

National Energy
Board



Office national
de l'énergie

DECISION

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27 March 2018

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Dear Mr. and Ms. Plummer, Ms. Morin, Ms. Chipiuk, Mr. Stoness and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project - Certificate OC-064
Decision for Detailed Route Hearing MH-023-2017
Dale and Lorna Plummer (Landowners)
Carly Morin (Intervenor)**

1. Background

On 19 May 2016, the National Energy Board (NEB or Board) issued its Report recommending that Governor in Council approve the Trans Mountain Expansion Project (TMEP), subject to 157 conditions ([A77045](#)).

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The TMEP included twinning the existing 1,147 kilometre long Trans Mountain Pipeline (TMPL) system in Alberta (AB) and British Columbia (BC) with approximately 981 kilometres of new buried pipeline; new and modified facilities, such as pump stations; additional tanker loading facilities at the Westridge Marine Terminal in Burnaby; and reactivating 193 kilometres of existing pipeline between Edmonton and Burnaby. Trans Mountain requested approval of a 150-metre-wide corridor for the TMEP pipeline's general route.

On 29 November 2016, Governor in Council directed the Board to issue the Certificate of Public Convenience and Necessity OC-064 (Certificate) ([A80871](#)), the effect of which was to approve the TMEP, including the 150-metre-wide corridor.

On 17 and 24 February 2017, Trans Mountain applied to the Board for Segments 1 and 2 of its TMEP detailed route, submitting the Plan, Profile, and Book of Reference (PPBoR). Under section 34 of the *National Energy Board Act* (NEB Act), Trans Mountain made available for public viewing copies of its PPBoR, served notices on owners of lands proposed to be acquired for the proposed detailed route¹, and published notices in newspapers in the vicinity of the proposed detailed route².

In all detailed route hearings, the Board considers the following issues:

1. the best possible detailed route of the pipeline;
2. the most appropriate method of constructing the pipeline; and
3. the most appropriate timing of constructing the pipeline³.

In its 31 August 2017 Letter of Decision ([A85762](#)), the Board stated that it would not consider the issue of compensation to be paid to landowners as that matter is not within its jurisdiction.

2. Detailed Route Hearing MH-023-2017

Mr. and Ms. Dale and Lorna Plummer were the registered owners of lands located at: SW 13-52-24-W5, Plan 5251TR, Block 1, Lot 4; and NW 12-52-24-W5M, Plan 9525366, Block 1, Lot 8, in the Rural Municipality of Yellowhead County. Trans Mountain identified these lands as Tracts 648 and 649, respectively. These properties are shown on PPBoR: M002-PM03006-081 and M002-PM03006-082 (see Figure 1 and Appendix I).

Between 13 March and 23 March 2017, notice pursuant to paragraph 34(1)(b) of the NEB Act was published by Trans Mountain in the Jasper Fitzhugh, Edson Leader, Hinton Parklander and Wabamun Community Voice. This notice set out that persons, other than landowners, who have lands that could be adversely affected may oppose the detailed route by filing a statement of opposition with the Board within 30 days of the publication of the notice.

On 30 March 2017, Mr. and Ms. Plummer were served by Trans Mountain with section 34(1)(a) notices for Tracts 648 and 649.

¹ As required by [paragraph 34\(1\)\(a\)](#) of the NEB Act.

² As required by [paragraph 34\(1\)\(b\)](#) of the NEB Act.

³ As set out in [subsection 36\(1\)](#) of the NEB Act.

Mr. and Ms. Plummer filed a statement of opposition with the Board on 12 April 2017 ([A82595](#)), as the owner of lands served with a section 34(1)(a) notice.

Between 29 May and 6 June 2017, the publication of the notice pursuant to paragraph 34(1)(b) of the NEB Act was again published in the Jasper Fitzhugh, Edson Leader, Hinton Parklander and Wabamun Community Voice.

On 31 August 2017, the Board issued a Letter of Decision ([A85762](#)) granting detailed route hearings in relation to Segments 1 and 2 to those who filed statements of opposition that met the requirements of the NEB Act. The Board granted a detailed route hearing to Mr. and Ms. Plummer.

The Board also issued a Hearing Order on 31 August 2017 ([A85764](#)), which assigned Mr. and Ms. Plummer hearing number MH-023-2017. The Hearing Order provided detailed information about the formal process the Board would follow to address the statements of opposition and Appendix VIII of the Hearing Order set out the timetable of events including the deadline to apply to participate in the hearing.

On 21 September 2017, the Board's Application to Participate process closed. The Board received an application from Mr. and Ms. Plummer on 21 September 2017 ([A86192](#)).

Neither Mr. nor Ms. Morin filed a statement of opposition nor did they apply to participate in the hearing for Mr. and Ms. Plummer by the deadlines set out in the Hearing Order.

Trans Mountain filed evidence with respect to Mr. and Ms. Plummer's statement of opposition on 9 October 2017 ([A86678](#)).

