

# EAO | Environmental Assessment Office

## INSPECTION RECORD

<b>Project Name:</b>	Site C	<b>Inspection Report Status:</b>	Open / Active
<b>Certificate #:</b>	E14-02	<b>Inspection No:</b>	2017-
<b>Certificate Status:</b>	Certified	<b>Inspection Date:</b>	2017-04-04 to 2017-08-29
<b>Region:</b>	Peace	<b>Office:</b>	Victoria
<b>Trigger:</b>	Complaint	<b>Inspector Name(s):</b>	Autumn Cousins, Director Compliance and Enforcement
<b>Sector:</b>	Energy	<b>UTM:</b>	
<b>Location Description:</b>	Confluence of Cache Creek and Peace River known as "Bear Flats"		
<b>Incidents of Non-Compliance Observed</b>	Yes		
<b>Inspection Summary:</b>	<p><b><u>Overview of Complaint Review Process:</u></b></p> <p>On April 4, 2017, the Environmental Assessment Office (EAO) Compliance and Enforcement (C&amp;E) received a complaint from West Moberly First Nations and Prophet River First Nation (the Complainants) regarding cultural and heritage resources in relation to the Highway 29 re-alignment through the "Bear Flats" near the confluence of Cache Creek and the Peace River. The Complainants (and Nun Wa Dee Stewardship Society who represent the Complainants) and BC Hydro provided the EAO with additional information via letters, emails and meetings. While additional documentation was reviewed during the course of the complaint review, a list of documentation referenced in this inspection record is included in <a href="#">Appendix A</a>.</p> <p>On May 18, 2017, Autumn Cousins, Director of Compliance and Enforcement (C&amp;E Cousins) conducted two site visits with representatives of Nun Wa Dee in relation to the complaints about the Highway 29 re-alignment. During the first site visit, C&amp;E Cousins also met with a local land owner in relation to complaints about mulching and fire hazards. This administrative inspection record also serves as the record for the site visits with the Complainants and the field inspection. See regulatory considerations at the end of this inspection record for additional information regarding the field inspection.</p> <p>As part of this complaint review, EAO C&amp;E provided the opportunity to review/respond to:</p> <ul style="list-style-type: none"> <li>• BC Hydro on the first draft inspection record on July 12, 2017, with comments due on July 17, 2017.</li> </ul>		

- The Complainants on the second draft inspection record (updated following consideration of BC Hydro’s comments) on July 20, 2017 with comments due on July 24, 2017. On July 20, 2017, EAO C&E provided BC Hydro with the second draft inspection record that was sent to the Complainants for review.
- BC Hydro and the Complainants on the third draft inspection record on August 10, 2017, with comments due noon on August 15, 2017.

As requested by BC Hydro on August 14, 2017, EAO C&E extended the opportunity to respond to the second draft inspection record. EAO C&E revised the deadline for comments to end of day August 16, 2017.

BC Hydro provided written comments on the draft inspection record on July 17, 2017, July 24, 2017, July 27, 2017, August 16, 2017 (from legal counsel), August 16, 2017 and August 23, 2017 (in response to follow up questions from the EAO). The Complainants provided written comments on the draft inspection records on July 24, 2017 and August 15, 2017.

As part of the opportunities to review/respond, C&E Cousins met in person with BC Hydro on July 17, 2017 and August 14, 2017 and the Complainants on July 21, 2017 and August 14, 2017.

C&E Cousins considered the comments provided by BC Hydro and the Complainants on the drafts of the inspection record and updated the inspection record accordingly. On August 8, 2017, C&E Cousins wrote to BC Hydro regarding the concerns raised by BC Hydro in their July 27, 2017 submission regarding EAO’s timeliness with the complaint review. The written submissions by BC Hydro and the Complainants and the August 8, 2017 response by EAO C&E are included in the appendix of this inspection record.

On August 1, 2017 C&E Cousins received a letter from another party regarding concerns about impacts to cultural and heritage resources from the Site C Project. While the matters raised through this letter are not specifically addressed through this inspection record, some of the findings within this inspection record relate to the concerns raised in the August 1, 2017 letter. On August 4, 2017, C&E Cousins wrote to the party to advise them of the West Moberly and Prophet River complaints review indicating that the inspection record would be made available following completion of the inspection record. C&E Cousins suggested to the party that they review the inspection record and then contact EAO C&E if the party has additional matters of concern not addressed by the inspection record.

Note: Throughout this inspection record, any reference to management plans refers to the management plans as well as any associated environmental protection plans or component plans.

**Summary of Findings:**

**Note that all findings are reflective of the analysis conducted to date. These findings may be subject to change based on additional analysis of existing information or if new information is obtained by EAO C&E in the future. If there is a discrepancy between this inspection summary and the findings below, the findings below must be interpreted so they will supersede the wordings of this summary.**

Through the course of this complaint review, C&E Cousins assessed:

For the Heritage Resources Management Plan (HRMP) required by Condition 62:

- If BC Hydro developed the HRMP in accordance with the required timelines in the condition; and
  - COMPLIANT (for both related requirements: draft and final plan)
- If BC Hydro provided the Complainants the draft HRMP for review in accordance with the requirements in the condition.
  - COMPLIANT

For the Cultural Resources Management Plan (CRMP) required by Condition 63:

- If BC Hydro developed the CRMP in accordance with the required timelines in the condition; and
  - COMPLIANT (for both related requirements: draft and final plan)
- If BC Hydro provided the Complainants the draft CRMP for review in accordance with the requirements in the condition.
  - COMPLIANT

For the Cultural and Heritage Resources Committee required by Condition 63:

- If BC Hydro established the Cultural and Heritage Resources Committee as required by Condition 63 and the CRMP; and
  - COMPLIANT
- If BC Hydro is implementing the Cultural and Heritage Resources Committee as required by Condition 63 and the CRMP in relation to:
  - The requirement in Section 5.2 of the CRMP to *“Working through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives”* and *“BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee.”*
  - NON-COMPLIANT

For the potential burial site in HbRh-16:

- If BC Hydro offered the Complainants opportunities for *“continued collaboration with Aboriginal groups for ground-truthing of any burial sites that the project may disturb”* following issuance of the Certificate;
  - COMPLIANT
- If BC Hydro *“invite[d] Aboriginal groups to complete ground-truthing exercises,*

	<p><i>whereby Aboriginal land users.... may identify any locations of cultural importance within planned construction areas within the [Project Activity Zone] PAZ. These ground-truthing exercises may identify areas for additional heritage work”;</i></p> <ul style="list-style-type: none"> <li>○ COMPLIANT</li> <li>• If BC Hydro “<i>Consider[ed] implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives the protection and documentation, including mapping of important Aboriginal trails and sites.</i>” as required by the CRMP. <ul style="list-style-type: none"> <li>○ NOT YET DETERMINED</li> </ul> </li> <li>• If BC Hydro “<i>implemented all mitigation measures set out in Volume 4 Section 32 Heritage Resources</i>” as required by the CRMP. <ul style="list-style-type: none"> <li>○ NOT YET DETERMINED</li> </ul> </li> <li>• If BC Hydro developed mitigation measures once BC Hydro became aware of this potential burial site as required by the HRMP and CRMP; and <ul style="list-style-type: none"> <li>○ NOT YET DETERMINED</li> </ul> </li> <li>• If BC Hydro has implemented the mitigations as required by the HRMP and CRMP in relation to the potential burial site in HbRh-16. <ul style="list-style-type: none"> <li>○ NOT YET DETERMINED</li> </ul> </li> </ul> <p>For HbRh-16:</p> <ul style="list-style-type: none"> <li>• If BC Hydro required “<i>the Contractor, by working through the Work Planning steps described in Section 4.1, will work with the Heritage Specialist to identify any measures that will be taken to avoid heritage sites, and will record any avoidance measures in EPPs. Where sites are to be avoided, the EPP would describe the site protection measures (e.g. fencing or barriers) that would be employed so that the site is not affected by construction activities.</i>” as required by Section 6.31 of the HRMP as it relates to the clearing conducted within HbRh-16; <ul style="list-style-type: none"> <li>○ COMPLIANT</li> </ul> </li> </ul> <p>For the sweat lodge:</p> <ul style="list-style-type: none"> <li>• If BC Hydro sought input from the Committee in relation to mitigation for the sweat lodge, consistent with the purpose of the Committee which is “<i>to advise BC Hydro on the management of adverse Project effects on cultural resources</i>” and the requirement in Appendix B of the CRMP that BC Hydro “<i>will work with the Committee to further develop these mitigation measures [EIS Vol 3 S. 19] and consider any others raised by the Committee</i>”; <ul style="list-style-type: none"> <li>○ NON-COMPLIANT</li> </ul> </li> <li>• If BC Hydro provided opportunities to the Complainants to “<i>work with Aboriginal groups to ground truth traditional land use information for specific areas ....prior to commencing construction.</i>” <ul style="list-style-type: none"> <li>○ COMPLIANT</li> </ul> </li> <li>• If BC Hydro “<i>Consider[ed] implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives....the protection and documentation, including mapping of important Aboriginal trails and sites</i>”;</li> </ul>
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- NON-COMPLIANT before March 3, 2017
- NOT YET DETERMINED as of March 3, 2017
- If BC Hydro “invited Aboriginal groups to complete ground-truthing activities for locations of cultural importance in relation to the sweat lodge”; and
  - COMPLIANT
- If BC Hydro “implemented all mitigation measures set out in Volume 4 Section 32 Heritage Resources” as required by the CRMP.
  - NOT YET DETERMINED

For the route of the Highway 29 re-alignment:

- If the current planned (as per the map provided by BC Hydro on July 9, 2017) Highway 29 re-alignment is consistent with the requirements in Schedule A of the Certificate.
  - COMPLIANT

For the bridge at Cache Creek:

- If the current (as per the correspondence provided by BC Hydro on June 14, 2017) planned 455m bridge at Cache Creek is consistent with the requirements in Schedule A of the Certificate.
  - NOT YET DETERMINED

As described in this inspection record, BC Hydro is WARNED of non-compliance with Certificate requirements. C&E Cousins determined that warnings are the appropriate enforcement response given there is another regulatory mechanism to require revisions to the HRMP and CRMP as described below. BC Hydro is advised that it may be a non-compliance if the HRMP and CRMP are not revised prior to certain construction activities occurring (see below).

In addition to the compliance matters summarized above, the EAO assessed if the HRMP and CRMP are developed and implemented to the satisfaction of the EAO. As C&E Cousins conducted this assessment on behalf of the EAO rather than as a C&E Officer, those findings are described in an August 30, 2017 letter to BC Hydro. The findings that the HRMP and CRMP are not to EAO’s satisfaction were provided to BC Hydro and the Complainants through the opportunity to review/respond described above.

On August 15, 2017 through the opportunity to review the draft inspection record (as well as previously), the Complainants noted that they did not include some of the requirements assessed in this inspection record in their complaint (see Appendix A). As further described in the August 15, 2017 letter, the Complainants requested that these requirements not be assessed in this inspection record. Throughout the course of the administrative inspection, C&E Cousins assessed those raised by the Complainants as well as other requirements deemed relevant to the administrative inspection.

**Related Policy and Court Decisions:**

C&E Cousins considered various policy and court decisions in the process of assessing this

complaint, including but not limited to the following excerpts:

- The Province’s 2010 Updated Consultation Procedures document (posted publicly at this [link](#)). On page 16, it states the following:

*“Where the First Nation does not provide further information, proceed to Phase Four, Decision and Follow-up. Before proceeding, consider the information gathered in the Preparation phase. If it appears likely that there will be significant impacts on known Aboriginal Interests, further consider whether opportunities exist to mitigate or accommodate that possible impact in the context of the proposed decision.”*
- The 2011 *West Moberly FN v BC (MEM)*, 2011 BCCA 247 case regarding the duty to consult when an Aboriginal group proposes an option that the proponent does not accept:

*[144] To be considered reasonable, I think the consultation process, and hence the “Rationale” would have to provide an explanation to the petitioners that, not only had their position been fully considered, but that there were persuasive reasons why the course of action the petitioners proposed was either not necessary, was impractical, or was otherwise unreasonable. Without a reasoned basis for rejecting the petitioners’ position, there cannot be said to have been a meaningful consultation.*
- The 2016 *Prophet River FN v. BC (FLNRO)*, 2011 BCCA 247 case (while relating to permits, C&E Cousins considered this relevant for management plans given both permits and management plans consider the manner and timing of how the work authorized by the Permits is carried out):

*[156] It seems to me that the subject matter of consultation on the Permits encompasses any incremental effects on the petitioners’ Treaty rights not addressed in the environmental assessment. Such incremental effects would arise from the manner and timing of how the work authorized by the Permits is carried out.*

*[157] This does not mean that the Permits do not affect the petitioners’ Treaty rights and that consultation on those potential effects was unnecessary. What it does mean is that consultation with respect to the effects of the work authorized by the Permits had already occurred in the course of the environmental assessment process. What remained to be consulted upon were the effects of the manner in which the work was to be carried out and the timing of that work, as well as any residual effects not addressed in the environmental assessment process.*

*[158] The Province has an ongoing constitutional obligation to engage in*

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	<p><i>meaningful consultation with the petitioners on the impacts of the Project on their Treaty rights. This does not mean, however, that further consultation is required at each stage of the Project on matters that were already the subject of meaningful consultation at an earlier stage.</i></p> <p><i>[162] I therefore conclude that the ongoing duty to consult and accommodate the petitioners was with respect to any novel or incremental impacts that the prosecution of the work authorized by the Permits could have had on the petitioners' Treaty rights. Such impacts might arise from the alignment of roads, the manner in which BC Hydro proposed to minimize impacts on archeological sites, or the timing of undertaking various steps such as clearing land to be flooded by the reservoir. These are, of course, merely examples of possible impacts. Consultation on the Permits must build on and take into account the consultation that took place during the environmental assessment process, but need not duplicate it.</i></p>
<b>Certificate or Act:</b>	Certificate
<b>Activity:</b>	Office Review
<b>Response:</b>	Warning

<b>Certificate Holder's Name:</b>	BC Hydro
<b>Certificate Holder's Contact(s):</b>	Greg Scarborough
<b>Mailing Address:</b>	Site C Clean Energy Project P.O. Box 49260 Vancouver, BC V7X 1V6
<b>Phone No:</b>	Office: 604-699-7444 Cell: 778-828-6231
<b>Contact Email:</b>	Greg.Scarborough@bchydro.com

