



# Nooaitch Indian Band

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Canada Energy Regulator  
Suite 210, 517 10 Avenue SW  
Calgary, AB T2R 0A8

**Attention:**

[REDACTED]  
[OPR\\_RPT@cer-rec.gc.ca](mailto:OPR_RPT@cer-rec.gc.ca)

Dear [REDACTED]

**Re: Nooaitch Indian Band Submissions for Phase 2 Engagement for the Canada Energy Regulator's Onshore Pipeline Regulations and Filing Manuals Review**

Nooaitch Indian Band (“**Nooaitch**”) makes this submission in response to the Canada Energy Regulator’s (“**CER**”) Phase 2 Engagement regarding the Onshore Pipeline Regulations (“**OPR**”) and Filing Manuals Review.<sup>1</sup> This submission is based on Nooaitch’s experience with regulated pipeline projects and operations within nłeʔkepmx tmíx<sup>w</sup> (Nlaka’pamux territory Land), particularly the Trans Mountain Expansion Project (“**TMX**”), and broader operational activities carried out under the CER’s OPR framework.

Nooaitch is a Band within the nłeʔkepmx Nation, whose reserve lands and territory are located within the Nicola Valley, including the Upper Coldwater River watershed. As such, Nooaitch holds Aboriginal rights and title protected under section 35 of the *Constitution Act, 1982*, including rights to hunt, fish, gather, and carry out cultural and spiritual practices within its territory.

Nooaitch has participated in the CER’s processes both independently and collectively through the Indigenous Advisory and Monitoring Committee (“**IAMC**”). The perspectives in this submission reflect lessons learned across all phases of pipeline development, including early consultation and engagement, construction, transition to operations, and post-construction regulatory oversight. This submission further identifies structural shortcomings in the current OPR regime, particularly as they relate to the recognition and protection of our Aboriginal rights, the delivery of meaningful accommodation, and the management of long-term and cumulative impacts affecting our lands and community well-being.

## **A. Nooaitch Experience with OPR-Regulated Projects**

### *Construction versus Operations*

Nooaitch’s experience with the TMX project demonstrates a significant difference between engagement and accommodation during construction versus during operations.

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<sup>1</sup> See, <https://www.cerdialogue.ca/opr>.

During construction, TMX engaged with Nooaitch prior to filing its application, and certain accommodations were implemented on a project- and territory-specific basis. These measures, however, were largely framed as temporary responses to construction-related impacts and were not designed to endure beyond the completion of physical works, despite there being binding Conditions within the Environmental Assessment Certificate (“EAC”).

Once TMX transitioned to operations, we observed a marked reduction in engagement capacity, including dedicated staff reassigned or removed, communication channels were narrowed, and Nooaitch’s ability to raise or seek resolution of our concerns became significantly limited. This transition exposed a fundamental gap in the OPR framework, as accommodation was not structured or enforced across the full life of a pipeline despite the evolving nature and permanence of impacts.

Despite conditions attached to the EAC for the TMX project regarding operations, includes conditions intended to govern operational conduct, Nooaitch has experienced limited federal oversight, inconsistent compliance, and weak enforcement of those requirements. For example, issues raised regarding access, land disturbance, and operational effects have often remained unresolved for extended periods, with no effective regulatory consequences. In Nooaitch’s view, the absence of robust enforcement mechanisms allows operational impacts to persist unchecked and undermines confidence in the CER’s regulatory role. More stringent compliance and enforcement measures are therefore required to ensure that operational activities do not continue to infringe Nooaitch’s Aboriginal rights.

#### Road Density and Access Management in the Upper Coldwater

The Upper Nicola Coldwater watershed is a culturally significant and environmentally sensitive area for Nooaitch and the n̄eʔkepmx Nation, used for hunting, harvesting, cultural practices, and stewardship activities. Construction of the TMX project resulted in a substantial and lasting increase in road density throughout this area.

