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 36

Hearing held at
L'audience tenue à

Delta Burnaby Hotel and Conference Centre
2nd floor, 4331 Dominion Street
Burnaby, British Columbia

February 2, 2016
Le 2 février 2016

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HEARING ORDER/ORDONNANCE D'AUDIENCE
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, Tuesday, February 2, 2016
Audience tenue à Burnaby (Colombie-Britannique), mardi, le 2 février 2016

BOARD PANEL/COMITÉ D'AUDIENCE DE L'OFFICE

D. Hamilton	Chairman/Président
P. Davies	Member/Membre
A. Scott	Member/Membre

APPEARANCES/COMPARUTIONS

Applicant/Demandeur
Trans Mountain Pipeline ULC
- Ms. Terri-Lee Oleniuk
- Ms. Lesley Matthews

Intervenors/Intervenants
Canadian Association of Petroleum Producers
- Mr. Nick Schultz

City of Edmonton
- Mr. David Woo
- Mr. Robert Gibbard
- Mr. Rodney Peacock

Washington State Department of Ecology
- Ms. Leslie Seffern

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

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LIST OF EXHIBITS/LISTE DES PIÈCES

No.	Description	Paragraph No./No. de paragraphe

--- Upon commencing at 9:00 a.m./L'audience débute à 9h00

19591. **THE CHAIRMAN:** Good morning and welcome to this morning's session in Calgary which is part of the National Energy Board's hearing regarding the Trans Mountain Expansion Project.

19592. We will continue to hear intervenor summary oral arguments.

19593. 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 is Mr. Phil Davies, and together we are the Panel assessing the Trans Mountain Expansion Project application.

19594. One housekeeping matter I'd like to address first this morning.

19595. In the event that we hear the building evacuation tone, the procedure will be to exit the hearing room using the entrance that you came in. Once in the hallway, there are two evacuation stairwells. The first is at the end of the hallway to the right of the hearing room entrance doors, and a second stairwell is in the elevator lobby.

19596. Once outside the building, we will proceed to Central Memorial Park, which is two blocks south of this building.

19597. As indicated in Procedural Direction 20, the Board has set time limits to hear oral summary argument. The time limit for intervenors is 40 minutes each. This time limit will strict -- will be strictly enforced and they reflect that intervenors have had the opportunity to file written argument-in-chief prior to providing your oral summary argument.

19598. There is a timer that will indicate a green light for the first 35 minutes, switching to yellow for the last 5 minutes of your speaking time. Finally, when your time is up a red light will come on. If necessary, the microphone will be switched off, although I will warn you before this happens.

19599. Final argument, as a whole, is an opportunity to express your views and opinions about the project based on the evidence filed by Trans Mountain and Intervenors on the hearing record. It is also an opportunity to make recommendations to the Board about matters within the List of Issues or any other -- or any terms and conditions to which the project should be subject if it is approved.

19600. The Board will not give any weight to new evidence introduced during oral summary argument or any submissions made that do not address the List of Issues.

19601. With that, I think we are ready to get underway this morning. And for the record, I'd ask Trans Mountain if they would introduce themselves this morning.

19602. **MS. OLENIUK:** Good morning. My name is Terri-Lee Oleniuk and I'm legal counsel to Trans Mountain. With me is Lesley Matthews and she's the regulatory lead for the project.

19603. **THE CHAIRMAN:** Thank you and good morning.

19604. This morning we will hear from the Canadian Association of Petroleum Producers. And this afternoon we will hear from the City of Edmonton and the Washington State Department of Ecology.

19605. So before we begin, are there any preliminary matters?

19606. **MS. OLENIUK:** Yes, sir. It's Terri-Lee Oleniuk for Trans Mountain again. There's just one matter I wanted to address briefly this morning, and that's regarding the deadline for Trans Mountain filing its reply argument in this matter.

19607. So the procedural direction the Board issued regarding oral hearings indicated a deadline of mid-February. So, as you know, Trans Mountain filed its original argument on August 20th, 2015.

19608. The vast majority of it was unchanged when it filed its revised final argument on December 15th. So that mean intervenors had just under five months to review the original argument before they had to file their own final argument.

19609. More than 80 intervenors filed several thousand pages of argument on January 12th raising a significant amount of issues that Trans Mountain needs to address in its reply argument.

19610. In order for Trans Mountain to properly review and have the opportunity to respond to these arguments, we respectfully request a deadline of

February 19th; that would be two weeks after the oral hearings commence at the end of this week.

19611. This will mean that Trans Mountain has just over one month to review the 80-some arguments that were filed by intervenors and respond to them. And it'll also mean that the Board will have just over three clear months after the hearing record closes to prepare its recommendation report.

19612. So those are my submissions on the matter, sir, and I look forward to clarification regarding the date.

19613. **THE CHAIRMAN:** Thank you, Ms. Oleniuk. The Panel will be considering that over the next remaining days we have to hear oral summary argument. And we thank you for your submission this morning.

19614. With that, Mr. Schultz, we're -- the Panel have read all the submissions that CAPP have put in front of us and your written argument. So with that, you have 40 minutes to present your oral summary argument.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS

19615. **MR. SCHULTZ:** Thank you, Mr. Chairman and good morning.

19616. Good morning, Members of the Board.

19617. My name is Nick Schultz. I'm Vice President of Pipeline Regulation and General Counsel to the Canadian Association of Petroleum Producers. I'm pleased to present the oral summary argument for the Canadian Association of Petroleum Producers.

19618. You have, as you've just mentioned, the written argument, which I will not be repeating. It was brief and this will be briefer still. Brevity does not mean that this is unimportant.

19619. Member companies produce -- CAPP member companies produce about 90 percent of Canada's natural gas and crude oil. Adequate pipeline capacity is of great importance.

19620. Denial of the project would be detrimental to Canada's oil producers,

to Alberta and to Canada. Access to diversified global markets would be limited. Growing crude supplies would increasingly use rail at higher cost.

19621. The magnitude of the harm to CAPP members, to Albertans who own the resource, and to Canada would be huge. And that is easily seen in the negative impact on oil prices when supply is pipeline constrained.

19622. This has been a long and complex process that has brought us to this point but the genesis of it all is quite simple: the world needs oil. The market evidence that you have before is very clear in this regard. The supply evidence is equally clear that Canada has the supply that the world needs. More pipeline capacity is needed; the evidence on that is equally clear.

19623. You do have some half-baked, so-called expert evidence in the form of the Gunton Report. The Gunton Report should be viewed, at most, as commentary. It cannot be said to be expert evidence. Dr. Gunton and his collaborators have no expertise in oil markets, and that is transparently evident from even a cursory reading of their report.

19624. They assert that they use industry data to ground their conclusions but this is, with all due respect, patently false, as even the quickest glance at the CAPP forecast that they cite will show.

19625. The CAPP forecast shows clearly the need for more pipeline capacity. And as for the current drop in oil prices, this changes the rate of supply growth but it does not change the fact that supply is growing and needs increased market access.

19626. Producers want to bring Canada's abundant oil to world markets. They want to do that by pipeline. It is safe and it is more economical than rail.

19627. A number of producers, all CAPP members including an associate member, have signed long-term firm contracts for this project providing the foundation for the economic viability of the project and its use over the long term. It is not only producers that want this. The owner of the resource wants it as well.

19628. You have Alberta's written argument. It is not the usual ordinary submission of the government through its counsel or a ministry official of the kind that, in my 38 years of doing NEB hearings, I have come to expect. It is quite extraordinary. It is a letter from the Premier, on the Premier's letterhead,

signed personally by the Premier, speaking in the first person.

