Canada Energy Regulator | Régie de l'énergie du Canada

Commission of the Canada Energy Regulator Report

Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership
GH-001-2024

January 2026

Canada

Commission of the Canada Energy Regulator Report

In the matter of

Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership

Application dated 30 May 2024 for the Sunrise Expansion Program
GH-001-2024

January 2026

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Cat No. NE4-5/2026-1E
ISBN 978-0-660-97858-1

N° de cat. NE4-5/2026-1F
ISBN 978-0-660-97859-8

This report is published separately in both official languages. This publication is available upon request in multiple formats.

Le rapport est publié séparément dans les deux langues officielles. Il est possible de l'obtenir sur supports multiples, sur demande.

Copies are available on request from:
The Publications Office
Canada Energy Regulator
517 Tenth Avenue SW
Calgary, Alberta, T2R 0A8
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Fax: 403-292-5503
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Demandes d'exemplaires
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Télécopieur : 403-292-5503
Téléphone : 1-800-899-1265

Printed in Canada

Imprimé au Canada

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Glossary of terms and abbreviations

2SLGBTQI+	Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional people who identify as part of sexual and gender diverse communities
ACE	abandonment cost estimate
BC	British Columbia
BCER	BC Energy Regulator
Bigstone	*Bigstone v NOVA Gas Transmission Ltd.*, 2018 FCA 89
Blueberry River Claim Area	Blueberry River First Nations Claim Area
Blueberry River Implementation Agreement	*Blueberry River First Nations Implementation Agreement*
BCTC	British Columbia Treaty Commission
CAC	criteria air contaminant
CCC	Crown Consultation Coordinator
CER	Canada Energy Regulator
CER Act	*Canadian Energy Regulator Act*
certificate	A certificate issued for a pipeline project under section 186 of the *Canadian Energy Regulator Act*
Chippewas	*Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, 2017 SCC 41
Clyde River	*Clyde River (Hamlet) v Petroleum Geo-Services Inc.*, 2017-SCC 40
Commission	Commission of the Canada Energy Regulator
CS	compressor station identifier prefix
CSA Z662	Standard CSA Z662:23 – *Oil and Gas Pipeline Systems*, developed by the CSA Group
Daniels	*Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12
DFO	Fisheries and Oceans Canada
EAS	environmental alignment sheets
ECCC	Environment and Climate Change Canada

EF2023	The Canada Energy Regulator's *Canada's Energy Future 2023* report
electrical facilities	Collectively, the two overhead power lines to CS-6B and CS-8A and the electrical substations within the boundaries of these compressor stations and at CS-8B, all of which form part of the Project.
Enbridge	Enbridge Inc.
EPP	Environmental Protection Plan
ERP	Emergency Response Plan
ESA	Environmental and Socio-economic Assessment
GHG	greenhouse gas
Gitxaala	*Gitxaala Nation v Canada*, 2016 FCA 187
GTM	Gas Transmission & Midstream (a part of Enbridge's corporate structure)
Haida	*Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73
Halfway River LPP	Halfway River First Nation/BC Landscape Planning Pilot
HV1	High Value areas defined under the *Blueberry River First Nations Implementation Agreement*
IA Act	*Impact Assessment Act*
IAMC	Indigenous Advisory and Monitoring Committee
ICA	Integrated Cultural Assessment being developed by the S'ólh Téméxw Stewardship Alliance
IR	information request
IRAP	Enbridge Inc.'s Indigenous Reconciliation Action Plan
IVMP	Integrated Vegetation Management Plan
Kebaowek	*Kebaowek First Nation v Canadian Nuclear Laboratories*, 2025 FC 319
LNG	liquefied natural gas
LSA	Local Study Area

Mikisew	*Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, 2005 SCC 69
Minister	Minister of Energy and Natural Resources
MS	meter station identifier prefix
NEBC Connector	NorthRiver Midstream NEBC Connector GP Inc.'s NEBC Connector Project, for which the Commission issued its OH-001-2022 report on 18 October 2023
North Corridor	NOVA Gas Transmission Ltd.'s North Corridor Expansion Project, for which the Commission issued its GH-002-2019 report on 3 September 2020
NPS	nominal pipe size
OGDA	Old Growth Deferral Area
OGMA	Old Growth Management Area
OPR	*Canadian Energy Regulator Onshore Pipeline Regulations*
power lines	The two overhead power lines to CS-6B and CS-8A, each of which forms part of the Project
PPBoR	Plan, Profile, and Book of Reference
Project	The proposed Sunrise Expansion Program, as described in Westcoast's application dated 30 May 2024, Project update dated 6 January 2025, and related submissions
Project components	The three components that Westcoast applied for as part of the Project: • pipeline loops – collectively, the 11 natural gas pipeline loops • power lines – collectively, the two power lines • facilities – collectively, the modifications and upgrades at 11 existing compressor stations (including the electrical substations) and at an existing meter station
Powley	*R v Powley*, 2003 SCC 43
RSA	Regional Study Area
SACC	Environment and Climate Change Canada's *Strategic Assessment of Climate Change*
SARA	*Species at Risk Act*
SMART	specific, measurable, achievable, relevant, and time-bound

Stonlasec8 Partnership	Stonlasec8 Indigenous Alliance Limited Partnership
STSA	S’ólh Téméxw Stewardship Alliance
STSA-Canada Protocol	S'ólh Téméxw Stewardship Alliance – Canada Consultation and Engagement Protocol
T-South	The existing Transmission South natural gas pipeline system in central and southern British Columbia, owned and operated by Westcoast Energy Limited Partnership
Taku River	*Taku River Tlingit First Nation v British Columbia (Project Assessment Director)*, 2004 SCC 74
Taylor to Gordondale	Pouce Coupé Pipe Line Ltd.’s Taylor to Gordondale Pipeline Project, for which the Commission issued its OH-001-2024 report on 7 November 2025
Tsilhqot’in	*Tsilhqot’in Nation v British Columbia*, 2014 SCC 44
Tsleil-Waututh	*Tsleil-Waututh v Canada (Attorney General)*, 2018 FCA 153
UN Declaration	United Nations Declaration on the Rights of Indigenous Peoples
UN Declaration Act	*United Nations Declaration on the Rights of Indigenous Peoples Act*
US	United States
VC	valued component
WCSB	Western Canada Sedimentary Basin
West Path Delivery 2023	NOVA Gas Transmission Ltd.’s West Path Delivery 2023 Project, for which the Commission issued its GH-002-2020 report on 24 May 2022
Westcoast	Westcoast Energy Inc. or Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership
Westcoast system	The existing natural gas pipeline system in British Columbia, owned and operated Westcoast Energy Limited Partnership, and which consists of the Transmission South and Transmission North pipeline systems
Woodfibre	Woodfibre LNG Limited
Yahey	*Yahey v British Columbia*, 2021 BCSC 1287

Symbols, formulas, and units

$	dollars (CAD)
%	per cent
Bcf/d	billion cubic feet per day
CO	carbon monoxide
ha	hectare
km	kilometre
kt CO_2e	kilotonnes of carbon dioxide equivalent
kV	kilovolt
m	metre
MMcf/d	million cubic feet per day
MW	megawatt
NO_2	nitrogen dioxide
NO_x	oxides of nitrogen
$PM_{2.5}/PM_{10}$	particulate matter
SO_2	sulphur dioxide

Preamble

This report sets out the Commission of the Canada Energy Regulator's recommendation, determinations, and decisions regarding the application of Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership for the Sunrise Expansion Program. As noted in the GH-001-2024 Hearing Order, the application was assessed by a three-member Panel of the Commission, consisting of Commissioner Kathy Penney (Presiding), Commissioner Trena Grimoldby, and Commissioner Stephania Luciuk.

To ensure that this report could be prepared in a timely manner, on 19 November 2025, the Lead Commissioner issued written instructions to the Panel under section 41 of the *Canadian Energy Regulator Act.* The instructions provided that Commissioner Penney would prepare a "principal opinion" and that Commissioner Luciuk and Commissioner Grimoldby could adopt, dissent, and/or concur with the views of the principal opinion, based on ongoing deliberations and their independent views.

After receiving the Lead Commissioner's instructions, and through their deliberations, Commissioners exchanged draft opinions and shared comments before concurrently exchanging final opinions. After exchanging final opinions, the Commissioners each provided a revised final opinion, having had the opportunity to review and consider their colleague's opinions. Additional revisions and responses followed thereafter.

As described in their respective opinions in this report, Commissioner Grimoldby concurred and dissented with the principal opinion and Commissioner Luciuk concurred with the principal opinion. This report therefore contains the principal opinion, Commissioner Grimoldby's opinion, Commissioner Luciuk's opinion, and Commissioner Penney's responses to her colleagues' opinions, which are organized as follows:

- **Chapters 1 to 12** contain the principal opinion, including the recommendation, determinations, and decisions of Commissioner Penney, along with her reasons. These chapters form the basis for the majority's recommendation, determinations, and decisions for the Project, as described in **Section 1.4**. The term "Commission" is used throughout the principal opinion because that opinion represents the views of the majority. The report's appendices support the principal opinion.

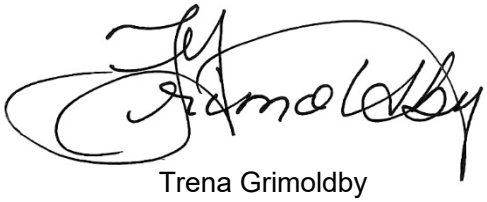
- **Chapter 13** contains Commissioner Grimoldby's concurring and dissenting opinion. Aspects of this chapter can be considered a minority opinion, as it contains decisions, views, and reasoning that differ from the principal opinion and those of Commissioner Luciuk.

- **Chapter 14** contains Commissioner Luciuk's concurrence with the principal opinion, concurrence with Commissioner Penney's responses to Commissioner Grimoldby's opinion, and responses to Commissioner Grimoldby's opinion, which include agreement with two of Commissioner Grimoldby's recommendations regarding conditions.

- **Chapter 15** contains Commissioner Penney's responses to the opinions of Commissioner Grimoldby and Commissioner Luciuk. This chapter supplements the principal opinion with further views and reasoning.

The signatures below represent Commissioners' acknowledgment that the principal, concurring, and dissenting opinions are contained in this report.

Kathy Penney
Presiding Commissioner



Trena Grimoldby
Commissioner

Stephania Luciuk
Commissioner

1 Overview

Having considered whether the Sunrise Expansion Program (**Project**) is and will be required by the present and future convenience and necessity, the Commission of the Canada Energy Regulator recommends that a certificate be issued under section 186 of the *Canadian Energy Regulator Act* (**CER Act**).[1] The certificate would authorize Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership (**Westcoast**)[2] to construct and operate the Project, subject to 47 conditions that the Commission considers necessary or in the public interest, which are provided in **Appendix 1.**

The Commission grants, in part, the orders and other relief Westcoast sought under sections 214, 97, and 226 of the CER Act and section 45.1 of the *Canadian Energy Regulator Onshore Pipeline Regulations* (**OPR**).[3] Westcoast's relief requests and the Commission's decisions are set out in **Sections 1.2 and 1.4**, respectively.

In making its determinations on the Project, the Commission took into account – in light of, among other things, Indigenous knowledge that has been provided and scientific information and data – all considerations that appeared relevant and directly related to the Project, including the factors described in subsection 183(2) of the CER Act. The Commission was mindful of, and also considered, the broader statutory framework within which this proceeding occurred. This includes applicable provisions of the CER Act (including subsection 317(1)), subsection 35(1) of the *Constitution Act, 1982,*[4] the *United Nations Declaration on the Rights of Indigenous Peoples Act* (**UN Declaration Act**),[5] section 82 of the *Impact Assessment Act* (**IA Act**),[6] and sections 77 and 79 of the *Species at Risk Act* (**SARA**).[7]

This report explains the Commission's reasons for its recommendation and decisions. Chapter 1 provides an overview of the Project and relief sought, the Commission's assessment and hearing, its recommendation and decisions, and the next steps in the regulatory process for the Project. **Chapter 2** describes the legal framework in which the Commission considered Westcoast's application. **Chapters 3 to 11** explain the Commission's analysis and determinations related to the factors and issues it considered, including Chapter 10 on the rights of Indigenous Peoples.[8]

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1 SC 2019, c 28, s 10.

2 Westcoast Energy Inc. filed the Project application. Outside of this hearing, the Westcoast pipeline system, including the Project, was transferred from Westcoast Energy Inc. to Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership. Filings were made in this hearing under each of these company names, and Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership confirmed that it adopted and affirmed all of Westcoast Energy Inc.'s evidence, submissions, and commitments. In this report, "Westcoast**"** is used as a common reference to the proponent.

3 SOR/99-294.

4 *Constitution Act*, *1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

5 SC 2021, c 14.

6 SC 2019, c 28, s 1.

7 SC 2002, c 29.

8 The term "Indigenous Peoples" has the meaning assigned to the definition of "aboriginal peoples of Canada" in subsection 35(2) of the *Constitution Act, 1982*, which states: In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

1.1 Description of the Project

On 30 May 2024, Westcoast – a subsidiary of Enbridge Inc. (**Enbridge**) – applied to the Canada Energy Regulator (**CER**) for a certificate and related approvals for the Project under Part 3 of the CER Act. Westcoast filed a Project update on 6 January 2025, refining the Project scope. The Project is a proposed expansion of Westcoast's existing Transmission South natural gas pipeline system (**T-South system**) in central and southern British Columbia (**BC**). This system transports natural gas to markets in BC and Alberta and to international markets in the United States (**US**) via interconnecting pipelines. The Project responds to requests from shippers for additional transportation capacity. These requests were driven primarily by an anticipated shortfall in capacity to deliver gas to the BC Lower Mainland and US Pacific Northwest once deliveries begin to the Woodfibre LNG Limited (**Woodfibre**) liquefied natural gas (**LNG**) export facility near Squamish, BC. That facility is expected to come into service in 2027.

Project work would take place roughly between Chetwynd, BC and the Canada-US border at Huntingdon/Sumas and would involve constructing and operating:

- 11 natural gas pipeline loops (approximately 139 kilometres [**km**] in total);
- new electric-driven compressor units (and associated substations) at 3 existing compressor stations[9] and a new gas-driven compressor unit at a fourth existing compressor station;
- 2 overhead power lines[10] (approximately 10 km in total) to power the new electric-driven compressor units at 2 existing compressor stations; and
- facility upgrades and other work at 11 existing compressor stations and at an existing meter station.

The Project scope also involves:

- constructing and using temporary infrastructure (e.g., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards, and construction camps); and
- decommissioning, by removal, a segment of deactivated pipeline (approximately 350 metres [**m**] long) within Westcoast's existing right-of-way.

Chapters 5 and 6 provide more details on these works and activities. On the following page, **Figure 1-1** provides an overview of the various Project components and their locations.

The Project's estimated capital cost is $3.99 billion ($2024). Subject to regulatory approvals, Westcoast intends to start Project construction as early as the second quarter of 2026, with a target in-service date of **1 November 2028.** Westcoast expects the Project to operate for at least 30 years.

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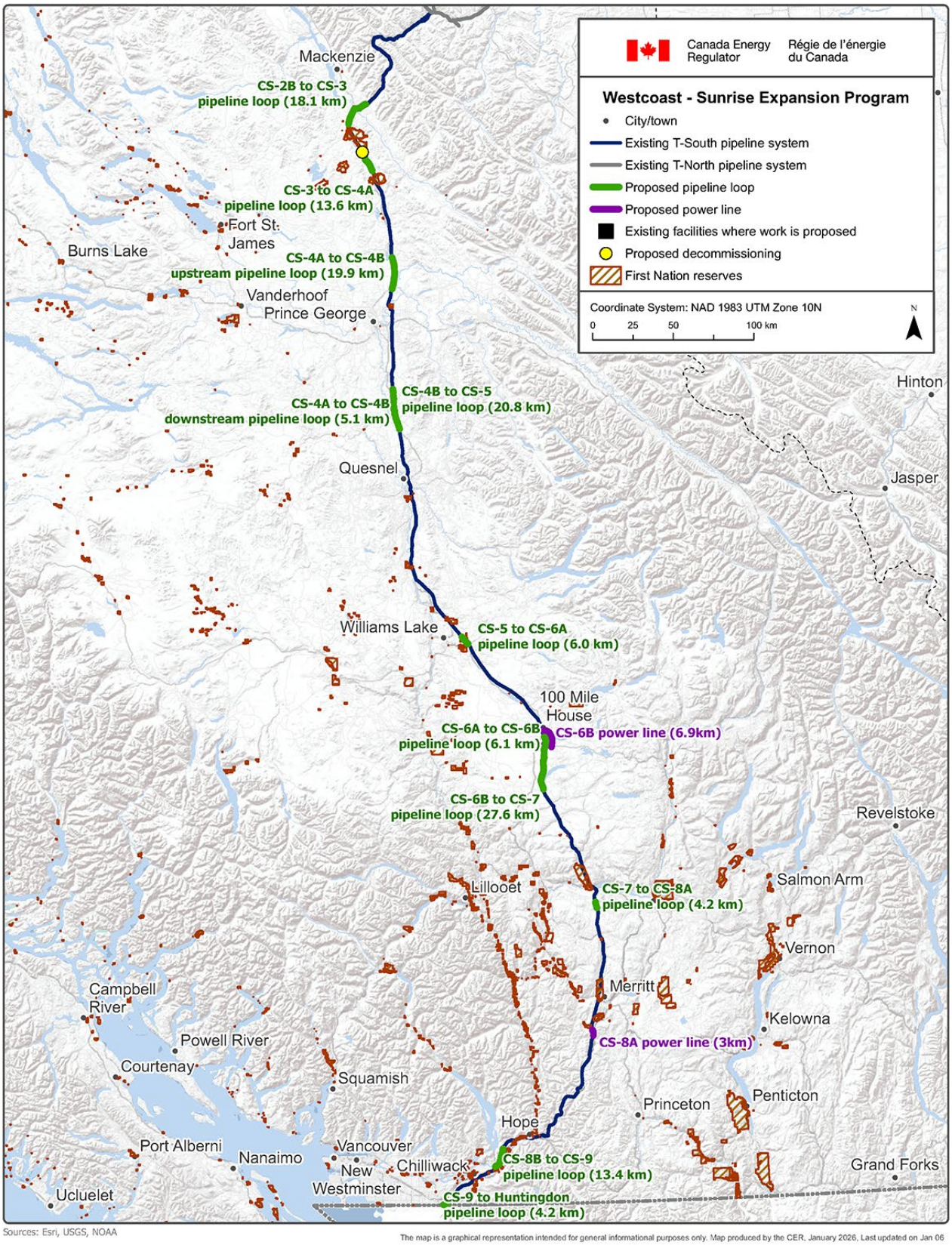
[9] Each compressor station is identified by a number prefixed by the letters "CS."

[10] In this report, the Commission uses the term "electrical facilities**"** when referring, collectively, to the two overhead power lines to CS-6B and CS-8A and the electrical substations within the boundaries of these compressor stations and at CS-8B, all of which form part of the Project.

Figure 1-1: Project overview map



1.2 Relief requested by Westcoast

Westcoast requested that the Commission:

1) issue a report, under section 183 of the CER Act, recommending that a certificate be issued authorizing Westcoast to construct and operate the Project;
2) approve, under section 45.1 of the OPR, the decommissioning of an existing, deactivated pipeline segment;
3) issue an order, under section 214 of the CER Act, exempting Westcoast from:
    a) the plan, profile, and book of reference (**PPBoR**) requirements of paragraphs 198(c) and 198(d), and section 199, of the CER Act for certain Project facilities and activities; and
    b) the leave to open requirements of paragraph 180(1)(b) and section 213 of the CER Act for certain Project components;
4) issue an order, under section 97 of the CER Act, exempting Westcoast from the requirements of section 17 of the OPR for certain low-pressure auxiliary piping systems at compressor station sites;
5) issue an order, under section 226 of the CER Act, affirming that the Project's cost will be included in the T-South system's cost of service and tolled on a rolled-in basis; and
6) grant such further relief as Westcoast may request or the Commission may consider appropriate.

Section 1.4 provides further details on the relief sought, and the Commission's recommendation or decision related to each.

1.3 The Commission's assessment of the Project

1.3.1 The Commission's role in assessing the Project

When a company applies for a certificate for a proposed pipeline project, the Commission's role under section 183 of the CER Act is to prepare and submit a report with its recommendation to the Minister of Energy and Natural Resources (**Minister**) as to whether a certificate should be issued for all or part of the project. Section 52 of the CER Act requires that the Commission hold a public hearing to assess such an application. In making its recommendation, paragraph 183(1)(a) requires that the Commission take into account whether the applied-for project is and will be required by the present and future public convenience and necessity.

The Commission must take into account all considerations that appear to be relevant and directly related to the project, including any Indigenous knowledge and scientific information and data filed on the hearing record. In addition, the Commission must take into account the factors set out in subsection 183(2) of the CER Act. These include economic, technical, and financial considerations; environmental and socio-economic effects; effects on the rights of Indigenous Peoples; and the interests and concerns of Indigenous Peoples, including regarding their current use of lands and resources for traditional purposes.

The Commission must provide the reasons for its recommendation and, regardless of that recommendation, include in its report the conditions that it considers necessary or in the public interest if the Governor in Council were to direct the issuance of a certificate. If a company requests that a part or parts of a project be exempted from specific sections of the CER Act or OPR, the Commission is responsible for making decisions on those requests and issuing any applicable orders.

1.3.2 The CER's and the Crown Consultation Coordinator's early engagement activities

The CER Act's preamble notes the Government of Canada's commitment to using transparent processes built on early engagement and inclusive participation. Consistent with that commitment, after receiving Westcoast's Project notification on 30 January 2024, the CER began its early engagement activities with the public (including landowners and communities) and, through the Crown Consultation Coordinator (**CCC**), with Indigenous Peoples potentially affected by the Project. During early engagement, the CER and the CCC contacted anyone that they understood may be affected by the Project, to inform them about the expected application and to gather any preliminary Project-related or procedural concerns. On the day Westcoast filed its application, the CER and the CCC filed their respective early engagement reports to help further inform the Project and the Commission's assessment process.

1.3.3 The Commission's public hearing for the Project

On 30 July 2024, the Commission issued a notice of public hearing. The notice explained the process for registering to participate as an intervenor in the hearing and provided information on the CER's Participant Funding Program to facilitate intervenors' participation, including Indigenous Peoples. In July/August 2024, as directed by the Commission, Westcoast:

- posted the notice on its website;
- published the notice in 15 print and digital publications and websites, including those with connection to the locations where Project work is proposed; and
- distributed the notice directly to, among others, potentially affected landowners, municipalities and first responders, and all Indigenous Peoples Westcoast had engaged, as well as to those on the Crown List for the Project.[11]

In issuing the notice, the Commission explained that its assessment and hearing would be the primary forum for Crown consultation with Indigenous Peoples. The Commission also confirmed that in addition to the hearing, the CCC would conduct early and supplemental Crown consultation activities with Indigenous Peoples and, as necessary, with other federal departments.

On 6 September 2024, the Commission issued a list of parties[12] and confirmed all registrants as intervenors. The Commission indicated that Indigenous Peoples potentially affected by the Project, including those on the Crown List, could register as intervenors at any time without having to justify their participation. At the hearing's conclusion, there were 63 confirmed intervenors, including 40 Indigenous communities or organizations. Many Indigenous communities or organizations who registered as intervenors also chose to participate in the CCC's supplemental Crown consultation activities, as did others on the Crown List who did not register as intervenors. Other intervenors

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[11] **Chapter 11** describes how the Crown List was developed for this Project. The Commission notes that the names of certain Indigenous communities differ between the Crown List and how they identified themselves in their registrations to participate in the hearing. In this report, for Indigenous intervenors on the Crown List, the Commission uses the names in their registrations (and, consequently, as they have been referred to throughout the hearing).

[12] In this report, the term "parties" is used when referring to Westcoast and all intervenors.

included companies, industry and landowner associations or groups, individuals, and federal, provincial, and municipal departments or agencies. **Appendix 2** provides the list of intervenors**.**

Before beginning its assessment of the Project, the Commission was required to make a threshold determination under section 183 of the CER Act on whether Westcoast's application was complete. On 13 September 2024, the Commission sought comments from parties and the CCC on a number of preliminary matters, including completeness. On 19 November 2024, the Commission determined that the application was complete and confirmed a 450-day legislated time limit. This meant that the Commission had until 12 February 2026 to complete its assessment and submit its report to the Minister. The Commission also set out certain initial hearing steps and deadlines at that time.

On 6 December 2024, the Commission issued the GH-001-2024 Hearing Order, taking into account comments received from parties and the CCC on the hearing process and the issues relevant to the proceeding. The Hearing Order set out all process steps and deadlines for the hearing and attached the List of Issues that the Commission would consider in assessing the Project.

Parties and the CCC had a variety of opportunities to participate in the hearing, including:

- Parties could file written evidence.
- Indigenous intervenors had an additional opportunity, later in the process, to file Indigenous-led assessments or studies.
- Parties and the CCC could ask each other two rounds of written information requests (**IRs**) to obtain information and test each other's evidence and submissions. Each IR round was followed by a process for filing motions to compel full and adequate IR responses.
- Indigenous intervenors could provide oral Indigenous knowledge during three separate weeks and in three different locations close to the Project route.
- Parties and the CCC could file written comments on potential conditions for the Project, including those issued by the Commission. To assist in developing their comments, the CER held a two-day virtual workshop at which attendees were provided information on the purpose of conditions, the CER's approach to project lifecycle oversight, and an overview of the Commission's potential conditions. Attendees were encouraged to exchange their perspectives.
- The CCC could file three reports, in addition to its early engagement report.
- Parties could file written argument.
- Parties could provide oral summary argument (if they filed written argument), and Westcoast could provide oral reply argument.

Anyone who was not an intervenor could file a letter of comment (referred to as a "commenter**"**), which could include comments on potential conditions. Commenters[13] were also able to attend the CER's virtual conditions workshop to help inform their comments. The Commission received 87 letters of comment, including 2 from Indigenous communities. Through the CCC's reports, the Commission also received information from Indigenous intervenors, Indigenous communities that did

[13] In this report, the term "participants**"** is used when referring to all parties, commenters, and the CCC.

not participate directly in the hearing, as well as from federal and provincial departments and agencies involved in the CCC's supplemental Crown consultation activities.

The Hearing Order indicated that oral cross-examination would be scheduled if required and reserved time for that purpose in September 2025. In June 2025, the Commission invited parties and the CCC to comment on whether there was a need or interest in holding this process step. None of these participants stated a need or interest. The Commission concluded that existing IR processes provided sufficient opportunities to obtain and test evidence and submissions on the hearing record and it decided not to hold oral cross-examination.

During the hearing, the Commission issued a series of procedural updates and rulings, both in response to parties' requests and on its own initiative. Many of these adjusted hearing steps and deadlines to enhance meaningful participation while maintaining fairness and efficiency in the hearing. **Appendix 3** provides the final timetable of events and **Appendix 4** summarizes the procedural adjustments and accommodations made.

1.3.4 Consideration of the hearing record

In reaching its recommendation and decisions, the Commission considered the entirety of the GH-001-2024 hearing record, which is available in the CER's online public registry in Folder 4456083. At the time the hearing record closed, 73 Indigenous communities and organizations were on the Crown List. Forty Indigenous communities and organizations registered to participate as intervenors in the hearing, with 23 providing oral Indigenous knowledge, 12 filing written evidence, 11 filing Indigenous-led assessments or studies, 24 filing written argument, and 6 providing oral summary argument. Two Indigenous communities filed letters of comment. The hearing record, including the CCC's reports, shows that many also participated actively in the CCC's supplemental consultation activities, with fewer than 10 not participating in either the Commission's hearing or the CCC's activities. In addition to Indigenous participants' submissions, the Commission also considered Indigenous Peoples' interests and concerns raised through the CCC's and Westcoast's filings.

This hearing record is comprehensive, reflecting diverse perspectives through a voluminous and detailed collection of written submissions, over 60 hours of oral Indigenous knowledge, and 3 days of oral argument. Participants' evidence and submissions included Westcoast's application and January 2025 Project update, oral Indigenous knowledge, written evidence, the CCC's reports, letters of comment, and argument. Most filings and transcripts were, and remain, publicly accessible. The Commission received a limited amount of confidential information under subsection 58(1) and section 60 of the CER Act, including filed evidence, Indigenous-led assessments or studies, oral Indigenous knowledge, and IR responses. While the Commission considered all confidential information in its assessment of the Project, none of it is disclosed in this report.

This report is not an exhaustive recitation of all information received. Instead, it summarizes key evidence and submissions that are relevant and directly related to the Commission's consideration of the Project. The omission of certain submissions or topics raised by participants, including by Indigenous Peoples, should not be interpreted as the Commission having disregarded them in making its recommendation and decisions on the Project.

Indigenous Peoples expressed interests and concerns throughout the hearing, both directly on the hearing record and through their consultation with the CCC, with the latter being conveyed in the

CCC's reports filed on the hearing record. The Commission recognizes the importance of fully considering these interests and concerns, including the Project's potential effects on the rights of Indigenous Peoples.

1.3.5 Procedural fairness

For the reasons explained in **Chapter 3**, the Commission finds that the GH-001-2024 hearing process met the requirements of procedural fairness, in accordance with the rules of natural justice. The process provided adequate notice of Westcoast's application and the Commission's hearing to those potentially affected by the Project, including Indigenous Peoples. It also provided parties with meaningful and diverse opportunities to know the case to be met, obtain and test evidence, and present their own cases.

1.3.6 Duty to consult and accommodate

For the reasons explained in **Chapter 11,** the Commission finds that its recommendation, determinations, and decisions related to the Project – outlined in **Section 1.4** and explained in more detail throughout this report – are consistent with subsection 35(1) of the *Constitution Act, 1982* and the honour of the Crown. The Commission finds that the Crown's duty to consult and accommodate has been met because the process for consulting Indigenous Peoples was adequate for the purpose of the Commission's recommendation to the Minister and the Commission's decisions on the Project. The Commission also finds that Westcoast's mitigation measures, together with the Commission's 47 conditions, are adequate to accommodate section 35 rights that would or may be affected by the Project and which were revealed through the consultation process.

The Commission provides its assessment of Project effects on the rights of Indigenous Peoples and on Indigenous land and resource use in **Chapter 10**. The Commission acknowledges that there is an interconnection between potential effects on the rights of Indigenous Peoples and the potential effects on environment and socio-economic matters. As such, through **Chapters 7 and 8**, the Commission discusses a number of cross-references to reflect these interconnections, which support a more complete understanding of the context in which Indigenous Peoples practice their rights or otherwise raise interests and concerns in the Project areas. Indigenous Peoples raised a wide range of interests and concerns related to other matters that the Commission considered and assessed. The Commission has incorporated its views and findings on these interests and concerns across other chapters of this report, where they directly relate to the topics being discussed.

