



**Press Release, For Immediate Release: March 8, 2022**

## **Property Developer in Surrey wants more money from Trans Mountain**

**Vesta Properties files for financial losses caused by construction delays and "stigma of proximity to new pipeline." Latest in series of allegations that Trans Mountain negotiates in bad faith.**

Coast Salish Territory (Surrey, BC) - On Monday, February 28, legal counsel for Vesta Property [filed documents](#) with the Canadian Energy Regulator (CER) as part of an unfolding challenge to Trans Mountain Expansion Pipeline (TMX) over inadequate compensation. They say the \$2.65 million they received from Trans Mountain (TM) in June 2021 is not enough to cover damages made to their Fraser Heights property by the high-pressure tar sands pipeline currently being built through North Slope Buffer Park and surrounding areas in Surrey.

In their [filed statement](#), land owners argue that TM's current offer is inadequate because the owners' "use of the land has been subject to the shadow of the Project for 4 years during which time [their] ability... to proceed with planning and development has been frustrated." Further, they claim "injurious affection and damages to the remainder [of the land] as a result of the stigma of the 'works' and the proximity of the pipeline within the subdivision, [as well as] loss in value to the remainder Lands."

Lawyers for Vesta Property also [outline several problems](#) with TM's negotiation tactics. These include failing to clearly determine the value of the land, and failing and/or refusing to consider loss in value of the land resulting from their pipeline. The lawyers conclude that: "[Trans Mountain] has failed to act in a bona fide good faith execution of its responsibilities... and instead has engaged in a sham process of offers which are transparently inadequate to meet the statutory requirements underpinning [Section 325 of the CER Act](#)."

Hundreds of records in the CER system describe similar negotiations with private landowners and municipalities that allegedly have not been in good

faith, including Coquitlam, Burnaby, Surrey, Metro Vancouver and TransLink. Nlaka'pamux Nation Tribal Council also filed documents this summer over abusive negotiations.

Sara Ross, an organizer with [Protect the Planet](#), a grassroots coalition working to stop Trans Mountain tar sands and pipeline expansion, says that "this particular example of negotiating in bad faith is not an isolated incident. The Right of Entry process has been used over and over by Trans Mountain as a threatening tool to get their way."

## **BACKGROUND**

Since negotiations with TM began in 2015, legal council has represented D. Wiemken and K. Sillars, two [Senior Executives](#) of Vesta Properties, a development company that owns the property located at 11420 157A Street in Fraser Heights, Surrey B.C. The developers first [met with Trans Mountain](#) on December 1, 2015. On April 6, 2016 the developers initiated a [re-zoning process](#) through the City of Surrey to convert the property from RA to RC to permit subdivision into 41 RC lots.

Records filed with the CER [here](#) and [here](#) show that as far back as August 2019, the relationship between TM and the developers was cooperative. They had reached agreement in principle to clear trees from the land and level it. The developer even offered TM more land if they wanted it.

On December 23, 2019, this relationship changed when TM announced the actual amount they were prepared to pay to acquire the property rights. After discussions between the legal teams, on September 18, 2020, TM tightened the negotiating screws by filing a Right of Entry. In response, the developers immediately filed a [legal challenge](#).

## **NOT AN ISOLATED INCIDENT**

The Canadian Energy Regulator's 'Right of Entry' (ROE or Section 324) grants Trans Mountain permission to 'enter' certain lands and begin work without an agreement in place with the landowner.

Trans Mountain [states outright](#) that owners will not get any bonus money if TM decides to request a ROE: "If this matter proceeds to right of entry, the determination of compensation payable will be based on the right to use any areas required. The bonus payment currently offered would not be part of Trans Mountain's compensation position before the Commission and any damages caused by construction activities will be compensated separately."

Ross of Protect the Planet says, "Either you get a sweet honeypot of a deal along with your pipeline OR, if you don't negotiate with Trans Mountain, you

just get a pipeline. They'll build it anyway. With Trans Mountain there is no free, prior and informed consent - not for private landowners, municipalities or First Nations along the route."

"Hopefully there won't be many more developers and others wanting a bigger cash grab from this wickedly over budget project," says Ross. "It's already at 21.4 billion, and it locks us into tar sands expansion for decades to come. How much worse can it get?"

