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Regulator

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File OF-Fac-Oil-T260-2013-03 ROE 19
20 November 2020

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Dear Mr. Parisé, Mr. Olthafer, Ms. P. Hornsby, Mr. K. Hornsby, Mr. Carter and Mr. Brideau:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (Project)
Application for Immediate Right of Entry pursuant to section 324 of the
Canadian Energy Regulator Act (Application)
Philippa Hornsby and Kimberly B. Hornsby (Landowners)
Legal: SW 25-53-16-W5M, Tract 517 (Lands)**

On 10 January 2020, the Commission of the Canada Energy Regulator¹ (Commission) received an application from Trans Mountain pursuant to section 324 of the *Canadian Energy Regulator Act* (CER Act) requesting an order granting Trans Mountain an immediate right to enter certain lands owned by the Landowners ([C04066](#)). The Application indicates that the registered owner of the Lands are Philippa Hornsby and Kimberly B. Hornsby.

On 19 July 2019, the Canada Energy Regulator's (CER) predecessor, the National Energy Board (NEB), issued its decision on resuming the regulatory processes for the Project ([C00593](#)).

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¹ On 28 August 2019, pursuant to the CER Act, the National Energy Board was replaced with the Canada Energy Regulator. The National Energy Board's adjudicative work has been transferred to the Commission of the Canada Energy Regulator.

The NEB decided that Trans Mountain was required to:

- file a new Plan, Profile and Book of Reference (PPBoR) for the entire length of the Project;
- re-serve landowners along the entire route with notice of proposed detailed route pursuant to paragraph 34(1)(a) of the NEB Act; and
- publish newly approved notices in local newspapers pursuant to paragraph 34(1)(b) of the NEB Act ([C00600](#)).

The Application indicates that Trans Mountain served the NEB Act paragraph 34(1)(a) notice of proposed detailed route, including the lands acquired or proposed to be acquired, on the Landowners on 29 July 2019. The Landowners did not file a statement of opposition to the detailed route.

On 22 October 2019, the Commission issued Order OPL-002-2019, approving the Plan, Profile, and Book of Reference that relates to the Lands (drawing number M002-PM03006-055) ([C02347](#)).

On 16 December 2019, the Landowners filed a motion with the Commission seeking, among other things, a determination and declaration that Trans Mountain is not entitled to install, operate and maintain the Project on the Lands ([C03678](#)). On 24 July 2020, the Commission dismissed the motion ([C07510](#)).

On 14 January 2020, Trans Mountain served and filed proof of service of the Application on the Landowners ([C04108](#)). In the Application, Trans Mountain requested relief from section 55 of the *National Energy Board Rules of Practice and Procedure, 1995* (Rules), which requires that the Application be served on the same day it was filed.

On 15 January 2020, the Landowners filed a written objection to the Application (Objection) ([C04119](#)). On 22 January 2020, Trans Mountain filed a response to the Objection, requesting the Commission dismiss the Objection and grant the ROE order as applied for (Response) ([C04250](#)).

The Landowners object to the Application, unless:

- certain specific provisions are included in the ROE order; and
- the ROE order includes the area within plan 3821 HW.

The Landowners also object to Trans Mountain being given the right of access and egress over all of the Landowners' property, citing section 3(c) of Exhibit A in the ROE Notice. Finally, the Landowners say that Trans Mountain did not enter into meaningful negotiations.

On 31 July 2020, the Commission set out a comment process on proposed modifications to the schedule of a potential ROE order ([C07639](#)). On 12 August 2020, Trans Mountain provided comments on the proposed modifications ([C07810](#)). On 18 August 2020, the Landowners provided their comments ([C07834](#)). On 21 August 2020, Trans Mountain provided its reply to the Landowners' comments ([C08010](#)).

The Commission finds it is appropriate to grant the right of entry order on the terms in the attached Schedule for the reasons below.