1.4 Commission recommendation, determinations, and decisions

Below is a summary of the recommendations, determinations, and decisions that the Commission was required to make following its assessment of the Project. Detailed reasons for each can be found throughout this report.

1.4.1 Recommendation on the Project

Having considered whether the Project will be required by the present and future public convenience and necessity, the Commission recommends that a certificate be issued under section 186 of the CER Act. The certificate would authorize Westcoast to construct and operate the Project, subject to the 47 conditions set out in **Appendix 1**.

1.4.2 Decision on requested exemption from PPBoR requirements

Under paragraph 198(c) and section 199 of the CER Act, companies are required to file and obtain the Commission's approval of certain documents (i.e., the PPBoR) describing the detailed route of a pipeline. Paragraph 198(d) requires that companies deposit the approved PPBoR in the land registry office or other office where land titles are recorded. Under section 214 of the CER Act, Westcoast sought an exemption from these requirements for certain Project facilities and activities.

For the reasons explained in **Chapter 5**, the Commission finds that it is in the public interest to approve Westcoast's PPBoR exemption request, except in relation to the CS-8A power line, for which the exemption request is denied. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order XG-002-2026, subject to the relevant conditions set out in **Appendix 1.** This exemption applies to:

- the temporary infrastructure required for Project construction (e.g., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards, and construction camps);
- pipeline right-of-way preparation activities (including clearing, grading, stripping, and topsoil storage) and conducting trenchless crossings in select areas along the pipeline route;
- the compressor unit additions at CS-2B, CS-6B, CS-8A, and CS-8B;
- the modifications and upgrades at CS-2B, CS-3, CS-4A, CS-4B, CS-5, CS-6A, CS-6B, CS-7, CS-8A, CS-8B, and CS-9, and at the Huntingdon meter station (identified as MS-16);
- the CS-6B power line;
- the substations at CS-6B, CS-8A, and CS-8B; and
- the pig launcher and receiver installations and tie-in and cross-over assemblies for the 11 new pipeline loops.

1.4.3 Decision on requested exemption from leave to open requirements

Under paragraph 180(1)(b) and section 213 of the CER Act, companies are required to obtain an order from the Commission prior to opening a pipeline, or a section of pipeline, for the transmission of hydrocarbons or any other commodity. This is referred to as "leave to open." The Project's electrical facilities are also subject to this requirement, by virtue of being connected works to the applied-for pipeline (as defined in the CER Act). Under section 214 of the CER Act, Westcoast sought an exemption from this requirement for certain Project components.

For the reasons explained in **Chapter 6**, the Commission finds that it is in the public interest to grant Westcoast's leave to open exemption request. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order XG-002-2026. This exemption applies to:

- the modifications and upgrades at CS-2B, CS-3, CS-4A, CS-4B, CS-5, CS-6A, CS-6B, CS-7, CS-8A, CS-8B, CS-9, and MS-16;
- the tie-in assemblies and auxiliary piping systems for the four compressor unit additions at CS-2B, CS-6B, CS-8A, and CS-8B;
- the pig launcher and receiver installations and tie-in and cross-over assemblies for the new pipeline loops;

- the two power lines; and
- the substations at CS-6B, CS-8A, and CS-8B.

1.4.4 Decision on requested exemption from joint examination requirements

Section 17 of the OPR requires companies, when conducting joining on a pipeline, to examine the entire circumference of each joint by radiographic or ultrasonic methods. Section 97 of the CER Act authorizes the Commission to exempt companies from this requirement. Westcoast requested an exemption from the non-destructive examination requirements for low-pressure auxiliary piping systems at various compressor station sites associated with the Project.

For the reasons explained in **Chapter 6**, the Commission finds that it is in the public interest to grant Westcoast's exemption request. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order MO-005-2026.

1.4.5 Decision on decommissioning

Section 45.1 of the OPR requires companies to apply for authorization to decommission a pipeline. For the reasons explained in **Chapter 6**, the Commission finds that it is in the public interest to approve Westcoast's request for authorization to decommission, by removal, a 350-metre-long segment of deactivated pipe within Westcoast's existing right-of-way. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order MO-006-2026, which is subject to the relevant conditions set out in **Appendix 1**.

1.4.6 Decision on toll structure

For the reasons explained in **Chapter 4**, the Commission finds that it is appropriate to grant Westcoast's request for the cost of the Project to be included in the T-South system's cost of service and tolled on a rolled-in basis, in accordance with the negotiated toll settlement previously approved by the Commission in Order TG-010-2022.[14] The Commission is satisfied that Westcoast's proposed approach is appropriate and expects that this would result in tolls that are just, reasonable, and not unjustly discriminatory.

1.4.7 Federal lands determination

Under section 82 of the IA Act, the Commission must determine whether carrying out the Project on federal lands is likely to cause significant adverse environmental effects (i.e., changes to the environment, and the effects of such changes on Indigenous Peoples and on health, social, or economic conditions). The Project would cross or affect federal lands, namely reserve lands of Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band.

For the reasons explained in **Chapter 8**, the Commission has determined that the Project is not likely to cause significant adverse environmental effects on the federal lands on which it would be carried out.

[14] Filing C22660.

1.5 Next steps

1.5.1 The Governor in Council's process

After the Commission submits its report to the Minister, section 186 of the CER Act requires that the Governor in Council do one of three things:

1) refer the recommendation or any conditions back to the Commission for reconsideration;
2) direct the Commission, by order, to issue a certificate for the Project or any part of it and to make the certificate subject to the conditions set out in the report; or
3) direct the Commission, by order, to dismiss the application.

If the Governor in Council issues an order directing the Commission to issue a certificate, it must do so within 90 days after the Commission submits its report, unless the Minister extends this legislated time limit. Under subsection 186(5), the Commission must comply with any such order within seven days. The Governor in Council also has the authority to amend or add any conditions to the certificate to further address concerns of Indigenous Peoples potentially affected by the Project, as part of the Crown's duty to consult and accommodate.[15]

1.5.2 Detailed route process

If the Commission issues a certificate, Westcoast cannot immediately construct the Project. It must next file, and obtain the Commission's approval of, its PPBoR for the Project, except for any portions that are exempted from these requirements (as explained in **Section 1.4.2 and Chapter 5**).

A PPBoR is comprised of two portions. The Plan and Profile shows the precise location and elevation profile of a pipeline on all parcels of land that it would cross (i.e., the detailed route). The Book of Reference shows details of each parcel to be crossed (e.g., names of owners and occupiers, area, and the length and width of lands to be taken). The PPBoR must be in a form that is satisfactory to the Commission.

Westcoast must publish notice of its PPBoR where the lands are situated and serve a notice on each owner of the lands that Westcoast proposes to acquire, lease, take, or use for the Project. Landowners have 30 days after receiving notice, and land users (e.g., leaseholders, tenants, Indigenous Peoples) have 30 days after the date that the last notice is published, to file a statement of opposition related to the detailed route.

If no one files a statement of opposition, the Commission may approve a PPBoR without further process. If a landowner or land user files a valid statement of opposition within the statutory time limits, the Commission must hold a public hearing to determine the best possible detailed route of the relevant Project components within the established corridor, as well as the most appropriate methods and timing of their construction on those lands. A detailed route hearing is limited to these issues. The Commission would not revisit its recommendation on the Project through this process. If the Commission approves the detailed route following a hearing, it can impose additional conditions, if appropriate. The Commission may approve certain parts of a PPBoR (for specific

[15] *Gitxaala Nation v Canada*, 2016 FCA 187 at para 168 [***Gixtaala***].

Project components), while withholding approval of other parts that are the subject of detailed route hearings.

1.5.3 Applying for leave to open

Under paragraph 180(1)(b) of the CER Act, Westcoast cannot operate the Project until it has obtained an order granting leave to open under section 213. This step ensures that construction is complete and that Westcoast has satisfied all applicable conditions before starting operations. Westcoast may choose to file separate leave to open applications for different Project components instead of a single application for the entire Project.

The Commission has exempted Westcoast from the leave to open requirements for certain Project components, as set out in Order XG-002-2026 and explained in **Section 1.4.3 and Chapter 6**. Westcoast is permitted to begin operating these exempted components without obtaining further leave from the Commission, subject to Westcoast meeting any additional relevant regulatory requirements.

1.5.4 Compliance with the Commission's conditions

As a lifecycle regulator, the CER regulates projects from their application and approval stage through to abandonment and after abandonment. Unless the Commission directs otherwise, companies are legally required to satisfy all conditions imposed by the Commission on their projects. The main purpose of conditions is to mitigate the potential risks and effects associated with a project so that it can be designed, constructed, operated, and ultimately abandoned in a safe manner that protects the public, the environment, and the rights of Indigenous Peoples. The CER uses various tools to encourage, monitor, and ensure compliance with the conditions it imposes (and with other legal requirements under the CER Act and its regulations). Collectively, these activities are referred to as "condition compliance."

The Commission thoroughly considered all participants' comments on potential conditions in establishing its conditions for the Project. The Commission modified approximately 30 of its potential conditions and added 3 new conditions in response to feedback received, including changes to further address interests and concerns of Indigenous Peoples.

Further, Westcoast made many commitments with respect to the Project throughout the hearing, including in response to feedback from potentially affected Indigenous Peoples.[16] The Commission considers it necessary and in the public interest to impose four standard conditions that would make all of Westcoast's commitments in this hearing regulatory requirements subject to the CER's oversight:

- **Condition 1** (Condition compliance)
- **Condition 2** (Design, location, construction, and operations)
- **Condition 3** (Environmental protection)

[16] Westcoast made these commitments both on and off the Commission's hearing record. It is important to note that the CER can only enforce commitments that Westcoast made on the hearing record in relation to the Project, since it is only those commitments that are before the Commission. The Commission expects Westcoast to fulfill the commitments it made, and may make, to Indigenous Peoples and stakeholders outside of the hearing record.

- **Condition 35** (Condition compliance reporting by Accountable Officer)

Throughout this report, the Commission explains all of the other conditions it considers necessary or in the public interest to impose on the Project. The Commission also discusses how it considered participants' comments on potential conditions, where relevant.

Most conditions would require Westcoast to make filings at different stages of the Project lifecycle (e.g., before beginning construction, before beginning operations, during operations). Certain filings would require Commission approval. The CER would undertake a thorough assessment of all Westcoast's condition filings, whether or not they require Commission approval, to determine whether they are complete and adequate, and that Westcoast has satisfied all condition requirements. All condition filings would be publicly available on the CER's online public registry. Interested persons, including Indigenous Peoples, may comment on any condition filing by filing a letter with the CER.

Before Westcoast can begin constructing any part of the Project, the CER would assess Westcoast's compliance with all relevant pre-construction conditions. Likewise, before Westcoast can begin operating the Project, the CER would assess Westcoast's compliance with all relevant pre-operation conditions. Compliance with conditions is mandatory, notwithstanding the exemptions granted by the Commission. The Commission would continue to assess Westcoast's compliance with certificate and order conditions throughout the life of the Project, including following construction and while the Project is operating.

2 Legal framework

The Commission assessed the Project and made its findings based on the statutory obligations, powers, and authorities afforded to it under its enabling statute, the CER Act. The Commission took into account the considerations and factors described in subsection 183(2) of the CER Act, as well as the CER Act's broader context, including in relation to efficiency and timely decisions, as well as Reconciliation and the rights and interests of Indigenous Peoples. The Commission considered its responsibilities under other federal legislation applicable to the Project and was guided by its obligations in relation to Indigenous Peoples, including those under subsection 35(1) of the *Constitution Act, 1982* and the UN Declaration Act. The Commission also considered participants' submissions with respect to the parallel regulatory processes being undertaken by Indigenous governing bodies and the cumulative effects framework that has been put into place in BC following the BC Supreme Court's decision in *Yahey v British Columbia*.[17]

The Commission's hearing process is only one phase of the CER's broader regulatory oversight of the Project. If the Governor in Council approves the Project and directs the Commission to issue a certificate, the CER would regulate the Project over its entire lifecycle. The conditions attached to any certificate and orders issued would form an important part of the CER's regulatory framework, alongside relevant regulations and standards and CER-issued guidance that can help inform and guide its regulated industry. The CER would monitor and assess Westcoast's compliance with this regulatory framework over the Project's lifecycle.

2.1 CER Act

The CER Act establishes the CER as an independent energy regulatory body responsible for, among other things, regulating interprovincial and international pipelines, power lines, and offshore renewable energy projects. The CER regulates energy projects under its jurisdiction over their entire lifecycle – from design in the early engagement phase, through the application process, construction, operations, and abandonment.

The Commission assesses an application for a pipeline certificate under section 183 of the CER Act to determine whether the project is in the Canadian public interest and if it should be recommended for approval. The Commission must consider Indigenous knowledge and scientific information and data. Subsection 183(2) also lists the factors that the Commission must take into account when making its recommendation:

a) the environmental effects, including any cumulative environmental effects;

b) the safety and security of persons and the protection of property and the environment;

c) the health, social and economic effects, including with respect to the intersection of sex and gender with other identity factors;

d) the interests and concerns of the Indigenous peoples of Canada, including with respect to their current use of lands and resources for traditional purposes;

e) the effects on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;

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[17] 2021 BCSC 1287 [***Yahey***].

f) the availability of oil, gas or any other commodity to the pipeline;

g) the existence of actual or potential markets;

h) the economic feasibility of the pipeline;

i) the financial resources, financial responsibility and financial structure of the applicant, the methods of financing the pipeline and the extent to which Canadians will have an opportunity to participate in the financing, engineering and construction of the pipeline;

j) the extent to which the effects of the pipeline hinder or contribute to the Government of Canada's ability to meet its environmental obligations and its commitments in respect of climate change;

k) any relevant assessment referred to in section 92, 93 or 95 of the *Impact Assessment Act*; and

l) any public interest that the Commission considers may be affected by the issuance of the certificate or the dismissal of the application.

As part of its Project application filed under section 183, Westcoast also sought approval to construct and operate electrical facilities, including three substations and two power lines. Westcoast argued that these electrical facilities would form part of its federal work and undertaking, would be integrated into its T-South system, and would be subject to common control, direction, and management by Westcoast. The electrical facilities would be used exclusively by Westcoast and dedicated solely to Westcoast's pipeline system. The power supplied by the power lines would not be used by or supplied to any third parties. The Commission accepts Westcoast's submissions and finds that the electrical facilities fall under the CER's jurisdiction. It is appropriate for the Commission to also assess them under section 183 of the CER Act as connected works to the "pipeline."

After assessing an application under section 183 of the CER Act, the Commission must issue a report to the Minister with its recommendation on the project, including all the conditions that the Commission considers necessary or in the public interest to attach to any certificate issued, if the project were approved. Under subsection 183(4), the Commission's report must be submitted to the Minister within the time limit set by the Lead Commissioner. This time limit can be no longer than 450 days from the day the applicant has, in the Commission's opinion, provided a complete application. For the Project, the Lead Commissioner set a time limit of 450 days. The Commission has no discretion under the CER Act to extend this time limit. Only the Minister may order extensions. Section 186 of the CER Act describes the Governor in Council's responsibilities as the final decision-maker on an application for a certificate under section 183.

Under the CER Act, the Commission is also responsible for making decisions and issuing orders with respect to pipeline projects. Section 214 authorizes the Commission to grant a company exemptions from certain requirements, authorizations, or processes in the CER Act. These include those in relation to the detailed route process for a project, which sets the precise location of the pipeline (or part of a pipeline), and the requirement to obtain leave to open, which allows the pipeline (or part of the pipeline) to begin operating.

Where a pipeline is proposed to cross reserve lands, subsection 317(1) of the CER Act requires the company to obtain Band Council consent before taking possession of, using, or occupying any lands required for the project. **Chapter 5** discusses subsection 317(1) consents required for this Project.

In making recommendations and decisions under the CER Act, the Commission must also take into account and consider the broader statutory context that guides how the Commission must undertake its statutory responsibilities. Subsection 56(1) requires the Commission to consider any adverse effects that its decision, order, or recommendation may have on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the *Constitution Act*, *1982*. The CER Act's preamble adds additional context. Among other things, it refers to Canada's commitment to enhancing Canada's global competitiveness; achieving Reconciliation with First Nations, the Métis, and the Inuit; implementing the United Nations Declaration on the Rights of Indigenous Peoples (**UN Declaration**); and using transparent processes. As a regulatory tribunal, the Commission must also ensure that its processes are being undertaken in a manner that is procedurally fair, in accordance with the rules of natural justice.

2.2 Other federal legislation

In making its recommendation and decisions on the Project, the Commission was required to consider or make determinations under other federal legislation. This includes:

- The **IA Act** – Under section 82 of the IA Act, the Commission must determine whether carrying out a project on any federal lands, including reserve lands, is likely to cause significant adverse environmental effects (i.e., changes to the environment and the effect of such changes on Indigenous Peoples and on health, social, or economic conditions). This Project would cross or affect the reserve lands of Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band. If the Commission determines that a project is likely to cause significant adverse environmental effects, the Governor in Council must determine if those effects are nonetheless justified in the circumstances. **Chapter 9** sets out and explains the Commission's federal lands determination related to the Project.
- The **SARA** – Under the SARA, the Commission is required to consider a pipeline project's impact on the critical habitat of species listed on Schedule 1 of that Act. Subsection 77(1) requires that the Commission provide its opinion as to whether all reasonable alternatives to the activity that would reduce impacts on species' critical habitat have been considered, and the best solution adopted, and that all feasible measures will be taken to minimize the activity's effects on the species' critical habitat. Subsection 79(1) requires that the Commission identify adverse effects on listed wildlife species and their critical habitat and, if a project is carried out, to ensure that measures are taken to avoid or lessen these effects and to monitor them. **Chapters 7 and 9** describes how the Commission met its obligations under the SARA.
- The ***Fisheries Act*** – Fisheries and Oceans Canada (**DFO**) is responsible for issuing authorizations under the *Fisheries Act* for proposed works or activities that may impact fish and fish habitat. Pursuant to a 2023 Memorandum of Understanding between DFO and the CER, the Commission assesses whether projects under its jurisdiction would have potential impacts on fish and fish habitat and, through its process, requires proponents to consider measures to avoid and mitigate impacts. The Commission must refer to DFO any activity that may result in the harmful alteration, disruption, or destruction of fish habitat. **Chapter 7** describes how the Commission met its obligations under the *Fisheries Act*.

2.3 Duty to consult and accommodate

Regulatory tribunals such as the Commission must perform the duties and exercise the powers assigned to them in their governing legislation, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982*. The government's duty to consult and, where appropriate, accommodate Indigenous Peoples is a constitutional principle derived from section 35 and grounded in the honour of the Crown. The purpose of the duty is Reconciliation and the protection of Indigenous and Treaty rights and the resources used by Indigenous Peoples to exercise those rights.

A regulatory tribunal's decision would trigger the Crown's duty to consult when the Crown has knowledge – real or constructive – of a potential or recognized Indigenous or Treaty right that may be adversely affected by the tribunal's decision. The duty to consult is not triggered by historical impacts. Rather, the subject of the consultation is the potential impacts of the current decision under consideration. However, the cumulative effects of an ongoing project and historical context may inform the scope of the duty to consult.

The content and scope of the duty to consult and accommodate is based on a spectrum. At the higher end of the spectrum, where deep consultation may be required, a decision-maker may provide opportunities to, among other things, make submissions, formally participate in the decision-making process, and receive written reasons to show that the concerns of Indigenous Peoples were considered and which reveal the impact they had on the decision.

Where the Commission is responsible for making recommendations and decisions under the CER Act, its project assessments and hearing processes are the primary forum for Crown consultation. In the companion decisions of *Clyde River (Hamlet) v Petroleum Geo-Services Inc.*[18] and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.,*[19] the Supreme Court of Canada acknowledged that the National Energy Board (now the Commission) has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures. As an agent of the Crown,[20] the CER, through its CCC, may also conduct consultation activities with Indigenous Peoples on a project's Crown List to supplement the Commission's hearing process. These supplemental consultation activities begin during the early engagement phase, in advance of the Commission's hearing process, and continue after the Commission's submits its report to support the Governor in Council's decision-making phase.

The Commission is required to make its recommendation and decisions on the Project in the overall public interest. The public interest has been defined as being both regionally and nationally based. It is therefore understood to be inclusive of all Canadians, including Indigenous Peoples. A decision to authorize a project cannot be in the public interest if the Crown's duty to consult and, where necessary, accommodate has not been met. The Crown is not to be held to a standard of perfection in fulfilling the duty to consult. What is required is reasonableness. Sometimes in attempting to fulfil the duty, there can be omissions, misunderstandings, accidents, and mistakes.

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[18] 2017 SCC 40 [***Clyde River***].
[19] 2017 SCC 41 [***Chippewas***].
[20] Under subsection 10(2) of the CER Act, the Regulator is for all purposes an agent of His Majesty in right of Canada.

Where a project's potential effects on the claimed rights and title are significant, the honour of the Crown may require accommodation to avoid irreparable harm or to minimize the infringement. The Supreme Court of Canada in *Haida Nation v British Columbia (Minister of Forests)*[21] provided that where accommodation is required, the Crown must balance the concerns of Indigenous Peoples reasonably with the potential impact of the decision on the asserted right or title and with other societal interests. The process of seeking compromise attempts to harmonize conflicting interests and move further down the path of Reconciliation. The duty requires good faith efforts to understand each other's concerns and move to address them.

2.4 UN Declaration and UN Declaration Act

2.4.1 Background

In 2007, the United Nations General Assembly adopted the UN Declaration, which sets out the minimum standards for the survival, dignity, and well-being of Indigenous Peoples throughout the world. In 2016, the Government of Canada announced that it fully supported the UN Declaration, without qualification. The UN Declaration Act came into force on 21 June 2021. Section 4 of the UN Declaration Act states that its purpose is to affirm the UN Declaration as a universal international human rights instrument with application in Canadian law, and to provide a framework for the Government of Canada's implementation of the UN Declaration.

In June 2023, in accordance with section 6 of the UN Declaration Act, the Government of Canada issued its first Action Plan (2023-2028) to achieve the objectives of the UN Declaration. Action Plan Measure 34 committed the government to work in consultation and cooperation with Indigenous Peoples to enhance their participation in CER-regulated projects, through various systemic measures.

The CER's obligations and commitments in relation to implementing the UN Declaration and the consideration of the rights of Indigenous Peoples extend beyond the UN Declaration Act. The preamble to the CER Act, which came into force in 2019, contains references to the federal government's commitment to achieving Reconciliation and implementing the UN Declaration. The CER Act also refers to the regulator's mandate, which includes an obligation to perform its duties and functions in a manner that respects the government's commitments regarding the rights of Indigenous Peoples. In addition, the CER has referenced its commitments to Reconciliation and implementing the UN Declaration through various policy documents. This includes the CER's Strategic Priorities and its Statement on Reconciliation, the latter of which was co-endorsed by the CER's Board of Directors and Indigenous Advisory Committee.

2.4.2 General application and context for the duty to consult

The Commission has previously considered the Crown's duty to consult and accommodate in light of the passage of the *UN Declaration Act*. Specifically, in a 2023 decision on a deviation application for the Trans Mountain Expansion Project,[22] the Commission stated:

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[21] 2004 SCC 73 [***Haida***].
[22] Filing C26807.

> (…) the UN Declaration does not displace the legal tests for whether the Crown owes a duty to consult or the content of that duty as set out in Canadian law. (…)
>
> The Commission notes, however, that the UN Declaration, as affirmed through the [UN Declaration Act], can be taken into account to inform how the CER, as a federal regulator, approaches its legal duties and obligations going forward, including those in relation to the duty to consult and accommodate.

Similarly, in its report for NorthRiver Midstream NEBC Connector GP Inc.'s NEBC Connector Project (**NEBC Connector**),[23] the Commission stated:

> The [UN Declaration Act] does not immediately modify the existing duty to consult (…)
>
> However, the implementation of the UN Declaration through the [UN Declaration Act] will inform how the Government approaches meeting these legal duties going forward and it has informed how the Commission assessed the duty to consult and accommodate.

In this hearing, several Indigenous participants urged the Commission to consider the UN Declaration, in light of the findings of the Federal Court in *Kebaowek First Nation v Canadian Nuclear Laboratories.*[24] Specific submissions on this point include:

- Tribunals with the authority to consider questions of law must actively consider how the UN Declaration may impact the interpretation of Canadian laws, including the fulfilment of section 35 of the *Constitution Act, 1982*.
- The UN Declaration gives rise to an enhanced duty to consult that goes beyond what was previously set out in Canadian jurisprudence and offers a robust process to Indigenous Nations.
- Consultation must:
  - place a heightened emphasis on the need for a deep level of consultation and negotiations geared towards mutually accepted arrangements; and
  - be tailored to consider the impacted Indigenous Nation's laws, knowledge, and practice.

Westcoast argued that the case law on the UN Declaration is not settled and that various lower court decisions, including that of the Federal Court in *Kebaowek,* are inconsistent and have created legal uncertainty.[25] Rather, Westcoast urged that the Commission rely on its own past decisions that applied the UN Declaration until additional guidance can be provided through the appellant courts.

While administrative decision-makers are not strictly bound by their previous decisions in the way courts are bound by *stare decisis,* general consistency should be sought to ensure coherence and

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[23] Filing C26744.
[24] 2025 FC 319 [***Kebaowek***].
[25] In argument, Westcoast also generally referenced the Superior Court of Quebec's decision in *R. v Montour and White*, 2023 QCCS 4154, and the BC Supreme Court's decision in *Gitxaala v British Columbia (Chief Gold Commissioner),* 2023 BCSC 1680.

predictability for those affected by their decisions.[26] However, the Commission does not accept that it ought not consider participants' submissions on the relevant principles that are emerging through the case law regarding the application of the UN Declaration to its decisions, in this rapidly evolving area of the law.[27]

In particular, the Commission acknowledges the Federal Court's finding in *Kebaowek* that administrative tribunals with the authority to determine questions of law must actively consider how the UN Declaration may impact the interpretation of Canadian laws, including the fulfilment of section 35 of the *Constitution Act, 1982*.[28] Further, the Court's finding that the UN Declaration is a contextual factor in assessing the adequacy of Crown consultation, which would give rise to an enhanced obligation to consult and require robust processes that consider Indigenous laws, knowledge, and practices.[29] The Commission notes that the Supreme Court of Canada has further affirmed that the UN Declaration has been incorporated into Canada's positive law, though the precise implications have yet to be determined.

The Commission confirms that it has taken the UN Declaration and the UN Declaration Act into account in its assessment of the Project, to inform how the CER approaches its legal duties and obligations, including those in relation to the duty to consult and accommodate. The Commission is satisfied that the approach it took in this hearing is consistent with the principles and standards outlined by the Federal Court in *Kebaowek*. Specifically, as also described in **Chapter 3**, the Commission carried out a robust hearing process that was designed to provide opportunities for deep consultation with Indigenous Peoples and was capable of taking into account their laws, knowledge, and practices in support of several principles of the UN Declaration.

2.4.3 Free, prior, and informed consent

A number of Indigenous participants took the position that the Commission would need to obtain their consent before making a recommendation to the Governor in Council as to whether a certificate should be issued for the Project or before the Project may be approved through their traditional territories. Some took the position that the UN Declaration establishes consent as the objective of consultation with Indigenous Peoples. Indigenous Peoples variously cited Articles 19 and 32 of the UN Declaration to support these positions. The Federal Court's decision in *Kebaowek* was also referenced to support more robust interpretations of consent emanating from, or supported by, articles of the UN Declaration.

In contrast, Westcoast argued that the Commission does not require consent from any Indigenous Peoples to make a recommendation on the Project. Westcoast raised case law for its position that the consultation process does not give Indigenous Peoples a veto power over proposals within their territories.[30] Westcoast added that while it aims to secure the free, prior, and informed consent of

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[26] *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, [2019] 4 SCR 653 at paras 129 and 131 [***Vavilov***]. The preamble to the CER Act also reflects the importance to global competitiveness of predictable decisions that can provide certainty to investors and stakeholders.

[27] In *Thomas and Saik'uz First Nation v Rio Tinto Alcan Inc.,* 2022 BCSC 15, rev'd in part, 2024 BCCA 62, the BC Supreme Court noted, at para 212, that "(…) it remains to be seen whether the passage of [UN Declaration] legislation is simply vacuous political bromide or whether it heralds a substantive change in the common law respecting Aboriginal rights including Aboriginal title. Even if it is simply a statement of future intent, I agree it is one that supports a robust interpretation of Aboriginal rights."

[28] S*upra* note 24 at para 81.

[29] *Ibid* at paras 124-125, 183.

[30] *Coldwater First Nation v Canada (Attorney General)*, 2020 FCA 34 at para 55.

Indigenous Peoples in relation to the Project, it is important to recognize that this may not be possible.

Section 6 of the Government of Canada's *Principles Respecting the Government of Canada's Relationship with Indigenous Peoples* recognizes that meaningful engagement with Indigenous Peoples aims to secure their free, prior, and informed consent when Canada takes actions that impact them and their rights, including with respect to their lands, territories, and resources. Through Justice Canada's guidance materials on the UN Declaration Act, the federal government has further described free, prior, and informed consent as a process that is "free" from manipulation or coercion, "informed" by adequate and timely information, and occurs sufficiently "prior" to a decision so that rights and interests of Indigenous Peoples can be incorporated or addressed effectively as part of the decision-making process. Consistent with the standards recognized by the federal government, the Commission previously outlined its understanding of the concept of free, prior, and informed consent as being focused on parties working together in partnership and with respect, while striving to achieve consensus in good faith on decisions that may affect the rights and interests of Indigenous Peoples.[31] The Commission is of the view that these descriptions of free, prior, and informed consent, which it has adopted for this hearing, are consistent with the standards described by the Federal Court in *Kebaowek.* In particular, the Commission points to the Court's finding that where free, prior, and informed consent is triggered, significant robust processes are required that are directed towards finding mutual agreement.[32]

Chapter 11 describes how the Commission considered the duty to consult and accommodate in this hearing, in light of the UN Declaration. **Chapter 5** discusses the Commission's consideration of the consents required with respect to reserve lands under subsection 317(1) of the CER Act.

2.4.4 Other articles of the UN Declaration

Through its prior recommendations and decisions, including that for Pouce Coupé Pipe Line Ltd.'s application for the Taylor to Gordondale Pipeline Project (**Taylor to Gordondale**),[33] the Commission referenced various articles of the UN Declaration that it considered in an interpretive context through its assessments. Indigenous participants in this hearing referenced a number of articles of the UN Declaration as being applicable to their rights and interests. These include:

- **Article 3** – The right to freely determine their political status and freely pursue their economic, social, and cultural development
- **Article 5** – The right to maintain and strengthen their distinct political, legal, economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State
- **Article 11** – The right to protect their culture
- **Article 18** – The right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions

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[31] *Supra* note 22 at PDF page 43 of 47.
[32] S*upra* note 24 at paras 133 and 183.
[33] Filing C37235.

