

March 4, 2021

VIA ELECTRONIC FILING
ORIGINAL BY COURIER

Canada Energy Regulator
Suite 210, 517 – 10th Avenue SW
Calgary, AB T2R 0A8

Attention: Mr. Jean-Denis Charlebois, Secretary of the Commission

Dear Mr. Charlebois:

**Re: Trans Mountain Pipeline ULC ("Trans Mountain")
Trans Mountain Expansion Project ("Project")
OF-Fac-Oil-T260-2013-03-ROE 99
Fred Tautchin and Stanley Tautchin ("Registered Owner")
Stephen Wasylyshyn ("Occupant", together with the Registered Owner, the "Owner")
Short Legal: SW 10-53-2-W5M / Tract 276 ("Lands of the Owner")
Request for Leave to Amend Section 324 Application for Right of Entry ("Application")**

Trans Mountain filed the Application requesting an order for right of entry ("**ROE**") to a portion of the Lands of the Owner with the Canada Energy Regulator ("**Regulator**") on October 28, 2020 ([C09186-1](#)). The Application was properly served on the Owner effective November 13, 2020 ([C09754-1](#)).

The Registered Owner filed an objection to the Application on November 23, 2020 with respect to those portions of the Lands of the Owner that were not previously acquired for the Project and those portions of the Lands of the Owner that were previously acquired for the Project. On February 18, 2021, the Commission of the Regulator ("**Commission**") issued CER Information Request No. 1 to Trans Mountain ([C11567-1](#)) ("**CER IR No. 1**"). On February 23, 2021, Trans Mountain filed a request to extend the deadline to respond to CER IR No. 1 ([C11632-1](#)). On February 24, 2021, the Commission extended the deadline for Trans Mountain to respond to CER IR No. 1 to March 4, 2021 at 4:00pm MT ([C11647-1](#)).

Due to the passage of time since the Application was filed, Trans Mountain is of the view that the right-of-way agreement between Trans Mountain and the Registered Owner that is registered on the title to the Lands of the Owner ("**Agreement**") now ranks in priority to the Occupant's unregistered interest pursuant to the *Alberta Land Titles Act*. Accordingly, Trans Mountain no longer requires the Commission to consider those portions of the Lands of the Owner that were previously acquired by Trans Mountain pursuant to the Agreement as part of the Application. Additional information related to the priority of the Agreement can be found in Trans Mountain's response to CER IR No. 1, which is being filed concurrently with this request to amend the Application.

Therefore, Trans Mountain hereby requests leave of the Commission pursuant to subsection 10(1)(b) of *the National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208 ("**NEB Rules**") to make amendments to the Application and the Schedule attached as Exhibit "C" to the Application (the "**Amendments**"). A blackline comparison and clean copy of the amended Application are attached hereto as **Schedules A** and **B**, respectively. A blackline comparison and clean copy of the amended Schedule are attached hereto as **Schedules C** and **D**, respectively.

A detailed summary of the Amendments, including a pinpoint reference to the original language in the Application document, a comparison of the amended or additional language,¹ as well as a statement explaining the nature of the amendment has been provided in the following chart:

Amended Document	PDF Reference	Original Language	Amended or Additional Language	Nature of Amendment
Application	PDF 4, No. 1	<p>1. Trans Mountain hereby applies to the Canada Energy Regulator ("Regulator" or "CER") pursuant to subsection 324(1) of the Act and section 55 of the Rules for an order ("Right of Entry Order") granting Trans Mountain an immediate right to enter:</p> <p>a. with respect to the Registered Owner, those portions of the Lands of the Owner shown as Temporary Workspace (Owner's Interest Not Previously Acquired) in the Individual Ownership Plan in Appendix A to the Schedule attached as Exhibit "C" to this Notice, forming part of the definition of "Temporary Workspace Area" in the Schedule attached as Exhibit "C" to this Notice, and proposed to be made part of the Right of Entry Order; and</p> <p>b. with respect to the Occupant, those portions of the Lands of the Owner defined as Pipeline ROW Area and Temporary Workspace Area in the Schedule attached as Exhibit "C" to this Application and proposed to be made part of the Right of Entry Order.</p>	<p>1. Trans Mountain hereby applies to the Canada Energy Regulator ("Regulator" or "CER") pursuant to subsection 324(1) of the Act and section 55 of the Rules for an order ("Right of Entry Order") granting Trans Mountain an immediate right to enter <u>those portions of the Lands of the Owner shown as Temporary Workspace Area in the Schedule attached as Exhibit "C" to this Application and proposed to be made part of the Right of Entry Order.</u></p> <p>a. with respect to the Registered Owner, those portions of the Lands of the Owner shown as Temporary Workspace (Owner's Interest Not Previously Acquired) in the Individual Ownership Plan in Appendix A to the Schedule attached as Exhibit "C" to this Notice, forming part of the definition of "Temporary Workspace Area" in the Schedule attached as Exhibit "C" to this Notice, and proposed to be made part of the Right of Entry Order; and</p>	<p>To reflect the change in the Application from requesting an order for immediate right of entry for portions of the Lands of the Owner relative to the Registered Owner and the Occupant to an order granting immediate right of entry for the Temporary Workspace Area as shown in the revised Schedule.</p>

