

# TRANS MOUNTAIN INDIGENOUS ADVISORY AND MONITORING COMMITTEE

## TERMS OF REFERENCE

### DEFINITIONS

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1. Defined terms in these Terms of Reference have the following meanings, which also include their singular and plural forms:

**“CER” is the Canada Energy Regulator**

**“Committee”** means the Trans Mountain Indigenous Advisory and Monitoring Committee established by these Terms of Reference as detailed in section 24, as may be amended from time to time;

**“Committee Members”** means the Indigenous Caucus and the Government Committee Members;

**“CPCN”** means the new Certificate of Public Convenience and Necessity, Instrument No. OC-065 issued to Trans Mountain Pipeline ULC in relation to the Project on 18 June 2019;

**“DFO”** means Fisheries and Oceans Canada, excluding the Canadian Coast Guard, a special operating agency within Fisheries and Oceans Canada;

**“Government”** means the Government of Canada, including its departments and agencies;

**“Government Committee Members”** are the representatives of federal government departments and agencies as contemplated by section 24(b);

**“Indigenous Caucus”** means the members of the Committee appointed by the Indigenous Communities;

**“Indigenous Communities”** are those Indigenous communities and groups to which the federal Crown determined it owes a duty to consult in relation to the Project, as set out in Appendix A;

**“Lifecycle”** includes the planning, application, construction, operation, decommissioning and abandonment phases of a pipeline, a terminal and their associated works;

**“Marine Terminal”** means the Westridge Marine Terminal in Burnaby, BC;

**“Monitor”** means the person designated by the Committee to accompany a regulator while carrying out their duties related to TM-regulated Activities.;

**“CER Inspection Officer”** means any person who has been designated and duly authorized by the CER to carry out the duties for that position, as described in sections 102 to 109 of the *CER Act*;

**“NRCan”** means Natural Resources Canada;

**“Project”** means the Trans Mountain Expansion Project;

**“Regulator”** means a federal department or agency with regulatory powers or other authorities in regards to the TM Activities and includes the CER;

**“Trans Mountain or TM”** means Trans Mountain Pipeline ULC or the company that currently holds the CPCN, CER Certificates of Public Convenience and Necessity OC-49 and OC-2 for the existing CER-regulated Trans Mountain pipeline, together with all related Amending Orders, authorizations and exemptions for the TM Pipelines;

**“TM Activities”** are the activities that may be undertaken in the TM Corridor relating to the TM Pipelines, the Marine Terminal and the marine shipping associated with the TM Pipelines;

**“TM Corridor”** is the corridor comprising the routes of the existing Trans Mountain Pipeline and the Project; and

**“TM Pipelines”** refer to the existing CER-regulated Trans Mountain pipeline and the proposed pipeline associated with the Project.

## GOAL

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2. The Committee is intended to form the basis of a new relationship between Indigenous Communities, the Government and the CER in respect of the TM Activities. The Committee provides for collaborative, inclusive and meaningful Indigenous involvement in the review and monitoring of the environmental, safety and socio-economic issues related to the TM Activities over their lifecycles.

## PURPOSES OF THE COMMITTEE

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3. To provide a collaborative forum supported by technical resources for Indigenous Communities, the Government and Regulators to enhance the cultural and environmental protection and the safety of the TM Activities.
4. To support Indigenous Communities' effective and meaningful participation in the monitoring of the environmental, safety and socio-economic aspects of the TM Activities.
5. To enable Indigenous Communities to come together to identify common priorities and perspectives related to the TM Activities and to voice those interests to the Government and Regulators.
6. To build an understanding of issues of concern to Indigenous Communities in order to develop a common perspective between the Government, the CER and Indigenous Communities regarding the TM Activities and to provide informed advice to the Government and the regulators on how to address those issues.
7. To share information in a cooperative and transparent manner relating to Indigenous interests and concerns, and environmental, safety and socio-economic issues of the TM Activities.

## GUIDING PRINCIPLES

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8. **Shared interest.** Committee members share the objective of working together to enhance the safety of the TM Activities and protect the environment and Indigenous interests in the lands and waters.
9. **Integration of Indigenous perspectives.** The Committee facilitates the integration of Indigenous knowledge, values and perspectives into the monitoring, regulation and performance of the TM Activities. To this end, the Committee is guided by s. 35 of the

*Constitution Act, 1982* and the principles of the UN Declaration on the Rights of Indigenous Peoples, and the Committee works to support reconciliation.

