

National Energy  
Board



Office national  
de l'énergie

## DECISION

File OF-Fac-Oil-T260-2013-03 15  
6 February 2018

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Dear Ms. Maitland, Mr. McKay, Mr. Carter, Mr. Stoness, Mr. Denstedt and Ms. Oleniuk:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project - Certificate OC-064  
Decision for Detailed Route Hearing MH-060-2017  
Ms. Victoria Maitland and Mr. John Gordon McKay**

### 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](#)).

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.

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On 29 November 2016, Governor in Council directed the Board to issue Certificate of Public Convenience and Necessity (Certificate) OC-064 ([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 its detailed route, submitting the Plan, Profile, and Book of Reference (PPBoR) for Segments 1 and 2 of the TMEP. 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 route,<sup>1</sup> and published notices in newspapers in the vicinity of the proposed detailed route<sup>2</sup>.

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

- the best possible detailed route of the pipeline;
- the most appropriate method of constructing the pipeline; and
- the most appropriate timing of constructing the pipeline.

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-060-2017**

Ms. Victoria Maitland and Mr. John Gordon McKay are the registered owners of lands located at Lot 7, Block 3, Plan 7620086, in the Rural Municipality of Parkland County, AB. The property is shown on PPBoR: M002-PM03006-011 and in Figure 1<sup>3</sup>. Trans Mountain identified this land as ADJ: Tract 62. Ms. Maitland and Mr. McKay reside on these lands. The Maitland/McKay lands are adjacent to lands proposed to be crossed by the new TMEP pipeline in Segment 2.

Ms. Maitland and Mr. McKay filed a statement of opposition ([A82318](#)) with the Board on 29 March 2017. On 31 August 2017, the Board issued a Letter of Decision ([A85762](#)) granting detailed route hearings in relation to Segment 1 and Segment 2 to those who filed statements of opposition that met the requirements of the NEB Act. The Board determined at that time that the Maitland and McKay statement of opposition did not meet the requirements of the NEB Act.

On 6 September 2017, Mr. Darryl Carter, legal counsel on behalf of Ms. Maitland and Mr. McKay, filed a motion requesting the Board reconsider its decision ([A85873](#)). In this motion, Mr. Carter noted, that the “Maitland/McKay residence would probably be closer to the proposed pipeline than any other residence in Segment 2 if the pipeline was constructed according to the detailed route as filed...the 30 m (metre) ‘prescribed area’ would be on their land and their yardsite would be within that ‘prescribed area’.”

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

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

<sup>3</sup> The map below was filed by Trans Mountain as part of its evidence for detailed route hearing MH-060-2017 ([A87290](#)).

The Board provided a comment period in relation to the motion and received comments from Trans Mountain and reply comments from Mr. Carter on behalf of his clients. On 20 October 2017, the Board issued Ruling No. 3 which granted the relief requested in the motion, and set down the statement of opposition from Ms. Maitland and Mr. McKay for a detailed route hearing (MH-060-2017).

A request for a site visit of the Maitland/McKay lands was filed with the Board ([A87610](#)) on 7 November 2017. In Ruling No. 4 ([A87818](#)), issued 15 November 2017, the Board set out its decision as to which properties would have a site visit in Segment 1 and Segment 2. The Board did not grant a site visit for the Maitland/McKay lands.

On 27 November 2017, the Board issued a letter ([A88211](#)) to Trans Mountain, and to Mr. Carter, as legal counsel to Ms. Maitland and Mr. McKay and the three other detailed route hearings noted below. In this letter, the Board was seeking comments in relation to procedural changes it was proposing for the oral portion of the hearing process for four specific detailed route hearings: MH-019-2017 (Keelan Petterson); MH-017-2017 (Dianne Murray); MH-026-2017 (Javier and Annemarie Sarango); and MH-060-2017 (Victoria Maitland and John Gordon McKay). After receiving comments from Trans Mountain and Mr. Carter, on behalf of his clients, the Board confirmed changes to the hearing process for those four hearings. The Board determined that certain procedural steps would be adopted rather than repeated in each of the other three detailed route hearings. The steps that were adopted were: the delivery of the Board's opening remarks; the registration of appearances; and the adoption of evidence by Trans Mountain that would be taken in the MH-019-2017 detailed route hearing.

The oral hearing for Ms. Maitland and Mr. McKay was held on 2 December 2017, in Spruce Grove, AB. Trans Mountain and Mr. Carter, on behalf of Ms. Maitland and Mr. McKay, adopted the above mentioned procedural steps at the beginning of the hearing.

Trans Mountain presented a panel of witnesses for cross-examination. Mr. McKay was also present. Mr. McKay gave an opening statement and answered questions. Mr. Carter, his legal counsel, asked questions of Trans Mountain's witness panel and provided argument.