19629. The first word in the letter is I, "I, the Premier, am writing;" speaking as the Premier of the government that has authority over the responsible development of the resource on behalf of Albertans; speaking as the Premier of the government that is responsible for Alberta's climate change policy; speaking to you as the regulator charged with deciding whether to recommend this project and if so, on what conditions; urging you to recommend it as a project that is needed, that is beneficial to all Canadians, not only Albertans.

19630. Speaking not only to you, I submit, but to all who have a role in this process; the Premier's federal and provincial counterparts and colleagues and speaking to all Canadians. And in this, the Premier speaks well for Alberta's producers.

19631. I need do no more than say that we, CAPP, share the view expressed in the Premier's letter to you. We too seek to develop the resource responsibly, to the benefit of all and to bring these resources to a global market that has a high demand for those resources.

19632. You have, though this long, complex process, heard every point of view. No relevant concern or consideration or affected interest has been left out. Any and all relevant concerns and issues have been and will be considered.

19633. You have, through this process, developed comprehensive and detailed evidence to inform your recommendation and the government decision, and this is exactly what your statutory mandate calls for and indeed, what all Canadians would or should expect.

19634. You have, in my respectful submission, done your duty.

19635. In the course of this long process, you have been subjected to unfair criticism, systematic abuse, in fact, from some who simply want no oil pipeline, ever, anywhere. We should not shy away from calling this abusive behaviour what it is. It is shameful. No reasonable process, old or new, will satisfy people with that as their objective.

19636. And to be clear, I am not saying that you should not consider any genuine concern. Of course you should. I am making a point of principle about institutions and respect for institutions and process.

19637. You are called upon to make an evidence-based report. You have the evidence. We ask you to look at the evidence. I submit the evidence in favour of the project is compelling.

19638.

19639. Trans Mountain has done an extraordinary job in very trying circumstances to address and respond to all relevant concerns and has done so through a consultative process with those affected that has run long and it has run deep.

19640. CAPP asks that you make a recommendation that is favourable to the project.

19641. Thank you. That concludes my remarks.

19642. **THE CHAIRMAN**: Thank you, Mr. Schultz. Just give us a minute.

--- (A short pause/Courte pause)

19643. **THE CHAIRMAN**: Thank you, Mr. Schultz, on behalf of the Canadian Association of Petroleum Product Producers. The Panel have no questions for you at this time.

19644. With that, we're adjourned until 1:30 Mountain Time when we will hear from the City of Edmonton, followed by the Washington State Department of Ecology.

19645. With that, we're adjourned.

--- Upon recessing at 9:15 a.m./L'audience est suspendue à 9h15
--- Upon resuming at 1:32 p.m/L'audience est reprise à 13h32

19646. **THE CHAIRMAN:** Good afternoon and welcome to this afternoon session in Calgary, which is part of the National Energy Board's hearing regarding Trans Mountain Expansion Project.

19647. We will continue to hear intervenor summary oral arguments.

19648. 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 Expansion Project application.

19649. Just a brief housekeeping matter. In the event that we hear the building evacuation tone, the procedure will be to exit the hearing room using the entrance that you came in. Once in the hallway, there are two evacuation stairwells. The first is at the end of the hallway to the right of the hearing room entrance doors, and the second stairwell is in the elevator lobby. Once outside the building, we will proceed to Central Memorial Park, which is two blocks south of the building.

19650. I think the presenters today have been briefed by staff on our timing system and regarding the 40 minutes that we have been allotted. And I think you're aware of the process for today so I won't repeat that.

19651. And I think I'd like to ask Trans Mountain to introduce them to those intervenors who are presenting today.

19652. **MS. OLENIUK:** Good afternoon. My name is Terri-Lee Oleniuk and I am counsel to Trans Mountain. With me is Lesley Matthews and she's the regulatory lead for the expansion project.

19653. **THE CHAIRMAN:** Thank you.

19654. We will begin this afternoon to hear the summary oral argument from the City of Edmonton, which will be followed by the Washington State Department of Ecology.

19655. Mr. Woo, I advise that the Panel have read all of the submissions from the City of Edmonton and we are now prepared to hear your oral summary argument.

19656. The time will start when you start.

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

19657. **MR. WOO:** Oh, I apologize. I've been waiting for the little light around the microphone to come on. It is on now. Terrific.

19658. Thank you, Chair Hamilton, Members of the Panel.

19659. My name is David Woo. I'm counsel for the City of Edmonton. And with me today is Robert Gibbard who is a director of transportation services for the City of Edmonton. Mr. Gibbard is actually a member of the technical committee that has been referenced in some of the written materials by both the City as well as Trans Mountain. He has been quite involved in that process. And Mr. Gibbard is here today in the event that the Panel has any questions that I may not be able to answer specifically.

19660. We also have available by phone our consultant from ISL Engineering and Land Services, Rodney Peacock, the president of ISL. He is in Edmonton in his -- I imagine in his office. And if at any point the Panel has any technical questions that either Mr. Gibbard or I cannot answer, Mr. Peacock is available to the Panel.

19661. Throughout these submissions, please feel free to interrupt me at any point if you do have any questions or if you would like any points of clarification.

19662. I appreciate that the Panel has reviewed the written materials by the City of Edmonton so I will just very briefly just go over the crux of our argument and the issue that is specific to us.

19663. I should at the outset state that the City of Edmonton does not take a position with respect to Trans Mountain's overall application for the Certificate of Public Convenience and Necessity for the Trans Mountain Expansion Project.

19664. The City's involvement in this matter relates to only one specific part of the proposed route. And our submissions, both written and as well as today, will just focus on that portion of the proposed route.

19665. The portion at issue or the section of the proposed route that is at issue is the portion where the pipeline would go through the Whitemud Road right-of-way -- a tongue twister. During our written submissions we have been referencing that area as the Whitemud Corridor, and if it pleases the Panel I'll just continue with that terminology.

19666. As the Panel is aware, Trans Mountain has proposed to have the Edmonton portion of the proposed pipeline deviate from the existing pipeline

right-of-way and to use the transportation/utility corridor -- or otherwise known as a TUC -- to bypass a number of residential areas which have developed since the time the pipeline was originally set down.

19667. The TUC is land owned by the Province of Alberta and it largely circles the City of Edmonton, and it is land set aside for projects like pipelines, transmission lines and so forth. Again, the advantage or the benefit of using the TUC would be that Trans Mountain would be able to leave undisturbed a number of residential communities in the City of Edmonton. But the issue with using the TUC is that, at some point, Trans Mountain will need to connect the proposed pipeline to the existing pipeline right-of-way.

19668. Trans Mountain has proposed or has brought forward two potential options. The first is to use a tract of land that is part of the TUC and it connects with the existing pipeline corridor. And again, that portion is owned by the Province of Alberta.

19669. The second option which Trans Mountain has really put forward -- I should clarify; the TUC connection is now a potential alternative to the proposed pipeline. But initially, prior to Trans Mountain's written evidence or written reply, they had not tabled that as a possible alternative. But I understand that they have sought leave from the Panel to have the TUC connection as part of their Plan Profile and Book of Reference.

19670. I'm sorry, Chair Hamilton. You seem a little confused. Am I ---

19671. **THE CHAIRMAN:** No. I'm just trying -- and your clock will stop. My face of confusion I wouldn't want to cause you any alarm. But I was just trying to -- you're indicating there's another route that this Panel isn't aware -- I'm trying to get the routes straightened out in my mind. Maybe I should let you finish.

