



## Trans Mountain Expansion (TMX) and Existing Pipeline – Socioeconomic Subcommittee

March 31, 2025

Canada Energy Regulator

**VIA EMAIL/COURRIEL:** [REDACTED]

Dear Sirs/Mesdames:

**Re: IAMC-TMX Socioeconomic Subcommittee (SESC) Feedback on the Phase 2 Review of the Onshore Pipeline Regulations and Filing Manual**

### Background

The Indigenous Advisory and Monitoring Committee for the Trans Mountain Expansion and Existing Pipeline (IAMC-TMX), established in 2017, sought to form the basis of a new relationship between Indigenous communities, the Government of Canada, and the Canada Energy Regulator (CER) in respect to Trans Mountain Corporation (TMC) and Trans Mountain Expansion Project (TMEP) activities. The intention of the Committee, comprised of 13 Indigenous and six senior federal representatives and involving 129 impacted Indigenous communities, is to provide for collaborative, inclusive, and meaningful Indigenous involvement in the review and monitoring of the environmental, safety, and socioeconomic issues related to TMC activities over their lifecycles.

In turn, in 2018 the IAMC-TMX Socioeconomic Subcommittee (SESC) was established, comprised of Indigenous and federal members, and with TMC representatives invited monthly to provide enhanced, Indigenous-specific reporting. The SESC's work has involved supporting impacted Indigenous communities in their efforts to improve how socioeconomic effects associated with a major project are identified, addressed, and managed, including through collaborative discussions with federal departments and regulatory agencies, co-development of Indigenous-focused indicators with Trans Mountain Corporation, and research carried out directly with affected First Nations and Métis during TMEP construction.

The work undertaken by the SESC since 2018 highlights that for Indigenous Peoples, the current requirements and conditions regarding oversight of social, economic, cultural, health, and wellbeing issues and concerns are insufficient. Government, regulators, industry, and Indigenous Peoples have much work to do to depict, track and manage socioeconomic concerns. Revisions to the Onshore Pipeline Regulations (OPR) and the Environmental Socio-Economic Assessment (ESA) and Lands portion of the Filing Manual (FM) offer an opportunity to highlight existing concerns and offer guidance to address various issues and gaps.

### Introduction

The contents of this submission, shared by the SESC's Chair, is premised upon activities undertaken by the SESC over the past seven years. This feedback to the CER regarding the Phase 2 review of the OPR and the ESA and Lands portion of the FM focuses on topic papers and aspects of the OPR and FM relevant to socioeconomic effects, and wherein requirements might be added that will more meaningfully consider Indigenous peoples and various socioeconomic risks and benefits associated with major projects under the CER. In sum, the SESC has heard over the years that significant changes are required to the CER's regulations and guidance documents, including to centre the interests of affected Nations / Communities in oversight on their lands and territories, from the earliest opportunity, and across project lifecycles. Also key to improved regulatory oversight is to consider all segments of Indigenous societies, including those that are most vulnerable, which too is critically important to reconciliation.

## 1 OPR – Emergency Management – Topic Paper C

This topic paper focuses on proposed improvements related to five subtopics: (1) CSA Z246.2 — Incorporation by Reference; (2) Priorities to be Considered within the Emergency Management (EM) Program; (3) Consolidation of Current Regulatory Framework Requirements within the OPR; (4) Liaison Activities and the Continuing Education Program; and (5) Involvement of Indigenous Peoples in EM. Below, the SESC briefly brings forth what it heard in its past work regarding recommendations, and slots that in under the topic paper subsections that are most relevant.

### 1.1 CSA Z246.2 — Incorporation by Reference

The CER intends to introduce new requirements to enhance its oversight of EM and is considering incorporating CSA Z246.2 into the OPR by reference.

#### Recommendations

The SESC does not have any feedback to pass along on this topic.

### 1.2 Priorities to Be Considered Within the EM Program

The CER intends to clarify the priorities to be considered within a company's EM Program and clarify that the EM Program must consider broader impacts to people (e.g., financial impacts) as well as safety.

#### Recommendations

The SESC's recommendations include that

- Although the inclusion of adverse effects on sites of historic and cultural significance in subsection 32(1) is welcomed, EM Programs must holistically consider impacts to community safety and the security of individuals in local communities. The SESC has found a lack of appropriate community and regional supports that serve to effectively protect the most vulnerable populations.
- Related to the above, the gendered impacts of emergency management must receive more attention, as was recommended in SESC's submission to the CER ("(SESC) Feedback to the Canada Energy Regulator on the draft Industry Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management", dated November 13, 2023).
- Respect for Indigenous Nation / Community strengths regarding emergency management. Historically, Indigenous peoples' knowledge and experience regarding preparing for, coping with, and recovering from disaster events has been overlooked, in favour of implementing external systems that themselves can lead to feelings of lack of safety in local communities.

### 1.3 Consolidation of Current Regulatory Framework Requirements Within the OPR

The CER has identified an opportunity to consolidate EM requirements specified outside the OPR into the OPR.

## Recommendations

The SESC's recommendations include that

- The CER and companies must apply an Indigenous Gender Based Analysis Plus (IGBA+) lens to the development of any Emergency Procedure Manuals and Response Plans. The has heard that some Indigenous community members feel it necessary to consider their own safety when making decisions about day-to-day activities during emergencies. To prevent, manage, and mitigate conditions during emergencies with potential to adversely affect people, companies need to have a more fulsome understanding of how risks are experienced differently by Indigenous People at large, and uniquely by Indigenous women, girls, and gender diverse and two-spirit individuals.

### 1.4 Liaison Activities and the Continuing Education Program

The CER is considering clarifying requirements for "liaison activities" and "continuing education programs" by deleting those terms and replacing them with new Emergency Response Coordination and Emergency Management Information provisions.

## Recommendations

Please refer to SESC recommendations in subtopic (5) Involvement of Indigenous Peoples in EM.

### 1.5 Involvement of Indigenous Peoples in EM

The CER intends to introduce new requirements to enhance its oversight of the involvement of Indigenous Peoples in EM and is considering adding a requirement for a plan to involve Indigenous Peoples in the EM Program.

## Recommendations

The SESC's recommendations include that

- The CER must add requirements for a company to integrate Indigenous Knowledge (IK) into all aspects of an EM program, and specifically through working directly with affected Indigenous Nations / Communities.
- During an emergency event, Indigenous Nations / Communities must be promptly notified directly, and the company must request and consider IK that applies to the affected area. IK and Indigenous involvement will inform a company's emergency response in important ways as it relates to sites of historic and cultural significance, and individuals in local communities.
- Indigenous Nations / Communities must be provided capacity support and prompt opportunities to access the incident location to review any reports and assessment results. The company must also support Indigenous Nations / Communities in any subsequent monitoring or contaminant testing that is necessary to provide assurances of safety of traditional resources e.g. food, after the incident occurs.
- In the "Industry Best Practices for Notifications to Indigenous Nations / Communities regarding CER-Reportable Incidents," the CER must also acknowledge and include opportunities for Indigenous Nations / Communities to self-identify as holding rights and interests in a particular area and desiring to be notified of all incidences.



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- Requirements to involve Indigenous Peoples in EM Programs must be accompanied by the inclusion of clear, measurable indicators to be reported on regularly, allowing for the ongoing assessment of compliance and success and understandings of strength building in Indigenous Nations / Communities regarding emergency management. Indicators must include data for Indigenous involvement that is distinguished by role, responsibilities, authority, project phase, and gender statistics.

