

NOTICE OF MOTION REGARDING NON-COMPLIANCE OF TRANS MOUNTAIN ENVIRONMENTAL PROTECTION PLAN, CER CONDITIONS 40, 41, 43,44, 61, 72, 78, BC CONDITION 16 AND THE INTERNATIONAL MIGRATORY BIRD CONVENTION *Species at Risk Act* Recovery Strategy Series Adopted under Section 44 of SARA
IN SPREAD 6

Whereas, there are laws and Conditions to mitigate harm to wildlife from the Trans Mountain expansion project. Construction activities by Trans Mountain contractors are in non-compliance of the following:

1. *Migratory Birds Convention Act*, 1994 <https://laws-lois.justice.gc.ca/eng/acts/M-7.01/page-1.html#h-357472>

2. OH 001-2014 the National Energy Board approved the Trans Mountain Expansion Project <https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2969696/2969867/A77045%2D1%2DNEB%2DReport%2DTrans%2DMountain%2DExpansion%2DProject%2DOH%2D001%2D2014.pdf?nodeid=2969681&vernum=-2> which included Conditions 40 (page 433) 41 (page 434) 43 (page 438) 44 (page 439) 61 (page 468) 72 (page 453) 78 (page 477) to protect the environment, species at risk, wetlands, and watercourses and,

3. Province of B.C. Certificate Condition 16 <https://www.projects.eao.gov.bc.ca/api/public/document/5892318fb637cc02bea16484/download/Schedule%20B%20-%20Table%20of%20Conditions.pdf> requires

The wildlife species at risk offset plan(s) must:

- a) Be developed in a manner consistent with BC's Policy for Mitigating Impacts on Environmental Values (2014, or as amended from time to time);
- b) Be developed to be consistent with the approved preliminary offset plan(s);
- c) Be developed to be consistent with any applicable provincial recovery strategies, to meet the requirements of any applicable provincial implementation plans, and to support or augment applicable provincial species at risk management objectives;
- d) Provide an evaluation of the success of mitigation measures implemented;
- e) Include a rationale for any instances in which offsets are not proposed, despite the identification of residual effects during post-construction monitoring;
- f) Include a rationale for the identified offset measures to be implemented to address residual impacts, and a timeline for implementation, including a discussion of the potential time lags between when Project effects would occur and when offset measures would become fully functional; and
- g) Include a plan for monitoring the effectiveness of offset measures,

including methods and reporting schedule, and for further mitigation or offsetting of any impacts that remain after mitigation measures have been implemented.

The Holder must provide the plan to EAO for approval, and to FLNRO, MOE, ECCC, OGC and Aboriginal Groups – Terrestrial within six years following the commencement of Operations.

The plan and any amendments thereto must be implemented under the supervision of a Qualified Professional and to the satisfaction of EAO for the duration of the timeframes identified in the plan(s).

BC's Policy for Mitigating Impacts on Environmental Values (2014)

https://www2.gov.bc.ca/assets/gov/environment/natural-resource-policy-legislation/environmental-mitigation-policy/em_procedures_may27_2014.pdf

4. Canada is a signatory of the International Migratory Bird Convention and has a regulation that protects Migratory Bird Nests
<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/reduce-risk-migratory-birds.html#toc3> “When determining if migratory birds, their nests or eggs are likely to be present, you **must** consider:
 - the available bird habitats
 - the migratory bird species likely to be encountered in such habitats
 - the time periods when they would likely be present

5. July 2019 REV 2 01-13283-GG-0000-EV-PLN-0013
*7.0 RARE ECOLOGICAL COMMUNITIES OR RARE PLANT SPECIES
DISCOVERY CONTINGENCY PLAN* https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781699/3805579/Condition_72_Pipeline_Environmental_Protection_Plan_%28EPP%29_%2D_A6V8Y8.pdf?nodeid=3805393&vernum=-2 Page B-18
Field studies for rare ecological communities and rare plant species will be complete prior to construction, and known locations and mitigation included in the RSMTs and EAS. If unidentified ecological communities or rare plants (vascular plant or bryophyte including moss or liverwort or lichens) are discovered on or within 30 m of the pipeline construction footprint prior to or during construction, Contractor personnel will follow the measures outlined as follows:
 - Note the location of the potential rare plant or ecological community relative to the pipeline construction footprint.
 - Notify Trans Mountain.
 - Send a photograph of the potential feature and any additional details (e.g., habitat

characteristics) regarding the feature and site to Trans Mountain to provide to the Vegetation Resource Specialist.

