



REQUEST FOR DECISION

To: TRUST COUNCIL

For the Meeting of:: Resolution Without Meeting (RWM)

From: Executive Committee

Date: February 4, 2014

SUBJECT: ISLANDS TRUST COUNCIL PARTICIPATION IN UPCOMING NATIONAL ENERGY BOARD HEARING PROCESS REGARDING KINDER MORGAN'S TRANS MOUNTAIN PIPELINE EXPANSION PROJECT

RECOMMENDATION: That, in light of Trust Council's stated opposition to the Kinder Morgan pipeline expansion, the Islands Trust Council direct the Chair to submit an application for the Islands Trust Council to participate as a commenter in the National Energy Board's hearing into the Trans Mountain Pipeline Expansion Project.

CHIEF ADMINISTRATIVE OFFICER COMMENTS:

Concerns about the impact of an oil spill within the islands and waters of the Islands Trust Area has long been of significant concern to residents of the Islands Trust Area and their elected representatives. The Islands Trust was established forty years ago to protect the environment and unique amenities of this area, including its communities, lifestyles and economies. While the risk of an oil spill from a tanker is low, the magnitude of impact would be devastating and difficult to imagine. Kinder Morgan, a pipeline company, has now applied to double the capacity of the pipeline that feeds tanker traffic to and from Burnaby BC, transporting oil through the Islands Trust Area to world markets. The type of oil to be transported would have particularly difficult consequences if spilled, and the amount of tanker traffic is expected to increase seven-fold. The question before Trust Council is whether or not it should and can participate in the federal hearing process (through the National Energy Board) that will determine whether this project will proceed. After considering the expected expense to organizational resources (staff time and funds), staff have concluded that full engagement in the formal quasi-judicial process as an *intervenor* would be expensive and time-consuming, requiring significant additional resources, and potentially detracting from core functions of the Islands Trust and attention to other topics that concern islanders. Staff recommend that Trust Council participate in the hearing process as a *commenter*, consistent with its existing resources.

IMPLICATIONS OF RECOMMENDATION

ORGANIZATIONAL:

The amount of staff time required to participate as a *commenter* in the National Energy Board (NEB) hearing process (i.e. to produce a letter of comment) will depend on the complexity of the issues raised in the letter and the extent of new research required. Estimates for staff time are between 5 to 10 days. While this work could be done within the current scope of Trust Council's advocacy program and staff resources available, other tasks for Trust Area Services staff would have to be re-prioritized to accomplish this. If Trust Council approves this resolution, staff will seek further direction from the Executive Committee regarding the priority of other advocacy work.

POLICY: No implications for existing policy.

FINANCIAL:

As a public agency, the Islands Trust is ineligible for participant funding from the NEB, despite our relatively small budget and staff capacity.

The Islands Trust's draft budget for 2014-2015, as currently recommended by the Financial Planning Committee, accommodates participation in a NEB hearing process as a *commenter*. This is based on the [Strategic Plan](#) that the Islands Trust Council adopted in December 2013, which anticipates participation in the NEB hearing at this level (see Activity 2.3.2). The Financial Planning Committee used Trust Council's Strategic Plan as the basis for its budget recommendations.

If Trust Council decided on a higher level of participation (e.g. '*intervenor*' level), additional funds would be required in the [2014-2015 budget](#) and a related amendment to Trust Council's Strategic Plan. This is discussed further under implication of Alternative Response Option #2. If Trust Council agrees to participate as a *commenter*, the Executive Committee may choose to have the letter of comment reviewed by legal counsel. Staff do not have an estimate of what this would cost. However, Trust Council's proposed annual budget for this type of legal advice is \$10,000 for fiscal year 2014-2015 and does not anticipate this kind of expenditure..

IMPLEMENTATION/COMMUNICATIONS:

To participate as a *commenter* in the NEB process, the Islands Trust must first apply to participate by completing the Application to Participate form and set out in 500 words or fewer how Islands Trust is directly affected by the project and/or what information that the organization believes is relevant or of value to the Board. (see attached draft response to Step 9 of application form).

The Application to Participate form must be submitted by noon, February 12, 2014. It is not yet known when the letter of comment would be due, but staff anticipate that it would be due prior to October 2014. The NEB will announce more information about the hearing process in April 2014.

If an Application to Participate as a *commenter* is submitted, the NEB will inform the Islands Trust in March 2014 if the organization has been accepted as a participant.

Submitting an Application to Participate as a *commenter* does not commit the organization to participating in the process. However, applying to participate in any way will raise public expectation about the Islands Trust's role in the process. Reversing the decision to participate at a later date could prove contentious and time consuming.

