

## Appendix D.7 – Lyackson First Nation

### I - Background Information

Lyackson First Nation (Lyackson) is a Coast Salish community located on the east coast Vancouver Island about 20 kilometers (km) south of Nanaimo, British Columbia (BC). Lyackson asserts that it traditionally used the Gulf Islands and surrounding waters to conduct fishing and other activities.

Lyackson has three reserves: *Lyackson 3*, *Portier Pass 5*, and *Shingle Point 4*. Lyackson members live at Chemainus, as their main reserve on Valdes Island has no regular transportation service. Lyackson's registered population as of July 2016 is 213; 40 members live on-reserve and 173 live off-reserve.

Lyackson is a party to the Hul'qumi'num Nation protective *Writ of Summons*, which was filed in the BC Supreme Court in December 2003, asserting Aboriginal title to a territory identified in the *writ*. Lyackson is party to the Hul'qumi'num Treaty Group (HTG) Statement of Intent. The HTG includes: Stz'uminus (Chemainus) First Nation, Lake Cowichan First Nation, Halalt First Nation, Penelakut Tribe, Cowichan Tribes, and Lyackson.

The HTG is currently in Stage 4 of the BC Treaty process (i.e. Agreement-in-Principle). Lyackson members historically spoke the Hul'qumi'num (pronounced "*Hul-ka-MEE-num*") language.

### II - Preliminary Strength of Claim Assessment

- The right of way (RoW) transects the asserted traditional territory of the Hul'qumi'num, between the Westridge terminal and Surrey, and again between Chilliwack and Hope (approximately 72 km of new RoW). The following Project facilities are located within the asserted traditional territory of the Hul'qumi'num: Hope Station, Wahleach Station, Port Kells Station, Burnaby Terminal, and Westridge Marine Terminal. The marine shipping route would pass through approximately 265 km of Hul'qumi'num Treaty Group's traditional territory.
- The Crown's preliminary assessment of Lyackson's Aboriginal rights in areas proximal to the marine shipping corridor of the Project, which transits the Strait of Georgia, is assessed as having a *prima facie* claim of Aboriginal rights ranging from weak to strong as follows. Areas of strong claims are areas within what ethno-historic sources generally describe as pre-contact traditional territory of the Lyackson and where there is information of their historic use as part of their traditional seasonal round, including areas in the Strait of Georgia proximal to, and within the southern reaches of, the southern arm of the Fraser River, portions of the southern Gulf islands that lie to the west of Galiano Island and above Active Pass and areas proximal to Valdes Island. Areas of weak claims include areas proximal to the Strait of Georgia north of Gabriola passage and north and south of the South arm of the Fraser River, the Strait of Georgia south of Active

Pass, and areas within Haro and Juan de Fuca Straits, which were not considered within the pre-contact traditional territory of the Lyackson and/or Cowichan people.<sup>1</sup>

- The Crown's preliminary assessment of the Lyackson's *prima facie* claim of Aboriginal title to upland areas proximal to the marine shipping corridor of the Project ranges from weak to strong. Strong claims are supported in certain upland areas on the southern half of Valdes Island, proximate to Lyackson historic villages. In other areas where there is limited information supporting specific Lyackson sufficient and exclusive occupation use of areas at 1846, the claim is weak. The Crown does not have clarity regarding how HTG members are asserting Aboriginal title in certain areas where there is limited indication that any of the HTG member First Nations could have excluded each other at 1846. For example, in upland areas proximal to the marine shipping corridor, including by the southern arm of the Fraser River, the Province would assess the *prima facie* claim of Aboriginal title of the Lyackson as ranging from weak to moderate, with the stronger (i.e. moderate) claims located in proximity to uplands in the vicinity of the large village site of Tl'ektines. The Crown also does not have clarity regarding how HTG members are asserting Aboriginal title in the southern Gulf Islands that lie to the west of Galiano Island and above Active Pass and to the west of Valdes and Gabriola; in these areas, the Crown would assess the *prima facie* claim of Aboriginal title of the Lyackson to upland areas as ranging from weak to weak-to-moderate, as there is some indication of habitation and resource gathering sites utilized by Cowichan people likely at 1846. The following areas are generally described by ethnohistoric sources as outside the traditional territory of the Cowichan people without evidence of their occupation or use, such that there is no support for a *prima facie* claim of Aboriginal title to upland areas: proximal to the Strait of Georgia north of Gabriola passage and north of the South arm of the Fraser River, the Strait of Georgia south of Active Pass and south of the south arm of the Fraser River, and within Haro and Juan de Fuca Straits.<sup>2</sup>

