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| Item.....                 |
| Meeting..... 2018 June 11 |

## COUNCIL REPORT

**TO:** CITY MANAGER **DATE:** 2018 June 05

**FROM:** DIRECTOR CORPORATE SERVICES **FILE:**  
DIRECTOR PUBLIC SAFETY AND *Reference:*  
COMMUNITY SERVICES

**SUBJECT: KINDER MORGAN PROTEST CAMPS**

**PURPOSE:** To respond to issues raised by delegations regarding protest camps located near Kinder Morgan Burnaby Tank Farm Facilities.

**RECOMMENDATION:**

1. **THAT** this report be received for information purposes.
2. **THAT** A copy of this report be sent to:
  - A) Ms. Darlene Johnston, 2014 Meadowood Park, Burnaby, BC, V5A 4G1
  - B) Ms. Elauna Boutwell and Mr. Bolten (via email)
  - C) Mr. Will George and Mrs. Roxanne Charles George (via email)
  - D) All Burnaby MP's and MLA's

**REPORT****1.0 INTRODUCTION**

Council at its meeting on 2018 May 14 received three delegations representing Forest Hills Residents, Watch House and Camp Cloud regarding protest camps located at Kinder Morgan Burnaby Tank Farm Facilities. The Forest Hills Residents delegation raised concerns regarding public safety in their neighbourhood, traffic safety, fire hazard relating to the illegal outdoor burning and smoke on Shellmont Street, and general comfort. Arising from the discussion, Council requested staff to report back on the issues raised by the delegations, and forward a copy of the report to all delegates.

To: City Manager  
 From: DIRECTOR CORPORATE SERVICES  
 DIRECTOR PUBLIC SAFETY AND COMMUNITY SERVICES  
 Re: KINDER MORGAN PROTEST CAMPS  
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## **2.0 RESPONSE TO ISSUES RAISED BY DELEGATIONS REGARDING KINDER MORGAN PROTEST CAMPS**

There are two sites established by the protestors to protest the approval of and work associated with the Kinder Morgan Pipeline Expansion Project near Burnaby Tank Farm. The “Watch House” site is located at the Forest Grove Park. The “Camp Cloud” site is located at Shellmont Street and Underhill Avenue. They arise as a direct result of Kinder Morgan’s Pipeline Expansion Project. The BC Supreme Court Order (the “Order”) dated June 01, 2018 allows for encampments, objects and structures located at or near the intersection of Underhill Avenue and Shellmont Street, at the location/area currently known as “Camp Cloud”, and the structure currently known as the “Watch House”. Further, the Order states that if the encampments, objects or structures at Camp Cloud obstruct, impede, or otherwise prevent physical access by Trans Mountain Sites or the Critical Roads, Trans Mountain may apply to the BC Supreme Court for an Order to remove Camp Cloud. Additionally in an event of an emergency, Trans Mountain may remove the structure currently known as “Watch House” provided that Trans Mount shall rebuild the structure if the Court determines that there was no reasonable emergency (see Attachment #1).

Notwithstanding the Court Order, staff are mindful of resident concerns regarding the protestors and protest sites.

Public Safety and General Comfort – Maintenance of public safety and general comfort of the neighbourhood is important. The presence of RCMP on-site ensures peace and order, and public safety. In addition, City staff are attending and monitoring the activities at the protest camp sites on a daily basis and responding appropriately to issues raised by the neighbourhood. Furthermore, staff note the willingness of the protest camp occupants to work with the area residents as indicated in their appearance before Council on May 14, 2018.

Traffic Safety – In response to traffic safety, the City installed roadside safety barriers on Shellmont and Underhill Avenue. In addition, for protest marches known to the City, staff has proactively worked with the RCMP to ensure that road closures do not adversely impact the residents from leaving or arriving onto their properties. For other unplanned protests in which the protestors are arrested for breach of the Order or for related on-site matters, on-site decisions of interim road closure or any other decisions during the arrests are made directly by the RCMP for both operational and safety reasons, and for a limited period of time.

Fires - With respect to the ceremonial fires at the protest sites, senior fire official has visited the protest sites to ensure that people at the sites are aware of safety protocols around fires and placing shroud on the fire at all times to minimize smoke impact to nearby area.