19672. **MR. WOO:** Thank you, sir.

19673. **THE CHAIRMAN:** I was --- maybe you were leading to that, something new that came on that we weren't aware of.

19674. **MR. WOO:** No. And I apologize for that. There is not another route. The routes -- the two routes that have been discussed in the City's materials, as well as Trans Mountain's materials, is the Whitemud Corridor and what has been

known as a Lewis Estates option. That is its use and connection. I apologize.

19675. I was going to go and explain that once the proposed pipeline leaves the TUC connection, it will then connect with the existing pipeline right away and go through the Lewis Estates area. And so we've been referring to that as the "Lewis Estates option". I apologize for the confusion.

19676. The second option that is available to Trans Mountain, which they have advanced as part of their proposed pipeline route, is to use the Whitemud Corridor, which is located at Whitemud and 215 Street.

19677. Now, this is land owned by the City of Edmonton and it is slated for significant expansion as well as a significant improvement to the area.

19678. As the Members of the Panel are aware, section 108 of the *National Energy Board Act* specifies that if a proposed pipeline crosses on, over, along or under a highway, the National Energy Board has the jurisdiction to place conditions with respect to the company's use or occupation of the highway as well as to deal with issues related to the highway crossing.

19679. We have, in our submissions, really emphasized two points. The first is that we would prefer and we -- for the reasons that I will get into -- the pipeline -- the current proposed pipeline, as it stands in the Whitemud Corridor, is not the optimal route for this project and, in fact, will cause a number of problems.

19680. So the City, with respect to just this portion of the pipeline, objects to the use of the Whitemud Corridor. But if that route is ultimately selected or approved, the City would like certain conditions placed on Trans Mountain pursuant to section 108 of the NEB Act.

19681. In our written materials ---

19682. **THE CHAIRMAN:** Mr. Woo, Mr. Davies has a question for you.

19683. **MR. WOO:** Yes.

19684. **MEMBER DAVIES:** I don't mean to break up your flow but I was just thinking as you were speaking about the Whitemud versus the Lewis Estates option. The Lewis Estates option, has that been an option that's been put forward; and the affected landowners and others, have they had a chance to consider that,

the implications of routing through the Lewis Estates option?

19685. **MR. WOO:** It's my understanding -- pardon me. It's my understanding that the process was started but was eventually abandoned when Trans Mountain had chosen the Whitemud Corridor as their preferred route.

19686. So I believe that they had done some initial consultations but the larger burden with respect to the public consultations for the residents in the area I believe have not been completed.

19687. And as I understand, again, recently Trans Mountain has sought leave to allow them to provide the Panel with further information regarding the Lewis Estates option including a detailed description of the option, supporting information as a possible reroute of the Trans Mountain Expansion Project.

19688. And I understand that they will do this concurrent with the filing of their planned profile and Book of Reference. And I would get this from the revised reply evidence -- the -- I apologize, the revised final argument for Trans Mountain. And that portion -- or that discussion is found -- maybe if I can come back to that as I kind of poke around through this -- through this document.

19689. **MEMBER DAVIES:** That's fine. I'm sure we can find it. I just wanted to make sure that we had an adequate record as to what consultation had taken place on that Lewis Estates option.

19690. **MR. WOO:** Thank you, sir.

19691. **MEMBER DAVIES:** Thank you.

19692. **MR. WOO:** And again, I'm not fully aware of what has been done but, from my understanding, I believe that just the initial stages of the consultation have been possibly completed; then nothing beyond the first initial steps.

19693. One of the key differences between the proposed pipeline route through the Whitemud Corridor and the option in the Lewis Estates area is that if the pipeline were placed through the TUC, it would need only one single, ninety-degree turn to go through the Lewis Estates area. The proposed pipeline route would continue east along the pipeline right-of-way and exit the City of Edmonton.

19694. The route through the Whitemud Corridor is much more tortuous. It hugs to some degree the profile of the road. And there are a number of sharp turns before it finally does connect with the existing pipeline corridor -- or existing pipeline right-of-way.

19695. Now, there have been a number of discussions between the City and Trans Mountain with respect to the technical committee that's been formed to deal with some of the issues related to the Whitemud Corridor. And the route that is shown in our written materials has been revised; it is less tortuous. I understand that there's greater straight-a-ways that have been placed. But in any event, there are still more turns and more difficulties in the City's view with that option versus the Lewis Estates option.

19696. The City objects, obviously, to the use of the Whitemud Corridor for the principal reason that Trans Mountain can complete this expansion project without using any land owned by the City. There is land set outside in the TUC which Trans Mountain has confirmed in its response to the City of Edmonton's information request that it could use.

19697. And it also has confirmed that if it were to use the TUC connection to get into the Lewis Estates area, it would have no need for the Whitemud Corridor.

19698. Given that the TUC is largely public land set aside by the province for projects specifically like this, it is the City's submission that there is no need that -- there is no need for Trans Mountain to use lands owned by the City, particularly this area which will undergo significant development as well as expansion.

19699. The caveat that I should place -- or not the caveat but the qualifying comment I should place is that beyond the -- beyond the preferences of the two routes, it is the City's overriding concern the proposed pipeline be placed in the safest location possible. But in the absence of a definitive risk assessment of the two options, we have argued against the Whitemud Corridor option.

19700. And the reason why the City objects to the use of the Whitemud Corridor is that the -- first, the presence of the pipeline will adversely affect the citizens of Edmonton. The pipeline will increase the cost of the City's expansion for the Whitemud Freeway. It will also restrict the City's ability to maintain and repair the Whitemud.

19701. Having the pipeline in the Whitemud Corridor will cause some safety concerns for the City. And finally, having the pipeline in the Whitemud Corridor will have an adverse effect or adverse impact on the City's ability to go through with its planned naturalization program for that area.

19702. I will just very briefly speak on those five points. Again, our written submissions obviously elaborate quite extensively on these five points. My purpose today is just to give an update as to what has happened really since we filed our written argument and where we are today.

19703. The first point, which has not changed significantly, is the adverse impact the pipeline would have on the citizens of Edmonton if it were placed in the Whitemud Corridor.

19704. In the written evidence filed by the City of Edmonton, specifically the report from ISL Engineering, they outline the number of vehicles that use this portion of the Whitemud currently. So this is the current use before the proposed expansion.

19705. And just very briefly, based on 2014 data, at the intersection of 215 Street there's an average annual weekday traffic of approximately 6,500 vehicles per day in the west and almost 22,000 vehicles per day in the east. For the north/south traffic, the average annual weekday traffic in 2013 was estimated to be 13,500 vehicles per day to the south of Whitemud Drive and 5,900 vehicles per day to the north.

19706. If the proposed pipeline were to be constructed in this area, an enormous amount of traffic would need to be rerouted during the construction, as well as any potential repairs to the pipeline.

19707. Moreover, if there was ever a rupture of the pipeline after the expansion of the Whitemud even more -- potentially even more drivers would be affected. Currently the Whitemud is -- four lanes? Two lanes in either direction. The City plans to expand this portion of its roadway to six lanes. And already we have tens of thousands of motorists using this portion of the Whitemud.

19708. In regards to the expansion of this area, if the proposed pipeline were actually placed in the Whitemud Corridor the City would incur several direct capital and operational costs as well as a number of unknown future costs associated with having the lack of flexibility with respect to how the expansion of

this roadway may eventually evolve.