Public expectations on Trust Council are high based on the level of awareness of this issue generated by Trust Council's publicly stated position of opposition to oil pipeline projects that lead to the expansion of oil export by barge and tanker from Canada's west coast and former advocacy. The Islands Trust may need to respond to public enquiries about why the organization is applying to participate as a *commenter*, rather than as a full *intervenor* in the hearing process. The following messages could be used to explain our position:

- There are two ways to be engaged in NEB hearings; as a *commenter* or as an *intervenor*.
- Applying to participate as a *commenter* would allow Islands Trust to be engaged with the process within its existing resources, without tax increases for constituents.
- Intervening requires extensive resources to monitor the process, participate, communicate and collaborate with partner agencies, and to respond to media and constituent opinions, inquiries and suggestions. Staff estimate that intervening could require up to 100% of the Policy Analyst's time in 2014-2015, possibly with contractor support, and that local taxpayers would be asked to fund at least \$140,000.

- Intervening in the NEB process would detract from the Islands Trust's ability to advocate on other topics important to constituents, and to deliver core services.
- There continue to be other methods to advocate for improvements to shipping safety. Trust Council can continue to work with/advocate to Kinder Morgan Canada, Transport Canada, Western Canada Marine Response Corporation, BC Ministry of Environment etc. for changes that reduce oil spill risks and increase oil spill preparedness.
- Oil tankers do not present the only oil spill risk in the Salish Sea. Container and bulk vessels can contain enough bunker oil to create large spills. If shipping safety and oil spill issues remain an advocacy priority for Trust Council, it may be strategic to reserve resources in 2014 to focus on issues associated with oil spill prevention generally, while partners are focused on the NEB review of the Trans Mountain Pipeline Expansion Project.
- While the up-coming NEB hearing process been high-profile, it is also important to understand the limits of the NEB's process and role. It can only regulate companies and cannot impose conditions on federal or provincial regulators. If the project is approved, the NEB can only provide conditions that would require the proponent to undertake oil spill risk reduction and mitigation activities that are within the company's control. Once the oil has left Westridge terminal in a vessel it is no longer within the custody of Kinder Morgan or under the regulations of the NEB. Overdue changes to the marine shipping safety and the oil spill response regime remain the responsibility of the federal government.
- Islands Trust area constituents may be able to represent themselves in the process if they apply to participate as *intervenors* or *commenters* and are accepted into the process. They may also be able to have their perspectives represented by non-governmental organizations, regional districts and the Province of British Columbia.
- During the course of the hearings, should questions arise that Islands Trust Council wishes to ask of Kinder Morgan Canada or of other *intervenors*, there may be opportunities to request that *intervenors* with an interest in the oil tanker impacts and oil spill risks/impacts incorporate these questions into their information requests. Islands Trust staff have had initial discussions that indicate other intervenors would be willing to assist in this way.
- The NEB's short timelines, and lack of up-front information about the hearing process, are not conducive to informed decision-making by local governments. This is particularly the case for the Islands Trust Council, a 26-member body which meets quarterly.

BACKGROUND

The Islands Trust Council has been advocating to senior governments about oil spill and oil tanker issues since 1979. An oil spill within the Islands Trust Area could have devastating impacts on the abundant biodiversity of the region and could significantly affect species already at risk, as well harm the livability and economic well-being of local communities.

In June 2012, the Islands Trust Council voted to oppose (in principle) oil pipeline projects that lead to the expansion of oil export by barge and tanker from Canada's west coast due to concern about the risk of oil spills that could irrevocably damage coastal environments, economies, and communities.

In December 2013, the Islands Trust Council passed the following resolution:

That the Islands Trust Council direct staff to further examine the financial and staff resources necessary to participate in the NEB hearing process into the Trans Mountain Pipeline Expansion Project and provide advice in a Resolution Without Meeting (RWM) for Council to consider early in 2014.

At that meeting the Islands Trust Council also voted to approve its Strategic Plan, which indicates (in section 2.3.2) that Chair participation in the NEB hearings related to Kinder

Morgan tanker traffic should take place via a 'letter of comment'. As requested by Trust Council, the Financial Planning Committee has developed Council's proposed 2014-2015 budget on this basis.

On December 16, 2013, Trans Mountain Pipeline ULC, operated by Kinder Morgan Canada and owned by Kinder Morgan Energy Partners, filed a Facilities Application with the NEB for authorization to build and operate the necessary facilities for the company's proposed Trans Mountain expansion project. Kinder Morgan Canada advises that, when printed, the application is more than 15,000 pages and up to two metres (seven feet) high when stacked end on end. This information provides insight into the complexity of the application and the review process.

The project will increase the number of oil tankers from 60/year to 408/year. Tanker accidents are low probability/high magnitude events.

The NEB regulates the Trans Mountain pipeline and terminal but does not regulate marine shipping. The NEB has decided to consider during the review process the potential environmental and socio-economic effects of marine shipping activities, but is not empowered to change federal or provincial marine oil spill prevention, response or recovery standards. The final authority for approving or rejecting a proposed project is with the federal Cabinet.