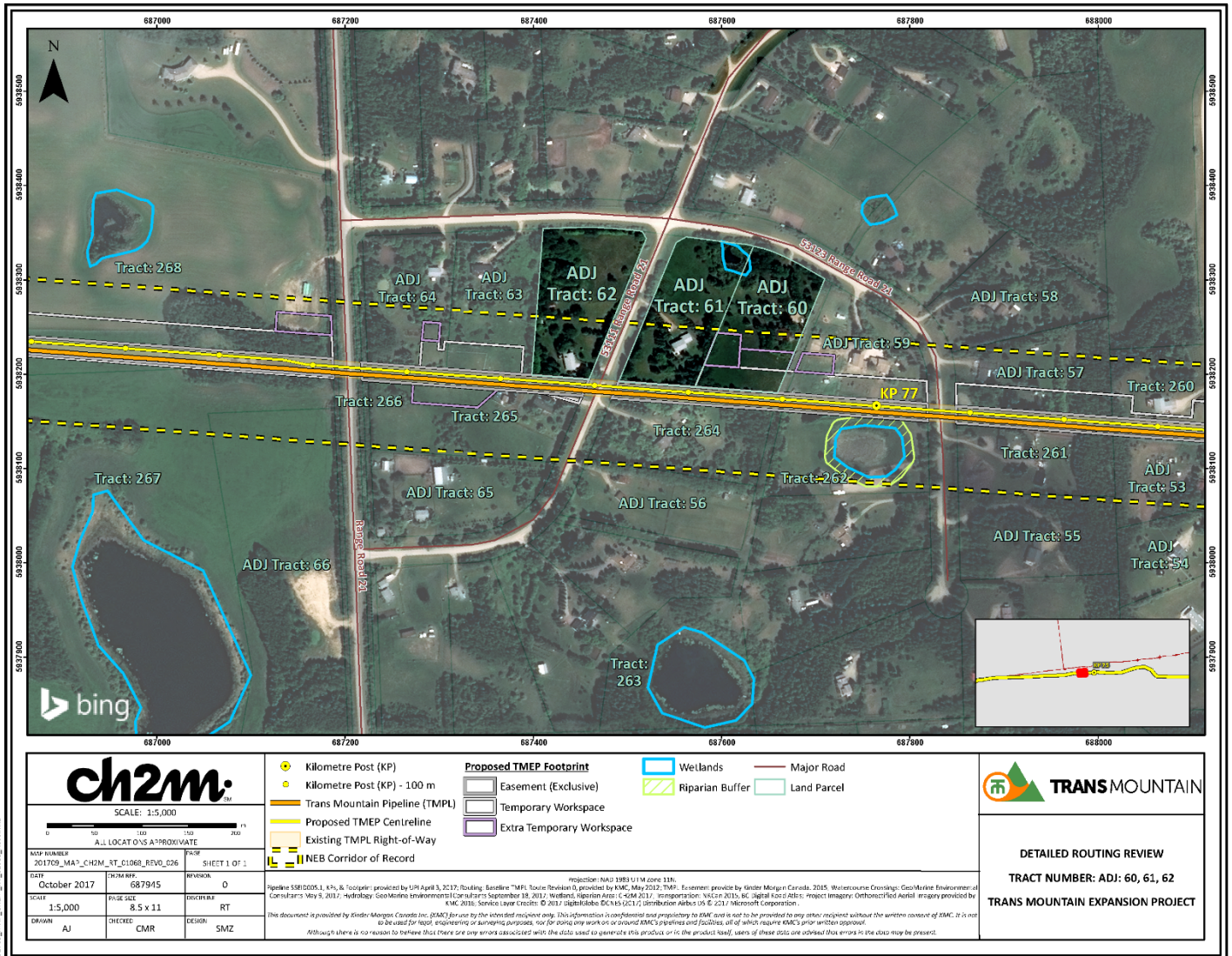


Figure 1 Map of Victoria Maitland and John Gordon McKay property

## 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 TMPE 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. Of the four principles, the highest preferred criteria Trans Mountain used in the case of the Maitland/McKay lands was, where practicable, co-locate the new TMPE pipeline on or adjacent to the existing TMPL easement.

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.

Trans Mountain also stated that locating the new TMEP pipeline within or adjacent to the existing TMPL easement allows Trans Mountain to leverage its existing pipeline protection program and rely on landowner knowledge of the location and nature of the pipeline to reinforce this.

### **2.1.2 Proposed Detailed Route and Ms. Maitland and Mr. McKay's Lands**

Trans Mountain stated that it was proposing to construct the new TMEP pipeline adjacent to the southern boundary of the Maitland/McKay lands, immediately south of the property line. The new TMEP pipeline will be within the existing TMPL easement. The northern boundary of the easement will abut the Maitland/McKay lands but does not extend into the property and no workspace or easement is proposed on the Maitland/McKay property. To reduce impacts to the Maitland/McKay lands and other surrounding lands, Trans Mountain proposes to use as the method of construction an extended horizontal drill bore which would cross under Range Road 21, adjacent to and extending beyond the Maitland/McKay lands.