On 31 October 2017, Ms. Morin sent a letter to the Board expressing concerns about the routing of the pipeline on Tract 649 which she had recently purchased from Mr. and Ms. Plummer ([A87379](#)).

On 2 November 2017, the Board issued Procedural Update No. 3 ([A87485](#)) which stated the detailed route hearings would take place between 20 November and 2 December 2017 in Hinton, Edson, and Spruce Grove, AB.

On 8 November 2017, the Board sent a letter to Mr. and Ms. Plummer and Ms. Morin asking the parties to confirm ownership status of the lands located at SW-13-52-24-W5M ([A87660](#)). In this letter, the Board also requested clarification as to who the Landowner or Affected Person was who would be participating in the MH-023-2017 hearing. The deadline to respond was 13 November 2017. Neither Mr. and Ms. Plummer nor Ms. Morin responded to the Board's letter.

On 14 November 2017, Trans Mountain filed reply evidence with respect to the 31 October 2017 filing from Ms. Morin ([A87747](#)). In this filing, Trans Mountain stated that Ms. Morin had no standing to submit evidence as she was not identified as a Landowner or Affected Person pursuant to the Board's 31 August 2017 Hearing Order.

On 14 November 2017, the Board issued Procedural Update No. 4 ([A87804](#)) which set the oral hearing for the Plummer lands for 21 November 2017, in Hinton, AB. Mr. and Ms. Plummer did not request a site visit.

On 17 November 2017, the Board issued a letter stating that Ms. Morin's participation status would be decided at the oral portion of the hearing in Hinton, scheduled for 21 November 2017 ([A87949](#)).

On 20 November 2017, Ms. Morin filed page 1 of the Certificate of Title for Plan 9525366, Block 1, Lot 8 (Tract 649) ([A87990](#)). This document indicated that Mr. and Ms. Morin are the owners of Tract 649.

On 21 November 2017, the oral portion of the detailed route hearing began. Mr. Plummer and Ms. Morin attended the hearing. After hearing submissions from all parties on the participation status of Ms. Morin, the Board granted Ms. Morin late Intervenor status to participate in the detailed route hearing for Mr. and Ms. Plummer under Hearing Order MH-023-2017.

Mr. Plummer made a motion requesting his hearing be rescheduled indicating that he had retained counsel who was unable to attend the hearing on 21 November 2017. Ms. Morin also requested that the hearing be delayed as she was wanting to seek legal counsel. The Board heard comments from Trans Mountain, and granted an adjournment to 25 November 2017.

On 22 November 2017, Ms. Eva Chipiuk, legal counsel at Prowse Chowne LLP, filed a letter with the Board advising that she had been retained as counsel on behalf of Mr. and Ms. Plummer as well as Ms. Morin ([A88091](#)). As part of this letter, Ms. Chipiuk filed a notice of motion (Motion) requesting a further adjournment of the hearing. A further letter in support of the Motion was filed on 23 November 2017 ([A88110](#)).

On 23 November 2017, Trans Mountain filed two letters in response to the Motion opposing any further adjournment of MH-023-2017 hearing ([A88105](#) and [A88133](#)). On 23 November, the Board issued a letter setting out a comment process on the Motion ([A88136](#)).

On 24 November 2017, Ms. Chipiuk filed a reply to Trans Mountain's response ([A88150](#)). After considering all of the submissions from the parties, the Board issued Ruling No. 4 denying the Motion to adjourn the hearing ([A88163](#)).

The hearing reconvened on 25 November 2017 and Trans Mountain presented a panel of witnesses for cross-examination. Mr. and Ms. Plummer and Ms. Morin appeared to make statements and answer questions. Mr. Morin also appeared as a witness and answered questions. The hearing took place over four days: 21, 25, 28, and 29 November 2017 in Hinton and Edson, AB, followed by written final argument.

Trans Mountain filed its written final argument on 6 December 2017 ([A88450](#)). Mr. and Ms. Plummer and Ms. Morin filed their final argument on 13 December 2017 ([A88607](#)), and filed an amended final argument on 14 December 2017 ([A88615](#)). Trans Mountain filed its reply argument on 15 December 2017 ([A88719](#)).

On 18 December 2017, Ms. Chipiuk filed a Motion ([A88750](#)) arguing that Trans Mountain introduced new evidence through its reply argument after the close of the evidentiary record of MH-023-2017. Trans Mountain filed its response to this Motion on 21 December 2017 ([A88856](#)). On 22 December 2017, the Board invited reply comments from Ms. Chipiuk ([A88889](#)). On 3 January 2018, Ms. Chipiuk filed reply comments on behalf of her clients ([A88963](#) and [A88966](#)). After considering the submissions from the parties, the Board issued Ruling No. 5 on 12 February 2018. The Board decided to accept all arguments as filed and decided it would assign the appropriate weight to those sections in the parties' written argument that are in dispute ([A89940](#)).

