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## LETTER DECISION

File OF-Fac-Oil-T260-2013-03 63  
28 January 2021

Mr. Robin Scory  
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Dear Mr. Scory, Mr. Stoness, and Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project (TMEP)  
Certificate of Public Convenience and Necessity (Certificate) OC-065  
Detailed Route Hearing MH-031-2020 – Robin Scory  
Decision of the Commission of the Canada Energy Regulator (Commission)**

### 1 Background

On 16 December 2013, Trans Mountain filed an application with the National Energy Board (NEB) under section 52 of the *National Energy Board Act*<sup>1</sup> (NEB Act) for a Certificate authorizing the construction and operation of the TMEP.

The TMEP includes twinning the existing 1,147-kilometre-long Trans Mountain Pipeline (TMPL) system in Alberta and British Columbia with approximately 981 kilometres of new buried pipeline; new and modified facilities, such as pump stations and additional tanker loading facilities at the Westridge Marine Terminal in Burnaby; and reactivating 193 kilometres of the existing pipeline between Edmonton and Burnaby. Trans Mountain requested approval of a 150-metre-wide corridor for the TMEP pipeline's general route.

Upon receipt of the application, the NEB commenced a public Certificate hearing process. Following this Certificate hearing, on 19 May 2016, the NEB issued its OH-001-2014 Report ([A77045](#)) recommending that the Governor in Council (GIC) approve the TMEP and its general pipeline corridor.

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<sup>1</sup> R.S.C., 1985, c. N-7 (repealed).

The TMEP was approved by Order in Council (OIC) P.C. 2016-1069 in November 2016. The NEB issued Certificate OC-064 and began work on various regulatory processes, including the 2017/18 detailed route approval process.

On 30 August 2018, the Federal Court of Appeal (FCA) issued its decision in *Tsleil-Waututh Nation v. Canada (Attorney General)*<sup>2</sup> [FCA Decision], setting aside OIC P.C. 2016-1069 and remitting the matter back to the GIC for appropriate action. Following the FCA Decision, the NEB reconsidered the matter of TMEP-related marine shipping and the Government of Canada reinitiated consultations with Indigenous<sup>3</sup> peoples.

Following a second public hearing process, the NEB issued its MH-052-2018 Reconsideration Report ([A98021](#)) in February 2019. Canada's Crown Consultation and Accommodation Report ([C00219-5](#)) was issued in June 2019. The GIC approved the TMEP again in June 2019 via OIC P.C. 2019-820 ([C00219](#)) and the NEB subsequently issued Certificate OC-065 ([C00061](#)).

On 19 July 2019, following a public comment process, the NEB set out how it would resume the TMEP detailed route approval process ([C00593](#)). The NEB directed Trans Mountain to file its Plan, Profile, and Book of Reference (PPBoR) for the entire TMEP route. Trans Mountain served landowners along the length of the TMEP with a notice that the detailed route approval process was underway, and placed notices in local publications. The notices indicated that landowners and Indigenous peoples with a continued or new objection to the proposed detailed route, or to the methods or timing of construction, were required to file a Statement of Opposition (SOO).

Landowners and Indigenous peoples whose 2017/18 detailed route hearings were put on hold following the FCA Decision were required to file a new SOO to continue with their detailed route hearings. Landowners and Indigenous peoples seeking a new detailed route hearing (i.e., those that did **not** have a 2017/18 detailed route hearing underway at the time of the FCA Decision) were required to file SOOs that demonstrated a material change in circumstances. Only SOOs that were filed on time, made in good faith, not withdrawn, and not frivolous or vexatious were accepted.

On 28 August 2019, the *Canadian Energy Regulator Act*<sup>4</sup> (CER Act) came into force, repealing the NEB Act. As a result, the Commission is considering approval of the PPBoR under the provisions of the CER Act.