• **Avoid further disturbance within 10 m of the location until the Vegetation Resource Specialist has been consulted. (my emphasis)**

- If warranted, the Vegetation Resource Specialist will be required to attend the site and will determine if site-specific mitigation measures are required.
- The Vegetation Resource Specialist will develop an appropriate site-specific mitigation plan in consultation with Trans Mountain and the Contractor based on the Rare Ecological Community and Rare Plant Population Management Plan (Appendix G)

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16. Complete migratory bird nest sweeps as necessary prior to construction, depending upon the timing of construction (refer to Section 7.0 Wildlife)

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6. Where feasible, initiate or complete clearing activities outside of the migratory bird nesting period **to reduce the risk of encountering migratory**

birds nesting (Environment Canada 2017). (my emphasis)

7. Clear or mow areas of vegetation (in particular, trees, grasslands and pasture) outside of the migratory bird nesting period to reduce the potential of nesting birds where work is scheduled to occur during the migratory bird nesting period.

8. In the event that clearing or construction activities are scheduled to commence within the migratory bird nesting period, or there are extended periods of inactivity between construction activities (i.e., a period greater than 7 days) within the nesting period, a non-intrusive area search for evidence of nesting (e.g., presence of territorial males, alarm calls, distraction displays, adults carrying nesting material/food) may be required. Searches for evidence of nesting should occur within 7 days prior to the construction activity.

9. In the event an active nest is found, the nest will be subject to site-specific mitigation measures (e.g., clearly marked species-specific buffer around the nest or non-intrusive monitoring). The appropriate mitigation measures will be developed in consultation with a Resource Specialist (see also the Wildlife Species of Concern Encounter and Discovery Contingency Plan in Appendix B)

6. ENVIRONMENTAL PLANS VOLUME 7
RESOURCE SPECIFIC MITIGATION TABLES SPREAD 6: KP 1075.09 TO KP
1144.91
FOR THE TRANS MOUNTAIN PIPELINE ULC TRANS MOUNTAIN EXPANSION
PROJECT
NEB CONDITION 72 October 2017 REV 3 <https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2981674/3335404/A86570%2D13%20Trans%20Mountain%20Revised%20Report%20Vol%207%20RSMT%20Spread6%20Condition%2072%20%2D%20A5V1E2.pdf?nodeid=3334625&vernum=-2>

Page 56

WT-724 Flat Swamp (shrubby swamp) (Ws53) Hope-Abbo_WC1046point5
C-29-J/92-H-4 10U 592041E 5449465N to 10U 591926E 5449280N 1075.66
1075.89 1.57 0.87 SHEET 53 of 96 230 Shrub Staking / Bare Root Stock

Watercourse Concern

(BC-706a1 and BC-706a2) Rare Plant Concern (my emphasis)

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SHEET 94 of 96

TABLE 10.1-5

COARSE WOODY DEBRIS TARGET VOLUMES FOR WILDLIFE HABITAT

Wildlife Area / Habitat Land Status KP Start KP End

Target Volume of Coarse

Woody Debris (m³/ha)₁ Coarse Woody Debris Purpose Coarse Woody Debris Specifications

Coastal giant salamander proposed critical

habitat (Bridal Creek Area) Private 1075.21 1075.32 77 To replace CWD cover and enhance habitat restoration within core and connective habitat

- CWD replacement should be targeted within areas where it would naturally occur (i.e., where forested areas existed prior to construction or are adjacent to the pipeline construction footprint).

- The target volume provided is an average of baseline conditions across portions of the Bridal Creek critical habitat area. Replacement of CWD should achieve the target average volume per hectare, but mimic natural patterns (i.e., patchiness) of CWD accumulation (some areas will have higher volumes of CWD than others). To achieve this, CWD should be randomly scattered across the Project Footprint (single pieces) with overlap between some pieces (small piles). Piles will be < 5m³ to coincide with BC Wildfire Hazard Abatement guidelines.

- Large pieces preferred (>20 cm diameter), however smaller pieces can also be used.

Include a variety of decay classes if existing CWD can be salvaged prior to construction.

- Coverage should not be so excessive that it inhibits vegetation growth, seeding or planting.

Coastal giant salamander proposed critical

habitat (Bridal Creek Area) Private 1075.53 1075.65 77 To replace CWD cover and enhance habitat restoration within core and connective habitat

Coastal giant salamander proposed critical

habitat (Bridal Creek Area) Crown 1075.65 1075.84 77 To replace CWD cover and enhance habitat restoration within core and connective

habita

6. Revision 6 *ENVIRONMENTAL PLANS VOLUME 2 PIPELINE ENVIRONMENTAL PROTECTION PLAN FOR THE TRANS MOUNTAIN PIPELINE ULC TRANS MOUNTAIN EXPANSION PROJECT NEB CONDITION 72* September 2019
[https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781699/3829209/Condition 72 IR 4.1 updated EPP addendum October 1%2C 2019 %2D A6Y2H2.pdf?nodeid=3871457&vernum=-2](https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781699/3829209/Condition%2072%20IR%204.1%20updated%20EPP%20addendum%20October%202019%20A6Y2H2.pdf?nodeid=3871457&vernum=-2) Page 2

