

## Appendix B.2 – Lhtako Dene Nation (Red Bluff Indian Band)

### I - Background Information

Lhtako Dene Nation (Lhtako Dene), also known as Red Bluff Indian Band, is an Aboriginal group located in central British Columbia (BC) whose asserted traditional territory is identified in a 2014 Forest and Range Consultation and Revenue-Sharing Agreement.<sup>1</sup> Lhtako Dene are understood to correspond with a portion of the Nazkoten subtribe of the Carrier as well as the Talkoten Carrier subtribe. They are today members of the Carrier Chilcotin Tribal Council, along with Toosey, Ulkatcho, and Lhoosk'uz Dene Nation.

Lhtako Dene holds four reserves: *Quesnel 1, Sinnce-tah-lah 2, Dragon Lake 3, Rich Bar 4*. There are 173 registered Lhtako Dene members, 67 of whom live on Lhtako Dene reserves, 3 live on a different group's reserve, and 103 live off reserve.

Lhtako Dene has not filed a protective *Writ of Summons* in BC courts nor is it participating in the BC Treaty Process.

### II - Preliminary Strength of Claim Assessment

- Approximately 2 kilometres (km) of the Project right-of-way (RoW) would be within the southeastern portion of Lhtako Dene's asserted traditional territory, between Jasper and Valemount. The Rearguard Pump Station and Hargreaves Trap Site would be adjacent to Lhtako Dene's asserted traditional territory. The distance from the RoW to the nearest Lhtako Dene Nation community is 200 km.
- The Crown's preliminary assessment of Lhtako Dene's claims for Aboriginal rights is based on the understanding that the Lhtako Dene correspond with elements of both pre-contact Nazkoten Carrier, and Talkoten Carrier (now extinct). Lhtako Dene is assessed as having a weak *prima facie* claim of Aboriginal rights within the Project area as the area is not within what is generally described by ethnohistoric sources as pre-contact traditional territory of the Nazkoten Carrier or Talkoten Carrier, and there is no indication of pre-contact use of the area by the Nazkoten Carrier<sup>2</sup>.
- The Crown's preliminary assessment of the Lhtako Dene's claim for Aboriginal title is a weak *prima facie* claim of Aboriginal title within the Project area as the area is not within what is generally described by ethnohistoric sources as the traditional territory of the Nazkoten Carrier or Talkoten Carrier, and there are overlapping claims to the area at 1846 by Tanoten Carrier

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<sup>1</sup> [http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/lhtako\\_dene\\_nation\\_fcra\\_-\\_2014.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/lhtako_dene_nation_fcra_-_2014.pdf)

<sup>2</sup> Lhtako Dene Nation: Review of Ethnographic and Historical Sources (June 6, 2012); Kew, Michael, 1974, Nazko and Kluskus: Social Conditions and Prospects for the Future. (Paper prepared for the Nazko-Kluskus Study Committee.); Lane, Robert, 1953, "Cultural Relations of the Chilcotin Indians of West Central British Columbia" Unpublished dissertation. University of Washington; Alexander, Diana, 1997, A Cultural Heritage Overview of the Cariboo Forest Region. Report prepared for Cariboo Forest Region, Ministry of Forests, Williams Lake, B.C., March 1997 (Revised November 1997); Moore, Dr. Patrick and Angela Wheelock, 2011, Lhtako Dene Strength of Claim Statement.

based further north and west, Sekani from the north, Cree from the east, and the North Thompson Division Secwepemc from the south<sup>3</sup>.

### **III - Involvement in the NEB and Crown Consultation Process**

Given the nature and location of the Project, and the potential impacts of the Project on Lhtako Dene's Aboriginal Interests, the Crown is of the view that the legal duty to consult Lhtako Dene lies at the low portion of the *Haida* consultation spectrum. In consideration of the Project intersecting with Lhtako Dene's asserted traditional territory, Lhtako Dene was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Lhtako Dene opportunities to be consulted at a deeper level.

Lhtako Dene did not participate in the National Energy Board (NEB) process as either an intervenor or a commentor, and did not submit an application for funding to the NEB, nor did the Carrier Chilcotin Tribal Council. The Major Projects Management Office (MPMO) offered Lhtako Dene \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Lhtako Dene did not use this funding opportunity. Lhtako Dene met with the Crown on August 31, 2016.

On September 2, 2016, EAO also provided Lhtako Dene \$5,000 towards their participation in the provincial process. The Crown provided a first draft of this Report to Lhtako Dene for review and comment on August 17, 2016. The Crown did not receive comments from Lhtako Dene on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from Lhtako Dene.

