

Appendix C.12 – Peters Band

I - Background Information

Peters Band (Peters) is a Stó:lō community, whose asserted traditional territory spans the Fraser River, with their reserve lands clustered on the south bank and a nearby island between Hope and Chilliwack, British Columbia (BC). Peters has three reserves: Peters No. 1, Peters No. 1A, and Peters No. 2. Peters' registered population as of July 2016 is 161, with 43 members living on reserve.

Peters is understood to be a modern descendant of the group ethnographically identified as the Tait. The Tait are one of several groups classified as Upper Stó:lō. Though similar language and customs appear to have been shared as between the Upper Stó:lō groups, the Tait spoke a unique dialect.

Peters members historically spoke the Stó:lō Halq'eméylem language. In January 2014, however, a language assessment determined there were no active language speakers within the community.

Although a culturally Stó:lō community, Peters is not a party to collective assertions of Aboriginal rights and title with other Stó:lō bands. Peters signed a Forest Consultation and Revenue Sharing Agreement with the Province of BC in 2013, within which they identify their asserted traditional territory.¹

The Project Right-of-Way (RoW) is proposed to cross Peters No. 1 and No. 1A reserve lands. As of spring 2016, the proponent advised that they had a commercial agreement with Peters to construct the Project across the following reserve lands: Peters No. 1 and No. 1A. The proponent will be seeking *Indian Act* s.28(2) permits from Peters to allow for the expansion of the pipeline. The *Indian Act* tenure will require a Band Council Resolution requesting the tenure be issued. Additionally, the form of agreements and fair market compensation will be considered before the approval of the tenures.

The existing pipeline crosses Peters No. 1 and No. 1A reserve lands.

II - Preliminary Strength of Claim Assessment

- Approximately 133 kilometres (km) of the Project RoW, including the Hope and Wahleach pumping stations, would be located within Peters' asserted traditional territory and the RoW crosses two of Peters' reserves (Peters No. 1 and Peters No. 1A). Approximately 1.38 km of RoW is proposed to cross Peters' reserves, including up to 65 m of new RoW.
- Peters is understood to be a modern descendant of the group ethnographically identified as the Tait. The Crown's preliminary assessment of the Tait's *prima facie* claim for rights over the area of the Project ranges from weak to strong. The portion that spans the asserted territory falls

¹ http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/frcsa_peters.pdf

within the area ethnographers attributed to the historic Tait territory and would support a strong *prima facie* claim.²

- The Crown's preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz up to Hope is considered moderate to strong, and the claim is strong for the portion of the Project in proximity to Hope. This is supported by the number of historic Tait village sites scattered from Popkum up through to Ruby Creek on towards Hope, including the historic site of *C'Kals*, a large village site where Hope is now located. The stretch of territory northwest of Hope is considered to be moderate, an area likely utilized for resource gathering activities by those who occupied the Tait villages in and near Hope and northwards.³

III - Involvement in the NEB and Crown Consultation Process

Given the nature and location of the Project, and the potential impacts of the Project on Peters' Aboriginal Interests, the Crown is of the view that the legal duty to consult Peters lies at the deeper end of the *Haida* consultation spectrum. Peters was placed on Schedule B of the section 11 order issued by the Environmental Assessment Office (EAO), which afforded Peters opportunities to be consulted at a deeper level.

Peters participated in the National Energy Board (NEB) process as an intervenor. Peters did not respond to the Major Projects Management Office's (MPMO) *Issues Tracking Table Information Request* ([A4Q8K7](#)), nor did Peters provide a final written or oral summary argument. Peters submitted a letter stating they could not participate in the second round of information requests due a lack of funding as the Board had yet to render a decision on Participant Funding at that time.

Peters signed a contribution agreement with the NEB for \$36,920 in participant funding plus travel for two to the hearing. The Major Projects Management Office (MPMO) offered Peters \$11,999 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Peters an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Peters signed contribution agreements with the MPMO in response to both of these offers, for a total of \$25,999 in allocated funding.

On November 1, 2016 Peters was provided with \$5,000 in capacity funding by the EAO to assist with the consultation process.