10. **Capacity.** The Committee strives to improve the capacity of Indigenous Communities to monitor effectively the TM Activities and to engage with Regulators and Trans Mountain.
11. **Collaborative forum.** The Committee is a forum for collaborative problem solving, priority setting and innovation. Committee members approach their work with openness to the concerns and perspectives of other members and a resolve to develop consensus-based solutions.
12. **Attention to both land and marine-based issues.** The Committee's structure reflects the importance of both inland and marine-based TM Activities, including by way of the formation of subcommittees and the allocation of the Committee's resources.
13. **Adaptive approach.** It is anticipated that the Committee, consistent with its purposes, will adapt its structure and activities, including through amendment of these Terms of Reference, in light of its experience, the progress of the TM Activities, and changes in the regulatory frameworks and/or other Government or CER initiatives.
14. **Longer-term vision.** In establishing the Committee, the parties to these Terms of Reference intend to depart from past practice and instead to create an opportunity for the Government, the CER and Indigenous Communities to learn and work together to advance their shared interests in environmental protection and pipeline and marine safety. These Terms of Reference are intended to set the parties on a new course based on an honourable and respectful relationship, recognition of Aboriginal and treaty rights, and the meaningful participation of Indigenous Communities in the oversight of the TM Activities. The Committee will seek to strengthen this relationship over time, including through greater independent Indigenous oversight of TM Activities. While it is recognized that some measures for deepening the relationship would require legislative initiatives that Parliament may or may not pursue, the Committee will endeavour to contribute to consideration of such initiatives as opportunities arise.
15. **Duplication to be avoided.** The Committee seeks to avoid duplication of efforts and to apply attention and resources to matters that, in the Committee's view, are not being fully addressed through other processes. Where matters of interest are being addressed through other processes, or other Government and CER initiatives, the Committee may

seek to participate in those processes or refer issues to them.

16. **Working within timelines.** In order to have the greatest possible impact and have its views taken into account, the Committee strives to work within regulatory timelines and Project construction and operations schedules.
17. **Working within current legislative and regulatory frameworks.** The Committee recognizes the current legislative and regulatory frameworks and the applicable principles of administrative law, including procedural fairness, and understands that, absent a statutory mechanism for doing so, statutory and ministerial decision-making powers or other statutory authorities and duties cannot be fettered or delegated to others, including the Committee. Within those frameworks, the Government and the CER seek to develop innovative and creative ways to support the Committee's goal and purposes.

## COMMITTEE ROLES AND RESPONSIBILITIES

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18. **Annual work plans.** At least annually, the Committee sets out in a work plan the activities it intends to undertake in that year to fulfill its purposes. The work plan will include accountabilities, budgets and timeframes.
19. **Committee activities.** Committee activities may include – but need not be limited to – any of the following:
  - a. **Input and advice.** Providing input and advice to Regulators with respect to environmental, safety and socio-economic aspects of the performance of the TM Activities, including:
    - i. Issues of concern to the Committee, including compliance with the conditions set out in the CPCN, as well as other requirements under the regulatory framework, and how those issues could be addressed;
    - ii. Regulatory standards and policies applicable to the TM Activities, so that they are informed by Indigenous knowledge, perspectives and interests; and/or
    - iii. The adequacy and accuracy of reports and filings made by Trans Mountain in connection with the TM Activities.
  - b. **Government and CER initiatives.** The Committee may also provide input to existing Government and CER initiatives to improve environmental protection policies and processes to modernize regulatory systems, such as by providing advice related to

legislative, regulatory or policy changes, including changes that would enhance the Committee's role in the oversight of the TM Activities.

- c. **Monitoring.** Monitoring the TM Activities, including by:
- i. Identifying Monitors to accompany and advise CER Inspection Officers and other staff from the CER as described in section 55. This would involve assisting in the planning and providing input into the scope of certain compliance verification activities (e.g. inspections) and accompanying CER Inspection Officers during certain compliance verification activities;
  - ii. Engaging with CER Inspection Officers as described in section 55 on corrective actions to be taken when non-compliance is identified; and/or
  - iii. Providing or arranging for training and educational materials to Indigenous Communities to improve their knowledge and capacity surrounding the TM Activities, including their ability to detect and respond to any spills or other hazards or emergencies.
- d. **Hiring and training of CER staff.** Involvement in the hiring and training of certain CER staff who may be involved in the TM Pipelines and the Marine Terminal, including:
- i. Making recommendations on the hiring of CER Inspection Officers and engagement staff who may be assigned to work related to the TM Pipelines and the Marine Terminal, including by designating a Committee member or another individual to sit on the relevant selection panel. The hiring process will follow the CER's hiring practices, including those set out by the Public Service Commission, and all related legislation; and/or
  - ii. Participating in the training of CER Inspection Officers and other staff to build an awareness of Indigenous perspectives as appropriate.
- e. **Incident prevention, emergency preparedness and response.** Enabling efforts to anticipate, prevent, mitigate, manage and recover from potential incidents (including oil spills) related to the TM Activities by:
- i. Supporting and enabling Indigenous Communities' general emergency management capacity and involvement in broader existing emergency management systems, including: prevention, mitigation, preparedness (including planning), response and recovery consistent with CER responsibilities in a terrestrial context, and in a marine context consistent with the broader marine safety system, environmental protection and other improvements under the Oceans Protection Plan;

