and training, and that be done with local governments, but also that local governments should not be out of pocket for the expense that's going to

necessarily be required in relation to that.

19341. **THE CHAIRMAN**: And forgive me if I'm going too deep here, and is -- in that arrangement where a municipality can invoice something that is extraordinary or -- I don't know, the right quite word. Is there a criteria, a standard set for that by each municipality of what falls into that that you can invoice or is it -- what's it based on, that ability to invoice somebody under what criteria?

19342. **MS. GILTROW**: For a detailed response I'll refer you to the evidence of the Township of Langley on that, so that will probably be the most helpful place to understand that. But it's -- essentially, it will be determined internally, but it'll likely be fairly common between municipalities. And it's -- there are the common municipal services et cetera, et cetera, that are annual budget line items.

19343. And then there are the matters that only occur when, for instance, a large development is occurring in a particular area and the construction of it requires traffic control mechanisms and they can either hire externally or they can draw upon the city's traffic control -- personnel who are trained in traffic control. But that will get charged to the developer. So that's the sort of general example of that.

19344. **THE CHAIRMAN**: Thank you.

19345. **MS. GILTROW**: And in my submissions about the need for operational exercises and the reason for that being that that's what drills down. That's what gets you down to the level of detail that you need to know in advance of an emergency happening to know that you'll be in a position to respond as safely as possible to an emergency, recognizing that once a rupture has happened and once we're in this situation, harm has been done and it can't be 100 percent avoided.

19346. But to get emergency response personnel into the best position possible, these things absolutely have to be worked out in advance, and operational exercises is a key factor to that, and doing it with local government first responders is a very key factor to that.

19347. But by contrast, the Province of British Columbia -- I don’t -- I won't ask you to go to their final argument. I'll read to you though, from paragraph 80

of their final argument. They point out that that is a very different model than what Trans Mountain is proposing.

19348. The Province says at paragraph 80:

> *"What the evidence on the record does show, however, is a general lack of preparedness. Many of the detailed plans that form part of an effective emergency response plan not only remain unprepared as of the time of writing, but will, Trans Mountain tells us, be left to be formulated at the time of an incident."*

19349. And then quoting from Trans Mountain, response to British Columbia information request; so now I'm quoting Trans Mountain's response:

> *"Additional documentation referred to in the emergency response plans, such as: communications plans, security plans, initial health and safety plans, health and safety plans, refuelling plans, lodging and food plans, medical plans, et cetera, are documents that are produced at the time of an incident as part of the overall incident action plan."*

19350. The Province takes fundamental exception to this model of emergency response and says it's insufficient, and that's consistent with the position the local governments are taking before you today.

19351. These plans need to be worked out in advance and furthermore, tabletop or discussion-based exercises are not going to be sufficient to do it. Operation-based exercises that train not only Trans Mountain staff but local first responders is going to be necessary to do it, and it must be done before this project can safely proceed.

19352. With respect to particular scenarios that are lacking in terms of assessing risk and then also being in a position to assess how best to respond to emergencies, the City of Abbotsford submits that the Board must at least require that there be a credible worst-case release at Sumas Terminal and McDermott Pump Station done as a scenario, and include a fire tank scenario at the Sumas Terminal.

19353. And that's particularly in light of the previous emergency response

failures by Kinder Morgan in the City's jurisdiction. These scenarios haven't been done, but they're critical to understanding the risk, but then also how response will effectively be managed and affected in those scenarios.

19354. The Fraser Valley -- this is just going back to -- I talked about that critical landslide area up near Popkum in the Fraser Valley this morning, so I'll just add here that the Fraser Valley Regional District submits that Condition 136 must at least include a full-bore rupture response exercise into the Fraser River between Hope and Popkum as a result of land slip.

19355. And FVRD submits in the alternative that a full-bore rupture exercise south of the Coquihalla summit to test the region's capability should be conducted, and because that's a real concern about the absence of response capacity in those areas, and yet the very sensitive water bodies that would be there to receive any product of a rupture.

19356. And just in a general sense -- I mean, I've just made some submissions about some scenarios that really must be run and some full-bore rupture response exercises that have to happen to create a much better sense of understanding and preparedness along the line, but as a general statement, there needs to be more robust emergency response training along the line at all.

19357. So there obviously aren't going to be emergency response exercises done at every point along the pipeline, but where key points are chosen, neighbouring municipal staff should be invited to those exercises and invited to observe and trained in conjunction. This -- we can't have a situation where we have some tremendously trained staff in some areas and then not in others, just because of where the ruptures happen to have been done. This has to be a robust preparedness plan that serves the whole line, if it is to proceed in any way.

19358. So as I've said, the Board has, at this stage in its draft conditions, left it to Trans Mountain to determine for itself what and whether operation-based exercises will be done, and Condition 119 doesn’t make specific requirements with respect to full-scale operation exercises, but the local governments submit that that's not a sufficient level of independent regulatory oversight and leaves the real risk of inadequate emergency response.

19359. Another point about specifics that's really important, is local governments and response agencies require full notice of incident command and response capacity. And this is an issue Abbotsford's really been pursuing through

this proceeding, where it was obviously an issue when it came to the Sumas Tank Farm release about what -- the staff that were actually on the ground and what they were actually trained to do.

19360. Abbotsford's been trying to understand -- and through information requests has asked but has not received -- a clear operational structure that shows which of Trans Mountain's employees that are currently stationed within the jurisdiction or that would be called upon within the jurisdiction, have unified command training and what positions in the unified command structure they can take up.

19361. This is something they essentially need to know if they're going to be working with Trans Mountain in partnership and emergency response. It's also critical that local governments have input into the unified command structure to ensure that local governments' concerns, needs and requirements are appropriately considered an acted upon.

19362. And that's consistent with the submissions I've been making to you all day, that in the final evaluation of these plans to determine whether they are safe enough to let the project proceed at all, that has to take into account local government participation and information to evaluate the ultimate adequacy of those plans.

19363. I've mentioned to you there's this issue of the OSCAR unit that I understand has now been brought to Abbotsford formally. Abbotsford was sitting there with its existing pipeline, pump station and tank farm, and the nearest oil spill recovery and containment unit -- there was one in Hope and one in Burnaby. There was nothing in Abbotsford. And that's been a problem that Abbotsford has identified for some time.

19364. I think post close of evidence, but nonetheless it's relevant, an OSCAR unit has been moved into Abbotsford. However, Abbotsford -- the fire department doesn't yet have access to it, nor training on how to use it. So it's a start but it doesn't get us to where we need to be to have Abbotsford emergency personnel in a position to respond to a rupture.

19365. And Abbotsford points to a good working relationship that it has with industry, and that's with the CP Rail. They have access 24 hours a day, seven days a week to the CP Rail emergency response trailer for any emergency within the city. So Abbotsford can use that material to respond to any emergency in the

city, and they know how to use it. And it's an example of an effective partnership between the municipality and industry that works, and that at the very least needs to be somewhere that -- something that's in place for future emergency response with Trans Mountain.

19366. **THE CHAIRMAN:** Ms. Giltrow, on that example, and I was drawn to that example on page 65 of your evidence. With CP Rail and their arrangement, as you say a good working relationship, did they provide training or did the staff at the fire department provide training themselves? Or how was that accomplished in that relationship?

19367. **MS. GILTROW:** So yes, CP brought in an outside expert from the United States who built the trailer and then provided training to Abbotsford staff over eight sessions so that they didn't have to work overtime. So it was woven in so as not to be too great a resource drain on the fire and rescue service staff. And then they've come back for a refresher as well. So that's all been done by CP.

