

**Climate Justice Research Collaborative and Mountain Protectors:
A Resource Guide to Pipeline Research and Reporting**



PC: [Jordan Barnes](#)

Maya Dong, Cassie Lumsden, and Cloe Mao
University of British Columbia
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Introduction

Executive Summary

Completed in collaboration with the University of British Columbia's [Climate Hub](#), specifically the [Climate Justice Research Collaborative \(CJRC\)](#), and the Mountain Protectors, this report strives to serve as a resource guide into issues related to the Trans Mountain Pipeline (TMX) project. As part of the CJRC, we aim to contribute to the existing understanding of the climate crisis by adopting a climate justice focused lens throughout our work. Climate justice acknowledges that climate change spreads an unequal burden of responsibility, with the most resting on the shoulders of marginalized communities, and the current systems in place are designed to allow it to continue to do so. With this perspective, we hope to explore the intersectional nuances that plague our research question - how do land and water regulations enable and constrain land protection on unceded Coast Salish Territories?

Our report begins with an introduction to the work of the Mountain Protectors to better situate our own positions as students supporting existing community-led efforts, and to highlight the knowledge that we have had the privilege of hearing and working with. Subsequently, we introduce our research beginning with an analysis of the current local, provincial, and federal policies and legislation that dictate major infrastructure projects such as the TMX. While our research finds legislation and policies clearly state the priority to protect the people and environment of the lands, it is clear through further analysis on non-compliance reports and widespread media news that this is not the case, and that violations continue to be committed. As such, the following reporting section summarized these existing legal pluralities into an succinct section that can be used to determine the best path forward when frontline workers find or are notified of breaches committed by pipeline companies. It is imperative to note here, however, that there exists a clear lack of transparency from TMX and little civil reporting methods that lead to direct outcomes.

These key barriers experienced in our findings are further examined in the discussion section of the report, by examining the pervasive and deeply held beliefs, relationships, and power dynamics that shape our social environments. In doing so, we aim to provide some deeper analysis into the root causes of climate injustice and continued pipeline violations, as well exploring other thematic areas often associated with advocacy work. Topics covered in this section include climate justice, colonization, capitalism, reconciliation, Indigenous rights and The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). While this is not a comprehensive list of all related root causes, we hope that this section acts as a springboard to delve into further research on these topics in an accessible way.

Finally, our report concludes with policy recommendations and additional resources to provide future researchers, activists, organizations and other bodies the framework to move forward, allowing this report to become a living document.

Background

Mountain Protectors

Based out of Burnaby, British Columbia, the [Mountain Protectors](#) are a group of land and water protectors, elders, and volunteers who strive to defend the natural lands of the unceded and stolen Coast Salish Territories by monitoring the TMX pipeline expansion. This work includes regular surveillance over all aspects of pipeline construction, organizing community events, and fostering a safe space at Kwecwecnewtxw (The Watch House) for ceremony and gatherings. As front-line defenders, the Mountain Protectors' ground documentation of TMX tank farms and marine terminals are pivotal in raising public awareness of the continuous ongoing and increasing illegal activity, environmental damage and human-rights disregard committed by TMX. In light of their work, our team aims to provide this guide as a resource for front-line workers to easily navigate around vague government avenues of support, as well as a starting place for others interested in climate justice and advocacy, building a long-term and sustainable movement.

Key Legislations and Policies

This section provides a general overview of legislations, regulations, and policies that relate to the regulation of the TMX project and land contamination. However, it is not an exhaustive list, as there are more laws applicable to energy projects as a whole, as well as Indigenous land and title rights.

Federal

[Canadian Energy Regulator Act](#)

- Legally authorizes the CER and gives them decision making authority over projects under their jurisdiction, including the TMX project
- Sections of note:
 - Section 56 - directs the CER to consider adverse effects decisions and orders may have on the rights and title of Indigenous Peoples of Canada, but does not direct any action be taken on these considerations or the involvement of Indigenous peoples in decision making
 - Section 115 - Defines violations by projects
 - Part 3 - governs pipelines under federal jurisdiction
 - Part 6 - governs the use of land for energy projects
 - Section 317 - speaks to the use of reserve lands in energy projects

[CER Onshore Pipeline Regulations](#)

- Regulates construction, decommissioning, and operation of pipelines under the CER jurisdiction
- Sections of note:
 - Section 48 - dictates that companies must have an environmental protection program

Canada Oil and Gas Operations Act

- Regulates the exploration, exploitation, and transportation of oil and gas to promote safety, environmental protection, the “polluter pays” philosophy, among other goals
- Also dictates federal oil and gas project jurisdiction to the CER
- Sections of note:
 - Section 25 - dictates the duty to report spills to the Chief Conservation Officer and the duty to take reasonable measures to prevent damage to human health, the environment, and property
 - Section 71 - designates violations and the penalties that may arise due to such violations

Other legislation that impacts the CER include the Canada Petroleum Resources Act, Oil and Gas Operations Act, Petroleum Resources Act.

