

# **TOWERBIRCH EXPANSION PROJECT**

## **FEDERAL/PROVINCIAL CONSULTATION AND ACCOMMODATION REPORT**

Proposed by:  
NOVA Gas Transmission Ltd.

Prepared by:

Major Projects Management Office  
British Columbia Environmental Assessment Office

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## ***Disclaimer***

***This report was developed by the Government of Canada and the British Columbia's Environmental Assessment Office to document the governments' coordinated and respective consultations with potentially-impacted Aboriginal groups in relation to the NOVA Gas Transmission Ltd.'s Towerbirch Expansion Project. Nothing contained or referenced in this report alters or should be construed to alter either government's powers, functions, or responsibilities.***

***If there is any inconsistency or ambiguity between this report and the National Energy Board Report (GH-003-2015), the National Energy Board Report (GH-003-2015) shall prevail.***

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## Acronyms and Abbreviations used in this Report -

BC	British Columbia
CAR	Consultation and Accommodation Report
the Agency	Canadian Environmental Assessment Agency
<i>CEAA 2012</i>	<i>Canadian Environmental Assessment Act, 2012</i>
EA	Environmental Assessment
EAO	BC Environmental Assessment Office
GiC	Governor General in Council
HDD	Horizontal directional drilling
ha	Hectare
INAC	Indigenous and Northern Affairs Canada
Km	kilometer
LSA	Local study area
m	Meter
mm	Millimeter
NEB	National Energy Board
<i>NEB Act</i>	<i>National Energy Board Act</i>
NGTL	NOVA Gas Transmission Ltd.
NRCan	Natural Resources Canada
OGC	BC Oil and Gas Commission
RoW	Right of way
RSA	Regional study area
<i>SARA</i>	<i>Species at Risk Act</i>
TK	Traditional knowledge
TLU	Traditional land use

# 1 Introduction

The Crown has a constitutional duty to consult Aboriginal groups, and where appropriate accommodate, when it contemplates conduct that may adversely impact asserted or established Aboriginal or treaty rights. The Crown seeks to undertake consultation that is meaningful, effective, and in a manner that upholds the honour of the Crown.

A duty to consult arises when the following three conditions are present:

- The Crown contemplates conduct;
- The Crown has actual or constructive knowledge of asserted or established Aboriginal or treaty rights, as recognized and affirmed under Section 35 of the *Constitution Act, 1982* (referred to collectively as “Aboriginal and Treaty Rights”); and
- That conduct or decision may have an adverse impact on these Aboriginal and Treaty Rights.

The Crown’s objectives in the consultation process are to meet the legal duty, uphold the honour of the Crown, and build long-term relationships with potentially-impacted Aboriginal groups. Through this process the Crown seeks to better understand how the Crown’s contemplated conduct (in this case, the authorization of an interprovincial natural gas pipeline) could potentially impact Aboriginal and Treaty Rights. The process also solicits input on how to address or otherwise accommodate potential impacts, where appropriate. The Crown’s contemplated conduct with respect to the NOVA Gas Transmission Ltd.’s (NGTL) proposed Towerbirch Expansion Project (the Project) is the potential for the Governor General in Council (GiC) to direct the National Energy Board (NEB), pursuant to the *National Energy Board Act (NEB Act)*, to issue a Certificate of Public Convenience and Necessity, subject to terms and conditions (the contemplated conduct), and the potential for the Province of British Columbia (BC) Minister of Environment and the Minister Natural Gas Development (collectively referred to as “the Ministers”) to issue an Environmental Assessment (EA) Certificate pursuant to section 17 of the *Environmental Assessment Act (the Act)*.

## 1.1 Purpose of the Consultation and Accommodation Report

The Government of Canada, through the Major Projects Management Office (MPMO) of Natural Resources Canada (NRCan) and the Government of BC, through the Environmental Assessment Office (EAO), collectively representing “the Crown”, have collaborated in the preparation of this Consultation and Accommodation Report (CAR) to document Aboriginal consultation conducted to date for the respective decisions on the Project. The CAR includes potential accommodation measures, with respect to the potential impacts of the Project on Aboriginal and Treaty Rights. The CAR is intended to inform statutory decision makers of the Aboriginal consultation that has occurred with respect to the Project. To this end the CAR:

- Describes the consultation process undertaken by the Crown with Aboriginal groups;

- Reports the views of Aboriginal groups on how the Crown conduct may potentially impact Aboriginal and Treaty Rights and other interests;
- Explains the Crown's findings regarding the potential impacts of the proposed Project on Aboriginal and Treaty Rights and other interests;
- Outlines accommodation measures proposed to address potential impacts on Aboriginal and Treaty Rights and other interests; and
- Presents the Crown's conclusion on the adequacy of consultation.

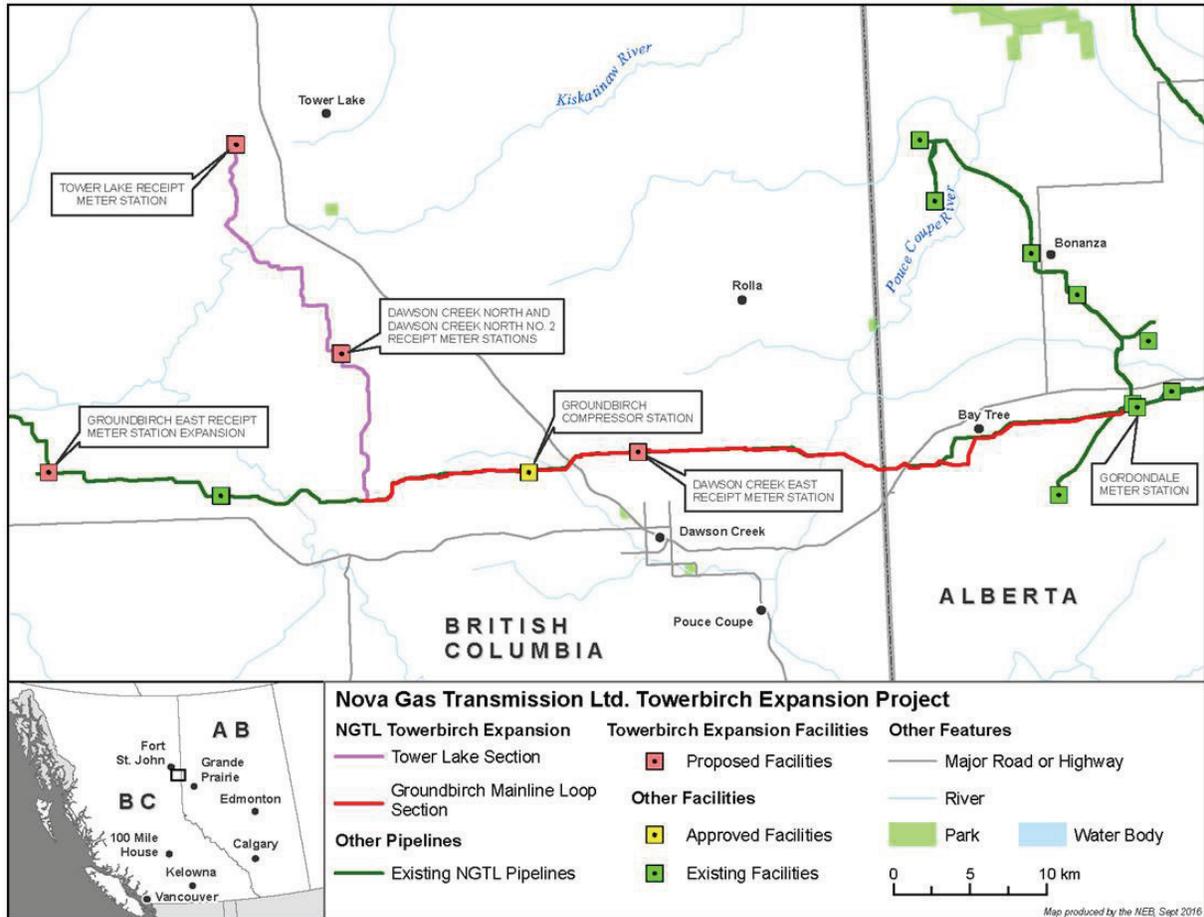
The CAR considers the key Aboriginal and Treaty Rights, and the concerns and issues of potentially-impacted Aboriginal groups, as identified through consideration of the NEB Recommendation Report for the Project, the Crown's identification of potential adverse Project impacts, and other factors and information brought forward through the participation of Aboriginal groups during the consultation process. This includes all information brought forward by Aboriginal groups through direct consultation, Aboriginal engagement records provided by NGTL, as well as through submissions made as part of the NEB's EA, and submissions made as part of the project application review under the *NEB Act*. The conclusions and recommendations of the NEB applicable to Aboriginal and Treaty Rights are reflected in the CAR.

The report was developed through collaborative efforts of the Government of Canada and the EAO. Wherever possible, it reflects the coordinated federal and provincial activities undertaken as it relates to Crown consultations with potentially affected Aboriginal groups. The report also identifies the respective separate federal and provincial activities, where applicable.

## **1.2 Project Description**

On September 2, 2015, NGTL, a subsidiary of TransCanada Pipelines Limited, filed an application to the NEB under sections 52 and 58 of Part III, and Part IV of the *NEB Act* seeking approval for a sweet natural gas pipeline to expand NGTL's existing system in northeastern BC and northwestern Alberta. The Project has been proposed to meet existing and forecasted supply contracts for sweet natural gas and would provide gas producers in the Tower Lake area with direct access to the NGTL System. The Project represents a \$439 million proposal, and consists of approximately 87 kilometres (km) of new pipeline in two pipeline sections (together, the Pipeline) and five receipt meter stations (Figure 1).

As the Project includes more than 40 km of new interprovincial pipeline, it is a designated Project under the *Canadian Environmental Assessment Act, 2012 (CEAA 2012)* and Regulations Designating Physical Activities. Therefore, as the Responsibility Authority, the NEB conducted the required environmental assessment pursuant to *CEAA 2012*. The NEB also conducted a review of the project application under the *National Energy Board Act*. Under the *Act*, the Project constitutes a reviewable project, pursuant to Part 4 of the Reviewable Projects Regulation (B.C. Reg. 370/02), because the Project includes a new transmission pipeline facility with a diameter greater than 323.9 millimetres (mm) and a length greater than 40 km.



**Figure 1 - Location of the proposed Project (NGTL, 2017)**

The pipeline consists of two segments, the Tower Lake Section and the Groundbirch Mainline Loop. The Tower Lake Section of the pipeline is located on approximately 93% private land and the Groundbirch Mainline Loop is located on approximately 82% private land. Approximately 82% of the pipeline would parallel existing right of way (RoW) or existing disturbance. There are a total of 25 water crossings required, four of which are considered major, high value, or sensitive water crossings and would use trenchless horizontal directional drilling (HDD), namely the Pouce Coupé River, the Kiskatinaw River, and two unnamed creeks. An overview of the characteristics of the proposed pipeline is provided in Table 1.

**Table 1 - Overview of proposed pipeline sections for the Project**

Pipeline Segments	
Groundbirch Mainline Loop	Approximately 55 km of 914 mm (36 inch) pipeline, the majority of which will parallel existing RoW for the Groundbirch Mainline.
Tower Lake Section	Approximately 32 km of 762 mm (30 inch) pipeline, which will parallel existing linear disturbances where possible.

NGTL stated that the Project would require a minimum construction RoW width of 22 metres (m) to 32 m for safe and efficient movement of vehicles and equipment during construction. The construction RoW would be reclaimed after construction and maintained for pipeline operation. The Tower Lake Section would require approximately 109 hectares (ha) of permanent RoW and 43 ha for temporary workspace while the Groundbirch Mainline Loop would require approximately 146 ha of permanent RoW and 104 ha for temporary workspace. NGTL noted that the construction of 70 m of permanent access road is required for the proposed Project. The five proposed meter stations include the Dawson Creek East Receipt Meter Station, Groundbirch East Receipt Meter Station Expansion, Tower Lake Receipt Meter Station, Dawson Creek North Receipt Meter Station, and the Dawson Creek North No. 2 Receipt Meter Station. The Project would not require the construction of any compressors stations.

The Project would also include temporary infrastructure required for the construction of the pipeline and certain RoW preparation activities along the proposed route. Other infrastructure and activities may include stockpile sites, contractor yards, access roads, borrow pits/dugouts, and the construction of the five proposed meter stations.

Subject to regulatory approvals, NGTL noted during the NEB hearing that should the Project be approved they plan to begin pipeline construction in the second quarter of 2017 with an expected in-service date in the fourth quarter of 2017. All meter stations are expected to be in-service by September 1, 2018.

### **1.3 Federal Crown's Approach to Aboriginal Consultation and Accommodation**

The federal Crown is committed to renewing the relationship with Aboriginal peoples to one based upon recognition of rights, respect, cooperation, and partnership. Federal Crown consultation with potentially-impacted Aboriginal groups has taken place in four phases:

- **Phase I: Early engagement phase**

Shortly after NGTL filed a Project description in 2015, NRCan consulted with the NEB and Indigenous and Northern Affairs Canada (INAC) in order to compile a list of potentially-impacted Aboriginal groups. The federal Crown contacted potentially-impacted Aboriginal groups to encourage participation in the NEB's hearing process so that the NEB could understand and consider the group's interests. In addition, the NEB held early engagement sessions with Aboriginal groups to discuss its hearing process, its participant funding program, and how groups could participate in its hearings.

- **Phase II: NEB hearing phase**

Upon initiating the hearing phase, all potentially-impacted Aboriginal groups were eligible to apply to participate as well as to apply for funding to participate in the hearings. The NEB closed its hearing record on July 8, 2016. The NEB regulatory review process is described in more detail in Section 2.1.

- **Phase III: NEB recommendation phase**

On October 6, 2016, the NEB delivered its Recommendation Report to the Minister of Natural Resources so that the Minister could make a ministerial recommendation to the GiC. The report included a recommendation that the GiC direct the NEB, pursuant to the *NEB Act*, to issue a Certificate of Public Convenience and Necessity to NGTL for the Project subject to 24 terms and conditions, including a condition that NGTL fulfill all commitments made during the hearing and in the filings<sup>1</sup>. The NEB further recommended that the GiC find that the Project is not likely to cause significant adverse environmental effects and direct the NEB to issue an Environmental Decision Statement for the project pursuant to the *CEAA 2012*. In preparing its recommendation, the NEB considered input from potentially-impacted Aboriginal groups that was received during the hearing phase, and designed several of its conditions in response to input provided by those groups.

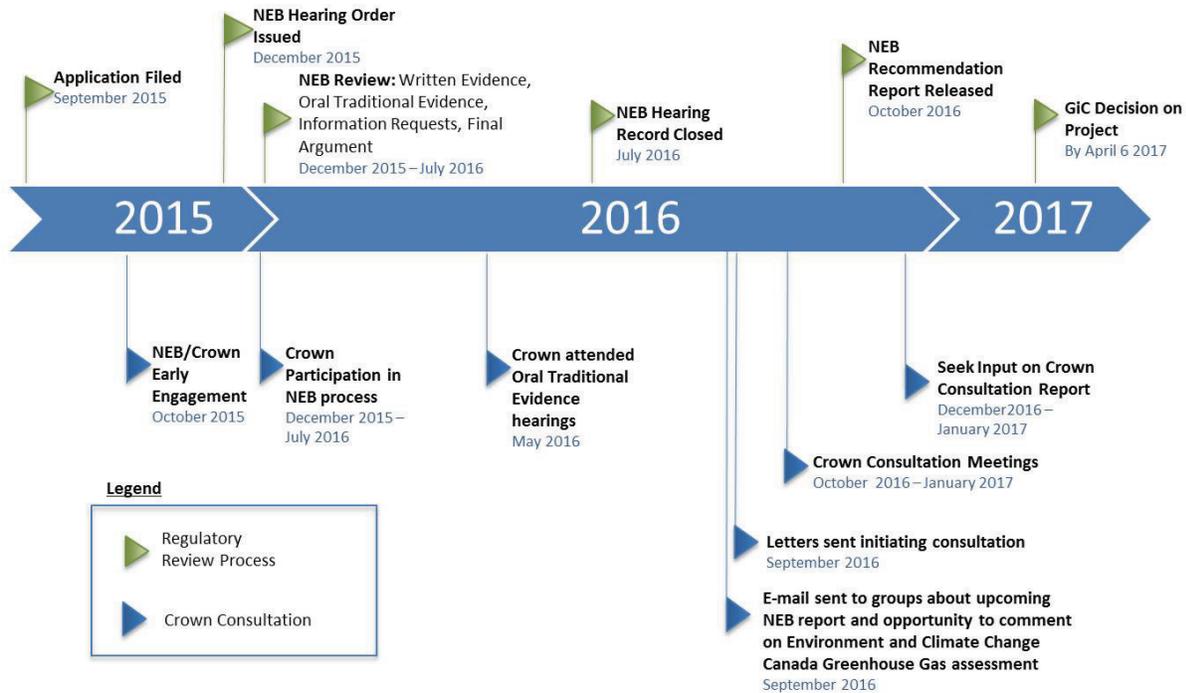
- **Phase IV: Post NEB recommendation consultation phase**

While Phase III was still underway, the federal Crown contacted potentially-impacted Aboriginal groups by telephone and email to propose direct consultations. In initiating direct consultation, the Crown shared its preliminary analysis of the level of consultation owing to each potentially-impacted group. Following receipt of the NEB Recommendation Report, the Crown contacted each potentially-impacted Aboriginal group to consult on that group's Aboriginal and Treaty Rights and seek views on outstanding impacts from the Project that were not addressed in the NEB Recommendation Report. The Crown offered funding to groups owed a moderate or a high level duty to consult. The Crown also considered input provided by potentially-impacted Aboriginal groups to the NEB during the hearing phase (contained within the NEB's hearing records) in order to ensure a comprehensive understanding of each group's views about impacts on Section 35 rights.

For Phase IV the federal Crown received a request from the BC EAO to coordinate consultation activities on the contemplated conduct. In light of this, the federal Crown coordinated elements of its consultation activities with the EAO. The federal Crown did not receive a similar request from any other provincial Crown. Coordination with the EAO was limited solely to elements of consultation and did not extend to the respective governments' decisions on the project.

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<sup>1</sup> Certificate Condition 2, Appendix II, NEB Report and Certificate Condition 3, Appendix II, where commitments pertain to environmental protection measures.



**Figure 2 - Review process timeline for the Project including Crown consultation**

## 1.4 The Province of BC’s Approach to Aboriginal Consultation and Accommodation

### 1.4.1 BC Environmental Assessment Office

The EAO consults on the entire Project application as submitted by NGTL to the NEB, including both Section 52 facilities<sup>2</sup> and Section 58 activities<sup>3</sup>.

The Province of BC consults with Aboriginal groups for many reasons, including: statutory, contractual, policy and good governance (including to build relationships and understanding of Aboriginal group communities), and the constitutional duty to consult. Through the consultation process, Governments seek to reconcile impacts to Aboriginal and Treaty Rights that may arise from government decisions. In *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73 (*Haida*), the Supreme Court of Canada established that the Crown is required to consult with Aboriginal groups with respect to Crown-authorized activities that might impact Aboriginal and Treaty Rights and that the extent (or level) of the consultation is proportionate to preliminary assessments of the following factors:

<sup>2</sup> Section 52 facilities include the 87 km of new pipeline composed of the Groundbirch Mainline Loop and Tower Lake Section.