19368. **THE CHAIRMAN:** Thank you.

19369. **MS. GILTROW:** And this next point harkens back to the issue of you really have to recognize that you're dealing with a huge variety of communities and emergency response capacity along the line.

19370. So currently Condition 119 requires Trans Mountain to provide an account of its emergency response capacity, but the local governments submit that it also has to provide an assessment of local and regional emergency responder capacity, especially if there's going to be any assumption on Trans Mountain's part that it would be able to rely upon local response capacity.

19371. **THE CHAIRMAN:** Just recognizing you have five minutes.

19372. **MS. GILTROW:** And this sort of universal response capacity has to be satisfactory before the project could safely proceed.

19373. Just on the subject of the costs that would be borne by local governments to properly train and be in a position to properly respond to emergencies, as I've said, it must be a condition of approval that local governments and response organizations are included in comprehensive emergency preparedness and training exercises. But at the same time, these organizations must be compensated for the additional draw on resources that such

training and exercises will cost.

19374. The costs to local governments and emergency first responders to participate in ongoing training during operations was not considered by Trans Mountain in its application. What it said was, and I'm quoting here from Trans Mountain in its application:

> *"Effects of the project on emergency, protective and social services during the operations phase under normal operations were considered for inclusion in the assessment, but were scoped out due to the understanding that Trans Mountain's current emergency response regime will not change or will not need to change to accommodate the expanded operating system."* (As read)

19375. In the local governments' submission, it fundamentally does need to change, and that's what our evidence has pointed at and that's what these submissions have been aimed at. And also, that change needs to take into account the costs that will be borne by local governments to effect that change.

19376. I just need a moment because I've actually covered several of these points so I don't want to repeat myself.

19377. Oh, and a final -- the final point, which certainly is set out in more detail in our written argument. But on the question of compensation, it also is an important position of all of the local governments in the joint submission that conditions must ensure that full compensation to local governments is made for any ongoing spill-related costs. So that is one sentence that encapsulates a lot of necessary steps.

19378. There needs to be effective baseline identification of existing conditions. There needs to be a way of tracking those additional costs, and that's including ongoing costs. As the Province of British Columbia pointed out, it could take -- this is from paragraph 21 of the Province of B.C.'s submissions.

19379. They point out that the Ward Road remediation and reclamation has just been completed. So that's a 2005 spill. The Province points out that Trans Mountain concedes the effects of pipeline spills could last for decades, and that groundwater contamination in the event of a spill could span over two decades.

19380. So the ongoing costs of not only emergency response but dealing with a spill that are incurred by municipality or local government those need to be compensated for fully.

19381. And subject to questions, those are my submissions.

--- (Applause/Applaudissements)

19382. **THE CHAIRMAN:** Mr. Davies has a question.

19383. **MEMBER DAVIES:** You mentioned in your remarks that when it comes to other private industries or organizations that require special services that they're invoiced for that. We explored a little bit about what criteria might be applied and whatnot.

19384. A follow-up question on that that I have is, do some of those organization, if they present a special risk that requires the city's emergency response first responders to staff up or standby for, you know, in case there's going to be an acute risk, is that type of work, type of fee part of that typical invoicing that other organizations have, a standby fee of sorts?

--- (A short pause/Courte pause)

19385. **MS. GILTROW:** Thank you for allowing the time.

19386. So what I can report is that for the City of Abbotsford anyway -- and this will be a common structure I think under the *Community Charter* in BC -- but there is a bylaw that sets out fees and charges for extraordinary events. And the example that Chief Beer helpfully gave was, for instance, like pyrotechnics related to movies, move production. So there is something extraordinary and it needs on-site emergency services personnel to be on the ready and they're charged for that.

19387. However, there is also a provision where in retrospect it can be determined that extraordinary costs had to be incurred. For instance, a barn fire where an excavator needs to be brought it to properly deal with the fire. That's an extraordinary cost that goes beyond what the normal level of service is provided. And then that can be invoiced, that can be retrospectively invoiced.

19388. **MEMBER DAVIES:** The two examples that you provided are

transitory risks, if you will, that come for a period of time and then dissipate. And obviously the movie production is going to wrap up and some point and leave town.

19389. Would the answer be any different for a risk that wasn't transitory, that was a risk such as the one which you've articulated is presented by Trans Mountain's operations? Would there be -- again, I'm exploring here; I'm not inviting any position. I'm just wondering whether or not under the current bylaws there's any opportunity for the City of Abbotsford to charge a stand-by fee for the extraordinary level of service you allege is required in order to be ready for a potential incident at any time?

19390. **MS. GILTROW:** I have a three-part answer to that. But one of the parts requires me to just speak with Don Beer just quickly if I could. Thank you.

19391. Thank you. So Chief Beer pointed out that if there was a particular event related to the pipeline such as the switching out of a valve or something that's, again, a transient incident that could pose a high extraordinary risk, that would be one scenario. Then our understanding of the bylaws -- it doesn't provide for the long-term constant readiness that would be called upon the Fire and Rescue Service to be ready for the spill of whatever liquids are coming through the pipeline. So that's sort of the first fact-based answer.

19392. Second, though, that's a bylaw and it would be a bylaw under provincial legislation that would be purporting to apply to Trans Mountain's federally regulated undertaking. So it's not a foregone conclusion that even if the bylaw did provide for billing for that constant extraordinary level of service they had to be on their ready for, that it would constitutionally applicable.

19393. And third, that model, that constant presence, the City having to deal with the constant presence of the pipeline and it adding to the expense of the City, is much more in the model of what we were talking about this morning with respect to infrastructure, right? So it is an ongoing expense that is added to the operations of the City for the life of the pipeline.

19394. And so in that sense, the submission is that there should be a compensatory model to compensate for the added costs to properly train and be ready for that. It's on exactly the same basis that we've submitted there should be a compensation model to deal with the costs that are added to just dealing with their infrastructure in the city because of the presence of the pipeline.

19395. **MEMBER DAVIES:** Thank you very much.

19396. **THE CHAIRMAN:** With that, we thank you, Chief Beer and Ms. Giltrow on behalf of the City of Abbotsford.

19397. We will give you two minutes to change or drive to the next -- bring up the next municipalities, which will be the Regional District of Fraser-Fort George and the Village of Valemount.

--- (A short pause/Courte pause)

19398. **THE CHAIRMAN:** Ms. Giltrow, we're happy to receive your next presentation on behalf of the Regional District of Fraser-Fort George and the Village of Valemount.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR REGIONAL DISTRICT OF FRASER-FORT GEORGE AND VILLAGE OF VALEMOUNT:

19399. **MS. GILTROW:** Thank you. Sorry. I had all that time and I -- thank you.

19400. So I'll just say very briefly for the record what I've said before, which is the Village of Valemount and Fraser-Fort George Regional District have made their final arguments, their written final arguments, jointly with the municipalities of the Township of Langley, Cities of Abbotsford and Fraser Valley Regional District.

19401. Each local government determined independently that it needed to intervene in this process, and each has participated independently as an intervenor but recognizing commonality of issues have submitted joint submissions while focusing also at the same time on particular issues that are of particular concern to the communities.