- **Article 20** – The right to maintain and develop their political, economic, and social systems or institutions; to be secure in their own means of subsistence and development; and to engage freely in all their traditional and other economic activities
- **Article 21** – The right to the improvement of their economic and social conditions
- **Article 24** – The right to maintain traditional health practices
- **Article 25** – The right to maintain and strengthen their distinctive spiritual relationship with their traditional territories
- **Article 26** – The right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use
- **Article 27** – States shall establish and implement, in conjunction with Indigenous Peoples concerned, a fair, independent, impartial, open, and transparent process (...) to recognize and adjudicate the rights of Indigenous Peoples pertaining to their lands, territories, and resources
- **Article 28** – The right to redress for lands, territories, and resources which they have traditionally owned or otherwise occupied or used and which have been taken, occupied, used, or damaged with their free, prior, and informed consent
- **Article 29** – The right to conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programs for Indigenous Peoples for such conservation and protection, without discrimination
- **Article 32.3** – States shall provide effective mechanisms for redress with respect to development activities and must take appropriate measures to mitigate adverse environmental, economic, social, cultural, or spiritual impacts of such activities

Where relevant in this report, the Commission references how it considered specific articles of the UN Declaration in an interpretive context, with a focus on the above-referenced articles that were raised directly by Indigenous participants in this hearing.

2.5 Other legal considerations

2.5.1 Regulatory processes of Indigenous governing bodies

Throughout this hearing, various Indigenous participants referenced other regulatory processes being undertaken for the Project by Indigenous governing bodies.[34] In some cases, participants sought recognition of these processes.

Through its consultation with the CCC, Matsqui First Nation advised that Westcoast had prepared an environmental assessment that complies with the Matsqui First Nation's *Environmental Assessment Law*, adopted in 2014. The CCC provided a summary of Matsqui First Nation's environmental assessment process, conclusions, and recommendations, and noted that Matsqui First Nation hopes

[34] Under section 2 of the CER Act, "Indigenous governing body" means "a council, government, or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982*."

that the CER would have a role in ensuring that Westcoast fulfils its obligations. Further, Matsqui First Nation stated that they were a government and expects to be treated as such.

The S'ólh Téméxw Stewardship Alliance (**STSA**) advised that they are a co-regulator within S'ólh Téméxw (the shared asserted territory of the Stó:lō people) and were conducting their own Integrated Cultural Assessment (**ICA**) for the Project. The STSA described their ICA as a formal exercise of Stó:lō jurisdiction over assessment and decision-making in relation to activities affecting Stó:lō rights, title, and stewardship responsibilities. The STSA asked the Commission to formally recognize their ICA, inclusive of any conditions, as enforceable, co-equal conditions to which the certificate would be subject if the Project is approved.

The Commission understands that some Indigenous governing bodies are undertaking alternate processes in relation to the Project, in which Westcoast is participating. The Commission further acknowledges the STSA's view that their ICA, being undertaken on behalf of a number of rights-bearing communities in S'ólh Téméxw, is the practical implementation of Articles 18 and 27 of the UN Declaration. The Commission supports Westcoast's continued participation in these parallel processes being undertaken in accordance with the laws, governance, and knowledge of Indigenous Peoples in the Project areas. The Commission is of the view that a project proponent's active participation in processes undertaken by Indigenous governing bodies can support Reconciliation and the objectives of the UN Declaration. To the extent that the results or findings of these processes have been filed on the hearing record, the Commission has considered them, as reflected in **Chapter 10**. The Commission further notes that it could enforce any commitments Westcoast made in this hearing process, including those regarding the process for the STSA's ICA, in accordance with **Condition 2** (Design, location, construction, and operations).

The Commission acknowledges Canada's engagement framework with the STSA, established through the *S'ólh Téméxw Stewardship Alliance – Canada Consultation and Engagement Protocol* (**STSA-Canada Protocol**). The STSA advised that the CCC committed to follow the intent of this protocol when engaging member Nations through the STSA. The Commission observes that after submitting its report to the Minister, the Governor in Council may have an opportunity to consider submissions from the STSA, including those in relation to their ICA and any conditions that may attach to it, and how they may apply to the Project. Similarly, in its role to support the Governor in Council's decision-making process, the CCC may also consider such submissions, in line with the STSA-Canada Protocol or otherwise.

However, for the purpose of its recommendation, the Commission finds that there is no basis under the CER Act, or otherwise at law or through other instruments such as the STSA-Canada Protocol, for it to formally recognize the STSA's ICA, inclusive of any conditions, as enforceable, co-equal conditions to which the certificate would be subject if the Project is approved. Rather, under paragraph 183(1)(b) of the CER Act, the Commission is required to set out all of the conditions that it considers necessary or in the public interest that would attach to any certificate issued. There is no power within the CER Act to establish unknown future conditions, the contents of which the Commission has not considered or otherwise determined to be consistent with other conditions established, or findings made, within this report.

Sections 77 and 78 of the CER Act provide for the development of regulations that would allow for certain powers and authorities under the CER Act (that are detailed in any arrangement subsequently entered into) to be carried out by Indigenous governing bodies. However, these regulations and the related arrangements have not yet been established. No participant, including

the STSA, identified authorities under the CER Act or otherwise that would allow the Commission to delegate aspects of its decision-making to other bodies, or to recognize the results of another assessment as legally binding (particularly those filed after the close of the hearing record and that the Commission cannot consider).

As generally noted above, while the UN Declaration can be taken into account to inform how the CER, as a federal regulator, approaches its legal duties and obligations going forward, it does not displace the clear wording of the CER Act. The Commission does not accept that the combined reading of sections 11, 56, and 183 of the CER Act, together with the UN Declaration and UN Declaration Act, require incorporating the completed ICA and its conditions as the STSA asserted. What is required for the purposes of the Commission's recommendation, and what the Commission has done, is to meaningfully consider and reflect the evidence and submissions filed on the record by Indigenous Peoples, including the STSA and Matsqui First Nation, as Indigenous governing bodies.

Chapter 10 provides details of Westcoast's commitments made in this hearing with respect to the STSA's process. Chapter 10 also discusses **Condition 15** (Outstanding Indigenous-led assessments or studies), which the Commission considers necessary to impose and which is aimed at verifying how Westcoast has incorporated into the Project the ICA's findings, including any of its attached conditions.

2.5.2 *Yahey* and the BC cumulative effects framework

The Project is situated in BC, in the general region that was subject of the Supreme Court of BC's decision in *Yahey.* The Project – including components to be constructed in Treaty 8 – is not located in the Blueberry River First Nations Claim Area (**Blueberry River Claim Area**) or any other areas that are the subject of the negotiated agreements and subsequent regulations stemming from *Yahey*. The Commission has considered participants' submissions with respect to the BC cumulative effects framework as general context, where relevant, as discussed in **Chapters 4 and 10**.

On 29 June 2021, the Supreme Court of BC issued its decision in *Yahey.* This was an action brought by Blueberry River First Nations for breach of Treaty and infringement of rights, based on the cumulative impact of a range of provincially authorized activities, projects, and developments in their traditional territories (referred to as the Blueberry River Claim Area in that decision). The Supreme Court concluded that the Province of BC had unjustifiably infringed the rights of Blueberry River First Nations under Treaty 8. It issued a number of declarations and ordered that the Province of BC negotiate mechanisms to assess and manage the cumulative effects of industrial development on the rights of Blueberry River First Nations.[35]

On 18 January 2023, the Province of BC and Blueberry River First Nations entered into the *Blueberry River First Nations Implementation Agreement* (**Blueberry River Implementation Agreement**). The cumulative effects goals of this agreement were to enhance restoration to heal the land, create new protected areas, and support and constrain certain development activities while the parties work jointly to implement the Cumulative Effects Management Regime (Article 2.2). For oil and gas development, this includes setting disturbance caps, a disturbance fee, and setbacks (Article 14), as well as establishing a restoration fund (Article 10.1).

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[35] *Supra* note 17 at para 1809.

On 20 January 2023, the Province of BC further entered into a Consensus Document with several Treaty 8 Nations in BC, to address the issues highlighted by the Court in *Yahey*. The Consensus Document sets out a number of initiatives to enhance natural resource management in Treaty 8 territory, including a restoration fund, wildlife co-management, initial steps towards cumulative effects management, and land use planning and protection measures. In March 2023, the Province of BC signed Letters of Agreement with additional Treaty 8 Nations in BC, endorsing the Consensus Document.

On 19 June 2024, the Province of BC issued the Halfway River First Nation/BC Landscape Planning Pilot (**Halfway River LPP**) to address cumulative effects and establish shared decision-making and co-management in Halfway River First Nation's core territory. The Halfway River LPP specifies mitigation measures that are required in addition to the measures required by other agreements.

The *Treaty 8 Planning and Mitigation Regulation*[36] (previously the *Blueberry River First Nations Implementation Agreement Regulation*) was enacted on 16 June 2023. It makes parts of the Blueberry River Implementation Agreement into statutory requirements, including with respect to the review of new oil and gas activity applications, disturbance caps and allocation, protections for old forest and traplines, protection of high value areas (from oil and gas and forestry activities), setbacks, and linear disturbance measures. As described in **Chapter 10**, none of the Project components are within the Blueberry River Claim Area or other relevant Treaty 8 enhancement management zones or planning pilot areas specifically addressed through the *Treaty 8 Planning and Mitigation Regulation* or the Halfway River LPP.

On 15 January 2024, the BC Energy Regulator (**BCER**) released the *Treaty 8 Planning and Mitigation Measures*. The document, which was co-developed with Treaty 8 Nations, established a number of enhanced planning and oil and gas-specific mitigation measures that would apply to energy resource activities in Treaty 8 territory, effective 15 April 2024. The BCER now requires operators to demonstrate how they have incorporated these mitigation measures for all applications within Treaty 8 territory.

[36] BC Reg 146/2023.

3 Procedural fairness

The Commission finds that its hearing process met the requirements of procedural fairness, in accordance with the rules of natural justice. The hearing process provided parties with meaningful and diverse opportunities to know the case to meet, obtain and test evidence, and present their own cases. While some intervenors raised procedural fairness concerns, as described in this chapter, the hearing record demonstrates that the Commission's process offered many opportunities for them to participate in a procedurally fair way, in accordance with the CER Act.

Procedural fairness is a common law concept that requires administrative decision-makers to implement processes that enable affected parties to know the case to be met and that provide meaningful opportunities for them to present their own cases, including to challenge evidence that contradicts their cases. The exact processes can vary, though the key question is whether, at the close of the hearing and considering all circumstances, those whose interests are affected have had an adequate opportunity to know the application and present their positions fully and fairly.[37]

In this case, the Commission established robust processes to notify those potentially affected by the Project of Westcoast's application and the Commission's hearing, to enable them to obtain information regarding the relevant issues being considered, to test that information, and to provide evidence and submissions of their own. The hearing process was subject to a legislated time limit under the CER Act – that being 450 days after the Commission determined the application to be complete – within which the Commission was required to complete all process steps and submit its report to the Minister.

On 30 July 2024, the Commission issued a letter attaching the notice of public hearing. Among other things, the notice contained information about Westcoast's application, options for participating, and information on how and when to register as an intervenor. The Commission confirmed that Indigenous Peoples who are potentially affected by the Project, including those on the Crown List, did not need to justify their requests to participate as intervenors, even if they registered after the deadline. To provide adequate notice to those potentially affected by the Project, the Commission directed Westcoast to distribute copies of the notice to:

- Westcoast's list of potentially affected landowners along the Project route;
- Westcoast's lists of interested persons;
- all municipalities and first responders likely to be impacted by the Project;
- all Indigenous Peoples engaged by Westcoast or otherwise on the Crown List for the Project (at the time);
- Ministers of Justice and Attorneys General;
- various associations; and
- federal government departments.

The Commission also directed Westcoast to post the notice on its website and to publish it in 15 different print and digital publications, including those circulating in and around the Project locations. On 23 August 2024, Westcoast confirmed that it had completed these steps in accordance

[37] *Tsleil-Waututh v Canada (Attorney General),* 2018 FCA 153 at para 235 [***Tsleil-Waututh***].

with the Commission's directions and subsection 23(2) of the *National Energy Board Rules of Practice and Procedure, 1995*.

Driftpile Cree Nation, the Manitoba Métis Federation, Nazko First Nation, Prophet River First Nation, and Siska Indian Band submitted that because they were not initially included on the Crown List and in early engagement, or were otherwise not aware of the hearing, their ability to participate was impacted. However, the Commission is of the view that adequate notice of Westcoast's application and the hearing was provided, enabling these Indigenous communities to become aware of this hearing. Driftpile Cree Nation, Nazko First Nation, and Prophet River First Nation registered to participate as intervenors at the hearing's outset. Further, the notice of public hearing was placed in publications circulating in and around the Manitoba Métis Federation's asserted National Homeland. It was similarly placed in publications circulating in and around the Nlaka'pamux territory, in which Siska Indian Band holds asserted rights.

On 19 November 2024, the Commission determined that the application was complete to proceed to assessment, which triggered the 450-day legislated time limit under subsection 183(4) of the CER Act. Skeetchestn Indian Band stated that a 450-day timeline is too restrictive and disadvantages Indigenous Peoples by depriving them of a genuine opportunity to participate. While the time limit may impact certain parties' ability to participate, the Commission is required by law, under the CER Act, to deal with matters expeditiously and within the legislated timeframe.[38] Nevertheless, as described in this chapter, the Commission aimed to maximize opportunities for meaningful participation despite the statutory constraints.

The Commission carefully designed its hearing process after taking into account participants' input, the requirements of natural justice, and the statutory time limit. In particular, the Commission held a process in September/October 2024 for participants to provide feedback on:

- the Commission's process for determining completeness;
- the completeness of the application;
- the preliminary List of Issues, which framed the topics that the Commission intended to consider in the hearing; and
- potential hearing process steps and timing.

The Commission considered all comments it received and it sought to be responsive,[39] while also being mindful of what could be reasonably accomplished within the legislated time limit and ensuring procedural fairness for all participants. As such, the process steps, sequencing, and timing were not arbitrary, as Coldwater Indian Band asserted. Rather, as the Commission explained in detail in its cover letter to the Hearing Order, in the Hearing Order itself, and in various procedural updates and rulings issued during the hearing, it considered and implemented a transparent and predictable

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[38] *Ibid* at para 252.

[39] For example, the Commission granted additional time for intervenors to prepare IRs to Westcoast, provided a virtual workshop on potential conditions, held oral process steps in locations close to the Project route, and avoided deadlines on Indigenous Peoples' cultural days and celebrations. Unlike its usual practice, the Commission also provided a later deadline for Indigenous Peoples to file Indigenous-led assessments or studies given concerns raised that not all of them would be complete at the hearing's outset.

procedure that accounted for the varied interests of the numerous participants, the principles of natural justice, and the need to adhere to the legislated time limit.

The resulting hearing process was customized to use most of the available statutory timeline and included ample opportunities for parties to obtain and test evidence, as well as to provide their own evidence and submissions. Specifically, parties could:

- file written evidence;
- file Indigenous-led assessments or studies, including at a later point in the hearing in response to requests for flexibility from Indigenous communities;
- share Indigenous knowledge orally over three separate sessions between February and May 2025, and in three different locations near the Project route, which afforded greater scheduling and travel flexibility for Indigenous Peoples to provide in-person oral evidence than has been customary in past National Energy Board and Commission hearings;
- ask questions about the evidence and submissions of other parties (where adverse in interest), and of the CCC, through two rounds of written IRs, which is more than typical when an opportunity for oral cross-examination is reserved;
- file motions to compel full and adequate responses when they considered IR responses to be insufficient;
- request the opportunity to orally cross-examine other parties and the CCC on their evidence and submissions, during a time that was reserved in the hearing;
- participate in a virtual workshop about, and provide written comments on, potential conditions for the Project; and
- file written argument and provide oral summary argument and, for Westcoast, oral reply argument.

These procedural steps, combined with information on the hearing record, such as Westcoast's filings and the Commission's List of Issues, enabled parties to know the case to be met and to meaningfully respond. Supporting this conclusion is that no party sought to orally cross-examine other parties (including Westcoast) or the CCC, despite the opportunity to do so.

Coldwater Indian Band raised concerns about Westcoast's 6 January 2025 Project update, which included a revised route for the CS-8A power line. Coldwater Indian Band maintained that they could not meaningfully engage on the Project's effects since there were uncertainties about whether the original power line route had been withdrawn and about the revised power line route. However, Westcoast's Project update clearly indicated that it was pursuing the revised power line route. Westcoast subsequently confirmed this in its 8 January 2025 response to Commission IRs. Specifically, Westcoast confirmed its "decision to re-route the powerline" and reiterated that it had "…decided to pursue an alternative, shorter, route for the CS-8A powerline." Further, the revised corridor for the CS-8A power line has been known and on the hearing record since the January 2025 Project update. While the detailed route of the power line within the corridor has not been confirmed, as is typically the case for pipelines in certificate hearings, the revised route was the subject of a desktop ecological review conducted by PGL Environmental Consultants for Coldwater Indian Band. This technical evidence illustrates that the update was available and sufficiently detailed to enable a technical assessment. Coldwater Indian Band also had opportunities to ask questions regarding the revised route, including through two IR rounds and potentially through oral cross-examination. There

is no procedural defect that warrants deferring the Commission's recommendation, as requested by Coldwater Indian Band.

As the hearing unfolded, the Commission provided procedural flexibility to afford fulsome participatory opportunities while ensuring fairness was maintained. The Commission provided guidance early in the hearing about how to request changes to established process steps. Throughout the hearing, parties had the ability to seek leave from the Commission to address procedural concerns, request modifications to the process, and to comment on such requests. This flexibility was both scheduled through designated motion processes – for example, through structured opportunities for motions to compel full and adequate IR responses after each IR round – and otherwise continuously afforded during the hearing as procedural matters were raised.

Parties actively used these procedural mechanisms. For example, parties filed numerous motions seeking filing deadline extensions for a variety of reasons, including logistical and capacity constraints. Some requests were filed on the eve of, or even after deadlines, and Westcoast objected to some. The Commission considered each request and issued rulings, weighing various factors such as the reason for the request, the prejudice that may result if the requested relief were granted, and the impacts on the hearing schedule. The Commission's decisions often demonstrated procedural flexibility. For example, the Commission issued 20 rulings and procedural updates in which it granted extensions and leave – including to Westcoast and Indigenous Peoples – for late filings (e.g., for IRs, written intervenor evidence, Indigenous-led assessments or studies), thereby increasing parties' opportunities to participate. In other cases, a balancing of fairness and efficiency considerations, while having regard to the statutory timeline, meant that the Commission could not accommodate some requests for additional time for certain hearing steps. Nevertheless, the Commission offered as much flexibility as possible where fairness and the hearing process allowed. **Appendix 4** summarizes the instances in this hearing where the Commission made procedural adjustments to the timetable of events set out in the Hearing Order, both broadly and for specific parties.

The Commission also had regard to concerns raised by Westcoast about fairness, including with respect to evidence from Matsqui First Nation that is not on the hearing record, new evidence provided by various Indigenous communities in argument, and Cheam First Nation's supplemental written argument. The Commission has taken Westcoast's concerns about evidence into account in its assessment of weight but has otherwise accepted Cheam First Nation's arguments since Westcoast had multiple opportunities to reply and, when asked by the Commission, did not seek specific relief for this issue.

In summary, the Commission is of the view that it conducted its hearing process in a manner that was procedurally fair, in accordance with the requirements of natural justice.

4 Economic and financial matters

The Commission finds that the Project is needed and economically feasible for the following reasons:

- The Project is needed to address an anticipated shortfall in capacity once the Woodfibre LNG export facility begins operating in 2027.
- The region holds a large, low-cost supply of natural gas to support the Project.
- Long-term forecasted supply is adequate, even accounting for potential provincial restrictions on land disturbances, as well as Canada's climate policies.
- Markets – new and existing – are adequate to support the Project, having regard to the competitiveness of Project supply sources, demand forecasts, and capacities of upstream and downstream facilities.
- Shippers have made long-term contractual commitments to underpin the applied-for facilities.
- Westcoast's financial resources, financial structure, and methods of financing for activities related to the Project are acceptable.

4.1 Need for the Project

The Commission finds that the Project is needed to provide additional capacity for a highly utilized and fully contracted system that currently lacks adequate spare capacity to accommodate existing demand and anticipated new demand associated with future LNG exports. The Project would increase the winter firm capacity from CS-2 to the Huntingdon Delivery Area by 300 million cubic feet per day (**MMcf/d**) – an increase of 17 per cent in incremental capacity – so gas can continue to be supplied to BC's Lower Mainland and to export markets in the US Pacific Northwest after exports from the Woodfibre LNG export facility begin. Gas production from northeast BC – mainly from the Montney Formation, which the Commission finds to be a large, low-cost, and competitive gas resource – would supply the Project.

In the last decade, demand for natural gas transported on the T-South system to markets in BC and the US Pacific Northwest increased. Since November 2015, all available capacity on the T-South system has been fully contracted, and the system maintains a high yearly average utilization rate above 90 per cent. The Woodfibre LNG export facility, expected to supply up to 2.1 million tonnes of LNG per year to international markets starting in 2027, will add approximately 300 MMcf/d of incremental demand for transportation to the T-South system's Huntingdon Delivery Area, which is already operating at full capacity. The proponents of the Woodfibre LNG export facility hold existing firm-service contracts of 290 MMcf/d and have been selling their service on the secondary market to deliver natural gas to existing markets. This will continue until the Woodfibre LNG export facility comes online, after which those firm-service contracts will be used to supply the facility. Reallocating this contracted capacity to LNG demand puts existing demand markets in BC and the US Pacific Northwest at risk of being undersupplied without additional transportation capacity. The Project is fully contracted, with a weighted-average duration of 65 years, helping demonstrate the need for the Project. The Commission finds that Westcoast's existing system has a low risk of significant contract non-renewals, given historical trends and forecasted demand.

The Commission considered that the Project is expected to deliver significant benefits to the Canadian economy, Indigenous Peoples, various levels of government, Canadian oil and gas producers, and other stakeholders. Among other things, Project benefits include economic growth through an expected contribution of up to $3.385 billion to Canada's gross domestic product, enhanced energy security, and alignment with broader public policy objectives. The need for the Project is also demonstrated by more than 80 letters of support for the Project and its projected benefits. Many stakeholders emphasized the importance of the Project in meeting the growing demand for natural gas and ensuring reliable, affordable energy, including during peak winter events. They also highlighted the Project's potential to support national trade and economic objectives, enhance local and provincial economic development, and strengthen industrial capacity. In addition, some stated the need for resilient infrastructure and identified improved market access as being critical to long-term energy and economic security.

4.2 Economic feasibility

4.2.1 Gas supply supporting the Project

The Commission recognizes that the Montney Formation holds more than enough natural gas supply to keep the Project well utilized throughout its economic life, which is defined as the period during which the Project is expected to generate net benefits and remain in service. Westcoast's evidence demonstrates that gas supply is abundant and low-cost, and is competitive even with evolving climate laws, regulations, and policies. The supply is also unlikely to be significantly limited by provincial restrictions on land disturbances and is competitive with other downstream supply options, which would support the Project's long-term utilization and economic feasibility.

4.2.1.1 Large, low-cost natural gas resources in western Canada

The Commission finds that sufficient natural gas is expected to be available to support the Project over the long term, given the size, production potential, and competitiveness of the Western Canada Sedimentary Basin (**WCSB**), even under Canada's evolving climate policies.

The Commission accepts that the WCSB contains significant natural gas resources – estimated at approximately 238 trillion cubic feet – that have not yet been produced. These resources are mostly in BC's Montney Formation, which directly supplies the T-North portion of the Westcoast system. Further, Westcoast's evidence indicates that most of these remaining resources are low-cost, and therefore competitive, under a wide range of evolving climate change laws, regulations, and policies. Wood Mackenzie's breakeven cost analysis shows that the majority of WCSB gas, particularly in the Montney Formation, lies below the projected Henry Hub price through 2050. This suggests that Canadian gas production is expected to remain economically attractive and capable of sustaining the Project's high utilization.

Total Canadian natural gas production was approximately 17.30 billion cubic feet per day (**Bcf/d**) in 2022, including 8.10 Bcf/d from the Montney Formation. Under the CER's *Canada's Energy Future 2023* report's (**EF2023**) Current Measures Scenario, production is projected to rise to 21.45 Bcf/d in 2050. In the report's Canada Net-zero Scenario, Montney production grows through 2030 even as total Canadian production remains relatively steady. Further, while total Canadian production falls to 11 Bcf/d by 2050 under the Canada Net-zero Scenario, the Montney Formation continues to increase its share, reflecting its low-cost, high-productivity advantages. Meanwhile, Wood Mackenzie forecasts BC gas production to more than double from 7 Bcf/d in 2024 to 15 Bcf/d by 2050.

In all EF2023 scenarios, which consider the impacts of climate change on the energy system and the economy in Canada, production gradually shifts toward the Montney Formation. Although the projections use different assumptions about future climate policies and emissions, the Commission finds that the location, scale, and economic competitiveness of Montney gas strongly suggest that the Westcoast system – including the Project – would likely have reliable access to abundant supply throughout the projection period.

With respect to climate policies, the Commission notes that EF2023's projection of gas production is tied to assumptions regarding international gas prices and Canadian LNG exports. In particular, the report's Net-zero Scenario used assumptions from the International Energy Agency's *World Energy Outlook 2022* report that considered relatively aggressive climate policies in export markets. If climate policies in Westcoast's export markets are ultimately less stringent than assumed in EF2023's Canada Net-zero Scenario, northeast BC gas production would likely be higher than projected.

4.2.1.2 Adequate upstream pipeline capacity

In terms of upstream supply, the T-North system delivers gas to the T-South system via the Fort Nelson Mainline and Fort St. John Mainline. The Fort Nelson Mainline (CS-N4 to CS-2) has a capacity of 1,825 MMcf/d, while the Fort St. John Mainline (CS-1 to CS-2) provides 1,082 MMcf/d. Combined, these pipelines could deliver 2,907 MMcf/d to CS-2, which is sufficient to meet the T-South system's contracted requirement of 2,321 MMcf/d (plus fuel) once the Project is in service. This indicates that there is more than adequate capacity to supply gas to the T-South system. Aside from the T-South system, gas from the T-North system flows to the Alliance, NOVA Gas Transmission Ltd., and Coastal GasLink pipelines.

4.2.1.3 Adequate supply despite restrictions on land disturbances

The Commission finds that sufficient natural gas supply is available to support the Project, even when accounting for provincial restrictions on land disturbances provided for in the *Treaty 8 Planning and Mitigation Regulation* and in agreements between BC and the Blueberry River First Nations and Halfway River First Nation. This is primarily because advances in drilling technology and increased reuse of existing land disturbances are expected to allow supplies to reach projected levels despite disturbance restrictions. A further reason is that the High Value (**HV1**) areas identified under the Blueberry River Implementation Agreement contribute little to current production and, given their limited size, are also likely to contribute little to future production.

In BC, the *Treaty 8 Planning and Mitigation Regulation* establishes restrictions on new disturbances in areas subject to the Blueberry River Implementation Agreement and the Halfway River LPP Areas. New disturbances within the Blueberry River Claim Area are annually capped and these annual cap limits cannot be exceeded unless exemptions are granted by Blueberry River First Nations or the Blueberry River Implementation Agreement is amended. Further, the Blueberry River Claim Area and producing areas of the Montney Formation have significant geographic overlap.

The Commission accepts that improvements in horizontal drilling (including longer lateral wells) and multi-well pad development have transformed BC's drilling landscape. This has enabled operators to access larger resource volumes from smaller surface footprints, which not only include well pads but also access roads and pipeline rights-of-way connecting well pads to other infrastructure. These advances and increased reuse of well pads (and their access roads and pipeline rights-of-way) are expected to substantially reduce annual new disturbances over time. As a result, new disturbances

can likely remain below established limits even if BC's natural gas production doubles. In addition, the Commission expects technology to continue improving into the future, potentially enabling similar growth of gas production from fewer wells. Evidence that supports these findings includes:

- Horizontal wells account for 97 per cent of all wells drilled in BC over the past decade. The average length of horizontal laterals has increased by about 7 per cent annually since 2005, reaching over 9,500 feet in 2024.
- These developments have significantly expanded the area drained by each well, reducing the need for new surface sites. Operational efficiency has also improved through multi-well pads and re-entry drilling on existing sites. Wood Mackenzie's analysis projects that the share of wells drilled on existing pads will rise from just over 50 per cent in 2025 to 73 per cent in 2040. The number of new pads needed per year is projected to fall from 30 in 2025 to 13 in 2040, while gas production in BC rises from 8 Bcf/d to 16 Bcf/d over the same time frame. This reflects a greater reliance on existing infrastructure and fewer new surface disturbances.
- These technological gains indicate that higher production levels can be achieved with fewer new well pads, smaller overall land impacts, and mitigated cumulative environmental effects, reducing new annual surface disturbances in the Blueberry River Claim Area. This conclusion is consistent with other evidence on the hearing record regarding potential annual land disturbances.
- Technological improvements, such as horizontal drilling, not only reduce surface disturbances but can also lower costs. Reusing existing infrastructure, such as well pads, provides both economic and operational advantages by reducing construction and operational costs associated with building new well pads (including costs associated with materials, planning and permitting, and labour). This supports Wood Mackenzie's view that significant, low-cost natural gas resources can be found in BC even after accounting for the impacts of provincial restrictions on land disturbances. Producers are incentivized to adopt these improvements due to both regulatory and economic drivers.

The Commission did not receive any contrary information with respect to this evidence about anticipated technological improvements, their effects, or their expected adoption by industry. Areas with restrictions include those designated as HV1 and those subject to the Halfway River LPP Areas, with portions of the Halfway River LPP Areas overlapping HV1 areas. The Commission notes that only a small fraction of natural gas is produced from HV1 areas in northeast BC (9.8 per cent in 2024). Since 2005, approximately 89 per cent of drilled BC Montney Formation wells have been located outside of HV1 and Halfway River LPP Areas. Thus, the Commission is of the view that the restrictions within the HV1 and Halfway River LPP Areas are unlikely to significantly constrain future production.