## **2 Process changes due to the COVID-19 pandemic**

The detailed route hearing processes began prior to the COVID-19 pandemic and initially contemplated an oral cross-examination portion, as well as optional site visits by the Commission to the lands subject to each hearing. After the pandemic struck, the Commission issued a Procedural Direction on 21 April 2020 ([C05817](#)) for in-progress detailed route hearings, modifying its processes to exclude steps that involved in-person contact. Oral cross-examination was replaced with rounds of written questions (called information requests or IRs) and answers, and site visits were replaced with the opportunity for parties to file photographs or videos with their written evidence.

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<sup>2</sup> 2018 FCA 153.

<sup>3</sup> The use of the term "Indigenous" has the meaning assigned by the definition of "aboriginal peoples of Canada" in subsection 35(2) of the *Constitution Act, 1982* which states:

In this Act, "aboriginal Peoples of Canada" includes the Indian, Inuit, and Métis Peoples of Canada.

<sup>4</sup> S.C. 2019, c. 28, s. 10.

As explained in the Procedural Direction, the process changes were aimed at finding alternative ways to ensure that the detailed route hearings could continue in a manner that is fair and transparent, while protecting the health of those involved.

The process set out in the MH-031-2020 Hearing Order ([C06932](#)) reflected and continued this approach.

### **3 Detailed Route Hearing MH-031-2020**

Mr. Robin Scory is the registered owner of lands noted as Tract 2648 in Segment 6.8 on PPBoR Sheet M002-PM03021-001 ([C00974-9](#)).

In 2017, Mr. Scory did not file a SOO during the TMEP detailed route approval process. In 2020, Mr. Scory filed a SOO ([C06346](#)) and was granted a new detailed route hearing (MH-031-2020).

As described in **Section 1**, the Commission's decision on resuming the TMEP detailed route approval process ([C00593](#)) set out that those seeking a new detailed route hearing were required to file SOOs that demonstrated a material change in circumstances related to the route location or the methods or timing of construction. This requirement helped the Commission determine whether to grant new detailed route hearings in 2019/20 and, if so, the issue(s) regarding which each SOO Filer could make submissions.

In the Hearing Order, the Commission determined that Mr. Scory established a material change in circumstances with respect to the methods of construction. Mr. Scory did not establish a material change in circumstances with respect to the route location or the timing of construction proposed by Trans Mountain.

In light of the foregoing, the one issue to be decided in this detailed route hearing is:

- Are Trans Mountain's proposed methods of constructing the TMEP pipeline the most appropriate? (see **Section 5**)

Trans Mountain bears the onus to prove its case with respect to this issue on a balance of probabilities.

Since commencing this detailed route hearing, the parties filed a number of documents, which may be viewed in the online hearing folder ([MH-031-2020](#)). The Commission has considered all of the materials filed in relation to the in-scope issue.

On 4 December 2020, the Commission heard argument from Trans Mountain and Mr. Scory by videoconference, for which a written transcript was produced ([C10187](#), with corrections at [C10338](#)).

#### **3.1 Notice of detailed route approval process to Indigenous communities**

On 23 August 2019, the NEB notified by letter 70 Indigenous communities,<sup>5</sup> whose rights and interests could be potentially affected by the TMEP detailed route approval process in Segments 6 and 7, of the detailed route approval process ([C01164](#), [C01167](#)).

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<sup>5</sup> In referring to Indigenous communities, the Commission is using this term to describe the individual First Nations, treaty associations, tribal councils, local and provincial Métis associations, and Métis settlement governing bodies that were identified as being potentially impacted by the TMEP.

All notices advised that interested Indigenous communities could file a SOO in relation to the proposed detailed route, the methods of construction, and/or the timing of construction; indicated the timeline for doing so; and described how to obtain further information or assistance.

On 23 September 2019, the Canada Energy Regulator (CER) received a SOO from the S'ólh Téméxw Stewardship Alliance (STSA) [\[C01778\]](#), opposing the proposed detailed route and the methods and timing of construction throughout Segments 6 and 7 lands. No other notified Indigenous community filed a SOO regarding the proposed detailed route for these segments. On 29 November 2019, the Commission issued SOO Decision No. 4 related to Segments 5, 6, and 7 [\(C03323\)](#), which granted a three-phased detailed route hearing process to STSA.