19402. The Village of Valemount and Regional District of Fraser-Fort George -- I'll orient you to them. Valemount is situated between the Rocky, Monashee, and Cariboo Mountains in the North Thompson Valley region of eastern B.C. The village is near Mount Robson Provincial Park and surrounded by numerous outdoor recreation and wilderness areas. The population of Valemount is approximately 1,065 residents, approximately 1,065 -- there might be 65 and a

half by now -- and its economy is based on logging and tourism.

19403. The Regional District of Fraser-Fort George consists of the City of Prince George, District of Mackenzie, Villages of McBride and Valemount, and seven electoral areas. And it contains an area of over 51,000 kilometres. And I spoke to you earlier this morning just orienting you to the governance model of regional districts and how one of their core services is to make sure that the many, many residents in British Columbia and remote areas ensure sufficient governance and services through local government.

19404. The Trans Mountain Pipeline will add approximately 60 kilometres of pipeline within the regional district, and it will cross just west of the Village of Valemount boundaries and through Electoral Area H in the Regional District of Fraser-Fort George.

19405. Key concerns of Fraser-Fort George and Valemount: one is the impact of the influx of 500 to 800 temporary workers right next to the village, particularly with respect to the management of solid waste due to the village's Solid Waste Transfer Station being at maximum capacity, but also the socio-economic impacts of having a boom and bust scenario like that. This will practically double, depending. It'll either increase by 50 percent or double the population of the Village of Valemount.

19406. And that has numerous socio-economic effects, including, not least, impacts on local housing. And when Valemount speaks about this, it speaks about this with the recent experience of the 2009 Looping Project that happened up in that area. And they directly experienced an increase in the cost of housing, local residents being pushed out and then a sudden drop in vacancy, people in some cases moving back. But this is a very real and practical concern that is not yet addressed.

19407. They are also very concerned -- and I will speak about this in this presentation -- with the location and placement of a number of the remote mainline block valves to enable shutoff of portions of the pipeline to reduce the impact of a spill. And then on the impact of well water quality and the lack of sufficient monitoring criteria to enable these communities to assess the impacts from the expansion project.

19408. It should be noted that fundamentally important to the Village of Valemount is its tourist industry. And that rests upon its location and just the

beautiful natural landscape. But the cleanliness of that landscape, the health of the ecology, that's fundamental to the economic well-being of Valemount. So the concern about the placement of block valves is key to that and also the concern about the lack of sufficient monitoring for impacts in remote areas.

19409. One of the issues that I first want to mention is the aquifer. The aquifer at Valemount is next to the oil landfill itself. And those two objects, the aquifer and the old landfill, are existing right now in a very fine balance. And Valemount is very concerned that the construction activities alone, let alone rupture -- but the construction activities alone could disrupt that balance.

19410. So they're concerned that the proximity of construction to the old landfill and their aquifer, puts them in a precarious position and puts them at risk. And they're concerned that this risk hasn't been sufficiently identified nor that significant mitigation measures have been identified for that.

19411. And so quite simply they want to have an articulated stake in determining how to manage that. And they want to ensure that the Board will have a regulatory oversight role over the final plan for how to deal with that very fine balance that they're currently living with and the potential impacts on it.

19412. And I've said to you earlier -- I'm moving on now to the point of emergency response -- that these communities want the Board to note very clearly that there must be no expectation of local emergency response capacity in this area. There is none.

19413. The Valemount Fire Department is a volunteer fire department. It would need outside resources. But it shouldn't be assumed that outside resources itself would solve this problem. A volunteer fire department can't be assumed to be in a position to be willing to take on the burden of spill response preparation let alone have the capacity to do it with the number of people required, et cetera, et cetera.

19414. So the position is do not assume that there is any spill response capacity coming out of Valemount. And then there just simply isn't outside of Valemount where the corridor lies. So it's not just a matter of it being volunteer fire department people who are serving it; it's just that there isn't any. So any assessment of spill response capacity must be done with those stark facts in mind.

19415. These two communities have been concerned about the location of

valves for some time and so too Langley and Abbotsford have been very concerned about this as well. And I've put the submissions about valves off until today but I will -- the communities have been concerned and they've repeatedly articulated their concerns and none are satisfied that their concerns have been met so far in this process.

19416. But I will turn to the submissions of the Province of British Columbia because they quite thoroughly address the issue of valves.

19417. At paragraph 12 of the submissions of the Province of British Columbia, the final argument, this is under their heading "Spill prevention through pipeline design". And they note that Trans Mountain has acknowledged that pipeline design is a primary tool in spill prevention. They say that:

> *"Trans Mountain has adopted a risk-based pipeline design approach. On numerous occasions, the evidence given by Trans Mountain refers to this approach as an 'industry-leading, world-class design approach.' Risk-based design, Trans Mountain states, aims to identify potential risks and to define and adopt mitigation measures so as to both reduce the likelihood of a failure and mitigate its consequences. One of the principal methods of mitigating the consequences of a failure is 'the optimization of valve placement and design.'"*

19418. The Province goes on to say:

> *"However, despite its stated commitment to the use of industry-leading, world-class pipeline design practices, Trans Mountain has, without adequate justification, declined to implement measures to limit the maximum possible volume of oil that would flow from the new pipeline in the event of a loss of containment. When asked by the province whether it would commit to installing isolation valves so as to limit maximum outflow to 2,000 cubic metres, Trans Mountain states that it would not citing, 'the practical limitations with respect to the siting of valves, such as the presence of rivers, steep ravines, avalanche slopes, accessibility, landowner constraints, and practical feasibility of bringing power into a valve site.'"*

19419. The Province says:

> *"No specific evidence is offered to substantiate the assertion that setting a threshold outflow volume is impractical."*

19420. The Province goes on to note that:

> *"This ignores the fact that the Proponent of another heavy oil pipeline [the Enbridge Pipeline] [...] has committed to installing valves to limit potential outflow [...] to 2,000 cubic metres."*

19421. The Province goes on to say that:

> *"Trans Mountain describes the identification of valve placement as an iterative process, involving a 'sensitivity analysis' which considers 'the marginal benefit on outflow volume among other factors in the decision-making process that is incorporated into the finalization of valve placements.' However..."*

19422. The Province says:

> *"...the analysis conducted by Trans Mountain -- including the identification and weighting of various considerations and their balancing against each other -- has not been made available to the Board, intervenors, and the public."*

19423. And that goes fundamentally to the point that I've been making throughout the day, is that if a determination as essential as how many and where you will place valves so as to be able to determine just how much product you're risking releasing in an incident -- if that is left entirely to Trans Mountain without input from the local communities that would be affected that know the terrain, that know where it might be practical, impractical and of great value to put valves, you know, closer together in certain circumstances -- and if it's not available to the Board to review and it's not available to others to review, it's fundamentally a lack of transparency that can't give, for instance, communities like Valemount, that will be living right next to the location of the pipeline that they already say will have insufficient monitoring of releases from the pipeline -- it doesn't give them any assurance that their safety or environmental protection or the public interest are being assured.

19424. So this is another submission to put in the barrel in terms of our overall submission that these plans and fundamental mitigation measures like the location of valves, have to be determined with input from local expertise, local communities, and it has to be determined by an independent regulatory body with oversight that takes into account those submissions in determining whether it's sufficient. It cannot be left to the Proponent to decide.