Canadian Environmental Protection Act

- Dictates that the Government of Canada use its powers to protect the environment
- Sections of note:
 - Section 2 - outlines all the duties the Government of Canada have to the environment and the people of Canada
 - Part 5 - controls and regulates the toxic substances listed in Schedule 1 of the Act
 - Part 9 - regulates works and environmental impacts on Aboriginal land

Impact Assessment Act

- Regulates environmental impact assessments for projects
- Sections of note:
 - Section 7 - dictates when the Act actually applies
 - Sections 47 and 48 - transfer the responsibilities for impact assessments for projects under CER jurisdiction to the CER

Provincial

B.C. Environmental Assessment Act (2002 or 2018)

- Directs power to the responsible minister or ministers to determine whether a project requires an environmental assessment certificate
- Dictates requirements for an environmental assessment certificate
- TMX Environmental Assessment Certificate Process:
 - For the TMX project, the B.C. government accepted the CER’s impact assessment under the 2002 Act, and made an environmental assessment certificate that added 37 conditions to the CER’s 157 conditions and recommendations listed in their impact assessment
 - Courts determined that the CER’s assessment did not adequately consider marine impacts of the TMX project and overturned the federal approval project until a reconsideration report was accepted in 2019

- Under the 2018 Act, the B.C. government is reconsidering their initial environmental certificate and determining whether any changes to the certificate conditions are required
- Sections of note:
 - Sections 27 and 28 (2002 Act) - permits the B.C. government to accept a federal impact assessment to stand in for a provincial environmental assessment

Environmental Management Act

- Regulates waste, contaminated sites, clean air, the reduction of greenhouse gases, compliance to the Act, and appeals.
- Dictates powers in managing the environment
- Currently in the process of being amended so the information here could become outdated or irrelevant
- Sections of note:
 - Section 41 - gives power to a director to order the owner or operator of a site to undertake a detailed site investigation if the director suspects the site may be contaminated or contain substances that can have adverse effects on humans or the environment
 - Section 44 - gives power to a director (who is a person designated by the minister) to determine if a site is a contaminated site
 - Division 3 - determines who is liable for contaminated site remediation
 - Division 4 - dictates the implementation of contaminated site remediation
 - Section 55 - regulates contaminated soil relocation
 - Section 79 - regulates spill prevention and spill reporting, including dictating that the failure to report a spill is an offence
 - Division 2.1 - regulates spill preparedness, response, and recover

Contaminated Sites Regulation (B.C. Reg. 375/96)

- Under the Environmental Management Act
- Regulates contaminates sites, site remediation, and the relocation of contaminated materials in a manner more specific than how these topics are regulated under only the Environmental Management Act
- This regulation may also be amended with the Environmental Management Act
- Sections of note:
 - Part 5 - dictitates the definition and determination of a contaminated site
 - Part 6 - sets standards for remediation of contaminated sites
 - Part 8 - regulates the relocation of contaminated soil

Spill Reporting Regulation (B.C. Reg. 187/2017)

- Under the Environmental Management Act
- Regulates the types and quantities of spills that must be immediately reported and the reporting process
- Sections of note:
 - Section 4 - dictates that a responsible person must immediately report the actual or potential spill to the Provincial Emergency Program

- Sections 5 and 6 - dictates that a responsible person must continuously update the relevant minister consistently throughout the duration of the spill in reports
- A responsible person is defined under section 91 of the Environmental Management Act as the person who has possession, charge, or control of the substance when a spill of the substance occurs or is at imminent risk of occurring

Protocol 12 for Contaminated Sites

- A policy created by a director (in this case, the Director of Waste Management) under Section 64 of the Environmental Management Act
- Establishes procedural requirements for the planning, conducting, and reporting of the remediation of a contaminated site, as well as the methods for classifying contaminated sites as high risk

Municipal

Many local governments follow applicable B.C. legislation, but may have bylaws that regulate processes within their limits. For example, the City of Burnaby requires [permits for all soil removal](#) from Burnaby sites and the [Climate Action and Energy Division](#) can be contacted in the case of a spill.

History of Non-Compliance

There are currently a variety of regulations and compliance mechanisms in place for the Trans Mountain project. Field visits and site inspections from compliance officers are completed to ensure that these regulations are being met by companies to ensure adequate protection of land, water, people and the environment around facilities.

Some past cases of non-compliance relating to land and water contamination are outlined below. These cases are specific to the local Westridge Marine Terminal facility in Burnaby. In almost all incidences, the requirements of non-compliance were met. Therefore, they may provide insight into the actions that have been taken in the past in response to cases of non-compliance, and serve as a foundation for which future reporting could be based on. This does not represent a comprehensive list of all compliance or regulatory instruments used. Full reports of non-compliance from field inspections for facilities across Canada can be found in [CER's online database](#). For a full history of non-compliance* for Trans Mountain facilities based in the province of British Columbia, in addition to the regulatory instruments used, please refer to this [reference sheet](#).

*as of April 2021

Land

1. Regarding a case of non-compliance relating to soil handling, Trans Mountain began work relating to watercourse diversion activities at the Westridge Marine Terminal, on what was identified as a “Streamside Protection and Enhancement Area” (SPEA). These activities were undertaken by Trans Mountain without submitting required information to demonstrate that the SPEA excavation was authorized by the Commission. The excavation relating to Watercourse Diversion activities on-site was originally not conducted, due to the 2018 decision from the Federal Court of Appeal on *Tsleil-Waututh*.

The decision rejected the approval of a pipeline on the basis of the Government of Canada's failure to conduct adequate consultations with First Nations communities, and affirms the Court's decision to foster "meaningful two-way dialogue" in Indigenous consultations. Trans Mountain filed another modified request to begin work for watercourse diversion in 2019, which was approved by the Commission through a Miscellaneous Order (MO-042-2019). Compliance officers noted that Trans Mountain removed around 1000 m³ of soil from the SPEA excavation area without justification of expanding the area of the excavation in either its original request, or update plans. A notice of non-compliance was filed regarding the ambiguity relating to the SPEA excavation, for completing work for Watercourse Diversion outside the scope of submissions that were originally approved by the Commission.