¹ Words that have been deleted from the Application document are marked as strikethrough, with new or additional language marked in bold and underlined.

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			b. with respect to the Occupant, those portions of the Lands of the Owner defined as Pipeline ROW Area and Temporary Workspace Area in the Schedule attached as Exhibit "C" to this Application and proposed to be made part of the Right of Entry Order.	
Application	PDF 5, No. 10, Exhibit "C"	Exhibit "C" Schedule describing the Lands of the Owner, the Pipeline ROW Area and Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner, the Pipeline ROW Area and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order;	Exhibit "C" Schedule describing the Lands of the Owner, the Pipeline ROW Area and <u>the</u> Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner, the Pipeline ROW Area and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order;	To reflect the removal of the Pipeline ROW Area from the Schedule
Exhibit "C"-Schedule	PDF 29, Cover page	Exhibit "C" Schedule describing the Lands of the Owner, the Pipeline ROW Area and Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner, the Pipeline ROW Area and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order	Exhibit "C" Schedule describing the Lands of the Owner, the Pipeline ROW Area and <u>the</u> Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner, the Pipeline ROW Area and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order	To reflect the removal of the Pipeline ROW Area from the Schedule
Exhibit "C"-Schedule	PDF 30, Section 1	(a) That portion of the Lands of the Owner containing 1.440 Ha / 3.56 Ac, more or less, shown as New Right of Way (Owner's Interest Previously Acquired) on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule. (the " Pipeline ROW Area ")	That portion of the Lands of the Owner containing 1.10 Ha / 2.72 Ac, more or less, shown as New Temporary Workspace on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule.	To remove the Pipeline ROW Area and to reflect the change in area required to be used as Temporary Workspace Area.

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		<p>(b) That portion of the Lands of the Owner containing 1.10 Ha / 2.72 Ac 3.684 Ha / 9.10 Ae, more or less, shown as New Temporary Workspace (Owner's Interest Previously Acquired) and Temporary Workspace (Owner's Interest Not Previously Acquired), including any lands depicted as Temporary Access Road (Owner's Interest Previously Acquired) on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule.</p> <p>(the "Temporary Workspace Area")</p>	(the "Temporary Workspace Area")	
Exhibit "C"-Schedule	PDF 30-31, Section 3	<p>3. RIGHTS OR INTERESTS APPLIED FOR IN RESPECT OF THE LANDS OF THE OWNER, THE PIPELINE ROW AREA AND THE TEMPORARY WORKSPACE AREA</p> <p>Trans Mountain requires the following rights, titles or interests in respect of the Lands of the Owner:</p> <p>(a) the right and interest in, on, over, upon, across, along, under and through the Pipeline ROW Area to:</p> <p>(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</p>	<p>3. RIGHTS OR INTERESTS APPLIED FOR IN RESPECT OF THE LANDS OF THE OWNER AND THE TEMPORARY WORKSPACE AREA</p> <p>Trans Mountain requires the following rights, titles or interests in respect of the Lands of the Owner:</p> <p>(a) 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;</p>	To remove the Pipeline ROW Area Rights and references to the Pipeline ROW Area Restoration

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		<p>(ii) generally to do all things necessary for or incidental to the exercise of the foregoing rights and interests;</p> <p>(referred to herein as the "Pipeline ROW Area Rights")</p> <p>(b)(a) 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;</p> <p>(referred to herein as the "Temporary Workspace Area Rights")</p> <p>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</p> <p>(c)(b) the right of access to and egress from the Pipeline ROW Area and the Temporary Workspace 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 Temporary Workspace Area</p>	<p>(referred to herein as the "Temporary Workspace Area Rights")</p> <p>for so long as required to complete the Pipeline Construction and the related Temporary Workspace Area Restoration, at which time the Temporary Workspace Area Rights shall lapse and be of no further force or effect; and</p> <p>(b) the right of access to and egress from the Temporary Workspace 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 Temporary Workspace Area Rights; provided, however, that Trans Mountain shall not use or exercise such right of access or egress for the purpose of Pipeline Construction;</p> <p>(the rights and interests referred to above being collectively referred to herein as the "Easement Rights")</p> <p>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.</p>	

