Friends of Brooks Point — Submissions to the National Energy Board
Trans Mountain Pipeline ULC - Trans Mountain Expansion
May 27, 2015

We are the Friends of Brooks Point Regional Park on Pender Island.

Welcome to Brooks Point Regional Park, 1500 metres of pristine shoreline on one of the last undeveloped headlands in the Southern Gulf Islands. It is one of our most cherished locations.

South Pender is a community of 200 people, and a bridge away from North Pender Island, a community of 2300 people.

Our community is deeply committed to building a local economy that provides income for our families and at the same time enhances, not sacrifices, our social and environmental well-being.

*Our economic development commission* is formally required to promote an economy that is “triple bottom line”.

We are governed by Islands Trust legislation that was enacted to preserve and protect this area and its unique environment for the benefit of local residents and for the citizens of BC.

Across from Brooks Point, three marine vessels operate near the Turn Point Special Operating Area. To prevent accidents, rules require them to be 0.5 nautical mile apart (946 meters - more than 3 football fields in length).

It often looks to us as if ships aren’t complying.

Brooks Point is a visual gateway to the world of the orcas and sea lions — the top of the food chain that starts with forage fish on the beaches and the kelp beds along the rocky shores.

Abundant marine and intertidal life and over 100 different bird species identified attract wildlife enthusiasts and bird watchers.

We have all worked extremely hard to protect Brooks Point.

With conservation partners, our community raised $915,000 to complete the park acquisition. Environment Canada contributed $50,000. We are in the process of finalizing the protective covenant to protect this ecological gem.

Brooks Point, looking East.
We look out onto the migratory path of the J-Clan, a population of southern resident killer whales (orcas).

These highly charismatic neighbours of ours have been around for 11 million years.

The J-Clan is in trouble. There are only about 80 members left in this Southern resident killer whale population. J-52 won’t be officially counted until he reaches his first birthday (Vancouver Sun). Only 12 of the 80 are females of reproductive age. Reproductive age begins around 14 which is a long time to wait for a family in desperate need of new members.

The J-Clan family is vulnerable to four threats — all of which we can control. It is harder and harder for them to find salmon. They are vulnerable to environmental contamination. Noise from ships are known to cause sensory disturbances that compromise their ability to use heightened sonar to communicate and forage for food. And finally, ship strikes and propeller cuts are constant threats to wound or even kill them.

Each of these threats can be traced to our reliance on petroleum.

The J-Clan was designated “endangered” under the Species at Risk Act in 2004. A draft Species at Risk recovery plan is vague, disappointing, and legally and scientifically inadequate to meet its four key recovery outcomes (See Venton).

Oil tankers are already using the migratory paths of the J-Clan as a transportation corridor. The Kinder Morgan proposal will substantially increase the traffic. The J-Clan is already on the edge. They don’t have a voice in the NEB process. If we approve the proposal, how do we know we haven’t signed their death warrant?

Photo credit: Orca Conservancy
We are deeply concerned about an oil tanker accident at Turn Point.

The Kinder Morgan project will increase tanker traffic along our shores from 60 to up to 816 Aframax oil tankers a year (Allan).

Increased traffic increases the risk of an accident and spill. Turn Point is the aptly-named landmark on Stuart Island (US) across Boundary Pass from us where large ships navigate a tricky bend in their route. Turn Point already presents a high collision risk. It is a sharp turn. Shipping lanes are narrow there, and currents can run well over 2 knots.

In 2002, Canadian and US Coast Guard authorities agreed on additional navigation rules at Turn Point for ships over 100m in length (Special Operating Area) (Source).

There is already a risk of a major spill in this high traffic area. We repeatedly witness ships passing much closer than the required half nautical mile distance. Human nature and economic pressure make it difficult for a faster ship to hold its speed for hours behind a slower one.

We want to know exactly how much this risk will increase if the Kinder Morgan proposal is approved. The EPA estimates that if three proposed projects go ahead, including Kinder Morgan, and 1,250 ships ply these waters, the risk of an accident increases by 4.75 (Pynn). Eighty per cent of shipping accidents are caused by human error (Pynn).
An oil spill would devastate on our triple bottom line economy.

Kinder Morgan modelling says a “Credible Worst Case” scenario is an oil tanker running aground near Turn Point at Arachne Reef, spilling 16,500 m3 of oil. We doubt this is indeed a credible worst case. A BC study says a spill from a single vessel would result in the loss of 210,000 m3 of oil. We also believe it is credible to imagine a collision in the Turn Point special operating area.

Others have raised additional concerns about assumptions and proprietary data in the model. We want to know the true facts.

An oil spill reaching our shores would significantly or even totally disrupt local food systems for the J-Clan by destroying kelp beds and compromising breeding areas for forage fish. Forage fish are the food of salmon and many other creatures lower in the food chain than the orcas.

A spill would also devastate our triple bottom line economy. Many of us depend on tourism for our livelihoods. Few visitors will want to visit a contaminated shoreline. Whale watching is an important contributor to our economy.

A CREC study suggests properties directly impacted by oil spills lose 10-40% of their value. Properties near spills drop 5-8% in value.

A Washington State Department of Ecology study concluded that a major spill would cost 165,000 jobs and 10.8 billion dollars, not including individual claims or environmental impacts.

A spill would hit the traditional territory of the Tsawout First Nation community of the WSANEC People. They are reviving their traditional Reef Net Fishery protected by the Douglas Treaty. Increased tanker traffic threatens this Treaty-protected right.