## 2 OPR – Human and Organizational Factors – Topic Paper E

This topic paper focuses on proposed improvements related to three subtopics: (1) adding a definition of Human Organization Factors (HOF) to the Interpretation section of the OPR; (2) adding clarifying language so that the process for identifying and analyzing potential hazards includes consideration of relevant performance influencing factors and the HOF discipline; and (3) adding clarifying language so that management system process(es) identify causal and contributing factors to near-miss and incident investigations.

### Recommendations

The SESC's recommendations include that

- The proposed options are carried forward; however, based upon what the SESC has heard over several years, the use of the HOF and relevant performance influencing factors to identify and analyze potential and existing hazards must explicitly acknowledge the different social norms, biases, and Western views that serve as the foundation of workplace culture and decision-making. Work environments in the resource extractive sector continue to be rooted in a hyper-masculine culture that can increase the risk of hazards to vulnerable populations within Indigenous Nations / Communities (e.g., women, girls, two spirit and gender diverse people). The SESC has previously shared with CER representatives new research that shows how the influx of thousands of non-local workers into Indigenous territories amplifies concerns related to race- and gender-based violence, harassment, and human and sex trafficking involving Indigenous women and children. Requirements related to the HOF and performance influencing factors in the identification and analysis of hazards should ensure a race- and gender-based analysis, and that companies be required to collaborate with affected Nations / Communities in hosting mandatory, cultural safety and unconscious bias awareness training for all staff and subcontractors, and training on topics related to MMIWG2S+. Culturally safe training should be held in person to build empathy and increase understanding of Indigenous Peoples, concerns, and culture.
- Management system processes related to the internal and public reporting of race- and gender-based harassment and bullying need to be strengthened. The SESC has heard often from Indigenous Nations / Communities that incidents of race- and gender-based harassment lack follow-up and transparency, and as such, these issues are allowed to persist in the workplace, sometimes involving a perpetrator being move to another location along the right of way. The CER should ensure that companies learn from and adaptively manage such hazards (e.g., harassment) in ways that move beyond simple checkbox requirements and filing paperwork. Companies should be regularly reviewing lessons learned from near-miss or incident investigations to ensure that high standards are being met and improvements to management system processes are being implemented. And importantly, there needs to be more transparency and accountability to local Indigenous Nations / Communities related to such incidents.

### **3 OPR – Management System and Contractor Management – Topic Paper F**

This topic paper focuses on proposed improvements related to two subtopics: (1) Management System Requirements and (2) Management of Contractors Providing Services and/or Products Across the Pipeline Lifecycle.

Below, the SESC briefly describes and provides feedback on the topic paper subsections that are most relevant to work undertaken by the SESC.

#### **3.1 Management System Requirements**

The CER has identified opportunities to further explore amendments to Sections 6.1–6.6 of the OPR.

##### **Recommendations**

The SESC does not have any feedback on this topic.

#### **3.2 Management of Contractors Providing Services and/or Products Across the Pipeline Lifecycle**

The CER intends to introduce new requirements to clarify and enhance its oversight of contractor management by adding an explicit requirement for a contractor management process within the OPR management system provisions and developing technical guidance to articulate CER requirements related to contractor management.

##### **Recommendations**

The SESC's recommendations include that

- The CER must ensure that companies and their contractors and subcontractors comply with all CER conditions, commitments, and requirements. The SESC has heard multiple instances where companies circumvent their regulatory obligations to adaptively manage projects by pointing to a lack of flexibility within their agreements with contractors. This is especially pertinent in the case of socioeconomic commitments, such as meaningful employment and contracting opportunities for affected Indigenous Nations / Communities. Lost in reporting whether Indigenous workers or contractors have been verified to be as they claim to be, i.e. belonging to a Nation / Community, or there has been no distinguishing between Indigenous workers and contractors who are from affected Nations / Communities, and those who are not. Further, the Indigenous spend data tends to capture 100% percent of a contract even when it is well known that a Nation / Community is received only a small percentage due to its "joint venture" partnership with a service company.

## 4 OPR – Reporting Harm – Topic Paper H

This topic paper focuses on proposed improvements related to five subtopics: (1) Definition of Incident — General; (2) Environmental Effects; (3) Definition of Incident — Loss of Operational View or Control of a Pipeline; (4) Definition of Incident — Release of Substance Thresholds; (5) Reporting — High-Potential Near Misses; (6) Reporting — Information Sharing; and (7) Reporting — Sites of Historic and Cultural Significance.

General feedback from the SESC’s work regarding this topic is provided below:

- The work undertaken by the SESC since 2018 highlights that for Indigenous Peoples, the requirements and conditions of regulatory bodies have many deficiencies in terms of requirements for identifying, managing, monitoring, and responding to socioeconomic issues and concerns.
- The CER and regulated companies must apply an IGBA+ lens to the development of any incident reporting processes. “Incidents” and “harms” are experienced differently by Indigenous People at large, and are uniquely felt by Indigenous women, girls, and gender diverse and two-spirit individuals.
- Like what is detailed in the Section 1 - OPR – Reporting Harm topic paper, Indigenous Peoples have a desire for greater understanding of, and involvement in, a company’s incident reporting processes. As such, a new requirement for the involvement of affected Indigenous Nations / Communities in reporting harm is of critical importance.
- Requirements to involve affected Indigenous Nations / Communities in incident reporting development and process implementation must be accompanied by the inclusion of clear, measurable indicators that are reported on regularly, allowing for the ongoing assessment of compliance and success. Indicators must include data for Indigenous involvement that is distinguished by role, responsibilities, authority level, project phase, and gender statistics.
- The CER and companies must collaborate with affected Indigenous Nations / Communities to develop and implement reporting mechanisms that are culturally safe and respectful. Reporting mechanisms need to be designed to surface cultural, economic, social, and health and wellbeing risks that are systemic in nature and allow for mechanisms that seek to address such harm, including from a cultural perspective.

Below, the SESC brings forth feedback relevant to topic paper subsections most relevant to what has been heard since 2018.

### 4.1 Definition of Incident — General

The CER has identified an opportunity to improve its definition of “incident.”

#### Recommendations

The SESC’s recommendations include that

- The CER’s current definition is lacking and does not incorporate socioeconomic issues and incidents that are disproportionately experienced by Indigenous Peoples. The influx of non-local, non-Indigenous workers into Indigenous territories is known to be linked to an increase in the use of drugs and alcohol, sexual exploitation and human trafficking, sexual assault, race- and gender-based violence, and harassment.

## 4.2 Environmental Effects

The CER is considering a risk matrix or similar decision-making tool located within technical guidance that can assist regulated companies in assessing severity, consequence, likelihood, and probability of escalation.

### Recommendations

The SESC's recommendations include that

- The CER must consider the potential for adverse socioeconomic effects, in addition to environment effects, as relates to "incidents" or "harms."
- Collaboration with Indigenous Nations / Communities and the integration of IK must be considered in the development of an OPR risk matrix or similar decision-making tool, as it relates to both adverse environmental *and* socioeconomic effects.
- As the CER is aware, pressure on, and damage to, traditional resources is a violation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), specifically Article 29.1. Occurrences that cause adverse impacts to Indigenous rights, such as a reduction in traditional resources or unsafe access to traditional harvesting and hunting sites, must be considered "incidents" as defined by the OPR and submitted to the CER.
- To improve how the CER approaches incident reporting in relation to adverse socioeconomic effects, the CER must mandate inter-agency working groups/committees for regulated projects be made up of participants from affected Indigenous Nations / Communities, the proponent, local policing agencies, responsible health organizations, and community organizations. These inter-agency working groups/committees would be responsible for tracking and reporting on socioeconomic incidents, such as crime and harmful behaviours.

