

National Energy
Board



Office national
de l'énergie

DECISION

File No. OF-Fac-Oil-T260-2013-03 19
16 April 2018

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Dear Ms. James, Mr. Soong, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project - Certificate OC-064
Decision for Detailed Route Hearing MH-034-2017
City of Coquitlam**

1. Background

On 19 May 2016, the National Energy Board (NEB or Board) issued its Report recommending the Governor in Council (GIC) 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, GIC directed the Board to issue the Certificate of Public Convenience and Necessity (Certificate) OC-064 ([A80871](#)), the effect of which was to approve the TMEP, including the proposed 150-metre-wide corridor.

On 3 and 17 March 2017, Trans Mountain applied to the Board for Segment 7 of its TMEP detailed route, submitting the Plan, Profile, and Book of Reference (PPBoR). Under section 34 of the *National Energy Board Act* (NEB Act), Trans Mountain made available for public viewing copies of its PPBoR, served notices on owners of lands proposed to be acquired for the proposed detailed route¹, and published notices in newspapers in the vicinity of the proposed detailed route².

In all detailed route hearings, the Board considers the following issues³:

- 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 4 October 2017 Letter of Decision ([A86548](#)), 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-034-2017

The City of Coquitlam (Coquitlam or the City) is the registered owner or occupier of lands at various locations proposed to be crossed by the detailed route of the TMEP pipeline in Segments 7.4, 7.5, and 7.6.

Trans Mountain identified the tracts affected in Coquitlam in its PPBoR for Segments 7.1 to 7.6, which was filed with the Board on 17 March 2017 (see Figures 1 through 4 and Appendix I). Lands owned by Coquitlam appear on PPBoR drawings M002-PM03025-002, M002-PM03025-003, M002-PM03026-001, and M002-PM03027-002.

Coquitlam filed a statement of opposition on 28 April 2017 ([A83006](#)), stating that it opposed the proposed location of the route along municipal roads. The Board granted Coquitlam detailed route hearing number MH-034-2017 and issued a Hearing Order on 4 October 2017 ([A86549](#)).

The oral portion of the detailed route hearing was held on 29 January 2018 in Burnaby, BC. Both Trans Mountain and Coquitlam presented witness panels, who were cross-examined by the respective parties and questioned by the Board.

The Board notes that Trans Mountain filed an application, pursuant to section 21 of the NEB Act, to vary a portion of the route within Coquitlam on 17 March 2017 ([A82139](#)). The variance was proposed in response to concerns from some affected parties, including Coquitlam. The variance crossed urban areas in Coquitlam and was outside the approved corridor for

¹ As required by paragraph 34(1)(a) of the NEB Act.

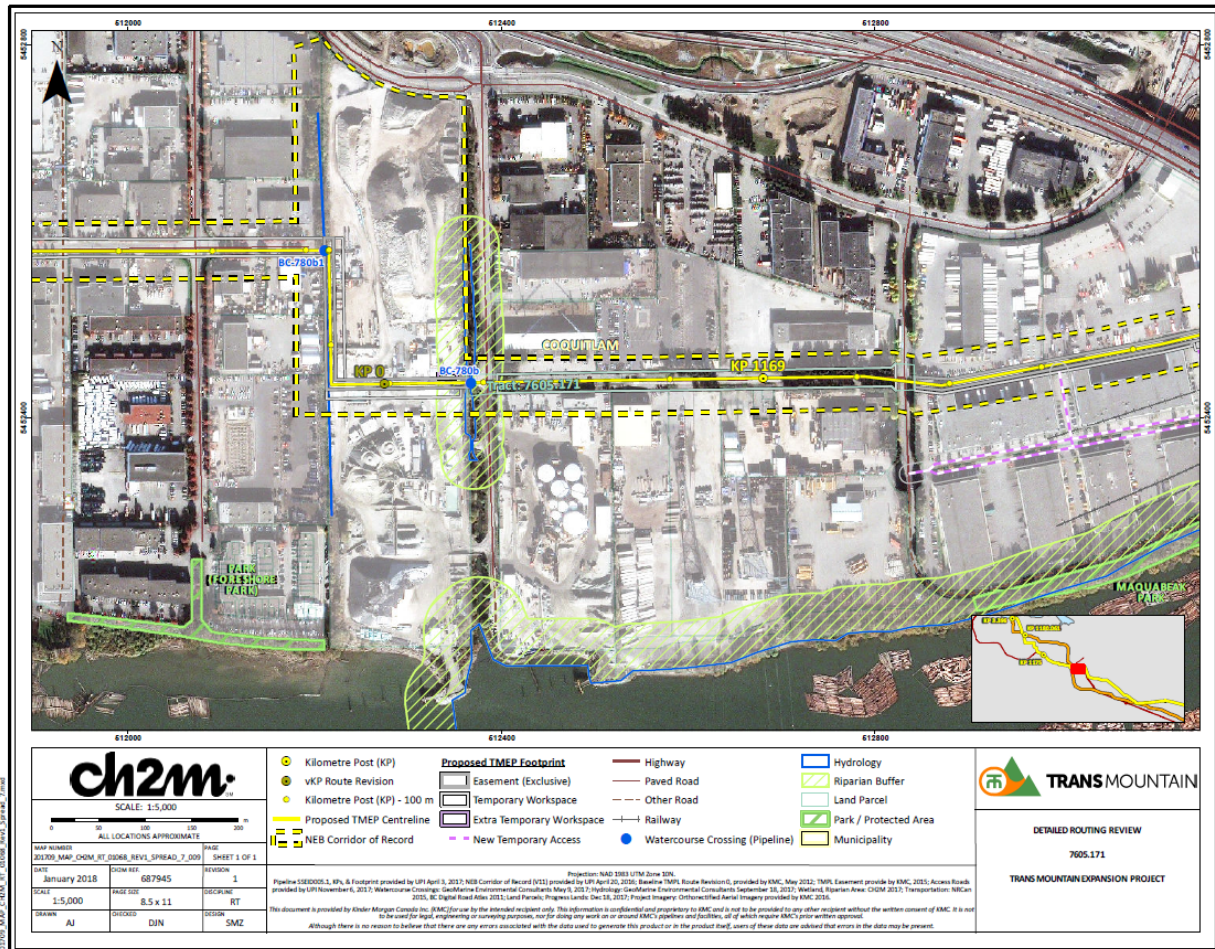
² As required by paragraph 34(1)(b) of the NEB Act.