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		<p>Rights; provided, however, that Trans Mountain shall not use or exercise such right of access or egress for the purpose of Pipeline Construction;</p> <p>(the rights and interests referred to above being collectively referred to herein as the "Easement Rights")</p> <p>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, <u>and, subject to subclause (b) above, for so long as Trans Mountain may desire to exercise them.</u></p>		
Exhibit "C"-Schedule	PDF 31-32, Section 4 (c), (e) and (h)	<p>...</p> <p>(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, <u>including restrictions on the use of the remaining Lands of the Owner by operation of s. 335 of the CER Act</u> 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.</p> <p>...</p> <p>(e) Incompatible Use: The Owner shall not make, do, install or construct, or permit or suffer</p>	<p>...</p> <p>(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 restrictions on the use of the remaining Lands of the Owner by operation of s. 335 of the CER Act.</p> <p>...</p> <p>(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, prior to the lapse of the Temporary Workspace Area Rights as described in subclause 3(a), within the Temporary Workspace Area. Subject to</p>	To revise the rights, obligations, restrictions and terms to remove references to the Pipeline ROW Area.

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		<p>to be made, done, installed or constructed, any Incompatible Use within the Pipeline ROW Area or, prior to the lapse of the Temporary Workspace Area Rights as described in subclause 3(ab), within the Temporary Workspace 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 Temporary Workspace Area.</p> <p>...</p> <p>(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 Temporary Workspace Area or any other portions of or any right or interest registered against the title to the Lands of the Owner.</p>	<p>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 Temporary Workspace Area.</p> <p>...</p> <p>(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 Temporary Workspace Area or any other portions of or any right or interest registered against the title to the Lands of the Owner.</p>	
Exhibit "C"-Schedule	PDF 35, Appendix A, Individual Ownership Plan	N/A	N/A	To replace the filed Individual Ownership Plan with a revised Individual Ownership Plan reflecting the change in area for the Temporary Workspace Area.
Exhibit "C"-Schedule	PDF 36-37, Appendix B, Defined Terms	<p>"Approval" means an approval in writing by Trans Mountain pursuant to this Schedule or otherwise, including any conditions of approval.</p> <p>...</p> <p>"Incompatible Use" means:</p> <p>(a) as to the Pipeline ROW Area, any use, activity or</p>	<p>...</p> <p>"Incompatible Use" means any use, activity or thing within the Temporary Workspace 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.</p>	To remove or revise certain Defined Terms based on their relevance in the revised Schedule.

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		<p>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</p> <p>(b) as to the Temporary Workspace Area, any use, activity or thing within the Temporary Workspace 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.</p> <p>...</p> <p>"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.</p> <p>...</p> <p>"Pipeline Construction" means the initial construction and installation of the Pipeline within the <u>within the area identified in the Individual Ownership Plan attached as Appendix "A" as "Existing R/W"</u> Pipeline ROW Area.</p> <p>...</p> <p>"Pipeline ROW Area Restoration" means the</p>	<p>...</p> <p>"Pipeline Construction" means the initial construction and installation of the Pipeline within the area identified in the Individual Ownership Plan attached as Appendix "A" as "Existing R/W".</p> <p>...</p>	

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		<p>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:</p> <p>(a) cause all construction debris to be removed from the Pipeline ROW Area;</p> <p>(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</p> <p>(c) restore Permitted Improvements within the Pipeline ROW Area.</p> <p>...</p>		

In parallel with this request, Trans Mountain will proceed to email a copy of the amended Schedule in MS Word format to TMX.ProcessHelp@cer-rec.gc.ca including a cover letter with the REGDOCS document number of the original Application filing in accordance with Procedural Directive No. 1 – Applications for Right of Entry issued by the National Energy Board on March 15, 2018 and subsection 55(3)(c) of the NEB Rules.

Trans Mountain appreciates that the right of entry process with respect to the Lands of the Owner has been lengthy. Therefore, at this juncture, Trans Mountain respectfully requests that the Commission immediately resume the processing of the Application, subject to the Amendments, as access is urgently required.

Should the Commission require any additional information, please do not hesitate to contact the undersigned.

