

National Energy
Board



Office national
de l'énergie

DECISION

File No. OF-Fac-Oil-T260-2013-03 19
10 May 2018

Mr. Ed MacIntosh
President
Fraser Heights Community Association
11136 156a Street
Surrey, BC V4N 4R4
Email the5macs@shaw.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
Legal Counsel
Osler, Hoskin & Harcourt LLP
Suite 2500, 450 – 1st Street SW
Calgary, AB T2P 5H1
Email regulatory@transmountain.com

Dear Mr. MacIntosh, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project - Certificate OC-064
Decision for Detailed Route Hearing MH-036-2017
Fraser Heights Community Association (FHCA)**

1. Background

On 19 May 2016, the National Energy Board (NEB or Board) issued its Report recommending that 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.

.../2

Suite 210, 517 Tenth Avenue SW
Calgary, Alberta T2R 0A8

517, Dixième Avenue S.-O., bureau 210
Calgary (Alberta) T2R 0A8

Canada

Telephone/Téléphone : 403-292-4800
Facsimile/Télécopieur : 403-292-5503
www.neb-one.gc.ca

Telephone/Téléphone : 1-800-899-1265
Facsimile/Télécopieur : 1-877-288-8803

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.

2. Detailed Route Hearing MH-036-2017

Fraser Heights Community Association (FHCA) is a volunteer organization representing the interests of the residents of the Fraser Heights community, which is located in the City of Surrey, BC. Trans Mountain proposes the new TMEP pipeline in Segment 7 to be routed adjacent to the Fraser Heights community and alongside the South Fraser Perimeter Road (SFPR) on lands owned by the City of Surrey (see Figures 1 and 2 and Appendices). These lands appear on PPBoR M002-PM03023-002, M002-PM03024-001, and M002-PM03024-002.

FHCA filed a statement of opposition on 7 July 2017 ([A84821](#)). The Board granted FHCA detailed route hearing number MH-036-2017 and issued a Hearing Order on 4 October 2017 ([A86549](#)).

The oral portion of the detailed route hearing was held on 17 March 2018 in Burnaby, BC. Trans Mountain and FHCA each presented a panel of witnesses for cross-examination and questioning by the Board.

Preliminary Matter – North Slope Realignment

In advance of the hearing, Trans Mountain filed a Notice of Motion for admission of new evidence on 13 March 2018 ([A90559](#)). The new evidence described a revised routing through the North Slope Buffer Area, referred to as the North Slope Realignment, which arose out of an agreement reached with the City of Surrey over certain lands. On 15 March 2018, Trans Mountain filed revised PPBoR sheets reflecting the North Slope Realignment ([A90598](#)). Trans Mountain made submissions at the outset of the hearing as to why the late evidence should be