## 4.3 Definition of Incident — Loss of Operational View or Control of a Pipeline

The CER is considering amending the definition of "incident" to include a requirement to notify the CER of security incidents such as loss of operational view or operational control of a pipeline.

### Recommendations

The SESC's recommendations include that

- The CER must ensure that regulated companies communicate real or potential contamination of water, food, and other natural resources to all members of an Indigenous community, including Elders, pregnant women, and children.

## 4.4 Definition of Incident — Release of Substance Thresholds

The CER has identified an opportunity to improve its oversight of low-vapour pressure (LVP) hydrocarbon and high-vapour pressure (HVP) hydrocarbon releases.

### Recommendations

The SESC does not have any feedback on this topic.

## 4.5 Reporting — High-Potential Near Misses

The CER seeks to ensure that companies notify the CER of high-potential (consequence) incident near misses and learn from them. The CER is considering a new OPR reporting requirement for companies to notify the CER of any high-potential incident near miss relating to the construction, operation, or abandonment of its pipeline.

### Recommendations

The SESC's recommendations include that

- Collaboration with Indigenous Nations / Communities and the integration of IK must be considered in the development of an OPR definition and description of a "high-potential incident near miss."
- The CER must consider socioeconomic incidents and their potential impact on people and Nations / Communities in the development of an OPR definition and description of a "high-potential incident near miss."
- The CER and companies must collaborate with Indigenous Nations / Communities to develop and implement culturally appropriate reporting mechanisms for near misses. Currently, there is a lack of awareness and trust in company reporting mechanisms and in instances where and when these mechanisms are used, there is little confidence in that these incidents are meaningfully addressed.

## 4.6 Reporting — Information Sharing

The CER aims to improve sharing of data-informed trends. The CER is considering new processes that will be to help ensure that companies can learn from incidents and near misses to prevent them in the future.

### Recommendations

The SESC's recommendations include that

- Consistent monitoring and reporting on socioeconomic incidents must be developed and implemented. The CER and proponents must collaborate with impacted affected Indigenous Nations / Communities to define socioeconomic incidents and determine culturally appropriate methods to collect and share data.
- As a means of improving data integrity and collection, the CER and proponents must collaborate with affected Indigenous Nations / Communities to develop culturally relevant information collection mechanisms. A relationship-based approach to reporting, responding to, and communicating on issues must be included as one of the touch points to meaningfully address incidents which have a tendency to disproportionately impact Indigenous People.

## 4.7 Reporting — Sites of Historic and Cultural Significance

The CER has identified an opportunity to improve its oversight relating to sites of historic or cultural significance. The CER is considering adding a new reporting requirement in relation to damage to a site of historic or cultural significance, subject to confidentiality agreements signed by companies and Indigenous communities and any applicable provincial or territorial requirements.



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## **Recommendations**

The SESC's recommendations include that

- A new reporting requirement in relation to damage to a historic or cultural significant site is of critical importance. As the CER is aware, the current lack of oversight for adverse impacts to sites of significance does not meet the standard set out in UNDRIP, Article 11.
- Indigenous Nations / Communities are best placed to document, monitor, manage, and report on sites of historic or cultural significance in their territory.
- Cultural and unconscious bias awareness training involving affected Nations / Communities must be mandated for all contractors, staff, and management prior to arrival at a work site. This training must cover relevant policies and protocols for traditional use and heritage resource finds.

## 5 OPR – Safety – Topic Paper J

This topic paper focuses on proposed improvements related to two subtopics: (1) Process Safety Management and (2) Safety Plans for Construction, Operations and Maintenance, and Abandonment Activities.

Rather than describing and providing feedback on each subsection of the topic paper, SESC has provided the general feedback listed below, as compiled through engagement with Nations / Communities since 2018.

### Recommendations

The SESC's recommendations include that

- "Safety" for Indigenous Nations / Communities goes beyond concerns related to the release of hazardous material or energy and includes socioeconomic and community safety. The CER must broaden its definition of safety to address issues of critical concern to Indigenous Nations / Communities, which include the following:
  - Normalization of a Sexually Exploitative Culture
  - Lack of Community and Regional Supports for Indigenous peoples, in particular Indigenous Women, Girls, Gender Diverse and Two-Spirit Individuals who may be disproportionately affected by resource development
  - Race- and Gender-Based Discrimination and Harassment
  - Harmful Behaviours such as Violence, and Substance Abuse

The SESC's research involving Indigenous Nations / Communities has identified deep, ongoing concerns regarding community safety and security. Certain safety risks are uniquely exacerbated in rural Indigenous Nations / Communities due to the higher rates of poverty, increased isolation, ongoing impacts of colonial policies, and institutional discrimination.

- The CER require applicants to report on any incidences of race- and gender-based discrimination, harassment and violence throughout the lifecycle of the project, including incidents onsite between employees or interactions between employees and community members. The CER must require commitments that cultural and gender safety conditions be closely monitored and addressed in conjunction with affected Indigenous Nations / Communities throughout the lifespan of a project.

## 6 OPR – Rights and Interests of Indigenous Peoples, Socioeconomic Effects, and Engagement – Topic Paper I

This topic paper focuses on proposed improvements related to three subtopics: (1) Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples; (2) Managing Socio-Economic Effects; and (3) Engaging with Potentially Affected People and Communities. Below, the SESC briefly describes and provides feedback on the CER's objectives for improvement and proposed options in each subsection of the topic paper, premised on what it has heard since 2018.

### 6.8 Preventing and Addressing Impacts to the Rights and Interests of Indigenous Peoples

The CER plans to implement new requirements to prevent and mitigate impacts on the rights and interests of Indigenous Peoples throughout the lifecycle of pipeline infrastructure while ensuring clear guidance for regulated entities.

The CER-proposed options include the following: (1) introducing a dedicated protection program to prevent and mitigate impacts on Indigenous rights and interests; (2) implementing management system processes to engage Indigenous Peoples, incorporate IK into protection programs, and recognize applicable Indigenous laws and policies; (3) mandating cultural competency training for company personnel; and (4) developing new reporting requirements for damage to culturally significant sites, revisions to EM programs to consider Indigenous sites, and requirements for companies to establish restoration goals in collaboration with affected Indigenous Nations.

#### Recommendations

The SESC's recommendations include that

- The proposed options are carried forward; however, the SESC strongly encourages the CER to adopt a distinctions-based approach given that First Nations, Métis, and Inuit communities have unique concerns, desired approaches, and IK related to the design, development, implementation, and maintenance of protection programs, management system processes, EM programs, and reporting requirements for damage to culturally significant sites. A distinctions-based approach should be flexible and recognize the context-specific nature and value of IK in responding to impacts to Indigenous rights and interests.
- The proposed options must actively uphold Indigenous rights and interests with clear mechanisms for accountability (e.g., providing monitoring and performance reports through a project's lifespan) and enforcement tools (e.g., co-developing grievance and reporting mechanisms) that directly involve affected Indigenous Nations / Communities and are sensitive to their needs and the concerns of their most vulnerable populations (e.g., Indigenous women and gender diverse individuals and Indigenous people employed by projects).
- The proposed options must also address the distinct financial and capacity needs of affected Indigenous Nations / Communities and seek to include them directly in developing mechanisms to ensure they are supported for early and continuous engagement in the proposed programs and processes.
- The CER mandates companies to provide, in collaboration with community leads from each affected First Nations, Métis, and Inuit community, cultural competency training to staff that addresses the

ongoing legacy of colonialism and discrimination experienced by Indigenous Peoples, as well as community protocols, strengths and interests.

- The CER hold responsibility for ensuring compliance across conditions and commitments and validates monitoring reports (for biophysical, workplace safety, and socioeconomic interests), including through directly engaging with affected Indigenous Nations / Communities to determine if Benefit Agreement commitments are being met and/or appropriately tracked by proponents.