- ii. Identifying and requesting potential enhancements in Trans Mountain’s plans and procedures to anticipate, prevent, manage and mitigate conditions during an emergency, including oil spills that adversely affect property, the environment and/or safety of the public or workers;
    - iii. Working with Trans Mountain to reinforce, influence and enhance its safety culture; and/or
    - iv. Reviewing and providing advice on Trans Mountain’s detailed incident reports filed with the CER.
  - f. **Identifying information gaps.** Identifying and seeking to fill information gaps, including with respect to the collection of baseline data along the TM Corridor.
  - g. **CER communications.** Providing input and advice on the need for and content of CER communications and educational materials for Indigenous Communities.
20. **Committee engagement with Indigenous Communities.** In coordination with the Indigenous Caucus, the Committee communicates and engages regularly with Indigenous Communities using various means regarding the TM Activities, the work of the Committee, Indigenous Communities’ recommendations and concerns, and Indigenous Communities’ monitoring efforts. The Committee, including the Indigenous Caucus, seeks to work with leadership of the Indigenous Communities to establish protocols to guide the engagement, and the Committee may allocate resources to support that engagement within its overall work plan and budget as appropriate.
21. **Means of fostering communication.** The Committee fosters open and effective communication with Indigenous Communities and others regarding TM Activities, including by such means as:
- a. Creating a website and other communication and engagement tools;
  - b. Creating summaries of complex technical information so that it is easily understood;
  - c. Distributing educational materials and reports regarding the TM Activities, the Committee’s work and efforts that can be undertaken by Indigenous Communities to monitor the TM Activities;
  - d. Receiving, considering, responding to or referring issues raised by Indigenous Communities, including by making linkages with ongoing or new Government and CER initiatives and sources of information that support the work of the Committee, as well as for those issues that go beyond the scope of the Committee; and

- e. Agreeing on spokespeople for the Committee and protocols for media and public communication.

22. **Supporting Indigenous Communities' engagement.** While the Committee's work does not duplicate or replace consultation by the Government or engagement by Trans Mountain with Indigenous Communities, the Committee (including through the Indigenous Caucus) seeks to support Indigenous Communities in their engagement with the Government, the CER and Trans Mountain.

23. **Marine.** With respect to marine-related TM Activities:

- a. The Committee reviews and monitors compliance with the marine conditions set out in the CPCN, including the marine-related commitments made by Trans Mountain
- b. The Committee works with Regulators in monitoring the marine aspects of the TM Activities so that the Committee can review and, as necessary, provide advice on those activities, the performance of those activities, and the effectiveness of any required mitigation; and
- c. Transport Canada, DFO and the Canadian Coast Guard are committed to identifying opportunities for engagement with the Committee, including as follows:
  - i. Transport Canada, DFO and the Canadian Coast Guard will seek to identify opportunities for the Committee's meaningful engagement in the initiatives relevant to the TM Activities under the Oceans Protection Plan;
  - ii. DFO will facilitate opportunities for the Committee to:
    - 1. Review any monitoring reports required by DFO under any authorizations issued in respect of the expansion of the Marine Terminal pursuant to paragraph 35(2)(b) of the *Fisheries Act*. At the request of the Committee, DFO will facilitate meetings between the holder of any of the authorizations and the Committee to discuss any concerns the Committee may have arising from any monitoring reports; and
    - 2. Engage with DFO in the development of DFO's comments on Trans Mountain's Marine Mammal Protection Program and regarding the implementation of that program.
  - iii. The Committee recognizes that certain regulations and standards that govern marine shipping operations are set through international agreements and are reflected in the legislative, regulatory and policy frameworks of individual International Maritime Organization member

countries, including Canada. However, Transport Canada will facilitate opportunities, as appropriate, to engage and seek feedback from the Committee on the marine safety system. For example, engagement on the marine inspection and enforcement regime may include:

1. Inviting Committee members to accompany Transport Canada Marine Safety Inspectors as observers during a Port State Control inspection and provide feedback;
  2. Discussing processes and procedures relating to marine compliance inspections and/or enforcement investigations of tankers within the marine safety regime; and
  3. Working with Trans Mountain to provide opportunities for the Committee to observe vessels loading product at the Marine Terminal.
- iv. The Canadian Coast Guard will consider opportunities for the Committee to engage on the TM Activities that intersect with the Canadian Coast Guard operational programs, and Oceans Protection Plan initiatives, such as Enhanced Maritime Situational Awareness, Additional Radar Sites, Indigenous Community Response Teams, Indigenous chapters of the Canadian Coast Guard Auxiliary, Enhanced Environmental Response and Regional Response Planning.