#### ***Views of Ms. Victoria Maitland and Mr. John Gordon McKay***

In their statement of opposition, Ms. Maitland and Mr. McKay stated that they opposed the proposed routing of the new TMEP pipeline due to its proximity to their residence. They made a statement that they were concerned about risk associated with the new TMEP pipeline and the adverse effect it would have on the current and future use of their lands. Details were not provided to explain the risk or effects.

In evidence filed by Ms. Maitland and Mr. McKay, they stated that their residence would probably be closer to the new TMEP pipeline than any other residence in Segment 2, given that it is 25 feet from the property line. They submitted that the 30 metre wide safety zone, also called the prescribed area, would apply to their lands, and that their residence would almost be in the centre of the prescribed area. They also submitted that their yardsite would be within the prescribed area. They stated that there are many restrictions and restraints placed on the use of their lands due to the prescribed area, relating to construction and vehicular traffic.

Ms. Maitland and Mr. McKay also raised issues of compensation related to the prescribed area and that it would cause a negative impact to their resale property value. Mr. McKay expressed concern about the possible liability that he could incur as a result of his property causing a disturbance to the integrity of the pipeline because it is located within the prescribed area.

Ms. Maitland and Mr. McKay did not provide any evidence that they opposed the methods or timing of construction of the pipeline.

#### ***Views of Trans Mountain***

Trans Mountain stated that the proposed routing near the Maitland/McKay lands is consistent with its routing criteria as the new TMEP pipeline will be located within the existing TMPL easement.



In its reply evidence, Trans Mountain responded to the concerns about the restrictions placed on the use of the Maitland/McKay lands because of the prescribed area.

Trans Mountain stated that it had been in contact with the landowners as early as March 2014 to provide them with information on the TMEP, including providing information on the prescribed area.

Trans Mountain stated that the prescribed area for the existing TMPL currently extends 18 metres into the Maitland/McKay lands. During questioning, Trans Mountain noted that by placing the new TMEP pipeline inside the existing TMPL easement, the prescribed area would extend approximately another 7 metres into the Maitland/McKay lands. Trans Mountain also stated that it did not expect the extension of the prescribed area would have a significant impact on the landowners' use of their lands.

Trans Mountain acknowledged during questioning that most of the residence was already within the prescribed area and that with the installation of the new TMEP pipeline more of the residence would be covered. Trans Mountain noted that the prescribed area related to the landowners digging or excavating within that area and that this activity would require the landowners to notify the company through AB One-Call. Trans Mountain further noted that the prescribed area was established through regulation, and that restrictions within this area relate to the safety of people and the pipeline. Trans Mountain submitted that the prescribed area will apply to adjacent lands wherever the pipeline is routed and that it was not a reason to question the route in this case.

Trans Mountain submitted that the proposed route was the best possible route as it was based on its routing criteria, allowed the project to be constructed safely, and that the routing criteria and the corridor for the TMEP pipeline's general route were assessed and approved by the federal Cabinet following the Board's original assessment of the TMEP.

Trans Mountain further submitted that the issues raised by Ms. Maitland and Mr. McKay in relation to compensation and property value were outside the scope of the detailed route hearing.

### **3. Board Decision for Detailed Route Hearing MH-060-2017**

The Board appreciates the time spent by Ms. Maitland and Mr. McKay and Trans Mountain in discussing their concerns during this detailed route hearing.

The proposed detailed route to the south of the Maitland/McKay lands is consistent with Trans Mountain's primary routing criteria to locate the new TMEP pipeline within the existing TMPL easement.

The Board notes that the new TMEP pipeline does not cross the Maitland/McKay lands, and there will be no easement or temporary workspace located on these lands. The Maitland/ McKay lands are adjacent to the proposed detailed route, and fall within the prescribed area, an area established by regulation to ensure the safety of people and the pipeline.

From the evidence filed and the representations made during the oral portion of the detailed route hearing, the Board is of the view that Ms. Maitland and Mr. McKay's main concern with the route is the location of the prescribed area and the potential for liability or impact it has on their property value.

The Board notes that the prescribed area exists for the purposes of safety, and is of the view that it is reasonable that a landowner whose lands are covered by the prescribed area is required to call before they dig and that the perceived inconvenience is not a reason to deny the detailed route.

In the Board's view, Ms. Maitland and Mr. McKay's concerns about property value and liability are related to compensation, which is outside of the Board's jurisdiction.

The Board was not provided with any evidence on the record from Ms. Maitland and Mr. McKay that the proposed route was not the best possible route, or that they had any preferred alternatives.