A [NEB hearing process](#) is a formal procedure, held in either oral or written form. There are two ways to engage in NEB hearings; as a *commenter* or as an *intervenor*.

- *Intervenors* have the opportunity to present written evidence, question others on their written evidence, cross-examine other witnesses at the oral portion of the hearing (if held), and give final argument (orally or in writing, depending on the format the NEB has chosen). *Intervenors* may also be cross-examined on their evidence.
- *Commenters* may submit a letter of comment with attachments but are not able to ask questions about other people's evidence or make a final argument.

Information provided by intervenors and commenters will be available to the public.

To become a participant (either as a *commenter* or as an *intervenor*) organizations and individuals must first apply to participate using the NEB's online or paper form to explain how they are directly affected by the project or what information or expertise they have that will help the NEB in its review. In determining who will be accepted into the process, the NEB will judge the value of the information to the NEB, whether the topics raised are within scope, and the qualifications of the applicant. The NEB encourages applicants to explain the degree of connection between the project and their interest, and the likelihood of harm to their interest including income and livelihood.

Participating as a *commenter* (submitting a letter of comment) is the less formal way to participate in a NEB hearing process. The letter of comment can convey the views and opinions of the Islands Trust Council but no questions will be asked of the Islands Trust. Through a letter of comment the Islands Trust Council can propose terms and conditions that should be imposed prior to any approval of the project. Letters of comment will not be considered sworn evidence and are not subject to questioning. As a result, letters of comment may not be given the same weight as sworn evidence that has been tested through questioning in a hearing. The NEB makes all letters of comment available to the public.

Intevenors may file evidence, ask questions of others to clarify evidence in the record, receive questions about filed evidence and may make final arguments. Staff understand that the following local governments have decided to apply to intervene: City of Burnaby, City of Port Moody, City of Vancouver, Metro Vancouver, Village of Belcarra, City of Richmond, City of Abbotsford, District of North Vancouver, City of Surrey and the City of Coquitlam.

The District of West Vancouver has decided to apply to submit a letter of comment. The City of Victoria has decided to apply to either intervene or write a letter of comment. The Washington State Department of Ecology has also decided to apply to intervene. Other local governments are understood to be considering whether to be involved in the hearing process and have requested staff reports.

The list of issues to be considered by the NEB (released July 26, 2013) is below. Staff recommend that the Islands Trust's letter of comment raise topics related to #5, #8 and #10.

1. The need for the proposed project.
2. The economic feasibility of the proposed project.
3. The potential commercial impacts of the proposed project.
4. The potential environmental and socio-economic effects of the proposed project, including any cumulative environmental effects that are likely to result from the project, including those required to be considered by the NEB's Filing Manual.
5. *The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed Project, including the potential effects of accidents or malfunctions that may occur.*
6. The appropriateness of the general route and land requirements for the proposed project.
7. The suitability of the design of the proposed project.
8. *The terms and conditions to be included in any approval the Board may issue.*
9. Potential impacts of the project on Aboriginal interests.
10. *Potential impacts of the project on landowners and land use.*
11. Contingency planning for spills, accidents or malfunctions, during construction and operation of the project.
12. Safety and security during construction of the proposed project and operation of the project, including emergency response planning and third-party damage prevention.

Staff deem it impractical for the Islands Trust to attempt to engage on the other issues.

The NEB does not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by the pipeline.

The NEB has not provided information on how the hearing process will unfold so the process below is based on staff's best guesses:

Steps in the Process	Timeframe
Apply to Participate	February 12, 2014, noon
Hearing Order released (provides more information about the details of the hearing process – e.g. whether it will be in an oral or written format)	~end of March 2014
List of Parties announced	~end of March 2014
Evidence and Questions (written)	~ 2nd-3rd quarter of 2014
Oral Hearing (if held)	~ 4th quarter of 2014/1st quarter 2015
Board Adjourns Hearing	?
Board recommendation report	~June 2015 Recommendation must be made by NEB within 15 months after the day on which an applicant has, in the Board's opinion, provided a complete application which is expected to be

Steps in the Process	Timeframe
	end of March 2014)

REPORT/DOCUMENT:

1. Letter from the NEB and blank application form (registered – not to be completed by others)
2. Draft submission re Step 9 of application form
3. NEB handout re Section 55.2 guidance – participation in a facilities hearing
4. NEB handout re NEB Hearing Process
5. [Islands Trust Council's oil tanker advocacy history](#) (will be updated for letter of comment)

KEY ISSUE(S)/CONCEPT(S):

Advocacy to protect the marine environment in the Islands Trust Area, within the resources available to the Islands Trust Council.

