

NORTH MONTNEY MAINLINE PROJECT

ABORIGINAL CONSULTATION AND ACCOMMODATION REPORT

Proposed by:
NOVA Gas Transmission Ltd.

Prepared by:

Environmental Assessment Office
pursuant to the *Environmental Assessment Act*, S.B.C. 2002, c.43

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Acronyms, Abbreviations and Definitions used in this Report

ACCI	Area of Critical Community Interest
Act	<i>BC Environmental Assessment Act</i>
AIA	Archaeological Impact Assessment
AMP	Access Management Plan
BC	British Columbia
BEC	Biogeoclimatic Ecosystem Classification
CHRP	Caribou Habitat Restoration Plan
CMT	Culturally Modified Tree
COSEWIC	Committee on the Status of Endangered Wildlife in Canada
CPCN	Certificate of Public Convenience and Necessity
DFO	Fisheries and Oceans Canada
EA	Environmental Assessment
EAC	Environmental Assessment Certificate
EAE	Enhanced Aboriginal Engagement Program
EAO	Environmental Assessment Office
EAS	Environmental Alignment Sheets
EPP	Environmental Protection Plan
ESA	Environmental and Socio-Economic Assessment
FLNRO	Ministry of Forests, Lands and Natural Resource Operations
GBPU	Grizzly Bear Population Unit
ha	hectare
HSE	Health, safety and environment
km	kilometres
KP	kilometer point
kt	kiloton
LNG	Liquefied Natural Gas
LSA	Local Study Area
m	metre
mm	millimeters

MPMO	Major Project Management Office
NEB Act	<i>National Energy Board Act</i>
NEB	National Energy Board or the Board
NIT	NOVA Inventory Transfer
OGC	BC Oil and Gas Commission
OGMA	Old Growth Management Area
PCHRP	Preliminary Caribou Habitat Restoration Plan
PDA	Project development area
PFP	Participant Funding Program
PMT	Peace Moberly Tract
PMTPP	Peace Moberly Tract Protection Plan
PRGT	Prince Rupert Gas Transmission Pipeline
PRRD	Peace River Regional District
RoW	Right-of-way
RSA	Regional Study Area
SARA	<i>Species at Risk Act</i>
TK	Traditional Knowledge
TLU	Traditional Land Use
VC	Valued Component

1 Introduction

On June 10, 2015 the Governor in Council directed the National Energy Board (NEB, or the Board) to issue a Certificate of Public Convenience and Necessity (CPCN) to NOVA Gas Transmission Ltd. (Proponent) for the North Montney Mainline (Project).

In 2010, NEB and the British Columbia (BC) Environmental Assessment Office (EAO) entered into an Equivalency Agreement. Under the Equivalency Agreement, the environmental assessment (EA) process completed by NEB is substituted for the EA process under BC's *Environmental Assessment Act* (Act). On January 13, 2016 the BC Supreme Court in *Coastal First Nations v. British Columbia* (BCSC Decision) held that a portion of the Equivalency Agreement between the EAO and NEB was invalid.

The court ruled that BC's Act applies to NEB projects to the extent that they require a Provincial Environmental Assessment Certificate (EAC). The court decision applies to projects that were previously assessed and approved by the NEB, including the North Montney Mainline, and are currently being assessed or will be assessed in the future under the terms of the Equivalency Agreement. Although effectively amended by virtue of the BCSC Decision, the remainder of the Equivalency Agreement remains valid. Therefore, pursuant to the Equivalency Agreement, and with respect to the North Montney Mainline, EAO has accepted the NEB's report as the assessment.

In accordance with the BCSC Decision and the Act, the Ministers of Environment and Natural Gas Development (Ministers) are required to make a decision on the issuance of a provincial EAC. EAO has consulted with Aboriginal groups, and built on the consultation that has occurred to date with federal and provincial agencies, the NEB review process, and engagement with the Proponent. Where possible, EAO has also sought to coordinate Aboriginal consultation activities with other provincial agencies responsible for subsequent permitting of the Project, including the BC Oil and Gas Commission (OGC).

Information gathered during consultation has been used to inform EAO's understanding of the impacts of the Project on areas of provincial jurisdiction, how those impacts may affect Aboriginal Interests¹, and to identify additional mitigation and accommodation that may be required to address such impacts.

1.1 Purpose of the Report

This Consultation and Accommodation Report provides a summary of the procedural and substantive aspects of Crown-Aboriginal consultation in respect of the Project. EAO has prepared this draft Consultation and Accommodation Report to document the Aboriginal consultation conducted to date with respect to the responsible BC Ministers' decisions on the Project's environmental assessment.

The report's key goals are to describe for decision makers:

1. Aboriginal consultation in respect of the Project;
2. Views of Aboriginal groups on how the Project, if it proceeds, may impact Aboriginal Interests and other interests;
3. Measures proposed to address potential impacts on Aboriginal Interests and other interests raised by Aboriginal groups;
4. The Crown's conclusions regarding the potential impacts of the Project on Aboriginal Interests and other interests; and

¹Treaty rights or asserted or established Aboriginal rights and title

5. Conclusions of the adequacy of consultation.

This report considers the key Aboriginal Interests, issues and concerns of potentially affected Aboriginal groups, through the Crown's initial identification of potential adverse Project impacts, and through consideration of the NEB's recommendation report in respect of the Project. EAO's methodology for assessing potential impacts of the Project on Aboriginal Interests relies in part on the NEB's conclusions and recommended conditions, but also considers a variety of other factors and information brought forward through the participation of Aboriginal groups during the consultation process.

The Province consults with Aboriginal groups for many reasons, including statutory, contractual, policy and good governance (including building effective relationships and understanding of Aboriginal group communities), as well as the constitutional duty to consult. Through the consultation process, the Province seeks to reconcile Aboriginal Interests with the interests of the Province and broader societal interests, while upholding the principle of the honour of the Crown.

This report was developed based on consideration of all information brought forward to EAO by Aboriginal groups through direct consultation, as well as submissions made by Aboriginal groups and the Proponent as part of the NEB's hearing process. The conclusions and recommendations of the NEB, applicable to Aboriginal Interests and other interests, are reflected in this report.

Prior to finalizing this report, EAO provided a draft version of the report to Aboriginal groups to inform consultation and gather feedback on the content of the report. By consulting on early drafts of this report, EAO's objective was to support a more transparent, responsive and productive consultation process. Where possible, comments received by Aboriginal groups on the draft report were integrated into the finalized version. Consultation meetings took place between July and December 2016. During consultation with Aboriginal groups, EAO sought to fully understand the perspectives of Aboriginal groups regarding existing and outstanding issues, potential impacts on Aboriginal Interests, and options to accommodate these potential impacts, as appropriate.

1.2 Project Description

On November 8, 2013, the Proponent filed an application with the NEB seeking approval to construct and operate the Project (Application²), a proposed extension of the NOVA Gas Transmission system to the North Montney area in northeastern BC. The Project is designed to transport sweet natural gas from the North Montney area through the NOVA Gas Transmission system and connected pipelines, including the Prince Rupert Gas Transmission pipeline (PRGT), which would deliver natural gas to the Pacific Northwest liquefied natural gas (LNG) facility. From this facility, LNG would be transported to gas markets across North America and to markets overseas. Purchase and sale of the natural gas would be facilitated through the NOVA Inventory Transfer (NIT) market, which is a natural gas trading hub where gas is bought and sold electronically.

Since the Project includes more than 40 kilometers (km) of new pipeline, it is captured as a designated Project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012) and Regulations Designating Physical Activities, and therefore required an EA pursuant to CEAA 2012, for which the NEB is the responsible authority since the proposed pipeline would be directly connected to an

² References to 'Application' in this report refer to the Environmental and Socio-Economic Assessment completed as part of the NGTL Section 52 Application.

interprovincial system, moving interprovincial product. The Proponent applied for this pipeline with the NEB on November 8, 2013 and NEB issued recommendations to the Federal Cabinet on April 15, 2015. Federal Cabinet accepted the NEB's recommendations to approve this Project on June 10, 2015 subject to 45 conditions.

The Project constitutes a reviewable Project, pursuant to Part 4 of the Reviewable Projects Regulation (B.C. Reg. 370/02) under BC's Act, because the Project includes a new transmission pipeline facility with a diameter >323.9 millimetres (mm) and a length of ≥40 km.

The Project is located in northeast BC in the Peace River Regional District (PRRD). It comprises approximately 301 km of 1,067 mm diameter (NPS 42) pipeline extending north from the terminus of the Proponent's existing Groundbirch Mainline (Saturn section) to a point 182 km northwest of Fort St. John and 141 km south of Fort Nelson, BC (Figure 1). The pipeline will be constructed in two sections: the southern Aitken Creek section comprises approximately 182 km of pipeline, and the northern Kahta section comprises approximately 119 km of pipeline. The Project parallels existing linear disturbances for approximately 155 km (51% of total length of the pipeline) and uses existing access roads where feasible; however, some new permanent access roads are required for the Project. Related facilities include 3 compressor stations, 16 meter stations, and associated facilities (together, Section 52 Facilities). Temporary infrastructure is required in advance of and during the construction of the Project, including stockpile sites, laydown areas, borrow pits/dugouts, contractor yards, and construction camps.

The Proponent stated that the Project requires a minimum construction right-of way (RoW) width of 32 meters (m) and that, where possible, it will make use of existing disturbance to reduce the amount of new disturbance. The workspace required for construction is a variable width corridor with a minimum construction RoW width of 32 m. The permanent RoW is 18 m. Access for the Project would primarily use existing roads where feasible, and new permanent access roads for pipeline, compressor, and meter stations will require a total area of 4,310 m by 20 m.

The Project includes a total of three compressor stations with bi-directional capability: two on the Aitken Creek Section of the Project and one on the existing Groundbirch Mainline. The total land required for all the compressor stations will be approximately 16 hectares (ha) of land and the Aitken Creek and Groundbirch Compressor Stations will require permanent all weather access roads totaling 1,800 m in length, while the Saturn Compressor Station will utilize existing road infrastructure for access, which will be covered by third party road use agreements. The Proponent plans to use existing road infrastructure where feasible.

Sixteen meter stations will be located along the pipeline, with 6 on the Aitken Creek section and 10 on the Kahta section. Fifteen meter stations are located on crown land and one is located on private land. The total length of new permanent access road required for the meter stations is 2,500 m. The Proponent plans to use existing road infrastructure where feasible, and for the meter station sites where existing year-round access is not available, a helicopter pad within the meter station footprint will be built to ensure access for maintenance and in case of emergency (Figure 1).

1.3 Regulatory Review

This section presents an overview of the key steps of the regulatory review and EA process, particularly in relation to Aboriginal consultation.

1.3.1 NEB Regulatory Review and Environmental Assessment Process

On November 8, 2013, NEB received the Proponent's Application, and on January 21, 2014, the Board determined it was complete to proceed to assessment. As the regulatory authority, the NEB is responsible for assessing the Application for a CPCN for the Project and to provide a report under Section 52 of the *National Energy Board Act* (NEB Act), which also includes recommendations flowing from an EA conducted under subsection 29(1) of the CEEA 2012. The NEB Report recommends whether a CPCN should be issued in the public interest, terms and conditions that should be attached to the CPCN if issued by the NEB for the Project, and recommendations based on the EA conducted under CEEA 2012.

The Board created Figure 1 to provide a general indication of the Project features, as updated by the Proponent in its March 2014 Project Update, which contained amendments to the route in the Kahta section of the Project.

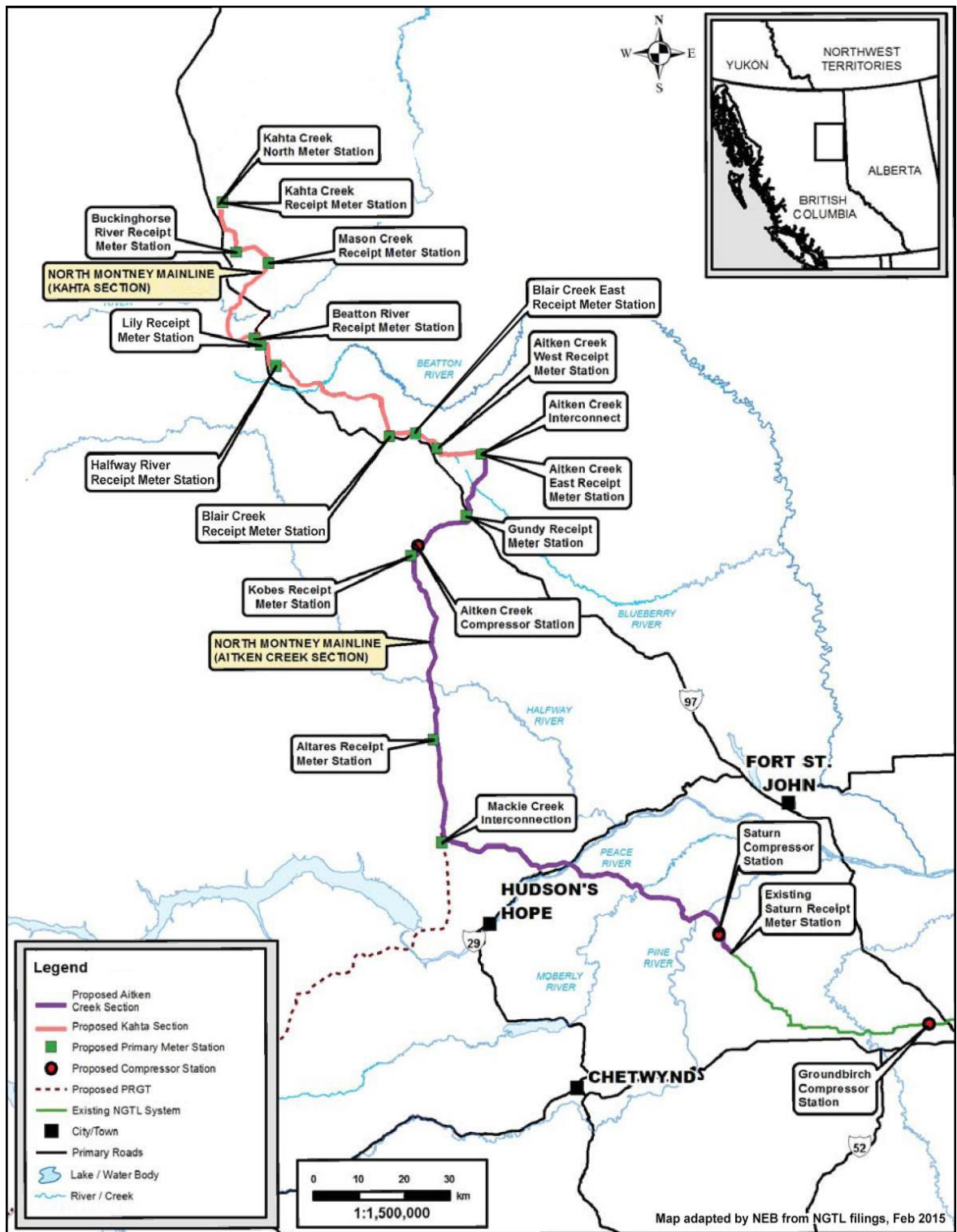


Figure 1 - Project Location Map with Overview of Facilities³

³ NGTL Project Application, Project Overview, Figure 1-1 Main Components of the Project, (A3Q655); NGTL North Montney Project Update, Figure 1: Updated Project Map – Kahta Section, (A3V1T0).

On February 5, 2014, the NEB issued the GH-001-2014 Hearing Order (Hearing Order), which established part of the process for NEB's consideration of the Application. The Hearing Order included the list of issues that the NEB would consider during its assessment of the Proponent's Application.

Pursuant to subsection 55.2 of the *NEB Act*, the Board determined who could participate in a hearing for a project before the Board. To be eligible to participate, interested persons or groups were required to request participation and demonstrate in their application to NEB that they:

- Are directly affected by the proposed Project, or
- Have relevant expertise or information that will assist the Board in making its decision and recommendation in respect to the proposed Project.

In total, NEB accepted 51 applications to participate for the hearing as either as Intervenors or Commentors (39 Intervenors and 12 Commentors). Applications to Participate were accepted from 37 commercial parties, 3 government bodies, 7 Aboriginal groups (1 withdrew), and 4 landowners.

The GH-001-2014 hearing consisted of both written and oral portions. The written process included the filing of evidence and letters of comment, information requests and corresponding responses, written motions and Board rulings, and final and reply argument. NEB directed six rounds of Board information requests to the Proponent and to some Intervenors. Parties also submitted information requests to each other. All responses to information requests were filed on the public record.

The written evidence filed on the public record was tested by oral cross examination before NEB during oral portions of the hearing. Oral Aboriginal Traditional Knowledge (TK) evidence was also heard. The hearings took place over a total of 17 days.

Board members consider all the information on the public record and make decisions and recommendations in respect of the public interest, which include conditions that the Applicant must comply with. For the Project, the majority of the Board recommended that a CPCN be issued.

The NEB Report was released on April 15, 2015. The 212 page report provides substantive information on the reasoning behind the recommendations and decisions. The Report also contains the Board's recommendation to the Governor in Council on the construction and operation of the pipeline. The majority of the Board recommended approval, subject to 45 conditions. One member of the Panel was not of the view that the entire Project should proceed, as a portion of the proposed pipeline and associated facility would traverse land that is of special significance to First Nations.

The Report contains the Board's approval of the applied-for rolled-in tolling design during a transition period, subject to conditions. The conditions include a requirement for the Proponent to maintain a separate cost pool and separate accounting records for the Project.

On June 10, 2015 the Governor General in Council directed the NEB to issue a CPCN (GC-125) to the Proponent in respect of the Project, subject to the terms and conditions set out in Appendix II of the NEB report.

1.3.2 British Columbia's Environmental Assessment Process

As a result of the BCSC Decision discussed in Section 1 of this report, a legal Order was issued under Section 10(1)(c) of the Act on April 8, 2016 requiring the Ministers of Environment and Natural Gas

Development to make a decision on the issuance of a provincial EAC. Following consultation on a draft with Aboriginal groups and the Proponent, a legal Order was issued under Section 11 of the Act on June 17, 2016 to establish the procedures for the remaining provincial EA process for the Project. Among other procedural aspects, this order specified the Aboriginal groups to be consulted by EAO, the Aboriginal consultation opportunities that would be provided, and requirements for the Proponent. Where possible, EAO sought to coordinate Aboriginal consultation activities with the OGC, which is responsible for issuing some subsequent provincial permits.

Pursuant to Section 17 of the Act, if provincial Ministers decide to issue an EAC, Ministers may attach any conditions to the EAC that they consider necessary. Such conditions would be legally binding on the certificate holder. Based on the NEB's report, and the consideration of both additional and Aboriginal consultation information, EAO has identified additional conditions to recommend to provincial Ministers to address Project impacts on areas of provincial jurisdiction. Aboriginal groups have had the opportunity to provide comments on the draft referral materials, including the draft conditions. These conditions would be in addition to any conditions required by the NEB, if Ministers issue the EAC and include the conditions.

In consideration of existing legal requirements, and the 45 NEB conditions, EAO is proposing an additional 21 conditions that Ministers may attach to a provincial EAC, if approved. These conditions are proposed in relation to areas of provincial jurisdiction. EAO acknowledges that the NEB has the primary responsibility for ensuring the Project is developed, constructed and operated in a manner that is safe and secure, and protects people, property and the environment.

EAO's proposed conditions are in response to the concerns that have been raised by Aboriginal groups during consultation undertaken for the Project. The proposed conditions are also in response to the key areas of provincial interest within the EA. The conditions endeavour to ensure that the Project would be developed and operated in a manner that is consistent with provincial policies and programs, in consideration of the existing regulatory regime.

1.4 NEB Recommendation, Decisions and Report Conclusions

1.4.1 Recommendation and Decisions

The following is a summary of the NEB's recommendation and decisions regarding the Project, as described in the NEB Report⁴.

- The majority of the Board recommended that a CPCN be issued under Section 52 of the NEB Act, for the construction and operation of the Project;
- The Board set out terms and conditions, contained in Appendix II of the NEB Report, which the Board considered necessary and desirable in the public interest, which the CPCN is subject to following direction from the Governor in Council to issue the CPCN;
- The majority of the Board determined that the construction and operation of temporary infrastructure for the Project, including stockpile sites, laydown areas, borrow pits/dugouts, contractor yards and construction camps (Section 58 Facilities), are in the public interest; and

⁴ NEB Report (A4K5R6) Sections 1.1, 1.2, Pages 1, 2

- The majority of the Board recommended that a CPCN be issued under Section 52 of the NEB Act for the construction and operation of the Project, subject to 45 conditions set out in Appendix II of the NEB Report.

1.4.2 NEB Recommendations and Conclusions on Aboriginal Engagement and Impacts

The following is a summary of the NEB's recommendation and conclusions regarding the Project, as described in the NEB Report.

- The Board found the design of the Proponent's engagement program, including its process to identify potentially affected Aboriginal groups, adequate for the nature, scope and setting of the Project. The Board was of the view that all potentially affected Aboriginal groups were provided with sufficient information about the Project, and had the opportunity to make their views about the Project known to the Proponent and to the Board⁵;
- The Board found the Proponent's implementation of its consultation program adequate. The Board noted the Proponent's commitment to continue to engage with potentially affected Aboriginal communities throughout the life of the Project⁶;
- The Board was of the view that it had sufficient information to adequately assess the potential effects of the Project on the current use of lands and resources for traditional purposes; the Board noted the Proponent's commitment to completing any outstanding traditional land use (TLU) investigations that would identify additional issues or concerns, and to receiving any additional information that may be brought forward by Aboriginal groups regarding their use of the land and resources in the Project area⁷;
- The Board imposed Condition 7 (NEB Report, Appendix II) requiring the Proponent to file with the Board a report outlining the results of any outstanding TLU investigations for the Project, including how any concerns or issues have been or will be addressed by the Proponent⁸;
- The Board expected the Proponent to continue to engage with Prophet River First Nation to discuss the site-specific details and potential measures to reduce or eliminate potential Project effects related to cultural camps identified near the Sikanni Chief River crossing location; the Board imposed Condition 10 (NEB Report, Appendix II) requiring the Proponent to submit to the Board a report on its consultations with Prophet River First Nation regarding Prophet River First Nation's cultural camps⁹;
- Adverse residual effects from the Project were identified for the following valued environmental and socio-economic components (VCs): vegetation and wetlands, wildlife and wildlife habitat, water quality, fish and fish habitat, atmospheric environment, acoustic environment, human occupancy and resource use, and traditional land and resource use¹⁰;
- The Board was of the view that most of the effects would be limited to the duration of construction, are fairly localized and minor in nature and would be mitigated by the Proponent's measures; however, the key long-term cumulative environmental impact would be the ongoing loss, alteration and fragmentation of the natural landscape in the region, particularly for caribou. While the changing land use would have a number of incremental cascading effects, the

⁵ NEB Report (A4K5R6) Section 7.5 Page 101

⁶ NEB Report (A4K5R6) Section 7.5 Page 101

⁷ NEB Report (A4K5R6) Section 7.5 Page 101

⁸ NEB Report (A4K5R6) Section 7.5 Page 102

⁹ NEB Report (A4K5R6) Section 7.5 Page 102

¹⁰ NEB Report (A4K5R6) Section 9.6 Page 147

Board found caribou and caribou habitat an appropriate overall indicator for the assessment of cumulative effects¹¹;

- The Board expressed a desire to see continuing improvement in the assessment of cumulative effects with respect to project applications. The Board acknowledged that development at the regional level in the Project area involves areas of provincial jurisdiction, both for approving development across a number of sectors, as well the regional and provincial land use planning process¹²;
- The majority of the Board recommended approval of the Proponent's applied-for route through the Peace Moberly Tract¹³ (PMT); however, the majority of the Board found that additional measures imposed by the Board were necessary for the route through the PMT to be in the public interest;
- In the view of one dissenting Board member, the Proponent did not sufficiently justify the preferred route through the PMT commensurate with the demonstration of concern and the evidence provided by Aboriginal groups about the route's potential impacts¹⁴;
- The majority of the Board found the Proponent's approach to justifying its preferred route was satisfactory. The majority of the Board also found the Proponent's approach to demonstrating the preferred route was the most appropriate option to meet the needs of the Project, while serving the public interest, was satisfactory. The Board determined that additional measures were necessary to eliminate or minimize to the greatest extent possible the Project's potential effects in the PMT in order for the routing of the Project through the PMT to be in the public interest; as such, the majority of the Board imposed Conditions 11, 12, and 35 (NEB Report, Appendix II), which require the Proponent to submit to the Board, for approval, a protection plan specific to the PMT that outlines the additional measures that will be implemented to eliminate or minimize to the greatest extent possible the Project's potential effects within the PMT, to develop a plan for consulting with Sauleau First Nations and West Moberly First Nations on the development of these measures, and on the effectiveness of the measures implemented.
- The majority of the Board was of the view that overall, in consideration of the Board's imposed conditions and with the implementation of the Proponent's environmental protection procedures and mitigation, the Project was not likely to cause significant adverse environmental effects.

¹¹ NEB Report (A4K5R6) Section 9.6 Page 147

¹² NEB Report (A4K5R6) Section 9.6 Page 147

¹³ An area located within the Area of Critical Community Interest (an area identified in NEB proceedings by Sauleau First Nations and West Moberly First Nations as an area of special significance) between Moberly Lake and the Peace River; identified in the NEB proceedings by Sauleau First Nations and West Moberly First Nations as an area of special interest because of its cultural, commercial and sustenance resource value to these First Nations.

¹⁴ NEB Report (A4K5R6) Section 7.6 Page 103

2 Engagement of Aboriginal Groups in the Regulatory Review and Consultation Process

2.1 Consultation with Aboriginal Groups

2.1.1 Principles Involved in Establishing Depth of Duty to Consult and Identifying Extent of Accommodation Required

The Province consults with Aboriginal groups for many reasons, including: statutory, contractual, policy and good governance (including to build relationships and understanding of Aboriginal group communities), and the constitutional duty to consult.

Through the consultation process, Governments seek to reconcile impacts to asserted or established Aboriginal rights including title, or treaty rights (Aboriginal Interests) that may arise from government decisions. In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (*Haida*), the Supreme Court of Canada established that the Crown is required to consult with Aboriginal groups with respect to Crown-authorized activities that might affect Aboriginal Interests and that the extent (or level) of the consultation is proportionate to preliminary assessments of the following factors:

- Strength of the case for any claimed Aboriginal rights (including title) that may be adversely affected; and
- Seriousness of potential impact of contemplated Crown action or activity to adversely impact Aboriginal Interests.

In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, the Supreme Court of Canada also applied this consultation framework to treaty rights, where a Crown-authorized activity may adversely affect a treaty right. The continued application of this framework to treaty rights was recently confirmed in *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48. The extent (or level) of the Crown's obligation to consult is described in the *Haida* case as lying on a spectrum from notification to deep consultation. A key objective of the EA process is to identify potential adverse effects of proposed projects on Aboriginal Interests and explore measures to avoid, mitigate or otherwise appropriately address such effects.

2.1.2 Aboriginal Groups Involved – Provincial Process

EAO's initial scope of consultation and determination of Schedule B and C Aboriginal groups included in the Section 11 Order was primarily informed by the proximity of the Project to an Aboriginal group's area of traditional use, as understood by the Province, and the general nature of potential Project effects on an Aboriginal group's Interests.

Consideration was given to areas of traditional use understood by the Province to be where Treaty 8 rights were historically exercised, and EAO's initial assessment of the required scope of the duty to consult was presented to Aboriginal groups identified on Schedules B and C for review and comment in May 2016, as part of consulting on the draft Section 11 Order. EAO issued the final Section 11 Order on June 17, 2016, which identified consultation with the following Aboriginal groups:

Schedule B

- Blueberry River First Nations;
- Doig River First Nation;

- Halfway River First Nation;
- Sauteau First Nations;
- West Moberly First Nations;
- McLeod Lake Indian Band;
- Dene Tha' First Nation;
- Horse Lake First Nation; and
- Prophet River First Nation.

Schedule C

- Fort Nelson First Nation.

Consultation with Aboriginal groups on Schedule B was approached at the deeper end of the consultation spectrum, and consultation with Aboriginal groups on Schedule C was approached at a lower level on the consultation spectrum. Details of consultation activities and opportunities for participation are discussed further in Section 3.3.1.

All of the potentially affected Aboriginal groups listed above are signatories to Treaty 8. Treaty 8, negotiated in 1899, covers 840,000 km² area of what is now northern Alberta, northeastern BC, northwestern Saskatchewan, and the southern portion of the Northwest Territories.

Treaty 8 grants signatory Aboriginal groups the treaty rights to:

“pursue their usual vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described, subject to such regulations as may from time to time be made by the Government of the country, acting under the authority of Her Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes.”

The rights to hunt, fish, and trap and the rights reasonably incidental to those rights, are recognized and affirmed by Section 35 of the *Constitution Act, 1982*.

2.1.3 Context for Assessing Potential Impacts on Aboriginal Interests

In understanding the scope and nature of the rights and obligations under Treaty 8, the Crown is guided by the text of the treaty, as well as the understandings and intentions of the Aboriginal and Crown participants to the making of the treaty or subsequent adhesions, following rules of treaty interpretation articulated by the Supreme Court of Canada.

Oral promises (recorded in the Report of Commissioners for Treaty 8, Winnipeg, Manitoba, September 22, 1899) are of considerable importance in the interpretation of Treaty 8. Following is an excerpt of those promises:

“Our chief difficulty was the apprehension that the hunting and fishing privileges were to be curtailed.... we had to solemnly assure them that only such laws as to hunting and fishing as were in the interest of the Indians and were found necessary in order to protect the fish and fur-bearing animals would be made, and that they would be as free to hunt and fish after the treaty as they would be if they never entered into it.”

The report cites assurances given that the treaty would not lead to any “forced interference with mode of life” and that “the same means of earning a livelihood would continue after the treaty as existed before it”. The Province views these aspects of the report as being consonant with the terms of the treaty insofar as the mode of life and livelihood referred to in the report were the hunting, trapping and fishing activities protected by the treaty.

Through Treaty 8, the Crown has the right to “take up” lands for settlement, mining, lumbering, trading, or other purposes. As stated by the Supreme Court of Canada in *Mikisew Cree First Nation v. British Columbia* (SCC 2005), with the general principle recently reaffirmed in *Grassy Narrows First Nations v. Ontario* (SCC, 2014), the Crown’s right to take up lands under Treaty 8 is subject to the duty to consult and, as appropriate, accommodate a Treaty 8 Aboriginal group’s rights before reducing the area over which their members may continue to pursue hunting, trapping, and fishing rights. Although all Treaty 8 Aboriginal groups are entitled to engage in hunting, fishing, and trapping activities within the whole of the Treaty 8 area, in accordance with the terms of the treaty, where a Treaty 8 Aboriginal group no longer has a meaningful right to hunt, trap or fish in relation to the territory over which it traditionally hunted, trapped or fished, this may result in a treaty infringement.

When intending to take up lands, the Crown must exercise its powers in accordance with the Crown obligations owed to the Treaty 8 Aboriginal groups, which includes being informed of the impact of the project on the exercise of the rights to hunt, trap and fish, communicate such findings to the Aboriginal groups, deal with the Aboriginal groups in good faith, and with the intention of substantially addressing their concerns. The extent or scope of the duty to consult and accommodate required with a Treaty 8 Aboriginal group depends on the seriousness of potential impacts to that Aboriginal group, as discussed in Section 5.0 of this report.

The Dane-zaa (or Dunne-zaa) are Athapaskan people who generally settled along the Peace River in BC and Alberta. These Aboriginal groups in northeast BC traditionally lived semi-nomadic lifestyles while following seasonal rounds to pursue hunting, trapping, fishing, and gathering. The specific seasonal movements of the Treaty 8 Aboriginal groups of the Peace River Region prior to the arrival of the Europeans and the fur trade are not well documented. The ethnographic descriptions provided by anthropologists are based on land use when 335 traplines and trading posts had already become part of the Treaty 8 Aboriginal groups’ economy. Following the allocation of reserve land, many Aboriginal groups, and their members, continued for several decades to live a semi-nomadic lifestyle, travelling seasonally throughout the Peace River country from the Rocky Mountains to the plains of Alberta.

Except for McLeod Lake Indian Band and Blueberry River First Nations, all other Treaty 8 Aboriginal groups located in BC are currently members of the Treaty 8 Tribal Association, a regional Aboriginal organization with an office in Fort St. John.

2.2 Key Information Sources

The assessment of the seriousness of impacts on Aboriginal groups’ treaty rights undertaken in this report draws on information generated through the federal review of the Project and through direct provincial consultation with Aboriginal groups, with emphasis on the latter.

With respect to information flowing from the federal review process, the Province has considered the NEB Report, the Project Application including TK and TLU studies undertaken by the Proponent and participating Aboriginal groups, and relevant information provided by Aboriginal groups either filed on the NEB hearing record or provided directly to the federal Crown or the Proponent during consultation.

Information provided by Aboriginal groups and filed in NEB hearing records identifies the nature, extent and importance of traditional and cultural activities practiced by many potentially affected Aboriginal groups in the Project vicinity. These traditional and cultural activities include practices that rely on the availability, quality and access to ecosystems and natural resources, such as the land, rivers, fish and wildlife, and vegetation.

The Province has relied heavily on information provided by Aboriginal groups during provincial consultation on the Project, which includes information presented by Aboriginal groups during the federal process and new information collected following federal approval of the Project. This information includes TK and land use in the proximity of the Project, impacts of the Project on treaty rights, and mitigation and accommodation measures proposed by Aboriginal groups.

The breadth of information and consultation activities with Aboriginal groups has helped the Province to understand traditional and contemporary land and resource uses, and associated Aboriginal Interests related to the Project.

3 Summary of Consultation Process

The following section discusses the procedural elements and chronology of Aboriginal consultation or engagement activities undertaken by the Proponent, NEB, the Federal Crown, and the Provincial Crown.

3.1 Proponent Engagement Process

According to the NEB Report, the goals of the Proponent's Aboriginal engagement program for the Project included involving communities as early as possible and the following¹⁵:

- Determining and considering potential effects on the current use of lands and resources for traditional purposes;
- Identifying sites of cultural and historical importance;
- Obtaining local and TK;
- Integrating local and TK information into the planning process;
- Identifying potential socio-economic effects and suitable opportunities to enhance benefits for local communities; and
- Developing appropriate mitigation to reduce potential adverse effects.

The Proponent indicated that it commenced its Aboriginal engagement process for the Aitken Creek section of the Project in May 2011 and for the Kahta section in June 2013. The Proponent indicated it initially identified and engaged in Project discussions with 21 Aboriginal groups. The Major Project Management Office (MPMO) subsequently identified one additional Aboriginal group and the Board identified three additional groups and organizations with potential interest in the Project.

The following 25 Aboriginal groups and organizations were consulted by the Proponent for the Project:

¹⁵ NEB Report (A4K5R6), Page 86.

- BC Métis Federation¹⁶
- Blueberry River First Nations
- Dawson Creek Métis Federation
- Dene Tha' First Nation
- Doig River First Nation
- Fort Nelson First Nation
- Fort Nelson Métis Society
- Fort St. John Métis Society
- Grand Prairie Métis Local
- Halfway River First Nation
- Horse Lake First Nation
- Kelly Lake Cree Nation
- Kelly Lake First Nation
- McLeod Lake Indian Band
- Kelly Lake Métis Settlement Society
- Métis Nation of Alberta
- Métis Nation of Alberta, Region 6
- Métis Nation British Columbia
- Moccasin Flats Métis Society
- North East Métis Association of BC
- Prophet River First Nation
- Red River Métis Society (RRMS)
- Saulteau First Nations
- Treaty 8 Tribal Association
- West Moberly First Nations

The Proponent confirmed that Kelly Lake First Nation indicated that it had no ongoing interest in the Project area.

The Proponent stated its engagement activities with Aboriginal groups for the Project included:

- Providing information packages that included a summary of the Project scope, a map showing the proposed Project area, proposed routes and site locations, and Proponent's contact information.
- Face-to face meetings to discuss the information packages, appropriate communication and engagement methods, initial feedback, methods to assess the potential effects of the Project (map review, field visits and participation in engineering), environmental and TLU studies, contact information and timing for follow-up meetings, potential community investment opportunities, and potential contracting, employment and training opportunities.
- Follow-up meetings to obtain better understanding of interests and issues of the identified Aboriginal communities, if any, and coordinate their participation in Project-related field studies.

¹⁶ BC does not recognize a legal obligation to consult with Métis people as the Province is of the view that no Métis community is capable of successfully asserting site specific Section 35 rights in B.C. *Updated Procedures for Meeting Legal Obligations When consulting with First Nations*. Interim 2010.

The Proponent submitted that each Aboriginal group was provided with comprehensive information about the Project, opportunities to meet with the Proponent to discuss and express any concerns about the Project, and opportunities to provide input into Project planning through Project-related field studies. The Proponent further submitted that it engaged with each interested community to determine how that community preferred to be engaged on the Project.

The Proponent indicated that communities were given opportunities to conduct a TLU study either facilitated by the Proponent's environmental consultant, CH2M (formerly TERA Environmental Consulting), or to conduct community-led studies for the Project. The Proponent also indicated that it provided funding for Aboriginal groups (if requested by the Aboriginal group) to hire third-party experts to review the Project Application and routing options for the Project. The Proponent noted that 363 Aboriginal participants were involved in biophysical and archeological field studies to support the Project.

Environmental field studies for the Project were initiated in the fall of 2011 and further studies were conducted from 2012 to 2014, with some additional studies conducted in 2015. The Proponent provided funding to Aboriginal groups to support participation in field studies and other Project-related activities, as discussed in greater detail in Section 3.4.1. The Proponent stated that all potentially affected Aboriginal communities were invited to provide TK during the biophysical and heritage resource field studies. The Proponent indicated that at the request of some communities, collected information remained confidential. The Proponent stated that TK was gathered and recorded in 2011 and 2012 with members of Halfway River First Nation, Blueberry River First Nations, Doig River First Nation, McLeod Lake Indian Band, North East Métis Association, and Kelly Lake Cree Nation during the archaeology, aquatics, vegetation, wetlands and wildlife biophysical field studies.

The Proponent indicated that during field studies in the of fall 2011 and winter 2012, TK participants asked that bear dens, erosion on hills, natural springs, old growth areas, mineral licks and raptor nests be avoided during construction of the Project. Field studies participants also recommended follow-up investigation at specific sites.

The Proponent stated that further TK was compiled during the 2013 aquatics, archaeology, vegetation, wetlands and wildlife studies with the participation of the following Aboriginal groups, not including Métis groups:

- Blueberry River First Nations
- Dene Tha' First Nation
- Doig River First Nation
- Fort Nelson First Nation
- Halfway River First Nation
- Horse Lake First Nation
- Kelly Lake Cree Nation
- McLeod Lake Indian Band
- Prophet River First Nation
- Sauteau First Nations
- West Moberly First Nations

The Proponent indicated that the TK report for 2013 field studies provided information for all components of the Project, including the Aitken Creek and Kahta sections, as well as meter and compressor stations.

The Proponent submitted that the current routing of the Project avoids all identified culturally modified tree (CMT) sites along the proposed Kahta and Aitken Creek sections. The Proponent further submitted that if historical or paleontological features not previously identified are found on the RoW or Project

facility sites during construction, the Proponent will follow its Heritage Resource Discovery Contingency Plan contained in the Environmental Protection Plan (EPP) as, conditioned by the NEB.

Aboriginal communities were invited to participate in supplemental biophysical field studies that focused on routing revisions, from January to June 2014. A TK report was prepared to address additional information collected from participating Aboriginal communities during the aquatics winter surveys, heritage resources surveys, CMT scouting, archaeology surveys, and supplemental wetlands, wildlife and vegetation surveys.

The Proponent confirmed that the issues and concerns identified by participating communities during June to August 2014 aquatics and archaeology studies were communicated to the Proponent and were considered in Project planning. The Proponent stated that information gathered during field studies after August 31, 2014 would be considered for incorporation into Project planning, including the EPP and the Environmental Alignment Sheets (EAS), as appropriate.

The Proponent indicated that the following Aboriginal groups, excluding Métis groups, elected to conduct TLU studies:

- Blueberry River First Nations
- Dene Tha' First Nation
- Doig River First Nation
- Halfway River First Nation
- Horse Lake First Nation
- Kelly Lake Cree Nation
- McLeod Lake Indian Band
- Prophet River First Nation
- Sauteau First Nations
- West Moberly First Nations

The Proponent submitted that, for the purposes of identifying potential Project effects on the current use of lands and resources for traditional purposes, the Proponent relied on best available information, including Project-specific information provided directly by Aboriginal communities, as well as publicly available reports and the Proponent's operating experience. The Proponent submitted that where Aboriginal community Project-specific TLU information was not available, it was assumed that lands and resources in the regional study area (RSA) are currently used by these Aboriginal groups in a manner that is consistent with the traditional activities and resources identified for other Aboriginal groups assessed in its Environmental and Socio-Economic Assessment (ESA).

As required by NEB Condition 7, outstanding TLU investigations were filed on July 30, 2015 and approved by the Board on November 30, 2015. The Proponent has confirmed that TLU investigations for the Project with the interested Aboriginal groups are complete. The Proponent also committed to implement an Aboriginal monitoring program, called the Aboriginal Construction Participation Program, and provided the Board with a description of its proposed Aboriginal Monitoring Program for the Project.

In accordance with NEB Condition 21 and Condition 5, the Proponent must provide Commitment Tracking Table, updated monthly, for the Project. As required, the Proponent has posted updated versions of the Project commitment tracker to its external webpage. At the time this report was written, the most recent reporting period for the commitment tracker submission was September 15, 2016 to October 15, 2016. The Proponent has posted the Project Commitment Tracking Report on TransCanada's external webpage for the Project at <http://www.transcanada.com/6841.html>.

3.1.1 Aboriginal Groups Concerns with Proponent Engagement and Assessment Methods

Aboriginal groups noted the following concerns related to the Proponent's Aboriginal engagement:

- Inadequately accommodated impacts to treaty rights (Aboriginal Interests).
- Lack of meaningful consultation on routing options, particularly for the Kahta section.
- Inadequate timelines associated with the Proponent's Aboriginal engagement, as well as the timelines of the regulatory process, which prevented meaningful consultation and participation; and
- Delays in negotiating capacity funding agreements, which resulted in an inability to gather necessary cultural evidence.