On January 22, 2016, Peters signed a Mutual Benefits Agreement and Legacy Settlement Agreement with the proponent. On January 25, 2016, Peters filed a regulatory support letter with the NEB ([A4X7U5](#)) indicating that, subject to the terms and conditions of the Mutual Benefits Agreement, Peters is satisfied

² Cascades Lower Canyon CFA: The Shxw'owhamel, Chawathil, Union Bar and Yale First Nations: A Preliminary Review of Ethnographic and Historical Sources; Stó:lō/Yale Territorial Overlaps: A Preliminary Review of Ethnographic and Historical Sources; Sto:lo First Nations: Traditional Territories of the "Upriver" Halkomelem or "Upper Sto:lo" – Review of Ethnographic and Historical Sources (Nov 18, 2013).

³ Ibid.

with the mitigation measures provided by the proponent in respect of the Project and further agrees that there has been adequate consultation by the proponent for the Project.

Peters, together with Shxw'ōwhámel First Nation, met with the Crown on March 3, 2016 to discuss the Project.

The Crown provided a first draft of the *Consultation and Accommodation Report* (Report) to Peters for review and comment on August 17, 2016. The Crown received comments on the Report from Peters on September 19, 2016. A second draft of this Report was provided to Aboriginal groups for review on November 2, 2016 and Peters provided comments on November 15, 2016.

IV - Summary of Key Peters Band Issues and Concerns Raised

The Crown has gained its understanding of Peters' issues and concerns through Peters' involvement in the NEB hearing process and through direct engagement and consultation, which includes a meeting in Vancouver on March 3, 2016. In addition, the Crown has considered information regarding the proponent's engagement with Peters as described in the proponent's *Aboriginal Engagement Report* (July 2016). This section offers a summary of the key issues raised by Peters, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown's assessment of the impact of the Project presented in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of Peters' key Project-related issues and concerns are summarized below:

Methodology, Process and Consultation

Peters has repeatedly stated that the NEB process is not a suitable forum for the Crown to discharge its legal duty to consult. In their meeting with the Crown in March 2016, Peters indicated there had been a lack of meaningful Crown consultation since they had met in the first round of consultation. Peters suggested there is a need for a separate, more participatory consultation process. In reviewing the draft version of this Report, Peters reiterated the position that consultation has not yet occurred, and that the Crown failed to consult Peters about the framework for the Project's review process. Therefore, Peters states the environmental assessment completed by the NEB does not fully provide the Crown with the information it requires on the potential adverse impacts on Peters' Aboriginal title, rights and Interests.

Peters expressed concern about the limited funding they have received to participate in the hearing and remarked upon the onerous record-keeping requirements of funding agreements. Peters has stated this has affected their ability to participate fully in the process, including preventing them from submitting Information Requests, as they had not yet received a decision on their application for funding by the deadline. Peters has suggested there needs to be adequate funding for consultations provided in advance of Indigenous groups incurring costs for them to be able to participate fully in the NEB process.

Peters has stated the NEB review of the Project was limited in scope.

Cumulative Effects

Cumulative impacts, particularly to wildlife such as bear and deer, have been observed by community members, arising from the extent of development which has already occurred in Peters' reserve lands and asserted traditional territory (including highways, the existing pipeline, etc.).

Project Construction Phase

Peters stated they hold concerns about potential contamination during construction at a particular creek in their territory as it provides habitat for several wildlife species.

Environmental Impacts

Peters has drawn attention to the Project's potential impacts to the environment, including noise pollution, increased access, and habitat disruptions to wildlife such as bear and deer causing these species to abandon the areas proximal to the community, be poached or killed on the highway. Additionally, Peters stated the Project could cause pollution to community drinking water sources and affect fish species important to their culture and diet, such as sturgeon.

Health and Human Safety

As the existing and proposed pipeline routes cross Peters' reserves, community members expressed concern about the psychological impacts on members, who will have more than 800,000 barrels of oil per day shipped within meters of their homes. Peters has also stated they use the land and water for sustenance and traditional activities, including hunting, trapping and gathering.

Impacts to Aboriginal Rights

Peters asserts Aboriginal rights and title throughout their territory. Peters claims that band members continue to use the lands and waters extensively for fishing and hunting, harvesting berries and plants, gathering medicinal plants and cedar for traditional activities, participating in spiritual bathing, managing lands and resources for future generations, and generally exercising cultural rights. Peters has expressed concern about loss of culture, language and traditions. Peters also noted the presence of pit houses that their ancestors built.