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From: DIRECTOR CORPORATE SERVICES  
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3.0 CONCLUSION


The two protest sites and related protests near the Kinder Morgan Burnaby Tank Farm are a direct result of the Kinder Morgan Expansion Project.

The BC Supreme Court Order allows for the presence of encampments, objects and structures located at or near the intersection of Underhill Avenue and Shellmont Street, at the location/area currently known as “Camp Cloud”, and the structure currently known as the “Watch House”.

Given the recent announcement by the Government of Canada in purchasing the Trans Mountain Pipeline assets and Kinder Morgan Pipeline Expansion Project (the “Project”), staff will continue to seek clarification on questions regarding the federal governments responsibility to comply with the 157 Conditions issued by the National Energy Board (NEB) for the Kinder Morgan Pipeline Expansion project, addressing the City’s concerns with respect to the Project and, more specifically in this case, the responsibility of the federal government to manage the protestors and protest sites.

Staff are, however, mindful of the resident concerns regarding the protestors and protest sites and are regularly monitoring the activities at the sites and responding appropriately to issues raised.

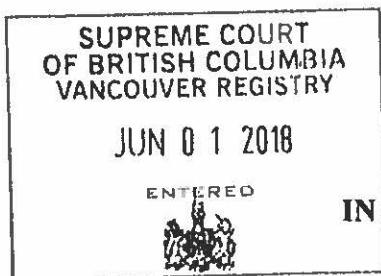
  
Dipak Dattani  
DIRECTOR CORPORATE SERVICES

  
Dave Critchley  
DIRECTOR PUBLIC SAFETY AND  
COMMUNITY SERVICES

DD:dd

Attachment

Copied to: Director Engineering  
Director Parks, Recreation & Cultural Services  
Director Planning and Building  
City Solicitor  
City Clerk



Court File No. S-183541  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**TRANS MOUNTAIN PIPELINE ULC**

PLAINTIFF

- and -

**DAVID MIVASAIR, BINA SALIMATH, MIA NISSEN, COREY SKINNER (aka CORY SKINNER), UNI URCHIN (aka JEAN ESCUETA), ARTHUR BROCIER (aka ARTUR BROCIER), KARL PERRIN, YVON RAOUL, EARLE PEACH, SANDRA ANG, REUBEN GARBANZO (aka ROBERT ARBESS), GORDON CORNWALL, THOMAS CHAN, LAUREL DYKSTRA, RUDI LEIBIK (aka RUTH LEIBIK), JOHN DOE, JANE DOE, AND PERSONS UNKNOWN**

DEFENDANTS

**ORDER MADE AFTER APPLICATION**

BEFORE THE HONOURABLE JUSTICE K.N. AFFLECK on May 31, 2018

ON THE APPLICATION of the Plaintiff, Trans Mountain Pipeline ULC (“**Trans Mountain**”), coming on for hearing at 800 Smithe Street, Vancouver, British Columbia on May 31, 2018, and on hearing: Maureen Killoran, Q.C. and Shaun Parker, counsel for Trans Mountain; Martin Peters, counsel for Mia Nissen; Neil Chantler, counsel for Gordon Cornwall; Casey Leggett, counsel for Karl Perrin; and no one appearing for the remaining Defendants;

## THIS COURT ORDERS THAT:

1. The Defendants, and any other person having notice of this Order, are hereby restrained and enjoined from:

(a) physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to, or work in, any of the sites or work areas as set out below:

(i) the Westridge Marine Terminal (the “WMT”), as indicated in the map attached at Schedule “A”;

(ii) the Burnaby Terminal (the “BT”), as indicated in the map attached at Schedule “B”; or

(iii) any other project or operations site of Trans Mountain or its affiliates, contractors, or subcontractors that has been reasonably identified as the same (such as through signage, fencing, flagging or boundary markings situated on or around the perimeter of such site) (the “Markings”),

(the sites and work areas referenced in this (a) being collectively, the “Trans Mountain Sites”);

(b) physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to the Reed Point Marina in Port Moody, B.C.;

(c) physically obstructing, impeding or otherwise preventing access by Trans Mountain, its contractors, employees or agents, to any of the roads identified and labelled in the map attached hereto as Schedule “C”, any road that leads directly or indirectly to any of the Trans Mountain Sites, or any of the following roads:

(i) Bayview Drive;

(ii) Inlet Drive/Barnet Highway/Highway 7A;

(iii) Cliff Avenue; or

(iv) Reed Point Way,

(the roads referenced in this (c) being collectively, the “**Critical Roads**”); and

(d) burning, defacing, tearing down, or otherwise harming, any and all signage, fencing, flagging or boundary markings situated on or around the perimeter of any of the Trans Mountain Sites or the Critical Roads, including without limitation the copies of this Order that are to be posted pursuant to paragraph 9 of this Order.

