

National Energy
Board



Office national
de l'énergie

DECISION

File OF-Fac-Oil-T260-2013-03 17
12 June 2018

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Dear Mr. Lauerman, Mr. Nettleton, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)
Trans Mountain Expansion Project (TMEP)
Certificate of Public Convenience and Necessity (Certificate) OC-064
Decision for Detailed Route Hearing MH-002-2018
Nestlé Canada Inc. (Nestlé)**

1. Background

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

On 10 March 2017, Trans Mountain applied to the Board for Segment 5 of the TMEP detailed route, submitting the Plan, Profile, and Book of Reference (PPBoR) [[A82031](#)]. As per section 34 of the *National Energy Board Act* (NEB Act), Trans Mountain made copies of its PPBoR available for public viewing, 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.

2. Detailed Route Hearing MH-002-2018

Nestlé is the registered owner of lands located in Parcel Identifier 014-667-452 along Othello Road, in Hope, BC. Trans Mountain identified these lands as Tract 1964, and the property is shown on PPBoR No. M002-PM03011-078. Trans Mountain proposes to cross these lands with the new TMEP pipeline in Segment 5.3. See Figure 1 below for a map showing the detailed route across Nestlé's property, as depicted in Trans Mountain's 6 March 2018 written evidence ([A90428](#)).

Nestlé filed a statement of opposition on 2 June 2017 ([A84157](#)). On 23 January 2018, the Board granted Nestlé a detailed route hearing ([A89486](#)) and, via the Hearing Order of the same date ([A89487](#)), assigned Hearing Number MH-002-2018.

Mr. Tyler Bacon filed Applications to Participate in Nestlé's detailed route hearing as both a commenter ([A90142](#)) and an intervenor ([A90141](#)). The Board denied these requests ([A90370](#)) on the basis that Mr. Bacon's submissions were broad in nature and did not describe any specific knowledge of, or provide any specific information about, Nestlé's lands.

Nestlé operates a commercial water bottling facility on its property, drawing water from the nearby Hope Spring and associated aquifer. Nestlé's operations involve transport truck traffic (between 20 and 40 trucks daily) to and from its facility via a private access road on the property.

A site visit of Nestlé's lands occurred on 7 May 2018. The oral hearing was held on 9 May 2018 in Merritt, BC, for which a written transcript was produced ([A91876](#)).