On 1 May 2020, the Commission received a letter from the STSA [\(C06175\)](#) in which it requested leave to substitute Semá:th First Nation (Semá:th) in the place of the STSA for the purposes of representing their own interests in the SOO filed by the STSA for Segments 5, 6, and 7. With the exception of Semá:th, all signatory STSA member communities had withdrawn their signatures from the SOO.

On 29 May 2020, the Commission issued a decision that revised the three phases of the Semá:th hearing [\(C06552\)](#). The decision concluded that Semá:th's opposition no longer pertained to certain lands, including lands that were later set down for examination in Detailed Route Hearing MH-031-2020. The Commission provided its reasons for this decision on 12 June 2020 [\(C06814\)](#).

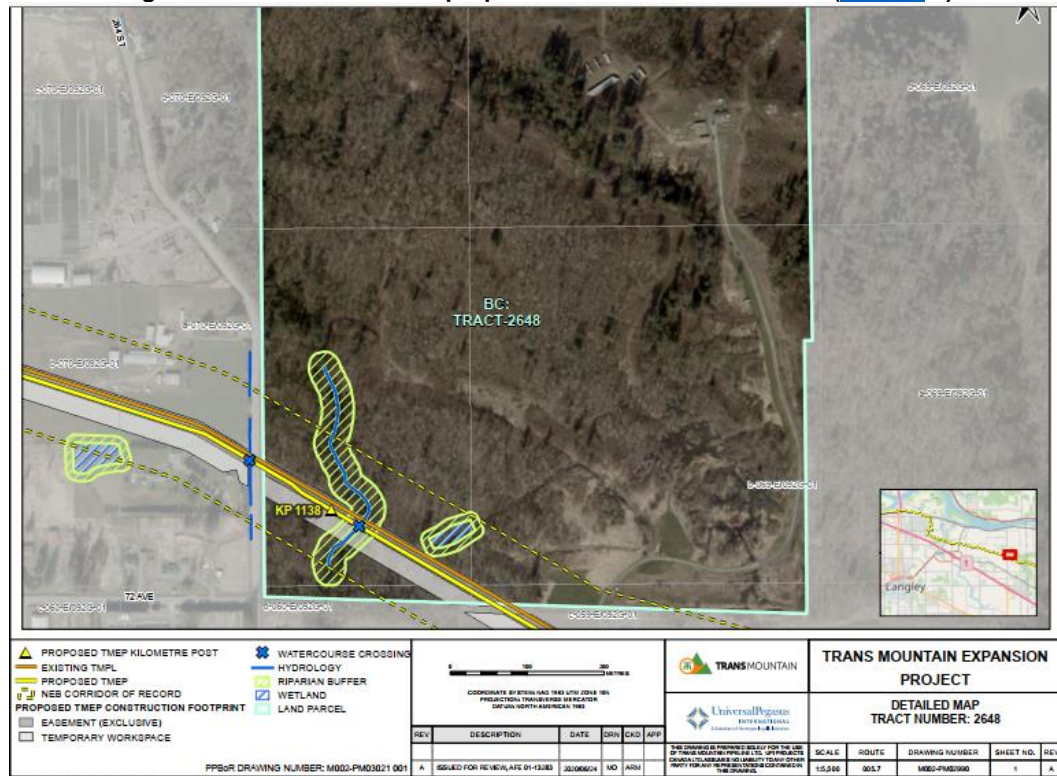
The Commission is of the view that there has been appropriate notification provided to Indigenous communities regarding the TMEP detailed route approval process and that they have been provided the opportunity to participate in the detailed route process for Segments 6 and 7.

#### **4 Overview of the proposed TMEP pipeline on the subject lands**

The geographic scope of Detailed Route Hearing MH-031-2020 is limited to Tract 2648, as described in **Section 3**, and is referred to in this Decision as the "Lands."

Figure 1 below shows Trans Mountain's proposed route across the Lands.

