



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

Mr. Scott Stoness  
Vice-President, Regulatory and Finance  
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Dear Mr. Stoness:

**Trans Mountain Pipeline ULC (Trans Mountain)  
Trans Mountain Expansion Project (Project)  
Request for relief to commence construction of the Burnaby Mountain Tunnel Portal site  
located in the Westridge Marine Terminal**

On 25 January 2018, Trans Mountain filed a request ([A89558](#)) for the National Energy Board (Board or NEB) to allow Trans Mountain to commence construction activities on the Burnaby Tunnel Portal site located entirely within the Westridge Marine Terminal (WMT). Trans Mountain requested the Board render its decision no later than 15 February 2018.

In its letter, Trans Mountain requested the Board acknowledge that:

1. the Burnaby Tunnel conditions applicable to the Westridge Tunnel Portal (WTP) site have been approved or met; and
2. the NEB confirm the lack of applicability, pursuant to Condition 1, of certain conditions relevant to the Burnaby Tunnel (Phase 39 of the Project) to allow for the development of the WTP site to proceed.

On 5 February 2018, Trans Mountain filed, for Board approval, Environmental Alignment Sheets (EAS) and Resource-Specific Mitigation Tables (RSMTs) for Westridge Delivery Pipelines. In addition, Trans Mountain confirmed that it undertook a comprehensive quality review of the EAS and RSMTs. On 9 February 2018, Trans Mountain filed supplemental information including updated EAS, RSMTs and a Westridge Marine Terminal Portal - Tree Clearing Plan.

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## ***Views of Trans Mountain***

In its request, Trans Mountain stated that the planned scope of work for the WTP site includes site preparation work such as tree clearing and grading, as well as the installation of a retaining wall for the purpose of facilitating the construction of the WTP. The site preparation work would be followed by the assembly of the tunnel boring machine (TBM), the commencement and completion of tunneling, followed by the demobilization of the TBM and the dismantling of the site to allow for the installation of the Westridge Delivery Pipelines.

Trans Mountain identified the WTP site as a priority for the Project and indicated that approval by 15 February 2018 would allow sufficient time for the WTP site clearing activities, estimated to take four to six weeks, to be completed prior to the migratory bird restrictions which come into effect on 26 March 2018. Trans Mountain indicated that if it was unable to complete clearing activities for the WTP site prior to that date, the development of the WTP site could be delayed until after the close of the window in August 2018. Due to the sequencing of activities for the entire Burnaby Tunnel Phase, a commencement of tree clearing after the end of the migratory bird restriction could result in further delays for Phase 39.

Trans Mountain submitted that it had completed an assessment of conditions applicable to the scope of work for the WTP site and, in its view, has complied with the conditions relevant to the commencement of construction of the WTP site. Trans Mountain indicated that the construction techniques applicable to the WTP site are distinct and separate from the Burnaby Tunnel construction, and therefore, in Trans Mountain's view, the tunnel design, geohazard and risk mitigation conditions that inform tunnel design and construction are not applicable to the Tunnel Portal work.

## ***Views of the Board***

### **Decision on Request**

The Board has considered Trans Mountain's request in the context of the scope of work described by Trans Mountain for the WTP site in its 25 January 2018 submission, namely site preparation work, such as tree clearing and grading, and the installation of a retaining wall for the purpose of facilitating construction of the WTP site. The Board notes that the Westridge Marine Terminal - Tree Clearing Plan, submitted on 9 February 2018, does not align with the Westridge Site Area Portal Excavation and Shoring Plan included in Trans Mountain's 25 January 2018 request. To be clear, the Board is approving the work to be completed in the area identified as "Limits for Contractor's Worksite" on the Westridge Site Area Portal Excavation and Shoring Plan as included in Trans Mountain's 25 January 2018 submission.

Trans Mountain must comply with applicable conditions of the Certificate, some of which have a requirement to be approved prior to the commencement of construction, unless otherwise directed by the Board. Clearing of trees at the WTP site is considered to be the commencement of construction of Phase 39. The Board has considered Trans Mountain's submission in terms of clarifying whether these requirements have been satisfied, and if the requested relief can be granted in accordance with Condition 1 of the Certificate.

The Board has examined Trans Mountain's request and is of the view that the WTP scope of work set out by Trans Mountain is reasonable, given the importance of the approaching migratory bird timing window restrictions set out by Environment and Climate Change Canada.

Therefore, the Board grants Trans Mountain relief pursuant to Condition 1 of the Certificate from the applicable pre-construction conditions for the WTP scope of work. The Board does find that information and associated mitigation measures found in the filings for Conditions 26 b)ii), 29, 51, 69, and 72 are relevant to the scope of work for the WTP site. Therefore, Trans Mountain is directed to implement the measures specific to the WTP site scope of work, as set out in those condition filings.

The Board notes that the relief granted in this decision is specific to the scope of work for the WTP site. The Board reminds Trans Mountain that it must still satisfy all applicable pre-construction conditions before construction can commence along any other portion of the pipeline route, unless relief is granted.

#### Other Matters

The Board reminds Trans Mountain that any work beyond that set out in its request for any remaining portions of Phase 39, or for additional construction activities such as the assembly of the TBM, will require further Board approvals or relief, where necessary.

The Board would like to clarify information regarding the Phases and work at or for the WMT. Under Condition 10, Trans Mountain assigned Phase numbers to various components of the Project, with the WMT identified as Phase 1, while the Burnaby Tunnel was identified as Phase 39. In Table 1 of its request, Trans Mountain outlined the status of conditions with respect to both Phase 1 and Phase 39. The Board is of the view that although the WTP site is located within the WMT, the WTP site is considered to be part of Phase 39, not Phase 1. Therefore the status of conditions relating to Phase 1, as set out in Table 1 of the 25 January 2018 submission do not apply with respect to Trans Mountain's current request.

Trans Mountain asserted that the Board issued Order MO-057-2017 allowing Trans Mountain to proceed with tree clearing and other works at the WMT. The Board reminds Trans Mountain that Board Order MO-057-2017 ([A88474](#)) granted Trans Mountain relief only from the City of Burnaby's requirement to obtain Preliminary Plan Approvals under section 7.3 of the Zoning Bylaw and Tree Cutting permits under section 3 of the Tree Bylaw for the Terminal work. Trans Mountain is reminded to comply with all other applicable permits, authorizations and conditions.

Trans Mountain emphasizes the importance of a timely decision with respect to the detailed route hearing on the Segment 7 and requested an expedited decision on the Burnaby Tunnel portion. The Board notes that decisions on such matters were issued on 15 February 2018 ([A90020](#), [A90021](#), [A90022](#)).

Public safety and the protection of the environment is of paramount importance to the NEB. The Board will hold Trans Mountain accountable for its performance through the entire lifecycle of the Project. Should the Board chose to conduct compliance verification activities related to the WTP site, the results will be made publicly available on the NEB's [Compliance and Enforcement webpage](#). For compliance verification purposes, Trans Mountain is directed to inform the Board of the start date of the approved work, prior to the commencement of construction at the WTP site.

Yours truly,

*Original signed by L. George for*

Sheri Young

Secretary of the Board