



DECISION

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

Ms. Janet Russell
Mr. Lyle Russell
Box 6447
Hinton, AB T7V 1X7
Email: jl Russell@moradnet.ca

Mr. D. Scott Stoness
Vice President, Regulatory and Finance
Kinder Morgan Canada Inc.
Suite 2700, 300 – 5th Avenue SW
Calgary, AB T2P 5J2
Email: regulatory@transmountain.com

Mr. Shawn H.T. Denstedt
Ms. Terri-Lee V. Oleniuk
Osler, Hoskin & Harcourt LLP
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Email: regulatory@transmountain.com

Dear Ms. and Mr. Russell, 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-025-2017
Ms. Janet Russell and Mr. Lyle Russell**

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.

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 route.²

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-025-2017

Ms. Janet Russell and Mr. Lyle Russell are the registered owners of lands located at S31-50-25-W5M, Lot 5, Plan 9222890, in the Rural Municipality of West Yellowhead County, AB. Trans Mountain identified this Tract as ADJ 262.01, and it is proposed to be crossed by the new TMEP pipeline in Segment 2. Ms. and Mr. Russell reside on this land, which is also used for recreational horses and their other animals.

Tract ADJ 262.01 is shown on PPBoR Sheet M002-PM03006-090 and appears in Figure 1 below.³

Ms. and Mr. Russell filed a statement of opposition to the proposed detailed route on 17 May 2017 ([A83643](#)). The Board granted Ms. and Mr. Russell a detailed route hearing ([A85762](#)) and issued Hearing Order MH-025-2017 ([A85764](#)) on 31 August 2017. The Hearing Order set a November-December 2017 timeframe for the oral portion of the detailed route hearing. Ms. and Mr. Russell did not submit a site visit request form.

Ms. and Mr. Russell filed written evidence and were present at the oral hearing, which was held on 20 November 2017, in Hinton, AB. Trans Mountain presented a panel of witnesses for cross-examination. Ms. and Mr. Russell asked questions of Trans Mountain's witness panel, answered questions, and provided an opening statement and argument.

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 originally filed by Trans Mountain as part of its evidence for detailed route hearing MH-025-2017 ([A86708](#)). It was used and marked during the hearing and subsequently entered as an exhibit on the record ([A87907](#)).