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

Lyackson participated in the National Energy Board (NEB) review process as an intervenor and submitted oral traditional evidence, written evidence, final oral summary and written arguments, as well as

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<sup>1</sup> Lyackson First Nation: Review of Ethnographic, Historical and Archaeological Resources. Prepared by Aboriginal Research Division, Legal Services Branch, Ministry of Attorney General. December 31, 2008; and The Hul'qumi'num Treaty Group: Review of Ethnographic, Historical and Archaeological Resources: Cowichan, Lake Cowichan, Halalt, Chemainus, Lyackson, Penelakut and Hwlitsum First Nations. Prepared by Aboriginal Research Division, Legal Services Branch, Ministry of Attorney General. September 8, 2009.

<sup>2</sup> Ibid

responded to the Crown's Issues Tracking Table Information Request by further elaborating their concerns ([A71256](#)).

Lyackson 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 Lyackson \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Lyackson an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Lyackson signed a contribution agreement with the MPMO for a total of \$12,000 in allocated funding.

On July 26, 2016 Lyackson was issued \$5,000 in capacity funding from the EAO to participate in consultations with the Crown.

Lyackson and Lake Cowichan First Nation met jointly with the Crown on April 20, 2016 to discuss the Project. Lyackson met again with the Crown on September 13, 2016.

The Crown provided a first draft of this Report to Lyackson for review and comment on August 17, 2016. Lyackson provided comments on the draft Report to the Crown in two letters on October 3 and 5, 2016. Those comments have been considered and integrated into this version of the Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 2, 2016. The Crown has not received comments from Lyackson.

#### **IV - Summary of Key Lyackson Issues and Concerns Raised**

The Crown gained its understanding of Lyackson's issues and concerns through the community's involvement in the NEB process, including submissions made through the NEB hearings process, the responses Lyackson provided to the Crown on its Information Request addressed to them, and through other engagement with the Crown. In addition, the Crown has considered information regarding the proponent's engagement with Lyackson, as described in the proponent's Aboriginal Engagement Report (July 2016).

Concerns raised by Lyackson include that the Project will lead to further negative environmental, economic, cultural, social, and spiritual impacts on Lyackson members and a reduction in their ability to pursue long-term governance and preservation objectives. This section offers a summary of the key issues raised by Lyackson, 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 Lyackson's key Project-related issues and concerns are summarized below:

##### Marine Impacts

- The effects of increased shipping on the Southern Resident Killer Whale (e.g. the higher likelihood of ship-source strikes);

- Increased pollution (including light and sound pollution), damaging marine resources and impairing the availability of fresh food;
- The potential for increased marine traffic to introduce invasive species, and through scouring and damaging wash created by ship engines;
- Tanker-generated waves, and light and noise disturbance, especially on the east side of Valdes Island and in nearby passes, resulting in disturbance of marine and foreshore habitat areas for octopus, sea lions, and a variety of other marine species;
- Effect on resource-rich areas in the event of a spill, which could be devastating to micro-ecosystems, the sturgeon food fishery, the Steller sea lion, and migratory birds biofilm; and
- Increased risk of accident and interference with small boat navigation (including Lyackson canoes and subsistence fishing boats).

#### Environmental and Cumulative Effects

- Cumulative effects of all projects in the area and the potential effects of projects on marine mammals, when there are no comprehensive studies;
- A greenhouse gas assessment that does not take into account downstream effects on climate change;
- Lack of understanding about the full spectrum of effects on Lyackson from the multiple projects being proposed, especially given the differential between current baselines relative to the pre-contact ecological state; and
- Assurance that the youth of Lyackson now, and in the future, will still be able to see their village sites.

#### Socio-economic Concerns

- Potential compromise of economic opportunities and existing economic activities, such as fisheries and tourism;
- Impacts to Lyackson governance and planning, including the ability of Lyackson leadership to uphold hereditary duties, particularly protection of values on Valdes Island, including ancestral sites and traditional harvesting rights and responsibilities; and
- Foreclosure of future community and economic development opportunities on Valdes Island, including ability for resettled Lyackson families to engage with confidence in island-based subsistence harvesting and business, and impacts to planned future use, including tourism based economic development, and other economic and community plans for Valdes Island.