<sup>3</sup> Section 58 activities includes the construction of the five meter stations; RoW preparation activities at HDD watercourse crossing locations and other locations on the RoW that could be impacted by the breeding bird period and seasonal fire bans; and temporary infrastructure, including stockpile sites, contractor yards, access roads, and borrow pits. Further details of the Section 58 activities are provided on the NEB registry (NGTL response to NEB Information Request No.5 (A77103-1)).

- Strength of the case for any claimed Aboriginal rights (including title) that may be adversely affected; and
- Seriousness of potential impact of contemplated Crown action or activity to adversely impact Aboriginal and Treaty Rights.

In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, the Supreme Court of Canada also applied this consultation framework to treaty rights, where a Crown-authorized activity may adversely affect a treaty right. The continued application of this framework to treaty rights was recently confirmed in *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48. The extent (or level) of the Crown's obligation to consult is described in the *Haida* case as existing on a spectrum from notification to deep consultation. A key objective of the EA process is to identify potential adverse impacts of proposed projects on Aboriginal and Treaty Rights and explore measures to avoid, mitigate, or otherwise appropriately address such impacts.

Pursuant to Section 11 of the Act, the EAO issued an Order that set out, in addition to other matters, how potentially-impacted Aboriginal groups would be consulted by the EAO. Consultation with Aboriginal groups listed on Schedule B of the Section 11 Order was approached at the deeper end of the *Haida* consultation spectrum, and those groups were provided the following opportunities:

- Receive notification of the issuance of any legal orders under the Act in relation to the Project;
- Discuss and comment on the issues raised through the NEB review and through any subsequent consultation in relation to potential impacts of the Project on areas of provincial jurisdiction on Aboriginal and Treaty Rights, and measures to avoid, minimize or otherwise accommodate, as appropriate, within reasonable timelines established by the Project Assessment Lead;
- Review supplemental information provided by NGTL to inform consultation in relation to potential impacts of the Project on areas of provincial jurisdiction on Aboriginal and Treaty Rights, and measures to avoid, minimize or otherwise accommodate, as appropriate, within reasonable timelines established by the Project Assessment Lead;
- Provide comments to NGTL on NGTL's draft report on Aboriginal consultation;
- Meet with the EAO representatives to discuss potential impacts of the Project on areas of provincial jurisdiction on Aboriginal and Treaty Rights, and measures to avoid, minimize, or otherwise accommodate such impacts, as appropriate;
- Review and comment on the EAO's draft referral materials;
- Provide a separate submission to the EAO regarding views on the Project and on the draft referral materials, to be included in the package of materials sent to Ministers when the Project is referred to Ministers for decision; and
- Request further engagement with the EAO in accordance with agreed upon timelines.

Consultation with Aboriginal groups listed on Schedule C of the Section 11 Order was approached at a lower level on the consultation spectrum, and Aboriginal groups on Schedule C were provided the following opportunities:

- Receive notification of the issuance of any legal orders under the *Act* in relation to the Project;
- Provide comments to NGTL on NGTL's draft report on Aboriginal consultation;
- Review and comment on the EAO's draft referral materials; and
- Discuss and comment on the issues raised through the NEB Panel review and through any subsequent consultation in relation to potential impacts of the Project on areas of provincial jurisdiction on its Aboriginal and Treaty Rights, and measures to avoid, minimize or otherwise accommodate, as appropriate.

The EAO shared a draft of the Section 11 Order with Aboriginal groups on May 11, 2016, and requested feedback. After considering feedback received from Aboriginal groups, changes were made to the draft Section 11 Order. On June 21, 2016, the EAO issued the Section 11 Order.

Pursuant to the Section 11 Order, on October 13, 2016, NGTL submitted an Aboriginal Engagement Summary to the EAO. This report summarized the efforts undertaken by NGTL to consult with Aboriginal groups, identified the feedback and information received from Aboriginal groups during engagement, identified potential adverse impacts of the Project on Aboriginal and Treaty Rights for each Aboriginal group, identified how these impacts would be mitigated or otherwise accommodated, and outlined future engagement activities.

The EAO's consultation process builds on the consultation that has occurred to date, including with provincial and federal agencies, through the NEB process, and engagement with NGTL. Permits are not issued by provincial agencies until the Ministers make a decision on the Environmental Assessment Certificate in accordance with Section 9 of the *Act*, with the exception of investigative use permits (i.e., permits to collect information to support the assessment of the Project); however, permitting agencies may consult with Aboriginal groups on permit applications prior to the Ministers' decision on the Environmental Assessment Certificate.

#### **1.4.2 BC Oil and Gas Commission**

In accordance with the Province of BC's principle of "one project, one assessment", the EAO coordinated Aboriginal consultation activities, as appropriate, with other provincial agencies who would be adjudicating permit applications for this Project, should an EA Certificate be issued.

Following receipt of NGTL's permitting application to the BC Oil and Gas Commission (OGC), the OGC initiated Aboriginal consultation on September 29, 2016. For NEB-regulated projects, the OGC adjudicates applications for the provincial authorizations under the *Land Act*, authorizations of stream crossings under the *Water Sustainability Act*, and issuance of cutting permits under the *Forest Act*. The OGC has been undertaking consultation with Aboriginal groups on the application submitted by NGTL for the Project since 2016. Consultation activities have included corresponding and meeting with Aboriginal groups regarding referral materials provided by the OGC and to discuss key concerns.

## 2 Project Application and Environmental Assessment

This section provides an overview of the project application review and EA processes, including the participation of Aboriginal groups in the regulatory review processes.

### 2.1 Federal Review and Environmental Assessment

The NEB regulatory review process is outlined below, including the participation of Aboriginal groups in the process, leading to the NEB Recommendation Report to inform the decision of the GiC.

In September 2015, the NEB received NGTL's application and on October 20, 2015, the NEB announced that, should the application be found to be sufficiently complete, it would undertake an EA public hearing to determine, amongst other things, whether the Project is likely to cause significant adverse environmental effects.

On October 20, 2015, the NEB issued a Notice of Public Hearing and Application to Participate for Aboriginal groups and other stakeholders along with funding to support their engagement in the review process. This was to allow those that may be impacted by the Project to share with the NEB any concerns or comments and to help inform the environmental and socio-economic analysis undertaken by the NEB. Information sessions were also organized, along with online sessions to provide more information on participating in the NEB hearing process.

The NEB received 39 applications to participate in the hearing process. Of the 39 applications, all were granted participant standing: 25 were Interveners (five Aboriginal groups, 15 commercial parties, one federal government department, two provincial government agencies, and two private individuals); and 14 were Commenters (one Aboriginal group, ten commercial parties, two federal government departments, and a provincial agency<sup>4</sup>).

On December 22, 2015, the NEB issued its hearing order (GH-003-2015) that established the process for a public hearing, which would be completed within 15 months or by March 22, 2017, as required by the *NEB Act*. The hearing order included a list of issues that the NEB would consider during its assessment of NGTL's Application and the list of participants. The NEB conducted its public hearing from December 2015 to July 2016. The hearing included written evidence, several rounds of Information Requests, letters of comment, collection of oral traditional evidence from Aboriginal participants, and the submission of final arguments.

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<sup>4</sup> An Intervener or a Commenter is a person, company or group who applied to participate in the NEB's hearing and was granted standing by the NEB to participate. An Intervener may submit various forms of written evidence and oral presentations. A Commenter may file one Letter of Comment that would be placed on the online public registry (record) and would form part of the official hearing record.

On May 17, 2016, two months before the close of the hearings, the NEB released draft conditions for the Project. The draft conditions were circulated to hearing participants for comment. The NEB considered all comments it received from NGTL, interveners and commenters before finalizing and setting out the final terms and conditions it would impose if the Project is approved by the GiC.

The portion of the hearing for oral traditional evidence and cross examination on matters related to Part III of the *NEB Act* was scheduled to occur the week of May 30, 2016, in Dawson Creek, BC, with cross examination related to Part IV scheduled for the week of June 6, 2016, in Calgary, Alberta. West Moberly First Nations, with support from Blueberry River First Nations and Saulneau First Nations, invited the NEB to hear oral traditional evidence in Kiskatinaw Provincial Park rather than Dawson Creek. However, the NEB was not able to meet its obligation to provide a safe and accessible hearing for NEB staff and the public at this location and the oral traditional evidence location remained in Dawson Creek. Of the five Aboriginal group interveners, one group (West Moberly First Nations) made presentations in Dawson Creek.

Following the receipt of final argument and the closure of the hearing record on July 8, 2016, the NEB considered all evidence presented to prepare its Recommendation Report to the Minister of Natural Resources, submitted on October 6, 2016.

The regulatory review and EA by the NEB is the initial part of the NEB's broader role as a lifecycle regulator. The NEB also regulates the construction, operation, and abandonment of pipelines that cross international borders or provincial boundaries, as well as the related pipeline tolls and tariffs. The NEB has exclusive jurisdiction and responsibility to enforce federal pipeline regulations and certificate conditions. Should the Project be approved, and NGTL decide to proceed with it, the NEB would use this same oversight to regulate the Project facilities and components going forward.

### 2.1.1 Participation of Aboriginal Groups

The NEB Panel formed to review the Project application and conduct the EA of the proposed Project engaged with Aboriginal groups potentially-impacted by the Project to ensure they were aware of how to participate in the hearing process, including how to obtain funding to support that engagement.

In July 2015, the NEB and the federal Crown sent letters to Aboriginal groups to advise them of the Project. These letters included offers to meet with Aboriginal groups to provide further information on the regulatory process and the role of the NEB in the review. The NEB held pre-hearing meetings with six groups.

In addition, at the request of the Fairview Métis Local, which self-identified as a potentially-impacted group, the NEB met with and provided a copy of the information package on the Project.

In total, six Aboriginal groups applied for, and were granted, standing in the NEB hearing, including five as interveners and one as a commenter. Three Aboriginal interveners applied for and received funding from the NEB to support participation in the review. Table 2 below provides a breakdown of the funding by applicant.

**Table 2 - Allocation of funds for the participation of Aboriginal groups in the NEB hearings for the proposed Project**

Aboriginal Intervener applicant	Amount awarded
Blueberry River First Nations	\$52,000
Saulteau First Nations	\$44,000
West Moberly First Nations	\$52,000
<b>Total</b>	<b>\$148,000</b>

Aboriginal groups provided comments, views, and evidence through written submissions and oral traditional evidence to the panel during the hearing. Three groups expressed an interest in presenting oral traditional evidence at the NEB hearing. Two of the groups withdrew their request. West Moberly First Nations was the only Aboriginal intervener to provide oral traditional evidence to the NEB Panel, which took place in Dawson Creek, BC, on May 31, 2016.

The federal Crown incorporated the information gathered during the NEB early engagement sessions and submitted by groups either intervening or commenting in the hearing process as part of the assessment the effects of the Project.

## 2.2 National Energy Board Recommendation Report Conclusions

On October 6, 2016, the NEB released its Recommendation Report on the Project, which concluded that the Project is in the present and future public convenience and necessity, and that through the implementation of NGTL's environmental protection procedures, mitigation measures, and the NEB's recommended terms and conditions, the Project is not likely to cause significant adverse environmental

effects. The NEB recommended that the GiC direct the NEB to issue a Certificate of Public Convenience and Necessity, subject to the 24 Certificate conditions, and approved a Section 58 exemption Order, subject to 12 Order conditions, set out in the NEB's Recommendation Report that NGTL would have to meet should the Project go ahead.

The 24 NEB Certificate conditions are categorized as follows:

- 3 applying generally to the proposed activity;
- 8 applying prior to construction;
- 7 applying during construction; and
- 6 applying post-construction.

The 12 NEB Order conditions are categorized as follows:

- 3 applying generally to the proposed activity;
- 5 applying prior to construction;
- 2 applying during construction; and
- 2 applying post-construction.

The proposed NEB conditions cover a wide range of issues and concerns identified by Aboriginal groups during the hearing process, including, but not limited to, environmental protection, habitat reclamation and restoration, traditional land use (TLU), and watercourse crossings. The following conditions relate specifically to concerns raised by Aboriginal groups during the NEB process:

- **Certificate Condition 4:** requires NGTL to develop a plan to enhance the regeneration of vegetation on the construction RoW within or adjacent to old growth forest birds habitat such that the width of the operating RoW is reduced as much as possible and that habitat functionality of disturbed areas is returned as soon as possible.
- **Certificate Condition 8:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project.
- **Certificate Condition 9:** Outstanding TLU investigations, requiring NGTL to notify the NEB of any outstanding TLU investigations and to identify how NGTL would incorporate concerns into the final Environmental Protection Plan.
- **Certificate Condition 12:** Breeding Bird Surveys and Protections Plans, requiring NGTL to retain a qualified avian biologist to carry out a pre-construction non-intrusive nest survey to identify any birds and active nests in the areas immediately surrounding the construction activities.

- **Certificate Condition 14:** Watercourse Crossing Inventory, requiring NGTL to provide a watercourse crossing inventory and contingency measures for any crossings in which the primary proposed crossing method or the applicable Fisheries and Oceans Canada’s “Measures to Avoid Causing Harm to Fish and Fish Habitat” cannot be implemented.
- **Certificate Condition 20:** requires NGTL to file Aboriginal Engagement Reports outlining engagement with Aboriginal Groups during construction of the Project.
- **Certificate Condition 21:** requires NGTL to file with the NEB an Employment, Contracting and Procurement Report for the Project during the construction phase.
- **Certificate Condition 23:** requires NGTL to file Post-Construction Environmental Monitoring Reports in the first, third and fifth complete growing seasons after final clean up. These reports will outline issues, progress and success of the measures implemented; as well as details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to them.

In addition, NGTL made a number of commitments throughout the NEB review process. NEB Certificate conditions 2 and 3 renders all commitments made by NGTL pertaining to design, construction, operation, and environmental protection legally binding. Certificate condition 6 requires NGTL to compile and publish its commitments in a tracking table.

### **2.2.1 Recommendations and Conclusions on Aboriginal Engagement and Impacts**

The following is a summary of the NEB’s recommendation and conclusions regarding the potential impacts of the Project on Aboriginal groups and the adequacy of consultation with Aboriginal groups, as described in the NEB Recommendation Report.

- The NEB found that the design of NGTL’s engagement program, including its process to identify potentially-impacted Aboriginal groups met the NEB’s expectations for the nature, scope, and setting of the Project. The NEB was of the view that all potentially-impacted Aboriginal groups were provided with sufficient information about the Project.
- The NEB found that NGTL’s implementation of its consultation program met the NEB’s expectations. The NEB noted NGTL’s commitment to continued engagement with potentially-impacted Aboriginal communities throughout the life of the Project.
- The NEB noted NGTL’s commitment to complete any outstanding TLU investigations and to receive any additional information that may be brought forward by Aboriginal groups regarding their use of the land and resources in the Project area. The NEB included Certificate condition 9 and imposed Section 58 condition 5 (NEB Recommendation Report, Appendix II and III) requiring NGTL to file with the NEB a report outlining the status of any outstanding TLU investigations for the Project, including how any concerns or issues have been or will be addressed by NGTL.
- The NEB found that there were potential Project-related residual effects for physical, biological, and socio-economic elements, but that once all mitigation (including NGTL commitments and NEB conditions) had been applied, the residual effect on these elements would be minor and of

limited duration. Therefore, it is unlikely there would be significant cumulative effect resulting from the Project.

The NEB was of the view that overall, with the NEB's imposed conditions and with the implementation of NGTL's environmental protection procedures and mitigation, the Project is not likely to cause significant adverse environmental effects.

### **2.3 Governor General in Council Decision-making Process**

After the NEB has submitted its Recommendation Report, the GiC has three months to render a decision on the report. The GiC may, upon recommendation of the Minister of Natural Resources:

- 1) Order the NEB to issue a Certificate of Public Convenience and Necessity to allow the Project to proceed;
- 2) Order the NEB to dismiss the application;
- 3) Refer the NEB recommendation or conditions back to the NEB for reconsideration; or
- 4) Extend the three month time limit for rendering a determination by any additional period or periods of time.

In January 2016, the Minister of Natural Resources and the Minister of Environment and Climate Change announced interim measures to be applied to projects already undergoing regulatory review as part of a longer-term plan to review the EA process and to modernize the NEB.

One of the interim measures called for by the Government of Canada is to undertake deeper consultation with Aboriginal peoples. To ensure sufficient time to apply this measure to the review of the Project, on December 15, 2016, the GiC extended the legislated time limit for its decision from January 6, 2017 to April 6, 2017.

The Minister of Natural Resources has approved this CAR and has transmitted it to all members of the Treasury Board of Canada (which will act as the Governor General in Council) to support the GiC's decision on the Project.

### **2.4 British Columbia Environmental Assessment Process**

On June 21, 2010, the EAO and the NEB entered into an equivalency agreement (NEB-EAO Agreement<sup>5</sup>) on EA's for projects that would trigger both provincial and NEB reviews. The agreement states that the Province of BC will accept the NEB's EA of a proposed project that would otherwise have to be reviewed

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<sup>5</sup> [NEB-EAO Agreement](#)

under the Act as an equivalent assessment, and that the proposed project may proceed without a provincial EA certificate.

In January, 2016, in *Coastal First Nations v. British Columbia*, the BC Supreme Court (BCSC) held that a portion of the NEB-EAO Agreement was invalid (British Columbia Supreme Court Decision)<sup>6</sup>. Specifically, the Court ruled that the Act applies to NEB projects to the extent that they require a provincial EA certificate. Although effectively amended by virtue of the BCSC Decision, the remainder of the NEB-EAO Agreement remained valid; therefore, for the Project, the review process completed by the NEB is being substituted for the EA process under *the Act*. The EAO is accepting the NEB Recommendation Report as the assessment report for the Project.

The EAO reviewed descriptions of the Project that NGTL submitted to the NEB as part of the federal EA process, and determined that the Project was a reviewable project under BC's *Reviewable Projects Regulation*.

As a result of the BCSC British Columbia Supreme Court Decision, a legal Order was issued under Section 10(1)(c) of the Act on April 8, 2016, requiring the Ministers to make a decision on the issuance of a provincial EA certificate. Following consultation on a draft Section 11 Order with Aboriginal groups and NGTL, a legal Order was issued under Section 11 of the Act on June 21, 2016, to establish the procedures for the remaining provincial EA process for the Project. Among other procedural aspects, this Order specified the Aboriginal groups to be consulted by the EAO, consultation opportunities that would be provided to Aboriginal groups, and requirements for NGTL.

### **3 Engagement by NGTL with Aboriginal Groups**

This section summarizes NGTL's engagement process with potentially-impacted Aboriginal groups.

#### **3.1 Aboriginal Engagement**

The NEB Filing Manual required NGTL to identify, engage, and consult with potentially-impacted Aboriginal groups prior to filing an application with the NEB. NGTL was also required to report to the NEB on these activities and to describe any issues or concerns raised by Aboriginal groups as part of its application.

Further to this requirement, NGTL outlined the following objectives of its Aboriginal Engagement Program:

- To build and maintain positive long-term relationships with Aboriginal communities and organizations potentially-impacted by the Project;

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<sup>6</sup> <http://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc34/2016bcsc34.pdf>

- To develop and share timely information to allow for informed, effective, and meaningful engagement with communities;
- To respond promptly to commitments and communications with respect to the needs, interests, and concerns identified by each community;
- To identify education, training, employment and contracting opportunities;
- To strive to create short- and long-term employment and business opportunities for Aboriginal peoples impacted by NGTL's activities;
- To support learning opportunities to provide a well-trained source of Aboriginal employees and build capacity in Aboriginal communities;
- To support the participation (e.g., capacity funding and information sharing) of Aboriginal communities and organizations who may be affected by the Project through negotiation of mutually acceptable work plans and budgets;
- To use Traditional Knowledge (TK) to inform the Project design, where feasible;
- To ensure that input from and concerns of Aboriginal communities and organizations are gathered, understood and considered in Project design and execution, including the Environmental and Socio-Economic Assessment, as appropriate;
- To ensure that Aboriginal communities and organizations are aware of how their input has influenced the Environmental and Socio-Economic Assessment and Project planning; and
- To ensure that issues and concerns with respect to potential effects that relate to Aboriginal and Treaty Rights are identified and addressed.