A87907
MH025-2017

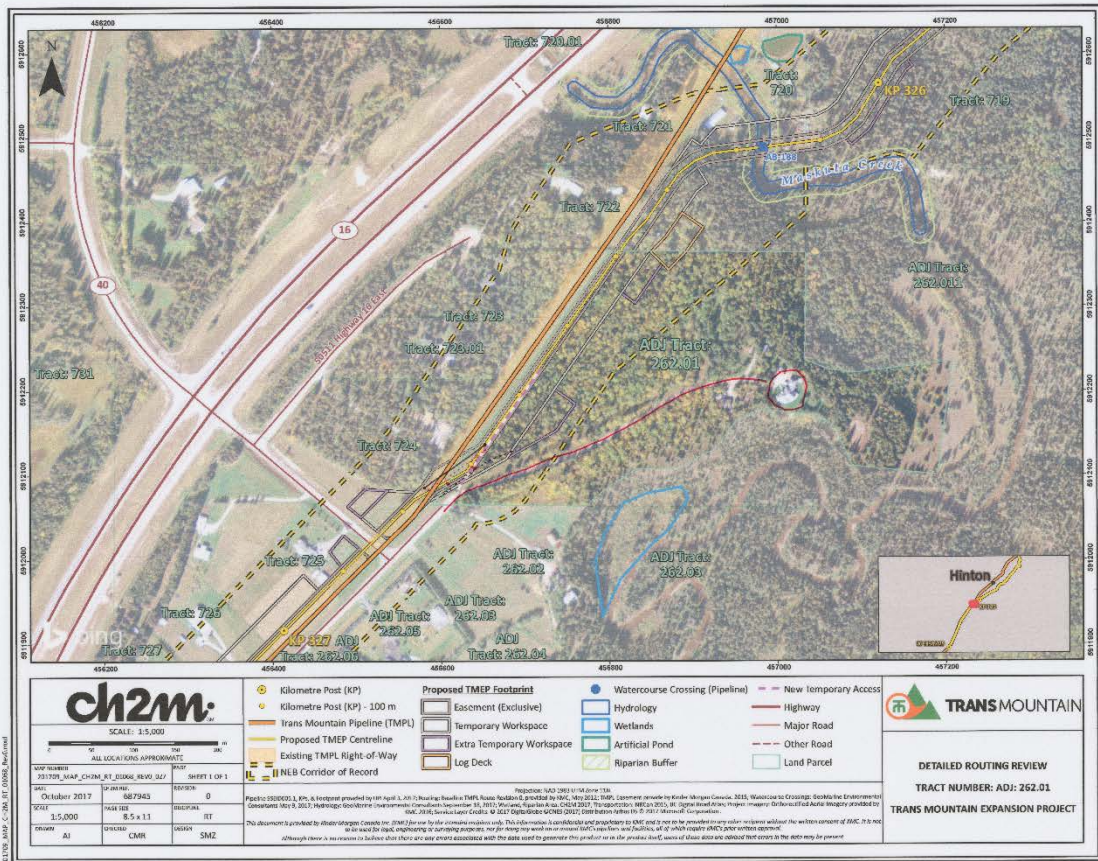


Figure 1 Map of the Russell's property

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

Trans Mountain stated that it is of the view that locating the pipeline parallel to the existing TMPL and ATCO pipelines is the preferable option in the area of Ms. and Mr. Russell's property, as it minimizes additional encumbrances on impacted lands. It also leverages existing landowner knowledge of the existence of the pipeline and reinforces existing TMPL protection program.

2.1.2 Proposed Detailed Route on the Russell Lands

According to Trans Mountain's PPBoR filed on 4 October 2017, the proposed route for the new TMEP pipeline follows the existing TMPL alignment and abuts an ATCO pipeline right-of-way on the west portion of Ms. and Mr. Russell's lands before crossing that same right-of-way at the south end of their lands. Approximately 340.1 metres of pipeline and a corresponding permanent easement area of 0.356 hectares (0.88 acres) would be situated on the property, with a right-of-way width between 10 and 25 metres.

Views of Ms. and Mr. Russell

In their statement of opposition, Ms. and Mr. Russell stated that they opposed the proposed route due to potential impacts on future plans to subdivide the land, specifically by reducing the size of some of the lots in the subdivision and limiting the required access. They proposed that the route at the entrance to the property (in the area of the crossing) could be moved 20 metres northwest, and the angle of approach reduced to provide the required access.

In their written evidence, Ms. and Mr. Russell also provided information from Yellowhead County on *Pipeline Installation and Road Crossings* (Guidelines), which includes guidelines and conditions for development near pipelines, including required road allowances.

Ms. and Mr. Russell stated that they were not applying for a subdivision development permit at this time and were not sure when they would, but that it was planned for the future. They also stated that they were asking Yellowhead County to rule on their regulations now so that the future subdivision application would not be disallowed because of the pipeline's location and its impact on property access. Ms. and Mr. Russell submitted that there would be impacts to some extent on at least three of the planned lots: Lot 1 in particular, and probably Lots 7 and 8.

Mr. Russell stated in argument that their property value would fall dramatically if the pipeline restricts access to a point where the land is not able to be subdivided.

At the hearing, Ms. and Mr. Russell stated that their concerns had been addressed by the commitments from Trans Mountain. These commitments are explained in Section 2.3 below.

Ms. and Mr. Russell did not raise any concerns with the timing or methods of construction.

Views of Trans Mountain

In its evidence, Trans Mountain acknowledged Ms. and Mr. Russell's concerns about access to lands and the ability to subdivide and stated that it had proposed modifications to the alignment and had narrowed the easement, along with increasing the depth of cover. Trans Mountain also submitted that maintaining an alignment on the north side of the existing TMPL right-of-way is not possible, due to the proximity of an existing residence on Tract 724 and two existing pipelines in the right-of-way at this location, which limit the space available for an additional pipeline. Trans Mountain submitted that access to the parcel of land can be maintained during construction.

During the oral hearing, Trans Mountain stated that it had committed to modify the alignment in the area of the crossing. It also stated that it had committed to narrow the proposed new TMEP easement from the standard 18 metres, to 10 metres, where the new TMEP right-of-way abuts the existing third party right-of-way to address Ms. and Mr. Russell's concerns.