**INSPECTION DETAILS**

<p><b>Requirement Description: 1</b></p>	<p><b>Condition 62: <a href="#">Heritage Resources Management Plan</a></b></p> <p><i>“The Certificate Holder must protect and preserve heritage resources by implementing measures as detailed in a Heritage Resources Management Plan (HRMP).</i></p> <p><i>The HRMP must be developed by a Qualified Environmental Professional (QEP).</i></p> <p><i>The HRMP must specify a process for the engagement of Aboriginal Groups* in planning and follow-up/monitoring activities related to heritage resources as the Project proceeds. In particular, the HRMP must incorporate a process for continued collaboration with Aboriginal Groups on ground-truthing for the identification of any burial sites that the Project may disturb.</i></p> <p><i>The Certificate Holder must provide the draft HRMP to the Archaeology Branch of the Ministry of Forests, Lands and Natural Resource Operations (FLNRO) and Aboriginal Groups for review a minimum of 90 days prior to the commencement of construction.</i></p> <p><i>The HRMP must include Archaeological Impact Management and Heritage Resources Monitoring and Follow-Up Programs. The field and reporting portions of each program will be of a scope, duration and frequency prescribed by the BC Heritage Conservation Act permits. The Archaeology Impact Management Program must be developed by a QEP qualified to hold Section 14 Heritage Inspection and Investigation Permits.</i></p> <p><i>The Heritage Resources Monitoring and Follow-Up Program must include at least the following:</i></p> <ul style="list-style-type: none"> <li>• <i>Monitor reservoir erosion during occurrences of exposure to assess the impacts on existing or newly identified protected archaeological sites and other heritage resources;</i></li> <li>• <i>Implement mitigation measures, systematic data recovery or emergency salvage operations in accordance with the Heritage Resources Management Plan;</i></li> <li>• <i>Conduct the monitoring of shoreline erosion downstream (for approximately 2 km) as part of chance-find procedures to determine if physical heritage resources are affected by the Project. The Certificate Holder must undertake this monitoring for any spills from the Project reservoir for a period of two years following the commencement of reservoir filling and commissioning; and</i></li> <li>• <i>Establish a reporting structure for reporting to Aboriginal Groups and the Archaeology Branch beginning 180 days following the commencement of operations.</i></li> </ul> <p><i>The Certificate Holder must file the final HRMP with the EAO, Archaeology Branch and Aboriginal Groups a minimum of 30 days prior to commencement of construction.</i></p> <p><i>The Certificate Holder must develop, implement and adhere to the final HRMP, and any</i></p>
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	<p><i>amendments, to the satisfaction of the EAO.”</i></p>
<p><b>Findings:</b></p>	<p>EAO C&amp;E assessed if BC Hydro developed the HRMP as required by Certificate condition 62, including providing the Complainants the draft HRMP to review.</p> <p>C&amp;E Cousins assessed:</p> <ul style="list-style-type: none"> <li>• If BC Hydro developed the HRMP in accordance with the required timelines in the condition; <ul style="list-style-type: none"> <li>○ The condition requires that <i>“The Certificate Holder must provide the draft Heritage Resources Mitigation Plan to the Archaeology Branch of FLNR and Aboriginal Groups for review a minimum 90 days prior to the commencement of construction.”</i></li> <li>○ The condition requires that <i>“The Certificate Holder must file the final Heritage Resources Mitigation Plan with the EAO, Archaeology Branch and Aboriginal groups a minimum of 30 days prior to the commencement of construction.”</i></li> </ul> </li> <li>• If BC Hydro provided the Complainants (West Moberly and Prophet River First Nations) the draft HRMP for review in accordance with the requirements in the condition. <ul style="list-style-type: none"> <li>○ The condition requires that BC Hydro provide the draft plan to the Complainants (and other parties) for review, which the EAO interprets to mean that BC Hydro is required to consider feedback provided by reviewing parties within the review period stated in the condition.</li> </ul> </li> </ul> <p><b>Based upon review of the information, EAO C&amp;E has determined that BC Hydro:</b></p> <ul style="list-style-type: none"> <li>• Is COMPLIANT with the requirement to provide the draft HRMP to the Complainants for review a minimum of 90 days prior to commencement of Construction. <ul style="list-style-type: none"> <li>○ BC Hydro provided the draft Plan to the Complainants on October 17, 2014 which was 286 days prior to the start of Construction on July 27, 2015.</li> </ul> </li> <li>• Is COMPLIANT with the requirement to file the final HRMP with the Complainants a minimum of 30 days prior to the commencement of Construction. <ul style="list-style-type: none"> <li>○ BC Hydro filed the final Plan with the Complainants on June 5, 2015, which was 52 days prior to the start of Construction on July 27, 2015.</li> </ul> </li> <li>• Is COMPLIANT with the requirement to provide the Complainants with the draft HRMP for review. <ul style="list-style-type: none"> <li>○ In order to determine compliance, EAO C&amp;E assessed whether the draft HRMP was sent to the Complainants for review and whether BC Hydro considered feedback received from the Complainants during the review period stipulated in the Certificate.</li> <li>○ As noted above, BC Hydro did provide the HRMP to the Complainants for review within the required timelines.</li> <li>○ On December 15, 2014, the Complainants wrote to BC Hydro <i>“There are a number of unresolved issues related to the proposed Site C project that BC</i></li> </ul> </li> </ul>

*Hydro has not addressed to date, some of which were raised during the presentations at the hearings while others are outlined in the JRP final report. Consultation on the CEMP, SMF, and the mitigation plans at this point, therefore, is premature. It is not reasonable for BC Hydro to skip over the substantive input that our Nations have provided to date and ignore the implications of such information regarding, for example, the CEMP, SMF, and mitigation plans. To help facilitate BC Hydro’s understanding of our issues and concerns raised during the hearings, we have attached a number of appendixes (the “Appendixes”) to this letter...In closing, we feel that the issues and concerns raised during the EA process and the JRP findings, which remain unaddressed, must be taken seriously and demonstrably incorporated into any substantive discussion regarding the construction and/or operations (e.g., the CEMP, SMF, and mitigation plans) of the proposed Site C project to be meaningful.”*

- On April 30, 2015, Saulteau First Nations’ wrote to BC Hydro on behalf of Saulteau, West Moberly and Prophet providing a funding proposal to support their review of the mitigation and monitoring plans.
- On May 5, 2015, BC Hydro responded agreeing to the funding proposal, enclosing a signed copy of the proposal and financial reporting requirements. Treaty 8 Tribal Associate (T8TA) responded on the same day saying they would consider the proposal.
- On May 13, 2015, BC Hydro wrote to T8TA asking if BC Hydro should forward the first payment under the proposal. BC Hydro advised EAO C&E that the T8TA did not respond and therefore the funds were not distributed.
- On June 5, 2015, BC Hydro provided a response to the Complainants including the issues BC Hydro noted in this information relevant to the Plan and how they were addressed in the Plan.
- In a June 23, 2017 letter to the Canadian Environmental Assessment Agency (CEAA) and copied to the EAO, BC Hydro advises that “BC Hydro consulted with West Moberly and Prophet River regarding the development of the mitigation and monitoring plans between October, 2014 and June, 2015” and “BC Hydro received no substantive comments from T8TA, West Moberly or Prophet on any of the plans. In the absence of specific comments, BC Hydro reviewed the Joint Review Panel hearings transcripts and submissions by West Moberly and Prophet River through the environmental assessment for any mitigation measures they proposed, and included a table setting out how those measures were addressed in the mitigation and monitoring plans.”

In addition to assessing compliance as noted above, the EAO assessed if the HRMP is developed ‘to the satisfaction of’ the EAO in relation to mitigation measures to address heritage resources. As described in an August 30, 2017 letter, while the EAO did not assess the overall effectiveness of the HRMP, the EAO has determined that the HRMP does not provide clarity regarding *reported but not confirmed* heritage resources, including:

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	<p>a) whether the HRMP includes requirements to develop and implement mitigation in relation to reported but not confirmed heritage resources; and</p> <p>b) The role of qualified professionals in relation to confirming heritage resources.</p> <p>As BC Hydro has been advised that the HRMP is not 'to the satisfaction of' the EAO and that it must be updated in relation to a) and b) above prior to conducting construction activities that may impact known reported but not confirmed heritage resources, it may be a non-compliance if BC Hydro were to proceed to conduct construction activities that may impact reported but not confirmed heritage resources in advance of updating the HRMP as outlined in the August 30, 2017 EAO letter.</p>
<b>Compliance:</b>	In compliance for all requirements assessed in the section above (Note HRMP is not 'to the satisfaction of the EAO')

<p><b>Requirement Description: 2</b></p>	<p><b><u>Condition 63: Cultural Resources Mitigation Plan</u></b></p> <p>The Certificate Holder must manage adverse Project effects on cultural resources by implementing mitigation measures detailed in a Cultural Resources Mitigation Plan (CRMP).</p> <p>The CRMP must be developed in collaboration with a Cultural and Heritage Resources Committee (Committee) established by the Certificate Holder that includes Aboriginal Groups.</p> <p>The CRMP must include consideration of the following elements and/or others that may be recommended by the Committee:</p> <ul style="list-style-type: none"> <li>• Identification and naming of key cultural sites;</li> <li>• Documenting historical use of the area, including trails, sites, and stories;</li> <li>• Commemoration of sites lost to inundation;</li> <li>• Cultural awareness and orientation of workforce; and</li> <li>• Support for cultural camps through financial or in-kind support.</li> </ul> <p>The Certificate Holder must provide the draft CRMP to the Committee for review a minimum 90 days prior to the commencement of construction.</p> <p>The Certificate Holder must file the final CRMP with the EAO and the Committee a minimum of 30 days prior to the commencement of construction.</p> <p>The Certificate Holder must develop, implement and adhere to the final CRMP, and any amendments, to the satisfaction of the EAO.</p>
<p><b>Findings:</b></p>	<p>EAO C&amp;E assessed if BC Hydro developed the CRMP as required by Certificate condition 63, including providing the draft CRMP for review to the Complainants.</p> <p>C&amp;E Cousins assessed:</p> <ul style="list-style-type: none"> <li>• If BC Hydro developed the CRMP in accordance with the required timelines in the condition; <ul style="list-style-type: none"> <li>○ The condition requires that <i>“The Certificate Holder must provide the draft Cultural Resources Mitigation Plan to the Committee for review a minimum 90 days prior to the commencement of construction.”</i></li> <li>○ The condition requires that <i>“The Certificate Holder must file the final Cultural Resources Mitigation Plan with the EAO and the Committee a minimum of 30 days prior to the commencement of construction.”</i></li> </ul> </li> <li>• If BC Hydro provided the Complainants the draft CRMP for review in accordance with the requirements in the condition. <ul style="list-style-type: none"> <li>○ Note that the requirement is that the CRMP be provided to the Committee for review. While the Complainants did not elect to participate in the Committee</li> </ul> </li> </ul>

until 2017, C&E Cousins assessed whether BC Hydro provided the Complainants the draft CRMP for review.

**Based upon review of the information, EAO C&E has determined that BC Hydro:**

- Is COMPLIANT with the requirement to provide the draft CRMP to the Committee for review a minimum of 90 days prior to commencement of Construction. This determination is informed by the following:
  - As noted below in Requirement 3, BC Hydro attempted to establish the Committee consistent with the timelines in the Certificate. Given the parties BC Hydro is required to invite to the Committee did not respond, BC Hydro attempted a second time to invite the parties to the Committee on May 20, 2015.
  - As the Committee was not established, BC Hydro provided the CRMP to the parties invited to the Committee for review on October 17, 2014 which was 286 days prior to the start of Construction on July 27, 2015.
  - BC Hydro provided the CRMP to the Committee on July 30, 2015 which was three days after to the start of Construction on July 27, 2015.<sup>1</sup>
- Is COMPLIANT with the requirement to file the final CRMP with the Committee a minimum of 30 days prior to the commencement of Construction. This determination is informed by the following:
  - As noted below in Requirement 3, BC Hydro attempted to establish the Committee consistent with the timelines in the Certificate. Given the parties BC Hydro is required to invite to the Committee did not respond, BC Hydro attempted a second time to invite the parties to the Committee on May 20, 2015.
  - As the Committee was not established, BC Hydro filed the final CRMP with the parties required to be invited to the Committee on June 5, 2015, which was 52 days prior to the start of Construction on July 27, 2015.
- Is COMPLIANT with the requirement to provide the draft CRMP to the Complainants through the Committee for review. This compliance determination is informed by:
  - As assessed in Requirement 3 below, BC Hydro invited the Complainants to the Committee on September 24, 2014. Until 2017, the Complainants did not participate in the Committee.
  - Given the Complainants did not participate in the Committee during the development of the draft CRMP, C&E Cousins assessed whether BC Hydro

<sup>1</sup> CRMP filed with Committee via Sharepoint

sought input from the Complainants outside of the formal Committee structure. As noted above, BC Hydro provided the complainants with the draft and final CRMP consistent with the timelines in the condition.