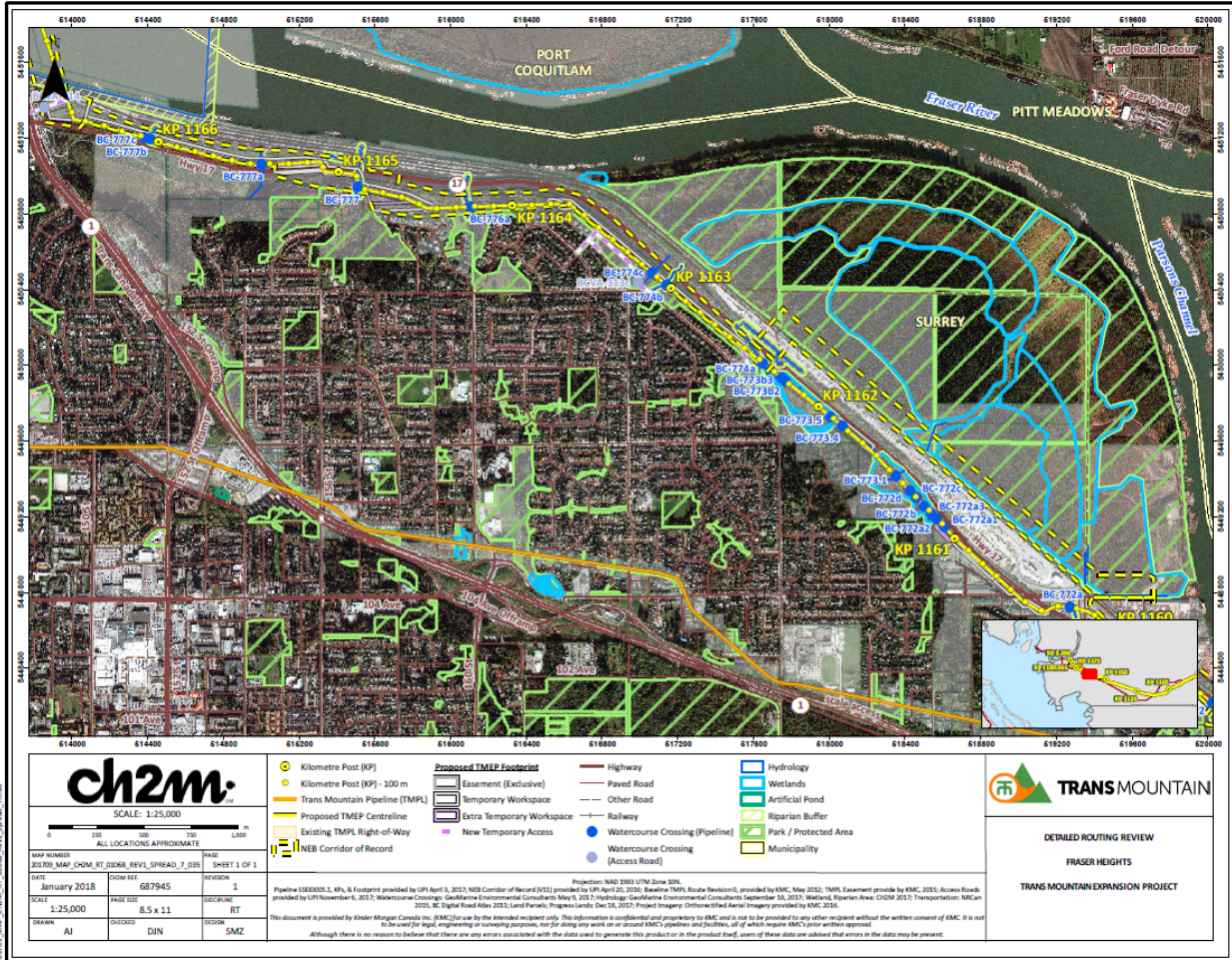
¹ As required by paragraph 34(1)(a) of the NEB Act

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

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

accepted. FHCA did not object to the filing of the new evidence. The Board admitted this new evidence onto the record in Ruling No. 1 during the oral hearing.