19709. Now, it's very important for me to advise the Panel that some of the cost concerns outlined in the City's written argument have been addressed by the technical committee. The largest -- I guess the greatest point of optimism -- probably the best way to put it -- is the current alignment may allow the City to build the bridges in this area as originally designed.

19710. The issue that the City had with possibly having the pipeline in this area was that we would need to build a longer bridge so as to avoid the pipeline. The extra material cost as well as the maintenance cost would have been quite substantial.

19711. My client has advised me that through the efforts of the technical committee, there have been a number of revisions to the alignment, and it may be possible that the issue with the bridge is now negated. But again, a lot of what has been going on is still in its preliminary stage but we are very optimistic and we are encouraged by the efforts that Trans Mountain has put towards the concerns addressed by the City.

19712. But ultimately, no matter what solutions the technical committee may come up with, it will never be able -- they will never be able to guarantee the City would not need to move the pipeline once the City actually begins the construction or the expansion of this roadway.

19713. The reason for some of the uncertainty is that the current plans for the Whitemud expansion are still in their preliminary stages and they are subject to change depending on the changing needs in the area.

19714. Again Trans Mountain and members of the City have done their best to mitigate some of the issues that may arise if there is a pipeline in that area, but if the City were required to move this pipeline during the construction of the Whitemud expansion it would potentially come at a cost of millions both for the relocation of the pipe as well as any sort of business loss that Trans Mountain might actually look to the City to compensate them for.

19715. Beyond ---

19716. **THE CHAIRMAN:** I wonder, Mr. Woo.

19717. **MR. WOO:** Yes?

19718. **THE CHAIRMAN:** I'm just wondering, as you updated the Panel on the discussions with Trans Mountain and the technical committee. And you acknowledged that future expansions of Whitemud is in the preliminary stages and subject to considerable uncertainty, and as you indicated, these discussions have been ongoing.

19719. I wonder, would you say, with those uncertainties and some things are changing and over time, would it not be premature for the Board to impose detailed conditions if we could regarding the Whitemud Corridor or any other corridor being proposed?

19720. **MR. WOO:** Thank you, Chair Hamilton.

19721. I don't think it would be premature, simply because of the fact that Trans Mountain does not need to use this tract of land to complete the expansion project. It's the City's position that if despite all of the issues raised by the City, despite all the problems identified and potential uncertainties associated with this area, if Trans Mountain elects to proceed through this corridor it is the City's position that it should be fully responsible from the moment the pipeline is placed into City's land to the life of that pipeline.

19722. There is another viable alternative available to Trans Mountain to complete their project, and to date we have yet to see anything that would be overwhelming evidence that the pipeline has to be in the Whitemud Corridor. And in Trans Mountain's response to our information request, they confirmed that initially they did an assessment of both options and they determined that both alternatives were viable and that they were both quite equal in the cost implications for the project.

19723. So this is a situation where Trans Mountain has decided to have the proposed pipeline go through this area, again despite the objections by the City.

19724. And I should pull back and say that although there is some uncertainty with respect to what this area, what this roadway will look like when the expansion is done, I can tell you that the City will expand this area. The plans are to build a significant -- to have this portion of the Whitemud be a significant throughway for the residents in this portion of the City.

19725. We know generally what we want to do in this area. The uncertainty lies in exactly where we're going to place some of the infrastructure. This would be the bridges, the overpasses, where exactly we're going to drop the road. But the overall plan is to expand this area to six lanes of traffic to actually at some point, I believe, connect with the Anthony Henday. It will be a very large portion of the City's inner ring road.

19726. That has already been established, and that work will be started sometime within the next 20 years. Again, we don't know the exact date when construction will begin since we are in the preliminary design stages, but this is something that the City intends to do. But more importantly, this is something that we have advised Trans Mountain that we are intending to do. And despite that, they have decided that they would like to go and use this corridor for the proposed pipeline.

19727. **THE CHAIRMAN**: Thank you.

19728. **MR. WOO**: Beyond just the costs associated with some of the expansion work, should the pipeline be in the Whitemud Corridor, the City would also incur other costs once the roadway has been expanded.

19729. Specifically, as the plans are designed as they are right now, the proposed pipeline would follow adjacent to the Whitemud Corridor. But obviously, when the City expands the road, portions of the pipeline will be directly underneath our road, and with that will come certain requirements, both through Kinder Morgan's ground disturbance pipeline protection requirements as well as some of the provisions in section -- provisions of the *National Energy Board Act*, specifically section 112, which would limit some of the things that the City could do in that area.

19730. With respect to the actual requirements on Kinder Morgan's side, as part of their ground disturbance pipeline protection requirements, any ground disturbance within .6 metres of either edge of the pipeline corridor must be performed by hand digging or hydrovac.

19731. So even when we are dealing with the situation where the City is beginning the expansion of this road, the construction of the road, there will be portions of this road that would require special equipment.

19732. Now, one of the things that the technical committee has discussed is

actually burying the pipe even further, and I believe that the pipeline, the alignment potentially could go as deep as 25 metres.

19733. But despite that, there are these requirements under Kinder Morgan's own protocols that the City would need to address. It would have to have some sort of agreement, short of actually using hydrovacs or hand digging in this area when we expand the road.

19734. There are also requirements that if ground disturbances occur within 7.5 metres of the pipeline, the City must have an inspector from Kinder Morgan there on the site. And given the scope and the proposed project in this area, that inspector may be on site for months at a time, which would come at a cost to the City.

19735. But ---

19736. **THE CHAIRMAN**: Perhaps. Mr. Woo, we can take a break.

19737. **MR. WOO**: Yes.

19738. **THE CHAIRMAN**: Mr. Davies has a question for you.

19739. **MEMBER DAVIES**: Mr. Woo, I'm looking for the exhibit that's on page 12 of your written argument. Our regulatory officer is having trouble finding it because I was going to ask him to put it up on the screen.

19740. **MR. WOO**: I'm sorry, is that the written argument or the written evidence?

19741. **MEMBER DAVIES**: I meant to say written argument. I'm sorry, page 12 of your written argument. I just thought it would be helpful if we had that up on the screen as you were going through here.

--- (A short pause/Courte pause)

19742. **MEMBER DAVIES**: Bear with us. Your timer is off, so not to worry.

19743. I think it would be helpful to have it on the screen because we are streaming these proceedings online and so that way there will be a common

reference point for all people participating.

19744. We hire multi-talented legal counsel with the Board here. Can you make it full screen, Daniel? There we are. Great.

19745. Now, can you just quickly orientate us as to make sure that we're all speaking the same language? I see two alignments itemized, so maybe you could walk us through that. If you'd like, we can give you a laser pointer.

19746. Oh, we can't give you a laser pointer. You'll have to do it by words.

19747. **MR. WOO**: If you would like, I could describe them for you.

19748. **MEMBER DAVIES**: Turn your microphone on please.

19749. **MR. WOO**: So this is the diagram that is both in the City's written evidence as well as the written argument. And for the Panel's consideration, the pink line is actually the route that we have been calling the Whitemud Corridor.

19750. So you'll see that the pink line extends from the bottom of the diagram and it hugs portions of the road. That area is largely the TUC, portions of the TUC and then as it gets closer into the Whitemud area, that is when the City's land comes into issue.

19751. Now, the proposed pipeline route would have the pipeline go through the area at 215 Street, so that it could eventually connect with the -- if you look at the blue line, there's another, unfortunately, pink line. That is the existing pipeline corridor.

19752. So the pink line represents the Whitemud Corridor option. The blue line represents the Lewis Estates option, so what it would have the proposed pipeline do is come off the TUC and use lands which is about 90 -- 199th Street and Whitemud Drive. That area's still part of the TUC and that's what the TUC connection is.