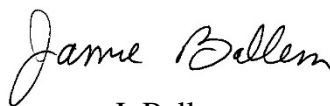
Having considered all of the evidence filed on the record by Trans Mountain and Ms. Maitland and Mr. McKay, the representations made at the oral portion of the hearing, and the matters described above, the Board finds that Trans Mountain's proposed route adjacent to the lands of Ms. Maitland and Mr. McKay is the best possible detailed route for the TMEP. The Board also finds that the methods and timing of constructing the new TMEP pipeline are the most appropriate.



L. Mercier  
Presiding Member



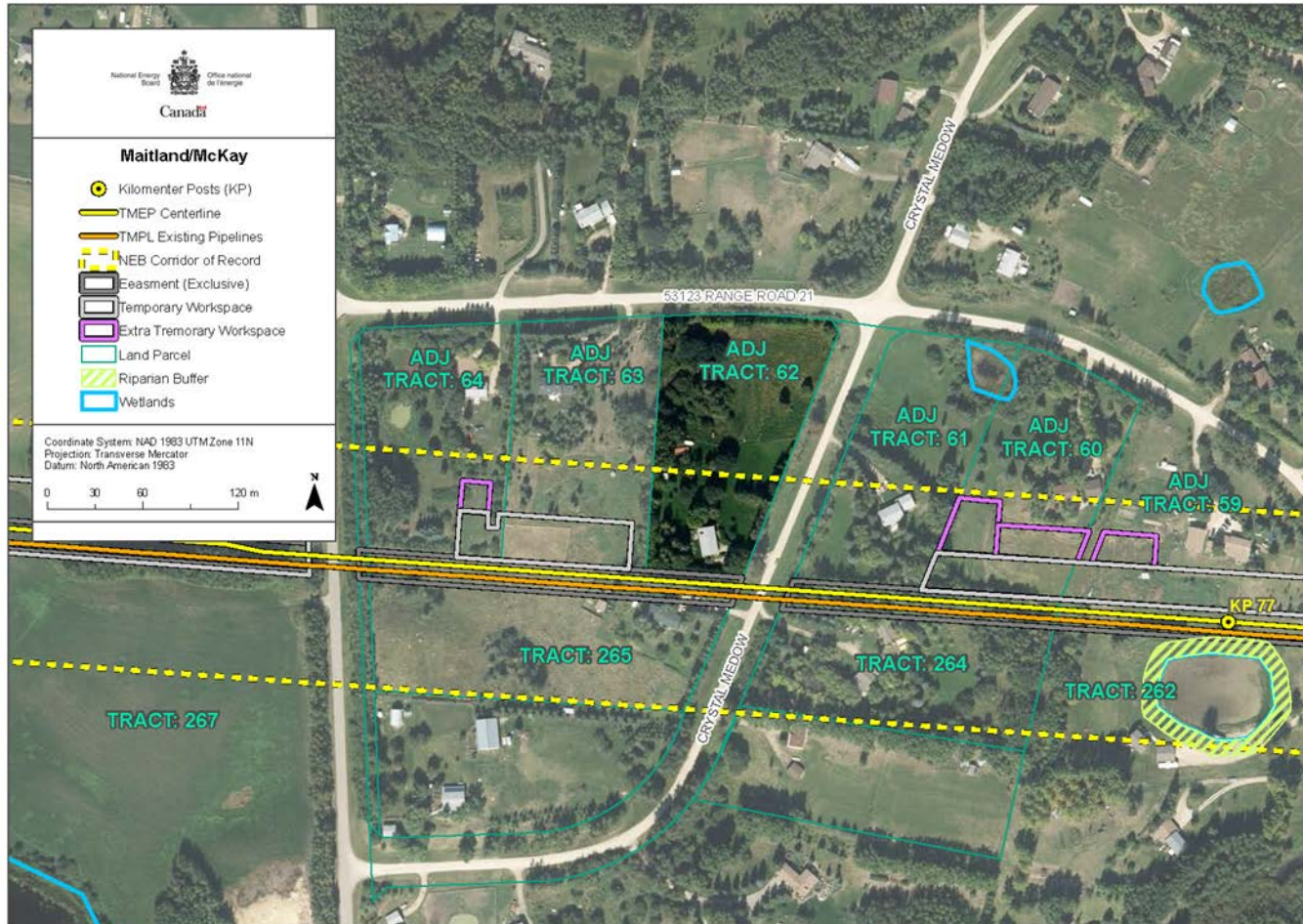
S. Parrish  
Member



J. Ballem  
Member

## Appendix I – Map of Victoria Maitland and John Gordon McKay’s property

This map was created by the NEB for illustrative purposes only.



MAP PRODUCED BY THE NEB, JANUARY 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.