³ As set out in subsection 36(1) of the NEB Act.

approximately 402 metres between Kilometer Post (KP) 1170.2 and KP 1170.6, with no impact on the net length of the pipeline. The City was notified of the variance but did not object or otherwise participate in the Board process on it. Service and notification of detailed route segments through Coquitlam reflected the applied-for variance, not the original, approved corridor (consistent with what is shown on Figure 2).

On 19 December 2017, the Board issued its decision on the variance application ([A88790](#)), which the Board subsequently amended on 28 February 2018 ([A90246](#)). The Board found the variance to be in the public interest and recommended GIC approval. The variance application summary is provided for context to this decision.

Figure 1 – Map of Tract 7605.171⁴



⁴ Figures 1 through 4 are maps filed by Trans Mountain as part of its evidence for detailed route hearing MH-034-2017 ([A89011-3](#)).

Figure 2 – Map of Tracts 7632 and 7632.01

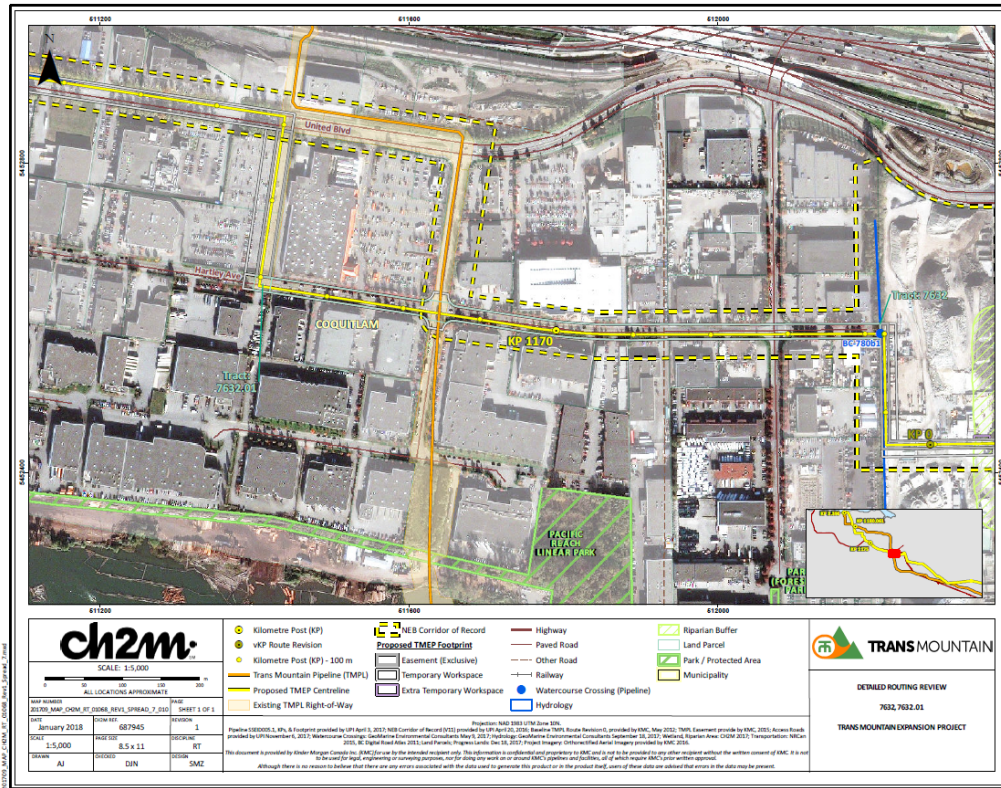


Figure 3 – Map of Tracts 7651 and 7627

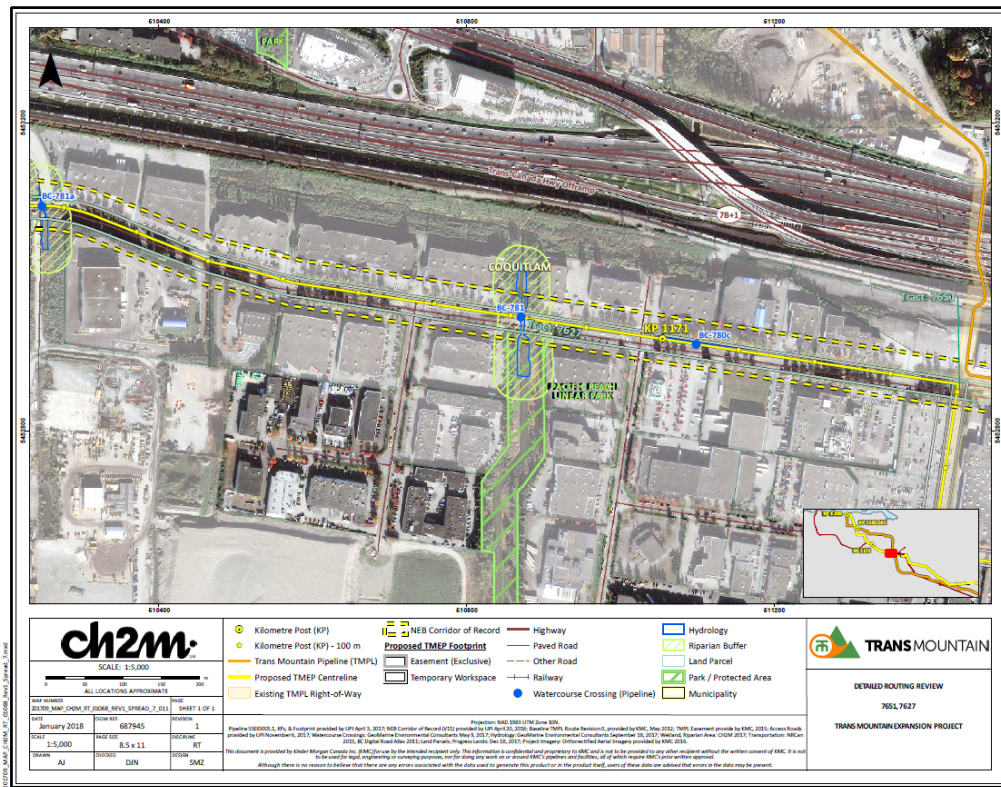
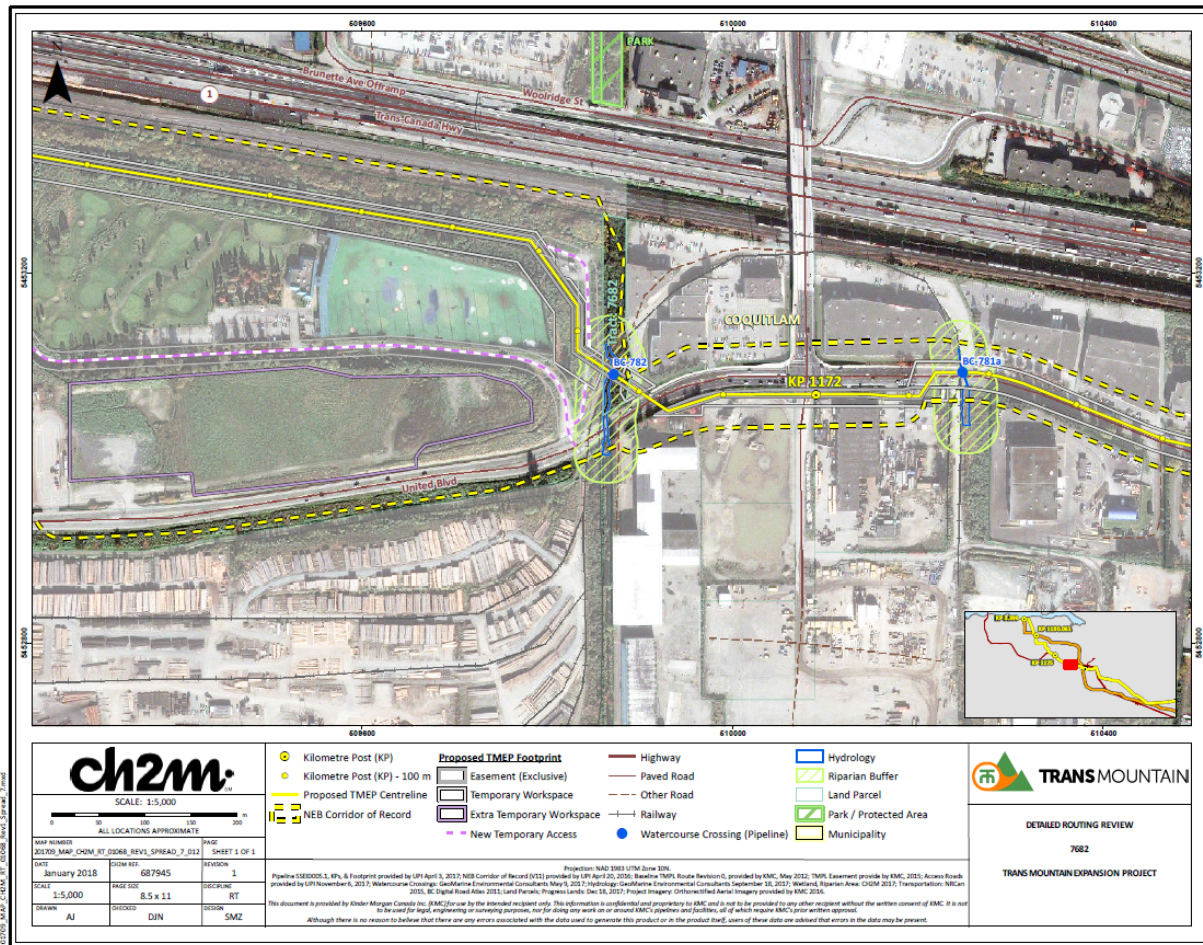


Figure 4 – Map of Tract 7682



2.1 Proposed Detailed Route

The proposed route through Coquitlam extends from KP 1167.7 to KP 1174.7. From the north side of the Fraser River Crossing, the proposed route for the new TMEP pipeline is parallel to or co-located with other linear infrastructure including but not limited to Rogers Avenue, Hartley Avenue, United Boulevard, and the Trans-Canada Highway.

2.2 Route Selection

Views of Coquitlam

Coquitlam indicated it opposed the proposed route of the pipeline along municipal roads owing to the negative impact its presence would have on municipal operations, specifics of which are outlined below.

At the oral hearing, Coquitlam stated that Trans Mountain has not established the proposed route is the best possible route within the approved corridor. In Coquitlam's view, Trans Mountain applied its routing criteria in a way that looks out for Trans Mountain's best interests, not necessarily the public's or the City's best interests.

