

**Trans Mountain Pipeline ULC (Trans Mountain)
Onshore Pipeline Regulations and Filing Manuals Update
Phase 2 – Engagement Overview
Due Date: March 31, 2025**

L. Filing Manuals - Lands Topic Paper

As noted in the [Backgrounder](#) document, the CER is seeking your feedback on possible changes to the “Lands Information” section in the Filing Manuals (i.e., section A.4 of the [Filing Manual](#), and chapter 8 of the [Electricity Filing Manual](#)). Any suggestions for improvement regarding this section are welcome, and in particular, the CER seeks your comments on the following topics.

Subtopic 1: Routing and Site Selection Process

The route and site selection process involves identifying, selecting, and siting of lands for a proposed project, whether it is an easement contiguous to an existing right-of-way, a new right-of-way or other lands (i.e., for above ground facilities). It also includes identifying third party crossings impacted by the route of the project.

Applicants must take into account results of engagement with the rights holders, owners, and users of lands when determining the preferred route, including the location of land rights required for the project.

Objectives for Improvement

The CER seeks to improve the clarity and specificity of the filing guidance regarding route and site selection, including documentation of the methodology used, and incorporation of input and perspectives from engagement with affected persons.

Proposed Option

The CER is considering clarifying expectations for applicants to:

- describe and justify the proposed route and site locations, explain the routing criteria and methodology, and describe alternatives considered and why the proposed route and sites were chosen;
- describe the general project setting in sufficient detail to justify the selection of the route and sites;
- describe how the applicant undertook and incorporated feedback from engagement with affected persons, municipal governments and communities, including landowners and Indigenous Peoples regarding the proposed route and sites; and,
- incorporate input and perspectives when siting a project or establishing a proposed route, e.g., input from directly affected Indigenous Peoples who participated in the route selection process to help ensure protection of heritage resources.

Discussion Questions

- I.1) What criteria or tools are currently used by companies in determining the location of the required lands and the proposed route within the study corridor? Are there additional criteria or tools that should be used? What additional guidance, or expansion of existing guidance should be in the Filing Manual in relation to such criteria and tools?

Response:

As part of a project corridor study, property specific information is used by Trans Mountain, including physical and legal elements. Physical property considerations include environmental impacts, such as the presence of septic fields, location of buildings, and other constraints. This information is collected through property visits, landowner discussions and through the local and provincial data sets and their information systems (e.g., online GIS). Constraints on Crown lands can be identified through a provincial data set and the corridor study. Legal considerations include property encumbrances registered on title, such as covenants restricting certain land uses, and this information is publicly available from the provincial land title office or federal registry for federal Crown lands. The route selection methodology should address both physical and legal constraints and identify them on the property line list for the selected route.

In all cases, Trans Mountain considers the following in determining the location of required lands and a project's proposed route:

- utilizing existing footprint where possible, including any available existing pipeline right of way corridor or rights of way of other linear facilities (e.g., highways),
- utilizing previously disturbed lands prior to considering undisturbed lands,
- minimization of environmental impact (i.e., avoid environmentally sensitive features where possible, utilize disturbed as opposed to undisturbed lands),
- avoidance of impact to sites of significance (i.e., Indigenous archeological sites or sacred sites),
- consideration of construction feasibility (i.e., installation in areas less susceptible to geotechnical instability, or temp lands required for trenchless installation to reduce environmental impact), and
- avoidance and minimization of impact to landowners and communities where possible.

I.2) To what extent should Indigenous knowledge and engagement be explicitly addressed in routing and site selection?

Response:

Engagement with Indigenous communities is necessary to understand potential impacts to their rights, land use, traditional land use. Indigenous knowledge, to the extent that it is available to the company through proactive engagement, would be considered in routing and site selection.

Subtopic 2: Compensation Methodology

The Commission of the CER can decide on disputes related to compensation payable under Part 6 of the CER Act. This may include:

- the acquisition, lease, or taking of lands;
- lands whose use is restricted by the operation of section 335 of the CER Act²; and
- damages caused by the activities of the company which are directly related to: the acquisition or lease of lands for a pipeline or abandoned pipeline; the construction of the pipeline; or the inspection, maintenance or repair of the pipeline or abandoned pipeline.

