

## Appendix C.14 – Seabird Island Indian Band

### I - Background Information

Seabird Island Indian Band (Seabird Island) is a Stó:lō community whose asserted traditional territory encompasses a large section within the Fraser Valley, British Columbia (BC). Seabird Island is located 20 kilometres (km) west of Hope, BC and 20 km east of Chilliwack, BC, along the Fraser River.

Seabird Island 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 Sto:lo. Though similar language and customs appear to have been shared between the Upper Sto:lo groups, the Tait spoke a distinct dialect.

Seabird Island has two reserves: *Pekw'xe:yles/Peckquaylis* and *Seabird Island*. Seabird Island's registered population as of July 2016 is 986, with 619 members living on reserve.

The Stó:lō historically spoke the Halkomelem language.

Seabird Island is a party to the Sto:lo Nation protective *Writ of Summons*, which was filed in the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the writ. Seabird Island signed a Forest Consultation and Revenue Sharing Agreement with the Province of BC in 2014, identifying its asserted traditional territory within this agreement.<sup>1</sup>

### II - Preliminary Strength of Claim Assessment

- The Project right of way (RoW) is estimated to run through 195 km of Seabird Island's asserted traditional territory also delineated as the Stó:lō Nation writ area. Six facilities (i.e. Hope Station, Wahleach Station, Sumas Station, Sumas Terminal, Border Traps, and Westridge Marine Terminal) would be located within Seabird Island's asserted traditional territory. Approximately 14.5 km of the marine shipping route is also within Seabird Island's asserted traditional territory. The RoW runs across the Fraser River south west of Seabird Island reserve between Kilometer Posts 1030 – 1040, just west of the Hope Pump Station. At its closest point, the pipeline corridor runs less than 1 km from the Seabird Island reserve.
- The Crown's preliminary assessment of the Tait's *prima facie* claim for rights over the area of the Project pipeline ranges from weak to strong. The portion that spans the asserted territory falls within the area ethnographers attributed to the historic Tait territory and would support a strong *prima facie* claim<sup>2</sup>.
- The Crown's preliminary assessment of the *prima facie* strength of claim for rights within the portion of the shipping route, including the Westridge Marine Terminal that falls within

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<sup>1</sup> [http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/fcrsa\\_seabird\\_2014.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/fcrsa_seabird_2014.pdf)

<sup>2</sup> 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).

Seabird Island's asserted traditional territory is weak. There is no information to indicate that ethnographers associated this area with Seabird Island.

- The Crown's preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz up to Hope, Tait's *prima facie* claim to title 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<sup>3</sup>. The claim diminishes to a weak *prima facie* claim for title for the remainder of the Project falling within the asserted traditional territory of Seabird Island.

### **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 Seabird Island's Aboriginal Interests, the Crown is of the view that the legal duty to consult Seabird Island lies at the deeper end of the *Haida* consultation spectrum. Seabird Island was placed on Schedule B of the Section 11 order issued by the Environmental Assessment Office (EAO), which affords Seabird Island opportunities to be consulted at a deeper level.

Seabird Island did not participate in the National Energy Board (NEB) review process. A confidential Mutual Benefit Agreement was signed between the proponent and Seabird Island in March 2015. A letter supporting the Project was sent to the NEB in March 2015.

The Major Projects Management Office (MPMO) offered Seabird Island \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Seabird Island an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Seabird Island did not use these funding opportunities. On October 15, 2016 EAO offered Seabird Island \$5,000 in capacity funding to participate in consultations with the Crown.

The Crown met with Seabird Island on March 9, 2016 and September 29, 2016. The Crown provided a first draft of this Report to Seabird Island for review and comment on August 17, 2016. The Crown did not receive comments from Seabird Island on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from Seabird Island.

### **IV - Summary of Seabird Island's Key Issues and Concerns Raised**

The Crown has gained its understanding of Seabird Island's issues and concerns through information brought forward during meetings with the Crown held in March and September 2016. In addition, the Crown has considered information regarding the proponent's engagement with Seabird Island as described in the proponent's [Aboriginal Engagement Report](#) (July 2016).

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<sup>3</sup> Ibid.

This section offers a summary of the key issues raised by Seabird Island, 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.

According to the proponent's [Aboriginal Engagement Report](#), Seabird Island engaged extensively with the proponent on such topics as employment and training opportunities for the community. It is the Crown's understanding that Seabird Island identified the following Project-related concerns with the proponent throughout their engagement<sup>4</sup>:

- Potential effects from construction and operations to:
  - Medicines;
  - Water, land, air, wildlife, habitat, and plants;
  - Increased wildfires;
- Potential effects from the introduction of foreign substances into the ecosystem; and
- Potential adverse environmental and cultural effects in the event of a spill.

During consultation meetings with the Crown in March and September 2016, Seabird Island raised several issues and concerns related to the Project:

- Environmental impacts of the Project;
- Increased intensity of development in their asserted traditional territory;
- Inadequate funding to participate in consultations;
- Impacts to sturgeon and sturgeon spawning grounds in the event of a spill;
- Inadequate Crown consultation and their interest in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP); and,
- A belief that Traditional Land Use (TLU) should be mandatory for all groups.

### ***Seabird Island's Response to NEB Recommendation Report***

Seabird Island expressed concerns with the *NEB Recommendation Report's* characterization of the Project impacts as modest. They believe that the cumulative effects of development in their traditional territory means that any incremental impacts associated with this Project, no matter how small, are significant.

### **V - Potential Impacts of the Project on Seabird Island's Aboriginal Interests**

A discussion of the Crown's approach to assessing Project impacts on Aboriginal Interests is provided in Section 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

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<sup>4</sup> Trans Mountain Pipeline. (2016). DRAFT Aboriginal Engagement Report.

for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

It is the Crown's understanding that Seabird Island did not complete a traditional land and resource use study for the Project. As a result, the Crown has limited information on the specific sites and resources used by Seabird Island for traditional purposes that could be impacted by the Project. Seabird Island identified concerns during the Crown consultation process, which the Crown has taken into consideration in its assessment of potential impacts on Seabird Island's Aboriginal Interests.

The general direct and indirect effects of the Project on Aboriginal rights, along with key mitigation measures, are described in Section 4.3 of the main body of this Report. As described in that Section, routine Project-related activities are likely to result in low to moderate impacts on the lands, waters and resources that Aboriginal groups use to exercise their hunting, trapping, plant gathering, fishing, and other traditional activities. Short-term, temporary access disruptions to traditional activities are expected, although these impacts would be localized within the Project footprint for the pipeline and associated facilities. In consideration of the information available to the Crown from the NEB process, Crown consultation with Seabird Island, Seabird Island's 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, the Project is expected to result in minor impacts on Seabird Island's Aboriginal rights.

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 Seabird Island 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 Seabird Island's asserted Aboriginal title to the proposed Project area.

Seabird Island expressed concerns regarding spills, including the potential for a spill to impact Seabird Island's ability to harvest salmon, berries, mushrooms, and other plants and animals for traditional, ceremonial, subsistence, and commercial purposes. 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 Seabird Island's Aboriginal Interests, and concerns raised by Seabird Island during the Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Seabird Island's exercise of Aboriginal Interests, depending on the characteristics and severity of the spill. 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.

## **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 Seabird Island's Aboriginal Interests would be up to minor.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Seabird Island's 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 Seabird Island 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 Seabird Island, 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 Seabird Island in an attempt to offset potential impacts, should the Project proceed.