(i) Specific provisions

The Landowners object to the issuance of an ROE order, unless certain provisions are included. Trans Mountain's Response considered and responded to each of these requests. The Commission's views on each provision follow.

- a. limit the term of the order as it relates to temporary workspace area (TWS) to a period of three years or such other specific length of time as the Commission believes is reasonable*

The Landowners argued that the reference to "approximately three years" in the ROE Notice was not specific enough and that it is impossible to determine fair compensation for a workspace area unless the term is specific.

In Response, Trans Mountain stated it was not possible to establish with absolute certainty the precise period of time required for construction, restoration and reclamation activities. Trans Mountain committed to making all reasonably practicable efforts to complete all of the restoration and reclamation activities for which TWS access is required within (a) three years from the date an ROE order is issued for the Lands, or (b) two years from the commencement of construction.

The Commission amends the following to the terms of the ROE Order, at clause 3(b) of the attached Schedule:

- (b) the right and interest in, on, over, upon, across, along, under and through the Temporary Workspace Area to carry out any activities necessary for or incidental to the Pipeline Construction, including to survey and carry out tests and examinations for the Pipeline and, for such purposes, remove from the Temporary Workspace Area any Incompatible Use, including any Improvement, Soil, Placed Soil or Vegetation that is an Incompatible Use. In any event, and unless the Commission of the Canada Energy Regulator otherwise directs, the TWS Area Rights shall lapse and be of no further force or effect by the later of: (i) three years from the date of issuance of Order RE-042-2020, or (b) two years from the commencement of the Pipeline Construction;

(referred to herein as the "**Temporary Workspace Area Rights**")

~~for so long as required to complete the Pipeline Construction and the related Pipeline ROW Area Restoration and Temporary Workspace Area Restoration, at which time the Temporary Workspace Area Rights shall lapse and be of no further force or effect; and~~

The Commission is of the view that the above term appropriately balances the parties' concerns and is a reasonable period of time for the temporary workspace rights in the circumstances.

- b. restrict the use of the land to the construction, operation and maintenance of the Project*

The Landowners cite paragraph 321(2)(e) of the CER Act in support of including this provision in the ROE Order. In Response, Trans Mountain argued that this term was

unnecessary and redundant. Trans Mountain stated that an ROE order is issued relative to the Lands, in reference to the specific Project, authorizing certificate and PPBOR.

The Commission therefore amends the definition of "Pipeline", in Appendix B Defined Terms, of the Schedule attached to the ROE Order as follows:

"Pipeline" means a pipeline for the Trans Mountain Expansion Project, approved by Certificate of Public Convenience and Necessity OC-065 issued by the National Energy Board on 21 June 2019, ~~for which Trans Mountain has approval under the CER Act~~ for the transportation, storage and handling of oil, other liquid or gaseous hydrocarbons, and any products or by-products thereof together with all installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto, including all such pipes, drips, valves, fittings, connections, meters and cathodic protection equipment, and telecommunication and electrical facilities used for or in the operation and maintenance of the pipeline.

c. no above-ground structures placed on the land

In Response to the Objection, Trans Mountain confirms that no valve site or other above-ground installation is contemplated for the Lands as part of the Project. Further, Trans Mountain states any such planned installation would be the subject of consultations with the Landowners (or future owners) if and when such installation was deemed to be required, including but not limited to the negotiation of any attendant compensation payable therefor.

The Commission accepts Trans Mountain's evidence that no above ground structure is planned for the Lands. Should Trans Mountain plan to install an above ground structure, it must consult with the Landowners at the time or seek relief, as needed.

d. all vehicles and equipment be cleaned before entering the land to guard against the spread of weeds and club root

In Response, Trans Mountain stated that the substance of the proposed term has been addressed in the Environmental Protection Plan (EPP) for the Project and is therefore unnecessary.

