

NO: R016

COUNCIL DATE: **FEBRUARY 3, 2014**

REGULAR COUNCIL

TO: Mayor & Council **DATE: January 29, 2014**

**FROM: Acting General Manager, Engineering
City Solicitor** **FILE: 5500-14**

**SUBJECT: National Energy Board Hearing Process Related to Kinder Morgan's Trans
Mountain Pipeline Expansion Project**

RECOMMENDATIONS

The Engineering Department and the Legal Services Division recommend that Council:

1. Receive this report as information; and
2. Authorize staff to apply to the National Energy Board (NEB) to allow the City of Surrey to participate as an Intervenor at the upcoming Public Hearing process related to Kinder Morgan's Trans Mountain pipeline expansion project.

INTENT

The purpose of this report is to provide an update regarding the proposed expansion of Kinder Morgan (KM)'s Trans Mountain Pipeline and their recent application to the National Energy Board, to discuss the next steps as they pertain to the City's interests, and to seek Council's direction on Surrey's participation in the NEB's Public Hearing process.

BACKGROUND

Kinder Morgan (KM) is planning an expansion of their Trans Mountain Pipeline which involves a twinning of their existing pipeline between Edmonton and Burnaby, which includes a 14-km segment of pipeline through North Surrey.

Regulation of the proposed pipeline falls under federal jurisdiction and is administered by the National Energy Board (NEB). The NEB received a 15,000 page application from KM for their expansion project on December 16, 2013 and this application triggered a regulatory review and a Public Hearing process for the proposed expansion.

On January 17, 2014 the NEB posted the Public Hearing application form for those who wish to apply to be involved in the KM Project Public Hearing process. Applications will be received by NEB and the NEB will then select which applicants are authorized to participate in the Public Hearing process.

Applicants can apply to the NEB for either:

- a) Commenter status – allows the applicant to file letters or comments only via written statements. As a Commenter the NEB is obligated to read and consider all written submissions to the same level of seriousness that an Intervenor would receive. Commenters are not permitted to present in person (orally) at public hearings, unless they are speaking as a general member of the public, nor are they entitled to receive a copy of all documents filed to the NEB.
- b) Intervenor status – this is the most involved level of participation where Intervenor may file written evidence, present in person (orally) at a public hearing, directly receive all documents filed by the company and other Intervenor, comment on evidence provided, and make a final argument. As an Intervenor, the applicant would not be obligated to respond to all documentation nor present orally; however, having Intervenor status would provide the applicant with the most opportunities / mechanisms to express its interests.

Applications to the NEB for either Intervenor or Commenter status will be received up to February 12, 2014. This is a one-time only application process; meaning interested entities who fail to apply to the NEB before February 12, 2014 will not have a second opportunity to apply to be an Intervenor/ Commenter, nor will they be able to participate in the KM Public Hearing unless it is as a member of the general public.

DISCUSSION

The NEB's Public Hearing process is a regulatory review of the proposed expansion with respect to socio, economic and environmental concerns along the entire route from Edmonton to Burnaby. The review process is expected to last 15 months, and it is expected to include a series of public hearings in both Alberta and British Columbia.

The City's interests in the KM project span multiple departments, including Engineering, Planning and Development, Parks, Recreation & Culture, and Fire Services. Particular interests are focused on the pipeline alignment, proximity to populated areas, environmental protection, and emergency response protocols and preparedness.

To date, the City has been active in discussions with KM's project team and these discussions have been beneficial in terms of route critique through Surrey, which is focused on identifying initial permitting and right-of-way requirements. KM's most recent route alignment provided to the City (illustrated on the map attached as Appendix I) shows an alignment that does not follow the existing alignment through residential areas, and instead runs parallel to the South Fraser Perimeter Road (SFPR) along the Fraser River.

Engineering staff recently met with a Surrey property owner regarding information supplied to him by KM. This information indicates a variation in alignment from that provided to the City by KM.

The alignment of the pipeline is of importance to the City, and since it appears that KM is continuing to vary the alignment, it is considered important for the City to participate in the NEB process, either as a Commenter or Intervenor, to ensure the City's interests are expressed and incorporated into the regulatory review process prior to the pipeline alignment being finalized.

Other Metro Vancouver municipalities have informed Surrey staff that they are applying for Intervenor status because their primary concerns are associated with increased oil tanker traffic in Burrard Inlet. Some Metro Vancouver municipalities have been in discussions amongst themselves to develop an initial strategy on local governance key issues as they pertain to those particular municipalities, which include interests that may be directly applicable to the City of Surrey. Under the NEB process, not all applicants will be granted Intervenor or Commenter status as the applicant must be directly impacted by the project or have relevant expertise; and it is this uncertainty that is causing local governments to begin discussions amongst themselves regarding possible joint/coordinated participation.

The City of Surrey is not eligible for funding support with respect to being either an Intervenor or Commenter.

SUSTAINABILITY CONSIDERATIONS

KM's Trans Mountain Pipeline is proposed to include construction of 14 km of pipeline through the City of Surrey, part of which is proposed to run adjacent to the Surrey Bend environmentally sensitive area. Construction and on-going operation of the expanded pipeline will have socio, economic and environmental implications.

The City's participation in the NEB Public Hearing process will assist in achieving the objectives of the City's Sustainability Charter; more particularly, the following scope actions:

- EC2: Economic Development Strategy and an Employment Land Strategy;
- EN12: Enhancement and Protection of Natural Areas, Fish Habitat and Wildlife Habitat;
and
- EN16: Land, Water and Air Quality Management.