In its statement of opposition, Coquitlam stated that within the proposed pipeline corridor approved by the Board, the alignment of the pipeline could be located off municipal roads and onto private property. Further, it said that under the NEB Act and Regulations, private property owners are in a better position to negotiate reasonable impact and cost mitigation measures directly with Trans Mountain through the right-of-way acquisition process.

Views of Trans Mountain

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.

In the Lower Mainland, including Coquitlam, Trans Mountain indicated that co-locating the TMEP pipeline within the existing TMPL easement, in accordance with the first principle, was not practicable due to the dense urban development that had occurred adjacent to the TMPL easement since it was first built in 1953. As a result, Trans Mountain indicated that it followed the second routing principle to minimize the creation of new linear corridors by installing the new TMEP pipeline adjacent to other easements or rights-of-way for other linear developments. As a result, much of the proposed route for the TMEP within this area is located in, or adjacent to, municipal streets. Trans Mountain explained that some locations were further restricted due to the new TMEP pipeline crossing of the Fraser River, a former landfill site, the Eaglequest Golf Course, and the WKR Industrial property.

Trans Mountain submitted that it has been engaging landowners in its routing discussions since 2012 and used this feedback to optimize the location of the TMEP route. It also stated that the width of the corridor provided flexibility for minor route adjustments including those informed by landowner input. Trans Mountain stated that it consulted extensively with Coquitlam through Technical Working Groups, and it also consulted with local businesses and the Chamber of

Commerce. The results of this consultation indicated that most stakeholders wanted the route to minimize impacts on local businesses. Trans Mountain submitted that the proposed route is consistent with this request, as it avoids business closures during construction.

2.2.1 Alternate Routes

Views of Coquitlam

In its statement of opposition, Coquitlam suggested the alignment of the pipeline could be located off municipal roads and onto private property (“Alternate Route 1”). Coquitlam did not specify exactly which private property. Alternate Route 1 would affect those portions of the alignment along Rogers Avenue, Hartley Avenue, and United Boulevard.