In response to the above concerns, the Proponent stated that each Aboriginal group was provided with comprehensive information about the Project, opportunities to meet with the Proponent to discuss any concerns about the Project, and opportunities to provide input into Project planning through Project-related field studies. The Proponent further indicated that Aboriginal groups were given opportunities to conduct a TLU study either facilitated by the Proponent's environmental consultant, or to conduct community-led studies for the Project. The Proponent also noted that funding was provided for Aboriginal groups to hire third party experts to review the Application and routing options.

Aboriginal groups noted the following concerns related to the Proponent's assessment methods:

- Absence of critical data for the Board to assess the impacts of the Project, including historical data and treaty rights.
- Inadequate level of detail in the supporting evidence for determining the 'reversibility' of potential residual effects.
- Lack of application of significance evaluation of social, economic and environmental effects to Aboriginal groups.
- Inadequate definition and scope of potential effects on the current use of lands and resources for traditional purposes.
- Lack of participation by Aboriginal groups in the selection of valued components (VCs).
- Lack of incorporation of third party reports and Project-specific information provided by Aboriginal groups.
- Adequacy of baseline information by not considering pre-disturbance baseline/pre-1980 historical reference point vs. current baseline conditions.
- Lack of significance thresholds, and concerns with methods and factors considered when determining significance of effects on traditional use.
- Lack of consideration around perception of risk associated with accidents and malfunctions.
- Inappropriate mapping scale used in the assessment (too coarse).

Aboriginal groups also raised concerns regarding the Proponents approach to collecting TK and TLU information. For example, both Blueberry River First Nations and West Moberly First Nations raised concerns related to field research methods and data collection protocols used in field studies undertaken by CH2M (formerly TERA) on behalf of the Proponent. Blueberry River First Nations stopped participating in field studies in spring 2014 due to concerns regarding methodological flaws associated with data collection. According to the NEB Report, West Moberly First Nations also "expressed concerns about the methodology that was employed by the Proponent and its consultant TERA in collecting TEK

for the Project, suggesting that the research approaches were not adequate and that, as a result, the conclusions of the ESA are not credible”¹⁷. The Proponent submitted that they had been working together with participating Aboriginal communities for several years and that numerous discussions had occurred with regards to cultural protocols, objectives of participation on the biophysical field studies and sharing and collection of TK to ensure a “free, informed and ongoing process” that meets Canadian ethical research standards¹⁸.

With the exception of NEB’s views and recommendations on cumulative effects and Project routing, the NEB found the Proponent’s approach for the assessment of the Project’s potential effects on traditional land and resource use generally acceptable. The NEB was of the view that it had sufficient information to adequately assess the potential effects of the Project on the current use of lands and resources for traditional purposes. The NEB imposed Condition 7 requiring the Proponent to file with the NEB a report outlining the results of any outstanding TLU investigations for the Project, including how any concerns or issues have been or will be addressed by the Proponent. NEB Condition 10 was specific to Prophet River First Nation and required the Proponent to submit to the Board a report on its consultations regarding cultural camps identified near the Sikanni Chief River crossing location.

Aboriginal group’s concerns regarding the Proponent’s engagement and evaluation with respect to cumulative effects and Project routing are discussed in Sections 4.1.2 and 4.1.4, respectively.

3.2 National Energy Board Engagement

The NEB’s Enhanced Aboriginal Engagement (EAE) program provides proactive contact with Aboriginal groups that may be affected by a proposed project, and helps Aboriginal groups understand the Board’s regulatory process and how to participate in that process. Before filing a project application, applicants were required by the NEB’s Filing Manual to identify, engage and consult with potentially affected Aboriginal groups. The Board’s Filing Manual required applicants to consult with potentially impacted Aboriginal groups early on in the planning of a project and report on these activities to the Board. Further, the Filing Manual required that the Application include detailed information on any issues or concerns raised by Aboriginal groups or that were otherwise identified by the applicant.

NEB encouraged early engagement between Aboriginal groups and the Proponent so that concerns could be identified early and considered, and potentially resolved, prior to filing the application. The NEB also encouraged Aboriginal groups which would be directly impacted by the Project, or had information and expertise that could help the Board gain a greater understanding of the Project to apply to participate in the hearing process. Aboriginal groups that were accepted to participate, contributed information through letters of comment, written evidence, oral testimony by elders and community members, cross-examination of the applicant and other participants, and through final arguments.

The NEB carried out its EAE activities for the Project between August 2013 and December 2013. The Board sent letters to 25 potentially affected Aboriginal groups and organizations (as described in Section 3.0). From August to December 2013, each of the 25 Aboriginal groups was contacted by the NEB by letter in advance of the hearing process commencement. The letter described the NEB hearing process, its Participant Funding Program (PFP) and included a summary description of the Project. The letter (and subsequent follow-up telephone calls) also provided each Aboriginal group with an

¹⁷ NEB Report (A4K5R6), Page 92

¹⁸ NEB Report (A4K5R6), Page 93

opportunity to meet face-to-face with NEB officials to discuss the hearing process and the Crown consultation process in greater detail and respond to any specific questions about these processes. No Aboriginal groups accepted the invitation to meet.

The groups that participated in GH-001-2014 hearing included: Dene Tha' First Nation, Blueberry River First Nations, Fort Nelson First Nation, McLeod Lake Indian Band, Prophet River First Nation, Sauleau First Nations, and West Moberly First Nations; however, Dene Tha' First Nation withdrew from participating in this hearing on July 29, 2014.

3.2.1 Federal Government Consultation

In order to meet its duty to consult for the Project, the federal Crown depended on the NEB process to the greatest extent possible. In conducting Crown consultation, the federal government makes sure there is representation from all departments and agencies whose mandates and expertise may be required to assess a project and its potential adverse impacts on Aboriginal groups. This whole of government approach arose from a 2007 Cabinet Directive and supporting Memorandum of Understanding established by the Major Project Deputy Ministers' Committee¹⁹.

A federal Crown Consultation Coordinator with Natural Resources Canada's MPMO oversees the process and serves as the main point of contact between the federal Crown and Aboriginal groups. This Crown Consultation Coordinator also maintains the Crown's record of consultation for the Project and implements consultation in a manner consistent with current legal standards, government policy and other expectations.

The MPMO, in collaboration with NEB and Indigenous Affairs and Northern Development Canada, developed a list of Aboriginal groups who may be adversely affected by the Project. Twenty-five potentially affected Aboriginal groups were identified (as identified in Section 3.0).

In January 2014, the MPMO sent follow-up letters to all 25 Aboriginal groups to provide further information on the federal Crown consultation process for the Project. NEB and MPMO notification/correspondence to potentially affected Aboriginal groups in the pre-hearing phase was filed into the hearing record.

As part of the federal Crown's reliance on the NEB process, Crown officials generally do not engage directly with Aboriginal groups during the hearing process and while the evidentiary record is open, to avoid creating a parallel consultation process. Crown representatives did, however, correspond with Blueberry River First Nations through meetings and letters. Halfway River First Nation also provided comments on the Project to the Minister of Natural Resources Canada in April 2015.

To determine if the federal Crown had met its duty to consult or if additional consultation was needed outside of or following the NEB hearing process, the MPMO conducted an assessment of NEB and Crown consultation activities.

¹⁹ See the Federal Action Plan, and Interim Guidelines, 2007 including the [Cabinet Directive on Improving the Performance of the Regulatory System for Major Resource Projects](#) (the directive that established the MPMO Initiative, launched on October 1, 2007) and supporting Memorandum of Understanding

3.2.2 Adjustments to the Sunset Clause for the Project

NEB Condition 45 establishes a sunset clause specifying that construction on the Project must begin before June 10, 2016 or approval for the Project would expire. On March 28, 2016, the Proponent filed a request with the NEB to extend the sunset clauses. The NEB provided a temporary extension of the sunset clause to December 2016 to allow time for comments on the Proponent's request. Blueberry River First Nations and Sauteau First Nations provided written submissions to the NEB regarding the request. On September 15, 2016, the NEB extended the sunset clause for the Project to June 10, 2017, subject to approval by the Governor in Council.

3.2.3 Aboriginal Groups Concerns with Federal Consultation

A number of Aboriginal groups raised concerns with the federal consultation process for the Project. Concerns generally included the following:

- Lack of early engagement on the Project and limited or no consultation during the NEB process, including during the period following issuance of the NEB recommendations report and Cabinet decision;
- Failure to engage Aboriginal groups on the inclusion of Aboriginal perspectives in the assessment of the Project;
- Lack of substantive engagement by federal agencies with Aboriginal groups before, during or after the NEB process;
- Lack of consultation on the federal process, leading to procedural limitations impacting the scope of information requests by Aboriginal groups during the NEB hearing process, and limitations on oral evidence presented by Aboriginal groups; and
- Lack of consultation on Project conditions, resulting in the failure to address, mitigate or accommodate Project impacts on Aboriginal Interests.

Nation-specific concerns regarding federal consultation are discussed in Section 5.0.

3.3 Provincial Government Consultation

3.3.1 BC Environmental Assessment Office

Pursuant to Section 11 of the Act, EAO issued an Order that set out, in addition to other matters, how potentially affected Aboriginal groups will be consulted by EAO. EAO's initial approach to identifying Aboriginal groups to consult was based on a geographic analysis of the proximity of the Project to an Aboriginal groups' area of traditional use, as understood by the Province. Aboriginal groups whose area of traditional use overlaps with, or is located within 2-km of the the Project corridor were placed on Schedule B of the Section 11 Order. Aboriginal groups whose area of traditional use is more than 2-km away from the the Project corridor and who may experience indirect impacts from the Project to Aboriginal Interests were placed on Schedule C of the Section 11 Order.

Consultation with Aboriginal groups on Schedule B was approached at the deeper end of the consultation spectrum, and those groups were provided the following opportunities:

- Receive notification of the issuance of any legal orders under the Act in relation to the Project;
- Discuss and comment on the issues the Aboriginal group raised through the NEB Panel review and through any subsequent consultation in relation to potential impacts of the Project on areas

of provincial jurisdiction on Aboriginal Interests, and measures to avoid, minimize or otherwise accommodate, as appropriate, within reasonable timelines established by the Project Assessment Lead;

- Review supplemental information provided by the Proponent to inform consultation in relation to potential impacts of the Project on areas of provincial jurisdiction on Aboriginal Interests, and measures to avoid, minimize or otherwise accommodate, as appropriate, within reasonable timelines established by the Project Assessment Lead;
- Provide comments to the Proponent on the Proponent's draft report on Aboriginal consultation;
- Meet with EAO representatives to discuss potential impacts of the Project on areas of provincial jurisdiction on Aboriginal Interests, and measures to avoid, minimize, or otherwise accommodate such impacts, as appropriate;
- Review and comment on the EAO's draft referral materials; and
- Provide a separate submission to the EAO regarding views on the Project and on the draft referral materials, to be included in the package of materials sent to Ministers when the Project is referred to Ministers for decision; and
- Request further engagement with the EAO in accordance with agreed upon timelines.

Consultation with Aboriginal groups on Schedule C was approached at a lower level on the consultation spectrum, and Aboriginal groups on Schedule C were provided the following opportunities:

- Receive notification of the issuance of any legal orders under the Act in relation to the Project;
- Provide comments to the Proponent on the Proponent's draft report on Aboriginal consultation
Review and comment on the EAO's draft referral materials; and
- Discuss and comment on the issues the Aboriginal group raised through the NEB Panel review and through any subsequent consultation in relation to potential impacts of the Project on areas of provincial jurisdiction on its Aboriginal Interests, and measures to avoid, minimize or otherwise accommodate, as appropriate.

EAO shared a draft of the Section 11 Order with Aboriginal groups on May 11, 2016, and requested feedback. After considering feedback received from Aboriginal groups, changes were made to the draft Section 11 Order. On June 17, 2016, EAO issued a Section 11 Order under the Act, which specified the consultation activities that EAO would undertake with all Aboriginal groups potentially affected by the Project, as listed on Schedules B and C of the Order.

Pursuant to the Section 11 Order, on June 22, 2016, the Proponent submitted a report to EAO on Aboriginal group engagement that it had undertaken. This report summarized the efforts undertaken by the Proponent to consult with Aboriginal groups, identified the feedback and information received from Aboriginal groups during engagement, identified potential adverse impacts of the Project on Aboriginal Interests for each Aboriginal group, identified how these impacts would be mitigated or otherwise accommodated, and outlined future engagement activities.

EAO's consultation process builds on consultation that has occurred to date, including with provincial agencies, through the NEB process, and engagement with the Proponent. Permits are not issued by provincial agencies until the Ministers make a decision on the environmental assessment certificate in accordance with Section 9 of the Act, with the exception of investigative use permits (i.e., permits to collect information to support the assessment of the Project); however, permitting agencies may consult with Aboriginal groups on permit applications prior to the Ministers' decision on the EAC.

3.3.2 BC Oil and Gas Commission

EAO took a coordinated approach to Aboriginal consultation for this Project that was informed by consultation undertaken by provincial agencies responsible for permit authorizations, and information provided by the Proponent. In accordance with the Province's principle of "one project, one assessment", the EAO is coordinating Aboriginal consultation activities, as appropriate, with other provincial agencies (OGC) who will be adjudicating permit applications for this Project, should an EAC be issued.

Following receipt of the Proponent's application to the OGC for an NEB-regulated pipeline application, OGC initiated Aboriginal consultation in May 2015. The OGC adjudicates and makes decision on the NEB application for the provincial authorizations under the *Land Act*, authorizations of stream crossings under the *Water Sustainability Act*, and issuance of cutting permits under the *Forest Act*. The OGC has been undertaking consultation with Aboriginal groups on the application submitted by the Proponent for the Project since 2015. Consultation activities have included corresponding with and meeting with Aboriginal groups regarding referral materials provided by the OGC, and to discuss key concerns.

3.4 Participant Funding Provided

3.4.1 Proponent Funding

Throughout the NEB process and subsequent consultation activities, the Proponent provided funding to Aboriginal groups to support participation in the following activities:

- Traditional ecological knowledge field studies;
- TLU studies (community-led or facilitated by external consultants, according to the preference of individual Aboriginal groups);
- Geo-technical Surveys;
- Socio-economic studies;
- Helicopter site visits to areas of interest or concern;
- Independent technical reviews;
- Peace Moberly Tract Protection Plan (PMTTP), including a Peace Moberly Tract Offset Fund to be established upon commencement of Project construction; and
- Letter of Agreement capacity funding encompassing general engagement such as meetings with Chief and council, Lands Departments, community meetings and workshops, as well as for the negotiation of agreements and miscellaneous expenditures.

The amount of funding provided to each Aboriginal group was dependent on the level of engagement carried out.

3.4.2 NEB Allocation of Funds for Participation in Hearing and Federal Funding

The Board administered a PFP to provide modest financial assistance to Aboriginal groups and other interested parties in the Board's oral hearing process. The Board established a Funding Review Committee to review applications for participant funding. The committee is independent of both the Proponent and the regulatory process. On September 20, 2013, the Board made funding available under its PFP to facilitate participation in the regulatory process for the Project. The Board received seven eligible applications from Aboriginal groups and a landowner. Following a review of the applications by the Funding Review Committee, independent of the Project regulatory review process, funding awards

were made. The NEB provided a total of \$233,800 to the following seven Aboriginal groups: Fort Nelson First Nation, Sauteau First Nations, West Moberly First Nations, McLeod Lake Indian Band, Blueberry River First Nations, and Prophet River First Nation.

3.4.3 EAO Funding

EAO offered capacity funding in the amount of \$5,000 to each Aboriginal group on Schedule B of the Section 11 who actively participated in the EAO assessment process, as outlined in the Section 11 Order. The funding was intended to assist with participation in consultation activities, such as document review and participation in meetings. EAO provided a total of \$40,000 to nine Aboriginal groups: Blueberry River First Nations, Dene Tha' First Nation, Doig River First Nation, Halfway River First Nation, Horse Lake First Nation, McLeod Lake Indian Band, Prophet River First Nation, Sauteau First Nations, and West Moberly First Nations.

4 Potential Impacts of the Proposed Projects on Aboriginal Interests

The sections below summarize EAO's general assessment of the potential impacts of the Project on Aboriginal Interests based on EAO and Proponent engagement efforts to consult with Aboriginal groups, as well as the NEB's regulatory review and environmental assessment. The assessment considered key issues and concerns raised by Aboriginal groups, potential impacts of the Project, and EAO's responses. Impacts and issues specific to individual Aboriginal groups are discussed in further detail in Section 5.0. The conclusions and assessment of impacts Aboriginal groups are specific to each Aboriginal group and are presented in Section 5.0.

4.1 Key Issues and Concerns Raised by Aboriginal Groups

4.1.1 Areas of Significant Cultural Importance for the Exercise of Treaty Rights

Within the Project area, there are two primary common areas of special interest for the exercise of treaty rights: the Peace Moberly Tract (PMT) within the Area of Critical Community Interest (ACCI), and the Pink Mountain area, including Lily Lake and the area surrounding Mile 156 Road. Sauteau First Nations and

West Moberly First Nations identified the ACCI in the 1980s, and the PMT more specifically, in 2006 under the *Draft Peace Moberly Tract Sustainable Resource Management Plan*²⁰. These areas were identified due to the cultural, commercial, recreational and sustenance (e.g., hunting, trapping and fishing) resource value that they provide to Aboriginal groups in the area. The Pink Mountain area was identified by Blueberry River First Nations and Halfway River First Nation as an area of critical cultural importance as it is an area heavily used for hunting, trapping, fishing, gathering, camping, and many other cultural practices. Pink Mountain was also identified as an area of use by Horse Lake First Nation and Prophet River First Nation. Other specific areas of concern identified by Aboriginal groups are discussed in Section 5.0.

²⁰ 2006 MFLNRO, *Draft Peace Moberly Tract Sustainable Resource Management Plan*, <https://www.for.gov.bc.ca/tasb/slrp/plan106.html>

Peace Moberly Tract

The PMT is an area of land, approximately 1,090 km² in size that lies within a regional ACCI between the Peace River and Moberly Lake. The PMT consist of wide valleys and low mountainous areas. The Project crosses five mapped watercourses in the PMT, including the Peace River and four unnamed tributaries to the Peace River. The PMT has been identified by numerous First Nations, including Sauleau First Nations and West Moberly First Nations, as an area of special interest and significant cultural importance. The Project traverses approximately 10 km of the northeastern portion of the PMT.

Within the PMT, the TK, language, stories, cultural protocols and values are taught, and shared, cultural meanings and identity are reinforced. The ability of Sauleau First Nations and West Moberly First Nation to access and engage in harvesting practices and return to culturally important sites and areas is important for cultural transmission to occur. Sauleau First Nations that their “culture, way of life, and livelihood is dependent on unimpaired access to a healthy and intact ecosystem that supports the community’s ability to hunt, trap, camp, fish, and be out on the land. The ability to continue to access and use lands and waters are vital to passing on knowledge from generation to generation”²¹.

The NEB did not reach a unanimous consensus regarding the Project route through the PMT. The majority of the Board concluded that the Proponent pursued its preferred route through the PMT over the significant concerns raised by Aboriginal groups, notably Sauleau First Nations and West Moberly First Nations, and that additional measures imposed by NEB would be necessary for the route through the PMT to be in the public interest. The dissenting member of NEB concluded that the Proponent failed to adequately consider alternative route options in light of available alternatives. The following key excerpts from the NEB report capture these differing views.

The Majority of the Board wrote, at page 103 of the NEB Report:

In the view of the majority of the Board, NGTL did not sufficiently justify its preferred route commensurate with the demonstration of concern and the evidence provided by Aboriginal groups about the route’s potential impacts. The majority of the Board finds NGTL’s approach unsatisfactory in these circumstances. The Board expects applicants to clearly demonstrate: 1) how the proposed project is the most appropriate option to meet the needs that would be satisfied by the project while serving the public interest; and, 2) how the input and concerns they receive from potentially impacted parties, including potentially affected Aboriginal groups, have influenced the design (including route selection), construction or operation of their project. The majority of the Board finds the concerns raised by SFN and WMFN to be significant and to have merit. The majority of the Board accepts the views of SFN and WMFN that their continued use of the lands and resources within the PMT is of great importance to their communities. This includes use of the PMT as a source of traditional resources, as being vital to the continuity of their language and cultures as part of their on-going activities in the PMT, and as an increasingly important intact landscape within an area of considerable and on-going development. Given the nature and degree of the concerns raised and the evidence submitted by SFN and WMFN questioning the appropriateness of the preferred route through the PMT, the majority of the Board would have expected NGTL to demonstrate justification for its preferred route commensurate with the degree of concerns raised, or demonstrate how it revised its Project to address these concerns to the extent possible.

The majority of the Board therefore finds that additional measures imposed by the Board are necessary to eliminate or minimize to the greatest extent possible the Project’s potential effects in the PMT, for

²¹ Sauleau First Nations. 2014. Sauleau First Nations Knowledge and Use Study Final Report

the routing of the Project through the PMT to be in the public interest. The majority of the Board is of the view that the Project can be constructed and operated with further technically and economically feasible mitigation to eliminate or minimize to the extent possible the Project's potential effects in the PMT. NGTL provided justification for its proposed mitigation measures, but the Board notes that NGTL did not indicate that this constitutes the fullest extent of measures that could be technically or economically implemented. Where applicants have not sufficiently justified how a project's design, routing and construction methods and techniques are the most appropriate for the circumstances while serving the public interest, the Board will not hesitate to impose conditions to protect the public and the environment.

The majority of the Board recommended three Project conditions, which they felt were necessary for the route through the PMT to be in the public interest. Conditions 11, 12, and 35 are discussed in further detail below.

The dissenting member of the Board wrote, at page 104 and 106 of the NEB Report:

NGTL did not provide persuasive evidence that it thoroughly investigated alternatives that would avoid the PMT. Given the extent of approved development in the surrounding area, there are reasonable routes outside of the PMT that should have been chosen. As a result, NGTL has not justified that the route through the PMT is an appropriate route.

If a project is otherwise found to be in the present and future convenience and necessity, in some cases potential impacts of the nature contemplated here may be found to be justified, such that the project should be approved. As the Board has stated in past decisions, "As a federal tribunal, the Board must focus on the overall Canadian, or national, public interest. Various decisions of the courts have established that a specific individual's or locale's interest is to be weighed against the greater public interest, and if something is in the greater public interest, the specific interests must give way." However, this statement assumes that there is sufficient investigation of the various options to accomplish the objective, and that this evidence is put before the decision-maker to consider when looking at options to fulfill the objective. The totality of evidence in this proceeding has not persuaded me that NGTL has adequately investigated other options that would achieve the same objective without potentially causing the impacts in the PMT. Considering the extent of development outside of the PMT, it stretches credibility to suggest that a route through the PMT is preferable to routes in already disturbed areas outside the PMT. There are other route options available.

The majority of the Board concluded that additional measures imposed by the Board were necessary for the route through the PMT to be in the public interest. The Board imposed Conditions 11, 12, and 35, that require the Proponent to submit a protection plan specific to the PMT that outlines the additional measures that will be implemented to eliminate or minimize to the greatest extent possible the Project's potential effects within the PMT, including potential effects on the traditional use of lands and resources by Saulteau First Nations and West Moberly First Nations. The Proponent was also required to develop a plan for consulting with Saulteau First Nations and West Moberly First Nations on the development of these measures to protect the PMT, to report to the Board on its consultation efforts, and to report to the Board to protect the PMT, to report to the Board on its consultation efforts, and to report to the Board on the effectiveness of the measure implemented through monitoring reports during operations.

On June 10, 2015 the federal Governor in Council approved the Project, including the routing through the PMT, in consideration of the assessment completed by the NEB and the recommended conditions. Since that time, the Proponent has proceeded to file material with the NEB to address many of their pre-construction condition requirements, including in relation to the PMT conditions.

In May of 2015, the Proponent submitted a consultation plan to NEB outlining how West Moberly First Nations and Saulteau First Nations would be consulted on the development of the PMTPP (PMTPP). This consultation plan was approved by NEB on July 22, 2015. In November of 2015, the Proponent

submitted a PMTPP for NEB approval. This plan includes a process for the incorporation of consultation and TK information into plan implementation, construction preparation plans, specific mitigation measures for the PMT, an overview of non-avoidable project activities and potential effects, and a plan for post-construction monitoring. The NEB approved this plan on May 27, 2016.

A Peace Moberly Tract Offset Fund will be established by the Proponent, subject to confirmation of the start of Project construction in the PMT.

Pink Mountain

The Pink Mountain area was identified by Blueberry River First Nations and Halfway River First Nation as an area of cultural importance as it is heavily used for hunting, trapping, fishing, gathering, camping, and many other cultural practices. It was also identified as an area of use by Horse Lake First Nation and Prophet River First Nation. The area of interest extends from the area surrounding Mile 156 road in the north, south to the area surrounding Pink Mountain.

The area has been identified by Aboriginal groups as an important ecological corridor of critical importance to animals, including moose. This area is important partially due to its proximity to key hunting grounds and the relatively undisturbed nature of the area. In consultation with Aboriginal groups, concern was commonly expressed regarding the route of the proposed Project through the Pink Mountain area. Concern was expressed about the continued fragmentation of critical habitat needed for hunting and the potential for contamination of the water, vegetation and wildlife from industrial activities. The Project intersects this area of importance and comes within 5 km of an established cultural camping area that is regularly used by Aboriginal groups. While the Pink Mountain area was identified as an area of concern during the NEB process, it received limited focus in the NEB Report. The Proponent indicated that consideration of existing disturbance was included as part of the Project routing and planning, to seek to reduce the potential impact of creating new access. The Project would parallel existing disturbance for approximately 76% of its length within the Pink Mountain area.

Lily Lake

Lily Lake, northeast of Pink Mountain, was identified by Blueberry River First Nations and Halfway River First Nation as an area of biophysical and cultural importance as it is heavily used for hunting, fishing, camping, and many other cultural practices. Lily Lake feeds the Beatton River and all surrounding habitat and is reported as high value habitat and calving grounds for moose, elk, and caribou²². Lily Lake also contains a rare archeology site, discovered during the archaeological impact assessment for the Project. This site, discovered in early 2014, included a rare Clovis point, as well as more than 200 artifacts. Aboriginal groups also noted that the area surrounding Lily Lake contains extensive trails and travel ways integral to the hunting, trapping, fishing and gathering, as well as access to other sites of cultural significance such as Pink Mountain.

Lily Lake was identified in the Proponent's Hydrostatic Testing Plan, required by NEB Condition 26, and submitted in April 2014, as a water source for hydrostatic testing of the northern section of the pipeline. The plan indicate that there could be water withdrawals from the lake of >50,000 m³ via an above-ground water line. Lily Lake, as well as Sikanni Chief River and Buckinghorse River were also considered as potential sources for the withdrawal. Halfway River First Nation expressed concerns related to potential impacts to Lily lake and surrounding area from water extraction related to the Project,

²² The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

including potential impacts to the marsh complexes surrounding the lake and to the hydrology in the area if water is withdrawn, and potential effects to ungulate calving habitat in this area. Further concerns were raised given the cultural significance of the lake, from a biophysical, traditional use, and heritage value perspective. Aboriginal groups also expressed concern regarding increased access to Lily Lake as a result of increased access to the area, which falls within 5 km of the Project route. According to the Proponent, water extraction from Lily Lake would require minimal ground disturbance due to the temporary nature of the above-ground pipe and existing access into the area.

4.1.2 Cumulative Effects: Traditional Land Use and Assessment Methodology

A number of Aboriginal groups identified concerns related to increasing pressure on the landscape related to cumulative effects in the northeast, and the incremental contribution of the Project to cumulative effects, including effects from related upstream development. Concerns related to cumulative effects and the impact on TLU broadly include the following:

- Cumulative effects to wildlife and wildlife habitat, and a reduction in the availability of preferred species to hunt and trap;
- Areas of traditional use being impacted or lost to development activities:
 - Aboriginal group members having to travel further to practice traditional activities;
 - Impact on cultural transmission of information and practices related to areas of traditional use;
- Increased access providing access for both non-Aboriginal hunters and predators, putting further pressures on important species such as moose; and
- Level of development on the landscape and its impact on the experimental element to the practice of treaty rights and cultural practices, including effects to seasonal rounds.

Some Aboriginal groups also identified concerns related to the methodology used by the Proponent in their assessment of cumulative effects. The assessment of cumulative effects in the Proponent's Application to the NEB considered the impacts of the residual effects associated with the Project in combination with the residual effects from other projects and activities that have been or will be carried out within the appropriate temporal and spatial boundaries and ecological context.

The Proponent identified past and current activities in the region that have the potential to contribute to cumulative effects including transportation, forestry, oil and gas development, utilities, and rural residential development. According to the Proponent, known future developments in the region include oil and gas development, transportation activities, forestry, utilities, and residential infrastructure.

Several Aboriginal groups noted concerns regarding the Proponent's cumulative effects assessment, and a number of Aboriginal groups indicated concern with the extent of existing development in the Project area. These Aboriginal groups indicated that ongoing cumulative effects in the region are impacting the ability of members to exercise their Aboriginal Interests. In addition, these Aboriginal groups stated that the methods used by the Proponent did not adequately consider the cumulative effects of the Project.

The NEB raised concerns regarding the Proponent's three-part screening process used for assessing cumulative effects, noting the approach taken by the Proponent was not an accepted method and was not supported by independent or peer reviewed scientific literature. The NEB also noted that the Project relies upon considerable additional development of gas wells in the North Montney area to provide supply and to justify Project design and economic feasibility, and yet the Proponent limited its

cumulative effects assessment in its ESA to activities that are currently within the regulatory process as reasonable future projects.

In response, the NEB requested linear disturbance analysis based on the development of the future wells in the North Montney area that underpin the Project. The NEB recognized the challenges and uncertainties associated with this type of analysis, but stated that it expected applicants to use the best available information or undertake additional work to assess the potential effects. After reviewing the additional modelling assumptions and analysis provided by the Proponent, the NEB indicated that the analysis reflected a reasonable model of potential trends²³.

The NEB was aware of concerns over cumulative effects in the region and stated that a regional plan would be highly beneficial in addressing these effects. In addition, the NEB recognized the need for the establishment of acceptable thresholds of change. The NEB noted OGC's responsibilities in regulating future activities in the North Montney region and encouraged them to continue developing the Area Based Analysis program. The NEB indicated that they recognize the Proponent does not control the development of provincial or federal initiatives but does expect the Proponent to make every effort to participate in finding solutions to the management of regional cumulative effects where possible²⁴.

The NEB anticipated that most of the cumulative effects are limited to the duration of construction, are fairly localized, minor in nature and will be mitigated by the Proponent's mitigation measures; however, the NEB noted that the key long-term cumulative environmental impact is the ongoing loss, alteration and fragmentation of the natural landscape in the region, particularly for caribou. Accordingly, the NEB was of the view that caribou and caribou habitat is an appropriate overall indicator for the assessment of cumulative effects.

The Province has recognized the importance of assessing and managing the cumulative effects of resource development in northeast BC in a broader context than in relation to a particular project. The Ministry of Forests, Lands and Natural Resource Operations (FLNRO), in collaboration with other provincial agencies, Aboriginal groups, and stakeholders, continues to develop and implement a provincial Cumulative Effects Framework to provide the policy, procedures and tools to improve the consideration of cumulative effects for a broad range of natural resource decision-making. The Cumulative Effects Framework is intricately linked with a number of other current and emerging initiatives across the resource sector, such as the ongoing Regional Strategic Environmental Assessment project that falls within the LNG Environmental Stewardship Initiative. The Regional Strategic Environmental Assessment is being developed with several Treaty 8 First Nations and involves the collaborative development of cumulative effects assessment approaches.

Further, in recognition of the importance of assessing and managing the cumulative effects of resource development in the northeast, the Province has established the Northeast Cumulative Effects Program and is working closely with Treaty 8 First Nations, local and federal government, key non-government organizations and industry on its development and implementation. The Northeast Cumulative Effects Program plan incorporates the work completed in the previous South Peace Cumulative Effects operational trial, as well as the OGC's Area-Based Analysis initiative²⁵. In this report, as part of the assessment of the impacts of the Project on Aboriginal Interests, EAO has considered the presence of any cumulative effects and how these may impact the exercise of Aboriginal Interests. This includes

²³ NEB Report (A4K5R6); page 150

²⁴ NEB Report (A4K5R6); page 150

²⁵ <http://www.bcogc.ca/public-zone/area-based-analysis-aba>

consideration of the following factors relevant to cumulative effects in assessing impacts on Aboriginal Interests associated with resource harvesting rights:

- Whether species that are harvested by Aboriginal groups are subject to conservation concerns, and if so, the current baseline condition of that species;
- The existing state of species habitat impacted by existing or past development;
- The relative importance of the Project area and its surrounding to the exercise of the harvesting activity of the Aboriginal group; and
- Any special characteristics or unique features of the Project area.

4.1.3 Access

During EAO's consultation with Aboriginal groups for the Project, concerns were raised regarding changes to access in the Project area. Aboriginal groups expressed concern that the Project would restrict access to areas currently used for cultural purposes, increase access to non-Aboriginal users, and increase access to predators. Aboriginal groups were also concerned that increased access to other land users would decrease the suitability of areas for cultural practices, and affect the experiential element of practicing traditional activities. Linear corridors are often used by non-Aboriginal hunters and land users operating motorized vehicles such as ATVs and snowmobiles. Increased access leads to increased pressure on wildlife populations due to increased hunting, noise disturbance scaring wildlife out of areas, and increased wildlife fatalities from vehicle collisions. Increased access to predators, such as wolves, due to linear disturbances could impact important species such as moose, elk, and caribou. Concerns regarding access with respect to the Project were identified primarily in the following types of areas: relatively undisturbed areas with minimal existing access; relatively contiguous tracts of habitat identified by Aboriginal groups as important for wildlife; riparian areas; and areas of cultural and spiritual importance (see Section 4.1.1).

4.1.4 Project Routing

The Proponent assessed a variety of routing alternatives by examining route selection criteria, undertaking a preliminary constructability assessment, and considering feedback from engagement with Aboriginal communities, landowners and government agencies. Six major alternative corridors for the Aitken Creek section were considered by the Proponent.

For the Aitken Creek section, the Proponent stated its proposed reclamation measures would reduce the impact to both the Pine River Dunes and the Septimus 04 Old Growth Management Area (OGMA)²⁶ by largely avoiding the dune features using pipe bends and short bores, reducing RoWs and temporary work spaces, minimizing disturbance through winter construction, and reclaiming areas using techniques such as replanting. The Proponent stated that it discussed this plan with representatives from FLNRO and OGC. FLNRO and OGC's preference remained re-routing around the feature entirely, however FLNRO and OGC indicated that the mitigation and reclamation proposed was appropriate and did not object to Pine River Dunes micro-routing and Reclamation Plan proposed by the Proponent.

Routing for the Kahta Section was influenced by the primary control points and existing and future customer plans that would potentially tie into the Project. The Proponent submitted that the route for the Kahta Section was selected by focusing on following existing linear features where possible, in order

²⁶ Parabolic sand dunes located in an area of 826 ha between Septimus Creek and the Pine River, northeast of Stewart Lake in the Peace Lowlands eco-section; valued for its grasslands, source and tamarack swamps

to reduce the amount of new land disturbance, and to minimize freehold land along the route. The Proponent stated two changes to the Project affected the final proposed route for the Kahta Section: an adjusted end point, and a new location for crossing the Sikanni Chief River. As a result of these changes, the overall length of the route was reduced by 5 km, from approximately 306 km to 301 km.

Aboriginal groups noted the following concerns related to Project routing:

- Location of the route through the PMT and the potential to affect the exercise of Aboriginal Interests in that area;
- Lack of consideration and evaluation given to alternative routes;
- Feasibility of crossing the Peace River by trenchless methods; and
- Lack of consultation on routing for the Kahta section, particularly in contrast to the six routing options discussed for the Aitken Creek section of the Project, and a lack of consultation regarding the impact of the Kahta route on TLUs.

Consultation on the Aitken Creek section of the Project began in 2011, while consultation on the Kahta section was not initiated until 2013. Aboriginal groups noted both the shorter timeframe allocated to consultation for the Kahta section as well as the limited number of routing options considered by the Proponent.

Aboriginal group concerns and details of the NEB's discussion on Project routing through the PMT are discussed in Section 4.1.1.

4.2 Overview of Potential Impacts on Treaty Rights

4.2.1 Hunting and Trapping

Overview

The Project would traverse a range of habitat types including coniferous, deciduous and mixed wood forests, wetlands, agricultural areas, riparian habitats and areas managed for silviculture. These habitats support ungulates such as moose, elk, plains bison, caribou, white-tail and mule deer, as well as other species such as wolf, coyote, black bear, grizzly bear, cougar, lynx, porcupine, beaver, squirrel, rabbit, raven, woodpecker, hawks, grouse, grey owl and swan.

Traditional hunting and trapping activities are practiced by Aboriginal groups in the region, and remain an important part of their livelihoods. Species hunted range from big game to small mammals and birds; however, moose, bear, and marten were noted as important species of traditional use in TLU studies²⁷. Other species that are traditionally hunted include (but are not limited to): mule deer, elk, wolf, porcupine, coyote, lynx, squirrel and rabbit. Caribou are also traditionally hunted, however, many Aboriginal groups have self-imposed moratoriums on hunting caribou due to the current status of herds in the region.

EAO understands that Aboriginal groups hunting and trapping activities depend, in part, on the status of wildlife populations within their area of traditional use. The local study area (LSA) is intended to capture the direct and indirect impacts from the proposed Project, while the RSA is intended to capture the area

²⁷ Stantec Consulting Ltd. (Stantec). 2013. Environmental and Socio-Economic Assessment for NOVA Gas Transmission Ltd. North Montney Project. Calgary, Alberta.

where the influence of other land uses and activities could overlap with proposed Project-specific effects and result in cumulative adverse effects.

Specific information pertaining to hunting and trapping areas was identified to the Proponent through TLU and TK programs and can be found in Table 1 of the final Environmental Protection Plan (NEB Condition 14).

Potential Impacts

The Proponent stated that the Project has the potential to alter wildlife habitat by widening existing RoWs, creating new RoW in undisturbed areas, and increasing the density of linear features on the landscape. Each of these potential effects will change habitats and their suitability for different species, and change access, wildlife movements, and mortality risk for different species. The nature and extent of effects would depend on the inherent sensitivity of each wildlife species and habitat type, the nature and timing of the disturbances, and the effectiveness of mitigation.

The Project is located in two Grizzly Bear Population Units (GBPUs): the Rocky GBPU and the Alta GBPU. Grizzly bear are designated as Special Concern by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). There are also eight federally-listed wildlife species at risk with the potential to occur along the Project route including the Canada warbler (Threatened), common nighthawk (Threatened), olive-sided flycatcher (Threatened), rusty blackbird (Special Concern), yellow rail (Special Concern), western toad (Special Concern), woodland caribou Graham herd (Threatened), and woodland caribou Pink Mountain herd (Special Concern).

The Project would traverse approximately 27 km of identified woodland caribou herd range. Of this, approximately 8 km of the Aitken Creek section would traverse the Graham herd range, and approximately 19 km of the Kahta section would traverse the Pink Mountain herd range. The Graham herd is listed as Threatened on Schedule 1 of the *Species at Risk Act (SARA)* and in June 2014, Environment Canada released the final *Recovery Strategy for the Woodland Caribou, Southern Mountain Population (Rangifer tarandus caribou) in Canada (Recovery Strategy)*, which included the identification of critical habitat for this herd. The Pink Mountain herd is listed as a species of Special Concern under the *SARA*, and as such does not require a Recovery Strategy and the identification of critical habitat; however, in accordance with the *SARA*, Environment Canada has developed the *Management Plan for the Northern Population of Woodland Caribou (Rangifer tarandus caribou) in Canada (Management Plan)* to identify measures for their conservation. No compressor or meter stations are proposed in the Graham caribou range and there are two proposed meter station sites in the Pink Mountain caribou range. Project scheduling was designed to avoid the critical timing period for caribou from January 15 to July 15.

The Project would intersect a number of important areas used by Aboriginal groups for hunting including the Pink Mountain, the PMT, and the ACCI.

During the consultation process, Aboriginal groups expressed concerns that their hunting and trapping rights could be impacted by:

- Alteration of habitat through vegetation clearing;
- Loss of habitat features such as mineral licks, wintering grounds and calving areas;
- Destruction of active bird nests and nestlings and increased human/bear interactions during

- vegetation clearing in summer months;
- Decreased animal health and distribution due to loss of grazing areas and large, continuous habitat areas;
- Contamination (real or perceived) of animals that live in and drink from creeks and watercourses downstream from river crossings;
- Increased number of people in areas that are currently inaccessible, leading to increased hunting pressure on species of importance;
- Continued pressure on wildlife due to ongoing corridor maintenance activities; and
- Increased wildlife mortality due to increased access for hunters and predators.

During the consultation process, Aboriginal groups expressed concerns regarding increased risk to wildlife during Project construction due to:

- Increases in noise from construction activities causing animals to move away from the areas that are used for hunting and trapping;
- Increased human/wildlife interactions due to wildlife attraction to wastes from construction and construction camps;
- Increased number of people in area adding hunting pressure to wildlife populations;
- Increased risk of wildlife mortality through vehicle collisions; and
- Restricted access due to safety concerns.

Mitigations and Accommodations

Standard Mitigation Measures

The Proponent has committed to several standard mitigation measures to reduce impacts on wildlife and wildlife habitats including:

- Minimizing the width of the RoW, where safe and efficient;
- Staking RoWs, staging areas, and temporary workspace to clearly delineate all boundaries;
- Flagging and fencing off of environmentally sensitive areas (e.g., nests, mineral licks, beaver dams, ponds or lodges, dens) prior to clearing and construction;
- Avoiding work during critical timing periods defined by provincial governing bodies where possible;
- Engaging Aboriginal groups during construction planning to avoid when possible reducing access for hunting and trapping;
- Using rollback as per the Province's *Interim Operating Practices for Oil and Gas Activities in Identified Boreal Caribou Habitat in British Columbia*²⁸ and as approved by FLNRO, earth berms and other access control measures at key locations along the RoW to deter access by humans; and
- Limiting clearing and brushing activities during the migratory bird nesting period between May 1 and July 31, and requiring nest sweeps in accordance with draft Environment Canada methods, should any clearing or brushing occur during this period. Enforcing vehicle speed limits on roads.