The EPP sets out Trans Mountain's commitment to ensure equipment arrives at the construction site clean and free of soil or vegetative debris and ensure that clean equipment is inspected, verified and documented, among others. The EPP also includes a weeds and vegetation management plan as well as a biosecurity management plan to specifically address the steps Trans Mountain will take to control weeds and clubroot during the construction of the Project. Trans Mountain further confirmed that according to the biosecurity management plan, a cleaning station is planned to be located at the Lands.

The Commission is of the view that this provision is not appropriate in the ROE Order. The EPP is part of the conditions imposed in Certificate of Public Convenience and Necessity OC-065, approving the Project. The EPP requires a number of plans to protect the environment including weed management, restoration and reclamation. Further, the CER completes inspections at construction sites to ensure compliance with conditions and the CER is available to landowners throughout the entire lifecycle of a pipeline, should any issues or concerns arise.

- e. Landowners absolved of any and all liability for damage to the pipeline that may be caused by the Landowners regular farming operations*

In Response, Trans Mountain argues that this proposed term contradicts or conflicts with damage prevention objectives and the statutory cost and compensation protections already afforded to the Landowners. For example, Trans Mountain points to section 335 of the CER Act which prohibits any person from engaging in an activity that causes a ground disturbance unless authorized. Further, Trans Mountain submits that it may be required to compensate the Landowners for restrictions to their use of the Lands, such as in the context of farming operations, if established by the evidence and subject to any duty to mitigate.

The ROE as applied for indemnifies the Landowners in certain circumstances, as per clause 4(e) of the Schedule attached to the ROE Order. Clause 4(c) of the Schedule also confirms Trans Mountain's obligation to compensate the Landowners for restrictions on the use of the pipeline Right of Way (ROW) under section 335 of the CER Act. The Commission agrees that, in the circumstances, a blanket indemnity is inconsistent with the regulatory scheme under the CER Act. As such, the Commission dismisses the request to include a provision of indemnity beyond what is provided for in the CER Act.

- f. access along the east side of the land to the large hay shed will be maintained across the pipeline ROW and workspace*

Trans Mountain submits that this proposed term relates to the construction methods to be used relative to the Lands and should, therefore, have been addressed in the detailed route process for the Project.

Trans Mountain confirms that it is obligated to do as little damage as possible during construction, under section 314 of the CER Act. Further, Trans Mountain notes it is obliged to restore the pipeline ROW area and TWS to a condition consistent with the current land use, under section 21 of the *National Energy Board Onshore Pipeline Regulations*. Trans Mountain states that, in accordance with these requirements, it will endeavor to maintain the requested access, advise the Landowners should such access become temporarily unavailable as a result of construction activities, and ensure that the current land use (including access to the hay shed) is restored following pipeline construction.

The PPBoR for the detailed route of the pipeline on the Lands has been approved and is not being reconsidered as part of this Application. The Commission agrees with Trans Mountain that issues regarding the best possible detailed route of the pipeline or the most appropriate methods of its construction are properly issues to be raised in the detailed route process. As noted above, the Landowners did not file a statement of opposition to the detailed route.

However, this issue also raises concerns regarding the conditions under which Trans Mountain may exercise the rights granted under the ROE Order. As such, the Commission adds the following term to the ROE Order, at clause 4(l) of the attached Schedule:

- (l) **Owner access to hay shed:** During Pipeline Construction, within 48 hours of a request from the Owner, Trans Mountain shall provide the Owner safe access to the hay shed on the Lands across the Pipeline ROW Area and the Temporary Workspace Area at the east end of the Lands.

Should such access become temporarily unavailable as a result of Pipeline Construction, Trans Mountain shall advise the Owner and ensure that access is made available as soon as possible.