Accidents or Malfunctions

Peters noted the potential for spills to create irreversible impacts to surface water and rivers, the harvest of wildlife and plants, as well as any impacts to the groundwater aquifer used for domestic purposes and to water cattle, which play an important economic role for members. Additionally, the positioning of the pipeline relative to the community amplifies the potential effects of a spill, given community lies downhill from the RoW. Peters has also drawn attention to the effects of an oil spill on water with an ice cover.

Peters has also expressed concern with the proponent's non-disclosure of information related to the timely detection and response to leaks, ruptures or spills.

Recognition of Economic Rights

Peters maintains their right to resource revenue sharing is based on their underlying title to their lands. Peters has stated that in the *Tsilhqot'in* decision, “the Supreme Court of Canada recognized that Aboriginal Title holders have the right... ‘to enjoy [the land’s] economic fruits.’”

Pipeline Integrity

In reviewing the draft version of this Report, Peters stated proponents should assess pipeline integrity throughout a project’s lifecycle. Additionally, in the case of Trans Mountain, the proponent should identify measures for the abandonment of both the existing and new pipeline. Peters noted they have not yet been made aware of a detailed decommissioning plan for the pipelines. Peters has expressed their concerns about the impacts of the decaying pipeline components should it be left in the ground post-operation.

Accommodation Proposals

Peters has proposed several accommodation measures, including the following:

- The negotiation of an agreement between the Crown and Peters for joint decision-making and Project oversight, consistent with the Nation-to-Nation commitment and the United Nations Declaration on the Rights of Indigenous People (UNDRIP), including funding for engagement and negotiations;
- Sufficient funding for consultation provided in advance of Peters incurring costs for consultation on the Project moving forward;
- Involvement in abandonment planning for both the existing and new pipeline;
- The recognition of Peters’ right to resource revenue sharing, based on their underlying title to their lands;
- The proponent be required to post an environmental bond or security in a form and amount that is acceptable to Peters; and
- That Peters have an enhanced role in the review and approval of environmental management and protection plans, emergency response plans, and monitoring (including over wetlands, water quality, fish and fish habitat, wildlife and post construction reclamation) during construction and operations stages, and at abandonment.

On July 22, 2016, the MPMO replied to correspondence received from Peters and Shxw'ōwhámel First Nation expressing interest in receiving a draft protocol and budget to showcase the type of Nation-to-Nation agreement Peters and Shxw'ōwhámel First Nation were seeking. To date, the Crown has not received any further correspondence on the matter, nor did Peters (or Shxw'ōwhámel First Nation) respond to the Crown’s invitation to arrange a second Phase III consultation meeting in fall 2016 to discuss this matter.

Peters has expressed interest in receiving further information regarding the Indigenous Advisory and Monitoring Committee proposed by the federal Crown, and has requested to be kept apprised of any updates related to this committee.

Section 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups. Accommodations proposed by Peters that the Crown has not responded to directly via letter will be otherwise actively considered by decision-makers weighting Project costs and benefits with the impacts on Aboriginal Interests.

Peters' Response to the NEB Recommendation Report

No specific comments were received from Peters on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Peters' Aboriginal Interests

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Sections 2.4.3 and Section 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group 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), by individual members or families.

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

- Biophysical effects to values linked to Aboriginal rights (e.g. fish) that were assessed by the NEB;
- Impacts on specific sites or areas identified as important to traditional use; and
- Impacts on social, cultural, spiritual, and experiential aspects of exercising Aboriginal Interests.

Additional factors considered in the assessment of impacts on Aboriginal Interests are described in Section 2.4.3 of this Report. The Crown's conclusion on the seriousness of Project impacts on Peters' Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Peters, Peters' engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant conditions proposed by the Province of any Environmental Assessment Certificate issued. Peters expressed disagreement with the Crown's assessment of Project impacts on Peters' Aboriginal Interests.

