

TMX-IAMC Monitoring Program: Field Discussion Process Terms of Reference

October 8, 2021

1. **Purpose.** These terms of reference are agreed to by Trans Mountain Corporation (TMC), the Canada Energy Regulator (CER), Natural Resources Canada (NRCan) and the Indigenous Caucus (Caucus) of the Indigenous Advisory and Monitoring Committee (IAMC), for the purpose of creating a process to discuss issues that emerge during the period of construction of the Trans Mountain Expansion Project (TMX), with a view to resolution of those issues.
2. **A process, not a standing forum.** These terms of reference set out an agreed upon process for discussing issues that arise in the field, so that when such issues arise the Parties already have a path mapped out by which to try to reach resolution. This is an *ad hoc* process, to be used when required. These terms of reference do not create a new standing forum.
3. **Parties.** TMC, the CER and the Caucus are the three primary parties (“Parties”) to the Field Discussion Process. As agreed by the Parties, other participants (e.g., other regulators, departments, or agencies, other relevant IAMC committee or sub-committee members and representatives of affected Indigenous communities) will be invited to a Discussion Forum as appropriate. The Parties will ensure participants are fully briefed on the issue and on this process. The IAMC-TMX Secretariat¹ (‘the Secretariat’) will facilitate the Field Discussion Process, subject to the other Parties directing otherwise.
4. **Parties’ liaisons.** Each of the three primary Parties will identify and assign a primary liaison for the Field Discussion Process, who will be each party’s primary point of contact for that purpose and who will aim to attend each meeting within the Field Discussion Process in order to provide continuity. In addition, in respect of each issue brought into the Field Discussion Process, the Parties will bring representatives with the appropriate technical, operational or managerial expertise or involvement in the matter to ensure the Parties have the factual and technical knowledge available to them to fully discuss and resolve the issue.
5. **Issues addressed are operational in nature.** The Field Discussion Process is intended to be used to address specific issues arising from the field, as opposed to

¹ The Secretariat is based out of Natural Resources Canada’s Indigenous Partnerships Office – West and provides a range of support services to the Committee.

matters of broader policy. The process is not intended to address questions of whether TMC is in compliance with regulatory requirements, but rather to provide a mechanism to resolve practical issues that arise during construction, as part of the Parties' broader interest in and commitment to continual improvement and excellence.

6. **Responsive to the issues raised.** Within the Field Discussion Process, the Parties will act in good faith with the aim of resolving issues early and informally.
7. **The Field Discussions Process is not to be triggered unnecessarily.** Any party may raise an issue consistent with these Terms of Reference and bring it into the Field Discussion Process. Each party will exercise good judgment in raising issues, mindful that the Field Discussion Process entails a substantial commitment of time and energy from each party for the discussion of each issue before it. Each party will make best efforts to resolve issues on an expedited basis through informal means before bringing an issue into the Field Discussion Process.
8. **The Field Discussion Process is triggered by giving notice.** Any one of the Parties' liaisons can trigger the Field Discussion Process by giving notice to each of the other primary Parties' liaisons. The notice should, where possible, include a summary of the following:
 - a. the factual nature of the issue;
 - b. why the Field Discussion Process with respect to the matter is required;
 - c. any timing sensitivity to the issue;
 - d. the proposed timing for the Field Discussion Process;
 - e. any request for particular representatives of any of the Parties to attend; or any request for additional guests to attend (as referenced in section 3);
 - f. any Indigenous communities that are particularly affected by the matter and should be invited to attend; and,
 - g. a summary or background overview of attempts to resolve the issue prior to it being referred to the Field Discussion Process.

The notice may also be shared with relevant IAMC committee members, and with Indigenous communities affected by the issue.

9. **Principles of engagement.** The Parties will engage in the Field Discussion Process in a manner consistent with the following principles:
 - a. **Time sensitive.** The Parties will at all times engage in the Field Discussion Process in a timely way, and with urgency when the nature of the issue

requires it. The Parties agree to respond to the initial Field Discussion Process notification within 72 hours.