²⁸ 2011 Province's Interim Operating Practices for Oil and Gas Activities in Identified Boreal Caribou Habitat in BC. <http://www.env.gov.bc.ca/wld/speciesconservation/bc/documents/Operating%20Practices.pdf>

In addition, the Proponent has developed and will implement a Wildlife Species of Concern Discovery Contingency Plan. This plan is included in Appendix 1E of the final EPP (Section 52, NEB Condition 14). The Proponent has also developed and will implement a Bird Nest Mitigation and Management Plan that would apply to federal and provincial species of concern, including migratory birds. This plan is included in Appendix 1F of the final EPP (Section 52, NEB Condition 14).

NEB Certificate Conditions

The following conditions, imposed by the NEB as part of the federal review and approval of the Project, would mitigate impacts to hunting and trapping:

- NEB Conditions 11, 12 and 35: a Protection Plan for the PMT (PMTTP), along with the Proponent's plans for consulting with Saluteau First Nations and West Moberly First Nations on the development of its plan and any additional mitigation measures to reduce or eliminate potential Project effects on the use of lands and resources within the PMT. Under these conditions, the Proponent is also required to report on the effectiveness of its mitigation measures in the PMT during the operation of the Project. The PMTTP Consultation Plan was approved by the NEB in May 2015, and the PMTTP was approved in May 2016;
- NEB Condition 14: an EPP to communicate all environmental protection procedures and mitigation measures to employees, contractors, and regulators. The EPP was approved by NEB in November 2015;
- NEB Conditions 15, 36, 37, 38: a Caribou Habitat Restoration Plan, as well as offsetting and monitoring plans and follow up reports, to address potential Project-effects on caribou and caribou habitat. The Preliminary CHRP was approved by the NEB in October 2015;
- NEB Condition 16: an Access Management Plan (AMP) to describe the details of access control measures proposed for the Project. The Proponent provided Sauteau First Nations, West Moberly First Nations, McLeod Lake Indian Band, Halfway River First Nation, Blueberry River First Nations, Doig River First Nation, and Prophet River First Nation with a preliminary version of the AMP for review and input in 2014. No comments were received from Aboriginal groups. The AMP was approved by NEB in August 2015;
- NEB Condition 17: requirement for the Proponent to conduct pre-construction grizzly bear den sweeps along the entire RoW;
- NEB Condition 27: requirement to track construction activity and environmental, socio-economic, safety and security issues during construction through filing of monthly construction reports by the Proponent; and
- NEB Condition 39: requirement for reports to be filed for post-construction monitoring.

Management plans conditioned by the NEB are discussed in further detail in Section 4.2.5.

EAO Conditions

EAO has proposed a number of conditions of the EAC to address concerns related to hunting and trapping identified through consultation with Aboriginal groups, as well as consideration of matters of provincial jurisdiction. These proposed conditions include:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in Construction Monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities during construction;

- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance;
- Peace Moberly Tract: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding the PMT, and establishment of a forum that includes participation by Saulneau First Nations and West Moberly First Nations to support ongoing dialogue regarding mitigation and management within the PMT; and
- Pink Mountain: development of a plan regarding Pink Mountain that outlines the means by which access will be controlled and disturbance will be minimized in the Pink Mountain area.

The potential impact of the Project on Aboriginal Interests associated with hunting and trapping for each Aboriginal group is described in Section 5.0 of this Report.

4.2.2 Fishing

Overview

Based on fish sampling and the documented distribution of fish species in potentially affected watersheds in the Aitken Creek section, a total of 34 fish species have the potential to inhabit watercourses that would be crossed by the Project. These include 15 sport fish species (Arctic grayling, rainbow trout, kokanee, bull trout, Dolly Varden, brook trout, lake trout, splake, mountain whitefish, lake whitefish, burbot, northern pike, walleye, yellow perch, and goldeye) and 19 non-sport fish species (trout-perch, longnose-sucker, largescale sucker, white sucker, brook stickleback, lake chub, flathead chub, peamouth chub, northern redbelly dace, northern pearl dace, finescale dace, longnose dace, redbelly shiner, spottail shiner, brassy minnow, northern pike minnow, spoonhead sculpin, slimy sculpin, and prickly sculpin). None of the fish species potentially present in watercourses crossed by the Aitken Creek section are included on Schedules 1 or 2 of SARA; however, one species, spottail shiner, is known to occur in the Moberly and Peace Rivers and is provincially red-listed. In addition, four species (bull trout, goldeye, northern redbelly dace, and northern pearl dace) occur in several watercourses crossed by the Project, and are blue-listed in BC.

A total of 31 fish species, including 13 sport fish species, have the potential to inhabit watercourses crossed by the Project in the Kahta section. There are no federally-listed fish species found within the Kahta section, however one provincially threatened species (spottail shiner) and three species of special concern (bull trout, northern redbelly dace, and northern pearl dace) could occur in watercourses crossed by the Project.

TLU studies conducted for the Project indicate that fish species that are traditionally harvested by Aboriginal groups in the Project area include Arctic grayling, Dolly Varden, suckers, rainbow trout,

cutthroat trout, pike, char, walleye, whitefish and salmon²⁹. Key fishing sites identified by Aboriginal groups that overlap or are in proximity to the Project were considered in relation to past, present and anticipated future use of the area for fishing. EAO understands that an Aboriginal group's fishing activities depend, in part, on the status and sensitivity of fish populations within their area of traditional use, the nature and timing of the disturbances, and the effectiveness of mitigation, and the extent to which the Project could affect an Aboriginal group's access to, and use of the area.

Specific information identified to the Proponent through TLU and TK programs is summarized in the EPP and EAS.

Potential Impacts

The Proponent's environmental effects assessment for fish focused on:

- Identifying the value, location and connectivity of important water quality and fish habitat features that might be affected by the Project;
- Identifying TK-related value and fish habitat features that might be affected by the Project;
- Developing environmental measures to protect and maintain water quality, fisheries resources and provincially red and blue-listed fish species;
- Complying with Section 35 of the *Fisheries Act*, which prohibits serious harm to fish (i.e., the death of any fish or any permanent alteration to, or destruction of, fish habitat) that are part of, or support, a commercial, recreational, or Aboriginal (CRA) fishery; and
- Achieving the BC MOE's *Environmental Mitigation Policy for British Columbia*³⁰.

During the consultation process, Aboriginal groups expressed concerns that their rights could be impacted by:

- Alteration of water quality and quantity resulting from Project activities leading to direct or indirect leading to adverse impacts on water, riparian areas, fish and fish habitat;
- Increased risk of contamination or perceived contamination resulting from Project construction, watercourse crossings and potential accidents or malfunctions;
- Change or loss of aquatic habitat that affects fishing; and
- Changes in access to areas used for fishing.

According to the Proponent, activities occurring during the construction phase of the Project would have the greatest potential to affect fish habitat. In-stream works associated with pipe installation (i.e., trenching, lowering-in and backfill), and installation of temporary and permanent facilities could physically alter the structure of important habitat features, such as wintering pools and high-value spawning areas. The likelihood of residual adverse effects to fish by way of physical injury or mortality would generally be low, depending on watercourse crossing method and fish presence.

Clearing of riparian vegetation for installation of the pipeline and vehicle crossing structures could also adversely affect fish by reducing available cover from predators, eliminating temperature-regulating shade from streamside vegetation, and decreasing nutrient inputs to the stream that come from insect

²⁹ Stantec Consulting Ltd. (Stantec). 2013. Environmental and Socio-Economic Assessment for NOVA Gas Transmission Ltd. North Montney Project. Calgary, Alberta.

³⁰ Ministry of Environment. 2013 Environmental Mitigation Policy for British Columbia. <http://www.env.gov.bc.ca/emop/>

and leaf litter drop. Removal of riparian vegetation could destabilize stream banks and result in increased erosion and potential introduction of suspended sediments into the watercourse.

In addition, erosion in cleared upland RoW areas could also lead to increased sediment deposition if appropriate mitigation measures are not properly implemented.

An Aboriginal group's access to fishing sites on streams crossed by the proposed Project would be restricted for short durations during Project construction at the crossings to ensure safety at the site. The proposed Project would also likely to increase access to areas along the proposed route by non-Aboriginal people.

Mitigations and Accommodations

Standard Mitigation Measures

The Proponent has proposed mitigation measures to avoid and minimize potential effects to fish and fish habitat, and other concerns associated with fishing activities raised by Aboriginal groups. The Project would be constructed in accordance with Fisheries and Oceans Canada (DFO) Measures to Avoid Harm when possible. In cases where the DFO's *Measures to Avoid Causing Serious Harm* cannot be met, the Proponent has committed to including site-specific mitigation measures to minimize impacts to fish and fish habitat in their EPP.

The Proponent expects that the riparian communities of all affected watercourses will develop and mature through natural succession. The Proponent also anticipated that the productive capacity of the adjacent fish habitats will return to pre-construction levels in the medium term. If the Proponent is unable to completely avoid or mitigate serious harm to fish, they will require authorization under Subsection 35(2) of the *Fisheries Act*.

The pipeline watercourse crossing techniques have taken into consideration DFO's risk matrix, and are proposed based on the presence of fish, quality of habitat, sensitivity and size of the watercourse, and timing of construction. An isolated crossing technique will be used at most fish-bearing crossings where the watercourse is flowing during construction. Trenchless crossings will be used for crossings with sensitive or high-value fisheries and/or with flows, water depths, and channel widths that cannot be effectively isolated. The Pine River, Peace River, Farrell Creek, and Halfway River are proposed to be crossed by trenchless methods, while the remainder of the watercourses are proposed to be crossed by isolation methods or by open cut. Watercourse crossing methodology for fish-bearing watercourses was finalized in the submission of Condition 23.

At conventional trench crossings, watercourse channels will be re-contoured and stabilized. At a minimum, contour grading and surface stabilization (seeding, erosion control blankets, straw mulch) will be undertaken on the approaches to all watercourse crossings. The Board recommended that the Proponent use bioengineering techniques to restore the banks, as required, at each watercourse crossing that has the potential to support fish. Erosion protection measures such as rock armor will only be considered where a bioengineered approach cannot achieve sufficient bank or pipeline erosion protection. In such cases, a combination of bioengineering and rock armor will be used to provide stream bank protection.

In terms of access, the geographic extent of areas where access will be restricted is generally small. Additionally, the construction period would be short-term and engagement with Aboriginal groups during construction planning is expected to mitigate some of the potential effects.

NEB Certificate Conditions

The Board imposed Condition 23 requiring that watercourse crossing-specific information be finalized by the Proponent prior to construction. Where the Proponent has committed to trenchless crossings, Condition 25 imposed by the Board requires the Proponent to notify the NEB of any changes or alternatives. Under NEB Condition 24, the Proponent is required to file a draft authorization package according to Schedule 1 of the Applications for Authorization under Paragraph 35(2)(b) of the *Fisheries Act* Regulations for any crossings that require a section 35(2) authorization.

EAO Conditions

EAO has proposed a number of conditions of the EAC to address concerns related to fishing identified through consultation with Aboriginal groups, as well as consideration of matters of provincial jurisdiction. These proposed conditions include:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify how access to riparian areas for major watercourse crossings will be minimized; and
- Water quality monitoring: the management and monitoring of water quality during construction consistent with the British Columbia Approved Water Quality Guidelines: Aquatic Life, Wildlife & Agriculture.

The potential impact of the Project on Aboriginal Interests associated with fishing for each Aboriginal group is described in Section 5.0 of this Report.

4.2.3 Gathering

Overview

The Project is located predominately in the Boreal White and Black Spruce Biogeoclimatic Ecosystem Classification (BEC) Zone (98.2% of the LSA) with the remaining 1.8% located in the Spruce Willow Birch BEC Zone. No plant species with special conservation status listed under SARA or COSEWIC were found during field surveys conducted for the Project. The Project also traverses 138 wetlands with treed fens (46), shrubby swamps (28), shrubby fens (19) and treed bogs (14), accounting for 77% of the wetland types.

The Project would cross multiple upland vegetation communities and wetlands (e.g., forested areas, native uplands, bogs, fens, swamps, marshes and open water). Approximately 52% of the total proposed length of pipeline will parallel with existing pipeline, road, or transmission line RoWs. Additional vegetation clearing will be required along the RoW and at locations of temporary and permanent facilities associated with the Project.

The Project traverses 11 Landscape Units that have old growth retention targets established by BC under the *Provincial Non-Spatial Old Growth Order*. The Project intersects two areas identified as legal OGMAs.

Rare plant surveys for the Project identified the following provincially red-listed plant species: Iowa golden saxifrage, northern bog bedstraw, old man’s whiskers, rusty woodrush, least moonwort, bear paw, fig-leaf pixie, swollen beaked sedge, Wulf’s sphagnum and whip fork moss. Field surveys identified four provincial noxious weed species, including creeping thistle, perennial sow thistle, Canada thistle and false mayweed, as well as three regional noxious species, including marsh thistle, quackgrass and oxeye daisy.

Native plants in the Project area are harvested by Aboriginal groups for sustenance, cultural and medicinal purposes. Although each Aboriginal group has specific areas for harvesting, the 2013 ESA for the Project found that the following plant species are used for traditional purposes³¹:

- Saskatoon berries
- blackberries
- strawberries
- raspberries
- dew berries
- low and highbush cranberries
- huckleberries
- low and highbush blueberries
- ferns
- fiddleheads
- moss
- lichen
- mushrooms (variety)
- stinging nettle
- rosehips
- dandelion
- black currants
- red currants
- jackpine
- pine
- cottonwood
- alder
- birch
- poplar
- buffalo berry
- soapberries
- chokecherries
- bilberries
- Labrador tea
- purple aster
- mint
- cedar
- diamond willow fungus
- red willow
- rabbit root
- rat root
- white lily
- cow parsnip
- fireweed
- valerian
- old man’s beard
- spruce chips
- cattails
- devil’s club
- caribou weed
- carrot root

EAO understands that an Aboriginal group’s gathering activities depend, in part, on the status of vegetation within their area of traditional use. The nature and extent of effects would depend on the inherent sensitivity and prevalence of vegetation communities, the nature and timing of the disturbances, and the effectiveness of mitigation.

³¹ Stantec Consulting Ltd. (Stantec). 2013. Environmental and Socio-Economic Assessment for NOVA Gas Transmission Ltd. North Montney Project. Calgary, Alberta.

Specific information pertaining to plant harvesting and traditional use activities in the vicinity of the Project was identified by the Proponent through TLU and TK programs and is summarized in the EPP and EAS.

Potential Impacts

The Proponent assessed the potential effects of the Project on specific elements of vegetation and wetlands including species of special status (native vegetation and rare plant species), weeds, invasive species, and ecological communities of special status.

Vegetation clearing during construction has the potential to result in the loss of plant species and harvesting areas used by Aboriginal groups through fragmentation of large tracts or patches of predominantly native vegetation and through the introduction and spread of non-native and invasive weed species. In addition, RoW corridor maintenance activities have the potential to further alter vegetation communities, species and wetlands.

Key gathering sites identified by Aboriginal groups that overlap or are in proximity to the Project were considered in relation to past, present and anticipated future use of the area for gathering. Multiple gathering sites, or sites identified by an Aboriginal group that overlap or are in close proximity to the Project footprint, could indicate a greater potential effect on that Aboriginal group's Aboriginal Interests associated with gathering. Additionally, numerous vegetation resources along the RoW that are traditionally harvested for cultural, medicinal, economic and subsistence purposes could be temporary or permanent removed, be altered through encroachment by non-native and invasive species, or through use of vegetation control.

Mitigations and Accommodations

Standard Mitigation Measures

According to the Proponent, the final Project route was designed to avoid key areas of concern and minimize any potential impacts. Access restrictions impacting gathering activities will occur during construction and decommissioning or abandonment for a limited period in specific geographic areas. Access for gathering would not be restricted along the Project route during operations, except for brief periods during maintenance activities on the RoW. Concerns and mitigations related to gathering activities are included in Chapter 8 of the EPP and in the EAS.

NEB Certificate Conditions

In order to be satisfied that all site-specific mitigation measures are appropriate and will be implemented according to their intent, the NEB imposed conditions requiring an EPP (Condition 14), Construction and Progress Reports (Condition 27) and Post Construction Monitoring Reports (Condition 39).

Mitigation in the EPP specific to native vegetation, including rare plant populations and ecological communities includes³²:

- Implementation of the Plant Species and Ecological Communities of Concern Discovery Contingency Plan (EPP, Appendix 1E) if previously unidentified rare plants or rare ecological communities are found on the RoW or at associated Project facilities prior to construction;
- Clearly marking identified rare plant locations before the start of RoW or Project facility preparation and construction; and
- Reviewing mitigation for rare plants/rare ecological communities with Contractor personnel in advance of construction to ensure there is full understanding of the procedures involved.

Additional information pertaining to the EPP is discussed in Section 4.2.5.

EAO Conditions

EAO has proposed a number of conditions of the EAC to address concerns related to gathering identified through consultation with Aboriginal groups, as well as consideration of matters of provincial jurisdiction. These proposed conditions include:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Access management: in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures; and
- Water quality monitoring: the management and monitoring of water quality during construction consistent with the British Columbia Approved Water Quality Guidelines: Aquatic Life, Wildlife & Agriculture.

The potential impact of the Project on Aboriginal Interests associated with gathering for each Aboriginal group is described in Section 5.0 of this Report.

4.2.4 Culturally Important Sites and Travel Ways

Overview

Throughout the region there are important cultural heritage sites for Aboriginal groups. Uses and general locations of sacred sites, such as burial grounds, birth sites, locations of vision quests, sweat lodges and other places of recognized spiritual power have been identified by Aboriginal communities. Similarly, habitation sites for Aboriginal groups also exist in the area, and include cabins, campsites, caches and settlements. These habitation sites may be used for short-term and long-term occupation. To access these sacred and habitation sites, Aboriginal groups often use long-established trails and

³² TransCanada. 2015. Environmental Protection Plan for the Proposed North Montney Project. Page 17.

travel ways. These travel ways continue to connect communities with one another and to important harvesting and hunting areas, and so have become a network of traditional use.

An Archaeological Impact Assessment (AIA) has been completed for the Project. The AIA reports and archaeological studies conducted in support of the Project identified 60 new sites within the Project footprint, including 28 in the Aitken Creek section and an additional 32 new sites in the Kahta section. Thirty-one previously recorded archaeological sites were also revisited within the Aitken Creek section of the Project development area (PDA) and 27 were revisited on the Kahta section. Specific information pertaining to trails and travel ways, habitation sites and features, and sacred sites identified to the Proponent through TLU and TK programs is summarized in the EPP and EAS.

Other areas of cultural significance, such as areas used for ceremonial and spiritual purposes identified to the Proponent through TLU and TK programs include an area approximately 155 km south of KP 80, and an island in the Peace River approximately 15 km northeast of KP 40, approximately 700 m south of KP 50³³. Further information on areas of significance and sites of importance identified by Aboriginal groups, including PMT, Pink Mountain and Lily Lake, discussed provided in Sections 4.1.1 and 5.0, respectively. Information on current and historic Aboriginal use of navigable waterways was also documented through the TLU studies conducted for the Project. Navigable waterways are important to Aboriginal groups as travel ways for conducting traditional activities.

Potential Impacts

Cultural continuity is vulnerable to environmental changes caused by industrial development, as these may decrease the opportunities to engage in cultural activities or may make an area less appealing as a site for cultural activities and knowledge transmission. Loss of a place, either permanently or over a long period of time, frequently results in a gap in the transmission of place-based knowledge, and eliminates the place as a cultural resource for remembering, teaching, and learning the knowledge and cultural practices associated with it.

Archaeological and cultural heritage sites, trails and travel ways identified by an Aboriginal group that overlap or are in proximity to the Project were considered in relation to past, present, and anticipated future use of the area. EAO understands that multiple archaeological or heritage sites identified by an Aboriginal group that overlap or are in proximity to the Project would indicate a greater potential effect on Aboriginal Interests associated with the historical connection to and continued use of these sites. The Project could impact archaeological and cultural heritage resources and sites, through the alteration, disturbance, or loss of sites, damage to CMTs or other cultural heritage features, and changes to the experience for users of the sites related to sensory disturbances from construction activities. Through the NEB process, Aboriginal groups expressed concerns about impacts to identified cultural and archaeological sites.

Mitigations and Accommodations

Field programs, consultation with Aboriginal groups, and TLU studies completed to date have identified wildlife trails, quad trails, and resource roads that will be crossed by the pipeline. During construction, there will be temporary disruptions of the trails and travel ways that may be used by Aboriginal groups for accessing hunting, fishing, or gathering areas. These disruptions are necessary to protect the health

³³ Stantec Consulting Ltd. (Stantec). 2013. Environmental and Socio-Economic Assessment for NOVA Gas Transmission Ltd. North Montney Project. Calgary, Alberta. Section 14.2.3.7 Table 14-11.

and safety of the public; however, there is planned mitigation to allow for the continued movement of wildlife (e.g., leaving breaks in soil stockpiles and minimizing the length of open trenches). Interruptions to use of the trails and travel ways would be limited to the construction phase of the Project.

Standard Mitigation Measures

The Proponent committed to continued engagement with potentially affected Aboriginal groups through construction and operation of the Project and will continue to evaluate whether additional mitigation measures are necessary to reduce or avoid effects on traditional use areas. The Proponent committed that if any additional TLU sites requiring additional mitigation are found on the RoW or at a Project facility site during construction, the Traditional Land Use Sites Discovery Contingency Plan will be implemented. The Proponent has developed standard mitigation measures for potential undiscovered archaeological, historical or paleontological resources sites that may be encountered during construction. In the event previously unidentified sites are encountered during construction, the Proponent will implement its Heritage Resource Discovery Contingency Plan.

A small portion of the creeks and rivers along the pipeline route are navigable and mitigation measures for potential effects on navigation have been identified. These include providing notification of potential interference with navigation, providing alternate routes around work areas, and reclamation of banks. Effects are predicted to be short-term and occur only during construction.

NEB Certificate Conditions

NEB Condition 5 requires the Proponent to file copies of all archaeological and heritage resource permits and clearances obtained from the BC Archaeology Branch. Condition 5 also requires the Proponent to file a statement explaining how it intends to implement any recommendations contained in the permits and clearances. Filing of relevant documentation must occur 30 days prior to commencement of construction.

NEB Condition 7 requires the Proponent to file a report outlining the results of any TLU investigations that were outstanding at the time of the NEB hearing. The report is required to contain information on how concerns or issues were or will be addressed by the Proponent, and must be filed at least 60 days prior to commencing construction on the Project. The report must also include a plan for outstanding TLU investigations for the Section 52 Facilities. Condition 7 also requires the Proponent to send copies of the report to the Aboriginal groups included in consultation activities. The Proponent submitted its Outstanding TLU Investigations report in 2015, and received approval on November 30, 2015.

NEB Conditions 11, 12 and 35 require the Proponent to file for approval, in advance of commencing construction in the PMT, a Protection Plan for the PMT, along with the Proponent's plans for consulting with Salteau First Nations and West Moberly First Nations on the development of its plan and any additional mitigation measures to reduce or eliminate potential Project effects on the use of lands and resources within the PMT (see Section 4.2.5 for details). Both the PMTPP Consultation Plan and the PMTPP have been approved by the NEB. The PMTPP Consultation Plan was approved by the NEB in May 2015, and the PMTPP was approved in May 2016.

The Proponent also committed to the use of monitors from interested Aboriginal groups to observe construction activities in areas of identified TLU sites. The Proponent is also developing an Aboriginal Construction Participation Program, which would facilitate Aboriginal community representatives to participate in observing construction activities.

NEB Condition 18 requires the Proponent to file a Navigation and Navigation Safety Plan specific to Section 52 Facilities that includes but is not limited to a listing of watercourses to be crossed or affected, an updated listing of effects on navigation and navigation safety, evidence and summary of consultation with potentially affected watercourse users and Aboriginal groups, and proposed mitigation measures to address effects on navigation and navigation safety for each navigable waterway. The Proponent's Navigation and Navigation Safety Plan to the NEB was approved by the NEB in September, 2015.

EAO Conditions

EAO has proposed a number of conditions of the EAC to address concerns related to culturally important sites and travel ways identified through consultation with Aboriginal groups, as well as consideration of matters of provincial jurisdiction. These proposed conditions include:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: in consideration of the AMP already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures;
- Peace Moberly Tract: engagement with and consideration of information provided by Sauleau First Nations and West Moberly First Nations regarding future filings to the NEB regarding the PMT, and establishment of a forum that includes participation by Sauleau First Nations and West Moberly First Nations to support ongoing dialogue regarding mitigation and management within the PMT;
- Pink Mountain: development of a plan regarding Pink Mountain that outlines the means by which access will be controlled and disturbance will be minimized in the Pink Mountain area;
- Water Extraction for Hydrostatic Testing: development of an alternatives assessment report, which describes the options for sourcing water used for hydrostatic testing, including alternatives to water extraction from Lily Lake; characterizes the environmental and cultural values, including traditional use and knowledge, that have the potential to be impacted by each water extraction alternative; and describes mitigation measures to avoid or minimize potential adverse effects; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

The potential impact of the Project on Aboriginal Interests associated with culturally important sites and travel ways for each Aboriginal group is described in Section 5.0 of this Report.

4.2.5 Management Plans

This section provides a summary of key management plans required by the NEB conditions to mitigate potential Project impacts. This section is provided to inform an understanding of mitigation measures and commitments made through the NEB process and its required plans.

Peace Moberly Tract

The NEB imposed the following three conditions to address concerns related to the Project route through the PMT:

- Condition 11: The PMTPP³⁴;
- Condition 12: The PMTPP – Consultation Plan³⁵; and
- Condition 35: The Peace Moberly Tract – Monitoring Report.

The PMTPP outlines the additional measures that will be implemented to eliminate or minimize to the greatest extent possible the Project's potential effects within the PMT, including potential effects on the traditional use of lands and resources by Saulteau First Nations and West Moberly First Nations. Specifically, the plan must include: the goals and measureable objectives of the PMTPP; an identification and rationale of biophysical and socio-economic elements to be included in the PMTPP; a description of mitigation measures proposed to eliminate or reduce any potential effects on the biophysical and socio-economic elements within the PMT; a description of the construction and operational monitoring plans that will be used to assess and demonstrate implementation and report effectiveness of mitigation; a description and justification for how the Proponent has incorporated the results of consultation with Aboriginal groups and government authorities into the plan; methods for determining the extent of non-avoidable effects on b) within the PMT; a discussion on possible enhancement or offset measures for all non-avoidable effects on socio-economic elements within the PMT including how any measures would be determined to be effective or adequate and a summary of any outstanding issues or concerns raised by potentially affected Aboriginal groups or government authorities, including a description of how these concerns or issues have been or will be addressed by the Proponent.

Condition 35 requires the Proponent to report on the effectiveness of its mitigation measures in the PMT during the operation of the Project.

Both the PMTPP Consultation Plan and the PMTPP have been approved by the NEB. The PMTPP Consultation Plan was approved by the NEB in May 2015, and the PMTPP was approved in May 2016.

Caribou

The NEB noted that the Project will result in loss of habitat for caribou, and could result in disturbance to caribou, beginning with construction and continuing through the lifecycle of the Project. The NEB is of the view that the Proponent has a responsibility to not only reduce effects on caribou habitat, but to also restore affected habitat as soon as possible and as much as possible. The NEB imposed Condition 15 requiring the Proponent to prepare a Caribou Habitat Restoration Plan (CHRP)³⁶. The Board required a

³⁴ <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objid=2871683&objAction=browse&viewType=1>

³⁵ <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objid=2809100&objAction=browse&viewType=1>

³⁶ <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objid=2798295&objAction=browse&viewType=1>

Preliminary Caribou Habitat Restoration Plan (PCHRP) be completed prior to construction, commencing with a final plan required within one year after construction is completed.

The purpose of the PCHRP, as defined by the Board is to provide the goals, measurable objectives and decision framework that would be used to prioritize potential caribou habitat restoration sites and to prioritize mitigation actions to be used at different types of sites, including consideration of typical site factors that may constrain implementation. It contains a literature review on which the decision making framework is based, quantifiable targets and performance measures including a schedule on when performance measures will be initiated and completed. The preliminary plan was submitted to the NEB in August of 2015 and approved on October 22, 2015. The Proponent stated that Aboriginal groups were consulted during the development of the plan. This included review and comment by a third-party consultant commissioned by an independent Technical Review Group consisting of Doig River First Nation, McLeod Lake Indian Band, Saulteau First Nations and West Moberly First Nations.

Within the first year of commencement of operations, the Proponent must submit a finalized CHRP that builds on the PCHRP. In addition to the PCHRP, the CHRP must include a complete table describing caribou habitat restoration sites, specification drawings for the implementation of each restoration method, maps or EAS showing the location of each site, evidence on how further consultation feedback with federal and provincial agencies is integrated into the plan and a qualitative and quantitative assessment of the total area of disturbance to caribou habitat that will be restored, duration of spatial disturbance and the aerial extent of the residual effects to be offset which also includes indirect disturbance.

In addition to the CHRP, the NEB also imposed Condition 36, requiring an Offset Measurement Plan for Residual Impacts to Caribou Habitat, Condition 37 requiring a Caribou Habitat Restoration and Offset Monitoring Program, and Condition 38 requiring Caribou Monitoring Reports. These documents have not yet been developed.

Environmental Protection Plan

The EPP³⁷, approved by the NEB on November 6, 2015, outlines environmental protection measures to avoid or reduce potential effects during construction of Section 52 components, namely the pipeline, access roads, fill lines, meter stations and compressor stations. A separate EPP was prepared for the Section 58 components which includes camps, yards, dugouts, and stockpile sites, and was approved by the NEB.

The EPP is required to include a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments, as set out in the Proponent 's application for the Section 52 Facilities, subsequent filings, evidence collected during the hearing process, or as otherwise agreed to during questioning and in its related submissions. The EPP must also describe the criteria for the implementation of all procedures and measures.

The environmental protection procedures under EPP must include site-specific plans, criteria for implementation, mitigation measures and monitoring applicable to all Project phases and activities. NEB Condition 14 also requires the EPP to include a reclamation plan, mitigation related to caribou and western toad habitat, EAS for the construction and operation of Section 52 Facilities, and evidence demonstrating a management system is in place.

³⁷ <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2811488&objAction=browse&viewType=1>

This EPP is based on TransCanada's Health, Safety and Environment (HSE) Commitment, TransCanada's HSE Management System, feedback obtained through consultation and engagement, results of the biophysical field programs, commitments made in the ESA and through Project permitting, and professional experience. The EPP has been finalized and approved by the NEB.

Access Management Plan

The AMP³⁸ describes the details of access control measures proposed for the Project. NEB Condition 16, requiring the AMP, states that the plan must include goals and objectives regarding access management, criteria for measuring the success in achieving these goals and objectives, details on access control sites, control methods proposed and a rationale for their selections and a description of adaptive management measures available and the criteria the Proponent would use to determine when, and if, adaptive management measures are warranted.

Specifically, the AMP must include: the methodology used to develop the AMP; baseline information to be used for assessing the AMP's effectiveness; the goals for monitoring and managing access, and the measures and criteria to be used to achieve those goals; the method and frequency of inspections for access controls along the RoW during operations for the life of the Project; the criteria for determining the need for maintenance, repair, or installation of new access control measures; and a schedule for reporting to the NEB during construction and operation, including after the first, third and fifth year following the commencement of construction.

The goals of the AMP are to manage access along the Project RoW to deter human access, maintain access to acceptable levels, and implement effective site-specific access management measures. Managing predator access is not an objective of the AMP; however, the measures used to manage human access are anticipated to reduce predator movement and efficiency on the Project RoW. The measures to reduce sightlines may discourage access and may also decrease predator efficiency.

Access control measures and locations have been chosen at a preliminary planning level and most of the access control measures will be implemented following construction; however, interim access control measures and situations in which they may be used are discussed in Section 2.5 of the AMP. Examples of areas that may receive interim access control include the PMT and areas where the Project overlaps with caribou ranges. The implementation of interim access control depends on a number of factors, such as: the availability of third party access points (e.g., roads/pipelines) out of the Proponent's control, the timing of the gap in construction activities when access to the RoW will not be required, and availability of materials. For example, interim access control would be implemented on the RoW or access roads into a caribou area if the gap in construction spans a sensitive time period such as calving.

Access control is not limited to access roads, but is also applied to other potential access locations such as intersecting linear disturbances (e.g., pipeline RoWs). Final access control locations and treatments will be determined based on the decision framework and criteria outlined in the AMP, and reported in the first monitoring report, as required by Condition 16.

³⁸ <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2787948&objAction=browse&viewType=1>

In 2014, the Proponent provided Saulteau First Nations, West Moberly First Nations, McLeod Lake Indian Band, Halfway River First Nation, Blueberry River First Nations, Doig River First Nation, and Prophet River First Nation with a preliminary version of the AMP for review and input; no comments were received from First Nations on this plan. The AMP was approved by the NEB in August, 2015.

5 Impacts to Aboriginal Interests by Aboriginal Group and EAO's Conclusions

5.1 Assessment Approach and Understanding of Potential Impacts

A discussion of the EAO's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests are provided in Sections 1.3.2 and 4.2, respectively. EAO recognizes that each Aboriginal group's areas of traditional use, as understood by the Province, may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), including by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Aboriginal group's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Aboriginal group's ability to practice Aboriginal Interests. Where information was available, EAO considered the following:

- Biophysical effects to values linked to Aboriginal rights (e.g., fish);
- Impacts on specific sites of traditional use; and
- Impacts on social, cultural, spiritual, and experiential aspects of exercising Aboriginal Interests.

EAO's conclusions on the seriousness of Project impacts on Aboriginal group's Aboriginal Interests considers information available to EAO from the NEB process, consultation with Aboriginal groups, Aboriginal groups' engagement with the Proponent, NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued.

5.2 Blueberry River First Nations

5.2.1 Community Profile

Blueberry River First Nations is a signatory to Treaty 8 and located in the PRRD in northeastern BC, north of Fort St. John. Blueberry River First Nations is one of four Dane-zaa communities of the Peace River who speak Dane-zaa Zaage?, also known as the Beaver Language, which is an Athapaskan language.

Blueberry River First Nations was part of the Fort St. John Band until 1977, when the band was split into the Blueberry River First Nations and Doig River First Nation. Blueberry River First Nations has two reserves covering 1,505.8 ha: IR 205, comprising 1,148.5 ha, and the South Parcel of Beaton River IR 204, comprising 357.3 ha. As of April 2016, Blueberry River First Nations had a total registered population of 479, with 192 living on Blueberry River IR 205, 251 living off reserve, and 36 living on other reserves. Blueberry River First Nations is governed by a Chief and four Councillors elected under the *Indian Act* electoral system.

5.2.2 Context

Approximately 160 km of the Project is located within consultative Area A and 140km in consultative Area B of what the Province understands to be Blueberry River First Nations' area of traditional use. According to the Blueberry River First Nations Knowledge and Use Study Report, the full route of the Project runs through the heart of Blueberry River First Nations' traditional lands, including spiritual areas, gravesites, and critical hunting, trapping and harvesting grounds³⁹. Based on the nature and location of the Project, and EAO's assessment of the potential impacts to Blueberry River First Nations' Treaty 8 rights, EAO is of the view that the duty to consult Blueberry River First Nations lies in the middle of the *Haida* spectrum.

5.2.3 Participation in the NEB Process

Blueberry River First Nations was an Intervenor in the NEB proceedings and filed evidence, presented witnesses, and participated in final arguments. Blueberry River First Nations engagement with the Proponent for the Aitken Creek portion of the Project began in May 2011. Engagement on the Kahta portion of the project began in in June 2013. Blueberry River First Nations sent representatives to participate in Proponent-led biophysical and heritage resource field studies aimed at collecting TK from Aboriginal groups participating in the NEB process; however, Blueberry River First Nations stopped participating in field studies in 2014 due concerns regarding the methodology associated with data collection. According to Blueberry River First Nations, Project-related concerns communicated by Blueberry River First Nations field participants were not recorded with any specific geographic location. As a result, Blueberry River First Nations field study participants were instructed by community leaders not to share TK information with the consultants⁴⁰.

Blueberry River First Nations elected to conduct a community-led TLU study, with funding support from the Proponent; however, a Project-specific study was not completed and filed with the NEB within the timeframe allotted by the NEB process. In September 2014, Blueberry filed a motion with the NEB seeking an adjournment of the second portion of the oral hearing and leave to file the traditional use

³⁹ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁴⁰ Tera Environmental Consultants, 2014. Appendix L, TERA Supplemental Traditional Knowledge Report. (A3W1R6). Page 5.

study once complete⁴¹. On October 30, 2014 the NEB rejected Blueberry River First Nations' motion to adjourn the hearing in order to consider the TLU study, although the NEB noted the Proponent's commitment to incorporate any additional TLU studies. Blueberry River First Nations was able to submit a more general TLU study within the allotted timeframe, and later completed a Project-specific study in January, 2015.

Throughout the NEB process, Blueberry River First Nations raised issues and concerns associated with the potential impacts of the Project on their treaty rights, the NEB process, the Project assessment completed by the NEB, and the Proponent's engagement efforts. Key issues raised by Blueberry River First Nations' during the NEB process centred on impacts to wildlife and wildlife habitat, the incorporation of TLU information in the assessment of Project impacts, and the potential impacts of the Project on traditional lands and resources, sites and activities in Blueberry River First Nations territory. Some specific key issues that were raised included:

- The level of development within the Peace Region resulting in the decline of moose populations in Blueberry River First Nations' area of traditional use;
- The increasing rate of industrial development in Blueberry River First Nations' area of traditional use, requiring members to travel further distances in order to hunt safely and successfully;
- The location of the Project, which transects Blueberry River First Nations' traditional lands, including spiritual areas, gravesites, and critical hunting, trapping and harvesting grounds;
- The impacts of the Project route and need for completion of a traditional use study as an essential step in determining the location of Blueberry River First Nations site-specific uses and making route revisions;
- The lack of meaningful consultation by the Proponent on routing options for the Kahta section of the Project, which runs through the core of Blueberry River First Nations territory and areas of heightened importance for the continued meaningful practice of treaty rights; and
- The limited timeframe provided for consultation on the Kahta section and the limited route alternatives considered for the Kahta section in comparison to the Proponent's early engagement with the Blueberry River First Nations on the Aitken Creek section and several route options for the Aitken Creek.

In June 2016, the Proponent requested to vary the CPCN by extending the sunset clause pursuant to Section 21 of the NEB Act. In September 2016, the NEB extended the sunset clause for the Project to June 10, 2017, subject to approval by the Governor in Council. Blueberry River First Nations responded to the Proponent's request for an extension to the sunset clause through a letter to the NEB dated July 7, 2016, and EAO understands that the letter anticipated a twofold response: engagement with the NEB regarding the request, and separate engagement with the federal Crown regarding the decision.

Blueberry River First Nations applied for leave to appeal the federal decision on the Project at the Federal Court of Appeal in July 2015. Their application for leave was denied. Blueberry River First Nations then filed for leave to appeal with the Supreme Court of Canada in October 2015.

5.2.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Blueberry River First Nations that the Project required an EAC under the Act. EAO issued a Section 10 Order specifying this requirement on April 8, 2016, and shared a

⁴¹ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 15

draft Section 11 Order with Blueberry River First Nations, which described the procedures for the provincial process for the Project, including key Aboriginal consultation opportunities. EAO provided Blueberry River First Nations an opportunity to comment on the draft Section 11 Order, and received comments in June 2016. EAO discussed the comments with Blueberry River First Nations by phone calls and email, and revised the draft Section 11 Order as outlined in letters from EAO to Blueberry River First Nations of June 13 and June 15, 2016. The Section 11 Order was issued on June 17, 2016.

The following sections outline the key steps in consultation undertaken between EAO and Blueberry River First Nations, and key concerns that were discussed during the consultation process. Specific concerns related to impacts on treaty rights and interests are also reflected in Section 5.2.5.

Concerns Regarding Timelines

In light of Blueberry River First Nations' current appeal with the Supreme Court of Canada and the engagement they anticipate in relation to the Sunset Clause, as described in Section 5.2.3, Blueberry River First Nations is of the view that EAO's consultation process with respect to the Project is premature. Blueberry River First Nations believes EAO should wait for outstanding matters before the courts to be resolved before proceeding with a provincial review to ensure that any resulting outcomes can be incorporated into the provincial process. This point of view was reflected in a letter to the EAO of September 8, 2016, in which Blueberry River First Nations explained that by continuing with the provincial assessment process pursuant to the Section 11 Order, the Province will constrain consultation and accommodation options with respect to the Project. Blueberry River First Nations expressed concern regarding the risk of expending time and resources in a provincial process that could be rendered unnecessary should the Governor in Council decision on the Project be overturned, or the nature of the Project change as a result of an additional federal Crown review process.

EAO provided several written responses to Blueberry River First Nations in response to their concerns regarding the timing of the provincial process in light of pending federal decisions on the Project. EAO communicated that the provincial consultation process was proceeding in a manner consistent with the BC Supreme Court's direction in *Coastal First Nations v. British Columbia (Environment)*, and that federal approvals for the Project remained valid; as such, EAO proceeded with the provincial review process in order to meet the obligations required by that BC Supreme Court ruling.

Blueberry River First Nations has expressed their view to EAO that the recent federal Court of Appeal decision in *Gitxaala Nation vs. Canada*, 2016 FCA 187 confirms their concerns, highlighting that the court overturned the Governor in Council's decision to approve the Enbridge Northern Gateway Pipeline because the federal government did not fulfill the Crown's duty to consult affected Aboriginal groups. Blueberry River First Nations asserts that the Governor in Council's decision on the Project shares the same flaws with respect to discharging the duty to consult. EAO offered to discuss the judgement in *Gitxaala Nation v. Canada* with Blueberry River First Nations and sought to understand Blueberry River First Nations' specific concerns regarding the Project through subsequent meetings. EAO proposed that preliminary discussions with Blueberry River First Nations proceed and offered Blueberry River First Nations the opportunity to meet and present an overview of concerns regarding the NEB process, as well as an overview of the TLU study that was conducted for the Project. This meeting occurred August 25, 2016 and the information presented during the meeting is reflected in Section 5.2.5 of this report.