- On December 15, 2014, the Complainants wrote to BC Hydro *“There are a number of unresolved issues related to the proposed Site C project that BC Hydro has not addressed to date, some of which were raised during the presentations at the hearings while others are outlined in the JRP final report. Consultation on the CEMP, SMF, and the mitigation plans at this point, therefore, is premature. It is not reasonable for BC Hydro to skip over the substantive input that our Nations have provided to date and ignore the implications of such information regarding, for example, the CEMP, SMF, and mitigation plans. To help facilitate BC Hydro’s understanding of our issues and concerns raised during the hearings, we have attached a number of appendixes (the “Appendixes”) to this letter...In closing, we feel that the issues and concerns raised during the EA process and the JRP findings, which remain unaddressed, must be taken seriously and demonstrably incorporated into any substantive discussion regarding the construction and/or operations (e.g., the CEMP, SMF, and mitigation plans) of the proposed Site C project to be meaningful.”*
- On April 30, 2015, Sauteau First Nations’ wrote to BC Hydro on behalf of Sauteau, West Moberly and Prophet First Nations providing a funding proposal to support their review of the mitigation and monitoring plans.
- On May 5, 2015, BC Hydro responded agreeing to the funding proposal, enclosing a signed copy of the proposal and financial reporting requirements. According to BC Hydro, T8TA responded on the same day saying they would consider the proposal.
- On May 13, 2015, BC Hydro wrote to T8TA asking if BC Hydro should forward the first payment under the proposal. BC Hydro advised EAO C&E that the T8TA did not respond and therefore the funds were not distributed.
- On June 5, 2015 BC Hydro provided a response to the Complainants stating that they reviewed the Joint Review Panel (JRP) report and hearings for mitigation measures referenced by the Complainants.
- On June 23, 2017, BC Hydro sent a letter to CEAA advising that *“BC Hydro consulted with West Moberly and Prophet River regarding the development of the mitigation and monitoring plans between October, 2014 and June, 2015”* and *“BC Hydro received no substantive comments from T8TA, West Moberly or Prophet on any of the plans. In the absence of specific comments, BC Hydro reviewed the Joint Review Panel hearings transcripts and submissions by West Moberly and Prophet River through the environmental assessment for any mitigation measures they proposed, and included a table setting out how those measures were addressed in the mitigation and monitoring plans.”*
- On July 24, 2017 as part of the Complainants’ opportunity to review the draft inspection record, the Complainants advised EAO C&E that *“BC Hydro failed to*

	<p><i>incorporate those substantive comments [in the JRP hearing transcripts and report], particularly with respect to the camp site and sweat lodge at Bear Flat. For example, the following statement is recorded in the December 21, 2013 hearing transcripts:</i></p> <p><i>“Various native groups, such as Treaty 8 (T/8), and individual communities, have held gatherings at our campground such as the annual NENAN Youth and Elders gathering. With our permission, an elder from one of the communities has erected a sweat lodge at the campground, and it has been used every year.”</i></p> <p><i>In addition, the JRP report states (P. 232): “The Panel agrees with the general proposal of BC Hydro to mitigate potential effects to heritage resources, first by avoidance, then by effect reduction, and lastly, by artefact recovery, with compensation as needed.” The Panel also noted George Desjarlais’ concern that the Project would affect “Important sweat lodges”.</i></p> <p><i>However, the CRMIP does not include a clear commitment to the mitigation hierarchy, beginning with avoidance. Nor does the CRMP contain any reference or measures to mitigate the sweat lodge or campsite at Bear Flat.”</i></p> <p>In addition to assessing compliance as noted above, the EAO assessed if the CRMP is developed ‘to the satisfaction of’ the EAO in relation to mitigation measures to address cultural resources. As described in a letter to BC Hydro on August 30, 2017, the EAO has determined that the CRMP as written does not effectively plan for the mitigation of adverse effects to cultural resources.</p> <p>As BC Hydro has been advised that the CRMP is not ‘to the satisfaction of’ the EAO and that it must be updated prior to conducting construction activities that may impact known cultural resources, it may be a non-compliance if BC Hydro were to proceed to conduct construction activities that may impact known cultural resources in advance of updating the CRMP as outlined in the EAO letter dated August 30, 2017.</p>
<p><b>Compliance:</b></p>	<p>In compliance for all requirements assessed in the section above (Note CRMP is not ‘to the satisfaction of EAO’)</p>

<p><b>Requirement Description: 3</b></p>	<p><b>Cultural and Heritage Resources Committee as required by Condition 63</b></p> <p><u>Condition 63</u>  <i>“The Cultural Resources Mitigation Plan (CRMP) must be developed in collaboration with a Cultural and Heritage Resources Committee (Committee) established by the Certificate Holder that includes Aboriginal Groups.”</i></p> <p>See Requirement 2 above for requirements of plan development with Committee</p> <p><a href="#">Cultural Resources Mitigation Plan (June 5, 2015)</a></p> <p>The Sections referenced below are from the Cultural Resources Mitigation Plan</p> <ul style="list-style-type: none"> <li>• <i>S.5.1 Establish the Committee</i>  <i>BC Hydro will develop a Terms of Reference for the Committee, and will provide it to potential groups who may form the membership of the Committee for review prior to convening the first meeting of the Committee. The Terms of Reference will include the following:</i> <ul style="list-style-type: none"> <li>○ <i>Committee Purpose and Mandate – The purpose of the Committee will be to advise BC Hydro on the management of adverse Project effects on cultural resources, and to provide input into a CRMP.</i></li> <li>○ <i>Membership Representation – Two members from BC Hydro will sit on the Committee, and will take on the roles of Chair and Secretary to support the administration of the Committee. Two members from each Aboriginal Group (potentially affected as defined by the EAO conditions) will be invited to participate in the Committee. With permission of other Committee Members, Committee Members may invite guests as relevant to meeting agendas.</i></li> <li>○ <i>Frequency, duration and location of meetings:</i> <ul style="list-style-type: none"> <li>▪ <i>BC Hydro proposes that for the first two years of Project construction meetings are to be quarterly, and that the frequency thereafter would be determined by Committee members once established.</i></li> <li>▪ <i>Each meeting agenda will determine the length of meetings.</i></li> <li>▪ <i>Meetings are proposed to be held in a central location such as Fort St. John, and may rotate to other communities as determined by Committee Members.</i></li> </ul> </li> <li>○ <i>Term of Committee – the Committee would be effective for the duration of the Project construction period.</i></li> </ul> </li> <li>• <i>S.5.2 Develop Cultural Resources Mitigation Initiatives in Collaboration with the Committee</i> <ul style="list-style-type: none"> <li>○ <i>Working through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives, including:</i> <ul style="list-style-type: none"> <li>▪ <i>Identification and naming of key cultural sites;</i></li> <li>▪ <i>Documenting historical use of the area, including trails, sites, and stories;</i></li> <li>▪ <i>Commemoration of sites lost to inundation;</i></li> <li>▪ <i>Cultural awareness and orientation of the workforce; and</i></li> <li>▪ <i>Support for cultural camps through financial in-kind support.</i></li> </ul> </li> </ul> </li> </ul>
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	<p><i>The information collected on heritage resources, including palaeontological, archaeological and historic resources, as described in the HRMP will support the identification of mitigation measures.</i></p> <p>In addition, Appendix B [of the CRMP] sets out some potential mitigation measures identified in the EIS, Volume 3, Section 19. <i>BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee.</i></p>
<p><b>Findings:</b></p>	<p>C&amp;E Cousins assessed:</p> <ul style="list-style-type: none"> <li>• If BC Hydro established the Cultural and Heritage Resources Committee as required by Condition 63 and the CRMP; <ul style="list-style-type: none"> <li>○ The CRMP requires that two members from each Aboriginal group be invited to participate in the Committee.</li> <li>○ The condition requires that the Committee be established but does not specify when, except that the Committee must be provided a draft plan to review 90 days before start of Construction. Therefore EAO C&amp;E is interpreting that the Committee must be established a minimum of 90 days prior to start of Construction.</li> </ul> </li> <li>• If BC Hydro is implementing the Cultural and Heritage Resources Committee as required by Condition 63 and the CRMP in relation to: <ul style="list-style-type: none"> <li>○ The requirement in Section 5.2 of the CRMP to <i>“Working through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives”</i> and <i>“BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee.”</i></li> </ul> </li> </ul> <p><b>EAO C&amp;E has determined that BC Hydro:</b></p> <ul style="list-style-type: none"> <li>• Is COMPLIANT with the requirement in relation to the Complainants to establish the Committee as required by Condition 63 and the CRMP. <ul style="list-style-type: none"> <li>○ On September 24, 2014 BC Hydro invited the Complainants (and other Aboriginal groups) to participate in the Committee. According to BC Hydro, no Aboriginal group responded to the invitation.</li> <li>○ On May 20, 2015, BC Hydro re-invited the Complainants (and other Aboriginal groups) to participate in the Committee.</li> <li>○ On July 30, 2015, BC Hydro held the first meeting of the Committee which was three days after the start of Construction on July 27, 2015.</li> <li>○ While the Committee was not established 90 days prior to the start of Construction, BC Hydro took the steps within BC Hydro’s control to establish the Committee consistent with the timelines in the condition and attempted again to establish the Committee at a later date.</li> </ul> </li> <li>• Is NON-COMPLIANT with the requirement in Section 5.2 of the CRMP to <i>“Working</i></li> </ul>

*through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives” and “BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee.”*

- The Terms of Reference for the Committee state that *“The Committee will work collaboratively to advise BC Hydro regarding the development and implementation of mitigation measures to address adverse effects of the Project on cultural resources, including:*
  - *Identification and naming of key cultural sites.*
  - *Documenting historical use of the area, including trails, sites, and stories.*
  - *Commemoration of sites lost to inundation.*
  - *Cultural awareness and orientation of workforce.*
  - *Support for cultural camps through financial or in-kind support.*

*BC Hydro will take into consideration the Committee’s advice regarding recommended mitigation measures, and will implement reasonable mitigation measures to address adverse effects of the Project.*
- BC Hydro held Committee meetings as follows:
  - **2015:** July 30, October 27
  - **2016:** January 14, March 2, April 20, June 14, August 25, October 20, December 8
  - **2017:**
    - The Complainants organized a meeting of the Committee in May 2017. The Complainants stated through the material provided through the opportunity to review this draft inspection record that *“the meeting was cancelled due to poor weather. “*
    - BC Hydro held a Committee meeting on July 26, 2017.
- EAO C&E notes that BC Hydro increased the frequency of the meetings in 2016, as requested by the Committee.
- On July 9, 2017, BC Hydro advised the EAO that *“Over the last year the committee has seen a variation of participation from the communities invited to participate and the meetings began to be used for discussing issues other than what the Committee was intended for. In an effort to make the meetings more effective and bring them back to their intended purpose, BC Hydro chose to seek a well-respected facilitator to support CHRC [Cultural and Heritage Resources Committee] initiatives. We started seeking this facilitator in early 2017, and secured Dan George as the moderator in April 2017. Since then we’ve been in discussions with Dan on how to reinvigorate the committee and are sending out invitations to the Nations for the next committee meeting planned for July 26, 2017.”*
- While the meeting minutes in 2015 and 2016 show that BC Hydro did discuss some mitigation measures with the Committee, BC Hydro has not developed mitigation for known cultural values in the Bear Flats area, including the sweat

lodge (and nearby camp) and the potential burial site through the Committee. EAO C&E notes that following the initial opportunity to respond to the inspection record, BC Hydro held a Committee meeting during which the Committee began to discuss mitigation for the sweat lodge and the potential burial site.

- In a meeting on June 16, 2017 and through the opportunity to respond to the findings in this inspection record, BC Hydro advised C&E Cousins that (paraphrased) they were of the view that it may not be appropriate to discuss sweat lodge mitigation in the Committee given that the Complainants chose not to participate in the Committee. On July 17, 2017, BC Hydro stated that:
  - *“...there is no requirement to develop site specific mitigation measures through the Committee. Further, it would be inappropriate to do so as it would disregard First Nation requests to treat site specific information sensitively and the sweat lodge is a cultural resource specific to West Moberly First Nation who has never attended a committee meeting.”*
  - *“CRMP section 5.2 requires that BC Hydro work through the Committee to a) develop the details of cultural resources mitigation initiatives including those listed at the section, and b) further develop the mitigation measures identified in the EIS, Volume 3, Section 19, and others raised by the Committee. When read in full, CRMP Section 5.2 does not require that BC Hydro consult with the Committee in relation to ever cultural site which may be impacted by the Project.”*
  - *“The Committee’s role is to decide which issues are appropriate to raise and discuss in that forum. The Committee includes representation from 13 Aboriginal groups who are diverse in terms of geography (spanning two provinces) and cultural (including Dunne-Za, Metis, Dene and Cree groups, among others). The Committee is intended to address mitigation initiatives for cultural resources that have significance across these groups, rather than to develop site-specific measures for cultural resources that are specific to one group. The cultural site of concern at Bear Flats, the sweat lodge, which is specific to one First Nation, was not raised at the Committee.”*
- Through the opportunity to review provided to the Complainants, they advised EAO C&E on July 24, 2017 that
  - *“We note that NWD [Nun wa dee] made a number of requests that BCH [BC Hydro] seek input on avoidance measures from other FNs entitled to be part of the Committee, both with respect to the grave and sweat (Bear Flat area generally).”*
  - *“The First Nations do not agree with this statement [that there is no requirement to develop site specific mitigation through the Committee.] given the nature of ex-post plans, such as the CRMP and HRMP, in terms of identifying values, mitigation measures,*

*implementation of monitoring and adaptive management activities, and reporting. BC Hydro should not be permitted to decide which mitigation measures are included and which mitigation measures are reported on.”*

- *BC Hydro is well aware of the cultural importance of the area to the local Aboriginal groups and Bear Flats is included in the cultural management plan. Further: “Bear Flats is reported to be an area used for gathering and teaching for T8TA. Elders camps, Youth and Elders camps, and Treaty 8 meetings are held at the Bear Flats campground, which is above the Site C maximum normal reservoir level, but within the reservoir impact lines. A portion of the property would be directly affected by the highway realignment at Cache Creek. The Nenan Dane-zaa Deh Zona Child and Family Services Society (NENAN) holds an annual Youth and Elders gathering at the campground. According to NENAN, the Bear Flats area was chosen due to its “profound significance as Treaty 8 people have gathered, camped, hunted and practiced ceremony here since time immemorial”. The T8TA, BRFN and SFN [Saulteau First Nation] also reported the importance of holding the event at Bear Flats (T8FNs Community Assessment Team and the Firelight Group Research Cooperative 2012). The effects to the Bear Flats campground are further discussed in Volume 3 Section 24 Harvest of Fish and Wildlife Resources” (BCH 2013f:19-87)*
- *On July 27, 2017 in a response to the EAO regarding the Complainants’ comments on the draft inspection record, BC Hydro stated that “BC Hydro is not aware of other Aboriginal groups raising concerns about the sweat lodge. During the environmental assessment, a member of West Moberly First Nations raised a concern about the sweat lodge in a meeting with BC hydro in April 2012. That meeting was with the Treaty 8 Tribal Association, who at the time was representing the West Moberly, Prophet River, Doig River and Halfway River First Nations. As such, this concern was recorded in the EIS consultation summaries for each of these four First Nations. To our knowledge, no member or representative of Doig River First Nation or Halfway River nation has expressed a specific interest in the sweat lodge.”*
- *EAO C&E is of the view that in order to be compliant with the requirements to “Working through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives” and “BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee”, BC Hydro would have either needed to:*
  - *develop mitigation through the Committee for the sweat lodge and potential burial site;*
  - *request the Complainants’ permission to develop mitigation through the Committee if BC Hydro was concerned it may not be appropriate to raise the matters at the Committee given the Complainants have*

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## INSPECTION RECORD

	<p>chosen not to participate in the Committee; or</p> <ul style="list-style-type: none"> <li>▪ amend the CRMP and Committee Terms of Reference (TOR) to state that the Committee is not the forum for discussion regarding matters that are specific to one or a few Aboriginal groups.</li> </ul>
<b>Compliance:</b>	<p>In compliance for one requirement and out of compliance for one of the requirements assessed in the section above. By way of this inspection record, EAO C&amp;E issued a warning in relation to this non-compliance.</p>