19753. So it would use those lands to connect with the existing pipeline corridor and then the expansion project would continue east along the -- oh, I apologize -- would continue west along the existing pipeline corridor.

19754. **MEMBER DAVIES**: Okay. So the way I understand it then, we

have, just above the middle point of the map, running from east to west, the existing alignment for Trans Mountain's current pipeline, and you're, on behalf of the City, expressing a preference for the expansion to follow that existing right-of-way through the Lewis Estates area.

19755. And the alternative that's also on the table is the Whitemud Drive alignment, so -- and that's further to the south, but roughly parallel until it swings on the west to reconnect.

19756. So my question of you is this, now that we're oriented: it looks like the interaction between the existing right-of-way and the proposed expansion that the City would prefer -- it looks like there's a lot of interaction between the pipeline and residential, which is immediately adjacent it and as opposed to the other one, which is in a major utility corridor.

19757. So I'm just trying to understand from -- if I were a landowner in that area, I'd certainly want to be able to stand in front of this tribunal or in a detailed route hearing or whatever, and have a really good look at this.

19758. So what -- given that would be the normal course, what would you have us do in our recommendation around conditions to make sure that the city's position is preserved, if you will, for that, for a future proceeding? What specifically would you have us do in order to make sure that that future proceeding could occur?

19759. **MR. WOO:** At this stage -- and I don't know whether Trans Mountain has done this, but we would recommend that one of the conditions be that Trans Mountain actually begin consulting with the residents of the Lewis Estates area before the certificate is actually issued or not issued, to begin that process so that obviously the project wouldn't be unduly delayed.

19760. One of the main points that should be emphasized is although there are a number of residents in this area, the area was built around the existing pipeline. So that when this entire portion of the City was built it was after the pipeline had been placed in the area. So those residents are already subject to the conditions associated with Trans Mountain's pipeline right-of-way. And of course we would want to have consultations for the residents. But ultimately, this is to some degree a land that Trans Mountain can use subject to, of course, any concerns raised by the Board.

19761. Now, even though there are less residents surrounding the Whitemud Corridor option, the point where the pipeline does become an issue is the area where there are residences currently present, already established in that area. And we suspect more residential properties will be established as well

19762. And I should clarify, our consultants, ISL, has taken an aerial photo of the area and they actually transposed the proposed Whitemud expansion. So this portion which is shaded in a diagonal grey manner -- that area is the area where the Whitemud will be expanded. And some of the roads that you see on the diagram do not exist currently. This is what we're proposing to do.

19763. **MEMBER DAVIES:** I understand.

19764. Okay. Well, I think procedurally we need some guidance from you as to how best to proceed.

19765. The other thing I'd like to explore with you is, in paragraph 20 of your argument on page 7, I believe you're suggesting here that we have authority to impose conditions under section 108 that perhaps would advance the cause that your client wants to see happen but can you show me specifically what in 108 we could actually use that would get us there? I'd like to explore that a little bit.

19766. **MR. WOO:** Certainly.

19767. So my reading of section 108 of the NEB Act is that when a proposed pipeline does cross either under or over or near an existing utility, the company has to take additional steps with respect to the utilities in that area. And this section, from my reading of it, allows the NEB to place conditions on the company's use and occupation of portions of the utilities like highways as well as to deal with highway crossing issues that may arise.

19768. And I get this from, again, the plain reading of 108 which specifies that:

> *"[N]o company shall construct a pipeline that passes on, over, [or] along [...] a utility unless a certificate has been issued..."*

19769. Which is obviously before the Panel.

> *"...or an order has been made under section 58, [and] in*

respect of the pipeline [...] the certificate or order contains a term or condition relating to that utility..."

19770. So my reading of this is that if a pipeline is to cross over a utility under the process of the certificate, there can be conditions placed on the company with respect to the occupation of that area.

19771. **MEMBER DAVIES:** Okay, thank you very much. I understand where you're coming from.

19772. **MR. WOO:** And just one further point with respect to the number of residents and residential properties surrounding both options.

19773. In the response to the City of Edmonton's information request, Trans Mountain confirmed that just based on the aerial overview of the area there are 75 homes which would be affected by the Whitemud option versus 90 homes that would be affected by having the expansion project in the Lewis Estates area.

19774. So again, even though it looks like there's a number of residential properties in the area, the ones that are directly affected, the numbers are fairly similar.

19775. I've spent quite a bit of time discussing the City's proposed expansion of this area. And it all leads to really the heart of the City's concern. And that is safety.

19776. Trans Mountain, in the materials that they have filed with the Board, have recognized that one of the principal safety issues affecting the proposed pipeline is third-party damage. And it is actually a component that they use in their Risk Assessment.

19777. Given the emphasis that is placed with respect to third-party damage, it is somewhat surprising that Trans Mountain would advance this option for part of its proposed pipeline route.

19778. I apologize; there's just too much paper before me. At some point I'll get myself organized.

19779. In the materials filed by Trans Mountain with the NEB, they describe third-party damage as "a principal threat". And this is from Volume 7, section

3.1.2 at pages 7 through 10. The filing ID is A56025. And Trans Mountain goes so far as to state:

> *"All pipelines experience some level of threat due to third-party damage, the magnitude of this threat being a function of the effectiveness of damage prevention measures, adjacent land use, depth of cover, material properties and pipeline design. Although damage prevention measures can help minimize this threat, the risk of third-party damage can never be fully neutralized."*

19780. These are the words from Trans Mountain. And when you look at the Whitemud Corridor option, we have already discussed some of the plans associated for this area, the expansion to six lanes, the construction of bridges and overpasses. There is a plan to drop part of the roadway by six metres. All of this work will require extensive and significant excavation and serious and significant construction activities in this area for years to come.

19781. If third-party damage is something that Trans Mountain is concerned about with respect to their pipeline, this is an area where there is no way to avoid it. This is going to happen. We are going to excavate massive tracts of land and we are going to build what in effect will be a very large portion of the inner ring road for the City of Edmonton.

19782. These concerns do not arise with the Lewis Estates option. There is no plan currently to expand that area. And really it would be very difficult to given the number of residences in that area.

19783. So that is one of the main reasons why the City has participated in this process, because of the safety issues that we view should be assessed by Trans Mountain before this pipeline construction begins.

19784. We have obviously -- we have other issues. Some of them are more minor, and given the time I'll just quickly run through the last two with the Whitemud. It is a major throughway. It does require maintenance on occasion. Once the Whitemud is expanded, it will require probably greater maintenance that we are currently used to.

19785. Some of the maintenance work around Whitemud can be as simple as filling a pothole, but more times than not we will do more significant work or

significant undertakings such as repaving of the area.

19786. Now, given the type of work that is typical for the Whitemud, as well as roadways in Edmonton generally, we have concerns with respect to when the City would be required to provide Trans Mountain or Kinder Morgan notice regarding any repair or maintenance work.

19787. And the concern arises because of Kinder Morgan's definition of a ground disturbance. As part of the Kinder Morgan requirements, Kinder Morgan has defined ground disturbance as work that disturbs the ground surface in any way whatsoever with the Kinder Morgan Canada right-of-way or the 30-metre safety zone surrounding the pipeline.

19788. If we were to apply that definition, it would likely capture a number if not all of the major roadwork that the City typically does on its roads, much less what it would need to do in the Whitemud area. And because of the requirements that would be in place should this pipeline be in this area, the City would now be somewhat restricted with respect to its maintenance activities.