NGTL began engaging with 24 potentially-impacted Aboriginal groups in June 2014. The 24 Aboriginal groups were identified based on desktop research, NGTL's own operating experience, and an established network of contacts with Aboriginal communities and organizations in the Project area. In 2015, based on input provided by the NEB and NRCan, NGTL added 3 groups to its consultation list for a total of 27.

NGTL provided these Aboriginal groups with information about the Project, opportunities to meet with NGTL to discuss the Project and express any concerns they might have, and opportunities to provide details of traditional land and resources use activities and other site-specific information to inform Project planning.

NGTL tracked their efforts to provide Aboriginal groups with opportunities to participate in its planning of the Project. NGTL engaged with Aboriginal groups to determine how they preferred to contribute to the Project, and NGTL provided funding to assist groups that elected to conduct community-directed traditional land and resources use studies for the Project.

NGTL invited interested Aboriginal groups to participate in a series of biophysical and heritage resources field studies to support its Environmental and Socio-Economic Assessment and as an opportunity for Aboriginal groups to learn about the Project and provide input. This participation is summarized in Table 3.

**Table 3 - Summary of Aboriginal participation in field studies, as provided by NGTL**

Aboriginal Group	Type of Field Study
<b>Blueberry River First Nations</b>	Aquatics (2014; 2015), Archaeology (2014; 2015), Soils (2014), Wildlife (winter tracking) (2014; 2015), Vegetation and Wildlife (combined) (2016).  Participants may have participated and contributed to discussions of issues and concerns.
<b>Duncan's</b>	Aquatics (2014; 2016), Soils (2014), Archaeology (2014; 2015; 2016), Wildlife (winter tracking) (2014), Vegetation and Wetlands (2016).
<b>Doig River First Nation</b>	Aquatics (2014), Archaeology (2014; 2015), Wildlife (winter tracking) (2014; 2015), Vegetation and Wetlands (2014), Soils (2014).  Participated and contributed to discussion of issues and concerns. Participants indicated that field observations were appropriate to be recorded and included in regulatory submissions; however no traditional ecological knowledge (TEK) was to be documented.
<b>Horse Lake</b>	Wildlife (breeding bird round 1; amphibian and yellow rail, and breeding bird round 2) (2015), Vegetation and Wetlands (2015) Aquatics (2015), Archaeology (2015), Vegetation and Wildlife (combined) (2016).
<b>Kelly Lake Cree</b>	Aquatics, (2014; 2016), Archaeology (2014; 2015; 2016), Soils (2014), Wildlife (winter tracking) (2014; 2015), Vegetation and Wildlife (combined) (2016).
<b>McLeod Lake Indian Band</b>	Wildlife (winter tracking) (2014), Soils (2014), Archaeology (2014; 2015), Aquatics (2016), Vegetation and Wildlife (combined) (2016).
<b>Prophet River</b>	Wildlife (winter tracking) (2014; 2015), Archaeology (2014; 2015), Aquatics (2016), Vegetation and Wildlife (combined) (2016).
<b>Saulteau First Nations</b>	Wildlife (winter tracking) (2014; 2015), Soils (2014), Archaeology (2014; 2015).
<b>West Moberly First Nations</b>	Wildlife (winter tracking) (2014; 2015), Aquatics (2014), Archaeology (2014; 2015; 2016), Vegetation and Wildlife (combined) (2016).  Participated and contributed to discussion of issues and concerns, however did not share TLU or TEK during their participation in the biophysical field studies.

As part of its engagement with Aboriginal groups in proximity to the Project area, NGTL negotiated agreements with communities in order for groups to participate in and benefit from the Project. Generally, these agreements included funding to support collaboration between the group and NGTL, to build capacity within the community, and for other initiatives. The Crown is not party to these

agreements and as such, while the Crown does consider the existence of agreements between NGTL and Aboriginal groups, the Crown considers only what Aboriginal groups or NGTL have voluntarily shared with the Crown.

### **3.2 Proponent Funding**

NGTL has executed Project-specific TLU Study Agreements with the following Aboriginal groups: Blueberry River First Nations, Prophet River First Nation, Doig River First Nation, Driftpile First Nations, Horse Lake First Nation, Kelly Lake Cree Nation, Métis Nation of British Columbia, Sauteau First Nations, West Moberly First Nations, and Métis Nation of Alberta Region 6. NGTL is currently negotiating a Project-specific TLU Study Agreement with McLeod Lake Indian Band. NGTL has also executed Project-specific Engagement Capacity Funding Agreements with Doig River First Nation, Blueberry River First Nations, and West Moberly First Nations and is negotiating with Prophet River First Nation on a similar agreement. In addition, NGTL provided capacity to Horse Lake First Nation to support community members in harvesting diamond willow fungus identified in the Project area during Horse Lake First Nation's Map Review and Site Assessment Report.

## 4 Crown Consultation with Aboriginal Groups

This section outlines the scope of the Crown's consultation with Aboriginal groups as well as the consultation process undertaken by the Crown.

### 4.1 Aboriginal and Treaty Rights

Outlined below is the historical and contextual information related to Aboriginal groups whose Aboriginal and Treaty Rights, have the potential to be adversely impacted by the Project.

#### 4.1.1 Treaty 8

Many of the Aboriginal groups potentially-impacted by the Project are signatories to the numbered historic Treaty 8, negotiated with the federal government in June, 1899. In understanding the scope and nature of the rights and obligations under historic treaties, the Crown is guided by the text of the treaty and oral promises recorded in the Report of Commissioners for Treaty 8 in 1899. The Crown also relies on the understandings and intentions of Aboriginal and Crown participants to the making of the treaty or subsequent adhesions, in accordance with rules of treaty interpretation articulated by the Supreme Court of Canada. The Crown views these understandings as being consonant with the terms of historic treaties insofar as the mode of life and livelihood referred to in the Report of the Commissioners for Treaty 8 were the hunting, trapping, and fishing activities protected by the treaty. Rights protected under these historic treaties may also include harvesting activities undertaken for spiritual and cultural purposes.

In Alberta, the treaty rights were modified following the conclusion of the Natural Resource Transfer Agreement, restricting the hunting, trapping, and fishing right for the purpose of food.

As stated by the Supreme Court of Canada in *Mikisew Cree*, and recently reaffirmed in *Grassy Narrows First Nation*<sup>7</sup>, the Crown's right to take up lands under historic treaties is not absolute, and is subject to the duty to consult and, if appropriate, accommodate the treaty Aboriginal groups' interests before reducing the area over which their members may continue to pursue hunting, trapping, and fishing rights.

While treaty adherents have rights to hunt, trap, and fish throughout their entire treaty area, land use information and other evidence filed with the NEB was reviewed to understand key interactions between the Project and Aboriginal groups' traditional use areas, including for spiritual and cultural use.

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<sup>7</sup> *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388 at para. 56 and *Grassy Narrows First Nation v. Ontario (Natural Resources)*, [2014] 2 SCR 447 at paras. 50-3.

Where a treaty First Nation no longer has a meaningful right to hunt, trap, or fish in relation to the territory over which it traditionally hunted, trapped, or fished, this could result in a treaty infringement.

The Crown assessed a depth of consultation owed to each potentially-impacted Aboriginal group.

#### 4.1.2 Métis Nations

Métis are Aboriginal peoples of Canada. Section 35 of the *Constitution Act, 1982* protects the customs, practices, and traditions that were historically important features of Métis communities, who emerged subsequent to European “contact”, and prior to the exercise of “effective control” by the European settlers. For Métis to be able to exercise Section 35 rights, they must be able to demonstrate they are members of a modern Métis community that has ancestral linkages to an historic rights bearing Métis community. The test for establishing Métis Section 35 rights was set out by the Supreme Court of Canada decision in *R. v. Powley*<sup>8</sup>.

In 2004, the Métis Nation of Alberta signed an Interim Métis Harvesting Agreement with the Government of Alberta. The Agreement recognizes the Métis’ right to harvest for food through hunting, trapping, and fishing, and applies to animals, fish, and fowl in their harvesting lands. The Métis Harvesting Agreement recognizes that Alberta Métis can harvest year-round (unless there is a closure for conservation reasons) on all unoccupied provincial Crown lands unless there is activity or development on the lands that would make harvesting unsafe. Alberta Métis can harvest on all occupied Crown lands, such as wild land parks, natural zones and some types of provincial parks and other provincial protected areas that have areas designated as harvesting zones. Alberta Métis can also harvest on private lands with permission from owners or occupants. The federal Crown identified several Métis settlements potentially impacted by the Project.

No Métis rights-bearing community in BC has been recognized by a court. In *R v. Willison*, 2006 British Columbia Supreme Court 985, the British Columbia Supreme Court was unable to conclude there was an historic Métis community in existence along the fur brigade trail in the southern part of the province. There has not been a judicial determination regarding the existence of a Métis community in northern BC. The Province of BC does not recognize a legal obligation to consult with Métis people, as it is of the view that no Métis community is capable of successfully asserting site-specific Section 35 rights in BC.

On April 14, 2016, the Supreme Court of Canada decision in *Daniels v. Canada*<sup>9</sup>, declared that Métis and non-Status Indians are "Indians" and fall under subsection 91(24) of the *Constitution Act, 1867*. The Government of Canada’s position is that not all Canadians who self-identify as Métis are Section 35

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<sup>8</sup> *R. v. Powley*, [2003] 2 SCR 207

<sup>9</sup> *Daniels v. Canada*, [2016], 1 SCR 99

rights-holders and thus there is a distinction between Métis self-identification and Métis Aboriginal rights. The 2003 Supreme Court of Canada decision in *R. v. Powley* provides the test needed to prove Métis Aboriginal rights.

The federal Crown consulted groups and organizations asserting Métis rights in both Alberta and British Columbia.

#### 4.1.3 Non-Treaty rights

A number of Aboriginal groups that do not have treaties may have Aboriginal rights that may be potentially affected by the Project. While the contemplated action relates to a Project that is proposed largely for areas covered by Treaty 8, the federal Crown identified several non-treaty Aboriginal groups with actual or asserted Section 35 rights that could be potentially-impacted by the contemplated Crown conduct.

The federal Crown consultation process ensured that all potentially-impacted Aboriginal groups could assert the contemplated conduct’s impact on their Aboriginal right or rights, even if that right was not grounded in a treaty.

#### 4.1.4 Aboriginal consultation by the Federal Crown

#### 4.1.5 Aboriginal groups identified for consultation

Beginning in the summer of 2015, and following receipt of the Project description by NGTL, the federal Crown worked to develop a list of potentially-impacted Aboriginal groups. In conducting this work, the federal Crown used information from the NEB, NGTL, and INAC. By September 2016, the federal Crown finalized a list of 32 individual Aboriginal groups and organizations representing several Aboriginal groups as having Aboriginal and Treaty Rights potentially impacted by the Project for the purposes of Phase IV.

This list was developed through the consideration of Aboriginal groups whose traditional territories, treaty areas, or traditional use fall within a 100 km buffer on either side of the Project footprint, and therefore could have potential impacts on their Aboriginal and Treaty Rights.

The following table lists the Aboriginal groups and organizations included in the final federal Crown list.

**Table 4 - Aboriginal groups included in the federal Crown list**

Aboriginal groups	
Alberta	
Beaver First Nation	Métis Nation of Alberta Region 6
Duncan’s First Nation	Métis Nation of Alberta – Local Council #1990
Dene Tha’ First Nation	Métis Nation of Alberta – Fairview Local
Driftpile First Nation	Sturgeon Lake Cree Nation
Horse Lake First Nation	Swan River First Nation

<b>Aboriginal groups</b>	
Métis Nation of Alberta	Whitefish Lake First Nation
Métis Nation of Alberta Region 4	Western Cree Tribal Council
<b>British Columbia</b>	
Blueberry River First Nations	Kelly Lake Métis Settlement Society
BC Métis Federation	McLeod Lake Indian Band
Dawson Creek Métis Association (North East Métis Association)	Métis Nation of British Columbia
Doig River First Nation	Moccasin Flats Métis Society
Fort Nelson First Nation	Prophet River First Nation
Fort St. John Métis Society	Red River Métis Society
Halfway River First Nation	Saulteau First Nations
Kelly Lake Cree Nation	Treaty 8 Tribal Council
Kelly Lake First Nation	West Moberly First Nations

#### **4.1.6 Establishing the depth of duty to consult in Phase IV**

The federal Crown undertook a preliminary depth of consultation analysis for each potentially-impacted Aboriginal group on the federal Crown list to determine the extent of consultation owed by the Crown. This analysis took account of the following factors for each Aboriginal group:

- Strength of the case for any asserted Aboriginal rights that may be adversely affected; and
- Degree of potential impact of contemplated federal Crown action or activity to adversely impact Aboriginal and Treaty Rights.

The federal Crown considered these two factors for each Aboriginal group's use of lands and resources in proximity to areas potentially impacted by the Project. The federal Crown assessed the potential severity of impacts on Aboriginal and Treaty Rights as outlined in section 5.1, and then consulted each Aboriginal group in a manner consistent with the conclusions of its depth of consultation analysis. Figure 3 illustrates how the federal Crown tailored its consultation with each Aboriginal group.

The federal Crown compiled information to conduct this analysis from a number of sources, including:

- Submissions to the NEB by NGTL;
- Submissions to the NEB by Aboriginal groups;
- Correspondence between the Crown and individual Aboriginal groups; and,
- The federal Government's Aboriginal and Treaty Rights Information System.

	Anticipated Negligible/ Very Weak Rights Claim	Anticipated Weak Rights Claim	Anticipated Moderate Rights Claim	Anticipated Strong Rights Claim	Modern Treaty Settlement, (including in process); Reserve Lands
Low Degree of Potential Adverse Impact	Nothing Required - opportunity to participate through public consultations	Recommended Letter, Info, Request for Aboriginal group to identify interest in contemplated conduct	Letter, Info, Input Welcomed on Project	Letter, Info, Consultation Session if Requested	Letter, Info, Consultation Session Anticipated
Moderate Degree of Potential Adverse Impact	Nothing Required - opportunity to participate through public consultations	Recommended Letter, Info, Request for Aboriginal group to identify interest in contemplated conduct	Letter, Info, Consultation Session if Requested	Letter, Info, Consultation Session Anticipated	Letter, Info, Consultation Session Most Likely Required
High Degree of Potential Adverse Impact	Recommended Letter, Info, Request for Aboriginal group to identify interest in contemplated conduct	Letter, Info, Input Welcomed on Project	Letter, Info, Consultation Session Anticipated	Letter, Info, Consultation Session(s) Most Likely Required	Possible Collaborative Development of Consultation Model (Protocol Agreement)

Source: *Aboriginal Consultation Interactive Guidebook*, Natural Resources Canada, January 2011.

**Figure 3 - Federal Crown depth of consultation determination framework**

#### 4.1.7 Phase IV consultation activities

In September and October of 2016, the federal Crown corresponded with the 32 Aboriginal groups and organizations on the federal Crown list to advise them of the publication of the NEB's Recommendation Report, and of the start of the comment period on a draft upstream greenhouse gas assessment on the Project, conducted by Environment and Climate Change Canada.

The federal Crown initiated the post-hearing consultation process by sending letters and applicable funding applications to the Aboriginal groups and organizations to seek their input on the NEB recommendations, and to identify any outstanding issues or concerns related to the Project.

For Aboriginal groups that were owed a moderate or high duty to consult, the federal Crown invited those groups to apply for funding specifically allocated in Budget 2016 to support their participation in Phase IV consultations. The Participant Funding Program was administered by the Canadian Environmental Assessment Agency (CEAA) on behalf of the Major Projects Management Office. CEAA followed up with groups to offer assistance in filling out the funding application in advance of the October 7, 2016, deadline. The federal Crown also followed up with groups to identify convenient dates to hold consultation.

Of the twelve Aboriginal groups offered funding, eight groups submitted a completed funding application and the federal Crown met with all eight groups on the Project. The remaining four did not respond to inquiries by the federal Crown.

During this time, the federal Crown followed up with groups on the low range of the consultation spectrum and responded to several requests for more information. At their request, the federal Crown met with five groups. The objectives of these meetings were to solicit from groups any outstanding issues and concerns not addressed by the NEB conditions as they pertained to the Project, and to identify any potential accommodation measures the federal Crown should consider when making a decision on the Project.

For each of the 14 groups with which the federal Crown met, the Crown developed a meeting summary and shared a draft with the respective group to ensure accuracy.

The CAR and group-specific annex was also shared with Aboriginal groups in draft form for review and comment. The CAR was shared to help ensure that the Crown has adequately understood groups' participation in the consultation process, the strength of any claimed Aboriginal rights, potential impacts on Aboriginal and Treaty Rights and any outstanding concerns, including whether they are addressed by the NEB conditions, NGTL commitments, or other measures.

In addition to reviewing and commenting on the CAR and the group-specific annexes, Aboriginal groups were also offered the opportunity to provide a submission to decision-makers to directly describe any outstanding concerns, issues, or other views with respect to the Project.

## **4.2 Aboriginal Consultation by British Columbia**

### **4.2.1 Aboriginal Groups Identified for Consultation**

To inform its initial scope of consultation, the EAO relied primarily on the proximity of the Project to the area understood by the Province to be the area of traditional use by a Treaty 8 First Nation and the general nature of the potential impact on their Treaty rights and other interests to determine whether an Aboriginal group would be included on Schedule B or C of the Section 11 Order. The initial assessment, provided in the draft Section 11 Order, of the required scope of the duty to consult was presented to Aboriginal groups identified on Schedules B and C for review and comment in May, 2016. The EAO issued the final Section 11 Order on June 21, 2016, which identified consultation with the following Aboriginal groups:

#### **Schedule B**

- Blueberry River First Nations;
- Doig River First Nation;
- Halfway River First Nation;
- Saulteau First Nations;

- West Moberly First Nations;
- McLeod Lake Indian Band;
- Horse Lake First Nation; and
- Prophet River First Nation.

#### **Schedule C**

- Fort Nelson First Nation; and
- Dene Tha' First Nation.

Consultation with Aboriginal groups on Schedule B was approached at the deeper end of the *Haida* consultation spectrum, and consultation with Aboriginal groups on Schedule C was approached at a lower level on the *Haida* consultation spectrum.

#### **4.3 Aboriginal Consultation by Alberta**

Within Alberta, the Government of Alberta's Policies on Consultation with First Nations and Métis Settlements on Land and Natural Resource Management direct First Nation and Métis Settlement consultation with respect to the management and development of natural resources on provincial Crown lands. The associated guidelines demonstrate how the Government of Alberta is seeking to fulfill its consultation responsibilities under the consultation policies and are intended to clarify the expectations of all parties engaged in the consultation process by providing an overview of the procedures to follow in the consultation process.

Consultation with First Nations and Métis Settlements is triggered when the Government of Alberta is contemplating conduct that may have an adverse impact on the exercise of Treaty rights or traditional use activities or Métis settlement members' harvesting activities. The Government of Alberta is responsible for overseeing and managing all substantive aspects of consultation. Although the Government of Alberta may delegate some procedural aspects of consultation to proponents, the Crown retains the sole responsibility for overseeing the overall consultation process and ensuring that the proponent's consultation activities comply with the consultation policies and guidelines. The First Nations and/or Métis Settlements that project proponents are directed to consult with are based on the location of the project footprint in relation to First Nations' or Métis Settlements' consultation areas as well as other relevant information.