2. The Defendants, and any other persons having notice of this Order, are hereby restrained and enjoined from coming within five (5) metres of:

(a) the fence line of the WMT;

(b) the property line of the BT, which property line shall be clearly marked and delineated by Trans Mountain;

(c) the Markings, as set out in paragraph 1(a)(iii) of this Order.

(collectively, the “**Buffer Zones**”).

3. Without limiting the terms of paragraph 1, the Buffer Zones shall not apply to: (a) any private property, public trail, or public roadway; (b) the encampments, objects and structures located at or near the intersection of Underhill Avenue and Shellmont Street, at the location/area currently known as “Camp Cloud” (“**Camp Cloud**”); or (c) the structure currently known as the “Watch House”, which is located near the south east corner of the BT.

4. If the encampments, objects or structures at Camp Cloud obstruct, impede, or otherwise prevent physical access by Trans Mountain to the Trans Mountain Sites or the Critical Roads, Trans Mountain may apply to this Court for an Order to remove Camp Cloud.

5. In the event of an emergency, Trans Mountain may remove the structure currently known as the “Watch House,” which is located near the south east corner of the BT, provided that Trans

Mountain shall rebuild such structure if this Court determines that there was not a reasonable emergency.

6. Any police officer is hereby authorized to arrest and remove any person who the police officer has reasonable and probable grounds to believe is contravening or knowingly has contravened the provisions of this Order. For the sake of clarity, such police officer retains his or her operational discretion as to whether or not to arrest or remove any person pursuant to this Order.

7. Any police officer who arrests and removes any person pursuant to this Order is hereby authorized to:

- (a) release that person from arrest upon the police officer being satisfied that the person will no longer contravene the provisions of this Order;
- (b) release that person from arrest upon the person agreeing in writing to not breach this Order and to appear before this Court at such a time and place as may be fixed for the purpose of being proceeded against for contempt of court or for fixing a date for such a proceeding;
- (c) where such a person has refused to give a written undertaking pursuant to paragraph 7(b) above, or where in the circumstances the police officer considers it appropriate, to bring forthwith such person before this Court at the Supreme Court Registry in Vancouver, or any such other place, or in any such manner, as the Court may direct for the purpose of being proceeded against for contempt of court, or for fixing a time for such proceedings; or
- (d) detain such person until such time until they can be brought before this Court.

8. A police officer and/or the BC Sheriffs Service is entitled to detain and transport any person in order to give effect to paragraph 7(c) above.

9. Trans Mountain shall cause copies of this Order to be posted on or around the Trans Mountain Sites.

10. Notice of this Order may be given to the Defendants by any of the following:

- (a) posting this Order in the fashion described in paragraph 9 of this Order;
- (b) posting a sign in a conspicuous location within 5 metres of any Trans Mountain Site (a “Warning Sign”), with text that is no less than 10 centimeters in height which states:

Any person who obstructs access to this site is in breach of an injunction order and may be subject to immediate arrest and prosecution.

A copy of the order is posted at: [www.transmountain.com](http://www.transmountain.com).

For further information, call 1.888.876.6711 or [info@transmountain.com](mailto:info@transmountain.com).

- (c) this Order is read to them, including but not limited to being read over an amplification system.

11. Without limiting paragraphs 6 or 10 of this Order, for the purposes of enforcing this Order, any person, regardless of whether they are in breach of this Order, shall be deemed to have knowledge and notice of this Order if:

- (a) a copy of this Order is shown to them or read to them (including but not limited to being read over an amplification system), and they are provided an opportunity to comply with this Order; or
- (b) they come within 10 metres of any Warning Sign.

12. Without limiting the foregoing and further to paragraph 11 above, any persons who breach the Order will be arrested in accordance with the RCMP’s “five step process” which is:

- (a) ask the individual to cease the unlawful act;
- (b) inform the individual their action is unlawful;



- (c) caution the individual that if they continue to act unlawfully they will be arrested and could face charges;
- (d) confirm that the individual is aware they will be arrested and could face charges; and
- (e) arrest the individual in accordance with appropriate Charter obligations.