## COMMITTEE MEMBERSHIP AND MEETINGS

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24. **Membership.** The Committee is comprised of:

- a. 13 representatives of Indigenous Communities, appointed in accordance with section 41; and
- b. One senior representative appointed in accordance with section 43 from each of the following:
  - i. Natural Resources Canada;
  - ii. Canada Energy Regulator;
  - iii. Transport Canada;
  - iv. Fisheries and Oceans Canada;
  - v. the Canadian Coast Guard; and
  - vi. Environment and Climate Change Canada.

25. **Meetings.** The Committee meets at least quarterly during the construction of the Project, and at least once annually during the balance of the TM Activities, or more frequently as agreed to by the Committee.
26. **Non-member participants.** Other individuals and representatives may, with the consent of the Committee, be invited to attend Committee or subcommittee meetings, including representatives from Indigenous Communities, Trans Mountain, other federal or provincial departments, ministries or agencies, municipal governments, the Port of Vancouver, and others.
27. **Co-Chairs.** The work of the Committee is facilitated by two co-chairs, one of whom is a member of, and is appointed by, the Indigenous Caucus, and the other of whom is the Committee member representing NRCan.
28. **Quorum.** Quorum for Committee meetings requires:
- a. The attendance of at least 50% of the membership of the Committee, which must include the representatives of NRCan and the CER; and
  - b. That a majority of the attendees of the meeting are Indigenous Caucus members.
29. **Alternates.** Committee members may send an alternate to a meeting where the member is unable to attend. It is understood that, because of the importance of maintaining continuity, sending alternates is to be done only on an exceptional basis.
30. **Recusal.** Committee members may recuse themselves where not doing so would create a conflict of interest. This should be done on an exceptional basis only.
31. **Transparency.** The Committee strives to make available to the public significant documents relating to its work, such as the Committee's and subcommittees' Terms of Reference and work plans, approved records of meetings, the names and affiliations of all Committee and subcommittee members, and the final version of all Committee reports, including financial reports. Where the Committee determines that certain documents should not be publicly disclosed, it provides reasons upon request.

## INDIGENOUS COMMITTEE MEMBERS (CAUCUS)

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32. **Representing Indigenous Communities' interests.** In order for the Committee to fulfill its goal and purposes, it supports an Indigenous Caucus. The Indigenous Caucus strives to represent the interests of the Indigenous Communities at the Committee, and to that end

it regularly engages with the Indigenous Communities to discern and develop shared understandings, priorities, perspectives and approaches, informed by technical capacity, which the Indigenous Caucus advances within the Committee with a view to shared understanding and problem solving.

33. **Communication with Indigenous Communities.** The Indigenous Caucus facilitates ongoing and effective communication with Indigenous Communities related to the Indigenous Caucus' work, including by:
- a. Sharing and distributing information, reports and input or advice aimed at determining shared priorities and perspectives; and
  - b. Engaging with and creating accessible means to receive input from the Indigenous Communities, including through protocols established under section 20.
34. **Meetings with Indigenous Communities.** The Indigenous Caucus meets with the Indigenous Communities as follows:
- a. It holds at least one meeting per year to which the Indigenous Communities are invited in order to establish common priorities and approaches;
  - b. It may hold regional meetings, as appropriate, to discuss the TM Activities, and in particular during the construction period;
  - c. It is understood that the Indigenous Communities need to discuss issues among themselves. It is also important that the Indigenous Communities meet with the full Committee, and the Indigenous Caucus will, as appropriate, invite the full Committee to attend portions of meetings in order to update the Indigenous Communities on the Committee's work; and
  - d. It may establish *ad hoc* processes to discuss matters specific to the Indigenous Caucus, such as the development of alternative models for selecting members of the Indigenous Caucus.
35. **Supported by resources.** The Indigenous Caucus requires support. Within its annual budgets, the Committee, by consensus, allocates resources to the Indigenous Caucus to support staff, who are accountable to the Indigenous Caucus, work under its direction, and who support its priority-setting, communication and engagement with Indigenous Communities. It is expected that these resources will comprise two staff positions, which may, at the Indigenous Caucus's option, involve technical capacity. In order to fulfill its responsibilities under these Terms of Reference, the Indigenous Caucus is also supported by Committee and secretariat resources. The substantive work contemplated by these

Terms of Reference is to be conducted under the Committee’s direction and the work of the Caucus and its staff is to be consistent with the purposes and principles of these Terms of Reference.