2.1 Proposed Detailed Route

2.1.1 Trans Mountain's Routing Criteria

In selecting its 150-metre-wide corridor and detailed route for the new TMEP pipeline, Trans Mountain submitted in its written evidence and opening statement at the detailed route hearing that it had established a hierarchy of routing principles. In descending order of preference, these were:

1. where practicable, co-locate the new TMEP pipeline on or adjacent to the existing TMPL easement;
2. where co-location was not practicable, minimize the creation of new linear corridors by installing the new TMEP pipeline adjacent to existing easements or rights-of-way for other linear facilities including other pipelines, power lines, highways, roads, railways, fibre optic cables and other utilities;
3. if co-location with any existing linear facility was not feasible, install the new TMEP pipeline in a new easement selected to balance safety, engineering, construction, environmental, cultural and socio-economic factors; and
4. in the event a new easement was necessary, minimize the length of the new easement before returning to a contiguous right-of-way.

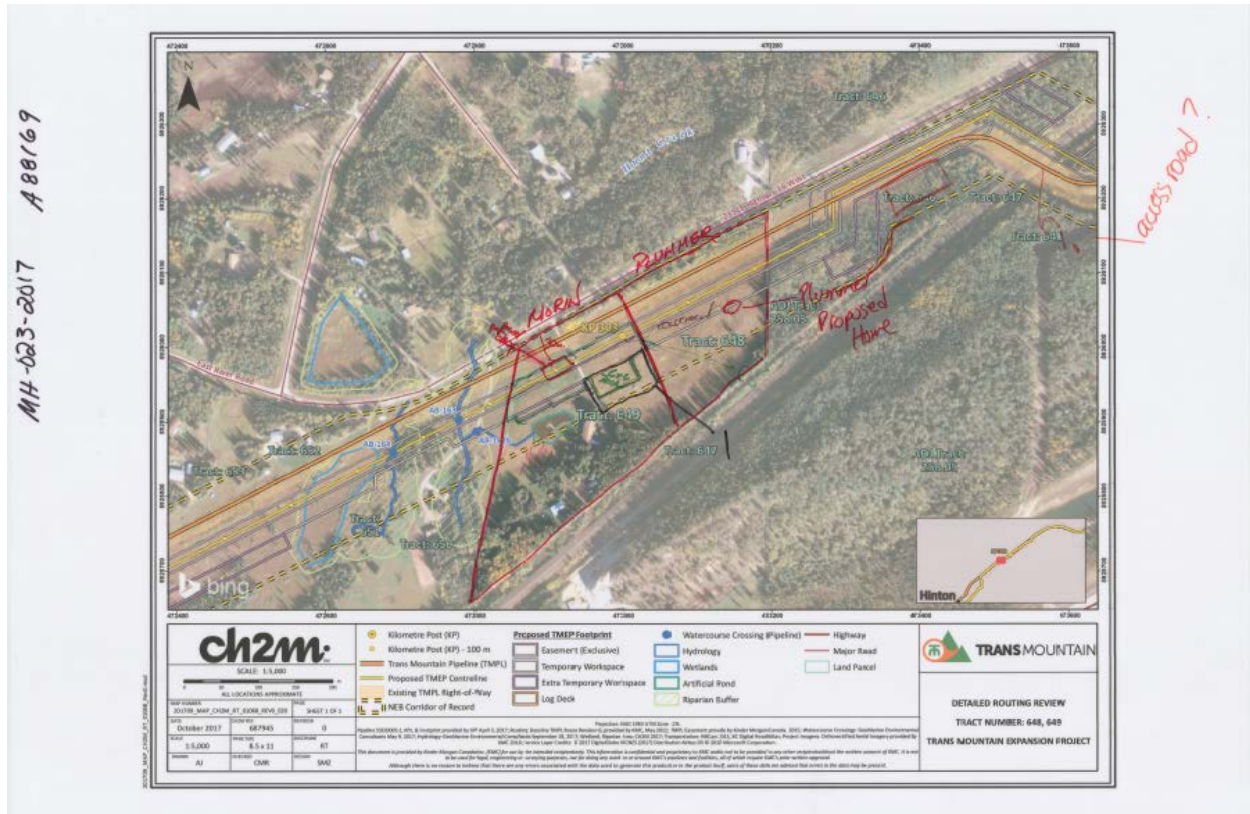
Trans Mountain stated that it had been engaging landowners in its routing discussions since 2012 and used feedback received to optimize the location of its 150-metre-wide corridor. It also stated that the corridor width provided flexibility for minor route adjustments, including those informed by landowner input.

2.1.2 Proposed Detailed Route on the Plummer/Morin Lands

As shown in Figure 1, the proposed detailed route crosses through the lands of Mr. and Ms. Plummer (Tract 648) and Ms. Morin (Tract 649) near Kilometre Post 303. For Tract 648, approximately 202.13 metres of pipeline and a corresponding permanent easement area of 0.365 hectares (0.90 acres) would be situated on the property.

For Tract 649, approximately 181.24 metres of pipeline and a corresponding permanent easement area of 0.325 hectares (0.80 acres) would be situated on the property. The width of the permanent right-of-way on both tracts is 18 metres. Total temporary workspace on Tract 648 is 1.05 acres, and on Tract 649 the temporary workspace is approximately 1.73 acres in area.