Figure 1 – Map of the FHCA Lands⁴

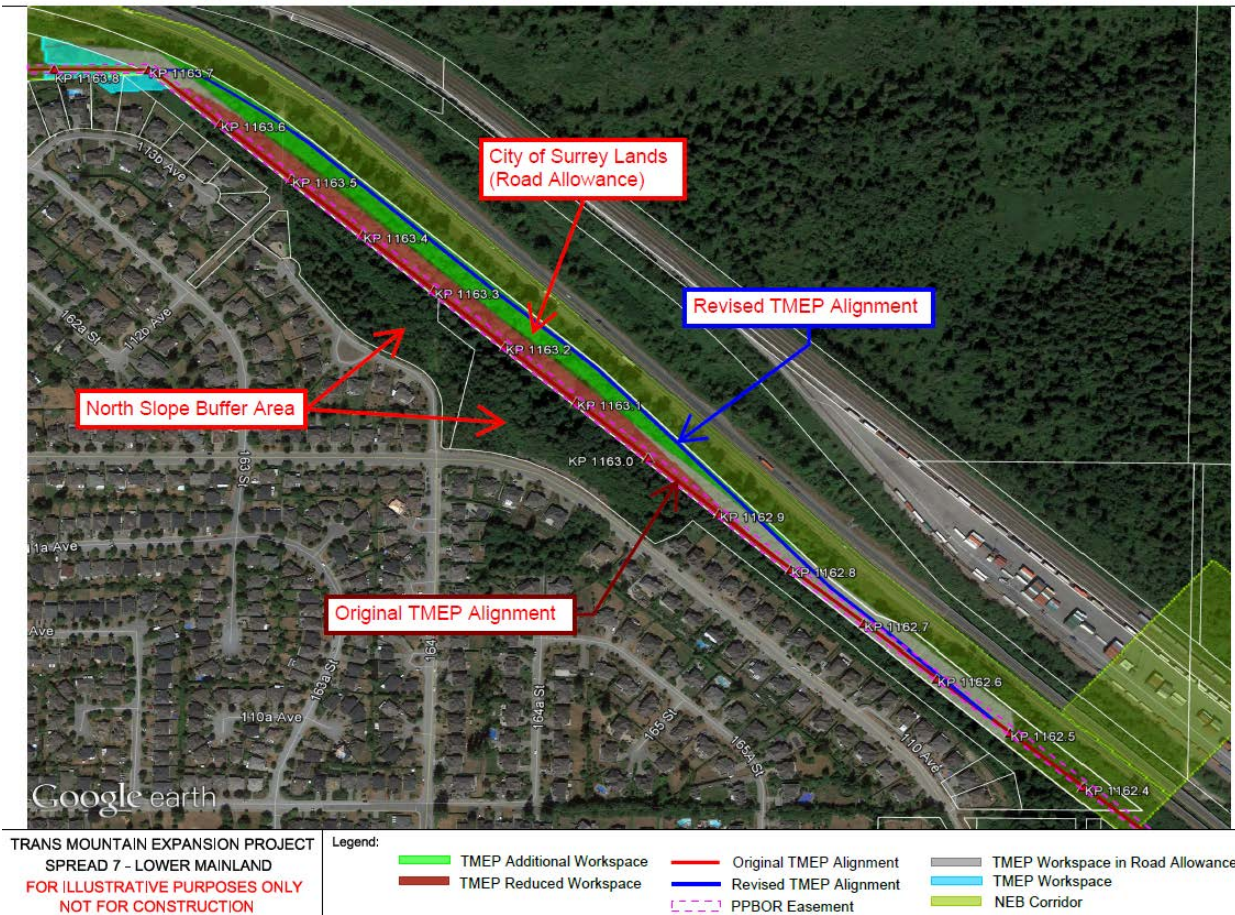


⁴ Figures 1 and 2 were maps filed by Trans Mountain as part of its evidence for detailed route hearing MH-036-2017 ([A89011-8](#) and [A90559-1](#)).

Figure 2 – Map of the North Slope Realignment

TITLE: North Slope Buffer Realignment Map

Drawing Date: 2018/03/13



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 said 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 said that it had been engaging landowners in its routing discussions since 2012 and used this feedback to optimize the location of its 150-metre-wide corridor. It also said that the width of the corridor provided flexibility for minor route adjustments, including those informed by landowner input.

Trans Mountain said that it is proposing a reduced construction right-of-way width of 25 metres in urban areas, including the City of Surrey, and a permanent right-of-way of 10 metres. In some areas at issue in this hearing, the permanent right-of-way follows a proposed multi-use pathway, and would include a four-metre paved pathway with a gravel shoulder of one metre on either side.

2.1.2 Proposed Detailed Route and Alternate Routes

As shown in Figures 1 and 2 and the Appendices, the proposed detailed route is adjacent to the Fraser Heights community between approximately Kilometre Post (KP) 1158 and KP 1166. Trans Mountain's preferred routing for the new TMEP pipeline in the City of Surrey is along the SFPR. This routing avoids Surrey Bend Regional Park and was developed in response to stakeholder input.

Views of FHCA

In its statement of opposition, FHCA stated that approximately half of the new TMEP pipeline in the City of Surrey would cross its community. FHCA said the pipeline will run across the entire northern boundary of the community in an east/west direction from Golden Ears Way to the Port Mann Bridge. FHCA said it has been subjected to many other construction projects and discussed the increased traffic, impact on sound buffers, tree loss, walking trails and foliage removal these had caused. The proposed route, FHCA indicated, would exacerbate these effects.

FHCA did not frame any of its concerns as relating to methods or timing of construction.