“The purpose of these appendices is to provide Trans Mountain Environmental Inspectors, Contractors and subcontractors, and NEB inspection staff with **a single reference document** to ensure mitigation measures are easily accessible during all phases of construction.”” An example of mitigation measures that were removed as a result of redundancies

include the migratory bird nesting periods, as this is included in the RSMTs”

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Pre-Construction Surveys

15. Complete required environmental surveys (e.g., supplemental biophysical assessments, wildlife habitat features) that are required prior to the commencement of construction and provide the key results of the surveys and any associated mitigation to Project inspection personnel and the Contractor. Identify any resource-specific locations in the field where mitigation is necessary and mark the locations accordingly.

16. Complete migratory bird nest sweeps as necessary prior to construction, depending upon the timing of construction (refer to Section 7.0 Wildlife)

7. EPP *Condition 72 Spread 6 Revision 6 https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781699/4105073/C14004-3_3_Condition_72_EAS_Spd6_Rev6_July_8%2C_2021_reduced_-_A7V0U6.pdf?nodeid=4104441&vernum=-2

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Coastal Giant Salamander – Within locations of interest engage a Wildlife Resource Specialist to conduct a salvage (as per conditions set out in the salvage permit). Generally, a salvage is conducted for three consecutive days prior to clearing. **Schedule clearing and construction during the fall (i.e., August 31 to November 1)** when salamanders can more easily disperse from the

area. Refer to Table 4.3-5 of the Resource Specific Mitigation Tables for detailed mitigation measures

Page 14 RSMT

8. *Species at Risk Act Recovery Strategy Series* Adopted under Section 44 of SARA
<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/recovery-strategies/barn-owl-proposed-2021.html>

PHOTOS OF CONSTRUCTION ACTIVITIES AND SIGNAGE PAGES 16 and 17

Whereas, the following were to be protected per CER Conditions 40, 43, 72 and BC Condition 16

VG 186 <https://apps.cer-rec.gc.ca/REGDOCS/File/Download/4104443> Page 38

WT-724 <https://apps.cer-rec.gc.ca/REGDOCS/File/Download/4104443> Page 43

WF-B0-09 KP 1075.23 to KP 1075.3

WF-BO-10 KP 1075.54 to KP 1075.88

<https://apps.cer-rec.gc.ca/REGDOCS/File/Download/4104443> Page 29

WF-CGS-02 <https://apps.cer-rec.gc.ca/REGDOCS/File/Download/4104443> Page 75

RBSA-1075.001 https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781699/4105073/C14004%2D5_5_Condition_72_RSMT_Spd6_Rev6_July_8%2C_2021_%2D_A7V0U8.pdf?nodeid=4104443&vernum=-2 Page 21

Recommended Construction

Work Window₁ Site-Specific Mitigation ₂

-- Migratory Bird Nesting Zone A1 A-067-D/092-H-5to A-025-D/092-G-7

968.58 1180.15 August 17 to March 25

(Nesting period: March 26 to August 16) (my emphasis)

- Schedule clearing and construction activities outside of the bird nesting period, where feasible.
- In the event clearing or construction activities are scheduled to occur within the migratory bird nesting period, Wildlife Resource Specialists will use non-intrusive methods to conduct an area search within 7 days of activity for evidence of nesting (e.g., presence of territorial males, alarm calls, distraction displays, adults carrying nesting material/food) where suitable nesting habitat is present, as determined by an Environmental Inspector or Wildlife Resource Specialist. In the event an active nest is found, the nest will be subject to site-specific mitigation measures (e.g., clearly marked species-specific buffer around the nest or non-intrusive monitoring). Engage a Wildlife Resource Specialist to monitor the nest during activity to ensure disturbance to nesting is avoided where site-specific circumstances may permit a reduction in the protective buffer (e.g., adequate barrier exists between the nest and Project activities that effectively reduces sensory disturbance from the Project). If monitoring indicates Project activities are causing disturbance of an active nest (i.e., considerable behavioural changes from baseline), work will be modified or temporarily halted and corrective measures will be implemented (e.g., increase in protective buffer, modification of Project activities within the buffer). The appropriate mitigation measures will be selected by an

Environmental Inspector, in consultation with a Wildlife Resource Specialist

Barn Owl Refer to the Barn Owl Mitigation and Habitat Restoration section (Appendix G of the Pipeline EPP) Popkum Area SHEET 29 of 76