Work Plan

From the onset of the provincial consultation process, Blueberry River First Nations expressed the desire to co-design a consultation process with EAO and OGC that was proportionate to their views of both the importance of the Project and the seriousness of impacts being experienced in their territory as a result of ongoing industrial activity. Further discussions with Blueberry River First Nations resulted in the development a draft work plan with the express purpose of defining a consultation process for the Project for both EAO and potential subsequent OGC permitting.

An initial draft of the work plan was developed in June 2016. Originally, a five-month timeframe from June to November was put forward by Blueberry River First Nations in an email to EAO dated June 30, 2016. The work plan included eight steps involving Blueberry River First Nations, EAO and OGC, and entailed multiple meetings. The parties agreed to begin implementing the work plan while its scope and content continued to be negotiated over several drafts occurring between April and October 2016. EAO has endeavoured to accommodate each step in the work plan, and extended initial project timelines by over two months in order to facilitate completion of the EAO-related steps in the work plan. During negotiations on the content and scope of the work plan, EAO and Blueberry River First Nations looked for efficiencies in the process. Blueberry River First Nations highlighted the importance of the sequencing of work plan activities, explaining that it was critical they have the opportunity to present the broader context of federal engagement and cumulative effects experienced by Blueberry River First Nations before discussing specific Project-related concerns, as the context determined the character and range of impacts the Project would have on Blueberry River First Nations' treaty rights and way of life.

The work plan included steps to provide information and context regarding the Project, including an overview of Blueberry River First Nations' concerns with the federal process⁴²; an overview of their 2015 TLU study,⁴³ completed for the Project but not considered in the NEB decision; an overview of Blueberry River First Nations' Disturbance Atlas⁴⁴ and Land Stewardship Framework⁴⁵, as well as an update from the Province on provincial cumulative effects initiatives; a community meeting to discuss the Project; site visits to show EAO critical areas of importance for Blueberry River First Nations; and meetings to discuss Project impacts on treaty rights, as well as potential conditions and accommodations. These steps and associated meetings are summarized in

⁴² *Defects of Federal Review Process of the North Montney Mainline Pipeline Project Prepared by Blueberry River First Nations, August 2015.* Provided to EAO during consultation on August 25, 2016

⁴³ *Blueberry River First Nations Knowledge and Use Study Report, The Proposed North Montney Pipeline Project, Final Report January 22, 2015.*

⁴⁴ *Atlas of Cumulative Landscape Disturbance in the Traditional Territory of Blueberry River First Nations, 2016.* Provided to EAO during consultation on September 22, 2016

⁴⁵ *A Land Stewardship Framework, June 2016.* Provided to EAO during consultation on September 22, 2016

Table 1: Summary of Consultation Work Plan and discussed in greater detail below.

Table 1: Summary of Consultation Work Plan

Dates	Meeting Description	Key Documents and Presentations
June 13, 2016	Discuss work plan and capacity funding	<ol style="list-style-type: none"> 1. Comments on draft Section 11 Order 2. Blueberry River First Nations Capacity Funding Budget Proposal
August 25, 2016	Discuss concerns with the federal process, present Blueberry River First Nations' TLU study	<ol style="list-style-type: none"> 1. Defects of the Federal Review process for the North Montney Mainline Project, 2016 (Report) – provided by Blueberry River First Nations 2. Blueberry River First Nations Knowledge and Use Study Report prepared for the North Montney Mainline Project, 2015
September 22, 2016	Cumulative Effects	<ol style="list-style-type: none"> 1. Atlas of Cumulative Landscape Disturbance in the Traditional Territory of Blueberry River First Nations, 2016 2. A Land Stewardship Framework 3. BC Cumulative Effects Framework - Update (FLNRO)
October 27 and 28, 2016	Community Engagement	<ol style="list-style-type: none"> 1. Community meeting (October 27, 2016) 2. Site visits (October 28, 2016)
November 9, 2016	Issues, Impacts, Options	<ol style="list-style-type: none"> 1. EAO draft conditions for the Project
November 24	EAO Process	<ol style="list-style-type: none"> 1. EAO draft conditions for the Project

In advance of the draft referral package, provided to Blueberry River First Nations for comment on November 24, 2016, EAO shared early drafts of the Aboriginal Consultation and Accommodation Report on August 17, 2016, August 30, 2016 and November 23, 2016. Early drafts of the report were provided to help inform consultation.

Blueberry River First Nations was invited to comment on the drafts circulated in August, and given a three-week comment deadline. At the request of Blueberry River First Nations, EAO extended the comment deadline by two weeks to October 3, 2016. Blueberry River First Nations provided comments on the version of the draft circulated on August 30, 2016 and EAO endeavoured to incorporate these comments into the finalized Aboriginal Consultation and Accommodation Report.

An early draft of proposed Project conditions was also provided on November 23, 2016 to facilitate a meeting held on November 24, 2016. On November 24, 2016, the draft referral package was provided to Blueberry River First Nations for a two-week review period. EAO received comments from Blueberry River First Nations on December 9, 2016. The comments were largely focused on EAO's proposed draft conditions and expressed concern regarding what Blueberry River First Nations' characterize as:

- A lack of meaningful assessment precluding the development of effective Project conditions;
- A lack of conditions to address impacts on wildlife;
- The failure of conditions to enable Aboriginal engagement and involvement;
- A lack of Proponent accountability;
- The inadequacy of the Pink Mountain Mitigation Plan; and
- The lack of assessment prior to the development of a condition for Lily Lake (Water Extraction and Hydrostatic Testing).

Blueberry River First Nations also reiterated their concern regarding cumulative effects in the area understood by the Province to their area of traditional use, and asserted that EAO failed to adopt the potential measures put forward by Blueberry River First Nations, which included the creation of protected areas in Blueberry River First area of traditional use, a co-management framework for resource management, and setting limits on oil and gas development including wells resulting from the Project.

EAO provided a formal written response to comments received by Blueberry River First Nation on December 15, 2016, which included an explanation of how EAO considered the comments provided.

Capacity Funding

Blueberry River First Nations expressed concern and disappointment for the limited amount of capacity funding provided by the EAO to support consultation for the Project. Blueberry River First Nations proposed a budget of \$86,000 to support consultation with the Province guided by the work plan. In addition to the capacity finding provided by EAO, the OGC offers monthly funding to Blueberry River First Nations to support consultation across projects. EAO understands that Blueberry River First Nations has declined OGC's funding. The amount of funding offered by OGC would have covered substantially more than the proposed \$86,000. In a letter to the EAO dated September 8, 2016, Blueberry River First Nations indicated that they would contact the Proponent directly to discuss appropriate funding for the provincial process.

Blueberry River First Nations expressed concern that the Proponent did not provided them with specific capacity funding to participate in the NEB hearing process for the Project, or to engage in technical discussions about Project routing for the Kahta section, or assessment design. It is the position of the Proponent that since initial engagement with Chief and Council in March 2014, that a Community Agreement between Blueberry River First Nations and TransCanada has had funding available to support the engagement efforts for the Project, including engagement expenses related to participation in the provincial review process of the Project. The Proponent has indicated that a number of efforts had been undertaken to discuss the detail of the Community Agreement with current Chief and Council, but were not taken up on the offer to discuss the Community Agreement or engagement funding. The Proponent has further indicated that substantial funding has been made available in a joint account since 2011, intended to support the lands department in support of Project-related engagement efforts, including salary for a local community liaison. Further funding was provided for completion of the TLU study, as well as community member participation in the environmental field studies. EAO has encouraged both parties to engage in further discussion regarding understanding of available funds to support Blueberry River First Nations' participation in EAO's review of the Project.

The Federal Process

Throughout EAO's consultation process, Blueberry River First Nations communicated outstanding concerns about the Project, the NEB review process for the Project, and the federal decision on the Project. Blueberry River First Nations is of the view that the NEB did not consider available information regarding Blueberry River First Nations' TLU. Blueberry River First Nations further explained that prior to directing the NEB to issue a CPCN for the Project, the Governor in Council failed to identify the nature and scope of Blueberry River First Nations' affected treaty rights, the direct and cumulative impacts of the Project on their rights, and the steps taken by the federal Crown to accommodate those impacts.

Blueberry River First Nations believes that, in light of these deficiencies, the provincial Crown cannot rely on the federal review process to discharge its constitutional duty to consult⁴⁶. In addition, Blueberry River First Nations is of the perspective that the Provincial Crown cannot rely on the conclusions of the NEB with respect to their treaty rights or potential impacts from the Project⁴⁷.

During consultation with EAO, Blueberry River First Nations presented a report expressing their views on the defects associated with the federal review process for the Project⁴⁸. The report details Blueberry River First Nations' perspective on the defects of the NEB process, report, and federal Crown consultation.

Among the numerous issues discussed in the report, Blueberry River First Nations expressed concerns regarding the lack of early engagement by the Proponent, highlighting insufficient data collection and lack of opportunity to provide input into the Project route for the Kahta section in order to identify areas of heightened importance for avoidance. Blueberry River First Nations noted that this "lies in stark contrast to the southern portion of the Project (Aitken Creek) for which the Proponent identified six route alternatives on which First Nations, including Blueberry, were consulted on as early as 2011"⁴⁹. Blueberry River First Nations considers the lack of consultation on routing through the Kahta section of the Project was not reflected in the Proponent's engagement log filed with the NEB. Specifically, Blueberry River First Nations asserts that on June 7, 2013, the Proponent first notified the Blueberry River First Nations' Lands Manager about the Project via email, and Blueberry River First Nations' Chief and Council were notified about the Project on August 13, 2013; Blueberry River First Nations noted that the Proponent had already determined the route for the Kahta section of the Project by at least June 30, 2013⁵⁰. In response, the Proponent noted that the commercial need for the Kahta section was not identified until 2013 and opportunities for input from Aboriginal groups on both sections of the Project route were offered prior finalization.

Blueberry River First Nations expressed disappointment in the amount of capacity funding provided by the NEB and Proponent. The NEB provided funding to Blueberry River First Nations to support participation in the NEB process; however, due to the legal and technical expertise required to support their assessments, Blueberry River First Nations considered that the amount provided was not adequate and only covered a portion of their costs⁵¹. Funding concerns with respect to the Proponent are discussed in the section above.

Blueberry River First Nations brought forward concerns to the EAO regarding the design of the NEB hearing process, including limitations to the presentation of oral traditional evidence. Blueberry River First Nations viewed the NEB hearing process as formal and adversarial, which they felt limited input by Elders and other presenters who were unwilling to participate in the hearings, or were apprehensive about sharing information about sites of cultural and spiritual importance in a public venue⁵². Blueberry River First Nations also noted that they were unsure if knowledge shared by Elders was

⁴⁶ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 4

⁴⁷ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 4

⁴⁸ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*.

⁴⁹ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 7

⁵⁰ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 7

⁵¹ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 7

⁵² Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*.

considered by the NEB because it was presented just prior to the deadline for Intervenor arguments and the close of the evidentiary portion of the NEB hearing⁵³.

Blueberry River First Nations was critical of the Proponent's assessment of Aboriginal Interests, pointing to insufficient information collection by the Proponent and the VCs used by the Proponent to assess impacts on treaty rights. Blueberry River First Nations was also critical of the cumulative effects assessment undertaken by the Proponent (discussed in greater detail in 'Cumulative Effects' section below).

Blueberry River First Nations raised procedural concerns regarding the methodology and approach to the assessment of land and resource use for traditional purposes and treaty rights. These concerns included:

- The framework relied upon by the Federal Crown to inform regulatory filing requirements is based on federal legislation and manuals that were developed by the Canadian Environmental Assessment Agency and the NEB without consultation with Aboriginal groups and lacks Aboriginal perspectives;
- The Proponent's assessment of Project impacts was developed unilaterally, without input from Blueberry River First Nations on appropriate baseline data or VCs which would enable the assessment of Project impacts on Blueberry River First Nations⁵⁴;
- The limited opportunities for input on Project-related effects on traditional land and resource use, field research methods and data collection protocols;
- The lack of a Blueberry River First Nations Project-specific TLU study for consideration in the NEB's assessment of Project impacts;
- The development of Project conditions and measures in the absence of an assessment of the impacts of the Project on Blueberry River First Nations treaty rights;
- The lack of a pre-disturbance baseline for what constitutes the meaningful practice of treaty rights and supporting resources; and
- The methodology used to assess cumulative effects and the absence of an assessment of the impacts of cumulative effects on Blueberry River First Nations' treaty rights.

Following the NEB hearing process and issuance of the NEB recommendations report, Blueberry River First Nations expressed the view that there was a lack consultation at the federal level. In May 2015, Blueberry River First Nations requested a meeting with Natural Resources Canada to discuss cumulative impacts, and mitigation and accommodation measures. EAO understands that Blueberry River First Nations did not receive a response regarding this meeting request prior to the issuance of a CPCN in June 2015. With respect to engagement with the Proponent after the issuance of the CPCN, EAO understands that Blueberry River First Nations was provided copies of the Proponent's preliminary Fish Habitat Offset Mitigation options, Caribou Mitigation Plan, and Access Control Plan for discussion and further consultation.

⁵³ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 19

⁵⁴ Subsistence Harvesting and Related Environmental Features, Continued Access and Use of Lands and Waters and Cultural Heritage and Cultural Continuity are valued components identified in Blueberry River First Nations' Knowledge and Use Report, used to assess the potential impacts of the Project on the use of lands and resources for traditional purposes.

Blueberry River First Nations' Traditional Land Use Information

Blueberry River First Nations elected to conduct a community-led traditional use study, with funding support from the Proponent; however, a Project-specific study was not completed and filed with the NEB within the timeframe allotted by the NEB process. Blueberry River First Nations attribute this to delays in the Proponent's response to Blueberry River First Nations' traditional use study proposal, and further delays in negotiating a final traditional use study agreement, which meant that work on the study did not begin until October 2014. EAO understands however that Blueberry River First Nations presented TLU information during the NEB hearing, as evidence.

As discussed in Section 5.2.3, Blueberry River First Nations filed a motion with the NEB in September 2014 seeking an adjournment of the second portion of the oral hearing and leave to file the traditional use study once complete⁵⁵. The motion was rejected, and a Project-specific traditional use study was not filed with the NEB; however, Blueberry River First Nations was able to submit a more general traditional use study and completed a Project-specific study dated January 22, 2015, which EAO has considered as part of its assessment of Project impacts.

Blueberry River First Nations are of the view that no meaningful opportunity was provided to verify the TK collected, and as a result, nation-specific TK was not incorporated into the Proponent's assessment⁵⁶. Blueberry River First Nations has also communicated substantial concerns with the selection of best available information used in the Proponent's 2013 Traditional Knowledge Literature Review. Blueberry River First Nations stated that the review of existing materials was inadequate, pointing to a lack of academic literature, limited information specific to Blueberry River First Nations, and outdated information⁵⁷.

During a consultation meeting with EAO on August 25, 2015, Blueberry River First Nations and The Firelight Group presented the findings of the Blueberry River First Nations TLU report for the Project. The scope of the 2015 TLU report includes baseline information and potential Project interactions for three value components identified by the study (Subsistence Harvesting and Related Environmental Features, Continued Access and Use of Lands and Waters, and Cultural Heritage and Cultural Continuity). Blueberry River First Nations noted that the scope of the report was limited due to time constraints and the availability of information at the time of writing, and does not include the locations and details of ancillary sites such as work camps, laydown and other staging sites, access roads, and other facilities for the Project.

In its TLU study, Blueberry River First Nations indicated that the Project represented an enabling feature that would result in significant associated development and further displacement of Blueberry River First Nations' traditional use of the Project area. Blueberry River First Nations study participants reported that practicing their treaty rights within easy distance from their homes is currently very difficult. They noted that healthy ecosystems with resources capable of supporting Blueberry River First Nations' treaty rights practices are increasingly difficult to find, making it more expensive to practice necessary subsistence harvesting activities, and in turn making traditional harvesting less

⁵⁵ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 15

⁵⁶ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Pages 8-9.

⁵⁷ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*. Page 8

accessible to the community. The TLU study states that the proposed Project would further compound these challenges⁵⁸.

Cumulative Effects

Fundamental to Blueberry River First Nations' concerns is the cumulative impacts from a range of projects and activities in their territory. Blueberry River First Nations' has expressed their concerns regarding cumulative effects in their area of traditional use throughout consultation with the Province on the Project. EAO understands that Blueberry River First Nations' concerns centre on the amount and rate of development within their area of traditional use, and how this is affecting their ability to practice their treaty rights. For example, Blueberry River First Nations indicated the following concerns:

- Development, particularly linear development, affects the abundance of and use of the landscape by wildlife, including important species for hunting, such as moose. As such, community members have to travel farther to practice their treaty rights;
- The rate of development is impacting community member's ability to return to sites that have been used previously, including by previous generations, to practice treaty rights. As a result, this is impacting cultural transmission and the ability Blueberry River First Nations members to teach TK to youth;
- Increased access into Blueberry River First Nations' area of traditional use is increasing access to both non-Aboriginal hunters and predators, resulting in further population pressures on important species such as moose; and
- The amount of development on the landscape is impacting the experiential element associated with the practice of treaty rights and other cultural practices.

The Blueberry River First Nations' *Atlas of Cumulative Landscape Disturbance*⁵⁹ (Atlas), provided to EAO during consultation with Blueberry River First Nations on September 22, 2016, contains detailed information on Blueberry River First Nations' summary of the scale and rate of industrial disturbance within their area of traditional use. For example, the Atlas highlights the following conclusions⁶⁰:

- 73% of the area inside Blueberry River First Nations traditional territory is within 250 m of an industrial disturbance, and 84% is within 500 m of an industrial disturbance;
- Of the total area of the province reserved for pipelines via tenures, 46% falls within Blueberry River First Nations traditional territory;
- Active petroleum and natural gas tenures cover 69% of Blueberry River First Nations traditional territory; and
- Of the 19,974 oil and gas wells in Blueberry River First Nation traditional territory, 36% are active and there are 9,435 oil and gas facilities, primary test facilities (6,210) and battery sites (1,120).

Blueberry River First Nations also presented EAO with their *Land Stewardship Framework*⁶¹, which includes key actions for the implementation of the framework and a discussion on the status of environmental management relevant to northeast BC, a review of the OGC Area-based-Analysis, and the

⁵⁸ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁵⁹ Ecotrust Canada and David Suzuki Foundation, 2016. Atlas of Cumulative Landscape Disturbance in the Traditional Territory of Blueberry River First Nations, 2016.

⁶⁰ Ecotrust Canada and David Suzuki Foundation, 2016. Atlas of Cumulative Landscape Disturbance in the Traditional Territory of Blueberry River First Nations, 2016. Page 7

⁶¹ Holt, Racheal, 2016. A Land Stewardship Framework, prepared for Blueberry River First Nations.

United Nations Aichi Targets. Blueberry River First Nations have stressed to EAO that interim measures are necessary to slow the rate of development in Blueberry River First Nations' area of traditional use until implementation of a long-term provincial strategy for managing industrial development is achieved.

During consultation with EAO in September 2016, Blueberry River First Nations communicated that their rights and interests have been subject to long-term, multi-source, and large scale adverse cumulative effects through land fragmentation and other industrial activities. Blueberry River First Nations expressed concern that the Proponent had failed to generate a cumulative effects assessment that encompassed Project-specific pipeline effects and other past, present and reasonably foreseeable future physical works and activities on Blueberry River First Nations' territory and treaty rights. Blueberry River First Nations assert the following deficiencies in the Proponent's cumulative effects assessment⁶²:

- Inadequate baseline data on existing impacts;
- Incorrectly spaced wells across entire the Montney Play when evidence shows wells will be concentrated in Blueberry's core territory;
- Failure to consider important aspects of upstream development;
- Underestimated extent of existing development; and
- Incorrect assumption that the OGC's Area Based Assessment would reduce impacts.

Blueberry River First Nations explained that their critical concerns regarding cumulative effects were raised repeatedly with the NEB, and that the NEB relied upon the Proponent's cumulative effects assessment, which Blueberry River First Nations considered to be flawed⁶³.

EAO has considered these concerns in the assessment of seriousness of impacts on Blueberry River First Nations' treaty rights, and acknowledges that there have been ongoing discussions between the Province and Blueberry River First Nations regarding cumulative effects, including an injunction application against the Province that is currently before the courts. Details on broader cumulative effects initiatives being undertaken by the Province, including opportunities for participation by Aboriginal groups, are outlined in Section 4.1.2 of this report.

Community Engagement

The work plan included a community meeting and site visit, both hosted by Blueberry River First Nations and attended by the EAO on October 27 and 28, 2016, respectively. Both the community meeting and site visit were unique consultation opportunities which EAO has not previously had with Blueberry River First Nations, and provided meaningful insight with respect to areas of importance to the community's continued practice of treaty rights, the current development in Blueberry River First Nations' area of traditional use, and community perspectives on provincial and federal consultation.

The community meeting included presentations made by Blueberry River First Nations, the Proponent, EAO, OGC, and the Firelight Group (on behalf of Blueberry River First Nations). Attendance by Blueberry River First Nations community members during the five presentations at the meeting ranged between 7 and 25 attendees. Community members voiced concerns regarding the EA process for the Project and discussed the need for more community-level engagement, specifically with regard to

⁶² Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*.

⁶³ Blueberry River First Nations, 2016. *Defects of the Review Process of the North Montney Mainline Pipeline Project*.

gathering TLU data from members. Members also criticized the adequacy of the process given the size of the Project, and potential for multigenerational impacts. Capacity funding and accommodation were also discussed, as was need to balance the economic interests of Blueberry River First Nations with development in their area of traditional use, as understood by the Province. The importance of maintaining intact landscapes for teaching and cultural transmission was a key theme brought forward by community members and discussed in the context of land alienation resulting from multiple large-scale industrial projects in the Peace region.

Following the community meeting, EAO participated in a site visit led by Blueberry River First Nations and facilitated in part by the Firelight Group. Three areas of critical importance to Blueberry River First Nations were viewed including Mile 156 and surround area including Lily Lake, Mile 135, and Mile 115⁶⁴. At each stop, Blueberry River First Nations explained the significance of the site in relation to the current practice of their treaty rights and interests, and the historical use of the site by Blueberry River First Nations' ancestors. Blueberry River First Nations also highlighted the industrial development in proximity to each site, the potential impact of the Project on specific features of significance, and showed EAO the proximity of the Project route to these features.

The area around Mile 156 and Lily Lake was described by Blueberry River First Nations as a key area for subsistence hunting and procurement of country foods, dating back several generations. Blueberry River First Nations described moose hunting, fishing on Lily Lake, and berry picking activities in the area, but noted that these activities are being impacted by surrounding industrial development and will be further impacted by the Project. Specifically, Blueberry River First Nations noted increased competition for moose due to increased access to the area from surrounding development, declining water levels in Lily Lake, and the destruction of a key berry picking area, which was cleared for the construction of a gas plant. Blueberry River First Nations and EAO observed a new road in the area and two moose carcasses left along the access road leading to Lily Lake. Blueberry River First Nations explained that the moose carcasses were discarded by non-Aboriginal hunters in the area. The Firelight Group discussed 68 values associated with the area, which were communicated to them by community members for the 2015 TLU report, and characterized the area as critical for food security.

Blueberry River First Nations described the area around Mile 135 as an important area for hunting, trapping, teaching, and cultural transmission. The area includes a cabin built by a former Chief that has been used by Blueberry River First Nations for more than four generations and remains in current use. The cabin is in close proximity to the Beaton River (also referred to as the Pine River by Blueberry River First Nations), which is considered an important travel way connecting the site to the Blueberry River First Nations' community and to a trap line in the area. According to Blueberry River First Nations and data collected by the Firelight Group for the 2015 TLU report, the Project will run within 500-600 m of the cabin. Blueberry River First Nations expressed concern that further development in the area will have significant impacts to the wildlife in the area, in turn impacting their ability to practice treaty rights. Concern was also expressed regarding the availability of water, which Blueberry River First Nations explained is being extracted from the Beaton River to support surrounding industrial activity.

The final site on the tour was to the area surrounding Mile 115. This area, specifically in proximity to the Blueberry River, was described by Blueberry River First Nations as a spiritual corridor used by Blueberry River First Nations' ancestors (Dreamers) to travel to the Dancing Grounds. Blueberry River First Nations described the area (including the Dancing Grounds) as one of the last intact spiritual areas

⁶⁴ Mile 156, 135, and 115, are distance markers located along Highway 97.

used by Blueberry River First Nations. The Project route is approximately 7 km from the Dancing Grounds. Blueberry River First Nations also described a more elaborate network of trails and travel ways leading from the community to the Dancing Grounds and connecting north to the Mile 156 area. Existing development in the Mile 115 area was observed by EAO via the access road used to travel to the site and included a rock quarry, pipeline RoWs, forestry activity and fenced private land.

Issues, Impacts and Options

On November 9, 2016, EAO and Blueberry River First Nations met to discuss impacts, issues and options for mitigation and accommodation associated with key Project impacts Blueberry River First Nations view as outstanding from both the federal and provincial processes. These issues include the following:

- Lack of impact assessment on Blueberry River First Nations' treaty rights using appropriate baseline data;
- Lack of cumulative effects assessment of VCs on Blueberry River First Nations' treaty rights and critical areas;
- Lack of consideration of the Blueberry River First Nations' TLU data; and
- Lack of a Blueberry River First Nations-specific socio-economic impact assessment for the Project.

Blueberry River First Nations communicated to EAO that an assessment and conclusion of Project impacts on Blueberry River First Nations' treaty rights remains outstanding. Blueberry River First Nations pointed to the following as being critical deficiencies in the current assessment, which was undertaken as part of the NEB process: the limited information considered during the NEB process, the lack of consultation on the Kahta section of the Project route, and the use of a generic VC which was not defined to capture Blueberry River First Nations "unique experience, perspectives or traditional practices, and not scoped on a scale meaningful to Blueberry River First Nations"⁶⁵. Blueberry River First Nations explained that an assessment of treaty rights must be designed to include input from community members, consideration of Blueberry River First Nations' ability to undertake rights-based activities in preferred areas, access and sufficiency of resources that are integral to the practice of treaty rights, continued ability for cultural transfer and teaching on the land, peaceful enjoyment, and safety and security on the land. Blueberry River First Nations explained that their cultural foundation extends beyond access to resources, and includes methods of cultural transmission such as visual markers that depend on continued future access to intact landscapes.

Cumulative impacts are a critical concern for Blueberry River First Nations. Blueberry River First Nations communicated to EAO that a cumulative effects assessment that includes an assessment of cumulative impacts on Blueberry River First Nations' treaty rights and areas of critical importance remains outstanding. Blueberry River First Nations disagree with the approach undertaken by the Proponent in assessing the cumulative effects of the Project, drawing particular attention to the VCs considered in the Proponent's assessment. Blueberry River First Nations explained to EAO that a reliable cumulative effects assessment would require accurate scoping, a baseline assessment to determine the baseline conditions affecting Blueberry River First Nations' treaty rights, a trends analysis and impact management. Blueberry River First Nations believes the Project will cause irreparable, multigenerational

⁶⁵ Blueberry River First Nations provided EAO with a document titled *Defects of Federal Review Process of the North Montney Mainline Pipeline Project Prepared by Blueberry River First Nations, August 2015*. Page 23. Provided to EAO during consultation on August 25, 2016

harm and that EAO will overlook these impacts if it accepts the cumulative effects analysis completed as part of the NEB process.

Numerous developments in the North Montney Play have occurred following the Blueberry River First Nations' 2015 Knowledge and Use Study for the Project. Blueberry River First Nations have communicated to EAO that an update to TLU and other land analysis information is necessary in order for EAO to accurately assess the impacts of the Project on Blueberry River First Nations treaty rights. This was also communicated during a presentation of TLU information by the Firelight Group during the community meeting held on October 27, 2016. During that presentation, it was also noted that the absence of TLU information in the 2015 TK and Use Report did not indicate a lack of use; rather limitations on the scope of the report could mean that there is additional data to be documented from community members.

Blueberry River First Nations communicated to the EAO that a socio-economic assessment specific to Blueberry River First Nations for was both necessary and outstanding for the Project. Blueberry River First Nations explained that the VC, *Social and Cultural Well-Being*, assessed by the Proponent, did not consider the unique socio-economic vulnerabilities of first nations and excluded Aboriginal perspectives, resulting in a range of social, economic and cultural impacts that were overlooked.⁶⁶ Blueberry River First Nations highlight the following aspects requiring socio-economic assessment: language, culture and health including rates of suicide, and substance abuse. During consultation with EAO on November 9, 2016, Blueberry River First Nations described widening inequality and reduced cohesion in their community attributed to the concentration of industrial development in their area of traditional use. Other socio-economic impacts including declining language retention and the ability to procure country foods were discussed in the context of needing an effective methodology to assess socio-economic impacts.

In order to address these key outstanding issues, Blueberry River First Nations proposed the following be undertaken for the Project prior to a provincial decision:

- Undertaken further TLU studies to update the 2015 TLU study with new information;
- Conduct an assessment of Project impacts on Blueberry River First Nations' treaty rights;
- Conduct a cumulative effects assessment on impacts to Blueberry River First Nations' treaty rights; and
- Conduct a socio-economic assessment specific to Blueberry River First Nations.

EAO has considered the deficiencies identified by Blueberry River First Nations. As part of this report, EAO conducted an assessment of the impacts of the Project on Blueberry River First Nations' treaty rights, discussed in the following section. EAO is of the view that the TLU information is sufficient to adequately inform the assessment of impacts to Blueberry River First Nations' treaty rights, and notes that the consultation requirements included in EAO's proposed conditions would allow for new or updated TLU information to inform the more detailed mitigation requirements in these plans.

Regarding the request for a socio-economic assessment specific to Blueberry River First Nations, EAO notes that the NEB is the primary regulator for the Project and that it undertook consideration of the Project's socio-economic impacts as part of its assessment. EAO does not require any further

⁶⁶ Blueberry River First Nations provided EAO with a document titled *Defects of Federal Review Process of the North Montney Mainline Pipeline Project Prepared by Blueberry River First Nations, August 2015. Page 10.* Provided to EAO during consultation on August 25, 2016

information to inform its assessment of the impacts of the Project on Blueberry River First Nations' treaty rights.

Regarding cumulative effects, EAO understands that there are a number of provincial initiatives underway to respond to concerns regarding the cumulative impact of development in the northeast. These initiatives are described in Section 4.1.2. EAO also understands that the Province has expressed openness to reengaging in exploratory discussions regarding negotiations for a potential Government-to-Government agreement with Blueberry River First Nations⁶⁷. Previous negotiations included discussions regarding protection measures for "critical areas", as identified by Blueberry River First Nations, which includes the Pink Mountain area.

5.2.5 Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Blueberry River First Nations members hunt and consume a broad range of animals, including ungulates such as moose, elk, deer, mountain goats, and mountain sheep which are an integral traditional food source⁶⁸. Other culturally important game species include bear, beaver, muskrat, porcupine, rabbits, marmot, lynx, marten, weasel, fisher, squirrel, wolverine, and ducks, geese, grebes, and grouse.

Blueberry River First Nations extensively use the area along the Project route for hunting and related activities, as evidenced in the Blueberry River First Nations 2015 Knowledge and Use Study Report, which identified 20 key areas of use within 5 km of the Project route⁶⁹. Within these areas, Blueberry River First Nations identified the following uses and features: campgrounds and trails used for hunting, trapping areas, kill sites, meat processing and drying sites, game trails and mineral licks, wildlife habitat and sighting areas, caribou migration and wintering grounds, and moose calving and wintering grounds.

Blueberry River First Nations indicated to EAO that moose are of particular importance to the community, and indicated that their observation is that moose are declining in their territory and in the Peace Region⁷⁰. Moose and large game hunting once provided a range of essential resources in addition to food, including hide and tools, furs for sale, and provisions for traditional use activities⁷¹. During the oral portion of the NEB hearing, Blueberry River First Nations stated that its members now have to travel north and to the west to get away from industrial activity to hunt safely and that there is hardly any game in those area⁷².

Blueberry River First Nations identified extensive moose habitat throughout the Project area. Blueberry River First Nations site-specific data shows the following areas of importance associated with moose:

⁶⁷ See letter of September 2, 2016 to Blueberry River First Nations from Dale Morgan, Regional Manager, Northeast, Ministry of Aboriginal Relations and Reconciliation.

⁶⁸ Kennedy and Bouchard 2011

⁶⁹ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project. Pages 36-38.

⁷⁰ From EAO consultation for the proposed Northeast British Columbia Expansion Project.

⁷¹ McGuigan 2003; Olson et al 2013, p.16-17

⁷² NEB Report (A4K5R6)

- Mile 156 Road, Lifeline Lake, and Lily Lake: noted by many Blueberry River First Nations members as a key area for subsistence hunting, critical to food security as well as a rich habitat for moose including calving grounds, muskeg, willows and mineral licks. The area is accessible primarily on foot, reducing impact from non-Aboriginal hunters and other land users. However, increased vehicle access resulting from the construction of roads associated with industrial development is evident in this area, as both noted by Blueberry River First Nations and observed by EAO during the October 28, 2016 site visit. Also see Section 4.1.1;
- Pink Mountain area: important ecological corridor of critical importance to wildlife, including moose. The area is used for subsistence hunting and includes key access routes to surrounding hunting grounds. In addition, Pink Mountain has been identified as a critical cultural and spiritual area for Blueberry River First Nations. Many Blueberry River First Nations members have noted that Pink Mountain area is one of the few remaining areas that is relatively undisturbed. This area provides a rich habitat for healthy game and is one of the few areas remaining where Blueberry River First Nations members feel they can safely collect drinking water. Also see Section 4.1.1; and
- North of Wonowon (Dancing Grounds): critical cultural and spiritual area also used for subsistence hunting of moose as it contains important environmental features for wildlife, such as mineral licks.

Caribou are also a species of importance to Blueberry River First Nations. Caribou are federally identified as a species at risk and are subject to federal harvesting moratoriums. Some Treaty 8 First Nations, including Blueberry River First Nations, have also implemented self-imposed moratoriums on caribou hunting⁷³.

Several registered trap lines belonging to Blueberry River First Nations members are in close proximity to, or overlap with the Project route, specifically in the area around Pink Mountain and Mile 135.

The Blueberry River First Nations TK and Use Report relies on three primary VCS, representing aspects of Blueberry River First Nations' knowledge and use and associated critical resources that would be impacted by the Project. They include Subsistence Harvesting and Related Environmental Features, Continued Access and Use of Lands and Waters, and Cultural Heritage and Cultural Continuity⁷⁴.

The Substance Harvesting and Related Environmental Features VC encompasses hunting, trapping, gathering plants for food and medicines, and clean drinking water. Specific to this VC, the Blueberry River First Nations TK and Use Report cites the following potential Project interactions related to hunting and trapping⁷⁵:

- Disturbance of animals during Project construction, causing them to move away from the area;
- Habitat fragmentation, limiting animal movement and reducing the size of available habitat areas;
- Loss of valuable habitat features such as mineral licks, wintering grounds, and calving areas;
- Decreased numbers of healthy animals due to loss of grazing areas;

⁷³ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁷⁴ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project

⁷⁵ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

- Construction work on the pipeline bringing increasing numbers of people into the area, adding hunting pressure to wildlife populations during construction and beyond the life of the Project;
- Decreased wildlife population due to road kill from increased vehicle traffic in the area;
- Reduced trapping access and success due to vandalization of and theft from Blueberry River First Nations' traps; and
- Need for Blueberry River First Nation members to travel further to practice subsistence harvesting.

As communicated by Blueberry River First Nations during the site visit with EAO, Project impacts contributing to decreased availability of wildlife relied upon for subsistence hunting jeopardizes Blueberry First Nations' food security. Declining food security is experienced by Blueberry River First Nations community members in a number of ways. Most notably, Blueberry River First Nations must travel further from their community in order to hunt healthy animals, which have migrated to habitat with fewer industrial disturbances. Blueberry River First Nations indicated that this problem is compounded by geographic and economic barriers to alternative food sources, such as store bought foods. The Blueberry River First Nations reserve is approximately 70 km from the nearest urban centre. Many community members who are unable to travel that distance, or the distance to further afield subsistence hunting areas, are increasingly relying on convenience foods purchased from service stations located along the primary highway. Limited access, affordability and nutritional value of available food alternatives pose an increasingly precarious situation for many community members. In addition, Blueberry River First Nations have indicated that the substitution of store bought foods for food obtained through subsistence hunting also contributes to the erosion of teaching opportunities and other cultural aspects of hunting, passed through generations.

In addition to the concerns identified by Blueberry River First Nations through provincial consultation, potential Project-related impacts to hunting and trapping are described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with Blueberry River First Nations, Blueberry River First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a moderate impact on Blueberry River First Nations' hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to Blueberry River First Nations' areas of traditional and current use for hunting and trapping activities, particularly the proximity of the Project to Pink Mountain;
- Ongoing concerns regarding access management with respect to Pink Mountain, both during Project construction and operations; and
- Consideration of cumulative effects to hunting and trapping activities.

Impacts on Fishing

Fish species of importance for Blueberry River First Nations include: Dolly Varden, arctic grayling, burbot (lingcod), northern pike (jackfish), bull trout, whitefish, sucker, lake trout, rainbow trout, and walleye⁷⁶. Other fish species caught include kokanee and pike minnow (squawfish).

⁷⁶ McGuigan 2003; Olson et al 2013; Joint Review Panel for the Site C Project 2014

TLU information submitted by Blueberry River First Nation has highlighted numerous fishing sites within 5 km of the Project, including the area between the Buckinghorse River and Mile 171 Road; Lily and Lifeline (Duhu) Lake ; around Stuart Lake and south of the Pine River; along the Halfway, Sikanni Chief, Beatton and Peace Rivers; and the area surrounding Pink Mountain⁷⁷. Lily Lake was mentioned as a particular area of concern due to its connection with the Beatton River watershed⁷⁸, which is used for fishing, gathering, and hunting purposes.

Blueberry River First Nations have raised concerns that the Project would lead to a reduction in water quantity and the loss of small creeks and watercourses, especially in the Pink Mountain area. During a site visit with EAO to Lily and Lifeline Lakes, Blueberry River First Nations noted that the water level in Lily Lake has receded in recent years, and that fishing is declining in both lakes.

In the Knowledge and Use Report, Blueberry River First Nations expressed concern about deforestation for the creation of the pipeline RoW, adding to the water run-off effects and potential flooding in key watersheds⁷⁹. Blueberry River First Nations also indicated concern regarding contamination and perceived contamination of river and watercourses, particularly at pipeline crossing points with potential impact on fish that live in the water. Of particular importance to Blueberry River First Nations is the Beatton River water crossing and potential downstream impacts. During NEB Hearings, Blueberry River First Nations expressed similar concerns to what was highlighted in their traditional use study, with specific concern expressed regarding contamination from spills, and accidents and malfunctions.

In addition to the concerns identified by Blueberry River First Nations through provincial consultation, potential Project-related impacts on fishing are described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with Blueberry River First Nations, Blueberry River First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor impact on Blueberry River First Nations' fishing activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Blueberry River First Nations' areas of traditional and current use for fishing activities;
- Project-related activities are not likely to have significant adverse effects on species harvested by Blueberry River First Nations; however, EAO recognizes that perceptions of potential contamination may influence how and where treaty rights are practiced;
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Blueberry River First Nations community members accessing traditional fishing sites within the vicinity of the Project.

Impacts on Gathering

⁷⁷ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁷⁸ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁷⁹ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

Plant gathering for subsistence and medicinal purposes continues to be practiced by Blueberry River First Nations community members. Gathering is an important practice for sustenance, medicine, family and group bonding, and teaching. Species of importance to Blueberry River First Nations include berries, medicinal plants, and other food plants such as: lowbush blueberry, chokecherries highbush blueberry, huckleberries, raspberries, cranberries, strawberries, Saskatoon berries, mint tea, trapper's tea, wild onions, wild rhubarb, rosehips, dandelions, water parsnips, wild carrot bluebells, and birch sap. Cambium and roots of trees are also harvested⁸⁰.

Blueberry River First Nations has identified numerous gathering sites within 5 km of the Project Area including the area between Buckinghorse River and Mile 171 Road, along Mile 156 Road and Lily Lake, south of the Atick Creek Road and along Pink Mountain Road, along Mile 135 Road, between Mile 132 Road and Mile 126 Road, south of the Cameron River, along the Halfway River, east of Butler Ridge, and around Stewart Lake and south of the Pine River⁸¹.

Of particular importance to Blueberry River First Nations is the area around Pink Mountain. This area is perceived by community members to be spiritually and environmentally clean, an essential requirement when harvesting traditional medicines⁸².

Community members have previously expressed concerns that development in the Blueberry River First Nations' area of traditional use was causing a decline in edible berries. During the site visit in the vicinity of Mile 156 and Lily Lake, Blueberry River First Nations identified an area to EAO that was previously used on an annual basis for berry picking but was cleared for the development of a gas plant.

Blueberry River First Nations members also noted that plants are safer to eat when harvested from a healthy ecosystem, without the risks of pesticides and other chemicals that can be found in commercial foods; however, they also note that those healthy, undisturbed ecosystems are increasingly difficult to find and that berry picking sites that were once abundant are no longer available for Blueberry River First Nations subsistence⁶. Community members have expressed concern that upstream activities could potentially contaminate downstream plants growing in and around watercourses impacted by the Project. Of particular concern was the Beatton River crossing⁸³.

The introduction or spread of invasive plant species was also an identified potential effect, and Blueberry River First Nations expressed concern that vegetation management techniques such as seeding for site restoration with fast-growing non-native species hinders the return of native species⁸⁴.

The Substance Harvesting and Related Environmental Features VC encompasses hunting for moose and other animals, trapping, gathering plants for food and medicines, and water.

Specific to this VC, the Blueberry River First Nations TK and Use Report cites the follow in potential

⁸⁰ Kennedy and Bouchard 2011; McGuigan 2003; Olson et al 2013; Joint Review Panel for the Site C Project 2014; Treaty 8 Environmental Assessment Team 2012

⁸¹ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁸² The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁸³ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project.