In summary, the Commission finds that, while recent legislation and agreements have placed limits on surface disturbance in parts of northern BC, the likely impact of surface restrictions on future supply is substantially mitigated due to, among other things, technological progress in drilling and the reuse of existing infrastructure like well pads. The likely continued availability of low-cost, high-productivity gas resources outside core protection zones also means that the Project is expected to remain well supplied. The Commission recognizes that future provincial regulatory developments may result in additional land restrictions that may affect supply. However, no detailed or specific evidence or submissions on potential regulatory changes, and impacts on supply, were received that

would affect the Commission's overall conclusions. **Chapter 10** discusses Blueberry River First Nations' concerns regarding potential effects of upstream development, as it relates to the rights of Indigenous Peoples.

4.2.1.4 The Project's relationship to Westcoast's Aspen Point Program

Regarding Blueberry River First Nations' concerns that the Project is integrally linked to the expansion of gas infrastructure and gas production in the Blueberry River Claim Area through Westcoast's Aspen Point Program, which the Commission approved in December 2024, the Commission concludes that the Project and the Aspen Point Program are not functionally interdependent. In reaching this view, the Commission considered the relationship between the two projects. This includes the existence of any physical connection, the extent to which the Aspen Point Program is dedicated to the Project for exclusive or primary use, and whether either project relies on the other to properly function.

The evidence on the hearing record does not establish an interdependence between the two projects. Westcoast's uncontested evidence is as follows:

- Most Aspen Point Program volumes are destined for Alberta or LNG exports (not associated with the Woodfibre LNG export facility) via CS-16, not for the T-South system, such that the Aspen Point Program and the Project are not interdependent.
- No expansions are required on the T-North system to deliver the incremental volumes needed for the Project, indicating no dependency on the Aspen Point Program (for which construction is anticipated to be completed in the last quarter of 2026).

In short, the Aspen Point Program might ultimately supply some gas to the Project, but the Project does not require the Aspen Point Program to be built. Adequate upstream capacity already exists. Similarly, the Aspen Point Program does not require the Project. Even if the Project may receive some gas from the Aspen Point Program, the Commission is mindful – in considering supply – of its previous findings that that program's economic viability is unlikely to be affected by a potential limitation of upstream development to comply with the Blueberry River Implementation Agreement. The Aspen Point Program itself is underpinned by long-term firm transportation contracts, with supplies that can come from several sources. Upstream producers committed to ship on the Aspen Point Program with the knowledge that their plans for incremental production must meet the requirements of the Blueberry River Implementation Agreement, which is enforced by the Province of BC.

4.2.1.5 Competitiveness of supply in downstream markets

The Commission is persuaded that the Montney Formation is a highly competitive gas supply source both in Canada and in the US. In Canada, the WCSB contains a variety of oil and gas producing areas. However, the Montney Formation and Deep Basin Formation are the primary drivers of natural gas production in the WCSB, with the Duvernay Formation also contributing. The Westcoast system receives natural gas sourced from the WCSB, particularly from the Montney Formation in northeast BC. The Commission agrees with Westcoast that the Montney Formation's substantial reserves and low breakeven cost, position the basin as a highly competitive source of supply for both North American and international markets, including markets in BC's Southern Interior and Lower Mainland. The Commission also agrees that the Westcoast system is well connected to access natural gas from this prolific resource base.

In the US Pacific Northwest, natural gas supply from northeast BC competes primarily with gas from the US Rockies, particularly the Western Rockies. Supplies from northeast BC are already increasing their share in the US Pacific Northwest, while competing supplies from the US Rockies are expected to decline. Although changes in US energy policy – such as expediting permitting and resource development (including on federal lands and waters), facilitating interstate pipeline permitting and construction, and restarting approvals for LNG exports – may incentivize US Rockies production, this additional supply is unlikely to be sufficient to meet demand in the markets served by the Project.

The Commission accepts Wood Mackenzie's forecasts that US Rockies production will continue to decline until the mid-2040s due to resource depletion and economic constraints, before rising again in response to projected increases in natural gas prices. The Commission agrees with Wood Mackenzie that Western Rockies production is unlikely to be sufficient to supply the US Pacific Northwest in the absence of additional pipeline capacity from Westcoast. The Commission also accepts that rising US LNG exports, and their expected strong growth to 2030 and beyond, will increase natural gas demand within the continental US to replace exported LNG volumes. In turn, this is expected to strengthen US demand for Canadian gas.

4.2.2 Markets supporting the Project

The Commission finds that there are adequate markets to support the Project. This finding considers the presence of existing and new markets for the Project and the capacity of downstream facilities to accommodate incremental volumes. In addition, short- and long-term demand projections indicate that there will likely continue to be high demand for transportation services on the T-South system to support the sufficient use of the Project throughout its economic life.

4.2.2.1 Existing and new markets

The Commission finds that there are both existing and new markets to receive the incremental volumes delivered by the Project, and that downstream facilities are physically able to receive incremental volumes. For the purposes of this finding, existing markets refer to natural gas consumers in BC and the US that are currently served by Westcoast's T-South system. New markets refer to international LNG markets that will be supplied through the Woodfibre LNG export facility.[40] The T-South system does not have spare capacity to meet both the existing demand needs, as well as new demand to supply future LNG exports.

The T-South system is highly utilized in serving existing markets. The system extends from CS-2 near Chetwynd to the Huntingdon Delivery Area at the Canada-US border and delivers natural gas to existing markets in BC (including the northwest and central areas of BC, the Lower Mainland, and Vancouver Island) and the US Pacific Northwest. The T-South system's current winter firm service capacity is 1,800 MMcf/d from CS-2 to the Huntingdon Delivery Area. Westcoast indicated that the T-South system is operating at a high level of utilization and that the annual utilization rate has been consistently above 90 per cent since 2016, with an average annual utilization in 2023 of 91 per cent.[41]

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[40] Demand for natural gas to serve these LNG markets is included in the short- and long-term demand forecast for BC.

[41] Natural gas transportation on the T-South system fluctuates seasonally, with utilization exceeding 90 per cent during peak periods such as winter when heating requirements drive higher consumption.

Importantly, the Commission notes that Westcoast's existing customers will likely find themselves with shortfalls of gas supply if the Woodfibre LNG export facility proceeds and the Project is not constructed. Westcoast forecasted that once the Woodfibre LNG export facility begins receiving gas deliveries, demand for natural gas on the T-South system will increase by 300 MMcf/d. This export facility is expected to enter service in 2027, after which Westcoast anticipates a shortfall in capacity to deliver gas to the system's existing markets in the BC Lower Mainland and the US Pacific Northwest. In particular, since the proponents for the Woodfibre LNG export facility have held firm service contracts on the T-South system since 2014 for 290 MMcf/d (and have been selling transportation services on the secondary market), the existing markets will no longer have access to these services after the Woodfibre LNG export facility begins operating. This capacity will be directed towards LNG exports – the new market. The resulting shortfall in capacity to existing markets would directly impact the ability of local distribution companies in BC and the US Pacific Northwest to provide reliable natural gas service to customers. The Commission agrees with the Export Users Group and Westcoast that a shortfall in capacity would also likely increase prices at the Sumas price hub located at the Canada-US border, which would have a negative impact on customers in the markets served by the T-South system.

With respect to supply for these markets, downstream facilities connected to the T-South system at the Huntingdon Delivery Area will be physically able to receive incremental volumes since their approximate physical capacity of 3,395 MMcf/d is sufficient to accommodate 2,100 MMcf/d of winter firm service capacity from CS-2 to the Huntingdon Delivery Area over the long term. In addition, FortisBC Energy Inc. is expanding its Eagle Mountain system, which will connect the Woodfibre LNG export facility to Westcoast's T-South system through the FortisBC system. Westcoast submitted that the peak winter design capacity of the Eagle Mountain Pipeline will be 402 MMcf/d after the expansion is completed in 2027.

4.2.2.2 Short- and long-term demand forecasts

The short- and long-term demand forecasts in connection with these markets demonstrate an adequate level of demand for transporting incremental volumes on the Project. This is supportive of the finding that the Project is likely to be used at a reasonable level throughout its economic life, considering current and evolving climate change laws, regulations, and policies.

The Commission finds the demand forecasts Westcoast submitted to be reasonable. In particular, the Commission notes:

- The Northwest Gas Association's *2024 Pacific Northwest Gas Market Outlook* provides demand and capacity forecasts until 2033. The data is based on integrated resource plans filed with utility commissions across BC, Idaho, Oregon, and Washington, as well as other publicly available company planning documents. The outlook indicates a near-term regional demand growth of 1.2 per cent per year, with industrial demand increasing the most (3.5 per cent per year), driven by LNG exports. Residential and commercial demand are also expected to grow, by 0.8 per cent and 0.3 per cent per year, respectively. These forecasts consider current and expected climate change policies and decarbonization initiatives.
- Longer-term third-party natural gas demand forecasts from Wood Mackenzie and S&P Global indicate, among other things, a flat demand profile for the BC markets served by the T-South system once LNG exports from the Woodfibre LNG export facility begin and increase the overall demand. The forecasts also indicate a subtle decline in demand over the long term in the US Pacific Northwest (including Washington and Oregon). Overall, the Wood

> Mackenzie forecasts show that demand in the markets served by the T-South system rises by 0.2 per cent from 2024 to 2060, including the demand from the Woodfibre LNG export facility. This is despite declines in power, residential, and commercial sector demand in the long term due to the ongoing energy transition. Both Wood Mackenzie and S&P Global account for current and evolving climate change laws, regulations, and policies in their regional demand forecasts.

The Commission finds the evidence based on forecasts and analyses, including from Wood Mackenzie and S&P Global, to be reasonable, recognizing that long-term projections of energy demand involve a range of assumptions and are influenced by factors such as evolving policies, economic trends, technological developments, and shifts in societal behaviour. Westcoast acknowledges the significant uncertainty surrounding climate change commitments and how policy will evolve over time. However, the Commission is of the view that using two independent third-party assessments for long-term forecasts supports the reasonableness of their assessments.

Regarding climate change implications, the Commission notes that there are many pathways to potentially achieving net zero emissions by 2050, and that BC natural gas demand could significantly fall relative to the forecasts provided by Wood Mackenzie and S&P Global. Wood Mackenzie incorporated the Clean Energy Strategy in BC into its power generation forecasts. It also considered provincial incentives, utility programs, and the CleanBC plan, which requires new buildings to be non-emitting and mandates high-efficiency water and heating systems by 2030. Industrial demand projections were informed by project-specific announcements due to there being multiple pathways to achieving decarbonization goals for industrial demand. However, policies and project decisions could continue to evolve. Although unlikely given the forecasts, the T-South system could potentially be underutilized over the long term if BC acts aggressively to reduce its greenhouse gas (**GHG**) emissions. However, the Commission weighed this against two things. First, otherwise underutilized capacity can still be well used during peak-demand events during winter cold snaps. Second, without the Project, Westcoast's existing customers would likely experience natural gas shortfalls in the years after the Woodfibre LNG export facility begins operating. The Commission also weighs these considerations against the proportionality of the increase to existing capacity, which is incremental in nature, adding less than 20 per cent to the system's capacity. This means a lower potential for underutilization.

In summary, the Commission finds that the market information provided in the short- and long-term forecasts demonstrates that market demand is likely to be sufficient to support the Project's economic feasibility. Westcoast has demonstrated that the T-South system is well utilized and does not have existing or spare capacity to meet the needs of existing demand as well as new demand to supply the Woodfibre LNG export facility. If that facility enters service and the Project is not built, existing markets are at high risk of losing significant amounts of gas supply that will shift to supplying LNG exports. In addition, lost supply for these existing markets would be difficult to replace (see the discussion in **Section 4.2.1.5** on lack of alternative supplies) and would result in pricing concerns for consumers.

4.2.3 Transportation matters

The Commission finds that the need for, and economic feasibility of, the Project are supported by the long-term contracts that underpin it, the likelihood of contract renewals, and the adequacy of upstream facilities to supply gas to the Project. Creditworthy shippers have fully contracted the expansion resulting from the Project. Upstream facilities have sufficient capacity to meet the T-South system's contracted requirements (see **Section 4.2.1.2**).

4.2.3.1 T-South system contracts

Creditworthy shippers have made long-term contractual commitments to underpin the Project. In response to the open season process, three shippers collectively requested 370 MMcf/d of capacity. Firm service agreements were executed with these shippers for 300 MMcf/d, with a weighted average term of 65 years.

The Commission notes that the T-South system has been fully contracted since 2015 and that no requests to relinquish existing contracts were received during the open season for the expanded capacity. As a result, the proposed expansion was sized to meet the combined requirements of existing and new shippers, based on Westcoast's assessment of market demand, particularly linked to the Woodfibre LNG export facility. The Project facilities would be fully integrated with the T-South system and provide transportation services under the Westcoast pipeline tariff.

The Commission also believes that while the contractual underpinning for the Project is strong and supports its need and economic feasibility, the pending expiration of existing contracts on the T-South system mean that the likelihood of renewals remains an important consideration. Specifically, approximately 39 per cent of these contracts have terms ending within 5 years and 61 per cent within 10 years. Provided that demand remains resilient, Westcoast expects continued contract renewals. It does not expect uncertainties related to climate change laws, regulations, and policies to materially affect these renewals. The Commission considers that historical renewal trends, the lack of relinquished contracts during the open season, and evidence of strong supply and sustained market demand indicate a low risk of significant non-renewals for existing capacity in the near and long term. From this perspective, the expanded T-South system will likely remain well contracted into the future.

4.2.3.2 Traffic filings

The *Toll Information Regulations* require pipeline companies that charge tolls to file traffic data with the CER. Given these requirements and the expected increase in utilization of the T-South system from CS-2 to the Huntingdon Delivery Area, the Commission would require Westcoast, if the Project is approved, to include estimated flows at CS-2 and deliveries to BC's Southern Interior in its traffic data filings, beginning with the first filing after starting Project operations. The Commission is of the view that this would improve market transparency and highlight the growing importance of the T-South system considering the Project. In its potential conditions issued for comment, the Commission included a similar reporting requirement. However, having considered Westcoast's comments on that potential condition and how to best support increased market transparency, the Commission is of the view that a direction from the Commission is most appropriate and that a condition is therefore not necessary in the circumstances.

4.3 Westcoast's financial resources and responsibility, financial structure, and methods of financing

The Commission finds that Westcoast has the ability – through its indirect parent company, Enbridge – to finance Project construction and operations. The Commission is also satisfied that Westcoast would set aside enough funds to address the Project's future abandonment costs and has sufficient available financial resources to respond to an unintended or uncontrolled release from a pipeline in accordance with the CER Act and the *Pipeline Financial Requirements Regulations*.

4.3.1 Ability to finance

The Commission is satisfied that Westcoast has the ability – through its indirect parent company, Enbridge – to finance the Project, including its construction and operations. Westcoast would own the Project and estimates the Project's capital cost to be $3.99 billion ($2024). The Project would be funded through a mixture of internally generated operating cash flows from both Westcoast and Enbridge, as well as new financing raised by Enbridge through new senior debt issuances, subordinated capital issuances, and asset sales. Enbridge would transfer the proceeds of this financing to Westcoast. Enbridge has a credit rating of BBB+ by Fitch Ratings and Standard and Poor's Global Ratings, BBB (High) by DBRS Morningstar, and Baa2 by Moody's Investors Service (now known as Moody's Ratings). The Commission also accepts that Enbridge, with its diversified earnings base and strong history of financial performance, will continue to have global access to funding in both the public and private capital markets. In considering these factors, the Commission is persuaded that Westcoast's access, through Enbridge, to global capital markets, liquidity, and a strong financial position give it significant financial flexibility to fund any unexpected Project construction costs and sustain Project operations.

The Commission finds that Canadians, including Indigenous Peoples, would have an opportunity to participate in the financing of the Project through debt and equity investment in Westcoast, albeit indirectly, if they choose to do so. This could be accomplished through purchasing equity or debt instruments of Enbridge, as referenced above. Further, the Commission also finds that Westcoast has demonstrated that, through Enbridge corporate programs and recent developments regarding the T-South system, Indigenous Peoples may have the opportunity to participate in the financing of the T-South system, and potentially the Project. In May 2025, Enbridge announced that it had signed an equity ownership agreement with the Stonlasec8 Indigenous Alliance Limited Partnership. This partnership represents 38 First Nations in BC, including some who are potentially affected by the Project, and now holds a 12.5 per cent interest in the Westcoast system. The partnership will have the option to invest in future expansions of the Westcoast system, including this Project, if approved. **Chapter 8** provides more information on the economic inclusion of Indigenous Peoples in the Project.

4.3.2 Financial resource requirements

Based on an already approved Financial Resources Plan, the Commission is satisfied that Westcoast continues to maintain a sufficient level of available financial resources to respond to an uncontrolled release in accordance with the CER Act and the *Pipeline Financial Requirements Regulations.*[42]

Westcoast falls within the definition of a Gas Class 1 Absolute Liability class under the *Pipeline Financial Requirements Regulations.* This would not change as a result of the Project. As such, Westcoast is and would continue to be required to maintain access to $200 million in financial assurances. The Commission approved Westcoast's Financial Resources Plan on 17 December 2019.[43] This Financial Resources Plan applies to the Westcoast system as a whole and would include the Project. Consistent with the *Pipeline Financial Requirements Guidelines*, Westcoast files an annual update to its Financial Resources Plan each spring. It also has an ongoing obligation to notify the CER if there are or will be any material revisions to its financial resources or its Financial Resource Plan.

4.3.3 Abandonment funding obligations

The Commission is satisfied that Westcoast would continue to set aside funds to meet its future abandonment costs, as required.[44] As such, Westcoast's current abandonment cost estimate (**ACE**) and related annual contribution amount would be updated to reflect the Project in the Commission's next ACE review process.

Westcoast sets aside funds for future abandonment activities in a pipeline abandonment trust for its T-South system facilities, in accordance with CER requirements. Westcoast expects that the Project's pipeline components would increase its overall ACE by approximately $35.4 million, based on the methodology set out in the Commission's June 2023 *Five-Year Review of Abandonment Cost Estimates and Set-Aside and Collection Mechanisms 2021* report. This represents an increase of approximately 4 per cent. This ACE impact assessment does not include costs associated with the Project's power line components because the CER's ACE calculation methodology does not contemplate such facilities.[45] Westcoast expects that the Project's cost would be immaterial to the total ACE and could be reflected in the next ACE review process if the Project is approved. Westcoast proposed incorporating the Project facilities into future periodic ACE updates, given that the Project ACE is small relative to the overall ACE. The Commission accepts that the incremental ACE amount associated with the Project is anticipated to be modest and expects the timeframe between Project completion and the next ACE review process to be short. Accordingly, the Commission is not requiring Westcoast to revise its ACE at this time. The Commission would consider the additional facilities associated with the Project in the next ACE review process.

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[42] Companies operating pipelines are required to maintain financial resources to cover the costs of an unintended or uncontrolled release from a pipeline. The *Pipeline Financial Requirements Regulations* require companies to demonstrate and maintain financial resources that match, at a minimum, the amount of absolute liability applicable to them. A portion of the financial resources must be readily accessible to the company.

[43] Subsequently, on 1 November 2024, the Commission approved the assignment of the Enbridge Credit Agreement to Westcoast GP on behalf of Westcoast LP.

[44] National Energy Board, *Abandonment Cost Estimates MH-001-2012 Reasons for decision*, Filing A50478 (14 February 2013). Further, under subsection 242(1) of the CER Act, the Commission has the authority to require a company to maintain funds or security to ensure that the company has the ability to pay for the abandonment of their pipeline(s). In a five-year cycle, the Commission concurrently reviews abandonment cost estimates, set-aside mechanisms, and collection mechanisms for all companies with pipeline systems regulated by the CER.

[45] Westcoast estimated the cost to abandon the power lines is in the range of $4 to $8 million.

4.4 Tolling

The Commission finds Westcoast's proposal to roll the capital costs of the Project into the T-South system's rate base, and to apply the existing Westcoast toll methodology previously approved by Order TG-010-2022, to be appropriate. The Commission expects that this would result in tolls that are just, reasonable, and not unjustly discriminatory. When considering the requested relief for rolled-in tolls, the Commission examined the degree of integration of the Project with the T-South system and whether the nature of service associated with the Project is different than that associated with the T-South system. The Project would be highly integrated and the nature of service is not different from the rest of the system. This supports rolled-in tolling. Demand from both new and existing shippers on the T-South system is driving the need for the Project. The Commission also considered that no shippers opposed the proposed rolled-in tolling approach.

In arriving at its finding on rolled-in tolls, the Commission notes the following considerations in particular:

- The Project responds to aggregate demand from all shippers, and all shippers would remain accountable for Project costs. Existing shippers had an opportunity to relinquish service as part of the open season process. No shippers exercised that option.
- The Project would be fully integrated with the rest of the T-South system and used to provide transportation services pursuant to the Westcoast Pipeline Tariff. The Project's capital costs would be rolled into the T-South system rate base in accordance with Westcoast's current and historical capital expenditure and tolling policy for expansion projects.
- Westcoast consulted its Toll and Tariff Task Force[46] regarding the tolling treatment for the Project. The Toll and Tariff Task Force members passed an unopposed resolution supporting Westcoast's proposal for Project costs to be included in the T-South system cost-of-service and tolled on a rolled-in basis.

The Export Users Group acknowledged that although the Project would result in significant costs and resulting toll increases, it would be appropriate for the Commission to approve rolled-in tolling. It added that the rolled-in tolling methodology is consistent with Westcoast's existing practice for system expansions and is consistent with the Commission's decisions approving prior expansions of the Westcoast system and of other pipeline systems. The Export Users Group also stated that as capital expenditures on the Project are made, the CER would exercise its oversight to conduct review processes that ensure the prudency of Project costs. The Commission confirms that prudency of costs can be reviewed as part of annual toll submissions when the subject costs are included in proposed tolls. Third parties, including the Export Users Group, would have the opportunity to submit comments or raise concerns at that time.

[46] Toll and Tariff Task Force membership includes shippers and other commercial stakeholders.

5 Land matters

As part of its assessment of the Project, with respect to land matters, the Commission considered and assessed:

- the lands that Westcoast would need – both permanent and temporary – to construct and operate the Project safely;
- Westcoast's route selection and land acquisition processes;
- Westcoast's request to exempt certain Project facilities and activities from additional regulatory processes to evaluate the Project's detailed route; and
- the processes that Westcoast has followed thus far to take possession of, use, or occupy reserve lands for certain Project purposes.[47]

The Commission finds that the Project route – comprising the routes for the pipeline loops and power lines – is appropriate because it reasonably minimizes effects on the environment, Indigenous Peoples, landowners, and land users, while providing the most efficient design for Project construction and operations. The Commission notes the benefits of Westcoast's routing criteria, which included paralleling existing infrastructure, route refinements to reduce its length and minimize the environmental and socio-economic footprint, and incorporating input from potentially affected Indigenous Peoples, landowners, occupants, and land users. Westcoast also appropriately updated its routing to be responsive to feedback received through ongoing engagement, both before and during the Commission's hearing.

The Commission has decided to partially deny Westcoast's request for an exemption from the requirements of paragraphs 198(c) and 198(d), and section 199, of the CER Act, as those apply to the CS-8A power line. This power line is not exempt, which means that Westcoast must meet the CER Act's PPBoR-related requirements for the CS-8A power line. This provides a further opportunity for those interested in this power line's routing to participate in the process for determining its detailed route.

The Commission also finds, after a careful interpretation of subsection 317(1) of the CER Act, that a lack of Band Council consent does not preclude the Commission's ability to recommend, or the Governor in Council's ability to direct, the issuance of a certificate for the Project. Further, for the reasons described in **Section 5.5**, the Commission is of the view that any certificate issued should apply to the entire Project, including its on-reserve components, though the Commission considers it necessary to impose **Condition 23** (Subsection 317(1) consents).

[47] References to reserve lands in this chapter refer to "reserve" within the meaning of subsection 2(1) of the *Indian Act*, as set forth in subsection 317(1) of the CER Act.

5.1 Land requirements

The Commission finds that Westcoast's anticipated land requirements, as described in this section, are appropriate because the proposed rights-of-way and temporary workspace would allow Westcoast to safely and efficiently construct and operate the Project. In making this finding, the Commission considered that no specific evidence was provided indicating that Westcoast sought to use more land than is reasonably necessary to safely and efficiently construct and operate the Project. Further, no detailed submissions were provided on what a smaller footprint would involve.

5.1.1 Pipeline loops

The Project's 11 pipeline loops total approximately 139 km in length. At its northern point, the Project originates at CS-2B, approximately 100 km west of Chetwynd. From north to south, pipeline loops are proposed near McLeod Lake, Summit Lake, Salmon Valley, Hixon, 150 Mile House, 94 Mile House, 70 Mile House, Logan Lake, and Aggasiz. The southernmost pipeline loop terminates at MS-16, southwest of Chilliwack. These pipeline loops and their respective approximate lengths are:

- CS-2B to CS-3 pipeline loop (18.1 km);
- CS-3 to CS-4A pipeline loop (13.6 km);
- CS-4A to CS-4B upstream pipeline loop (19.9 km);
- CS-4A to CS-4B downstream pipeline loop (5.1 km);
- CS-4B to CS-5 pipeline loop (20.8 km);
- CS-5 to CS-6A pipeline loop (6.0 km);
- CS-6A to CS-6B pipeline loop (6.1 km);
- CS-6B to CS-7 pipeline loop (27.6 km);
- CS-7 to CS-8A pipeline loop (4.2 km);
- CS-8B to CS-9 pipeline loop (13.4 km); and
- CS-9 to Huntingdon pipeline loop (4.2 km).

For approximately 96 per cent of their total length, the pipeline loops would be located adjacent to Westcoast's existing rights-of-way or other linear disturbances (e.g., roads, power line rights-of-way). Generally, the permanent pipeline rights-of-way would be approximately 18 m wide. Temporary workspace needs would vary depending on site-specific circumstances, though a width of 27 m would generally be required. Westcoast estimates that the pipeline loops would require approximately 199 ha of permanent land area and 753 ha of temporary workspace.

The pipeline routes traverse Crown land (including Cheam First Nation and Seabird Island Band reserve lands) and private land. On a linear basis, the approximate breakdown of these routes is 5 per cent reserve land, 63 per cent other Crown land, and 32 per cent private land. Areas for Project components on reserve lands include rights-of-way and temporary workspace, including temporary workspace on McLeod Lake Indian Band reserve lands.

5.1.2 Power lines

Westcoast would construct, own, and operate the Project's two new overhead transmission lines, which total approximately 10 km in length. These power lines and their respective approximate lengths are:

- CS-6B power line (6.9 km, from a BC Hydro point of delivery to CS-6B); and
- CS-8A power line (3 km, from north of Kingsvale to CS-8A).

These power lines would largely follow existing linear disturbances (e.g., pipeline and power line rights-of-way, roads). The power line rights-of-way would generally be 80 m wide, with site-specific variations based on localized circumstances such as terrain, tree profile, and span. The power line routes would cross Crown, municipal, and private lands. Westcoast estimates that the power lines would require approximately 66 ha of permanent land area and 7 ha of temporary workspace.

5.1.3 Compressor and meter station upgrades and modifications

The Project involves upgrades and modifications at 11 existing compressor stations and at MS-16. Activities at these station sites would be confined to the existing site footprints, with the exception of those at CS-2B, CS-3, CS-4B, CS-8A, and MS-16, which would require the following footprint expansions:

- CS-2B – approximately 2 ha on private land to be purchased by Westcoast;
- CS-3 – approximately 2 ha on an adjacent industrial property;
- CS-4B – less than 1 ha on Crown land;
- CS-8A – approximately 5 ha on private land to be purchased by Westcoast; and
- MS-16 – approximately 1 ha on private land to be purchased or leased by Westcoast.

Westcoast anticipates needing approximately 3 ha of temporary workspace for the Project's station work. **Chapter 1** includes a map (**Figure 1-1**) that provides an overview of the Project components and their locations.

5.2 Route selection process

The Commission finds that Westcoast's route selection process, routing criteria, and proposed routing are appropriate because:

- Westcoast's route selection process, and particularly Westcoast's focus on routing the Project within or adjacent to existing disturbances, is appropriate.
- Westcoast's routing criteria reduces potential adverse effects, including avoiding sensitive environmental areas such as Green Lake.
- The Project route adequately accounts for feedback Westcoast received during engagement, including from Indigenous Peoples, while also providing the most efficient design for Project construction and operations.

Westcoast considered several routing options for the Project, based on the following criteria:

- Routing the pipeline loops, station upgrades and modifications, and power lines within or adjacent to existing disturbances (either owned by Westcoast or another third party).
- Where routing cannot be contiguous to an existing disturbance, installing the pipeline loops or power lines in new rights-of-way based on safety, engineering, construction, environmental, cultural, and socio-economic factors.
- If a new right-of-way is deemed necessary, reducing the length of the new right-of-way.

Among other things, Westcoast's routing took into account feedback from landowners, regulatory authorities, and other stakeholders. The routing was also influenced by, and responsive to, concerns raised by potentially affected Indigenous Peoples. Further, Westcoast considered limiting new linear disturbances by paralleling existing infrastructure, and avoiding, reducing, or mitigating potential effects on biophysical, socio-economic, and cultural resources. Before filing its Project application, Westcoast had already made multiple routing decisions in response to input from Indigenous Peoples and stakeholders. This includes:

- Removing a pipeline loop that was initially contemplated downstream of CS-2 due to environmental considerations.
- Deviating a portion of the CS-6B to CS-7 pipeline loop to increase its distance from Green Lake.
- Reducing the length of the CS-7 to CS-8A pipeline loop from 21 km to 4.1 km to avoid Tunkwa Provincial Park.
- Avoiding a Fraser River crossing, after considering feedback about the importance of chinook salmon to Indigenous communities.

Westcoast continued to modify the Project's routing during the hearing in response to feedback from Indigenous Peoples and stakeholders and based on further studies. In its January 2025 Project update, Westcoast reduced the CS-8A power line's length from approximately 21 km to approximately 3 km and removed from the Project scope a 6-kilometre-long power line to CS-8B. These changes were made to avoid effects on environmental features and cultural sites of significance, and to be responsive to concerns heard during engagement with Indigenous Peoples. The changes also reduced the Project's land area requirements. Westcoast conducted extensive engagement activities before revising the Project route and filing its January 2025 Project update, including:

- Notifying all Indigenous communities on the Crown List of the potential Project update and requesting feedback.
- Meeting with Indigenous communities who expressed an interest in further engagement on the Project update.
- Meeting with affected municipalities to collect feedback on the Project update.
- Issuing mailouts to landowners and land users potentially affected by the Project update, indicating that they could contact Westcoast with questions or concerns.