Landowners and companies are encouraged to work together to resolve compensation disputes related to the issues above. If parties are unable to resolve these disputes, they can be brought to the CER for alternative dispute resolution, or to the Commission for decision.

² For more information about section 335 of the CER Act, including the prescribed area, refer to the damage prevention section of the CER website

Objectives for Improvement

The CER's objective for improvement is to gain an understanding of a company's compensation approach, such as its:

- compensation method;
- principles that it uses to structure compensation matters; and
- best practices and approaches.

Proposed Option

The CER is considering clarifying expectations for applicants to explain their compensation methodology and compensable matters.

Discussion questions

- I.3) How could Filing Manual guidance better describe the CER's expectations (such as criteria) for companies when they are developing a compensation methodology for land matters?

Response:

A compensation methodology is established as part of the company's land acquisition program. The compensation for land rights should be consistent with market considerations and in accordance with the legal and regulatory requirements. Any requirement in the CER Filing Manual should align with recognized land valuation standards and legislation. The goal is for landowners to be compensated in compliance with the legal and regulatory requirements and appropriate to the land interest taken by the company.

- I.4) When a company has developed a compensation methodology relating to their project, what information should be included in its application?

Response:

Trans Mountain's goal is to ensure that compensation to the landowner is commensurate with the land interest taken and is compliant with the CER Act. Typical considerations would include market value, restrictions on land, length of tenure and loss of use or quiet enjoyment. As such, in its application the company would address the type of interest in land to be taken, how the land interest is to be valued, applications of adjustment factors, and confirm compliance with the provision of the CER Act.

The evaluation of any impact of land taking for the purpose of pipeline should be left to qualified appraisers. As an example, when investigating a new pipeline easement, appraisers look to understand the nature of both the legal and physical rights that are sought. Appraisers are engaged by pipeline companies to establish appropriate adjustment factors that are applied to the market value of properties. The adjustment factors are expressed in percentage figures and applied to the market value of the full interest of the land component of property. The adjustment factors consider questions including:

- What is the proposed easement use?
- What is the location of the proposed easement area within a property? (e.g., is the easement located within the setback area?)
- What are the restrictions imposed on property owners within the easement area?

There are other questions considered in the pipeline easement evaluation. Other types of land interests such a lease may be considered as part of the land acquisition strategy specific to a pipeline project. The appraisal standards and accepted appraisal principles govern the valuation of pipeline easement.

Specific requirements imposed by the CER for compensation methodology could run the risk of being inconsistent with the generally accepted valuation standards.

The pipeline company is liable for all damages resulting from the exercise of its powers under the CER Act. Assessment of damages or heads of compensation is based on a case-by-case review of factual information unique to each situation and the existing contractual arrangement, if any. Relevant case law interpretations may assist with the determination of compensation for complex claims.

- I.5) How detailed should a company's compensation methodology and approach be? For example, it could be kept at a broad overview level, or it could be made specific to include the use of land evaluations, studies, or analysis that was completed in order to determine the compensation to be offered to owners² (as per section 320 of the CER Act).

Response:

Please see the response to request I.4), above.

Subtopic 3: Location of Lands Required for the Project

A description of the locations, and rationale for using lands necessary for the project, allows the Commission to assess whether the identified lands are appropriate for use. Currently, the Filing Manual specifies that information regarding the location of land includes:

- a general description of the location of the lands that are proposed to be used for the project including maps and location coordinates; and
- a description of the nature and relative proportions of land ownership types along the proposed route (i.e., freehold, Federal or Provincial Crown, public lands, or other).

Objectives for Improvement

The CER would like to have a clear and detailed summary of the lands specifically obtained for permanent, temporary and/or crossing uses.

Proposed Option

The CER is considering clarifying expectations for applicants to provide more detailed information on lands specifically obtained for permanent, temporary and/or crossing uses.

Discussion questions

- I.6) What specific guidance should be provided, in relation to companies describing the location of lands that support the studies for the Environmental and Socio-economics Assessment while incorporating Traditional Land Use and Traditional Ecological Knowledge?

Response:

The siting of a project and its land location is a consideration in relation to environmental and socio-economic assessment, which would also incorporate traditional land use and traditional ecological knowledge. In Trans Mountain's view, the *Filing Manual* currently provides appropriate guidance for application planning. Please see also Trans Mountain's response to Paper K.

² 320 In sections 321 to 334, owner means any person who is entitled to compensation under section 314.