Figure 1 – Map of the Plummer/Morin Property⁴



The proposed route for the new TMEP pipeline on the Plummer/Morin lands follows the existing TMPL alignment. There is an existing 18.3-metre Trans Mountain right-of-way across the Plummer/Morin lands which contains two Trans Mountain pipelines; the existing 30-inch TMPL and a deactivated 24-inch line. There is also a utility right-of-way owned by ATCO Gas and Pipelines Ltd. (ATCO) abutting the existing Trans Mountain right-of-way. The right-of-way for the new TMEP pipeline would be south of the ATCO right-of-way.

The northwest corner of the residence on Tract 649 is 78.5 metres from the centerline of the proposed new TMEP pipeline, 70.5 metres from the edge of the permanent easement, and 38 metres to the edge of the workspace. A proposed log deck is 32 metres from the residence at its closest point.

⁴ The map in Figure 1 was originally filed by Trans Mountain as part of its evidence for detailed route hearing MH-023-2017 ([A86678](#)). It was used and marked during the hearing and subsequently entered as an exhibit on the record ([A88169](#)).

Trans Mountain stated at the hearing that it planned to start clearing for construction on the lands in late October or November of 2018, construct the pipeline between January and March 2019, and conduct clean-up and reclamation activities in the summer of 2019.

The method of construction on the Plummer/Morin lands is open cut pipeline installation and the road crossing would be completed by way of slip bore.

Views of Dale and Lorna Plummer

In their statement of opposition, Mr. and Ms. Plummer shared concerns about the existing TMPL and their relationship with Trans Mountain, including their past experiences with reclamation and use of the lands near the existing pipelines. They also raised concerns about their relationship with Trans Mountain.

Mr. and Ms. Plummer noted in their statement of opposition that they will not sign an agreement with Trans Mountain, stating that the existing TMPL is a hindrance and nuisance to the use and enjoyment of their property.

Mr. and Ms. Plummer did not file any written evidence. However, during the hearing, Mr. and Ms. Plummer talked about their use of the lands for recreation and family activities.

In June of 2017, Mr. and Ms. Plummer sold Tract 649 to Mr. and Ms. Morin. Mr. Morin is the grandson of Mr. and Ms. Plummer. Mr. and Ms. Plummer currently reside in Hinton, AB. They do not reside on Tract 648. At the hearing Mr. and Ms. Plummer noted their intention to construct a home on Tract 648. Mr. Plummer indicated that there was no set date for when he and his wife planned to build this house.

During questioning from Trans Mountain, Mr. Plummer indicated that Mr. and Ms. Morin were aware of the existing TMPL and the proposed new TMEP pipeline before they purchased Tract 649.

Mr. and Ms. Plummer stated that they oppose the proposed route for the new TMEP pipeline and requested that it be relocated half a mile north or south of their lands to Crown land. In their Application to Participate, Mr. and Ms. Plummer described the alternate route as follows: “the proposed route should be changed from crossing under Highway 16 and the CNR near Obed and then crossing back to the south side east of Hinton as they have to bypass Hinton on the south side of town.” At the hearing, Mr. and Ms. Plummer also questioned whether the proposed TMEP could be located between the existing pipelines already on the property.

When asked if he had any outstanding concerns with the proposed route of the new TMEP pipeline given the commitments made by Trans Mountain, Mr. Plummer indicated he did not want Trans Mountain on his land.

Views of Carly Morin

On 14 June 2017, Mr. and Ms. Jordan and Carly Morin purchased the lands identified as NW 12-52-24-W5M, Plan 9525366, Block 1, Lot 8 (Tract 649).

Ms. Morin filed a letter with the Board on 31 October 2017, stating that she had recently purchased the property (Tract 649) and became aware that the proposed route of the new TMEP pipeline will run directly through the property. She stated that she and her husband are new business owners and they bought the lands intending to expand and develop their business on Tract 649. Mr. and Ms. Morin currently reside in the residence located on Tract 649.

Ms. Morin stated at the hearing that she and Mr. Morin are currently renting space in Hinton, AB for their business and they plan to build a shop on Tract 649. The proposed shop would be for repairing and storing equipment not being used.

In her 31 October 2017 letter, Ms. Morin noted that she had submitted a development permit to the Yellowhead County (County) which was in the final stages of approval. She also stated that she had a blueprint for the shop and is planning to begin construction in the spring of 2018. The 31 October 2017 letter goes on to suggest that, based on the location of the proposed route, as well as the location of the proposed shop, the Morins have a direct conflict with Trans Mountain. The letter indicates this could result in laying off workers, incurring additional expenses, and possibly dissolving the business.

Ms. Morin stated that the shop is proposed to be located next to the ATCO easement. Specifically, Ms. Morin stated that their plan is to construct the shop as far away from their home and as close to the existing pipeline rights-of-way as possible. During the hearing, Ms. Morin noted that an alternate location on Tract 649 for the proposed shop has not been considered due to the presence of wet and swampy areas on the property.