⁸⁴ TARA 2011-2012 Traditional Knowledge Report for the Proposed NOVA Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project (A3Q6G3)

Project interactions related to gathering plants for food and medicine⁸⁵:

- Direct removal of plants during the creation of the Project RoW;
- Replacement of native species with non-native species during construction, operations and reclamation;
- Permanent loss of plant and/or plant harvesting habitat even after reclamation efforts as some native plants do not return within a harvester's lifetime, thereby effectively causing the permanent loss of knowledge of that harvesting habitat; and
- Contamination or perceived contamination of berries, plants, and medicines, causing Blueberry River First Nations members to cease harvesting essential subsistence plant foods and medicinal plants in the study area, by:
 - Contamination along the pipeline RoW during Project construction:
 - Spraying of pesticides and herbicides on the pipeline RoW or along roads and access routes used for pipeline construction and maintenance; and
 - Road traffic (dust and exhaust) along roads and access routes used for pipeline construction or maintenance.

In addition to the concerns identified by Blueberry River First Nations through provincial consultation, potential Project-related impacts on gathering are described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, consultation with Blueberry River First Nations, Blueberry River First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor-to-moderate impact on Blueberry River First Nations' gathering activities. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to Blueberry River First Nations' areas of traditional and current use for gathering activities, particularly the proximity of the Project to Pink Mountain;
- Ongoing concerns regarding access management with respect to Pink Mountain, both during Project construction and operations; and
- Consideration of cumulative effects to gathering activities.

Impacts on Culturally Important Sites and Travel Ways

The Blueberry River First Nations 2015 Traditional Use and Knowledge Report cited 19 key areas within 5 km of the Project route containing culturally important sites and travel ways used extensively by community members⁸⁶. Activities and features occurring in these areas include trails used for hunting, fishing and gathering; ATV, dogsled and saddle horse trails; water routes traveled by canoe; cabin, camping and teepee sites; burial sites and birth places; areas used for teaching; areas containing heritage resources; and spiritual and ceremonial sites. Areas of highlighted importance identified by

⁸⁵ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project. Page 65

⁸⁶ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project. Pages 36-38.

Blueberry River First Nations include the Pink Mountain area, the Dancing Grounds north of Wonowon, the area surrounding Mile 156 Road, and Lily and Lifeline Lakes.

Summer gatherings in pre-determined sites are important for multiple family groups and members of different bands to meet⁸⁷. Three key locations within Blueberry River First Nations' traditional use area are:

- The Pink Mountain area, used for current ceremonial, gathering and community harvesting and knowledge sharing purposes;
- The Dancing Grounds area, including a travel way along the Blueberry River to the Dancing Grounds described by Blueberry River First Nation as a spiritual corridor, and an important cultural and spiritual site north of Wonowon; and
- The areas around Lily and Lifeline Lakes, which are considered important, relatively undisturbed, wildlife habitats and areas of cultural importance.

Blueberry River First Nations members consider Pink Mountain to be an area vital to maintaining their cultural and spiritual activities. Pink Mountain is used to practice and teach traditional ways of life to children, is close to key hunting grounds, and is an important ecological corridor for wildlife. The Blueberry River First Nations Knowledge and Use report notes that many community members consider Pink Mountain to be one of the few remaining undisturbed areas where members can hunt healthy game, safely drink water and eat the fish they catch without fear of contamination. The report further explains that Pink Mountain is "considered a clean area not only environmentally but also spiritually, making it an essential resource area for traditional medicines that must be picked from clean undisturbed sites"⁸⁸. The Pink Mountain area is approximately 5 km from the Project. Also see Section 4.1.1 for further discussion of Pink Mountain.

The Dancing Grounds and travel way to the Dancing Grounds which runs along the Blueberry River is another site of critical importance to Blueberry River First Nations. As described in their Knowledge and Use Report, the Dancing Grounds are a gathering place for cultural and spiritual practice as well as seasonal hunting and gathering rounds. Blueberry River First Nation also report a permanent cabin in current use located at the Dancing Grounds. The Dancing Grounds are located approximately 7 km from the Project. During site visits with EAO, Blueberry River First Nations explained that some areas are of critical importance to the community due to their significance in the practice of treaty rights and because of the increasing pressure from cumulative effects from surrounding industrial development.

Lily and Lifeline Lakes, located within 2.5 km from the Project are important bodies of water that support high value wildlife habitat, including calving grounds for moose, caribou and elk. Blueberry River First Nations use these areas for gathering berries and medicinal plants and camping. The area around Lily Lake also contains a burial site, and is a location of important heritage resources. As noted in the Blueberry River First Nations' Knowledge and Use Study, "the area surrounding Mile 156 Road, Lifeline Lake, and Lily Lake is of particular concern to Blueberry River First Nations as the pipeline footprint runs within less than 1 km of this high-value wildlife habitat and subsistence harvesting area"⁸⁹. Community members also noted that Lily Lake has limited access, making it a prime, relatively undisturbed area; however as previously noted, increased vehicle access resulting from the construction of roads

⁸⁷ Ridington 1980, p.357

⁸⁸ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project. Page 41

⁸⁹ The Firelight Group. 2015. Blueberry River First Nations: Knowledge and Use Study Report, The Proposed North Montney Pipeline Project. Page 38

associated with industrial development is evident in this area. Also see Section 4.1.1 for further discussion of Lily Lake.

There is a potential risk of disturbance to, or loss of, previously recorded or undiscovered heritage sites resulting from pipeline construction (clearing, grading, trenching, drilling, watercourse crossings, stringing pipe, lowering, backfilling, hydrostatic testing, cleanup and final reclamation). Similarly, there is also a risk of disturbance to or loss of, previously unrecorded TLU sites and disturbance to, or interference with, traditional uses during construction, operation and maintenance activities⁹⁰.

Key issues raised by Blueberry River First Nations during the NEB hearings and in the Blueberry River First Nations traditional use study include, access controls and increased traffic, reduced harvesting ability by Blueberry River First Nations in preferred areas, and destruction of culturally important sites such as unmarked gravesites. Also of concern was the perception that the Project would negatively impact sites of recreational, teaching, gathering and knowledge transmission value. Concern was expressed that increased access would increase the level of non-Aboriginal hunters and users within the Project LSA and RSA, reducing the ability to quietly enjoy the land and reducing safety and willingness to harvest from preferred areas. Concern was also expressed that upstream development from sites such as the Dancing Grounds would create actual or perceived contamination of important medicinal and cultural plants and spiritual contamination of an essential cultural heritage site from increased traffic during and after pipeline construction.

In addition to the concerns identified by Blueberry River First Nations through provincial consultation, potential Project-related impacts on culturally important sites and travel ways are described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, consultation with Blueberry River First Nations, Blueberry River First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a moderate impact on Blueberry River First Nations' culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to Blueberry River First Nations' areas of traditional and current use, particularly around Pink Mountain, the Dancing Grounds, and Lily and Lifeline Lake, which EAO understands to be of great importance with respect to cultural activities;
- Ongoing concerns regarding management of culturally important sites with respect to the Project, both during Project construction and operations; and
- Consideration of cumulative effects with respect to culturally important sites and travel ways.

5.2.6 Mitigation and Accommodation

Please refer to Section 4.2 of this report for a summary of Project impacts identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent. In response an information request from Blueberry River First Nations during the NEB

⁹⁰ NEB Report (A4K5R6)

process, the Proponent committed to documenting the occurrence of western toad, including breeding and dispersal areas, through the Wildlife Species of Concern Discovery Contingency Plan (Commitment 99). NEB Condition 14, requiring the Proponent to develop an EPP builds on the this commitment by requiring NEB approval of all mitigation related to western toad and western toad habitat prior to construction as well as a description of how the Proponent will raise awareness of construction personnel of the potential presence of western toad on the RoW and ensure the implementation and compliance with its Wildlife Species of Concern Discovery Contingency Plan; a description of the frequency and location of sweeps that will be conducted to determine the presence of western toad on the RoW; and a description of the specific deterrent and relocation measures that will be implemented if western toad is discovered on the RoW during construction.

With respect to traditional use study information, the Proponent committed to continued engagement with Blueberry River First Nations through construction and operation of the Project and continued evaluation of additional mitigation measures necessary to reduce or avoid effects on traditional use sites. The Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116). In the event traditional use sites are identified during ongoing engagement and/or construction, the traditional use study Sites Discovery Contingency Plan will be implemented to mitigate effects of the Project on these sites (commitment 98). Further, the Proponent has committed to incorporate the findings of additional traditional use studies brought forward after the Hearing for the Project, into the Project planning, including the final EPP and the EAS, to the extent feasible (commitment 111). NEB Condition 7 requires the Proponent to file a report outlining the results of any TLU investigations that were outstanding at the time of the NEB hearing. Details of this condition are discussed further in Section 4.2.4.

EAO has sought to address key concerns raised by Blueberry River First Nations through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to the general public and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance;
- Pink Mountain: development of a plan regarding Pink Mountain that outlines the means by which access will be controlled and disturbance will be minimized in the Pink Mountain area;

- Water extraction for hydrostatic testing: development of an alternatives assessment report, which describes the options for sourcing water used for hydrostatic testing, including alternatives to water extraction from Lily Lake; characterizes the environmental and cultural values, including traditional use and knowledge, that have the potential to be impacted by each water extraction alternative; and describes mitigation measures to avoid or minimize potential adverse effects; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.3 Dene Tha' First Nation

5.3.1 Community Profile

Dene Tha' First Nation is a Slavey group situated in Alberta. The Dene Tha' linguistic characteristics are Athabaskan Dene. There are three Dene Tha' communities located in northwest Alberta, Bushe River, Meander River, and Chateh, which is formerly known as Assumption. The Dene Tha' area of traditional use, as understood by the Province extends from northwest Alberta to northeast BC to the southern Northwest Territories.

Dene Tha' First Nation has seven reserves with a combined area of 30,038 ha. As of April 2016, Dene Tha' First Nation had a total registered population of 3,009, with an on-reserve population of 2,032, an off-reserve population of 917, 53 living on other reserves, seven others living on Crown land.

Dene Tha' First Nation is a member of the North Peace Tribal Council, which also includes Beaver First Nation, Little Red River Cree Nation, Lubicon Lake Nation, and Tallcree First Nation. The North Peace Tribal Council was incorporated in 1987 and is governed by a board of directors. Dene Tha' has a Custom Electoral System, elected Chief and Council under Section 11 of the *Indian Act*, with a council quorum requirement of 5.

5.3.2 Context

Approximately 170 km of the Project is located in Consultative Area B of what that the Province understands to be in Dene Tha' First Nation's area of traditional use. Based the nature and location of the Project, and EAO's assessment of the potential impacts to Dene Tha' First Nation's Treaty 8 rights based on the information available, EAO is of the view that the duty to consult Dene Tha' First Nation lies at the low end of the *Haida* spectrum.

5.3.3 Participation in the NEB Process

Dene Tha' First Nation participated as Intervenors in the NEB proceedings and filed evidence, including a TLU study entitled *Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts*. The TLU study set out issues and concerns raised by the community in relation to the Project, and the associated impacts on their Treaty rights. These are discussed in detail below. In 2013, TK was compiled from Dene Tha' First Nation during aquatics, archaeology, vegetation, wetlands and wildlife studies conducted on behalf of the Proponent. In July 2014, Dene Tha' First Nation withdrew from further participation in the NEB proceedings.

Due to Dene Tha' First Nation's decision to withdrawal from participating in NEB proceedings in 2014, the NEB report does not contain specific issues raised by Dene Tha' First Nation during the NEB process. Information contained in TK gathered during 2013 field studies and the community-led TLU study identify general concerns with respect to treaty rights, as well as concern regarding the cumulative impacts of industrial activities in Dene Tha' First Nation's area of traditional use; EAO has considered this information in development of this report.

According to the Dene Tha' First Nation's TLU study, over the last half century the Dene Tha' First Nation have witnessed an exponential increase in the destruction and "taking up" of their traditional lands by agriculture, forestry, and oil and gas development. Clearing the land for farming permanently removes

land from Dene Tha' First Nation for traditional uses; logging and oil and gas operations does so for several decades, unless contaminated or otherwise rendered permanently unusable. Nevertheless, Dene Tha' First Nation is of the view that the ability of present and future generations to exercise their constitutionally protected Treaty and Aboriginal rights is significantly compromised. Not only may the cultural connection with an area be lost for several decades or generations, it may never be regained. Habitats change, and knowledge specific to valued harvesting areas is no longer shared⁹¹.

There is a common and growing perception among the Dene Tha' First Nation that the oil and gas industry is largely responsible for the increased incidence of sickness, especially cancer, in their communities. Some Dene Tha' First Nation community members hold oil companies responsible for the deaths of several hundred Dene Tha' First Nation community members during the early days of the industry (i.e., 1960s-80s), when interaction with oil field workers resulted in uncontrolled alcohol and drug abuse, unwanted pregnancies, domestic violence, and other social pathologies⁹².

While these charges remain to be rigorously substantiated through independent inquiry, the most proximate and observable adverse impacts from the oil and gas sector are environmental and ecological in nature⁹³. Dene Tha' First Nation stressed that particular attention must be devoted to developing and implementing consultation policies and procedures that comply with directions from Canada's courts while setting aside large enough tracts of land whereby present and future generations of Dene Tha' First Nation can continue to exercise their treaty rights⁹⁴.

5.3.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Dene Tha' First Nation that the Project required an EAC under the Act. EAO issued a Section 10 Order specifying this requirement on April 8, 2016, and shared a draft Section 11 Order with Dene Tha' First Nation on May 11, 2016. The Section 11 Order described the proposed procedures for the provincial EA process for the Project, including key Aboriginal consultation opportunities. EAO requested comments on the draft Order, but did not receive input from Dene Tha' First Nation.

Following the issuance of the issuance of the Section 11 Order on June 17, 2016, EAO wrote to Dene Tha' First Nation on several occasions between July and September offering opportunities to meet and discuss the Project, but did not receive confirmation on proposed meeting dates, though Dene Tha' First Nation did express an interest in meeting. EAO offered Dene Tha' First Nation capacity funding to support their participation in the provincial review process on August 5, 2016. On September 2, 2016 EAO shared an early draft of the Aboriginal Consultation and Accommodation Report, and requested comments by September 23, 2016. On September 29, 2016, EAO received an email with an attached letter dated September 16, 2016 from Dene Tha' First Nation. In the letter, Dene Tha' First Nation expressed concern that they had not received capacity funding to support consultation on the Project and concern that they had missed opportunities to discuss the impact of the Project on their treaty rights and other important information in relation to the Project.

⁹¹ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

⁹² Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013, Page 20

⁹³ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

⁹⁴ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

On September 30, 2016, EAO responded to Dene Tha First Nation's letter reiterating the capacity funding offer and providing clarification that capacity funding is issued upon written confirmation from Dene Tha' First Nation. EAO also offered an opportunity to meeting during the week of October 13, 2016 to discuss the Project and any outstanding concerns or issues. EAO communicated that there was still time in the provincial process to consider any information provided by Dene Tha' First Nation and that Dene Tha' First Nation would have an opportunity to comment on draft referral materials, including the final draft of the Aboriginal Consultation and Accommodation Report prior to referral to Ministers for decision. Dene Tha' First Nation responded with an invitation to for EAO to meet with Chief and Council on October 17, 2016 in Chateh, Alberta.

During the meeting with Dene Tha' First Nation on October 17, 2016, EAO discussed the background and rationale for the current provincial review of the Project, as well as the provincial review process, including timelines. Dene Tha' First Nation explained that they hold an agreement with TransCanada that limits their ability to speak to specific aspects of the Project and that they had initially began the NEB process for the Project as an Intervenor, but had withdrawn from participation prior to the conclusions of the hearing. They also explained that feedback and concerns could only be brought forward to the panel by Intervenors and as a result, they felt their concerns and TLU information were not adequately reflected in the NEB report.

Dene Tha' First Nation noted that consultation with the Proponent and federal government had been inadequate and requested that EAO and Proponent to come back to their community to host a community open house to seek feedback on the Project. Dene Tha' First Nation also noted that federal and provincial capacity funding was inadequate. Dene Tha' First Nation discussed putting together an opinion paper to present to EAO that outlines their concerns. EAO explained that it would consider any submissions in the final report, and that while it was likely too late in the process to facilitate an open house, EAO would be happy to have further discussions on the Project.

EAO received comments on the initial draft of the Aboriginal Consultation and Accommodation Report from Dene Tha' First Nation on October 28, 2016. The comments received from Dene Tha' First Nation reflected concern with the provincial, federal and Proponent consultation processes for the Project, use of TLU information, and disappointment in the limited amount of capacity funding provided to facilitate consultation. Dene Tha' First Nation noted that there "is simply too much development currently taking place in our lands, and far too many other demands on our limited resources" to meaningfully participate in the EAO process without sufficient capacity funding. Dene Tha' First Nation also note that the Proponent was not required to submit a commitment tracking table to the federal crown as part of its decision making process and was only required to file updated commitment tracking tables after the NEB had issued the CPCN. Concern was also expressed regarding the enforceability of commitments, and Dene Tha' First Nation noted that EAO should take steps to ensure that the Proponent's commitments are fulfilled. Dene Tha' First Nation also took issue with the NEB's assessment of Project impacts on woodland caribou, noting that their TLU study expressed serious concern regarding Project impacts on caribou.

EAO provided a response to Dene Tha' First Nation's comments on the initial draft of the Aboriginal Consultation and Accommodation Report on November 24, 2016. EAO made a number of offers to follow up with a teleconference meeting to discuss outstanding issues and to request additional TLU information that Dene Tha' First Nation indicated they had collected with respect to the Project. No responses on these requests were received. A draft referral package was sent to Dene Tha' First Nation

on November 24, 2016 for a two-week review period. EAO did not receive comments from Dene Tha' First Nation on the draft referral package.

EAO made numerous offers of the \$5,000 in available capacity funding, and provided rationale for the amount that was being offered; Dene Tha' First Nation sent written acceptance of capacity funding on November 28, 2016, which EAO subsequently provided.

5.3.5 Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Dene Tha' First Nation members extensively hunt year round and consume a range of animals as traditional foods including moose, beaver, rabbit, chickens, muskrat, lynx, porcupine, jacks, ducks, geese, deer, elk, and caribou. Based on information collected during interviews with Dene Tha' First Nation members as part of the community-led TLU study during the NEB process, between 50-80% of Dene Tha' First Nation diet is comprised of traditional foods.

Moose hunting is identified as one of the most important TLU activities undertaken by Dene Tha' First Nation hunters in the Project area. Key hunting areas asserted in the Dene Tha' First Nation TLU study include a 20 km wide corridor bordering the Alaska Highway between Fort St. John and Ft. Nelson, the area west of the Alberta border between Boundary Lake and Doig River, as well as the areas surrounding Pink Mountain, Wonowon and Prophet River⁹⁵.

Dene Tha' First Nation appear to intensify moose hunting activities during the fall, particularly in the Boundary Lake area, located approximately 90 km from the Project corridor. Moose hunting, as well as hunting for other species is also conducted in the area at the north end of the Kahta portion of the pipeline, between Wonowon and Pink Mountain, as well as in the area between Attache and Wonowon and throughout the Peace River valley.

Many Dene Tha' First Nation members consider the area west of Boundary Lake as a major, if not primary moose hunting ground due to the combination of a number of favourable conditions, including higher ground, easy access (as a result of an abundance of access roads), and many small lakes, streams and beaver ponds. At some fall campsites around Boundary Lake, small cohorts of Dene Tha' First Nation engage in a highly organized system of food production and distribution involving hunters, transporters, camp attendants, butchers, dry and meat producers that provide meat for much of the Dene Tha' First Nation community. As more non-native hunters discover the Boundary Lake area, and as oil and gas development proceeds at its current pace, it is likely that Dene Tha' hunters will find the Pink Mountain area increasingly attractive. Yet, it too may soon become subject to the same industrial development pressures, especially as oil and gas development intensifies in the area.

Dene Tha' First Nation participants in the TLU study noted that in some cases, moose are scared by noise associated with industrial activity, but other cases, moose are attracted to noisy sites as a means of avoiding predators. This phenomenon has been witnessed by Dene Tha' First Nation community members, particularly in proximity to compressor stations where moose sometimes seek temporary refuge from wolves. Other Dene Tha' First Nation members note increased hunting pressure in the

⁹⁵ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

Sulphur Lake area, shifting some hunting activities to the area west of the Alberta-BC border to past Goodlow and between the Peace River and Doig River, roughly 75 km from the Project⁹⁶.

With respect to hunting moose, Dene Tha' First Nation communicated to EAO that new access roads and clearing for the pipeline and related facilities will reduce suitable habitat for moose and improve access for non-aboriginal hunters, resulting in adverse impacts to moose populations and to the ability of Dene Tha' First Nation members to exercise their treaty rights.

In addition to impacts on moose, Dene Tha' First Nation community members interviewed as part of their TLU study identified impacts to caribou, furbearers, and birds; specifically owls, nighthawks, grouse, ptarmigan, and waterfowl. Herbicide spraying to control vegetation along roads, pipelines, well sites, power transmission lines and other oil and gas facilities is another concern of Dene Tha' First Nation harvesters. Many Dene Tha' First Nation members have seen a significant decline in animals (furbearers, birds of prey, and smaller animals) around these installations, and suspect that herbicide use is partially responsible⁹⁷.

In the past, Dene Tha' First Nation registered traplines in BC and Alberta tended to concentrate trapping, hunting and other TLU activities in the Hay River, Shekillie River and Petitot River watersheds, which are located more than 100 km from the Project. In more recent decades, Dene Tha' First Nation indicated that they have been forced to hunt further afield in response to dwindling resources closer to their reserves. As more land is disturbed and resources impacted by the agricultural, oil and gas, and forestry sectors within Dene Tha' First Nation's area of traditional use, traplines holders and hunters have had to adopt different techniques and strategies and depend more heavily on other parts of Dene Tha' First Nation area of traditional use, including areas that overlap with the Project. Dene Tha' First Nation is of the opinion that noise and vibration from power lines, pipelines, and other oil and gas installations and activities have driven animals away from traplines and other areas where Dene Tha' hunters prefer to exercise their treaty rights.

During consultation with EAO, Dene Tha' First Nation communicated concerns regarding cumulative effects on caribou as a result of forestry clearing, and impacts of the Project on moose and on trapping in general. Dene Tha' First Nation also view the NEB's assessment of Project impacts on trapping to be unaddressed and that specific mitigation measures and Project conditions are needed from EAO to ensure these impacts are addressed. In addition to the concerns identified by Dene Tha' First Nation through provincial consultation, potential Project-related impacts to hunting and trapping are described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with Dene Tha' First Nation, Dene Tha' First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Dene Tha' First Nation's hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Dene Tha' First Nation's community and areas of traditional use;

⁹⁶ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

⁹⁷ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

- Project-related activities are not likely to have significant adverse effects on species harvested by Dene Tha' First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Dene Tha' First Nation community members accessing traditional hunting and trapping sites within the vicinity of the Project

Impacts on Fishing

The Beaton and Halfway rivers near Pink Mountain and associated watersheds were identified as areas used by Dene Tha' First Nation for fishing⁹⁸. Both areas are within 10 km of the Project, and there is a section northwest of Pink Mountain where the Project crosses the Beaton River. Dene Tha' First Nation community members note that fishing has declined significantly due to scarcity of fishing resources and a growing perception of contamination in some watersheds as a result of surrounding industrial activities.

During consultation with EAO, Dene Tha' First Nation communicated concerns regarding the impacts of the project on fishing and impacts to streams as a result of water crossings. Community members noted that all rivers and streams in the area were closely interconnected and that any impacts to one from a spill, for example, would impact fish and fish habitat in others. In addition to the concerns identified by Dene Tha' First Nation through provincial consultation, potential Project-related impacts to fishing are described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with Dene Tha' First Nation, Dene Tha' First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Dene Tha' First Nation's fishing activities. In reaching this conclusion, EAO has considered the following key factors:

- Project-related watercourse crossings are not likely to cause significant adverse effects; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Dene Tha' First Nation community members accessing traditional fishing sites within the vicinity of the Project.

Impacts on Gathering

Dene Tha' First Nation's gathering activities include a variety of berries and medicinal plants (cranberry, bunch berry, bear berry, juniper, fungi) harvested around the Boundary Lake area. Berries are also harvested around the Pink Mountain during the early and later parts of the summer. Dene Tha' First Nation did not raise specific concerns regarding gathering to EAO during consultation, but did note a general concern regarding the cumulative impacts of forestry in their area of traditional use. Potential Project-related impacts to gathering are described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, consultation with Dene Tha' First Nation, Dene Tha' First Nation's engagement with the Proponent, the Proponent's proposed

⁹⁸ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Dene Tha' First Nation's gathering activities. Some of the factors that have informed EAO's conclusions include:

- Project-related activities are not likely to cause significant adverse effects on species harvested by Dene Tha' First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Dene Tha' First Nation community members accessing traditional gathering sites within the vicinity of the Project

Impacts on Culturally Important Sites and Travel Ways

Repeatedly occupied Dene Tha' First Nation hunting camps are concentrated around Boundary Lake, which is approximately 90 km from the Project. Small groups of Dene Tha' First Nation hunters will often camp together at Boundary Lake in several locations and hunt for extended periods of time. Tent poles and drying racks are sometimes left at these seasonally reoccupied campsites for future use, despite the possibility that they might be destroyed by oil and gas activities.

Historic and prehistoric evidence of Dene Tha' First Nation's use and occupation, including a variety of trails and campsites, is anticipated to be found in Project area⁹⁹. Overnight camps and other occupation sites of more fleeting duration are also expected throughout the area, in conjunction with access roads and seismic lines.

There is a potential risk of disturbance to, or loss of, previously recorded or undiscovered heritage sites resulting from Pipeline construction. Similarly, there is also a risk of disturbance to or loss of, previously unrecorded TLU sites and disturbance to, or interference with, traditional uses during construction, operation and maintenance activities. Dene Tha' First Nation did not raise specific concerns regarding culturally important sites and travel ways during consultation with EAO. Potential Project-related impacts to culturally important sites and travel ways are described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, consultation with Dene Tha' First Nation, Dene Tha' First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Dene Tha' First Nation's culturally important sites or travel ways. Some of the factors that have informed EAO's conclusions include:

- No specific culturally important sites or travel ways to Dene Tha' First Nation were identified with respect to the Project, though EAO recognizes that previously undiscovered sites may be identified in the future; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Dene Tha' First Nation community members accessing traditional gathering sites within the vicinity of the Project

⁹⁹ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013

5.3.6 Mitigation and Accommodation

Please refer to Section 4.0 for a summary of Project impacts identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent. For example, the Proponent has committed to consideration of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116).

Dene Tha' First Nation are of the view that the standard mitigation measures committed to by the Proponent are not sufficient to address their concerns. According to the Dene Tha' First Nation's TLU study, the following five specific mitigation and accommodation measures are needed for the Project¹⁰⁰:

1. More and better consultation;
2. Increased revenue sharing contracting opportunities;
3. Establishment of protected areas;
4. Establishment of environmental monitoring and reclamation program; and
5. Establishment of a hunter/trapper support program.

EAO has sought to address key concerns raised by Dene Tha' First Nation through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

¹⁰⁰ Dene Tha' Land Use in the Vicinity of TransCanada Pipeline Limited's Proposed North Montney Mainline Pipeline and Anticipated Ecological/Environmental Impacts, 2013. Pages 32-34.

5.4 Doig River First Nation

5.4.1 Community Profile

Doig River First Nation is a signatory to Treaty 8. It has two reserves with a combined area of 1,358 ha: Doig River IR 206, comprising 1,001 ha; and the North Parcel of Beatton River IR 204, comprising 357 ha. Prior to 1977, Doig River First Nation was governed with Blueberry River First Nations as a single administrative entity known as the Fort St. John Indian Band. As of April 2016, Doig River First Nation had a total registered population of 304, with an on-reserve population of 136, an off-reserve population of 158, and 10 living on other reserves. Doig River First Nation has one Chief and two Councillors elected under the *Indian Act* electoral system.

5.4.2 Context

Approximately 85 km of the Project would overlap with the western area of what the Province understands to be Doig River First Nation's area of traditional use. The Project enters this area of traditional use approximately 3 km north of the confluence of Cameron River and Townsend Creek. The Project route then proceeds northwest, paralleling the border of what the Province understands to be Doig River First Nation's area of traditional use, before heading northeast across the Blueberry River and then west, exiting Doig River First Nation's area of traditional use approximately 10 km east of Julienne Creek. Based on the nature and location of the Project, and EAO's assessment of the potential impacts to Doig River First Nation's Treaty 8 rights, EAO is of the view that the duty to consult Doig River First Nation lies at the middle of the *Haida* spectrum.

5.4.3 Participation in the NEB Process

Doig River First Nation was engaged as part of the NEB's enhanced Aboriginal Engagement Process for the Project but did not participate in the GH-001-2014 proceeding as an Intervenor.

In 2010, Doig River First Nation undertook a field assessment with CH2M (formerly TERA) that consisted of both a map review and ground reconnaissance. In 2011 Doig River First Nation participated in Proponent-led engagement for the Aitken Creek section of the Project and for the Kahta section in 2013. In 2013, Doig River First Nation also contributed TK during archaeology, aquatics, vegetation, wetlands and wildlife biophysical field studies led by the Proponent.

During the NEB process, Doig River First Nation set out issues and concerns raised by the community in relation to the Project, and the associated impacts on their treaty rights. Doig River First Nation's key concerns centre on impacts to hunting and fishing, and to traditional land and resource uses, sites and activities. Specific issues raised include:

- Impacts to areas used for subsistence hunting including the Peace River Valley, the Del Rio area, the Farrell Creek area, and the area near the Alaska Highway north of the Halfway River Reserve.
- Impacts to highly used traditional fishing areas;
- Important watercourses including the Peace, Moberly, and Pine Rivers and Farrell Creek that would be affected by Project activities;
- Pipeline routing that intersects key traditional travel and use corridors, including trails associated with the Peace, Moberly and Pine Rivers;
- Camp sites used by Doig River First Nation within 5 km of the Project; and
- Sacred and ceremonial sites in the greater Peace River Valley and Bear Flats area.

5.4.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Doig River First Nation that the Project required an EAC under the Act. EAO issued a Section 10 Order specifying this requirement on April 8, 2016, and shared a draft Section 11 Order with Doig River First Nation on May 11, 2016. The Section 11 Order described the proposed procedures for the provincial EA process for the Project, including key Aboriginal consultation opportunities. EAO requested comments on this order, but did not receive input from Doig River First Nation.

Following the issuance of the Section 11 Order on June 17, 2016, Doig River First Nation accepted capacity funding from EAO to support consultation activities. Initial dates for meetings were discussed in July 2016. Between July and October 2016, EAO offered numerous opportunities to meet, however no meetings were finalized. On September 2, 2016, EAO shared an early draft of the Aboriginal Consultation and Accommodation Report, and requested comments by September 23, 2016. EAO did not receive comments on the draft Aboriginal Consultation and Accommodation Report from Doig River First Nation.

On November 4, 2016, Doig River First Nation responded to requests to meet with EAO, and a meeting was held in the Doig River First Nation community on November 16, 2016. During that meeting, EAO discussed the provincial process for the Project and timelines for provincial referral. EAO provided a summary of Project details and provided a map of the Project route to facilitate consultation. Doig River First Nation expressed concern regarding the Peace River watercourse crossing, specifically slope stability and issues potentially arising from intersection with the Site C hydroelectric dam project. EAO agreed to forward Doig River First Nation engineering information from the Proponent regarding watercourse crossings and bank stability assessments.

Doig River First Nation explained that capacity constraints had prevented them from reviewing the early draft of the Aboriginal Consultation and Accommodation provided by EAO in September 2016. Doig River First Nation explained that without reviewing the draft, their ability to identify potential issues was limited. EAO agreed to provide an updated draft of the report on November 17, 2016, one week in advance of the scheduled draft referral package, to allow more time for Doig River First Nation's review and comments. EAO also extended the timeline for separate submissions by two days to facilitate capacity constraints. The complete draft referral package was sent to Doig River First Nation on November 24, 2016 for a two-week review period. EAO did not receive comments from Doig River First Nation on the draft referral materials.

5.4.5 Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Doig River First Nation members continue to hunt and trap throughout their area of traditional use, as understood by the Province. Hunting and trapping occurs primarily in the late-summer months in order to stock food for winter.

Doig River First Nation reported important subsistence hunting areas throughout the Project area including the Peace River Valley, the Del Rio area, the Farrell Creek area, and the area near the Alaska Highway north of the Halfway River Reserve. Moose, mule deer, elk, wolf, bear, porcupine, coyote, lynx,

squirrel, rabbit, and beaver were all identified as species hunted by Doig River First Nation¹⁰¹. Moose is considered a principle food source, and the fall moose hunt remains the most important harvest of the year. Protection of moose licks and moose calving areas have been identified as a concern¹⁰². Doig River First Nation has identified that a preferred moose calving area is located on the islands in the Peace River in proximity to a planned water course crossing. Doig River First Nation also asserts hunting in the PMT and trapping in the Peace River Valley between Taylor and Moberly Lake¹⁰³. This area is transected by the south end of the Aitken Creek line.

Doig River First Nation has previously noted that the southern limit of their area of traditional use, as understood by the Province, has been impacted by land alienation from agriculture and industrial activities, reducing the quality and quantity of several key species hunted and trapped by Doig River First Nation. Specifically, Doig River First Nation reported that the Peace River area is used less frequently than in the past for hunting, trapping, and plant gathering activities. Instead, areas south of the Fontas River near the Doig and Beatton River, and toward the Alberta border including the Boundary Lake and Ole Lake areas, are becoming increasingly important for Doig River First Nation members. Other potential Project-related impacts to hunting and trapping are also described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, Doig River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible-to-minor impact on Doig River First Nation's hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Doig River First Nation's community and areas of traditional use;
- Project-related activities are not likely to have significant adverse effects on species harvested by Doig River First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to Doig River First Nation community members accessing traditional hunting and trapping sites within the vicinity of the Project.

Impacts on Fishing

The Peace River Valley was identified as an especially highly used area for fishing by Doig River First Nation. The Peace, Moberly, and Pine Rivers and Farrell Creek were identified as important watercourses that would be or affected by the Project through crossings or close proximity (within 5 km).

Doig River First Nation has noted that, relative to hunting and trapping, fishing is less important to Doig River First Nation members, with many historically important fishing areas, such as Beatton River not used by members because of the perception of contamination from surrounding industrial activity. Fishing areas of current importance include confluence of various tributaries with the Peace River (e.g.,

¹⁰¹ NEB Report (A4K5R6); Environmental and Socio-economic Assessment, Chapter 14, Traditional Land and Resource Use (A3Q6G)

¹⁰² Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

¹⁰³ North Montney Mainline NEB Report (A4K5R6); Environmental and Socio-economic Assessment, Chapter 14, Traditional Land and Resource Use (A3Q6G)

Halfway River, Portage Creek), the area around Taylor on the Peace River, the upper Doig River and the upper Blueberry River. Fish species of importance include jackfish, whitefish, pickerel (walleye), grayling, trout (bull, lake, Dolly Varden, and rainbow), and suckers¹⁰⁴.

Potential Project-related impacts to fishing are also described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, Doig River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Doig River First Nation's fishing activities. Some of the factors that have informed EAO's conclusions include:

- Project-related watercourse crossings are not likely to cause significant adverse effects; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to Doig River First Nation community members accessing traditional hunting and trapping sites within the vicinity of the Project.

Impacts on Gathering

Various plant species are harvested by Doig River First Nation members for food, medicine, or other cultural uses; however, Doig River First Nation had indicated that the quantity and quality of plants available for traditional harvesting has reduced over time. Plant gathering activities take place in the greater Peace River valley, Del Rio area, Farrell Creek area, the area near the Alaska Highway north of the Halfway River Reserve, Kobes Creek Road area, Altares Core Road area, Beryl Prairie Road section, Boysen Road section, and the Pine River valley. Sage and other rare medicinal plants are collected along the south facing slopes of the Peace River valley¹⁰⁵. Important berry picking areas can be found all along the Beatton River north of Fort St. John to the confluence with the Blueberry River¹⁰⁶, falling approximately 50 km or more from the Project route. An important medicinal plant habitat area is located on the north shore of the Peace River opposite the confluence with the Moberly River¹⁰⁷, approximately 25 km from the Project route.

Traditionally harvested plants include high-bush and low-bush cranberry, frog's blanket/bed, saskatoon berries, wild mint, strawberries, wild rose hips, huckleberries, diamond willow fungus, cloudberries, lichen and peat moss, mushrooms, spruce gum, cow parsnip, wild rhubarb, sage, Labrador tea, and devil's club.

Potential Project-related impacts to gathering are also described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, Doig River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected

¹⁰⁴ Site C Clean Energy Project; Volume 5 Appendix A06 Part 4; Aboriginal Summary: Doig River First Nation, Final Report. January 2013.

¹⁰⁵ Site C Clean Energy Project; Volume 5 Appendix A06 Part 4; Aboriginal Summary: Doig River First Nation, Final Report. January 2013.

¹⁰⁶ Site C Clean Energy Project; Volume 5 Appendix A06 Part 4; Aboriginal Summary: Doig River First Nation, Final Report. January 2013.

¹⁰⁷ Site C Clean Energy Project; Volume 5 Appendix A06 Part 4; Aboriginal Summary: Doig River First Nation, Final Report. January 2013.

to result in a negligible-to-minor impact on Doig River First Nation's gathering activities. Some of the factors that have informed EAO's conclusions include:

- Project-related activities are not likely to cause significant adverse effects on species harvested by Doig River First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Doig River First Nation community members accessing traditional gathering sites within the vicinity of the Project.

Impacts on Culturally Important Sites and Travel Ways

Trails and travel ways are important to Doig River First Nation members for seasonal hunting, fishing, gathering, and trade throughout the region. Traditionally-used trails between Taylor and Moberly Lake and between the Moberly and Pine Rivers were identified during the NEB process. Doig River First Nation stated that important sacred places exist in the greater Peace River Valley, and that the Bear Flats is an area used in the past and currently as a ceremonial place¹⁰⁸. Cache Creek was historically used by Doig River First Nation and other First Nations peoples for caching foods during hunting and gathering seasons.

Doig River First Nation indicated that the Projects intersects key traditional travel and use corridors, including trails associated with the Peace, Moberly and Pine Rivers. Doig River First Nation also indicated that there are a number of camp sites used by Doig River First Nation within 5 km of the Project¹⁰⁹.

Potential Project-related impacts to culturally important sites and travel ways are also described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, Doig River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor impact on Doig River First Nation's culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to important cultural and spiritual sites and travel ways, as identified through the NEB process; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Doig River First Nation community members accessing culturally important sites and travel ways within the vicinity of the Project.

5.4.6 Mitigation and Accommodation

Please refer to Section 4 in the main body of this report for a summary of Project impacts identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

¹⁰⁸ NEB Report (A4K5R6)

¹⁰⁹ NEB Report (A4K5R6)

The Proponent has made direct commitments to Doig River First Nation with respect to incorporation of TLU information in Project planning and activities. Specifically, the Proponent has committed to continued engagement with Doig River First Nation through construction and operation of the Project and continued evaluation of additional mitigation measures necessary to reduce or avoid effects on TLU. The Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116).

EAO has sought to address key concerns raised by Doig River First Nation through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.5 Fort Nelson First Nation

5.5.1 Community Profile

Fort Nelson First Nation is an Athapaskan speaking people belonging to the Slavey culture group. The Fort Nelson First Nation linguistic group includes Slavey (Dene) and Cree. This group signed Treaty 8 in August 1910 as part of (Siccannie; Siccanni; Sekani; Slave Band of Fort Nelson; Slavey/Cree), which was split into Fort Nelson First Nation and Prophet River First Nation in 1974.

Fort Nelson First Nation is comprised of eight reserves, encompassing a total land base of 9,752 ha, with the main reserve, Fort Nelson I.R. #2, located approximately 6 km southeast of the community of Fort Nelson. As November 2016, the total registered population was 936, with 401 people living on-reserve.

Fort Nelson First Nation held past affiliation with the Treaty 8 Tribal Association but removed themselves from the Treaty 8 Tribal Association and are no longer affiliated with this or any other tribal council or organization. Fort Nelson First Nation has an Act Electoral System, elected Chief and Council under Section 10 of the *Indian Act*, with a council quorum requirement of 4.

5.5.2 Context

The Project would be located approximately 72 km from what the Province understands to be Fort Nelson First Nation's area of traditional use. Based on the nature and location of the Project, and EAO's assessment of the potential impacts to Fort Nelson First Nation's Treaty 8 rights, EAO is of the view that the duty to consult Fort Nelson First Nation lies at the low end of the *Haida* spectrum. Fort Nelson First Nation was listed on Schedule C of the Section 11 Order.

5.5.3 Participation in the NEB Process

Fort Nelson First Nation was an Intervenor in the NEB process. Fort Nelson First Nation filed evidence and participated in final arguments presented during the panel process but did not complete a Project specific traditional use study.

As an Intervenor in the NEB process, Fort Nelson First Nation set out issues and concerns raised by community members in relation to the Project. Key concerns centre on impacts to wildlife and wildlife habitat, hunting and fishing including:

- Environmental impacts, including linear and areal disturbances, which increase habitat fragmentation, and adversely impact caribou populations and other wildlife species;
- Increased traffic and other activity in relatively remote and undisturbed areas, resulting in the displacement of animals on which Fort Nelson First Nation families and mode of life depends;
- Displacement of traditional and recreational activities in Fort Nelson First Nation territory; and
- Direct adverse impacts on water, riparian areas, fish and fish habitat and other aspects of the southern portion of the Liard watershed.

Fort Nelson First Nation also raised procedural concerns regarding limited opportunities for Project input, potential Project-related effects on traditional land and resource use, and field research methods and data collection protocols. Fort Nelson First Nation stated that the Proponent did not properly consider the cumulative impacts of the Project, and neither the provincial nor federal Crown had assessed the cumulative impacts of induced gas development in Fort Nelson First Nation's territory.