To strengthen the Government of Alberta's role in the First Nation's and Métis Settlement consultation process, the Government of Alberta created the Aboriginal Consultation Office (ACO). The ACO's mandate is to provide consultation management services to meet the needs of Government of Alberta ministries, First Nations, Métis settlements, the Alberta Energy Regulator, and project proponents.

The Government of Alberta's First Nations and Métis Settlements consultation guidelines outline the stages of consultation, which include:

- Pre-consultation assessment:
  - Assess whether or not consultation is required;

- If consultation is required, identify which First Nations and/or Métis Settlements are to be consulted;
- Assess the potential adverse impacts of the proposed decision or activity;
- Assess the scope of the duty to consult based on available information regarding the potential adverse impacts on Treaty rights, traditional uses, or harvesting activities; and
- Assign a level of consultation which corresponds with the scope of the potential adverse impacts. The level of consultation (Level 1 - streamlined, Level 2 – standard, and Level 3 – extensive) identifies how deep the consultation should be and what process steps are required.
  - Level 3 Consultation requires the proponent to develop a Consultation Plan that the ACO must approve before consultation activities can begin.
- Information sharing;
  - Proponents are required to provide comprehensive information to the First Nations and/or Métis Settlements regarding the project, regulatory authorizations being sought, the consultation process, level of consultation, and requests for feedback and any concerns.
- Exploring and documenting concerns;
- Verifying the consultation record with the First Nation and/or Métis Settlement; and
- Determining the adequacy of consultation. Although the optimal outcome of consultation is that all consulting parties reconcile interests, agreement of all parties is not required for consultation to be adequate. If consultation is deemed adequate, the proponent proceeds with the application to the appropriate regulatory decision-maker.

The Project was assessed as requiring Level 3 (extensive) consultation. On July 23, 2015, the Government of Alberta directed NGTL to consult on the Project and its ancillary dispositions with the potentially-impacted Aboriginal groups. The ACO is continuing to work with NGTL, First Nations, and other Ministries to facilitate the fulfillment of consultation requirements under Alberta’s consultation policies and guidelines.

#### **4.4 Participant Funding Provided to Support Consultation**

The Crown offered funding to support the engagement of Aboriginal groups during Crown consultation activities. The funding provided by the NEB is outlined in section 2.1.1.

##### **4.4.1 Federal funding**

The federal Participant Funding Program supported Aboriginal participation in consultation activities in the post-NEB hearing phase. Funds were provided for these consultations in Budget 2016 based on the government’s interim strategy.

The Crown invited Aboriginal groups to apply for funding, offering \$8,500 to groups assessed as being owed a high level of consultation and \$4,250 to moderate groups. These funds were identified to

support Aboriginal groups' review of the NEB Recommendation Report and their meaningful consultation with the Crown on any issues that may remain outstanding, along with the consideration of measures to mitigate potential impacts, if necessary.

As of November 2016, the Crown had allocated \$52,600.10 in funding to Aboriginal groups, as outlined in Table 5.

**Table 5 - Allocation of federal funds for participation in the Phase IV consultation.**

<b>Applicant/Recipient name</b>	<b>Funding amount approved (\$)</b>
Doig River First Nation	\$8,472.50
Saulteau First Nations	\$8,500.00
West Moberly First Nations	\$8,500.00
Blueberry River First Nations	\$8,500.00
Horse Lake First Nation	\$8,495.60
Fort St. John Métis Society	\$1,632.00
Kelly Lake Métis Settlement Society	\$4,250.00
Métis Nation of Alberta Local council #1990	\$4,250.00
<b>Total</b>	<b>\$52,600.10</b>

#### **4.4.2 Provincial funding**

The EAO offered funding in the amount of \$5,000 to each Aboriginal group on Schedule B of the Section 11 Order. The funding was intended to assist with participation in consultation activities, such as document review and participation in meetings. A total of \$40,000 was offered to eight Aboriginal groups (Blueberry River First Nations, Doig River First Nation, Halfway River First Nation, Horse Lake First Nation, McLeod Lake Indian Band, Prophet River First Nation, Saulteau First Nations, and West Moberly First Nations). The EAO's funding was accepted by seven of the Aboriginal groups.

#### **4.5 Crown Consultation Record and Tracking of Key Issues**

Following each meeting with an Aboriginal group, Crown officials developed a draft meeting record and shared it with the Aboriginal group to ensure that the conversation was captured correctly and to seek concurrence on any outstanding action items. The meeting records informed the development of group-specific annexes. The Crown also reviewed, responded to, and retained all correspondence with each Aboriginal group. The Crown further considered the engagement logs as filed by NGTL in the NEB hearing process. The EAO further considered engagement logs filed by NGTL as required in the EAO Section 11 Order.

An issues tracking table was developed to identify issues raised by Aboriginal groups during the NEB hearing process and was then updated during Crown consultations. The table also included an analysis by the Crown of the extent that proposed conditions by the NEB would be likely to address the concerns of Aboriginal groups or if a gap existed. The tool was updated as consultation progressed and informed areas where accommodation measures may be considered. This tool was also informed by the analysis provided by the NEB to the Crown in October 2016, of the issues raised by all Aboriginal groups throughout the hearing process.

## **5 Potential Impacts of Contemplated Crown Conduct on Aboriginal and Treaty Rights**

This section considers potential impacts of the Project on Aboriginal and Treaty Rights, as well as mitigations to address impacts.

### **5.1 Approach to Assessing Potential Impacts of the Project on Aboriginal and Treaty Rights**

This section presents the Crown's methodology for assessing the seriousness of potential impacts of the Project on Aboriginal and Treaty Rights. The following information informed the Crown's understanding of potential impacts of the Project on Aboriginal and Treaty Rights:

- Information contained in NGTL's Application and reports provided by NGTL on Aboriginal engagement;
- Information provided by Aboriginal groups regarding their views of how their Aboriginal and Treaty Rights may be impacted by the Project;
- Input from Aboriginal groups on assessing potential impacts of the Project on Aboriginal and Treaty Rights;
- Conclusions in the NEB Recommendation Report with respect to the residual effects of the Project; and
- Consultation with Aboriginal groups during the Crown consultation process.

The Crown considers the following types of information in assessing the seriousness of a potential impact on Aboriginal and Treaty Rights, where available:

- The location of the area understood to be the Aboriginal group's area of traditional use;
- Past, present, and anticipated future Aboriginal uses of the Project area and its surroundings, including the frequency and timing of such uses by each Aboriginal group;
- The baseline conditions associated with the exercise of Aboriginal and Treaty Rights, including a consideration of other activities or development in the local or regional area that are in proximity to the Project that may contribute to the current condition of the valued components;

- The context within which the rights are exercised, such as the relative importance of the Project area and its surroundings to the exercise of each group's Aboriginal and Treaty Rights, including any special characteristics or unique features of that area;
- The relative availability of other areas in reasonable proximity, within the area of traditional use of each Aboriginal group where the meaningful exercise of Aboriginal and Treaty Rights could reasonably occur;
- Any residual and cumulative effects of the Project to valued components associated with the exercise of Aboriginal and Treaty Rights, including consideration of the magnitude and direction of change, geographic extent, duration and frequency of change, reversibility of the change and probability of occurrence (informed by the NEB Recommendation Report);
- The extent to which the Project would affect each Aboriginal groups' access to and use of the Project area to exercise Aboriginal and Treaty Rights; and
- Measures proposed to mitigate adverse effects corresponding to impacts on Aboriginal and Treaty Rights.

The Crown's assessment of the seriousness of a potential impact on Aboriginal and Treaty Rights considers likely adverse residual effects that could cause a change to the practice of a right, whether deemed significant or not, after mitigation measures are applied.

## **5.2 Crown's Overview of Potential Impacts on Aboriginal and Treaty Rights**

### **5.2.1 Mitigation Measures Committed to by NGTL**

During the NEB review process, NGTL committed to several design and mitigation measures that would help avoid or mitigate potential impacts of the Project on Aboriginal groups' hunting, fishing, and gathering activities, as well as sites of cultural importance. These measures include:

- Implementing an Aboriginal Construction Participation Plan, which allows participants to discuss potential issues that may arise;
- Aligning 82% of the Project RoW with existing RoWs or other linear disturbances to minimize the need for new disturbance;
- Reducing the width of permanent RoW to be maintained during operations. A 5 m setback from each side of centerline would be applied as a maximum distance in environmentally sensitive areas (e.g., wetlands, riparian areas, old growth forest habitats);
- Prohibiting recreational vehicle use by employees and contractors along the RoW and discouraging unauthorized public vehicle access during construction through the use of signs;
- Monitoring access control in areas where access control has been employed such as areas of new cut or where the RoW is intercepted by other linear features on Crown lands;
- Outlining standard mitigation and management practices in the Environmental Protection Plan and implementing these practices to reduce cumulative effects resulting from the Project; and

- Providing training to all workers on site during construction such as employees, contractors, environmental monitors, and Aboriginal monitors. Workers will participate in the Project-specific and general environmental orientation program.

Only mitigation measures relevant to the specific Aboriginal and Treaty Rights or concern are described in subsequent sections.

### 5.2.2 National Energy Board Conditions

In assessing NGTL's Application, the NEB included conditions to which a Certificate of Public Convenience and Necessity would be subject under Section 52 of the *NEB Act* that are in addition to the pipeline integrity, safety and environmental protection legislation and standards to which the Project is already subject. There are several NEB Certificate conditions that are relevant to mitigating potential impacts of the Project on Aboriginal groups' hunting, fishing, and gathering activities, as well as sites of cultural importance. These conditions are described below:

- **Certificate Condition 1:** requires NGTL to comply with all of the conditions contained in the NEB Certificate unless the NEB otherwise directs;
- **Certificate Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process;
- **Certificate Condition 3:** requires NGTL to implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its application, subsequent filings or as otherwise agreed to during the hearing process;
- **Certificate Condition 6:** requires NGTL to provide, upon request, its filings with the NEB related to its Commitments Tracking Table. The Commitments Tracking Table lists all the commitments made by NGTL in its Project Application or in its related submissions;
- **Certificate Condition 7:** requires NGTL to file a Project-specific Environmental Protection Plan that would be implemented. The Environmental Protection Plan will describe all environmental protection procedures and mitigation and monitoring commitments set out in NGTL's application or in its related submissions;
- **Certificate Condition 8:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project;
- **Certificate Condition 9:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups and how revisions were incorporated into the final Environmental Protection Plan; and
- **Certificate Condition 23:** requires NGTL to file Post-Construction Environmental Monitoring Reports in the first, third and fifth complete growing seasons after completing final clean up. These reports must outline issues, progress and success of the measures implemented including

those pertaining but not limited to wildlife and wildlife habitat and any identified traditional use sites or areas of cultural value for all areas of the Project footprint. These reports must also include details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to issues and concerns raised.

There are several NEB- imposed Order conditions for the Project that are relevant to mitigating potential impacts from Section 58 activities on Aboriginal groups' hunting, fishing, and gathering activities, as well as sites of cultural importance. These conditions include:

- **Order Condition 1:** requires NGTL to comply with all of the conditions contained in the Order unless the NEB otherwise directs;
- **Order Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process;
- **Order Condition 3:** requires NGTL to implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its application, subsequent filings or as otherwise agreed to during the hearing process;
- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project;
- **Order Condition 5:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups, and how revisions were incorporated into the final Environmental Protection Plan;
- **Order Condition 6:** requires NGTL to file an updated Project-specific Environmental Protection Plan that would be implemented. The Environmental Protection Plan will describe all environmental protection procedures and mitigation and monitoring commitments set out in NGTL's application, its related submissions, or as otherwise agreed to during the hearing process; and
- **Order Condition 7:** requires NGTL to provide its filings with the NEB related to its Commitments Tracking Table. The Commitments Tracking Table lists all the commitments made by NGTL in its Project Application or in its related submissions.

Only NEB conditions relevant to the specific Aboriginal and Treaty Rights or other concerns are described in subsequent sections.

### 5.2.3 Hunting and Trapping

The Project is located in the Boreal White and Black Spruce Biogeoclimatic Zone. The Project is also located within Bird Conservation Region 6, which extends from the Northwest Territories in the north to Alberta, Saskatchewan and Manitoba in the south; 8% of Bird Conservation Region 6 is in northeast BC<sup>10</sup>.

NGTL identified 13 federally listed wildlife species that have the potential to inhabit the terrestrial Local Study Area (LSA) and Regional Study Area (RSA), 9 of which are listed on Schedule 1 of the *Species at Risk Act* (SARA). The 13 species include: western toad, barn swallow, Canada warbler, common nighthawk, great blue heron, horned grebe, olive-sided flycatcher, rusty blackbird, short-eared owl, yellow rail, little brown myotis, northern myotis, and wolverine. NGTL identified 14 provincially listed bird species that have been historically recorded in the terrestrial RSA, including: bay breasted warbler, black backed woodpecker, black throated green warbler, common yellow throat, Connecticut warbler, Le Conte's sparrow, least flycatcher, Nelson's sparrow, pileated woodpecker, short-eared owl, trumpeter swan, western tanager, western wood peewee, and yellow rail.

Traditional hunting and trapping activities are practiced by Aboriginal groups in the region, and remain an important part of their livelihoods. Species that are traditionally hunted include (but are not limited to): moose, elk, deer, mountain goats, rabbit, beaver, marten, ducks, geese, grebes, and grouse.

It is understood that Aboriginal groups' hunting and trapping activities depend, in part, on the status of wildlife populations within their area of traditional use. The LSA is intended to capture the direct and indirect impacts from the Project, while the RSA is intended to capture the area where the influence of other land uses and activities could overlap with Project-specific effects and result in cumulative adverse effects. Specific information pertaining to each Aboriginal group's hunting and trapping activities in the vicinity of the Project was identified by NGTL through traditional land use (TLU) and TK programs.

In section 9.6.1 of the NEB Recommendation Report, the NEB identifies expected interactions between the Project and the environment, and the potential adverse effects resulting from those interactions. The Project is expected to interact with the following environmental elements related to hunting and trapping activities: wildlife and wildlife habitat; species at risk or species of special status and related habitat; current traditional land and resource use; and, social and cultural well-being. Expected interactions between the Project and these elements during construction include: clearing, stripping, topsoil salvage, grading, trenching, backfilling, watercourse crossing, pad/foundation construction, infrastructure installation, as well as operation of equipment and vehicles, and construction-related influx of temporary workers. During operation, the Project could interact with these environmental elements as a result of operation of equipment and vehicles, vegetation clearing, and ongoing maintenance activities.

The following potential Project-related adverse environmental effects identified by the NEB are related to hunting and trapping activities:

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<sup>10</sup> <https://www.ec.gc.ca/mbc-com/default.asp?lang=En&n=C2CB4DD5-1>

- Alteration or loss of suitable habitat for all indicators (including furbearers/carnivores; old growth forest birds; olive-sided flycatcher; barn swallow; yellow rail; and western toad), due to vegetation clearing, fragmentation, and sensory disturbance;
- Changes to wildlife movement patterns due to the creation of barriers for moose, furbearers/carnivores, old growth forest birds, and western toad;
- Increased wildlife mortality and changes in wildlife abundance of old-growth forest birds, olive-sided flycatcher, barn swallow, yellow rail, and western toad, due to site clearing and construction activities;
- Changes in wildlife abundance and increased wildlife mortality of moose, furbearers/carnivores, and old growth forest birds due to increased predation, hunting and/or trapping;
- Changes in wildlife abundance and increased wildlife mortality for all indicators due to vehicle-wildlife collisions and sensory disturbance;
- Changes in access for land and resource users;
- Disturbance of hunting and trapping activities during construction and operation; and
- Disruption of community life by temporary workers.

According to the NEB, many potential effects associated with wildlife and wildlife habitat and migratory bird species, among others, can be effectively addressed through the use of standard mitigation practices and techniques<sup>11</sup>. The NEB also directed NGTL to follow applicable best practices identified in relevant *SARA* recovery strategies and management plans throughout the lifecycle of the Project.

In addition, the NEB provided a detailed analysis of key environmental issues in section 9.6.5 of the NEB Recommendation Report. Specific conclusions of the NEB in respect of potential effects of the Project that relate to hunting and trapping activities include:

- Low magnitude adverse effects to old growth forest bird habitat in the LSA that are medium- to long-term in duration and reversible; residual effects are not likely to be significant; and
- Low to moderate magnitude adverse effects to traditional land and resource use in the regional study area that are medium-term in duration and reversible; residual effects are not likely to be significant.

The NEB also considered the residual effects of the Project in combination with the effects of other past, present, and reasonably foreseeable projects and activities. In its assessment of cumulative effects, the NEB predominantly identified residual effects for certain valued components within a larger geographic

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<sup>11</sup> According to the NEB, standard mitigation refers to "...a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully and is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the Board." (p. 135, NEB Recommendation Report).

extent (beyond the LSA). Valued components identified by the NEB related to hunting and trapping activities include wildlife and wildlife habitat, species at risk, traditional land and resource use, and social and cultural well-being. The NEB concluded that once all mitigation measures have been applied, the residual effects would be minor and of limited duration and that it is unlikely that there would be significant cumulative environmental effects resulting from the Project. However, the NEB recognized that valued components such as wildlife and wildlife habitat, traditional land and resource use, and species at risk are experiencing and will likely continue to experience adverse cumulative effects due to current land use and activity in the region.

NGTL has committed to several mitigation measures that would help avoid or mitigate potential impacts of the Project on Aboriginal groups' hunting and trapping activities including:

- Any wildlife trails or other locations for wildlife identified in TLU studies in the Environmental Alignment Sheets;
- Implementing mitigation measures outlined in the Environmental Protection Plan and setback distances from nests of old growth forest birds to avoid incidental take from clearing and construction, and minimize sensory disturbances during construction, operation, and maintenance as much as possible;
- Requiring environmental inspectors to inspect the wolf den found along the RoW to ensure that the den is inactive prior to construction;
- Developing a Wildlife Species of Concern Discovery Contingency Plan which would be implemented when needed, such as the identification of any trees important to wildlife along the RoW; and
- Implementing mitigation measures in the Environmental Protection Plan in the event that mineral licks are found in the Project area.

In addition to those NEB Certificate conditions described in section 5.2.2, the following NEB Certificate conditions would help avoid or mitigate potential impacts of the Project on Aboriginal groups' hunting and trapping activities:

- **Certificate Condition 4:** requires NGTL to develop a plan to enhance the regeneration of vegetation on the construction RoW within or adjacent to old growth forest birds habitat such that the width of the operating RoW is reduced as much as possible and that habitat functionality of disturbed areas is returned as soon as possible;
- **Certificate Condition 12:** requires NGTL to file Breeding Bird Surveys and Protection Plans in the event of construction within the breeding and nesting period for migratory birds or restricted activity periods for non-migratory birds protected under provincial jurisdiction. NGTL shall retain a qualified avian biologist to carry out a pre-construction non-intrusive survey to identify any birds and active nests in the construction area; and

- **Certificate Condition 13:** requires NGTL to file Construction Progress Reports outlining the activities carried out during the reporting period, updates on the extent to which construction overlaps with environmentally sensitive periods and mitigation measures taken, any environmental, socio-economic, safety and security issues, and issue of non-compliance, as well as the measures undertaken for the resolution of each issue and non-compliance.