RELEVANT POLICY:

- [Islands Trust Act](#), section 3
The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.
- [Islands Trust Policy Statement](#) Part 1: Roles and Responsibilities section
The Islands Trust Council cannot effectively implement the Policy Statement without the support of all stakeholders. Assistance, cooperation and collaboration are required from local trust committees, island municipalities, the Trust Fund Board, the Provincial Government, other government agencies, non-government organizations, communities, First Nations, property owners, residents and visitors.
- Islands Trust Policy Statement Part 1:
To achieve its object, the Islands Trust must be an educator, coordinator, and initiator, guiding individuals, organizations and other agencies in support of the object. While the Islands Trust can provide the necessary leadership, responsibility for stewardship of the Trust Area rests with many. Individuals, other government agencies, organizations, and the Province itself all have important roles to play. Cooperative actions are required of other agencies, organizations and individuals to ensure that activities are carried out in a manner that is sensitive to the needs of Trust Area ecosystems and island communities.
- Islands Trust Policy Statement policy 3.1.9:
Trust Council encourages actions and programs of other government agencies which place priority on the side of protection for Trust Area ecosystems when judgment must be exercised; protect the diversity of native species and habitats in the Trust Area, and prevent pollution of the air, land and fresh and marine waters of the Trust Area.
- [Advocacy Policy 6.10.iii](#)
- Islands Trust Council's 2011-2014 Strategic Plan section 2.3 includes under the strategy "Advocate for protection of the Salish Sea and Howe Sound from oil spills, derelict vessels and industrial activities." In section, 2.3.2, the Strategic Plan indicates that Chair participation in the NEB hearings related to Kinder Morgan tanker traffic should take place via a 'letter of comment'.

DESIRED OUTCOME:

Representing the Islands Trust Object to the NEB hearings about the proposed Trans Mountain Pipeline Expansion Project, within available resources and consistent with Trust Council's Strategic Plan.

RESPONSE OPTIONS

That, in light of Trust Council's stated opposition to the Kinder Morgan pipeline expansion, the Islands Trust Council direct the Chair to submit an application for the Islands Trust Council to participate as a commenter in the National Energy Board's hearing into the Trans Mountain Pipeline Expansion Project.

Alternatives (not recommended):

1. Not to participate in the NEB hearing process regarding the proposed Trans Mountain Pipeline Expansion Project.
2. That, in light of Trust Council's stated opposition to the Kinder Morgan pipeline expansion, the Islands Trust Council direct the Chair to submit an application for the Islands Trust Council to participate as an *intervenor* in the NEB hearing into the Trans Mountain Pipeline Expansion Project, and:
 - a. Direct staff to develop a program budget request for consideration by Trust Council in March 2014 to support *intervenor*-related costs
 - b. Direct staff to develop a program budget request for consideration by Trust Council in March 2014 to backfill Trust Area Services staff resources during the hearing process

IMPLICATIONS OF ALTERNATIVE 1 – (to neither comment nor intervene – **not recommended)**

ORGANIZATIONAL (Alternative 1 – not recommended): Will reserve capacity for implementing the other activities in the Islands Trust Council's Strategic Plan.

FINANCIAL: N/A

POLICY: N/A

IMPLEMENTATION/COMMUNICATIONS (Alternative 1 – not recommended):

If it chose this alternative, the Islands Trust may still need to develop communications materials to respond to public inquiries about why the organization is choosing not to comment or intervene in the hearing process. The following messages could be used to explain a Council decision not to participate:

- Islands Trust Council is committed to keeping taxes low and focusing its work on where it can best advance the Object of Islands Trust
- Other interest groups are intervening and we can work with them to promote Islands Trust interests
- There continue to be other methods to advocate for improvements to shipping safety and oil spill prevention and preparedness. The Islands Trust can continue to work with/advocate to Kinder Morgan Canada, Transport Canada, Western Canada Marine Response Corporation, BC Ministry of Environment, etc.

IMPLICATIONS OF ALTERNATIVE 2 - (Participate as an *intervenor* – not recommended)

ORGANIZATIONAL (Alternative 2 - not recommended):

The amount of staff time required to participate as an *intervenor* is difficult to quantify at this time. At minimum, it is expected to require all of the resources currently allocated to Trust Council's advocacy program from May 2014 - February 2015. In addition, other staff resources (CAO, Director of Trust Area Services, Communications Specialist) would be required, although the amount of time difficult to judge at this time. If Council wished to continue Trust Area Services functions including advocacy (e.g. ferries, aquaculture, derelict vessels), contractor or auxiliary staff would be needed to backfill the Policy Analyst position, requiring up to \$50,000 in funding depending on the scope of work. The small size of the Trust Area Services team means that the project could be jeopardized by the illness or departure of key staff people.

FINANCIAL (Alternative 2 - not recommended):

It is unclear at this time what funding is needed to support participation as an *intervenor* as there are many factors still to be determined. The Living Oceans Society determined that they would need \$140,000 to participate and have been granted \$79,000 in participant funding from the NEB. This estimate does not include staff or volunteer time. Raincoast Conservation Foundation received \$72,000 in participant funding, about half of their request.