<p><b>Requirement Description: 4</b></p>	<p><b>Potential Burial Site Within Archaeological site HbRh-16</b></p> <p><u>Excerpt of Certificate Condition 62</u>  <i>The HRMP must specify a process for the engagement of Aboriginal Groups in planning and follow-up/monitoring activities related to heritage resources as the Project proceeds. In particular, the HRMP must incorporate a process for continued collaboration with Aboriginal Groups on ground-truthing for the identification of any burial sites that the Project may disturb.</i></p> <p><a href="#">Heritage Resources Management Plan (June 5, 2015)</a>  The Sections referenced below are Sections of the HRMP.</p> <ul style="list-style-type: none"> <li>• <i>Section 4.0 Engagement with Aboriginal Groups</i> <ul style="list-style-type: none"> <li>○ <i>BC Hydro will invite Aboriginal groups to complete ground-truthing exercises, whereby Aboriginal land users, including registered trap-line holders, may identify any locations of cultural importance within planned construction areas within the PAZ. These ground-truthing exercises may identify areas for additional heritage work.</i></li> </ul> </li> <li>• <i>Section 5.2 Additional Baseline Inventory</i> <ul style="list-style-type: none"> <li>○ <i>BC Hydro is working with Aboriginal groups to complete ground-truthing exercises, whereby Aboriginal land users, including registered trap-line holders, are engaged to identify culturally important locations in the PAZ. These ground-truthing exercises may identify areas for additional heritage inventory work.</i></li> <li>○ <i>Mitigation measures will be developed for newly found sites consistent with the approaches outlined in this HRMP.</i></li> </ul> </li> <li>• <i>Section 6.3.1 – Mitigation Measures – Avoidance:</i> <ul style="list-style-type: none"> <li>○ <i>The preferred means of limiting effects to heritage sites is partial or complete avoidance by changing the design or placement of project components.</i></li> <li>○ <i>The Project components that may offer some opportunity for some level of avoidance of heritage sites include [amongst others]: the final alignment or placement of temporary work areas within Highway 29 realignments.</i></li> <li>○ <i>The Contractor, by working through the Work Planning steps described in Section 4.1, will work with the Heritage Specialist to identify any measures that will be taken to avoid heritage sites, and will record any avoidance measures in EPPs. Where sites are to be avoided, the EPP would describe the site protection measures (e.g. fencing or barriers) that would be employed so that the site is not affected by construction activities.</i></li> <li>○ <i>For heritage sites that cannot be avoided, Appendix B [of the HRMP] describes the various types of mitigation in greater detail.</i></li> </ul> </li> <li>• <i>Section 6.3.4 – Confirmed burial sites</i> <ul style="list-style-type: none"> <li>○ <i>The preferred approach for confirmed human burial locations is to avoid them. However, where a confirmed human burial location cannot be avoided by construction activities it may require in situ protection (e.g., capping) or</i></li> </ul> </li> </ul>
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*relocation, in accordance with regulatory requirements. Determination of the preferred approach will be made with input from descendants of the deceased individuals, if they can be identified and contacted.*

- **Section 6.3.5 – Summary of Mitigation Measures by Activity**
  - *Activity: Highway 29 realignment and access roads (including site preparation, clearing and grubbing, construction).*
  - *Primary mitigation approaches [others are noted; these are the relevant ones]:*
    - *Site avoidance where the project design can feasibly be changed (e.g., road alignment) (Archaeological and historical resources).*
    - *Chance find procedure.*
- **Appendix B [of the HRMP], B1 Effect Reduction Measures**
  - *For components of the Project where avoidance or partial avoidance of effects to heritage sites is not possible, steps may be taken to reduce or minimize effects to these sites (see BC Archaeology Branch 1998). Potential approaches to reduce or minimize project effects on heritage resources are described in the Sections below.*
  - **Burial Site Mitigation.**
    - *For burial sites that cannot be avoided and therefore will be adversely affected by Project activities, there are several options. Relocation of the burial to a new location, in consultation with descendants (if known) to address how the remains would be recovered, how they would be transported, who would be involved with the relocation process, what ceremonies (if any) should be performed and by whom, and to where the burial should be relocated.*
    - *Capping of the burial in place is an option for burial sites that will remain in situ. Consultation with descendants (if known) can support decisions about how the remains would be covered and what ceremonies (if any) should be performed, and by whom.*
    - *Depending on the wishes of any known descendants, other suggestions may be made with respect to mitigation of burials prior to disturbance, such as commemoration of the location, leaving them in their current state, or other options that may be suggested.*

Excerpt of Certificate Condition 63

*The Certificate Holder must manage adverse Project effects on cultural resources by implementing mitigation measures detailed in a CRMP.*

Cultural Resources Mitigation Plan (June 5, 2015)

The Sections below are excerpts from the CRMP

- **Appendix A [of the CRMP]: Baseline Conditions. EIS Table 19.2 Culturally Important Places and Valued Landscapes [lists many others]:**
  - *Place name: Bear Flats*
  - *Landscape feature: Cache Creek confluence with Peace River, Bear Flats*



- *Current uses:*
  - *A: Temporary habitation, cabin, gathering place, hunting, teaching areas, place names, plant gathering, fresh water, firewood, earth material;*
  - *B: Hunting, fishing, gathering, camp site*
- *First Nations: T8TA (A above); Blueberry River (B above)*
- *Reported Cultural Values: Traditional burial site (A above); Moose, elk, deer, berries, camp (B above)*
- *Interaction: Inundation; Highway 29 realignment (Both A & B above)*
- **Appendix B [of the CRMP]: List of EIS Mitigation Measures**
  - *Project phase: Construction and operations*
  - *Potential Effect: Changes in cultural and traditional uses of the land*
  - *Mitigation Measures [others listed in Appendix B; these are the relevant ones]:*
    - *Work with Aboriginal groups to ground truth traditional land use information for specific areas within the Project activity zone prior to commencing construction, e.g. when determining the exact location of an access road.*
    - *Continue to consult with Aboriginal groups regarding clearing plans and protocols.*
    - *Establish a Culture and Heritage Resources Committee to provide advice and guidance on the mitigation of specific effects of the Project on culture and heritage resources. The Committee would consist of BC Hydro officials and Aboriginal members whose communities are in the immediate vicinity of the Project.*
    - *Consider implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives:*
      - *the identification and naming of key cultural sites and the potential to integrate Aboriginal names into Project operations and sites;*
      - *the protection and documentation, including mapping of important Aboriginal trails and sites; and*
      - *Implement all mitigation measures set out in Volume 4 Section 32 Heritage Resources:*
        - *Table 32.7 of Volume 4, section 32 of the EIS “Summary of Effectiveness of Proposed Mitigation Measures”:*
          - *Valued Component: heritage resources.*
          - *Project phase: construction.*
          - *Potential adverse effects: changes to resource integrity & changes to resource accessibility.*
          - *Key mitigation measures [long list including the following]: avoidance, move historical structure, implementation of heritage resources management plan.*



<p><b>Findings:</b></p>	<p>Note that EAO C&amp;E considers the potential burial site to be a cultural resource and a reported but not confirmed heritage resource. As per the Archaeology Branch, <i>“The potential burial site at Cache Creek is a recorded archaeological site, HbRh-16. Currently this site is recorded as a lithic site and is protected under the HCA. It is as-yet unconfirmed where there are burial(s) present. Regardless of the confirmation of presence of a burial, any ground altering activities must be authorized by a Heritage Conservation Act permit.”</i> If it is determined this site is not a burial then it may be evidence of another cultural resource. According to the Complainants (paraphrased), the site is significant from a community perspective; therefore it is a cultural resource. According to the CRMP, cultural resources are “matters of cultural importance to local Aboriginal Groups.”</p> <p>As noted in the requirement 1 above, the HRMP does not provide clarity regarding requirements for reported but unconfirmed heritage sites and the role of Qualified Professionals (QP) in confirming reported but unconfirmed heritage sites. The Complainants noted on July 24, 2017 through the opportunity to review the draft inspection record that:</p> <p><i>“Many heritage sites may have sufficient evidence to justify recognition as a heritage site, where complete certainty is not possible for technical or cultural reasons. In this case, we have a report prepared by a QEP identifying the site as a Dunne-za Burial Site (heritage site and cultural resource site) and no QEP of BC Hydro has suggested that there is any error in this determination either on technical or cultural grounds.</i></p> <p><i>The Landsong Report reviews all evidence including physical evidence at the site, at other sites, and oral history, plus consultation with local FNs, to conclude that it should be treated as a burial site and not disturbed. Thus, digging up the site to confirm presence of human remains is not appropriate and should not be required. HRMP should be changed to reflect the reality that some burial sites are “confirmed” through opinion of QEP, based on physical evidence and oral history/consultation with FNs, as in this case.”</i></p> <p>For the potential burial site in HbRh-16, EAO C&amp;E assessed:</p> <ul style="list-style-type: none"> <li>• If BC Hydro offered the Complainants opportunities for <i>“continued collaboration with Aboriginal groups for ground-truthing of any burial sites that the project may disturb”</i> following issuance of the Certificate as required by the HRMP;</li> <li>• If BC Hydro <i>“invite[d] Aboriginal groups to complete ground-truthing exercises, whereby Aboriginal land users.... may identify any locations of cultural importance within planned construction areas within the [Project Activity Zone] PAZ. These ground-truthing exercises may identify areas for additional heritage work”</i> as required by the HRMP;</li> <li>• If BC Hydro required <i>“the Contractor, by working through the Work Planning steps described in Section 4.1, will work with the Heritage Specialist to identify any measures that will be taken to avoid heritage sites, and will record any avoidance measures in</i></li> </ul>
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*EPPs. Where sites are to be avoided, the EPP would describe the site protection measures (e.g. fencing or barriers) that would be employed so that the site is not affected by construction activities.” as required by Section 6.31 of the HRMP;*

- *If BC Hydro “Consider[ed] implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives the protection and documentation, including mapping of important Aboriginal trails and sites.” as required by the CRMP.*
- *If BC Hydro “implemented all mitigation measures set out in Volume 4 Section 32 Heritage Resources” as required by the CRMP.*
  - *Note this is being assessed specific to the potential burial and not all cultural resources.*
  - *Note that within the CRMP it states that BC Hydro will “Implement all mitigation measures set out in Volume 4 Section 32 Heritage Resources.” As such, EAO C&E interprets that BC Hydro is committing to do the same mitigation measures for the cultural resources as outlined for heritage resources in this Section of the HRMP.*
  - *Within Section 32.3.1.6 it states “Should avoidance through redesign not be possible, road construction and Peace River tributary crossings have the potential to affect heritage resources.”*
  - *Within Section 32.3.3 it states “Given that heritage sites are a non-renewable resource, site preservation and conservation are considered primary principles. The preferred means of minimizing effects to heritage sites is complete avoidance. Based on the nature of the Project, the option of avoidance may be available primarily for the transmission line, Highway 29 realignment, access roads, and possibly the off-site quarries and construction materials areas.”*
  - *Within Section 32.3.3 it states “In certain circumstances, constraints such as terrain or design tolerances may make complete avoidance of a heritage site impossible. However, it may be possible to redesign portions of the Project components to reduce effects to a heritage site (e.g., partial avoidance). Project components with the greatest opportunity for partially avoiding heritage sites include the transmission line, Highway 29 realignment, access roads, and possibly the off-site quarries and construction materials areas. Similar to above, heritage resource considerations will be incorporated into the detailed design process, improving the likelihood that some heritage resources can at least be partially avoided. For Project components where avoidance or partial avoidance of effects to heritage sites is not possible, steps may be taken to reduce or minimize effects to these sites (see B.C. Archaeology Branch 1998).”*
  - *Within Section 32.3.3.5 it states, “should additional or alternative mitigation measures be identified through discussions with Aboriginal groups....these will be evaluated by BC Hydro in consultation with the group in question and the appropriate regulatory body on a case-by-case basis.”*
- *If BC Hydro developed mitigation measures once BC Hydro became aware of this potential burial site as required by Section 5.2 of the HRMP and CRMP; and*

	<ul style="list-style-type: none"> <li>• If BC Hydro has implemented the mitigations as required by the HRMP and CRMP in relation to the potential burial site in HbRh-16.</li> </ul> <p><b>EAO C&amp;E has determined that BC Hydro:</b></p> <ul style="list-style-type: none"> <li>• Is COMPLIANT with the requirement to offer the complainant opportunities for <i>“continued collaboration with Aboriginal groups for ground-truthing of any burial sites that the project may disturb”</i> following issuance of the Certificate.             <ul style="list-style-type: none"> <li>○ BC Hydro wrote to the Complainants to invite them to participate in ground-truthing for sites of importance to them (including burials) on the following dates:                 <ul style="list-style-type: none"> <li>▪ Feb 13, 2014,</li> <li>▪ Sept 24, 2014 (for October 2014),</li> <li>▪ May 20, 2015 (for activities starting in June 2015),</li> <li>▪ Nov 10, 2015 (to ground truth traditional land use sites identified on maps provided by the Complainants submitted as comments on a water licence application; the potential burial site at HbRh-16 was not on these maps).</li> <li>▪ March 11, 2016 (focus on areas where construction planned for 2016 and Bear Flats; activities planned for late spring / early summer 2016)</li> <li>▪ Aug 8, 2016 (for Bear flats)</li> <li>▪ Nov 15, 2016 (BC Hydro noted it was only aware of one potential burial in Cache Creek and re-extended invitation to ground-truth with First Nations)</li> </ul> </li> <li>○ Specific to Cache Creek (which would include the potential burial site), BC Hydro offered the Complainants opportunities to ground-truth on:                 <ul style="list-style-type: none"> <li>▪ Jan 3, 2017 (in response to stop work request related to burials - invitation to ground-truth any potential burial site / sites of importance)</li> <li>▪ Jan 16, 2017 (regarding Complainants concerns about mass grave in Cache Creek area – invitation in the area so site specific sites of importance can be identified and mitigation developed)</li> <li>▪ Feb 10, 2017 (to ground-truth in April and May 2017 after clearing complete but prior to start of highway construction).</li> <li>▪ April 6, 2017</li> </ul> </li> </ul> </li> </ul>
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- Apr 11, 2017 (invitation for site visit to Bear Flat area)
  - Through the opportunity to review the draft inspection record provided to the Complainants, on July 24, 2017 the Complainants advised the EAO that “...we consider BC Hydro’s offers to ground-truth unhelpful at best, and possibly indicative of bad faith consultation (given that it was a technical discussion of avoidance which was requested, not another trip to view the sites the FNs discovered on their own without BC Hydro’s assistance.” They also requested that the compliance determinations related to ground-truthing be removed from this inspection record as “...the First Nations do not allege that FNs needed to help ground-truthing or that BCH failed to provide the opportunity. This is a red herring. We ask that it be removed from the report.”
  - On July 27, 2017, in response, BC Hydro stated that “EAC [Environmental Assessment Certificate] Condition 62 requires BC Hydro to implement a process for ground-truthing of burial sites.”
  - On August 15, 2017 through the opportunity to respond, the Complainants stated that “The EAO references the April 6, 2017 letter from BC Hydro as evidence that it satisfied the ground-truthing condition in relation to the Landsong Report (this letter is enclosed in Appendix 5). That viewpoint is not accurate. What the April 6, 2017 letter demonstrates is that BC Hydro had refused to conduct the specific type of ground-truthing recommended in the Landsong Report.” The August 15, 2017 letter elaborates on the Landsong Report recommendations and related matters that the Complainants raised to the EAO. The complainant’s letter provides information regarding what they would have considered an effective approach to ground truthing.
- Is COMPLIANT with the requirement to invite Aboriginal groups to complete ground-truthing activities for locations of cultural importance in relation to the potential burial site.
  - See list of ground-truthing opportunities offered above.