19425. The Province says:

> *"Without any further information regarding the decision-making process employed by Trans Mountain in identifying valve [placement], the province is not satisfied that Trans Mountain's decision not to see a threshold outflow volume for Line 2 is reasonable."*

19426. So what the Province points out is now:

> *"As a result, maximum spill volumes under the current design remain as high as 4,600 m^3. The risk posed by a project capable of releasing 4,600,000 litres of diluted bitumen into the environment is significant, and the Province would have expected Trans Mountain to offer, in its application and in responses to information requests, a more fulsome description of the reasons why, as it alleges, implementing measures that further limit potential spill volumes is not practically feasible. In short, Trans Mountain has not shown that, in this regard, it has adopted world-class design methods for the Project."*

19427. So bringing this home to the local community of Valemount that has all along been concerned about valve placement and limiting the harm that could happen from a rupture, Valemount can't help but point to senior government who itself is not satisfied with the assertions made and the lack of commitments made that would protect the interests of the community.

19428. And the submission, at the risk of repeating myself, is that it cannot be assumed that this will proceed safely on the current assertions made by the Proponent or on the current draft wording, and there must be a full assessment of a safe spill response plan and valve placement before the project can safely proceed. Otherwise, communities like Valemount stand to be significantly

impacted without really understanding why, really understanding what considerations went into refusing to limit spill volumes to what the province has sought.

19429. Leak detection is another issue. And Valemount has raised this because of the many kilometres of remote pipeline that -- and Fraser Fort-George has raised this as well of course because of the remote pipeline locations there. *"The ability to promptly detect a release from the pipeline is the first element of an effective spill response system"*, says the Province.

> *"However, the evidence on the record does not demonstrate an overall ability to consistently detect a release from the pipeline in a timely manner. Each leak detection method Trans Mountain refers to in the evidence is discussed in turn below."*

19430. And this is the Province.

19431. So one of the issues is in-line inspections. With respect to small, or what's identified as smaller leaks so 100 to 200 cubic metres of oil, *"Trans Mountain's response"* -- the Province points out -- *"to any concerns in that regard is that a spill of 100 to 200 cubic metres of oil would likely be detected by means other than in-line inspection which is only to happen every five years.*"

19432. And they say that,

> *"...regular aerial photos, personnel working on the pipeline, or members of the public would be quick to identify such a sizeable spill"*.

19433. The Regional District and Valemount point out that that's just not going to be okay for remote locations that don't have members of the public or consistent presence there. And there is no commitment to regular aerial patrols at this point that would meet the concerns of these communities.

19434. The Province points out that automated leak detection systems are not sufficient for the Province's purposes. And Valemount Fraser-Fort George are in a position of having to point to that and say that the concerns they have raised all along about leak detection haven't yet been answered by the Proponent and do need to be answered for their concerns to be taken care of.

19435. So there's another issue that Valemount and Fraser Fort-George Regional District have raised, which is the question of when will shutdowns happen. And the Province, again the Province comments on this in a helpful way.

19436. So:

> *"Trans Mountain claims that it would shut down the pipeline immediately if a potential leak were identified or suspected, and that a report of a release would result in the immediate shutdown of pumps."*

19437. But as the Province points out:

> *"The evidence does not bear out those statements. Following the 2005 Ward Road release, the pipeline, then operated by Terasen, was not shut down for an entire week following the first odour complaint, despite repeated complaints."*
>
> *"The 2012 Tank 121 release at the Sumas Tank Farm further demonstrates Trans Mountain's slow response to an indication of loss of containment. Although in that particular instance no shutdown was required, since the tank was, at the time, inactive and isolated, Trans Mountain did not react to an alarm at the Control Centre for over three hours, and the release was not confirmed until more than four hours after the alarm was triggered."*

19438. So the Province points out that,

> *"Trans Mountain's response to previous incidents indicates that action would not be taken until confirmation of a leak, which, in some cases, is a lengthy process."*

19439. So Valemount, Fraser-Fort George, as well as Langley and Abbottsford, through this have taken the position that there needs to be a condition in the certificate that imposes a rule -- I mean, for this proceed safely -- that imposes a rule directing that the control centre operator perform a controlled shutdown of a pipeline if a leak cannot be ruled out within a prescribed time period after initial indication that a leak may have occurred.

19440. These communities are very concerned that the standard not be that the presence of the leak has to be confirmed, but rather that within an established period of time that needs to be established through a process that relies upon expertise, the shutdown must occur if a leak cannot be ruled out.

19441. So those are some of the key concerns that my clients have raised with me with respect to valve placement, leak detection and pipeline shutdown, which are of great concerns to them both in terms of Valemount's proximity to the pipeline but then of course they're very concerned about the kilometres of remote pipeline that travel through their jurisdiction as well.

19442. Finally, I want to say a few words about the worker camp.

19443. This goes to something I mentioned earlier which is a concern about the monitoring of socio-economic conditions and a plan, having an effective plan in place to identify them, and mitigate them and compensate for them. And the Fraser Valley Regional District is quite concerned about the absence of any baseline conditions to monitor socio-economic impacts whether positive or negative.

19444. Valemount, as I've said, is very concerned about the influx of workers right next door to it that could increase by half or double the population over a temporary period of time, and then of course, as I've said, it's a boom-bust scenario that's a real concern.

19445. And the local governments have submitted generally -- this is at paragraph 90 of my argument -- that Trans Mountain is seeking to rely on local government services to support and mitigate the extra-ordinary disruption its construction activities will have on communities without acknowledging its proper responsibility for the added cost burden this will put on those communities.

19446. For example, in response to the Village of Valemount and Regional District of Fraser-Fort George's information request No. 1 regarding its concerns about the impacts of a TMEP construction camp next to the small community of Valemount, Trans Mountain responded without supporting evidence, detail or analysis saying:

> *"'As a citizen and tax payer within a municipality, province and country, individuals would receive the benefits of the economic stimulus and tax revenues generated by the project*

which will help to either offset personal taxes, or provide those jurisdictions with additional revenues for the provision of public services and infrastructure'."

19447. Now with respect, it's submitted that doesn't go any distance towards answering the concern that was raised by the Village of Valemount. The Village of Valemount is in a very particular circumstance being a village of such a small size and being faced with a population influx of such a magnitude proportionate to its existing size. That is an extraordinary circumstance.

19448. The assertions about the benefits of taxation and economic stimulus with which Trans Mountain responded fundamentally ignore the very practical and real reality that Valemount was raising.

19449. Trans Mountain also stated that it will rely on local government policing services to provide security during construction and operations of the Trans Mountain Expansion Project, and has said it will retain private security services to supplement, assist and work with municipal policing.

19450. Police departments are already committed resources that consume a significant portion of municipal budgets. Trans Mountain must at the very least consult with local police in developing its security programs and establish a compensation plan for additional policing costs incurred by local governments as a result of the Trans Mountain Expansion Project.

19451. Now in terms of -- that's one example, and the boom-bust -- I mean, I'm speaking about it in generalities. The problem is there are many aspects to the socio-economic impacts of the sort of boom-bust scenario that that kind of worker camp would have next to Valemount. And those haven't been identified in the application.

19452. They will be experienced in a very real way by the Village of Valemount. In not being identified in the application, they are certainly not currently provided for in any mitigation plan, or any socio-economic plan.

19453. And so with respect to, for instance, the socio-economic effects mitigation plan, that is, I believe, Condition 17, that's an example of where they're -- the Board must, if in submitting a condition, whether or not it's recommending approval, the condition for socio-economic impact monitoring with respect to the Village of Valemount, must absolutely require exchange between Trans Mountain

and the Village of Valemount to identify what are the indicators that we'll be looking at to see what the impacts are, identifying anticipated impacts to the very extent possible and putting in mitigation measures upfront; for instance, worker housing if necessary, identifying together, collaboratively how to mitigate something that is just going to be a firestorm for this community.