FHCA proposed that the pipeline route could be "clustered" with the railway and the SFPR instead. FHCA suggested that this would help increase the sound and sight barrier instead of removing the very mature trees and replacing them with saplings, which will take many years to mature.

During the oral hearing, FHCA questioned why the proposed routing could not be located closer to the SFPR to avoid impacts on a pond and vegetation in a City of Surrey park located near KP 1159. FHCA said the proposed routing would cause the community to lose visual and noise protection from the Golden Ears Connector as it would destroy the remaining forested area between 181 Street and the Golden Ears Connector.

During the oral hearing, FHCA representatives asked questions about route adjustments they had proposed and Trans Mountain's witnesses provided additional information on the rationale for

certain routing choices. FHCA indicated that although they had met previously with Trans Mountain, they had not had an in-depth discussion about route options. FHCA also indicated that while they had heard of the concept of the proposed multi-use pathway aligned with the permanent right-of-way through the community, until the hearing they were not aware of its routing details and they indicated general support for it as a way to enhance the liveability of the area.

The representatives of FHCA said their submissions in this hearing reflected the comments they have heard from the community. They also said their organization has had constructive discussions with Trans Mountain to date and remained willing to work with Trans Mountain to ensure it honours its commitments.

Views of Trans Mountain

Trans Mountain said that its preferred routing along the SFPR avoids routing through Surrey Bend Regional Park, as required by Condition 7 of the Certificate⁵, and minimizes impacts to residents and environmentally sensitive areas. Trans Mountain said this approach is consistent with the routing principles to minimize impacts to residents and environmentally sensitive areas and to route along existing utility corridors if following the existing pipeline corridor is not feasible.

Trans Mountain said its routing through the City of Surrey was constrained by topography, urban development, municipal infrastructure, engineered features and environmental restrictions, including Pacific Water Shrew critical habitat. Trans Mountain also indicated that alignment directly within the SFPR, as FHCA requested, was not possible due to the BC Ministry of Transportation and Infrastructure's plans to expand the SFPR in the future, the presence of retaining walls, and impacts on traffic.

In response to FHCA's concerns raised at the hearing about the park and pond, Trans Mountain stated that the proposed route:

- does not go through the park at this location, but is adjacent to it and would therefore not affect the pond of concern;
- was co-located with a planned multi-use pathway to accommodate a request from the BC Ministry of Transportation and Infrastructure to avoid interference with an intended future expansion of the existing highway; and
- follows the multi-use pathway which would result in only one cleared path through the area.

For these reasons, the alignment alternatives around KP 1159 proposed by FHCA during discussions with Trans Mountain were not considered feasible and were ruled out during the design phase. However, Trans Mountain stated that it developed a specific planting plan for this area that would include larger nursery stock than it typically uses for reclamation and slow-growing conifers, to create year-round greenery while maintaining a view to the north.

⁵ See NEB Report pages 244 and 417

Trans Mountain set out that the North Slope Realignment, which is within the City of Surrey's adjacent lands to the North Slope Buffer Area (KP 1162.5 to KP 1163.7): (1) is within the NEB-approved corridor; (2) will be constructed with an open-cut construction method; and, (3) is located as close to the SFPR as geotechnical, engineering and construction considerations permit. Trans Mountain stated the Realignment has the support of the affected landowner, the City of Surrey, and addresses some of the concerns raised by FHCA.

After it ruled to admit the new evidence of the North Slope Realignment, the Board questioned Trans Mountain about this evidence. Trans Mountain confirmed that the necessary studies had been completed to ensure feasibility and also indicated the routing changes were not significant, at most deviating 40 metres from the original applied-for route. Trans Mountain indicated there was no net environmental difference from the Realignment versus the originally proposed detailed route.

Trans Mountain confirmed that the only affected landowner, the City of Surrey, consented to the changes as they were made to address the City's concerns. After agreement was reached, the City of Surrey withdrew their statement of opposition. Trans Mountain added that the North Slope Realignment may alleviate some of FHCA's concerns and that through the hearing, FHCA had the ability to question this Realignment. Trans Mountain indicated that other than the City of Surrey, who had consented to the change, and FHCA, who was granted a hearing, it did not expect other landowners to be affected by this realignment.