- b. **Sharing of information.** Ahead of the actual meeting(s), each party will attempt to share what information it has that relates to the matter, provided it is useful for the discussion and resolution of the matter, and it is able to be shared from a confidentiality standpoint (mindful of the Parties' commitments and relevant requirements to protect confidential information).
- c. **Listening to understand.** Each party brings their expertise to the table. All Parties should draw from the collective expertise of the table in attempting to identify a path forward. The best outcomes will reflect that all Parties have been listened to and understood.
- d. **Good faith and looking for solutions.** The Parties should consistently remain focused on problem solving. The Parties acknowledge that defensiveness and entrenched viewpoints do not serve to advance the resolution of operational issues. The Parties commit to regularly self-assessing whether the right people are at the table for resolution of the issue at hand.
- e. **Taking innovative approaches together to make the relationships work.** The Field Discussion Process will work most effectively if creative solutions and new ideas can be explored. If barriers to new approaches are identified, the Parties should explore possible methods of overcoming those barriers on a without prejudice basis.
- f. **Candour and acknowledgment of each other's interests and constraints.** The Parties will make best efforts to focus on their shared interests, as opposed to their divergent ones. Constraints should be candidly identified to enable the Parties to articulate the goalposts of the possible outcome.
- g. **Clarity of issue summary and intended outcomes.** The Parties agree to be as clear and concise as possible in identifying issues to be addressed as well as the desired outcomes, so as to help focus the Field Discussion Process and support effective issues resolution (e.g., outcomes are operational and efficient).

10. Issue Resolution. The Parties will set out a timeline for discussion that reflects the urgency of the matter. If the Parties are unable to resolve the issue within the

timeline, then any party can advance the issue to the Monitoring Policy Table for resolution. If the Monitoring Policy Table is unable to resolve the issue within a reasonable timeline, then any party can advance the issue to the Leadership Table. Parties agree that referral of an issue to the Leadership Table should be limited to matters that are significant and warrant this type of review. Each of the Parties' Liaisons will be consulted prior to any Party requesting an escalation of an issue to the Leadership Table.

11. **Record of Outcome.** Where there has been agreement on resolution, the Secretariat will draft a Record of Outcome for review and approval by the Parties. The Record of Outcome will include the commitments made by each of the Parties and will be shared with the TMX-IAMC Committee and any relevant sub-committees. The Secretariat will track each party's progress on fulfilling its commitments. Where there has been no agreement on resolution, NRCan the Secretariat will record that the Parties did not resolve the particular issue through the Field Discussion Process.
12. **Implementation.** The Field Discussion Process on a particular issue may be reconvened by any party, by way of notice to each of the Parties' liaisons, in order to follow-up on the commitments made in a Record of Outcome.
13. **Issues of a policy nature.** If the Parties agree that a policy change could mitigate similar issues in the future, then the Parties may make a collaborative recommendation to the relevant entity or entities.
14. **Resolving Issues Related to the Functioning of the Process.** Where necessary, the Parties agree to discuss and seek to resolve any issues that are preventing the effective functioning of the Field Discussion Process, including whether these terms of reference should be revised. Such discussions may be had at first instance by the Parties' liaisons. If the liaisons cannot address the issues adequately, then those issues may be taken to a leadership table comprising:
 - a. The Chief Executive Officer of the Canada Energy Regulator;
 - b. The President and Chief Executive Officer of Trans Mountain Corporation;
 - c. The Indigenous and Government Co-Chairs of the Indigenous Advisory and Monitoring Committee; and
 - d. Indigenous leadership from the IAMC and/or its sub-committees, as determined by the Indigenous Caucus of the IAMC.

**For the Indigenous Caucus
(Indigenous Advisory and Monitoring Committee):**



December 17, 2021

Date

Michelle Wilsdon
Indigenous Co-Chair