Regards,



Alain Parisé, Director, Land

cc. Registered Owner
Occupant

Schedule A

**Blackline Comparison of Original and Amended Application for Right of Entry dated October 28,
2020**

CANADA ENERGY REGULATOR

IN THE MATTER OF the *Canadian Energy Regulator Act*, SC 2019, c 28, s 10 (Canada), (the "**Act**") and the regulations made thereunder;

AND IN THE MATTER OF Certificate OC-065, as amended, authorizing the construction and operation of the Trans Mountain Expansion Project (the "**Project**");

AND IN THE MATTER OF an Application by Trans Mountain Pipeline ULC ("**Trans Mountain**") pursuant to subsection 324(1) of the Act and section 55 of the *National Energy Board Rules of Practice and Procedure*, 1995, SOR/95-208 (the "**Rules**") for an Order granting Trans Mountain an immediate right to enter certain lands as described herein.

TRANS MOUNTAIN PIPELINE ULC

APPLICATION FOR RIGHT OF ENTRY

October 28, 2020

To: Secretary of the Commission
Canada Energy Regulator
Suite 210, 517 - 10th Avenue SW
Calgary, Alberta T2R 0A8

And to: Fred Tautchin
52519 Range Road 22
Parkland County, Alberta, Canada T7Y 2J3

Stanley Tautchin
52531 Hwy 770
Parkland County, Alberta, Canada T7Y 2J6

(the "**Registered Owner**")

And to: Occupant
Stephen Wasylyshyn
RR 1
Carvel, Alberta, Canada T0E 0H0

(being other persons, insofar as they can be ascertained, interested in the Lands)

(said Registered Owner and other persons hereinafter referred to collectively as "**Owner**")

Right of Entry Application Pursuant to Subsection 324(1) of the Act

1. Trans Mountain hereby applies to the Canada Energy Regulator ("**Regulator**" or "**CER**") pursuant to subsection 324(1) of the Act and section 55 of the Rules for an order ("**Right of Entry Order**") granting Trans Mountain an immediate right to enter those portions of the Lands of the Owner shown as Temporary Workspace Area in the Schedule attached as Exhibit "C" to this Application and proposed to be made part of the Right of Entry Order.
 - ~~a. with respect to the Registered Owner, those portions of the Lands of the Owner shown as Temporary Workspace (Owner's Interest Not Previously Acquired) in the Individual Ownership Plan in Appendix A to the Schedule attached as Exhibit "C" to this Notice, forming part of the definition of "Temporary Workspace Area" in the Schedule attached as Exhibit "C" to this Notice, and proposed to be made part of the Right of Entry Order; and~~
 - ~~b. with respect to the Occupant, those portions of the Lands of the Owner defined as Pipeline ROW Area and Temporary Workspace Area in the Schedule attached as Exhibit "C" to this Application and proposed to be made part of the Right of Entry Order.~~
2. On October 13, 2017, October 16, 2017 and September 25, 2020, Trans Mountain served notice on the Owner pursuant to subsection 87(1) of the *National Energy Board Act* ("**NEB Act**") ("**Section 87 Notice**") in relation to the lands required for the Project.
3. On June 21, 2019, the National Energy Board issued Certificate OC-065 authorizing Trans Mountain to construct and operate the Project.
4. On September 4, 2019 and September 5, 2019 Trans Mountain served notice on the Registered Owner pursuant to section 34 of the NEB Act ("**Section 34 Notice**") in relation to the detailed route of the Project.
5. On September 25, 2020, September 27, 2020 and September 28, 2020 Trans Mountain served notice on the Owner pursuant to subsection 324(2) of the Act ("**Notice**") in relation to right of entry.
6. The Commission of the Regulator ("**Commission**") has issued an Order approving the Plan, Profile and Book of Reference relevant to the Lands of the Owner.
7. Trans Mountain requires the rights, titles and interests in the Lands of the Owner for the purposes and pursuant to the rights, obligations, restrictions and terms and conditions described in Exhibit "C". The form of Exhibit "C" is proposed to be made a part of the Right of Entry Order sought by this Application.
8. As summarized in Exhibit "F" to this Application, Trans Mountain has attempted in good faith to negotiate an agreement with the Owner for the necessary rights to enter the Lands of the Owner and has been unsuccessful to date. The issues that Trans Mountain believes remain outstanding which form the basis for the inability to reach a voluntary agreement with the Owner are also described in Exhibit "F".
9. Trans Mountain requires immediate right of entry to the Lands of the Owner in order to commence construction of the Project. Construction is anticipated to commence on the Lands of the Owner on or about November 23, 2020.