Ms. Morin noted that the first development permit for the proposed shop that was submitted to the County was rejected for being incomplete. Ms. Morin was unable to confirm the date the first application was made. A second application was submitted on 24 November 2017. A copy of this application was submitted into evidence ([A88168](#)) at the hearing on 29 November 2017. The development permit application was for a home-based business. The dimensions of the proposed shop are 20 feet tall by 60 feet wide by 125 feet long, and it is to be used as a shop for storage and repairs.

Ms. Morin stated that at a meeting with Trans Mountain representatives on 14 November 2017, she offered blueprints of the proposed shop to Trans Mountain. Trans Mountain did not take a copy of the blueprints at that time. Ms. Morin noted that the blueprints contained an error.

Ms. Morin stated at the hearing that she and Mr. Morin resided with Mr. and Ms. Plummer at the residence on Tract 649 from approximately June to October 2017. Ms. Morin confirmed during the hearing that she was aware of the information that Mr. and Ms. Plummer were getting from Trans Mountain about the TMEP and its proposed route. Further Ms. Morin stated that she was aware that the proposed route for the new TMEP pipeline could possibly affect her property (Tract 649).

Ms. Morin submitted a Certificate of Title showing that the land has been owned by herself and Mr. Morin as of 14 June 2017. The Certificate of Title lists all registered utility rights-of-way, including the existing TMPL, for a total of 11 instruments. Ms. Morin also stated that her purchase of Tract 649 was not the first time she has purchased property and that she used a lawyer to complete the purchase.

At the hearing, Ms. Morin described her plan to operate a business on the lands, and that it took time to get detailed plans in place. She also explained her interactions with Trans Mountain since September of 2017. Additionally, Ms. Morin attended an Alternative Dispute Resolution session with Mr. Plummer and representatives from Trans Mountain on 24 October 2017.

In final argument, Ms. Morin argued that given the routing proposed and the impacts on her future development, she was being asked to put her development plans on hold for at least one year without any certainty about how or if they can develop. Ms. Morin and Mr. and Ms. Plummer requested that the Board deny Trans Mountain's approval of the detailed route. In the alternative, they requested that the Board impose certain terms and conditions on any approval of the detailed route.

Views of Trans Mountain

Trans Mountain submitted during questioning that it addressed issues about routing related to impacts on development by proposing to put the new TMEP pipeline up against the existing TMPL and ATCO rights-of-way, which also minimized additional fragmentation of Tracts 648 and 649.

In reply evidence, Trans Mountain stated that the routing for the new TMEP pipeline was required to be south of the other rights-of-way as the space available between the existing pipelines was not sufficient. The proposed route of the new TMEP pipeline is constrained on the Plummer/Morin lands by the presence of other pipelines on the northern edge of the properties. Therefore, Trans Mountain has proposed routing the new TMEP pipeline along the southern edge of the existing pipelines. Trans Mountain indicated that the location of the new TMEP pipeline is consistent with its second routing criteria which is to minimize the creation of new linear corridors by installing the TMEP adjacent to existing easements or rights-of-way.

Alternate Routes

In written evidence and at the hearing, two main alternate routes were discussed.

- a) Move the new TMEP half a mile north or south

In their statement of opposition, Mr. and Ms. Plummer requested that the proposed route for the new TMEP pipeline be relocated half a mile north or south of their lands onto Crown land. In its written evidence and at the hearing, Trans Mountain indicated that re-routing the new TMEP pipeline to Crown land north or south of the lands is technically feasible, but would add significant length to the pipeline, affect additional landowners, and require the new TMEP pipeline to deviate from the existing TMPL alignment. This alternate route is also outside of the NEB approved corridor.

At the hearing, Trans Mountain provided further information on the alternate route that would go from Tract 636.01 to Tract PC 9038, which is where Trans Mountain crosses to the north over Highway 16 and returns to the south side of Highway 16. One alternate route option would follow the highway tightly on the very south side, and the second aligns with a clear area and minimizes tree loss. The first option would increase the length of the new TMEP pipeline by approximately 0.6 kilometres, and the latter option would increase the length of the pipeline by approximately 2.2 kilometres. Trans Mountain stated that these alternate routes had not been assessed for constructability or geotechnical slope stability nor had consultations been undertaken with First Nations or stakeholders. Trans Mountain indicated that it was not aware how many additional landowners would be affected by these alternate routes but that its proposed route for the new TMEP pipeline had 46 parcels, only two of which were not acquired.

- b) Place the new TMEP pipeline within the existing easements

At the hearing, Trans Mountain was questioned on whether it could construct the new TMEP pipeline within the existing right-of-way.

Trans Mountain has two pipelines within its 18.3-metre existing easement; its 30-inch TMPL, and three metres south of the TMPL, a deactivated 24-inch pipeline. To the south of these pipelines is the 10-metre ACTO right-of-way which contains a 10-inch active gas pipeline. The proposed TMEP easement is on the south side of the ATCO easement and is 18 metres-wide.