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

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

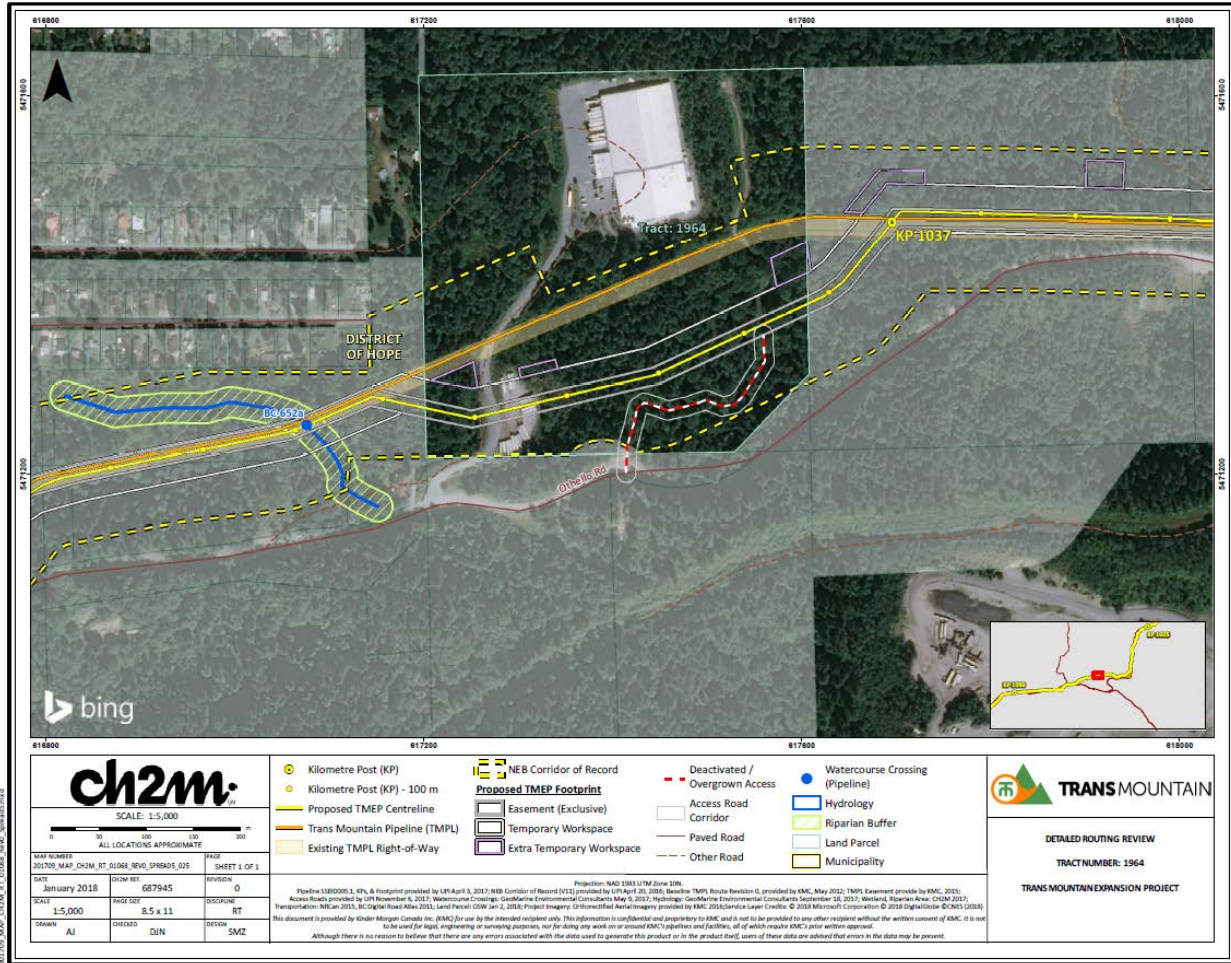


Figure 1 – Map showing the detailed route across Nestlé's property (Tract 1964), as depicted in Trans Mountain's 6 March 2018 written evidence ([A90428](#))

2.1 Proposed detailed route

2.1.1 Trans Mountain's routing criteria

Trans Mountain submitted that its pipeline corridor was developed based on a standard set of routing criteria designed to enable the pipeline to be installed safely, and to reinforce the protection and integrity of the pipeline while minimizing the adverse effects of pipeline installation and operation to the extent practicable.

During its route selection process, Trans Mountain established a hierarchy of routing options. 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, minimize the creation of new linear corridors by installing the new TMEP pipeline adjacent to existing easements or rights-of-way of 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.
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, while the TMEP's installation will generally require a 45-metre-wide construction right-of-way, it studied and applied for a wider corridor (generally 150 metres wide) to provide flexibility for minor pipeline alignment adjustments during the detailed engineering and design phase.

Trans Mountain stated that, as a practice, determining routing feasibility for the entire TMEP included the consideration of a range of factors, including constructability; long-term geotechnical stability; and environmental, cultural, and socio-economic suitability.

2.1.2 Proposed detailed route on Nestlé's property

The proposed detailed route would cross Nestlé's property between Kilometre Posts 1037+100 and 1037+600. Trans Mountain indicated that the route deviates from the existing TMPL on Nestlé's property in order to provide additional separation between the TMEP and Nestlé's facilities.

In its written evidence ([A90817](#)), Nestlé explained that it hired independent experts to assess the potential impacts of the TMEP's construction on the Hope Spring, aquifer, and Nestlé's operations. Through this, significant concerns with the TMEP's location and constructability were identified, including increased risks to subsurface stratigraphy and groundwater quality, pathways, and spring occurrence. A preferred Alternate Route was identified. Nestlé noted that only minor deviations from Trans Mountain's proposed detailed route were required to yield significant improvements in construction and aquifer mitigation.