### **IV - Summary of Key Lhtako Dene Issues and Concerns Raised**

The Lhtako Dene did not participate in the NEB review process. The Crown has considered information in this draft report provided through the Proponent's engagement with Lhtako Dene, and a meeting with Crown agencies.

Based on communications between Lhtako Dene and the Proponent, the Crown understands that Lhtako Dene identified the following Project-related interests, issues, and concerns<sup>4</sup>:

- Project effects on hunting, fishing, gathering medicinal plants and berry picking, which are an important part of the lives of Lhtako Dene community members;
- Encroachment on areas where medicinal plants are harvested;
- Poisoning of fish and game wildlife;
- Potential disruption of communal gatherings and outings throughout Lhtako Dene' traditional territory, which connect community members to the land;
- Historical village sites at Bowron, Quesnel and Horsefly Lakes;
- Opposition of Lhtako Dene Elders to the Project due to the risk of spills;
- Sub-alpine regions in Lhtako Dene traditional territory are used for hunting, harvesting of medicinal plants and picking berries; and
- Important fishing sites are located in the traditional territory of Lhtako Dene.

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<sup>3</sup> Ibid.

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

Lhtako Dene indicated to the Crown at the August 31, 2016 meeting that lack of capacity is an issue for them in participating in the review of this Project. They also advised that accommodation should take the form of financial support to their community, either through employment such as environmental monitoring, through scholarships or other community supports.

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

#### **Lhtako Dene's Response to NEB Recommendation Report**

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

#### **V - Potential Impacts of the Project on Lhtako Dene's Aboriginal Interests**

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests are provided in Sections 2.4.3 and Section 4.3 of this report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

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

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

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

Lhtako Dene completed a traditional land and resource use (TLRU) study for the Project in 2014. The study included a map review and community interviews that focused on Crown lands within the asserted traditional territory of Lhtako Dene in the segment of the proposed pipeline from Hargreaves to Darfield. Traditional land uses identified by Lhtako Dene include hunting moose, elk and deer, gathering plants, information on fishing sites, sacred sites, trapping sites, habitation sites, gathering areas for community members, and trails and travel-ways. Lhtako Dene's TLU information is summarized in the Project Application ([A3S1S0](#), [A4H1X0](#)).

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

According to Lhtako Dene's TLRU information, community members hunt wild game for both food and fur. Species primarily hunted include big game, such as moose, deer, elk, caribou and bears, and small

game such as muskrat, beaver, rabbit, and grouse. Waterfowl, including ducks, mudhen, grouse, geese, mallard and crane, are typically shot or snared. Historically, Lhtako Dene trapped animals such as bear, squirrel, weasel, mink, marten, lynx, weasel, fisher, beaver fox, and coyote to collect and sell the pelts. Presently, community members trap muskrat, groundhog, squirrel, beaver and lynx. Lhtako Dene community members gather traditional plants throughout their traditional territory for subsistence, medicinal and other purposes. Gathered plants include blueberry, balsam, cow parsnip, wild celery, ginger, Labrador tea, devil's club, rosehip, mint, huckleberry, high-bush and low-bush blueberry, choke cherry, wild rhubarb, soapberry, Saskatoon berry, wild raspberry, red cranberry, wild strawberry, thimbleberry, gooseberry, various types of roots (e.g., strawberry root, dandelion root, tiger lily, wild onion, wild parsnip and bulrush or cattail, and kwadas roots), red willow, hazelnut, chaga, nettle, yellow cedar, spruce, and pine.

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

Lhtako Dene Nation identified nine hunting sites during the TLRU study for the Project, of which none are located within the proposed pipeline corridor. Two hunting sites, in the Valemount region and east of Rearguard, are located approximately 260 m and 440 m, respectively, from the proposed pipeline corridor. One hunting site north of Rearguard is approximately 2.1 km from the proposed pipeline corridor, and six hunting sites are more than 99 km from the proposed pipeline corridor. An unconfirmed number of trapping locations were identified during the TLRU study for the Project, none of which are located within the proposed pipeline corridor. The nearest trap line is approximately 217 km west of the proposed pipeline corridor, collectively owned by Lhtako Dene, and little used today. A number of plant gathering sites were identified by Lhtako Dene Nation during the TLRU study for the Project. Although the site-specific locations are confidential, one plant and berry gathering site along the west side of the Fraser River was identified in the proposed pipeline corridor.