36. ***Duties of Indigenous Caucus members.*** Each member of the Indigenous Caucus strives to advance the interests of the Indigenous Communities as a whole, although each member also pays special attention to the concerns and perspectives of the Indigenous Communities of the grouping that selected the member.
37. ***Informing the Committee as appropriate.*** In order to support the collaborative spirit of the Committee, the Indigenous Caucus, as appropriate, keeps the Committee generally informed of its engagement work with the Indigenous Communities and it seeks to coordinate those engagement efforts with the Committee.
38. ***Honourarium.*** It is contemplated that the Indigenous Caucus members will be provided an honourarium to reflect and facilitate their participation.
39. ***Terms of Initial Indigenous Caucus Members.*** The first members of the Indigenous Caucus (the “Initial Indigenous Caucus”) serve 18-month terms.
40. ***Membership.*** The membership of the Initial Indigenous Caucus is the following, with reference to the groupings of Indigenous Communities set out in Appendix A:
  - a. One member from each of:
    - i. Vancouver Island – Western Approach;
    - ii. Vancouver Island – South;
    - iii. Vancouver Island – Southeast;
    - iv. Burrard Inlet / Lower Fraser;
    - v. Fraser Valley;
    - vi. Mid-Fraser / Thompson;
    - vii. BC Interior;
    - viii. Okanagan;
  - b. Three members from Alberta First Nations;
  - c. One member from BC Métis; and
  - d. One member from Alberta Métis.

41. **Selection of Initial Indigenous Caucus members.** For each of the groupings set out in section 40:
- a. The Indigenous Communities are invited to select their respective member or members for the Initial Indigenous Caucus; and
  - b. If, after three months following these Terms of Reference coming into force, there is a significant interest among the Indigenous Communities of a grouping to confirm or replace its respective member(s), the Initial Indigenous Caucus will facilitate an opportunity for that grouping to do so.
42. **Future method for selecting members.** During its term, the Initial Indigenous Caucus develops and sets out methods for the selection of members of the Indigenous Caucus, and it initiates and oversees a process by which a method for future selections, and the terms for Indigenous Caucus members going forward, is determined by the Indigenous Communities. The number of Indigenous Caucus members may be changed only by decision of the Committee.

## GOVERNMENT AND CER COMMITTEE MEMBERS

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43. **Representatives.** Government Committee Members are designated by the Deputy Minister of the department they are representing. The CER Committee Member is designated by the Chief Executive Officer of the CER.
44. **Committee meeting participation.** Government and CER Committee Members attend Committee meetings seeking to understand Indigenous perspectives, share information to build understanding about the role of the Regulators, and collaborate on solutions to issues in a timely manner.
45. **Engagement within Government.** The Government and the CER undertake to establish such practices, procedures and protocols within their organizations as they deem necessary to promote these Terms of Reference and ensure they can be implemented throughout their respective organizations.

## COMMITTEE STRUCTURE

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46. **Resources.** The Committee is supported by a third-party funding delivery partner (Cando), who administers Vote 10 funding on behalf of the Federal Lead Department, to support Indigenous Caucus operations. This funding model enables Indigenous Caucus to exercise strengthened oversight and decision-making, with respect to allocating funds towards workplan activities. Workplan activities and their associated budgets are reviewed and

endorsed by consensus at the main Committee table.

- 47. *Subcommittees.*** The Committee forms and oversees subcommittees to work on specific issues or regional concerns. The subcommittees undertake work that requires more expertise or focus on a particular issue.
- 48. *Subcommittee terms of reference and work plans.*** The Committee may request subcommittees to develop terms of reference and/or work plans for approval by the Committee.
- 49. *Subcommittee membership.*** The Committee determines the membership of subcommittees. Subcommittee members may include Committee members. The Committee may also invite the participation of other individuals and representatives, such as: Elders, youth, Indigenous knowledge-holders, other community members or staff from Indigenous Communities or other Indigenous groups; representatives of the federal, provincial and local governments; Trans Mountain representatives; and technical experts.