#### Traditional Resource Use

- Lyackson is concerned that the effects on Traditional Marine Resource Use at Westridge Marine Terminal (WMT) are high and will impact Lyackson's rights, title and interests; and,
- The disruption of traditional marine uses will harm Lyackson's cultural identity by threatening to disrupt the transfer of intergenerational traditional knowledge, which is required to uphold the wellbeing of the First Nation in all aspects (physically, mentally, spiritually).

### Impacts on Aboriginal Rights

- As a consequence of the potential negative impacts on marine resources, Lyackson is concerned that their ability to practice their Aboriginal rights and interests is threatened by the Project; and,
- Lyackson believes the Crown requires further information to fully understand Lyackson's interests.

### Cultural and Social Impacts

- Potential adverse impact from the Project to Lyackson's traditional territory, including ancestral remains and sacred sites; travel ways and trails; hunting, harvesting and plant-gathering sites; gathering places; and submerged lands;
- Preservation and governance of traditional territory, and its interlinked lands, waterways, and ecosystems; and
- Social, cultural, mental, spiritual, and emotional adverse effects on Lyackson members from the compromise of traditional territory and ability to perform cultural practices.

### Methodology, Process and Consultation

- Efficacy of the NEB process methodology, and its ability to define a meaningful scope; communicate clearly, fairly, and accessibly, in a government-to-government basis; and ensure enforcement and compliance with Project's terms and conditions.

The Crown is in receipt of an open letter sent to Prime Minister Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark from a collective of Aboriginal groups, including Lyackson. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

### ***Lyackson's Response to NEB Recommendation Report***

Lyackson remains concerned regarding to the efficacy of the NEB process methodology, its ability to define a meaningful scope; communicate clearly, fairly, and accessibly, in a government-to-government basis; and ensure enforcement and compliance with Project's terms and conditions. In Lyackson's view, the review process has indicated poorly understood baseline conditions, lack of knowledge of cause and effect relationships, lack of scientific certainty in the review of Project specific data, high degree of subjectivity applied. Therefore, according to Lyackson, the NEB conditions have not adequately reduced or avoided the directly or indirect concerns advanced by Lyackson regarding potential impacts on other traditional and cultural practices.

Sections 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.

## **V - Potential Impacts of the Project on Lyackson's 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 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), including by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Lyackson's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Lyackson's 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 Lyackson's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Lyackson, Lyackson's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant conditions proposed by the Province of any Environmental Assessment Certificate issued.

Lyackson conducted a third-party traditional use study (TUS) titled *The Lyackson Use and Occupancy Mapping Study* ([A4Q0I2](#)). The study provides information regarding Lyackson's use and occupancy within their current asserted traditional territory including use and occupancy mapping, ethnographic and archaeological information, as well as other data. In its Supplemental Technical Report ([A4F5D2](#)), the proponent estimated approximate distances and directions from the marine shipping lanes based on information in Lyackson's report. Additional information for Lyackson was presented in *Volume 8B* ([A3S4K3](#)) of the Project application.

### ***Impacts on Hunting, Trapping, and Plant Gathering***

As summarized in Lyackson's TUS, community members hunt a variety of marine and terrestrial species including ducks, water birds, seal, porpoise and sea lion. Community members also gather seaweed, kelp and berries in numerous places within their traditional territory. Lyackson identified four hunting sites and three plant gathering sites in their TUS. The following sites are located within the marine regional study area (RSA): three hunting sites at Shingle Point, Porlier Pass, and south of Porlier Pass and two plant gathering sites on the east coast of Le'eyqsun (Valdes Island) and Porlier Pass. None of the sites require Lyackson community members to cross the marine shipping lanes.

Lyackson raised the following specific concerns with potential Project impacts relating to hunting, trapping, and plant gathering activities:

- Potential effects of climate change, including the introduction of invasive species; and
- Potential adverse impacts from the Project to Lyackson's traditional territory, including hunting, harvesting and plant-gathering sites; and gathering places.

The general direct and indirect effects of the Project on hunting, trapping, and gathering, along with key mitigation measures, are described in Sections 4.3.1 of the main body of this Report. 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 and lichens and vegetation communities of concern, old growth forests, wetlands, and terrestrial wildlife and wildlife habitat (including species at risk), marine mammals, and marine birds.

Conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with hunting, trapping, and plant gathering sites (Sections 4.3.1 of this Report). 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 to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP) and the vegetation and wildlife management plans. The proponent would implement a range of mitigation measures that would reduce potential effects associated with Lyackson's hunting, trapping, and plant gathering activities, including access management plans, plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, scheduling and notification of Project activities (via the proponent's marine public outreach program), and a marine mammal protection program.

NEB Condition 81 would require the proponent to develop a WMT-specific EPP, including mitigation and monitoring plans, to be finalized in consultation with Fisheries and Oceans Canada (DFO) and potentially affected Aboriginal groups. The proponent would also be required to conduct a post-construction monitoring program for marine mammals from the expansion of the WMT. The proponent has committed to various mitigation measures to reduce effects of construction and operation of the WMT on marine birds, further the proponent has committed to compile information regarding mortality and collision events and to include that information in post-construction monitoring reports.

In consideration of the information available to the Crown from the NEB process, consultation with Lyackson, Lyackson'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, Project construction and routine maintenance during operation and Project-related marine shipping are expected to result in a negligible-to-minor impact on Lyackson's hunting, trapping and plant gathering activities.

### ***Impacts on Freshwater Fishing, and Marine Fishing and Harvesting***

As described in Lyackson's TUS, community members fish and harvest a wide variety of marine resources including clams, chiton, mussels, oysters, crabs, sea cucumber, sea urchin, octopus, pink, sockeye, coho and spring salmon, dogfish, flounder, ling cod, rock cod, sturgeon and herring. Two main regions are used for fishing and marine harvesting: Le'eyqsun (Valdes Island) and from the mouth of the Fraser River to Seabird Island. Salmon is the most important species fished by community members for subsistence, cultural, and commercial purposes.

Lyackson identified a total of 11 fishing and marine harvesting areas in their TUS, nine of which are located within the Marine RSA. Community members would be required to cross shipping lanes to access six of the sites including those locations along the Fraser River, Canoe Pass, Roberts Bank, Point Roberts, Steveston, and outside the BC Ferries causeway.

Lyackson raised specific concerns with potential Project impacts relating to freshwater fishing and marine fishing and harvesting activities:

- Lack of satisfaction with Project marine effects analysis during the NEB process;
- Potential effects of climate change, including the effects on salmon;
- Increased pollution (including light and sound pollution) damaging marine resources, thereby impairing availability of fresh food;
- Impacts from increased marine traffic, such as increased pollution;
- Cumulative effects of all projects in the area and the potential effects of projects on marine mammals, when there are no comprehensive studies;
- Potential adverse impacts from increased tanker traffic on the marine environment as a result of increased potential for introduction of invasive species, and through scouring and damaging wash created by ship engines;
- Tanker-generated waves, and light and noise disturbance, especially on the east side of Valdes Island and in nearby passes, resulting in disturbance of marine and foreshore habitat areas for octopus, sea lions, and a variety of other marine species; and
- Increased risk of accident and interference with small boat navigation (including Lyackson canoes and subsistence fishing boats).

As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish and 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. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.1 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 Lyackson, the proponent would implement several mitigation measures to reduce potential effects to species important for Lyackson's 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, has 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.

The general direct and indirect effects of the Project on Aboriginal rights to marine fishing and harvesting, along with key mitigation measures, are described in Section 4.3.3 of the main body of this Report. The conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with marine fishing and harvesting sites (Section 4.3.3 of this Report). Project related marine shipping traffic would utilize existing deep-sea navigational channels. The proponent would implement a range of mitigation measures that would reduce potential effects associated with Lyackson's marine fishing and harvesting activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups. The proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Lyackson community members to take measures to reduce potential disruptions from tankers and allow planning for fishing activities to take place that minimizes disturbance from Project-related tankers. Reduced harvests, while not expected to occur from temporary access restrictions, could impact Lyackson's cultural activities such as sharing of marine food with the community.

In consideration of the information available to the Crown from the NEB process, consultation with Lyackson, Lyackson's 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 and Project-related marine shipping are expected to result in minor impacts on Lyackson's marine fishing and harvesting activities.

### ***Impacts on Other Traditional and Cultural Practices***

Trails and travelways were identified by Lyackson in their TUS. Those trails and travelways are between Le'eyqsun and various habitation and harvesting sites throughout their traditional territory. Those trails and travelways are important to the history and culture of Lyackson as they provide community members with access to important resources that are shared with other Hul'qumi'num Nations and the broader Coast Salish community. Areas around Roberts Bank and the mouth of the Fraser River were identified by Lyackson as culturally important meeting places where community members would meet other First Nations in the region. Sacred areas identified by Lyackson include ceremonial, religious, and burial sites.