Peters completed a traditional land use (TLU) study in 2014 titled *Peters Band Knowledge and Use Study: Kinder Morgan's Trans Mountain Expansion Project*. The report included identification of traditional land uses in the segment of the proposed pipeline from Hope to Burnaby, and from Burnaby to Westridge. As stated in the report, the TLU study does not represent all of Peters' current uses and the absence of data does not suggest the absence of use or value. Traditional land uses identified by Peters include hunting, gathering plants, information on fishing sites, sacred sites, trapping sites, habitation sites, gathering areas for community members, and trails travelways. Peters' TLU information is summarized in the

Project Application ([A4S717](#)). Where available, the proponent estimated approximate distances and directions of geographic locations identified in the Peters report from the proposed pipeline corridor.

Impacts on Hunting, Trapping and Plant Gathering

Peters' TLU information describes the importance of hunting for subsistence purposes and cultural activities for community members. Hunting is used to supplement community members' fishing activities. Bear, deer, geese, ducks, grouse, moose, and mountain goat are hunted in the Project Area. Plants and fungi are harvested by Peters' community members for food, medicines, dyes, and craft materials. Harvested plants include berries (salmon berries, wine berries, blackberries, currents, cap berries, raspberries, huckleberries, soap berries, low-bush cranberries and thimbleberries), rhubarb, and medicinal plants. Cedar, wild cherry, lichen, red willow, cascara bark, and swamp grass are used for baskets and other traditional crafts.

Peters identified concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities. These concerns include the cumulative and immediate impacts of construction, operations, and a potential spill on wildlife, hunting and trapping activities, harvesting of plants and fungi in Peters' asserted traditional territory. Additionally, Peters has noted noise pollution from construction as an environmental concern.

As described in the *NEB Recommendation Report*, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants, lichens and vegetation communities of concern, old growth forests, wetlands, and wildlife and wildlife habitat (including species at risk-listed species). If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering (Section 4.3.1 of this Report). With regards to specific concerns raised by Peters, the proponent would implement several mitigation measures to reduce potential effects to species important for Peters' hunting, trapping, and plant gathering activities. The proponent is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction of wildlife to the work site, minimize sensory disturbance and protect site-specific habitat features are outlined in the Project Environmental Protection Plan and the Wildlife Management Plans. The proponent has developed Commitment 1005, which states that Trans Mountain will conduct sound level monitoring at representative sites throughout the Project footprint.

Twelve hunting sites were identified by Peters during the TLU study for the Project, of which five sites are located within the proposed pipeline corridor. The five hunting sites are associated with Peters No. 1, No. 1A, and No. 2, Hunter Creek, and the Fraser River. Two hunting sites are located within 2 km of the proposed pipeline corridor, and five hunting sites are located more than 3 km from the Project Area. One trapping site was identified during the TLU study for the Project approximately 1.6 km east of the proposed pipeline corridor. This trapping site at Mount Ludwig is an important trapping

region for Peters' community members. Peters identified 13 plant gathering sites during their TLU study for the Project, of which seven sites are located within the proposed pipeline corridor. The seven sites are associated with Peters No. 1, No. 1A, and No. 2, Fraser Valley, and Othello to Carry Peak. Three plant gathering sites are located within 2 km of the proposed pipeline corridor at Silver Creek Valley, Bridal Falls and Peters No. 2. The remaining three sites are more than 2.4 km from the proposed pipeline corridor.

Peters raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including increased public access and disruptions to wildlife habitat or poaching of animals such as bears and deer. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Peters' access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities.

The Crown appreciates that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Peters. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites (Section 4.3.1 of this Report). With regards to specific concerns raised by Peters, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Peters' hunting, trapping, and plant gathering activities, such as management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs that monitor access control measures. The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic during and following construction in order to minimize disturbance to access to Peters' traditional lands. The proponent has committed to minimizing the development of access routes, controlling public access along the construction right-of-way, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent has also committed to work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Peters prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Peters to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Peters expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including loss of Aboriginal rights, culture, language and traditions, and the transmission of these key practices and knowledge across generations arising from cumulative and immediate impacts of construction, operations, and a potential spill. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Peters' hunting, trapping, and plant gathering activities. The Crown appreciates that this short-term disruption could temporarily alter the behaviour of community

members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members.