## 6.9 Managing Socio-Economic Effects

The new CER requirements aim to ensure companies establish structured processes to identify, anticipate, manage, and mitigate potential socioeconomic impacts throughout all stages of development. The CER-proposed options include the following: (1) introducing a new protection program for socioeconomic effects requiring companies to develop, implement, and maintain a system integrated with their management processes and (2) expanding the existing Environment Protection Program to include socioeconomic effects, creating a comprehensive Environment and Socio-Economic Effects Protection Program.

### Recommendations

The SESC's recommendations include that

- The CER require companies to collaborate with affected Indigenous Nations / Communities to identify and manage socioeconomic effects and risks. This would involve providing affected Indigenous Nations / Communities with tools, resources, and the authority required to assess, mitigate, and respond to project impacts effectively. The SESC has heard from communities of their desire to build internal technical and analytical expertise so as to be in a better position to identify, assess, and monitor socioeconomic impacts and to enable their involvement in decision-making regarding adaptive management approaches. Providing training and funding (for Indigenous-led research and data collection) enables Nations / Communities to analyze project effects and have meaningful involvement in the co-management of socioeconomic effects development and monitoring related to areas such as cultural impacts, health and wellbeing, and the safety and security of vulnerable populations (e.g., the safety and security of Indigenous women and girls). Instituting this approach would create continuous learning opportunities for both Nations / Communities and the CER.
- The CER mandates Nation / Community specific Indigenous Monitors whose place-based IK, lived experience, and understanding of community priorities would provide for a comprehensive approach to the development of protection programs focused on environmental and socioeconomic effects. It is critical for the CER and companies to understand the different lenses, understandings, and methods required to monitor biophysical vs socioeconomic concerns.
- The CER require applicants to make real commitments for Indigenous business, employment and training opportunities with clear criteria and concrete targets. In particular, commitments should specify targets for Indigenous contracting, employment and training for affected Indigenous Nations / Communities.

## 6.10 Engaging with Potentially Affected People and Communities

The CER seeks to clarify expectations, ensuring impacted communities receive relevant information throughout the project's lifecycle. They seek to promote continuous engagement with Indigenous Peoples to identify and

address potential impacts on their rights and interests. The CER-proposed options include the following: (1) engagement requirements as a separate obligation or integrated into a company's management system.

## **Recommendations**

The SESC's recommendations include that

- The CER proceed with a separate engagement process, in the spirit of reconciliation, with affected Indigenous Nations / Communities, ensuring transparent communication and relationship building, and for the purpose of fostering meaningful, early, and continuous engagement regarding the development of programs and processes in accordance with Indigenous laws and policies. Engagement initiatives must be direct and move beyond, for example, phone lines or virtual web-reporting to be considered meaningful.
- As per recommendations in subtopic (1) of this topic paper, the CER ensures companies adopt a distinctions-based approach in designing engagement processes that are flexible and reflect the needs and priorities of participating First Nations, Métis, and Inuit communities. A direct engagement approach strengthens relationships, builds trust, and increases understanding of the issues and concerns that are specific to each participating Indigenous Nation.

## 7 FM – Environmental and Socio-Economic Assessment Topic Paper K

This topic paper focuses on proposed improvements related to two subtopics: (1) Restructuring the ESA Section and (2) Environmental and Socio-economic Assessment. Below, the SESC provides feedback premised on what we've heard over the past seven years and that can inform the CER's objectives for improvement and proposed options.

### 7.1 Restructuring the ESA Section

The CER seeks to improve the structure and layout of the ESA by improving the clarity and readability of the section and by seeking more details about the potential effects of proposed projects on the rights and interests of Indigenous Peoples. The CER-proposed options include the following: (1) splitting the current ESA into two sections (an amended ESA section and a new Rights and Interests of Indigenous Peoples section) to improve the clarity and readability of the ESA and (2) developing an initial subsection at the beginning of the ESA that consolidates common and general guidance on topics (e.g., IK) and specifies that these topics be included, as relevant, throughout the new amended ESA and new Rights and Interests of Indigenous Peoples section.

#### Recommendation

The SESC's recommendations include that

- The CER and applicants recognize that Indigenous Title, and Indigenous and Treaty rights, distinguish Indigenous Nations / Communities from local and regional entities, as Constitutionally protected Indigenous and Treaty rights require the CER and applicants to engage with impacted Indigenous / Communities when a project is being considered. The proposed split of the current ESA into the amended ESA section and a new "Rights and Interests of Indigenous Peoples" sections is aligned with this distinction and feedback previously shared with the CER.
- The amended ESA section must still acknowledge Indigenous rights and interests, where applicable, and integrate IK. For example, in describing land use plans in baseline conditions, the amended ESA section should include a discussion of applicable land use plans associated with Indigenous Nations / Communities whose traditional territory overlaps with the assessment areas. Meaningful reconciliation does not compartmentalize Indigenous rights and interests but considers Indigenous rights and interests in a holistic manner.
- Both in the amended ESA section and "Rights and Interest of Indigenous People" section, proponents must be required to apply an IGBA+ lens. The CER is advised to consider the Minister's Advisory Council on Indigenous Women's definition of IGBA+: "Indigenous Gender Based Analysis Plus begins from the position that colonization has, through several approaches and processes, including the forced implementation of patriarchal, western versions of governance and family-making – contributed to the historic and contemporary marginalization of Indigenous women, girls, and gender-diverse individuals in specific ways."<sup>1</sup> IGBA+ requires proponents to appropriately consider how Indigenous

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<sup>1</sup> Minister's Advisory Council on Indigenous Women. (2023). Indigenous Gender Based Analysis Plus (IGBA+) Toolkit: Created for Meaningful Application by Federal/Provincial Government, Corporations, Indigenous Communities and Indigenous Women, Girls, Two-Spirit and Gender-Diverse Individuals. Retrieved March 25, 2025 from [https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/maciw\\_igba\\_toolkit.pdf](https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/maciw_igba_toolkit.pdf)

women, girls, gender diverse, and two-spirit people might be affected differently by a project, due to historic and ongoing race- and gender-based discrimination. Below are some examples, highlighted through the work of the SESC, where an IGBA+ lens is necessary.

- Addressing real and perceived safety concerns connected to the influx of non-local, predominantly male workers staying in various types of accommodation, including temporary work camps. Research has shown that Indigenous women, girls, and gender diverse individuals are at heightened risk<sup>2</sup> for harm in these circumstances. The assessment of potential impacts and design of mitigation measures and processes for adaptive management needs to involve local Nations / Communities and address the specific needs of Indigenous women, girls, and gender diverse individuals.
- Cascading socioeconomic (including health and wellbeing) effects associated with project effects, such as housing availability and affordability which may be disproportionately experienced by Indigenous peoples, including Indigenous women and gender diverse individuals who are already facing race- and gender-based discrimination.
- Access to benefits associated with projects (i.e. business, employment and training opportunities) may be less accessible to Indigenous women and gender diverse individuals, who may already be experiencing challenges such as lack of access to childcare, or compounding factors of race- and gender-based discrimination and barriers to employment not necessarily faced by the general population.

Effectively applying an IGBA+ approach requires enhanced collection of disaggregated data allowing for a more detailed and accurate analyses of how different groups are affected by resource projects.

- The CER recognize and require applicants to acknowledge the National Inquiry into Missing and Murdered Indigenous Women and Girl Calls for Justice, specific to resource development, be included as an overarching topic of importance across the ESA and the “Rights and Interest of Indigenous People” sections. Highlighted here are calls #13.1 and #13.2<sup>3</sup>:
  - “We call upon all resource-extraction and development industries to consider the safety and security of Indigenous women, girls, and 2SLGBTQIA people, as well as their equitable benefit from development, at all stages of project planning, assessment, implementation, management, and monitoring.”