In addition to general Section 58 Order conditions imposed by the NEB (section 5.2.2), the following NEB Order condition would help avoid or mitigate potential impacts of the Project's Section 58 activities on Aboriginal groups' hunting and trapping activities:

- **Order Condition 9:** requires NGTL to file a Breeding Bird Survey and Protection Plan in the event of construction within the breeding and nesting period for migratory birds or restricted activity periods for non-migratory birds protected under provincial jurisdiction. NGTL shall retain a qualified avian biologist to carry out a pre-construction non-intrusive survey to identify any birds and active nests in areas surrounding construction activities; and
- **Order Condition 10:** requires NGTL to file Construction Progress Reports outlining the activities carried out during the reporting period, updates on the extent to which construction overlaps with environmentally sensitive periods and mitigation measures taken, any environmental, socio-economic, safety and security issues, and issue of non-compliance, as well as the measures undertaken for the resolution of each issue and non-compliance.

In consideration of concerns raised by Aboriginal groups during the NEB hearing and through Crown consultation, and in consideration of NEB conditions, the existing regulatory regime, and the interest and jurisdiction of the province of BC, the EAO is also proposing a number of conditions, which BC Ministers may attach to the provincial EA certificate, if approved. Conditions particularly relevant to avoiding or mitigating impacts on Aboriginal groups' hunting and trapping activities include:

- **EAO Condition:** would require Aboriginal consultation and that NGTL provide opportunities for Aboriginal groups to participate in monitoring activities during construction;
- **EAO Condition:** would require NGTL to prohibit hunting, fishing, trapping, and plant gathering by employees and contractors; and
- **EAO Condition:** would require NGTL to participate in regional cumulative effects initiatives at the request of government agencies.

#### 5.2.4 Fishing

The Project is located in the Pouce Coupé River and Kiskatinaw River sub-basins within the Upper Peace sub-basin of the Peace River. The Project crosses 24 watercourses including the Kiskatinaw and Pouce Coupé Rivers, and Sergeant, McQueen, and Coal Creeks, as well as 19 unnamed watercourses. Twenty-four fish species have the potential to inhabit watercourses crossed by the Project. Ten fish species with a provincial special conservation status are potentially present in the aquatic LSA, RSA, and/or Peace

River. Within the aquatic RSA, Arctic grayling and bull trout are species identified as primary concern since they represent species of management concern and are a commercial, recreational, or Aboriginal fishery species. None of the fish species documented in the aquatic RSA have a federal designation under the SARA or by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

TLU studies conducted for the Project indicate that fish species that are traditionally harvested by Aboriginal groups in the Project area include, but are not limited to Dolly Varden, Arctic grayling, lingcod, northern pike, bull trout, whitefish, sucker, squawfish, lake trout, rainbow trout, and walleye.

It is understood that an Aboriginal groups' fishing activities depend, in part, on the status and sensitivity of fish populations within their area of traditional use, the nature and timing of the disturbances and the effectiveness of mitigation, and the extent to which the Project could affect an Aboriginal group's access to and use of the area. Specific information pertaining to fishing activities in the vicinity of the Project was identified by NGTL through TLU and TK programs.

In section 9.6.1 of the NEB Recommendation Report, the NEB identifies expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions. The Project is expected to interact with the following environmental elements related to fishing activities: aquatic species and habitat; water quality and quantity; navigation and navigation safety; current traditional land and resource use; and, social and cultural well-being. Expected interactions between the Project and these environmental elements during construction and operation include:

- Construction activities (clearing, soil handling, stripping, topsoil salvage, grading, trenching, backfilling, watercourse crossing, pad/foundation construction, infrastructure installation);
- Construction of isolated, trenched and trenchless horizontal directional drilling watercourse crossings;
- Diversion of water during construction;
- Construction and operation of meter stations (altered surface conditions and land use changes);
- Water withdrawal and release for hydrostatic testing during construction;
- Excavation and backfilling for trenched watercourse crossings;
- Equipment and vehicle traffic during construction and operation; and
- Construction-related influx of temporary workers.

The following potential Project-related adverse environmental effects identified by the NEB are related to fishing activities:

- Redirection of runoff or change in groundwater quantity;
- Scour, bank erosion, or lateral migration of watercourses that may occur prior to the required reclamation activities occurring;
- Change in natural flow rates;

- Change in water quality due to release of hydrostatic test water resulting in potential surface water contamination and/or transfer of biota between watersheds;
- A change in habitat quality and/or quantity or disturbance of instream fish habitat;
- Alteration or removal of riparian vegetation;
- Increase in sediment load and sediment deposition in and downstream of the Row;
- Change in abundance and distribution of fish populations;
- Reduced success of spawning and rearing of fish;
- Direct harm to fish through entrainment, suffocation, release of deleterious substances, or mechanical damage;
- Disturbance of fishing activities during construction and operation;
- Disruption of watercourse users during construction;
- Decrease in access to navigable waters for waterway users, including Aboriginal communities; and
- Disruption of community life by temporary workers.

According to the NEB, many potential effects associated with fish and fish habitat and riparian habitat, among others, can be effectively addressed through the use of standard mitigation practices and techniques. The NEB also directed NGTL to follow applicable best practices identified in relevant SARA recovery strategies and management plans throughout the lifecycle of the Project.

In addition, the NEB provided a detailed analysis of key environmental issues in section 9.6.5 of the NEB Recommendation Report. In respect of potential impacts of the Project on fishing activities, the NEB concluded on effects to traditional land and resource use, which includes Aboriginal fishing activities. The NEB concluded that the Project is expected to have low to moderate magnitude adverse effects on traditional land and resource use in the RSA that are medium-term in duration and reversible. The NEB concluded that residual effects to traditional land and resource use are not likely to be significant.

The NEB also considered the residual effects of the Project in combination with the effects of other past, present, and reasonably foreseeable projects and activities. In its assessment of cumulative effects, the NEB predominantly identified residual effects for certain valued components within a larger geographic extent (beyond the LSA). Valued components identified by the NEB related to fishing activities include fish and fish habitat, traditional land and resource use, and social and cultural well-being. The NEB concluded that once all mitigation measures have been applied, the residual effects would be minor and of limited duration and that it is unlikely that there would be significant cumulative environmental effects resulting from the Project. However, the NEB recognized that several valued components, including traditional land and resource use, are experiencing and will likely continue to experience adverse cumulative effects due to the current land use and activity in the region.

NGTL has committed to several mitigation measures that would help avoid or mitigate potential impacts of the Project on Aboriginal groups' fishing activities including:

- Implementing permanent bank reclamation measures;
- Screening of all water intakes and conducting all crossings in accordance with Department of Fisheries and Oceans Canada requirements;
- Restricting construction to the approved RoW and narrowing the RoW through riparian areas if possible;
- Developing water quality monitoring plans to monitor for sediment events during instream construction activities and taking corrective actions when necessary. In the event that corrective actions are not successful, construction activities would be temporarily suspended until effective solutions are identified;
- Committing to use horizontal directional drilling at four sites, crossing five waterways; and
- Following the post construction monitoring plan laid out in NGTL's response to Information Request 3.15 during the NEB hearing process<sup>12</sup>, which includes specific measurable evaluation criteria and targets for plant growth and composition, surface drainage, coarse fragments and micotopography, and soils and topsoil.

In addition to those NEB Certificate conditions described in section 5.2.2, the following NEB Certificate conditions would help avoid or mitigate potential impacts of the Project on Aboriginal groups' fishing activities:

- **Certificate Condition 13:** requires NGTL to file Construction Progress Reports outlining the activities carried out during the reporting period, updates on the extent to which construction overlaps with environmentally sensitive periods and mitigation measures taken, any environmental, socio-economic, safety and security issues and issue of non-compliance, as well as the measures undertaken for the resolution of each issue and non-compliance;
- **Certificate Condition 14:** requires NGTL to complete a watercourse crossing inventory to finalize watercourse crossing site-specific information within their watercourse crossing inventory prior to construction. This will include an updated inventory of all watercourses to be crossed, detailed generic drawings of crossing methods, site-specific information for each crossing, and a summary of consultations with potentially-impacted Aboriginal groups, among others;
- **Certificate Condition 15:** requires NGTL to notify the NEB of any changes or implementation of contingency water course crossings instead of its proposed primary method;
- **Certificate Condition 16:** requires NGTL to provide confirmation that any required *Fisheries Act* authorizations were obtained; and

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<sup>12</sup> <https://apps.neb-one.gc.ca/REGDOCS/Item/View/2949629>

- **Certificate Condition 18:** requires NGTL to file with the NEB site specific drilling execution plans for crossings requiring horizontal directional drilling, including site-specific mitigation measures undertaken to minimize the risk of potential frac-outs and other drilling failures.

General Section 58 Order conditions imposed by the NEB are described in section 5.2.2. These conditions have been considered by the EAO to help avoid or mitigate potential impacts of the Project's Section 58 activities on Aboriginal groups' fishing activities.

In consideration of concerns raised by Aboriginal groups during the NEB hearing and through Crown consultation, and in consideration of NEB conditions, the existing regulatory regime, and the interest and jurisdiction of the province of BC, the EAO is also proposing a number of conditions, which BC Ministers may attach to the provincial EA certificate, if approved. Conditions particularly relevant to avoiding or mitigating impacts on Aboriginal groups' fishing activities include:

- **EAO Condition:** would require Aboriginal consultation and that NGTL provide opportunities for Aboriginal groups to participate in monitoring activities during construction;
- **EAO Condition:** would require NGTL to prohibit hunting, fishing, trapping, and plant gathering by employees and contractors; and
- **EAO Condition:** would require NGTL to participate in regional cumulative effects initiatives at the request of government agencies.

### 5.2.5 Gathering

The majority of the terrestrial LSA for the Project is located in the Moist Warm Boreal White and Black Spruce geo-climatic subzone, with the remaining portions of the LSA in the Dry Mixedwood and Lower Foothills subregions. Common trees found in these subregions include white spruce, trembling aspen, lodgepole pine, black spruce, jack pine, white birch, balsam fir, tamarack, and balsam poplar. Populations of creeping thistle, perennial sow thistle, and scentless chamomile were observed in and adjacent to the Project footprint during the 2014 and 2015 vegetation field surveys conducted by NGTL. NGTL also observed 17 unregulated nuisance weed species in and adjacent to the Project.

A portion of the Project's LSA is in Zone 2 of the BC Agricultural Land Reserve. As a result, the majority of the LSA overlaps with a land use zone in which agriculture is recognized as the priority use. The soil LSA and RSA contain agricultural lands and forested lands with agricultural capability. The majority of the soil LSA has a high to very high risk of compaction and rutting, as well as a high risk of water erosion, and a low risk of wind erosion.

A total of 14 historical occurrences of provincially listed plant species were recorded at 21 locations in the Project footprint, terrestrial LSA, and terrestrial RSA. Three BC provincially listed plant species (i.e. golden saxifrage, spotted coralroot, and striped coralroot) were observed by NGTL at two locations during the 2014 and 2015 vegetation field surveys; two of the species were observed within the Project footprint. The Project footprint and terrestrial LSA do not support habitat for federally listed plant

species. A single ecological community, narrow-leaf willow shrubland, was documented in the Project footprint during the 2014 and 2015 vegetation field surveys.

The Project footprint, transects 29 wetlands totalling 5 ha. Most wetlands are non-peaty (mineral) wetlands that consist mainly of forested swamp, temporary wetlands, and semi-permanent ponds and lakes.

TLU studies conducted for the Project indicate that plant species traditionally harvested by Aboriginal groups in the Project area include, but are not limited to: berries, medicinal plants, and other food plants such as: diamond willow, fireweed, aspen bark, rat root, caribou moss, horsetail, peppermint, rat root, lowbush blueberry, chokecherries highbush blueberry, huckleberries, raspberries, high- and low-bush cranberries, strawberries, Saskatoon berries, mint tea, trapper's tea, wild onions, wild rhubarb, rosehips, dandelions, water parsnips, wild carrot bluebells, and birch sap.

It is understood that an Aboriginal group's gathering activities depend, in part, on the status of vegetation within their area of traditional use. The nature and extent of effects would depend on the inherent sensitivity and prevalence of vegetation communities, the nature and timing of the disturbances, and the effectiveness of mitigation. Specific information pertaining to plant harvesting and traditional use activities in the vicinity of the Project was identified by NGTL through TLU and TK programs.

In section 9.6.1 of the NEB Recommendation Report, the NEB identifies expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions. The Project is expected to interact with the following environmental elements related to gathering activities: soil and soil productivity; vegetation; wetlands; species at risk or species of special status and related habitat; current traditional land and resource use; and, social and cultural well-being. Expected interactions between the Project and these environmental elements during construction and operation include:

- Construction activities (clearing, stripping, topsoil salvage, grading, trenching, backfilling, watercourse crossing, pad/foundation construction, infrastructure installation);
- Vegetation clearing and ongoing maintenance activities during operation;
- RoW cleanup and reclamation;
- Introduction or proliferation of prohibited noxious or noxious weeds from equipment/activity;
- Revegetation of the Project footprint;
- Operation of equipment and vehicles during construction and operation; and
- Construction-related influx of temporary workers.

The following potential Project-related adverse environmental effects identified by the NEB are related to gathering activities:

- Change in areal extent of productive soil;
- Change in soil capability or quality due to topsoil-subsoil admixing, compaction, and rutting or undesirable (saline) subsoil in the root zone;
- Loss or alteration of terrestrial vegetation important to wildlife and humans;
- Change in vegetation community type;
- Alteration of native species composition in the Project footprint;
- Loss or alteration of listed plant species or listed ecological communities;
- Alteration of wetland area;
- Alteration of wetland habitat important to wildlife, vegetation, and humans;
- Introduction or proliferation of noxious invasive, non-native plant species resulting in loss or alteration of native wetland communities;
- Alteration of wetland health and function (including hydrological and water quality);
- Change in access for land and resource users;
- Alteration of plant gathering sites during construction and operation; and
- Disruption of community life by temporary workers.

According to the NEB, many potential effects of the Project can be effectively addressed through the use of standard mitigation practices and techniques. The NEB also directed NGTL to follow applicable best practices identified in relevant *SARA* recovery strategies and management plans throughout the lifecycle of the Project.

In addition, the NEB provided a detailed analysis of key environmental issues in section 9.6.5 of the NEB Recommendation Report. Specific conclusions of the NEB in respect of potential effects of the Project that relate to gathering activities include:

- Moderate magnitude adverse effects associated with revegetation, which would be localized in the Project footprint, medium-term in duration and reversible; residual effects are not likely to be significant; and
- Low to moderate magnitude adverse effects to traditional land and resource use in the regional study area that are medium-term in duration and reversible; residual effects are not likely to be significant.

The NEB also considered the residual effects of the Project in combination with the effects of other past, present, and reasonably foreseeable projects and activities. In its assessment of cumulative effects, the NEB predominantly identified residual effects for certain valued components within a larger geographic extent (beyond the LSA). Valued components with residual effects within a larger geographic extent

related to gathering activities include soil and soil productivity, vegetation, wetlands, traditional land and resource use, and social and cultural well-being. The NEB concluded that once all mitigation measures have been applied, the residual effects would be minor and of limited duration and that it is unlikely that there would be significant cumulative environmental effects resulting from the Project. However, the NEB recognized that several valued components, including vegetation, wetlands, species at risk, and traditional land and resource use, are experiencing and will likely continue to experience adverse cumulative effects due to the current land use and activity in the region.

NGTL has committed to several mitigation measures that would help avoid or mitigate potential impacts of the Project on Aboriginal groups' gathering activities including:

- Implementing measures to reduce potential impacts on traditional plant gathering activities and providing opportunities for Aboriginal groups to harvest before construction;
- Conducting pre-construction treatment and control of noxious weed infestations where site specific circumstances warrant such treatment;
- Limiting disturbance to crop and native vegetation to the extent practical and restricting the general application of herbicide near rare plants or rare ecological communities;
- Relying on natural revegetation in an attempt to limit the introduction of non-native species along the RoW and temporary work spaces. NGTL indicated that natural revegetation is preferable since it more closely resembles native vegetation communities with higher species richness and fewer invasive species;
- Monitoring the establishment of vegetation after Project construction and using quantifiable targets to evaluate the recovery of vegetation (e.g. per cent cover, plant growth, species composition, and per cent of undesirable species). In the event recovery targets are not met in an area, NGTL will use other methods such as seeding or planting;
- Determining whether the Twin Sisters Nursery has the desired plant materials necessary for revegetation and, if so, sourcing these materials from the aforementioned nursery on commercially reasonable terms;
- Leaving high edge-to-area ratios in an attempt to facilitate the dispersion of seeds for native vegetation communities;
- Salvaging strippings that contain forest floor material in an attempt to promote natural recovery by preserving native seedbank;
- Undertaking a vegetation assessment for vegetation within the RoW that is different than a comparable control site;
- Implementing active reclamation in some environmentally sensitive areas, including riparian areas and areas prone to erosion; and
- Refining the route in order to reduce the area of the Tower Lake Section of the Project within identified wetlands from 2.2 to 0.23 ha.

In addition to those NEB Certificate conditions described in section 5.2.2, the following NEB Certificate conditions would help avoid or mitigate potential impacts of the Project on Aboriginal groups' gathering activities:

- **Certificate Condition 4:** requires NGTL to develop a plan to enhance the regeneration of vegetation on the construction RoW within or adjacent to old growth forest birds habitat such that the width of the operating RoW is reduced as much as possible and that habitat functionality of disturbed areas is returned as soon as possible. The plan is required to include, among other things, a description of the strategies for regeneration of the RoW, procedures for RoW width reduction and vegetation management on the RoW during Project operation, and a summary of NGTL's consultation with potentially-impacted Aboriginal groups;
- **Certificate Condition 13:** requires NGTL to file Construction Progress Reports outlining the activities carried out during the reporting period, updates on the extent to which construction overlaps with environmentally sensitive periods and mitigation measures taken, any environmental, socio-economic, safety and security issues and issue of non-compliance, as well as the measures undertaken for the resolution of each issue and non-compliance.

General Section 58 Order conditions imposed by the NEB are described in section 5.2.2. These conditions have been considered by the Crown to help avoid or mitigate potential impacts of the Project's Section 58 activities on Aboriginal groups' gathering activities.

In consideration of concerns raised by Aboriginal groups during the NEB hearing and through Crown consultation, and in consideration of NEB conditions, the existing regulatory regime, and the interest and jurisdiction of the province of BC, the EAO is also proposing a number of conditions, which BC Ministers may attach to the provincial EA certificate, if approved. Conditions particularly relevant to avoiding or mitigating impacts on Aboriginal groups' gathering activities include:

- **EAO Condition:** would require Aboriginal consultation and that NGTL provide opportunities for Aboriginal groups to participate in monitoring activities during construction;
- **EAO Condition:** would require a vegetation management plan that includes the requirement to consult Aboriginal groups in the development of the plan;
- **EAO Condition:** would require NGTL to prohibit hunting, fishing, trapping, and plant gathering by employees and contractors; and
- **EAO Condition:** would require NGTL to participate in regional cumulative effects initiatives at the request of government agencies.

### 5.2.6 Sites of Cultural Importance

Throughout the region there are important cultural heritage sites for Aboriginal groups. Uses and general locations of sacred sites, such as healing areas, ceremonial sites, sweat lodges, burial grounds, and other areas of cultural and spiritual importance have been identified by Aboriginal communities. Similarly, habitation sites for Aboriginal groups also exist in the area, including campsites. These

habitation sites may be used for short-term and long-term occupation. To access these sacred and habitation sites, Aboriginal groups often use long-established trails and travelways. These travel ways continue to connect communities with one another and to important harvesting and hunting areas, and so have become a network of traditional use.