- Regulatory requirement: [MO-042-2019](#) and [CER Act 95\(2\)](#)
 - "Diversion work outlined in the Request, subject to the following condition:
 1. Within 7 days of completing the Watercourse Diversion, Trans Mountain must file, with the Commission, confirmation that the approved Watercourse Diversion was completed and constructed in compliance with all applicable conditions and commitments from the Trans Mountain Expansion Project. If compliance with any of these conditions or commitments cannot be confirmed, Trans Mountain must file with the Commission details as to why compliance cannot be confirmed"
- Requirements of Compliance Instrument
 - Provide:
 - Report on the next c. 106 filing

Water

2. Regarding non-compliance relating to water contamination, the compliance officer was unable to reach the Environmental Manager on site after an observed spill. The number provided on spill kits, as a part of the management procedure, was found to be out of service, and the contact number of the construction manager was also found to be out of service. A notice of non-compliance was issued for this instance.
 - Regulatory requirement: [Facilities EPP - Vol. 3 - Cond. 78](#) (Sep.2017)
 - "Post specific instructions regarding applicable contacts and appropriate response actions to be taken in the event of a spill in the field construction offices. The first person on the scene will execute the actions presented in the Spill Scene Checklist. Report the spill to an Environmental Inspector, Environmental Manager and Chief Activity Inspector."
 - Company action
 - Provide:
 - Existing or planned summary of how Trans Mountain will complete a systematic check of documentation for spill kits used for its facilities, and copies of the updated documentation

- What the Company has been done (or plans to do) to ensure that this issue will not reoccur on other Project sites.
- 3. In another case relating to water contamination of marine environments, inspection of the facility led the compliance team to observe evidence of wooden pilings on-site that could pose a risk to the surrounding marine environment. This risk can be attributed to the presence of creosote in the sediment that may threaten the water quality. While a notice of non-compliance was not issued, an Information Request was submitted by the officer to be actioned by Trans Mountain.
 - Associated Regulations:
 - [TMX Contamination Identification and Assessment Plan approved for WMT \(A82636-2\)](#)
 - Condition 46 filing, Section 6.2
 - “Should impacts be identified on Trans Mountain properties or as a result of Trans Mountain activities, Trans Mountain will implement appropriate mitigation and remediation measures in accordance with the NEB Remediation Process Guide (2011)”
 - [NEB Remediation Process Guide \(2011\)](#)
 - “A company may also encounter contamination that:
 - a. is not liquid but may cause an adverse environmental effect
 - b. occurred because of a previous incident
 - or c. is an accumulation over time.”
 - “NEB expects notification of the contamination by writing to the Secretary of the Board as soon as practicable”
 - Regulatory requirement: [Onshore Pipeline Regulations \(OPR\)](#)
 - Section 48: “A company shall develop, implement and maintain an environmental protection program that anticipates, prevents, manages and mitigates conditions that could adversely affect the environment.”
 - Requirements of Compliance Instrument
 - Provide:
 - Confirmation of whether Trans Mountain will sample the sediment to determine if contamination is present.
 - If it plans to do so, then additional requirement to provide an estimated start date of the dock support removal work.
 - If contamination was confirmed following the removal of the dock supports, confirm that the company will file and submit appropriate notifications as given by the NEB Remediation Process Guide and Condition 46 of TMX Contamination Identification and Assessment Plan.
- 4. There also may exist issues regarding personnel on-site that may potentially impact adherence to environmental protection. On a routine site visit, relating to discussions about marine environment monitoring, the Trans Mountain was unable to answer how its subcontractors were qualified to conduct visual monitoring of marine animals within the surrounding environment, and could not provide adequate evidence for training regarding