10. In support of this Application, and in accordance with the requirements of the Act and the Rules, the following Exhibits are attached to and form part of this Application:

- Exhibit "A"** Copy of the Notice served pursuant to subsection 324(2) of the Act;
- Exhibit "B"** Proof of service of the Notice set out in Exhibit "A" in accordance with subsection 8(8) of the Rules;
- Exhibit "C"** Schedule describing the Lands of the Owner, ~~the Pipeline ROW Area~~ and ~~the~~ Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner, ~~the Pipeline ROW Area~~ and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order;
- Exhibit "D"** Copy of the current Certificate of Title for the Lands of the Owner described in Exhibit "C";
- Exhibit "E"** Copy of section 56 of the Rules;
- Exhibit "F"** Summary of the land negotiation process, outstanding issues and reasons a voluntary agreement could not be reached;
- Exhibit "G"** CER Template for Objection to Application for Right of Entry; and
- Exhibit "H"** Completed CER Filing Inventory.

Relief Sought

1. Trans Mountain requests that the Commission:
- grant Trans Mountain an order for immediate right of entry to the Lands of the Owner pursuant to subsection 324(1) of the Act; and
 - grant such further and other relief as Trans Mountain may request and the Commission may consider appropriate.

Dated at Calgary, Alberta, this 28th day of October, 2020.

Trans Mountain Pipeline ULC

By its counsel
Blake, Cassels & Graydon, LLP

Per:



Lars Olthafer

Tract: 276
SW 10-53-2-W5M
Fred Tautchin et al.

Please direct all communications regarding this Application to:

Alain Parisé
Director, Land
Trans Mountain Canada Inc.
Suite 2700, 300 – 5th Avenue S.W.
Calgary, AB T2P 5J2
Tel: 403-514-6700
Email: TMEP_Land@transmountain.com

and to: Lars Olthafer
Blake, Cassels & Graydon, LLP
855 – 2nd Street SW
Suite 3500, Bankers Hall East Tower
Calgary, AB T2P 4J8
Tel: (403) 260-9633
Fax: (403) 260-9700
Email: lars.olthafer@blakes.com

Schedule B

Clean Copy of Amended Application for Right of Entry dated October 28, 2020

CANADA ENERGY REGULATOR

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To: Secretary of the Commission
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Calgary, Alberta T2R 0A8

And to: Fred Tautchin
52519 Range Road 22
Parkland County, Alberta, Canada T7Y 2J3

Stanley Tautchin
52531 Hwy 770
Parkland County, Alberta, Canada T7Y 2J6

(the "**Registered Owner**")

And to: Occupant
Stephen Wasylyshyn
RR 1
Carvel, Alberta, Canada T0E 0H0

(being other persons, insofar as they can be ascertained, interested in the Lands)

(said Registered Owner and other persons hereinafter referred to collectively as "**Owner**")

Right of Entry Application Pursuant to Subsection 324(1) of the Act

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7. Trans Mountain requires the rights, titles and interests in the Lands of the Owner for the purposes and pursuant to the rights, obligations, restrictions and terms and conditions described in Exhibit "C". The form of Exhibit "C" is proposed to be made a part of the Right of Entry Order sought by this Application.
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Tract: 276
SW 10-53-2-W5M
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Owner and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order;

- Exhibit "D"** Copy of the current Certificate of Title for the Lands of the Owner described in Exhibit "C";
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 - b. grant such further and other relief as Trans Mountain may request and the Commission may consider appropriate.

Dated at Calgary, Alberta, this 28th day of October, 2020.

Trans Mountain Pipeline ULC

By its counsel
Blake, Cassels & Graydon, LLP

Per: 
Lars Olthafer

Please direct all communications regarding this Application to:

Alain Parisé
Director, Land
Trans Mountain Canada Inc.
Suite 2700, 300 – 5th Avenue S.W.
Calgary, AB T2P 5J2
Tel: 403-514-6700
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and to: Lars Olthafer
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Schedule C

**Blackline Comparison of Original and Amended Schedule attached as Exhibit "C" to the
Application for Right of Entry dated October 28, 2020**

Exhibit "C"

Schedule describing the Lands of the Owner, ~~the Pipeline ROW Area~~ and ~~the~~ Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner, ~~the Pipeline ROW Area~~ and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order

SCHEDULE

1. LANDS IN RESPECT OF WHICH ORDER IS SOUGHT

LEGAL DESCRIPTION

SW 10-53-2-W5M

(the "Lands of the Owner")

~~(a) That portion of the Lands of the Owner containing 1.4401.10 Ha / 3.562.72 Ac, more or less, shown as New Right of Way (Owner's Interest Previously Acquired) 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 3.684 Ha / 9.10 Ac, more or less, shown as Temporary Workspace (Owner's Interest Previously Acquired) and Temporary Workspace (Owner's Interest Not Previously Acquired), including any lands depicted as Temporary Access Road (Owner's Interest Previously Acquired) Temporary Workspace on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule.~~

~~(the "Temporary Workspace 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 TEMPORARY WORKSPACE 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")~~

- (a) ~~(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;

(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

- (b) ~~(c)~~ the right of access to and egress from ~~the Pipeline ROW Area and~~ the Temporary Workspace 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 Temporary Workspace 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,~~ Temporary Workspace 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 any 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 Temporary Workspace Area Rights as described in subclause 3(ba), within the Temporary Workspace 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 Temporary Workspace 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 Temporary Workspace 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.