If there is a spill, how can we be certain we won't get stuck with the bill for the clean up?

An Environmental Law Centre report says the funding and compensation scheme that exists under Canadian law would be remarkably inadequate in the event of a catastrophic oil spill. It says compensation would be inadequate for the people living along the coast of B.C. whose livelihoods, cultures, health, property and environment would inevitably be devastated. It argues the funding available for clean up costs and restoring the environment would also be inadequate.

This same Kinder Morgan modelling predicts the red area on this map will be the unmitigated spread of the spill after 96 hours. Other research predicts a much larger spread (see for example Raincoast).

Kinder Morgan says much of the spill can be mitigated, contained and/or cleaned-up.

But these assertions have been challenged by other experts who say the oil (diluted bitumen) will be so heavy much of it will sink to the bottom, and that Kinder Morgan base their projections on near-perfect conditions and twice the response capacity than currently exists (Weaver).

The sea floor in Haro Strait and Boundary Pass has two deep basins that churn the incoming and outgoing tides distributing the nutrients so important for marine life and the complex food chain that is integral to the survival of the endangered J-Clan (Farmer).

On the outgoing tide, the churning of the sunken bitumen in these basins would keep on poisoning the waters passing by Oak Bay, Victoria, Esquimalt, and Sooke. On the incoming tide, it will poison the vast Salish Sea.
It is your job to get to the bottom of all these issues. With respect, we believe your process is flawed. Your mandate doesn’t allow you to consider crucial questions like climate impacts, upstream or downstream ecological consequences, or long-term inter-generational fairness. We worry that you are going through the motions, and that you will not be responsive to our concerns. We choose to participate anyway. We want to tell our story. And we urge you to reject the Kinder Morgan proposal. It is not thought through and poses unacceptable risks to our unique Salish Sea marine environment and our Gulf Island economy.

If you choose to continue to consider the application, we urge you to withhold approval until:
1. Your mandate is expanded to cover climate impacts, upstream or downstream ecological consequences, and intergenerational inequities.
2. You have formally consulted with the Tsawout people Nation to Nation, not as an intervenor.
3. You have committed to broader and more meaningful public consultation, including the ability to cross examine the credibility of information provided by the proponent.
4. We have the following missing and essential information:
   4.1. Reliable scientific spill modelling, for different tidal and weather (wind) conditions, for several spill locations along Boundary Pass and Haro Straits, and with fully disclosed underlying assumptions.
   4.2. Full disclosure of the chemical nature of the tanker contents including both bitumen and diluent content. The bitumen is one of our concerns. Its solvent carrier is another. The solvent will certainly travel on the water surface and in the air as it will have highly volatile components. What fraction is carrier? What is the carrier made of? What vapours would be drifting around our areas? What concentrations?
   4.3. The ownership and nationality of the various pipeline, oil, and shipping companies and their legal liabilities.
   4.4. Details of the proponent’s spill response plans.
   4.5. Full estimates of the costs of remediation, including the sources of those costs.
   4.6. Reliable estimates of increased damage to our park from erosion caused by increased wave action and vibration caused by increased tanker traffic.
5. The following essential pieces are in place:
   5.1. An independent scientific panel has:
       a. Assessed the impact of a 210,000m³ spill of both bitumen and solvent in our waters and weather conditions, and evaluated the spill response capacity to clean up such a spill.
       b. Studied the impact of increased oil tanker traffic will have on the survival of the endangered Southern Resident Killer Whale population (J-Clan), including ship strikes and sound impacts.
   5.2. The Federal and Provincial Governments have completed work on a National Marine Protected Area in the Haro Strait Boundary Pass and beyond to promote sustainability of the marine environment and the economy that depends on that environment.
   5.3. Existing shipping regulations are strengthened and the applicable areas of regulation are broadened. Enforce and publish consequences for any violations. The oil and shipping companies do not have strong enough incentives to adhere to self-defined and self-policing standards.
   5.4. Current navigational requirements in the limited Turn Point special operating area have been expanded to East Point on Saturna and Race Rocks in Haro Strait.
   5.5. There is an “exclusion zone” around laden tankers travelling through the Salish Sea.
   5.6. Shipping and production companies are legally obligated to post a bond for the full cost of remediation. For estimates, look to the actual clean up costs for the Kalamazoo, Gulf, and Valdez oil spills.
   5.7. Reliable remedial procedures and equipment are in place to handle actual worst case scenarios.
   5.8. Federal legislation penalizes companies for intentionally providing misleading or false information such as falsifying shipping hazards, modelling assumptions, dilbit composition, etc.
We urge you to do the right thing.

If you can’t do this work, communities will do it for you. Kinder Morgan’s risk is that they will obtain all the necessary government approvals but will still not have social licence to operate. Social licence is granted to a proponent by communities like ours on a site-specific basis. Once granted, it must be earned and maintained. For proponents, social licence equals economic security. Without social licence, the debate will move to the courts, to the market, and to the streets.

We understand the economic importance of oil and gas. We drive cars. We import much of our food. We enjoy the social services that are paid for in part by oil and gas royalties. But we also know that for our children’s sake we must get off our reliance on carbon. We are liquidating our stocks of natural, human and social capital to pay for next year’s services. The Kinder Morgan proposal will continue this trend.

As a community we are deeply committed to building an economy that can generate income for families but not at the expense of everything else we hold dear. We believe it can be done. We intend to be a model for other Canadian communities. We want our governments to join us.

Please click here to listen to more of our voices, and to hear from some of the children on Pender Island who will inherit the consequences of the NEB’s decision.