Figure 1 – Trans Mountain’s proposed route across the Lands (C07134-1)



## 5 Are Trans Mountain’s proposed methods of construction the most appropriate?

Trans Mountain proposes to construct the TMEP pipeline on the Lands with a conventional open-trench construction methodology. The proposed method of construction for Turkey Brook Creek (identified in Trans Mountain’s Watercourse Crossing Inventory as BC-748) is an isolation with fish salvage and water quality monitoring (if flowing), or open-cut (if dry or frozen to bottom). Trans Mountain proposes a bore as the method of construction for 264<sup>th</sup> Street on the western boundary of the Lands.

For the reasons set out below, the Commission finds that Trans Mountain’s proposed methods of construction are the most appropriate.

### Mr. Scory’s submissions

Mr. Scory’s concerns regarding Trans Mountain’s proposed methods of construction include the following:

#### Effects on stream water quality and quantity, and riparian area

- Installation of the pipeline will affect the quality and quantity of water in Turkey Brook Creek on the Lands and further downstream, which will affect domestic and agricultural water supplies within the riparian area of Nathan Creek. To address this concern, Mr. Scory suggests the following:
  - Conduct a stream assessment of riparian habitat values for fish and wildlife provided by a Qualified Professional and Biologist.

- Complete water tests and algae and biological activity assessments, as well as in-stream and water flow analyses, over a 12-month period.
- Ensure that a Qualified Professional and a Biologist are present for all work inside top-of-bank markers. Remediate riparian areas according to provincial planting criteria, such as the British Columbia *Riparian Areas Regulation*, and federal Fisheries and Oceans Canada standards.

#### Pipeline buoyancy and ability to cross with heavy equipment

- Trans Mountain's proposed installation depth for the pipeline is not enough to prevent it from becoming buoyant in wet areas, which creates a spill hazard due to the flexing of the pipe and would limit Mr. Scory's ability to cross it with farm and other equipment. Mr. Scory also plans to develop the Lands in the future, and the current planned pipe thickness will not allow for crossings with heavy equipment in some locations. To address these concerns, Mr. Scory suggests the following:
  - Use a minimum depth of cover of three metres to allow for topsoil, drainage tiles, and crossing by farming vehicles and equipment, as well as future development.
  - Ensure that depth of cover and pipe thickness allow for pipeline crossings to support 200,000 pounds.
  - Use the thickest-walled pipe (14.7 millimetres) across the Lands, and the thickest protective coating on the TMEP.

#### Pipeline crossing under the creek

- Trans Mountain's plan to install the pipeline under the creek will require significant bends in the pipeline because the creek runs through a 30-foot-deep ravine. This will increase the risk of a spill and contamination of the creek and downstream waterbodies, including Nathan Creek and the Fraser River, because more pressure will be needed to pump the product through the pipe and buoyancy issues will increase stress on the pipe. To address this concern, Mr. Scory suggests constructing a permanent, clear-span bridge across the ravine and the creek to support the pipeline, so that the pipe can be straight.

#### Insufficient workspace

- The proposed 24-metre temporary workspace (TWS) is too narrow to store all of the materials removed from the right-of-way (RoW), as well as the materials required for construction, and to safely accommodate construction vehicle travel. To address this concern, Mr. Scory suggests the following:
  - Use the 50-acre area north and south of the RoW as a secure equipment and laydown yard with access via a municipal truck route.
  - Remove sod, grass, and organics offsite. As an alternative, place sod and organic soil at the property line for a five-metre-tall by ten-metre-wide berm.

#### Insufficient security fence

- Trans Mountain's proposal to use temporary security fencing during construction is insufficient to maintain security and prevent public access, vandalism, theft, and terrorism. To address this concern, Mr. Scory suggests installing a permanent, eight-foot-tall, chain-link fence, buried one foot in the ground.



In addition to the concerns noted above, Mr. Scory raises concerns about Trans Mountain's emergency response plans applicable to the Lands in the event of a spill. Specifically, he states his view that the control points are inadequate and that there is no spill response plan specifically for the Lands.