19454. And then again, going back to my model that I've been submitting all day, if that plan is not one that is agreed upon by the municipality and Trans Mountain, then there must be independent regulatory oversight that takes into account the evidence that the village can put before the regulator to say, "No, no, no, look, these are serious consequences that we're going to be facing. We have suggested very practical mitigation measures and compensation measures to try to deal with them, that we're not in agreement with the Proponent."

19455. It cannot be the model that the Proponent has to merely speak with the Village of Valemount but then submit a plan for filing that isn't subject to subsequent regulatory oversight that's informed by the evidence of the Village of Valemount. That has to happen to properly close the loop on what will be a very significant impact for that village.

19456. I've said already that the Village of Valemount in particular -- its economic heart is so reliant upon tourism, so not only in terms of an environmental perspective, but in terms of a socio-economic perspective, we have to be very careful in protecting what is a vibrant and beautiful community, but that is facing very significant potential impacts from this project. And any conditions that are issued must be clear, have their input and be enforceable to try to protect their interests.

19457. I'll just say in closing, summarizing somewhat the submissions that have woven through the day with respect to the need to -- if there are going to be conditions issued, if there is going to be an approval, it is fundamentally in the joint local governments' submission that it cannot be in the public interest to issue conditions that leave it to the Proponent to determine whether goals are met, and what the measures must be, and what the mitigation -- the measures of monitoring, and what the mitigation measures must be, and what compensation will be in place, and what emergency management plans must be in place.

19458. These must be clearly determined before the project can conceivably safely proceed and they must be determined through a robust process that takes into account local government information, expertise and knowledge and has an

independent evaluation of that information and comes up with clear, enforceable conditions that will be enforced. There must also be the capacity in place subsequently to enforce those conditions.

19459. It cannot be in the public interest to proceed under circumstances any different than that. It cannot be in the public interest to allow the project to proceed based upon any vague wording about the goals to be achieved by the plans that would be required of the Proponent or to leave it to the Proponent merely to consult with key agencies.

19460. I have, throughout today, spoken about concerns where Trans Mountain's consultation has perhaps satisfied Trans Mountain's targets or ends, but has not satisfied the local governments, who have been the other side of that consultation.

19461. I mentioned to you the assertion by Trans Mountain that the Lower Fraser Valley air quality committee concerns have been addressed and that they had declined to consult further, when that was very clearly not the case, and what they were doing was raising very serious methodological issues.

19462. I raised with you the province's concern that Trans Mountain initially reported to the province that its response to the Ward Road spill in Abbotsford had been prompt and adequate, where the evidence was, it was very much not prompt on Trans Mountain's part, that the spill was left undetected by Trans Mountain for over -- up to or over a week, despite numerous complaints, and was ultimately only solved by the Abbotsford emergency responders.

19463. But however, it wasn’t until it was pressed that Trans Mountain had to concede to the province that it was something other than a success story.

19464. There has been the failure to model key issues and risks that are of fundamental concern to local governments. The spill response scenario in an aquifer, in a drinking water aquifer, that hasn't been modelled and that is just so fundamentally important to these communities.

19465. The failure to model the human health effects of ground-level ozone, when that is an existing problem in the Fraser Valley airshed, one that is well-recognized and well-documented to have serious health impacts, one that we know will be added to by the project through its operations, not through spill, but through its operations, and yet the human health impacts haven't been modelled.

19466. The failure to model key air contaminants has been a real concern for Fraser Valley Regional District, and as the province points out, the refusal to disclose full copies of documents that are essential to emergency response assessment, and the refusal to do so on the basis of vague concerns about security that, in my submissions, haven't been -- haven't satisfied anyone.

19467. And further, with respect to documents that exist in an unredacted form in a public forum in the United States, those are emergency response documents that are of fundamental importance to understanding the risks and the capacity for emergency response, and the Province has said it's not in a position to assess those.

19468. We heard from Chief Beer today that Abbotsford holds updated response -- current response plans in an updated form, but hasn't had any training based on updated management plans.

19469. But this refusal to disclose such key plans is a further example of the concern that these local governments have been speaking about all day, is at key times, lack of transparency or improperly reporting consultation as having been sufficient when it just hasn't been. It hasn't been a true exchange of information between experts with a common goal of truly alleviating the burdens and risks borne by the local residents.

19470. So that is all in aid of the submission that if there are going to be conditions that seek to ensure the safety of this process, this project, they have to be very clear and they have to be subject to independent regulation and they have to be informed by the expertise and knowledge of local governments as well as other key agencies.

19471. And subject to questions, those are my submissions.

--- (Applause/Applaudissements)

--- (A short pause/Courte pause)

19472. **THE CHAIRMAN**: Ms. Giltrow, on behalf of the Board I'd like to thank you for your submissions from the various municipalities and districts you have throughout today.

19473. And with that, we have no further questions. We'll take a short break till 10 after 3:00 and then we'll hear from Mr. Calvin Taplay.

--- Upon recessing at 2:58 p.m./L'audience est suspendue à 14h58
--- Upon resuming at 3:11 p.m./L'audience est reprise à 15:11

19474. **THE CHAIRMAN**: The Board thanks you, Mr. Taplay, for attending today and I think the staff have briefed you on our timing system.

19475. So the Board is there -- here to hear your oral summary argument. Please proceed.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR MR. CALVIN TAPLAY:

19476. **MR. TAPLAY**: Hi. So I'd like to thank the Members of the Board, Trans Mountain, the intervenors and the representatives that are in this hearing space. I'd like to thank the public, which has gathered outside this hotel.

19477. I'd like to acknowledge the presence of the Member of Parliament for the riding of Burnaby, North Seymour, Terry Beech. Mr. Beech's presence today is that of an observer. He is not endorsing this particular presentation.

19478. I have talked to intervenors in this space and outside of this space and they've indicated that they support Mr. Beech's presence at this hearing and are strongly supportive of his attendance today, just to get a sense of the way that the process works.

19479. So what I'm going to do right now is I'm going to turn to Exhibit B290-6, which is Figure 5-1, the "Pipeline Overview". And so today I'm going to basically be describing the delivery line of the Trans Mountain Pipeline proposal, the alternative route, which is going from the Burnaby Terminal to Westridge Terminal. And so I will be focussing mainly on that.

19480. So the first thing I'd like to do today is to acknowledge that I live on the unceded territories of the Coast Salish people. These peoples include the Tsleil-Waututh, Musqueam, and Squamish Nations. The nations have been the traditional stewards of the land and waters around the Burrard Inlet for thousands of years.

19481. Indigenous and non-Indigenous have stewardship responsibilities for this and future generations of Canadians. This stewardship responsibility is in the national and public interests.

19482. As I said, I'll be largely focusing on the alternative route from the Burnaby tank farm to the Westridge.

19483. So as an intervenor, I'm directly affected because I live approximately 50 metres from the proposed pipeline alternative route.

19484. I'd like to have the next exhibit which is Exhibit B290-19, Option 3, "Overland Route".

19485. So I'm interested in the social and environmental impacts that have been neglected in this proposal as it relates to the density of population in North Burnaby.