- I.7) What should be included in a description of the lands used by Indigenous Peoples or communities for traditional purposes that are proposed to be used for the project?

Response:

The location and description of lands required for a pipeline or associated facility project builds on the route selection process and the information collected as part of the pipeline corridor study. Land required for projects is legally described, using the provincial or federal land survey systems, as applicable.

Trans Mountain's applications filed with the CER for projects include summaries of its engagement with Indigenous groups, which discusses Trans Mountain's understanding of how the lands may be used by Indigenous communities. However, there are circumstances where an Indigenous community may request that certain information be treated as confidential, as the information may be sacred to the community, and/or there is a risk of potential damage to a given site if such information were to be made public. The *Filing Manual* should ensure there is flexibility in conveying information in relation to lands used by Indigenous Peoples, without compelling the public submission of information that should be maintained confidentially. Please also see Trans Mountain's response to Paper I, request i.1).

Subtopic 4: Land Rights

A company may need to acquire or lease the lands necessary for the construction, operation, and maintenance of its facilities. Land acquisition or lease of lands can be complex and may depend on the type of land ownership³, the existing and ongoing uses of the lands, and the type of acquisition (i.e., permanent⁴ easement, temporary workspace⁵ and access, and third-party crossing⁶). The description of the land rights required for a project informs the Commission, as well as rights holders, owners and users of lands, of the different types of land rights needed for the project (e.g., easement, statutory right-of-way, temporary workspace, permit or licence, crossing permit, etc.) and the areas where existing land rights allow for the project.

Objectives for Improvement

The objective of updated guidance would be for applicants to provide details on the land rights obtained for permanent, temporary or crossing uses.

Proposed Option

The CER is considering clarifying that applicants should describe the land rights required for permanent, temporary or crossing uses.

Discussion questions

- I.8) What information is appropriate (e.g., typical drawings, estimated duration for each type of temporary workspace) for companies to describe the land rights required (or not required in the

³ The lands being acquired or leased may be Crown lands, or privately owned.

⁴ This can include a description of the permanent land rights proposed to be acquired for the project and related facilities; the width of the permanent right-of-way (RoW); the locations and dimensions of any new lands required for all associated facilities (other than the pipeline RoW); and a description of the existing land rights that allow for the project.

⁵ Temporary workspace includes lands parallel to an existing and/or proposed RoW, as well as any areas proposed to be used temporarily for construction activities (such as horizontal directional drilling activities, crossings, and storage areas).

⁶ Third party crossings include those utilities, such as a highway, an irrigation ditch, a publicly owned or operated drainage system, sewer or dike, an underground telecommunications line or a line for the transmission of hydrocarbons, electricity or any other substance. (section 217(6) of the CER Act).

case of existing rights), and the type of ownership, for the company to demonstrate that impacted rights holders, owners and users of lands have been identified and consulted in land acquisitions and compensation matters?

Response:

The *Filing Manual* currently requires a description of land rights and the type of ownership. To prepare for early engagement activities which take place before a proponent submits its application, the proponent undertakes an assessment of the impacted rights holders, landowners and users in relation to the project footprint. This is a mandated process pursuant to the [Early Engagement Guide](#), and between the *Filing Manual* and the *Early Engagement Guide*, Trans Mountain is of the view that requirements are clear and no further clarification is required.

Acquisition of land rights and the associated information required for the acquisition process are set out under section 320-322 of the CER Act. The CER is encouraged to clarify the definition of “landowner”, as a linear project (such a pipeline) affects various land interests including fee simple, covenants, easements and other registered land interests that may prove incompatible with a pipeline from a legal land perspective. Service requirements of section 322 of the CER Act and any filings associated with right-of-entry under section 324 are necessary to properly deal with not only fee simple ownership but also registered partial interests (i.e., covenants, easements, etc.) where the nature of the interest may conflict with a pipeline project or where legal restrictions exist and need to be addressed to accommodate a pipeline project.