## INFORMED DELIBERATIONS AND DECISIONS

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- 50. *Dealings with the Committee.*** Government and the CER are open, accessible and transparent in their dealings with the Committee and subcommittees.
- 51. *Government and CER information sharing.*** Government and the CER share information openly with the Committee, subject to common law privileges or other restrictions or exemptions as may be found in federal legislation concerning the disclosure of documents and other materials, or when the CER is in the middle of a decision process or procedural fairness otherwise prohibiting disclosure. When information cannot be shared, Government or the CER provides reasons.
- 52. *Indigenous Communities' information sharing.*** In order to fulfill the purposes of the Committee, including the integration of Indigenous perspectives into the regulation of the TM Activities, Indigenous Communities are encouraged to share their perspectives, knowledge and other information with the Committee as they deem appropriate.
- 53. *Accessible information.*** In order to inform its deliberations, the Committee maintains an information base that may be comprised of both western and traditional knowledge, and is

accessible by all members of the Committee. The Committee develops rules regarding the management of that information.

## ENGAGEMENT WITH TRAN MOUNTAIN

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**54.** The Committee seeks proactive and productive means to engage with Trans Mountain and include it in its discussions, as appropriate, with the aim of promoting continual improvement of its safety culture and performance, and its relations and engagement with Indigenous Communities.

## CANADA ENERGY REGULATOR INSPECTION OFFICERS

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**55. *CER Inspection Officers' engagement with Committee.*** CER Inspection Officers' primary role, as set out in the *CER Act*, is to ensure the safety and security of people and pipeline, and the protection of property and the environment. CER Inspection Officers inspecting the TM Pipelines and the Marine Terminal exercise their powers independently and in accordance with the regulatory framework and their professional judgement. CER Inspection Officers or other CER staff also seek to:

- a. Keep the Committee informed of their activities, including any issues of concern in relation to the TM Pipelines and the Marine Terminal;
- b. Facilitate the involvement and respond to concerns of any Monitors regarding the TM Pipelines and the Marine Terminal;
- c. Receive and consider any information or input from the Committee (including its subcommittees);
- d. Where the CER Inspection Officer is of the view that the grounds for making an Order under s. 109 of the *CER Act* may exist, they can consider, as is appropriate and practicable in the circumstances, the views of the Committee and/or any Monitors regarding the potential grounds for making an Order and the potential terms under which an Order should be made, as well as whether there are additional considerations that should be taken into account in relation to the terms of the Order; and
- e. As appropriate and practicable, receive input from the Committee and/or Monitors with respect to whether a hazardous or detrimental situation has been remedied satisfactorily, whether an Order should be lifted, and whether other measures to address the situation should be put in place.

## REGULATORS' AND GOVERNMENT'S RESPONSES TO ADVICE

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- 56. Advice from the majority of the Committee.** The Committee uses its best efforts to ensure that advice provided to a Regulator or the Government reflects a consensus among Committee members. After making best efforts to reach consensus, advice supported by a majority of members may be put forward on behalf of the Committee for consideration by a Regulator or the Government, provided that the Committee members putting forward the advice first:
- a. Ensure that the advice has been provided to all Committee members in final written form; and
  - b. Provide all Committee members with an opportunity to explain, in writing, why they cannot support the advice in whole or in part and those reasons will be conveyed to the Regulator or the Government for consideration along with the advice.
- 57. Advice to Regulator or Government.** When the Committee provides advice to a Regulator or the Government in writing, the Regulator or Government considers the advice, and, to the extent permitted by the legislative and regulatory framework and applicable principles of law, including procedural fairness, either:
- a. Agrees with and adopts the advice; or
  - b. After engaging with the Committee, adopts the advice with modifications, or rejects it, in which case the Regulator or the Government provides written reasons for why the advice was modified or rejected, and whether or how the interests or concerns underlying the advice have been or will be addressed.
- 58. Advice to CER in quasi-judicial role.** Where the Committee provides advice to the CER in a situation where a CER member or members are authorized by legislation to make a binding decision, the CER member(s) considers the advice and, to the extent required under the principles of administrative law, provides written reasons, including how the advice was treated in the decision. This may include specifically how and why the advice was accepted, accepted with modifications, or rejected.
- 59. Duties also owed to Indigenous Communities.** For greater clarity, while sections 57 and 58 apply only to advice from the Committee, the duties of Regulators and Government to respond to that advice as set out in those sections is for the benefit not only of the Committee but also of each Indigenous Community.

## REACHING CONSENSUS

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**60. Consensus model.** The Committee and the subcommittees will deal with issues and resolve disputes using a consensus model. A single voice reflecting a consensus will speak more persuasively than advice based on separate voices.

**61. Conduct.** Members of the Committee, Indigenous Caucus and subcommittees will:

- a. Treat each other and all members' organizations or communities with respect and good faith;
- b. Share relevant information, to the extent they are authorized to do so;
- c. Listen to one another with open minds in an effort to understand each other's concerns and perspectives; and
- d. Strive to find ways to address all concerns and to incorporate different perspectives.