19486. So my first experience with Kinder Morgan and Trans Mountain occurred in the year 2007 when there was an oil spill in the neighbourhood of Westridge. So basically that took place at 12:30 that day. I came home from work hearing all the media reports about this. So I decided to take my toddler, at that time, down to see the sight of this and it was just amazing to see trees covered in diluted bitumen, houses, the roadway going down, the backhoe, et cetera. So that inspired me, or influenced me a great deal coming up to today.

19487. And so what happened is in 2012, the spring, Trans Mountain made the decision that they wanted to expand the system and so I became very concerned at that point having seen that spill. So what I did was I attended a roundtable that took place at St. Timothy Anglican Church. And it involved some of the following speakers.

19488. It involved the City of Burnaby Mayor, Derek Corrigan; Mike Davis from Kinder Morgan Canada; the Chevron refinery had a representative there; Carleen Thomas was there on behalf of Tsleil-Waututh; and the member of parliament for Burnaby-Douglas, Kennedy Stewart.

19489. I want to go on to Exhibit B290-6, Figure 5-15, "Side Slope Visible on North Side of Burnaby Mountain Parkway".

19490. Okay. So this image shows the Burnaby Mountain Parkway that was constructed in the -- constructed in the 1990s to create access to the new Simon Fraser University which came out -- or was constructed in 1965.

19491. Now, Trans Mountain likes to discuss this project in relation to the year 1953 and how it has operated this pipeline safely since then.

19492. Trans Mountain is open -- sorry, owned by Kinder Morgan Canada, which is a subsidiary of Kinder Morgan Inc. based in Houston, Texas.

19493. The original Trans Mountain pipeline was approved in December 1951 after a three-day hearing. First Nations were not consulted during that hearing process. The original pipeline was built to transport conventional crude oil from Alberta to British Columbia.

19494. The new proposal transitions away from conventional crude oil and is now mainly diluted bitumen.

19495. In 1951, British Columbia had previously depended on its oil supply from California. Also in 1951, we did not see the emergence of environmental concerns which started to emerge in the 1960s. So the era has changed from dramatically from the 1950s to the present day; concerns are different. And I'll be touching about that as we progress.

19496. I'd like to call up Exhibit B290-6, Appendix C, photographs 2, looking at the Burnaby Mountain Parkway from Centennial Avenue. So if you can enlarge the upper right-hand side of the screen.

19497. So this image shows the entrance to Burnaby Mountain Park. Burnaby Mountain Park is located beside Burnaby Mountain Conservation Area which was dedicated as a conservation area by the City of Burnaby in the 1970s.

19498. Burnaby residents have voted in favour of additional conservation areas during -- or -- during ballot questions asked after numerous municipal elections. And essentially, residents have again and again and again said that they enjoy having these conservation areas with -- especially within a densely populated space.

19499. Many Metro Vancouver residents stood proudly in support of this conservation area on the mountain and were prepared to face arrest in 2014 in

response to Trans Mountain's geotechnical investigations. So at that time there were protests that erupted; it involved arrests of people from all walks of life including children as young as 10 years of age, going up to grandparents.

19500. And what this sort of points out is the importance of involving the public in processes such as this, that shutting the public out does not help us, as a country, get to solutions, and it's very important to have inclusion in the space.

19501. So this photograph was taken approximately two months before those protests started.

19502. I'd like to go on to the next image which is Exhibit B290-6, Figure 4, "Looking West on Burnaby Mountain Parkway", if you can zoom in on that.

19503. So this is an image showing the descent down Burnaby Mountain Parkway and heading towards Westridge neighbourhood.

19504. The red lines indicated the Trans Mountain expansion lines for the alternative route. In the report detailing this alternative route, Trans Mountain's contractors stated that the construction for this pipeline, because of its location, as you can see here, could be done at night.

19505. So what it neglects to disclose is that if you were to proceed to the left-hand side of that image, off-frame, approximately 100 metres down the hill, you would rapidly approach densely-populated areas. So if construction is taking place in this space, it will impact residents during the nighttime.

19506. I'm going to go on to the next exhibit, which is Exhibit B290-6 5. RK 1.8, looking west along Burnaby Mountain Parkway, east of Dalla Tina Avenue.

19507. This image shows the descent towards Westridge neighbourhood. If you look very carefully in that photograph, you will see right in the centre Burrard Inlet is shown in the distance. And if you were to go straight across the Burrard Inlet, you would end up in the Tsleil-Waututh Nation Reserve, and behind that, the District of North Vancouver.

19508. So all areas shown in this photograph are part of the Burrard Inlet Watershed.

19509. The Burrard Inlet Watershed is directly impacted by a potential diluted

bitumen spill from the Trans Mountain Pipeline Expansion, regardless of whether the route selected is Trans Mountain's primary delivery line or its alternative line from the Burnaby Terminal to the Westridge Terminal.

19510. I'd like to call up Exhibit B290-6, Figure 5-5, "Looking West on Burnaby Mountain Parkway".

19511. So this image shows the end of the Burnaby Mountain Parkway as it transitions to Hastings Street. Any diluted bitumen spill that starts anywhere along this parkway would quickly enter the Westridge neighbourhood. A diluted bitumen spill that starts along this parkway would also quickly enter into storm sewers and rapidly make its way to the Burrard Inlet.

19512. Construction of this pipeline would negatively impact transit service to Simon Fraser University and bicycle infrastructure located along Burnaby Mountain Parkway. Both transit and cycling are activities that promote sustainability and are essential components of urban environments.

19513. I'd like to go to the next exhibit, which is B290-6. And this is "Looking East along Hastings Street". If you can enlarge that image that would be great. Thank you.

19514. So now, as we progress down the mountain going from east to west heading towards Vancouver, we've now arrived at the bottom of Burnaby Mountain. The person who has taking this photograph has turned the position of the camera 180 degrees facing from west to east looking up Burnaby Mountain.

19515. Now, this image shows part of the Burnaby Mountain Conservation Area in the background. If you look very closely you can see the original road that travelled up the side of Burnaby Mountain in the early 1950s and preceded the construction of the original Trans Mountain Pipeline in 1953.

19516. This road was the original route to access the mountain and led to a public park at the centre of the mountain in 1950. The roads built after 1950, including the Burnaby Mountain Parkway, took vehicular traffic closer and closer to the Burnaby Mountain Terminal.

19517. And so why this is important is -- the City of Burnaby has pointed this out -- is that if a fire was to occur at the Burnaby Terminal, it's location relative to the Burnaby Mountain Parkway and Gaglardi Way is so close that fire would

impede the ability of first responders to make it to Simon Fraser University.

19518. In 1953, the Burnaby Terminal was largely surrounded by green space. In 2016, the Burnaby Terminal is surrounded by a densely populated area including Forest Grove, other townhouse developments, detached homes. If the original Trans Mountain Pipeline was built today it would most likely never be constructed in that spot as a result.

19519. I'd like to go to the next exhibit, which is Exhibit B290-6, Figure 5-8, "Looking East on Hastings Street at Duthie Avenue". Great, thank you.

19520. So this imagine shows the corner of Hastings and Duthie Avenue. The original Trans Mountain Pipeline runs south to north along Duthie Avenue. So that's the one that's going horizontally across the screen.

19521. When the original pipeline was built in 1953 along this route, Burnaby had very low levels of densely populated areas with very large lots and few arterial streets. Today in 2016. Burnaby has one of the most densely populated areas in Canada with numerous duplexes, townhouses, apartment buildings, arterial roads, collector roads, cul-de-sacs, bike paths, bike trails, hiking trails, et cetera. The density of population creates incredible challenges for this project in terms of public safety.