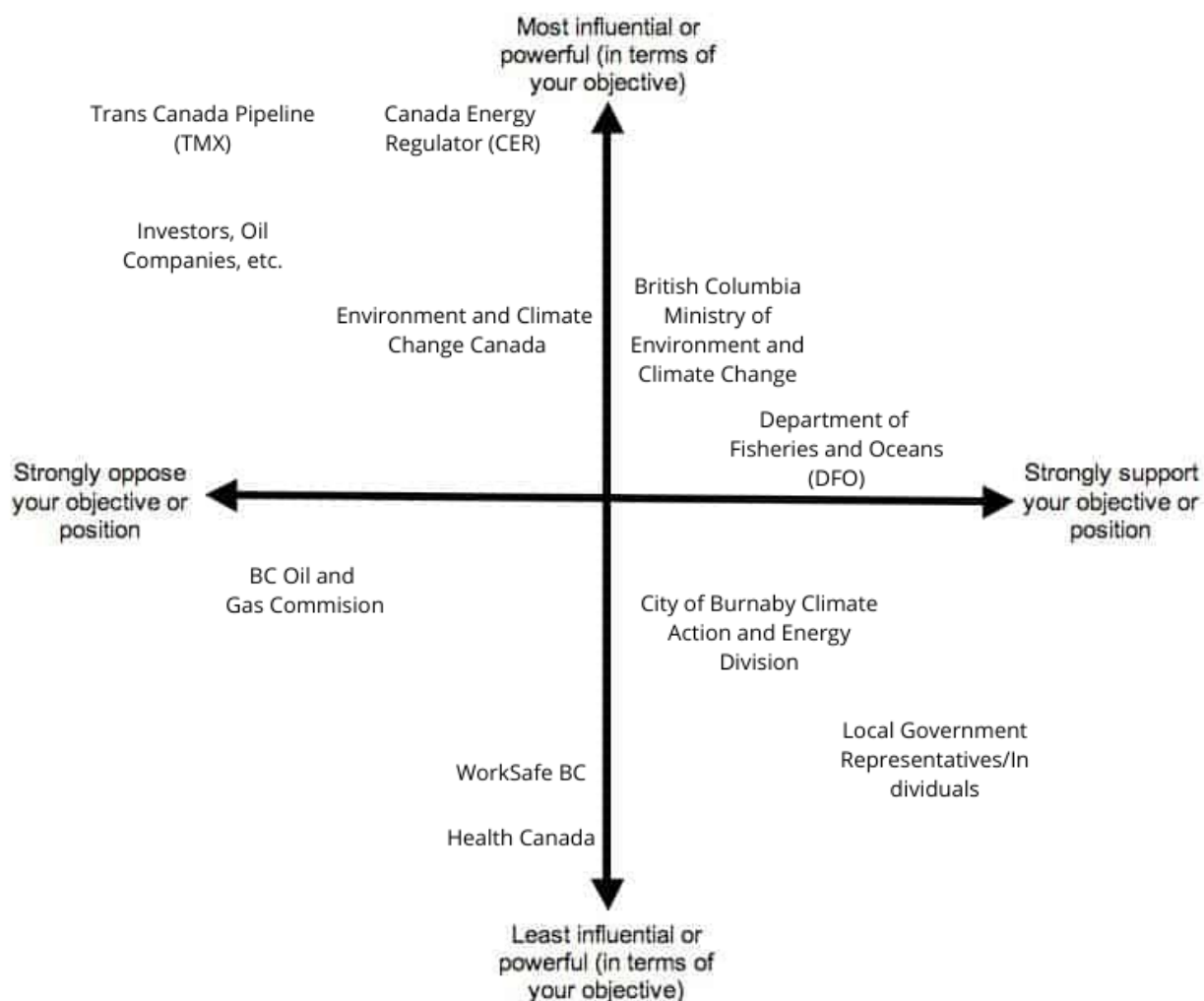
these tasks. Similarly to the previous case, an information request was issued for the company to action on.

- Regulatory requirement: [Westridge Marine Terminal EPP - Vol.4 - Cond.81 - Mar. 2018](#)
 - Section 8.40
 - “Prior to the commencement of impact pile driving, conduct visual monitoring (by trained, qualified personnel) for cetaceans and marine mammal species at risk within an initial marine mammal exclusion zone, set to a radius of 1 km from active locations of impact pile driving.
 - Conduct simultaneous visual monitoring within a harbour seal-specific exclusion zone, set to a radius of 150 m.
 - Impact pile driving may only commence if no marine mammals are observed within their respective exclusion zones for 30 minutes prior to the start of the activity.
 - The exclusion zone for cetaceans and marine mammal species at risk will encompass the area within which underwater noise levels exceed 160 dB re: 1 µPa.
 - Underwater noise level field verification will be conducted during the first several days of impact pile driving to define the radius of this zone”
- Requirements of Compliance Instrument
 - Provide:
 - Documentation demonstrating Trans Mountain’s verification process relating to the visual monitoring of marine animals, showing that it is conducted by ‘trained, qualified personnel’.
 - Copy of the Marine Mammal Monitoring standard operating procedure used by the facility and its contractors.

Key Stakeholders and Power Mapping

[Power mapping](#) is an organizing tactic and visual tool that can help identify the power dynamics at play, who has power and who is on your side, and which stakeholders or actors are the best to target to promote social change. In doing so, it will aid in identifying where in the current system there might be room for change, and the best leverage points to use when thinking of action.

The image below showcases our team’s experience with different stakeholders related to the TMX pipeline expansion project. It is important to note here that a power map will vary for different people and groups depending on the various positionalities they have, and their own unique experiences and relations to an issue. This map may also change with different projects or objectives as well, as the power many of the government stakeholders below will change depending on who has jurisdiction over different issues. Nonetheless, it can prove to be a valuable tool in understanding the power dynamics that surround a given issue, and how it impacts further action.



Reporting

This section provides contact information and additional details regarding possible avenues of reporting pipeline violations. A summary of just regulatory bodies and contact information can be found in the [Appendix](#).

Federal

Canadian Energy Regulator (CER)

CER Confidential Disclosure (Whistleblower Process)

- This is an anonymous method for reporting acts of non-compliance (violations to the CER Act and Regulations) generally including safety of pipelines and facilities, pipeline integrity, environmental protection, emergency management and security, damage prevention, etc.