Westcoast also conducted engagement for routing decisions on reserve lands. For example, Westcoast's engagement with Seabird Island Band included meetings with the Chief and Council, technical staff, community open houses, and discussions with interested Certificate of Possession holders.[48] Routing options were assessed with a view to minimizing potential effects on Seabird Island Band reserve lands, their community members, and the environment. Through this engagement, the Project underwent these adjustments:

- The right-of-way width was reduced from 18 m to a targeted 10 m in sections crossing Seabird Island Band reserve lands.
- Changes were made to minimize the number of Certificate of Possession lots traversed.
- The route was modified to avoid Seabird Island Band's proposed cultural center and the areas of highest population density.
- Access roads were designed to avoid using private roadways.

Seabird Island Band raised concerns about routing early in Westcoast's engagement process. Westcoast's engagement on routing continues with Seabird Island Band, alongside permitting processes with Environment and Climate Change Canada's (**ECCC**) Canadian Wildlife Service, including to address concerns raised about the general route through Seabird Island Band's reserve lands.

Westcoast engaged with McLeod Lake Indian Band through meetings and in-person community sessions. Westcoast offered McLeod Lake Indian Band an opportunity to participate in future site visits and Westcoast's Cultural Walk-Through Program. Westcoast's engagement with Cheam First Nation similarly included leadership and community meetings.

Coldwater Indian Band and Lower Nicola Indian Band raised concerns about the CS-8A power line route. They shared that they prefer the revised, shorter route (compared to the originally proposed 21-kilometre-long route) but believe there is a lack of information about the revised route. They pointed to a recent "repositioning" of the power line that they were advised of in September 2025 as an example of the uncertainty about the power line's location. Coldwater Indian Band emphasized the need for a collaborative and transparent evaluation process for the revised route that includes their meaningful involvement. Lower Nicola Indian Band wished to be engaged more deeply because the power line would traverse the Nicola River watershed, which is very important to them and the surrounding Nlaka'pamux communities. Lower Nicola Indian Band also noted that PPBoR-related exemptions, as requested by Westcoast, raised concerns about safety and safety culture. These particular concerns are discussed further in **Chapter 6**. In response to Lower Nicola Indian Band generally, Westcoast submitted that it has been responsive to the concerns of Indigenous communities.

In response to Coldwater Indian Band's concerns, Westcoast indicated that it had provided information to the community about the CS-8A power line's revised route as early as December 2024, as well as confirmation that Westcoast would not pursue the 21-kilometre-long route originally proposed. Westcoast also provided capacity funding to Coldwater Indian Band for a joint evaluation of alternative routes, which evolved into a Joint Powerline Committee. Westcoast also indicated that it welcomed Coldwater Indian Band's input on engagement processes. Westcoast confirmed that the

[48] *Indian Act*, RSC 1985, c I-5, s 20(2).

“repositioning” of the power line was within the Project footprint described in its January 2025 Project update, and that it was working on refinements with Coldwater Indian Band.

The Commission is not persuaded that there is inadequate information about the revised CS-8A power line route for its assessment of the Project, including regarding the appropriateness of that power line’s general routing. Westcoast filed multiple maps on the hearing record showing the power line’s proposed location, including its position within the Project footprint and various local and regional study areas that were the subject of Westcoast’s initial Environmental and Socio-economic Assessment (**ESA**) and its supplemental ESA filed in January 2025. The Commission notes that the information filed enabled Coldwater Indian Band’s consultant to prepare a study based on an identified study area. While the power line’s precise routing remains to be determined, as is the case with other Project components, the Commission finds that there is adequate information on the hearing record to enable parties to know the general routing corridor and to consider potential effects. However, the Commission has considered Coldwater Indian Band’s and Lower Nicola Indian Band’s concerns about the CS-8A power line’s potential effects on them and their desire for deeper engagement with Westcoast on this Project component. For this reason, the Commission denies Westcoast’s request to exempt the CS-8A power line from the CER Act’s PPBoR requirements. This would enable further opportunity, if the Project is approved, for those interested in this power line’s route to participate in the process for determining its detailed route. **Section 5.4** discusses this decision in further detail. The Commission notes that any future detailed route process for this power line would be limited to considering its best possible detailed route, as well as the most appropriate methods and timing for its construction. The Commission would not revisit its recommendation on the Project through the detailed route process.

Cheam First Nation also raised concerns that there is insufficient information about an alternate pipeline route if their Band Council does not provide consent for Westcoast to take possession of, use, or occupy their reserve lands under subsection 317(1) of the CER Act (discussed in **Section 5.5**). Westcoast responded that it has provided evidence about alternative off-reserve options and had discussed them with Cheam First Nation. Westcoast also indicated that if consent is not obtained, it would apply to the CER for an alternative option, such as through a variance application. The Commission is not convinced that additional information on alternate routes is required for its assessment of the Project since its assessment must pertain to what Westcoast applied for and not about contingencies that may ultimately not be required. The Commission is satisfied that the appropriateness of any alternative route would be satisfactorily addressed in any future variance application, if one is required.

The Commission notes that the above discussion focuses on Project routing, including the route for the CS-8A power line. **Chapter 10** discusses Project effects on the rights of Indigenous Peoples, including those of Cheam First Nation, Coldwater Indian Band, and Lower Nicola Indian Band. **Chapter 11** includes a discussion on Coldwater Indian Band’s ability to participate in this hearing in a procedurally fair way, given the available information about the CS-8A power line.

5.3 Land acquisition (private and non-reserve Crown land)

The Commission finds that Westcoast’s anticipated requirements for land rights, and its process for acquiring those rights, are acceptable and would meet the applicable requirements of the CER Act, including sections 321 and 322. Westcoast anticipates completing its acquisition of land rights for non-reserve lands by mid-2026. This section focuses on the acquisition of land rights for private and

non-reserve Crown land. **Section 5.5** discusses Band Council consents required for Westcoast to take possession of, use, or occupy reserve lands for the Project.

Westcoast stated that there are approximately 66 landowners and 15 tenants along the pipeline loops, as well as Crown land. Along the power lines, there are an additional three landowners, including Westcoast, as well as Crown land. Westcoast's engagement for its acquisition of private and non-reserve Crown land for the Project included:

- engaging with landowners beginning in 2023;
- commencing its land acquisition program as of filing the Project application in May 2024; and
- submitting applications to the BCER for Crown land in late 2024 and the second quarter of 2025.

Section 321 of the CER Act provides that a company may acquire or lease lands for a pipeline under a land acquisition or lease agreement and contains requirements relating to their forms. Section 322 requires companies to serve a notice on all owners of land that includes information about the land the company wishes to acquire, the compensation being offered, the project, and the company's interest in acquiring land. Westcoast filed samples of its statutory pipeline and power line right-of-way agreements, option for purchase of lands, surface lease template, and agreements for temporary workspace and road use. Westcoast also filed sample section 322 notices for the pipeline loops and power lines. These samples are in a form consistent with the applicable provisions of the CER Act.

At the time the hearing record closed, Westcoast had secured through right-of-way agreements approximately 74 per cent of the freehold land required for the Project's pipeline and facilities components. Sixty-nine land acquisition agreements had been signed for those components. An estimated 30 additional agreements would be required, which Westcoast anticipated being signed by the end of the second quarter of 2026. Westcoast also confirmed that it served 70 notices for the proposed acquisition or lease of lands under section 322 of the CER Act. It also stated that up to approximately 10 notices for the pipeline loops may still need to be served due to route refinements and some parcels' new ownership.

For the Project's power lines, at the time the hearing record closed, no land acquisition agreements had been signed for private land due to ongoing negotiations and route refinements. Westcoast anticipated signing two private land acquisition agreements by the end of the second quarter of 2026. Westcoast would provide additional land acquisition information in its updated Environmental Protection Plans (**EPPs**) filed under **Condition 9** (Updated EPPs), a requirement that the Commission considers necessary to impose to make sure it receives this information.

If Westcoast and an owner cannot reach an agreement on a land acquisition or lease, or compensation, they may use the CER's alternative dispute resolution process under subsection 73(1) of the CER Act. Westcoast may also seek a right of entry order under subsection 324(1) of the CER Act and the owner may apply to the Commission for a determination or direction regarding compensation under sections 327 and 334.

5.4 Decision on requested exemption from PPBoR requirements

To meet its construction schedule and the Project's target in-service date of 1 November 2028, Westcoast requested, under subsection 214 of the CER Act, an exemption from the CER Act's PPBoR requirements (i.e., the detailed route process) for the following facilities and activities, which in aggregate would not exceed 40 km in length:

- the temporary infrastructure required for Project construction (e.g., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards, and construction camps);
- pipeline right-of-way preparation activities (including clearing, grading, stripping, and topsoil storage) and conducting trenchless crossings in select areas along the pipeline route;
- the compressor unit additions at CS-2B, CS-6B, CS-8A, and CS-8B;
- the modifications and upgrades at CS-2B, CS-3, CS-4A, CS-4B, CS-5, CS-6A, CS-6B, CS-7, CS-8A, CS-8B, CS-9, and MS-16;
- the two power lines;
- the substations at CS-6B, CS-8A, and CS-8B; and
- the pig launcher and receiver installations and tie-in and cross-over assemblies for the 11 new pipeline loops.

For the reasons that follow, the Commission finds that an exemption from the CER Act's PPBoR requirements for most of the requested facilities and activities is in the public interest. However, in light of concerns raised by Coldwater Indian Band and Lower Nicola Indian Band about the CS-8A power line route, the Commission does not approve this exemption for that power line, finding it is not in the public interest in these circumstances.

Ordinarily, project proponents must file their PPBoR with the CER and obtain the Commission's approval of a project's detailed route before starting construction. This involves publishing a notice of the PPBoR and serving a notice on the owners of the lands that the company proposes to acquire, lease, take, or use for the project. Owners and users of these lands may file statements of opposition related to the detailed route, which may result in a public hearing to consider the limited issues of the best possible detailed route and the most appropriate methods and timing for construction. Section 214 of the CER Act permits the Commission to grant exemptions from, among other things, the CER Act's PPBoR requirements when it is in the public interest. In assessing whether to grant Westcoast's requested exemption in this case, the Commission considered and weighed the following primary factors:

- Westcoast's reasons for the requested exemption.
- Specific objections raised and the nature of parties' concerns, or lack thereof.
- Westcoast's commitments and the Commission's conditions.

Westcoast submitted that an exemption is needed for the following reasons:

- To meet the Project's construction schedule and target in-service date.

- The exemption for the pig launcher and receiver installations, four compressor unit additions, and modifications and upgrades at 11 compressor stations and at MS-16 are critical to effectively manage the extensive outage program that would be required for tie-in and integration purposes. An exemption would allow Westcoast to spread this program over three summers and accommodate the later connection of pipeline loops without incurring further outages, to the benefit of shippers and other market participants.
- To help facilitate efficient Project execution, including within the context of preferred timing windows and applicable environmental timing restrictions. It would also reduce scheduling risks associated with adverse weather conditions.

Areas to which the exemption would apply would be limited to lands where Westcoast is the fee simple owner, has an existing lease, or has otherwise obtained landowner or Crown approval for the activities. Further, these areas would be selected primarily based on construction, environmental, Indigenous, and stakeholder considerations. Westcoast stated that it would not undertake any exempted activities until after a certificate is issued and any applicable Commission conditions for the activities are satisfied.

The Commission accepts that an exemption for certain Project facilities and activities is required for Westcoast to meet its construction schedule and target in-service date, and that it would allow Westcoast to better manage efficient Project execution. Of particular importance is that an exemption would enable Westcoast to efficiently manage its outage program that would be required for tie-in and integration purposes.

Coldwater Indian Band and Lower Nicola Indian Band raised concerns relating to the CS-8A power line's routing. Coldwater Indian Band said that they lacked information about the power line and potential impacts on their rights. Lower Nicola Indian Band expressed concerns about the power line's interaction with the Nicola River watershed. Both communities conveyed a desire for greater involvement in the power line's routing. Westcoast indicated that it had provided routing data to Coldwater Indian Band and that they were jointly evaluating alternative routes through a Joint Powerline Committee. Westcoast also committed to ongoing engagement and provided evidence that it had been engaging with Lower Nicola Indian Band, including through tri-weekly meetings and correspondence about the power line's route, among other things. These communities' concerns weigh in favour of the Commission denying an exemption from the detailed route process for the CS-8A power line. Lower Nicola Indian Band also generally objected to the exemption sought, though their concerns pertained to safety culture, as opposed to routing.

The Commission considered Westcoast's commitments with respect to the Project, which apply to the facilities and activities for which the exemption was sought. The Commission notes that the exemption would only apply where Westcoast has, or has obtained, associated land rights or approvals, which would include any applicable CER Act subsection 317(1) Band Council consents (discussed in **Section 5.5**). Westcoast also committed to a joint evaluation of a power line alternative with Coldwater Indian Band; to engaging Lower Nicola Indian Band with respect to updating, confirming, and collecting comprehensive information to address their community's concerns; and to creating processes that support meaningful engagement with potentially affected Indigenous Peoples. Westcoast stated that it would continue to incorporate input throughout the regulatory process into Project construction and operations. In deciding on the requested exemption, the Commission also took into account the conditions that it considers necessary to impose, which would apply equally to the exempted facilities and activities. These conditions include:

- **Condition 2** (Design, location, construction, operations) would require the exempted facilities and activities to be located in accordance with the information provided on the hearing record, despite the exemption.
- **Condition 3** (Environmental protection) would require Westcoast to implement a variety of tools and its commitments for the protection of the environment included in its Project application and related submissions. This requirement would apply equally to the exempted facilities and activities.
- **Condition 9** (Updated EPPs) would require Westcoast to file updated EPPs containing environmental protection mitigation measures. This would also apply and extend associated environmental safeguards to the exempted facilities and activities.
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) would require Westcoast to file a plan regarding Indigenous monitoring during construction. This would apply to, and support, Indigenous Peoples' participation in monitoring construction activities related to the exempted facilities and activities.
- With respect to Coldwater Indian Band's and Lower Nicola Indian Band's concerns about the potential effects of the CS-8A power line, **Condition 15** (Outstanding Indigenous-led assessments or studies) would require Westcoast to describe how information from outstanding Indigenous-led assessments or studies, including any from Coldwater Indian Band and Lower Nicola Indian Band, is integrated into the Project. This condition would support the integration of relevant Indigenous knowledge into the exempted facilities and activities, in a manner commensurate with other Project components.

Westcoast's foregoing commitments and the Commission's conditions weigh in favour of granting an exemption for most of the Project facilities and activities that were included in Westcoast's exemption request. After considering Westcoast's reasons for requesting the exemption, the lack of specific route-related objections for the majority of the facilities and activities Westcoast asked to be exempted, Westcoast's commitments, and the Commission's conditions, the Commission finds that granting an exemption from the requirements of paragraphs 198(c) and 198(d), and section 199, of the CER Act is in the public interest. This exemption applies to all facilities and activities for which the exemption was requested, except for the CS-8A power line. The Commission is mindful of Coldwater Indian Band's and Lower Nicola Indian Band's concerns about the CS-8A power line's routing and recognizes that an exemption, though permitted under the CER Act, could affect their ability to later oppose the power line's detailed route. Having evaluated Westcoast's reasons for the exemption request, these communities' concerns, Westcoast's commitments and the Commission's conditions, the Commission does not believe that exempting the CS-8A power line is in the public interest and denies Westcoast's request related to this Project component. The Commission's conclusion differs for the CS-6B power line, where the Commission finds that an exemption is appropriate because of the lack of specific concerns raised about that power line's route.

The Commission is therefore issuing Order XG-002-2026 to reflect its decision, contingent on a certificate being issued for the Project. Westcoast must account for the CS-8A power line in fulfilling its PPBoR requirements under paragraphs 198(c) and (d), and section 199, of the CER Act. The Commission recommends that Westcoast review Guide U of the Filing Manual for guidance when preparing its PPBoR for the CS-8A power line.

In arriving at this decision, the Commission also considered whether it would be in the public interest to exempt facilities and activities – including temporary infrastructure, right-of-way preparation

activities, and activities at CS-9 – located on the reserve lands of Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band. While these communities did not raise any specific routing concerns, the Commission heard broader concerns about the potential effects of the on-reserve Project components and the need to protect those lands. The Commission considered Westcoast's reasons for the exemption request, the lack of specific routing objections, as well as Westcoast's commitments and the Commission's conditions that would also apply to on-reserve Project components. The Commission finds that an exemption should be granted for the requested facilities and activities on reserve lands, having particular regard to the effect of subsection 317(1) of the CER Act in supporting Indigenous communities' decision-making and governance in relation to those lands.

As described in **Section 5.5**, subsection 317(1) requires Westcoast to obtain Band Council consent before taking possession of, using, or occupying reserve lands for the purpose of constructing the Project or engaging in the activities referred to in paragraph 313(a) of the CER Act. Through Westcoast's negotiations with the relevant Indigenous communities for consent – as demonstrated by its ongoing collaboration with Seabird Island Band on routing and supported by Cheam First Nation's assertions that they have a right to set their own standards and conditions for matters on reserve (for example, regarding the environment and fisheries) – the Commission expects that the Project's detailed routing on reserve lands (including the precise routes, methods, and timing of construction) would be adequately addressed. Accordingly, any routes that may be agreed upon between these Indigenous communities' Band Councils and Westcoast should be given appropriate weight. As there were no submissions on the hearing record about the need for additional regulatory oversight over routing if consent is granted, the Commission finds that further detailed route processes would not be necessary. If Westcoast does not obtain consent, routing on reserve lands would no longer be an issue because Westcoast would not be allowed to construct the Project on those lands.

5.5 Reserve lands

5.5.1 Context

Where a company wishes to take possession of, use, or occupy reserve lands for, among other things, constructing a pipeline, it is required to obtain consent from the Band Council. Specifically, subsections 317(1) and (2) of the CER Act state:

> **Consent of council of the band**
>
> **317 (1)** Despite section 35 of the *Indian Act*, a company must not, for the purpose of constructing a pipeline or engaging in the activities referred to in paragraph 313(a), take possession of, use or occupy lands in a *reserve*, within the meaning of subsection 2(1) of the *Indian Act*, without the consent of the *council of the band*, within the meaning of that subsection.
>
> **For greater certainty**
>
> **(2)** For greater certainty, nothing in subsection (1) is to be construed as modifying the application of the other provisions of this Act.

A portion of the CS-8B to CS-9 pipeline loop would cross Seabird Island Band and Cheam First Nation reserve lands. Temporary workspace would also be located on McLeod Lake Indian Band reserve lands. The areas required – including for rights-of-way, temporary workspace, and temporary access – are 51.67 ha on Seabird Island Band's reserve lands, 4.97 ha on Cheam First Nation's reserve lands, and 1.15 ha on McLeod Lake Indian Band's reserve lands. In explaining its rationale for proposing a portion of the CS-8B to CS-9 pipeline loop on reserve lands, Westcoast referenced engineering alternatives that it considered, Project modifications made through engagement, and its history of operating Westcoast system infrastructure on these reserves. Westcoast asserts that it has forged long and durable working relationships with these Indigenous communities.

Westcoast has obtained one Band Council consent under subsection 317(1), filing a Band Council Resolution from Seabird Island Band on the hearing record. The resolution provides Seabird Island Band Chief and Council's consent for Westcoast to take possession of, use, and occupy Seabird Island Band's reserve lands for the purposes of the CS-8B to CS-9 pipeline loop, subject to and in accordance with the terms of a right-of-way agreement that was being negotiated.

Westcoast also confirmed that it remains in, and is committed to continuing, discussions with both Cheam First Nation and McLeod Lake Indian Band to obtain their Band Councils' consents. Westcoast added that it continues to discuss and evaluate off-reserve options with Cheam First Nation. It also asserted, which Cheam First Nation did not dispute, that Cheam First Nation prefers to negotiate a land agreement based on the proposed Project routing, which would traverse their reserve, instead of Westcoast pursuing an off-reserve route. If the required consents cannot be obtained, Westcoast has contingency plans. These include constructing an intermediate compressor station, extending the CS-9 to Huntingdon pipeline loop, and finding an alternate temporary workspace location. Westcoast also noted that it could submit a variance application to seek approval of an alternative route if it does not receive the required consents.

5.5.2 Commission discussion on whether Band Council consent is required for a Project recommendation and approval

For the reasons that follow, the Commission finds that it can recommend, and the Governor in Council can direct, the issuance of a certificate for the Project without Westcoast having first obtained Band Council consents under subsection 317(1).

5.5.2.1 Commission discussion on interpreting subsection 317(1)

Westcoast and Cheam First Nation provided arguments on the meaning of subsection 317(1),[49]

raising differing interpretations on whether Cheam First Nation's consent (distinct from free, prior, and informed consent discussed in **Chapter 2**) is required before the Commission can recommend that a certificate be issued for the Project and before the Governor in Council can issue a direction to that effect. Having interpreted subsection 317(1) using the rules of statutory interpretation, which includes assessing the CER Act's broader statutory context, the Commission is satisfied that the CER Act authorizes it to recommend, and the Governor in Council to direct, that a certificate be

[49] McLeod Lake Indian Band, who was not an intervenor, did not provide submissions directly in the hearing.

issued for the Project despite Westcoast not having obtained all Band Council consents by the time the hearing record closed.

Neither Westcoast nor Cheam First Nation provided jurisprudence that considers the meaning of subsection 317(1), which the Commission is now applying for the first time. However, both parties provided cases on the modern principles of statutory interpretation, which can be summarized as follows:

- The words of an Act are to be read in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[50]
- It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that there is a need for external interpretive aids. An ambiguity must be "real." The words of the provision must be reasonably capable of more than one meaning and one must consider the entire context of a provision before one can determine if it is reasonably capable of multiple interpretations.[51]
- In the federal context, statutory interpretation is informed by the *Interpretation Act*.[52] Subsection 8.3(1) states that every enactment is to be construed as upholding the Aboriginal and Treaty Rights of Indigenous Peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them. Section 12 provides that every enactment is deemed remedial, and shall be given such fair, large, and liberal construction and interpretation as best ensures the attainment of its objects.

R. v Sparrow[53] speaks to employing a generous interpretation of subsection 35(1) of the *Constitution Act, 1982*.

Grammatical and ordinary meaning

The grammatical and ordinary meaning of the words in section 317(1) is that Band Council consent is required for a company to take possession of, use, or occupy reserve lands for specified purposes. There is no timing specified for when consents must be obtained. The words also do not make consent a prerequisite for a Commission recommendation or Governor in Council decision relating to a proposed project. This interpretation is based on the following observations:

- Subsection 317(1) is a prohibition on a company. It is not a prohibition on the Commission or the Governor in Council.
- Subsection 317(1) does not prescribe when consent must be obtained. In particular, it does not stipulate that consent must be obtained before the Commission can recommend, and the Governor in Council can direct, the issuance of a certificate.

Therefore, a simple reading of subsection 317(1) permits one to conclude that the Commission can recommend, and the Governor in Council can direct, the issuance of a certificate for the Project without Westcoast having obtained all requisite Band Council consents. However, before reaching a

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[50] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27 at para 21.
[51] *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42 at para 29.
[52] RSC 1985, c I-21.
[53] 1990 CarswellBC 105 at para 56 (SCC).

conclusion about the provision's meaning, the Commission must also consider the total context of subsection 317(1).[54]

History and context

Both parties raised subsection 78(1) of the *National Energy Board Act* as relevant context. Like subsection 317(1) of the CER Act, this provision prohibited a company from taking possession of, using, or occupying reserve lands without consent. However, the prohibition was subject to the Governor in Council's, not Band Council's, consent.

Cheam First Nation submitted that Governor in Council consent under section 78 would have been obtained before a certificate had been issued, though they offered no examples. Westcoast argued that the time for the Governor in Council's consent under section 78 was before construction, referring to an example where Express Pipeline Ltd. obtained the Governor in Council's consent to take Crown land after a project certificate had already been issued. This context, including the Express Pipeline Ltd. example, supports the interpretation that a Commission recommendation, and a Governor in Council decision, to issue a certificate can precede Band Council consent. It also demonstrates how the requirement for consent was maintained notwithstanding the project's approval which, as explained in this section, would be the case with respect to Cheam First Nation's consent.

With respect to the CER Act's history, legislative Hansard does not provide any information on the specific intent of subsection 317(1). However, the legislative summary of Bill C-69 states:

> The procedure for a company wishing to take possession of or to occupy reserve lands is changed. **The [CER Act] replaces the *National Energy Board Act* requirement that a company seek Governor in Council approval to take or occupy reserve lands with the requirement that the consent of a band council be obtained (section 317(1)).** This provision also appears to override an expropriation power in section 35 of the *Indian Act* that allows the Governor in Council to take or use reserve lands for public purposes by transferring them to an "expropriating authority," such as a government or a pipeline company acting under statutory authority. [emphasis added]

This historical context supports the interpretation that subsection 317(1) is intended as a process for companies to take possession of, use, or occupy reserve lands for specified purposes, in a manner that supports Indigenous communities' authorities over their reserves. It is not intended as a prerequisite to a project's approval.

Turning to the object and scheme of the CER Act, subsection 317(1) is a component within a larger statutory scheme. Courts generally examine the context, which helps interpret the words and the legislative scheme. The goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence, and consistency of the legislative scheme.[55] The Commission considers the following to be relevant context on the overall object of the legislation:

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[54] *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4 at para 48.
[55] *Ibid* at para 49.

- As raised by Cheam First Nation, the CER Act's preamble references the Government of Canada's commitments to achieving Reconciliation with Indigenous Peoples through, among other things, government-to-government relationships, and to implement the UN Declaration.[56] In addition, the preamble raises Canada's commitment to enhancing Canada's global competitiveness by, among other things, building a system that enables decisions to be made in a predictable and timely manner, and providing certainty to investors and stakeholders.
- Section 6 of the CER Act describes the legislation's purpose, which is to regulate certain energy matters within Parliament's jurisdiction. Among other things, this includes ensuring that regulatory hearings and decision-making processes are fair, inclusive, transparent, and efficient. This purpose is consistent with subsection 31(3), which provides that all applications and proceedings before the Commission must be dealt with as expeditiously as the circumstances and procedural fairness and natural justice permit.
- Cheam First Nation also referred to section 35 of the *Constitution Act*, *1982.* The Commission recognizes, as a contextual consideration, subsection 56(1) of the CER Act, which requires the Commission, when making a recommendation, to consider any adverse effects that it may have on the section 35 rights of Indigenous Peoples.
- The CER's mandate, contained in section 11 of the CER Act, involves, among other things, making transparent decisions, orders, and recommendations with respect to projects, and exercising powers and performing duties and functions in a manner that respects the Government of Canada's commitments regarding the rights of Indigenous Peoples.

In addition, it is important to highlight the scheme of the CER Act as it relates to the pipeline certificate process and related land matters:

- Under subsection 183(1), if the Commission considers a certificate application for a pipeline to be complete, it must prepare and submit to the Minister, and make public, a report setting out its recommendation as to whether a certificate should be issued for all or any part of the pipeline. After receiving the Commission's report, the Governor in Council is required under section 186 to refer a recommendation back for reconsideration, direct the Commission to issue a certificate for the pipeline or any part of it, or direct the Commission to dismiss the application.
- The Commission's obligation to issue a recommendation and the Governor in Council's obligations to make a decision are not limited by, or subject to, any other provisions of the CER Act, including subsection 317(1). Nor are the applicable timelines for project recommendations and decisions (contained in subsections 183(3) and 186(2)) made subject to when Band Council consents may be obtained. Equally, nothing in sections 183 and 186 negates a Band Council's right to consent, or not consent, under subsection 317(1).
- Subsection 317(1) is located in Part 6 of the CER Act, relating to lands. Subsection 317(1) follows sections relating to the taking and use of Crown land and falls under the heading "Certain Lands for Which Consent Required," and precedes sections on the acquisition or lease of lands.

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[56] With respect to the UN Declaration, Cheam First Nation raised Articles 26 to 28 regarding the protection of reserve lands.

- With respect to acquiring land rights for projects, companies that are unable to reach acquisition or lease agreements with owners under subsection 321(1) can seek right of entry orders from the Commission under subsection 324(1). Right of entry orders are granted after project approval. Of note, the Commission's ability to issue right of entry orders under subsection 324(1) is expressly made subject to subsection 317(1).
- Under subsection 190(1), after a certificate is issued, the Commission may, upon receiving an application or on its own initiative, vary a certificate. If the Minister considers that it is in the public interest to do so, the Minister may direct that the Commission make a recommendation to the Governor in Council with respect to the variance instead.

Having regard to the entire context, and the object and scheme of the CER Act, the Commission is of the view that the intent of subsection 317(1) is to provide a process for companies to take possession of, use, or occupy reserve lands for specified purposes and to support Indigenous communities' decision-making with respect to reserves by requiring Band Council consent. As a result, the Commission can recommend, and the Governor in Council can direct, the issuance of a certificate for the Project without Westcoast having first obtained the requisite consents.

This interpretation aligns with the location of subsection 317(1) in Part 6 of the CER Act relating to lands, since the subject matter of the provision is aimed at how a company can take possession of, use, or occupy reserve lands for specified purposes. This is consistent with the provision's positioning under the legislative heading "Certain Lands for Which Consent Required" and the carveout of subsection 317(1) from the Commission's ability to grant right of entry orders under subsection 324(1). This context reinforces an interpretation of subsection 317(1) that focuses on matters pertaining to lands. In contrast, interpreting subsection 317(1) as more broadly precluding the Commission's ability to recommend, and the Governor in Council's authority to direct, the issuance of a certificate would go beyond, and would be inconsistent with, this context (also having regard to the effect of subsection 317(2)).

Further, the Commission's interpretation fits harmoniously within the CER Act's references to Reconciliation, implementing the UN Declaration (having regard to, among others, Articles 18, 20, 26, and 29), and Canada's commitments pertaining to the rights of Indigenous Peoples. Even if a project is approved, Band Councils continue to retain the right to consent, or withhold consent, under subsection 317(1). This meaningfully aligns with Cheam First Nation's submissions that the provision should be interpreted in favour of protecting reserve lands, in a manner that recognizes the provision's operation notwithstanding section 35 of the *Indian Act* and that respects their land code. The interpretation, which upholds the rights of Indigenous Peoples pertaining to reserves, is also consistent with the provisions of the *Interpretation Act* identified above. In short, there is no inversion of Parliament's safeguard, as Cheam First Nation asserted. Moreover, the Commission's interpretation fits harmoniously within the overall object and scheme of the CER Act relating to the Commission's and the Governor in Council's respective roles in making recommendations and decisions regarding proposed projects, within applicable statutory deadlines and in a manner that is expeditious and predictable.

Cheam First Nation asserted that a Project approval without consent would be legally unenforceable and hypothetical. Westcoast submitted that if consent is not granted, it can apply for a variance to seek approval of an alternative option. The Commission is satisfied that the Project would not be frustrated if Westcoast cannot obtain the requisite consents because the company can seek Commission approval of an alternative to the Project's on-reserve components. If an alternative

route is sought, potentially affected parties, including Indigenous Peoples, would be consulted as appropriate, as Cheam First Nation requested and Westcoast affirmed.