At the oral hearing, Trans Mountain also submitted that it could change the angle of its horizontal drill bore across the multi-pipeline corridor, moving the entry location slightly to the northeast (on Tract 724), and also change the angle to cross the existing TMPL and two ATCO easements, pushing the exit point further northeast on the Ms. and Mr. Russell's lands. This change would reduce the length of the right-of-way (from 150 metres to 98 metres) that is within the 10 metre Yellowhead County road setback. Trans Mountain clarified that it is this modified route, as shown in Appendix B of its reply evidence, which is now proposed as the best possible detailed route.

This minor route adjustment is reproduced below as Figures 2. Trans Mountain submitted that the route change would still be within the proposed easement shown on the PPBoR, but that, if minor updates had to be made to the PPBoR, it committed to file them with the Board.

Figure 3-1: Russell's Proposed Alternate Route (TM Reply Evidence, A87767-1, PDF pg 5 of 6)

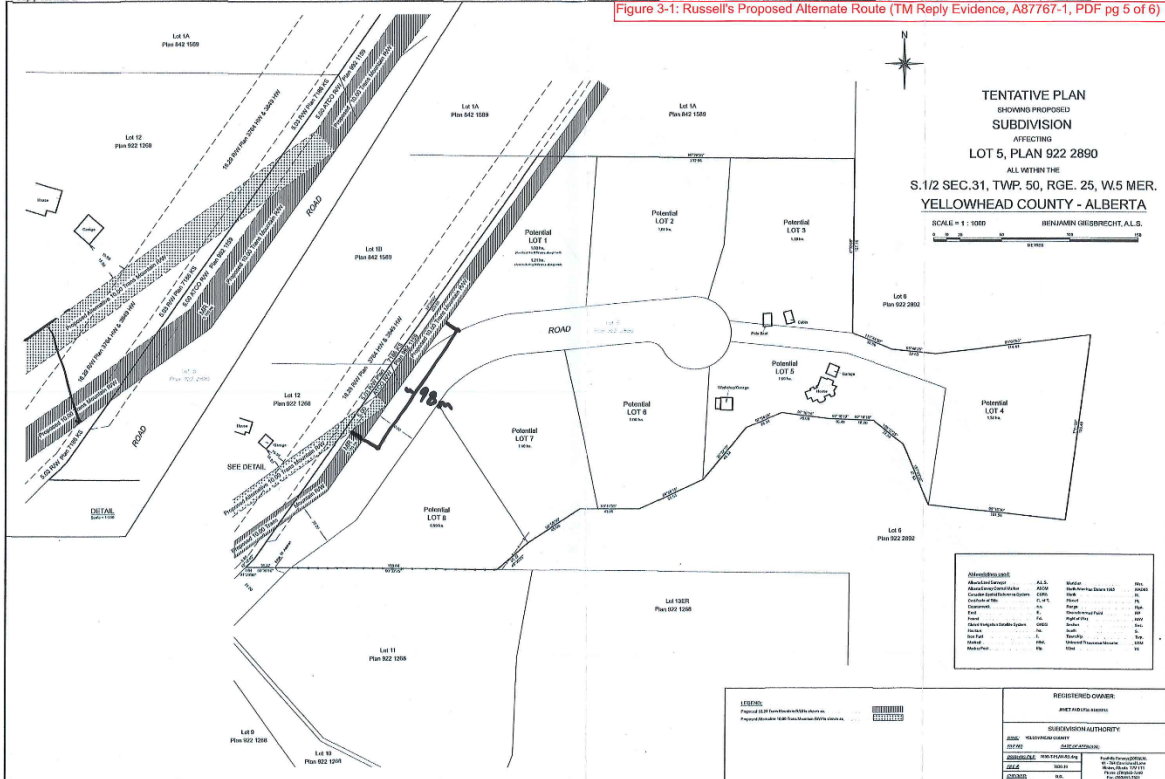


Figure 2 – Russell's proposed alternate route – This map is not meant to be 100 per cent accurate. It was created by Ms. and Mr. Russell and entered as evidence by Trans Mountain (A87767) in the MH-025-2017 detailed route hearing. It is intended to show the route adjustments developed to address Ms. and Mr. Russell's concerns regarding road access for a planned future subdivision. It was used and marked during the hearing and subsequently entered as an exhibit on the record (A87908).