- g. the proposed pipeline be constructed in such a way as to allow: (i) services such as water, sewer, and electrical to cross the pipeline, and (ii) accesses across the line for subdivisions on the land in the future.*

In Response, Trans Mountain argued that the extent to which other utilities or access roads can cross the Project in the event the Lands are subdivided at some point in the future, is a matter that would have appropriately been dealt with during the detailed route process or might be considered in future pursuant to section 335 of the CER Act. Trans Mountain further noted that the details of any planned crossing of, or a planned disturbance to be undertaken in proximity to, the Project will be considered under section 335 of the CER Act and the *Damage Prevention Regulations*.

As noted above, no statement of opposition was filed by the Landowners in response to the proposed route of the pipeline on the Lands. In addition, potential future development of the Lands is not relevant to determining the present Application, which is about access to the Landowners' lands. Matters regarding pipeline construction with respect to future development plans for the Lands are to be discussed with the company. In the event parties are unable to reach agreement on this or other matters, the requisite application may be made to the CER for adjudication of the dispute. The Commission dismisses the request to include this provision.

(ii) Plan 3821 HW

The Landowners object to the issuance of a ROE Order unless it includes the area within plan 3821 HW. Trans Mountain relied on its submissions in its Motion Response.

In the Commission's 24 July 2020 ruling, the Commission dismissed the Landowners' request for a determination and declaration that Trans Mountain is not entitled to install, operate and maintain its proposed expansion on ROW 3821 HW that was granted for a different pipeline by a different owner in 1952. Accordingly, the Landowner's request to extend the area subject to the ROE Order beyond what Trans Mountain has applied for, to include the area within plan 3821 HW, is dismissed.

(iii) Right of access and egress

The Landowners object to Trans Mountain being given the right of access and egress over all of the Landowners' property, as per section 3(c) of the ROE Notice.

Trans Mountain submitted the applied-for rights are consistent with rights typically granted under easement agreements including the ROW agreements that other landowners have voluntarily entered into with Trans Mountain relative to the Project.

The Commission notes that such rights are limited "for all purposes necessary or incidental" to other rights granted to Trans Mountain, under clause 3(c) of the Schedule. In addition, this clause further provides that Trans Mountain shall not use such access or egress rights for the purposes of pipeline construction. In the Commission's view, such access and egress is necessary in order to protect people, property and the environment.

(iv) Negotiations

The Landowners state in their Objection that Trans Mountain did not enter into meaningful negotiations and that Trans Mountain has made no attempt to finalize a land acquisition agreement with the Landowners. However, the Objection did not include further details.

In its Response to the Landowners' Objection, Trans Mountain submitted that the record of consultation that forms part of the Application demonstrates that it has engaged in good faith negotiations with the Landowners and their counsel from September 2014 to the present. Trans Mountain stated an offer of compensation was made, however, no agreement has been reached with the Landowners to date.

The Commission encourages landowners and companies to engage in good faith and meaningful negotiations to reach an agreement regarding land rights for projects. A company may seek a ROE order where a voluntary agreement could not be reached. In the circumstances, the Commission accepts that Trans Mountain having offered compensation for a greater area, as a matter of comity, does not negate its good faith.

Conclusion

The Commission finds it is appropriate to grant the right of entry order on the terms in the attached Schedule.

Trans Mountain also requested relief from subsection 55(2) of the Rules, which requires that the Application be served on the same day it was filed. The Commission notes that the Application was served on the Landowners four days after it was filed. The period within which the Landowners were required to file any objection commenced upon service, under the Rules. Therefore, the Commission finds there was no prejudice to the Landowners from service of the Application taking place four days after filing and grants the requested relief from subsection 55(2) of the Rules.

Pursuant to subsection 324(1) of the CER Act, the Commission has issued Order RE-042-2020 (Order).

A certified copy of the Order and Schedule attached to and forming part of the Order is enclosed.

The comment process was limited to the proposed modifications to the Schedule. The Commission notes the Landowners included compensation matters, which are outside of the scope of this decision. Under Part 6 of the CER Act, parties may apply to the Commission to determine compensation disputes in relation to land matters. The CER's [*Guidance on Land Related Compensation Disputes*](#) provides further information about when compensation may be available.