The Commission finds no ambiguity in subsection 317(1), after considering the entire context and in reading the words of the provision in their grammatical and ordinary sense, in harmony with the legislative framework. There is no plausible reading that accords equally with the intentions of the CER Act. Accordingly, there is no need to resort to any of the subsidiary principles of statutory interpretation. The Commission finds that it can recommend, and the Governor in Council can direct, the issuance of a certificate for the Project without all consents under subsection 317(1) being in place.

Cheam First Nation expressed concern that a recommendation in favour of the Project, and any subsequent issuance of a certificate, affects their negotiating position and that of other communities in the future. Among other things, Westcoast argued that Cheam First Nation's negotiating position would not be weakened since Westcoast would need consent to construct on reserve lands and there is still time to negotiate. Neither party made detailed submissions on how potential effects on negotiations should be considered when interpreting subsection 317(1) using the modern principles of statutory interpretation. Ultimately, the Commission's analysis is based on the modern principles, and an assessment of possible effects on negotiations (which can vary from case to case) was not required to discern Parliament's intent. That said, the Commission is of the view that Cheam First Nation would retain a meaningful ability to exercise their right to consent, or not consent, to Westcoast's taking possession of, use, or occupation of their reserve lands. This is because the requirement for consent under subsection 317(1) would remain, there is no specific evidence that Cheam First Nation would be compelled to consent if the Project were approved, and Cheam First Nation has provided multiple submissions on how its existing governance and land authorization processes would support proper decision-making with respect to administering their reserve lands.

The Commission is of the view that the clarity of the foregoing interpretation, grounded in both the precise wording of subsection 317(1) and an appreciation of the entire statutory context, provides certainty to proponents, Indigenous Peoples, and stakeholders on the applicable timeline for consent and its connection to regulatory processes and outcomes.

5.5.2.2 Commission discussion on whether to only recommend the issuance of a certificate for a part of the Project

Cheam First Nation submitted that if the Commission recommends the Project's approval, the recommendation to approve should exclude any Project components that would require the possession, use, or occupation of reserve lands until their Band Council consent is granted under subsection 317(1). In response, Westcoast argued that the Commission should reach the same conclusion as it did in its report for the NEBC Connector. There, the Commission declined a landowner's request to only approve a part of that project. In arriving at that decision, the Commission noted that not approving part of the pipeline would render the project unable to fulfill its purpose, that such an approach would not be practical or consistent with regulatory efficiency, and that it would be contrary to the Commission's finding of public interest.

In these circumstances and for the following reasons, the Commission is not persuaded that it should exempt from its recommendation the Project components that require Cheam First Nation's consent under subsection 317(1):

- The Commission has found that the Project as a whole, and as applied for, is in the public interest. This finding was made for the entire Project, taking into account all relevant considerations, including the on-reserve components.
- The Commission's recommendation, and any Governor in Council decision, to approve the Project does not remove Cheam First Nation's ability to consent or withhold consent. This is consistent with Cheam First Nation's desire for control and decision-making authority over their reserve lands.
- If the Commission were to only recommend, and the Governor in Council were to only approve, parts of the Project that are not on Cheam First Nation's reserve lands, and Cheam First Nation ultimately grants consent, Westcoast would need to file a new application for the Commission to approve on-reserve components that have already been canvassed and considered in this hearing. This would be duplicative, impractical, and inconsistent with regulatory efficiency and predictability. The Commission has on the hearing record what it needs to make a public interest determination regarding the Project, including the Project's on-reserve components. There would be no utility to a new hearing.
- If Cheam First Nation does not grant consent, the Project would not be hypothetical or necessarily unable to proceed. Westcoast could apply for a variance that the Commission would address in the ordinary course.

Having regard to Cheam First Nation's and Westcoast's submissions on potential conditions related to Band Council consents, the Commission agrees that conditions need not repeat existing legal requirements, including those of subsection 317(1). However, to ensure transparency on an issue of clear importance to Cheam First Nation and McLeod Lake Indian Band, the Commission considers it necessary to impose **Condition 23** (Subsection 317(1) consents). Condition 23 would require Westcoast to file confirmation that it has obtained the requisite Band Council consents prior to taking possession of, using, or occupying reserve lands as contemplated by subsection 317(1). Alternately, if the Band Council of Cheam First Nation or McLeod Lake Indian Band decides not to provide consent, Westcoast would be required to file an update that includes a description of the steps that Westcoast would take to address the lack of consent, along with relevant timelines.

6 Project design, construction, and operations

The Commission considered the technical and engineering aspects of the Project to determine whether Westcoast could design, construct, and operate it in a safe and secure manner that protects people and the environment. Through its assessment, the Commission considered the appropriateness of Westcoast's proposed design and construction methods for the Project, which is made up of both the pipeline components and the electrical facilities (being the two power lines and the three electrical substations within the existing compressor stations). The Commission also considered the appropriateness of Westcoast's programs and plans for Project operations. The Commission took into account Westcoast's management system and approach to safety culture, as well as its plans and programs related to safety, operations and maintenance, and emergency management.

The Commission finds that Westcoast can design, construct, and operate the Project in a safe and secure manner that protects people and the environment in compliance with applicable regulations, standards, and industry codes, and consistent with relevant CER-issued guidance and best practices. The Commission reached this conclusion based on the reasons explained in this chapter.

The Commission also finds it to be in the public interest to grant Westcoast's request for an exemption from the non-destructive examination requirements for low-pressure auxiliary piping systems at various compressor stations, and from the requirements for leave to open for certain Project components. The Commission accepts that these exemptions would allow for greater efficiencies and reduce the impacts on Westcoast's operations, without compromising the safety and security of people or the environment. The Commission also finds it to be in the public interest to grant Westcoast's request to decommission, by removal, a 350-metre-long segment of deactivated pipe within Westcoast's existing right-of-way.

6.1 Overarching framework and applicable standards

The OPR establishes requirements that companies must meet to manage safety, security, and environmental protection throughout the entire lifecycle of their pipelines. Through the OPR, companies are required to establish, implement, and maintain a management system, as well as a series of protection programs, to anticipate, prevent, manage, and mitigate situations that may adversely affect the safety and security of their pipelines, employees, and the public, as well as property and the environment.

Section 4 of the OPR references certain standards for pipelines developed by the CSA Group that must be followed throughout the lifecycle of the infrastructure, including CSA Z662:23 – *Oil and Gas Pipeline Systems* (**CSA Z662**). CSA Z662 is comprehensive, setting engineering-related requirements and detailing minimum standards through hundreds of industry standards, guidelines, and procedures relating to most aspects of pipeline design, construction, operations, maintenance, deactivation, and abandonment.

In addition to the applicable legislative requirements and related standards, the CER has issued guidance documents[57] outlining best practices and standards to provide clarity and guide the actions

[57] Found at https://www.cer-rec.gc.ca/en/about/how-we-regulate/guidance/.

of its regulated companies and those who may be interested in the CER's requirements or processes. Examples of these guidance documents, some of which are referenced in this chapter, include:

- *Guidance Notes for the Canadian Energy Regulator Onshore Pipeline Regulations;*
- *Industry Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management;* and
- *Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents.*

Through its application, Westcoast sought authorization to construct and operate the electrical facilities as part of the Project. As explained in **Chapter 2**, the Commission accepts that the electrical facilities fall under the CER's jurisdiction and can be assessed under section 183 of the CER Act as connected works to the "pipeline."

The Commission notes that although the OPR is focused on the regulation of pipelines that transport hydrocarbons,[58] the electrical facilities, as part of the applied-for Project, would also be subject to the OPR, to the extent that those regulations can reasonably be applied. The Commission is satisfied that the appropriate standards set out in the OPR would be applied to the Project. This is due to Westcoast's confirmation that, with the exception of the Pipeline Integrity Program and Storage Integrity Program, its management system and the applicable programs, manuals, procedures, measures, and plans developed in accordance with the OPR, would apply to the electrical facilities.

The OPR does not incorporate any of the CSA standards that specifically relate to electrical facilities. However, Westcoast identified certain standards and committed to design, install, and maintain the electrical facilities in a manner that complies with, or exceeds, their requirements. These standards include:

- CSA 22.1 – *Safety Standard for Electrical Installations* (requirements for the safe installation and maintenance of electrical equipment and systems in Canada);
- CSA 22.3 No. 1 – *Overhead Systems* (comprehensive safety and engineering requirements, applicable to outdoor electric supply and communication lines);
- CSA Z462 – *Workplace Electrical Safety Standard* (requirements to protect workers from electrical hazards in the workplace); and
- CAN/ULC S801 – *Standard on Electric Utility Workplace Electrical Safety for Generation, Transmission, and Distribution* (requirements for employers and workers working on electric utility systems).

[58] Section 1 of the OPR sets out that, for the purposes of the OPR, "onshore pipeline or pipeline" means a pipeline intended for the transmission of hydrocarbons that is not in an offshore area. The related standards incorporated, and requirements described, throughout the regulation relate primarily to pipelines that transport hydrocarbons.

6.2 Project design

6.2.1 Overview of the Project (pipeline components and electrical facilities)

As outlined in **Chapter 1**, the pipeline components that Westcoast applied for as part of the Project consist of 11 new pipeline loops, totaling approximately 139 km of nominal pipe size (**NPS**) 42 pipeline (1 067 millimetre outside diameter). These pipeline loops would primarily be constructed contiguous with the T-South system rights-of-way roughly between Chetwynd and the Canada-US border at Huntingdon/Sumas. The Project would require installing pig launcher and receiver facilities, header connections, and crossover assemblies. Sectionalizing valves, which are used to close the pipeline in emergencies or for maintenance, would be located at the crossover assemblies.

The Project also requires modifications and upgrades at 11 existing compressor stations. New compressor units and required infrastructure would be added at four locations:

- CS-2B would receive a new gas turbine driven unit (nominal 32,000 horsepower);
- CS-6B would receive a new electric motor drive unit (nominal 40,000 horsepower);
- CS-8A would receive a new electric motor drive unit (nominal 40,000 horsepower); and
- CS-8B would receive a new electric motor drive unit (nominal 25,000 horsepower).

Modifications to existing compressor stations include upgrading existing units (such as re-wheeling), adding cooling capacity, piping alterations, and tie-ins. Specifically, five compressor stations (CS-4A, CS-4B, CS-5, CS-6A, and CS-7) would have existing centrifugal compressor piping reconfigured from series to parallel operations. A series of piping and equipment modifications and upgrades would be made at MS-16, which is an existing meter station at the downstream end of the T-South system, to increase capacity throughput. These modifications and upgrades include replacing the existing inlet header and increasing the line size to NPS 42. A new NPS 42 inlet pipeline receiver barrel and two new filter separators would be installed, and existing scrubbers and filter separators removed or demolished.

Westcoast also requested approval to decommission, by removal, a 350-metre-long segment of deactivated pipeline within Westcoast's existing right-of-way.

The Project's electrical facilities include, as connected works, certain electrical infrastructure at three compressor stations, namely:

- CS-6B requires a substation and approximately 6.9 km of new overhead power line for its power source.
- CS-8A requires a substation and approximately 3 km of new power line for its power source.
- CS-8B requires a substation. Westcoast stated that this substation would be powered by a new overhead power line that would be built by BC Hydro and regulated by the British Columbia Utilities Commission.

Chapter 1 includes a map (Figure 1-1) with an overview of the Project and the locations of its components.

6.2.2 General design of the pipeline components and material specifications

The Commission finds that the general design of the pipeline components and material specifications are appropriate for their intended use and meet applicable safety standards. In making this finding, the Commission considered the Project as applied for, including the technical specifications such as pipe type, wall thickness, grade, depth of cover, and coating, and how it met the relevant regulations, standards, and industry codes, as set out in the OPR and CSA Z662. The Commission also considered participants' relevant submissions on specific design elements, including depth of cover, buoyancy control, cathodic protection, wall thickness, and class location, which are set out in greater detail in this section. Westcoast committed to designing the Project in accordance with the OPR and CSA Z662.

The Commission recognizes that at the time of a large application, project design is often at a preliminary stage that evolves based on engagement with interested stakeholders and Indigenous Peoples, as well as the company's requirements and refinements. As project design progresses from preliminary to final, and ultimately to the as-built stage, adjustments to the design occur in the normal course. For the Project, a number of refinements were identified through filings made on the hearing record, including Westcoast's December 2024 supplemental evidence and its January 2025 Project update. To provide transparency and continued regulatory oversight while enabling reasonable flexibility, the Commission considers it necessary to impose **Condition 33** (Technical specification updates), which would require Westcoast to file any additional technical specification updates for the Project components prior to filing the associated leave to open application(s). These updates would allow for minor changes to pipe length, diameter, wall thickness, grade, or material that do not impact any other aspect of the approved Project. This condition would also enable information to be submitted transparently and efficiently to the CER for review. If the changes are found to be significant or otherwise fall outside the scope of permitted changes, Westcoast would be required to file a variance application. This would allow the Commission to consider the impact of those changes on the approved Project.

6.2.2.1 Depth of cover

The Commission finds that the proposed depths of cover for the pipeline, including rural road ditch locations in the City of Abbotsford, are reasonable and meet applicable requirements, as defined by CSA Z662. Depth of cover is an important safety consideration because it helps protect the pipeline from third-party damage, scour, and external loads, such as those found at road and railway crossings.

The City of Abbotsford raised concerns about the depth of the pipeline across rural ditches, and its ability to continue conducting maintenance activities in the area. The Commission is of the view that Westcoast's proposed depth of a minimum of 1.2 m below the bottom of existing ditches without additional protection is reasonable for the location, consistent with the requirements of CSA Z662, and allows the ditches to be maintained safely. The Commission expects Westcoast to continue working with the City of Abbotsford to address its concerns to enable safe pipeline operations alongside activities being undertaken by the city.

6.2.2.2 Buoyancy control

The Commission considered the buoyancy control measures described by Westcoast in light of concerns highlighted about extreme weather events in the area and finds that they are reasonable. In assessing the appropriateness of the measures identified, the Commission notes that they comply with CSA Z662. The Commission also considered Westcoast's commitment to take a management

system approach, through the application of past learnings from the 2021 floods, to mitigate similar events in the future.

The City of Abbotsford noted that extreme weather events, such as atmospheric rivers in 1990 and 2021, caused significant flooding in local areas. It asked about Westcoast's plans for dealing with buoyancy control for the pipeline. The Commission also recognizes that maintaining Sumas Prairie, the site of the former Sumas Lake, requires constant effort and vigilance. A disruption in that area from major weather events, or other matters, can trigger flooding in the former Sumas Lake region, despite the preventative structures and equipment in place.

In response to these concerns, Westcoast committed to incorporating buoyancy control measures, such as bag weights or concrete weights, into the Project design, as appropriate, in areas where the pipeline may experience positive buoyancy (e.g., wetlands, muskeg, or at water crossings). Westcoast also committed to applying learnings from past weather events that led to high water tables and flooding in the area to mitigate the potential effects of similar events in the future. Westcoast and the City of Abbotsford agreed to continue meeting on a quarterly basis to discuss the city's concerns, including with respect to pipeline buoyancy.

6.2.2.3 Cathodic protection interaction with municipal infrastructure

The Commission finds that Westcoast's proposed cathodic protection measures are appropriate and meet applicable requirements, as defined by CSA Z662. In making this finding, the Commission notes that the proposed cathodic protection system entails connecting the Project to the T-South system with additional rectifiers, as well as additional measures to prevent the system from negatively affecting third-party infrastructure. Further, Westcoast would monitor the cathodic protection system's performance through test leads installed along the new pipeline loops.

Cathodic protection is one measure within a broader system that is designed to prevent and control external corrosion on pipelines. Westcoast stated that it plans to protect the Project's buried pipelines by applying high-integrity coating systems and cathodic protection, as required by CSA Z662. Cathodic protection works by using anodes that are buried near the pipeline and electrically connected to it. These anodes provide a protective negative electrical charge to the steel pipe, making it cathodic and reducing the potential for corrosion when exposed to different soil conditions.

The Commission considered the concerns raised by the City of Abbotsford regarding the potential adverse interactions of the pipeline's cathodic protection with municipal infrastructure. The Commission finds the steps and measures Westcoast identified to mitigate the proposed cathodic protection system's impact on third-party infrastructure to be reasonable. Specifically, Westcoast does not anticipate needing additional rectifiers within the City of Abbotsford, as the existing system is expected to be sufficient for both the new and existing pipelines. However, studies are underway to confirm this. Westcoast would also install bonding conductors at each location where the new pipeline would cross other underground steel utilities, such as municipal pipelines. These bonding conductors are intended to prevent the cathodic protection system from negatively affecting third-party infrastructure.

6.2.2.4 Wall thickness and class location

The Commission finds that Westcoast's determination of class location for the pipeline loops, together with the proposed wall thicknesses based on class location, is appropriate, and meets the requirements of CSA Z662. In accordance with Westcoast's preliminary assessments, most of the

new pipe would be designated as Class 1. Nine locations require Class 2 or Class 3 designations based on their existing land use. Another five locations have been designated for Class 2 requirements because the dwelling numbers, or occupation potential during normal use, are close to necessitating a higher designation.

Class designation refers to a method of categorizing a pipeline's location based primarily on the number of people who would customarily be near the pipeline. The class designation is then used to derive a location factor that is applied to calculations that help to determine the appropriate pipeline wall thickness. For pipelines subject to the OPR, the standard and method used for that assessment of class, and the subsequent location factor, is set out in CSA Z662. Under that standard, four pipeline class designations may apply to pipeline segments based on the level of development within the class location assessment area. More specifically:

- Class 1 applies to areas with 10 or fewer dwelling units within the assessment area.
- Class 2 applies to areas with 11 to 45 dwelling units or one or more buildings/outside areas occupied by 20 to 120 persons during normal use, including specific industrial installations.
- Class 3 applies when there are 46 or more dwelling units, or institutions (i.e., hospitals or prisons) where rapid evacuation is difficult, or buildings/outside areas are occupied by more than 120 persons during normal use.
- Class 4 applies to areas showing a prevalence of buildings intended for human occupancy with four or more stories above ground.

A pipeline's wall thickness refers to the thickness of the steel material used to construct the pipe. In general, thicker pipe walls are less likely to be significantly damaged if they are accidentally struck. They also provide more resistance to pipeline operating pressure, potential integrity imperfections, or defects like those caused by corrosion or cracking.

Several factors are considered when determining the appropriate pipe wall thickness. The primary factors are operating pressure, pipe diameter, and the type of steel used. Additional factors that may require an increased wall thickness include the method of pipe manufacturing, the temperatures the pipe would experience during operations, and the applicable class designation. In general, in accordance with CSA Z662, thicker pipe walls are required in higher-risk areas, such as densely populated regions (that is, Class 2 to Class 4 locations).

Class designations may change as land use, and populations change around a pipeline. As a community grows, or its use of the lands near a pipeline changes, the class designation for the pipeline in those areas may increase. For compliance to CSA Z662 to be maintained, companies may choose to be proactive and establish higher class locations for certain areas where population growth or other changes are anticipated, to ensure the pipe thickness remains suitable and that a pipe would not have to be replaced.

The Commission expects companies to adhere to the requirements of CSA Z662 for class designation because the standard is consistent with its expectations for determining an acceptable wall thickness. Westcoast stated that it plans to finalize pipeline class designations during the detailed design phase after a certificate is issued. The grade of steel Westcoast identified in its application, and the pipeline class designations already identified, are a minimum that would result in pipe wall thicknesses of at least:

- 13.8 millimetres in Class 1 areas;

- 15.3 millimetres in Class 2 areas; and
- 19.6 millimetres in Class 3 areas.

Thicker-walled pipes or additional reinforcements may also be used at crossing locations where necessary to accommodate stresses associated with those crossings. These stresses depend on factors such as the nature of the crossings, the construction method used, any additional supports used to strengthen or support the crossing, and the nature of the load passing or crossing over the pipeline.

Seabird Island Band expressed concerns about class location determinations, and the resulting pipe wall thickness, within their community. During his oral Indigenous knowledge presentation, Tribal Chief Tyrone McNeil of Seabird Island Band shared that:

> (…) [CSA Z662] puts it on [Westcoast's] hands to determine the pipe classification. In large part, it's based on population density and proximity. If I had it my way, every inch of pipe, particularly in Seabird, in proximity to Seabird, would have the highest wall thicknesses, not your regular line pipe, and replace those pipes like you've been doing in Chilliwack over the last five years, upgrading the classification of your pipe and have that apply regardless of population [density] on Seabird (…)

Westcoast confirmed that the CS-8B to CS-9 pipeline loop within Seabird Island Band's reserve lands would, at a minimum, meet Class 2 design requirements. This commitment exceeds the minimum class location requirements defined by CSA Z662 for the population density within that reserve.

The Commission notes that Westcoast's commitment to a higher-class location within Seabird Island Band's reserve lands may not fully address their interest in having the highest wall thickness more broadly. However, having considered all the factors noted above, the Commission is satisfied that Westcoast's pipe thickness selection, based on class location, is appropriate. In making this finding, the Commission notes that pipe thickness, while important, is only one of several factors contributing to the overall integrity and safety of the pipeline. The Project also incorporates activities that reduce the potential for pipeline degradation, including external pipe coating, cathodic protection, and implementing Westcoast's Integrity Management Program.

6.2.2.5 Valve locations and spacing

The Commission finds that the Project's valve types and locations are appropriate and meet the applicable requirements for gas pipelines, including the requirements set out in CSA Z662. In considering the appropriateness of the Project's valve placement, the Commission considered Westcoast's proposed approach to place new line break valves at the crossovers for the new pipeline loops. It also considered that the valves would be remotely controlled by Westcoast's supervisory control and data acquisition (commonly known as SCADA) system.

Westcoast stated that during a cultural walk in April 2025, Matsqui First Nation members raised questions about the role of valves in emergency response. In response, Westcoast provided information to the community about the role of valves in emergency response, and their locations at the crossover assemblies. Westcoast stated that it further pointed community members to various places on the hearing record where they could obtain additional information.

The Commission generally notes that valves are installed on pipelines to stop the flow of product for maintenance and control purposes, and to mitigate effects if there is a leak or rupture. Valves are placed at certain intervals, and at strategic locations, at the cross connections between loops and mainlines, and at compressor stations.

CSA Z662 requires companies, when determining the number and spacing of valves, to demonstrate the suitability of the valve spacing, having regard to a number of factors, including the location and the class designation imposed on the pipeline because of the proximity of people living and working near it. The greater the number of people near a pipeline, the more valves are required for the length of pipeline. The type of product that could be released in an emergency, and the time that may be taken to detect, access, and take steps to contain a release, are also considered when determining valve location and valve types.

The Commission is satisfied that Westcoast's proposal to place valves at crossovers for the new pipeline loops is consistent with CSA Z662 and appropriate given the locations and class designations of the pipeline. The Commission further notes Westcoast's statement that it would remotely control the new valves, providing additional assurance that a release could be detected and detained rapidly, even in more remote geographic locations.

The Commission observes that although the purpose of sectionalizing valves is the same, their application is different in natural gas pipelines than for oil pipelines. For natural gas pipelines, the purpose of sectionalizing valves in an emergency is to reduce the volume of gas discharged to limit the risks of fire or explosion. For an oil pipeline, the primary purpose of sectionalizing valves is to limit the extent of contamination from a release. The placement of the valves for gas or oil pipelines is also different since the force that would cause product to be released, once the pumps or compressors are shut off, is different. In a natural gas pipeline, the force that could drive gas out of the pipe is from the pressure contained in the pipe. For oil pipelines, the force that can cause liquid to leave the pipe is gravity. The Commission's assessment of valve placement and operation for the Project focused on the requirements for a natural gas pipeline.

6.2.3 General design of crossings

6.2.3.1 Pipeline crossings

The Commission finds that Westcoast's proposed design and installation of crossings for the pipeline loops are appropriate and would meet the applicable regulations, standards, Westcoast's specifications, and respective crossing agreements. In making this finding, the Commission considered Westcoast's submissions on how the pipeline would cross highways and roadways, railways, watercourses, and utilities. The Commission also considered concerns raised by the City of Abbotsford and Westcoast's commitment to continued engagement on these issues.

The City of Abbotsford raised concerns regarding road and infrastructure crossings within municipal boundaries, including traffic management, access, and noise. Westcoast highlighted several measures to address the concerns raised, including:

- Westcoast and the city agreed to continue meeting on a quarterly basis to discuss the city's concerns, including with respect to infrastructure crossings.
- Westcoast and the city have discussed a potential permitting and inspection approach and mitigation for the Project's noise and traffic effects.

- Westcoast committed to sharing its traffic management plan with the city, once available.

The Commission encourages Westcoast to continue meeting with the City of Abbotsford, as well as other interested stakeholders and Indigenous Peoples, to address ongoing concerns related to crossings.

6.2.3.2 Trenchless watercourse crossings

The Commission finds that Westcoast's trenchless watercourse crossing designs are appropriate and meet applicable requirements of CSA Z662 and the OPR.

Trenchless crossing methods are designed to avoid or reduce surface construction effects. Westcoast proposed trenchless crossing methods at four watercourses – Parsnip River, Naver Creek, Maria Slough North, and Maria Slough South. Based on the trenchless crossing feasibility assessments Westcoast filed for those crossings, the Commission is satisfied that the planned crossing methods and designs are appropriate and would comply with the relevant requirements and standards.

6.2.4 General design of the electrical facilities

The Commission finds that the general design and proposed methods of construction and operations for the electrical facilities are appropriate and meet applicable safety and reliability standards. In making this finding, the Commission considered the design details and technical specifications provided in relation to the electrical facilities and how they meet the relevant regulations, standards, industry codes, and reliability criteria. The Commission also considered the suitability of the additional standards and codes that Westcoast committed to apply throughout the lifecycle of the facilities, as set out in its application.

In finding that the electrical facilities could be operated reliably and without adverse impacts on the broader power grid, the Commission also took into account the Facilities Agreements and Electricity Supply Agreements that Westcoast said it would enter into with BC Hydro, the operator of the power grid to which the Project's electrical facilities would connect.

6.2.4.1 Technical specifications

The electrical facilities include two new power lines that would be physically connected to the T-South system through substations and related facility infrastructure. The CS-6B power line would be approximately 6.9 km in length, and the CS-8A power line approximately 3 km in length. Westcoast stated that the power lines would be utility standard overhead transmission lines and would provide power to the new compressor units to be installed at CS-6B and CS-8A. Further, Westcoast submitted that it would install a combination of wooden monopole and wooden H-frame structures, with heights ranging from 16 to 25 m, depending on terrain conditions and features to be crossed. Approximately 35 poles would be required for the CS-8A power line, with the lateral spacing generally ranging from 75 to 180 m. Approximately 71 poles would be required for the CS-6B power line, spaced at approximately 60 to 180 m. The Commission finds reasonable the technical details and descriptions, applicable design standards, engineering drawings, and single-line diagrams that Westcoast provided in its application and related submissions. The details specified are consistent with the applicable standards and prudent engineering practices.

The Commission accepts that construction activities may result in deviations from preliminary designs due to unforeseen field conditions or engineering adjustments. The Commission also

recognizes the importance of maintaining accurate records of the constructed electrical facilities to support effective post-construction compliance verification and inspection activities. Therefore, the Commission considers it necessary to impose **Condition 36** (As-built electrical drawings), which would require Westcoast to file as-built electrical drawings and single-line diagrams identifying the locations of all electrical facilities. This condition filing would provide the Commission with a reliable reference for future oversight and ensure that any deviations from the original design would be appropriately documented and assessed by the Commission.

6.2.4.2 Standards

The Commission finds that the standards Westcoast identified are appropriate and would support the safe and reliable construction and operation of the electrical facilities. In particular, Westcoast submitted that it would design and construct the power lines in accordance with CSA C22.3 No. 1 – *Overhead Systems* and applicable BC Hydro standards. It also stated that the electrical facilities would comply with CSA C22.1 – *Safety Standard for Electrical Installations* and BC Hydro's *Technical Interconnection Requirements for Transmission Voltage Customers for Service at 60,000 to 287,000 Volts*, R1.

Westcoast indicated that it would construct, operate, and maintain the Project in compliance with workplace electrical safety practices that are equivalent to, or exceed the requirements of, the most current version of:

- For transmission lines: CAN/ULC S801 – *Standard on Electric Utility Workplace Electrical Safety for Generation, Transmission, and Distribution.*
- For substations and compressor stations: CSA Z462 – *Workplace Electrical Safety*.

To ensure that the electrical facilities are designed, constructed, and operated in conformity with the specifications, standards, plans, and commitments Westcoast made in its application and related submissions, the Commission considers it necessary to impose **Condition 14** (Quality assurance and compliance for the electrical facilities). This condition would require Westcoast to file a Quality Assurance and Compliance Program for the electrical facilities before starting construction. The Commission also considers it necessary to impose **Condition 20** (Schedule and progress of construction of electrical facilities), which would require Westcoast to provide a detailed construction schedule for the electrical facilities before starting construction. This condition would also require Westcoast to report quarterly on any deviations from the construction schedule and on any safety, security, and non-compliance issues encountered.

6.2.4.3 Power system protection

In 2015, the National Energy Board (the CER's predecessor) observed several electrical incidents in pipeline facilities due to ground faults and arcing faults. Through its investigations, the National Energy Board identified some common causes of such incidents. In response, it issued Safety Advisory SA-2015-03[59] setting out its expectations for preventive actions to protect pipeline facilities under its jurisdiction**.**

[59] Found at https://www.cer-rec.gc.ca/en/safety-environment/industry-performance/information-safety-advisories/safety-advisory/2015/archive/safety-advisory-sa-2015-03-power-system-protection-in-pipeline-facilities.html.

Westcoast submitted that it will determine the final details of the measures it would take for the power system's protection, upon completing studies for the electrical facilities. The Commission requires this information to confirm that Westcoast would implement a protection system that meets the recommendations in Safety Advisory SA-2015-03. This is essential to make sure the electrical facilities operate safely and reliably throughout their lifecycle, in a manner that can help prevent incidents. Accordingly, the Commission considers it necessary to impose **Condition 30** (Power system protection for compressor stations, substations, and power lines), which would require Westcoast to file, for Commission approval, details of its electrical power system design for each compressor station, substation, and power line, before starting to operate the electrical facilities. This condition would allow the Commission to assess if Westcoast's plans for the power system's protection continue to be appropriate.