EAO C&E has determined that the compliance status is NOT YET DETERMINED in relation to the following three requirements as explained below:

- the requirement to “Consider implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives for the protection and documentation, including mapping of important Aboriginal trails and sites”
- the requirement to “implement all mitigation measures set out in Volume 4 Section 332 Heritage Resources” and
- the requirement to develop mitigation measures once BC Hydro became aware of this potential burial site in August 2016 as required by the HRMP and the CRMP.
  - According to BC Hydro, on August 2, 2016, FLNRO sent BC Hydro letters from the Complainants dated June 8 and June 20, 2016 with information about the potential burial site within HbRh-16.
    - On July 27, 2017 in response to the Complainants’ comments on the draft inspection record, BC Hydro stated that “BC Hydro received the

*Landsong report from FLNRO on March 6, 2017..... This is when BC Hydro became aware of the specific location of the potential burial within HbRh-16. We understand that Nun wa dee provided FLNRO with information and mapping in June 2016 (see Nun wa dee's letters dated June 8 and June 20, 2016). FLNRO subsequently forwarded that information to BC Hydro in August 2016. Based on that information, BC Hydro was not able to determine that a potential burial site (other than the previously identified burial within HbRh-2) had been identified. BC Hydro wrote to Nun wa dee (see correspondence of August 8 and November 15, 2016 and January 30, 2017) noting that the only specific location for a potential burial that we were aware of in the Cache Creek area was the site within HbRh-2. The Archaeology Branch also wrote to Nun wa Dee on June 22, 2016 setting out its understanding the potential burial identified by Nun wa dee was within HbRh-2. BC Hydro did not receive information from Nun wa dee about the specific location for the potential burial in HbRh-16 until the March 2017 Landsong report."*

- On March 6, 2017, FLNRO provided BC Hydro with the Report of Landsong Heritage Consulting Ltd., March 1, 2017 that identified the location of the potential burial and suggested possible mitigation measures.
- On March 18, 2017, the Complainants provided BC Hydro with the March 15, 2017 "Review of Alternative Routes for the Cache Creek Section of Highway 29 in the Vicinity of Bear Flat" report prepared for the Nun wa dee Stewardship Society by S. Graham Engineering and Geology Inc (S. Graham Report). According to the Complainants, the S. Graham Report sets out why and how avoidance of the potential grave and sweat could be achieved and assesses the feasibility of avoidance.
- On March 29, 2017, BC Hydro sent the Complainants a letter requesting the coordinates of the potential burial site and offering investigations and discussions regarding mitigation options. BC Hydro provided information regarding why BC Hydro "is not prepared to change the alignment from the alignment selected through the EA process."
  - During the opportunity to review the draft inspection record provided to the Complainants, on July 24, 2017 the Complainants advised that "The request for coordinates should not be considered a necessary or even genuine request given a) multiple maps had already been provided by the date to FLNRO, Arc Branch depicting the location; b) the Mar 15 SGE Report contains a description of the location of the grave and sweat at Bear Flat; c) BCH had attended the two-day meeting in Mar 22/23, 2017 identifying the sites; d) BCH could easily have visited Bear Flat and asked the Boons to see the site for themselves. By the date of this request, the gravesite had been taped off by Landsong, and is located in the centreline of BCH's own preferred alignment."

- On April 6, 2017, BC Hydro wrote to the Complainants. BC Hydro proposed ground-truthing the location of the potential burial. BC Hydro stated that the results of ground investigations would need to be shared with BC Hydro by April 30, 2017 in order to inform any potential mitigations prior to the start of construction.
- On April 11, 2017, BC Hydro sent the Complainants a letter re-iterating offer to work with the Complainants in investigations and to discuss mitigation options.
- On April 26, 2017 the Complainants wrote C&E Cousins and CEAA in follow up to the March 29, 2017 letter from BC Hydro to the Complainants. The April 26, 2017 letter included an April 25, 2017 "Review of BC Hydro Letter of March 29, 2017 Regarding the Proposed Relocation of Highway 29 in the Vicinity of Bear Flat" prepared for Nun wa dee by S. Graham Engineering and Geology Inc. The April 25, 2017 review provides S. Graham Engineering and Geology Inc's assessment of BC Hydro's statements in the March 29, 2017 letter regarding: "Dates of Notification", "Exact Locations of the Sweat Lodge and Cache Creek Gravesite", "Boat Launch", "Highway 29" (various pages), "Multiple Accounts Evaluation Process", "Joint Review Panel (page 3)", "Consequences of Making a Change in Reroute Alignment (page 3)".
- In early June 2017, there were a series of letters between the Complainants and BC Hydro and a BC Hydro media event regarding feasibility and cost associated with suspending work in the Cache Creek area. In response, on June 7, 2017, the Complainants wrote a letter to EAO and CEAA refuting, as stated by the Complainants in July 24, 2017 to the EAO, the claims "that delaying work on the (currently designed) Cache Creek Realignment would force BC Hydro to delay the September 2019 river diversion by a full year, resulting in \$600 million in project delay."
- On June 14, 2017, BC Hydro sent the Complainants a letter outlining proposed mitigation for the potential burial site (lengthening bridge from 430m to 455m (in addition to lengthening from 404m to 430m which is being done for technical reasons) and raising the clearance above the potential burial by 2m) which would avoid direct impacts to the potential burial site.
- On June 15, 2017, the Complainants sent a response advising that "... we also find evidence of bad faith in the fact that the letter – along with another letter describing what BCH characterises as "mitigations" – was sent to us the day before contracts are to be sent out for the work at Cache Creek. This calls into questions whether BC Hydro actually intends to protect heritage and cultural resources, as required by the conditions to its environmental assessment approvals."
- On June 17, 2017, the Complainants sent BC Hydro a letter requesting spatial data for the proposed bridge/road refinements.
- On June 20, 2017, BC Hydro sent a letter to the Complainants regarding proposed mitigation for the potential burial site (as per the June 14, 2017 letter).



- On June 22, 2017, BC Hydro and the Complainants met to discuss potential mitigation for the potential burial site and sweat lodge. As previously stated by the Complainants, they explained that no mitigation was acceptable other than a different highway alignment.
- On June 27, 2017, the Complainants sent BC Hydro a letter in follow up to the June 17, 2017 letter requesting the spatial data for the proposed bridge/road refinements.
- On June 29, 2017 – the Complainants sent a letter to the EAO including June 27, 2017 and June 28, 2017 media releases.
- On July 27, 2017 through the opportunity to respond to the draft inspection record, BC Hydro stated that *“BC Hydro has also extended the proposed bridge at Cache Creek from 404 metres to 455 metres, and raised the height of the bridge, to avoid physically disturbing a site that West Moberly and Prophet River have identified as a potential burial. West Moberly and Prophet River have not accepted these mitigation proposals and instead stated that the only acceptable mitigation measure would be an alternative route for the highway.”*
- On July 24, 2017 through the opportunity to review the draft inspection record and BC Hydro’s comments on the draft inspection record, the Complainants stated that:
  - “...our view is that BC Hydro did not take prompt or adequate steps to develop mitigation measures after being informed of the discovery of the grave in July 2016. Locating the bridge 2 metres above the grave at Hb-Rh-16 may or may not avoid the physical location of the grave, but it does not preserve the site for cultural use by Aboriginal groups, as required under the CRMP.”*
  - “BC Hydro has refused to provide the spatial information to the First Nations for full consideration (Lee 2017d). To date, BC Hydro has ignored information requests from First Nations regarding proposed adjustment to Highway 29 route and the redesign of the bridge over Cache Creek (Lee 2017e; Lee 2017d). This request **overdue by 37 days**. Additional requests that BC Hydro has not fulfilled to date regarding the Highway 29 realignment include the head pond that pertains to the Highway 29 realignment, clearing activities at Bear Flats, drill site at Bear Flats, restricted area at Bear Flats (Lee 2017). These requests date back to May 2017, making them months overdue.*
  - BC Hydro [Note the Complainants have confirmed that although their letter states “EAO” in this sentence that it was intended to say BC Hydro.] is not consulting in good faith regarding the measures it proposes. It has refused thus far to provide the necessary information to the First Nations for consideration.”*
- On August 16, 2017 through the opportunity to respond, BC Hydro advised the EAO that :
  - “BC Hydro provided the requested spatial data for refinements to the bridge and*

*route of the highway to Nun wa dee on July 25, 2017. A copy of BC Hydro's July 25 letter is enclosed.*

*BC Hydro does not agree that it has ignored information requests. BC Hydro has endeavored throughout consultation with West Moberly and Prophet River First Nations to provide them with information that will assist them understand the upcoming work and its potential impacts."*

- On August 15, 2017 through the opportunity to review the draft inspection record, the Complainants stated *"Therefore, BC Hydro was aware of the substantive issues (i.e., traditional gathering and cultural camp at Bear Flats, the Sweat Lodge, and the Cache Creek Gravesite) to the route of the Highway 29 realignment since approximately July 2016, which means the June 2017 mitigation measures regarding the Cache Creek Gravesite were developed approximately 11 months afterwards. "*
- EAO C&E notes that the Joint Review Panel process concluded significant adverse effects to cultural and heritage resources, so it is understood that not all cultural and heritage resources will be avoided; however, cultural and heritage resources raised by Aboriginal groups during or after the Environmental Impact Statement (EIS) must have mitigation considered regardless of if the Aboriginal group participates in the consultation process offered by the Certificate Holder. This is consistent with the provincial policy and case law.
- While EAO C&E notes that some clearing, archaeological and geotechnical work occurred in the vicinity of the potential grave site prior to the development of mitigation consistent, given the activities have been minimal when compared with the overall planned work in the Cache Creek area it continues to be possible for BC Hydro to achieve compliance. In order to achieve compliance with these requirements, BC Hydro must either:
  - Accept the mitigation as proposed by the Complainants; or
  - Develop new mitigation consistent with the requirements of the Certificate including providing a detailed explanation with supporting analysis regarding why the mitigation proposed by the Complainants *is not necessary, is impractical, or is otherwise unreasonable.*

EAO C&E has determined that that the compliance status is NOT YET DETERMINED regarding the requirement to implement the mitigations as required by the HRMP and CRMP in relation to the potential burial site in HbRh-16.

- Note this is being assessed specific to the potential burial site and not all cultural resources and reported but not confirmed heritage resources.
- The CRMP does not provide clarity regarding required mitigation. Multiple ambiguous and potentially conflicting terms such as 'possible', 'impossible', 'feasible', 'primary principles', etc. and lack of site/activity specific mitigation (and a process to develop mitigation for newly identified cultural resources) lead to unclear requirements in



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## INSPECTION RECORD

	<p>relation to the mitigation of cultural resources.</p> <ul style="list-style-type: none"> <li>• The HRMP does not provide clarity regarding if the plan requires mitigation for potential burial sites.</li> <li>• As noted above in the findings of Requirement 1 and 2, the EAO has determined that the CRMP and HRMP are not to the EAO's satisfaction as required by the Certificate. The EAO requires that BC Hydro update the CRMP and HRMP.</li> <li>• Once the CRMP and HRMP are updated, EAO C&amp;E may have sufficient information to determine the compliance status of the requirement to implement mitigation.</li> </ul>
<b>Compliance:</b>	In compliance for two requirements and the compliance status is 'not yet determined' for four of the requirements assessed in the section above.

<p><b>Requirement Description 5:</b></p>	<p><b>Heritage requirements in Environmental Protection Plans (EPPs)</b></p> <p>HRMP Section 6.1 <i>Work Planning</i></p> <ul style="list-style-type: none"> <li>Contractors will be responsible to include heritage requirements as part of an EPP as applicable to the scope of work covered by the EPP. Contractors will be required to develop the heritage requirements of an EPP, and to provide the Heritage Specialist with information in a timely manner about the scheduling of planned work.</li> </ul>
<p><b>Findings:</b></p>	<p>EAO C&amp;E has determined that BC Hydro is COMPLIANT in relation to the requirement that <i>“the Contractor, by working through the Work Planning steps described in Section 4.1, will work with the Heritage Specialist to identify any measures that will be taken to avoid heritage sites, and will record any avoidance measures in EPPs. Where sites are to be avoided, the EPP would describe the site protection measures (e.g. fencing or barriers) that would be employed so that the site is not affected by construction activities.”</i> as required by section 6.31 of the HRMP as it relates to the clearing conducted in HbRh-16.</p> <ul style="list-style-type: none"> <li>The March 15, 2017 <i>“Environmental Protection Plan: Bear Flat – Cache Creek Highway 29 Realignment BC Hydro Owned/Leased Land Clearing”</i> (Bear Flat EPP) includes heritage mitigation measures for HbRh-16.             <ul style="list-style-type: none"> <li>The Bear Flat EPP states: <i>“As mentioned in Section 1.0, heritage management requirements related to grubbing activities are subject to confirmation by Charlie Weiler of BC Hydro to ensure grubbing can be performed. Specifically, an additional map included in Appendix A outlines an area surrounding Cache Creek which will require further investigation by First Nations using ground penetrating radar prior to grubbing. The heritage management requirements for archaeology sites at Cache Creek will change during the course of the clearing contract timeline. Therefore, the contractor will review heritage management requirements every day during the tailboard meeting.”</i></li> <li>The map referenced above includes a red rectangle and the following text added on January 18, 2017 <i>“Do not carry out any clearing and grubbing work within the area of the rectangle until advised by BC Hydro”</i></li> </ul> </li> <li>The report Site C Clean Energy Project Site Investigation: Interim Report for Excavations at HbRh-16 (October 25, 2016) summarized the work completed as required for Class 1 sites. The report provided the color classification modification based on the excavations and results completed within the report.</li> <li>On February 2, 2017, FLNRO responds to the above report stating <i>“The reports conclude that the systematic data recovery completed at archaeological sites HbRh-12, 16, 19, 63, 136, 144, 145, 147, 148, 156, 162, 165 and 168 has been sufficient to delineate the content, context and significance of these resources. As these sites are still subject to protection under the Heritage Conservation Act development within the boundaries of</i></li> </ul>