**62. Meaning of consensus.** For the purposes of the Committee, consensus means the general agreement of all Committee members on a course of action. Consensus does not require concurrence on every point, but rather broad agreement on the general approach and willingness to accept the overall course of action. Points of disagreement may be identified along with an explanation as to why agreement on those points has not been possible. In order to ensure the broadest possible consideration of options and possibilities, all suggestions are considered tentative until consensus is achieved on the overall course of action.

**63. Dispute resolution.** To assist in reaching consensus on particularly contentious or difficult issues, the Committee may retain the services of a facilitator or seek the advice of an independent expert. The Committee may use structured dispute resolution processes where required, including but not limited to the following:

- a. Committee members have an obligation to fully explore issues and search for mutually acceptable solutions, articulate interests, propose alternatives, listen to proposals and endeavour to build agreement;
- b. Committee members can expect adequate time and opportunity to become informed, discuss issues and articulate areas of agreement and disagreement; and
- c. When unable to support a consensus, Committee members have an obligation to explain how the matter at issue is of importance, identify how they are adversely impacted and suggest an alternative.

## GENERAL

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- 64. *Participation is without prejudice.*** It is understood and accepted that Indigenous Communities have varied opinions on the TM Activities, and that some communities support them and some oppose them. Participating in the work of the Committee – including by attending meetings of the Indigenous Caucus, or by a community member acting as a member of the Committee or a subcommittee – does not indicate that a community supports or does not oppose the TM Activities. Participation in this process is entirely “without prejudice” to the Government’s, the CER’s and the Indigenous Communities’ positions with respect to existing or prospective litigation. In plain terms, Government undertakes not to argue or adduce evidence in any current or future legal proceeding that is to the effect that, based on a Community’s participation in this process: (i) the Community agrees with or otherwise acquiesces to Canada’s position that the Committee is a form of accommodation; (ii) the Community has accepted that it is being accommodated in relation to the Project through its participation in the Committee; and/or (iii) the Community has agreed that the Committee responds to any of the concerns and objections to the Project.
- 65. *No diminishment of duty to consult.*** The Committee will be an additional forum for engagement between Regulators and Indigenous Communities and will not replace or diminish any right of individual Indigenous Communities to be consulted and accommodated by the Government.
- 66. *No diminishment of Trans Mountain’s obligations.*** Any advice or input provided to Trans Mountain by the Committee is intended to help Trans Mountain achieve or remain in compliance with legal requirements. This advice does not relieve Trans Mountain from its responsibility to comply with all applicable legal and regulatory requirements, as determined by the Regulators or the Government.
- 67. *Not a treaty, and no derogation from Aboriginal and treaty rights.*** It is understood and acknowledged that these Terms of Reference do not:
- a. Constitute a land claims agreement or treaty within the meaning of sections 25 and 35 of the *Constitution Act, 1982*; or
  - b. Affect, define, extinguish or derogate from any treaty or Aboriginal rights, including Aboriginal title.

## ANNUAL REPORT

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**68.** The Committee will submit an Annual Report to the Minister of Natural Resources, the Chief Executive Officer of the CER and the Indigenous Communities, highlighting achievements and lessons learned. The report will be made publicly available.

## REVIEW, AMENDMENT AND TERMINATION

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**69. *Review.*** The Committee reviews the effectiveness of these Terms of Reference, including the structure, on an annual basis during the construction phase of the Project and at least every three years thereafter. The Committee may invite the participation in this process of senior representatives of the Government and the NEB. The first review will be completed by September 30, 2018, and will include at least the following:

- a. An assessment of how the Committee has enhanced Indigenous participation in monitoring the TM Activities;
- b. An evaluation of opportunities to align the Committee with any new environmental processes or changes to the CER or other Government legislative or regulatory framework; and
- c. A consolidation of early learnings from the Committee operations.

**70. *Amendment.*** These Terms of Reference may be amended by agreement in writing of the Government, the NEB and the Indigenous Caucus.

**71. *Termination.*** These Terms of Reference will terminate at the end of the lifecycles of the TM Activities or earlier upon the agreement of the Government, the NEB and the Indigenous Caucus.