An Archaeological Impact Assessment (AIA) was conducted along the entire proposed route in BC. At the time of the NEB hearing process the AIA was not complete, but had identified an initial seven archaeological sites in the Project footprint. NGTL noted that the Project would not cross any previously-designated paleontological sites.

The NEB identifies expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions in section 9.6.1 of the NEB Recommendation Report. The Project is expected to interact with the following environmental elements related to sites of cultural importance: heritage resources; current traditional land and resource use; and, social and cultural well-being. Expected interactions between the Project and these environmental elements during construction and operation include:

- Construction activities (clearing, stripping, topsoil salvage, grading, trenching, backfilling, watercourse crossing, pad/foundation construction, infrastructure installation);
- Equipment and vehicle traffic during construction and operation; and
- Construction-related influx of temporary workers.

The following potential Project-related adverse environmental effects identified by the NEB are related to sites of cultural importance:

- Disturbance to, or loss of, previously recorded or undiscovered heritage sites;
- Disturbance to use of trails and travelways during construction and operation;
- Disruption of gathering places and sacred sites during construction and operation;
- Disruption of community life by temporary workers; and
- Change in access for land and resource users.

According to the NEB, many potential effects of the Project can be effectively addressed through the use of standard mitigation practices and techniques. The NEB also directed NGTL to follow applicable best practices identified in relevant *SARA* recovery strategies that outline regeneration requirements and management plans throughout the lifecycle of the Project.

In addition, the NEB provided a detailed analysis of key environmental issues in section 9.6.5 of the NEB Recommendation Report. Specific conclusions of the NEB in respect of potential effects of the Project that relate to sites of cultural importance include:

- Moderate magnitude adverse effects to heritage resources in the Project footprint that are short-term in duration and reversible; residual effects are not likely to be significant; and

- Low to moderate magnitude adverse effects to traditional land and resource use in the regional study area that are medium-term in duration and reversible; residual effects are not likely to be significant.

The NEB also considered the residual effects of the Project in combination with the effects of other past, present, and reasonably foreseeable projects and activities. In its assessment of cumulative effects, the NEB predominantly identified residual effects for certain valued components within a larger geographic extent (beyond the LSA). Valued components with residual effects within a larger geographic extent related to sites of cultural importance include traditional land and resource use and social and cultural well-being. The NEB concluded that once all mitigation measures have been applied, the residual effects would be minor and of limited duration and that it is unlikely that there would be significant cumulative environmental effects resulting from the Project. However, the NEB recognized that several valued components, including traditional land and resource use, are experiencing and will likely continue to experience adverse cumulative effects due to the current land use and activity in the region.

NGTL has committed to several mitigation measures that would help avoid or mitigate potential impacts of the Project on Aboriginal groups' sites of cultural importance including:

- Continuing to work with Aboriginal groups to identify any potential heritage resource sites or culturally sensitive sites before construction and working with local Aboriginal communities to develop appropriate mitigation measures in the event a site is identified;
- Training environmental inspectors and on-site construction personnel about heritage resources potential and the Heritage Resources Discovery Contingency Plan;
- Implementing the TLU Site Discovery Contingency Plan if any TLU sites, including travelways, are identified along the RoW; and
- Providing construction schedule, pipeline route, and meter station maps, and implementing mitigation measures as described in the TLU Site Discovery Contingency Plan, in the event that a pack trail is identified within the RoW prior to construction.

In addition to those NEB Certificate conditions described in section 5.2.2, the following NEB Certificate condition would help avoid or mitigate potential impacts of the Project on Aboriginal groups' sites of cultural importance:

- **Certificate Condition 11:** requires NGTL to file confirmation that all archaeological and heritage resource clearances and authorizations have been obtained from appropriate provincial agencies. NGTL must also describe how conditions in the clearances and authorizations will be met, as well as describe how any additional mitigation measures have been incorporated into the Environmental Protection Plan as a result of conditions.

General Section 58 Order conditions imposed by the NEB are described in section 5.2.2. These conditions have been considered by the Crown to help avoid or mitigate potential impacts of the Project's Section 58 activities on Aboriginal groups' sites of cultural importance.

In consideration of concerns raised by Aboriginal groups during the NEB hearing and through Crown consultation, and in consideration of NEB conditions, the existing regulatory regime, and the interest and jurisdiction of the province of BC, the EAO is also proposing a number of conditions, which BC Ministers may attach to the provincial EA certificate, if approved. Conditions particularly relevant to avoiding or mitigating impacts on Aboriginal groups' sites of cultural importance include:

- **EAO Condition:** would require Aboriginal consultation and that NGTL provide opportunities for Aboriginal groups to participate in monitoring activities during construction;
- **EAO Condition:** would require NGTL to engage with Aboriginal groups to seek to identify opportunities for cultural awareness and recognition;
- **EAO Condition:** would require NGTL to engage Aboriginal groups on the reporting, management and mitigation of impacts on heritage values; and
- **EAO Condition:** would require NGTL to participate in regional cumulative effects initiatives at the request of government agencies.

## **6 Issues raised by Aboriginal groups during the regulatory review and Crown consultation processes**

Aboriginal groups raised a number of common issues during the NEB review and Crown consultation. This is a summary of the key issues raised by Aboriginal groups and does not represent the views of the Crown. This section also identifies mitigation measures that address issues and concerns identified by potentially-impacted Aboriginal groups.

### **6.1 Effect of pipeline watercourse crossings during construction**

#### ***Issue***

Concerns were expressed that the construction of watercourse crossings may negatively affect the riparian zone and water quality.

Aboriginal groups raised concerns that the banks of the Kiskatinaw and Pouce Coupé Rivers are unstable and disturbance from a watercourse crossing could have effects on the river banks and the river itself.

The use of horizontal directional drilling at watercourse crossings could result in frac-out events that effect the water and surrounding areas.

Aboriginal groups indicated that the biophysical effects assessment in riparian areas performed by NGTL was incomplete and failed to take traditional knowledge and land use into consideration. During the hearing phase, the NEB outlined a draft Certificate condition requiring a Riparian Habitat Management Plan, including post-construction monitoring over the first five years, that Aboriginal groups felt addressed some of their concerns. In the final NEB Recommendation Report this condition was not

included as presented in the draft conditions and many Aboriginal groups expressed that they did not feel their views were adequately represented in the final conditions.

### ***NGTL Commitments***

NGTL made specific commitments during the NEB hearing process that are relevant to mitigating the Project's potential effects on waterways during construction including:

- Implement permanent bank reclamation measures post-construction;
- Screen all water intakes and conduct all crossings in accordance with Department of Fisheries and Oceans requirements;
- Restrict construction to approved RoW and narrow the RoW through riparian areas if possible;
- Develop water quality monitoring plans to monitor for sediment events during instream construction activities and take corrective actions when necessary. If corrective actions are not successful, construction activities would be temporarily suspended until effective solutions are identified and put in place;
- Use HDD for the four major water crossings under five waterways to limit disturbance to the river banks through avoidance;
- Include detailed mitigation measures as part of the Environmental Protection Plan;
- Follow the post-construction monitoring plan laid out in NGTL's response to Information Request 3.15 during the NEB hearing process. This plan includes monitoring of riparian zones and outlines specific measurable evaluation criteria and targets for plant growth and composition, surface drainage, coarse fragments and microtopography, soil colour, soil compaction, soil texture and topsoil thickness; and
- Develop Project mitigation to allow wetlands to return to the same level of function as documented in pre-construction surveys.

### ***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions to mitigate potential Project-related effects to watercourse crossings during and post construction:

- **Certificate Condition 8:** requires NGTL to file a plan for Aboriginal participation in the monitoring of construction and post-construction activities;
- **Certificate Condition 14:** requires NGTL to finalize watercourse crossing site-specific information within their watercourse crossing inventory prior to construction;
- **Certificate Condition 15:** requires NGTL to notify the NEB of any changes or implementation of contingency water course crossings;
- **Certificate Condition 16:** requires NGTL to provide confirmation that any required authorizations under the *Fisheries Act* were obtained;

- **Certificate Condition 18:** requires NGTL to file with the NEB site specific drilling execution plans for crossings requiring horizontal directional drilling; and
- **Certificate Condition 23:** requires NGTL to file Post-Construction Environmental Monitoring Reports in the first, third and fifth complete growing seasons after final clean up. These reports outline issues, progress and success of the measures implemented; as well as details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to them.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered relevant to potential effects of the Project's watercourse crossings:

- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project;
- **Order Condition 6:** requires NGTL to file an updated Project-specific Environmental Protection Plan that will describe all environmental protection procedures and mitigation and monitoring commitments set out in NGTL's application, its related submissions, or as otherwise agreed to during the hearing process; and
- **Order Condition 10:** requires NGTL to file progress reports during construction of Section 58 activities, including an update on the extent to which construction activities overlap with environmentally sensitive periods (e.g., the migratory bird nesting period, Western Toad breeding period, restricted activity periods for watercourses) and any mitigation measures required and implemented to reduce the risk of adverse impacts during the environmentally sensitive periods.

### ***Crown's conclusion***

The Crown acknowledges that water quality is important to Aboriginal people and can impact their use and enjoyment of the land. The Crown is of the view that the commitments made by NGTL and the NEB conditions provide assurances that potential adverse effects to waterways and riparian zones during construction would be minimized. NGTL's commitment to use HDD and to develop a water quality monitoring plan would minimize and mitigate effects on riparian zones and water quality. NEB Certificate Condition 8 provides an opportunity for Aboriginal groups to participate in the monitoring of construction activities to ensure that activities are carried out in a way that reduces any potential adverse effects to waterways.

The draft condition on the development of a Riparian Habitat Management Plan was addressed through commitments outlined in the NEB hearing process by NGTL through Information Request 3<sup>13</sup>. NGTL

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<sup>13</sup> <https://apps.neb-one.gc.ca/REGDOCS/Item/View/2949629>

committed to follow a post-construction monitoring plan, including monitoring of riparian zones through specific measurable evaluation criteria and targets, as outlined in the NGTL commitments above.

To further ensure continued monitoring on all areas affected by the Project, the NEB included Certificate condition 23 which requires post-construction monitoring reports be filed at the end of the first, third, and fifth years post construction to ensure that revegetation efforts are meeting the established targets.

The EAO is proposing conditions that may accompany a provincial EA Certificate, should one be granted for the Project, that would further mitigate the potential for adverse effects to watercourses. With respect to the issue raised by Aboriginal groups that NGTL did not take traditional knowledge and land use into consideration in its the biophysical effects assessment in riparian areas, the EAO is proposing a condition which would require NGTL to continue to engage with Aboriginal groups and demonstrate how any new information, including TLU information, obtained through engagement has been considered. The EAO has also proposed a condition that would require NGTL to provide opportunities for Aboriginal groups to participate in monitoring activities during construction.

Taken together, the Crown is satisfied that the concerns raised regarding potential Project effects to watercourses have been reasonably accommodated by these conditions and commitments.

## **6.2 Direct environmental effects on wildlife and wildlife habitat, including wetlands, during construction phase**

### ***Issue***

Aboriginal groups indicated that the loss, alteration, access to, and fragmentation of the natural landscape in the region may affect the movement patterns of wildlife in the area, particularly predators, birds, moose, and small mammals.

Groups raised concerns that clearing a RoW for pipelines in forested areas may negatively affect wildlife habitat through the destruction of areas such as wetlands, trees of importance to migratory birds, dens (bear and wolf), and mineral licks.

It was indicated by Aboriginal groups that NGTL has not provided detailed plans for the protection of wildlife and wildlife habitat, including mineral licks in the Project area.

### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are most relevant to minimizing direct effects on wildlife and wildlife habitat:

- Implementation of an Aboriginal Construction Participation Plan, allowing concerns of Aboriginal groups to be considered during and post-construction;

- NGTL has redefined the route in order to reduce the Tower Lake Section within identified wetlands from approximately 2.2 hectares to 0.23 hectares;
- NGTL has aligned 82% of the Project RoW with existing RoWs or other linear disturbances to minimize the need for new disturbance;
- NGTL will not clear native species from the RoW that do not raise operational and integrity concerns;
- Any wildlife trails or other locations for wildlife identified in TLU studies will be included in Environmental Alignment Sheets;
- Reduction of the width of permanent RoW to be maintained during operations. A 5 m setback from each side of centerline will be applied as a maximum distance in environmentally sensitive areas (e.g., wetlands, riparian areas, and old growth forest bird habitats);
- Mitigation measures outlined in the Environmental Protection Plan and setback distances from nests of old growth forest birds will be implemented to avoid incidental take from clearing and construction, and minimize sensory disturbances during construction, operation, and maintenance as much as possible;
- Environmental Inspectors will inspect the wolf den found along the RoW to ensure that the den is inactive prior to construction;
- NGTL will develop a Wildlife Species of Concern Discovery Contingency Plan which will be implemented when needed such as the identification of any trees important to wildlife along the right of way; and
- In the event that mineral licks are found in the Project area, NGTL will implement mitigation measures outlined in the Environmental Protection Plan.

***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions that are relevant to minimizing direct effects on wildlife and wildlife habitat including:

- **Certificate Condition 4:** requires NGTL to develop a plan to enhance the regeneration of vegetation on the construction RoW within or adjacent to old growth forest birds habitat such that the width of the operating RoW is reduced as much as possible and that habitat functionality of disturbed areas is returned as soon as possible;
- **Certificate Condition 6:** requires NGTL to provide, upon a group's request, NGTL's filings with the NEB related to its Commitments Tracking Table. The Commitments Tracking Table lists all the commitments made by NGTL in its Project Application or in its related submissions;
- **Certificate Condition 7:** requires NGTL to file a Project specific Environmental Protection Plan that will be implemented describing all environmental protection procedures; and mitigation and monitoring commitments;

- **Certificate Condition 8:** requires NGTL to file an Aboriginal Monitoring Plan for during and post-construction of the Project;
- **Certificate Condition 9:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns and how revisions were incorporated into the final Environmental Protection Plan;
- **Certificate Condition 12:** Requires NGTL to file Breeding Bird Surveys and Protection Plans in the event of construction within the breeding and nesting period for migratory birds or restricted activity periods for non-migratory birds protected under provincial jurisdiction. NGTL shall retain a qualified avian biologist to carry out a pre-construction non-intrusive survey to identify any birds and active nests in the construction area; and
- **Certificate Condition 13:** requires NGTL to file Construction Progress Reports on the 1<sup>st</sup> and 16<sup>th</sup> of each month outlining the activities carried out that month including: an update on extent to which construction overlaps with environmentally sensitive periods and mitigation measures taken; any environmental, socio-economic, safety and security issues, and issue of non-compliance; and the measures take for resolutions of each issue or non-compliance.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to minimizing effects on wildlife and wildlife habitat:

- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project;
- **Order Condition 5:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups, and how revisions were incorporated into the final Environmental Protection Plan;
- **Order Condition 6:** requires NGTL to file an updated Project-specific Environmental Protection Plan that would be implemented describing all environmental protection procedures and mitigation and monitoring commitments set out in NGTL's application, its related submissions, or as otherwise agreed to during the hearing process;
- **Order Condition 7:** requires NGTL to provide its filings with the NEB related to its Commitments Tracking Table that lists all the commitments made by NGTL in its Project Application or in its related submissions;
- **Order Condition 9:** requires NGTL to file a Breeding Bird Survey and Protection Plan in the event of construction within the breeding and nesting period for migratory birds or restricted activity periods for non-migratory birds protected under provincial jurisdiction. NGTL shall retain a qualified avian biologist to carry out a pre-construction non-intrusive survey to identify any birds and active nests in areas surrounding construction activities; and
- **Order Condition 10:** requires NGTL to file progress reports during construction of Section 58 activities, including an update on the extent to which construction activities overlap with environmentally sensitive periods (e.g., the migratory bird nesting period, Western Toad

breeding period, restricted activity periods for watercourses) and any mitigation measures required and implemented to reduce the risk of adverse impacts during the environmentally sensitive periods.

### ***Crown's conclusion***

During consultation, Aboriginal groups reflected the importance of protecting wildlife and wildlife habitat including wetlands, breeding bird habitat, and mineral licks. NGTL has made a number of commitments to address these concerns, including adjustments to route selection and the development of processes to address sites of specific importance to Aboriginal groups as they are identified along the RoW.

NGTL has selected a route in which 82% of the RoW follows either existing RoWs or linear disturbances. Following inquiries from Aboriginal groups, the route was further adjusted to reduce the amount of the Tower Lake Section within identified wetlands from approximately 2.2 ha to 0.23 ha. Further adjustments may be made through detailed route decisions, should the Certificate of Public Convenience and Necessity be granted. The Crown anticipates further opportunity for engagement of potentially-impacted Aboriginal groups with the NEB and BC permitting agencies throughout construction of the Project.

To ensure the development and implementation of protection procedures or mitigation measures for effects to wildlife and wildlife habitat, the NEB has included a number of Certificate conditions. Certificate Condition 7 requires NGTL to file an Environmental Protection Plan outlining all environmental protection procedures that would be implemented throughout Project construction. Certificate Condition 4 requires NGTL develop a regeneration plan that includes narrowing the RoW and ensuring that habitat is restored as quickly as possible in breeding bird habitat in areas of old growth forest. Certificate Conditions 12 and 13 require that NGTL report on construction status for the entire Project and perform breeding bird surveys and protection plans should construction occur within the breeding and nesting period for migratory birds or restricted activity periods for non-migratory birds protected under provincial jurisdiction.

The Crown understands that Aboriginal groups are well placed to provide information on wildlife and habitat within their areas of traditional use. NEB Certificate Condition 9 underlines that importance and includes a requirement that NGTL include Aboriginal knowledge obtained through TLU or traditional use studies in Project planning. The importance of traditional knowledge would also be supported through the inclusion of Aboriginal groups in monitoring of the Project, which would ensure ongoing dialogue with NGTL throughout construction and post construction as outlined in Certificate Conditions 8, 20, and 23.

The EAO is proposing conditions that may accompany a provincial Environmental Assessment Certificate, should one be granted for the Project that would further mitigate the potential for adverse environmental effects on wildlife habitat. These proposed conditions would include requirements for NGTL to:

- Demonstrate how any new information, including TLU information, obtained through engagement would be considered;
- Provide opportunities for Aboriginal groups to participate in monitoring activities during construction; and
- Participate in regional cumulative effects initiatives at the request of government agencies.

The Crown notes that the BC Ministry of Forests, Lands, and Natural Resource Operations, recently committed to investing additional resources to help increase moose populations. The commitment is a response to the *Strategy to Help Restore Moose Populations in British Columbia*<sup>14</sup>, which outlines 21 actions including: reducing the number of limited-entry hunts for moose cows and calves; preparing moose management plans for the Peace, Omineca and Cariboo regions; using existing tools to increase habitat protection; and expanding moose survey work to include calf mortality.

The Crown is of the view that taken together, these conditions and commitments would ensure that long term environmental effects to both wildlife and wildlife habitat resulting from this Project would be monitored and minimized.

### **6.3 Adequacy of employee training for environmentally sensitive areas and sites of cultural importance**

#### ***Issue***

It was perceived that NGTL employees had a lack of understanding with respect to TLU and sites of cultural importance which often results in disrespectful conduct in the area. This is seen by Aboriginal groups as disrespectful to both the site and associated Aboriginal community. A draft NEB condition outlining employee training for NGTL addressed some of the Aboriginal concerns, and not including this condition in the NEB Recommendation Report was noted by some Aboriginal groups as a failure to address their concerns.

#### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are most relevant to the adequacy of training for environmentally sensitive sites and site of cultural importance including:

- Provide training through an orientation program to all workers on site during construction. Employees, contractors, environmental monitors and Aboriginal monitors will participate in the NGTL Project specific and general environmental orientation program; and

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<sup>14</sup> <http://www.env.gov.bc.ca/fw/wildlife/management-issues/docs/Restoring-and-Enhancing-Moose-Populations-in-BC-July-8-2016.pdf>

- Provide environmental inspectors and on-site construction personnel with training on heritage resources potential and the Heritage Resources Discovery contingency Plan.

### ***NEB Conditions that serve to address this issue***

The NEB included the following Certificate conditions that are most relevant to the adequacy of training for environmentally sensitive sites and site of cultural importance:

- **Certificate Condition 2** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Certificate Condition 11** requires NGTL to confirm that all archaeological and heritage resource clearances and authorizations have been obtained from Alberta Department of Culture and the BC Ministry of Forest, Lands, and Natural Resource Operations. In addition, NGTL will have to describe any additional mitigation measures incorporated into its Environmental Protection Plan as a result of conditions imposed by provincial authorities.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to environmentally sensitive sites and site of cultural importance:

- **Order Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Order Condition 10:** requires NGTL to file progress reports during construction of Section 58 activities, including an update on the extent to which construction activities overlap with environmentally sensitive periods (e.g., the migratory bird nesting period, Western Toad breeding period, restricted activity periods for watercourses) and any mitigation measures required and implemented to reduce the risk of adverse impacts during the environmentally sensitive periods.

### ***Crown's conclusion***

Proper handling and respecting environmentally sensitive sites and TLU sites is important so that areas may continue to be used by Aboriginal groups for cultural purposes. NGTL has committed to providing environmental orientations and training on heritage resources to all workers on the Project prior to construction.

The content and requirements of archaeological and heritage resources clearances are not within federal jurisdiction. The NEB has required through Certificate Condition 11 that all archaeological and heritage resource clearances and authorizations from provincial regulators are obtained and mitigation measures developed.

The EAO is proposing conditions that may accompany a provincial EA Certificate, should one be granted for the Project, that would further mitigate the potential for adverse effects that relate to sites of cultural importance. These proposed conditions require NGTL to demonstrate how any new information, including TLU information, obtained through engagement has been considered, engage with Aboriginal groups to seek to identify opportunities for cultural awareness and recognition, and engage Aboriginal groups on the reporting, management and mitigation of impacts on heritage values.

The Crown concludes that conditions and commitments imposed on NGTL, would ensure that employees are educated on environmentally sensitive areas and TLU sites.

#### **6.4 Adequacy of Revegetation Plans**

##### ***Issue***

Aboriginal groups expressed concerns that the proposal for natural revegetation is considered insufficient for the RoW and temporary work areas, particularly in areas of old growth forest.

Concerns were raised that seed mixes used in revegetation are generally not composed of species native to the area, often resulting in non-native invasive species replacing important native species. A number of groups requested that NGTL use indigenous plants and seeds sourced from the Twin Sisters Nursery for all seeds used in reseeding efforts on the Project.

Aboriginal groups would like to work with NGTL to define specific reclamation targets for revegetation along the RoW and in temporary work areas.

##### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are most relevant to revegetation of the RoW and temporary construction sites:

- Rely on natural revegetation (e.g. passive reclamation), since natural revegetation is preferable and results in a closer resemblance to native vegetation communities with higher species richness and fewer invasive species;
- Leave high edge to area ratios to facilitate seed dispersion of native vegetation communities;
- Maintain the practice of salvaging strippings containing forest floor material to promote natural recovery by preserving native seedbank;
- Implement active reclamation in some environmentally sensitive areas, such as riparian areas and areas prone to erosion;
- Monitor vegetation establishment following construction of the Project;
- A vegetation assessment will be undertaken, as part of the post-construction monitoring program, where vegetation within the RoW is different than a comparable control site;

- Use quantifiable targets to evaluate vegetation recovery including percent cover, plant growth, species composition and percent of undesirable species. If targets for recovery are not being met in an area, then supplementary methods such as seeding or planting will be used; and
- Determine whether the Twin Sisters Nursery has the desired materials for revegetation and, if it does, NGTL will source material from Twin Sisters Nursery on commercially reasonable terms.

### ***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions that are most relevant to revegetation of the RoW and temporary construction sites including:

- **Certificate Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process;
- **Certificate Condition 4:** requires NGTL to develop a plan to enhance the regeneration of vegetation on the construction RoW within or adjacent to old growth forest bird habitat such that the width of the operating RoW is reduced as much as possible and that habitat functionality of disturbed areas is returned as soon as possible; and
- **Certificate Condition 23:** requires NGTL to file Post-Construction Environmental Monitoring Reports in the first, third and fifth complete growing seasons after final clean up. These reports will outline issues, progress and success of the measures implemented; as well as details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to them.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to revegetation of the RoW and temporary construction sites:

- **Order Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project.

### ***Crown's conclusion***

The Crown heard concerns throughout the process over the importance of revegetation along the RoW and temporary work areas associated with the Project, specifically with respect to using appropriate methods and materials. NGTL has made commitments to ensure that revegetation minimizes the long

term effects of the disturbance including a commitment to active revegetation in select environmentally sensitive areas or areas not meeting targets.

The Post-Construction Environmental Monitoring Report requires NGTL to report on the status and success of its regeneration plan as well as its Aboriginal monitoring outcomes, consultations and issues addressed in the first, third, and fifth year post construction.

The EAO is proposing conditions that may accompany a provincial EA Certificate, should one be granted for the Project, that would further support reclamation efforts and mitigate potential adverse effects to re-vegetation. The EAO is proposing a condition that would require NGTL to provide a vegetation management plan that includes, among other requirements, a description of measures to mitigate impacts to traditional use plants, a description of how TLU information has been considered in vegetation management, and consultation with Aboriginal groups in the development of the plan. Further, the EAO is proposing conditions that would require NGTL to conduct Aboriginal consultation throughout the Project and provide opportunities for Aboriginal groups to participate in monitoring activities during construction.

The Crown is of the view that taken together, these conditions and commitments would ensure that revegetation measures and monitoring of the RoW and temporary work areas would be implemented in a way that minimizes long term effects resulting from the Project.

## **6.5 Adequacy of Access Management and Safety**

### ***Issue***

Aboriginal groups outlined that construction of new pipelines results in accompanying access roads and paths that can be used by recreational vehicles. Possible increased use of the area by non-Aboriginal peoples could increase the number of hunters and further disrupt wildlife.

Aboriginal groups see increased use by non-Aboriginal people in the area as an increased risk to their TLU sites which can further impact the ability of Aboriginal communities to practice their rights.

Aboriginal groups were concerned that the construction and operation of the Project may impact their ability to safely practice their rights on their traditional territory as a result of spills and site contamination.

### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are relevant to minimizing direct environmental effects on access management and safety including:

- Prohibit recreational vehicle use by employees and contractors along the RoW and discourage unauthorized public vehicle access during construction through the use of signs;
- Align the Project to be adjacent to existing NGTL pipelines, proposed third party pipeline RoWs, or along other linear disturbances to minimize the requirement for new permanent RoW and new disturbance;

- Monitor access control in areas where access control has been employed such as areas of new cut or where the RoW is intercepted by other linear features on Crown lands; and
- Incorporate Project facilities into TransCanada's emergency management system and any related operating procedures. TransCanada's management systems will apply to the entire lifecycle of the Project, and consists of the Emergency Management Program, Integrity Management Program, Safety Management Program, Security Management Program and Environmental Protection Plan.

### ***NEB Conditions that serve to address this issue***

The NEB included the following Certificate conditions that are most relevant to access management and safety.

- **Certificate Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Certificate Condition 7:** requires NGTL to file a Project specific Environmental Protection Plan that will be implemented describing all environmental protection procedures; and mitigation and monitoring commitments.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to access management and safety:

- **Order Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Order Condition 6:** requires NGTL to file an updated Project-specific Environmental Protection Plan that will describe all environmental protection procedures and mitigation and monitoring commitments set out in NGTL's application, its related submissions, or as otherwise agreed to during the hearing process.

### ***Crown's conclusion***

The construction of new infrastructure has the potential to result in intensified use of Crown lands in the Project area by non-Aboriginal peoples for recreational and traditional use purposes, including hunting, fishing, and use of recreational vehicles. For the Project, 89% of the land is freehold land. The Crown acknowledges that Aboriginal communities are concerned that the increase in access may impact their ability to practice their hunting and trapping rights in their areas of traditional use. NGTL has made a number of commitments to minimize the impacts during construction of the Project including prohibiting the use of recreational vehicles along the RoW and in temporary work sites, as well as

discouraging all unauthorized public vehicle access. NGTL has further aligned the RoW with existing disturbances and has committed to monitoring access in areas of new cut on Crown lands.

The design, construction, operation or abandonment of all pipelines must be done in accordance to the *Pipeline Safety Act* as well as the *NEB Act*. The National Energy Board Onshore Pipeline Regulations incorporate by reference Canadian Standard Association Z662-15 Oil and Gas Pipeline systems (CSA Z662-15). As lifecycle regulators, the NEB is responsible for ensuring that pipelines are constructed, operated, maintained and decommissioned in accordance to the *NEB Act* and its associated regulations. Further, upon construction, NGTL has made a commitment that Project facilities would be incorporated into TransCanada's emergency management system which adheres to the *NEB Act* and its associated regulations.

The EAO is a condition that may accompany a provincial EA Certificate, should one be granted for the Project, which would further mitigate potential Project-related impacts to Aboriginal and Treaty Rights associated with increased access. This condition requires NGTL to identify deactivation, reclamation, and restoration measures for temporary access roads and other temporary infrastructure as they relate to vegetation management.

The Crown is of the view that taken together, these conditions and NGTL commitments and route selection would ensure that additional access to the area is limited minimizing impacts on TLU sites in the area. Further, the Crown is of the view that federal legislation and associated regulations would ensure that the pipeline and associated facilities would be constructed and operated in a safe fashion.

## **6.6 Direct environmental effects during construction phase on medicinal plants and food sources**

### ***Issue***

Concerns were raised that clearing areas for construction affects vegetation in the area and may result in the destruction of medicinal plants or food sources such as berry patches.

### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are relevant to environmental effects on medicinal plants and food sources including:

- Implement measures to reduce potential impacts on traditional plant gathering and provide opportunities to harvest before construction;
- Limit disturbance to vegetation (crop and native vegetation) to the extent practical and restrict the general application of herbicides near rare plants or rare ecological communities;

- Rely on natural revegetation and monitor vegetation establishment following construction of the Project and use quantifiable targets to evaluate vegetation recovery including per cent cover, plant growth, species composition and per cent of undesirable species;
- Use supplementary methods such as seeding or planting if targets for revegetation are not being met in an area; and
- Determine whether the Twin Sisters Nursery has the desired materials for revegetation and, if so, source material from Twin Sisters Nursery on commercially reasonable terms.

### ***NEB Conditions that serve to address this issue***

The NEB included the following Certificate conditions that are relevant to environmental impacts on medicinal plants and food sources:

- **Certificate Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process;
- **Certificate Condition 7:** requires NGTL to file a Project specific Environmental Protection Plan that will be implemented describing all environmental protection procedures; and mitigation and monitoring commitments; and
- **Certificate Condition 23:** requires NGTL to file Post-Construction Environmental Monitoring Reports in the first, third and fifth complete growing seasons after final clean up. These reports outline issues, progress and success of the measures implemented; as well as details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to them.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to environmental impacts on medicinal plants and food sources:

- **Order Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Order Condition 6:** requires NGTL to file an updated Project-specific Environmental Protection Plan that will describe all environmental protection procedures and mitigation and monitoring commitments set out in NGTL's application, its related submissions, or as otherwise agreed to during the hearing process.

### ***Crown's conclusion***

The importance of gathering vegetation for food and medicinal purposes was expressed a number of times to the Crown throughout the consultation process. Loss of these plant species through construction, poorly planned revegetation, or introduction of non-native invasive species could hold

long term impacts on Aboriginal communities in the area. NGTL has made a number of commitments to address these concerns including the commitment to limit disturbance to vegetation to the extent practical and restrict the general application of herbicide near rare plants or rare ecological communities.

In total 89% of the Project RoW would be located on privately-owned lands, with the remaining 11% located on Crown land. NGTL indicated that the predominant land use along the Project route is agriculture and the undisturbed land required for the Project was reduced by paralleling existing disturbances for approximately 82% of the total route.

NGTL has committed to providing opportunities for impacted Aboriginal groups to harvest plants of specific importance prior to construction. NGTL would rely on natural revegetation to limit the introduction of non-native species along the RoW and temporary work spaces and would determine if the Twin Sister's Nursery has the desired materials for areas requiring revegetation.

Certificate Condition 23 requires NGTL to file Post-Construction Environmental Monitoring Reports including information on the progress and/or success of the revegetation measures implemented. Should targets for revegetation not be met, NGTL is required to implement appropriate actions, such as active revegetation.

The EAO is proposing conditions that may accompany a provincial EA Certificate, should one be granted for the Project, which would further mitigate the potential for adverse environmental effects on vegetation in the Project area. The EAO is proposing a condition that would require a vegetation management plan that includes, among other requirements, a description of measures to mitigate impacts to traditional use plants, a description of how TLU information has been considered in vegetation management, and consultation with Aboriginal groups in the development of the plan. It is also proposing a condition requiring NGTL to demonstrate how any new information, including TLU information, obtained through engagement has been considered and a condition requiring NGTL to provide opportunities for Aboriginal construction monitors.

The Crown is of the view that taken together, these conditions and commitments would minimize the long term environmental effects on medicinal plants and food sources for Aboriginal groups.

## **6.7 Direct environmental impacts during construction phase on traditional land use sites**

### ***Issue***

Aboriginal groups have identified a number of sites of cultural importance within 5 km of the Project RoW.

Aboriginal groups indicated that there may be a number of potential sites of significance or pack trails along the RoW that may be impacted.

Groups felt that Aboriginal traditional land use sites have not been adequately assessed and addressed with respect to the Project. Aboriginal groups requested that NGTL be required to implement measures to avoid, minimize, restore, and offset any potential impacts of the Project on values identified by

potentially-impacted Aboriginal groups to the greatest extent possible within the limits of technical and economic feasibility

Aboriginal groups indicated that sites of significance to Aboriginal groups were not specifically incorporated into the NEB condition related to Heritage Resources.

Heritage resources and sites of cultural importance were identified by Aboriginal groups as not being appropriately considered and incorporated into Project planning.

### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process which are relevant to mitigation of impacts on TLU sites including:

- Aboriginal Construction Participation Program (ACPP) allows for participants to discuss any potential issues that may arise;
- Implement the TLU Site Discovery Contingency Plan if any TLU sites, including travelways are identified along the RoW;
- Commitment for training environmental inspectors and on-site construction personnel about heritage resources potential and Heritage Resources Discovery Contingency Plan; and
- If a pack trail is identified in the RoW before construction, NGTL will provide construction schedule, pipeline route and meter station maps, and implement mitigation measures as described in the TLU Site Discovery Contingency Plan.

### ***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions that are relevant to the environmental impacts on TLU sites:

- **Certificate Condition 8:** requires NGTL to file an Aboriginal Monitoring Plan for during and post-construction of the Project;
- **Certificate Condition 9:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns and how revisions were incorporated into the final Environmental Protection Plan; and
- **Certificate Condition 11:** requires NGTL to confirm that all archaeological and heritage resource clearances and authorizations from Alberta Department of Culture and the BC Ministry of Forest, Lands, and Natural Resource Operations have been obtained and how NGTL has incorporated additional mitigation measures into its Environmental Protection Plan.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to mitigating potential impacts on TLU sites:

- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project; and

- **Order Condition 5:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups, and how revisions were incorporated into the final Environmental Protection Plan.

### ***Crown's conclusion***

Throughout the NEB hearing process and Crown consultations, the importance of maintaining culturally significant sites and travel ways was expressed by multiple groups. The Crown acknowledges these concerns and the importance of these sites to Aboriginal communities. To address these concerns NGTL has made commitments to supporting TLU studies, engaging with Aboriginal groups throughout construction, training environmental inspectors and on-site construction personnel about heritage resources potential, and development and implementation of a TLU Site Discovery Contingency Plan.

To ensure continued engagement by Aboriginal groups during and post construction, the NEB has included Certificate Condition 8 requiring NGTL to engage potentially-impacted Aboriginal groups both during and post- construction of the Project. Certificate Condition 9 further requires NGTL to file with the NEB a plan to address any outstanding TLU studies and resulting concerns that are identified.

A number of groups were concerned about omissions of Aboriginal sites of cultural importance in Certificate Condition 11 requiring NGTL to obtain provincial authorizations from the BC Ministry of Forest, Lands, and Natural Resource Operations and the Alberta Department of Culture. The Crown notes that the protection of heritage sites is provincially regulated and falls outside of the federal Crown's jurisdiction. The BC *Heritage Conservation Act* encourages and facilitates the protection and conservation of heritage property in BC. BC's *Heritage Conservation Act* defines a heritage value as "the historical, cultural, aesthetic, scientific or educational worth or usefulness of a site or object"<sup>15</sup>.

The EAO is proposing conditions that may accompany a provincial EA Certificate, should one be granted for the Project, which would further mitigate the potential for adverse effects that relate to sites of cultural or historical importance and would allow for the meaningful engagement of Aboriginal groups in the management of these resources. The EAO is proposing a condition that would require NGTL to engage Aboriginal groups on the reporting, management and mitigation of impacts on heritage values and TLU sites. The EAO is also proposing conditions that would require NGTL to demonstrate how any new information, including TLU information, obtained through engagement has been considered and EAO would require NGTL to provide opportunities for Aboriginal construction monitors.

The Crown believes that these conditions and commitments would ensure that Aboriginal groups are further engaged, which would provide Aboriginal groups opportunities to identify measures of reasonable accommodation for impacts to TLU sites.

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<sup>15</sup> *Heritage Conservation Act* [RSBC 1996] Chapter 187.

## **6.8 Cumulative effects during operational and decommissioning phases on the environment and on traditional land use**

### ***Issue***

Aboriginal groups identified concerns with cumulative effects on the environment, including watercourses, vegetation, wetlands, and wildlife and wildlife habitat, and on traditional land use. Aboriginal groups stated that the numerous projects occurring in northeast BC have been considered separately from one another, resulting in a compounding of impacts in the ability of Aboriginal groups to exercise their Aboriginal and Treaty Rights. Aboriginal groups felt that these cumulative impacts have not been identified or considered by the Crown in the decision making process. It was requested that NGTL, the NEB, and the Crown be required to assess and consider the cumulative effects of an area prior to making a decision on the current Project.

It was stated during the hearing process that increasing density of linear disturbances in the area has placed pressures on the local moose population. Aboriginal groups outlined that linear feature densities ranging from 0.25km/km<sup>2</sup> to 1.9km/km<sup>2</sup> have been identified as thresholds above which natural populations of certain large vertebrates decline. Currently the linear feature density for the Regional Study Area as estimated by NGTL is 3.9 km/km<sup>2</sup> indicating that there are current pressures that may affect species resiliency.

### ***NGTL commitments***

NGTL made the following commitments during the NEB hearing process that are relevant to cumulative effects:

- Standard mitigation and management practices would be outlined in the Environmental Protection Plan and implemented to reduce cumulative effects resulting from the Project;
- Restrict the general application of herbicides on a site specific basis, including the application of pesticides near rare ecological communities and waterbodies;
- Monitor and evaluate the effectiveness of its environmental mitigation measures during its post-construction monitoring program; and
- Restrict pesticide use on Crown land in locations identified by Aboriginal groups as areas of traditional use.