6.2.4.4 Interconnection and grid reliability

The Commission finds that Westcoast's approach to interconnecting its electrical facilities to the BC Hydro grid is appropriate and can be supported without adversely affecting the reliability of the power grid or the electrical facilities' safe and reliable operation. In making this finding, the Commission considered the system impact studies that have been or are being conducted by BC Hydo to assess the implications of adding the proposed load to the existing grid. The Commission also considered the agreements that Westcoast is entering into with BC Hydro to ensure compliance with its standards, as the operator of the power grid to which the Project would connect. Finally, the Commission considered the CER's General Order MO-036-2012 for Electricity Reliability Standards[60] that would be applied to the Project.

6.2.4.5 System impact studies

The Commission notes that BC Hydro would construct and own the interconnection facilities at the point where Westcoast's electrical facilities would connect to BC Hydro's power grid. The electrical facilities would be used exclusively by Westcoast and dedicated solely to Westcoast's pipeline system. The power lines would extend from a BC Hydro point of delivery to the respective substations being installed within existing compressor station boundaries.

Westcoast explained that as part of the interconnection process, BC Hydro is undertaking a number of system impact studies for each of the new interconnections associated with the Project:

- **CS-6B interconnection –** Westcoast confirmed that BC Hydro has completed an interconnection system impact study in support of the proposed CS-6B compressor unit. The study confirmed that BC Hydro can accommodate Westcoast's interconnection request at the proposed point of interconnection, subject to certain system upgrades that were identified in that study.
- **CS-8A interconnection –** The CS-8A power line was revised and shortened from approximately 21 km to approximately 3 km. The revised route would connect through an existing third-party transmission line. The system impact study for this interconnection was expected to be completed by the fourth quarter of 2025.
- **CS-8B interconnection –** The power line originally proposed to CS-8B was removed from the Project scope. As now proposed, BC Hydro would supply power directly to the existing

[60] Filing A49626.

compressor station by upgrading its own distribution system. The impact study for this new arrangement was expected to be completed by the third quarter of 2025.

6.2.4.6 Agreements with BC Hydro

Westcoast stated that it would enter into Facilities Agreements and Electricity Supply Agreements with BC Hydro to ensure that the reliability impacts of connecting the electrical facilities to the BC Hydro grid (if any) are acceptable to BC Hydro, and compliant with BC Hydro standards. The Commission notes that the final details of the interconnections with BC Hydro would be determined prior to energizing the electrical facilities, and that all substations would comply with BC Hydro's *Technical Interconnection Requirements for Transmission Voltage Customers for Service at 60,000 to 287,000 Volts*, R1.

To ensure the electrical facilities' safe and reliable connection to the BC Hydro grid, the Commission considers it necessary to impose **Condition 32** (System impact studies prior to energization). This condition would require Westcoast to file, before operating the electrical facilities, confirmation that the final electric service agreements necessary for the Project interconnections to the BC Hydro grid have been executed. It would also require Westcoast to file a letter from BC Hydro confirming that the final system impact studies conclude that the Project would have no negative effect on the BC Hydro grid.

6.2.4.7 CER's reliability standards and requirements

Through its assessment, the Commission also considered the CER's reliability standards and requirements that should be applied to the Project, in particular those described in General Order MO-036-2012. The Commission is satisfied that Westcoast's adherence to these reliability standards would further support the electrical facilities' safe and reliable operation and enable effective CER oversight throughout the Project's lifecycle. The National Energy Board issued General Order MO-036-2012 with respect to the reliability, safety, and security of international power lines under its jurisdiction. This General Order recognized that the electrical power system in North America is integrated, and that mandatory and enforceable transmission reliability standards are critical to the electrical power system's proper functioning.

The electrical facilities would connect to the BC Hydro system, which is regulated by the British Columbia Utilities Commission. In addition to its own standards and requirements, the British Columbia Utilities Commission also adheres to the guidelines established by the Western Electricity Coordinating Council, as the relevant regional reliability organization.

Through General Order MO-036-2012, companies that hold certificates for CER-regulated international power lines are required to take measures to ensure the reliable and secure operation of its facilities. This includes adhering to certain reliability standards established by the relevant provincial authority and regional reliability organization. Although the General Order specifically relates to CER-regulated international power lines, the Commission is of the view that extending these reliability standards and requirements to the Project's electrical facilities would help support their safe and reliable operations, as well as the reliability of the larger power system to which they would connect.

The Commission heard from Westcoast that through the Facilities Agreements and Electricity Supply Agreements Westcoast would be signing with BC Hydro, Westcoast would be subject to the reliability standards and requirements established by the British Columbia Utilities Commission and

the Western Electricity Coordinating Council. Despite this, the Commission considers it necessary to impose **Condition 31** (Reliability standards) to establish clear, enforceable, regulatory requirements for the reliability of the electrical facilities throughout the Project's lifecycle. This condition would require Westcoast to file confirmation, before operating the electrical facilities, that the Project will comply with British Columbia Utilities Commission-approved reliability standards, as well as any applicable Western Electricity Coordinating Council criteria, requirements, policies, or guidelines.

The Commission further recognizes that electrical reliability is critical to the safe and effective operation of the electrical facilities and, by extension, the Project's safe and effective operations. However, the OPR, as the CER's principal safety regulation, does not capture power outages through incident reporting or otherwise. To ensure there is strong regulatory oversight of potential electrical reliability issues, the Commission considers it necessary to impose **Condition 34** (Unplanned power line outage of electrical facilities). This condition would require Westcoast to promptly report any unplanned outages affecting the electrical facilities and provide details of corrective actions taken or proposed to mitigate the impacts of the outage and prevent a recurrence. This reporting requirement would support the CER's oversight of the electrical facilities' reliability and safety throughout the Project's lifecycle.

6.2.4.8 Voltage ratings and operational limits

Westcoast submitted that the CS-6B power line's design voltage would be 138 kilovolts (**kV**), but it would initially be operated at 66 kV. The CS-8A power line would also be rated at 138 kV. Westcoast stated that the power lines' power capacities would be:

- 80 megavolt-ampere during summer conditions and 102 megavolt-ampere during winter conditions for the CS-6B power line; and
- 114 megavolt-ampere during summer conditions, and 144 megavolt-ampere during winter conditions for the CS-8A power line.

Condition 2 (Design, location, construction, and operations) would require Westcoast to operate the Project in accordance with its application and related submissions, which includes operating the power lines within the stated design limits. If Westcoast needs to operate the power lines beyond the applied-for and approved operation limits, it would be required to file a variance application with the CER. Westcoast indicated that the CS-6B power line would initially operate at 66 kV despite being built at a design voltage rating of 138 kV. Under this condition, Westcoast would be required to obtain approval from the Commission before operating the CS-6B power line at a voltage greater than 66 kV.

6.3 Management system

The Commission finds that Westcoast adequately described how its programs required under the OPR are coordinated within its management system to promote safety and environmental protection. The Commission also finds that Westcoast adequately explained how it would make any needed changes to its management system.

For CER-regulated companies, management system requirements are set out in section 6 of the OPR. Additional guidance is set out in the *CER Management System Requirements and CER*

Management System Audit Guide to assist management system practitioners in furthering their knowledge of the CER's management system requirements.

A company's management system must also include the protection programs listed in subsection 55(1) of the OPR, which are:

- Safety Management Program;
- Integrity Management Program;
- Environmental Protection Program;
- Security Management Program;
- Damage Prevention Program; and
- Emergency Management Program.

As required by the OPR, a management system is an approach designed to effectively manage and reduce risk, as well as being adaptable to changing situations. It includes the necessary organizational structures, resources, accountabilities, policies, processes, and procedures for an organization to fulfill all tasks related to safety, security, and environmental protection. A carefully designed and well-implemented management system supports a strong culture of safety and is fundamental to keeping people safe and protecting the environment.

Upon starting operations, Westcoast would integrate the Project into the T-South system and continuing operations. As a subsidiary of Enbridge, Westcoast operates under the Enbridge Gas Transmission & Midstream (**GTM**) Integrated Management System, which is part of Enbridge's overarching Management System Structure. Westcoast stated that this structure establishes requirements that allow Enbridge to identify, assess, and effectively manage hazards and risks while ensuring regulatory compliance. Westcoast further claims that the Enbridge GTM Integrated Management System sets out requirements for implementation across business units and incorporates a safety and reliability policy, a management system framework, and supporting standards. The Commission notes that the Enbridge GTM Integrated Management System includes each of the six protection programs referenced, which are required under the OPR.

The Commission recognizes that the management system framework also requires a review process to identify any necessary changes to the management system and drive continual improvement. Westcoast stated that Enbridge GTM senior management drives the continual improvement of its management system through periodic management reviews. Further, the overall review process for the T-South system identifies the need for any required modifications to the management system.

Westcoast confirmed that it would construct and operate the electrical facilities in accordance with Westcoast's management systems. Westcoast's integrated management system is designed to be appropriate for the nature, scope, scale, and complexity of the company's assets, operations, and applicable activities, including the electrical facilities.

The CER regulates projects under its jurisdiction for their entire lifecycle, from its early engagement and application assessment processes through construction, operations, maintenance, and eventual decommissioning or abandonment. Compliance verification – including with the management system requirements of the OPR and CSA Z662 – is carried out at all stages through reviewing condition

filings, inspections, audits, meetings, and incident oversight. When companies do not meet these requirements, the CER has the authority to take action to ensure the company remains in compliance and safely operates its infrastructure.

The Commission is satisfied that Westcoast provided adequate information in its application and related submissions, consistent with the Filing Manual, to demonstrate how it would coordinate the programs required under the OPR within its management system to promote safety and environmental protection. The Commission notes that the complete scope of the company's management system would continue to evolve as the Project progresses from the design and construction phase into operations. As a lifecycle regulator, the CER would continue to assess the necessary elements of Westcoast's management system and Westcoast's ability to achieve the objectives of safety and environmental protection throughout the Project's lifecycle.

6.3.1 Management systems and safety culture

The Commission is satisfied that with the implementation of the Enbridge GTM Integrated Management System, in support of a strong safety culture, the Project can be carried out in a manner that provides for the safety and security of the public, company personnel, and physical assets, and that protects property and the environment.

In 2021 the CER published its *Advancing Safety in the Oil and Gas Industry: Statement on Safety Culture.*[61] The CER defines safety culture as the attitudes, values, norms, and beliefs, which a particular group of people share with respect to risk and the safety of people and the environment. The document provides the CER's safety culture framework and discusses the importance of management systems in keeping people safe and protecting the environment. The statement on safety culture articulates the expectation that CER-regulated companies build and maintain a positive safety culture while remaining vigilant to potential cultural threats.

The Commission notes Westcoast's submission that its management system supports its safety culture. The Commission further notes the company's past commitments to, and participation in, the CER's safety culture advancement efforts.

The Commission considered the issues raised by Lower Nicola Indian Band through a study prepared by Dr. Najmedin Meshkati and filed as their Indigenous-led study. The study expressed concerns about the implementation of a safety management system for the Project and Westcoast's related safety culture maturity. The report more generally identified a number of opportunities for regulatory enhancement in relation to safety culture, emergency preparedness, Indigenous participation, and regulatory risk management.

In response, Westcoast generally noted that the study identified minimal specific references to the Project and did not identify references to the management system or protection program requirements set out in the OPR, or the CER's role in overseeing these requirements.
The Commission specifically notes some of the issues raised in study, together with Westcoast's related response:

- Lower Nicola Indian Band stated that Westcoast's application did not reference certain information that is key to a strong pipeline safety management system, including past safety

[61] Found at https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/statement-safety-culture/index.html.

performance and incident data, lessons learned from other projects or industry events, or information on system integrity management. Westcoast responded that matters in relation to safety, safety culture, and emergency management are already covered by its current management systems and protection programs – most notably the Enbridge GTM Integrated Management System.

- Lower Nicola Indian Band noted that there is a lack of visible leadership involvement in safety systems, and poor information systems for gathering and analyzing data from various sources, including communities and local responders. In response, Westcoast asserted that the Enbridge GTM Integrated Management System and related protection programs promote a strong safety culture. Westcoast further noted that Lower Nicola Indian Band's study was undertaken without reviewing Westcoast's integrity management system or consulting Westcoast's staff. Westcoast committed to ongoing engagement with Lower Nicola Indian Band on these issues, and to sharing more information about its management systems and protection programs.
- Lower Nicola Indian Band argued that its study identified opportunities to improve safety leadership, accountability, and overall safety culture through enhanced Indigenous participation, including co-governance and active Indigenous monitoring. Westcoast acknowledged Lower Nicola Indian Band's concerns about operational safety, control room culture, and cultural safety, and it invited the community to take part in ongoing assessments and plans. Westcoast confirmed that it would review cultural site protection measures as they are identified, supported by existing contingency plans, and will consider recommendations from Indigenous-led assessments or studies when planning mitigation measures.

The Commission has considered Lower Nicola Indian Band's submissions made through its study, but is satisfied, based on the evidence filed, that Westcoast's management system with respect to the Project has been designed and would be implemented in a manner that supports a strong safety culture. Further, Westcoast's management system would provide for the safety and security of the public, company personnel, and physical assets, as well as for the protection of property and the environment, in accordance with the relevant regulations and standards and consistent with the CER's expectations. The Commission notes that over the Project's lifecycle, the CER would verify Westcoast's compliance not only with the standards and commitments set out in its application and related submissions, but also with the robust requirements set out in the OPR and related standards, including CSA Z662. As a lifecycle regulator, the CER assesses these requirements through a variety of compliance verification activities during operations (e.g., audits and inspections).

The Commission encourages Westcoast to continue participating actively in the CER's safety culture advancement efforts to help build and maintain a positive safety culture while remaining vigilant to potential cultural threats. The CER' s webpage on safety culture[62] provides more information about these efforts and the ongoing activities between the CER and the companies it regulates. In addition, the CER has educational materials and guides available on its Learning Portal,[63] which are designed to help companies better understand safety culture and human and organizational factors.

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[62] Found at https://www.cer-rec.gc.ca/en/safety-environment/safety-culture.
[63] Found at https://www.cer-rec.gc.ca/en/safety-environment/safety-culture/safety-culture-learning-portal.

6.4 Construction safety

The Commission finds that Westcoast's protection programs, processes, and safeguards meet applicable regulations and standards and are appropriate to enable safe Project construction and to address construction-related hazards, worker protection, and public safety. In making this finding, the Commission considered Westcoast's safety management and damage prevention programs that are in place as part of the Enbridge GTM Integrated Management System and Enbridge's Management System Structure. As described in **Section 6.3**, the Commission accepts that in aggregate, these requirements establish the foundation for Westcoast to identify, understand, and effectively manage hazards and risks, to maintain compliance, and to support their application throughout the Project's lifecycle. The Commission notes that Enbridge's system-wide structures would be supplemented by Project-specific documents, including Construction Safety Manuals and contractor site-specific safety plans. The Commission is satisfied with Westcoast's general commitment to continue engaging stakeholders, landowners, and Indigenous Peoples throughout the Project's lifecycle to address and respond to their interests and concerns with respect to the Project.

The Commission considered and is satisfied with Westcoast's approach to ensuring that contractors are aware of their safety-related responsibilities, and with its approach to ensuring that there would be an appropriate level of supervision and oversight of its contractors. In reaching this conclusion, the Commission considered the various commitments Westcoast made in relation to its safety programs and procedures, as well as the conditions that the Commission considers necessary to ensure appropriate contractor oversight.

Specifically, Westcoast stated that it would require its contractors to comply with applicable safety regulations and Westcoast's corporate safety programs. In addition, Contractors would be required to follow and observe the current version of the Enbridge GTM Integrated Management System on file with the CER, which the Commission notes is based upon the policies, processes, and other management system elements defined in the OPR. The Commission further notes Westcoast's commitment to having safety inspectors on site during Project construction to ensure that personnel are following applicable safety procedures. The Commission expects that all of Westcoast's commitments in relation to personnel following applicable safety programs and procedures would extend to its contractors or any other persons working on the Project with or on behalf of Westcoast. To ensure that sufficiently senior and qualified individuals within Westcoast are tasked with responsibility for contractor oversight, the Commission considers it necessary to impose, in **Condition 17** (Construction Safety Manuals), a requirement for Westcoast to identify the position of the persons within Westcoast responsible for ensuring contractors adhere to safety performance requirements. This would allow for additional transparency and clear accountability.

The Commission considered participants' concerns related to construction safety and is satisfied that Westcoast's responses and commitments were responsive and demonstrate Westcoast's willingness to engage with Indigenous Peoples and stakeholders regarding their interests and concerns. Some of these safety-related concerns and Westcoast's responses and commitments include:

- In response to a request for assurance from the BC Métis Federation that their partner communities be provided orientation and training opportunities related to construction safety procedures and protocols, Westcoast committed to providing a safety orientation to anyone, including Indigenous Peoples, planning to attend a Project construction site.

- In response to a request by Cheam First Nation regarding Westcoast's Construction Safety Manual for the Project, Westcoast submitted that it would welcome their Indigenous knowledge regarding safety practices through ongoing engagement with them, including as part of ongoing studies being undertaken.
- Westcoast agreed with Kelly Lake First Nation that safety measures should be in place for the Project's lifespan, not only during construction. Westcoast referred them to the Enbridge safety web page for further information about Enbridge's core values of safety, robust operational integrity management, and its general approach to safe operations throughout the Project's life.
- In response to the City of Abbotsford's concerns that Westcoast has not provided them with a traffic control plan, Westcoast pointed to their agreement for quarterly technical meetings and its commitment to continued engagement and to share its traffic management plan with the city when it is available.

Westcoast indicated that Enbridge's Construction Safety Manual on file with the CER, is applicable for the broader T-South system and would therefore also apply to the Project. The Commission requires that the existing manual be supplemented by Westcoast's Project-specific Construction Safety Manuals that would provide, among other things, additional details on the safety-related responsibilities of management personnel specific to the Project components. The Commission accepts that these Project-specific documents have not yet been finalized because they require contractor input and additional design details that would not be available until later stages of Project planning. As such, **Condition 17** (Construction Safety Manuals) would require Westcoast to file, before starting construction of each of the Project components (facilities, pipeline loops, power lines), a Construction Safety Manual specific to that component. This would allow the CER to review and assess the adequacy of the safety measures contained in each Construction Safety Manual against OPR requirements, before Westcoast starts construction.

To monitor ongoing safety and security issues related to Project construction, track safety key performance indicator trends, and allow for timely corrective actions, the Commission also considers it necessary to impose **Condition 26** (Construction progress reports). This would require Westcoast to file a monthly construction progress report for the Project (excluding the electrical facilities) once construction starts until construction is completed. The Commission also considers it necessary to impose **Condition 20** (Schedule and progress of construction of electrical facilities), which would require Westcoast to file similar information for the electrical facilities, on a quarterly basis, during their construction.

The Commission finds that the timely notification of events with potentially serious consequences would allow the CER to follow up to ensure that Westcoast is taking appropriate actions to understand their cause and avoid recurrence. Early notification can also allow the CER to proactively identify recurring events that may have serious safety consequences; not to penalize the company, but rather to address trends in a timely way to prevent harm to people, property, or the environment. Therefore, the Commission considers it necessary to impose **Condition 25** (High-potential near misses), which would require Westcoast to file a preliminary incident report within 72 hours after discovering a high-potential near miss (i.e., an event where a reasonable and informed person would determine that under slightly different circumstances, there would have been a high likelihood for serious injury or death to a person). These reports can be aggregated and considered alongside safety-related information obtained through Westcoast's monthly construction progress reports to plan compliance verification activities and drive continual improvement.

A number of Indigenous Peoples requested that they be provided notification of near misses within their traditional territories. The Commission notes that through **Condition 5** (Plan for notifying Indigenous Peoples of condition filings), Westcoast would be required to provide timely notification to interested Indigenous Peoples of all condition filings throughout Project construction and operations, unless Westcoast receives notification from an Indigenous community that they are not interested in receiving a filing. Westcoast would report on near misses monthly through the construction progress reports required under **Condition 25.** These filings would be provided to interested Indigenous Peoples via the requirements of **Condition 5**.

6.5 Operations and maintenance

The Commission finds Westcoast's proposed approach for operating and maintaining the Project to be appropriate and would enable Westcoast to operate it safely and in compliance with all applicable regulations and standards, including the OPR and CSA Z662, as well as the CER's expectations. In making this finding, the Commission considered that the Project, in its entirety, would be integrated into Westcoast's T-South system and ongoing operations. The Commission also notes that the new pipeline loops would operate as a third parallel pipeline within the same right-of-way as two existing Westcoast pipelines.

The Commission finds it appropriate that for Project operations and maintenance, Westcoast would generally rely on its existing procedures, standards, and management systems for the broader T-South system, which has been operating for decades. This involves including the Project's pipeline components in Westcoast's integrity and maintenance program and continuous 24/7 monitoring of the T-South system. Westcoast stated that the Project would fall under the scope of the Enbridge GTM Integrated Management System, which includes integrity management and safety management. The Enbridge GTM Integrated Management System, in turn, falls under Enbridge's Management System structure. The Commission agrees with Westcoast's submission that this approach would help ensure consistent and reliable Project operations, in compliance with all relevant legal requirements.

6.6 Emergency management

6.6.1 Emergency response planning

The Commission finds that Westcoast's emergency response planning for the Project to be appropriate and meets the requirements of applicable CER regulations, standards, and orders. It is also consistent with the best practices identified by the CER. In making this finding, the Commission considered that the Project would be subject to the Enbridge GTM Integrated Management System and Enbridge's overarching Emergency Management Program and associated Emergency Response Plans (**ERPs**). The Commission accepts that these documents meet the requirements of the Filing Manual and the OPR and are part of an adaptable response framework capable of anticipating, preventing, mitigating, and managing potential emergencies.

Enbridge maintains a Core ERP for its pipeline system and ERPs for the T-North and T-South systems. The Project would be incorporated into the Enbridge Core ERP and the T-South system ERP, which would be amended as required to capture information related to the Project. These plans are currently on file with the CER as required by section 32 of the OPR and the CER

Emergency Procedures Manuals letter dated 26 March 2015.[64] Westcoast's relevant ERPs and Emergency Management Program information are available on Enbridge's Emergency Management website, as required by Order AO-001-MO-006-2016,[65] which compels the publication of Emergency Procedures Manuals, and Order AO-001-MO-002-2017,[66] which compels the publication of Emergency Management Program information.

The Commission also considered concerns raised by participants in relation to emergency management and response planning, together with Westcoast's related commitments and responses. These include:

- The City of Abbotsford requested commitments from Westcoast related to its ERPs, including regarding sharing documents, establishing expectations with the Abbotsford Fire Rescue Service, and complying with the city's *Fire Service Bylaw, 2020.* In response, Westcoast agreed to engage Abbotsford Fire Rescue Service in developing a site-specific health and safety plan. Westcoast stated that it plans to engage the city regarding any bylaws that may be applicable. Westcoast confirmed that it would share with the city the amended Enbridge GTM Integrated Management System Core ERP and T-South system ERP.
- The District of Hope filed a letter of support for the Project and expressed support for Westcoast's coordination with local services for wildfire preparedness and local responder capacity. The Commission expects Westcoast to continue engaging and educating affected stakeholders and emergency service providers regarding emergency and safety procedures, in accordance with its obligations under section 35 of the OPR. The Commission also expects Westcoast to liaise and coordinate with partner agencies such as local services and wildfire partners, including the District of Hope.

The Commission finds value in developing and maintaining Project-specific construction ERPs. Therefore, the Commission considers it necessary to impose **Condition 18** (Construction Emergency Response Plan(s)), which would require Westcoast to file, before starting construction, Project-specific construction ERP(s). The Commission notes the specific and high level of interest in the ERPs identified by Indigenous Peoples and other organizations and agencies. As a result, the Commission considers it necessary to include a requirement in **Condition 18** for Westcoast to provide a copy of the plan(s) to Indigenous Peoples and other organizations and agencies who may be involved in emergency response.

The Commission also recognizes the value of emergency response exercises and heard the strong interest expressed by participants in various aspects of emergency response processes and planning for the Project. Given the importance of these exercises, the Commission considers it necessary to impose **Condition 42** (Emergency response exercise), which would require Westcoast to conduct a functional or full-scale emergency response exercise to evaluate the implementation of its ERP. The Commission notes that Westcoast has a well-established Emergency Management

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[64] Found at https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/onshore-pipeline/emergency-procedures-manuals.html.
[65] Filing A79720-1.
[66] Filing A79720-3.

Program that follows a three-year exercise planning cycle. The Commission would allow this exercise to be held within that planning cycle.

6.6.2 Involvement of Indigenous Peoples

The Commission finds Westcoast's plans for involving Indigenous Peoples in its emergency planning for the Project to be appropriate. The plans are consistent with the CER's expectations identified in its *Industry Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management*. In making this finding, the Commission considered Westcoast's ongoing engagement with Indigenous Peoples potentially affected by the Project, the concerns raised, and Westcoast's responses and identified mitigation measures.

The Commission is satisfied that Westcoast's Emergency Management Program and procedures, including any future updates, are readily accessible and can be transparently provided to interested Indigenous Peoples. This is because of Westcoast's commitment to adhere to the CER's existing requirements, including:

- sections 32 to 35 of the OPR;
- Order AO-001-MO-006-2016 (Compelling Publication of Emergency Procedures Manuals); and
- Order AO-001-MO-002-2017 (Compelling Publication of Emergency Management Program Information on Company Websites).

Westcoast stated that its Indigenous Engagement Program was designed to, among other things, be proactive, foster long-term relationships, and allow for multiple avenues and activities to provide information and gather input from potentially affected Indigenous communities and organizations.

Westcoast's efforts to engage Indigenous Peoples on topics related to emergency management include:

- Maintaining a dedicated Indigenous Emergency Response Liaison to complement its Community and Indigenous Engagement Team. The liaison works directly with Indigenous Communities to provide emergency preparedness and response education and promote a desired state of readiness for each Indigenous community.
- Developing baseline community engagement materials and information designed to provide education on Westcoast's system, the nature and characteristics of the product being transported, the location of pipeline assets, and the emergency planning zone in relation to community boundaries and reserve lands.
- Interacting with Indigenous communities' emergency management representatives to ensure Indigenous Peoples have access to the supports required to bring each community to their desired state of readiness and develop or enhance individual Indigenous community ERPs and programs. Westcoast indicated that it would continue working with each Indigenous community to support the ongoing development of Westcoast's Emergency Management Program to ultimately progress to an emergency exercise using individual Indigenous community plans.

- Committing to include Indigenous knowledge in emergency management plans, projects, and operations. This knowledge is obtained through established relationships and ongoing engagement with Indigenous Peoples.
- In collaboration with Indigenous Peoples, developing an incident communication protocol for Indigenous communities within the emergency planning zone. This protocol identifies key contacts and allows for the timely notification of CER-reportable incidents occurring within or adjacent to reserve boundaries.
- Supporting other forms of participation related to emergency response, including the procurement of Indigenous businesses, exercises, engagement, ongoing meetings, and Indigenous community events.

The Commission also considered the concerns raised by Indigenous Peoples in relation to emergency management and response planning, together with Westcoast's commitments and responses to those concerns. These include:

- Lower Nicola Indian Band identified a need for Indigenous communities' more comprehensive involvement in emergency response and preparedness (e.g., training, coordination, integration, exercises, and consultation). They also raised concerns that cultural issues may weaken technical emergency response efforts. Westcoast confirmed that it would consider recommendations from Indigenous-led assessments or studies while planning mitigation measures. Westcoast committed to sharing more details about its ERPs, including the Enbridge GTM Integrated Management System ERPs, with Lower Nicola Indian Band.
- Kwantlen First Nation raised questions about earthquake preparedness, ERPs, responding to leaks, and emergency response and preparation for First Nations. Westcoast stated that it established recurring meetings with Kwantlen First Nation, extended a capacity funding offer, described its integrity program, and noted that it has a dedicated Emergency Management liaison that works directly with First Nations on emergency response planning.
- Nooaitch Indian Band had questions about emergency management plans and long-term, operational planning for proactive collaboration. Westcoast responded that it held monthly meetings with Nooaitch Indian Band and committed to emergency coordination efforts while maintaining ongoing engagement and addressing their priorities.
- Seabird Island Band identified an interest in emergency management related to the Project. Westcoast provided emergency management information through ongoing engagement, meetings, materials, and handouts. During an open house requested by Seabird Island Band, Westcoast subject matter experts spoke to specific emergency response concerns.
- Skeetchestn Indian Band raised concerns about access roads and emergency access routes. Westcoast committed to further collaboration. Skeetchestn Indian Band also described ongoing concerns regarding emergency access and crossing the pipeline right-of-way to respond to emergencies (e.g., responding to wildfires, medical emergencies requiring quick access to emergency services).
- Westcoast provided details to Bonaparte First Nation in response to questions about emergency planning zone boundaries and emergency response programs.

- Boston Bar First Nation raised questions about the emergency response process for a potential gas release. Westcoast provided them with an overview of emergency preparedness measures, including regular testing, collaboration with local responders, continuous program reviews, and extensively trained personnel. Westcoast also described the proactive measures it takes to mitigate the risk of a pipeline release.
- Westcoast stated that it is working directly with Lheidli T'enneh First Nation on their questions related to emergency response planning.
- Sumas First Nation stated that it has an active emergency management team and wants to coordinate with Westcoast's emergency management team. They also emphasized the importance of disaster planning. Westcoast's emergency management specialist contacted Sumas First Nation and Westcoast committed to continue working with them.
- Yale First Nation indicated to Westcoast that they are interested in an ERP that is like that of other communities situated along the pipeline route. Westcoast provided information on its emergency response program and committed to continue working with Yale First Nation on a community ERP. Yale First Nation said that it continues to have concerns about the safety of the pipeline and Westcoast's ability to protect their lands in the event of an emergency. In response to Yale First Nation's interest in a condition requiring Westcoast to co-develop a plan with interested Indigenous Peoples, Westcoast reiterated its commitment to work with Yale First Nation, including working on a community ERP and incident notification protocol.

The Commission is satisfied that Westcoast has reasonably responded to the interests and concerns raised by Indigenous Peoples with respect to emergency management. The Commission expects Westcoast to continue engaging with potentially affected Indigenous Peoples on these issues over the Project's lifecycle.