CONCLUSION

KM has applied to the NEB for a regulatory review of a proposed Trans Mountain Pipeline expansion from Edmonton to Burnaby, including a 14-km section of pipeline through the City of Surrey. The NEB is accepting applications, up to February 12, 2014, from stakeholders who are interested in participating in the NEB's Public Hearing process related to this project.

Based on the above discussion it is recommended that Council authorize staff to apply to the National Energy Board (NEB) to allow the City of Surrey to participate as an Intervenor at the Public Hearing process on Kinder Morgan's Trans Mountain pipeline expansion project.

If the City is accepted as an Intervenor, the City is not obligated to participate in all aspects of the Public Hearing process such as presenting in person in front of the NEB. The City would have the ability, and flexibility, to provide written responses to NEB or present in person, if deemed necessary.

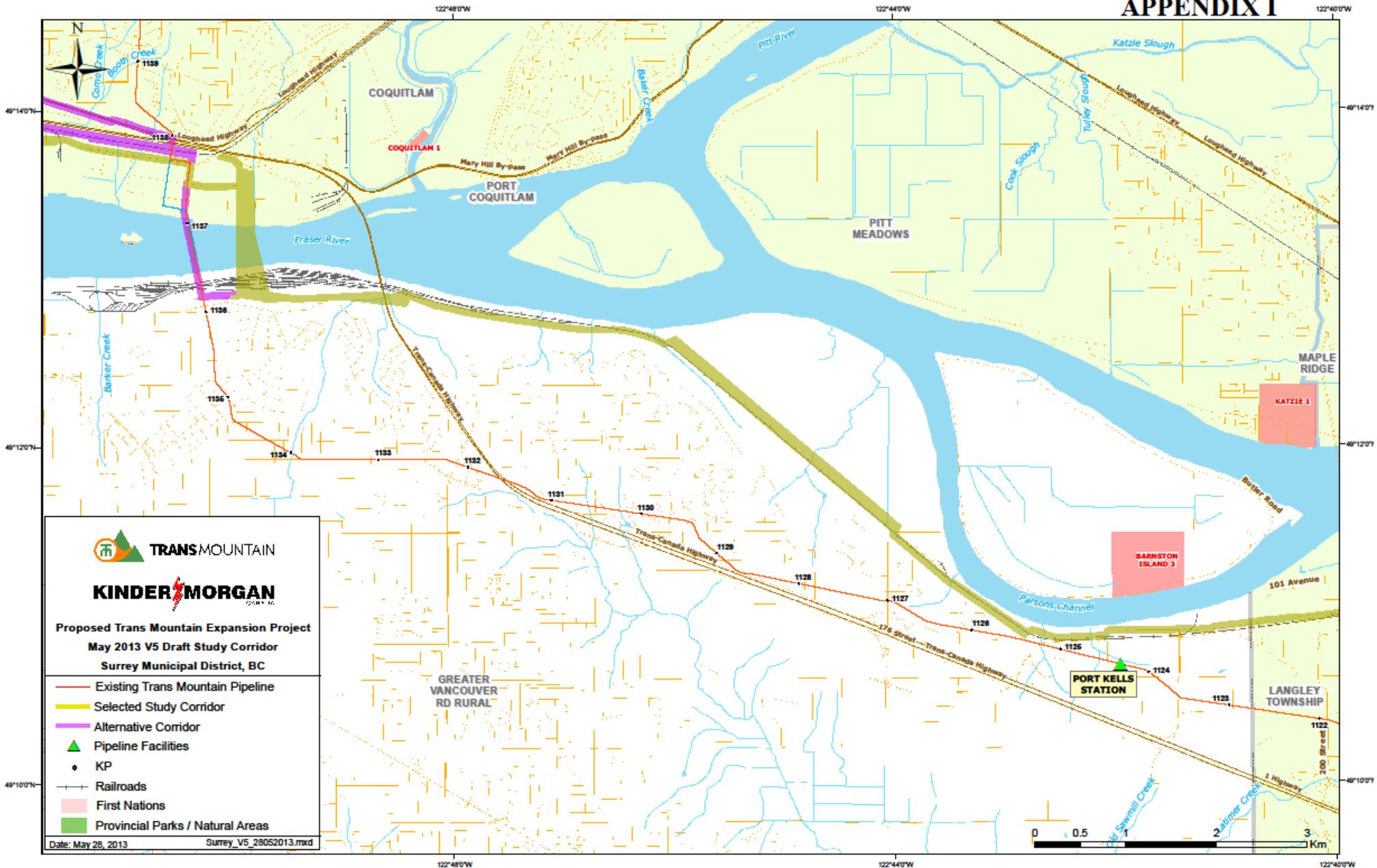
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KDZ/SBN/JWD/brb/ras

Appendix I: Map of Kinder Morgan Canada Inc Proposed Pipeline Expansion Route through
Surrey

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TRANS MOUNTAIN
KINDER MORGAN
2006-16

Proposed Trans Mountain Expansion Project
 May 2013 V5 Draft Study Corridor
 Surrey Municipal District, BC

- Existing Trans Mountain Pipeline
- Selected Study Corridor
- Alternative Corridor
- ▲ Pipeline Facilities
- KP
- +— Railroads
- First Nations
- Provincial Parks / Natural Areas

Date: May 26, 2013 Surrey_V5_28052013.mxd