TABLE 4.3-10A

CANDIDATE CRITICAL HABITAT FOR BARN OWL (ECCC) https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/3781699/4105073/C14004-5_5_Condition_72_RSMT_Spd6_Rev6_July_8%2C_2021_-_A7V0U8.pdf?nodeid=4104443&vernum=-2

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Species

Locations **within Critical Habitat** (my emphasis)

(as provided by ECCC): Locations of Interest² Recommended Mitigation Specific to Critical Habitat

Barn Owl

Refer to the Barn Owl Mitigation and Habitat Restoration section (Appendix G of the Pipeline EPP)

Popkum Area

- KP 1075.12 to KP 1076.79
- KP 1077.30 to KP 1079.39
- ID: WF-BO-09
- KP 1075.23 to KP 1075.37

Note, the mitigation listed below applies to the areas listed in the locations of interest column.

Prior to Clearing/Construction

- Commence clearing or construction between September 1 and February 28 to avoid the sensitive nesting and fledging period for barn owls (approximately March 1 to August 31). Where clearing and construction cannot be initiated in this period, Wildlife Resource Specialists will conduct area searches (where suitable nesting habitat occurs) prior to the commencement of clearing or construction to locate active barn owl nests along the Project Footprint. Area searches will include revisiting potential nest trees identified during previous field work and determining occupancy by recent evidence of use (e.g., pellets) and watching the potential nest structure from a safe distance to avoid disturbance. If necessary, and depending on the time of year, call-playback may be used and will follow available Provincial survey standards (e.g., Resources Information Standards Committee). In the event an active barn owl nest is identified, mitigation will be approved by the Environmental Inspector with guidance from a Wildlife Resource Specialist, and in consultation with BC MFLNRORD as necessary, depending on the site-specific circumstances. The recommended setback for barn owl nests ranges from 1.5 tree lengths for urban areas, 100 m for rural and 200 m for undeveloped areas. During the breeding season, an additional 100 m “quiet” buffer is recommended. Measures will include one or a combination of the following:

- implement the appropriate protective setback until the nest is no longer active; or
- engage a Wildlife Resource Specialist to monitor the nest during activity to ensure disturbance to nesting is avoided where site-specific circumstances may permit a reduction in the protective setback (e.g., adequate barrier exists between the nest and Project activity that effectively reduces sensory disturbance from the Project). If monitoring indicates Project activities are causing disturbance of an active nest (i.e., considerable behavioural changes from baseline), work will be temporarily halted and corrective measures will be implemented (e.g., increase in protective setback, modification of Project activities within the setback).

- Prior to clearing within identified areas with the biophysical attributes of nesting habitat, the Construction Manager and Environmental Inspector, with the assistance of a Wildlife Resource Specialist will identify suitable nest trees located within the Project Footprint for replacement and retention. Identify those trees located on the edge of the Project Footprint that can be avoided where their retention will not affect construction execution, pipeline operations or maintenance activities, or conflict with applicable safety requirements (refer to Table 4.3-10B for suitable nest trees identified to date). Where suitable nest trees are identified for retention, retain adjacent trees to protect the structural integrity of the nest tree from blow-down, where their retention will not affect construction execution, pipeline operations or maintenance activities, or conflict with applicable safety requirements. The retention of these trees will be approved by the Environmental Inspector and the Construction Manager to ensure safety requirements are met. Clearly mark locations where clearing is to be narrowed or avoided to retain identified trees.

- Complete danger tree assessments on the edge of the Project Footprint so that every effort can be made to retain (and if necessary, modify to remove dangerous portions) suitable nest trees as an alternate to complete removal. Those conducting danger tree assessments will be trained as per the Wildlife Danger Tree Assessor’s Course as administered by the Wildlife Tree Committee or will refer to the wildlife danger tree assessor’s material (course workbooks, guides) available on the Government of BC website (Government of BC 2017) for guidance on reasonable efforts and suitable mitigation in danger tree assessments.

During Clearing/Construction

- In the event an active barn owl nest is discovered during clearing or construction, implement the Wildlife Species of Concern Discovery and Wildlife Encounter Contingency Plan (Appendix B of the EPP). Mitigation will be reviewed and approved by the Environmental Inspector with guidance from a Wildlife Resource Specialist depending on the site-specific circumstances.

- If construction activities require the removal of a known barn owl nest, Trans Mountain will work with the Appropriate Government

Authorities to discuss practical options and mitigation measures. Nest removal will only occur following confirmation that the nest is inactive (i.e., young have left the nest). When a known nest is removed an artificial nest box will be installed in nearby suitable habitat.