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<sup>2</sup> Gibson, G., K. Yung, L. Chisholm, and H. Quinn with Lake Babine Nation and Nak’azdli Whut’en. (2017). Indigenous Communities and Industrial Camps: Promoting health communities in settings of industrial change. Victoria, B.C. Retrieved March 25, 2025 from <https://firelight.ca/assets/publications/reports/firelight-work-camps-feb-8-2017.pdf>

House of Commons Standing Committee on the Status of Women. (2022). Responding to the Calls for Justice: Addressing Violence Against Indigenous Women and Girls in the Context of Resource Development Projects. Retrieved March 25, 2025 from <https://www.ourcommons.ca/DocumentViewer/en/44-1/FEWO/report-5/>

Moodie, S., A. Mason, and L. Moorcroft. (2021). Never until now: Indigenous and racialized women’s experience working in Yukon and northern British Columbia mine camps. Liard Aboriginal Women’s Society. Watson Lake, Yukon. Retrieved March 25, 2025 from <https://www.liardaboriginalwomen.ca/index.php/never-until-now-laws-mining-report>

<sup>3</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls. (2019). Reclaiming power and place: The final report of the National Inquiry into Missing and Murdered Indigenous Women and Girls. Retrieved March 25, 2025 from <https://www.mmiwg-ffada.ca/final-report/>

- “We call upon all governments and bodies mandated to evaluate, approve, and/or monitor development projects to complete gender-based socio-economic impact assessments on all proposed projects as part of their decision making and ongoing monitoring of project. Project proposals must include provisions and plans to mitigate risks and impacts identified in the impact assessments prior to being approved.”

## 7.2 Environmental and Socio-economic Assessment

The CER seeks clarity around the following five aspects of the amended ESA section.

### 7.2.1 VC Identification and Selection

The CER wants to ensure that the identification and selection of VCs is informed by IK and engagement to cover both broad and narrow concerns. The CER-proposed options include the following: (1) adding guidance to ensure that applicants incorporate and demonstrate how both IK and engagement were used in the selection of VCs and potential project-related effects and (2) adding a discussion of how narrow and broad VCs were selected to cover issues of concern.

#### Recommendation

The SESC’s recommendations include that

- The CER requires all applicants to work collaboratively with Indigenous Nations / Communities to ensure that information from engagement, including IK, is meaningfully reflected in the identification and selection of VCs, both narrow and broad, to build trust, ensure mutual understanding, and adequately capture affected Indigenous Nation / Community concerns and issues.
- The CER requires all applicants to include a methodology section in the application that describes how IK and information from engagement was used to select VCs. The methodology section can either be stand alone or nested within each VC section of the assessment, depending on the consensus reached between the applicant and affected Indigenous Nations / Communities participating in the assessment.
- The CER add explicit language requiring applicants to assess the potential socioeconomic effects associated with the influx of non-local workers as part of overarching guidance. The current guidance in the FM specifies “an application must clearly identify, describe and substantiate: .... other physical facilities and activities necessary to enable the project to proceed, including directly-related ancillary facilities, such as access roads including temporary and permanent bridge crossings, construction camps, or pipe lay-up and storage areas, marine terminals and loading facilities.”<sup>4</sup> While this requirement references construction camps, it is primarily focused on facilities and not on the socioeconomic effects experienced by communities because of the associated influx of non-local, primarily male workers, and in some instances, their families. Through seven years of oversight and monitoring of the TMEP, the SESC has observed many inaccuracies associated with understanding how the influx of workers and temporary work camps impacted local Indigenous Nations / Communities and residents generally in various locations.

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<sup>4</sup> Canada Energy Regulator. (2024). *Filing Manual*. Retrieved March 25, 2025 from <https://www.cer-rec.qc.ca/en/applications-hearings/submit-applications-documents/filing-manuals/filing-manual/>

## 7.2.2 Socio-economic Valued Components

The CER wants to clarify guidance for socioeconomic effects assessment by considering what stays in the amended ESA section and what is moved into the new Rights and Interests of Indigenous Peoples section. The CER-proposed options include the following: (1) renaming “Socio-economic Elements” to “Socio-economic Valued Components” and (2) focusing the socio-economic VCs (e.g., employment and economy, human health, human occupancy and resource use, infrastructure and services, and navigation and navigation safety) on non-Indigenous Peoples and communities.

### Recommendation

The SESC’s recommendations include that

- The CER include flexibility for additional socioeconomic VCs to emerge from engagement with Indigenous Nations / Communities beyond what is proposed i.e., employment and economy, human health, human occupancy and resource use, infrastructure and services, and navigation and navigation safety; for example, impacts across genders, Indigenous displacement, loss of biodiversity, etc.
- The CER remove the distinction that the socioeconomic VCs focus on non-Indigenous Peoples and communities. Socioeconomic VCs should assess the potential effects of pre-construction, construction, post-construction, operation, and decommissioning phases on people and communities through an IGBA+. The improvement by splitting the current ESA section into an amended ESA section and the “Rights and Interests of Indigenous Peoples” section is the recognition by the CER and applicants of the Constitutionally protected Indigenous and Treaty rights of Indigenous Nations / Communities, which must be considered separately from the potential effects on the public.
- The CER provide more detailed descriptions around the circumstances and interactions requiring detailed socioeconomic information (Table A-1 in the Filing Manual), particularly related to the influx of workers, and in some instances their families.
- The CER require proponents to assess potential impacts on socioeconomic VCs during the post-construction period. The SESC heard from affected communities their concerns about changes in employment and income levels post-construction and potential escalating of mental health and substance abuse issues. Communities recommended requiring proponents to provide support to employees/contractors to leverage experience gained on the project to access other opportunities as the project winds down.
- The CER require more rigorous assessments for socioeconomic VCs, including use of disaggregated data and location-specific primary data to verify the accuracy of any third-party datasets used to characterize existing conditions. Through the work of the SESC, it was evident that reliance on third-party datasets did not capture up-to-date information, nor did it fully capture the on-the-ground realities. For example, it is not sufficient to identify the number of health centres. Applicants of projects requiring an influx of workers, at least some of whom will be accompanied by their families, must understand the number of health workers and their capacity to take on new patients/cases, particularly when it is already difficult to access health services due to shortages of health workers.
- The CER include opportunities for the CER to complete an ex-poste analysis of an applicant’s ESA.

### 7.2.3 Mitigation and Enhancement Measures

The CER wants to clarify guidance related to mitigation and enhancement measures. The CER-proposed options include the following: (1) describing both enhancement and mitigation measures, (2) demonstrating how the mitigation hierarchy has been followed and justifying offset principles applied, (3) documenting and monitoring socioeconomic protection measures equivalent to the EP Plan and PCEMR, and (4) ensuring the implementation and maintenance of site-specific environmental and socioeconomic protection measures related to the operations phase.