APPENDIX A

INDIVIDUAL OWNERSHIP PLAN OF THE LANDS OF THE OWNER

INDIVIDUAL OWNERSHIP PLAN

GOVERNMENT ROAD ALLOWANCE

Original

Fd. No Mk.
N. 1/4 10
Re-est.
Left No Mk.

35"

10

S.W. 1/4 SEC. 10 53-2-5

DETAIL A
NOT TO SCALE

ROAD PLAN
466JY

LOT 1
BLOCK 1
PLAN 0827406

ROAD PLAN 5266PX

ROAD PLAN 466JY

R1
Top
Broken

357'47'55"
355.71

GOVERNMENT ROAD ALLOWANCE

Mp. 0.3N

357'47'55"
376.80

SECONDARY HIGHWAY 770

R13 Mp. 0.3NW

ROAD PLAN 2411CL

ROAD PLAN
466JY

2.00
2.29
40.34
83'46'20"

83'46'20"
164.99
83'46'20"
798.09
263'46'20"
798.09
83'46'20"
507.57
83'46'20"

173'46'20"
15.00
83'46'20"
164.99
83'46'20"
100.00
83'46'20"
225.00
798.09 - 83'46'20"
798.09 - 83'46'20"
507.57
83'46'20"

SEE
DETAIL A

2.3m TEMPORARY
WORKSPACE

35.0m TEMPORARY
WORKSPACE

45.0m TEMPORARY
WORKSPACE

18.0m NEW R/W
PLAN 361HW & 4380HW

DETAIL B

1:5000

ALTALINK R/W PLAN
3777 TR

BLOCK 1

UNNAMED
WETLAND

SEE
DETAIL B

10m X 284m
TEMPORARY
ACCESS ROAD

DETAIL C

NOT TO SCALE

353'46'20"
25.00
83'46'20"
103.33
83'46'20"
204.77
83'46'20"
222.41
83'46'20"
78.51
270'24'20"

83'46'20"
1101.26
83'46'20"
50.12
47'
798.09
263'46'20"
798.09
83'46'20"
39.93
83'46'20"
1.68
83'46'20"
437.35
357'
2.29

1101.26



R2
C.S.

802.90
263'46'20"

83'46'20"

39.93
83'46'20"

205'51'10"

50.09

82.87

243'48'35"

270'24'20"

78.51

306'37'50"

90'24'20"

126'37'50"

83'46'20"

14.70

83'46'20"

25'51'10"

40.38

83'46'20"

11.80

83'46'20"

87'54'40"

836.41(l. to l.)

PLAN 812 0011

NEW R/W (OWNER'S INTEREST PREVIOUSLY
ACQUIRED) IS OUTLINED THUS:

TEMPORARY WORKSPACE
(OWNER'S INTEREST NOT PREVIOUSLY
ACQUIRED) IS OUTLINED THUS:

TEMPORARY WORKSPACE
(OWNER'S INTEREST PREVIOUSLY
ACQUIRED) IS OUTLINED THUS:

TEMPORARY ACCESS ROAD (OWNER'S
INTEREST PREVIOUSLY ACQUIRED) IS
OUTLINED THUS:

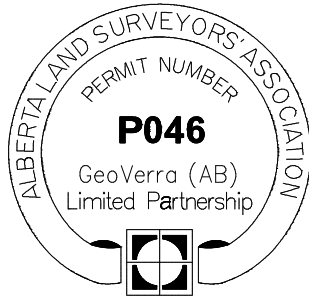
THIS PLAN CERTIFIED CORRECT THIS
22nd DAY OF SEPTEMBER, 2020.

JEFFREY ADAMS, ALS

C. OF T.: 152 050 240
OWNER(S): FRED TAUTCHIN AS TO AN UNDIVIDED 50/100 INTEREST
STANLEY TAUTCHIN AS TO AN UNDIVIDED 50/100 INTEREST
AREA REQUIRED FOR NEW R/W:
(OWNER'S INTEREST PREVIOUSLY ACQUIRED) 1.44 ha (3.56 Ac.)
AREA REQUIRED FOR TEMPORARY WORKSPACE
(OWNER'S INTEREST NOT PREVIOUSLY ACQUIRED: 1.10 ha (2.72 Ac.)
AREA REQUIRED FOR TEMPORARY WORKSPACE
(OWNER'S INTEREST PREVIOUSLY ACQUIRED): 2.30 ha (5.68 Ac.)
AREA REQUIRED FOR TEMPORARY ACCESS ROAD
(OWNER'S INTEREST PREVIOUSLY ACQUIRED): 0.284 ha (0.70 Ac.)
TRACT NUMBER: 276
STATUTORY IRON POSTS FOUND SHOWN
DISTANCES ARE IN METRES