- 3 methods for reporting:
 - Through their online, confidential form (most recommended by the CER): www.clearviewconnects.com
 - Through a phone call to 1-866-358-1718
 - Through mail to P.O. Box 11017, Toronto, ON, M1E 1N0
- Refer to the [Whistleblowing Process Guide](#) for information on the process and requirements
- Important notes:
 - In certain instances the CER may be required by law to provide information that could identify the tipster/reporter
 - Therefore, absolute confidentiality cannot be guaranteed

CER

- For reporting emergencies related to a CER-regulated company's operations, facility, or activity
 - Phone: 403-299-2773

CER Pacific Region Office

- This office assists with damage prevention, community relations, and emergency preparedness
 - Phone: 604-666-3975
 - Email: infopacific@cer-rec.gc.ca

Transportation Safety Board 24 Hour Hotline

- For reporting pipeline emergencies and contaminated sites
 - Phone: 819-997-7887

Fisheries and Oceans Canada (DFO)

DFO Observe Record Report (ORR)

- For reporting damage to fish habitat and pollution of fish habitat
- Also use for salmon and salmon habitat related violations
- Phone:
 - Toll Free Phone: 1-800-465-4336
 - Email: DFO.ORR-ONS.MPO@dfo-mpo.gc.ca
- Requirements for reporting a violation
 - Date, time, and location
 - Violator's identify and/or description
 - Boat/vehicle description (if relevant)
 - Any evidence that might still be at the scene of the violation

DFO Fish and Fish Habitat Department

- Can report damage to fish habitat and fish kills in BC to the Pacific Region's FFHP office
 - Phone: 1-866-845-6776
 - Email: ReferralsPacific@dfo-mpo.gc.ca
 - Other regions contact information can be found [here](#)

DFO Additional Regional Contacts:

- Greater Vancouver Area: 604-607-4186
- Other regional phone numbers can be found [here](#)

Provincial

B.C. Report All Poachers and Polluters (RAPP)

- Toll free, anonymous, 24/7 tip line to report known or suspected violations of fisheries, wildlife, or environmental protection laws
- Submit a tip through:
 - the [RAPP online form](#) (non-emergency contact)
 - 1-877-952-7277 (use if an emergency or non-emergency)
- Requirements for a tip:
 - Description of suspect
 - Details of the violation (date, time, location, type of violation, suspect's actions and comments, equipment used in the violation)
 - Any transportation involved (vehicle make and model, license plate information, colour)

Provincial Emergency Program (PEP)/ Emergency Management British Columbia (EMBC)

- This number connects with the Emergency Coordination Centre (part of Emergency Management BC (EMBC); the dispatcher will notify the appropriate Environmental Emergency Response Officer.
- To submit a report:
 - Phone: 1-800-663-3456.
- Direct contact to Environmental Emergency Program
 - Email: SpillReports@gov.bc.ca

Municipal

City of Burnaby

- All issues associated with an emergency spill into the environment, including witnessing someone dumping material into the environment, are centralized by calling the City's Dispatch (also known as Engineering Dispatch)
 - Phone: 604-294-7200
 - The required information is dependent on the type of spill and the emergency response needed, however the following information is requested by Dispatch:
 - The contact information for the individual reporting the spill (Full Name and telephone number)
 - If the caller knows who caused the spill they should provide the name of the responsible person and the owner of the substance spilled
 - The date and time of the spill (when it was observed)
 - The location of the spill site (include closest civic address if it is on the road)
 - A description of the spill site and the surrounding area
 - A description of the source of the spill

- The type and quantity of the substance spilled, if possible
 - Details of any action taken at the site by the party caused the spill
 - Names of any provincial, federal, local, and/or First Nation government agencies present at the spill site, if available
 - The names of any other persons or government agencies advised about the spill
- The caller who reported the spill will receive a call from a Climate Action Officer within a short period of time after making the reporting. The caller can request a call back for an update, please note this call back request may not occur immediately and will only be done after the situation is remediated and the spill mitigation measures are concluded. If a legal action is recommended against the spiller, information may not be released
 - Who recommends legal action?
 - It is dependent on the size, impact/results of the spill and the applicable environmental law. The legal action could be undertaken by the senior government (Province or the Federal government) or by the local government (municipalities) dependent on the applicable Environmental laws and the violations occurred
 - Under what conditions does confidentiality apply when sharing information about spills? How do we get access to information in the public interest (i.e. to do due diligence - that in fact contaminated land was tested, for instance)
 - In BC all information about recorded and reported spills are available on the Provincial Site Registry site - individuals can seek that information from the Province
 - Would civil society need to complete a A Freedom of Information (FOI) request in these circumstances? Is there any further contact information regarding FOIs?
 - For information at the Municipality level, some information is available through a service fee with a written authorization requirement from the owner of the land
- To report historical contamination that is not causing an immediate impact to the public and the environment, you can contact the [Climate Action and Energy Division](#)
 - Phone: 604-297-7850
 - Email: climateactionandenergy@burnaby.ca
 - After reporting they will connect you to a Climate Action officer for a follow up
- Soil Deposition and Soil Removal Permits
 - These permits allow soil to be imported from an outside location and placed on a site within Burnaby, or removed from a location within Burnaby
 - [Bylaw No. 5974](#) requires that a permit be issued for all soil deposition, and [Bylaw No. 4251](#) requires that a permit be issued for soil removed from any property within the City
 - For proposed soil deposition (filling) works, please read the [Soil Deposit Permit application](#) requirements and complete

- For proposed soil removal (removal) works, please read the [Soil Removal Permit application](#) requirements and complete
- The completed application package can be sent to the following:
 - Email: phil.hillman@burnaby.ca
 - Phone: 604-294-7425 (by fax to the Engineering Department)
- [Burnaby Tree Bylaws](#)
 - Replacement Trees are required as a condition of all Tree Cutting Permits
 - For matters regarding trees on City property: Tree Service Line: 604-297-4500
 - Important note: in the ongoing the case of expansive [tree cutting](#) by TMX, the BC Oil and Gas Commission acts to give TMX permits to cut timber on crown land (as per section 47.7 of the [BC Forestry Act](#))

Discussion

Broader Connections

While our work primarily focuses on the specifics of the TMX pipeline and its relevant information, it is important to emphasize the deeper, root causes and ongoing legal stances and structures that allow for these injustices and violations to continue. Below we outline some key thematic areas that play a key role in allowing TMX to commit breaches and violations, despite heavy criticism and clear resistance from Indigenous communities. While this is not a comprehensive list, this section aims to offer the reader some deeper insight into some of the systemic issues in Canada that uphold a cycle of injustice, and act as a starting place for future research.