During the oral hearing, Coquitlam further indicated that moving the alignment onto private property would reduce potential impacts to critical municipal infrastructure, eliminating any interference, additional costs, or delays for the City to complete future municipal work.

Coquitlam disagreed with Trans Mountain’s statement that moving the route onto private property would result in business closures during construction. Coquitlam questioned Trans Mountain about its written evidence, which indicated that construction through Coquitlam would be of short duration and that it would work with local businesses with multiple access points to ensure access is maintained at least at one location and would adjust its construction schedule to maintain access if only one access point existed. Coquitlam suggested that the same mitigations could apply if the alignment was moved on to private property, but may be more costly for Trans Mountain.

During the oral hearing, Coquitlam indicated that if the Board approves an alignment within municipal roads, it would prefer the route be moved off paved travelled portions, and onto the boulevard (“Alternate Route 2”). Coquitlam stated that Alternate Route 2 would reduce impacts on traffic and would also reduce differential settlement (discussed in more detail below) after construction. Coquitlam confirmed that it had not discussed Alternate Route 2 with Trans Mountain prior to the oral hearing.

Coquitlam suggested that placing the pipeline adjacent to the road right-of-way, either in the boulevard or adjacent to the boulevard on private properties (i.e., either alternate route), would minimize conflicts with existing municipal infrastructure. It also argued that both options would result in similar impacts on businesses.

Coquitlam confirmed it did not consult with any local businesses about either of its alternate routes. In the City’s view, this was the responsibility of Trans Mountain.

Views of Trans Mountain

Trans Mountain stated that Coquitlam raised Alternate Route 1 for the first time in its statement of opposition and that Alternate Route 2 was raised for the first time during the oral hearing. Neither of the alternate routes were raised during any Technical Working Group meetings.

Trans Mountain indicated that it reviewed several alignment alternatives during the design of the proposed route for the new TMEP pipeline, including the possibility of routing on private lands. Specifically, with respect to United Boulevard, alignment options to the north and south of the road allowance were considered; however, Trans Mountain deemed this route as not feasible due to the impact on the owners and tenants of the commercial properties. Trans Mountain's construction activities would not have allowed these businesses to remain open during construction, as the construction workspace would affect the ability of people to enter and exit the businesses. Trans Mountain explained that if the alignment is north of United Boulevard, access could be maintained by using the entrances of other businesses, as the parking lots are connected.

Trans Mountain stated the rationale for not proposing alignments to the north or south of United Boulevard also applied to Hartley Avenue and Rogers Avenue, in that there would be significant business disruption to the commercial properties along these roads. In addition, the alternate alignments reviewed would have adversely impacted Como Creek. Trans Mountain pointed out that it also has to consider its own setback requirements from transmission lines, existing water infrastructure, and location of signs next to roadways.

2.2.2 Ability to Maintain, Expand, or Repair Municipal Infrastructure

Views of Coquitlam

At the oral hearing, Coquitlam pointed out that almost half of the proposed route through the city is along city roads, mainly United Boulevard, Hartley Avenue, and Rogers Avenue.⁵ Coquitlam explained this is a major industrial area, and also has substantial commuter, bus, and truck traffic, and a planned residential development nearby. The alignment is also within a major utility corridor containing sanitary and storm sewers, among other utilities.

Coquitlam stated that the proposed route would burden its ability to maintain and regulate its infrastructure because of the location of the pipeline itself and the restrictions associated with working near pipelines, particularly along major municipal roadways. In Coquitlam's view, the proposed route of the new TMEP pipeline will increase the time it takes to plan, design, build and maintain municipal projects and infrastructure. Coquitlam argued it would have to notify Trans Mountain, understand its emergency procedures, locate and protect the pipeline, then wait for Trans Mountain's approval and deal with any conditions or changes Trans Mountain proposes before moving forward. Coquitlam also discussed instances where it had been delayed in its work, such as installing street signs or planting trees, because Trans Mountain initially refused its requests, and allowed them only after extensive negotiations.

Coquitlam expressed concern about the impacts on emergency work on municipal infrastructure (i.e., unplugging a sewer line). Coquitlam stated it would prefer any emergency work required on municipal infrastructure to be repaired according to Coquitlam's schedule, not Trans Mountain's schedule.

⁵ 3 km of 7.4 km of pipeline.

Overall, Coquitlam indicated that it will face additional time and expense not only during construction activities but over the lifetime of the pipeline, for maintenance of municipal infrastructure and for this reason suggested the proposed route is not the best route.

Views of Trans Mountain

Trans Mountain acknowledged Coquitlam's concerns about requirements for municipal work near pipelines, which it said reflect NEB requirements for any ground disturbance within 30 metres of the pipeline right-of-way ("the Prescribed Area"). Trans Mountain described the requirements for work in the Prescribed Area and its process for responding to One Call requests. In its view, municipalities encounter these kinds of notification requirements on a daily basis. Trans Mountain stressed that using One Call was standard industry practice and was not an unusual imposition on Coquitlam. Trans Mountain compared the NEB's notification requirements within the Prescribed Area to those of Metro Vancouver for activities within 30 metres of Metro Vancouver infrastructure, noting that the processes were similar.

In its reply evidence, Trans Mountain stated that it would not comment on cost impacts of the TMEP, as these issues were a matter of compensation and were outside the scope of a detailed route hearing.

Trans Mountain indicated that it continues to be open to discussions with Coquitlam regarding opportunities to accommodate and coordinate any future municipal infrastructure plans.

2.3 Methods of Construction

2.3.1 General Methods

Views of Coquitlam

As its written evidence, Coquitlam filed a report from Associated Engineering that included suggested practices that Trans Mountain should consider in urban areas. Coquitlam indicated that this report identified areas of concern such as soft soils, depth of cover and landfills, and provided suggested mitigation measures to minimize impacts on these areas.

Views of Trans Mountain

Trans Mountain said it proposes to use a restricted construction footprint within Coquitlam. Its primary construction methods in Coquitlam are Shored Trench/Stove Pipe and Guided Horizontal Auger Bore methods.

In its reply evidence, Trans Mountain provided a detailed reply to the Coquitlam portion of the Associated Engineering report. Trans Mountain submitted that its detailed mitigation measures set out in its reply evidence should be preferred over the general mitigation measures identified in the Associated Engineering report, as the general mitigation measures proposed are not with respect to the detailed route of the TMEP and are instead general and high-level comments that are outside the scope of this detailed route hearing.