Should you have any questions, please contact a Process Advisor by phone at 1-800-899-1265 (toll free) or by e-mail at TMX.ProcessHelp@cer-rec.gc.ca.

Yours sincerely,

Signed by S. Wong

for

Jean-Denis Charlebois
Secretary of the Commission
Attachment



ORDER RE-042-2020

IN THE MATTER OF the *Canadian Energy Regulator Act* (CER Act) and the regulations made thereunder; and

IN THE MATTER OF an application made by Trans Mountain Pipeline ULC (Trans Mountain) as General Partner of Trans Mountain Pipeline L.P., for a Certificate of Public Convenience and Necessity and other related approvals pursuant to Part III of the *National Energy Board Act*; and,

IN THE MATTER OF an application made by Trans Mountain dated 10 January 2020 for an order pursuant to subsection 324(1) of the CER Act granting the right to enter certain lands in the Province of Alberta, filed with the Commission of the Canada Energy Regulator (Commission) under File OF-Fac-Oil-T260-2013-03 ROE 19, Tract 517 (Application).

BEFORE the Commission on 19 November 2020.

WHEREAS on 21 June 2019, the National Energy Board issued Certificate of Public Convenience and Necessity OC-065 to Trans Mountain in respect of the Trans Mountain Expansion Project;

AND WHEREAS the CER Act came into force on 28 August 2019;

AND WHEREAS the relevant plan, profile and book of reference was approved by the Commission on 22 October 2019 in Order OPL-002-2019;

AND WHEREAS on 10 January 2020, Trans Mountain filed the Application for an immediate right to enter the lands identified as SW 25-53-16-W5M (Lands);

AND WHEREAS the registered owners of the Lands are Philippa Hornsby and Kimberly B. Hornsby (Landowners);

AND WHEREAS the Commission is satisfied that the Landowners were properly served with a notice of the right of entry application pursuant to subsection 324(2) of the CER Act on 9 December 2019;

AND WHEREAS Trans Mountain filed a response to the Landowners motion on the notice of right of entry application on 10 January 2020;

AND WHEREAS the Landowners filed a reply to Trans Mountain's response to the objection on the notice of right of entry application on 14 January 2020;

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AND WHEREAS the Commission is satisfied the Landowners were properly served the Application on 14 January 2020;

AND WHEREAS the Landowners filed an objection to the Application on 15 January 2020;

AND WHEREAS Trans Mountain filed a response to the Landowners objection to the right of entry Application on 22 January 2020;

AND WHEREAS the Commission has considered the public interest and fairness and grants Trans Mountain relief from subsection 55(2) of the *National Energy Board Rules of Practice and Procedure, 1995*;

AND WHEREAS the Commission is of the view that it would be appropriate to issue the order subject to the terms listed below;

IT IS ORDERED THAT:

Trans Mountain is granted the immediate right to enter the Lands, all of which lands and rights are more particularly described in the Schedule attached to and forming part of this Order, subject to the terms set out in that Schedule.

THE COMMISSION OF THE CANADA ENERGY REGULATOR

*Signed by
S. Wong
for*

Jean-Denis Charlebois
Secretary of the Commission

SCHEDULE RE-042-2020

1. LANDS IN RESPECT OF WHICH ORDER IS SOUGHT

LEGAL DESCRIPTION

SW 25-53-16-W5M

(the "**Lands of the Owner**")

- (a) That portion of the Lands of the Owner containing 0.095 hectares / 0.23 acres, more or less, shown as New Right of Way on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule.

(the "**Pipeline ROW Area**")

- (b) That portion of the Lands of the Owner containing 2.1 hectares / 5.19 acres, more or less, shown as Temporary Workspace on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule.

(the "**TWS Area**")

2. DEFINED TERMS

The words and phrases defined in Appendix "B" hereto shall have the respective meanings set out in Appendix "B" when used in this Schedule.