The Commission notes that submissions regarding emergency prevention, preparedness, and response are out of scope for this detailed route hearing. Accordingly, the Commission did not consider these submissions in making its decision about the most appropriate methods of construction on the Lands. However, the Commission provides the following information in relation to these concerns.

During the TMEP Certificate hearings, and as described in its Reconsideration Report ([A98021](#)), the Commission evaluated and approved Trans Mountain's pipeline integrity (Chapter 6) and emergency prevention, preparedness, and response (Chapter 9) proposals. In addition, the NEB imposed Certificate Condition 89 related to pre-construction and site-specific emergency management (other conditions address emergency management more broadly). Certificate Condition 89 requires Trans Mountain to file with the Commission, at least two months prior to commencing construction, a site-specific Emergency Response Plan to be implemented during the construction phase. The plan must include spill contingency measures that Trans Mountain will employ in response to accidental spills attributable to construction activities, 24-hour medical evacuation, fire response, and security.

Mr. Scory also submits that a spill from the TMEP pipeline on the Lands would result in economic impacts. The Commission did not consider this information in its determination on the basis that economic impacts of a possible spill are out of scope for this detailed route hearing, as they are a compensation issue.

Mr. Scory also raises concerns about the existing TMPL pipeline, including requesting that the 24-inch pipeline be replaced with a 36-inch pipeline across the Lands. This issue is out of scope for this detailed route hearing and, therefore, was not considered by the Commission in its decision.

While the Commission appreciates the background and overview of the Lands provided by Mr. Scory, the Commission notes that many of the issues he raises as concerns are subject to requirements contained in the *Canadian Energy Regulator Onshore Pipeline Regulations* (OPR), the *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations*, Canadian Standards Association (CSA) standards, Certificate OC-065 conditions, and Trans Mountain's commitments.

### ***Trans Mountain's submissions***

Trans Mountain's submissions regarding Mr. Scory's concerns include the following:

#### **Effects to stream water quality and quantity, and riparian area**

- Trans Mountain has developed a Water Quality Monitoring Plan as a component of the overall Pipeline Environmental Protection Plan (EPP) for the TMEP and will implement mitigation measures to protect water quality and quantity at watercourse crossings. Mitigation measures include, for example, reducing disturbance to streambanks and riparian areas, minimizing vegetation removal, and implementing applicable measures from the Fish Species of Concern Contingency Plan in the EPP. Trans Mountain will also follow the Reclamation Management Plan and the Riparian Habitat Management Plan.

- Trans Mountain will follow all applicable provincial and federal permit requirements for watercourses, including any conditions related to reclamation and planting criteria, and has completed the required watercourse crossing assessments for Turkey Brook Creek. Post-construction environmental monitoring of watercourse crossings will be conducted in accordance with Certificate Condition 151. No further studies are warranted and it is unnecessary to appoint a Qualified Professional and a Biologist.