In Trans Mountain's view, the North Slope Realignment would resolve some of FHCA's concerns as it would:

- be further north than the original alignment and therefore further from the community of Fraser Heights;
- increase the separation between the residences and pipeline alignment to provide increased noise buffer;
- reduce the visual impact by increasing the width of the tree buffer and less trees being removed; and
- provide a walking trail as part of a multi-use path to be established after construction.

Trans Mountain said that FHCA's concerns regarding impacts to trees, foliage, and walking trails will be largely be addressed through the mitigation measures presented in Trans Mountain's Environmental Protection Plan, as well as the NEB's conditions in place regarding specific environmental management and reclamation plans.⁶

Trans Mountain said that it considered FHCA's opposition and evidence and is of the view that the proposed route through the City of Surrey balances a number of factors, including environmental sensitivity, impacts to the residential community and disruption to existing transportation corridors. Trans Mountain said it remains of the view that the proposed route is the best possible route on these lands.

⁶ For example, NEB Condition 72 required Trans Mountain to file its Pipeline Environmental Protection Plan with the Board.

During the hearing, Trans Mountain committed to continue working with FHCA to address any concerns they may have and to share information on its plans as the project moves forward.

As regards the North Slope Realignment, Trans Mountain submitted that efforts to optimize the detailed route to accommodate a landowner's concerns should be treated with fairness and efficiency and not trigger a new detailed route hearing; otherwise, Trans Mountain argued that companies may be reluctant to pursue changes that could settle hearings in advance of these route hearings and would be contrary to the objectives of this process which is to encourage proponents to work with affected parties and try to resolve the concerns as best possible. Therefore, Trans Mountain submitted that the Board already has the information it requires in order to approve the revised PPBoR pages without starting the detailed routing process over.

While FHCA did not object to Trans Mountain being able to file the new evidence, they said they disagreed with the new proposed North Slope Realignment but did not provide any further details on their opposition to the Realignment.

3. Board Decision for Detailed Route Hearing MH-036-2017

The Board appreciates the time spent by FHCA and Trans Mountain in discussing their concerns at the detailed route hearing.

The Board notes that the original routing criteria and impacts to the environment, including trees, were assessed by the Board during the Certificate hearing for the TMEP. The routing criteria was considered appropriate in the Certificate hearing and the corridor was approved with the subsequent issuance of Certificate OC-064. The Board attached 157 conditions to this approval, including those for environmental protection and reclamation.

In the Board's view, the proposed route is consistent with Trans Mountain's routing criteria and reflects stakeholder input, including input from the landowner.

The Board is also of the view that the construction plans and mitigation measures Trans Mountain committed to during the Certificate hearing and associated conditions will adequately address FHCA's concerns with respect to protecting the pond and park as well as tree removal at KP 1159. In the Board's view, additional mitigation measures are unnecessary. The Board also notes Trans Mountain's specific commitment regarding re-planting with larger nursery stock and slow-growing conifers.

The Board recognizes that the landowners of the lands covered by FHCA's statement of opposition are the City of Surrey and the BC Ministry of Transportation and Infrastructure, but that Trans Mountain has nevertheless committed to continued engagement with FHCA. The Board encourages Trans Mountain and FHCA to continue to work together constructively to address issues of shared interest.

The Board notes that no issues were raised by FHCA relating to the methods and timing of construction.

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

In this specific case, the Board is of the view it is appropriate to exercise its discretion to accept Trans Mountain's revised PPBoR reflecting the North Slope Realignment as a revision to the PPBoR originally filed for the Board's approval on 17 March 2017. The Board has had regard to the fact that the impacted landowner, the City of Surrey, has agreed to the change, and FHCA has given a hearing and had the opportunity to test the Realignment.

In the Board's view, since the revisions are intended to directly address the concerns of the one directly affected landowner and that the Board was able to test the technical aspects of the newly proposed North Slope Realignment during the hearing, it is satisfied that this approach is acceptable, in the specific circumstances of this hearing.

Any approval by the Board of the PPBoR (namely M002-PM03023-002, revision 1, dated 15 March 2018, M002-PM03024-001, revision 1, dated 15 March 2018, and M002-PM03024-002) for lands adjacent to the FHCA, will include a condition requiring Trans Mountain to fulfill the commitments it made in the course of this detailed route hearing and update its alignment sheets. FHCA is entitled to seek remedy from the Board if the commitments are not being fulfilled.