#### Recommendation

The SESC's recommendations include that

- The CER require applicants to describe both mitigation and enhancement measures. With regards to the latter, the SESC has heard that business and employment opportunities for affected Indigenous peoples should continue for the life of the proposed project.<sup>5</sup> This may include, for example, the development of Indigenous-specific training opportunities, recruitment approaches, retention policies, career advancement plans, and support for accessing contracting opportunities.
- The CER require applicants to include workplace cultural safety policies and training as part of enhancement measures, i.e. Indigenous Nation / Community-specific training. The SESC heard from Indigenous people employed on the TMEP project about incidences of race- and gender-based discrimination, harassment, and violence.
- The CER must require applicants to engage with affected Nations / Communities to validate proposed socioeconomic mitigation measures and commit to adaptive management (including ensuring that language in contractor and subcontracting agreements allow for adaptive management). The current FM states "if new mitigation measures are to be used, provide any test results or a technically based rationale for their use and describe how their effectiveness will be evaluated."<sup>6</sup> For the past seven years, the SESC has worked to oversee and monitor the socioeconomic effects associated with the construction of the TMEP. Through this work, the SESC heard from affected Indigenous Nations / Communities that mitigation related to socioeconomic effects lacked real commitments. Many mitigation and enhancement measures proposed to address socioeconomic effects remain
  - (a) 'new' (because there are few studies that have evaluated their effectiveness);
  - (b) are primarily based on unproven grievance mechanisms, such as hotlines, and various engagement practices which arguably are not mitigation measures; and
  - (c) are often vague and non-committal (e.g. parties will work towards).

Ongoing engagement and ongoing feedback from stakeholders and affected Indigenous Nations / Communities is a critical component of designing effective mitigation and ensuring effective, on-the-ground monitoring. The experience on the TMEP showed that the current regulatory framework required little by way of validating compliance, including evaluating the effectiveness of socioeconomic

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<sup>5</sup> Feedback specific to mitigation and enhancement measures to address impacts under the "Rights and Interests of Indigenous People" section are discussed in Section 8.

<sup>6</sup> Canada Energy Regulator. (2024). *Filing Manual*. Retrieved March 25, 2025 from <https://www.cer-rec.gc.ca/en/applications-hearings/submit-applications-documents/filing-manuals/filing-manual>

adaptive management, mitigation, and monitoring plans from the perspective of Indigenous / Nations Communities, and did not confirm whether committed engagements were occurring. As a result, socioeconomic management and monitoring plans became somewhat of a check box exercise, whereby proponents submit reports identify few issues, and without validation from Indigenous Nations / Communities, are deemed to be complying.

- The CER must require applicants to make a real commitment to co-design and implement mitigation and enhancement measures that are bound by conditions that enable the CER to evaluate their effectiveness, including through engagement with stakeholders and Indigenous Nations / Communities. The SESC observed that on the TMEP there were several conditions simply requiring the submission of a plan but not necessarily requiring substantive review or engagement regarding the adequacy of the plan from the perspective of stakeholders and Indigenous Nations / Communities. Additionally, as the Project activities, workforce requirements, and schedule changed, there seemed to be few requirements for TMC to revisit and update these plans. For example, the Workforce Accommodation Strategy was drafted in 2017 with a project schedule of completion by 2021.<sup>7</sup> As construction was delayed due to the reconsideration hearing and COVID, among other aspects, despite this plan being out of date there seemed to be no requirement that it be updated. As a result, the threshold for action for TMC's Socio-Economic Effect Monitoring Plan indicator #1 ("Number of worker-days in field [categorized in two ways: by geographic origin, and also by Indigenous v. non-Indigenous status]) no longer applied as "Construction workforce continues beyond Worker Accommodation Strategy predicted timeframe".<sup>8</sup>
- The CER must require applicants to propose effective inspection, monitoring, and follow-up plans and be responsible for ensuring these proposed processes are occurring. Only in this way can issues be identified, documenting, and adaptively managed, including any intended and unintended consequences.

#### 7.2.4 Issues of Importance in Cumulative Effects Assessment

The CER wants to clarify guidance related to issues of importance in cumulative effects assessment. The CER-proposed options include the following: (1) considering relevant environmental events (e.g., wildfires) and climate change in cumulative effects assessments, (2) applicants justifying the use of timeframes (short or long term) in cumulative effects assessments, and (3) not requiring a cumulative effects assessment for VCs where the applicant demonstrates that proposed offsets will result in no net loss for the VC.

#### Recommendation

The SESC's recommendations include that

- The CER require all applicants to consider relevant, potential future events associated with climate change (e.g., wildfires) in cumulative effects assessment. The SESC believes that the goal of

<sup>7</sup> Kinder Morgan. (2017). *Worker Accommodation Strategy for the Trans Mountain Pipeline ULC Trans Mountain Expansion Project NEB Condition 59*. Retrieved March 26, 2025 from [https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2981674/3320705/A85812-](https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2981674/3320705/A85812-3)

[3](https://docs2.cer-rec.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2981674/3320705/A85812-3) [Trans Mountain Revised Compliance Filing Condition 59 - A5T8H6.pdf?nodeid=3319587&vernum=-2](https://www2.gov.bc.ca/gov2/gov/transmountain/ulc-transmountain-expansion-project-neb/condition-59-revised-compliance-filing-condition-59)

<sup>8</sup> Trans Mountain Corporation. *Socio-Economic Monitoring Reports*. Retrieved March 25, 2025 from <https://www.transmountain.com/socio-economic-reports>

reconciliation requires enhanced analysis to understand the uneven impacts that disasters such as wildfires have on Indigenous Peoples' lives and lands. An enhanced analysis would incorporate an IGBA+ framework to consider how future events may result in uneven impacts experienced by gender diverse individuals.

- Persistent and pervasive issues regarding Missing and Murdered Indigenous Women, Girls and 2SLGBTQI+ people is one of the most profound of all cumulative impacts, stemming from a history of colonial racism and sexism that devalued and dehumanized Indigenous women, and subjugated them to forms and levels of violence (direct, structural and cultural). This history, which sought to shift what were egalitarian relational practices to relationships based on Western notions of gender roles and patriarchal beliefs, reverberates today, and forms the landscape on which new projects are layered. To ignore this reality in a cumulative effects assessment is to perpetuate in the present the harms experienced by Indigenous Women, Girls, Two-Spirit and Gender Diverse People.
- The CER require all applicants to engage with potentially affected Indigenous Nations / Communities to ensure that concerns, issues, and IK are meaningfully integrated into the development of proposed offsets and the justification of timeframes (short and long term).
- The CER consider how language in the FM and proposed options favours biophysical VCs, placing socioeconomic risks as an afterthought. The SESC has worked diligently to raise awareness of the socioeconomic impacts resulting from major projects on people, specifically on Indigenous Nations / Communities. Any updates to the FM should reflect socioeconomic concerns as equal importance and acknowledge that methodologies for biophysical VCs may not always apply to socioeconomic VCs. For example, the third proposed option "not requiring a cumulative effects assessment for VCs where the applicant demonstrates that proposed offsets will result in no net loss for the VC" is inappropriate for socioeconomic VCs.
- The CER and applicants must be held more accountable for their determinations of no residual effects (no net loss) for VCs with the application of mitigation measures. The SESC agrees with the proposed option that applicants be required to demonstrate that their proposed mitigation measures will confidently achieve no net loss for that VC. However, from experience the SESC has observed that the terms 'demonstrate' and 'confidently' are often not questioned, nor effectively evaluated as it relates to socioeconomic VCs.

### 7.2.5 Approach to Significance

The CER is considering updating the FM to reflect its most recent approach to determining significance. The CER-proposed options include the following: (1) including a templated framework that includes a sliding scale significance determination for each VC and (2) requiring the applicant to consider whether or not the proposed project is likely to cause significant adverse environmental effects on federal lands (as per section 82 of the *Impact Assessment Act*).

### Recommendations

The SESC's recommendations include that

- The CER engage in rigorous studies of recent projects to provide some benchmarking as it relates to socioeconomic effects and the determination of significance. Some environmental VCs have regulatory standards regarding determination of significance; in contrast, socioeconomic effects assessments



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remain more complex and determination of significance of socioeconomic VCs will differ across different subsets of a population.