On 1 May 2018, following an engineering and constructability review of Nestlé's Alternate Route and further discussions with Nestlé, Trans Mountain filed a Modified Alternate Route and associated revised PPBoR ([A91670](#)), which it requested that the Board accept as late evidence. It noted that the Modified Alternate Route is within Nestlé's lands, remains within the approved corridor, incorporates technical feedback from both Parties, and is only a minor deviation from Trans Mountain's originally proposed detailed route. Trans Mountain also confirmed that the Modified Alternate Route was feasible to construct.

Following a comment period, the Board accepted Trans Mountain’s filing as late evidence in Ruling No. 1 dated 8 May 2018 (A91835). The Board noted that, in its comments (A91706), Nestlé had indicated its support for the Modified Alternate Route. See Figure 2 below for a map showing the Modified Alternate Route across Nestlé’s property, as depicted in Trans Mountain’s 1 May 2018 filing.

At the oral hearing, Trans Mountain and Nestlé jointly stated that, through their collaborative work, all of Nestlé’s concerns related to the TMEP pipeline’s routing had been resolved and that the Modified Alternate Route was to the satisfaction of both Parties.

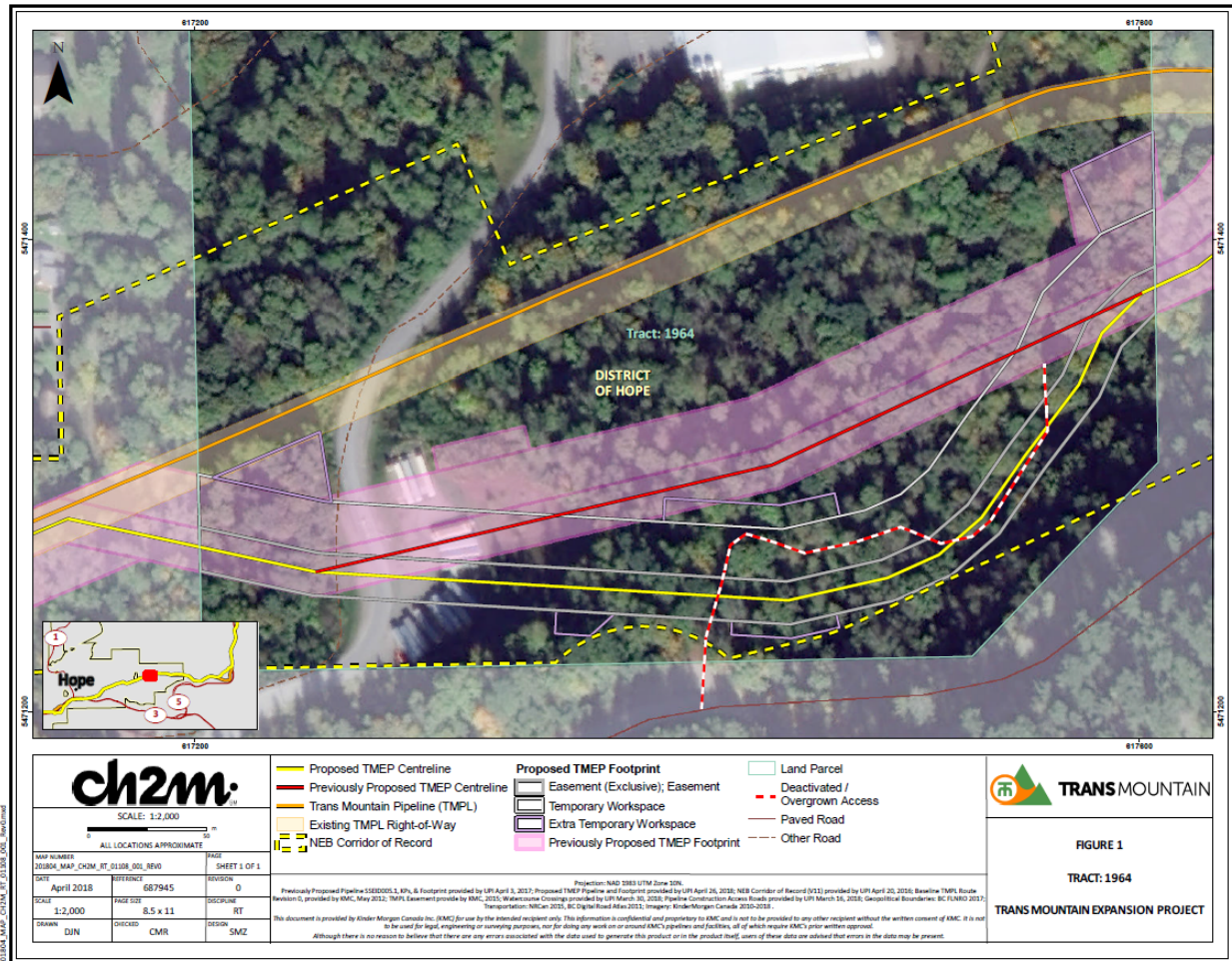


Figure 2 – Map showing the proposed Modified Alternate Route across Nestlé’s property (Tract 1964), as depicted in Trans Mountain’s 1 May 2018 filing

2.2 Methods of construction

In its written evidence, Trans Mountain proposed conventional open-cut construction on Nestlé’s lands. To minimize impacts on Nestlé’s daily operations, Trans Mountain stated that it intended to bore the main access road to Nestlé’s facility. It noted that it also developed traffic management plans – which it committed to discussing with Nestlé prior to construction – to

minimize any traffic disruption or inconvenience to Nestlé's operations and the public. Trans Mountain stated that it would work with Nestlé during construction to maintain necessary access. If blasting is required on Nestlé's lands, it would be avoided in proximity to wells.

In its written evidence, Nestlé and its experts made the following recommendations with respect to the methods of construction:

- Minimize the right-of-way width and disturbance via appropriate construction techniques.
- No blasting or trenchless operations should occur near the aquifer without Nestlé's consent.
- The crossing of Nestlé's trailer storage area and bottling facility driveway should be installed by means of a road bore, rather than open-cut.
- A detailed, site-specific plan for monitoring surface water and groundwater conditions during pre-construction, construction, reclamation, and operations should be provided to Nestlé at least 30 days prior to construction, with regulatory oversight as required.
- Trans Mountain should engage separate subject matter experts to represent pipeline construction and aquifer protection interests, respectively, throughout planning and construction.
- Consideration should be given to installing emergency shutdown valves on either side of the aquifer, as for a major water crossing, to minimize contamination volumes in the event of a release.

In its reply evidence ([A91158](#)), Trans Mountain expressed a concern that Nestlé's Alternate Route could not be constructed using cold bends. It also indicated that it was prepared to undertake the following measures to address Nestlé's concerns:

- Reduce the right-of-way width and disturbance via standard construction techniques, where possible.
- Perform a survey for grade and ditch rock.
- Develop an Engineered Blasting Plan, if blasting is required, with limits on ground acceleration (vibration), and review this plan with Nestlé.
- Work with Nestlé to identify the appropriate construction methodology to minimize impacts on its trailer staging area and bottling facility driveway.
- Work with Nestlé to prepare a site-specific plan, prior to construction, for monitoring surface water and groundwater conditions during pre-construction, construction, and post-construction phases. This plan will compliment Trans Mountain's commitments under Board Condition No. 130, which requires that a Groundwater Management Plan be developed three months prior to operations.
- Work with Nestlé to develop environmental measures in compliance with the Project Sediment Control Plan to control sediment and drainage on the lands.