Trans Mountain stated in its written evidence that constructing the new TMEP pipeline between the existing Trans Mountain pipelines is not feasible. The work space is insufficient to construct the new TMEP pipeline between the existing Trans Mountain pipelines safely and would raise additional constructability issues.

The distance between the existing TMPL and ATCO pipeline is approximately 13 metres. At the hearing, Trans Mountain indicated that placing the new TMEP pipeline between the TMPL and the ATCO pipeline, while technically feasible, is not safe. This would require Trans Mountain to work on top of the active ATCO pipeline with heavy equipment. If Trans Mountain were to construct the new TMEP pipeline between the existing TMPL and the ATCO pipeline, it would

need to employ the stove pipe method which involves welding up three joint sections and locking them in place. Trans Mountain stated at the hearing that placing the new TMEP pipeline between the existing TMPL and the ATCO pipeline could contravene its safety practices and standards and it could result in a situation where a contractor refuses work its considers unsafe.

Trans Mountain stated that using the stove pipe method of construction would increase the time required to construct the new TMEP pipeline and the amount of excavation. In addition, a crossover would be required to realign the pipeline route back onto the south alignment, moving all excavations to the Morin lands. Trans Mountain also explained that if the workspace was not on the south side, the entire road would be out of commission during construction with this method. Further, Trans Mountain said it would have to have an agreement from ATCO to work on top of its gas line for about 475 metres.

Location of the proposed Morin Shop

Trans Mountain indicated at the 25 November 2017 hearing that it has had discussions with Ms. Morin about the location of the proposed shop but that it was not clear to Trans Mountain what the dimensions of the shop would be, or where the exact location would be, as Ms. Morin had only talked about it conceptually. During the hearing, Trans Mountain indicated it had not received blueprints for the proposed shop but that it had seen drawings. Further, Trans Mountain indicated that the plans it had been shown of the proposed shop appeared to be incorrect.

Trans Mountain also stated at the hearing on 25 November 2017 that if it had an approved development plan or site plans, it could try to work with Ms. Morin to accommodate development, but that without any specific information, it is difficult to consider. Trans Mountain stated it had contacted the County to try and get more information and had been told that the Morins' development application had been refused.

Trans Mountain noted that the addition of the new TMEP pipeline to the pipelines currently crossing the Morin lands would result in loss of use of those lands that are within the new TMEP pipeline easement and stated that matters of compensation are outside the scope of the detailed route hearing process.

Trans Mountain stated at the hearing, that with the space to be taken up by the new TMEP pipeline easement and temporary workspace, there would be approximately ten acres of lands that is unencumbered or unused on the Morin property, or about 70 percent.

In its final argument, Trans Mountain argued that Ms. Morin lacked credibility and specificity with respect to the details of her proposed shop. Trans Mountain further argued that the potential development of the proposed shop is speculative.

Location of the proposed Plummer Residence

During the hearing, Trans Mountain stated that it understood that Mr. and Ms. Plummer have plans for future development, but that it did not have any details about these plans. Trans Mountain stated that it could not address issues when it did not have details. Trans Mountain indicated that if Mr. and Ms. Plummer were prepared to provide Trans Mountain with a map showing the location of the proposed home, Trans Mountain could include it in its planning.

In its evidence, Trans Mountain stated that it was aware of Mr. and Ms. Plummer's concerns respecting TMPL operations and maintenance and had met with them to discuss those issues. Trans Mountain is continuing discussions to further address these issues outside of the detailed route process. Trans Mountain stated at the hearing there will be some follow-up to ensure that it takes the steps necessary to re-engage and try to rebuild its relationship with Mr. and Ms. Plummer.

In its final argument, Trans Mountain argued that the proposed route is the best route and that many of the terms and conditions requested by Mr. and Ms. Plummer and Ms. Morin during their final argument are duplicative of conditions in the Certificate decision and that some proposed conditions have not been justified or are outside the scope of the proceedings.

2.2 Summary of Commitments:

In its evidence and during the hearing, Trans Mountain committed to:

- Topsoil stripping in non-frozen conditions;
- Looking at options to relocate the log deck/multi-use workspace to a new location in consultation with the Plummers and Morins;
- Using temporary fencing if requested by the Plummers or Morins; and
- Taking steps to repair the relationship between Trans Mountain and Mr. and Ms. Plummer.

3. Board Decision for Detailed Route Hearing MH-023-2017

The Board appreciates the time spent by all participants in discussing their concerns during this detailed route hearing.

The proposed detailed route to the south of the existing encumbrances on the Plummer/Morin lands is consistent with Trans Mountain's routing criteria to minimize the creation of new linear corridors by installing the TMEP adjacent to existing easements or rights-of-way or other linear facilities.

Alternate routes proposed by Mr. and Ms. Plummer, namely to relocate the new TMEP pipeline off the Plummer/Morin lands, were discussed at the hearing. While these alternate routes may be technically feasible, as acknowledged by Trans Mountain, they would add length to the new TMEP pipeline, affect additional landowners and deviate from the existing TMPL alignment.