Pipeline buoyancy and ability to cross with heavy equipment

- The proposed depth of cover of 1.2 metres was determined based on an engineering analysis and the specifications of CSA Z662.
- Regarding Mr. Scory's buoyancy concern, Trans Mountain is aware of the wet ground conditions on the Lands. High water tables do not ordinarily require any specialized techniques for design. Buoyancy control measures are typically reserved for swamps and wetlands. In-line inspection tools will be run through the TMEP pipeline segments at regular intervals, which can detect pipe movement and highlight any buoyancy issues. As an additional precautionary measure, a fibre-optic cable will be installed alongside the pipeline to allow for monitoring of ground movement and seismic disturbances, and lead to more timely assessments of any potential pipeline movement. If required, Trans Mountain will conduct further onsite investigation and, if site conditions warrant and it becomes necessary, additional buoyancy control measures may be implemented, such as geotextile bag weights or screw anchors.
- Regarding Mr. Scory's request that the pipeline allow for crossings to support 200,000 pounds, Trans Mountain notes that the majority of the pipe on the Lands is 14.7-millimetre heavy-wall pipe. Trans Mountain has provided two locations with 14.7-millimetre heavy-wall pipe to accommodate road allowances to the west and south of the Lands. Further road crossing crossings are unnecessary for the Lands. Mr. Scory may require Trans Mountain's approval before conducting crossings of the TMEP. These requirements are described in the *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations*. Trans Mountain works to ensure that landowners, if they have to cross the pipeline or do excavations greater than 30 centimetres, have a way to contact Trans Mountain through the One Call process, or directly to its 24/7 contact numbers.
- With respect to Mr. Scory's requests that the pipeline have a minimum cover of three metres in anticipation of future development, Mr. Scory has not provided any details of these plans. In Trans Mountain's view, the proposed 1.2-metre depth of cover meets or exceeds the relevant industry standards applicable to the Lands, including CSA Z662.
- Trans Mountain's proposed pipe wall thickness meets or exceeds the relevant industry standards applicable to the Lands, including CSA Z662. The majority of the pipe on the Lands is 14.7-millimetre heavy-wall pipe, and approximately 35 per cent is 11.8-millimetre line pipe. The road allowance is set as heavy-wall pipe in the southeast part of the Lands (roughly 6.7 metres), then switches to 11.8-millimetre line pipe for 123 metres. Following this, there are 144 metres of heavy-wall pipe for the water crossing, 68 metres of heavy-wall pipe for the two small field bends, then the last few metres are heavy-wall pipe for the road crossing to the west side (5.8 metres).
- Trans Mountain's external pipeline coating will be factory-applied in accordance with CSA Z245.20. The pipeline segments will be delivered to site pre-coated.



The coating is designed to match the pipe thickness and to satisfy pipeline specifications and industry standards.

#### Pipeline crossing under the creek

- Trans Mountain plans to grade out the banks on either side of the ravine for the watercourse crossing on the Lands, which will result in a smooth profile that will enhance constructability. Following this grading, the pipe will be installed to slope gradually, and no 45-degree bend will be required.
- Details on watercourses to be crossed by the TMEP, including specific information on the location and construction methodology, are included in the Watercourse Crossing Inventory.

#### Insufficient workspace

- The proposed 25-metre TWS on the Lands is sufficient. Additional TWS is unnecessary and would result in additional cost and impacts.
- Trans Mountain does not intend to store a large quantity of timber on the Lands. All merchantable timber will be hauled to mills for processing and no storage will be required. All non-merchantable timber and woody debris will be mulched in place or taken offsite to a centralized storage yard for future processing.
- Regarding Mr. Scory's assertion that there will only be one-way access due to the steep ravine and soft soil, Trans Mountain's view is that there is sufficient space for the safe operation of construction equipment. TMEP construction on the Lands will occur based on the conventional footprint. In Trans Mountain's view, based on the proposed 1.2-metre depth of cover and removal of the majority of timber as planned, there is sufficient space for all spoil materials, working equipment, and a travel lane. The conventional footprint provides more room for TMEP construction equipment than other typical construction footprints. Trans Mountain does not typically use two-way travel lanes, nor are these lanes necessary for the safe construction of the TMEP on the Lands.

#### Insufficient security fence

- Trans Mountain has developed a Security Plan to support execution of the TMEP. All construction activities will be in accordance with the requirements of the Security Plan. Temporary fencing may be employed along the RoW or at trenchless crossing excavations, at the discretion of Trans Mountain's security team, based on project threat levels.

### **5.1 The Commission: Trans Mountain's proposed methods of construction are the most appropriate**

For the reasons discussed below, the Commission finds that Trans Mountain's proposed methods of constructing the TMEP across the Lands are the most appropriate.

