

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. Murray, 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-017-2017
Ms. Dianne Murray**

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,¹ 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 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-017-2017

Ms. Dianne Murray is the registered owner of lands located at Lot 7, Block 4, Plan 7620086, in the Rural Municipality of Parkland County, AB. The property is shown on PPBoR: M002-PM03006-011 and in Figure 1³. Trans Mountain identified this land as ADJ: Tract 61. Ms. Murray's lands are adjacent to lands proposed to be crossed by the new TMEP pipeline in Segment 2. Ms. Murray resides on these lands.

Ms. Murray filed her statement of opposition with the Board on 29 March 2017 ([A82315](#)), as a person who may be adversely affected by the proposed detailed route of the new TMEP pipeline. On 31 August 2017, the Board issued a Letter of Decision ([A85762](#)) granting her a detailed route hearing, and issued Hearing Order MH-017-2017 ([A85762](#)). The Hearing Order set a November-December 2017 timeframe for the oral portion of the detailed route hearing.

A request for a site visit of Ms. Murray's lands was filed on 24 October 2017 with the Board ([A87151](#)). 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 Ms. Murray's lands.

On 27 November 2017, the Board issued a letter ([A88211](#)) to Trans Mountain, and to Mr. Carter, as legal counsel to Ms. Murray and the three other detailed route hearings noted below. In this

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 The map in Figure 1 was filed by Trans Mountain as part of its evidence for detailed route hearing MH-017-2017 ([A86707](#)).