2.3.2 Differential Settlement

Views of Coquitlam

During the detailed route hearing, Coquitlam explained that United Boulevard and Hartley Avenue are constructed over an old municipal landfill site. Coquitlam is concerned that having the pipeline routed under paved portions would result in differential settlement, which leaves “sags and humps in the road,” and would result in additional road maintenance for the City after construction.

Coquitlam said that routing the pipeline down the middle of United Boulevard will exacerbate differential settlement and imposes operational impacts on Coquitlam. Coquitlam also noted that sections of Hartley Avenue already suffer from differential settlement issues that create a “bit of a hazard” for vehicle traffic. The City submitted that according to the analysis in the Associated Engineering report, if the new TMEP pipeline is routed within the travelled or paved portions of a road like United Boulevard, then it may have to repave the roads every seven years, rather than every 15 years as planned.

Coquitlam expressed concern that Trans Mountain would not address the effects of differential settlement brought about by the construction of the pipeline. Coquitlam said the greatest change to mitigate these impacts would be to move the pipeline out of the road right-of-way, but if that is not possible then it should be moved outside of the paved or travelled portion of the roadway. It further suggested that increasing the depth of cover could mitigate some of the effects.

Views of Trans Mountain

With respect to construction of the TMEP in areas of the Eaglequest Landfill, Trans Mountain said it has engaged specialist consulting engineers to assist in designing the construction plans. Trans Mountain and its consultant will develop detailed engineering plans, including settlement and existing contamination considerations, for the installation of the new TMEP pipeline in proximity to landfill areas, in accordance with applicable specifications and regulations.

Trans Mountain stated that it was aware of the potential for differential settlement along the proposed route and that its mitigation options will depend on the landfill materials encountered during trenching activities. Trans Mountain committed to avoid exacerbating effects of the pipeline on surrounding infrastructure, in part through selecting backfill materials to avoid differential settlement. Trans Mountain also committed to a two-metre depth of cover on United Boulevard to mitigate potential differential settlement. Trans Mountain recognized that it must assume responsibility for any damages to other infrastructure.

3. Board Reasons and Decision for Detailed Route Hearing MH-034-2017

The Board appreciates the time spent by Coquitlam and Trans Mountain in discussing their concerns at the detailed route hearing. The concerns focused on routing issues and the method of construction and not the timing of construction.

The Board notes that the original routing criteria, along with potential impacts on municipal infrastructure, were assessed by the Board during the Certificate hearing for the TMEP. The routing criteria and the corridor were found to be appropriate by the Board. The Board attached 157 conditions to Certificate OC-064, including ones for working with affected municipalities. Trans Mountain has committed to meeting the conditions and commitments it made during that hearing.

The Best Possible Route

The Board acknowledges the challenges of selecting a route in this area due to the dense urban development that has occurred since the TMPL was constructed, as well as other routing restrictions such as crossing the Fraser River, a former landfill site, the Eaglequest Golf Course, and the WKR Industrial property. The Board also acknowledges that the City's lands are more affected than others in this segment and it may face some additional burdens in its efforts to plan, execute and manage municipal infrastructure with the proposed route of the TMEP pipeline. These same burdens were acknowledged in the Board's Report in the Certificate hearing.

Trans Mountain has the onus of proving, on a balance of probabilities, that its applied-for route is the best possible route. The Board accepts Trans Mountain's evidence that several alignment alternatives were considered during the design and planning of the proposed route, including the possibility of routing through private lands. Trans Mountain provided evidence it had consulted with other stakeholders, specifically local businesses and the Chamber of Commerce, about routing options. The results of these consultation efforts indicated that most stakeholders wanted the route to minimize impacts on businesses. These consultations also caused Trans Mountain to file its variance application to help minimize identified impacts. Trans Mountain also provided evidence as to the feasibility of its route from an engineering perspective, which the Board accepts as technically accurate and compliant with regulatory requirements.

Coquitlam proposed two alternate routes, both of which Trans Mountain stated were not feasible primarily due to potential interference with the ability of businesses to stay open during construction. The Board notes that Coquitlam disagreed with this assessment and its witnesses expressed the opinion that the impacts on businesses that would result from its proposed alternate routes could be mitigated. The Board notes that the alternate routes were not raised or assessed in the Associated Engineering report submitted by Coquitlam. This lowered the weight the Board gave to Associated Engineering report, a report which the Board found to be general in nature. Further, Coquitlam did not consult with the businesses on the potential impacts along the proposed alternate routes.

The Board finds that the alternate routes proposed by Coquitlam were lacking in detail and in the case of Alternate Route 2, were not raised prior to the oral hearing. Alternate routes are proposed to challenge whether Trans Mountain has demonstrated its applied-for route is the best possible. The Board is of the view that raising alternate routes for the first time during the oral hearing creates challenges as it is difficult to assess their feasibility or their potential impacts. The Board requires direct evidence be filed in advance of the oral hearing, so that it may be fully tested at the oral hearing. This is not to say that alternate routes cannot ever be raised in a hearing but in

the absence of sufficient evidence to support them, it is more difficult to counter the evidence that Trans Mountain brought forward to support its applied-for route.

Overall, the Board is of the view that co-locating the pipeline within existing roads and utility corridors is consistent with Trans Mountain's routing criteria and limits the nature and extent of construction impacts on businesses, including those businesses along United Boulevard, Hartley Avenue, and Rogers Avenue. The applied-for route balances this with other safety, engineering, and environmental factors and appropriately accounts for the additional routing restrictions Trans Mountain faced in selecting the route through Coquitlam. In addition, given the consultation conducted by Trans Mountain with local businesses, the Chamber of Commerce and the City, along with the changes it made in response to these consultations that resulted in the variance application, the Board is of the view that the proposed route is the best possible detailed route of the pipeline.

Coquitlam also raised concerns that the proposed route imposes undue burdens on its ability to plan, maintain, and repair its municipal infrastructure in a timely fashion. The Board is of the view that these matters were adequately assessed in the Certificate hearing for the TMEP. Trans Mountain is under a continuing legal obligation to meet the conditions and commitments it made related to municipal infrastructure impacts during that hearing. The Board notes that there are extensive views provided on these issues in the NEB Report ([A77045](#)) and that the Board imposed specific conditions on this issue as well. To the extent that any of Coquitlam's concerns relate to compensation, this is outside the scope of a detailed route hearing.