Whereas, in June 2021 ECC ordered Trans Mountain to halt construction activities: <https://www.cer-rec.gc.ca/en/safety-environment/industry-performance/reports-compliance-enforcement/inspection-officer-order/2021/dlb-001-2021/dlb-001-2021.html>

1. On 9, April 2021, a complaint from a member of the public was submitted to the CER Pacific Region Office citing their concerns in relation to improper buffer zone demarcation, destruction of a nest and additional environmental concerns on Trans Mountain Expansion Project (TMEP) Spread 7 between Government Road and North Road (49.24455, -122.89987). In response, the CER initiated Compliance Verification Activity (CVA) CVA-2122-125 which is ongoing
2. On 12 April 2021, An Environment and Climate Change Canada (ECCC) Wildlife Officer conducted an unannounced site inspection on TMEP Spread 7 under the authority of the Migratory Birds Convention Act, 1994 (MBCA, 1994). Trans Mountain was issued a verbal stop work order by ECCC for contravening paragraph 6(a) of the Migratory Birds Regulations which contravention resulted in the destruction of a migratory bird nest. The order is specific to the 1,000 meter stretch from the overpass on Highway 1 and North Road and between a slope of Highway 1 and CN Rail track. Subsequently, a Compliance Order was issued in writing by ECCC to Trans Mountain. (Approximate GPS coordinates for the site are 49.244471, -122.900165. According to Trans Mountain, the site is called Construction Work Package 98 or CWP-98.)
3. On 8 May 2021, an American Robin's nest and eggs were destroyed by a tree faller on Spread 5B (KP 1075) near Agassiz, BC. Nest sweeps had been conducted by Trans Mountain's contracted Resource Specialists and mitigations including flagging, staking and roping of a 30 m buffer were in place at the time when the nest was destroyed. Trans Mountain indicated the location of the nest was communicated to the contractors conducting clearing activities and no approval was provided to the clearing contractor to conduct clearing activities within the American Robin nest buffer. The hand falling crew crossed over the staking and flagging for the buffer and cleared approximately 10 alder trees (shrubs) within the buffer prior to work being halted by a Trans Mountain Contractor Foreman. Upon identification of the incident, Trans Mountain sent out a memo to all Project construction staff outlining and reinforcing requirements pertaining to review and awareness of nest sweeps prior to initiating daily work. These included reviewing nest sweeps maps and associated mitigation measures prior to daily work, completing a pre-construction environmental walkthrough prior to new work areas starting, and documenting review of nest sweep maps and confirmation of preconstruction environmental walkthroughs on daily safe work agreements.
4. On 25 May 2021, CER staff held an implementation assessment meeting (CVA2021- 125) with Trans Mountain to follow up on mitigation requirements and implementation for clearing within the migratory bird nesting window on TMEP.

Trans Mountain confirmed all plans, procedures and mitigation measures were being followed. Trans Mountain advised that on May 18, 2021 an environmental stand down meeting was held to review events, nesting bird mitigation measures, and the importance of the environment.

5. On 2 June 2021, CER Inspection Officer received a phone call from Trans Mountain indicating its contracted clearing crew cleared a section of trees and shrubs without Trans Mountain's authorization in Construction Work Package 95 (KP 1174.69) on spread 7 in Burnaby, British Columbia on 27 May 2021. Further, Trans Mountain's applicable policies and procedures were not followed including, but not limited to, the Environmental Protection Plan, the Resource Specific Mitigation Plan, the Environmental Socioeconomic Assessment, and the Environmental Field Guide: Nesting Bird Risk Assessment. Trans Mountain became aware of this activity on 28 May 2021 and a contracted Resource Specialist was mobilized to the site. No damaged or destroyed nests were identified in the cleared vegetation after an inspection was conducted by the Trans Mountain Resource Specialists and other personnel.

Whereas, Cara Cornell adjacent landowner communicated the following to the CER:
Whom This May Concern:

According to the Transmountain Environmental Plan (TMEP) (2017), (p. 23):

"In the event that clearing or construction activities are scheduled to commence within the migratory bird nesting period or there are extended periods of inactivity between construction activities (i.e., a period greater than 7 days), Wildlife Resource Specialists will use non-intrusive methods to conduct an area search for evidence of nesting (e.g., presence of territorial males, alarm calls, distraction displays, adults carrying nesting material/food). Searches for evidence of nesting should occur within 7 days prior to the construction activity."

We have also been told that prior to all clear cuts Transmountain Pipeline (TMP) conducts three (3) ecological inspections, aka "bird sweeps," to locate bird nests.

Prior to June 6, 2022, the Registered Professional Biologists would have given the "all clear" to clear cut the trees in the wetland because they had not found any nests. (*could we demand records of this signoff?*). So, on the morning of June 6, 2022, TMP supervisors and workers arrived on site at Bridal Falls Forest Service Road (BFFSR) to clear cut the wetland extending from the BFFSR to Popkum Road South.