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

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

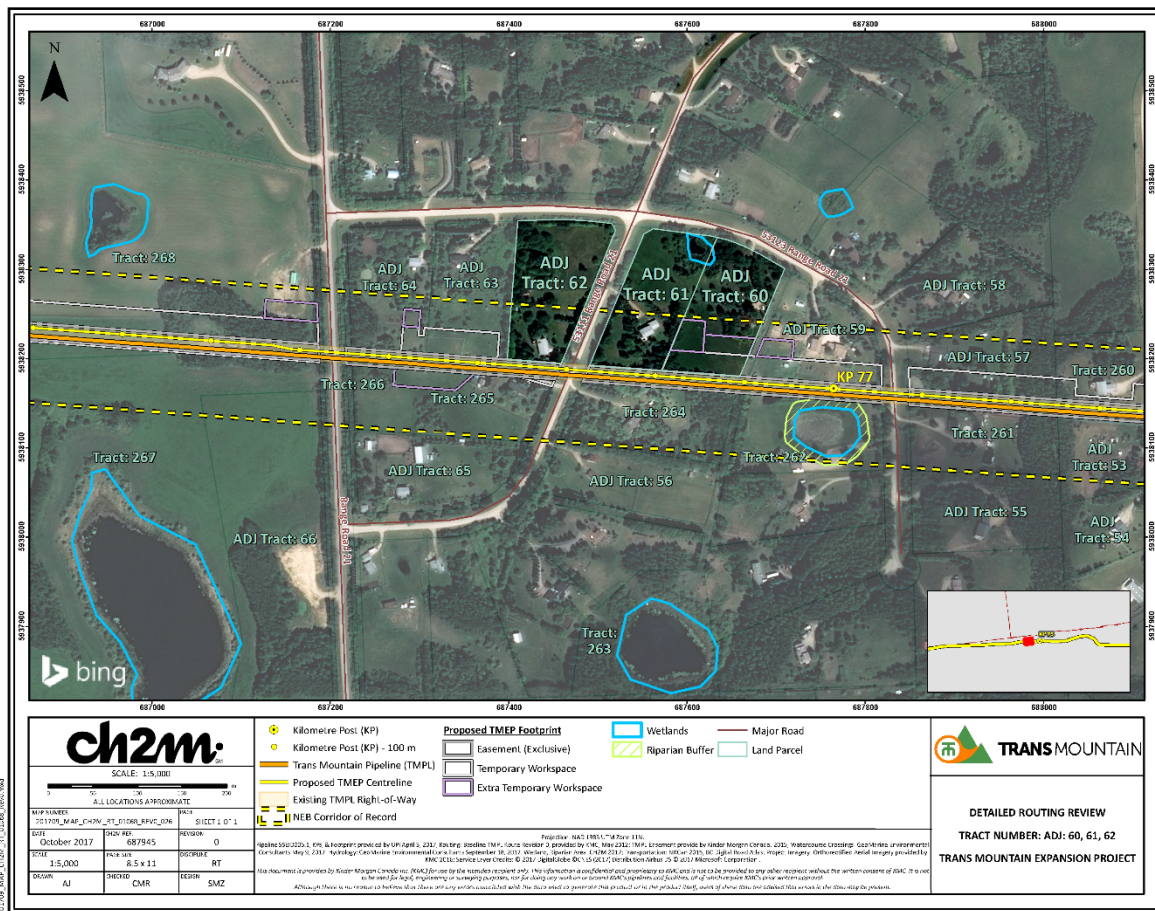


Figure 1 Map of Dianne Murray property

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 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. Of the four principles, the highest preferred criteria Trans Mountain used in the case of the Murray lands was, where practicable, co-locate the new TMEP 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.

2.1.2 Proposed Detailed Route and Ms. Murray's Lands

Trans Mountain stated that the route is located adjacent to the southern boundary of Ms. Murray's lands, and the easement does not extend onto her property. Trans Mountain submitted that this routing is consistent with its criteria as it is within the existing TMPL easement. No workspace or right-of-way is proposed on the Murray lands. The method of construction will be a trenchless technique, using an extended horizontal drill bore, across the lands located south of Ms. Murray's lands. Trans Mountain submitted that this reduces the impact and inconvenience to the Murray property.

Trans Mountain did note that the 30 metre wide prescribed area (safety zone) associated with the new TMEP pipeline would extend onto Ms. Murray's lands. Trans Mountain also noted that the existing TMPL prescribed area already extends onto Ms. Murray's lands. Trans Mountain stated in its evidence that if Ms. Murray wished to undertake ground disturbance work within the prescribed area, she must first contact Trans Mountain or the local One Call Centre.

Views of Ms. Murray

Ms. Murray expressed concerns in her written evidence and at the hearing about the TMEP itself and the fact that she was denied participation in the Certificate hearing.

In her written statement of opposition, Ms. Murray submitted that she was concerned about the proximity of the route to her residence, and stated at the hearing that her house was 38 metres away from the easement. She also noted in her statement of opposition that she was concerned about the method of construction and was not certain if there was a workspace proposed to be located on her lands.

During the hearing, Ms. Murray described the impacts of the new TMEP pipeline to her property and use of her land. She submitted she can now only access the back of her house where her water well and septic system are located through the prescribed area, which makes servicing an issue. She noted that her well, which is her only source of water, is 80 feet from the property line, and that the well and septic are both within the prescribed area. She expressed concerns with the effects of the prescribed zone on her property related to access and property value and

noted she cannot do many of her every day activities without seeking permission from Trans Mountain. Ms. Murray objected to the inconvenience of having to get permission before she undertakes ground disturbance work in the prescribed area. She said she did not know where the safety zone is actually located and wanted Trans Mountain to come to her property and identify it.

In her evidence, Ms. Murray expressed concerns about risk associated with the proposed pipeline, and the potential adverse effect it would have on the current and future use of the lands. Ms. Murray stated in her evidence that the 150 metre wide corridor was too narrow for two pipelines and that the new TMEP pipeline should not be routed through heavily populated areas and instead should follow the highway.

At the hearing, Ms. Murray expressed concerns about the safety of the new TMEP pipeline, and her fear of an incident such as a fire or explosion, and how she would evacuate in case of emergency. She also submitted that a leak could go undetected for a long time.