At the oral hearing, Trans Mountain submitted that the existing TMPL, in its location, does not impede future subdivision of the lands, nor does the new TMEP easement necessarily impede Ms. and Mr. Russell's ability to subdivide, though it may impact Lot 1. Trans Mountain explained that, in its view, the issue was really about Ms. and Mr. Russell's ability to build an access road for their future subdivided land, given that Yellowhead County requires a 10 metre setback between the edge of a road allowance and buried pipelines.

In its reply evidence and at the oral hearing, Trans Mountain stated that it had met with Yellowhead County and was now proposing this updated route alignment to address Ms. and Mr. Russell's access concerns. At the oral hearing, Trans Mountain committed to work with Ms. and Mr. Russell to get written confirmation from Yellowhead County that the new TMEP pipeline's proposed location was acceptable, and that it would not cause issues in any future development applications that Ms. and Mr. Russell may make. Trans Mountain also stated that it considered these commitments to be legally binding. Trans Mountain stated that it had agreement in principle from Yellowhead County, but that, in the end, Yellowhead County is not going to give formal approval until a development application is submitted. Trans Mountain said it was not unusual for a county to give this type of variance, so it expects that Yellowhead County will likely grant it.

Although the realignment had brought the routing closer to another residence on Tract 724, Trans Mountain submitted that this change was within the easement obtained from the owner of Tract 724, and that it was not aware of any issues raised by this landowner.

In argument, Trans Mountain pointed out that Ms. and Mr. Russell's plans to subdivide were somewhat speculative and that, if they did end up suffering a loss because of the route, they would be compensated. Trans Mountain also stated in argument that it has proposed a route that minimizes potential impacts to the extent feasible, taking into consideration current and potential future land uses and feedback from the landowners. It indicated that this route, with the minor adjustments proposed, was the best possible detailed route.

2.3 Summary of Commitments

During the oral hearing, Trans Mountain committed to:

- Modify the route alignment on the lands south of the existing pipelines to address Yellowhead County's Guidelines by increasing depth of cover, changing the crossing location and angle, and narrowing the right-of-way;
- Continue engaging with Ms. and Mr. Russell for the resolution of the route alignment that enables future subdivision;
- Continue working with Yellowhead County and Ms. and Mr. Russell in an effort to obtain Yellowhead County's written agreement for a variance relative to the new TMEP pipeline and Ms. and Mr. Russell's planned future development; and
- File a revised PPBoR with the Board in future, if changes are made.

3. Board Decision for Detailed Route Hearing MH-025-2017

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

In the Board's view, the routing of the new TMEP pipeline on Ms. and Mr. Russell's lands is consistent with Trans Mountain's criterion to route its new TMEP pipeline within or adjacent to the existing TMPL easement to the greatest extent possible. The Board acknowledges that Ms. and Mr. Russell are not objecting to the timing or methods of construction.

The Board notes that the issues raised by Ms. and Mr. Russell were addressed by Trans Mountain through the commitments it made in both its written evidence and at the oral hearing.

Regarding the issue of the new TMEP pipeline's location and its impacts on access for future development, the Board notes that no subdivision application has been made to Yellowhead County by Ms. and Mr. Russell. However, the Board acknowledges the importance to Ms. and Mr. Russell of maintaining their future ability to subdivide. The Board notes that Trans Mountain has committed to modify its route to address Ms. and Mr. Russell's concerns and to work with them and Yellowhead County. The Board also acknowledges Trans Mountain's statement that its commitments are legally binding. In the Board's view, these commitments effectively address Ms. and Mr. Russell's concerns. In making its decision, the Board has factored in the facts that

both Ms. and Mr. Russell and Trans Mountain have agreed to the proposed modifications and that these modifications will not affect any other landowner.

Regarding Mr. Russell's comments about the potential impacts to his property value, the Board is of the view that this is a compensation matter which is outside the Board's jurisdiction, but that it is likely to be addressed through ongoing discussions between Trans Mountain and Ms. and Mr. Russell.