3. RIGHTS OR INTERESTS APPLIED FOR IN RESPECT OF LANDS OF THE OWNER, THE PIPELINE ROW AREA AND THE TWS AREA

Trans Mountain requires the following rights, titles or interests in respect of the Lands of the Owner:

- (a) the right and interest in, on, over, upon, across, along, under and through the Pipeline ROW Area to:

- (i) survey and carry out tests and examinations for, lay down, construct, operate, maintain, inspect, patrol (including aerial patrol), alter, remove, replace, reconstruct and repair the Pipeline within the Pipeline ROW Area and, for such purposes, remove from the Pipeline ROW Area any Incompatible Use, including any Improvement, Soil, Placed Soil or Vegetation that is an Incompatible Use; and
- (ii) generally to do all things necessary for or incidental to the exercise of the foregoing rights and interests;

(referred to herein as the "**Pipeline ROW Area Rights**")

- (b) the right and interest in, on, over, upon, across, along, under and through the TWS Area to carry out any activities necessary for or incidental to the Pipeline Construction, including to survey and carry out tests and examinations for the Pipeline and, for such purposes, remove

from the TWS Area any Incompatible Use, including any Improvement, Soil, Placed Soil or Vegetation that is an Incompatible Use;

(referred to herein as the “**TWS Area Rights**”)

for so long as required to complete the Pipeline Construction and the related Pipeline ROW Area Restoration and TWS Area Restoration, at which time the TWS Area Rights shall lapse and be of no further force or effect. In any event, and unless the Commission of the Canada Energy Regulator otherwise directs, the TWS Area Rights shall lapse and be of no further force or effect by the later of: (i) three years from the date of issuance of Order RE-042-2020, or (b) two years from the commencement of the Pipeline Construction; and

- (c) the right of access to and egress from the Pipeline ROW Area and the TWS Area on, over, upon, across and through the remainder of the Lands of the Owner, from and to neighbouring lands (including public roads), for all purposes necessary or incidental to the exercise and enjoyment of the Pipeline ROW Area Rights and the TWS Area Rights; provided, however, that Trans Mountain shall not use or exercise such right of access or egress for the purpose of Pipeline Construction;

(the rights and interests referred to above being collectively referred to herein as the “**Easement Rights**”)

for Trans Mountain, its successors and assigns, and its and their respective employees, agents, contractors, and subcontractors, on foot and/or with vehicles, supplies, machinery and equipment at any and all times, by day and by night, and, subject to subclause (b) above, for so long as Trans Mountain may desire to exercise them.

4. RIGHTS, OBLIGATIONS, RESTRICTIONS AND TERMS

- (a) **Use of the Lands of the Owner:** Trans Mountain’s use of the Lands of the Owner pursuant to the Easement Rights shall be restricted to use in connection with the Pipeline.
- (b) **Restoration:** Trans Mountain shall, upon completion of the Pipeline Construction and following any other exercise of the Easement Rights thereafter, as soon as weather and soil conditions permit, and to the extent it is practicable to do so, complete the related Pipeline ROW Area Restoration and, if applicable, TWS Area Restoration except as otherwise agreed to by the Owner.
- (c) **Compensate Owner:** Trans Mountain shall compensate the Owner for all damages caused by the operations, Pipeline or abandoned Pipeline of Trans Mountain to the extent contemplated by the provisions of the CER Act governing compensation including: (i) any restrictions on use of the Pipeline ROW Area by operation of s. 335 of the CER Act; and (ii) any adverse effect on the remaining Lands of the Owner, including restrictions on the use of the remaining Lands of the Owner by operation of s. 335 of the CER Act.
- (d) **Indemnify Owner:** Trans Mountain shall indemnify the Owner from all liabilities, damages, claims, suits and actions resulting from the operations, Pipeline or abandoned Pipeline of

Trans Mountain, other than liabilities, damages, claims, suits and actions resulting from the gross negligence or willful misconduct of the Owner.