In response to an information request from the Board regarding bending techniques ([A91670](#)), Trans Mountain discussed the limitations with, and its preference for, using in-field cold bends, and when off-site induction bends would be required. It stated that its Modified Alternate Route could, in fact, be constructed using multiple cold bends.

In its comments on Trans Mountain's request to file its Modified Alternate Route, Nestlé noted that certain specific issues remained outstanding. With respect to the methods of construction, Nestlé had concerns with the commitments Trans Mountain made in its reply evidence, which included the development of site-specific construction and groundwater monitoring plans. While Nestlé believed the commitments were appropriate in principle, it had not had the opportunity to comment on them and it had not been provided with further details regarding content.

At the oral hearing, Nestlé and Trans Mountain jointly stated that, through their collaborative work, all of Nestlé's concerns related to the appropriate methods of construction on Nestlé's lands have been sufficiently addressed.

2.3 Timing of construction

In its written evidence, Nestlé and its experts recommended that construction on Nestlé's lands should occur during the summer season only.

At the oral hearing, Nestlé and Trans Mountain jointly stated that, through their collaborative work, all of Nestlé's concerns related to the appropriate timing of construction on Nestlé's lands have been sufficiently addressed.

3. Board decision for Detailed Route Hearing MH-002-2018

The Board appreciates the time and effort spent by the Parties in participating in the detailed route hearing process. The Board is pleased that its Alternative Dispute Resolution process and staff were able to help the Parties reach a mutually acceptable resolution.

The Board notes that it assessed the original routing criteria during the Certificate hearing for the TMEP and found them to be appropriate. The corridor was approved with the subsequent issuance of Certificate OC-064, to which 157 conditions were attached.

In the Board's view, the Modified Alternate Route is consistent with Trans Mountain's routing criteria and reflects Nestlé's input.

While Nestlé has indicated that all of its issues have been resolved related to the List of Issues in this detailed route hearing, it has not withdrawn its statement of opposition. As a result, the Board must make a decision on the best possible detailed route of the TMEP pipeline across Nestlé's lands, and regarding the most appropriate methods and timing of construction.

The detailed route hearing process is aimed at providing landowners with an opportunity to address site-specific concerns pertaining to their lands. As detailed above, Nestlé's site-specific concerns were resolved to their satisfaction. Although the Board is not aware of all of the specific details and commitments that led to this resolution, it places significant weight on the fact that Nestlé's concerns have been resolved.

Having considered all of the evidence filed on the record by Nestlé and Trans Mountain, the representations made at the oral hearing, and the matters described above, the Board finds that

Trans Mountain's Modified Alternate Route, as filed on 1 May 2018, is the best possible detailed route across Nestlé's lands. The Board is also satisfied with Trans Mountain's proposed methods and timing of construction.

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

At the oral hearing, the Parties requested that the Board issue a decision approving the PPBoR for the Modified Alternate Route, as filed by Trans Mountain on 1 May 2018.

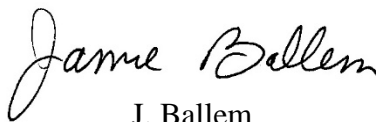
The Board notes that no statements of opposition were filed by adjacent landowners in response to the service and notification of the originally proposed detailed route.³ The Board also notes that Mr. Bacon's Applications to Participate did not raise concerns specific to Nestlé's lands. The Modified Alternate Route was proposed to address Nestlé's concerns and is to the Parties' mutual satisfaction. Further, it is a minor alteration that remains entirely on Nestlé's lands and within the approved corridor. In the specific circumstances of this case, the Board is of the view that it is appropriate to exercise its discretion to accept Trans Mountain's revised PPBoR for the Modified Alternate Route. The Board will approve the revised PPBoR at a later date by way of a future Board order.



L. Mercier
Presiding Member



S. Parrish
Member



J. Ballem
Member

³ Westcoast Energy Inc., carrying on business as Spectra Energy Transmission, filed a statement of opposition and was granted Detailed Route Hearing MH-010-2018 in relation to Tract 1962 on the same PPBoR sheet; however, it subsequently withdrew its statement of opposition.