19522. Trans Mountain has refused to disclose a public safety plan for this project and has not involved the public in the creation of such a plan. The Province of British Columbia is opposed to this project as a result of a lack of that plan.

19523. I'd like to go to Exhibit B-290-6, Figure 5-6, "Aerial View of Hastings Street Showing Apartments".

19524. Now, this image shows my direct neighbourhood between Duthie Avenue on the east and Barnet Road on the west. In 1951, Hastings Street was narrower. In 1951, Barnet Road was the main arterial route running towards Port Moody, but was again a narrow arterial road. In 1951, there were no townhouses, no co-ops, no apartment buildings, no densely situated detached houses, no collector roads, or no cul-de-sacs.

19525. Trans Mountain's contractors have indicated that this stretch of road would be one of the slowest to construct along the entire route of the project due

to the density of utility rights-of-way that would be encountered. Furthermore, due to Trans Mountain's schedule, even emergency response vehicles would have great difficulty accessing the lots in this area due to the proposed construction. Construction along here would be a nightmare.

19526. I'd like to go to the next exhibit, which is B290-6 which is Figure 10, "Aerial View of Hastings Street and Barnet Road".

19527. So if you look at this image, you will see apartment buildings right there and right there. Again, you've got density in terms of the townhouses over on this side. You can see the detached houses have very narrow lots in there. So if there was a bitumen spill in that area it would cover a number of houses very easily. The image also shows a multi-lane highway right over here, Inlet Drive. And that highway connects Burnaby to the outer suburbs. In 1951 there was no highway.

19528. The highway is also an emergency route in case of earthquakes and tsunamis. If an earthquake was to occur and the north side of Burnaby Mountain was impacted, that highway is potentially vulnerable. If Trans Mountain builds its route using the primary route from Burnaby Terminal, it has not fully accounted for the seismic activity that may impact the north slope of Burnaby Mountain.

19529. I'd like to go to Exhibit B290-6, RK 244, looking west along Hastings Street. It's number 9. Yeah.

19530. This image shows some of the transmission lines and trees that may be affected by construction of a pipeline through this area.

19531. I'd like to go to Exhibit B290-6, Figure 5-11, "Chevron Gas Station and Inlet Drive". Great.

19532. So this image shows the Trans Mountain Expansion Project alternative route crossing under Inlet Drive.

19533. The 2007 pipeline rupture is 370 metres north of here on Inlet Drive. So Burnaby Residents Opposing Kinder Morgan Expansion discussed the impact of this 2007 incident on the surrounding neighbourhood. So I live approximately 330 metres from this incident and experienced high volumes of fumes from this accident to at least 7 hours past the actual event of that day.

19534. Trans Mountain in its response to this spill made the situation worse by closing down the pipeline at the Westridge Terminal on that day causing the pipeline rupture to dramatically increase. Human error does occur and will occur again. No one in my area closer to Hastings Street was evacuated.

19535. Without an emergency plan from Trans Mountain, it is essentially impossible to figure out whether the company understands the seriousness of diluted bitumen pipeline spills and their potential effects on residents.

19536. I'd like to go to the next exhibit, which is B290-6, Figure 5-12, "Looking Northwest Across Inlet Drive From Chevron Gas Station".

19537. So this image shows the Westridge Public Park. The image shows the alternative route running through the park space and through forested spaces.

19538. Trans Mountain, if it needs to use this route, and it's always kept this option open -- it stated that it has a primary route that it wants to go through Burnaby Mountain but it has never removed this route from its proposal -- that if it needs to use this route for any reason, it will need to clear-cut rights of way through conservation areas and public parks.

19539. These conservation areas and public parks were set aside for the -- sorry -- the people of Burnaby by their elected representatives for the enjoyment of present and future generations of Canadians residing in this city.

--- (Applause/Applaudissements)

19540. **MR. TAPLAY:** The public parks and conservation areas provide recreation space for residents, and cutting down trees robs the space aesthetically and in terms of the trees serving as a sound barrier for traffic on Inlet Drive.

19541. I'd like to go to Exhibit B290-6, 10. RK 2.53, looking northwest at gas station parking spots. If you can enlarge that, that would be great.

19542. This image shows -- I just wanted to point this image out in particular because it shows you a townhouse development on the left-hand side, which is right there, which is brand new to the region and also speaks to the density in the area.

19543. So as the City of Burnaby continues to evolve over the next 20 to 50 years, the likelihood of greater numbers of townhouses, apartments and duplexes increasing in North Burnaby is highly likely. Exposing residents to pipeline leaks, destruction of property and contaminated soil is unacceptable.

19544. The playground to Westridge Elementary School is located approximately 160 metres to the left of this image. The Westridge Elementary School building is located approximately 280 metres to the left of this image.

19545. Clearly, without an emergency plan in effect that could have been tested by intervenors during this process or the public is troubling. Under these conditions and the lack of consultation, this project should be rejected.

19546. I'd like to turn to Exhibit B-290-6, Figure 5-14, "Looking Southeast at Cliff Avenue Crossing".

19547. So this image shows Westridge Public Park from the west side. The pipeline route in red shows how it transits the park moving towards the Burrard Inlet Conservation Area.

19548. I'd like to call up Exhibit B290-6 8. RK 2.7, woods on west side of Cliff Avenue. If you can enlarge that, that would be great.

19549. So this image shows Burrard Inlet Conservation Area. If Trans Mountain uses its alternative route, it will need to clear-cut its way through this conservation area. The trees play an ecological service in terms of capturing CO_2 emissions. The trees play a role in protecting habitat, including blue heron. The trees protect the stability of the land in that area from erosion. The trees provide an acoustic buffer for residents from the surrounding sounds of Inlet Drive and the harbour. The trees provide an aesthetic presence, ensuring the livability of residents in the city.

19550. I'd like to call up the next exhibit, which is Exhibit B290-6, which should be a map. Okay, that's perfect.

19551. So this map shows the pipeline route as it exits the conservation area and travels through the backyards of approximately three residents near the Westridge Marine Terminal.

19552. The houses stand approximately 100 metres from the Burrard Inlet.

Should a pipeline leak reach the Burrard Inlet, there is a high likelihood that diluted bitumen would reach the beaches of several public parks, including Barnet Marine Park located adjacent to the Westridge Marine Terminal, or Cates Park located 1,000 metres across the Burrard Inlet.

19553. I'd like to call up Exhibit B290-6, which is 6.1, "Clearing". If you can zoom in there.

19554. And I'm quoting from the contractors for Trans Mountain. They say,

> *"Clearing will be required for approximately 1000m of the pipeline. As mentioned in Section 5.4, clearing is not recommended between March 15 and August 15. Therefore, clearing should occur as a separate activity prior to March 15. This will enable the summer construction window to be maximized since construction will not be delayed by clearing activities."*

19555. So of the approximate three kilometres of right-of-way required to get from the fence line of Burnaby Terminal to the Westridge Terminal, one-third of it will be required to be clear-cut through public parks and conservation areas. The clear-cutting diminishes the quality of life for nearby residents.