The Board was persuaded by Trans Mountain's arguments that, in this case, these alternate routes were inferior to the route applied for.

With respect to locating the new TMEP pipeline within the existing encumbrances on the Plummer/Morin lands, the Board notes that the working space available would raise safety concerns as well as additional constructability concerns. Placing the new TMEP pipeline between the existing TMPL and the ATCO pipeline could contravene safety practices and could result in contactors refusing work they deem to be unsafe. The Board found Trans Mountain's evidence on this point to be persuasive; the Board is of the view that placing the TMEP between the existing pipelines could pose a safety risk.

The Board notes that both Mr. and Ms. Plummer and Ms. Morin raised concerns with respect to proposed development on their respective lands. Mr. and Ms. Plummer indicated that there is no date set for when they intend to construct their new house. The Board finds that the house proposed to be constructed by Mr. and Ms. Plummer does not conflict with the timing of construction of the new TMEP pipeline.

With respect to Ms. Morin's proposed shop, the Board notes that Trans Mountain repeatedly indicated at the oral hearings that despite having requested details, it had not been provided with sufficient information regarding the specifications of the proposed shop. The Board is not aware of any development permit approval that has been granted for the proposed shop. While Ms. Morin was unable to confirm whether the original development permit was applied for within days of an Alternative Dispute Resolution meeting, the Board notes that the second development permit application, which was filed with the Board during the hearing, was applied for in the midst of the oral portion of the detailed route hearings.

While the Board appreciates it can take time to prepare development permit applications and blueprints, the Board favored the evidence of Trans Mountain that the approval of the development permit application as well as construction of the proposed shop are not confirmed at this time.

Additionally the Board notes Trans Mountain's commitment to look at options on the location of the log deck/multi-use workspaces to accommodate any planned development of Mr. and Ms. Plummer as well as Ms. Morin.

With respect to whether or not Ms. Morin was aware of the proposed route of the new TMEP pipeline on her lands prior to purchasing Tract 649 in June 2017, Mr. Plummer stated at the hearing that she was. Further the Board notes that the purchase of Tract 649 was not Ms. Morin's first time purchasing property. She was assisted by legal counsel during the purchase of that property and would have had a copy of the Land Titles Certificate showing the 11 instruments already on title. The Board is of the view that Ms. Morin either knew or ought to have known prior to purchasing Tract 649 that the new TMEP pipeline was proposed to be routed across her property.

Mr. and Ms. Plummer as well as Ms. Morin raised a number of concerns with respect to Trans Mountain's consultation efforts during the detailed route hearing, including during written argument. Specifically, in final argument, Ms. Chipiuk argued that her clients had limited awareness of the project. The Board is of the view that sufficient consultation was undertaken to allow for Mr. and Ms. Plummer and Ms. Morin to be made aware of the proposed detailed route and to participate in the process.

The Board encourages parties to engage early and often. While the Board expects Trans Mountain to engage with landowners, the Board also expects affected parties to engage with Trans Mountain and make themselves available to discuss potential solutions. The Board encourages Trans Mountain, Mr. and Ms. Plummer and Ms. Morin to collaborate in order to address issues of interest to all parties, including concerns about the potential impacts on future development on the Plummer/Morin lands.

Parties are also reminded that Alternative Dispute Resolution services are available through the Board. The Board has a landowner complaint resolution process for any issues that arise with pipelines during operation which any landowner can request by contacting the Board.

With regard to the conditions proposed by Ms. Chipiuk during final argument, the Board is of the view that many of these proposed conditions are either covered in the conditions attached to the Certificate or were identified as commitments made by Trans Mountain in this detailed route hearing.

During final argument, Ms. Chipiuk also requested that costs be awarded under section 39 of the NEB Act. With respect to costs, the Board refers the parties to its 22 February 2018 letter, wherein the Board indicated that it would consider such requests once the detailed route hearing has concluded ([A90137](#)).

Additionally, Mr. and Ms. Plummer and Ms. Morin also requested, during final argument, that the Board attend a site visit on their lands prior to making its decision as the lands are unique. The Board provided a process prior to the oral portion of the hearings on how and when to request site visits. Mr. and Ms. Plummer and Ms. Morin did not request a site visit, nor was such a request made during the hearings. To the extent such a request was made, the Board did not find it persuasive. Additionally, the Board is of the view that it has been provided with adequate information on the record to make its decision without requiring a site visit.

Having considered all of the evidence filed on the record by Trans Mountain, Mr. and Ms. Plummer, and Ms. Morin, the representations made at the oral portion of the detailed route hearing, and the matters described above, the Board finds that the route proposed by Trans Mountain is the best possible detailed route of the pipeline, and the methods and timing of constructing the pipeline are the most appropriate, subject to the commitments made by Trans Mountain.

Any approval by the Board of a PPBoR for the Plummer/Morin lands will include a condition requiring Trans Mountain to list and fulfill the commitments it made in the course of the detailed route proceeding, and update its alignment sheets. If required, Mr. and Ms. Plummer and Ms. Morin are entitled to seek remedy from the Board if any commitments are not being fulfilled.