Lhtako Dene raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering, including encroachment on areas where medicinal plants are harvested, and effects to sub-alpine regions in Lhtako Dene traditional territory that are used for hunting, harvesting of medicinal plants and picking berries. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Lhtako Dene's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown appreciates that with construction and reclamation activities

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

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Lhtako Dene's hunting, trapping, and plant gathering activities. The Crown appreciates that this short-term disruption could temporarily alter the behaviour of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). The proponent would implement several mitigation measures to reduce potential effects to Lhtako Dene's hunting, trapping, and plant gathering activities. The proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction ROW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

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

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

### ***Impacts on Freshwater Fishing***

Fished species include char, suckers, Dolly Varden, ling, whitefish, kokanee and spring salmon, and sturgeon. Lhtako Dene raised concerns related to environmental effects of the Project on fishing activities, specifically poisoning of fish. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish and fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Lhtako Dene, the proponent would implement several mitigation measures to reduce potential effects to species important for Lhtako Dene's fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least risk biological windows in an attempt to avoid causing serious harm to fish, has committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat, and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat.

According to Lhtako Dene's TLRU information, the Quesnel River was a popular fishing site for community members prior to dam construction in the 1950s. Currently, Lhtako Dene community members fish in territory shared with Shuswap and Chilcotin in Farewell Canyon. Lhtako Dene identified seven fishing sites during the TLRU study for the Project. The nearest fishing site is approximately 164 km from the proposed pipeline corridor.

Lhtako Dene raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities in their traditional territory. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Lhtako Dene's access to fishing activities. The Crown appreciates that if construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Lhtako Dene community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for Lhtako Dene (Section 4.3.2 of this Report). With regards to specific concerns raised by Lhtako Dene, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Lhtako Dene's fishing activities. The proponent is committed to minimize disturbance to access to Lhtako Dene's asserted traditional lands, as described in the Access Management Plan. The proponent committed to

working with Lhtako Dene to develop strategies to most effectively communicate the construction schedule and work areas to community members.

As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Lhtako Dene's fishing activities. The Crown appreciates that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. NEB conditions, if the Project is approved, would either directly or indirectly reduce the potential social, cultural, spiritual or experiential effects associated with fishing activities (section 4.3.2 of this Report).

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

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

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

According to Lhtako Dene's TLRU information, many trails and travelways used in the past continue to be used by Lhtako Dene community members to travel for trade and recreation, and access hunting, fishing, trapping, gathering and camping areas. Currently, the Bella Coola Grease Trail is used by community members to travel to the annual gathering at the Village of Ulkatcho. In the past, community members primarily lived in villages along the Fraser River around Quesnel. Community members currently camp at Farewell Canyon, Aboo Lake, Maud Lake, Nyland Lake, Tzenzaicut Lake, along the Fraser River in the Wells region, and along Nazko Highway. Punchesakut Lake was used as a gathering area where different tribes would come together each year, and Baron Lakes is a spiritual and sacred area where right-of-passage ceremonies were held. Burial and grave sites are located throughout the traditional territory, and are considered sacred for Lhtako Dene.

Lhtako Dene identified concerns related to environmental effects of the Project on other traditional and cultural practices. As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). With regards to specific concerns raised by Lhtako Dene, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Lhtako Dene's traditional and cultural practices. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW

finalization, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

Lhtako Dene identified 5 trails and travelways, 10 habitations sites, 7 gathering places, and 2 sacred areas during the TLRU study, none of which are located within the proposed pipeline corridor. The nearest trails and travelways, habitation sites, gathering places and sacred areas are located 56 km, 92 km, 132 km, and 207 km, respectively, from the proposed pipeline corridor.

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

Lhtako Dene expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, specifically to the communal gatherings and outings throughout Lhtako Dene's traditional territory that connect community members to the land. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Lhtako Dene's cultural and spiritual practices, or that their participation in the traditional activity is curtailed, during Project construction and routine maintenance activities.

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

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

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

The Crown notes that the Project would be located within an area of Lhtako Dene's asserted traditional territory assessed as having a weak *prima facie* claim of Aboriginal title. The Crown has actively consulted with Lhtako Dene throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. It is noted that Lhtako Dene has not executed a Mutual Benefits Agreement with the proponent.

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

### ***Impacts Associated with Accidental Pipeline Spills***

Lhtako Dene expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests. There is opposition of Lhtako Dene elders to the Project due to the risk of spills. The Crown also appreciates Lhtako Dene's concerns regarding spills, and the potential for a spill to impact Lhtako Dene's use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Lhtako Dene has for its territory.

A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on Lhtako Dene's Aboriginal Interests and concerns raised by Lhtako Dene during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Lhtako Dene's Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill<sup>5</sup>.

### **VI - Conclusions**

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline safety regime would only partially address these

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<sup>5</sup> Trans Mountain Final Argument, p. 85 and 207

ongoing burdens and risks. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Lhtako Dene's Aboriginal Interests would be negligible.

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