The EAC for the TMX project included a Condition included a broad requirement for an Access Management Plan.<sup>2</sup> In reality, however (and just as one example), the execution of this Condition has fallen short of its stated intent. Based on Nooaitch’s experience:

- there has been no structured or meaningful joint decision-making process to determine which access routes should remain permanent, which should be temporary, and which should be fully decommissioned and rehabilitated;
- Nooaitch was not engaged in identifying specific roads for decommissioning or determining appropriate rehabilitation standards; and
- conditions requiring cooperation and shared decision-making have not been implemented in a manner consistent with their wording or purpose, despite being formally imposed.

The practical consequence of these failures is that Nooaitch continues to bear the long-term effects of increased access, including habitat fragmentation, heightened pressures on wildlife, and disruption to culturally significant areas. Under the current OPR framework, Nooaitch lacks enforceable tools to compel compliance with access management commitments or to require remediation where conditions have not been met.

We recommend the OPR framework require that access management within First Nations territories be governed by clearly defined, mandatory joint decision-making processes. These processes must include consent regarding road retention, decommissioning, and rehabilitation, supported by enforceable

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<sup>2</sup> Trans Mountain Expansion Project Environmental Assessment Certificate, Schedule B, Condition 22.  
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timelines, reporting requirements, and compliance verification led or confirmed by affected First Nations.

### **Lack of Transparency and Accountability**

Nooaitch has consistently experienced a lack of transparency in both the Crown Consultation Coordinator (“CCC”) process and CER oversight, including with the TMX project during operations. As Nooaitch submitted to the CER Commission in the Westcoast Sunrise Expansion Program (“SXP”), regulatory processes increasingly emphasize procedural formality over substantive engagement and outcomes.<sup>3</sup> [NTD: added post-OPR Review deadline].

In practice, Nooaitch has experienced situations where proposed conditions or operational decisions were advanced on tight timelines that did not account for our capacity limitations. Information necessary to understand potential impacts or assess mitigation measures was often provided late in the process, in a fragmented form, or at a level of technical complexity that required technical review by consultants. Consultation records documented meetings and correspondence without demonstrating how Nooaitch’s concerns actually influenced decisions or resulted in concrete changes.

For example, during operational activities associated with the TMX project, Nooaitch received limited advance notice and had no meaningful opportunity to influence timing, methods, or mitigation measures. Attempts to raise concerns were constrained by the characterization of these activities as “operations,” effectively placing them beyond meaningful regulatory scrutiny. These shortcomings mirror those identified by Nooaitch in relation to the CER’s completeness determination and process for the SXP, where Nooaitch raised concerns about fragmented review, lack of procedural fairness, and the absence of clear accountability mechanisms. [NTD: added post-OPR Review deadline].

The effect of these processes has eroded our trust in the CER’s regulatory system and have, unfortunately, weakened Nooaitch’s view of the CER’s role as a credible quasi-judicial decision-maker.

Additionally, under the current OPR framework, cumulative effects analysis remains narrowly framed and does not adequately account for:

- impacts arising from the original construction of pipeline infrastructure;
- incremental effects associated with looping projects, upgrades, and operational programs; and
- progressive increases in road density, access, and land use pressures over time.

For Nooaitch, some of the most significant impacts occurred during the 2017–2018 period, including activities associated with the Tunkwa Looping Project. These works proceeded under operational authorities, with minimal notice and limited opportunity for the Crown to meaningfully engage with us and meaningfully fulfill its duty to consult. Because such activities were characterized as “operations” rather than discrete “projects”, we were left with limited input or recourse.

While similar to our recommendation above, we recommend that the OPR framework, overall, establish clear, enforceable standards for transparency and accountability, including requirements for timely and complete information disclosure, reasonable engagement timelines, and an explicit obligation for the

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<sup>3</sup> [C31607-1](#).

CER to assess and determine consultation adequacy before authorizing operational activities that may adversely affect Aboriginal rights and title.

## **B. Failure of Cumulative Effects Integration**

The OPR framework does not meaningfully integrate cumulative effects into ongoing operational phase of pipeline projects. This deficiency results in:

- continuing infringements arising from legacy infrastructure that are never reassessed or addressed;
- the absence of adaptive management mechanisms capable of responding to changing environmental conditions or accumulating impacts; and
- a regulatory gap in which First Nations experience real and ongoing effects but lack effective avenues for redress.