- (e) **Incompatible Use:** The Owner shall not make, do, install or construct, or permit or suffer to be made, done, installed or constructed, any Incompatible Use within the Pipeline ROW Area or, prior to the lapse of the TWS Area Rights as described in subclause 3(b), within the TWS Area. Subject to the foregoing and to the provisions of the CER Act and any regulations or orders made thereunder, the Owner shall have the right to use and enjoy the Pipeline ROW Area and the TWS Area.
- (f) **Ownership of Pipeline:** Notwithstanding any rule of law or equity, the Pipeline shall at all times remain the property of Trans Mountain notwithstanding that it may be annexed or affixed to the Lands of the Owner and shall at any time and from time to time be removable in whole or in part by Trans Mountain.
- (g) **Quiet Enjoyment:** Trans Mountain, in performing and observing the covenants and conditions on its part to be observed and performed, shall and may peaceably hold and enjoy the Easement Rights hereby granted without hindrance, molestation or interruption on the part of the Owner or of any person, firm or corporation claiming by, through, under or in trust for the Owner.
- (h) **Other Rights Preserved:** Nothing contained herein shall affect or prejudice any right, present or future, which Trans Mountain may have under the provisions of the CER Act or otherwise to acquire, use or occupy the Pipeline ROW Area, the TWS Area or any other portions of or any right or interest registered against the title to the Lands of the Owner.
- (i) **Successors and Assigns:** The Easement Rights are and shall be of the same force and effect as a covenant that runs with the Lands of the Owner. The Easement Rights and all rights, obligations, restrictions, terms and conditions set forth in this Schedule shall extend to, be binding upon, and enure to the benefit of the heirs, executors, administrators, successors and assigns of the Owner and Trans Mountain, respectively.
- (j) **Interpretation:** Wherever the singular or masculine or neuter gender is used in this Schedule, it shall be construed as if the plural or other appropriate gender, as the case may be, had been used where the context so requires. If the Owner is comprised of more than one person, the obligations and liabilities of the persons included in the Owner hereunder shall be joint and several.
- (k) **Notices:** Any notice or other communication or delivery required or permitted to be given by one party to the other shall be in writing and may be given by either:
 - (i) delivery by hand, in which case it shall be deemed to have been received on delivery; or
 - (ii) sent by prepaid registered post mailed at a post office in Canada, in which case it shall be deemed to have been received on the third (3rd) business day following the day of mailing;

provided that any notice delivered by hand that is delivered after 4:00 p.m. local time at the address of the addressee on a business day shall be deemed to be received on the next following business day.

The address of Trans Mountain for such purpose shall be

Trans Mountain Pipeline ULC
Suite 2700, Stock Exchange Tower
300 – 5th Avenue S.W.
Calgary, Alberta, T2P 5J2
Attention: Land Department

The address of the Owner for such purpose shall be the address that appears on the certificate of title for the Lands of the Owner maintained by the LTO at the time the notice is given.

A party may from time to time notify the other party of a change of address to another address inside Canada. Notwithstanding anything contained herein to the contrary, if a strike, lockout or other labour disruption involving postal employees is in effect or generally known to be impending, every notice or other communication or delivery given under this provision must be given by personal delivery.

- (l) **Owner access to hay shed:** During Pipeline Construction, within 48 hours of a request from the Owner, Trans Mountain shall provide the Owner safe access to the hay shed on the Lands across the Pipeline ROW Area and the Temporary Workspace Area at the east end of the Lands. Should such access become temporarily unavailable as a result of Pipeline Construction, Trans Mountain shall advise the Owner and ensure that access is made available as soon as possible.