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

Any Board approval of a PPBoR for Ms. and Mr. Russell's lands will include a condition requiring Trans Mountain to list and fulfill the commitments it made in the course of this detailed route hearing, and to update its alignment sheets. Ms. and Mr. Russell are entitled to seek remedy from the Board if 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 new TMEP pipeline on Ms. and Mr. Russell's lands.



L. Mercier
Presiding Member



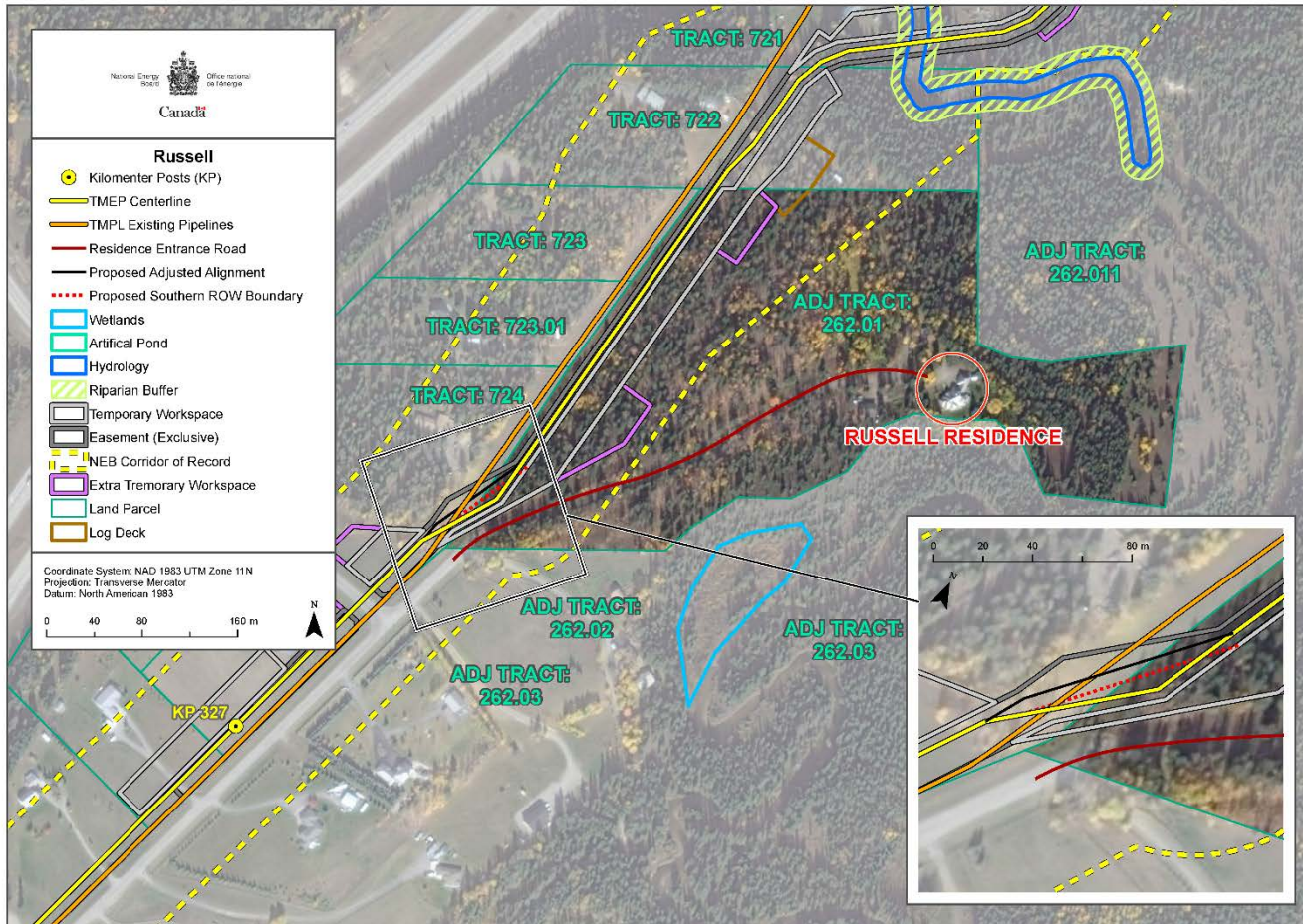
S. Parrish
Member



J. Ballem
Member

Appendix I – Map of the Ms. and Mr. Russell’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.