With respect to the specific matters discussed above and raised by Mr. Scory, the Commission finds the following:

Effects to stream water quality and quantity, and riparian area

Mr. Scory contends that installation of the TMEP on the Lands will affect the quality and quantity of water in Turkey Brook Creek and further downstream, and affect domestic and agricultural water supplies. Mr. Scory requests that Trans Mountain conduct additional stream assessments, water quality testing, and flow analysis. In response to this concern, Trans Mountain submitted that it has completed watercourse crossing assessments for Turkey Brook Creek and will follow the mitigation and reclamation measures contained in its various plans, and comply with all permit requirements for watercourses.

The Commission is of the view that additional stream assessments, water quality testing, and flow analyses are not warranted, as these matters are addressed in Trans Mountain's Watercourse Crossing Inventory (updates are filed in accordance with Certificate Condition 43) and Water Quality Monitoring Plan, which is a component of the overall Pipeline Environmental Protection Plan for the TMEP. The Commission is satisfied that Trans Mountain's submissions adequately respond to the concerns raised by Mr. Scory.

Pipeline buoyancy and ability to cross with heavy equipment

Mr. Scory submits that the TMEP should be installed at a depth of 3 metres, rather than the proposed 1.2 metres, in order to prevent buoyancy and reduce flexing of the pipe, and to accommodate crossings with heavy equipment and future development. For the same reasons, Mr. Scory also suggests that Trans Mountain use its thickest-walled pipe and thickest protective coating for the entire length of the Lands.

The Commission is satisfied that Trans Mountain's proposed depth of cover, as well as the thickness of the pipe and coating, meet required industry standards. The Commission is also satisfied that Trans Mountain's plans to monitor for buoyancy using in-line inspection tools and a fibre-optic cable, and to conduct further onsite investigation as needed, are sufficient in this case. The Commission gives significant weight to Trans Mountain's commitment to implement additional buoyancy measures should they be required on the Lands in future.

To address his concern about crossing the pipeline with heavy equipment, Mr. Scory suggests that Trans Mountain increase the depth of cover and use thicker-walled pipe. The Commission is of the view that these measures are not necessary to accommodate crossings of the pipeline with heavy equipment on the Lands. The Commission notes that the weight of equipment to cross a pipeline is only one factor in crossing design; another factor is the distribution of the weight.

Increasing the pipe's depth of cover and its wall thickness would not remove Mr. Scory's requirement to comply with the applicable provisions of the CER Act and the *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations* for pipeline crossings. The Commission notes that the same regulations require Trans Mountain to work with landowners to accommodate safe pipeline crossings. The Commission encourages the parties to maintain their ongoing engagement to ensure that Mr. Scory is able to cross the pipeline with his equipment.

With respect to Mr. Scory's plans for future development of the Lands, the Commission notes that Mr. Scory did not provide any details about the scope or timing of such development. The Commission is of the view that Trans Mountain can work with Mr. Scory, as needed, to accommodate future development. Based on the evidence, the Commission is not satisfied that the potential for future development justifies deeper cover for the pipeline or the use of thicker-walled pipe or thicker pipe coating.

In the Commission's view, Trans Mountain's proposed depth of cover for the pipeline and its proposed pipe wall thickness and coating are appropriate for the Lands.

#### Pipeline crossing under the creek

Mr. Scory submitted that installation of the pipeline under Turkey Brook Creek would require significant bends in the pipeline because the creek runs through a 30-foot-deep ravine. In Mr. Scory's view, these bends would increase the risk of a spill and contamination of the creek and downstream waterbodies because more pressure would be needed to pump the product through the pipe, and buoyancy issues would increase stress on the pipe. Mr. Scory suggests that Trans Mountain instead construct a permanent bridge across the ravine and suspend the pipeline from the underside of the bridge. Mr. Scory states that this would allow the pipeline to be installed in a straight line, which, in his view, is safer.

During argument, Mr. Scory used a piece of wire as a prop to demonstrate his concerns. The Commission appreciated Mr. Scory's resourcefulness and found the visual demonstration helpful to explain the nuances of his concerns.

The Commission is satisfied by Trans Mountain's explanation that it plans to grade out the banks on either side of the ravine, such that there will be no significant bends in the pipeline where it crosses under Turkey Brook Creek. Instead, the pipeline will be installed in a smooth profile with a gradual slope. In the Commission's view, this adequately responds to the concerns raised by Mr. Scory.