- The CER requires applicants to include a sliding scale significance determination and potential assessment of impacts that is determined by integrating biophysical and socioeconomic data and IK. IK is dynamic, place-based, and cumulative and offers applicants the opportunity to provide more holistic and informed significance determinations and assessments of potential impacts to federal lands. IK held by Elders represents an understanding of the cycles of lands, waters, and community that have been built upon by earlier generations and is invaluable to sustainable social and economic development.

## 8 FM – Rights and Interests of Indigenous Peoples Topic Paper M

This topic paper focuses on proposed improvements related to two subtopics: (1) Restructuring the FM and (2) Rights and Interests of Indigenous People. Below, the SESC briefly describes and provides feedback on the CER's objectives for improvement and proposed options in each subsection of the topic paper.

### 8.1 Restructuring the FM

The CER aims to enhance the structure and clarity of the ESA section in its FM by seeking more comprehensive information on the potential impacts of proposed projects on the rights and interests of Indigenous Peoples while improving the overall readability of the section. To achieve these objectives, the CER is considering dividing the current ESA section into two distinct parts: an amended ESA section and a new section specifically focused on the rights and interests of Indigenous Peoples. Additionally, the CER is considering consolidating general guidance into an initial subsection, emphasizing that relevant topics, such as engagement results, IK, and climate change resilience, that can be addressed in the ESA and the new Indigenous rights section.

#### Recommendations

The SESC's recommendations include that:

- The CER require applicants to have separate "Rights and Interests of Indigenous Peoples" sections/assessments for each potentially affected Indigenous Nation/Community. Through its past work, the SESC observed and heard from affected Indigenous Nations / Communities that the current Indigenous rights and interests assessment process is insufficient. Indigenous rights and interests are distinct and should be assessed separately, acknowledging the unique legal, historical, and cultural context of Indigenous Peoples and an inherent right to self-determination and governance. A distinct ESA section allows for a focused assessment of how proposed projects may affect Indigenous rights, interests, and sovereignty. Indigenous Peoples are not a monolith, and the specific interests, rights, and values, and distinct culture and worldview, of First Nations, Metis and Inuit must be respectfully considered in the assessment. Assessing Indigenous rights and interests separately promotes accountability and transparency and holds the CER responsible for considering the potential impacts on, and defining specific monitoring and mitigation measures to protect, Indigenous rights and interests.
- The CER require applicants to apply an IGBA+ approach to the new Rights and Interests of Indigenous Peoples section by describing the gendered impacts of proposed project activities, infrastructure, influx of workers, etc. In particular, applicants must consider how Indigenous women, girls, two-spirit and gender diverse individuals experience project related socioeconomic risks and benefits differently, and their meaningful inclusion in developing strategies to safeguard the social and environmental rights of local communities.
- Indigenous rights and interests are meaningfully incorporated into the new Rights and Interests of Indigenous Peoples section by integrating, where available, current Indigenous Knowledge (IK) about baseline conditions, potential effects, cumulative effects, mitigations, and monitoring plans. The SESC advises that in cases where current IK for any of the affected Indigenous Nations / Communities is unavailable, the CER require that applicants collaborate directly with those Indigenous Nations / Communities and so as to meaningfully characterize baseline conditions, potential effects, cumulative effects, mitigations, and monitoring plans.

- The CER require applicants to provide Capacity Funding Agreements to Indigenous Nations / Communities to allow for sufficient resources to conduct project-specific studies and to enable fulsome engagement to inform the development of the amended ESA and the new Rights and Interests of Indigenous Peoples section. The SESC has observed and heard from affected Indigenous Nations / Communities that applicants and the CER (then the National Energy Board) inadequately considered and integrated IK into VC selection, effects assessments, mitigation approaches, adaptive management, and monitoring. In part, community members expressed that the CER and applicants are not adequately prepared to engage with IK when it is shared.

## 8.2 Rights and Interests of Indigenous Peoples

The CER seeks clarity around the following five aspects of the rights and interests of Indigenous Peoples, considered separately below.

### 8.2.1 VCs Focused on the Rights and Interests of Indigenous Peoples

The CER's objective is to refine its guidance on Indigenous rights and interests by determining which elements should remain in the ESA section and which should be included in the proposed section on rights and interests of Indigenous Peoples while ensuring there is no redundancy. The CER-proposed options include the following: (1) consolidating and expanding a distinct category of VCs focused on Indigenous rights and interests; (2) focusing the new category of VCs on the rights and interests of Indigenous Peoples such as employment and economy for Indigenous Peoples, heritage resources, the human health of Indigenous Peoples (availability and accessibility of country foods), social and cultural wellbeing, and traditional land and resource use including sites of Indigenous significance; and (3) updating the FM to require proponents to outline not only mitigation measures but also enhancement measures to support Indigenous rights and interests.

### Recommendations

The SESC's recommendations include that:

- The CER require applicants to meaningfully collaborate with Indigenous Nations / Communities on ESA VC selection and scoping of Indigenous interests and VCs. While there will be some crossover, Indigenous interests and VCs may be different for each Indigenous Nation / Community. In addition to the potential VCs outlined by the CER in the proposed options, the SESC heard from Indigenous Nations / Communities that the CER-regulated projects fail to appropriately assess impacts to cultural recovery and sustenance, including as concerns impacts to intergenerational knowledge transfer and land-based learning practices, which in turn adversely impacts the continuation of Indigenous languages. As raised through SESC's work, important VCs to consider pertain to harvesting and subsistence activities and other cultural practices, Indigenous governance systems, Indigenous health and wellbeing, and social and economic conditions.
- The CER require applicants to meaningfully collaborate with Indigenous Nations / Communities to define indicators and measurable parameters for each Indigenous interest VCs and ESA VCs. An assessment of effects on Indigenous interests (or VCs under the new "Rights and Interests of Indigenous Peoples" section) may be supported by information from VCs under the ESA section.
- The CER require applicants and CER staff be sufficiently prepared to engage with IK. This may require CER and applicants to complete Nation / Community specific training and participate in cultural ceremonies and site visits before receiving and bearing witness to IK.

## 8.2.2 Integrating the Applicant’s Assessment and Indigenous-led Assessments and Studies

The CER aims to provide clearer guidance on when and how applicants should support Indigenous-led assessments and studies when requested by Indigenous Nations, as well as how to incorporate their findings into project assessments. The CER proposes refining expectations for applicants regarding the inclusion of Indigenous-led studies, such as IK and Traditional Land and Resource Use studies.

### Recommendation

The SESC’s recommendations include that:

- The CER require applicants to support affected Indigenous Nations / Communities with Indigenous-led assessments and/or Indigenous-led studies. Indigenous Nation / Community-led studies should not be restricted to IK and Traditional Land and Resource Use Studies as opportunities should be available to gather information relevant to their specific interests and VCs, including from a cumulative impact assessment perspective.
- Indigenous-led cumulative impact assessments support the assertion of rights under Section 35 of the Constitution Act, 1982 as well as international commitments under the UNDRIP Declaration Act, 2021. Such Indigenous-led assessments and studies that integrate IK and community values ensures that a Nation / Community rights and interests are properly considered, and lead to a more comprehensive and culturally relevant assessment.
- The CER require applicants to integrate IK throughout the application, including in the amended ESA and new “Rights and Interests of Indigenous Peoples” sections. These ensure that Indigenous rights and interests, IK, and perspectives including regarding cumulative impacts, are meaningfully considered in decision-making.
- The CER must require proponents to provide sufficient funding to Indigenous Nations / Communities to account for the human resources, time, and effort involved in working fulsomely with a proponent to identify and minimize risks to their rights and interests from the project. Very often, there exists funding, seasonality, and regulatory deadline challenges for Indigenous Nations / Communities to complete Indigenous-led cumulative impact assessments and studies that appropriately recognize and integrate IK in decision-making. To address these challenges, the SESC has heard from Indigenous Communities / Nations that dedicated funding streams be established to support Indigenous-led assessments, including during early engagement and through to post-construction and operations. It is important that the CER and applicants engage with affected Indigenous Nations / Communities early to allow for greater flexibility in timelines, and to enable Indigenous-led studies to be meaningfully considered and addressed.