Based on informal estimates provided by others, staff estimate that up to \$140,000 would be need to be budgeted for

- Travel costs for Islands Trust Chair (or delegated representative) to travel to the oral hearings (NB: This assumes that hearings would be in an oral rather than a written format. If so, the location has not been announced, but could be Vancouver, central BC and/or Alberta).
- Legal advice, legal review of submissions, and legal counsel support of Islands Trust Chair (or delegated representative) at either a written or oral hearing.
- Other as yet unanticipated costs.

There may be opportunities to share information and collaborate with other intervenors as a way of reducing costs. We know that other local governments with interests in marine spills such as City of Vancouver will be intervening. Staff have spoken with the Executive Director of the Living Oceans Society who has offered to incorporate Islands Trust Council questions into their line of questioning, as possible. It is likely that other intervenors concerned with the marine shipping activities associated with the project would also be willing.

In total, the cost to intervene and sustain current Trust Area Services department capacity could be up to \$190,000. It would be possible for Island Trust to minimize its involvement as an intervenor but, should Trust Council decide to intervene, a sufficient budget should be in place to enable credible participation by the Islands Trust Council Chair (or delegated representative) both before and after the November 2014 municipal elections.

POLICY: No implications for existing policy.

IMPLEMENTATION/COMMUNICATIONS (Alternative 2 - not recommended):

The application to participate form must be submitted by noon, February 12, 2014.

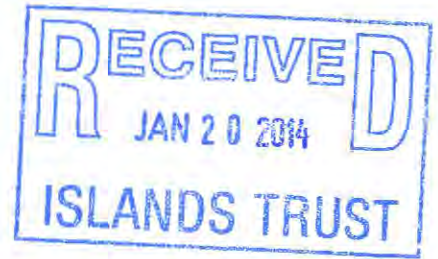
Submitting an application to *intervene* does not commit the organization to participating in the process. The Islands Trust could intervene and file no evidence, and simply ask questions of other parties. However, applying to intervene will raise public expectation about the Islands Trust's role in the process, and reversing the decision at a later date could prove contentious.

The Islands Trust may need to respond to public inquiries about why the organization is applying to be an *intervenor* in the hearing process, and to justify the related use of taxpayer funds. The following messages could be used to explain Council's decision:

- The Islands Trust Council has been advocating to senior governments about oil spill and oil tanker issues since 1979. An oil spill within the Islands Trust Area could have devastating impacts on the abundant biodiversity of the region and could significantly affect species already at risk, as well harm the livability and economic well-being of local communities.
- In June 2012, the Islands Trust Council voted to oppose (in principle) oil pipeline projects that lead to the expansion of oil export by barge and tanker from Canada's west coast due to concern about the risk of oil spills that could irrevocably damage coastal environments, economies, and communities.
- Applying to intervene gives Trust Council the option to scale participation up or down and leaves the door open for the next elected Council.
- Sufficient funding to intervene must be secured through the 2014-2015 budget, regardless of what cost savings or reduced activities might occur as the intervention process evolves.
- It is unknown if island constituents will be accepted to participate in the process or if Islands Trust Area regional districts will actively intervene -applying to intervene leaves open the possibility that Islands Trust could ask questions relevant to specific constituent interests, provided they are consistent with the Islands Trust object and hearing application.

Prepared By: Clare Frater, Policy Analyst, January 30, 2014

Reviewed By/Date: Lisa Gordon, Director, Trust Area Services – January 30, 2014
Chief Administrative Officer – January 30, 2014
Executive Committee – February 4, 2014



January 2014

Trans Mountain Pipeline Expansion Project - Application to Participate Form

Hello,

Thank you for your interest in the Trans Mountain Pipeline Expansion Project. As requested, enclosed is a registered copy of the Application to Participate Form, as well as documents and guidance materials which may assist you in completing the form. Your package should include:

- Hearing Process Handbook
- Project area map
- Diagram of Hearing Process
- Participant Funding Program (PFP) Guide
- Contact information for the Process Advisor and PFP Coordinator

Please submit your application to participate by noon Pacific Standard Time on Wednesday, February 12, 2014. The application form itself provides details on how and where to submit your application.

*Please note that this form has been registered to you and blank photocopies should not be used by others to apply to participate. If you know of others who are interested in applying to participate in this hearing process, please ask them to call me at 1-800-899-1265 or email transmountainpipeline.hearing@neb-one.gc.ca to request a registered form.

Best regards,

Reny Chakkalakal
Process Advisor – Trans Mountain Part III Hearing
National Energy Board

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Telephone/Téléphone : 403-292-4800
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<http://www.neb-one.gc.ca>
Telephone/Téléphone : 1-800-899-1265
Facsimile/Télocopieur : 1-877-288-8803

National Energy
Board



Office national
de l'énergie

**Trans Mountain Expansion Project
Application to Participate**

Step 1 – I am applying as:

A Group

Select which one best describes your Group:

- ☐ **My group is an organization that will represent its own interests**
- ☐ **My group is a collection of individuals with common interests.** If so, you **MUST** list the first and last names of the Individual(s) you represent for this ATP Form to be considered and you must check the box below.
- ☐ I have permission to identify and speak on behalf of the people listed below.