ALBERTA LAND SURVEYORS' ASSOCIATION
PERMIT NUMBER
P046
WSP Surveys (AB)
Limited Partnership

REVISION: C



TMC No.: 01-13283-M002-PP-02165-RC	
DWG: 38290-SRB-53-16-RC	SCALE
FILE No.: S-38290	DATE: NO

SCALE: 1:5000	DWG BY: BC
DATE: NOV. 22, 2019	CKD BY: JA

APPENDIX B

DEFINED TERMS

“Approval” means an approval in writing by Trans Mountain pursuant to this Schedule or otherwise, including any conditions of approval.

“Improvement” means a building, structure, erection, pipe, pole, fence, tower, road, pavement, foundation, improvement or thing of any kind or nature constructed or installed within land.

“including” means including without limitation.

“Incompatible Use” means:

(a) as to the Pipeline ROW Area, any use, activity or thing within the Pipeline ROW Area that would materially interfere with, disrupt or delay the exercise of the Easement Rights, or that imperils the safety or security of the Pipeline or any person or property associated therewith, and includes the use of any part of the Pipeline ROW Area for any Improvement that is not a Permitted Improvement; and

(b) as to the TWS Area, any use, activity or thing within the TWS Area that would materially interfere with, disrupt or delay the exercise of the Easement Rights, or that imperils the safety or security of the Pipeline or any person or property associated therewith.

“LTO” means the land registry or land titles office in which land transactions affecting the Lands of the Owner may be deposited, registered, recorded or filed.

“CER Act” means the *Canadian Energy Regulator Act* (Canada), and regulations thereunder, all as amended or replaced from time to time.

“Owner” means the Registered Owner or occupant or other person interested in the Lands of the Owner, or all of them, where the context so requires.

“Permitted Improvement” means an Improvement within the Pipeline ROW Area for which there is an Approval and for which there has been compliance with any conditions that are part of that Approval.

“Pipeline” means a pipeline for the Trans Mountain Expansion Project, approved by Certificate of Public Convenience and Necessity OC-065 issued by the National Energy Board on 21 June 2019, for the transportation, storage and handling of oil, other liquid or gaseous hydrocarbons, and any products or by-products thereof together with all installations, equipment, fittings and facilities included in, associated with, appurtenant, affixed or incidental thereto, including all such pipes, drips, valves, fittings, connections, meters and cathodic protection equipment, and telecommunication and electrical facilities used for or in the operation and maintenance of the pipeline.

“Pipeline Construction” means the initial construction and installation of the Pipeline within the Pipeline ROW Area.

“Pipeline ROW Area Restoration” means the restoration of any part of the Pipeline ROW Area or anything within it disturbed by the exercise of the Pipeline ROW Area Rights in accordance with the following, if and to the extent applicable:

- (a) cause all construction debris to be removed from the Pipeline ROW Area;
- (b) replace all topsoil removed from, grade and contour and otherwise restore the Pipeline ROW Area so it is suitable for its use as a pipeline right of way and any prior use thereof that is not an Incompatible Use; and
- (c) restore Permitted Improvements within the Pipeline ROW Area.

“Placed Soil” means Soil that has been deposited, dumped or placed on land.

“Registered Owner” means the owner of the fee simple estate in the Lands of the Owner.

“Soil” means soil, fill, earth, sand, gravel, and other material of any kind or nature of which land is composed.

“TWS Area Restoration” means the restoration of any part of the TWS Area or anything within it disturbed by the exercise of the TWS Area Rights in accordance with the following, if and to the extent reasonably practicable:

- (a) cause all construction debris to be removed from the TWS Area;
- (b) replace all topsoil removed from, grade and contour and otherwise restore the TWS Area so it is suitable for any prior use thereof; and
- (c) restore pre-existing Improvements within the TWS Area.

“Trans Mountain” means Trans Mountain Pipeline ULC.

“Vegetation” means trees, shrubs, nursery stock and other vegetation and includes the limbs or growth of any Vegetation.

“within” means across, over, under, in, through and on.