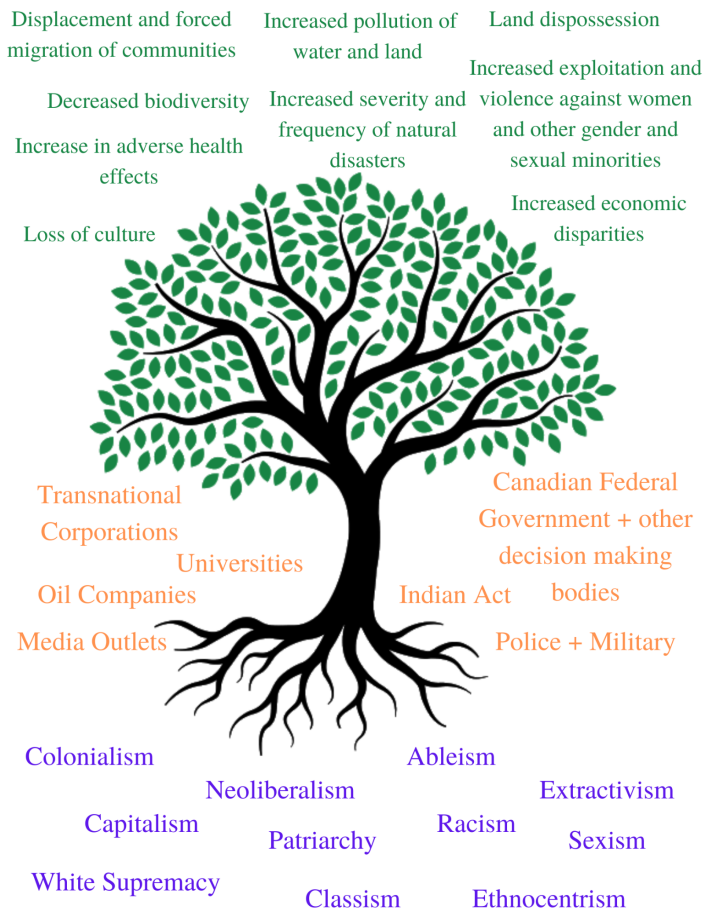
Inequalitree

Utilizing Ayendri Perera-Riddell's [Inequalitree](#) teaching tool, this section begins with a visual representation to illustrate the daily impacts, structures/institutions, and root cause ideologies of the continued violations of Indigenous rights committed by the TMX expansion project. In doing so, we aim to provide a more holistic picture of the issue. While not all these issues are discussed further below, we hope that in providing these topics of research may aid in further work.

The structure of the tree is as follows:

- The "leaves" of an issue are the symptoms and consequences of an injustice that are most visible in everyday life.
- The "trunk" of an issue includes the institutions and social policies that dictate the symptoms of the issue. Institutions support symptoms, just as a trunk supports the branches and leaves.
- The " roots" of an issue are the pervasive and deeply held beliefs, relationships, and power dynamics that shape our social environments. The roots support the institutions and symptoms, as roots support a tree.

A workshop guide on how to create an Inequalitree can be found [here](#).



Climate Justice

Climate justice adopts a framework that acknowledges that climate change spreads an unequal burden of responsibility, with the most resting on the shoulders of marginalized communities, and the current systems in place are designed to allow it to continue to do so. So in response, climate justice seeks to provide these intersectional and inclusive frameworks to address these unequal challenges, and replace these current oppressive systems while prioritizing people at the forefront. The root causes of climate change are generally agreed to stem from the immense emission of greenhouse gases to support a capitalist economy, and its ramifications are exacerbated by poverty and power imbalance within social systems

The continued expansion of the TMX pipeline is a clear example of climate injustice, as it fails to prioritize the communities that will ultimately carry the biggest burden of the pipeline's environmental harm, and does so by operating and controlling a system that continuously ignores the rights of Indigenous communities.

Capitalism

Capitalism, also known as the free market economy, is an economic system whereby property, business, and industry are owned by private individuals or corporations, in contrast to state ownership. Production and income are distributed through free markets, where prices are set by rules of demand and supply. Furthermore, it is characterized by the motive to make a profit in which this private system of ownership allows the most prosperous stakeholders to have

a greater decision-making power. As a result, capitalism is often seen as incompatible with climate justice because it encourages infinite growth on a planet with finite resources. Due to its need for continuous growth, the exploitation of land and people usually also occurs in tandem in order to create greater profits. Capitalism remains to be the prominent economic system in the Western world.

It is under this capitalist structure that allows the TMX pipeline to harbour enormous power in influencing decision-making, as well as acting as a major reason behind the slow progress in government officials calling for a stop to the pipeline expansion. For example, currently there is an [unparalleled amount of concentrated power of oil and gas industry associations in Canadian policy and decision making](#). The bulk of these lobbying efforts are carried out by a few large corporations that also control the majority of Canada's economic sector. Despite Canada's public commitments to addressing the climate crisis and related inequalities, its operation under a capitalist economic framework challenges its work to achieving a truly sustainable and equitable future.