Name (s): _____

(You may attach additional pieces of paper if required).

NOTE: Individual persons you are representing as part of a Group with a common interest do not have to complete a separate ATP form.

The following describes the categories under which you may apply. If you want to apply as an individual or authorized representative, please contact the National Energy Board (NEB or Board) and request a form for that category.

An **Individual** is one person or landowner who may or may not have a lawyer or person speaking on their behalf and who will represent their own personal interests. Apply as an Individual if you plan to bring forward issues regarding personal impacts or property-specific issues, and you are not represented by a Group. Use the **Individual** ATP Form if you have a lawyer or representative but are filling in the ATP Form yourself. If your lawyer or representative is filling in a form for you, you do not need to complete a separate ATP Form.

An **Authorized Representative on Behalf of an Individual** is someone who speaks or submits documents on behalf of an Individual. This may be a lawyer or other person. An Authorized Representative will present the views and personal interests of the Individual they are representing.

A Group is:

- an organization with its own interests (for example, a company, NGO, special interest group, Aboriginal group, government agency), or
- a collaboration of two or more people that represents the common interests of those people.

The Group will have a Main Contact Person(s) and may also have an Authorized Representative such as a lawyer. The Main Contact Person will usually fill out the ATP Form on the Group's behalf and will respond to questions in the hearing on behalf of the Group if participation is granted. A Group representing an Individual should select the ATP Form for **Authorized Representative on Behalf of an Individual**.

Step 2 – Hearing Information

The Project to be assessed in this hearing is defined as:

- Expansion of Trans Mountain pipeline system from Edmonton, AB and Burnaby, BC
- 987 km of new pipeline, new and modified facilities, and reactivation of 193 km of existing pipeline
- Expansion of the Westridge Marine Terminal

Project Name: Trans Mountain Expansion Project
Company Name: Trans Mountain Pipeline ULC
NEB File Number: OF-Fac-Oil-T260-2013-03 02
Hearing Order: N/A

Participant Funding is available for this hearing. For information please see the *Participant Funding Program (PFP) Guide* (insert A in your package).

The NEB has people who can help you to understand the Board's process and answer your questions about process. They can also assist you if you have questions about filling in this ATP form.

For process support on this hearing please contact the Process Advisor Reny Chakkalakal by emailing TransMountainPipeline.Hearing@neb-one.gc.ca or calling toll free 1-800-899-1265.

Step 3 – Important Information

The NEB will use only the information provided in this ATP Form to decide whether you are allowed to participate in this hearing. Previously submitted information will not be considered. It is important to provide all the requested information on this ATP Form. It is your responsibility to demonstrate that the NEB should allow you to participate.

You must fully complete all required fields on this ATP Form in order to be considered. If you do not provide sufficient information on this ATP Form, you will not be allowed to participate.

You should refer to the Guidance document called *Guidance Document on Section 55.2 and Participation in a Facilities Hearing* (insert B in your package) when filling in your ATP form.

Service: You must send a copy of your final ATP Form on Trans Mountain Pipeline ULC to the following addresses:

D. Scott Stoness
Vice President, Finance & Regulatory Affairs
Kinder Morgan Canada
2700, 300 – 5th Avenue SW
Calgary, Alberta
T2P 5J2

And a cc to:

Shawn Denstedt QC
Osler Hoskin and Harcourt LLP
Suite 2500 TransCanada Tower
450 – 1st Street SW
Calgary, Alberta
T2P 5H1

Step 4 – Privacy Agreement

The Board is authorized to collect, use and disclose personal information in the context of any Board proceeding. Except where confidentiality is granted, all information and documents filed with the Board as an Individual or on behalf of other Individuals will be made public. Additionally, any contact information provided may be used to contact you or serve documents on you.

Under the federal *Personal Information Protection and Electronic Documents Act*, the *Regulations Specifying Publicly Available Information* state that personal information in a record of a quasijudicial body (like the Board) is publicly available without consent, provided that the collection, use and disclosure of that information relates directly to the purpose for which the information appears in the record.

By signing here, you are indicating that you have read and understood the above information.

Signature

Step 5 – Contact Information – Group’s Main Contact

Enter the name of the person who will appear as your Group’s contact on the List of Parties. Any questions or correspondence to the Group will be sent to the person listed below.

Name of Company or Group

Name [Mr., Mrs., Ms.; First Name; Last Name]

Address 1 [apt.; street; city]

Address 2 [province; postal code, zip code; country]

Phone

Fax

Email

Step 6 – Contact Information – Authorized Representative for Group

A Group’s Authorized Representative is someone who speaks or files documents on behalf of the Group. You may have more than one Authorized Representative.