TRANS MOUNTAIN PIPELINE ULC

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED PIPELINE RIGHT OF WAY,
TEMPORARY ACCESS ROAD AND
TEMPORARY WORKSPACE
WITHIN
S.W. 1/4 SEC. 10
TWP. 53 - RGE. 2 - W. 5M.
PARKLAND COUNTY - ALBERTA



REVISION: D

GeoVerra
237 4th Avenue SW, Suite 3300
Calgary, Alberta • T2P 4K3
t: 403-243-8380 • www.geoverra.com

TMC No.: 01-13283-M002-PP-00801	PAGE 1 OF 1
DWG: 38290-SRB-53-2-RA	SCALE: 1:5000
FILE No.: S-38290	DATE: SEPT. 22, 2020
	CKD BY: DM

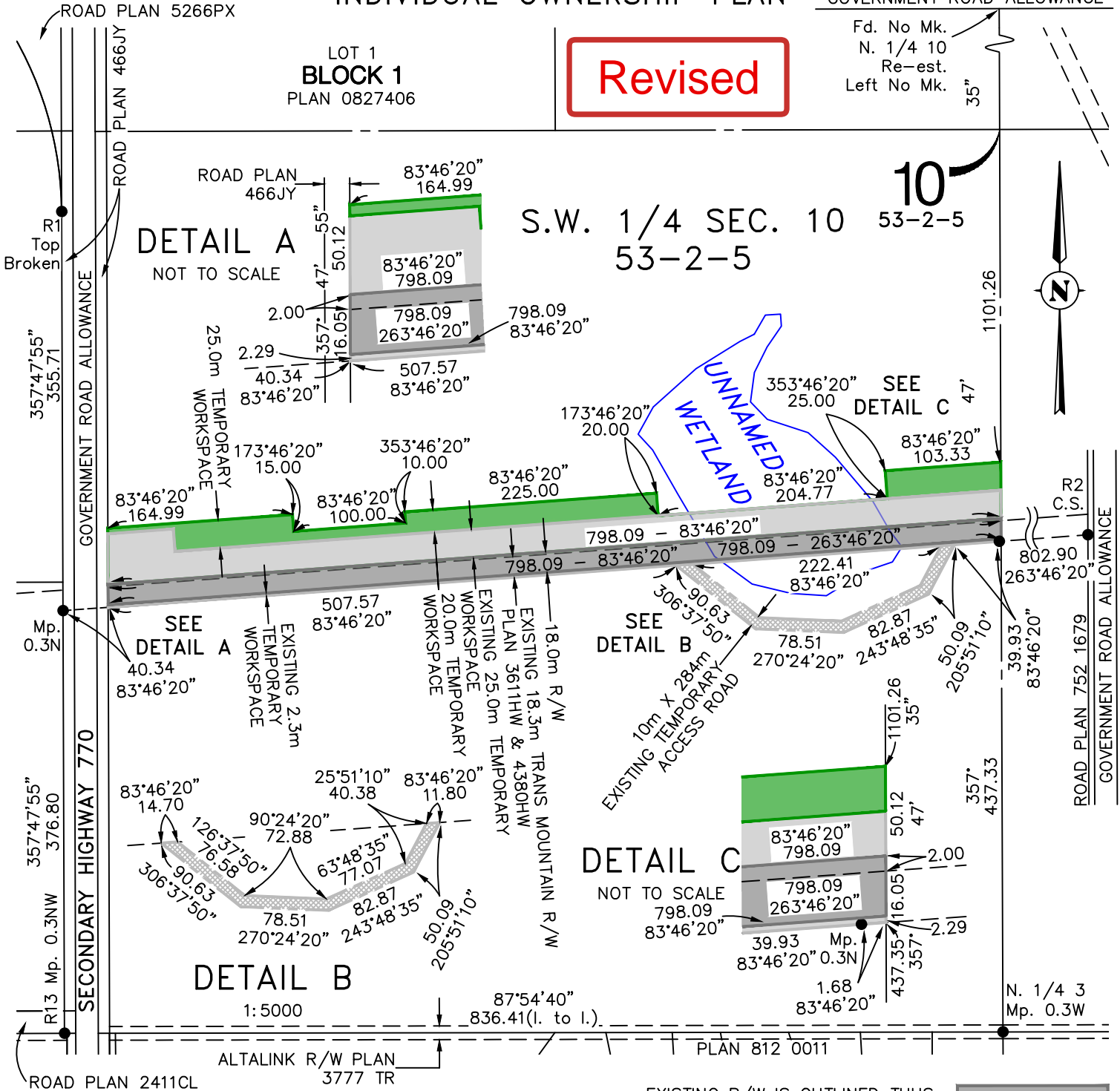
INDIVIDUAL OWNERSHIP PLAN

GOVERNMENT ROAD ALLOWANCE

Revised

Fd. No Mk.
N. 1/4 10
Re-est.
Left No Mk.

35"



C. OF T.: 152 050 240
OWNER(S): FRED TAUTCHIN AS TO AN UNDIVIDED 50/100 INTEREST
STANLEY TAUTCHIN AS TO AN UNDIVIDED 50/100 INTEREST

EXISTING R/W: 1.44 ha (3.56 Ac.)
AREA REQUIRED FOR NEW TEMPORARY WORKSPACE: 1.10 ha (2.72 Ac.)
EXISTING TEMPORARY WORKSPACE: 2.30 ha (5.68 Ac.)
EXISTING TEMPORARY ACCESS ROAD: 0.284 ha (0.70 Ac.)

EXISTING R/W IS OUTLINED THUS: [Grey shaded area]
NEW TEMPORARY WORKSPACE IS OUTLINED THUS: [Green shaded area]
EXISTING TEMPORARY WORKSPACE IS OUTLINED THUS: [Light green shaded area]
EXISTING TEMPORARY ACCESS ROAD IS OUTLINED THUS: [Hatched area]

THIS PLAN CERTIFIED CORRECT THIS 25th DAY OF FEBRUARY, 2021.

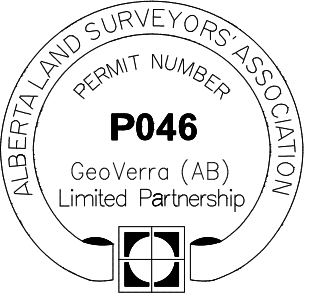
TRACT NUMBER: 276

STATUTORY IRON POSTS FOUND SHOWN
DISTANCES ARE IN METRES

JEFFREY ADAMS, ALS

TRANS MOUNTAIN PIPELINE ULC

INDIVIDUAL OWNERSHIP PLAN SHOWING
PROPOSED TEMPORARY WORKSPACE
WITHIN
S.W. 1/4 SEC. 10
TWP. 53 - RGE. 2 - W. 5M.
PARKLAND COUNTY - ALBERTA



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 Temporary Workspace Area, any use, activity or thing within the Temporary Workspace 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 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.

"Pipeline Construction" means the initial construction and installation of the Pipeline within the ~~Pipeline ROW Area~~area identified in the Individual Ownership Plan attached as Appendix "A" as "Existing R/W".

~~"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.

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

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

Schedule D

**Clean Copy of Amended Schedule attached as Exhibit “C” to the Application for Right of Entry
dated October 28, 2020**

Exhibit "C"