Colonialism

Colonialism refers to the process and practice of acquiring full political control over another country, occupying it with settlers, and exploiting it economically. While it takes on many forms, a key characteristic is the uneven power relations and structures that exist between colonizers and Indigenous peoples.

Settler Colonialism is a distinct form of colonialism which functions through the replacement of Indigenous populations with an invasive settler society that develops its own distinctive identity and sovereignty over time.

Furthermore, colonization is not a historical event but a continued system of oppression that is rooted in dominance and control. As examined by Jen Gobby (2019), "Indigenous people in Canada are currently facing the ongoing impacts of a colonial past, as well as impacts from ongoing colonialism as a persistent structure." The TMX pipeline's blatant occupation and exploitation of unceded and stolen territories and disregard for Indigenous communities represent the continued colonization and land dispossession. These inherent colonial structures and motivations continue to perpetuate a cycle of environmental racism and climate injustice.

Indigenous Rights

In relation to the ongoing and persistent structure of colonialism, Indigenous rights and title have been continually impacted by the *Indian Act*, which is a piece of legislation originally created that allowed the Crown to control every aspect of Indigenous life. Even as a highly oppressive piece of legislation, it still largely exists today as Canadian legislation because since the 1950's, proposed policies by the Canadian government to abolish the *Indian Act* and replace it with a legislation that would treat Indigenous peoples like any other Canadian citizen were widely rejected by Indigenous peoples as it would have forced Indigenous peoples to assimilate into the Canadian colonialist structures of life rather than be considered as a separate group, as Indigenous peoples are under the *Indian Act*. The *Indian Act* also serves as a reminder that the Canadian government has a unique relationship with, and an obligation to, Indigenous peoples (Hanson). Outside of this legislation, Indigenous rights have been affirmed through court rulings rather than the institution of additional legislation. In relation to the TMX project, the main right

the courts have affirmed is the right to consultation. However, more than consultation is necessary to deconstruct the colonialist structures imposed on Indigenous populations and Indigenous rights, as determined by UNDRIP and reconciliation.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

UNDRIP acts as a comprehensive statement that addresses the human rights of Indigenous peoples, particularly individual and collective rights, cultural rights and identity, rights to education, health, employment, language, among others. It is a piece of policy and is not a legally binding document for the states that support the UN Declaration (United Nations). Therefore, the various governments of Canada are not legally obligated to follow the articles dictated by the UN Declaration when considering approving, constructing, and operating projects that may impact Indigenous peoples. In much of Canadian law, there is a requirement to consult with Indigenous groups that may be affected by any given project. However, Article 19 of UNDRIP dictates that states should consult with Indigenous peoples, but also obtain their free, prior and informed consent before making decisions (United Nations). Under Canadian law and precedent-setting supreme court decisions, the Canadian government has a duty to consult Indigenous peoples prior to carrying out projects on their land and territories, but they do not have the duty under the law to obtain free, prior and informed consent. Thus, for the TMX project, the CER only had to carry out their consultation duties as dictated by the law, but not gain consent from Indigenous communities for the project, failing Article 19 of UNDRIP.

Reconciliation

In addition, in many ways, failing Article 19 of UNDRIP also has led to a failure in reconciliation in regards to the TMX project. Part of the Truth and Reconciliation Commission and rooted in Section 35 of the *Constitution Act, 1982* are [10 Principles](#) that are supposed to guide the Government of Canada in its reconciliation. The sixth Principle states that “the Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources” (Government of Canada). By not allowing consulted Indigenous peoples free, prior, and informed consent during the decision making process for the TMX project, the government is failing their own goals for reconciliation.

Policy Recommendations and Areas of Improvement

This section covers some key barriers we faced throughout our research process, and that others moving forward may face as well. In shedding light on these areas, we hope to be able to call for improvements to be made.

1. Currently, we find that there lacks a robust system for incident reporting for civil society about on-site activities. Throughout our research, lack of transparency and information about local policies and procedures have highlighted the challenge for the public in reporting incidents on-site at Trans Mountain facilities to the correct departments of authority.

2. Accessibility in reporting can also be improved. Current methods only include telephone and email - investing in mobile reporting avenues will allow for greater and more timely access for frontline land and water defenders, activists, etc.
3. Pipeline facilities should also adhere to regulations and project requests, more stringent compliance tools may also need to be introduced, so that on-site work does not begin without adequate consultation with local Indigenous groups, as well as approval from the Commission.
4. More detailed reports could be released to the public in documentation of non-compliance and the actions taken to resolve them. This is to increase transparency of reporting and compliance procedures, and create a clearer foundational framework upon which reporting can be based.
5. It is also of consideration to provide more opportunities for Indigenous consultation in the proposal stage for projects, and responsibilities should be given to Indigenous monitors and to the public for work on site.
6. It is also recommended that clearer methods of communication should be addressed, either within a regulatory instrument, local operating procedures, or facility specific Environmental Protection plans.
7. In regards to communication with government branches, current communication remains slow or non-existent. This speaks to a lack of accessible communication between civil society and decision-making bodies, and it is recommended that the current contact process be reviewed and improved.

Conclusion

Additional Resources

Listed below are additional resources to consult on various thematic areas. As we move forward in the climate justice movement, it is imperative to note its intersectional nature that strives to incorporate the voices and experiences of everyone impacted by this unprecedented environmental degradation. Furthermore, it is also critical to reflect on the voices that are often left out of Western-dominated academia. In response to this, the resources provided below strive to bridge this knowledge gap and bring the voices of people most impacted to the forefront. Overall our resource guide aims to support existing climate justice efforts by acting as an additional resource amongst many others that are available to the public. In linking others below, we hope to contribute to building a sustainable and community-centred movement.