Regarding cumulative impacts, Fort Nelson First Nation raised concerns that the cumulative impact analysis did not include the impacts of oil and gas development on Fort Nelson First Nation to date, the impacts of current development, or the direct and induced impacts of reasonably foreseeable development in their territory. Fort Nelson First Nation stated that the lack of a meaningful cumulative impacts assessment is a threat to their socio-economic well-being, health, and cultural heritage. Fort Nelson First Nation stated that the NEB did not have enough information about cumulative impacts to make a reasonable conclusion regarding this issue.

5.5.4 Summary of Crown Consultation

Fort Nelson First Nation was provided notification of key milestones for the Project, and the opportunity to review and provide comments on the draft Aboriginal Consultation and Accommodation Report, as well as the other draft referral materials.

In August 2016, Fort Nelson First Nation contacted EAO and requested a meeting to discuss the Project. A teleconference was held between EAO and Fort Nelson First Nation on August 15, 2016, during which the EAO presented an overview of EAO's process and legal overview of why EAO was undertaking a review of the Project. At that time, EAO identified consultation opportunities, including review of the initial draft Aboriginal Consultation and Engagement Report. On August 24, 2016, Fort Nelson First Nation requested that EAO refer back to the comments and concerns put forward by Fort Nelson First Nation through NEB submissions because they would not be able to provide additional information without capacity funding from EAO. Fort Nelson First Nation also indicated that a review of the initial draft Aboriginal Consultation and Accommodation Report was not necessary. EAO provided the draft referral materials to Fort Nelson First Nation for review on November 24, 2016. EAO did not receive comments from Fort Nelson First Nation on the draft referral materials.

5.5.5 Impacts of Project on Treaty Rights and Interests

The Project crosses the Buckinghorse and Sikanni Chief Rivers, both of which flow into the Liard watershed. During the NEB process, Fort Nelson First Nation stated "the Project would likely have direct adverse impacts on water, riparian areas, fish and fish habitat and other aspects of the southern portion of the Liard watershed, which flows north into and through the heart of Fort Nelson First Nation territory"¹¹⁰. In addition, Fort Nelson First Nation stated that as a result of gas sector activities in the northern BC, there are a number of environmental impacts including linear and areal disturbances that increase habitat fragmentation, which adversely impacts caribou population and other wildlife species. Fort Nelson First Nation expressed concern that in addition to an increase in linear disturbances to wildlife habitat, the Project would create increased traffic and other activity in a relatively remote and undisturbed part of Fort Nelson First Nation's area of traditional use¹¹¹.

Taking into consideration the potential residual adverse effect from the Project, the lack of overlap with the Project on the area the province understands to be Fort Nelson First Nation's area of traditional use, EAO concludes that the proposed Project is not expected to impact Fort Nelson First Nation's Treaty 8 rights to hunt, trap and fish, or Fort Nelson First Nation's gathering activities and use of culturally important sites and trails.

¹¹⁰ NEB Report (A4K5R6) Page 141.

¹¹¹ GH_001 Proceeding Summary (see Ratcliffe and Co. to NEB, FNFN Written Submissions, FNFN Concerns)

5.5.6 Mitigation and Accommodation

Please refer to Section 4 for a summary of Project mitigation identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

The Proponent has made direct commitments to Fort Nelson First Nation with respect to the incorporation of TLU information in Project planning and activities. Specifically, the Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116).

EAO has sought to address key concerns raised by Fort Nelson First Nation through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed; and
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance.

5.6 Halfway River First Nation

5.6.1 Community Profile

Halfway River First Nation is a Beaver, or Dane-zaa, speaking community and was originally part of the Hudson Hope Band. The Hudson Hope Band, which adhered to Treaty No. 8 in 1914, separated in the 1970's to become the Halfway River First Nation and West Moberly First Nations. The Halfway River reserve is north of the Peace River and is 3,988.8 ha in size. As of April 2016, Halfway River First Nation had a total registered population of 280, with an on-reserve population of 143, an off-reserve population of 131, and 6 living on other reserves. Halfway River First Nation is governed by a Chief and two Councillors.

5.6.2 Context

Approximately 250 km of the Project is located within what the Province understands to be Halfway River First Nation's area of traditional use. Based on the nature and location of the Project and EAO's assessment of the potential impacts to Halfway River First Nation's Treaty 8 rights, EAO is of the view that the duty to consult Halfway River First Nation lies in the middle of the *Haida* spectrum.

5.6.3 Participation in the NEB Process

Halfway River First Nation was engaged as part of the NEB's enhanced Aboriginal Engagement Process for the Project but did not participate in the GH-001-2014 proceeding. Halfway River First Nation participated in Proponent-led engagement for the Aitken Creek portion of the Project in May 2011 and for the Kahta section in June 2013. Halfway River First Nation has indicated that there was very little consultation by the Proponent on the Kahta section of the Project. As part of the Proponent engagement process, Halfway River First Nation participated in TK studies conducted in 2011 and 2012. In 2013, further TK was compiled from Halfway River First Nation during aquatic, archaeology, vegetation, wetland and wildlife field studies. Halfway River First Nation elected to participate in a TLU study facilitated by CH2M (formerly TERA) and participated in monitoring of geotechnical investigations at the Halfway River in October 2013. In 2015, Halfway River First Nation completed additional archeological studies.

Halfway River First Nation's key concerns raised during the NEB process centred on impacts to hunting, trapping, gathering, fishing, and to traditional land and resource uses, sites and activities. Key issues raised include:

- Continued ability to trap and hold provincial traplines;
- Concern about project routing at the north end of the Kahta line and its proximity to Lily Lake;
- Harvesting in areas of importance; and
- Continued use of Halfway River as a major transportation route and fishing, hunting, and harvesting area for Halfway River First Nation.

5.6.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Halfway River First Nation that the Project required an EAC under the Act. EAO issued a Section 10 Order, specifying this requirement on April 8, 2016, and shared a draft Section 11 Order with Halfway River First Nation on May 11, 2016. The draft Section 11 Order described the proposed procedures for the provincial EA process for the Project, including key

Aboriginal consultation opportunities. EAO requested comments on this Order, but did not receive written feedback from Halfway River First Nation. The Section 11 Order was issued on June 17, 2016.

EAO met with Halfway River First Nation on August 9, and September 12, 2016 to discuss the provincial assessment process for the Project and Project-specific issues. EAO provided Halfway River First Nation capacity funding to support consultation activities.

During consultation meetings, Halfway River First Nation requested and received the following information from EAO regarding the Project: Project shape files, information on access management, rationale with respect to routing around the Sikanni Chief River crossing, and reference to find information on tolling methodology and upstream analysis.

Key concerns raised by Halfway River First Nation during provincial consultation meetings included:

- Access management: concerns about increased access into relatively undisturbed areas, particularly around watercourse crossings and riparian disturbance. Halfway River First Nation identified several key areas where community members practiced their treaty rights, and where Project activities could increase access to the public, putting further pressure on species harvested by Halfway River First Nation, and also provide increased access and opportunities for predators of these species; and
- Water withdrawal from Lily Lake: Halfway River First Nation expressed that members use the area around Pink Mountain, including Lily Lake, to practice their treaty rights. Concerns about withdrawal of water from Lily Lake for hydrostatic testing were identified due to the marsh complexes surrounding the lake and the potential for effects to the hydrology in the area if water is withdrawn. This area was also identified by Halfway River First Nation as an important area for moose calving. A nearby lake, Duhu Lake, was identified by Halfway River First Nation as an acceptable alternate water source; however, it is unclear if there is a hydrological connection between the two lakes, which would require further exploration. Lily Lake is discussed further in Section 4.1.1.

Halfway River First Nation communicated to EAO that they would like to discuss access management options directly with the Proponent and felt that direct communication and further consultation with the Proponent on selection of access management strategies and locations was the best way forward. EAO considered this during development of provincial conditions for the Project.

In response to the concerns regarding water withdrawals for Lily Lake, EAO requested additional information from the Proponent regarding selection of this site. The Proponent provided EAO with their hydrostatic test plan, as well as rationale for selection of this site. EAO considered the information provided, and determined that due to the high cultural sensitivity of the Lily Lake area, it was appropriate to propose Condition 16, which requires development of a report to describe potential effects of water extraction from Lily Lake on the lake and the surrounding area, including mitigation measures to avoid or minimize potential adverse effects.

On September 2, 2016 EAO shared an early draft of the Aboriginal Consultation and Accommodation Report with Halfway River First Nation, and requested comments by September 23, 2016. EAO did not receive comments on the preliminary draft from Halfway River First Nation. A draft referral package was sent to Halfway River First Nation on November 24, 2016 for a two-week review period. EAO received comments from Halfway River First Nation on December 13, 2016, which they requested be submitted to Ministers as a separate submission. The comments articulated concerns regarding EAO's assessment

of the Project and associated proposed conditions, as well as potential Project impacts on wildlife habitat, watercourses, traplines and sites of cultural significance. With respect to watercourse crossings, Halfway River First Nation noted concerns with the proposed crossing methods at the Halfway River, Ground Birch Creek, Farrell Creek, Kobes Creek, the Moberly River, the Cameron River and the Peace River. Impacts associated with these watercourse crossings are discussed in further detail in Section 5.6.5.

Halfway River First Nation also raised concerns regarding cumulative effects, noting that the amount of associated infrastructure required to supply the Project will be extensive; and that the current and future disturbance created by the Project will very likely result in significant adverse environmental effects. Halfway River First Nations stated that EAO should require an adequate cumulative effects assessment and management plan for the Project.

In addition to the suggested revisions to EAO's Project conditions, and the addition of a condition regarding cumulative effects assessment and management, Halfway River First Nation recommended two additional conditions related to geotechnical assessments and access management. EAO provided a written response to Halfway River First Nation's comments, including a description of how EAO considered the comments in the final referral package, and a red lined version of Section 5 of the Aboriginal Consultation and Accommodation Report, showing the changes made to that document.

5.6.5 Potential Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Halfway River First Nation's asserted hunting and trapping territories are concentrated within the Halfway Valley, on the edge of the foothills and the Rocky Mountains. Hunting and trapping extend as far west as the Finlay River watershed, located on the western slope of the Rockies in the Rocky Mountain Trench, in an area which lies outside of what the Province understands to be the western boundary of Treaty 8. Three current key harvesting areas within what the Province understands to be Halfway River First Nation's area of traditional use are located at the confluence of Halfway River and the Cameron River, the Chowadie area, and the Kobes Creek area. Other significant wildlife habitat was identified between Groundbirch Creek and Ferrell Creek. Grizzly bear sightings were also caught using wildlife cameras in the area north of the Halfway First Nation Indian Reserve and Gundy Creek.

Important game species include moose, bighorn and stone sheep, mule and whitetail deer, bison, and woodland caribou, as well as smaller game, such as beaver and hare. Other species include porcupine, whistler (hoary) marmot, wolf, blue grouse, ruffed grouse and spruce grouse^{112,113}. Moose, elk and deer are the most important harvested species for local use^{114,115}. The fall moose hunt remains the most important harvest of the year and trapping is common in the winter, with less harvesting occurring

¹¹² Finavera Wind Energy Inc. (FWEI). 2011. Application for an EA Certificate – Tumbler Ridge Wind Energy Project. Available at: <http://www.finavera.com>. Accessed: May 2016.

¹¹³ Prince Rupert Gas Transmission Project: Application for an Environmental Assessment Certificate. Part C – Aboriginal Consultation, Section 33. Prepared for TransCanada Pipelines Ltd. Revision 1, May 2014.

¹¹⁴ Pokiak, Roslyn; TERA Environmental Consultants Ltd. (1994). *Halfway River Band and Prophet River Band Traditional Knowledge Study - Pink Mountain/Sikanni Chief Area, B.C.* Fort St. John: Husky Oil Operations.

¹¹⁵ Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

during the summer when seasonal employment tends to be higher. Halfway River First Nation indicated that the PMT is one of the last remaining areas to harvest moose and that the protection of moose licks is a concern^{116,117,118,119}.

Halfway River First Nation raised concerns about potential Project impacts on moose calving islands near the Peace River crossing and the Cameron River crossing. Other concerns have been raised regarding an increase in public access to Halfway River First Nation's hunting areas resulting in an observed decrease in moose and caribou¹²⁰. This concern extends to areas of relatively undisturbed wildlife habitat that support harvested species, both from the perspective of disturbance to wildlife habitat and increased access for predators, as well as increased hunting pressure resulting from increased access to areas that were not previously accessible to the general public. Halfway River First Nation asserts that trapping continues to be practiced throughout the area which the Province understands to be their area of traditional use. Trapped species include beaver, coyote, ermine, fisher, fox, groundhog, hare/rabbits, lynx, marten, mink, muskrat, river otter, red squirrel, wolf, and wolverine¹²¹. Areas of importance for trapping include the confluence of the Cameron River and Halfway River and the Chowadie area. Halfway River First Nation has stated that the Project would directly impact a trapline belonging to a community member.

In addition to the concerns identified by Halfway River First Nation through provincial consultation, potential Project-related impacts to hunting and trapping are described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with Halfway River First Nation, Halfway River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor-to-moderate impact on Halfway River First Nation's hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Halfway River First Nation's community and areas of traditional use;
- Project-related activities are not likely to have significant adverse effects on species harvested by Halfway River First Nation; and
- Project-related disturbance from construction activities within are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to Halfway River First Nation community members accessing traditional hunting and trapping sites within the vicinity of the Project.

¹¹⁶ FMA. (1996). *Traditional Land Use Overview: Husky Oil Operations Ltd., Murphy Oil Company Ltd., Novgas Clearinghouse Ltd.*

¹¹⁷ McCullough, Fedirchuk; TERA Environmental Consultants Ltd. (1995). *Traditional Knowledge Study of Natural and Cultural Resources in the Vicinity of the Lower Graham and Chowade Rivers Area, British Columbia*. Fort St. John: Husky Oil Operations.

¹¹⁸ Pokiak, Roslyn; TERA Environmental Consultants Ltd. (1994). *Halfway River Band and Prophet River Band Traditional Knowledge Study - Pink Mountain/Sikanni Chief Area, B.C.* Fort St. John: Husky Oil Operations.

¹¹⁹ Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

¹²⁰ The Treaty 8 First Nations (T8FNs) Community Assessment Team and The Firelight Group Research Cooperative. 2012. *Telling a Story of Change the Dane-zaa Way: A Baseline Community Profile of Four Treaty 8 First Nations*. Submitted to BC Hydro as part of the Site C Environmental Assessment. November 27, 2012.

¹²¹ Prince Rupert Gas Transmission Project: Application for an Environmental Assessment Certificate. Part C – Aboriginal Consultation, Section 33. Prepared for TransCanada Pipelines Ltd. Revision 1, May 2014.

Impacts on Fishing

Halfway River First Nation's traditional economy focused on hunting, trapping, plant gathering, and to a lesser extent, fishing. Fishing occurs most frequently along Kobes Creek¹²², the Graham River and Chowade River¹²³ which are outside of the Project RSA. Halfway River First Nation also reported harvesting fish from the confluence of the Peace River and Halfway River, near the Red Deer Falls, Pink Mountain, Stony Lake and Fraser Lake. Fish species of importance include bull trout, burbot, catfish, Dolly Varden, flat head chub, goldeneye, grayling, inconnu (whitefish), lake trout, large scale sucker, long nose sucker, pike (jackfish), rainbow trout, squawfish, suckers, walleye, and white sucker¹²⁴.

During consultation, Halfway River First Nation noted concern regarding the potential for water contamination where the Project crosses the Cameron River, Kobes Creek and Halfway River. With respect to the Kobes Creek crossing, Halfway River First Nation communicated concern regarding the geotechnical stability, noting that the creek provides habitat for numerous fish species, and is a popular fishing spot by their members. Halfway River First Nation believes the potential for a debris slide, resulting from Project activities, poses a threat to their ability to continue to fish in this waterbody.

Halfway River First Nation also noted that disturbance to the riparian areas at several proposed watercourse crossings was of concern, as was the proposed methods of re-vegetation and restoration in these areas. In relation to watercourse crossings and riparian vegetation, Halfway River First Nation noted that clearing riparian vegetation to the edge of watercourse crossings is standard practice and can lead to increased access to cattle in these areas which could in turn contribute to water contamination. In addition, the following site specific concerns were included in Halfway River First Nation's comments on EAO's draft referral package:

- Halfway River: Fisheries values include good spawning habitat and known populations of bull trout in late summer and early fall that require inflow for spawning. This river is habitat to the provincial red-listed spottail shiner. The design is partial isolated open cut. Halfway River First Nation believes the potential impacts are too great and does not agree with the designed crossing method;
- Ground Birch Creek: The design is isolated dam and pump and work is planned for outside the least risk work timing window. Halfway River First Nation also noted that the tributary to Ground Birch Creek is missing from the conceptual offsetting plan;
- Farrell Creek: Fisheries values include potentially high value spawning habitat and potential for the provincial blue-listed bull trout and the red-listed spottail shiner. Based on the potential for bull trout, there is a two week least risk timing window. Halfway River First Nation is of the understanding that Project work is currently proposed outside this window and the type of crossing proposed is isolated by dam and pump. Halfway River First Nation believes the potential impacts are too great with this design at this time and requests this crossing is by horizontal directional drilling;
- Moberly River: Fisheries values for the Moberly River include important habitat for various fish species including the provincial blue-listed bull trout and red-listed spottail shiner, and is considered high risk. Halfway River First Nation disagrees with the plan for the design and the

¹²² August 9, 2016 Consultation with Halfway River First Nation

¹²³ Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

¹²⁴ Prince Rupert Gas Transmission Project: Application for an Environmental Assessment Certificate. Part C – Aboriginal Consultation, Section 33. Prepared for TransCanada Pipelines Ltd. Revision 1, May 2014.

schedule for this crossing;

- Cameron River: The Cameron River is highly significant to Halfway River First Nation. Halfway River First Nation is of the understanding that open cut watercourse crossing is proposed for the Cameron River, although there is potential for species at risk; and
- Peace River: Halfway River First Nation has noted that there is no discussion about the impacts from the Site C dam to the proposed crossings at Peace River and Farrell Creek.

In addition to the concerns identified by Halfway River First Nation through provincial consultation, potential Project-related impacts on fishing are described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with Halfway River First Nation, Halfway River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor impact on Halfway River First Nation's fishing activities. Some of the factors that have informed EAO's conclusions include:

- Project-related watercourse crossings are not likely to cause significant adverse effects; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause minor disruptions to Halfway River First Nation community members accessing traditional fishing sites within the vicinity of the Project.

Impacts on Gathering

Various plant species are harvested by Halfway River First Nation members for food, medicine, or other cultural uses; however, Halfway River First Nation indicated that the quantity and quality of plants available for traditional harvesting has reduced over time.

Halfway River First Nation report harvesting more than 75 plant species for subsistence including berries, trees and fungus^{125,126}. Peppermint and rat root are harvested from wetland areas, while sage and other rare medicinal plants are collected along the south facing slopes of the Peace River valley.^{127,128} Halfway River First Nation also reported an important medicinal plants harvesting area on the north shore of the Peace River, opposite the confluence with the Moberly River¹²⁹.

Other current gathering areas reported by Halfway River First Nation include: Crying Girl Prairie, Chowade River, Kobes Creek, Cameron River, the Halfway River extending to the confluence with the Peace River at Attachie, Farrell Creek between Hudson's Hope and the Upper Halfway River, Christina Falls, and the Graham River watershed¹³⁰.

¹²⁵ Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

¹²⁶ Finavera Wind Energy Inc. (FWEI). 2011. Application for an EA Certificate – Tumbler Ridge Wind Energy Project. Available at: <http://www.finavera.com>. Accessed: May 2016.

¹²⁷ Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

¹²⁸ Site C Clean Energy Project; Volume 3, Section 19; Current Use of Lands and Resources for Traditional Purposes, Final Report. January 2013.

¹²⁹ Site C Clean Energy Project; Volume 3, Section 19; Current Use of Lands and Resources for Traditional Purposes, Final Report. January 2013.

¹³⁰ The Treaty 8 First Nations (T8FNs) Community Assessment Team and The Firelight Group Research Cooperative. 2012. Telling a Story of Change the Dane-zaa Way: A Baseline Community Profile of Four Treaty 8 First Nations. Submitted to BC Hydro as part of the Site C Environmental Assessment. November 27, 2012.

Project-related impacts on gathering are described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, consultation with Halfway River First Nation, Halfway River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor impact on Halfway River First Nation's gathering activities. Some of the factors that have informed EAO's conclusions include:

- Project-related activities are not likely to cause significant adverse effects on species harvested by Halfway River First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Halfway River First Nation community members accessing traditional gathering sites within the vicinity of the Project.

Impacts on Culturally Important Sites and Travel Ways

Halfway River First Nation has strong cultural ties to the Chowade River area, the Halfway River area down to the Peace River, and the lands between the Halfway River reserve and Hudson's Hope¹³¹. Due to the historical and current importance of the Peace River region to Halfway River First Nation members, traditional trails exist on either side of the Peace River and within the Peace River valley towards Bear Flats. The Halfway River was identified as a major transportation route as well as fishing, hunting, and harvesting area for Halfway River First Nation¹³². Halfway River First Nation also reported sacred and ceremonial sites between Hudson's Hope and Taylor, BC.

Halfway River reported the following TLU values which could be impacted by the Project:

- 25 Archaeology Sites, with the possibility of 3 being right on the RoW;
- 16 Cabin or camp sites;
- 1 Cemetery or burial site;
- 4 Collection sites;
- 2 Fishing site;
- 37 Habitation sites;
- 70 Kill sites;
- 18 Wildlife sites; and
- 41 Other sites of importance.

Halfway River First Nation also noted a sacred site within close proximity to their community, and 8 km from the Project. According to Halfway River First Nation, the site is environmentally rich with numerous wetlands that provide critical habitat to moose. It is also one of the last intact areas within close proximity the Halfway River First Nation community.

¹³¹ The Treaty 8 First Nations (T8FNs) Community Assessment Team and The Firelight Group Research Cooperative. 2012. Telling a Story of Change the Dane-zaa Way: A Baseline Community Profile of Four Treaty 8 First Nations. Submitted to BC Hydro as part of the Site C Environmental Assessment. November 27, 2012.

¹³² Finavera Wind Energy Inc. (FWEI). 2011. Application for an EA Certificate – Tumbler Ridge Wind Energy Project. Available at: <http://www.finavera.com>. Accessed: May 2016.

There is a potential risk of disturbance to, or loss of, previously recorded or undiscovered heritage sites resulting from pipeline construction. Similarly, there is also a risk of disturbance to or loss of, previously unrecorded TLU sites and disturbance to, or interference with, traditional uses during construction, operation and maintenance activities¹³³. Of specific concern to Halfway River First Nation are impacts on the Pink Mountain area, including Lily Lake. Halfway River expressed significant concern regarding water withdrawals from Lily Lake for hydrostatic testing for the Project due to the importance of Lily Lake as site of spiritual importance and ecological integrity¹³⁴. Lily Lake is named after a Halfway River First Nation spiritual elder. Halfway River First Nation is concerned that the use of Lily Lake for water extraction will negatively impact marsh land in the area and provide increased access, and also impact calving grounds for ungulates in the area.

In addition to the concerns identified by Halfway River First Nation through provincial consultation, potential Project-related impacts on culturally important sites and travel ways are described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, consultation with Halfway River First Nation, Halfway River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor-to-moderate impact on Halfway River First Nation's culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to important cultural and spiritual sites, including Pink Mountain and Lily Lake; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to Halfway River First Nation community members accessing culturally important sites and travel ways within the vicinity of the Project.

5.6.6 Mitigation and Accommodation

Refer to Section 4.0 of this report for a summary of Project mitigation identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

The Proponent has made direct commitments to Halfway River First Nation with respect to the watercourse crossings and the incorporation of TLU information in Project planning and activities. Specifically, the Proponent had committed to provide Halfway River First Nation with restoration drawings for watercourse crossings when they are completed (commitment 11, 109). Restoration drawings for watercourse crossings were sent to Halfway River First Nation via email on July 14, 2015. With respect to TLU information, the Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116).

¹³³ NEB Report (A4K5R6)

¹³⁴ August 9, 2016 Consultation with Halfway River First Nation

EAO has sought to address key concerns raised by Halfway River First Nation through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance;
- Pink Mountain: development of a plan regarding Pink Mountain that outlines the means by which access will be controlled and disturbance will be minimized in the Pink Mountain area;
- Water extraction for hydrostatic testing: development of an alternatives assessment report, which describes the options for sourcing water used for hydrostatic testing, including alternatives to water extraction from Lily Lake; characterizes the environmental and cultural values, including traditional use and knowledge, that have the potential to be impacted by each water extraction alternative; and describes mitigation measures to avoid or minimize potential adverse effects; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.7 Horse Lake First Nation

5.7.1 Community Profile

Horse Lake First Nation is an Alberta-based signatory to Treaty No. 8 who asserted traditional territory within BC in June 2013. Horse Lake First Nation has two reserves that are located west of Hythe in northwestern Alberta. Horse Lake First Nation leadership consists of a Chief and four Councillors. As of April 2016, Horse Lake First Nation had a registered population of 1,154. The on-reserve population was 476, with 666 individuals living off reserve, and 12 individuals living on other reserves.

5.7.2 Context

The Project would be located entirely within the northwest quadrant of Consultative Area B of what the Province understands to be Horse Lake First Nation's area of traditional use. The southernmost portion of the Project is approximately 5 km from Consultative Area A. Based on the nature and location of the Project and EAO's assessment of the potential impacts to Horse Lake First Nation Treaty 8 rights, EAO is of the view that the duty to consult Horse Lake First Nation lies at the lower end of the *Haida* spectrum.

5.7.3 Participation in the NEB Process

Horse Lake First Nation was engaged as part of the NEB's enhanced Aboriginal Engagement Process for the Project, but did not participate in the GH-001-2014 proceeding.

In 2011, Horse Lake First Nation participated in Proponent-led engagement for the Aitken Creek section of the Project and for the Kahta section in 2013. In 2013, Horse Lake First Nation also contributed TK during archaeology, aquatics, vegetation, wetlands and wildlife biophysical field studies led by the Proponent. Horse Lake conducted a community-led map review and participated in field reconnaissance from October 21 to October 25, 2013, facilitated by CH2M (formerly TERA). Horse Lake First Nation also completed a TLU study in 2013. The Proponent received the results of the study in October 2014, and responded to Horse Lake First Nation in July 2015.

Horse Lake First Nation's key concerns centre on Project impacts to hunting, trapping and fishing. Key issues raised during NEB and Proponent-led engagement during the NEB process included:

- Hunting and trapping in Horse Lake First Nation's area of traditional use, as understood by the Province, and the community's continued ability to practice treaty rights;
- The ability to hunt year-round at the following sites: Nose Creek, Norway, Wapiti River, Nose Mountain directly south of Horse Lake First Nation reserve lands, Red Deer Falls, Pink Mountain, and Quintette Mountain south of Stony Lake and towards Fort St. John; and
- Potential impacts to fishing in the following areas: the confluence of the Peace River and Halfway River, near the Red Deer Falls, Pink Mountain, Stony Lake and Fraser Lake, Kinuseo Falls, Kinuseo Creek, Murray River, Wapiti River, Red Deer River, Kelly Lake, and Swan Lake.

5.7.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Horse Lake First Nation that the Project required an EAC under the Act. EAO issued a Section 10 Order, specifying this requirement, on April 8, 2016 and shared a draft Section 11 Order with Horse Lake First Nation on May 11, 2016. The draft Section 11 Order described the proposed procedures for the provincial EA process for the Project, including key Aboriginal

consultation opportunities. EAO requested comments on this Order, and received written feedback from Horse Lake First Nation in a letter dated May 30, 2016.

Following the issuance of the Section 11 Order on June 17, 2016, EAO provided Horse Lake First Nation capacity funding to support consultation activities. EAO met with Horse Lake First Nation August 11 and September 15, 2016, to discuss Project-specific issues and the provincial assessment process for the Project. During consultation, Horse Lake First Nation identified sites of importance and discussed their use of the lands in proximity to the Project. Potential impacts of the Project described by Horse Lake First Nation are detailed in Section 5.7.5. During consultation, Horse Lake First Nation requested LIDAR mapping to review with their Elders. EAO sent this request to the Proponent, who was unable to provide LIDAR directly to Horse Lake First Nation due to licence considerations; Horse Lake First Nation later indicated to the Proponent that the mapping would not be required.

During Provincial consultation with Horse Lake First Nation, key issues raised centered on the potential impacts of the Project on lands used for traditional practices in the vicinity of the Sikanni Chief River crossing, the Pink Mountain and Lily Lake area, and sections of the Buckinghorse River.

On September 2, 2016 EAO shared an early draft of the Aboriginal Consultation and Accommodation Report with Horse Lake First Nation, and requested comments by September 23, 2016. EAO did not receive comments on the preliminary draft from Horse Lake First Nation. A draft referral package was sent to Horse Lake First Nation on November 24, 2016 for a two-week review period. EAO did not receive comments from Horse Lake First Nation on the draft referral materials.

5.7.5 Potential Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Horse Lake First Nation members hunt year round across their area of traditional use at various locations including: Nose Creek, Norway, Wapiti River, Nose Mountain directly south of Horse Lake First Nation reserve lands, Red Deer Falls, Pink Mountain, and Quintette Mountain, south of Stony Lake and towards Fort St. John. In addition to hunting sites, Horse Lake First Nation reported it has traplines near Grand Prairie and north of Horse Lake¹³⁵.

Caribou and moose are animals of importance to Horse Lake First Nation. Caribou used to be relied on extensively for food, but are no longer hunted because of recent declines in populations. Moose continue to be hunted and harvested. Project-related impacts on hunting and trapping are also described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with Horse Lake First Nation, Horse Lake First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Horse Lake First Nation's hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Horse Lake First Nation's areas of traditional use;

¹³⁵ NEB Report (A4K5R6); Environmental and Socio-economic Assessment, Chapter 14, Traditional Land and Resource Use (A3Q6G)

- Project-related activities are not likely to have significant adverse effects on species harvested by Horse Lake First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Horse Lake First Nation community members accessing traditional hunting and trapping sites within the vicinity of the Project.

Impacts on Fishing

Horse Lake First Nation reported fishing as a TLU activity but stated that industrial development in recent decades has reduced fish populations in lakes traditionally relied upon for fishing. Trout are fished by Horse Lake First Nation near the Red Deer Falls, Pink Mountain, and Stony Lake. Salmon are harvested from Fraser Lake. Horse Lake First Nation also reported fishing around Kinuseo Falls, Kinuseo Creek, Murray River, Wapiti River, Red Deer River, Kelly Lake, and Swan Lake, but noted that there are no longer any fish in Horse Lake. Project-related impacts on fishing are also described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with Horse Lake First Nation, Horse Lake First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Horse Lake First Nation's fishing activities. Some of the factors that have informed EAO's conclusions include:

- Project-related watercourse crossings are not likely to cause significant adverse effects; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Horse Lake First Nation community members accessing traditional fishing sites within the vicinity of the Project.

Impacts on Gathering

Horse Lake First Nation reported that edible and medicinal plants continue to be harvested within the Project area. Berries, including huckleberries, are picked for subsistence. Medicinal plants harvested by Horse Lake First Nation include rat root, caribou moss and mountain medicines¹³⁶. Project-related impacts on gathering are also described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, consultation with Horse Lake First Nation, Horse Lake First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Horse Lake First Nation's gathering activities. Some of the factors that have informed EAO's conclusions include:

- Project-related activities are not likely to cause significant adverse effects on species harvested by Horse Lake First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Horse Lake First Nation community members accessing traditional gathering sites within the vicinity of the Project.

¹³⁶ NEB Report (A4K5R6); Environmental and Socio-economic Assessment, Chapter 14, Traditional Land and Resource Use (A3Q6G)

Impacts on Culturally Important Sites and Travel Ways

Horse Lake First Nation identified the following areas of cultural features and sites of cultural importance: cultural camps near the Sikanni Chief River crossing, guide areas and camps near Pink Mountain and the Lily Lake area including two smaller creeks to the east of Lily Lake near the airstrip and Pat Brady Ranch, the Sikanni Chief Falls, and the Buckinghorse River. Project-related impacts on culturally important sites and travel ways are also described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, consultation with Horse Lake First Nation, Horse Lake First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Horse Lake First Nation's culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Horse Lake First Nation community members accessing culturally important sites and travel ways within the vicinity of the Project.

5.7.6 Mitigation and Accommodation

Refer to Section 4.0 of this report for a summary of Project mitigation identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

The Proponent has made direct commitments to Horse Lake First Nation with respect to the incorporation of TLU information in Project planning and activities. Specifically, the Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116).

EAO has sought to address key concerns raised by Horse Lake First Nation through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as

development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance; and

- Pink Mountain: development of a plan regarding Pink Mountain that outlines the means by which access will be controlled and disturbance will be minimized in the Pink Mountain area;
- Water extraction for hydrostatic testing: development of an alternatives assessment report, which describes the options for sourcing water used for hydrostatic testing, including alternatives to water extraction from Lily Lake; characterizes the environmental and cultural values, including traditional use and knowledge, that have the potential to be impacted by each water extraction alternative; and describes mitigation measures to avoid or minimize potential adverse effects; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.8 McLeod Lake Indian Band

5.8.1 Community Profile

McLeod Lake Indian Band is an adherent to Treaty 8 pursuant to the 2000 *McLeod Lake Indian Band Treaty No. 8 Adhesion and Settlement Agreement*. Culturally, McLeod Lake Indian Band is part of the larger Sekani (Tse'khene) Aboriginal group and shares kinship with the Kwadacha First Nation and Tsay Key Dene First Nation. It also has cultural ties with western Dane-zaa or Dunne-zaa (Beaver) groups, such as West Moberly First Nations and Halfway River First Nation.

McLeod Lake Indian Band includes a 108,000 km² area with 22 reserves totaling 18,285.7 ha. The primary reserves are located about 150 km north of Prince George. As of April 2016, ad a total registered population of 545, with an on-reserve population of 108, an off-reserve population of 404, and 33 living on other reserves. The government of McLeod Lake Indian Band consists of a Chief and six Councillors.

5.8.2 Context

Approximately 45 km of the Aitken Creek section of the Project would overlap with the Province understands to be McLeod Lake Indian Band's claimed traditional territory. Given the nature and location of the Project and EAO's assessment of the potential impacts to McLeod Lake Indian Band's Treaty 8 rights, EAO is of the view that the duty to consult McLeod Lake Indian Band lies at the lower end of the *Haida* spectrum.

5.8.3 Participation in the NEB Process

McLeod Lake Indian Band participated in the NEB process and proceedings, but did not file evidence, present witnesses, or contribute final arguments during the panel process.

In 2010, McLeod Lake Indian Band undertook a community directed traditional use field assessment of the proposed Project. This field assessment consisted of both a map review and ground reconnaissance. In 2011, McLeod Lake Indian Band participated in the Proponent-led engagement for the Aitken Creek section of the Project, and for the Kahta section in 2013. In 2013, McLeod Lake Indian Band also contributed traditional ecological knowledge during archaeology, aquatics, vegetation, wetlands and wildlife biophysical field studies led by the Proponent.

During the NEB process, McLeod Lake Indian Band set out issues and concerns raised by the community in relation to the Project, and the associated impacts on their treaty rights. McLeod Lake Indian Band's key concerns centre on impacts to wildlife, hunting, trapping and gathering, fishing, and to traditional land and resource uses, sites and activities. Key issues raised include:

- Potential effects on predator-prey dynamics as a result of increased line-of-sight created by RoWs;
- Ability to practice hunting, trapping and gathering in the vicinity of the Project and the impact of the Project on two historical hunting areas and multiple drinking water collection sites identified along the Project route;
- Historical fishing sites in the Moberly River; and

- Impact of the Project on traditional land and resource uses, sites and activities including: trails and travel ways, habitation sites such as camps and family settlements and one sacred site located at War Horse Falls.

McLeod Lake Indian Band also identified broad concerns regarding the cumulative impacts of industrial development on water, wildlife, the introduction and spread of invasive plant species, impacts of pollution on wildlife species, and Project impacts on burial sites and cabins. No specific locations of concern in relation to cumulative effects were identified by McLeod Lake Indian Band.

5.8.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform McLeod Lake Indian Band that the Project required an EAC under the Act. EAO issued a Section 10 Order, specifying this requirement on April 8, 2016. EAO shared a draft Section 11 Order with McLeod Lake Indian Band on May 11, 2016 which described the proposed procedures for the provincial EA process for the Project, including key Aboriginal consultation opportunities. EAO requested comments on this Order, but did not receive written feedback from McLeod Lake Indian Band. The Section 11 Order was issued on June 17, 2016.

EAO provided McLeod Lake Indian Band capacity funding to support consultation activities. EAO met with McLeod Lake Indian Band on August 10, 2016 to discuss the provincial assessment process for the Project and Project-specific issues. Access management and sites of importance were the primary focus of the discussion with McLeod Lake Indian Band, as well as impacts to moose wetland habitat and Project routing.

Two iterations of EAO's draft Aboriginal Consultation and Engagement Report were provided to McLeod Lake Indian Band for comment in July and September, 2016. EAO requested comments on the draft by September 23, 2016 but did not receive feedback. A draft referral package was sent to McLeod Lake Indian Band on November 24, 2016 for a two-week review period. EAO did not receive comments from McLeod Lake Indian Band on the draft referral materials.

5.8.5 Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Field study participants from McLeod Lake Indian Band involved in Proponent-led field reconnaissance conducted in 2011-2012, reported that the lands along the proposed pipeline route provide ideal habitat for the following commonly hunted animals: moose, elk, white-tail and mule deer, wolf, coyote, black bear, grizzly bear, cougar, lynx, porcupine, bison, beaver, squirrel, buffalo, caribou, rabbit, raven, woodpecker, hawks, grouse, grey owl and swan. Participants reported that they hunt moose, elk and deer and trap marten, wolverine, fisher, wolf, rabbit and lynx on lands along and surrounding the proposed pipeline routes¹³⁷. McLeod Lake Indian Band community members and Elders identified several hunting areas including hunting areas crossed by the Project from kilometer point (KP) 0 to KP 29 and from KP 45 to KP 70.

McLeod Lake Indian Band also indicated that there are two historical hunting areas along the Project route. One is located in the vicinity of the Pine River but the location of the other was not disclosed.

¹³⁷ TERA 2011-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. (Aitken Creek Section) project

Important hunting and trapping were also reported near Nation Arm, the Williston Reservoir and Tsedeka Creek as well as Mugaha Creek and the Mugaha Valley¹³⁸. These areas were noted as high value-habitat resources for moose, beaver, martin, fisher and elk but are located more than 100 km from the Aitken Creek section of the proposed the Project pipeline¹³⁹.

McLeod Lake Indian Band also reported trapping as a traditional activity but no active trapping areas were identified within the Project area. McLeod Lake Indian Band field study participants involved in the 2011-2012 Proponent-led field reconnaissance identified McLeod Lake as an important trapping area but this area is located approximately 155 km southwest of the Project route.

TK gathered from McLeod Lake Indian Band TK holders for the federal assessment of the Enbridge Northern Gateway project¹⁴⁰ noted that there has been a decline in populations of moose, black bears and trapping animals, which the community attributes to poachers, big game hunters, logging and previous industrial activity in the area. McLeod Lake Indian Band TK holders have also observed a general decline in animal health, particularly around areas of industrial development¹⁴¹.

During provincial consultation, McLeod Lake Indian Band raised concerns regarding the potential impacts of the Project on moose wetland habitat and identified key habitat areas near the Pine River and Peace River crossings. In addition to the concerns identified by McLeod Lake Indian Band through provincial consultation, potential Project-related impacts to hunting and trapping are described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with McLeod Lake Indian Band, McLeod Lake Indian Band's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible-to-minor impact on McLeod Lake Indian Band's hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to areas of traditional use by McLeod Lake Indian Band;
- Project-related activities are not likely to have significant adverse effects on species harvested by McLeod Lake Indian Band; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to McLeod Lake Indian Band community members accessing traditional hunting and trapping sites within the vicinity of the Project.

Impacts on Fishing

¹³⁸ The Firelight group, 2014, *McLeod Lake Indian Band Knowledge and Use Study Intern Report*, prepared for the Prince Rupert Gas Transmission Pipeline project

¹³⁹ The Firelight group, 2014, *McLeod Lake Indian Band Knowledge and Use Study Intern Report*, prepared for the Prince Rupert Gas Transmission Pipeline project

¹⁴⁰ Enbridge Northern Gateway Pipelines. (2010). Volume 5A: Aboriginal Engagement Enbridge Northern Gateway Project Sec. 52 Application. Enbridge Northern Gateway Pipelines

¹⁴¹ TERA 2011-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. (Aitken Creek Section) project. Section 3.3.2 Page 80.

During Proponent led biophysical field studies, field study participants reported that they do not currently travel to the Project area to fish; however, Elders believe that in the past the area was travelled through and used by McLeod Lake Indian Band, and historical fishing sites in the Moberly River were identified along the Project route. In their TLU study, McLeod Lake Indian Band identified other historic fishing areas from KP 45 to KP 70¹⁴². Outside of the Project area, community members report fishing in McLeod, Carp and McIntire lakes for Dolly Varden, trout and ling cod.

Field study participants expressed concern regarding the potential impacts of proposed water crossings on fish habitat. Trenchless and open cut crossing methods were reviewed in the field with participants. Concerns regarding construction debris entering watercourses in the region were also raised. Project-related impacts to fishing are described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with McLeod Lake Indian Band, McLeod Lake Indian Band's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on McLeod Lake Indian Band's fishing activities. Some of the factors that have informed EAO's conclusions include:

- Project-related watercourse crossings are not likely to cause significant adverse effects; and
- EAO's understanding of use of the Project area by McLeod Lake Indian Band for the purposes of fishing.

Impacts on Gathering

During Proponent led field studies, McLeod Lake Indian Band community members and Elders identified several plant harvesting areas with respect to the Project. Field study participants noted that within the entire ecosystem, vegetation supports healthy wildlife. Stands of black spruce, birch, tamarack, jack pine, aspen and poplar in the region were reported to support moose and other ungulates. For example, moose are known to feed on young willow before calving. All berries, cow parsnip and caribou lichen were identified as an important food sources for squirrels, grouse, grizzly and black bears¹⁴³. A primary plant harvesting area was identified around McLeod Lake approximately 155 km southwest of the Project where cat tail, wild rhubarb, birch syrup, muskeg tea and fiddleheads are gathered.