The Board notes that Coquitlam referred generally to past examples of where its work had been delayed due to negotiations with Trans Mountain. The Prescribed Area exists for the purposes of safety and those undertaking ground disturbance activities within a pipeline's Prescribed Area must comply with the relevant legal requirements. The Board notes that it is a fact that municipalities encounter these kinds of notifications requirements on a daily basis and this is not an unusual imposition on Coquitlam. The inconvenience associated with this is not a reason to deny the proposed route. The Board reminds Trans Mountain of its concomitant legal obligations under the damage prevention regime, which include timely responses to requests.

The Board acknowledges Coquitlam's statement that its staff enjoy a good working relationship with Trans Mountain's staff. The Board further notes Trans Mountain's commitment to continue working with Coquitlam through Technical Working Groups and other engagement initiatives to address future concerns. In the Board's view, this combined with existing Certificate conditions and mitigation measures can adequately address Coquitlam's concerns regarding impacts on municipal infrastructure.

For all these reasons, the Board finds the applied-for route is the best possible route.

Methods of Construction

The Board notes that extensive views were provided on potential impacts on municipal infrastructure and post-construction restoration and reclamation in the NEB Report ([A77045](#)), and that the Board imposed numerous conditions in this regard.

Coquitlam did not appear to take into account such conditions in its evidence, namely the Associated Engineering report. To some extent, this lowered the weight the Board assigned to the evidence as it related to the suggested practices as it was clear the suggestions were not fully informed by the most current and comprehensive information available on these issues. The Board recognizes that despite this, Trans Mountain gave detailed responses to the suggestions in the Associated Engineering report including comprehensive lists of its site-specific mitigation.

The Board finds that the site-specific mitigations provided address the concerns raised by Coquitlam with respect to methods of construction.

The Board recognizes the concerns arising from the buried landfill through which a portion of the TMEP will be constructed in Coquitlam. Settlement issues related to the buried landfill add to the challenges of maintaining infrastructure but are not insurmountable. The addition of the new TMEP pipeline may require additional management of municipal utilities and roads; however, the Board notes that Trans Mountain has acknowledged its responsibility in managing and mitigating its impact on municipal infrastructure.

Trans Mountain committed to using a specialist engineering firm to develop detailed engineering plans that would reflect settlement and existing contamination considerations. The Board also notes that Coquitlam has successfully built infrastructure on the landfill areas, and has experience in managing the impacts. The Board also notes that Coquitlam said issues pertaining to the landfill site need “a collaborative approach to try to come up with solutions that work for everybody.” The Board is confident that with Trans Mountain’s proposed mitigation (i.e., thorough backfill selection and increased depth of cover) and Coquitlam’s experience, the issue of differential settlement can be managed effectively.

Conclusion

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

No issues were raised relating to the timing of construction and the Board accepts the construction timing as appropriate.

Any approval by the Board of the PPBoR for Coquitlam’s lands will include a condition requiring Trans Mountain to list and to fulfill the commitments it made in the course of this detailed route hearing, as well as update its alignment sheets. Coquitlam is entitled to seek remedy from the Board if the commitments are not being fulfilled.

Trans Mountain is reminded that the conditions of approval in Certificate OC-064 apply to the construction and operation of the TMEP on Coquitlam’s lands.

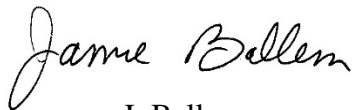
The Board further notes that it cannot issue an approval of the PPBoR affected by the section 21 variance until it is approved by GIC. Further, the Board will not approve the sections of the PPBoR that pertain to the ICBC variance application until the GIC has decided on it, as the preferred and approved corridor.