If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). With regards to specific concerns raised by Peters, the proponent would implement several mitigation measures to reduce potential effects to Peters hunting, trapping, and plant gathering activities. The proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups regarding the integration of traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Peters, Peters' engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on Peters' hunting, trapping and plant gathering activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Peters;
- Project-related pipeline and facility construction and routine maintenance activities within Peters' traditional territory are temporary and thus, likely to cause minor disruptions to Peters' community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Peters regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

TLU information describes the importance of subsistence fishing for Peters' community members, as salmon is the primary component of most community members' diet. Fished species include salmon (sockeye, Chinook, pink, steelhead and Coho), cutthroat trout, bullhead trout, sturgeon, catfish, carp, Dolly Varden, rainbow trout, and suckers.

Peters identified many concerns related to environmental effects of the Project on fishing activities, in particular increased disturbances that the new pipeline could have on water and important fish species, such as sturgeon, and impacts to surface water and rivers arising from a potential spill. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish, fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Peters, the proponent would implement several mitigation measures to reduce potential effects to species important for Peters' fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least-risk biological windows in an attempt to avoid causing serious harm to fish. The proponent has also committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat. Through Commitment 266, the proponent has committed to developing a Conceptual Fish Offset Plan should the potential for serious harm to fish that are part of, or support a commercial, recreational or Aboriginal (CRA) fishery be confirmed, unless authorized by Fisheries and Oceans Canada (DFO), either during the self-assessment or upon NEB or DFO review.

Peters identified 10 fishing sites during the TLU study for the Project, of which five are located within the proposed pipeline corridor. The five fishing sites are associated with Peters No. 1, No. 1A, and No. 2. There are two fishing sites located within 2 km of the proposed pipeline corridor near Bridal Veil Falls and Peters No. 2. Three fishing sites are located more than 3.1 km from the proposed pipeline corridor. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Peters' access to fishing activities. The Crown appreciates that if construction and reclamation occur during the fishing season; there could be a potential reduction in access to waterways, staging areas, and fishing sites for Peters' community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for Peters (Section 4.3.2 of this Report). With regards to specific concerns raised by Peters, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Peters' fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Peters' traditional lands, as described in the Access Management Plan. The proponent committed to working with Peters to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Peters expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of their fishing activities, including loss of Aboriginal rights, culture, language and traditions, and the transfer of these practices and knowledge across generations. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Peters' fishing activities. The Crown appreciates that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. If the Project is approved, the NEB conditions would either directly or indirectly reduce the potential effects on social, cultural, spiritual or experiential effects associated with fishing activities (Section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Peters, Peters' engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on Peters' freshwater fishing activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Peters;
- Project-related pipeline and facility construction and routine maintenance activities within Peters' traditional territory are temporary and thus, likely to cause minor disruptions to Peters' community members accessing traditional fishing sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Peters regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

As described in their TLU information, Peters community members primarily use trails and travelways to access plant gathering sites, fishing sites and hunting sites. An unknown number of trails and travelways are also located in and around Peters reserves' boundaries, and towards Wahleach Lake. Habitation sites included permanent habitation sites and homes, seasonal homes, previous homes, cabins, homes of relatives, and campsites. Campsites used regularly are located near Wahleach Lake, Hicks Lake, Silver Lake, and within the Fraser Valley near Yale. Community members emphasize their cultural connection to water and reported ceremonial sites used for burnings, drumming, healing grounds and potlaches. In and around the reserves gathering places are used for food processing and teaching, and for hunting, fishing and plant gathering activities. Sacred areas identified by Peters include birthplaces, meditation sites, spiritual locations, and burial sites. Peters has also drawn attention to the presence of culturally significant pithouse in their traditional territory.

Peters identified three trails and travelways during the TLU study for the Project, of which two are located in the proposed pipeline corridor, and one is located 4.2 km east of the proposed pipeline

corridor. Seven habitation sites were identified by Peters during the TLU study for the Project, of which three are located within the proposed pipeline corridor. The other four habitation sites are locations more than 4.2 km from the Project Area. Nine gathering places were identified by Peters during the TLU study for the Project, of which five are located within the proposed pipeline corridor. The five gathering places are associated with Peters No. 1, No. 1A, and No. 2. Two gathering places are located within 2 km of the proposed pipeline corridor in Peters No. 2 and at Silver Creek Valley. The other two gathering places are more than 4.2 km from the proposed pipeline corridor. Peters community members identified seven sacred areas during the TLU study for the Project, of which five are located within the proposed pipeline corridor. The five sacred areas are associated with Peters No. 1, No. 1A, and No. 2. Two sacred areas associated with Peters No. 2 and Mount Ludwig are located within 2 km of the proposed pipeline corridor.