Details/Observations/Background

On Wednesday June 1, 2022, in the afternoon, I (Cara) observed two people wearing white hard hats looking up intently, into the trees and shrubs. We were driving along Popkum Road South which has a clear view of the wetland area from the road. I was a passenger in a SUV.

On Friday June 3, 2022, I spoke with two Registered Professional Biologists (RPBios) one male, and one female, who were completing an ecological assessment. Their ecological assessment was being done on the parcel of land from BFFSR to Popkum Road South. They had just exited this wetland area and I spoke with them briefly regarding the area to be clear cut for "work space," their qualifications,...

On Saturday June 4, 2022, a solitary female human wearing a white hard hat entered the site from the NE side of BFFSR at 6:30 am. She entered the grove of mature cedars where Sara and Maureen were conducting their nesting survey. She said, "hello" to one of the nest-finders.

On Monday June 6, 2022, I observed workers arriving at the site on the North and South side of the BFFSR. and was told by a supervisor (video available), and another worker, that the wetland area was to be clear cut today. I told them that I wanted to speak to the person in charge. Ken, the supervisor, was radioed by staff because he was down in the area to be clear cut. As well, men were in the clear cut with a machine running walking through the middle of the marsh. The clear cutting was going to be done that day, on Monday June 6, 2022, with the RPBios "all clear," given. I told Ken and other staff members that there were active birds' nests in the wetland. They stopped.

This prompted another RPBio check that was done on Tuesday morning, and, contrary, to the previous nest surveys proved fruitful; a *red-breasted sapsucker nest was identified*. Then, they identified two more American Robins' nests near Popkum Road South. **Three (3) active birds' nests were not located by the RPBio's during the initial survey prior to giving the "all clear" to clear cut the wetland.**

If I, a local resident, had not intervened the eggs, hatchlings, fledglings,...in the area would have been killed.

The RPBio's are not finding the active birds' nests prior to the clear cuts and the egg embryos, hatchlings, fledglings,...are getting killed.

- **Every time** that the Community Nest Finding Network (CNFN) has been on a TM site immediately prior to tree-felling, we have discovered nests where they are about to cut; or where they are already cutting. **A total of three (3) times.**
- One of these times involved an Environment and Climate Change Canada (ECCC) Officer witnessing the destruction of a hummingbird nest.
-

On the Canadian Energy Regulator (2021) site, there are other examples of nest destruction and violations committed by TMP, (paras. 4 - 8).

Conclusion:

TM's RPBios are not finding the active birds' nests prior to clear cutting and egg embryos, hatchlings, fledglings,...are getting eradicated.

Kind Regards,

Cara Cornell and Sara Ross

References

Canadian Energy Regulator, (2021). Order DLB-001-2021 pursuant to Section 109 of the Canadian Energy Regulator Act, paras. 4 - 8, retrieved from: <https://www.cer-rec.gc.ca/en/safety-environment/industry-performance/reports-compliance-enforcement/inspection-officer-order/2021/dlb-001-2021/dlb-001-2021.html>

Transmountain Environmental Plan (2017). Environmental Plans Volume 1. Temporary Construction Lands Infrastructure Environmental Protection Plan for the Trans mountain Pipeline ULC Trans Mountain Expansion Project NEB Condition 78 Update. Rev 3. Retrieved from:

https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956.726/2392873/2981674/3405788/A88721-3_UPDATED_2017-12_Trans_Mountain_Attachment_2_Condition_78_-_A5Y4W9.pdf?nodeid=3406005&vernum=-2

Whereas, Trans Mountain was advised of these concerns on May 26 and June 2, 2022 and an email was sent to CER June 5, 7, 9 stating:

"A conversation early in the morning, during the clear-cutting with a supervisor overseeing the workers we saw robin ***in the construction site flying back and forth***. At this time the clear-cutting. should have stopped. I told the supervisor and he saw the robin visually, and the supervisor nonchalantly responded you know what she's doing. My observation was that she was fatigued and stressed. No cease of the work or report was written was completed. It was likely the robin with a nest indicated by buffer signs. Trucks and people,...big machines all were passing by and near the buffer signs. The American Robin buffer signs were ambiguous as to the 20 metre radius zone and seemed unclear as to the exact buffer zone.

As well, I mentioned to the supervisor that a tree being cut looked like it had a nest and he said, oh its "probably just moss," No cessation of work occurred."