## Annex A: Indigenous Communities - Revised 2019

### Western Approach

Ditidaht First Nation	Huu-ay-aht First Nations
Ka:'yu:'k't'h'/Che:k'tles7et'h First Nations	Pacheedaht First Nation
Toquaht Nation	Uchucklesaht Tribe
Ucluelet First Nation	

### Vancouver Island - South

Esquimalt Nation	Malahat Nation
Pauquachin First Nation	Scia'new (Beecher Bay) Indian Band
Songhees (Lekwungen) Nation	Tsartlip First Nation
Tsawout First Nation	Tseycum First Nation
T'Sou-ke First Nation	

### Southeastern Vancouver Island

Cowichan Tribes	Halalt First Nation
Hwlitsum First Nation	Lake Cowichan First Nation
Lyackson First Nation	Penelakut Tribe
Snaw-naw-as (Nanoose) First Nation	Snuneymuxw (Nanaimo) First Nation
Stz'uminus (Chemainus) First Nation	

### Burrard Inlet / Lower Fraser

Katzie First Nation	Kwikwetlem First Nation
Musqueam Indian Band (Xwməθkwəyəm)	Semiahmoo First Nation
Squamish Nation (Skwxwú7mesh)	Tsawwassen First Nation
Tsleil-Waututh Nation	

### Fraser Valley

Aitchelitz Band (Athelets)	Chawathil First Nation
Cheam First Nation	Kwantlen First Nation
Kwaw-Kwaw-Apilt First Nation (QweQwe'opelhp)	Leq'a:mel First Nation
Matsqui First Nation	Peters First Nation
Popkum First Nation	Scowlitz (Sq'ewlets)
Seabird Island Indian Band (Sq'ewqel)	Shxw'ōwhámel First Nation
Shxwhá:y Village	Skawahlook First Nation (Sq'ewá:lxw)
Skowkale First Nation (Sq'ewqéyl)	Skwah First Nation
Soowahlie First Nation (Th'ewá:li)	Squiala First Nation (Sxwoyehálá)

Sts'ailes Nation	Sumas First Nation (Sema:th)
Yale First Nation	Tzeachten First Nation (Ch'iyaqtel)
Union Bar First Nation	Yakweawkwoose First Nation (Yeqwyeqwí:ws)

**Mid-Fraser / Thompson**

Ashcroft Indian Band	Boothroyd Band
Boston Bar Band	Coldwater Indian Band (C'eletkwmx or Ntsla'tko)
Cook's Ferry Indian Band	Kanaka Bar Indian Band
Lower Nicola Indian Band (Shulus)	Lytton First Nation
Nicomen Indian Band	Nooaitch Indian Band (Nooaitch)
Oregon Jack Creek Band	Shackan Indian Band (Shackan)
Siska Indian Band	Skuppah First Nation
Spuzzum First Nation	

**BC Interior**

Adams Lake Indian Band (Sexqeltqín)	Bonaparte Indian Band (St'uxwtews)
Canim Lake Band (Tsq'escen')	Esk'etemc First Nation
High Bar First Nation (Llenlney'ten)	Lheidli T'enneh First Nation
Lhtako Dene Nation	Little Shuswap Lake Indian Band (Skwlax)
Neskonlith Indian Band	Shuswap Indian Band (Kenpésq't)
Simpcw First Nation	Skeetchestn Indian Band (Skítsesten)
Splatsin First Nation (Splatsín)	Stswecem'c / Xgat'tem (Canoe Creek / Dog Creek Indian Band)
Tk'emlúps te Secwépemc	Toosey Indian Band (Tl'esqox)
Ts'kw'aylaxw First Nation (Pavilion Indian Band)	Whispering Pines / Clinton Indian Band (Stil'qw / Pelltíq't)
Williams Lake Indian Band (T'exelc)	Xat'súll First Nation (Soda Creek Indian Band)

**Okanagan**

Lower Similkameen Indian Band (Smelqmix)	Okanagan Indian Band
Osoyoos Indian Band	Penticton Indian Band
Upper Nicola Band	Upper Similkameen Indian Band
Westbank First Nation	

**Alberta First Nations**

Alexander First Nation (Kipohtakaw)	Alexis Nakota Sioux Nation
Aseniwuche Winewak Nation	Driftpile Cree Nation
Enoch Cree Nation	Ermineskin Cree Nation
Horse Lake First Nation	Louis Bull Tribe
Montana First Nation	O'Chiese First Nation
Paul First Nation	Papaschase First Nation
Saddle Lake Cree Nation	Samson Cree First Nation
Stoney Nakoda First Nation (Iyarhe Nakoda)	Sturgeon Lake Cree Nation
Swan River First Nation	Sucker Creek First Nation
Sunchild First Nation	Tsuu'tina Nation
Whitefish (Good fish) Lake First Nation	

**British Columbia Métis**

BC Métis Federation	Kelly Lake Métis Settlement Society
Métis Nation of BC	

**Alberta Métis**

Buffalo Lake Métis Settlement	East Prairie Métis Settlement
Kikino Métis Settlement	Lac Ste. Anne (Gunn Métis - Local Council #55)
Métis Nation of Alberta	Metis Nation of Alberta – Regional Council Zone 4
Mountain Métis Nation Association	