Peters identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including to spiritually and culturally important sites. As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). With regards to specific concerns raised by Peters, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Peters' traditional and cultural practices. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW finalization, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

Peters raised concerns with the Project's potential impacts relating to cultural practice and increased access to the land by members of the public due to Project-related activities. Project-related activities are expected to cause short-term disruptions that temporarily affect the ability of Aboriginal groups to access land, waters or resources for traditional purposes. The Crown appreciates that Peters' opportunities for certain traditional and cultural activities will be temporarily interrupted during construction and routine operation, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Peters' traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific sites and access to physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown notes the proponent's commitment to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

Peters expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, including impacts affecting the transmission of Peters' culture, tradition and language to the next generation, and cultural and social impacts of the Project. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Peters' cultural and spiritual practices, or that their participation in the traditional activity is curtailed, during Project construction and routine maintenance activities.

In consideration of the information available to the Crown from the NEB process, consultation with Peters, Peters' engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a moderate impact on Peters' other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on Peters' traditional and cultural practices;
- Project-related construction and routine maintenance activities within Peters' traditional territory are temporary and thus, likely to cause minor disruptions to Peters' community members accessing traditional and cultural practice sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Peters regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

The Crown has actively consulted with Peters throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Peters throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Peters' use of its asserted traditional territory, including cumulative impacts from development, access, disruption to wildlife, and potential impacts in the event of a spill;
- Activities that affect Peters' ability to manage and make decisions over the Project area, including impacts to Peters' ability to manage lands and resources for future generations; and
- Project-related activities that affect Peters' economic development aspirations for its asserted traditional territory, including recognition of Peters' asserted right to resource revenue sharing, based on their underlying title to their lands as argued in the *Tsilhqot'in* decision.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims.

Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. The Crown notes that Peters executed a Mutual Benefits Agreement with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce or accommodate impacts to Aboriginal title claims if the Project proceeds.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion that the Project is expected to have negligible impacts on Peters' Band's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

Peters expressed concerns regarding the direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the effects of a potential spill on:

- Surface water and rivers, as well as the groundwater aquifer used for domestic purposes and to water cattle; and
- The harvest of wildlife and plants and associated traditional language and cultural practices.

Peters noted the potential for spills to create irreversible impacts to surface water and rivers, the harvest of wildlife and plants, as well as any impacts to the groundwater aquifer used for domestic purposes and to water cattle, which play an important economic role for members. Additionally, the positioning of the pipeline relative to the community amplifies the potential effects of a spill, given community lies downhill from the RoW. Peters has stated the presence of the pipeline in their traditional territory, and its proximity to their community is a cause of psychological stress for community members. Peters has also drawn attention to the effects of an oil spill on water with an ice cover.

Peters has also expressed concern with the proponent's non-disclosure of information related to the timely detection and response to leaks, ruptures or spills. Peters has stated proponents should assess pipeline integrity throughout a project's lifecycle. Additionally, in the case of Trans Mountain, Peters has stated the proponent should identify measures for the abandonment of both the existing and new pipeline.

The Crown also appreciates Peters' concerns regarding spills, and the potential for a spill to impact Peters' use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Peters has for its territory. A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report.

In consideration of this information and analysis, as well as information available to the Crown on Peters' Aboriginal Interests and concerns raised by Peters during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Peters' Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.⁴

VI - Conclusion

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Peters' Aboriginal Interests would be up to moderate.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Peters' ongoing involvement and participation in the proponent's detailed Project planning, including the development of site-specific measures or pipeline routing to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Peters in emergency response planning activities. The federal Crown is also considering incremental measures that would further accommodate the potential adverse impacts of the Project on Peters, as discussed in Sections 4 and 5 of the main body of this Report.

In addition, the Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Peters in an attempt to offset potential impacts, should the Project proceed.

⁴ Trans Mountain Final Argument, p. 85 and 207