### ***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions that are relevant to cumulative effects.

- **Certificate Condition 8:** requires NGTL to file an Aboriginal Monitoring Plan for during and post-construction of the Project;
- **Certificate Condition 9:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns and how revisions were incorporated into the final Environmental Protection Plan; and

- **Certificate Condition 23:** requires NGTL to file Post-Construction Environmental Monitoring Reports in the first, third and fifth complete growing seasons after final clean up. These reports outline issues, progress and success of the measures implemented; as well as details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to them.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to cumulative effects:

- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project; and
- **Order Condition 5:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups, and how revisions were incorporated into the final Environmental Protection Plan.

### ***Crown's conclusion***

During the NEB process and subsequent consultation, Aboriginal groups raised concerns regarding adverse cumulative effects as a result of increased development in the area. There is a concern that projects are being assessed individually based on localized potential effects as opposed to addressing effects at a regional level taking into consideration all of the existing and proposed projects in the area. Aboriginal groups are worried that ongoing industrial development in the region would lead to long-term negative effects on the environment and the well-being of their communities.

To minimize potential adverse direct and cumulative effects on the environment and traditional land and resource use, the NEB included Certificate conditions 8, 9, and 23. These conditions would ensure continued Aboriginal participation and environmental monitoring, which would promote adaptive management and encourage adjustments throughout both construction and post-constructing to NGTL procedures as necessary to minimize long term effects.

NGTL has aligned the Project route with existing RoW and disturbance where possible, thereby minimizing potential overall environmental effects. NGTL has also made commitments to help mitigate the Project's effects, including restricting the general application of herbicides on a site specific basis, restricting the application of pesticides near rare ecological communities and waterbodies, and monitoring and evaluating the effectiveness of its environmental mitigation measures during its post-construction monitoring program. NGTL would also restrict pesticide use on Crown land in locations identified by Aboriginal groups as areas of traditional use.

The Province has recognized the importance of assessing and managing the cumulative effects of resource development in northeast BC. BC's Ministry of Forests, Lands, and Natural Resource Operations, in collaboration with other provincial agencies, Aboriginal groups, and stakeholders, continues to develop and implement a provincial Cumulative Effects Framework to provide the policy,

procedures, and tools to improve the consideration of cumulative effects to support a broad range of natural resource decision-making. The Cumulative Effects Framework is linked with a number of other current and emerging initiatives across the natural resource sector, including the ongoing Regional Strategic Environmental Assessment (RSEA) project that is being developed with several Treaty 8 First Nations, LNG related proponents, other levels of government, and other Aboriginal groups, as part of the LNG Environmental Stewardship Initiative. The RSEA involves the collaborative development of cumulative effects assessment approaches with the aim of optimizing the meaningful exercise of Treaty 8 Rights and the development interests of the parties. The objectives of RSEA are to assess the impacts of natural resource development on the rights of the participating Aboriginal groups within an agreed upon study area and to use the results of this assessment to develop management responses.

The Crown notes that in recognition of the importance of assessing and managing the cumulative effects of resource development, the Province of BC has established the Northeast BC Cumulative Effects Program and is working closely with Treaty 8 First Nations, local and federal government, key non-government organizations, and industry on its development and implementation. The Northeast Cumulative Effects Program plan incorporates the work completed in the previous South Peace Cumulative Effects operational trial, as well as the OGC's Area-Based Analysis initiative<sup>16</sup>. The RSEA and the Northeast Cumulative Effects Program would provide complementary programs and capacity to identifying and managing cumulative effects in the northeast.

The EAO is also proposing a condition that may accompany a provincial EA Certificate, should one be granted for the Project, that would require NGTL to participate, at the request of government agencies, in regional initiatives related to the monitoring, assessment, or management of cumulative effects.

The Crown believes that these conditions and commitments would minimize the potential for and duration of impacts resulting from the Project. At the same time, the federal Crown has committed to considering this issue during the NEB modernization process and the review of EA legislation.

## **6.9 Opportunities for economic participation by Aboriginal groups in the Project**

### ***Issue***

Aboriginal groups indicated that there is no guarantee that communities would have the opportunity to participate in and benefit from the Project.

It was expressed that there is an inequality with which Aboriginal employment opportunities are distributed by NGTL, specifically with respect to opportunities provided to First Nation communities and

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<sup>16</sup> [Oil and Gas Commission Area Based Analysis](#).

denied to Métis communities. It was requested that in future NEB projects, socio-economic data should be collected to better understand this inequality.

### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are relevant to Aboriginal economic participation including:

- Continue to work with Aboriginal communities and organizations to share in the benefits and opportunities provided by the Project;
- Provide support and resources to communities to increase their ability to participate in Project activities as well as support community long-term goals for skills development and training;
- Continue to work with communities to identify opportunities for capacity development;
- Continue to identify social and economic opportunities in the region in which Aboriginal groups can participate;
- Follow enhancement measures to maximize employment, education and training for Aboriginal Communities; and
- Create employment targets for Aboriginal employment opportunities on the Project, including achieving 8-12% Aboriginal contracting and 8-10% Aboriginal employment on the Project.

### ***NEB Conditions that serve to address this issue***

The NEB included the following Certificate conditions that are relevant to Aboriginal economic participation:

- **Certificate Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process; and
- **Certificate Condition 21:** requires NGTL to file with the NEB an Employment, Contracting and Procurement Report for the Project during the construction phase.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered, including the following condition relevant to Aboriginal economic participation:

- **Order Condition 2:** requires NGTL to design, locate, construct, install and operate in accordance with the commitments made or other information referred to in its application, subsequent filings or as otherwise agreed to during the hearing process.

### ***Crown's conclusion***

The Crown heard many times during consultations that Aboriginal groups want to benefit from the economic opportunities that this Project would generate. NGTL has made commitments that would help potentially-impacted groups take advantage of employment opportunities, business opportunities, and capacity building within their community. Specifically, NGTL has committed to achieving 8-12% Aboriginal contracting and 8-10% Aboriginal employment on the Project. Certificate condition 21 requires NGTL to file an Employment Contracting and Procurement Report with the NEB that further outlines this information after construction.

While the Crown does not have the authority to prescribe who NGTL employs as part of the Project, it notes that the term Aboriginal group is inclusive of both First Nation and Métis groups, consistent with the defined term of "aboriginal peoples of Canada" in Section 35(2) of the *Constitution Act, 1982*. As such, the federal Crown understands that any commitment made by NGTL or NEB condition pertaining to the employment of Aboriginals must consider both First Nation and recognized Métis communities and individuals equally.

The Crown encourages Aboriginal groups to bring forward any concerns to NGTL and the NEB for consideration. The Crown therefore concludes that taken together these conditions and commitments would help reinforce that all potentially-impacted Aboriginal groups be considered for participation in economic opportunities resulting from the Project.

## **6.10 Participation in NEB review and Crown consultation processes**

### ***Issue***

Aboriginal groups indicated that there was a lack of financial resources and internal capacity to effectively engage in the NEB review and Crown consultation processes.

The participant funding offered by the NEB and the Crown was viewed as low compared to the effort required to substantively review and respond to the materials filed, and participate in the process.

Aboriginal groups expressed a desire for all filings to be shared with their communities. Aboriginal groups would like to be given the opportunity to review and comment on NGTL filing documents.

### ***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions that are relevant to ensuring the opportunity for ongoing involvement of potentially-impacted Aboriginal groups:

- **Certificate Condition 6:** requires NGTL to provide copies of all of its condition compliance filings to any interested party;

- **Certificate Condition 8:** requires NGTL to file a plan for Aboriginal participation in monitoring construction and post construction activities, which would set out further opportunity for Aboriginal groups to identify any specific adverse effects of the Project and mitigation measures;
- **Certificate Condition 9:** requires NGTL to file with the NEB at least 60 days before commencing construction a report on any outstanding traditional Aboriginal land uses investigations for the Project; and
- **Certificate Condition 20:** requires NGTL to file Aboriginal Engagement Reports outlining engagement with Aboriginal Groups during construction of the Project.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to opportunities for ongoing involvement of potentially-impacted Aboriginal groups:

- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project; and
- **Order Condition 5:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups, and how revisions were incorporated into the final Environmental Protection Plan.

### ***Crown's conclusion***

The Crown greatly values the views of Aboriginal groups and the depth of their traditional knowledge. The Crown understands that in order to meaningfully participate in the review process and in consultations regarding the Project, financial resources are required for staff, expertise, and the preparation of TLU studies. For these reasons, the NEB and NGTL offered participant funding to those groups who applied to participate in the NEB hearing process and the Crown offered additional funding to Aboriginal groups for consultation subsequent to the release of the NEB Recommendation Report. Further, the federal Crown and the EAO worked to hold joint meetings in many instances in order to minimize the number of consultation meetings requested of groups. The Crown offered to meet Aboriginal groups in person in order to explain the Project and review process and discuss potential impacts and accommodation measures. Meetings were held at a location of the Aboriginal group's choosing, where possible, to help decrease time and cost of transportation.

NEB Certificate condition 9 requires NGTL to work with potentially-impacted Aboriginal groups to complete their TLU studies and provides an opportunity for Aboriginal groups to voice any outstanding concerns that they may have throughout construction of the Project. Certificate conditions 8 and 20 require that NGTL address the concerns raised and file a plan for Aboriginal participation in construction and post-construction monitoring.

The EAO is proposing conditions that would accompany a provincial EA Certificate, should one be granted for the Project, related to ongoing involvement for potentially-impacted Aboriginal groups. These proposed conditions require NGTL to document and maintain a record of consultation, develop

Aboriginal engagement reports in consultation with Aboriginal groups, engage with Aboriginal groups to seek to identify opportunities for cultural awareness and recognition, consult with Aboriginal groups on vegetation management, and engage Aboriginal groups on the reporting, management, and mitigation of impacts on heritage values.

The Crown is of the view that taken together, these conditions and commitments would ensure that Aboriginal groups are meaningfully engaged throughout construction, operation and decommissioning of the Project.

## **6.11 Adequacy of the Crown's consultation process**

### ***Issue***

The Crown consultation process was considered as taking place too late in the review process to be meaningful and effective.

While the intention to pursue meaningful consultation was appreciated, face-to face meetings after the release of the NEB Recommendation Report were considered by Aboriginal groups as too late in the review process to be effective in influencing decisions regarding the Project and proposed conditions. Some Aboriginal groups felt limited in their ability to present impacts and expressed concern that the federal government was limited in how it could respond to concerns, and provide accommodation measures.

### ***Crown's conclusion***

Aboriginal groups' participation in the NEB hearing process helps to ensure the consideration of proposed accommodation measures to address issues and concerns raised by Aboriginal groups. NEB Certificate conditions are relied upon by the federal Crown for accommodation of potential Project impacts on Aboriginal and Treaty Rights, and also relied on by the provincial Crown as a key component of accommodation. The Crown sought to consult potentially-impacted Aboriginal groups in a manner consistent with the federal government's commitment to renew the relationship with Aboriginal peoples on a nation to nation basis.

To ensure transparent and effective consultations, the federal Crown encouraged potentially-impacted Aboriginal groups to participate in the NEB process indicating that the federal Crown would be relying on the process to, in part, inform the GiC decision. The EAO and federal Crown contacted all potentially-impacted Aboriginal groups by phone, email, or print mail in order to ensure that all those who wanted to, had the opportunity to express their views. The Crown further provided a depth of consultation assessment to each Aboriginal group.

To ensure that input and concerns from all potentially-impacted Aboriginal groups were meaningfully considered, the Crown provided timeline extensions, offered participant funding, offered to meet with each group in person, and sought to conduct coordinated consultation.

To avoid errors in the CAR and consultation record, the Crown provided each Aboriginal group with meeting summaries after each consultation meeting. The Crown also sent a draft of the CAR and relevant annex(es), which contains a detailed summary of the group's input on the potential impacts of the Project on its Aboriginal and Treaty Rights, along with any proposals for accommodation measures.

In seeking to balance interests and recognizing the importance of input from Aboriginal groups, the Crown believes that it has met its duty to consult owed to each of the potentially-impacted Aboriginal groups for this Project.

## **6.12 Adequacy of NGTL's engagement with Aboriginal groups**

### ***Issue***

Aboriginal groups indicated that they were not being meaningfully consulted by NGTL and were being limited in time and access to locations for TLU studies along the RoW.

NGTL employees assessing the TLU studies were described by Aboriginal groups as not having adequate knowledge or understanding to do so appropriately. Further, Aboriginal groups expressed that there is insufficient time to ensure that information obtained through outstanding TLU studies can be incorporated into Project planning.

Involvement of Aboriginal groups by NGTL in pre-construction, construction, and post-construction is requested to ensure that Aboriginal knowledge is incorporated at all stages of the Project. Aboriginal groups suggested that this involvement can be accomplished through the employment of Aboriginal monitors during construction and post- construction.

### ***NGTL commitments***

NGTL made the following specific commitments during the NEB hearing process that are relevant to its engagement with Aboriginal groups to date including:

- NGTL invited Aboriginal groups to participate in supplemental biophysical and heritage resource field studies and supported interested Aboriginal communities and organizations in the completion of TLU and TK studies for the Project;
- Provide potentially-impacted Aboriginal communities with notification of scheduled field programs and provide notification and post information when post-construction monitoring reports are filed with the NEB;
- NGTL's Aboriginal Construction Participation Program allows for participants to discuss any potential issues that may arise;

- Should sites of specific importance be identified through a TLU study, NGTL will establish appropriate mitigation measures through the NGTL TLU Sites Discovery Contingency Plan and/or Heritage Resources Discovery Contingency Plan;
- Consider any additional information resulting from ongoing engagement for inclusion in Project planning and the final Environmental Protection Plan; and
- Implement a post-construction monitoring program to evaluate the recovery of areas disturbed during construction, identify environmental issues that might have arisen post-construction, identify and coordinate the implementation of any remedial measures that are warranted, and identify additional special measures to address any outstanding or new environmental issues.

### ***NEB Conditions that serve to address this issue***

The NEB included a number of Certificate conditions that are relevant to ensuring an appropriate level of engagement by NGTL with Aboriginal groups.

- **Certificate Condition 6:** requires NGTL to provide, upon request, NGTL's filings with the NEB related to its Commitments Tracking Table. The Commitments Tracking Table lists all of the commitments made by NGTL in its Project Application or in its related submissions;
- **Certificate Condition 8:** requires NGTL to file an Aboriginal Monitoring Plan for during and post-construction of the Project;
- **Certificate Condition 9:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns and how revisions were incorporated into the final Environmental Protection Plan;
- **Certificate Condition 20:** requires NGTL to file Aboriginal Engagement Reports outlining Aboriginal engagement during construction of the Project; and
- **Certificate Condition 23** requires NGTL to file post-construction monitoring reports in the first, third and fifth complete growing seasons after final clean up. These reports outline issues, progress and success of the measures implemented; as well as details of Aboriginal monitoring outcomes and consultations undertaken with potentially-impacted Aboriginal groups including how NGTL addressed or responded to them.

The NEB also imposed a number of Section 58 Order conditions that the Crown has considered that are relevant to ensuring an appropriate level of engagement by NGTL with Aboriginal groups:

- **Order Condition 4:** requires NGTL to file an Aboriginal Monitoring Plan describing participation by Aboriginal groups in monitoring during construction and post-construction of the Project;
- **Order Condition 5:** requires NGTL to file for approval a plan to address outstanding TLU investigations including outstanding concerns raised by potentially-impacted Aboriginal groups, and how revisions were incorporated into the final Environmental Protection Plan; and

- **Order Condition 7:** requires NGTL to provide its filings with the NEB related to its Commitments Tracking Table. The Commitments Tracking Table lists all the commitments made by NGTL in its Project Application or in its related submissions.

### ***Crown's conclusion***

The Crown is of the view that the relationship between NGTL and potentially-impacted Aboriginal groups is important. Aboriginal groups should be meaningfully engaged by the Proponent in advance, and throughout the life, of the Project. NEB has included Certificate conditions requiring NGTL to continue to actively engage Aboriginal groups by providing opportunities to identify, and have addressed, concerns with the Project (Certificate condition 8). NGTL would also be required to address concerns related to the completion and consideration of outstanding TLU studies (Certificate condition 9), and for this engagement to continue through post-construction of the Project (Certificate conditions 20 and 23).

The EAO is proposing conditions that would accompany a provincial EA Certificate, should one be granted for the Project, related to continued Aboriginal engagement. These proposed conditions require NGTL to document and maintain a record of consultation, develop Aboriginal engagement reports in consultation with Aboriginal groups, engage with Aboriginal groups to seek to identify opportunities for cultural awareness and recognition, consult with Aboriginal groups on vegetation management, and engage Aboriginal groups on the reporting, management and mitigation of impacts on heritage values.

The Crown encourages groups to bring forward any additional concerns that may arise to NGTL, the NEB, and provincial permitting agencies in the post-EA stage. As the regulator, the NEB has the tools to enforce conditions and commitments made by NGTL. The Crown therefore concludes that taken together, these conditions and commitments would ensure that Aboriginal groups are meaningfully engaged by NGTL throughout the life of the Project.

## 7 Summary Conclusion

The Crown heard a range of concerns from Aboriginal groups. These views reflect groups' commitment to stewardship of the land and traditional territories, as well as a strong desire to ensure development does not impede the ability of future generations to carry out traditional land use activities.

The federal Government has committed to a renewed relationship with Aboriginal peoples based on nation-to-nation engagement. Some of the concerns presented to the Crown in the course of consultations on the Project would be addressed by the federal Government's commitment to modernize the NEB and to review the federal EA legislation.

In relation to concerns directly linked to the Project's potential impact on Aboriginal and Treaty Rights, the Crown has assessed those concerns against the NEB's existing requirements with respect to pipeline integrity, safety, and environmental protection, the conditions proposed by the NEB for the Certificate of Public Convenience and Necessity, commitments made by NGTL, and, for the EAO, the proposed BC provincial conditions. The Crown concludes that Project modifications, NGTL commitments and agreements entered into with Aboriginal groups, NEB conditions that would be legally binding to a potential Certificate of Public Convenience and Necessity, and the EAO's proposed conditions for a potential provincial EA certificate would all help to avoid, mitigate, or otherwise accommodate for adverse Project impacts on Aboriginal and Treaty Rights.

Most notably, the NEB has proposed a condition that requires NGTL to develop and report on an Aboriginal Monitoring Plan which would provide a role for Aboriginal groups in enabling them to participate during both the Project's construction and post-construction phases. The Crown welcomes this condition as recognition of the strong desire of Aboriginal groups to be involved in the development of natural resources in their traditional territory and one that is consistent with the level of impact presented by this Project.

The Crown has provided its views on the potential adverse impacts of the Project on each Aboriginal group's Aboriginal and Treaty Rights. Given the uniqueness of each Aboriginal group, and in recognition of the different ways in which biophysical, area-specific, and experiential impacts could impact each specific group's exercise of Aboriginal and Treaty Right, the Crown has documented its understanding and assessment of the potential impacts in each Aboriginal group's annex.

## 8 Annexes

An annex has been developed for each potentially-impacted Aboriginal group identified by the federal Crown as having Aboriginal and Treaty Rights potentially impacted by the Project. For each potentially-impacted Aboriginal group located in BC, a separate set of annexes has been developed by the EAO. Both sets of annexes detail the issues raised by potentially-impacted Aboriginal group during consultation. The federal government annexes have been shared with the respective Aboriginal groups, but will not be published as part of the CAR, as they contain third party information. The annexes developed by the EAO have been shared with the respective Aboriginal groups and will be published as part of the CAR, in accordance with the Act and regulations.