Ms. Murray did not provide any detail in her evidence about her opposition to the proposed method of construction, and she did not oppose the timing of construction of the pipeline.

Views of Trans Mountain

Trans Mountain submitted that Ms. Murray's evidence regarding her participation status in the Certificate hearing and objections to the TMEP itself were matters outside the scope of the detailed route hearing process.

Trans Mountain acknowledged Ms. Murray's concerns about risks and safety of having two pipelines side by side and submitted that locating multiple pipelines within a common easement is a standard industry practice worldwide.

Trans Mountain also stated that as part of its risk-based design, it had taken measures to proactively identify geohazards and to incorporate measures to mitigate these hazards and prevent pipeline failure where such hazards exist.

Trans Mountain submitted in its written evidence and at the hearing 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 that program. Trans Mountain submitted that this promotes pipeline safety, which Ms. Murray had not recognized in her comments.

Regarding Ms. Murray's concerns about the prescribed area, Trans Mountain submitted in argument that the area is established by regulation under the NEB Act to promote safety. As the prescribed area extends onto her property, Ms. Murray would be required to make a call to the One-Call Centre if she was going to undertake ground disturbance in this area.

Trans Mountain submitted that safety was an issue which was fully explored by the Board when it considered the original application for TMEP in the OH-001-2014 hearing. Trans Mountain stated that it had considered Ms. Murray's concerns and it remained of the view that the proposed route is the best possible route in this area.

3. Board Decision for Detailed Route Hearing MH-017-2017

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

The Board notes that the new TMEP pipeline is located to the south of Ms. Murray's property, it does not cross her land, and there is no temporary workspace located on her property. In the Board's view, the routing near Ms. Murray's lands is consistent with Trans Mountain's routing criteria to locate the new TMEP pipeline within the existing TMPL easement.

The Board recognizes that the matters of pipeline safety, including pipeline integrity and emergency management are important. However, the Board is of the view that those matters are not for consideration in a detailed route hearing. These matters were assessed in the OH-001-2014 Certificate hearing for the TMEP and were discussed extensively in the NEB Report ([A77045-1](#)), specifically in Chapters 6, 7, 8, and 9. Numerous conditions were also imposed by the Board on safety matters.

In the Board's view, the majority of the concerns raised by Ms. Murray are general concerns about the TMEP. With regard to Ms. Murray's concern about the new TMEP pipeline corridor through heavily populated areas, the Board notes that the original routing criteria was assessed and accepted during the OH-001-2014 hearing and approved with Certificate OC-064 for the TMEP. It is therefore not a matter that the Board will reconsider in this detailed route hearing.

The Board notes that the prescribed area, which does extend into Ms. Murray's lands, exists to address safety which is a primary concern of Ms. Murray. The Board is of the view that any perceived impacts of having the prescribed area extend onto her property are outweighed by the appropriateness of the proposed detailed route.

The Board notes Ms. Murray's evidence that her water well is within the prescribed area, and that Trans Mountain did not follow up with her about its location. This evidence was not disputed by Trans Mountain. The Board is of the view that it is possible that Ms. Murray's water well should be included on the Water Well Inventory in accordance with Condition 93 of Certificate OC-064, and therefore directs Trans Mountain to confirm the presence and location of Ms. Murray's well and ensure it is included on its Water Well Inventory, if appropriate.