L. Mercier
Presiding Member

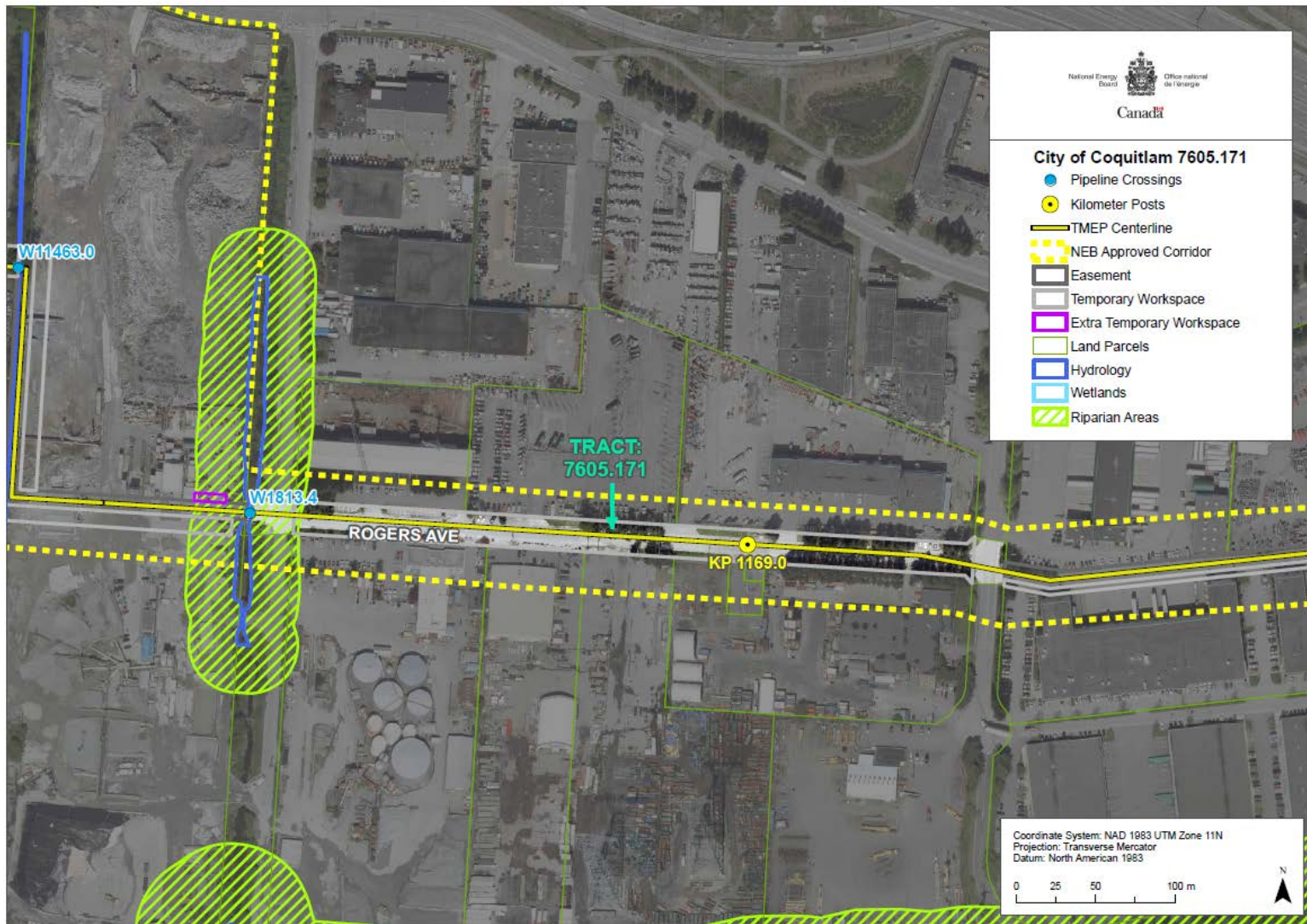


S. Parrish
Member

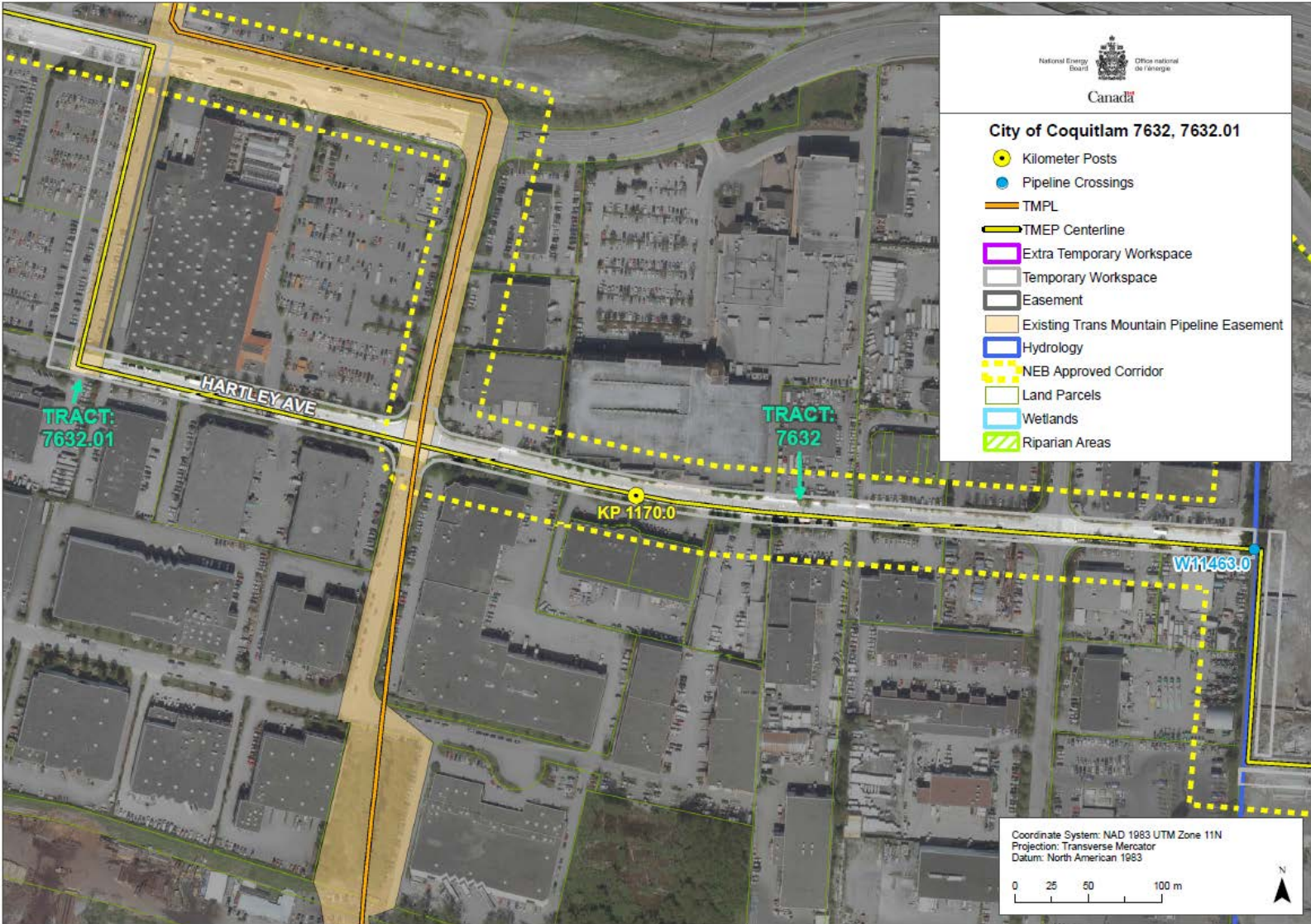


J. Ballem
Member