Name: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Step 7 – Method or Level of Participation

Tell us how your Group wants to participate:

A Commenter:

- may provide views on the proposed project in a Letter of Comment; and
- is not considered a Party (Intervenor or Company) to the hearing, cannot ask information requests or cross-examine other Parties, and cannot provide final argument.

An Intervenor:

- may provide evidence;
- responds to information requests or oral cross-examination on evidence you file; may ask information requests or cross-examine other Parties who filed evidence; and
- may provide argument.

Intervening requires a time commitment to the hearing process.

The NEB will review your ATP Form and decide whether your Group is allowed to participate.

Additional information about the role of commenters and intervenors may be found in the *Hearing Process Handbook* (insert C in your package).

Please select **one** of the following:

- ☐ Commenter
- ☐ Intervenor

Step 8 – Interest or Expertise

The NEB will only use the information provided in this ATP Form to decide if your Group will be allowed to participate in this hearing. No other information will be considered. When completing the ATP Form, you should consider the Hearing Description in Step 2 above and the List of Issues in Step 9.

You should also refer to the *Guidance Document on Section 55.2 and Participation in a Facilities Hearing* (insert B in your package).

You are “**directly affected**” if you have a specific and detailed interest in the proposed Project that may be affected by the Board’s decision. You have “**relevant information or expertise**” if you have knowledge that will assist the Board.

Please select one or both of the following:

- ☐ The Group I am representing is **directly affected** by the proposed Project
- ☐ The Group I am representing has **relevant information or expertise**

Step 9 - Your Group's Connection to the Project Issues

The List of issues that the Board will consider in the Trans Mountain Expansion Project hearing is set out below. These are the issues that the Board has determined are relevant to this hearing.

Note: The Board does not intend to consider the environmental and socio-economic effects associated with upstream activities, the development of oil sands, or the downstream use of the oil transported by the pipeline.

Please identify **at least one issue** that relates to:

- i. How the Group as a whole is directly affected and/or
- ii. The information/expertise that the Group believes is relevant or of value to the Board and provide a brief explanation in the space below.

- ☐ 1. The need for the proposed Project.
- ☐ 2. The economic feasibility of the proposed Project.
- ☐ 3. The potential commercial impacts of the proposed Project.
- ☐ 4. The potential environmental and socio-economic effects of the proposed Project, including any cumulative environmental effects that are likely to result from the Project, including those required to be considered by the NEB's Filing Manual.
- ☐ 5. The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed Project, including the potential effects of accidents or malfunctions that may occur.
- ☐ 6. The appropriateness of the general route and land requirements for the proposed Project.
- ☐ 7. The suitability of the design of the proposed Project.
- ☐ 8. The terms and conditions to be included in any approval the Board may issue.
- ☐ 9. Potential impacts of the Project on Aboriginal interests.
- ☐ 10. Potential impacts of the Project on landowners and land use.

- ☐ 11. Contingency planning for spills, accidents or malfunctions, during construction and operation of the Project
- ☐ 12. Safety and security during construction of the proposed Project and operation of the Project, including emergency response planning and third-party damage prevention.

Limit your answer to no more than 500 words. You may attach additional pieces of paper if required.

Step 10 – Access, Notification and Service

Select which official language you would like to use to participate and receive correspondence:

- ☐ English
- ☐ French

Signature

Step 11 – Review and Submit

You are about to submit your Application to Participate (ATP) Form to the NEB.

Before submitting your application, you should first review it and check that you have:

- ☐ Checked off one box about your Group's interest (Step 1)
- ☐ Checked off that you have permission to identify and speak on behalf of others, and provided their names (Step 1)
- ☐ Signed the Privacy Agreement (step 4)
- ☐ Provided the contact information for the Authorized Representative for the Group (step 6)
- ☐ Checked off ONE box indicating your Group's request to be either a commenter or intervenor (step 7)
- ☐ Checked off your Group's interest or expertise (step 8)
- ☐ Checked off one or more issues (step 9)
- ☐ Provided a brief explanation (step 9)
- ☐ Signed the form (step 10)
- ☐ Made a copy of your form to send to the company (step 3)

When you're ready to submit your ATP form to the NEB, send only the completed ATP form to the address below. (You do not need to return the inserts.)

Sheri Young
Secretary
National Energy Board
444 Seventh Avenue SW
Calgary, AB T2P 0X8
Fax: 403-292-5503

If you notice a typing error or administrative error after filing, contact a NEB Regulatory Officer at 1-800-899-1265 or by email at TransMountainATP@neb-one.gc.ca.



Islands Trust

DRAFT

**Islands Trust Council submission
re Step 9 of the National Energy Board's Trans Mountain Pipeline
Expansion Project – Application to Participate Form**

February 12, 2014

In relation to issues 5, 8, and 10 on the Board's list of issues:

The Islands Trust Council is an elected local government body, established through the Province of British Columbia's [Islands Trust Act](#), in recognition of the provincial significance of the environment and communities of British Columbia's southern coastal islands and waters. Section 3 of the *Act* states:

"The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia."