## 8.2.3 Assessing Effects on the Rights of Indigenous Peoples

The CER seeks to clarify its guidance for applicants on assessing project impacts on Indigenous rights and interests, ensuring a comprehensive interpretation. The CER-proposed options include the following: (1) expanding and restructuring a dedicated “Rights and Interests of Indigenous Peoples” section and (2) introducing a standardized framework, using a sliding scale (modelled after the NEBC Recommendation Report) to assess and determine the impact of project effects on Indigenous rights and interests.

## Recommendation

The SESC's recommendations include that

- The CER revise the guidance described in the FM related to the Rights of Indigenous Peoples. For example, applicants must be required to reflect how historical and present activities and projects affect Indigenous interests, including identifying the effect to which Indigenous Nations / Communities can absorb more change, as proposed by the applicant. Applicants must be required to describe the existing conditions associated with each identified Indigenous interest and VC.
- The CER require applicants to meaningfully engage affected Indigenous Nations / Communities in defining the scope of the assessment, establishing existing conditions, and reviewing their respective assessments. The SESC has heard frequently from Indigenous Nations / Communities affected by the TMEP their concerns regarding that proponents were making uninformed decisions for Indigenous Nations / Communities, and that CER staff and proponents continued to show-up unprepared to engage with Indigenous Nations / Communities as concerns their IK. Indigenous Nations / Communities should be directly involved in making draft determinations of the severity of the project's effects on their own rights and interests.

### 8.2.4 Monitoring and Oversight by Indigenous Peoples

The CER is considering clarifying and modifying expectations for Indigenous monitoring and oversight during construction and operations to enhance assessments of project effects on Indigenous rights and interests. The CER-proposed options include the following: (1) specifying how applicants should involve Indigenous Peoples in construction, post-construction, and operational monitoring.

## Recommendation

The SESC's recommendations include that

- The CER require applicants to demonstrate collaborative, transparent, and adaptive approaches to document, monitor, manage, and report on protection and enhancement measures for VCs. This could include co-developing Nation / Community-specific monitoring plans using IK and community-driven indicators. The CER must be held accountable for the rigorous evaluation of the efficacy of these processes in each application, particularly as it relates to socioeconomic, cultural continuity, health and wellbeing, and governance interests. Too often, applicants propose mitigation measures and monitoring processes that have no real commitments and use vague language that can later be interpreted differently by different parties.
- The CER to ensure requirements for monitoring and oversight consider the importance of undertaking socioeconomic monitoring and biophysical monitoring separately. Understanding that there are interconnections, for example, effects on biophysical components often have cascading effects on socioeconomic and health and wellbeing interests. However, the work of the SESC observed that socioeconomic effects and monitoring are often an afterthought in guidance, monitoring, and oversight. Monitoring and oversight of socioeconomic, cultural, governance and health and wellbeing interests are currently very poorly done, if completed at all. Datasets used tend to be regionally focused and end up diluting localized project effects, are not timely enough to show real-time effects, and are not disaggregated by gender and race. Furthermore, monitoring plans should establish clear thresholds that trigger specific actions when they are exceeded, ensuring timely and effective responses and with transparency and accountability to affected Nations / Communities.

- The CER must specify how applicants should involve Indigenous Peoples in construction, post-construction, and operations monitoring. Impacted Indigenous communities are best placed to document, monitor, adaptively manage, and report on protection and enhancement measures in their territory. NGTL's efforts with affected Indigenous Nations / Communities on post-construction monitoring for the NGTL 2021 and Edson Mainline projects is a positive advancement in this regard. In furtherance of these efforts, Indigenous-driven strategies for monitoring socioeconomic effects and measuring compliance would enhance transparency, ensuring that commitments are upheld in a manner that respects Indigenous rights and values. Through the work of the SESC, Indigenous Nations / Communities repeatedly highlighted the need for community-led socioeconomic monitoring and adaptive management. Community-based socioeconomic monitors with a background in understanding social, economic, cultural issues and concerns and research and data analysis experience would ensure more accurate reflection of on-the-ground realities, transparency and accountability, and oversight of community agreements or impact benefit agreements. Nations / Communities and applicants should co-design Indigenous Nation / Community-specific mitigations, which could involve collaborative monitoring frameworks, and adaptive mitigation approaches.
- The CER require applicants to use an IGBA+ approach to identify risks and to inform the development of mitigation and monitoring plans, i.e., including race- and gender-disaggregated tracking. SESC meetings surfaced that, too often, proponents note the unavailability of race- and gender-disaggregated data as a reason they are unable to appropriately track socioeconomic effects and effectiveness of mitigation measures, and in other instances proponents present data sets that are not geographically specific to a Nation / Community. To appropriately establish existing socioeconomic conditions and develop effective monitoring plans, with clear thresholds and commitments, up-to-date and local-level data is needed. Applicants must be required to design assessments that better consider data needs and accessibility, including community-level data, and develop plans to ensure access. This may include supporting Indigenous communities to build internal strengths regarding community-level data collection.
- The CER be required to verify compliance and assess the effectiveness of management and mitigation measures on Indigenous Interests at the Indigenous Nation / Community level. This would include engaging directly to hear community-specific concerns, IK, and determine localized impacts that are not being addressed by proponents. To date, much of the focus of CER compliance and verification work has been on biophysical and workplace safety (as it relates to physical hazards), or passively receiving socioeconomic reports from proponents and with no verification involving Indigenous Nations / Communities. Substantially more work is required by applicants and regulators to identify and manage the socioeconomic impacts of projects of Indigenous peoples.
- The CER require applicants to go beyond an ethics hotline to commit to co-developing culturally appropriate grievance mechanisms. Provision of an accessible process for Indigenous people to submit recommendations or concerns throughout a project's life cycle are critical to ensuring transparency and accountability as it relates to Indigenous rights and interests, and in particular socioeconomic concerns which very often are not otherwise surfaced and addressed.

### **8.2.5 Clarifying the CER's Guidance for Sites of Indigenous Significance**

The CER wants to provide clear guidelines for applicants concerning heritage and cultural resources, including sites of Indigenous importance, during construction and operation phases. This is to ensure a thorough evaluation of how a project might impact the rights and interests of Indigenous Peoples. The CER-proposed

options include the following: (1) clarifying expectations for applicants about sites of Indigenous significance, heritage resources, and traditional land and resource use that can form part of an assessment.

### **Recommendation**

The SESC's recommendations include that

- The CER should encourage applicants to take a holistic approach to protection of sites of Indigenous significance, including through early and sustained engagement with Indigenous Nations / Communities, a focus on understanding gender-differentiated impacts, and collaborative decision-making. Sites of Indigenous significance are understood uniquely by Indigenous Nations / Communities, including through their own IK lens, governance structures, and cultural protocols. Supporting Indigenous Nation / Communities to lead assessments, supporting by adequate funding to be able to identify sites of Indigenous significance, is important to upholding the tenets of Free, Prior and Informed Consent. Follow-up activities should include greater effort to avoid impacts to these sites, and where impacts are not avoided, to ensure short, medium and long-term monitoring and reporting in conjunction with affected Nations / Communities.