19789. There would obviously be reporting requirements, as well as potentially the necessity of having an inspector in the area if the work is within a certain distance from the pipeline, which in this case once the expansion is complete it would be because the road would likely be right over top of the pipeline.

19790. The concern for the City is given how much volume, how much the volume of traffic in this area, if emergency repairs are required for this area the City would be somewhat restricted with respect to what it could deploy because it would need to get prior permission from Kinder Morgan for those areas of the roadway which fall within the requirements, or fall within the Kinder Morgan requirements for the pipeline right-of-way.

19791. The final point that we had addressed in our written submissions is with respect to the naturalization plan that the City has been developing for this area. One of the changes that the City has implemented is the use of natural vegetation in areas which would require little or no maintenance.

19792. And the vegetation would serve two purposes. The first would be to act as a sound barrier for the residents that are adjacent to the Whitemud area. But more importantly, the vegetation would be used for drainage purposes as

well. For portions of the Whitemud, particularly once the expansion has occurred, the ability for the City to actually implement its naturalization plan could be significantly reduced or restricted.

19793. There are requirements with respect to the height of vegetation pursuant to the Kinder Morgan requirements, the landscaping guidelines. Vegetation cannot be more than one metre for areas surrounding the pipeline corridor. And obviously, that would have a significant impact in terms of what the City may be able to place in the area for sound barriers as well as for drainage.

19794. Now, if it's a situation where we have to put less than optimal vegetation in this area, it could and most likely will result in an additional cost to the City of Edmonton. Currently we're trying to move away from the need to mow grass and have various city employees attend areas near major thoroughfares like the Whitemud and have more natural vegetation which can just produce the same results but with significantly fewer costs.

19795. So those are the five principal objections that the City has with respect to Trans Mountain's proposed use of the Whitemud Corridor. And again, the entire argument for the City of Edmonton is premised on the fact that this area is not needed by Trans Mountain. I cannot emphasize that enough.

19796. There are obviously issues related to the residents in Lewis Estates should the expansion project be placed in the existing pipeline corridor, but there are mechanisms in place that can take into account some of those concerns and allow those residents to have full say before the Board.

19797. And again, one of the recommendations that the City would have is to have Trans Mountain begin that process as soon as possible so that it doesn't delay the project itself.

19798. But if ultimately the current proposed pipeline route is approved, there are a number of conditions that the City would like to be placed on Trans Mountain. The conditions are listed on the final page of our written evidence. And they can simply be summarized as follows.

19799. If Kinder Morgan or Trans Mountain wants to place a pipeline in the Whitemud Corridor, they should be fully responsible for that pipeline for the life of that pipeline. If anything needs to be done with respect to the pipeline, including repairs, including relocations, those costs should be borne solely by

Trans Mountain.

19800. And if that pipeline were to affect the City's ability to implement the proposed expansion of the Whitemud, and if those effects result in additional costs, it's the City's submission that Trans Mountain should be responsible for those costs. This is property owned by the City. This is lands that we have earmarked to be part of what we hope to be a very large inner ring road. And again, it is -- the intent of the City for this area has been conveyed to Trans Mountain on a number of occasions.

19801. Yet, if they continue to insist that the pipeline be placed in this corridor, the City again would ask that this Panel place conditions where the City can be made whole. That we do not have to bear any costs associated with the decision made by Trans Mountain. There's public land available to Trans Mountain to complete the expansion project.

19802. It is the City's submission that those lands would be more appropriate for this project. And again, on the final page of our argument we specify the conditions or the types of conditions that we would like to see if the proposed pipeline were placed in the Whitemud Corridor. I won't bother repeating them.

19803. Rather, I'll just spend the last six minutes taking any questions that the Panel may have.

19804. **THE CHAIRMAN:** Thank you, Mr. Wood, for your submissions.

19805. On your last point, and you suggested that section 108 -- you're relying on section 108 of the NEB act provides the authority for the Board to impose conditions requiring full financial reimbursement of any costs incurred by Edmonton relating to having the pipeline along Whitemud.

19806. I'm just wondering, what specific part of section 108 provides authority in your opinion for the Board to order such reimbursements?

19807. **MR. WOO:** Thank you, Chair Hamilton.

19808. This section itself does not speak to financial compensation. And the City is well aware that issues dealing with financial compensation should go to a different process, specifically to the Minister of the Environment. And to have the process either negotiated with the assistance of the minister or through the use

of an arbitrator. That is the typical route that would normally be associated with claims for compensation.

19809. But the City's submissions, although deal with compensation, really speak to a broader issue. And that is, there is no need for this pipeline to be in the lands owned by the City of Edmonton. So we are looking for more than just compensation. We don't want to go and have a process where either an arbitrator or a negotiator will determine what is the fair value of land for the City and, I guess, the fair value of the land used by Trans Mountain. We're not interested in that process.

19810. We don't want to give up this land because this land cannot be quantified very easily as it stands right now because what the City would be giving up once this pipeline is in this area is control of its own lands and control of the expansion that it has planned for this area.

19811. So we are looking for something broader than financial compensation. We are looking for confirmation and affirmation by the Panel that states to Trans Mountain, "If you want to use this portion of land, this parcel of land owned by the City of Edmonton, despite the fact that there is other lands available to you that most likely is more appropriate, than you should bear all the consequences of that decision, both financial as well as non-financial."

19812. And there would be situations where obviously -- if the pipe needs to be relocated or there's expertise or inspections associated with the pipeline prior to construction, we will look to Kinder Morgan or Trans Mountain to take on that responsibility both financially as well as in terms of the deployment of labour and manpower.

19813. So it is not -- we are relying on section 108 because there is no other section that I can really look to in the NEB Act that would speak to this situation. I've -- this is a rather unique situation in the sense that in other circumstances, typically lands that are being used by the pipeline company are needed and they're really -- it is the best option available for a number of parties.

19814. Now, the landowner may -- the landowner may be upset with respect to the use of the land but ultimately it may be the best route for the pipeline. And so in those situations, financial compensation does make sense. It is the -- it's the cost of the land or the value of the land that the pipeline company is providing to the landowner.

19815. But again, what we are looking for goes beyond financial compensation because what we're giving up cannot necessarily be fully encapsulated by some sort of financial compensation from Kinder Morgan or Trans Mountain.

19816. This goes to the heart of the City's ability to develop this area. And it significantly will impact the flexibility that we have with respect to the proposed expansion of this roadway. Once that pipeline is in, we are fully aware that both the NEB rules as well as Kinder Morgan's regulations will significantly hamper what we can do in that area and it could potentially bring about costs not even contemplated at this stage.

19817. That's why we don't want to go into a compensation hearing, because we can't really quantify what we're dealing with.

19818. But in terms of the -- your specific question, I apologize, Chair Hamilton, where in section 108 again? The City is relying on this section for the general powers granted to the NEB to place conditions. And that's what we're asking the Panel to do, is to place conditions if Trans Mountain were to use this land.

19819. **THE CHAIRMAN:** Could you give us a second?

19820. **MR. WOO:** Of course.

--- (A short pause/Courte pause)

19821. **THE CHAIRMAN:** Well, thank you, Mr. Woo. The Panel have no further questions. We thank you and your -- Mr. Gibbard and the gentleman on the phone for attending today. And we will consider all of your submissions along with everyone else's as we determine our recommendation on this -- on this application.