- I.9) Is it helpful to provide a description of the process to be used if agreements with utility owners cannot be reached

Response:

Utility crossings agreements are issued so that activities can be conducted and assets installed safely around existing infrastructure. In Trans Mountain’s experience, crossing agreements have become a tool for some utilities to leverage additional asks in the agreement, or re-negotiate terms in the original agreement that are peripheral to the activities or their installation, which can result in greater costs or schedule delays, and is burdensome in comparison to what is needed for safe pipeline crossing as required under the CER Act and related regulations under the CER Act. This practice of using crossing agreements as a negotiation tool for non-project related items should be strictly prohibited. The ability of an approved project to obtain consent to safe crossings in accordance with the regulations should not be replaced with lengthy negotiations of additional terms or renegotiation of existing terms if there is already an existing arrangement between two pipeline companies. The alternative would be submitting a crossing application to the CER and waiting for its determination, which would also result in additional schedule and costs resulting in project delays.

Operators of non-CER regulated infrastructure including but not limited to local and provincial government agencies have established their own processes for crossings. The issue of lengthy negotiations associated with the resolution of many additional asks from these agencies is challenging. The challenges become apparent in an urban setting where underground infrastructure is extensive and complex. Large scale projects such as new product pipelines require careful planning to ensure that any existing infrastructure and priority interests are integrated into the project execution. This practice should be same for all public or government regulated projects (principle of equal treatment). While the CER Act establishes a utility right of entry process to assist a pipeline project with a forced crossing where a voluntary crossing is not granted, the process is often lengthy and challenging. The CER may want to consider a streamlined process for crossing non-CER infrastructure. Such a process would set out clear

and reasonable criteria for a pipeline project to follow, specific to the design and safe crossing of the infrastructure.

Subtopic 5: Rights Holders, Owners, and Users of Lands

The land acquisition information in the Filing Manual currently includes a description of the:

- numbers of rights holders, owners, and users of lands, and tenants;
- the number of land acquisition agreements (such as option or easement agreements) to be signed and the number signed at the time of submitting the application;
- the number of section 322(1)⁷ notices served; and
- timing of service of remaining notices.

Objectives for Improvement

The CER seeks to clarify its guidance for applicants to describe the rights holders, owners and users of lands so that the Commission is informed of the landowners and users directly impacted by the project.

Proposed Option

The CER is considering specifying that applicants should provide a more detailed description of those directly impacted by a project.

Discussion questions

I.10) What might be an accurate way to describe the types of rights holders, owners and users of lands?

Response:

Land rights and their meaning are typically described under common law or statute. Certain rights to use Crown land that are disposed of by provincial bodies would be described by the responsible government agency.

I.11) Is this information available to companies at the time companies are preparing their application?

Response:

Land interests are generally publicly available. Land interests can be generally classified as exclusive vs. non-exclusive rights, permanent or temporary, registered rights or non-registered rights to occupy or use lands for a specific purpose. Sections 320 through 322 of the CER Act deal with land rights registered in the provincial Land Title Office or federal registries for federal lands, surveyed or unsurveyed crown land, and land dedicated to roads or parks, and which is publicly available. There are some land interests that are not publicly available such as short-term leases which may not be registered. Trans Mountain would seek this information through the early engagement process.

There are various rights holders occupying or using provincial Crown lands (e.g., licence to graze Crown land, trapper, guide outfitter, etc.). These rights do not constitute an interest in land under the provincial land titles system and are not subject to the provisions under sections 320 through 322 of the CER Act. The non-exclusive and limited rights are dealt with under the provincial land application process.

⁷ Section 322 of the CER Act describes the notice to be served on landowners informing them that lands may be required for a project

Subtopic 6: Land Acquisition Process

The Filing Manual outlines expectations regarding the information that companies are to provide regarding the process to be used for the acquisition of rights, including:

- a description of the process to be used for acquiring the lands or land rights required for the project;
- the proposed schedule of acquisition activities, including a list of acquisition activities that have already taken place or have commenced; and

the status of service of notices on all owners (as per section 320 of the CER Act) of lands to be acquired pursuant to section 322(1) of the CER Act.

Objectives for Improvement

The CER's objective for improvement is for applicants to describe the land acquisition process including processes to be used in the event that land acquisition agreements cannot be obtained.

Proposed Option

The CER is considering adding specificity to its guidance regarding details on the overall land acquisition process, including a description of the process to use if applicants are unable to reach agreements on land rights with the right holder, owner and user of lands, and utility owners.

Discussion questions

- I.12) What elements of a land acquisition process should be included when companies describe their process?

Response:

The CER Act and the land acquisition process guidance in the *Filing Manual*, are, in Trans Mountain's view, clear and prescribed appropriately. If a company is unable to obtain resolution, the CER can facilitate resolution through the Right of Entry process.