	<p><i>this site may only be completed under a Section 12 Site Alteration Permit.”</i></p> <ul style="list-style-type: none"> <li>• On March 7, 2017, BC Hydro provided direction to clearing contractor within HbRh-16 consistent with the above report. The direction enabled the January 18, 2017 directive within the red rectangle to be modified.</li> <li>• On March 11, clearing and mulching began within the boundaries of HbRh-16 (excavation of subsurface materials was prohibited). Bi-weekly reports from Golder Associates indicate that the color coded areas were flagged prior to and after clearing and mulching.</li> <li>• On May 5, 2017, the Complainants sent Transport Canada, with a cc to BC Hydro, a letter describing, among other things, clearing and grubbing activities as documented through a field audit conducted by the Complainants.</li> </ul> <p>EAO C&amp;E notes that there is a requirement in Appendix B of the CRMP to “<i>Continue to consult with Aboriginal groups regarding clearing plans and protocols.</i>” Please note that this requirement has not been assessed by EAO C&amp;E in relation to the clearing conducted within the Cache Creek area.</p> <p>NOTE: While the EPP requirement was included in the versions of the inspection record that were subject to the opportunities to review/respond, there was not a preliminary compliance determination in the draft inspection records. As such, if BC Hydro or the Complainants provide the EAO with additional information regarding this, or any other, requirement, the compliance determination is subject to change upon review by EAO C&amp;E.</p>
<b>Compliance:</b>	In Compliance

<b>Requirement</b>	<b>Potential Impacts to the sweat lodge</b>
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**Description 6:**

Excerpt of Certificate Condition 63

*The Certificate Holder must manage adverse Project effects on cultural resources by implementing mitigation measures detailed in a CRMP.*

Cultural Resources Mitigation Plan (June 5, 2015)

The sections below are excerpts from the CRMP

- *Section 5 Certificate Condition 63: Mitigation Measures:*
  - *S.5.1 Establish the Committee. Committee Purpose and Mandate – The purpose of the Committee will be to advise BC Hydro on the management of adverse Project effects on cultural resources, and to provide input into a Cultural Resources Mitigation Plan.*
  - *S 5.2 Develop Cultural Resources Mitigation Initiatives in collaboration with the Committee.*
    - *Working through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives, including [others listed in CRMP]: Identification and naming of key cultural sites.*
    - *The information collected on heritage resources, including palaeontological, archaeological and historic resources, as described in the Heritage Resources Management Plan will support the identification of mitigation measures.*
    - *In addition, Appendix B [of the CRMP] sets out some potential mitigation measures identified in the EIS, Volume 3, Section 19. BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee.*
- *Appendix A [of the CRMP]: Baseline Conditions. EIS Table 19.2 Culturally Important Places and Valued Landscapes [lists many others]:*
  - *Place name: Bear Flats*
  - *Landscape feature: Cache Creek confluence with Peace River, Bear Flats*
  - *Current uses:*
    - *A: Temporary habitation, cabin, gathering place, hunting, teaching areas, place names, plant gathering, fresh water, firewood, earth material;*
    - *B: Hunting, fishing, gathering, camp site*
  - *First Nations: T8TA (A above); Blueberry River (B above)*
  - *Reported Cultural Values: Traditional burial site (A above); Moose, elk, deer, berries, camp (B above)*
  - *Interaction: Inundation; Highway 29 realignment (Both A & B above)*
- *Appendix B [of the CRMP]: List of EIS Mitigation Measures*
  - *Project phase: Construction and operations*
  - *Potential Effect: Changes in cultural and traditional uses of the land*
  - *Mitigation Measures [others listed in Appendix B; these are the relevant ones]:*
    - *Work with Aboriginal groups to ground truth traditional land use*

	<p><i>information for specific areas within the Project activity zone prior to commencing construction, e.g. when determining the exact location of an access road.</i></p> <ul style="list-style-type: none"> <li>▪ <i>Continue to consult with Aboriginal groups regarding clearing plans and protocols.</i></li> <li>▪ <i>Establish a Culture and Heritage Resources Committee to provide advice and guidance on the mitigation of specific effects of the Project on culture and heritage resources. The Committee would consist of BC Hydro officials and Aboriginal members whose communities are in the immediate vicinity of the Project.</i></li> <li>▪ <i>Consider implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives:</i> <ul style="list-style-type: none"> <li>• <i>the identification and naming of key cultural sites and the potential to integrate Aboriginal names into Project operations and sites;</i></li> <li>• <i>the protection and documentation, including mapping of important Aboriginal trails and sites; and</i></li> <li>• <i>Implement all mitigation measures set out in Volume 4 Section 32 Heritage Resources:</i> <ul style="list-style-type: none"> <li>○ <i>Table 32.7 of Volume 4, section 32 of the EIS “Summary of Effectiveness of Proposed Mitigation Measures”:</i> <ul style="list-style-type: none"> <li>▪ <i>Valued Component: heritage resources.</i></li> <li>▪ <i>Project phase: construction.</i></li> <li>▪ <i>Potential adverse effects: changes to resource integrity &amp; changes to resource accessibility.</i></li> <li>▪ <i>Key mitigation measures [long list including the following]: avoidance, move historical structure, implementation of heritage resources management plan.</i></li> </ul> </li> </ul> </li> </ul> </li> </ul>
<p><b>Findings:</b></p>	<p>Note that EAO C&amp;E considers the sweat lodge to be a cultural resource not a heritage resource. According to the CRMP, cultural resources are “<i>matters of cultural importance to local Aboriginal Groups.</i>”</p> <p>For the sweat lodge, EAO C&amp;E assessed:</p> <ul style="list-style-type: none"> <li>• If BC Hydro sought input from the Committee in relation to mitigation for the sweat lodge, consistent with the purpose of the Committee which is “<i>to advise BC Hydro on the management of adverse Project effects on cultural resources</i>” and the requirement in Appendix B of the CRMP that BC Hydro “<i>will work with the Committee to further develop these mitigation measures [EIS Vol 3 S. 19] and consider any others raised by the Committee.</i>”</li> <li>• If BC Hydro provided opportunities to the Complainants to “<i>work with Aboriginal groups to ground truth traditional land use information for specific areas prior to</i></li> </ul>

*commencing construction.”*

- If BC Hydro *“Consider[ed] implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives the protection and documentation, including mapping of important Aboriginal trails and sites.”*
- If BC Hydro invited Aboriginal groups to complete ground-truthing activities for locations of cultural importance in relation to the sweat lodge”.
- If BC Hydro *“implemented all mitigation measures set out in Volume 4 Section 32 Heritage Resources”* as required by the CRMP.
  - Note this is being assessed specific to the sweat lodge and not all cultural resources.
  - Note that within the CRMP it states that BC Hydro will *“Implement all mitigation measures set out in Volume 4 Section 32 Heritage Resources.”* As such, EAO C&E interprets that BC Hydro is committing to do the same mitigation measures for the cultural resources as outlined for heritage resources in this Section of the HRMP.
  - Within Section 32.3.1.6 it states *“Should avoidance through redesign not be possible, road construction and Peace River tributary crossings have the potential to affect heritage resources.”*
  - Within Section 32.3.3 it states *“Given that heritage sites are a non-renewable resource, site preservation and conservation are considered primary principles. The preferred means of minimizing effects to heritage sites is complete avoidance. Based on the nature of the Project, the option of avoidance may be available primarily for the transmission line, Highway 29 realignment, access roads, and possibly the off-site quarries and construction materials areas.”*
  - Within Section 32.3.3 it states *“In certain circumstances, constraints such as terrain or design tolerances may make complete avoidance of a heritage site impossible. However, it may be possible to redesign portions of the Project components to reduce effects to a heritage site (e.g., partial avoidance). Project components with the greatest opportunity for partially avoiding heritage sites include the transmission line, Highway 29 realignment, access roads, and possibly the off-site quarries and construction materials areas. Similar to above, heritage resource considerations will be incorporated into the detailed design process, improving the likelihood that some heritage resources can at least be partially avoided. For Project components where avoidance or partial avoidance of effects to heritage sites is not possible, steps may be taken to reduce or minimize effects to these sites (see B.C. Archaeology Branch 1998).”*
  - Within Section 32.3.3.5 it states, *“should additional or alternative mitigation measures be identified through discussions with Aboriginal groups....these will be evaluated by BC Hydro in consultation with the group in question and the appropriate regulatory body on a case-by-case basis.”*

Note that in the process of assessing requirements regarding the development of cultural resource mitigation measures that may relate to the sweat lodge, C&E Cousins considered ‘what is the sweat lodge’, specifically if it is only the structure itself or some larger area

around the sweat lodge used by participants during sweat lodge ceremonies. Given it is commonly understood that sweat lodge participants use the areas around sweat lodges during the sweat ceremonies and given that the sweat lodge keeper and the West Moberly and Prophet River First Nations Chiefs have referenced the importance of the approximately 1 km area surrounding the sweat lodge, C&E Cousins considers that both the physical structure itself and the activities undertaken within the area used during sweat lodge ceremonies (up to approximately 1 km from sweat lodge) comprise ‘the sweat lodge’ as asserted by the Complainants. In this inspection record, references to the ‘sweat lodge’ include the associated activities undertaken in the surrounding area.

EAO C&E notes that within the 1 km area around the physical sweat lodge structure that there were existing land uses, access and infrastructure prior to construction associated with the Project (e.g. existing highway, camp, aggregate quarry, etc). On July 24, 2017 through the opportunity to review the draft inspection record, the Complainants advised the EAO that *“This is true, but not relevant. The existing disturbances do not conflict with the ceremonial elements of the sweat (e.g. noise is within acceptable level, natural setting preserved, etc) or related cultural activities (camp, feast house, etc). The proposed disturbances, however, are inconsistent with, and would preclude functioning of the sweat, including noise from truck traffic, safety (having a highway within the area where ceremony participants, including children, walk between rounds, etc) as well as the destruction of the camp site itself, which with feast house is tied to the enjoyment of the sweat and related cultural practices. With a highway through the middle of the camp site, none of these practices would be continued – all of this has been set out in previous discussions with BCH.”*

**EAO C&E has determined that BC Hydro:**

- Is NON-COMPLIANT in relation to the requirement to seek input from the Committee in relation to the mitigation for the sweat lodge, consistent with the purpose of the Committee which is *“to advise BC Hydro on the management of adverse Project effects on cultural resources”* and the requirement in Appendix B of the CRMP that BC Hydro *“will work with the Committee to further develop these mitigation measures [EIS Vol 3 S. 19] and consider any others raised by the Committee”*.
  - While the meeting minutes show that BC Hydro did discuss some mitigation measures with the Committee, BC Hydro has not discussed mitigation for the sweat lodge.
  - In a meeting on June 16, 2017, BC Hydro advised C&E Cousins that (paraphrased) they were of the view that it may not be appropriate to discuss sweat lodge mitigation in the Committee given that the Complainants chose not to participate in the Committee.
  - EAO C&E has determined that in order to be compliant with the requirements to *“Working through the Committee, BC Hydro will develop the details of cultural resources mitigation initiatives”* and *“BC Hydro will work with the Committee to further develop these mitigation measures and consider any others raised by the Committee.”*, BC Hydro would have either needed to:



- develop mitigation through the Committee specific to this sweat lodge or sweat lodges generally;
  - request the ' permission to develop mitigation through the Committee if BC Hydro was concerned it may not be appropriate to raise the matter at the Committee given the Complainants have chosen not to participate in the Committee; or
  - amend the CRMP and Committee TOR to state that the Committee is not the forum for discussion regarding matters that are specific to one or a few Aboriginal groups.
- EAO C&E notes that as of March 3, 2017, that BC Hydro has been consulting with the Complainants regarding the sweat lodge potential mitigation, however not through the Committee which provides a discussion forum to aid in the development of effective mitigation. Even if BC Hydro was concerned that it may not be appropriate to discuss mitigation specific to this sweat lodge through the Committee, BC Hydro could have engaged the Committee to discuss typical sweat lodge activities and means to mitigate potential effects to sweat lodge activities.
- EAO C&E notes that in the July 2017 meeting of the Committee that Nun wa Nun wa dee provided a presentation to the Committee about the potential burial and sweat lodge.
- Is COMPLIANT with the requirement to provide opportunities to the Complainants to *“work with Aboriginal groups to ground truth traditional land use information for specific areas prior to commencing construction”*
  - See above list of ground-truthing opportunities in Requirement 4.
  - On August 15, 2017 through the opportunity to review the draft inspection record, the Complainants stated *“...we take the view that BC Hydro is not in fact compliant.”* The Complainants' correspondence provides reasons in support of their view as shown in Appendix A.
- Prior to March 3 2017 (see below for determination as of March 3, 2017), was NON-COMPLIANT with the requirement to *“Consider implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives the protection and documentation, including mapping of important Aboriginal trails and sites.”*
  - As noted in the EIS volume 3, Appendix F, on April 25, 2012 *“a West Moberly member inquired about the road realignment relative to a sweat lodge located by Bear Flat, and asked for a 1 km buffer between this spiritual/sacred area and the proposed realignment.”*
  - While BC Hydro provided opportunities to the Complainants to ground-truth, BC Hydro did not take the further step until March 3, 2017 to document and identify potential mitigation [‘protection’ in the requirement above] for the sweat lodge.
  - EAO C&E notes that the Joint Review Panel process concluded significant adverse effects to cultural and heritage resources, so it is understood that not



all cultural and heritage resources will be avoided; however, cultural and heritage resources raised by Aboriginal groups during or after the Environmental Impact Statement (EIS) must have mitigation considered regardless of if the Aboriginal group participates in the consultation process offered by the Certificate Holder. This is consistent with the provincial policy and case law.

- Clearing for the Highway 29 re-alignment at Cache Creek began on February 15, 2017 and ended on March 29, 2017.
- According to BC Hydro, ground-truthing and investigations with other First Nations occurred before and after clearing. First Nations were provided with advance notice of the clearing and geotechnical activities.
  - On August 15, 2017 through the opportunity to review, the Complainants stated that *“The First Nations consider this statement to be inaccurate or potentially misleading. BC Hydro did not provide “advance notice” of its “geotechnical activities” to the First Nations. As noted above, BC Hydro provided the First Nations with a notice of 1 business day (see Appendix 6). There was no consultation regarding the drilling site, activities, or a ground-truthing opportunity to examine that specific site (also see First Nations’ letter in Appendix 7). Nor did BC Hydro explain that the purpose of the geotechnical drilling was to determine feasibility of placing the bridge 2 meters above the grave at Cache Creek.”*
- On March 10, 2017 BC Hydro provided the Complainants with notice of the approximately 80m buffer around the sweat lodge. The Complainants advised C&E Cousins that the 80m was not adequate in their view as they had requested a 1 km buffer.
- On May 15, 2017, BC Hydro provided the Complainants with a map showing the areas in the Cache Creek area where clearing occurred for the Highway 29 re-alignment, as well as the no-work zone around the sweat lodge.
  - On August 15, 2017, through the opportunity to review the draft inspection record, the Complainants stated that they do not appear to have this correspondence. The Complainants also referred to April 19, 2017 correspondence in which the Complainants allege that work occurred within the 80 m buffer.
- EAO C&E notes that clearing occurred in the area that the Complainants consider comprises the sweat lodge and associated activities prior to the development of mitigation.
- Is COMPLIANT with the requirement to invite Aboriginal groups to complete ground-truthing activities for locations of cultural importance in relation to the sweat lodge”
  - See ground-truthing findings for the potential burial in Requirement 4 above.