19822. We'll take a 10-minute recess, return at 2:45 when we will hear from the Washington State Department of Ecology.

--- Upon recessing at 2:35 p.m./L'audience est suspendue à 14h35
--- Upon resuming at 2:47 p.m./L'audience est reprise à 14h47

19823. **THE CHAIRMAN:** Good afternoon and the Panel are -- read all the evidence that the Washington State Department of Ecology has presented and in front of us and we are now pleased to -- I understand you've been briefed on our timing system and you know the limitations there. So we'd be pleased to receive your oral summary argument.

--- FINAL ARGUMENT BY/ARGUMENTATION FINALE PAR THE WASHINGTON STATE DEPARTMENT OF ECOLOGY:

19824. **MS. SEFFERN:** Is my microphone on? Yes, it is.

19825. Good afternoon, Members of the Board. My name is Leslie Seffern and I am the authorized representative for the Washington State Department of Ecology.

19826. The project that we're talking about today will involve the shipment of oil through the shared waters of the United States and the State of Washington. It will -- the project tankers will travel through the Salish Sea which is an extraordinarily rich environment both natural environment, cultural and economic. The resources are highly treasured by the State of Washington.

19827. As you know, the project will increase the tanker traffic through the Salish Sea by sevenfold. So whereas before, there would have been one tanker going through the Salish Sea per week, now there would be seven tankers going through the Salish Sea per week.

19828. The Washington State Department of Ecology is responsible for protecting Washington's waters. Ecology wants to ensure that the risks from this project are minimized to the maximum extent practicable and we are urging the Board to us its authority to the maximum extent to minimize any risks to the Salish Sea from the project.

19829. Ecology has reviewed the draft conditions that the Board issued and we are respectfully requesting that the Board amend Conditions 114 and 108; those are related to marine shipping and financial assurances.

19830. And we also are asking that you add two additional conditions related to tug escorts and response planning.

19831. Ecology is asking the Board to require Trans Mountain to include in its tanker-acceptance criteria three requirements that are generally described as follows: that project vessels prepare contingency plans for a rapid, coordinated and effective response to oil spills; that project vessels demonstrate financial assurances and commit to taking responsibility for all costs and damages in Washington from oil spills; that vessels and barges calling on Westridge Terminal participate in the costs of the emergency rescue tug that is stationed at Neah Bay to rescue vessels in distress.

19832. And the two additional conditions that we're asking the Board impose on Trans Mountain are first that Trans Mountain consult Ecology as it develops its tug escort capability matrix and that it participate in the geographic response planning for the shared waters of the Salish Sea where the oil tankers and barges would travel.

19833. Beginning with contingency plans, tank vessels and barges calling on Westridge Terminal are required to -- on Washington ports are required to prepare and have available and get them approved by the Department of Ecology, detailed contingency plans that govern what would happen in the event of an oil spill. The purpose is to be prepared for a coordinated, rapid, and effective response to an oil spill.

19834. Regulations in Washington establish a methodology to define first a worst case spill volume to form the basis of the plan. Then the plan has to ensure a number of things: that there is sufficient personnel available and trained to respond in the event of an oil spill; that spill management teams are pre-identified; that there is sufficient equipment available and pre-staged in areas where it could be needed.

19835. That equipment includes things like recovery devices; storage capacity; aerial surveillance to detect oil in dark and foggy conditions; boom -- which is the floating devices that capture the plume of an oil spill -- that is capable of efficiently containing the oil in high current conditions; equipment to locate and recover oils that have become submerged or sunk, which is typical of diluted bitumen, the kind of oil that's going to be travelling through this area; equipment capable of managing oiled wildlife; shoreline clean-up equipment.

19836. And then also the contingency plans include a commitment to participate in the funding of the Neah Bay rescue tug, the emergency rescue tug.

19837. To make sure the contingency plans are effective, the vessels who file them in Washington have to ensure that they go through drilling procedures; they go through an entire drill procedure every three years that tests every aspect of that plan to make sure that it works. And if the specific equipment is not listed in the plan itself, it is made available on a public database called the Western Response Resource List.

19838. And all of the plans are publicly available so that anyone who has a role in ensuring that there is an effective response, can see what's in the plan and can ensure that the efforts that they make are coordinated with those in the contingency plan for the particular vessel.

19839. Additional details of the requirements are laid out in Washington's regulatory provisions. There are both the planning standards and the drill standards. Those are in Exhibits 17 and 23, which I provided to the Board in advance of the hearing today, as well as a list of 15 different aspects of the contingency plans that are drilled in the drilling exercise that happen every 3 years.

19840. Just a note on the exhibits. We can pull them up and take a look at them now. It might be useful for you to see just how comprehensive they are. If you want to pull up Exhibit 17, which is the Planning Standards, you can take a quick look at that.

19841. So those are the Oil Spill Contingency Planning Standards. And if you can go to pdf 3 -- oops. It's actually just the first page of this exhibit. So I'm not sure -- are you Part 4? There you go. So if you just go to the next page I think you should see WAC 173-182-010. One more page. Or it's at the bottom of -- that's it. So if you can just -- one more page. Sorry.

19842. There, 173-182-010 -- that looks like Exhibit 23. But I'll just read it to you and you can -- all of the regulations are in the record in these three exhibits that I laid out, 17-23 and 22.

19843. In WAC (Washington Administrative Code) -- just our regulations -- 173-182-010, there's a nice overview of what is in a contingency plan. And it includes:

> *"[Maximizing] the effectiveness and timeliness of oil spill response [plans]; [ensuring] continual readiness, maintenance*

of equipment and training of personnel..."

19844. And as I said before, that includes pre-staged personnel and equipment in particular areas that have been pre-identified, especially areas that are sensitive in terms of the species that are there, the habitat that supports the species.

> *"...[They must' support coordination with state, federal, and other contingency planning efforts; [p]rovide for the protection of Washington waters, natural, cultural and significant economic resources by minimizing the impact of oil spills; and [...] provide the highest level of protection..."*

19845. **THE CHAIRMAN:** Perhaps if you would entertain questions.

19846. **MS. SEFFERN:** Sure.

19847. **THE CHAIRMAN:** You indicated that this is for state and federal. In those exercises, the drills and everything, is there a relationship between the U.S. and Canadian waters? Is that integrated into this?

19848. **MS. SEFFERN:** The drills are focused on drilling the elements of the particular contingency plan that the vessels have provided. But there is coordination between the U.S. Coast Guard and the Canadian Coast Guard. There's a joint contingency plan and there's also a -- it's called the Canadian-U.S. Pact. But those are very general requirements and they don't get into the level of detail that the Washington Administrative Code requires for the contingency plans that are prepared by the vessels.

19849. **THE CHAIRMAN:** And in the U.S., as you indicate, your agency is responsible for Washington State waters and then as I'm reading your evidence, there's the U.S. and Washington State Plan and Response Standards. And there's about eight parts to that. So I'm wondering where the relationship is with authority between the state and the federal. I just want to understand that clearly in my mind; it would be helpful.

19850. **MS. SEFFERN:** There's the federal plan, which is the National Contingency Plan. That requires the various regions to do planning at the regional level. And then there's another level for geographic response plans for particular geographic regions within Washington. So for example, San Juan County has its own geographical response plan that identifies in advance all of the

sensitive areas and gives guidance to first responders in the initial hours of an oil spill.

19851. **THE CHAIRMAN:** Thank you.

19852. **MS. SEFFERN:** Draft Condition 114(b) requires Trans Mountain's facilities to implement an enhanced marine oil spill response regime that is generally described including general capacity and response times, and a general requirement that equipment be staged in the area, the study area. Missing are requirements for vessel contingency plans that give detailed information consistent with the requirements of Washington's regulations.