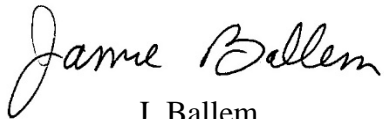
Trans Mountain is reminded that the relevant conditions of approval in Certificate OC-064 apply to the construction and operation of the TMEP on the Plummer/Morin lands.



L. Mercier
Presiding Member

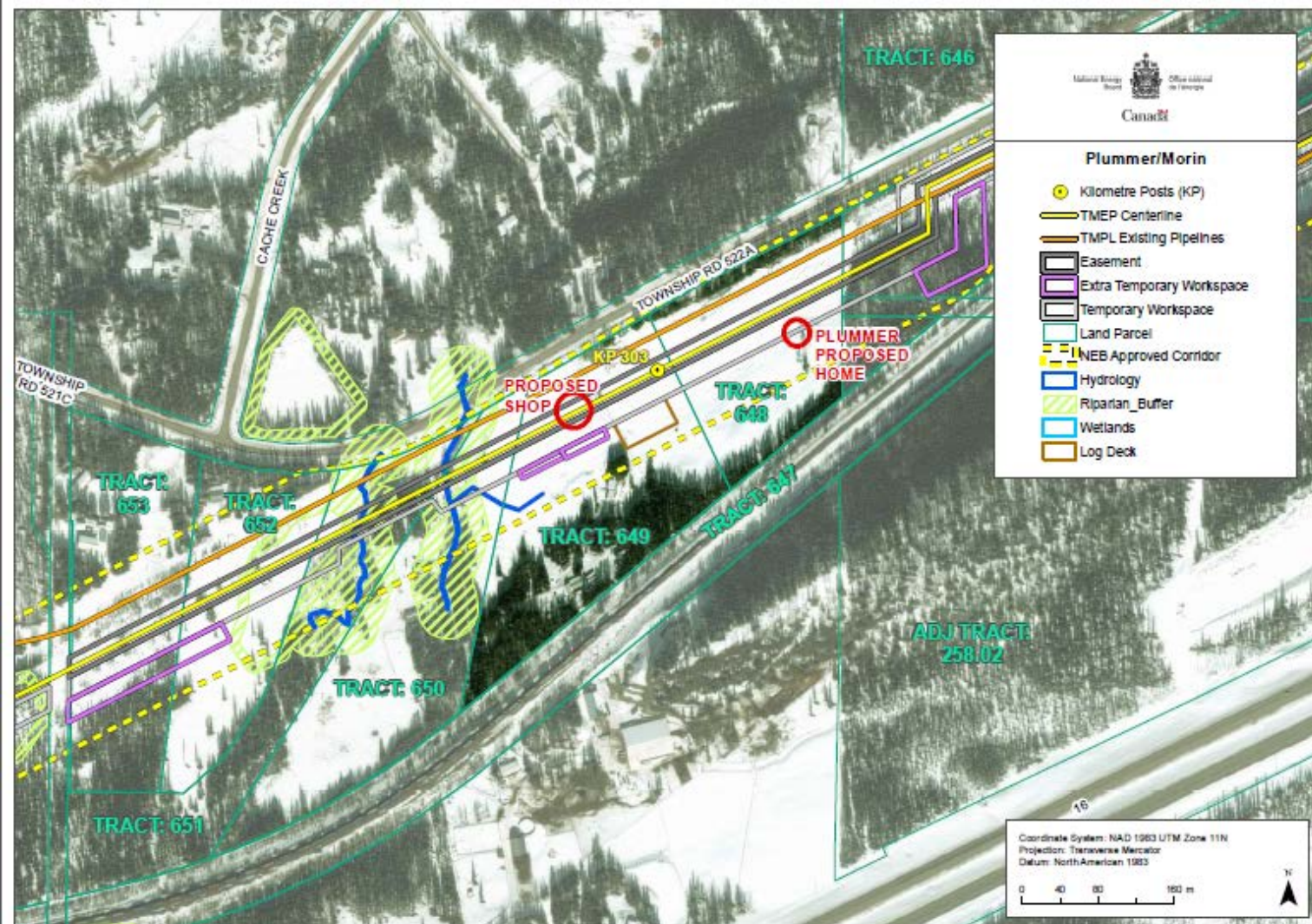


S. Parrish
Member



J. Ballem
Member

Appendix I – Map of the Plummer/Morin Property



MAP PRODUCED BY THE NEB, MARCH 2018. THIS MAP HAS BEEN GENERATED BY THE NEB FOR ILLUSTRATIVE PURPOSES ONLY. THE NEB DISCLAIMS ALL RESPONSIBILITY FOR ANY ERRORS, OMISSIONS AND INACCURACIES. READERS WISHING TO CONSULT THE ACTUAL MAPS AS THEY WERE FILED SHOULD REFER TO THE OFFICIAL RECORD.