Whereas, a formal report from Sara Ross, Community Nest Finding Network was submitted to CER:

COVER LETTER TO INITIAL REPORT SUBMISSION SENT JUNE 6:

To whom it may concern;

On Saturday June 4 the **Community Nest Finding Network (CNFN)** conducted a Nesting Survey near KP1075.57 after being notified by a local community member of what seemed to be troubling forest-clearing practices by Trans Mountain.¹

For various reasons we are concerned about imminent tree-clearing on this site, perhaps as early as Monday June 6. Only one nest is currently buffered on the site (AMRO) yet we believe there should be 5 more nests buffered.

Indeed, on Saturday we photo-documented and GPS-located an unbuffered Red-breasted Sapsucker nest in forest we believe is about to be cleared. Additionally, one of

the sapsuckers' primary feeding trees was documented 63m away on the same site. This nest will require a large buffer area to ensure it is not impacted by cutting.

4 other nests were identified using significant evidence indicators. See attached report for details.

CNFN suggests an immediate halt to tree-clearing activities on the site until adequate nest buffering can be shown to have been completed.

While we understand there is mounting pressure to move forward with tree-clearing for the pipeline expansion (to make up for the extraordinary delays the project has faced) we note that **ECCC recommends no tree-clearing take place within the migratory bird nesting season**. It is the strong view of CNFN that there should be no tree clearing during nesting season at all.

We believe that nest-surveys, particularly the 1 ha/hr typical industry practice are insufficient to locate or protect nests, particularly in dense mature woodland habitat with a diverse multi-story canopy such as this site. There are likely *more than* 15 nests on this site, and that **more careful scrutiny is required** before tree-clearing activities can be allowed to take place in order to ensure nests are protected.

We also note there is a history of nest destruction on this project, including specifically in the Bridal Falls area. An incomplete desk review of documented Trans Mountain nest-destruction incidents includes (CER links available on request):

- On March 4, 2022 a hummingbird nest was destroyed at CWP-57.
- Last year on April 12, 2021 a hummingbird nest was destroyed at CWP-98.
- On May 8, 2021 a Robin's nest was destroyed at KP 1075.
- On June 2, 2021 a chickadee nest was left exposed amidst improperly felled trees at CWP-95.

Please let us know that you've received and read our attached report. Please advise us directly when appropriate action has been taken. Finally, don't hesitate to contact us if we can be of further assistance in this matter.

Sincerely,

Sara Ross, representing the Community Nest Finding Network.
778-898-0464

HIGH LEVEL SUMMARY AS REQUESTED BY CER, SENT JUNE 13

Good morning,

As requested by Ray Yang, here is a brief summary of the issue.

- TM is felling trees in the height of nesting season. (According to ECCC tree-cutting should not be done in nesting season unless unavoidable. This is to protect birds who are nesting.)

- There are literally dozens (if not more) birds nesting in each area TM (or TM contractors) want to cut. This is self-evident if you listen to the birds on site singing in the dawn chorus.
- TM uses a method to look for nests which is industry-accepted (Site C Dam), although there are no hard rules governing what is required. Briefly: a Registered Professional Biologist (RPBio) is on site for some amount of time (We witnessed the RPBio on site Sat. June 4 for ONE hour), and this happens for 3 days out of 5, after which - providing no nests are discovered - the company has 7 days to fell trees.

Problem:

- **Every time that the Community Nest Finding Network has been on a TM site immediately prior to tree-felling we have discovered nests** where they are about to cut (or where they are already cutting).
- **Their method is consistently not finding the nests that are present.**
- On all occasions (3) our nest discoveries stopped TMs clearing activities until the babies fledged. (NOTE: TM denies one of these 3 occasions, but I'm prepared to testify as CNFN caused them to stand down their fellers who were present that morning when the chickadee nest was discovered last June 2, 2021 on North Rd. Coquitlam.)

Conclusion:

- One hour is not enough time on site to locate nests, even if this is repeated several days in a row. Birds nests are actually hard to find, and birds try to hide their nests and their approaches to their nests. At any rate TM's RPBios are unable able to locate the nests that are present within that timeframe.
- If TM insists on felling trees in nesting season, and continues to use this method -which is not locating even obvious nests?- then nests will be destroyed and federal laws will be broken with full knowledge.

Whereas, Canada must uphold their obligations under the International Migratory Bird Convention and,

Whereas, Trans Mountain cleared a very large area east of Bridal Veil Falls Forest Service Road in May 2022 and are using part of it to store soils as shown in the attached photo. Whereas Trans Mountain's contractors informed a local resident that the extra width is a temporary work area and

Whereas, Trans Mountain included an updated list of Condition 61 extra workspace sites identified as Tables 1 and 2 of its June 27 2022 submission to the Commission in the context of a request for an additional work space in the Brunette River area:

Whereas Tables 1 and 2 of the June 27 submission fail to include or mention the extra work space near Bridal Veil Falls Forest Service Road:

Whereas this is a breach by Trans Mountain of o of the project conditions.and

Whereas, we need to protect the marsh (WL-724) because it is home to endangered species and other wildlife. It is unique because it is a forested marsh located between the mountains and the Trans Canada highway and,

Whereas, the marsh is a wetland which purifies water for watercourses / fish habitat / a salmon bearing stream BC 706a1 and 706 a2 (the unnamed streams at Popkum Road)

Whereas, the marsh is home to endangered giant western salamanders who need the abundant moisture and conifers in the area.