19853. We're not saying that -- well, we're saying that Washington has done the work to establish detailed requirements for contingency plans. And we understand that Canada has the intention of adopting a world-class response regime. And there's been discussion in the last three years about that, but we've not seen anything specific materialize yet.

19854. And so that's why I'm referring to the Washington standards, because they establish a template to guide the Board as it imposes this requirement.

19855. So Ecology ---

19856. **THE CHAIRMAN:** Could I also follow up if that's okay?

19857. **MS. SEFFERN:** Sure.

19858. **THE CHAIRMAN:** On the geographic response plans, is there any vessels that are currently sailing through the Salish Sea in the State waters that have to comply with this?

19859. **MS. SEFFERN:** Yes. I mean, that's the reason for the plan. Yeah.

19860. **THE CHAIRMAN:** So they ---

19861. **MS. SEFFERN:** But they are the vessels calling on Washington ports, not on Canadian ports.

19862. **THE CHAIRMAN:** Okay, thank you.

19863. **MS. SEFFERN:** Yeah. So therefore, Ecology is requesting that the Board require Trans Mountain to include in its tanker acceptance criteria requirements that vessels prepare contingency plans equivalent to those required in Washington that include commitments to perform drills based upon published criteria that provide for amendments based upon lessons learned and that are available in a public database such as the one used in Washington.

19864. So I'm going to move on to financial assurances.

19865. Washington tankers and barges have financial assurance requirements by statute in Washington. For barges, barges are required to demonstrate proof of financial responsibility for $5 million or $300 per gross ton of the barge, whichever is greater.

19866. Tank vessels have to demonstrate financial responsibility in the amount of $1 million per incident per spill. They must document the ability to cover costs and damages by themselves, unless they are covered by an international protection and indemnity mutual organization for the same amount.

19867. In addition, vessels and barges are required to cover the full costs and damages of oil spills. There is no liability limit in Washington.

19868. These are the requirements that the Washington legislature determined are necessary to protect Washington waters.

19869. Draft Condition 108 requires Trans Mountain to file a financial assistance plan to cover the costs and liabilities caused by the proposed facilities, but Trans Mountain is not required to secure financial assurance commitments from the vessels and barges calling on the Westridge Terminal.

19870. And Canada has liability limits for vessels and financial assurance requirements for vessels that mirror those limits.

19871. Therefore, Ecology is asking the Board to require Trans Mountain to include in its tanker acceptance criteria requirements that vessels demonstrate financial assurances that are at least equivalent to those in Washington and commit to pay the costs and damages without limit that result from oil spills that impact Washington.

19872. I want to move on to the costs of the rescue tug at Neah Bay.

19873. Tank vessels and barges calling on Washington ports must pay for the use of the emergency rescue tug that is stationed at Neah Bay, which has come to the aide of many vessels to help avoid oil spills.

19874. Ships calling on Canadian ports do not pay into the tug's maintenance, the crews, the docking facilities and other expenses.

19875. Ecology's website lists the instances where the tug has come to the aide of vessels in distress in the last 10 years or so, and it's been on roughly 50 occasions. Around 18 of those have been to rescue Canadian ships, ships calling on Canadian ports. So in about 18 percent of time, in nine instances, 18 percent of the time.

19876. The tug helps assure that unladen tankers who are in distress could call on the tug and be rescued. And the unladen tankers, even though they don't have crude oil cargo, have a tremendous amount of fuel on board. For example, Polar Tankers carry on the order of 5.6 million litres of fuel oil, which is a lot.

19877. There is no draft condition that requires payment into the rescue tug. Therefore, Ecology is requesting that the Board require Trans Mountain to pay into the rescue tug, or in the alternative require in its tanker acceptance criteria that the vessels calling on Westridge Marine Terminal pay into the rescue tug.

19878. So we move to the rescue tug capability matrix.

19879. As you know, Trans Mountain has said that they will require their vessels to have tug escorts when they are laden with crude oil. And they are developing a tug matrix to determine the capability that those tugs have to have in order to ensure that they can do the job.

19880. In Washington, tugs must have an aggregate horsepower, shaft horsepower equivalent to at least five percent of the dead weight tons of the escorted tanker or barge and sufficient mechanical capabilities to provide for safe escort.

19881. Draft Condition 114(a) requires Trans Mountain to prescribe a tug matrix that includes minimum capabilities for tugs that escort tankers, as described in Draft Condition 114 (a)'s cited references. However, those references don't include a requirement to consult with Washington State or the

U.S. Coast Guard to ensure that the tug capabilities are sufficient to protect Washington's marine waters.

19882. And Ecology is in the best position to understand the areas that are sensitive ecologically in the project route, to be able to provide input into what those tug escort capabilities should look like.

19883. And so Ecology is asking the Board to include a condition that requires Trans Mountain to consult with Ecology in the process of developing the tug matrix capabilities. Or in the alternative, requiring Trans Mountain to consider written input from Ecology. And we're asking the Board to require Trans Mountain to make the final tug matrix available to Ecology.

19884. Finally, I want to take a moment and discuss the geographic response plans that we talked about earlier.

19885. Washington participates, as I said, in the oil spill response system. That includes a process for including for developing site-specific response strategies known as "geographic response plans". These involve agreed to ahead of time tactics by state and federal agencies, tribes, response organizations and local emergency responders.

19886. They are developed to minimize impacts on sensitive areas threatened by a spill. They identify the natural, cultural and economically significant resources that are at risk, and they give first responders direction in the early hours of a spill.

19887. Vessels calling on the Westridge Marine Terminal are carrying diluted bitumen, a heavier form of crude oil that can sink over time and in waters that are turbulent with high sediment content, which is typical of the waters along the route.

19888. Trans Mountain has not provided input into the geographic response planning process, but Ecology views them as an essential part of that process; therefore -- excuse me, there's no condition currently requiring Trans Mountain to participate in the cross-border GRP process to ensure a coordinated response with the United States and Washington State in the event of a spill in our shared waters.

19889. Therefore, Ecology is asking the Board to require Trans Mountain to

fund and help develop and test and implement a joint geographic response plan with Ecology to address the risks from vessels carrying diluted bitumen through shared waters in the Salish Sea to ensure that resources at risk from spills are pre-identified; first responders, including those in the United States and the State of Washington have direction in the initial hours of a spill so that the response can be coordinated; and finally, there is an effective response for submerged or sinking oils that are not currently addressed in the plan.

19890. So in conclusion, Ecology asks the Board to use its authority to the maximum extent allowed by law to place conditions on this project if it does go forward that will protect the natural resources of the Salish Sea.

19891. That's all I have.

19892. **THE CHAIRMAN**: Thank you, Ms. Seffern.

--- (A short pause/Courte pause)

19893. **THE CHAIRMAN**: Thank you, Ms. Seffern. The Panel have no questions -- further questions of you, and appreciate your attendance today on behalf of the Washington State Department of Ecology.

19894. And with that, we'll be adjourning.

19895. And tomorrow we will hear from Canadian Natural Resources, a joint submission by the Canadian Natural Resources, Canadian Oil Sands, Cenovus, Devon, Husky Oil, Imperial Oil, Statoil, Suncor, Tesoro and Total.

19896. And we'll hear from them first in the morning, followed by BP Canada Energy Group ULC.

19897. We are adjourned until 9:00 a.m. Mountain Time.

--- Upon adjourning at 3:15 p.m./L'audience est ajournée à 15h15