13. This Order shall not apply to persons acting in the course of or in the exercise of a statutory duty, power or authority.

14. Provided the terms of this Order are complied with, the Defendants and other persons remain at liberty to engage in a peaceful, lawful and safe protest.

15. Trans Mountain undertakes to this Court that it will abide by any Order of this Court as to damages payable by it to the Defendants named or subsequently named in this Action as a result of the granting of this Order, or as otherwise ordered by this Court.

16. This Order is in effect until the trial of this Action.

17. Trans Mountain is at liberty to apply to vary the terms of this Order. Any person affected by this Order shall have the liberty to apply to set aside or vary this Order on not less than 48 hours' notice to Trans Mountain.

18. This Order supercedes and replaces the Order of this Court filed March 16, 2018.

BY THE COURT:



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REGISTRAR

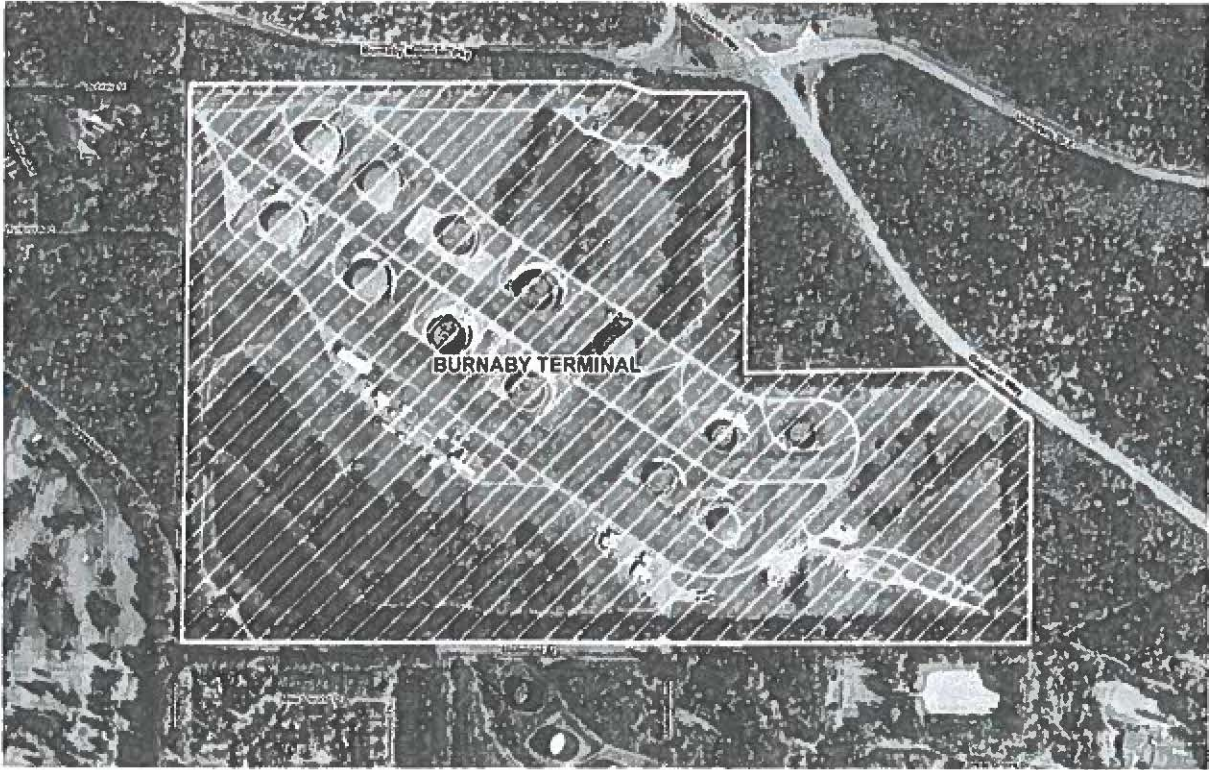
**SCHEDULE "A"**

**THE WESTRIDGE MARINE TERMINAL**



**SCHEDULE "B"**

**THE BURNABY TERMINAL**



SCHEDULE "C"

CRITICAL ROADS