Project-related impacts to hunting and trapping are described in Section 4.4.1.

In consideration of the information available to EAO from the NEB process, consultation with McLeod Lake Indian Band, McLeod Lake Indian Band's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on McLeod Lake Indian Band's gathering activities. Some of the factors that have informed EAO's conclusions include:

- Project-related activities are not likely to cause significant adverse effects on species harvested by McLeod Lake Indian Band; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to McLeod Lake Indian Band community members accessing traditional gathering sites within the vicinity of the Project.

¹⁴² TERA 2011-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. (Aitken Creek Section) project

¹⁴³ TERA 2011-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. (Aitken Creek Section) project

Impacts on Culturally Important Sites and Travel Ways

Field study participants and Elders identified one sacred area during field studies, but the exact location was not disclosed.

McLeod Lake Indian Band field study participants also identified an area near War Horse Falls, approximately 155 km from KP 80, used for sweat lodges, and a pack trail approximately 100 km south of the Project that leads from War Horse Falls to Fort St James. A McLeod Lake Indian Band Elder explained that remote places that are far from activity and habitation are the preferred locations for sweats and prayer.

During provincial consultation, McLeod Lake also identified the Pine Dune area as an important site to McLeod Lake Indian Band members and other Treaty 8 nations. This site contains camp sites and trails. McLeod Lake Indian band has worked with other companies for a number of years to avoid impact to the Pine Dune area due to its significance. McLeod Lake Indian Band also expressed concern about increasing access to the Pine River valley (KP 10-20 of the Project) due to potential impacts from other land users and increased access for predators. On July 28, 2015, a site visit to the Pine Dunes area of the Project route took place with McLeod Lake Indian Band, the Proponent, and OGC. According to the Proponent's Aboriginal Engagement Summary (September 2014 - March 2016)¹⁴⁴, participants viewed the location of the route and discussed proposed mitigation measures designed to avoid or reduce potential effects on the dunes and associated vegetation; McLeod Lake Indian Band and OGC were satisfied with the mitigation that was proposed.

During provincial consultation, McLeod Lake Indian Band also highlighted the importance of the PMT area as an area where members can practice their rights without interference from other land users. Concern was expressed that the pipeline route through this area would decrease the cultural value of the area, as well as decrease the perception of safety and the ability to quietly enjoy the land.

Project-related impacts to culturally important sites and travel ways is detailed in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, consultation with McLeod Lake Indian Band, McLeod Lake Indian Band's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible-to-minor impact on McLeod Lake Indian Band's culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity of Project to areas of traditional use by McLeod Lake Indian Band; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to McLeod Lake Indian Band community members accessing culturally important sites and travel ways within the vicinity of the Project.

¹⁴⁴ Nova Gas Transmission Ltd. Aboriginal Engagement Summary September 2014 to March 2016. Submission to EAO. http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_document_458_40931.html

5.8.6 Mitigation and Accommodation

Refer to Section 4.0 of this report for a summary of Project mitigation identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

The Proponent has made direct commitments to McLeod Lake Indian Band with respect to the incorporation of traditional use information in Project planning and activities. Specifically, the Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116).

EAO has sought to address key concerns raised by McLeod Lake Indian Band through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.9 Prophet River First Nation

5.9.1 Community Profile

Prophet River First Nation is a signatory to Treaty 8 and a member of the Treaty 8 Tribal Association. Prophet River First Nation, also known as Dene Tsaa tse K’Nai First Nation, is part of the wider Dane-zaa or Dunne-zaa language group and was historically known as the Beaver Tribe. Prophet River First Nation has one reserve that is located 100 km south of Fort Nelson at Mile 233 of the Alaska Highway in the Northern Rockies Regional District of BC. As of April 2016, Prophet River First Nation had a registered population of 272, with an on-reserve population was 95, 165 individuals living off reserve, and 12 individuals living on other reserves. Prophet River First Nation’s custom electoral system elects its Chief and two Councillors.

5.9.2 Context

Approximately 35 km of the Katha section of the proposed Project overlaps in the southeastern quadrant of what the Province understands to be Prophet River First Nation’s area of traditional use. Based on the nature and location of Project and EAO’s assessment of the potential impacts to Prophet River First Nation’s Treaty 8 rights, EAO is of the view that the duty to consult Prophet River First Nation lies at the low end of the *Haida* spectrum.

5.9.3 Participation in the NEB Process

Prophet River First Nation was an Intervenor in the NEB proceedings and filed evidence, presented witnesses and participated in final arguments. Prophet River undertook an initial TLU study in 2013 and in 2014 elected to conduct a community led study of the potential adverse impacts on the cultural traditions, customs, and practices of Prophet River First Nation from the proposed Project. Prophet River First Nation also participated in biophysical field studies facilitated by CH2M (formerly TERA), and completed helicopter flyovers and site visits of the Sikanni River crossing in September and November 2013 and August 2014.

During the NEB assessment process, Prophet River First Nation set out issues and concerns raised in relation to the Project, and the associated impacts on their treaty rights. Prophet River First Nation’s key concerns centre on route options and project impacts to wildlife and wildlife habitat, hunting, trapping, gathering, fishing, and to traditional land and resource uses, sites and activities. Key issues raised include:

- Decline in caribou populations and distribution around the Peace River where the Aitken Creek section is located¹⁴⁵;
- Decline in moose populations and distribution primarily due to fragmentation of the landscape from anthropogenic activities^{146 147};
- Continued ability to practice Treaty Rights with respect to hunting and trapping in areas transected by Project activities and infrastructure;

¹⁴⁵ Mitigations measures proposed by NGTL and referenced in the NEB Report (A4K5R6)

¹⁴⁶ “We can no longer go where we used to go”: Potential Adverse Impacts of the Proposed North Montney Pipeline Project on the Traditional Land Uses and Values of Prophet River First Nation (A4C0I5)

¹⁴⁷ Mitigations measures proposed by NGTL and referenced in the NEB Report (A4K5R6)

- Continued use of gathering places in the vicinity of the Project where berry picking, social events, and hunting take place;
- Restricted access to harvesting and gathering sites that are in proximity to the RoW during construction;
- Impacts to areas of cultural significance including the north side of the Buckinghorse River, east of the Buckinghorse campground, Mason Lake, and north and south of the Sikanni Chief River¹⁴⁸;
- Location of the Kahta Section re-route being immediately adjacent to and/or possibly intersecting cultural camp sites used as base-camps for the South-Sikanni Culture Camp¹⁴⁹;
- Intersection of the Project RoW with trails and travel ways^{150,151}; and
- Routing at the Sikanni Chief River.

Prophet River First Nation also raised concerns regarding the cumulative effects of various industrial and agricultural activities on the community's ability to exercise treaty rights in Prophet River First Nation's areas of traditional use. Placement of industrial infrastructure in and around traditional use sites, locations and areas has resulted in several conflicts relating to restrictions on hunting practices and in some cases on fishing, trapping, gathering and other cultural activities. Prophet River First Nation expressed concern that oil and gas companies have restricted their access and land use practices based on the basis of safety practices. For example, restrictions on access, either due to health and safety risks or conflict between land uses, has effects on Prophet River First Nation's ability to transmit culture through story-telling, oral history and TK sharing, all of which occur in conjunction with other activities such as hunting, fishing and trapping. Specific hunting, fishing, trapping and gathering areas are also chosen for spiritual reasons such as re-connecting with ancestors or spiritual renewal. Prophet River First Nation indicated that this is not possible if they are forced to use other sites for these practices.

Prophet River First Nation also stated that serious social issues occur when land users, their families and the community have difficulty or stop identifying with the traditions, customs and practices that fostered by TLU values. Norms and values that are taught through cultural activities could become less frequent and thus inadequate for maintaining the physical and mental health of Prophet River First Nation members. Prophet River First Nation identified the Project crossing of the Sikanni River as a serious concern. According to Prophet River First Nation, the presence of Project infrastructure at this location, in addition to the physical disturbances to the land during construction, will impact Prophet River First Nation members due to the spiritual characteristics of the location. As such, mitigation options such as directional drilling underneath this location would not reduce impacts and may worsen the situation. Mitigations are discussed further in Section 5.9.6.

Prophet River First Nation also raised concern that development of oil and gas resources in the region have also increased the potential risk of hydrogen sulphide (H₂S) being released. The presence of H₂S has directly impacted TLUs. Members noted concerns with the extent to which it has become dangerous to use the land. Concern over exposure to H₂S has caused some members to abandon areas that were previously used for hunting, camping, gathering or trapping. Prophet River First Nation are of the perspective that safety procedures have not been developed in a manner that accounts for the

¹⁴⁸ "We can no longer go where we used to go": Potential Adverse Impacts of the Proposed North Montney Pipeline Project on the Traditional Land Uses and Values of Prophet River First Nation (A4C015)

¹⁴⁹ Mitigations measures proposed by NGTL and referenced in the NEB Report (A4K5R6)

¹⁵⁰ "We can no longer go where we used to go": Potential Adverse Impacts of the Proposed North Montney Pipeline Project on the Traditional Land Uses and Values of Prophet River First Nation (A4C015)

¹⁵¹ Supplemental Traditional Knowledge Report (A3W1R6)

traditional practices of Prophet River First Nation on the land, particularly the dynamic nature of the seasonal round and its management systems of rotating within an area and from one area to another.

Prophet River First Nation participants in the TLU study led by CH2M noted concern with road construction for the purpose of natural resource activities. Prophet River First Nation participants were concerned with the access that these roads provide to non-Aboriginal hunters and the increasing pressures new access has on sensitive habitats and the animals that rely on them. Prophet River First Nation noted that linear disturbances have adverse consequences on the ecosystems they rely on and can result in the introduction of predators as well as motorized vehicle operators.

5.9.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Prophet River First Nation that the Project required an EAC under the Act. EAO issued a Section 10 Order specifying this requirement on April 8, 2016, and shared a draft Section 11 Order with Prophet River First Nation on May 11, 2016. The Section 11 Order described the proposed procedures for the provincial EA process for the Project, including key Aboriginal consultation opportunities. EAO requested comments on the draft Section 11 Order, but did not receive input from Prophet River First Nation. The Section 11 Order was issued on June 17, 2016.

On May 26, 2016 EAO received correspondence from Prophet River First Nation requesting an update on the Project, clarification on the provincial process, and copies of correspondence between EAO and the Proponent. EAO provided the requested materials to Prophet River First Nation in July and offered to meet to discuss the Project and to inform EAO's understanding of how the Project may impact Prophet River First Nation's treaty rights.

Between July and October, 2016, EAO attempted to contact Prophet River First Nation on a number of occasions to offer opportunities to meet and discuss the Project. EAO did not receive a response from Prophet River First Nation regarding meeting requests. On September 2, 2016 EAO shared an early draft of the Aboriginal Consultation and Accommodation Report and requested comments by September 23, 2016. EAO did not receive comments on the draft Aboriginal Consultation and Accommodation Report from Prophet River First Nation.

On October 10, 2016, EAO received a letter from Prophet River First Nation indicating an interest in participating in the provincial review process, and a contact list for Project-related correspondence. EAO responded and welcomed the opportunity to meet with Prophet River First Nation to discuss the Project, and also offered capacity funding to support participation. Upon confirmation of acceptance, EAO provided capacity funding, and also offered potential meeting dates, noting that a meeting should be held by end of October 2016 in order to facilitate meaningful consideration of input provided and to reflect any input in draft referral materials.

A teleconference was held between Prophet River First Nation and EAO on November 7, 2016 to discuss the Project. Key concerns raised by Prophet River First Nation included:

- Federal engagement through the NEB process, including challenges with the quasi-judicial and adversarial nature of the process;
- The scope and nature of the NEB conditions; and
- Ecological restoration of temporary work spaces beyond natural regeneration.

Prophet River First Nation described the interactions between linear rights of way and the effect that large, unrestored corridors can have on natural patterns, such as movement and habitat use by wildlife; they further described the interactions between this and how it affects seasonal rounds for community members. Prophet River First Nation indicated that Elders were working on a report to articulate some of their key concerns regarding the Project and desired mitigation measures, and would be provided copies to the Proponent and EAO. EAO indicated a desire to follow up once this report had been received, and that it would be preferable to have this meeting prior to draft referral materials being circulated. Prophet River First Nation committed to following up with meeting dates as soon as possible.

On November 8, 2016, Prophet River First Nation requested spatial files from the EAO that included temporary work spaces. EAO provided these files the same day as the request.

As a follow up to consultation with EAO on November 7, 2016, Prophet River First Nation provided EAO with correspondence to the Proponent dated September 24, 2015 which detailed concerns raised with the Proponent during the NEB. This correspondence was provided to EAO on November 19, 2016 and discussed the work Prophet River First Nation's had undertaken with respect to the development of a condition related to the Sikanni area and the traditional seasonal rounds that take place there. It further expressed concern in regarding the Proponent's characterization and incorporation of TLU information in its environmental impact assessment, as well as concern regarding the limited opportunity for consultation and participation in the implementation, monitoring and follow-up programs related to the Project. The letter also referenced 170 values in the Project area that were identified by Prophet River First Nation Elders and knowledge holders, and detailed cultural and biophysical concerns regarding traditional practices associated with hunting key species; these are discussed in further detail in Section 5.9.5. EAO understands that the Proponent responded to Prophet River First Nation in September and October 2015, acknowledging the concerns raised with regards to TLU, and also committed to work with Prophet River First Nation to develop appropriate mitigation measures, as required in Condition 10 of the NEB report.

Further, in their 2015 correspondence to the Proponent, Prophet River First Nation expressed that the *Dunne-za dai'onsti* (through the native eye) should be incorporated into post-assessment plans, and that discussions must come from a place that respects their history, culture, and people as a necessary starting point. EAO provided a response on November 22, 2016 to thank Prophet River First Nation for the information and to indicate that the information provided would be reflected in the draft Aboriginal Consultation and Accommodation Report. EAO made additional requests for a follow up meeting and an approximate timeframe in which to expect the report referenced during the teleconference on November 7, 2016.

EAO sent its draft referral package to Prophet River First Nation on November 24, 2016 for a two-week review period. EAO received comments from Prophet River First Nation on December 9, 2016. Prophet River First Nation's comments were in relation to proposed draft conditions, specifically: Involvement of Aboriginal Groups in Construction Monitoring, Aboriginal Cultural Awareness and Recognition, Caribou Mitigation and Monitoring, Peace Moberly Tract, Pink Mountain, Water Extraction for Hydrostatic Testing, and Archaeology – Heritage Resources. Prophet River First Nation also provided copies of correspondence between Prophet River First Nation and the Proponent which contained TLU data and comments on NEB conditions. EAO reviewed and considered this additional information and incorporated it into the Aboriginal Consultation and Accommodation Report. EAO also provided a written response to Prophet River First Nation on December 15, 2016 explaining how the information was considered.

5.9.5 Impacts of Project on Treaty Rights and Interests

Impacts to Hunting and Trapping

Prophet River First Nation's hunting activities center on ungulate species including moose, goat, caribou, sheep, bison, elk, and deer. Additional species such as rabbits, water-fowl, and beavers are also hunted. Trapping provides both material items such as furs for clothing and meat for consumption, bait, and trade. Species that are trapped by Prophet River First Nation members include nearly all furbearers and some ungulates which are trapped with snares.

The TLU study conducted on behalf of Prophet River First Nation demonstrates that the Project RoW for both the Aitken Creek and Katha sections, intersects with a number of Prophet River First Nation land uses, particularly the Sikanni and Buckinghorse Rivers. The area around Klua Lakes was also identified as an important hunting area within Prophet River First Nations traditional use area, and is located approximately 85 km from the Katha Section of the Project. Prophet River First Nation also identified hunting activity outside of what the Province understands to be Prophet River First Nation's area of traditional use, including the areas near Pink Mountain, Farrell Creek, Cypress Creek and the section of the Peace River where the Project crosses. The areas surrounding Pink Mountain and Farrell Creek are approximately 5 km from the Project, and the Cypress Creek area is approximately 25 km from the Project. The section of the Peace River where the Project crosses approximately 135 km from what the Province understands to be Prophet River First Nation's area of traditional use.

As part of the Prophet River First Nation TLU study, Elders noted considerable changes to the land and habitats on their traplines. While most have passed the traplines onto the next generation, which continue to trap, many of them still trap during the winter months. Many also travel the traplines during the summer. Cultural activities continue to be an important part of their lives. Most still engaged with the youth to teach traditional practices.

Prophet River First Nation noted that in addition to the availability of wildlife for hunting and trapping, changes in wildlife behavior as a result of Project activity could also impact the sacred relationship between animals and humans, altering the ways Prophet River First Nation members can (or cannot) engage in traditional practices. For instance, Prophet River First Nation members do not harvest animals unless the animal offers itself to the hunter in a particular way. Changes in animal behavior have resulted in fewer opportunities for this necessary interaction to occur. Changes in behaviors of predators and prey have also been observed by Prophet River First Nation. This has changed the manner in which Prophet River First Nation members and wildlife interact with one another. Prophet River First Nation members have also noted a decline of the caribou population and its distribution in and around the Peace River where the Aitken Creek section is located.

Prophet River First Nation also raised concern regarding the potential for the Project to create prolonged increased access to traditional hunting areas by non-Aboriginal hunters and to impact Prophet River First Nation's Treaty rights. In a letter to the Proponent dated September 25, 2016, Prophet River First Nation identified potential adverse impacts from implementing natural re-vegetation along the Project RoW. Prophet River First Nation also noted that community Elders have visited seismic lines created in the 1970's that remain ecologically unrestored as a result of relying on natural re-vegetation, and suggested the Proponent adopt replanting program and undertake further

assessment to determine sections of the Project route that could be reduced in width through the planting of trees.

Additional information pertaining to potential Project-related impacts to hunting and trapping is discussed in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, Prophet River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible-to-minor impact on Prophet River First Nation's hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Prophet River First Nation's community and areas of traditional use;
- Project-related activities are not likely to have significant adverse effects on species harvested by Prophet River First Nation; and
- Project-related disturbance from construction are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to Prophet River First Nation community members accessing traditional hunting and trapping sites within the vicinity of the Project.

Impacts to Fishing

Fishing remains an important food source for Prophet River First Nation members. Prophet River First Nation members fish several species including whitefish, Rainbow trout, Bull trout, lingcod/burbot, arctic grayling, and Lake trout. The results received from the Prophet River First Nation TLU study indicate that Prophet River First Nation members fish in the Prophet, Minaker, and Sikanni Chief Rivers, all of which fall within Prophet River First Nations area of traditional use and have watersheds located within 5 km of the Project. Prophet River First Nation also reported fishing in Klua Lake and the importance of Halfway River as a significant historical fishing area¹⁵². Prophet River First Nation members noted that fish resources have declined over time in terms of size and available catch, and that access to fish is decreasing to the point where even catching a small fish is rare¹⁵³.

Potential Project-related impacts to fishing are also described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, Prophet River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Prophet River First Nation's fishing activities. Some of the factors that have informed EAO's conclusions include:

- Project-related watercourse crossings are not likely to cause significant adverse effects; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible to minor disruptions to Prophet River First Nation community members accessing traditional fishing sites within the vicinity of the Project.

¹⁵² NEB Report (A4K5R6)

¹⁵³ NEB Report (A4K5R6)

Impacts on Gathering

Berries are often the focus of gathering activities for Prophet River First Nation; however hundreds of other plants are also gathered. Plants are used for a variety of cultural practices including food, material items, medicines, painting and ceremonies. Berries of importance identified by Prophet River First Nation include huckleberries, cranberries, and blueberries¹⁵⁴. Trees, such as birch, are used for a variety of cultural purposes such as baskets¹⁵⁵. During 2013 field studies, Prophet River First Nation field participants did not identify any plant gathering sites, but noted that there were several invasive plants found in and around the location of the Project. Prophet River First Nation also noted the presence of a gathering site in the proximity of the Kahta section RoW that could be disturbed during construction and operation. The gathering site was identified in 2015 during a ground-truthing exercise undertaken by Prophet River First Nation Elders. According to Prophet River First Nation, the site was discussed with the Proponent; however it was determined to be outside of the Project RoW. The exact location of the site was not identified, however Prophet River First Nation believes it to be located within the Project RoW or within a Project temporary workspace.

Additional potential Project-related impacts to gathering are described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, Prophet River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a negligible impact on Prophet River First Nation's gathering activities. Some of the factors that have informed EAO's conclusions include:

- Project-related activities are not likely to cause significant adverse effects on species harvested by Prophet River First Nation; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Prophet River First Nation community members accessing traditional gathering sites within the vicinity of the Project.

Impacts on Culturally Important Sites and Travel Ways

Prophet River First Nation members consider connection to the land as a core aspect of Dunne-za culture and identity. According to Prophet River First Nation, the Project area contains 170 *jon'te*, which are area sites and places with TLU values. The 170 *jon'te* identified are of concern if the Project was to be constructed, and include the following values: campsites, trapping sites, gathering areas, mineral licks, and trails.

Camps are one method that the Prophet River First Nation uses to build, maintain and in some cases revitalize connections with the land. The locations where Prophet River First Nation selects to camp in a particular year depends on conditions of the camping area. Various land uses have caused members to lose their connection to the land. This occurs when sacred places are destroyed by industrial activities. Locations of camps are always beside sources of water. TK associated with water provides guidance on when and where to harvest ungulate species such as moose. Prophet River First Nation members have

¹⁵⁴ Stantec Environmental and Socio- Economic Assessment, 2013

¹⁵⁵ Stantec Environmental and Socio- Economic Assessment, 2013

observed the influences of industry on water, and highlight the hesitancy of some members to drink water from streams and rivers due to perceptions of contamination¹⁵⁶.

Areas of cultural significance in proximity to the Project within what the Province understands to be Prophet River First Nation's areas of traditional use include the north side of the Buckinghorse River, east of the Buckinghorse campground (Buckinghorse River Wayside Park), Mason Lake, and north and south of the Sikanni Chief River¹⁵⁷. These areas are intersected by, or fall within 5 km of, the Project. They support a host of traditional activities including gatherings where berry picking, social events, and hunting takes place. Prophet River First Nation also identified a pack trail, cabin site and a campsite but did not disclose exact locations of these features¹⁵⁸. Prophet River First Nation also view the area around Pink Mountain as an area of heightened importance for hunting, camping and cultural activities. Pink Mountain is outside of what Province understands to be Prophet River First Nation's area of traditional use, but is within 5 km of the Project.

Prophet River First Nation also noted that a cabin site and ancestral resting place exist in the proximity of the Kahta section RoW. According to Prophet River First Nation, the site was identified in 2015 during a ground-truthing exercise undertaken by Prophet River First Nation Elders and discussed with the Proponent.

Prophet River First Nation expressed concerns that the Kahta section of the Project is located immediately adjacent to and/or possibly intersects with approximately three cultural camp sites which are used as base-camps for the South-Sikanni Culture Camp. Culture camps have been integral to the mode of life for Prophet River First Nation, including activities in and around the Sikanni Chief River¹⁵⁹. Actions and activities that are planned to occur during construction are likely to conflict with these TLU values¹⁶⁰. Prophet River First Nation expressed concern that construction activities in the Sikanni River area may inhibit their ability to exercise their Treaty rights, and that they may not be able to practice Treaty rights in an alternative location that is culturally appropriate, as not all customs and practices are transportable.

Cultural continuity is vulnerable to environmental changes caused by the Project, as these may decrease the opportunities to engage in cultural activities or may make an area less appealing as a site for cultural activities and knowledge transmission. Loss of a place, either permanently or over a long period of time, frequently results in a gap in the transmission of place-based knowledge, and eliminates the place as a cultural resource for remembering, teaching, and learning the knowledge and cultural practices associated with it¹⁶¹.

Potential Project-related impacts to culturally important sites and travel ways are also described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, Prophet River First Nation's engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected

¹⁵⁶ NEB Report (A4K5R6)

¹⁵⁷ NEB Report (A4K5R6)

¹⁵⁸ NEB Report (A4K5R6)

¹⁵⁹ Supplemental Traditional Knowledge Report (A3W1R6)

¹⁶⁰ NEB Report (A4K5R6)

¹⁶¹ "We can no longer go where we used to go": Potential Adverse Impacts of the Proposed North Montney Pipeline Project on the Traditional Land Uses and Values of Prophet River First Nation (A4C0I5)

to result in a minor impact on Prophet River First Nation's culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity and possible intersection of the Project to important cultural and spiritual sites and travel ways, particularly around Sikanni Chief River; and
- Project-related disturbance from construction are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Prophet River First Nation community members accessing culturally important sites and travel ways within the vicinity of the Project.

5.9.6 Mitigation and Accommodation

Refer to Section 4.0 for a summary of Project impacts identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

Specific to Prophet River First Nation, and in relation to three cultural camps in the area of the Sikanni Chief River crossing, the NEB has imposed Condition 10 and requiring the Proponent to continue to engage with Prophet River First Nation to discuss the site-specific details related to these cultural camps, and to file a report on its consultations with Prophet River First Nation regarding potential effects on Prophet River First Nation traditional land and resource uses at the location of the Sikanni Chief River crossing, including cultural camps.

Communication between the Proponent and Prophet River First Nation regarding Condition 10 began in July 2015. In September 2015, the Proponent worked with Prophet River First Nation to coordinate a site visit to the Sikanni River Crossing to better understand the community's concerns with the river crossing location. On September 17, 2015, the Proponent met with Prophet River First Nation near Buckinghorse, BC to complete the site visit for the Sikanni Chief River crossing as per Condition 10. According to the Proponent, there was some confusion on purpose of the site visit and further follow up was requested by Prophet River First Nation. On November 12, 2015, the Proponent met with Prophet River First Nation Chief and Council and a Treaty 8 GIS Technician to get an update on the field work being undertaken by Prophet River First Nation to address Condition 10. Prophet River First Nation requested a helicopter site visit to allow Elders and the Project team representatives to see the sites of concern. The flyover was scheduled for December 10, 2015, but was delayed and is still pending. The Proponent has indicated that it remains committed to working with Prophet River First Nation to address their concerns regarding the Sikanni River Crossing as outlined in Condition 10 of the CPCN.

In addition to Condition 10, the Proponent also made direct commitments to Prophet River First Nation with respect to environmental protection and the incorporation of TLU information in Project planning and activities. Specifically, the Proponent has committed to continued work with Prophet River First Nation's monitors to confirm the mitigation strategies identified and describe how any agreed upon mitigation will be denoted in the final EPP for the Project (commitment 7). As part of the EPP, the Proponent committed to and completed a review of the Weed Management Plan (commitment 8). The Proponent has also committed to protect a mineral lick identified during a 2014 site visit in the proximity of the proposed Sikanni Chief River water crossing. The mineral lick will be flagged off prior to construction of the RoW to avoid disturbance (commitment 110).

With respect to TLU information, the Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116). In the event TLU

sites are identified during ongoing engagement and/or construction, the TLU Sites Discovery Contingency Plan will be implemented to mitigate effects of the Project on these sites (commitments 98 and 107).

EAO has sought to address key concerns raised by Prophet River First Nation through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance;
- Pink Mountain: development of a plan regarding Pink Mountain that outlines the means by which access will be controlled and disturbance will be minimized in the Pink Mountain area.
- Water extraction for hydrostatic testing: development of an alternatives assessment report, which describes the options for sourcing water used for hydrostatic testing, including alternatives to water extraction from Lily Lake; characterizes the environmental and cultural values, including traditional use and knowledge, that have the potential to be impacted by each water extraction alternative; and describes mitigation measures to avoid or minimize potential adverse effects; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.10 Saulteau First Nations

5.10.1 Community Profile

Saulteau First Nations is a signatory to Treaty 8 and a member of the Treaty 8 Tribal Association. Saulteau is a Dane-zaa, Anishnaubemowin (Saulteau), and Nēhiyawēwin (Cree) speaking community. Saulteau First Nations' reserve is located at the east side of Moberly Lake, approximately 4 km from the Project. The reserve is 3,025.8 ha in size. As of April 2016, Saulteau First Nations had a total registered population of 1,057, with an on-reserve population of 363, an off-reserve population of 656, 11 living on Crown land, and 27 living on other reserves. Leadership includes one Chief and four Councillors. The Chief and each of the Councillors represent one of the five founding Saulteau First Nations families. Each family nominates a representative who becomes a Councillor; the general Saulteau First Nations membership elects a Chief every three years from among these five families.

5.10.2 Context

Approximately 95 km Project would overlap in the northern portion of what the Province understands to be Saulteau First Nations' area of traditional use. Based the nature and location of the Project and EAO's initial assessment of the potential impacts to Saulteau First Nations' Treaty 8 rights, EAO is of the view that the duty to consult Saulteau First Nations lies at the middle of the *Haida* spectrum.

5.10.3 Participation in the NEB Process

Saulteau First Nations was an Intervenor in the NEB proceedings and filed evidence, presented witnesses, and participated in final arguments.

Saulteau First Nations participated in Proponent-led engagement for the Aitken Creek section of the Project in May 2011 and for the Kahta section in June 2013. As part of the Proponent-led engagement process, Saulteau First Nations participated in TK studies conducted by the Proponent during biophysical and heritage resource field studies in 2011. Other TK information was gathered from Saulteau First Nations during archaeology, aquatics, vegetation, wetlands and wildlife biophysical field studies which took place in 2011 and 2012. In 2013, further TK was compiled from Saulteau First Nations during aquatics, archaeology, vegetation, wetlands and wildlife studies. A Technical Routing Review was held with Saulteau First Nations in which the Proponent provided a detailed route overview, facilitated a route review session and a fly-over with Saulteau First Nations' participants and their technical consultant to explain and demonstrate the technical route constraints of each of the options.

Saulteau First Nations also elected to conduct a community-led TLU study in 2014, facilitated by the Firelight Group and supported through funding from the Proponent.

In June 2016, the Proponent requested to vary the CPCN by extending the sunset clause pursuant to s.21 of the NEB Act. In September 2016, the NEB extended the sunset clause for the Project to June 10, 2017, subject to approval by the Governor in Council. Saulteau First Nations responded to the Proponent's request for an extension to the sunset clause through a letters to the NEB and the Proponent dated April 21 and July 8, 2016. In those letters, Saulteau First Nations requested that the NEB provide clarification on the approval process for the sunset clause, re-consider Project routing in light of the requested extension to the sunset clause, and that the Proponent use any extensions granted to carry out further investigations related to wildlife mitigation measures and Project routing that were previously cut short by time constraints. On September 15, 2016, the NEB extended the sunset clause for the Project to June 10, 2017, subject to approval by the Governor in Council.

Saulteau First Nations' issues and concerns with respect to the Project centred on impacts to wildlife and wildlife habitat, hunting and gathering, and to traditional land and resource uses, sites and activities. Key issues raised included:

- Impacts of the Project on moose populations and habitat used by moose including the protection of moose mineral licks^{162,163,164};
- Disturbance of animals during Project construction, causing them to move away from the area;
- Fragmentation of habitat, limiting animal movement and reducing the size of available habitat areas;
- Linear disturbances (RoW) improving predator success rates, leading to reduced numbers of prey species such as moose, elk and caribou, and increased numbers of bears and wolves;
- Linear disturbances improving access for hunters, and increasing their success rates due to long lines of sight, adding to hunting pressure on wildlife populations;
- Removal of plants during the creation of the Project RoW, and replacement of native species with non-native species during reclamation;
- Disturbance of habitation sites in the area such as camps and family settlements;
- Disturbance of gathering places in the vicinity of the Project;
- Disturbance of burial sites that may be located in the vicinity of the Project along the Aitken Creek section¹⁶⁵;
- Impacts of the Project on sustenance, cultural, commercial, and socio-economic significance of the Area of Critical Community Interest (ACCI) and the PMT;
- Reduction in land base for traditional activities reducing the ability to transfer TK and threatens cultural identity¹⁶⁶; and
- Impacts of routing through the PMT on Saulteau First Nations' ability to maintain its cultural identity¹⁶⁷.

Saulteau First Nations also submitted that the cumulative effects of industrial development in the Peace Region are adversely affecting the ability of Saulteau First Nations members to exercise their treaty rights in a manner consistent with the spirit and intent of Treaty 8. Saulteau First Nations stated that the proposed route of the Project unnecessarily passes through high value traditional use areas relied upon by Saulteau First Nations members for the exercise of treaty rights, and that no pipeline route through the middle of the PMT will be supported by Saulteau First Nations.

Saulteau First Nations sought leave to judicially review the NEB's approval of the Project to the Federal Court of Appeal in July 2015. Although the Federal Court of Appeal denied leave, Saulteau First Nations has sought leave to appeal the Federal Court's decision to the Supreme Court of Canada and that application is still outstanding.

5.10.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform Saulteau First Nations that the Project required an EAC under the Act. On April 8, 2016 EAO issued a Section 10 Order and shared a draft Section 11 Order with

¹⁶² Mitigations measures proposed by NGTL and referenced in the NEB Report (A4K5R6)

¹⁶³ NEB Report (A4K5R6)

¹⁶⁴ Saulteau First Nation Traditional Knowledge and Use Report, 2014

¹⁶⁵ Mitigations measures proposed by NGTL and referenced in the NEB Report (A4K5R6)

¹⁶⁶ NEB Report (A4K5R6); 170;163

¹⁶⁷ NEB Report (A4K5R6); 170;163

Saulteau First Nations on May 11, 2016, which described the proposed procedures for the provincial EA process for the Project, including key Aboriginal consultation opportunities. EAO requested comments on the draft Section 11 Order, but did not receive written feedback from Saulteau First Nations. The Section 11 Order was issued on June 17, 2016.

EAO provided Saulteau First Nations with capacity funding to support activities associated with provincial consultation. EAO met once with Saulteau First Nations on August 24, 2016 to discuss the provincial assessment process for the Project and Project specific matters. The PMTPP, Project routing, and sites of importance were the primary focus of feedback received from Saulteau First Nations. During the meeting with EAO, Saulteau First Nations identified Twin Sisters Native Plant Nursery, a community owned and operated nursery, as a potential plant source for re-vegetation activities along the Project RoW following construction.

EAO shared the initial draft of the Aboriginal Consultation and Accommodation Report with Saulteau First Nations in August 2016 and requested comments by September 23, 2016. At the request of Saulteau First Nations, that deadline was extended to October 10, 2016. Comments received from Saulteau First Nations were focused on federal consultation and the Proponent's engagement process, submissions made to the NEB by the Proponent, the NEB Report, the PMT, and EAO's interpretation of Treaty 8 rights. Saulteau First Nations noted that they were not engaged in any substantive way by federal agencies before, during, or after the NEB process, and that federal agencies did not consult with Saulteau First Nations about the proposed Project. Saulteau First Nations suggested that EAO provide a list of documents reviewed as part of the provincial process (described in Section 1.3.2), and noted that EAO should revise its characterization of the NEB's views on routing through the PMT (Section 4.1.1) and related Proponent engagement. In addition, Saulteau First Nations noted that EAO should consider and include Saulteau First Nations critique of the PMTPP and include reference to external reports on this issue (Section 5.10.5). EAO considered the comments provided by Saulteau First Nations and revised the draft Aboriginal Consultation and Accommodation Report accordingly.

A draft referral package was sent to Saulteau First Nations on for review and comment on November 24, 2016 for a two-week review period. On December 2, 2016 EAO held a joint meeting with Saulteau First Nations and West Moberly First Nations to discuss proposed draft conditions, and potential revisions brought forward by both Aboriginal groups. EAO offered a follow up meeting on December 15, 2016 to Saulteau First Nations and West Moberly First Nations to discuss the finalized conditions and to discuss how EAO considered input from Saulteau First Nations and West Moberly First Nations in this process.

EAO also received written comments from Saulteau First Nations on other draft referral documents. Specifically, Saulteau First Nations requested an explanation of how EAO determined depth of consultation, as well as clarification on aspects of the Proponent's Aboriginal Engagement Report, and correspondence/documentation which EAO relied on to characterize the Proponent's engagement with Saulteau First Nations. EAO provided a written response on December 14, 2016 to address Saulteau First Nations' requests.

5.10.5 Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

Saulteau First Nations' use of lands, both traditionally and today, extends through much of the upper Peace River Valley and adjacent watersheds. Areas of particular importance located within what the Province understands to be Saulteau First Nations' area of traditional use include: the Halfway River, Beryl Prairie Road near Ruddy Creek, Farrell Creek Road and the confluence of Farrell Creek and the Peace River, North of Beryl Prairie (between Wapoose Creek and Lynx Creek), between the Peace River and the Moberly River, sections along the Moberly River, Big Guy Flats (around the bridge), between the Moberly River and the Pine River, and South of the Pine River¹⁶⁸. Saulteau First Nations also asserts hunting and trapping activities near the Buckinghorse River, Blueberry River, and Kobes Creek Road (the area south of Groundbirch Creek)¹⁶⁹.

Saulteau First Nations members have always lived off the land, getting their meat, fish, fruit, and vegetables from the abundant resources of the area. Historically, the area of northeastern BC offered a rich array of species for hunting and trapping. Moose and other game, such as elk, deer, caribou, grouse, and rabbits, were important components of Saulteau First Nations diet. Fur-bearing mammals, such as lynx, beaver, and marten were important for food as well as for their valuable hides, which were used to make clothing and blankets, as well as being sold in the fur trade¹⁷⁰.

Hunting is integral to Saulteau First Nations food security and cultural continuity. Moose and other large game played an important role historically for subsistence harvesting and Saulteau First Nations way of life, culture, and identity and continue to do so today. Hunting and preparing an animal plays an important role in Saulteau First Nations cultural values, traditions, and future continuity for the community; hunting is not simply for sustenance but is also important for teaching and learning. Sharing the results of a successful hunt is integral to the Saulteau First Nations way of life and a regular part of their hunting practice. Sharing is also an important component of Saulteau First Nations food security for some members who are unable to hunt for themselves. In addition to sharing, some Saulteau First Nations members have also reported trading with other Aboriginal groups, as they have done for generations¹⁷¹.

The food security of many Saulteau First Nations members depends on having a reliable source of animals to hunt. Many Saulteau First Nations members see the land as a place where they can get healthy, preferred foods for their families; however, many Project field study participants expressed concern about dwindling wildlife availability and what that could mean for food security in the community. Many Saulteau First Nations members reported high levels of concern about declining wildlife numbers, which they attribute to the impacts industrial development and the resulting increased traffic and increased presence of non-Aboriginal hunters on the land.

Many members described memories of a landscape once filled with animals, where it was easy to hunt, and hunt close to home. Today many, members report that they have to travel longer distances to find animals. They note that going farther requires more money for gas and travel time, compounding the difficulty for many members to hunt and provide food for their families on a regular basis. In addition to being increasingly difficult to find moose and other wildlife in areas they were once abundant, Saulteau First Nations members also report that the quality of the meat that is successfully hunted is compromised. Saulteau First Nations members attribute these declines in wildlife populations to

¹⁶⁸ Saulteau First Nations Knowledge and Use Study, 2014

¹⁶⁹ Saulteau First Nations Knowledge and Use Study, 2014

¹⁷⁰ Saulteau First Nations Knowledge and Use Study, 2014

¹⁷¹ Saulteau First Nations Knowledge and Use Study, 2014

cumulative impacts on wildlife in the general area of the Project and beyond. The cumulative impacts are created by other pipelines and industrial activities, combined with logging and farming, and the damming of the Peace River, creating a fragmented landscape in which very few areas of intact habitat remain¹⁷².

The Moberly River corridor to the south of the proposed pipeline route, the PMT and ACCI, are preferred Saulteau First Nations hunting areas. Wildlife hunted in this area includes moose, elk, deer, grizzly and black bears, buffalo, beaver, lynx, wolverine, muskrat, fisher, marten, rabbit, grouse, ducks, and geese. Saulteau First Nations relies heavily upon the PMT and ACCI areas for sustenance, cultural, commercial, and socio-economic purposes. Continued activities in the ACCI are in accordance with Treaty 8 rights, and include hunting for large and small game, trapping for fur bearing animals, fishing, building and maintaining cabins, camping, and building new trails to access these resources. Industrial developments that occur within the ACCI and PMT are of particular concern and interest for Saulteau First Nations. The proposed Project passes through both the ACCI and the PMT¹⁷³. Specific concerns regarding the PMT are reflected below, but have been taken into consideration regarding potential Project impacts to hunting and gathering rights.

In addition to the concerns identified by Saulteau First Nations through provincial consultation, potential Project-related impacts to hunting and trapping are described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with Saulteau First Nations, Saulteau First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a moderate impact on Saulteau First Nations' hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to Saulteau First Nations' areas of traditional and current use for hunting and trapping activities, particularly the intersection of the Project with the ACCI and PMT; and
- Ongoing concerns regarding access management with respect to the PMT, both during Project construction and operations.

Impacts on Fishing

Fish are an important component of Saulteau First Nations subsistence, and are caught year-round in lakes and rivers in Saulteau First Nations' areas of traditional use including: the Sikanni Chief River, the Moberly River, Big Guy Flats, Farrell Creek Road and the confluence of Farrell Creek and the Peace River, between the Moberly River and the Pine River, and south of the Pine River¹⁷⁴.

In the Project area, Saulteau First Nations participants use the upper Moberly River extensively, catching species such as rainbow trout, bull trout, grayling, and jackfish. Saulteau First Nations members also reported using the roads along the upper Moberly River for hunting and camping, as well as picking berries and medicinal plants. These activities all rely on both good water quality and the perception of

¹⁷² Saulteau First Nations Knowledge and Use Study, 2014

¹⁷³ NEB Report (A4K5R6); 170;163

¹⁷⁴ NEB Report (A4K5R6); 170;163

good water quality. Spraying of RoWs with herbicides is of serious concern to Saulteau First Nations members due to concerns about contamination of water, fish, birds, berries, and other plants.

Watercourses were highlighted as a vital resource for all life, and as well as important travel routes for Saulteau First Nations members¹⁷⁵. Of specific concern is the potential for contamination at water crossing on the Moberly River, as the Moberly River corridor is an area of exceptionally high use for Saulteau First Nation members.

In addition to the concerns identified by Saulteau First Nations through provincial consultation, potential Project-related impacts on fishing are described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with Saulteau First Nations, Saulteau First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor impact on Saulteau First Nations' fishing activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to Saulteau First Nations' areas of traditional and current use for fishing activities;
- Project-related activities are not likely to have significant adverse effects on species harvested by Saulteau First Nations; however, the EAO recognizes that perceptions of potential contamination may influence how and where treaty rights are practiced; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to Saulteau First Nations community members accessing traditional fishing sites within the vicinity of the Project.