The *Act* establishes the Islands Trust Council's area of jurisdiction which includes the islands and waters indicated on the following map. The Islands Trust Council represents electors and requisitions property taxes.



A large oil spill resulting from the project or an oil tanker collision or malfunction into the Salish Sea could have a negative impact on the Island Trust Area's unique amenities and environment, directly affecting the advancement of the Islands Trust Council's provincial object.

The Islands Trust Council is also directly affected through a financial interest in ecologically sensitive properties that would need costly remediation in the event of a large marine spill resulting from the project or an oil tanker malfunction or accident. The Islands Trust Council funds a land conservancy branch, the [Islands Trust Fund](#), which owns ocean-front nature reserves with a combined 1.4 km of shoreline and holds an interest in 17 additional ocean-front properties, through conservation covenants, registered on land titles.

Islands Trust Fund-owned properties vulnerable to oil spills

Island	Nature Reserve/Sanctuary	Shoreline (m)	Property Value (2013)
Denman	Lindsay Dickson	539	\$910,000
Galiano	Trincomali	386	\$227,000
Mayne	Horton Bayviary	44	\$343,000
North Pender	Medicine Beach	237	\$1,289,000
Salt Spring	Deep Ridge	14	\$454,000
	Ruby Alton	227	\$742,000
Total	6 nature reserves	1,447 meters (1.4 km)	\$3,965,000

Islands Trust Fund conservation covenants vulnerable to oil spills

Local Trust Area	Number	Shoreline protected (m)
Ballenas Winchelsea	1	1,565
Galiano	2	452
North Pender	4	653
Little D'Arcy	1	2,123
Sidney	5	3,558
Salt Spring	2	386
Saturna	1	717
South Pender	1	236
Total	17	9,690 (9.7 km)

The Islands Trust Council will provide the National Energy Board with the following relevant information/knowledge:

- Information on how marine spills from the project and related marine shipping activities could impact advancement of the Islands Trust Council's provincial object, and the environmental and socio-economic goals and policies contained in the [Islands Trust Policy Statement](#). These democratically-derived goals and policies reflect community values and concerns.
- The Islands Trust Council maps showing the locations of areas particularly sensitive to marine oil spills (e.g. eelgrass beds, forage fish habitat).
- Islands Trust Council's documented concerns relating to marine vessel traffic growth in the region, commercial vessel anchorage noise and light impacts, and insufficient spill response capacity and knowledge in relation to diluted bitumen and synthetic oils in the marine environment.



SECTION 55.2 GUIDANCE – PARTICIPATION IN A FACILITIES HEARING

The *National Energy Board Act*¹ (NEB Act) sets out when the National Energy Board (Board) will allow a person² to participate in a hearing to consider an application to construct and operate a pipeline or power line.³

Persons wishing to participate must demonstrate to the Board's satisfaction that they fall within one or both of the two categories described in the NEB Act and set out below.

Directly Affected Person

The Board must hear from any person who, in the Board's opinion, is directly affected by the granting or refusing of a project application. The Board decides on a case-by-case basis who is directly affected. The Board may consider these factors when making this decision:

1. The nature of the person's interest.
 - Whether a person has a specific and detailed interest, rather than a general public interest.
 - Examples of interests that could support participation are:
 - commercial, property or other financial interest (including employment);
 - personal use and occupancy of land and resources; or
 - use of land and resources for traditional Aboriginal purposes.
2. Whether the granting or refusing of a project application causes a direct effect on the person's interest.
 - The degree of connection between the project and the interest.
 - The likelihood and severity of harm a person is exposed to.
 - The frequency and duration of a person's use of the area near the project.

¹ Section 55.2 of the NEB Act states:

On an application for a certificate, the Board shall consider the representations of any person who, in the Board's opinion, is directly affected by the granting or refusing of the application, and it may consider the representations of any person who, in its opinion, has relevant information or expertise. A decision of the Board as to whether it will consider the representations of any person is conclusive.

² The word "person" includes an individual, company, organization or group.

³ Specifically, this guidance applies to applications made under sections 52, 58 and 58.16 of the NEB Act.

Relevant Information or Expertise

The Board may choose to hear from any person who, in the Board's opinion, has relevant information or expertise.

1. The Board may consider these factors when deciding if a person has relevant information:
 - the source of the person's knowledge (for example, local, regional or Aboriginal);
 - the extent to which the information is within the project scope and related to the list of issues; and
 - how much value the information will add to the Board's decision or recommendation.
2. The Board may consider these factors when deciding if a person has relevant expertise:
 - the person's qualifications (for example, the person has specialist knowledge and experience);
 - the extent to which the person's expertise is within the project scope and related to the list of issues; and
 - how much value the information will add to the Board's decision or recommendation.

NEB Hearing Process