19556. I'd like to call up Exhibit B290-6, 5.5 KP, first paragraph. In it, it states -- again, this is the contractors for Trans Mountain:

> *"Construction during the day will be favorable for local residents but will significantly impact traffic. Construction during the night will be favorable for traffic disruption but will impact local residents. It is also worth noting that construction during the night would violate the City of Burnaby's noise bylaw. It is unclear whether a variance to allow night work would be approved due to the nearby residences."*

19557. As has been demonstrated to date, when there's a conflict involving the City of Burnaby by-laws that it has no ability to enforce its own by-laws. And it is unlikely that it has the ability to do so here either.

19558. The mayor and councillors for the City of Burnaby are elected by the residents of Burnaby to conduct activities to the benefit of its constituents. The

mayor and councillors are accountable to the people of Burnaby for their actions, and face the electorate on a regular basis in order to gain mandates from its residents.

19559. The National Energy Board has no such accountability to the residents of Burnaby. The National Energy Board has shown in the past that it is willing to strike down City of Burnaby by-laws for the exclusive benefit of Trans Mountain.

--- (Applause/Applaudissements)

19560. **MR. TAPLAY:** I'd like to go Exhibit B444-3, page 103, third paragraph. This is from Trans Mountain's final argument. So here it says:

> *"Trans Mountain's rationale for choosing the Westridge Marine Terminal as the preferred alternative was based on the expectation that Roberts Bank would result in a significantly greater footprint and estimated $1.2 billion [worth] or higher capital cost and assumed higher operating costs."*

19561. Now, I would submit that Trans Mountain's preference for its current Westridge Marine Terminal and Burnaby Terminal are based exclusively on cost and have little to do with environmental impact. The fiduciary responsibility of Trans Mountain is to the shareholders of Kinder Morgan Inc. The fiduciary responsibility includes maximizing profit and therefore keeping costs as low as possible to ensure that greater profits can be realized for the company and its shareholders.

19562. In this context, the role of the regulator, the National Energy Board, should be to ensure that public safety issues are addressed and that environmental degradation does not occur as a result of approving this project. This regulatory role should be inclusive of current and future generations of Canadians, to be effective.

19563. I'd like to go to Exhibit B290-27.

19564. So this image shows the possible flows of diluted bitumen at different sites throughout Burnaby. The image shows the flow of diluted bitumen through streets and residence and conservation areas. The image fails to show one of the likely routes to the Burrard Inlet through storm sewers.

19565. I'd like to go to the next exhibit, B444-3, page 337, second paragraph, which is Trans Mountain's final argument.

19566. Here it says:

> *"The marine HHRA also concluded that any health effects that could be experienced by people in the area close to an oil spill, though discomforting and annoying, would likely be confined to mild, transient sensory and/or non-sensory effects attributable largely to the irritant and central nervous system depressant properties of the chemicals. Regardless, these effects are not acceptable and Trans Mountain fully acknowledges and proposes timely and effective emergency response to limit any opportunities for public exposure to chemical vapours from a spill."*"

19567. Trans Mountain proposes timely emergency response but it does not want to disclose this emergency response plan. Effectively, this means that intervenors cannot gauge whether Trans Mountain has factored in all costs regarding an oil spill and whether externalities have been accurately captured.

19568. Additionally, this means that municipalities and their taxpayers cannot assess the emergency responders required for an emergency. Furthermore, this means that potential costs for emergency response could be downloaded to municipalities since this has not -- this was not included in this application. The public has been effectively shut out of this response.

19569. I'd like to turn to Exhibit 234-7, Figure 4-14, "Acute Inhalation", PAC level 1, PAC level 2, exposure level contours for benzene for a Westridge Terminal spill.

19570. So this image shows exposure to benzene in the case of a diluted bitumen spill at the Westridge Terminal. Please note that PAC level 1 and PAC level 2 benzene exposure includes Tsleil-Waututh Nation Reserve, Capitol Hill neighbourhood, Westridge neighbourhood, and Burnaby Mountain.

19571. The likelihood that population density in terms of densification will continue to occur in this area over the next 20 to 50 years is high. In such a case, the likelihood of benzene exposure to an increasingly dense population, increases over time and makes this project location unacceptable, in terms of fugitive

emissions and in terms of oil spills.

19572. **THE CHAIRMAN**: I see you've noticed your five minutes remaining, Mr. Taplay.

19573. **MR. TAPLAY:** So Exhibit B444-3, final paragraph. This is page 49.

19574. Trans -- this is from Trans Mountain's final argument, and it's quoting directly the National Energy Board, so the National Energy Board states:

> *"The public interest is inclusive of all Canadians and refers to a balance of economic, environmental and social considerations that changes as society's values and preferences evolve over time."*

19575. So please note here that the definition is inclusive of all Canadians and not simply the Proponent or intervenors, but the entire population. The definition refers to a balance of economic, environmental and social considerations; not that market efficiency and tidewater access is the sole definer of the public interest.

--- (Applause/Applaudissements)

19576. **MR. TAPLAY**: Society values change over time. It is not 1951; it is 2016. The project is not inclusive of its externalities, including greenhouse gas emissions, and therefore it does not address one central component of the public interest.

19577. The project lacks an emergency response plan and this does not address another component of the public interest.

19578. And I will take on Exhibit B444-3, page 136, third paragraph.

19579. And this is again from Trans Mountain's final argument. It says:

> *"Intervenors, including Burnaby, Simon Fraser University and Dorothy Doherty raised concerns regarding the proposed location and tank spacing for the expansion of the Burnaby Terminal. Ms. Doherty states that the Burnaby Terminal should be decommissioned. Trans Mountain notes that the development around Burnaby Terminal, including the*

> *residential neighbourhoods and Simon Fraser University, occurred after the terminal was constructed."*

19580. Trans Mountain's statement about residential development is accurate. However, Trans Mountain has no control over this residential development and this development is highly likely to continue over the operations of this proposed system. Trans Mountain has not disclosed in its application how it intends to address this population density.

19581. The public interest is not served by having a private entity refuse to disclose its emergency plan at the application stage so intervenors have the capacity to test this plan.

19582. Exhibit B444-3, page 6, bottom paragraph.

19583. Trans Mountain's final argument:

> *"The remaining 11 percent of new routing was selected according to routing criteria, which includes avoidance of residential neighbourhoods within urban areas that have grown since the Trans Mountain pipeline was constructed in 1953. The risks and potential impacts of the project's route are well-known. The TMPL has operated more than 60 years along most of the very same route."*

19584. Trans Mountain has, on many occasions, advanced the idea that this project is brownfield, rather than greenfield, meaning that it largely follows the existing right-of-way. This assumes that the original pipeline was optimized in 1951 as a result of a three-day hearing.

--- (Laughter/Rires)

19585. **MR. TAPLAY**: The original pipeline proposed was never subjected to scrutiny by First Nations. The original pipeline proposal in 1951 was not subject to modern environmental considerations and assessments that have emerged since the 1960s.

19586. The purpose of the original pipeline to provide access to Canadians living along the west coast to domestic oil supply is not the same as being advanced in the current application. For the purposes of the residents of Burnaby,

this project is not brownfield. This proposal is clearly in the wrong place.

19587. And that concludes my presentation. Thank you very much.

--- (Applause/Applaudissements)

19588. **THE CHAIRMAN**: The Board have no questions, Mr. Taplay, and we thank you for your attendance today.

19589. That concludes our hearing here in Burnaby. We are adjourned and we will reconvene at 9:00 a.m. Mountain Time on Tuesday, February the 2nd, and we will begin with the Canadian Association of Petroleum Producers.

19590. We're adjourned.

--- Upon adjourning at 3:52 p.m./L'audience est ajournée à 15h52