Schedule describing the Lands of the Owner and the Temporary Workspace Area; the rights, titles and interests applied for in respect of the Lands of the Owner and the Temporary Workspace Area; and the rights, obligations, restrictions, terms and conditions proposed to be made part of the Right of Entry Order

SCHEDULE

1. LANDS IN RESPECT OF WHICH ORDER IS SOUGHT

LEGAL DESCRIPTION

SW 10-53-2-W5M

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

That portion of the Lands of the Owner containing 1.10 Ha / 2.72 Ac, more or less, shown as New Temporary Workspace on the Individual Ownership Plan attached as Appendix "A" and forming part of this Schedule.

(the "**Temporary Workspace 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 AND THE TEMPORARY WORKSPACE 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 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;

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

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

- (b) the right of access to and egress from the Temporary Workspace 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 Temporary Workspace 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 Temporary Workspace 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 any restrictions on use of the 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, prior to the lapse of the Temporary Workspace Area Rights as described in subclause 3(a), within the Temporary Workspace 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 Temporary Workspace 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 Temporary Workspace 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.

APPENDIX A

INDIVIDUAL OWNERSHIP PLAN OF THE LANDS OF THE OWNER

APPENDIX B

DEFINED TERMS

"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 any use, activity or thing within the Temporary Workspace 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.

"Pipeline" means a pipeline 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.

"Pipeline Construction" means the initial construction and installation of the Pipeline within the area identified in the Individual Ownership Plan attached as Appendix "A" as "Existing R/W".

"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.

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

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