Without a comprehensive approach to cumulative effects, harms persist and intensify over time, leaving Indigenous Nations without meaningful regulatory protection.

Nooaitch recommends that the OPR framework require the integration of cumulative effects assessment throughout operations, including mandatory reassessment where cumulative effects increase or conditions evolve. This framework should incorporate adaptive management triggers, Indigenous-led monitoring, and enforceable authority to modify, suspend, or remediate operations where impacts exceed set standards.

## **C. Climate Change, Carbon Accounting, and OPR Limitations**

Nooaitch is deeply concerned that the OPR framework addresses climate impacts in an overly narrow manner. Current assessments focus almost exclusively on pipeline operations, excluding upstream and downstream emissions, including:

- increased oilsands production enabled by pipeline capacity;
- downstream shipping and export to international markets; and
- broader carbon influx associated with expanded fossil fuel infrastructure.

In addition, there is limited clarity about the use and effectiveness of carbon offsets, biodiversity credits, and green energy “initiatives”. These mechanisms are often presented in abstract terms, without demonstrating tangible benefits or relevance to the communities most affected by project-related emissions.

At the same time, our communities are expected to absorb the impacts of provincial climate policies, including transitions in home heating and transportation, while energy systems (e.g. through BC Hydro) have shifted from net exporter to net importer due to increased demand. The disconnect between these realities and continued investment in fossil fuel infrastructure is not meaningfully addressed within the OPR framework.

Nooaitch recommends comprehensive climate impact assessments that account for upstream and downstream emissions, transparent evaluation of offset mechanisms, and meaningful participation by affected communities in assessing whether proposed climate measures adequately address community-level impacts.

## **D. Free, Prior, and Informed Consent and the OPR Framework**

Nooaitch does not see the current OPR framework as capable of achieving free, prior, and informed consent (“FPIC”). The CCC model mirrors earlier TMX consultation structures and remains inconsistent with the principles articulated by the Federal Court of Appeal in *Tsleil-Waututh*,<sup>4</sup> including the requirement for meaningful, two-way dialogue and accommodation.

Key deficiencies include:

- reliance on consultation logs that document activity but not outcomes;
- absence of decision-making authority for First Nations; and
- failure to assess whether consultation has been adequate before allowing activities to proceed.

## **E. CER Oversight and First Nations Advisory Mechanisms**

Nooaitch acknowledges the efforts of individual Indigenous representatives and technical leads within IAMC and related forums. However, advisory bodies cannot substitute for enforceable regulatory obligations.

Mandates for IAMC participation and accommodation were not designed to endure for the life of projects like TMX, despite clear expectations from affected Nations that they would. Similarly, engagement through industry-led forums or workshops, such as those associated with Enbridge projects, often lacks clarity, authority, and accountability, leaving First Nations uncertain about how concerns will be addressed or resolved.

## **RECOMMENDATIONS**

Nooaitch respectfully recommends that the CER’s OPR review result in the following reforms:

1. The OPR must mandate enforceable accommodation measures that apply throughout construction, operations, and decommissioning.
2. First Nations must hold decision-making authority over access management, road decommissioning, and rehabilitation within their territories.
3. The OPR must require cumulative effects assessments encompassing original construction, operational upgrades, and long-term land use change.
4. Carbon analysis must include upstream and downstream impacts, supported by transparent and enforceable offset mechanisms.
5. The CER must be required to determine that consultation is adequate and consistent with FPIC before authorizing regulated activities.
6. CCC processes must be transparent, and enforcement tools strengthened to ensure compliance with regulatory conditions.

## **CONCLUSION**

In Nooaitch’s experience, the current OPR framework falls short in protecting our Aboriginal rights and title, addressing cumulative effects, and ensuring meaningful accommodation over the life of pipeline projects. Without significant reform, we expect to continue experiencing enduring impacts without trust

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<sup>4</sup> *Tsleil-Waututh Nation v. Attorney General of Canada, et al.*, 2018 FCA 153.  
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in the regulatory process. Nooaitch urges the CER to use this review to fundamentally realign the OPR with principles of accountability, transparency, and respect for Indigenous jurisdiction.

Respectfully,

Nooaitch Indian Band

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