Lyackson identified six trails/travelways, two gathering places, and two sacred areas in the TUS. All sites except three trails/travelways are located within the Marine RSA. The following areas require Lyackson community members to cross the marine shipping lanes to access the areas: three travelways between

Le'eyqsun (Valdes Island) and Vancouver, Lummi, and Fraser River; one gathering place at Roberts Bank. Shipping lanes are not crossed to access sacred areas.

Lyackson raised the following specific concerns with potential Project impacts relating to other traditional and cultural practices:

- Importance of the Southern resident killer whale to Lyackson and concerns that increased marine traffic will have negative effects on the species;
- Assurance that the youth of Lyackson now, and in the future, will still be able to see their village sites;
- Potential adverse impacts from the Project on Lyackson's traditional territory, including ancestral remains, sacred sites; travel ways and trails; hunting, harvesting and plant-gathering sites; gathering places; and submerged lands;
- Potential impacts from increased marine traffic and higher likelihood of whale strikes; and
- Social, cultural, mental, spiritual, and emotional adverse effects on Lyackson members from the compromise of traditional territory and ability to perform cultural practices.

The general direct and indirect effects of the Project on traditional and cultural practices, along with key mitigation measures, are described in Section 4.3.4 of the main body of this Report.

Lyackson identified cultural use of or concerns regarding Southern resident killer whales during the NEB and Crown consultation processes. *The NEB Recommendation Report* concluded that the increase in marine vessel traffic associated with the Project is likely to result in significant adverse effects on the traditional Aboriginal use associated with the Southern resident killer whale. The Crown understands that the Southern resident killer whale population is in decline, and that additional adverse environmental effects from project-related marine shipping would be considered significant.

Conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown understands that there will be temporary interruptions to Lyackson's traditional and cultural practices, and there could be reduced access to traditional and cultural sites during Project operational activities. It is noted that the proponent has committed to ongoing engagement with Aboriginal groups in providing 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 Lyackson, Lyackson's 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 operations and Project-related marine shipping are expected to result in minor to moderate impacts on Lyackson's other traditional and cultural practices. The moderate impacts would

arise from Project-related marine shipping activities on traditional Aboriginal use associated with the Southern resident killer whale.

### ***Impacts on Aboriginal Title***

Lyackson raised the following concerns with potential Project impacts relating to their Aboriginal title claim:

- Potential compromise of economic opportunities and existing economic activities, such as fisheries and tourism; and
- Preservation and governance of traditional territory, and its interlinked lands, waterways, and ecosystems.

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, marine 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 understands that Lyackson has not entered into a Mutual Benefits Agreement with the proponent.

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-to-minor impacts on Lyackson's asserted Aboriginal title to the proposed Project area.

### ***Impacts Associated with Accidental Pipeline, Terminal, and Tanker Spills***

Lyackson expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including:

- Potential effects on resource-rich areas in the event of a spill, which could be devastating to small micro- ecosystems, the sturgeon food fishery, the Steller sea lion, and migratory birds biofilm; and
- Impacts from increased marine traffic, such as the potential impacts of spills.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a 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. Section 4.3.6 of the main body of this report sets out the impacts associated with accidental spills. In consideration of this information and analysis, as well as information available to the Crown on Lyackson's Aboriginal Interests and concerns raised during the NEB process and Crown consultation process, an accidental oil spill associated with the Project could result in minor to serious impacts on Lyackson's Aboriginal Interests. In

making this general conclusion, the Crown acknowledges that Aboriginal peoples who rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.<sup>3</sup>

## **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 and marine safety regimes would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations of the pipeline and WMT, as well as for marine vessel use of the area between the WMT and the 12 nautical mile limit (J-buoy) through the Salish Sea and Strait of Juan de Fuca, the Crown expects impacts of the Project on the exercise of Lyackson's 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 Lyackson'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 Lyackson in emergency response planning activities. The federal Crown is considering incremental measures that would further accommodate the potential adverse impacts of the Project on Lyackson, as discussed in Sections 4 and 5 of the main body of this Report.

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<sup>3</sup> Trans Mountain Final Argument, p. 85 and 207