EAO C&E has determined that while BC Hydro was non-compliant with this requirement prior to March 3, 2017 that as of March 3, 2017 the compliance status is NOT YET

DETERMINED with the requirement to *“Consider implementing, in consultation with Aboriginal groups and British Columbia where appropriate, the following potential initiatives....the protection and documentation, including mapping of important Aboriginal trails and sites.”*

- On March 3, 2017, BC Hydro sent the Complainants a letter proposing mitigation measures and offering to meet.
- On March 22-23, 2017, the Complainants, federal/provincial agencies and BC Hydro met to discuss the sweat lodge and potential mitigation, among other matters. C&E Cousins participated in the majority of this meeting.
- On March 29, 2017, BC Hydro sent the Complainants a letter requesting the coordinates of the sweat lodge and offering investigations and discussions regarding mitigation options. BC Hydro provided information regarding why BC Hydro *“is not prepared to change the alignment from the alignment selected through the EA process.”*
- On April 11, 2017, BC Hydro sent the Complainants a letter re-iterating offer to work with the Complainants in investigations and to discuss mitigation options.
- On June 14, 2017, BC Hydro sent the Complainants a letter outlining proposed mitigation for the sweat lodge including increasing the distance between highway and sweat lodge by an additional 8m, vegetation, noise abatement measures, and constructing a new sweat lodge.
- On June 15, 2017, the Complainants sent a response advising that *“we also find evidence of bad faith in the fact that the letter – along with another letter describing what BCH characterises as “mitigations” – was sent to us the day before contracts are to be sent out for the work at Cache Creek. This calls into questions whether BC Hydro actually intends to protect heritage and cultural resources, as required by the conditions to its EA approvals.”* On July 24, 2017 through the opportunity to respond, the Complainants advised the EAO that *“The significance of this letter is that it responded to many of the substantive issues between the parties concerning cost, timing/delay, and feasibility of avoidance. It also identifies repeated mischaracterization by BCH of the consultation record, including matters so central to the discussion it is difficult to reach any other conclusion that there was an intention to distort the public record.”*
- On August 16, 2017 through the opportunity to respond, BC Hydro advised the EAO that *“BC Hydro strongly disagrees with Nun wa dee’s allegations in this paragraph that it has acted in bad faith or mischaracterized the record.*
- On July 26, 2017, BC Hydro wrote to Nun wa dee in response to the June 15, 2017 letter in which BC Hydro set out its disagreement with Nun wa dee’s views.
- On June 20, 2017, BC Hydro sent a letter to the Complainants regarding proposed mitigation for the sweat lodge (as per the June 14, 2017 letter).
- On June 29, 2017 – the Complainants sent a letter to the EAO including June 27, 2017 and June 28, 2017 media releases. On the same date, the Complainants

sent BC Hydro a letter with the media releases as shown in the attachments of the August 15, 2017 letter from the Complainants to the EAO.

- Through the opportunity to respond to this draft inspection record, on July 17, 2017, BC Hydro stated to the EAO *“To mitigate the impact to the sweat lodge, BC Hydro has refined its highway design to increase the distance of the highway from the sweat lodge; however, we are only able to move the highway a further eight metres such that the realigned highway will now be 45 metres from the sweat lodge. BC Hydro has suggested that this could accommodate additional vegetation and noise abatement measures. BC Hydro suggested other mitigation and accommodation measures, including fencing, sound proof walls and constructing a new sweat lodge or spiritual centre in the Bear Flats area further away from the road.”*
- Through the opportunity to review this draft inspection record and BC Hydro’s comments on the draft inspection record, the Complainants on July 24, 2017 stated:

*“This statement is not true.*

*First, BC Hydro has not moved the Highway 29 realignment 45 metres from the Sweat Lodge. Based on BC Hydro’s calculations, only the centerline might be 45 metres from the edge of the Lodge (ours is 43 metres). The centerline represents the mid of the road, not the closest point vehicles are passing by the Lodge or where road maintenance occurs.*

*Second, and most important, is that side of the Highway is approximately 19.7 metres from the edge of the Lodge, not 45 metres as BC Hydro has stated. See Figure 2 in Appendix 2 of this letter, which is a map showing the distances. Other than the Sweat Lodge, the other spatial data was provided by BC Hydro.*

*Lastly, as note below, the measuring from the edge of the Lodge is not appropriate. Singing and prayers are done around (north) of the Sweat Lodge, which would mean people would be standing on the Highway or in the ditch. As explained to BC Hydro, people cannot go behind the Sweat Lodge where the rocks, fire, and other cultural features are located.*

*This statement is disingenuous. [Regarding BC Hydro’s suggestion that the further 8m could accommodate additional vegetation and noise abatement measures.]*

*First, the customs and practices of the Sweat Lodge have been explained to BC Hydro. Further, on March 22, 2017, representations of the First Nations provided BC Hydro with the results of the effects assessment regarding moving the Sweat Lodge. For example, slide 39 in particular and its discussion noted that there are physical and cultural issues with moving the Sweat Lodge.*

	<p><i>Measures to do so would be generate “ineffective” mitigation and, in some instances, were technically unfeasible” (PRFN and WMFN 2017).</i></p> <p><i>Notwithstanding that it is not possible to move sacred land (ineffective), it is technically unfeasible to move the Lodge, which is summarized as the following:</i></p> <ul style="list-style-type: none"> <li>▪ <i>moving east put the Lodge too close to graves;</i></li> <li>▪ <i>moving west does not help because the road is still beside it;</i></li> <li>▪ <i>moving south cannot happen because the Site C reservoir is there; and,</i></li> <li>▪ <i>moving north means there is no camp or cultural features around the Lodge. BC Hydro is aware of the ineffectiveness and technical infeasibility of its proposal and agreed during the meeting in June 2017 that the measures would not work.”</i></li> </ul> <ul style="list-style-type: none"> <li>○ In order to achieve compliance with these requirements, BC Hydro must either: <ul style="list-style-type: none"> <li>▪ Accept the mitigation as proposed by the Complainants; or</li> <li>▪ Develop new mitigation consistent with the requirements of the Certificate including providing a detailed explanation with supporting analysis regarding why the mitigation proposed by the Complainants is <i>not necessary, is impractical, or is otherwise unreasonable.</i></li> </ul> </li> </ul> <p>EAO C&amp;E has determined that that the compliance status is NOT YET DETERMINED regarding the requirement to implement all mitigation measures set out in Volume 4 Section 32 Heritage Resources as required by the CRMP in relation to the sweat lodge.</p> <ul style="list-style-type: none"> <li>• Note this is being assessed specific to the sweat lodge and not all cultural resources.</li> <li>• Neither Section 32 nor the CRMP provide clarity regarding required mitigation. Multiple ambiguous and potentially conflicting terms such as ‘possible’, ‘impossible’, ‘feasible’, ‘primary principles’, etc. and lack of site/activity specific mitigation (and a process to develop mitigation for newly identified cultural resources) lead to unclear requirements in relation to the mitigation of cultural resources.</li> <li>• As noted above in the findings of requirement 2, the EAO has determined that the CRMP is not to the EAO’s satisfaction as required by the Certificate. The EAO requires that BC Hydro update the management plan as noted in ‘regulatory considerations’ below.</li> <li>• Once the CRMP is updated, EAO C&amp;E may have sufficient information to determine the compliance status of the requirement to implement mitigation.</li> </ul>
<p><b>Compliance:</b></p>	<p>For the requirements assessed in the section above, BC Hydro is in compliance with two requirements, out of compliance with one requirement and the compliance status for one requirement is not yet determined. In addition, BC Hydro was non-compliant with one requirement prior to March 30, 2017 and since that date the compliance status is ‘not yet determined.’ By way of this inspection record, EAO C&amp;E issued a warning in relation to the non-compliance.</p>

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## INSPECTION RECORD

<b>Requirement Description: 6</b>	<p><b>Schedule A: Project Description 4.3.4.1</b></p> <p>The alignments are shown on Figure 4.28 through Figure 4.33.</p>
<b>Findings:</b>	<p>C&amp;E Cousins assessed if the current planned Highway 29 re-alignment in the vicinity of Cache Creek is consistent with the requirements in Schedule A of the Certificate.</p> <p>Figure 4.33 depicts the Highway 29 re-alignment approved route (centre line), known as 'option 1' during the EIS. The legend on the map notes that the highway realignments are subject to change.</p> <p>On August 15, 2017 through the opportunity to review, the Complainants stated that: <i>"While the First Nations recognize that the map notes "subject to change", any such changes need to be subject to consultation with the First Nations."</i> The letter provides additional views about consultation regarding the highway realignment as described in Appendix A. While EAO C&amp;E has determined that Schedule A allows variations to the approved route, EAO C&amp;E has not assessed what, if any, consultation may be required in relation to changes to the highway alignment.</p> <p>EAO C&amp;E has determined that another route all together (e.g. option 2 which was assessed during the EIS) would not be compliant with the Certificate however variations to the approved route are authorized. C&amp;E Cousins did not assess the extent of variation authorized by the wording in the legend, although if the alignment were to include components of option 2 (which Ministers did not authorize through the issuance of the Certificate) further assessment would be required to determine if it would be consistent with Schedule A.</p> <p>C&amp;E Cousins has determined that BC Hydro is COMPLIANT with Schedule A in relation to the current planned alignment based on the map provided by BC Hydro on July 9, 2017.</p>
<b>Compliance:</b>	<p>In compliance for the requirement assessed in the section above</p>

<p><b>Requirement Description: 7</b></p>	<p>Schedule A: Project Description 4.3.4</p> <p>The bridge at Cache Creek is described as follows:</p> <p>4.3.4 Highway 29 Realignments</p> <p>4.3.4.1 General Description</p> <p>Excerpt: <i>“The alignments, including bridge cross-sections, are shown on Figure 4.28 through Figure 4.33. The lengths of each segment of the highway relocation, including causeway and bridge lengths, are given in Table 4.5.”</i></p> <p>Table 4.5</p> <p><b>Highway 29 Realignment Segments and Respective Watercourse Crossing Lengths</b></p> <table border="1"> <thead> <tr> <th>Segment</th> <th>Total Length of Segment (km)</th> <th>Causeway Length (m)</th> <th>Bridge Length (m)</th> <th>Number of Piers</th> <th>Bridge Span</th> <th>Figure Number</th> </tr> </thead> <tbody> <tr> <td>Lynx Creek</td> <td>8.0</td> <td>290</td> <td>160</td> <td>1</td> <td>2</td> <td>Figure 4.28</td> </tr> <tr> <td>Dry Creek</td> <td>1.5</td> <td>N/A</td> <td>11 m pipe-arch culvert</td> <td>1</td> <td>N/A</td> <td>Figure 4.29</td> </tr> <tr> <td>Farrell Creek</td> <td>2.0</td> <td>150</td> <td>170</td> <td>N/A</td> <td>2</td> <td>Figure 4.30</td> </tr> <tr> <td>Farrell Creek East</td> <td>6.0</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> <td>N/A</td> <td>Figure 4.31</td> </tr> <tr> <td>Halfway River</td> <td>4.0</td> <td>640</td> <td>305</td> <td>3</td> <td>4</td> <td>Figure 4.32</td> </tr> <tr> <td>Cache Creek</td> <td>8.5</td> <td>240</td> <td>200</td> <td>1</td> <td>2</td> <td>Figure 4.33</td> </tr> </tbody> </table> <p><b>4.3.4.2 Alternative Highway Alignments Considered</b></p> <p>Excerpt: <i>“Each alignment had two options for crossing the watercourse:</i></p> <ul style="list-style-type: none"> <li><i>• A short bridge plus a causeway</i></li> <li><i>• A long bridge”</i></li> </ul> <p><i>BC Ministry of Transportation and Infrastructure preferred the short bridge options due to lower long-term maintenance costs, so the long bridge options were dropped.</i></p>	Segment	Total Length of Segment (km)	Causeway Length (m)	Bridge Length (m)	Number of Piers	Bridge Span	Figure Number	Lynx Creek	8.0	290	160	1	2	Figure 4.28	Dry Creek	1.5	N/A	11 m pipe-arch culvert	1	N/A	Figure 4.29	Farrell Creek	2.0	150	170	N/A	2	Figure 4.30	Farrell Creek East	6.0	N/A	N/A	N/A	N/A	Figure 4.31	Halfway River	4.0	640	305	3	4	Figure 4.32	Cache Creek	8.5	240	200	1	2	Figure 4.33
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<p><b>Findings:</b></p>	<p>C&amp;E Cousins assessed if the current (as of June 14, 2017) planned 455m bridge at Cache Creek is consistent with the requirements in Schedule A of the Certificate. The project description in Schedule A specifies that the bridge causeway will be 240m long, the bridge will be 200m long, there will be 1 pier and 2 bridge spans. Figure 4.33 shows the authorized location of the bridge and two abutments. In addition, Schedule A is explicit that the long bridge options were dropped.</p>																																																	

Through the opportunity to respond to the draft inspection record provided to BC Hydro, on July 28, 2017 BC Hydro advised the EAO that:

*“First, as a matter of logic, where the alignment of highway at a creek or river crossing can be changed, flexibility in the design of the bridge must necessarily also be allowed. At different crossing locations: A) the length of the crossing will be different and, b) the geotechnical conditions will be different. In short, any change to the alignment will require a change to the design of the bridge to accommodate the conditions encountered.*

*As of the date of the Amended EIS, for the Cache Creek area, BC Hydro had identified a corridor within which potential routes, including crossing of Cache Creek, were being investigated. This is explained in Section 6.6.1.4 of the EIS. The corridor is shown on Figure 6.11. It demonstrates that the alignment, including the design of the bridge, was subject to change. It also demonstrates that the alignment and bridge, as currently designed, have been accounted for in the environmental assessment, and consequently, have been authorized by the Ministers in the EAC.”*

On August 16, 2017, BC Hydro provided additional information to the EAO regarding the design of the bridge as shown in Appendix A. As noted in the correspondence, BC Hydro’s view is that EAO’s interpretation is incorrect because:

- *“Since the bridges are part of the “Realignment” and that any reference to flexibility of design in highway alignment, including in particular the reference in Figure 4.33, must be taken to include design of the watercourse crossings.” and*
- *“ The fact that design would be ongoing is confirmed in Section 4.4: The construction activities described in the following subsections are based on the construction planning and assumptions made for the 2010 project cost estimate. Activities may be somewhat different depending on final design and procurement, including contractors’ preferences for equipment, sequencing of activities and construction means and methods*

In BC Hydro’s August 16, 2017 letter, BC Hydro also provided information relating to “as matter of law and public policy, environmental assessment is supposed to be conducted on the understanding that the design of a project will continue to evolve after the assessment is completed.” BC Hydro states that the ‘design length of the bridge was lengthened to address geotechnical concerns and then further lengthened to reduce the risk of impacting a potential burial.’ BC Hydro states that “In effect, the conclusion in the draft Inspection Record is that the public interest in approving the Project can be served only if Cache Creek is crossed with a 200 m bridge and a 240 m causeway and, conversely, that increasing the deck and reducing the causeway, changes which would be make the bridge safety and would mitigate the risks to Cache Creek and to a potential burial site, are prohibited under the EAC. “Additional information regarding BC Hydro’s views is included in the



correspondence in Appendix A.