- I.13) Are there standard or best practice elements that are common amongst most companies? If yes, what are they?

Response:

Pipeline companies strive to negotiate land rights in good faith. The success of acquisition program often depends on the strategy each company develops at the beginning of its project.

Private landowners should not be liable for and shall be compensated for damages resulting from pipeline activities under the CER Act.

- I.14) What information could be included when describing the process to be used if companies are unsuccessful in acquiring land rights either before or after an application is submitted to the CER?

Response:

Trans Mountain is of the view that the current binding hearing process is effective in obtaining resolution where the proponent and the landowner have been unable to do so.

For acquisition of Crown lands, the process is set by the applicable province. The provincial body reviews land applications, assesses any land use conflicts and issues permits/tenures following the completion of technical reviews and consultation requirements. The CER would not typically be involved in this process unless there is lack of agreement between the pipeline company and the province.

Acquisition of land rights on Indian reserves and any land interests on reserve lands are applied for under Indigenous Services Canada (ISC). Trans Mountain understands that the CER is unable to enforce right of entry on reserve lands. If there is no other alternative but cross reserve lands, there is a lack of clear process set out for pipeline companies to follow through the ISC supported by the Ministry of Justice.

For acquisition of privately owned lands, landowner engagement is handled through the CER process. The CER prescriptions could include other relevant non-financial encumbrances, e.g., third party easements, covenants, etc. Similar to a provincial expropriation process, Trans Mountain is of the view that section 322 notice should be given to registered parties holding non-financial interests in land that are affected by the pipeline project footprint and pose a land use conflict. In the absence of a voluntary agreement resolving the land use conflict, including acquisition of priority on title, a pipeline company would be able to follow a right of way entry process accordingly.

The CER could facilitate education for landowners that pipeline projects, once approved by the appropriate level of government, are determined to be in public interest. This means that similar to any other public projects (e.g., highway), the company will follow a process that is designed to limit discretionary expectations of those directly impacted to ensure efficient project execution.

Information regarding the process is outlined in the notice served under section 322 of the CER Act. Explanation of the process for the public is provided in the *Land Matters Guide*, which in Trans Mountain's view is a meaningful tool for landowners participating in an acquisition process.

Subtopic 7: Land Acquisition Notices and Agreements

In accordance with the CER Act, companies will use notices and land acquisition agreements to acquire the rights necessary for their projects. The CER Act describes specific information that must be included in the notices and agreements (see section 321 and 322). In the Filing Manual, companies are asked to include with their application a sample copy of each form of land acquisition notice and agreement to be used in acquiring land rights.

Objectives for Improvement

The objectives of new guidance are to help ensure:

- the sample agreements(s) provided do not include personal information, land description or any details relating to the amount offered for compensation; and
- companies may also use other forms of agreements for necessary land rights and other purposes.

Proposed Option

- Applicants to provide details on the agreements used for land activities, including providing a copy of the form of agreement used to permit access to lands for Traditional Land Use and Traditional Ecological Knowledge studies.

Discussion questions

- I.15) Are there other elements that should be included in any land acquisition notices and land agreements besides what is required by sections 321 and 322 of the CER Act?

Response:

While companies do not have direct expropriation powers, the right-of-entry process as described in section 324 of the CER Act is a form of indirect expropriation through the Commission's powers specific to land taking. The very first step in an expropriation process is to understand all estates and interests associated with the lands in respect of which an order is sought. Apart from a fee-simple interest or leasehold and leased fee interests held by property owners or lessees and lessors, respectively, there may be other interests registered against property title. These encumbrances may conflict with the rights and terms issued under a right-of-entry order (e.g. covenant permitting only a certain land use; easement prohibiting certain uses or activities, etc.). The definition of "landowner" under the CER Act, or guidance, should be more inclusive and certain. The CER may wish to review the provincial expropriation acts with respect to land interests when a property is being expropriated.

Section 321 of the CER Act deals with a form of agreement. The prescriptions under section 321(2) could be clarified to resolve the ambiguity in addressing the applicable requirements under the subsections of section 321(2) versus including language dealing with each subsection in an agreement.

- I.16) Are there standard or best practice elements that are common amongst companies?

Response:

Please see the response to request I.15), above.