Whereas, an independent biologist might also find other endangered species in the area such as toads and Oregon forest snails because they have been found in neighbouring areas and,

Whereas, The trees in the marsh are homes to hundreds of birds including barn owls, American robins, and Red Sap Sucker woodpeckers. Occasionally larger animals have been seen in the area, including bears and,

Whereas, the forested area immediately to the east was illegally logged and cleared this spring making the remaining marsh even more important for wildlife. The area which was cleared is known to be home to other giant western salamanders, toads and barn owls nevertheless Trans Mountain contractors cut the trees this spring contrary to legislation and Trans Mountain's own environmental plan. Any logging, if any, should have occurred in the fall and,

Whereas, Trans Mountain contractors may have encountered wildlife and bird nests while logging in the area and they may have destroyed everything. Not only did Trans Mountain contractors log an area for the new pipeline, they also logged trees and cleared additional land for a work site and,

Trans Mountain has had a Professional Registered Biologist (PRBio) work in the area: including but not limited to looking for bird nests and salvaging wildlife from the area that was cut and which it plans to cut in the future.

The Community Nest Finders volunteers found bird nests in the area which Trans Mountain's PRbio could not find. This brings the skills and professionalism of the PRbio into question and,

Whereas, Trans Mountain plans to use horizontal directional drilling (HDD) to cross Popkum Road, adjacent to the marsh.

Trans Mountain's contractors did substantial environmental harm this spring making the remaining marsh land even more crucial.

THEREFORE BE IT RESOLVED . that Trans Mountain provide the reports about logging in the area and

BE IT FURTHER RESOLVED, that Trans Mountain provide a copy of the PRbio's reports.

BE IT FURTHER RESOLVED that Trans Mountain replace the PRBio with someone with better skills, preferably someone with qualifications satisfactory to Trans Mountain, the

CER BC EAO and concerned residents of the area and,

BE IT FINALLY RESOLVED that Trans Mountain be ordered to continue the HDD under the marsh WT-724.

Cara Cornell

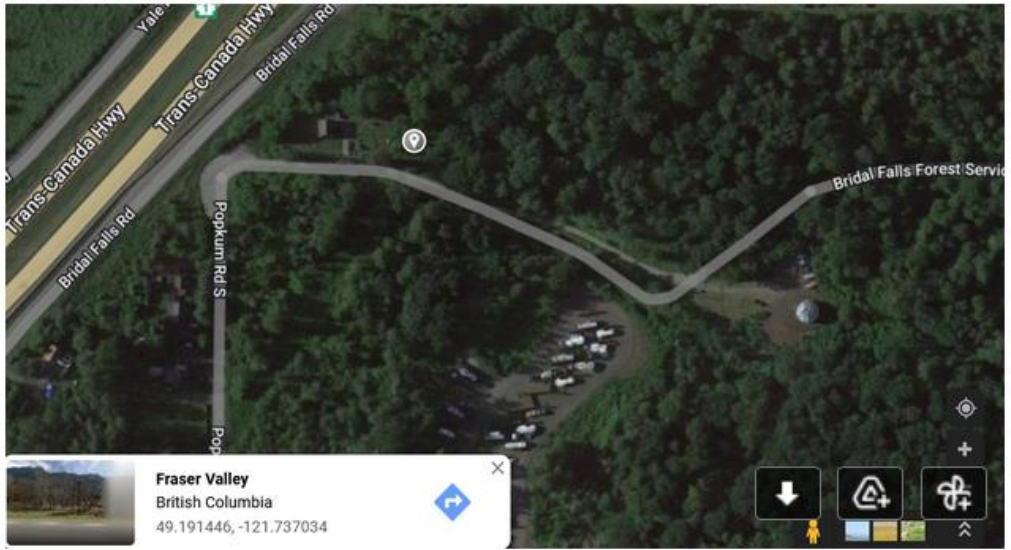
Sara Ross

Peter Vranjkovic

Lynn Perrin Director, Pro Information Pro Environment United People Network

1

Google Satellite June 19 2022



2. Photo of clearing east of 1075.69



3. Photo of wetland WT-724 and signage west of KP 1075.69