A search of the CER Trans Mountain database shows more than 700 Right of Entry entries, including many where landowners challenge the ROE and outline their objections. These are some examples of what landowners (and municipalities) have said about TM and the ROE process. They are based on a cursory review which only scratches the surface of the hundreds of entries.

A [private landowner](#) "felt threatened on several occasions as [the land agent for TM] repeatedly mentioned to pursue Right of Entry process and how we will not receive any bonus payments if they were granted the right."

After a Right of Entry was filed for Metro Vancouver-owned land in Coquitlam, [MetroVan pushed back](#), stating, "the timing of the Application may amount to an abuse of the Right of Entry process because meaningful negotiations for Trans Mountain to acquire the Lands from GVS&DD have not yet occurred," among other reasons.

A [Right of Entry](#) filed on Metro Vancouver for use of Colony Farm park sparked outrage and generated protests. This example illustrates what the process looks like from a landowner perspective. In a [quote by CTV](#), Neal Carley, Metro Vancouver's general manager of parks and environment says that while in the midst of the negotiation process for pipeline use of Colony Farm, "Staff and negotiators for Metro Vancouver looked into previous CER rulings and concluded that the regulator would likely side in favour of Trans Mountain."

Metro Vancouver decided to bypass the regulatory process and go directly to the negotiating table. "[Had the issue gone to the regulator, Carley says he believes the district would have received anywhere from \\$300,000 to \\$400,000, but by negotiating directly, Metro Vancouver is said to have secured a better deal](#)".

And a shocking, "[unacceptable and offensive](#)" example of negotiating in bad faith points the finger directly at the CER rather than at Trans Mountain.

In summer 2021, right before the devastating heat dome and wildfires that killed over 600 people in BC and destroyed the entire town of Lytton in Nlaka'pamux territory, the [Nlaka'pamux Nation Tribal Council \(NNTC\)](#)

[describe](#) a “gross loss of trust and good faith” in the CER after their work process was undermined while working together to create a Joint Information Report.

A collaborative process had been carefully negotiated, with documents going back and forth for months. An agreement was mostly finalized, when contrary to usual practice and quite literally in the final hour, the CER legal counsel made substantial and substantive changes that were not disclosed to the NNTC for their review prior to submission.

Upon discovering this breach of trust, [the Tribal Council](#) wrote to the CER to communicate “[their] deep offense and objection to the conduct of the CER in carrying out its responsibilities as the designated lead Crown consultation body.” They further requested an apology and a dispute resolution process. As a result, the NNTC withdrew from participating in the Joint Report, casting shame on the Canadian state’s attempt at meaningful consultation.

In the matter of Trans Mountain vs Translink, [Right of Entry documents](#) filed by TM are clearly inadequate because they neglect to provide a summary of why parties failed to come to agreement. Further, Translink’s [objection to the ROE filing](#) states, “Every reasonable attempt to finalize a crossing agreement has not been made,” which is one of the requirements for the legal process described [in Section 217](#) (see page 11).

Likewise, [City of Surrey lawyers](#) contested the ROE stating “CER should be aware that the parties are in the advanced stages of negotiating and acquisition or lease agreements”

“[Costco submits](#) that a ROE application is unnecessary and premature as ‘every reasonable attempt’ has not been made to finalize an agreement between the parties. Moreover, the Applications do not consider or reasonably minimize the disruptions to Costco’s business operations, nor address Costco’s security and safety concerns.”

The [City of Burnaby has spent](#) more than 1.2 million dollars on legal fees fighting Trans Mountain between 2014 and 2018. The second-to-last case was when Trans Mountain was granted the right to ignore tree-cutting bylaws for more than one thousand trees. Lawyers for the City of Burnaby [wrote](#): “TM... demanded approval within 4 days, failing which TM stated that it would seek approval from the CER - as it then did ... without any further effort. Four days is a grossly insufficient time, and not in good faith.”

“In this day and age surely we can do better than Trans Mountain’s pattern of dirty deals for dirty fuels,” ends Ross. “I still believe we can stop this thing and Protect the Planet.”

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**Contact:**

Sara Ross • 778-898-0464 • [redsara@gmail.com](mailto:redsara@gmail.com)

Protect the Planet is a coalition opposed to tar sands expansion and the Trans Mountain Expansion pipeline.

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