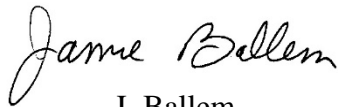
Having considered all of the evidence filed on the record by Ms. Murray and Trans Mountain, the representations made at the oral portion of the hearing, and the matters described above, the Board finds that Trans Mountain's proposed route is the best possible detailed route for the TMEP adjacent to Ms.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



L. Mercier
Presiding Member



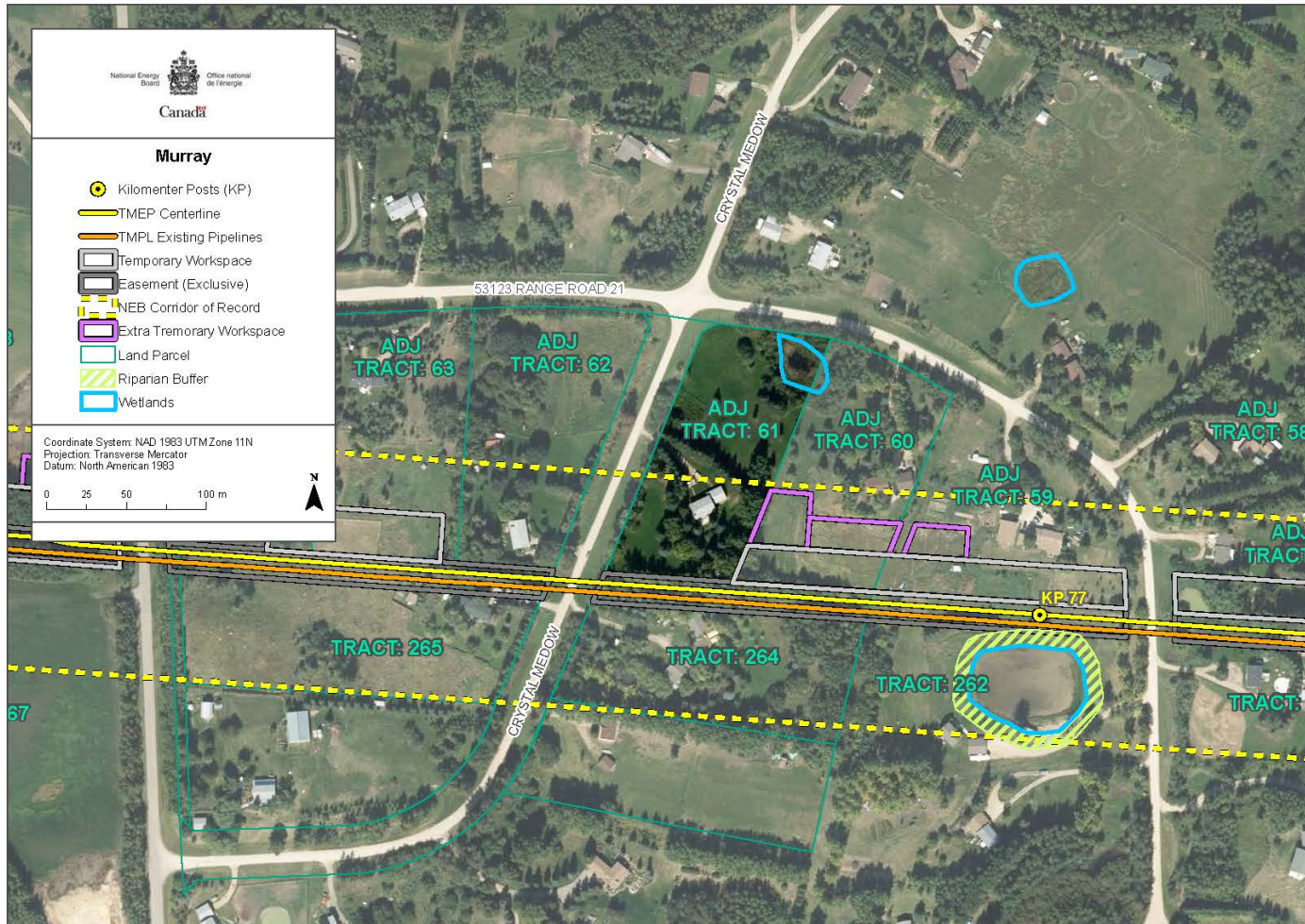
S. Parrish
Member



J. Ballem
Member

Appendix I – Map of Dianne Murray’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.