Impacts on Gathering

Gathering and preserving berries is an important subsistence and cultural activity for Saulteau First Nations members. Many Saulteau First Nations members go to known berry patches year after year, and the knowledge of these areas has often been passed down for generations¹⁷⁶.

Saulteau First Nations reported the following locations as areas of importance for gathering activities: Kobes Creek Road (the area south of Groundbirch Creek), Beryl Prairie Road Near Ruddy Creek, north of Beryl Prairie (between Wapoose Creek and Lynx Creek, along the Moberly River, Big Guy Flats (around the bridge), between the Moberly River and the Pine River, and south of the Pine River¹⁷⁷.

Picking medicinal plants remains an important cultural activity for Saulteau First Nations members, and this knowledge is an important component of Saulteau First Nations cultural teachings. Some Saulteau First Nations members have expressed concern about the cost of prescription pharmaceutical drugs and therefore the importance of preserving traditional medicinal knowledge and plant availability is more valuable than ever. Some medicinal plants are only found in certain places. As they do with berries, some Saulteau First Nations members pick medicines at favoured sites to which they have returned

¹⁷⁵ Saulteau First Nations Knowledge and Use Study, 2014

¹⁷⁶ Saulteau First Nations Knowledge and Use Study, 2014

¹⁷⁷ NEB Report (A4K5R6); 170;163

many times. Saulteau First Nations members have expressed concern about the loss of use of these places or the destruction of these plants.

While Saulteau First Nations members return to known plant harvesting sites year after year, they are also always on the lookout for new areas. Saulteau First Nations members have reported they often pick berries when they find them by chance while they are camping, fishing or hunting. Saulteau First Nations participants in Project-related studies stressed that plant growth (both quantity and quality) depends on environmental conditions. This is especially the case with berries, as a location with abundant berries one year may have none the next, and vice versa. Therefore, while participants stressed the importance of protecting existing plant picking sites within the Project area, they also highlight the need to protect large areas of plant habitat for potential future use. This is especially important in the face of ongoing destruction of plant habitat due to industrial development.

During consultation with EAO, Saulteau First Nations recommended use of Twin Sisters Plant Nursery for re-vegetation activities along the Project RoW, and noted that a pre-site assessment would be required approximately one year in advance of re-vegetation in order to harvest and grow site-appropriate plants for re-vegetation purposes. Saulteau First Nations also noted a seed mix that had been co-developed by the Twin Sisters Plant Nursery for the Peace region that would be appropriate for consideration for the Project.

Project-related impacts on gathering are described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, consultation with Saulteau First Nations, Saulteau First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor-to-moderate impact on Saulteau First Nations' gathering activities. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to Saulteau First Nations' areas of traditional and current use for gathering activities, particularly the intersection of the Project with the ACCI and PMT; and
- Ongoing concerns regarding access management with respect to the PMT, both during Project construction and operations.

Impacts on Culturally Important Sites and Travel Ways

Saulteau First Nations members have noted that their culture and identity is rooted in a close connection to the land and animals. Being able to teach their children and grandchildren is of great importance to Saulteau First Nations. The younger generations also echo this, placing a high importance on being able to be out on the land and to learn Saulteau First Nations cultural practices so they can pass them on to their own children in the future. The transmission of language, knowledge, stories, traditional values, and cultural practices (e.g. the making of dry meat and preparing hides) is essential for Saulteau First Nations cultural continuity. For this to occur, younger generations must have the opportunity to learn about the land and animals, hunting and trapping, fishing, gathering plants, and appropriate cultural protocols. This learning usually takes place out on the land through traditional activities. Many Saulteau First Nations participants highlighted the importance of this teaching and learning, often recollecting areas and activities that have been used and practiced for generations.

Saulteau First Nations reported numerous cultural and spiritual values which are exercised by community members within the Saulteau First Nations' area of traditional use. Within the Project area, Saulteau First Nations reported areas of significance such as teaching areas, burial sites, moose and deer antler shedding sites, a ceremony place, a place of spiritual importance, meat processing sites, place names, and family trapping areas held for generations¹⁷⁸.

Site-specific data from the Saulteau First Nations TLU study undertaken for the Project indicated that the Moberly River corridor, the PMT, and the ACCI, all of which are transected by the Project, are of high use by Saulteau First Nations members. This includes the highly important upper Moberly River watershed that has been intensively used by Saulteau First Nations members for generations.

Other areas of importance associated with trails used for hunting, trapping, accessing campsites, transportation by horse and water routes used for hunting and fishing were reported in the following locations: Buckinghorse River, Sikanni Chief River, south of Sikanni Chief River, north of Lily Lake, Blueberry River, Kobes Creek Road (the area south of Groundbirch Creek), Beryl Prairie Road near Ruddy Creek, along the Moberly River, Big Guy Flats (around the bridge), north of Beryl Prairie (between Wapoose Creek and Lynx Creek, between the Peace River and the Moberly River, Farrell Creek Road and the confluence of Farrell Creek and the Peace River, between the Moberly River and the Pine River, and south of the Pine River¹⁷⁹). Other areas of significance include the mountain known as "Twin Sisters" (Beattie Peaks), which is regarded as an important historical and spiritual site for Saulteau First Nations members, and Pink Mountain, an area used by Saulteau First Nations for bison hunting, camping and cultural events.

Destruction and fragmentation of habitat within culturally important areas including the PMT and ACCI has the potential to reduce the suitability of areas of key importance for teaching, learning, and practicing cultural activities. Through provincial consultation, Saulteau First Nations expressed concern regarding the execution of NEB Condition 11, requiring the Proponent to develop a PMTPP in consultation with Saulteau First Nations. Saulteau First Nations expressed that their community had undertaken a significant amount of work, including hiring of consultants, to develop what they felt were robust mitigation measures for consideration in the PMTPP. They further expressed that they did not feel these mitigations were meaningfully considered by the Proponent in development of the PMTPP, and that subsequently, few of the preferred mitigations were reflected in the final PMTPP. The PMTPP was approved by NEB in May 2016.

According to the Proponent, five in-person meetings and numerous correspondences with respect to the PMTPP were held with Saulteau First Nations. The Proponent provided funding for Saulteau First Nations and West Moberly First Nations to hire consultants to review and comment on drafts of the PMTPP. The Proponent also stated that it provided funding for another consultant to facilitate TLU ground truthing activities with Saulteau First Nations within the PMT. The Proponent stated that it provided drafts of the PMTPP to Saulteau First Nations on four separate occasions between August and November, 2015 for their review and comment. According to the Proponent, during engagement Saulteau First Nations raised general concerns with matters that included THE PROPONENT's environmental and socio-economic assessment methodology, impacts associated with any route through the PMT, and cumulative effects across the PMT and Saulteau First Nations' traditional

¹⁷⁸ NEB Report (A4K5R6); 170;163

¹⁷⁹ Saulteau First Nations Knowledge and Use Study, 2014

territories that are outside of the Project route. The Proponent considered these matters outside the scope of the PMTPP as outlined by the NEB in Condition 11.

The Proponent noted that initial drafts of the plan were provided to Saulteau First Nations in August 2015, and that it received limited feedback until November 2015. The Proponent also noted that Saulteau First Nations repeatedly requested that postponing the finalized PMTPP until NEB Certificate Condition 4 has been satisfied. That condition requires the Proponent to advise the NEB of a positive final investment decision by Progress Energy Canada Ltd. on its Pacific Northwest LNG Project at least 60 days prior to commencing construction of the Project. The PMTPP was filed prior to the fulfillment of Condition 4¹⁸⁰.

Since filing, the Proponent stated it has made concerted attempts to engage with Saulteau First Nations regarding the PMT but does not believe that additional time would result in any material changes to the mitigation measures contained in the PMTPP.

In addition to the concerns identified by Saulteau First Nations through provincial consultation, potential Project-related impacts on culturally important sites and travel ways are described in Section 4.2.4.

In consideration of the information available to EAO from the NEB process, consultation with Saulteau First Nations, Saulteau First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a moderate impact on Saulteau First Nations' culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to Saulteau First Nations' areas of traditional and current use, particularly the intersection of the Project with the ACCI and PMT, which EAO understands to be of great importance with respect to cultural activities; and
- Ongoing concerns regarding management of the PMT with respect to the Project, both during Project construction and operations.

5.10.6 Mitigation and Accommodation

Please refer to Section 4.0 for a summary of Project impacts identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent.

The Proponent made commitments to Saulteau First Nations with respect to the use of TLU information in Project planning and activities, heritage conservation, and the PMT. The Proponent also made commitments to Saulteau First Nations with respect to the incorporation of TLU information in Project planning and activities. Specifically, the Proponent has committed to consider/incorporate additional concern, and traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87, 116). With respect to heritage conservation, the Proponent has amended its Heritage Resource Discovery Contingency Plan which governs the assessment and mitigation of archaeological sites discovered during construction, to provide an opportunity for local Aboriginal communities to be involved with decision-making regarding the handling of human remains (commitment 124).

¹⁸⁰ ¹⁸⁰ NGTL letter to NEB Condition 11 (A74426-1). December 2015

In consideration of the concerns raised by Saulteau First Nations regarding the potential impacts the Project may have on the continued use of the lands and resources in the PMT for their traditional uses and activities, the NEB imposed Conditions 11, 12 and 35. Conditions 11 and 12 require the Proponent to file for approval, in advance of commencing construction in the PMT, a Protection Plan for the PMT (PMTPP), along with the Proponent's plans for consulting with Saulteau First Nations on the development of its PMTPP, and any additional mitigation measures to reduce or eliminate potential Project effects on the use of lands and resources within the PMT. Condition 35 requires the Proponent to report on the effectiveness of its mitigation measures in the PMT during the operation of the Project. Both the PMTPP Consultation Plan and the PMTPP have been approved by the NEB. The PMTPP Consultation Plan was approved by the NEB in May 2015, and the PMTPP was approved in May 2016.

The Proponent also committed to providing information to workers on the Project regarding the sensitivity of the ACCI and the PMT (commitment 34).

EAO has sought to address key concerns raised by Saulteau First Nations through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;
- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance;
- Peace Moberly Tract: engagement with and consideration of information provided by Saulteau First Nations and West Moberly First Nations regarding future filings to the NEB regarding the PMT, and establishment of a forum that includes participation by Saulteau First Nations and West Moberly First Nations to support ongoing dialogue regarding mitigation and management within the PMT; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

5.11 West Moberly First Nations

5.11.1 Community Profile

West Moberly First Nations is a signatory to Treaty 8 and a member of the Treaty 8 Tribal Association. West Moberly First Nations is a Beaver, or Dane-zaa, speaking community and was originally part of the Hudson Hope Band, along with Halfway River First Nation, up until 1977. West Moberly First Nations' community is located on the west side of Moberly Lake and the reserve occupies 2,033.6 ha. As of April 2016, West Moberly First Nations had a total registered population of about 294 people, with an on-reserve population of 124, an off-reserve population of 165, 1 living on Crown land, and 4 living on other reserves. West Moberly First Nations are governed by a Chief and four Councillors.

5.11.2 Context

Approximately 115 km of the Aitken Creek section of the Project would overlap with the northern region of what the Province understands to be West Moberly First Nations' area of traditional use. Based on the nature and location of the Project, and EAO's assessment of the potential impacts to West Moberly First Nations' Treaty 8 rights, EAO is of the view that the duty to consult West Moberly First Nations lies in the middle of the *Haida* spectrum.

5.11.3 Participation in the NEB Process

West Moberly First Nations was an Intervenor in the NEB process and proceedings, and filed evidence, presented witnesses and participated in final arguments during.

In 2013, West Moberly First Nations participated in Proponent-led TK collection during aquatics, archaeology, vegetation, wetlands and wildlife studies. In 2015, West Moberly First Nations participated in archaeology surveys of the Katha section of the Project, and in four archeological investigation surveys at Lily Lake. During the archaeological studies at Lily Lake, carried out by Proponent consultants and West Moberly First Nations, participants documented a rare paleo-aged site. According to the Proponent, the site will be protected because of the Project's efforts to study the site and ensure it will not be damaged during construction when an above ground water line is temporarily installed to take water from Lily Lake¹⁸¹. The site was also registered with the BC Archaeology Branch.

West Moberly First Nations also conducted a third party Socio-Economic Data Collection Study (SES) for the submission under the NEB Act. The socio-economic elements covered in this report included human occupancy, social and cultural well-being, heritage, demographics, human health, community infrastructure and services, employment and businesses of the West Moberly First Nations. West Moberly First Nations also participated in an independent technical review of the project and in the cultural monitoring of the geotechnical investigation work at Kobes Creek.

Throughout the NEB process, West Moberly First Nations set out issues and concerns raised by the community in relation to the Project, and the associated impacts on their treaty rights. West Moberly First Nations' key concerns centre on impacts to wildlife and wildlife habitat, hunting and to traditional land and resource uses, sites and activities. Key issues raised include:

¹⁸¹ Nova Gas Transmission Ltd. Aboriginal Engagement Summary September 2014 to March 2016. Submission to EAO

- Rapid reduction in wildlife numbers;
- Sensory disturbances on wildlife activity including changes to migration routes;
- Failure of the Proponent to adequately mitigate, avoid or justify significant Project impacts to the Moberly caribou herd;
- Impact of the of Project route through the PMT and ACCI, and the adverse effects on one of the most sacred, hunting and gathering areas for West Moberly First Nations to meaningfully exercise their treaty rights;
- Impact of the Project route on land use in the ACCI, the Farrell Creek and Kobes Creek areas¹⁸²;
- Failure of the Proponent to account for the cultural and spiritual components of traditional use practices in their impacts analysis¹⁸³; and
- Lack of clarity from the Proponent on how mitigation measures will be applied on a site by site basis¹⁸⁴.

West Moberly First Nations also raised concerns that a number of TLU resources, areas and activities are likely to be impacted by the Project¹⁸⁵. West Moberly First Nations asserted that increased industrialization has encroached on West Moberly First Nations' territory, severely limiting its ability to engage in traditional practices in those areas¹⁸⁶. West Moberly First Nations also expressed concerns regarding the methodology that was employed by the Proponent and its consultant CH2M (formerly TERA) in collecting traditional ecological knowledge for the Project, suggesting that the approaches were not adequate and thus the conclusions not credible¹⁸⁷.

West Moberly First Nations stated that the method used by the Proponent, which is based on screening out impacts without fully assessing the interaction between residual effect and other impacts, underestimates the scale and significance of cumulative effects associated with the Project. Potential adverse effects from the proposed Project are considered to contribute to the existing significant adverse effects on the rights of West Moberly First Nations, particularly on the exercise of those rights in the Farrell Creek watershed, PMT and ACCI. West Moberly First Nations is concerned that the cumulative effects of industrial activity (including fracking activities, wind generation projects, mining, major and feeder pipelines, access routes, oil and gas leases, hydro power generation, and transmission lines from power projects or to major industrial sites) are destroying ecosystems, critical habitat, wildlife, and cultural landscapes.

5.11.4 Summary of Crown Consultation

On March 29, 2016, EAO wrote to inform West Moberly First Nations that the Project required an EAC under the Act. On April 8, 2016 EAO issued a Section 10 Order and on May 11, 2016 EAO shared a draft Section 11 Order with West Moberly First Nations, which described the proposed procedures for the provincial review process for the Project, including key consultation opportunities. EAO requested comments on the draft Section 11 Order, but did not receive written feedback from West Moberly First Nations. The Section 11 Order was issued on June 17, 2016.

¹⁸² West Moberly First Nations Socio-Economic Study North Montney Pipeline Project (2014). Prepared by Askiy Resources.

¹⁸³ West Moberly First Nations Final Argument (C36-32-3)

¹⁸⁴ West Moberly First Nations Final Argument (C36-32-3)

¹⁸⁵ NEB Report (A4K5R6)

¹⁸⁶ NEB Report (A4K5R6)

¹⁸⁷ NEB Report (A4K5R6)

EAO provided West Moberly First Nations with capacity funding to support consultation activities. Prior to meeting with West Moberly First Nations, EAO shared a copy of the draft Aboriginal Consultation and Accommodation Report and requested comments by September 23, 2016. No comments were received. On September 13, 2016, EAO met with from West Moberly First Nations to discuss the Project. During the meeting, West Moberly First Nations presented the following key concerns for further discussion and consideration of potential conditions or accommodations: revegetation, routing and directional drilling, caribou, and access management. West Moberly First Nations also provided EAO copies of their submission to the NEB opposing the approval of the Proponent's PMTPP, including West Moberly First Nations' mitigation recommendations to the Proponent, and correspondence regarding the Project footprint within what West Moberly First Nations has identified as critical habitat for the Klinse-Za (Moberly) caribou herd. EAO committed to a follow up discussion on these matters, particularly around potential conditions, and committed to providing draft conditions in advance of that meeting to inform the discussion. An early draft of proposed conditions was provided to West Moberly First Nations on November 23, 2016 for discussion.

Follow-up meetings were held on November 24 and December 9, 2016. The meeting on December 9, 2016 included participation by Sauteau First Nations. The focus of both meetings was EAO's draft conditions. EAO discussed the context, intent and desired outcomes of each condition with West Moberly First Nations. West Moberly First Nations provided EAO with written and verbal feedback on conditions of relevance and proposed changes to the following conditions in order to strengthen, clarify or refine their intended objective: Plan Development, Aboriginal Consultation Reports, Involvement of Aboriginal Groups in Construction Monitoring, Access Management, Caribou Mitigation and Monitoring, Peace Moberly Tract and Pink Mountain. West Moberly First Nations, presented their rationale for each proposed change, and EAO undertook an iterative process to revise draft conditions, where possible. Upon finalizing the Project conditions, EAO offered to meet with West Moberly First Nations and Sauteau First Nations to discuss the proposed conditions and how input provided by West Moberly First Nation and Sauteau First Nations was considered.

A draft referral package was sent to West Moberly First Nations on November 24, 2016 for a two-week review. While EAO met with and consulted West Moberly First Nations on draft project conditions, EAO did not receive written comments from West Moberly First Nations on the other documents comprising the draft referral package.

5.11.5 Impacts of Project on Treaty Rights and Interests

Impacts on Hunting and Trapping

West Moberly First Nations relied on hunting of large ungulates, primarily wood bison, moose, and deer and the trapping of furbearers during the fur trade era¹⁸⁸. Carnivores and omnivores of importance to West Moberly First Nations include grizzly bear, black bear, lynx, wolf, wolverine, marten, fox, mink and coyote. Ungulates of importance to West Moberly First Nations include moose, elk, caribou, mountain goats, mountain sheep, mule deer and white-tail deer. Birds of importance to West Moberly First Nations include black capped chickadee, red-winged blackbird, purple finch, Swainson's thrush, American robin, darkeyed junco, white-crowned sparrow, American bald eagle, and golden eagle.

¹⁸⁸ West Moberly First Nations Traditional Land Use and Occupancy Study Final Report (1999-2000). Prepared by West Moberly First Nations Traditional Land Use and Occupancy Study Team. Available from <https://apps.nrs.gov.bc.ca/int/tus/listFiles.do?tusId=49> [accessed May 2016]

West Moberly First Nations have indicated that moose is a principle food source¹⁸⁹.

West Moberly First Nations area of traditional use for hunting occurs within an arc from the upper Halfway River to Hudson's Hope to Moberly Lake to upper and lower Pine watershed, northwest of Hudson's Hope¹⁹⁰. Hunting is a primary focus of West Moberly First Nations land use in the Farrell Creek cultural network and the PMT cultural network. Cultural networks are spatial units that exist within the larger traditional seasonal round. They are the areas where West Moberly First Nations go to access resources and engage in cultural practices at different times throughout the year. These networks are connected and these connections are essential for maintaining cultural integrity¹⁹¹. Movement between networks occurs for a variety of reasons dictated by traditional ecological knowledge, including wildlife population management.

Two regions that West Moberly First Nations had identified as important are the ACCI and the PMT. Sauleau First Nations and West Moberly First Nations have identified a shared area of ACCI as an area of special significance¹⁹². West Moberly First Nations have noted that the ACCI stretches from Carbon Creek in the west to the mouth of the Pine River in the east. The PMT is located between the southern shore of Moberly Lake and the Peace River¹⁹³ on the north end. The PMT is an area of special interest to Sauleau First Nations and West Moberly First Nations because of its cultural, commercial and sustenance resource value¹⁹⁴. It is also considered a sacred hunting and gathering area¹⁹⁵. West Moberly First Nations have stated that the PMT is now one of the only pristine areas it has left to meaningfully exercise its treaty rights¹⁹⁶. The lower Pine River watershed and the Moberly River are important harvesting areas for West Moberly First Nations members. West Moberly First Nations have also indicated that the south side of the Peace River is an important harvesting area.

A portion of the Project, between the Saturn Receipt and Mackie Creek Interconnect, traverses the ACCI including approximately 10 km of the PMT which is in the ACCI. Of primary concern is the access that the route through the PMT would provide to others, leading to increased exploitation of, and impacts to wildlife, including caribou¹⁹⁷.

West Moberly First Nations members have indicated an observed loss in species distribution and population as a result of industrial activities, agriculture and other conflicting land uses¹⁹⁸. Specific concern was placed on caribou, which have a persistent small population in the Project area, according to West Moberly First Nations¹⁹⁹. Concern was also expressed regarding moose population decline. During provincial consultation, West Moberly First Nations expressed concern regarding the Kinse-Za (Moberly caribou herd); independent mapping undertaken on behalf of West Moberly First Nations has identified critical habitat for this herd outside of what is recognized by the Province, and this area would

¹⁸⁹ Appendix A: TERA 2001-2012 Traditional Knowledge Report for the Proposed Nova Gas Transmission Ltd. Groundbirch Mainline (Aitken Creek Section) Project. July 2013. TERA Environmental Consultants.

¹⁹⁰ Site C FNET. 2013c. Site C Clean Energy Project - Volume 5 Appendix A28 Part 4 - Aboriginal Summary: West Moberly First Nations - Final Report. Prepared for: BC Hydro Power and Authority. Available at: https://www.ceaa-acee.gc.ca/050/documents_staticpost/63919/93686/Vol1-Appendices.pdf. [accessed June 2016]

¹⁹¹ West Moberly First Nations Socio-Economic Study North Montney Pipeline Project (2014). Prepared by Askiy Resources.

¹⁹² NEB Report (A4K5R6)

¹⁹³ Draft Peace Moberly Tract Sustainable Resource Management Plan (FLNRO, 2006)

¹⁹⁴ NEB Report (A4K5R6)

¹⁹⁵ NEB Report (A4K5R6)

¹⁹⁶ NEB Report (A4K5R6)

¹⁹⁷ NEB Report (A4K5R6)

¹⁹⁸ West Moberly First Nations Socio-Economic Study North Montney Pipeline Project (2014). Prepared by Askiy Resources.

¹⁹⁹ West Moberly First Nations Socio-Economic Study North Montney Pipeline Project (2014). Prepared by Askiy Resources.

overlap with the Project route.

West Moberly First Nations members have highlighted the impact that industrial land use and non-Aboriginal recreational land use, have had on traditional hunting practices of West Moberly First Nations. West Moberly First Nations are concerned that the high volume of authorizations issued in their territory are making it increasingly difficult to find areas on their territory that are undisturbed and suitable for cultural activities. Members highlighted the PMT Cultural Network as one of the few places left within West Moberly First Nations territory where members can still access cultural places and resources they require, and expressed concern that additional access into the PMT would increase the number of non-Aboriginal hunters in the area. West Moberly First Nations have indicated that they want to see access management for the Project rooted in the concept of preserving peaceful enjoyment of the land for Aboriginal land users.

West Moberly First Nations' trapping areas are concentrated west of Moberly Lake, within West Moberly First Nations' area of traditional use but outside of the Project area. There are currently five known members that actively trap. According to the West Moberly First Nations TLU report, the geographic extent of the adverse effects is predicted to extend to the Farrell Creek Cultural Network, the PMT Cultural Network, and possibly the Moberly River, Moose Call and Klinse-Za traplines.

In addition to the concerns identified by West Moberly First Nations through provincial consultation, potential Project-related impacts to hunting and trapping are described in Section 4.2.1.

In consideration of the information available to EAO from the NEB process, consultation with West Moberly First Nations, West Moberly First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a moderate impact on West Moberly First Nations' hunting and trapping activities. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to West Moberly First Nations' areas of traditional and current use for hunting and trapping activities, particularly the intersection of the Project with the ACCI and PMT; and
- Ongoing concerns regarding access management with respect to the PMT, both during Project construction and operations.

Impacts on Fishing

Fishing takes place in the many lakes, rivers and creeks in West Moberly First Nations area of traditional use. Depending on the location and time of year, various species are targeted by West Moberly First Nations community members. West Moberly First Nations have indicated that they fish in the Blueberry River and in an area upstream from the Taylor Bridge on the Peace River. Fish species of importance to West Moberly First Nations include bull trout, northern pike, whitefish, arctic grayling, mountain whitefish, white sucker, burbot, longnose suckers, Dolly Varden, and rainbow trout²⁰⁰. Fishing is not typically done in conjunction with other traditional activities.

West Moberly First Nations described difficulty in finding locations where fishing can occur without

²⁰⁰ West Moberly First Nations Socio-Economic Study North Montney Pipeline Project (2014). Prepared by Askiy Resources.

interference from other land users. West Moberly First Nations also expressed concern regarding high levels of methylmercury, leading to changes in seasonal practice, and in some cases termination of cultural practices due to health concerns.

West Moberly First Nations' right to fish could be impacted by the Project through reduced access to areas of importance, including access to the Halfway River, the lower Moberly River, and the Peace River, as well as the smaller lakes within the PMT Cultural Network, particularly the Cameron Lakes.

West Moberly First Nations also noted that potential impacts from the Project are likely to contribute to existing significant adverse effects on fishing in the Farrell Creek Cultural Network and the PMT Cultural Network. These significant adverse effects also interact with the cumulative effects that exist within the Project area.

In addition to the concerns identified by West Moberly First Nations through provincial consultation, potential Project-related impacts on fishing are described in Section 4.2.2.

In consideration of the information available to EAO from the NEB process, consultation with West Moberly First Nations, West Moberly First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor impact on West Moberly First Nations' fishing activities. Some of the factors that have informed EAO's conclusions include:

- Proximity of the Project to West Moberly First Nations' areas of traditional and current use for fishing activities;
- Project-related activities are not likely to have significant adverse effects on species harvested by West Moberly First Nations; however, the EAO recognizes that perceptions of potential contamination may influence how and where treaty rights are practiced; and
- Project-related disturbance from construction activities are temporary and relatively short in duration and thus, likely to cause negligible disruptions to West Moberly First Nations community members accessing traditional fishing sites within the vicinity of the Project.

Impacts on Gathering

Plants of importance to West Moberly First Nations include: yarrow, monkey flower, goldenrod, tall larkspur, arnica, fireweed, aster, red baneberry, red clover, plantain, devil's club, monkshood, horsetail, highbush and lowbush cranberry, thimbleberry, wild strawberry, raspberry and huckleberry. Plant gathering sites were identified by West Moberly First Nations along the Pine and Moberly Rivers.

Gathering activities in the Farrell Creek Cultural Network and in the PMT Cultural Network primarily occur in West Moberly First Nations area of traditional use. An important part of gathering plants is the opportunity it provides West Moberly First Nations to connect with the land, family, and the youth that often accompany Elders. Traditional ecological knowledge is taught at this time along with how to operate on the land. Experiencing the "bush life" is central to much of the activity, as it enables members to connect with the land given the type of practice, where members spend a great deal of time touching, holding, smelling, and listening to nature.

According to West Moberly First Nations, gathering could be impacted by reduced access to cultural networks due to construction and maintenance activities. The West Moberly First Nations traditional use report indicates that gathering could be impacted in the Farrell Creek Cultural Network and the PMT Cultural Network. West Moberly First Nations have noted that impacts on gathering are likely to be greater during the construction phase due to the Project due to increased noise, dust and traffic. Ongoing impacts are anticipated as a result of real or perceived contamination, increased access from other land users, and increased noise and dust associated with corridor maintenance activities.

Project-related impacts on gathering are described in Section 4.2.3.

In consideration of the information available to EAO from the NEB process, consultation with West Moberly First Nations, West Moberly First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a minor-to-moderate impact on West Moberly First Nations' gathering activities. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to West Moberly First Nations' areas of traditional and current use for gathering activities, particularly the intersection of the Project with the ACCI and PMT; and
- Ongoing concerns regarding access management with respect to the PMT, both during Project construction and operations.

Impacts on Culturally Important Sites and Travel Ways

According to the West Moberly First Nations' traditional use report, the Aitken Creek section of the Project transects a number of culturally important areas including areas of the traditional seasonal round, particularly the Farrell Creek Cultural Network and the PMT. Both have long histories with the people of West Moberly First Nations and their ancestors. Collectively, there are approximately 3,700 sites, locations, and areas that rely on the land and natural resources of the Farrell Creek Cultural Area and PMT Cultural Network. West Moberly First Nations describe these areas as the last places they have to go to exercise traditional practices in a meaningful way.

Destruction and fragmentation of habitat within culturally important areas, including the PMT and ACCI, has the potential to reduce the suitability of areas of key importance for teaching, learning, and practicing cultural activities. Through provincial consultation, West Moberly First Nations expressed concern regarding the execution of NEB Condition 11, requiring the Proponent to develop a PMTPP in consultation with West Moberly First Nations. West Moberly First Nations expressed ongoing concerns regarding their proposal and request for specific mitigations for inclusion in the plan, and that the majority of these mitigations were not reflected in the final plan, that was subsequently approved by the NEB in May 2016. Specific concerns were related to buffer areas around areas of importance (e.g., mineral licks), access management, revegetation, and consideration of drilling options to avoid surface disturbance within the PMT. West Moberly articulated these concerns to EAO and proposed potential means by which to address these concerns.

According to the Proponent, five in-person meetings and numerous correspondences with respect to the PMTPP were held with West Moberly First Nations. The Proponent provided funding for West Moberly First Nations and Sauteau First Nations to hire consultants to review and comment on

drafts of the Plan, as well as funding for ground-truthing and documentation of site specific issues. The Proponent stated that it provided drafts of the PMTPP to West Moberly First Nations on four separate occasions between August and November, 2015 for their review and comment. According to the Proponent, during engagement West Moberly First Nation raised general concerns with matters that included the Proponent's Environmental and Socio-economic Assessment methodology, impacts associated with any route through the PMT, and cumulative effects across the PMT and the communities' traditional territories that are unrelated to the Project. The Proponent considered these matters outside the scope of the PMTPP as outlined by the NEB in Condition 11.

The Proponent noted that initial drafts of the plan were provided to West Moberly First Nations in August 2015, and that it received limited feedback until November 2015. The Proponent also noted that West Moberly First Nations repeatedly requested that postponing the finalized PMTPP until Certificate Condition 4 has been satisfied. That condition requires the Proponent to advise the Board of a positive final investment decision by Progress Energy Canada Ltd. on its Pacific Northwest LNG Project at least 60 days prior to commencing construction of the Project. The PMTPP was filed prior to the fulfillment of Condition 4²⁰¹.

Since filing, the Proponent stated it has made concerted attempts to engage with West Moberly First Nations regarding the PMT but does not believe that additional time would result in any material changes to the mitigation measures contained in the PMTPP.

In addition to the concerns identified by West Moberly First Nations through provincial consultation, potential Project-related impacts on culturally important sites and travel ways are described in Section 4.2.4.

EAO carefully considered the concerns raised by West Moberly First Nations, both during provincial consultation and through the NEB process, as well as information and responses provided by the Proponent through the NEB process. The conclusions below and the proposed conditions identified by EAO reflect consideration of these materials and concerns.

In consideration of the information available to EAO from the NEB process, consultation with West Moberly First Nations, West Moberly First Nations' engagement with the Proponent, the Proponent's proposed mitigation measures and the NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued, the Project is expected to result in a moderate impact on West Moberly First Nations' culturally important sites and travel ways. Some of the factors that have informed EAO's conclusions include:

- Proximity and intersection of the Project to West Moberly First Nations' areas of traditional and current use, particularly the intersection of the Project with the ACCI and PMT, which EAO understands to be of great importance with respect to cultural activities; and
- Ongoing concerns regarding management of the PMT with respect to the Project, both during Project construction and operations.

²⁰¹ NGTL letter to NEB Condition 11 (A74426-1). December 2015

5.11.6 Mitigation and Accommodation

Please refer to Section 4, in the main body of this report for a summary of Project impacts identified by the NEB and corresponding mitigation measures captured in NEB conditions and Project commitments from the Proponent. The Proponent made direct commitments to West Moberly First Nation with respect to the use of TLU information in Project planning and activities, and heritage conservation and the PMT.

The Proponent has made commitments to West Moberly First Nations with respect to the incorporation of TLU information in Project planning and activities. Specifically, the Proponent has committed to consideration/incorporation of additional issues of concern, traditional use sites or features identified through ongoing engagement into Project planning, including the EPP and the EAS, as appropriate; and to providing the NEB with monthly updates on the results of ongoing engagement efforts (commitments 87 and 116). With respect to heritage conservation, the Proponent's has amended its Heritage Resource Discovery Contingency Plan which governs the assessment and mitigation of archaeological sites discovered during construction, to provide an opportunity for local Aboriginal communities to be involved with decision-making regarding the handling of human remains (commitment 124). The Proponent also committed to providing information to workers on the Project regarding the sensitivity of the ACCI and the PMT (commitment 34).

In consideration of the concerns raised by West Moberly First Nations regarding the potential impacts the Project may have on the continued use of the lands and resources in the PMT for their traditional uses and activities, the NEB imposed Conditions 11, 12 and 35. Conditions 11 and 12 require the Proponent to file for approval, in advance of commencing construction in the PMT, a Protection Plan for the PMT, along with the Proponent's plans for consulting with West Moberly First Nations on the development of its Protection Plan and any additional mitigation measures to reduce or eliminate potential Project effects on the use of lands and resources within the PMT. Condition 35 requires the Proponent to report on the effectiveness of its mitigation measures in the PMT during the operation of the Project. Both the PMTPP Consultation Plan and the PMTPP have been approved by the NEB. The PMTPP Consultation Plan was approved by the NEB in May 2015, and the PMTPP was approved in May 2016. West Moberly First Nations expressed the following concerns regarding this plan:

- Limited opportunity for participation from West Moberly First Nations in the development of the plan;
- Limited adoption of mitigation measures proposed by West Moberly First Nations;
- Lack of focus on avoidance of impacts versus monetary offsetting; and
- Absence of an analysis on avoidance and mitigation, including impacts on treaty rights, prior to the Proponent's conclusions on the feasibility of mitigations.

EAO has sought to address key concerns raised by West Moberly First Nations through recommendation of the following provincial conditions, should an EAC be granted:

- Aboriginal consultation reports: continued engagement by the Proponent with Aboriginal groups, including information sharing and discussion of site-specific mitigation measures;
- Involvement of Aboriginal groups in construction monitoring: providing opportunities for members of Aboriginal groups to participate in monitoring activities that occur within their area of traditional use;

- Aboriginal cultural awareness and recognition: identification of opportunities for cultural awareness and recognition, and efforts to support these opportunities, as identified;
- Access management: development of an access management plan, in consideration of the access management plan already developed for and approved by the NEB, which includes requirements to identify the types, locations and rationale for all access management measures, as well as the means by which access to hunters and predators will be managed;
- Caribou mitigation and monitoring: engagement with and consideration of information provided by Aboriginal groups regarding future filings to the NEB regarding caribou, as well as development of a plan to reduce direct impacts to caribou through displacement and sensory disturbance;
- Peace Moberly Tract: engagement with and consideration of information provided by Sauleau First Nations and West Moberly First Nations regarding future filings to the NEB regarding the PMT, and establishment of a forum that includes participation by Sauleau First Nations and West Moberly First Nations to support ongoing dialogue regarding mitigation and management within the PMT; and
- Archaeology – heritage resources: development of a heritage resource discovery plan to address potential disturbance or chance finds of archaeological/heritage sites or resources, as well as ongoing engagement on the reporting, management and mitigation of impacts to heritage resources, and providing training opportunities for Aboriginal monitors.

6 Weighing of Impacts

The Province has a responsibility to weigh the potential impacts and accommodations on Aboriginal Interests with other societal interests, including the social, environmental and economic benefits of a proposed project. This evaluation is an important component informing the Ministers' decision on whether to approve a proposed project. In weighing a proposed project's benefits with impacts on Aboriginal Interests, EAO holds the view that the following factors are relevant to consider:

- Importance of the proposed project to the provincial economy;
- Benefits of the proposed project to affected Aboriginal communities; and
- Resources or values that may no longer be available for future generations.

6.1.1 Project Importance to the Provincial Economy

The BC government set its vision for natural gas sector in BC in September 2011 with the release of the *Canada Starts Here: The BC Jobs Plan*. In the *4-Year Progress Update*, released in 2015, natural gas development opportunities were identified as key to future economic growth.

It is expected that the majority of economic benefits from the Project will accrue during the construction phase of the Project. The Proponent has stated that the Project is expected to introduce over \$800 million into the BC economy during construction through spending on services and associated subcontracts. Provincial tax revenue and indirect tax revenue from induced economic activity is expected to be over \$180 million. The Project is expected to increase property tax revenue to the Peace River Regional District by \$8 million a year. The Proponent expects to employ over 900 workers on a full time basis over the two-year construction period. The Proponent has estimated that a total of 2,470 full time equivalent (FTE) positions will be generated during Project construction, with an additional 1,770 indirect FTEs generated. The Proponent also estimates an additional 2,184 induced FTEs due to increased household spending.

Once construction is complete, the Proponent estimates that operation and maintenance workforce requirements are for five employees.

In addition to the direct economic benefits provided by the proposed Project, the Project also fills an important strategic need as it will enable access to the North Montney area of BC to growing gas markets in North America and overseas. The Project would connect gas supply to the Aitken Creek Gas Storage Facility and the Prince Rupert Gas Transmission pipeline. Prince Rupert Gas Transmission would transport gas sourced by the Proponent to the proposed Pacific NorthWest LNG Ltd. natural gas liquefaction, storage, and export facility at Lelu Island, BC.

By connecting the NGTL system to the North Montney supply basin, Aitken Creek Gas Storage and potential global LNG markets, this Project will stimulate growth of existing and new production areas in the Western Canadian Sedimentary Basin, provide access to new longer term markets for Western Canadian Sedimentary Basin gas, enhance operational flexibility for producers, and increase liquidity within BC and other North American and international markets.

Economic benefits including jobs from these related projects would not be possible without the construction of this Project.

6.1.2 Benefits of Project to Affected Aboriginal Communities

The Proponent has indicated that the Project would provide opportunities to Aboriginal communities within close proximity to the Project to provide contracting services. The Proponent has indicated that they continue to discuss opportunities related to contracting and employment with Aboriginal communities and that this capacity has been incorporated into Project planning. The Proponent has designated the following activities to qualified Aboriginal businesses and partnerships: camps and catering services, RoW clearing and hauling, medical services, and security services. The Proponent also submitted that it is in a partnership with the North East Native Advancing Society Innovative Learning Centre and that this partnership supports the development and delivery of training programs for Northeast BC Aboriginal community members.

The Proponent has also indicated that it works with its primary contractors to facilitate employment of individuals from Aboriginal communities in proximity to the Project, including identifying opportunities for on-the-job training. The Proponent has stated that it has typically achieved participation rates of 10% to 15% of the construction workforce by individuals from Aboriginal communities. The Proponent estimates that \$33 million would be awarded in contracts to qualified Aboriginal businesses and Aboriginal partnerships on the Project.

The Proponent has stated that it has a community investment program which focuses on civic investment, education, environment, and health and human services and that it is committed to supporting Aboriginal-specific community investment initiatives. These include support for youth and elder gatherings, computers in schools and fundraising for seasonal community events.

6.1.3 Resources or Values that May no Longer be Available for Future Generations

As discussed in Sections 4.0 and 5.0 of this report, traditional subsistence activities, such as hunting, fishing, gathering and trapping may be altered as a result of construction and operations activities of the Project, which could manifest through changes to local harvesting locations, behavioural alteration to or sensory disturbance of environmental resources, or through increased public access to traditional harvesting areas and increased pressure on environmental resources.

Although EAO has assessed there to be potential impacts to resources or values of importance to Aboriginal groups, in addition to the proposed mitigation actions and conditions required by the NEB, EAO has also proposed a number of conditions to further reduce the potential for adverse effects on Aboriginal groups (see Section 4.2).

7 Conclusions

The NEB concluded that:

- With the implementation of the Project's environmental protection procedures and mitigation, and the NEB's recommended conditions, the Project is not likely to cause significant adverse effects; and
- The Project is in Canada's public interest.

Based on:

- The federal Governor in Council's approval of the Project and direction to the NEB to issue the necessary CPCN in June 2015;
- Information contained in the NEB Report, the Proponent's Application, information filed with the NEB during the review of the Project, and information provided during the remaining provincial review of the Project;
- The efforts at and record of consultation and engagement with potentially affected Aboriginal groups, including by the NEB and the Proponent, the federal government, and EAO;
- The commitments of the Proponent, requirements imposed by the NEB conditions, the additional regulatory requirements of the federal and provincial governments, and EAO's proposed conditions;
- Commitments and requirements for ongoing consultation and engagement of Aboriginal groups by the Proponent;
- The participation of, and opportunities for the participation of, Aboriginal groups, government agencies, and the public, in the NEB panel process and subsequent regulatory processes;
- Issues raised by Aboriginal groups regarding outstanding issues and concerns during Crown consultation; and
- Mitigation measures identified as proposed conditions in Schedule B (proposed conditions) of the EAC to be undertaken by the Proponent.

EAO is satisfied that:

- Consultation has been carried out in good faith and that the Crown's process of seeking to understand potentially outstanding issues and impacts was reasonable;
- The potential for adverse effects on the Aboriginal Interests of Aboriginal groups has been avoided, minimized or otherwise accommodated to an acceptable level; and
- The provincial Crown has fulfilled its obligations for consultation and accommodation to Aboriginal groups relating to the issuance of a provincial EAC.