For care:

- Working with issues of climate justice can be emotionally, physically and spiritually taxing. As such, it is important to view care as labour, and take the time to look after ourselves and each other. The [Fireweed Collective](#) offers mental health education and mutual aid through a Healing Justice lens.

For additional research:

- To gain a greater understanding of the racist policies that have impacted Indigenous, Black and racialized communities in Canada, check out the [Canadian Centre for Policy Alternatives \(CCPA\)](#)'s publication, [Challenging Racist British Columbia](#).

- Looking forward, what would a just energy transition look like after phasing out fossil fuels and oil extraction, and how might this be achieved? Check out the [Canadian Centre for Policy Alternatives \(CCPA\)](#)'s publication *[Winding Down BC's Fossil Fuel Industries: Planning for climate justice in a zero-carbon economy](#)*.
- The [Yellowhead Institute](#) based out of Ryerson University creates critical policy perspectives that support First Nations jurisdiction in order to create movement in First Nations governance, scrutinize government policy, and create models for change. Their [Land Back report](#) discusses important perspectives of Canada dispossessing Indigenous peoples from their land, and what Indigenous communities are doing to take their land back.
- [Jen Gobby](#) is an activist-scholar based in rural Quebec. Her research focuses on working collaboratively with land defenders and environmental justice activists on how we can more powerfully push for large scale social change. Her most recent publication, *[More Powerful Together: Conversations with climate activists and Indigenous land defenders](#)*, looks at how social movements can help bring about large-scale systems change.
- [Glen Coulthard](#) is Yellowknives Dene and an associate professor in the First Nations and Indigenous Studies Program and the Departments of Political Science at the University of British Columbia. His book, *[Red Skin, White Masks: Rejecting the Colonial Politics of Recognition](#)*, focuses on Indigenous experiences in Canada, and examining these experiences against the backdrop of liberal pluralism, reconciliation and colonial relationships between Indigenous Peoples and Nation-States.
- The [Gitanyow Huwilt Society](#) released the [Gitanyow Wilp Sustainability Assessment Process](#) (GWSAP) at the beginning of 2021 in coordination with [West Coast Environmental Law](#). The GWSAP is a legal instrument based on Gitanyow's own laws that sets out requirements for fully Indigenous-led assessment processes for projects within Gitanyow's inherent jurisdiction. The GWSAP creates interesting implications for the provincial and federal environmental assessment processes, and will force any project within Gitanyow's jurisdiction to more fully consider Indigenous law, the Indigenous perspective, and environmental concerns.
- *[Why Are Indigenous Peoples Blocking The Railways? And Why It's Important!](#)* by Québec artist Chloloula is a great comic that aims to offer greater understanding into Indigenous resistance against pipeline expansion in various parts of Canada.
- [Wet'suwet'en Supporter Toolkit 2020](#) from [The Unist'ot'en Camp](#), an Indigenous re-occupation of Wet'suwet'en land in northern "B.C., Canada", offers many resources for education and action.

Other community initiatives/groups to support:

- The [Tsleil-Waututh Nation Sacred Trust](#) initiative works to stop the proposed Trans Mountain Expansion (TMX) tanker and pipeline project.
- [Tiny House Warriors](#) aims to stop the Trans Mountain pipeline from crossing unceded Secwepemc Territory.
- [Braided Warriors](#) is an Indigenous youth-led group defending the land, particularly from the TMX project

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<https://www.justice.gc.ca/eng/csj-sjc/principles-principes.html>.
- United Nations. *United Nations Declaration on the Rights of Indigenous Peoples*. Department of Economic and Social Affairs: Indigenous Peoples.
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

Appendix - Contacts Page

Please consult the [Reporting](#) section of this report for more details on these contacts and on necessary information for reporting land contamination.

CER Whistleblower Process	Online: www.clearviewconnects.com Phone: 1-866-358-1718 Mail: P.O. Box 11017, Toronto, ON, M1E 1N0
CER Emergency Contact	Phone: 403-299-2773
CER Pacific Office	Phone: 604-666-3975 Email: infopacific@cer-rec.gc.ca
Transportation Safety Board Hotline	Phone: 819-997-7887
DFO Observe Record Report	Phone: 1-800-465-4336 Email: DFO.ORR-ONS.MPO@dfo-mpo.gc.ca
DFO Greater Vancouver Area Office	Phone: 604-607-4186
DFO Fish and Fish Habitat Pacific Region	Phone: 1-866-845-6776 Email: ReferralsPacific@dfo-mpo.gc.ca
B.C. RAPP	Online: the RAPP online form Phone: 1-877-952-7277
PEP/EMBC	Phone: 1-800-663-3456. Email: SpillReports@gov.bc.ca
*B.C. Oil and Gas Commission	Phone: 1-250-794-5200
City of Burnaby Engineering Dispatch	Phone: 604-294-7200
City of Burnaby Climate Action and Energy Division	Phone: 604-297-7850 Email: climateactionandenergy@burnaby.ca
*City of Burnaby License Office	Phone: 604-294-7320 Email: licence@burnaby.ca

*B.C. Oil and Gas Commission may dispatch inspectors to a location to look into complaints (although there is some uncertainty as to whether or not they would respond to complaints on TMX sites since they do not have jurisdiction over the TMX project)

*Can contact City of Burnaby License Office for concerns about unlicensed business, property use, or unsightly premises