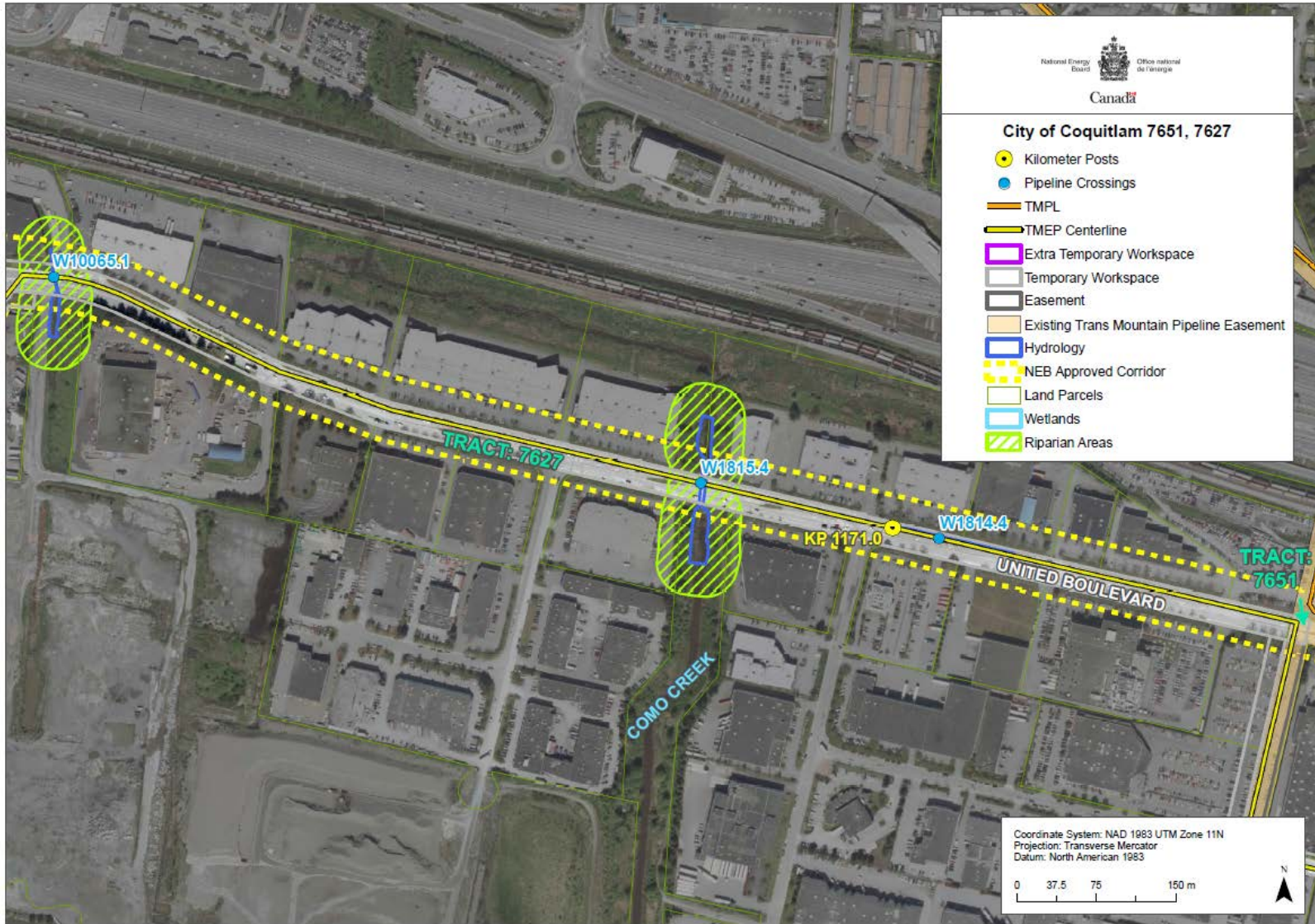
Appendix I – Maps of City of Coquitlam Lands



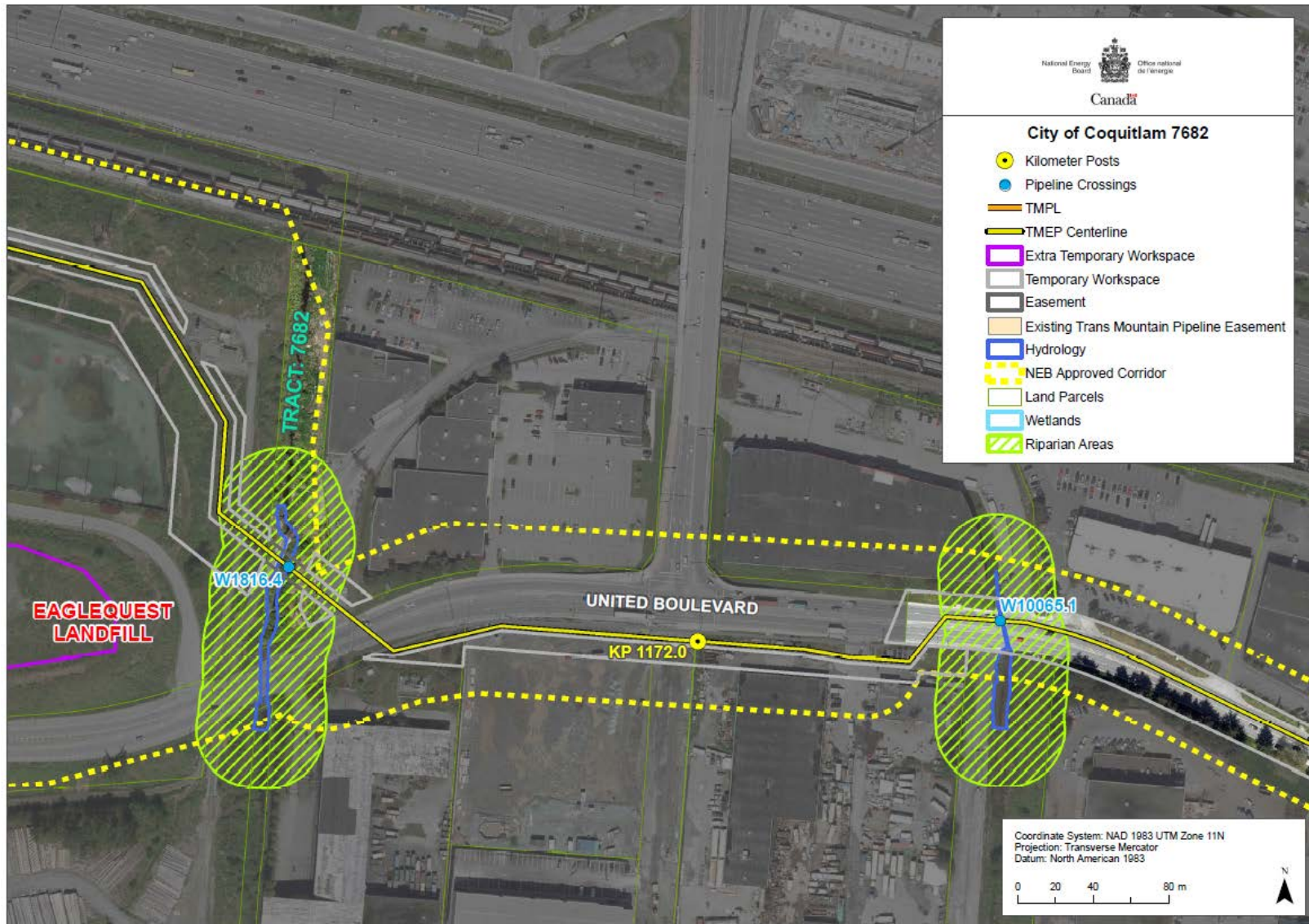
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