#### Insufficient workspace

Mr. Scory submits that the proposed 24-metre Temporary Workspace (TWS) is too narrow to store all of the materials required for construction and materials removed from the RoW, and also to safely accommodate construction vehicle travel. In response, Trans Mountain submits that the proposed TWS is sufficient because Trans Mountain does not intend to store a large quantity of timber on the Lands. Further, Trans Mountain indicates that it has accounted for soil storage based on the depth of soil to be removed from the RoW to install the pipeline, as well as space for working equipment and a travel lane.

The Commission finds Trans Mountain's justification for the size of the TWS to be satisfactory. The Commission accepts that Trans Mountain has properly assessed the space needed for the TWS based on its extensive experience with pipeline construction and RoW management. As a result, the Commission is of the view that the TWS proposed by Trans Mountain is appropriate.

#### Insufficient security fence

Mr. Scory submits that Trans Mountain's proposal to use temporary security fencing during construction is insufficient to maintain security and prevent public access, vandalism, theft, and terrorism. He suggests installing a permanent, eight-foot-tall, chain-link fence, buried one foot in the ground. In response, Trans Mountain submits that it has developed a Security Plan to support execution of the TMEP, and that all construction activities will be in accordance with the requirements of the Security Plan. Trans Mountain states that temporary fencing may be employed along the RoW or at trenchless crossing excavations, at the discretion of Trans Mountain's security team, based on project threat levels.

The Commission accepts that Trans Mountain has developed a Security Plan to support the execution of the TMEP, in accordance with Certificate Condition 63. The Commission also notes that Trans Mountain's Access Management Plan, which it developed in accordance

with Certificate Condition 47, requires Trans Mountain to monitor site access and security, and implement adaptive management measures as required. The Commission is of the view that these plans adequately address security for the Lands during construction and that Trans Mountain's intention to use a temporary fence is appropriate. However, the Commission expects Trans Mountain to continuously monitor and adapt its security measures throughout construction, in accordance with its Security Plan and its Access Management Plan.

## **6 Conclusion**

The Commission appreciates the time and effort of Mr. Scory in providing his presentation of evidence and argument in this detailed route hearing. In particular, the Commission notes Mr. Scory's in-depth knowledge of the Lands.

Having decided that Trans Mountain's proposed methods of construction are the most appropriate, and having determined that it is unnecessary to make a finding as to whether the proposed route is the best possible route and the proposed timing of construction is the most appropriate (see **Sections 1 and 3** above), the Commission may approve the PPBoR for the Lands.

Any future Order approving the PPBoR for the Lands will include conditions requiring Trans Mountain to list and fulfill the commitments it made in the course of this detailed route hearing, to file updated environmental and construction alignment sheets, and to maintain a copy of the Order and condition filings at its construction office(s).

The Commission reminds Trans Mountain that the relevant conditions of approval in Certificate OC-065 apply to the construction and operation of the TMEP pipeline on the Lands.

The Commission is pleased that both Mr. Scory and Trans Mountain have expressed a willingness to continue their discussions regarding the construction the TMEP on the Lands. The Commission encourages the parties to continue to meaningfully engage.

The Commission also reminds the parties that, under Part 6 of the CER Act, parties may apply to the Commission to determine compensation disputes in relation to land matters. The CER's [Guidance on Land Related Compensation Disputes](#) provides further information about when compensation may be available. If the parties are unable to resolve a compensation dispute through their own negotiation efforts, the CER can support the resolution of the dispute in two ways: through ADR or adjudication (hearing and decision) by the Commission. Interested parties may contact [ADR-MRD@cer-rec.gc.ca](mailto:ADR-MRD@cer-rec.gc.ca) to request ADR services or file an [application](#) to the Commission to commence either or both of these compensation dispute proceedings.

Yours sincerely,

*Signed by*

Jean-Denis Charlebois  
Secretary of the Commission

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