

THE OPEN HOUSE

Your Window to REBGV Government Relations

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Bill C-38 – What does it mean for property owners along pipelines?

Bill C-38, the *Jobs, Growth and Long-term Prosperity Act* was passed by the federal government on June 29, 2012.

Among its many provisions, it makes significant changes to legislation including the *Canadian Environmental Assessment Act*, the *National Energy Board Act*, and the *Species at Risk Act*.

These changes affect the operation of the National Energy Board (NEB), which has potentially serious implications for property owners along pipelines.

This includes the 2,200 property owners along the Trans Mountain Pipeline, owned by Kinder Morgan, which runs from the Alberta tar sands and passes through Lower Mainland communities including Hope, Chilliwack, Abbotsford, Surrey, Langley, Coquitlam and Burnaby. The original pipeline was completed in 1953.

Kinder Morgan, a Texas-based company, is planning a \$5 billion expansion to twin the Trans Mountain Pipeline. For further information on this proposed expansion, see the August 24, 2012 issue of *The Open House*.

Canadian Environmental Assessment Act

The new Act, which replaces the previous Act of the same name, establishes a new federal environmental regime. Assessments are conducted in relation to projects, designated by regulations or the federal Minister of the Environment to determine whether they will cause significant adverse environmental effects.

This means environmental assessments are no longer automatically required for projects proposed or regulated by the federal government – including pipeline projects – except where the Minister of Environment designates a project for assessment.

The new legislation downloads responsibilities to provincial governments. For example, for designated projects, the new legislation calls for provincial assessments instead of federal assessments.

National Energy Board Act

Previously if the NEB, an independent quasi-judicial panel, recommended granting a Certificate of Public Convenience and Necessity (CPCN) to allow, for example, a pipeline project to go

ahead, the federal Cabinet could overrule the decision. However, if the NEB did not recommend granting a CPCN, Cabinet could not approve it.

Now, under a new process, the NEB must present a report to the federal Cabinet specifying whether it recommends issuing or denying a CPCN. Cabinet – politicians – can direct the NEB to require the proponent of the designated project to collect any information or undertake studies necessary for Cabinet to make decisions.

Cabinet will make the decision whether to approve or deny the CPCN and will outline the specific terms and conditions. In turn, the NEB will provide this information to the applicant.

For example, if the NEB denied granting a CPCN for the proposed expansion of Kinder Morgan's Trans Mountain Pipeline, Cabinet could overrule this decision and approve the expansion, even where an environmental assessment identifies significant adverse impacts to habitat and the environment.

The NEB is now exempt from having to abide by species at risk protections and will no longer be required to make sure pipelines and other major infrastructure minimize risk to vital habitat.

The chair of the NEB has new powers to speed up pipeline applications, unilaterally or with the other NEB members. The NEB must limit to 15 months the review of pipeline projects, including any environmental assessment, and the preparation of recommendations. Cabinet will have a further three months to make its decision.

Previously a range of interested parties could make submissions to the NEB or review panels during consultation periods. Now only those “directly affected” or with information or expertise will be consulted or permitted to appear at review panel hearings.

This could potentially mean that should it express an interest in doing so, the Real Estate Board might not be permitted to



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make a submission concerning the property rights of home owners along the proposed expansion of the Trans Mountain Pipeline in the Lower Mainland, as the Board might not be considered as being “directly affected”.

What is the National Energy Board (NEB)?

The NEB is an independent federal agency established in 1959 by the Parliament of Canada. The nine-member NEB is appointed by the Governor in Council for a seven-year renewable term and is accountable to Parliament through the Minister of Natural Resources Canada.

The NEB regulates pipelines, energy development and trade in the Canadian public interest.

The Board also:

- provides energy advice to the Minister of Natural Resources;
- carries out studies and prepares reports when requested by the Minister;
- holds public inquiries; and

- monitors current and future supplies of Canada’s major energy commodities.

The NEB has responsibilities under the *National Energy Board Act (NEB Act)*, the *Canada Oil and Gas Operations Act*, the *Canadian Environmental Assessment Act*, the *Northern Pipeline Act*, and certain provisions of the *Canada Petroleum Resources Act*. As a result of the *Canada Transportation Act*, the NEB’s jurisdiction includes pipelines that transport commodities other than oil or natural gas.

The NEB deals with about 750 applications annually. For major applications, the NEB holds public hearings where applicants and interested parties can participate. These hearings can be written or oral proceedings and are held at locations across Canada where there is a particular interest in the application and which will be most affected by the NEB’s decision.

The NEB operates as a court of record, similar to a civil court. Its powers include the swearing in and examination of witnesses and the taking of evidence.

Public Consultation

Kinder Morgan has developed a discussion guide on the expansion and an online survey. Please read the guide then provide your feedback in the survey. Both are available here: <http://talk.transmountain.com/bc-lowermainland>

Kinder Morgan is also holding a number of Trans Mountain Pipeline public consultation sessions. More information about the sessions including their dates and locations, how to register to attend, and the guidelines for how they will operate are available here: <http://talk.transmountain.com/bc-lowermainland>

The list of dates and times of the consultation sessions, as of November 16, are as follows:

Date	Session
November 6, 2012	Belcarra Info Session - Municipal Hall (4084 Bedwell Bay Road) - 5pm-7pm
November 13, 2012	East Vancouver Info Session - Pacific National Exhibition (PNE), Hastings Room (2901 East Hastings Street) - 5pm-8pm
November 15, 2012	Downtown Vancouver Info Session - Harbour Centre, Segal Hall (515 West Hastings Street) - 5pm-8pm
November 17, 2012	West Point Grey Info Session - Aberthau Mansion (4397 West 2nd Ave) - 5pm-8pm
November 20, 2012	Coquitlam Info Session - Centennial Secondary School, Courtyard (570 Poirier Street) - 5pm-8pm
November 21, 2012	Surrey Info Session - Ellendale Elementary School (14525 110A Avenue) - 5pm-8pm
November 24 - 29, 2012	Burnaby Info Session - Location, Date & Time TBD

Site preparation begins for Tsawwassen First Nation retail developments



Ground preparation, the construction of a temporary road access off of Highway 17, and a temporary traffic light mark the beginning of site preparation for the Tsawwassen First Nation (TFN) retail development.

The majority of the work will take place at night during off-peak hours to minimize traffic disruptions.

The site preparation is being undertaken for TFN’s two retail developments partners, Ivanhoe Cambridge and Property Development Group.

The TFN is developing its 724 hectare (1,800 acre) property on the north side of Highway 17 between the Deltaport Terminal and 52nd Street. There

will be a 175 acre mixed use development. Ivanhoe Cambridge will develop two-thirds of this property or roughly 1.2 million square feet into a project known as Tsawwassen Mills, which will feature major retailers, smaller stores, restaurants, entertainment such as movie theatres and a resort hotel.

The Property Group Development will develop the remaining one-third of the mixed use development into a 600,000 square foot outdoor retail space.

Other development will include an industrial park by Roberts Bank, known as The Tsawwassen Gateway Logistics Centre.