C&E Cousins reviewed the material provided by BC Hydro and does not agree with their interpretation of Schedule A. Section 8 (2) of the *Environmental Assessment Act* states that

*Despite any other enactment, if an environmental assessment certificate has been issued for a reviewable project, a person must not*

*(a) undertake or carry on an activity that is authorized by the certificate, or*

*(b) construct, operate, modify, dismantle or abandon all or part of the project facilities that are authorized by the certificate,*

*except in accordance with the certificate.*

Schedule A of the Site C Certificate includes a project description that describes what is authorized by the Certificate. Although there is an updated policy since the issuance of this Certificate, the Environmental Assessment Certificate Policy (2012) which was in place at the time of the development of the Site C Certificate describes Schedule A (called a Certified Project Description (CPD) in this policy document):

*The Certified Project Description describes what is being certified by an EA Certificate. ....Because the Certified Project Description forms Schedule A of the EAC, it is a legally binding document. The Proponent must design, build, operate and decommission (if applicable) the proposed project in accordance with the Certified Project Description and the Table of Conditions.*

*The goal of the Certified Project Description is to describe all of the essential elements of the project proposed by the proponent, taking into account any changes to the project that occurred during the EA. If a certificate is issued for the project and the proponent subsequently proposes to vary from the Certified Project Description, an amendment to the EAC would be required.*

Consistent with compliance oversight of other projects, EAO C&E has based the interpretation of the Certificate for this complaint review on what is written in the Certificate and its schedules with associated figures. Contrary to BC Hydro’s views, ‘public interest’ is not a factor considered when determining whether a project activity or facility would be consistent with the requirements of the certificate. When issuing the certificate, Ministers determined what is authorized by the Certificate as described by the Certificate. The *Environmental Assessment Act* and this Certificate include provisions if the Certificate Holder determines after issuance of the Certificate that project changes are required to address various matters such as those raised in BC Hydro’s correspondence (geotechnical, public interest, Aboriginal interest, environmental, etc).

In the Site C Certificate, Schedule A provides flexibility regarding the highway re-alignment

due to the statement on the map that alignments are subject to change, however there is not a similar statement in Schedule A regarding flexibility for bridge design, rather specifics of the bridge design are provided as summarized above in the findings description. Therefore Schedule A provides flexibility for location of the highway between the bridges identified in Schedule A but does not provide flexibility for the bridge design.

Regarding BC Hydro’s assertion that Section 6.6.1.4 of the EIS provides a corridor within which the highway and bridge may be constructed, EAO C&E notes that Section 6.6.1.4 of the EIS is not included in the Certificate. As such, the details within it, except as also described in the Certificate, were not authorized by the Ministers contrary to BC Hydro’s statement. In addition, section 4.3 of Schedule A states that:

*Design and planning of the Project have continued since submission of the Project Description Report (BC Hydro 2011). The descriptions provided below supersede the descriptions contained in the Project Description Report (BC Hydro 2011).*

In discussions with BC Hydro, C&E Cousins noted that while there does not appear to be flexibility in certain components of the bridge design in Schedule A that she recommends that BC Hydro review the Certificate for any statements that would support their assertion that they are authorized by the Certificate to change the design of the bridge from how it is described in the Certificate. In their response on August 16, 2017, BC Hydro identified that Section 4.4 of Schedule A notes that ‘activities may be somewhat different’.

C&E Cousins notes that Section 4.4 of Schedule A provides a general description of construction activities whereas Section 4.3 of Schedule A describes “Project Components”. C&E Cousins does not agree with BC Hydro that Section 4.4 enables variation to what is described in Section 4.3 as it relates to the bridge at Cache Creek. The wording in Section 4.4 is explicit that the flexibility provided by “Activities may be somewhat different depending on final design and procurement...” relates to ‘the following subsections’. Given that Section 4.3 precedes Section 4.4, ‘activities may be somewhat different...’ does not authorize deviations from what is described in section S.3 of Schedule A. In addition, it is evident when reviewing Sections 4.3 and 4.4 together that Section 4.3 describes the project components as authorized by the Certificate while Section 4.4 provides a description of construction planning. While Section 4.4 does not provide flexibility for the details described in Section 4.3, C&E Cousins agrees that the text quoted by BC Hydro from Section 4.4 allows flexibility regarding what is written in section 4.4 relating to bridge construction:

*Bridge works would include driving piles in dry and wet conditions, placing concrete fill and columns for foundation, placing approach works, erecting girders, and placing the bridge deck. Bridge works would also include placement of bridge end fills, and placement of riprap and bedding. Concrete could be provided from existing commercial sources. Concrete batch plants may also be established and would include water supply, cement, and fly-ash storage and facilities for mixing*

concrete. Temporary bridges and water crossings may include winter crossings, abutment bridges, and pile bridges. Winter crossings may be snow or gravel-covered box culverts. Abutment bridges would include modified railway flatbed cars, or steel girders and timber deck placed on timber crib or concrete abutment footings. Pile bridges would include pipe pile piers installed into the riverbed, with a timber deck supported on structural steel girders.

In their response on August 16, 2017, BC Hydro quotes a section of Schedule A regarding the length of the bridge:

Section 4.3.4.2 states:

*“Each alignment had two options for crossing the water course:*

- A short bridge plus a causeway
- A long bridge

C&E Cousins notes that the next sentence in Schedule A states [underline added for emphasis]:

*BCMOTI preferred the short bridge options due to lower long-term maintenance costs, so the long bridge options were dropped.*

While Schedule A provides flexibility regarding highway alignment, Schedule A as issued by Ministers specifies design criteria (e.g. length of bridge, length of causeway, number of piers, etc) for the bridge in addition to explicitly stating that the long bridge options (without the causeway included in the short bridge option) were dropped.

C&E Cousins has determined that the 455m bridge as planned by BC Hydro as of June 14, 2017 would be non-compliant with the requirements of Schedule A. The compliance status as of August 4, 2017 is NOT YET DETERMINED because:

- The bridge is not yet under construction beyond geotechnical and archaeology work in the vicinity of the bridge site; and
- BC Hydro advises “the scope of the clearing is the same extent as would have been completed for a shorter bridge.”

Note that this conclusion by EAO C&E that the bridge as planned by BC Hydro as of June 14, 2017 would be non-compliant is not a determination of the merits of the design change, rather that the planned bridge, if constructed, would not be consistent with the Certificate.

If BC Hydro wishes to proceed with a bridge at Cache Creek different than as described in Schedule A, the Certificate and the *Environmental Assessment Act* include provisions for consideration of proposed changes to the Certificate. Any questions regarding a potential amendment request should be directed to Michael Shepard, A/Executive Project Director.

<b>Compliance:</b>	Not Yet Determined
<b>Inspection Conducted by:</b>	
<b>Signature:</b> Autumn Cousins	<b>Date Signed: 2017-08-30</b>

**Regulatory Consideration:**

Please note that Section 9 of the *Environmental Assessment Act* includes provisions relating to approvals under other enactments. In situations when a project is developed inconsistent with the environmental assessment certificate, it is important that certificate holders consider section 9 which states:

***Effect on approvals under other enactments***

**9 (1)** *Despite any other enactment, a minister who administers another enactment, or an employee or agent of the government or of a municipality or regional district, must not issue an approval under another enactment for a person to*

*(a) undertake or carry on an activity that is a reviewable project, or*

*(b) construct, operate, modify, dismantle or abandon all or part of the facilities of a reviewable project,*

*unless satisfied that*

*(c) the person has a valid environmental assessment certificate for the reviewable project, or*

*(d) there is in effect a determination under section 10 (1) (b) that an environmental assessment certificate is not required for the project.*

**(2)** *Despite any other enactment, an approval under another enactment is without effect if it is issued contrary to subsection (1).*

**Summary of Field Inspection Completed May 18, 2017:**

On May 18, 2017, C&E Cousins conducted a field inspection of the Bear Flats area to follow up on mulching and fire hazard complaints from various Complainants, accompanied by Steven Abbey, Environmental Site Manager, BC Hydro and Graeme Paterson, Independent Environmental Monitor (IEM) support, EDI. While this inspection record details the administrative inspection to conduct the complaint review, it also serves as the field inspection record. C&E Cousins did not make any compliance determinations in relation to the field inspection. The photographs from the inspection were provided to Chris Parks, Senior C&E Officer, EAO to review as part of his work reviewing other complaints in the Cache Creek area. The fire hazard complaints and components of the mulching in riparian areas complaints have been referred to FLNR C&E.

<p><b>Environmental Assessment Office</b></p>	<p><b>Mailing Address:</b>          PO Box 9426 Stn Prov Govt          Victoria BC V8W 9V1</p>	<p><b>Telephone: 250 387-0131</b>  <b>Fax: 250 387-2208</b>  <b>Email: <a href="mailto:eao.compliance@gov.bc.ca">eao.compliance@gov.bc.ca</a></b>  <b>Website: <a href="http://www.eao.gov.bc.ca">http://www.eao.gov.bc.ca</a></b></p>
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**Appendix A – List of Documentation Referenced in the Inspection Record<sup>2</sup>**

1. February 13, 2014 – BC Hydro to RWillson
2. February 13, 2014 – BC Hydro to LLogan
3. February 14, 2014 – BC Hydro to LTsakoza
4. September 24, 2014 – BC Hydro to RWillson
5. September 24, 2014 – BC Hydro to LTsakoza
6. October 14, 2014 - Figure 433
7. October 17, 2014 – BC Hydro to LTsakoza
8. October 17, 2014 – BC Hydro to RWillson
9. December 15, 2014 – LTsakoza, RWillson and NParenteau to BC Hydro
10. *April 30, 2015 – Sauteau First Nation to BC Hydro*
11. *May 5, 2015 – BC Hydro to Sauteau First Nation*
12. *May 13, 2015 - BC Hydro to TT8TA*
13. May 20, 2015 – BC Hydro to LTsakoza
14. May 20, 2015 – BC Hydro to RWillson
15. June 5, 2015 – Cultural Resources Mitigation Plan
16. June 5, 2015 – Heritage Resources Management Plan
17. June 5, 2015 – BC Hydro to JLee
18. July 30, 2015 – CHRC Meeting Minutes
19. October 27, 2015 – CHRC Meeting Minutes
20. November 10, 2015 – BC Hydro to JLee
21. November 10, 2015 – BC Hydro to JLee
22. January 14, 2016 – CHRC Meeting Minutes
23. March 2, 2016 – CHRC Meeting Minutes
24. March 11, 2016 – BC Hydro to JLee
25. April 20, 2016 – CHRC Meeting Minutes
26. June 14, 2016 – CHRC Meeting Minutes

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<sup>2</sup> Note: The documents italicized above are not included in the appendix given the confidential nature of some components of those documents. They are available upon request, with potential severing of certain information consistent with the Freedom of Information and Protection of Privacy Act.

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## INSPECTION RECORD

27. August 8, 2016 – BC Hydro to RWillson/LTsakoza/JLee
28. August 25, 2016 – CHRC Meeting Minutes
29. October 20, 2016 - CHRC Meeting Minutes
30. November 15, 2016 – BC Hydro to RWillson and LTsakoza
31. December 8, 2016 – CHRC Meeting Minutes
32. January 3, 2017 – BC Hydro to RPaterson and JLee
33. January 16, 2017 – BC Hydro to JLee
34. February 10, 2017 – BC Hydro to JLee
35. March 3, 2017 – BC Hydro to RWillson
36. March 10, 2017 – BC Hydro to JLee
37. March 15, 2017 – EPP – Bear Flat/Cache Creek
38. March 29, 2017 – BC Hydro to JLee
39. April 4, 2017 – RWillson and LTsakoza to EAO and CEAA
40. April 6, 2017 – BC Hydro to JLee
41. April 11, 2017 – BC Hydro to RWillson and LTsakoza
42. April 26, 2017 – JLee to EAO
43. May 5, 2017 – JLee to Transport Canada
44. May 15, 2017 – Cache Creek Clearing Update Map
45. June 7, 2017 – LTsakoza and RWillson to EAO and CEAA
46. June 14, 2017 – BC Hydro to JLee
47. June 15, 2017 – JLee to BC Hydro
48. June 17, 2017 – JLee to BC Hydro
49. June 20, 2017 – BC Hydro to JLee
50. June 23, 2017 – BC Hydro to CEAA
51. June 27, 2017 – JLee to BC Hydro
52. June 29, 2017 – JLee to EAO and CEAA
53. July 9, 2017 – BC Hydro Clearing Update Map
54. July 9, 2017 – BC Hydro to EAO
55. July 9, 2017 – BC Hydro to EAO (attachment to July 9<sup>th</sup> correspondence)
56. July 12, 2017 – EAO to BC Hydro

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## INSPECTION RECORD

57. July 17, 2017 – BC Hydro to EAO
58. July 20, 2017 – EAO to JLee, BMuir and TThielmann
59. July 20, 2017 – EAO to BC Hydro
60. July 24, 2014 – JLee to EAO
61. July 24, 2017 – BC Hydro to EAO
62. July 24, 2017 - Landsong to BC Hydro
63. July 26, 2017 – BC Hydro to JLee
64. *BC Hydro held a Committee meeting on July 26, 2017*
65. July 27, 2017 – BC Hydro to EAO
66. July 28, 2017 – BC Hydro to EAO
67. *August 1, 2017 – Another party to EAO*
68. August 8, 2017 – EAO to BC Hydro
69. August 10, 2017 – EAO to BC Hydro
70. August 10, 2017 – EAO to JLee, BMuir and TThielmann
71. August 15, 2017 – JLee to EAO
72. August 16, 2017 – BC Hydro to EAO
73. August 16, 2017 - Fasken Martineau to EAO
74. August 23, 2017 – BC Hydro to EAO
75. August 30, 2017 – EAO to BC Hydro