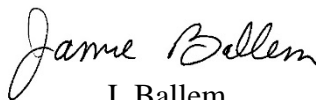
Trans Mountain is reminded that the relevant conditions of approval in Certificate OC-064 apply to the construction and operation of the TMEP adjacent to the Fraser Heights community.



L. Mercier
Presiding Member

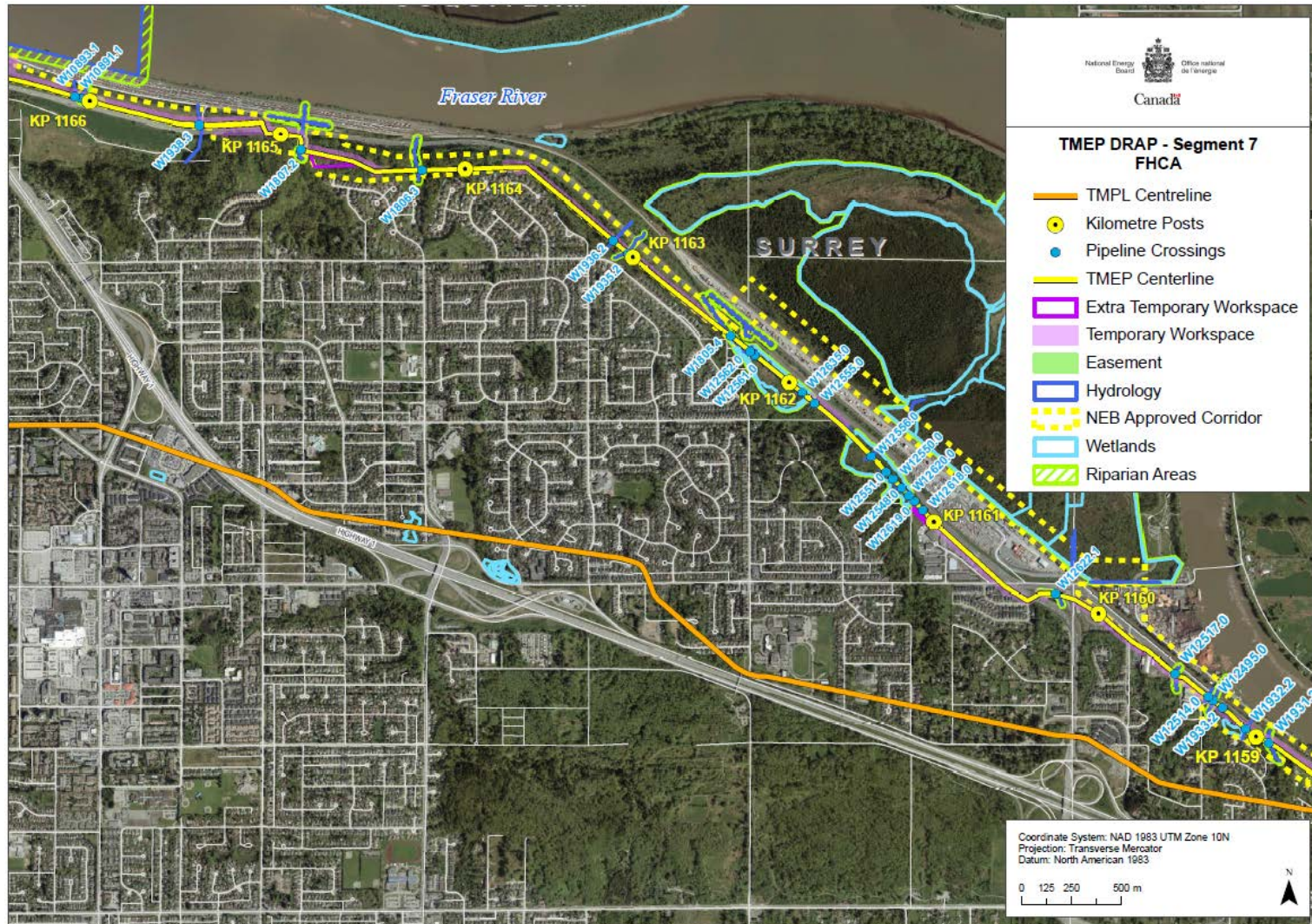


S. Parrish
Member

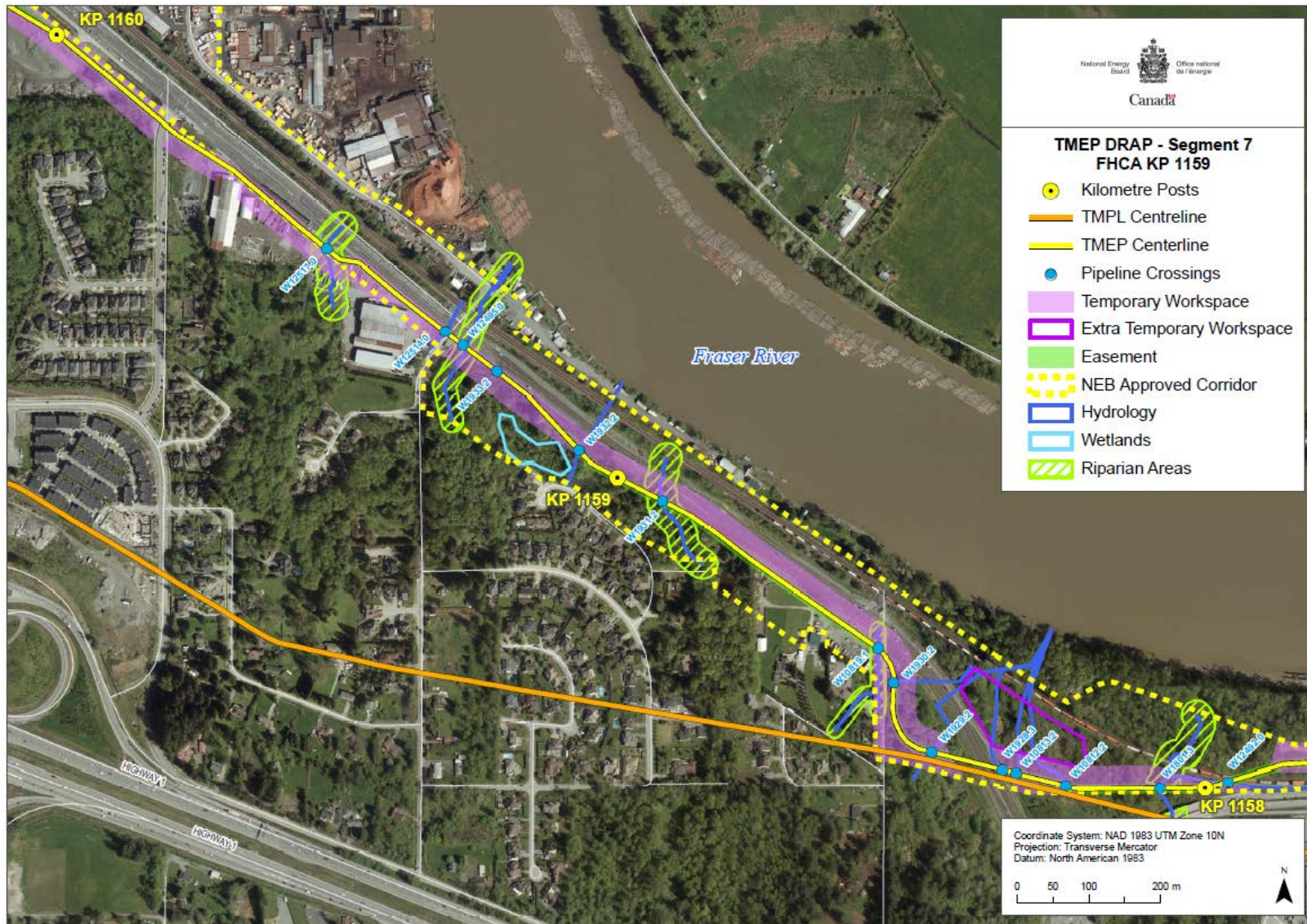


J. Ballem
Member

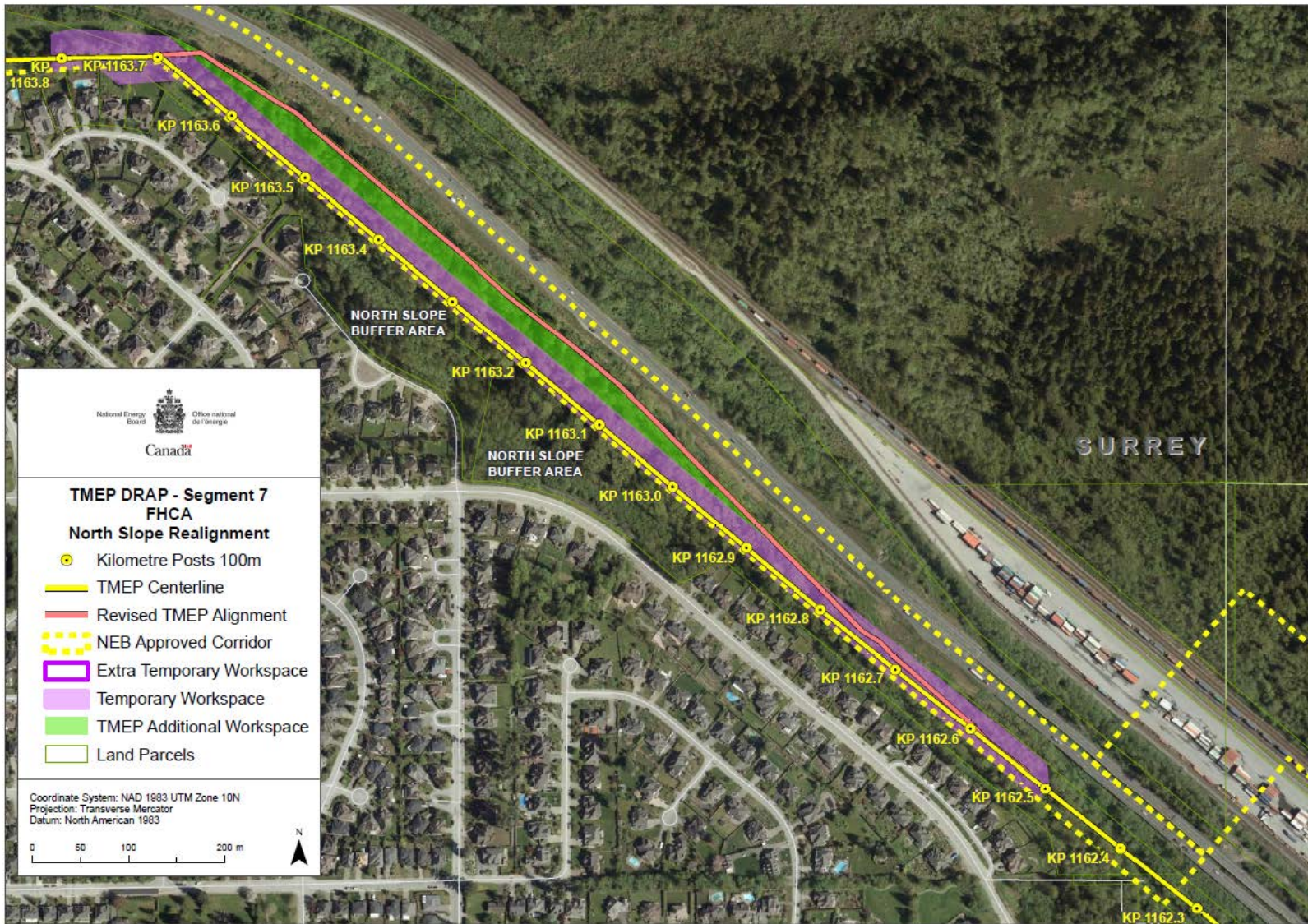
Appendix I – Maps of FHCA Lands



MAP PRODUCED BY THE NEB, MAY 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.



MAP PRODUCED BY THE NEB, MAY 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.



MAP PRODUCED BY THE NEB, MAY 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.