Westcoast submitted that it has also considered and implemented the CER's *Industry Best Practices for Involvement of Indigenous Nations and Communities in Emergency Management*. The Commission notes that this is one of two guidance documents that the CER has issued outlining industry best practices to enhance the involvement of Indigenous Peoples in emergency management. The other document is the *Industry Best Practices for Notifications to Indigenous Nations and Communities regarding CER-reportable Incidents.* These best practices complement existing legislation and regulatory requirements relating to emergency management. They aim to improve safety for Indigenous Peoples and mitigate potential environmental effects and were designed to advance Reconciliation. The Commission finds that Westcoast's efforts to involve Indigenous Peoples in emergency management to be suitable to address the questions and concerns raised and align with the CER's expectations for implementing the best practices. In line with the best practices, Westcoast is expected to:

- engage with potentially affected Indigenous Peoples to determine the types, format, and frequency of emergency management information they prefer to receive; their capacity to participate in a pipeline emergency response; and the various roles and functions in which they are interested in being involved;
- identify opportunities for Indigenous Peoples' participation in company emergency response training and exercises;

- consider Indigenous knowledge and address potential effects on the safety and protection of traditional, cultural, and heritage resources during pipeline emergencies within Westcoast's Emergency Management Program;
- incorporate lessons learned from past incidents, emergencies, and exercises regarding the involvement of, and potential Project effects on, Indigenous Peoples;
- discuss how Westcoast's Emergency Management Program can support and align with Indigenous communities' ERPs, including priorities for preparedness and response;
- develop and maintain up-to-date contact lists; and
- work with Indigenous Peoples to determine the types of immediately reportable incidents that are of interest, and the preferred communication method for each Indigenous community.

The Commission expects Westcoast to continue following the regulatory framework and align its efforts with the CER's industry best practices. This would allow Indigenous Peoples to enhance their emergency response readiness suitable to the current state of their own programs and help address specific areas of concern for each Indigenous community.

6.7 Decisions on requested exemptions and decommissioning

6.7.1 Decision on requested exemption from leave to open requirements

The Commission finds that it is in the public interest to grant Westcoast's request under section 214 of the CER Act for an exemption from the leave to open requirements of paragraph 180(1)(b) and subsection 213(1) of the CER Act, in relation to certain Project components. The Project's electrical facilities, by virtue of being connected works to the applied-for pipeline (as defined in the CER Act), are also subject to this requirement. Westcoast included the electrical facilities in its exemption request. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order XG-002-2026. This exemption applies to:

- the modifications and upgrades at CS-2B, CS-3, CS-4A, CS-4B, CS-5, CS-6A, CS-6B, CS-7, CS-8A, CS-8B, CS-9, and MS-16;
- the tie-in assemblies and auxiliary piping systems for the four compressor unit additions at CS-2B, CS-6B, CS-8A, and CS-8B;
- the pig launcher and receiver installations and tie-in and crossover assemblies for the new pipeline loops;
- the two power lines; and
- the substations at CS-6B, CS-8A, and CS-8B.

Westcoast is permitted to begin operating these exempted components without obtaining further leave from the Commission, subject to Westcoast meeting any additional relevant regulatory requirements.

The Commission accepts that Westcoast requires an exemption from the leave to open requirements for these Project components to limit impacts on shippers and Westcoast's operations. The Commission also accepts, as submitted by Westcoast, that parts of this work (i.e., modifications and upgrades at compressor stations and MS-16), are low risk and routine. Further, all of the tie-in

piping and assemblies would be pre-tested according to the hydrostatic testing requirements set out in the OPR and CSA Z662.

While the Commission has granted an exemption from the leave to open requirements for these particular Project components, Westcoast would still be required to validate the integrity of the piping and joints through non-destructive means prior to product entering the system, in accordance with the OPR and CSA Z662. The testing program and the results of the tests are records that must be retained and made available to the CER upon request.

The Commission accepts that an exemption is appropriate because the Project involves pipeline loops that would connect to Westcoast's T-South system and without this exemption, Westcoast would not be able to keep this system operating where it connects to the Project until leave to open for the tie-ins is granted. While the Commission considers a leave to open application under section 213 of the CER Act, the tested piping sections must remain empty until the Commission grants leave to open and permits product to enter the pipe. As a result, the new tie-ins related to the Project – and the part of the T-South system to which they connect – would remain empty while Westcoast prepared, submitted, and awaited the Commission's confirmation of the testing results and ultimate approval of the leave to open application. This could require a shutdown of an indeterminate duration. Further, maintaining a tested section of pipeline empty of product when it is tied into an operating system may require that the entire operating system be drained and shut down.

The Commission recognizes that the leave to open application process can conflict with the continued operation of existing pipeline systems and impose operating constraints and challenges. The Commission finds that granting this exemption helps ensure that Project tie-ins can be carried out efficiently while not compromising safety because the tie-ins would still undergo testing as required by the OPR and CSA Z662. In granting the requested exemption, Westcoast would still be required to obtain leave to open in the normal course for the remaining pipeline loops and compressor units that form part of the Project.

6.7.2 Decision on requested exemption from joint examination requirements

Section 17 of the OPR requires companies, when conducting joining on a pipeline, to examine the entire circumference of each joint by radiographic or ultrasonic methods. Section 97 of the CER Act authorizes the Commission to exempt companies from this requirement. The Commission finds that it is in the public interest to grant Westcoast's request for an exemption from the non-destructive examination requirements for low-pressure auxiliary piping systems at various compressor stations associated with the Project. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order MO-005-2026.

The Commission finds the exemption appropriate because these low-pressure auxiliary piping systems are considered low risk. They operate at low pressure and low stress and, if a leak were to occur, the consequences would be minor. The facilities are situated within fenced and secured areas, are subject to continuous monitoring, and pose a negligible risk of explosion or fire. In addition, Westcoast confirmed that the main natural gas piping connecting the new compressor units would be designed, constructed, and tested in accordance with the requirements of CSA Z662, and 100 per cent non-destructive examination coverage would apply to the welded joints for such piping.

The exemption request pertains to five categories of auxiliary utility piping, all of which have a design pressure of 1 965 kilopascals (285 pounds per square inch). The design pressure for these five

categories of piping is far lower than the design pressure levels for the natural gas piping within the compressor stations. In Westcoast's experience, there have been no concerns or safety issues associated with the practice of conducting non-destructive examination inspections in accordance with the requirements of the American Society of Mechanical Engineers standard ASME B31.3 – *Process piping*. These systems have lower risk and operate at lower pressures and hence have lower pipe stress levels. The exemption would not compromise the safety of the public or employees of the company. For the auxiliary piping, a minimum of 15 per cent non-destructive examination would be completed, using radiography for butt welds and magnetic particle inspection with visual examination for socket welds only, consistent with CSA Z662.

6.7.3 Decision on decommissioning

The Commission finds that it is in the public interest to grant Westcoast's request under section 45.1 of the OPR for authorization to decommission, by removal, a 350-metre-long segment of deactivated pipe within Westcoast's existing right-of-way. Accordingly, contingent on a certificate being issued for the Project, the Commission is issuing Order MO-006-2026 under section 45.1 of the OPR, subject to the five conditions relevant to this order set out in Appendix 1.

This pipeline segment lies in the path of the proposed CS-3 to CS-4A pipeline loop. Westcoast sought to remove this segment, which has been physically isolated and deactivated since 2007 under Order MO-08-2006, while the trench is open for the installation of the pipeline loop. Westcoast indicated that removing this segment would make room for the new pipeline loop and that no additional temporary or permanent disturbance is expected. The Commission is satisfied that its removal during Project construction would reduce potential ground disturbance and overall effects on the land.

7 Effects on the environment

This chapter presents the Commission's analysis and findings related to the Project's potential environmental effects, including cumulative effects. For the reasons described below, the Commission finds that the Project is likely to result in residual effects, including cumulative effects, on the environment. The Commission recognizes the interconnectedness between the Project's potential environmental effects and its potential effects on socio-economic valued components (**VCs**) and on the rights of Indigenous Peoples. The Commission's assessments on these topics are found in **Chapters 8 and 10**, respectively.

In accordance with subsection 77(1) of the SARA, the CER consulted with the Minister of the Environment, Climate Change and Nature and the Minister of Fisheries regarding the Project's potential effects on species listed on Schedule 1 of the SARA and their critical habitats. As per subsection 77(1), the Commission finds that all reasonable alternatives to the activity that would reduce effects on the species' critical habitat have been considered and the best solution has been adopted. The Commission also finds that all feasible measures will be taken to minimize the effects of the activity on the species' critical habitat. In **Sections 7.6.2.9, 7.7.3, and 7.7.4**, the Commission discusses potential Project effects on species at risk and their critical habitats.

7.1 The Commission's environmental assessment methodology and criteria

To assess the Project's potential environmental effects – as well as its health, social, and economic effects (discussed in **Chapter 8**) – the Commission used the VC-based approach described in the Filing Manual. This approach involved the following:

- The Commission evaluated whether the Project may result in adverse residual Project effects on a VC after Westcoast implements its mitigation measures and commitments and satisfies any applicable conditions the Commission may impose. Any concerns regarding Westcoast's mitigation measures, including their adequacy, are addressed in the VC-specific discussions.
- If residual Project effects are expected – that is, effects that remain after mitigations are implemented, and conditions are satisfied – the Commission evaluated the Project's relative contribution to total cumulative effects, which is the combined effect of the Project's residual effects with those from other past, present, or reasonably foreseeable projects and activities within the relevant temporal and special boundaries for each VC.
- Where residual Project effects are expected, the Commission determined the significance of the Project's potential effects, using the criteria set out in **Appendix 5**. These determinations take into account the effects' temporal extent, geographic extent, magnitude, and relative contribution to total cumulative effects.

For its assessment, the Commission used the following spatial boundaries and definitions:

- **Project footprint** – The area directly disturbed by Project activities, including associated physical works. Westcoast assumed a Project footprint of 55 m buffered on the Project components for the pipeline loops and 96 m buffered on the power lines. Some activities (such as hydrostatic testing, trenchless crossings, valves, stockpiles sites, and work camps)

may require additional footprints and would be determined in detailed design. Therefore, the Commission also considered the proposed corridor and the Local Study Area (defined below). The compressor stations' Project footprints are based on determined permanent disturbance footprints.

- **Local Study Area (LSA)** – Varies with the VC being considered. The LSA includes the Project footprint and extends beyond it to incorporate the area within the zone of influence or an area where the VC is most likely to be affected by the Project.
- **Regional Study Area (RSA)** – Varies with the VC being considered. The RSA includes the Project footprint and LSA, and an area extending beyond the LSA where the potential residual adverse effects from the Project may act in combination with those of other certain and reasonably foreseeable projects and activities to cause cumulative effects on the VC. This provides regional context for the assessment of Project effects within the LSA.

7.2 Overarching conditions for the protection of the environment

The Commission considers it necessary to impose conditions related to environmental protection and Indigenous monitoring. Several overarching conditions (i.e., not specific to individual VCs) are described in the following subsections to provide context for their application, as these conditions are referred to throughout the report.

7.2.1 EPPs

The EPPs are a key mechanism for avoiding, mitigating, and managing potential adverse environmental effects associated with Project activities. The EPPs outline anticipated environmental hazards and risks, compile general and Project-specific mitigation measures for use during construction, and detail protective measures and commitments made in the hearing to avoid or mitigate environmental risks. The EPPs also consolidate information related to reclamation objectives and outcomes from engagement with Indigenous Peoples.

Given the EPPs' importance in mitigating potential environmental effects, the Commission considers it necessary to impose **Condition 9** (Updated EPPs), which would require Westcoast to file an updated EPP for Commission approval for each relevant Project component – namely, for facilities, pipelines, and power lines. This condition requires, among other things, that Westcoast updates each EPP to include all commitments made during this hearing, including to Indigenous Peoples, and general and site-specific plans related to sediment, vegetation, wetlands, and wildlife. Recognizing the importance that Indigenous Peoples place on participating in environmental protection efforts, and in response to comments received on the importance of their involvement in developing various Project plans, the updated EPPs must also include robust reporting on the incorporation of Indigenous knowledge and input received in Westcoast's engagement with Indigenous Peoples.

The Commission considered comments from many Indigenous Peoples that Westcoast's Project plans, including the EPPs, should be co-developed with Indigenous communities. The Commission does not consider it necessary to impose such a condition. The Commission must balance the importance of ensuring that necessary Project plans can be developed in a timely and practicable manner while ensuring that Indigenous Peoples are meaningfully involved in their development. The Commission acknowledges Westcoast's concern that, given the large number of Indigenous communities being engaged and their potentially differing interests, there is no assurance that a plan

can be co-developed in a timely way or that a single plan can be satisfactory to all relevant stakeholders and Indigenous Peoples. Westcoast's ongoing engagement can be a practical forum through which meaningful input from Indigenous Peoples can be received. The Commission expects Westcoast to fulfill its commitment to creating processes that support meaningful engagement with potentially affected Indigenous Peoples and to incorporate input into Project construction and operations. To further respond to comments from Indigenous Peoples on the importance of Indigenous knowledge and their contributions to Project plans, the Commission modified numerous conditions to require enhanced reporting on how Westcoast incorporated Indigenous knowledge and engagement results into applicable Project plans.

7.2.2 Post-construction environmental monitoring reports

A robust post-construction monitoring program is a fundamental tool for verifying whether potential adverse effects have been effectively mitigated and areas reclaimed. Such a program not only requires monitoring and analyzing results but it also requires identifying and implementing corrective measures to address goals that have not been met (e.g., with respect to reclamation). To confirm that Westcoast conducts post-construction monitoring appropriately, in accordance with its commitments and in compliance with the OPR,[67] the Commission considers it necessary to impose **Condition 41** (Post-construction environmental monitoring reports).

This condition would require Westcoast to file monitoring reports after the first, third, and fifth complete growing seasons after Project clean-up. In establishing this timing, the Commission considered requests to extend the monitoring program to 10 years, as suggested by Saulteau First Nations and Coldwater Indian Band. However, the Commission determined this is not required because this condition and the OPR collectively provide for adequate ongoing environmental protection both during and after the initial five-year reporting period. In addition, an extended monitoring duration for more sensitive caribou habitat would be required by **Condition 45** (Caribou Habitat Restoration and Offset Measures Monitoring Program), discussed in **Section 7.7.3**. Further details on monitoring durations are provided below:

- **Condition 41** sets the minimum duration for the Project's post-construction environmental monitoring reporting, which can be extended. The condition contemplates ongoing assessments of reclamation trajectories and requires, if goals and measurable targets are not achieved (or if issues are identified regarding the success of implemented reclamation measures) by the fifth-year report, a reporting schedule for additional monitoring. In such cases, additional reporting and corrective actions would be required.
- Westcoast is also required to comply with the OPR throughout the Project's lifecycle. Paragraph 6.5(1)(u) of the OPR requires companies to establish and implement processes to inspect and monitor their activities and facilities to evaluate the adequacy and effectiveness of, among other things, their environmental protection program (required by section 48 of the OPR[68]), which must address environmental mitigations.

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[67] For example, section 39 of the OPR requires that Westcoast develop a surveillance and monitoring program for the protection of the environment.

[68] Section 48 requires that Westcoast develop, implement, and maintain an environmental protection program that anticipates, prevents, manages, and mitigates conditions that could adversely affect the environment.

- **Condition 45** would require Westcoast to undertake a minimum of 10 years of post-construction monitoring specific to caribou habitat. This reflects the slow-growing characteristics of caribou habitat, and the importance of this species' recovery.

Accordingly, the Commission has maintained the post-construction environmental monitoring reporting timeframe at five complete growing seasons after final clean-up. This is consistent with Filing Manual guidance as well as other Commission conditions for the vast majority of projects with a post-construction environmental monitoring reporting requirement.[69]

7.2.3 Plan for Indigenous Peoples' participation in construction and post-construction monitoring, and incorporating Indigenous knowledge

The Commission also considers it necessary to impose **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), which would require Westcoast to file plans, for Commission approval, describing Indigenous Peoples' participation in monitoring activities during Project construction and operations. These plans must include, among other things, descriptions of how Westcoast's engagement with Indigenous Peoples and how Indigenous knowledge informed the plans' development, the scope of monitoring activities, roles and responsibilities of Indigenous monitors, and how Westcoast would use and incorporate monitoring information and apply it to the Project.

Westcoast made a commitment that monitoring activities would be tailored to reflect each Indigenous community's identified interests and concerns and would evolve based on ongoing feedback and site-specific conditions. Westcoast stated that Indigenous monitors would ultimately play a key role in observing, documenting, and reporting, during monitoring activities to ensure that environmental, cultural, and community values are effectively respected during Project execution.

7.2.4 Strengthened conditions through the incorporation of Indigenous knowledge and results of engagement with Indigenous Peoples

The Commission heard from numerous Indigenous Peoples about the importance of incorporating Indigenous knowledge and perspectives into various aspects of the Project, including with respect to assessing and monitoring environmental effects. Westcoast made numerous commitments relating to these topics. For example, it committed to continued inclusion of Indigenous knowledge in its plans, projects, and operations, as well as to continued engagement with Indigenous Peoples regarding the EPPs and reclamation plans. The Commission takes these commitments seriously and views them as meaningful measures to reduce potential Project effects across environmental, socio-economic, and rights-related matters. To ensure accountability and transparency with respect to these commitments, and that their implementation would reduce Project effects as expected, the Commission considers it necessary to strengthen numerous conditions, including some relating to environmental protection, with these filing requirements:

- Westcoast must describe how it has taken available and applicable Indigenous knowledge and results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables, into consideration in developing various condition filings

[69] Recent examples include the NEBC Connector and NOVA Gas Transmission Ltd.'s West Path Delivery 2023 Project.

(including various plans and reports). It must also describe how such information was integrated or, if not integrated, explain why not.

- Westcoast must provide summaries of its engagement with potentially affected Indigenous Peoples, including a description of:
    - all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them;
    - how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, explain why not; and
    - how Westcoast incorporated recommendations or has otherwise made changes based on the issues, concerns, and recommendations received.

These requirements, in whole or in part, have been incorporated into various environmental conditions, including **Condition 7** (Preliminary Caribou Habitat Offset Measures Plan)**, Condition 8** (Forest Management and Old Growth Mitigation Plan)**, Condition 9** (Updated EPPs)**, Condition 10** (Wildlife Species at Risk Mitigation Plans)**, Condition 13** (Finalized watercourse crossings inventory)**,** and **Condition 41** (Post-construction environmental monitoring reports). The Commission is of the view that these requirements, combined with accompanying regulatory oversight, would enhance the robustness of Westcoast's mitigation measures and contribute to reducing Project effects.

7.3 Soil and soil productivity

Project construction, reclamation, and maintenance activities would result in residual Project effects on soil which have the potential to alter soil structure, mineral composition, and moisture retention and may reduce soil quality and quantity. Project activities can also affect terrain stability, contributing to erosion and sloughing.

The Commission finds that the implementation of Westcoast's mitigation measures, commitments, and monitoring programs along with its compliance with **Condition 9** (Updated EPPs) and **Condition 41** (Post-construction environmental monitoring reports), would reduce the extent and magnitude of the effects on soil and soil productivity. As a result, any residual Project effects are expected to be short to medium term in duration, localized within the LSA, and of low magnitude. The Commission expects the Project's contribution to total cumulative effects to be low, and overall, the significance of effects on soil to be low.

7.3.1 Relevant setting

7.3.1.1 Soil and soil productivity

The spatial boundary for assessing the Project's effects on soil and soil productivity is based on the Project footprint, with an LSA and RSA comprising a 500-metre buffer centered on Project components. The Project crosses forests, brushlands, hydric environments, agricultural and anthropogenically disturbed lands, and industrial developments.

Westcoast identified 11 known federal contaminated sites located within 500 m of the CS-8B to CS-9 pipeline loop, with 7 sites still open. There are also multiple sites inside and within 500 m of the Project footprint that are listed on a BC registry relating to remediation sites, though a listing does not mean that a site is contaminated.

According to Nazko First Nation, soil is an essential component of the ecosystem. It is the medium from which vegetation grows and its nutrients flow through the environment to wildlife and humans who subsist on them. In their oral Indigenous knowledge sessions, Nicomen Indian Band and Saulteau First Nations also spoke about the importance of soil and its quality.

7.3.1.2 Terrain stability

Terrain stability is particularly relevant in areas with sloping topography, such as slope approaches and watercourse banks, where erosion risks are heightened. While most of the Project encounters level ground or gentle slopes, some segments encounter moderate to steeply sloping topography. Where the Project crosses steeply sloping terrain, there is potential to alter terrain stability and topography. Westcoast's Desktop Geotechnical Hazard Assessment indicated that approximately 2 km of the Project is located on terrain with a moderate to high likelihood of landslide initiation following clearing and construction activities. Westcoast indicated that a geohazard field assessment of the higher likelihood areas is required to verify the desktop review and to determine appropriate mitigation during construction.

Williams Lake First Nation raised concerns during their oral Indigenous knowledge session about the risk of soil erosion and its effect on soils and terrain stability within their territory. In particular, they spoke about a high-incline slope landscape with nothing to hold the soil down, and excessive soil loss to downslope areas. Seabird Island Band indicated that over 1,600 acres have been lost to river erosion, so they would require dike or bank protection to prevent losing more land. They also raised concerns about persistent erosion due to additional infrastructure.

7.3.2 Project effects, mitigation, and monitoring

7.3.2.1 Soil and soil productivity

Project effects on soil quality and quantity during construction, reclamation, and maintenance activities include loss or mixing of topsoil, compaction, rutting, pulverization, change in contour, wind or water erosion, and contamination from spills or exposure of already contaminated soils. There is also potential for increased surface stoniness after reclamation activities, which can decrease the soil's capability to support plant growth or affect land operability.

With respect to general mitigations, Westcoast indicated that it would implement established and proven mitigation measures and construction practices to avoid or reduce effects on soil and soil productivity, as outlined in its ESA and EPPs. These measures include conducting detailed soil surveys, salvaging soil, implementing contingency plans for erosion, sediment control, and soil handling, and using specialized techniques such as three-lift soil handling and matting. Additional measures address wet or thawed soils, erosion-prone slopes, watercourse crossings, and post-construction site restoration. For areas affected by permanent land use changes, such as compressor station sites, mitigation would be supported by a reclamation plan that can be implemented during future decommissioning. Westcoast stated that it would monitor Project effects on soil as part of the post-construction environmental monitoring program. The Commission is of the view that Westcoast's mitigation measures to address the Project's potential effects on soil and soil productivity, and its proposed monitoring, are adequate as they reflect standard industry practices.

Westcoast's mitigation measures for soil contamination include implementing a Fuel and Hazardous Material Spill Contingency Plan as part of its EPPs. This plan outlines procedures for notification, spill containment, and reporting. Westcoast committed to identifying known and potential sites where

contaminated soil may be encountered, reporting all spills, and applying measures to prevent spills. Westcoast would also implement the Contamination Discovery Contingency Plan where applicable. Regarding the one site identified as an area of potential environmental concern, Westcoast has already reported it through the CER's Remediation Process Guide procedures.

Preserving healthy soils is extremely important to Nazko First Nation, especially in the mountainous ecosystem of the study area where powerful and medicinal plants are known to grow. Past projects have resulted in damaged soil and contaminated soil throughout their territory. Nazko First Nation community members do not harvest vegetation for any purpose in areas that have been damaged or have the potential to be contaminated. Nazko First Nation recommended that they participate in modifying the EPPs, safety protocols, and environmental alignment sheets (**EAS**) to ensure soils are safe for future generations' use in harvesting vegetation and wildlife. Nicomen Indian Band and Peters First Nation expressed similar concerns and made similar recommendations. In response, Westcoast committed to incorporating into future updates of its EPPs, including the EAS, feedback received on soil management through Indigenous-led assessments or studies and its engagement with Indigenous Peoples.

The City of Abbotsford asked about Westcoast's consideration of the City's bylaw relating to soil and soil productivity. Westcoast indicated that it planned to engage with the City regarding bylaws applicable to the Project, consistent with its broader commitment to engage the City regarding Project activities planned within municipal boundaries.

The Commission finds that Westcoast's mitigation measures and commitments regarding general Project effects on soil and soil productivity (including those contained in the ESA and EPPs) align with industry standards. They are also suitable, particularly in areas where erosion, sedimentation, or potential contamination may result from Project activities. The mitigation measures are expected to reduce Project effects on soils.

7.3.2.2 Terrain stability

The Commission finds that Westcoast's mitigation measures from the completed geotechnical hazard assessment align with industry standards and are appropriate in reducing Project effects on terrain stability. Westcoast plans to routinely monitor terrain instability and erosion risk and conduct supplemental geotechnical surveys to assess terrain stability at compressor stations and along the power lines. Westcoast also committed to engaging a geotechnical engineer to provide specialized advice during both the Project design and construction phase, and to assist in developing appropriate design and mitigation measures to address any risks relating to slope instability. Westcoast's geotechnical hazard assessment also recommended using organic soils that may have buoyancy control concerns to target sites for a muskeg delineation field program.

To promote accountability and transparency with respect to Westcoast's planned mitigation measures and commitments, and to further reduce Project effects, the Commission considers it necessary to impose **Condition 9** (Updated EPPs), which would require Westcoast to include updates in its EPPs resulting from its commitments relating to soil, site-specific plans for erosion, sediment control, and riprap use. It would also require reporting on the incorporation of Indigenous knowledge and results from engagement with Indigenous Peoples into the plan. **Condition 41** (Post-construction environmental monitoring reports) would require Westcoast to, among other things, report on the extent to which the goals and measurable targets stated in the EPPs are achieved and to undertake corrective actions where needed. Further, **Condition 18** (Construction Emergency

Response Plan(s)) – discussed in **Chapter 6** – would require Westcoast to include, as part of its Emergency Response Plan(s), spill contingency measures that it would employ in response to accidental spills. **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) are also expected to reduce effects on soils by having Westcoast involve Indigenous Peoples in monitoring plans.

7.3.3 Residual and cumulative effects

As described in **Table 7-1**, the Commission finds that the residual Project effects on soil and soil productivity would be short to medium term in duration, localized, and of low magnitude. The total cumulative effects are expected to be low and the overall significance to be low.

The Commission accepts that residual Project effects on soil and soil productivity may remain after implementing mitigation measures, including with respect to terrain stability. The Commission finds that residual Project effects on soil quality and quantity would be confined to the Project footprint and LSA, generally short to medium term in duration, occasional in frequency, and low in magnitude. The Commission agrees with Westcoast that after implementing its mitigation measures, plans, and commitments, and satisfying applicable conditions, including **Condition 9** (Updated EPPs) and **Condition 41** (Post-construction environmental monitoring reports), the residual Project effects on terrain instability would be of low significance and not carried forward into the cumulative effects assessment.

The Commission agrees with Westcoast's assessment of the Project's cumulative effects on soil and soil productivity, considering existing land uses and reasonably foreseeable developments within the Soil and Soil Productivity LSA. The predicted total cumulative effects would be of low magnitude and low significance, with similar effect levels expected, regardless of the Project proceeding. Westcoast identified potential contributors to cumulative soil degradation, including admixing, compaction, rutting, trench subsidence, and remnant crown formation, as well as erosion and surface stoniness. The total cumulative soil disturbance in the LSA was estimated to be approximately 10,498 ha (57 per cent of the LSA), with the Project contributing 408.86 ha (2 per cent of the LSA). Westcoast stated that implementing mitigation measures outlined in the ESA and EPPs would effectively reduce the Project's contribution to cumulative effects. The total cumulative effects of topsoil productivity are expected to be of low magnitude, reversible, and not significant, particularly when the Commission's recommended conditions are accounted for.

Table 7-1: Evaluation of significance of residual effects on soil and soil productivity

Soil and soil productivity		
Residual effects: • Change in soil quality and quantity • Change in land use		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to medium term	Effects are expected to be short to medium term in duration and limited to the construction phase or from isolated events during Project operations. The Commission considers that changes to land use are expected to be for an extended term but considers those to be limited.
Geographic extent	Local	Effects are expected to be restricted to the Project footprint and LSA.
Magnitude	Low (adverse)	Low adverse Project effects are expected with Westcoast's implementation of its mitigation measures, commitments, and its compliance with the Commission's conditions.
Cumulative effects	Low (adverse)	Considering Westcoast's mitigation measures and commitments, the Commission's conditions, and the limited temporal and geographic extent and magnitude of the Project's effects on soil and soil productivity, the Commission finds that the Project's contribution to cumulative effects is expected to be low. As a result, the total cumulative effects remain low.
Significance	Low (adverse)	The Commission expects that residual Project effects on soil and soil productivity are expected to be short to medium term in duration, limited to the Project footprint and LSA, and adverse (but of low magnitude). The Commission finds that the Project's contribution to total cumulative effects is low and that the overall significance would be low.

7.4 Vegetation

The Commission finds that the Project is likely to result in residual Project effects on vegetation, including the loss or alteration of native vegetation, rare species and communities, culturally important plant communities, and old growth forest. These effects may occur due to land use changes, vegetation clearing, and disturbance associated with Project construction and operations. In addition, the introduction and spread of weeds of concern and forest pests may further affect vegetation health and composition.

The Commission finds that the implementation of Westcoast's mitigation measures, commitments, and monitoring programs, along with its compliance with the Commission's conditions, would reduce the extent and magnitude of the effects on vegetation. As a result, any residual Project effects are expected to be of medium to long term in duration, localized within the LSA, and of medium magnitude. The Commission considers that the overall cumulative effects on vegetation are medium. The Commission expects the Project's contribution to total cumulative effects to be low and, overall, the significance of effects on vegetation to be medium.

7.4.1 Relevant setting

The Project crosses a diversity of land cover types such as forested, agricultural, wetland, and disturbed lands. Forests are predominantly found in the north and central sections of the Project, with a greater proportion of agricultural lands, primarily pasture and hay land, in the south section.

Westcoast explained that native vegetation is dominated by upland coniferous forests of subalpine fir, white spruce, and Engelmann spruce. Douglas fir, lodgepole pine, and ponderosa pine stands occupy drier areas. Patches of trembling aspen also occur. Grasslands are typically dominated by bunchgrasses and shrubs and include saline meadows. Wetlands, discussed in **Section 7.5**, are common along the Project components and include marshes, fens, swamps, and bogs. Westcoast anticipates that the Project would disturb approximately 37.5 ha of Old Growth Management Areas (**OGMAs**) and another 13.3 ha of Old Growth Deferral Areas (**OGDAs**).

Westcoast's assessment of potential effects on vegetation included the direct Project footprint, the LSA (a 200-metre buffer around the Project footprint) where there is a reasonable potential for Project-specific effects to occur, and the RSA (a 1-kilometre buffer around the Project footprint) for evaluating cumulative effects. Westcoast's assessment considered Project construction and operations.

To assess potential effects on vegetation, Westcoast selected key indicators that reflect both ecological and cultural values. These included vegetation communities of concern (culturally important vegetation communities, native vegetation, plant communities at risk, rare ecological communities, most affected ecological communities, old growth forest), and vegetation species of concern (culturally important vegetation, vegetation species at risk, rare vegetation species). They also included weeds and invasive plant species, and forest health.

7.4.2 Project effects on vegetation (general), mitigation, and monitoring

The Commission finds that the residual Project effects on vegetation would be of low to medium magnitude overall as a result of Westcoast's mitigation measures, including reclamation plans and post-construction monitoring, its commitments, and its compliance with the Commission's conditions.

The Commission considered Westcoast's field and desktop studies as well as Indigenous knowledge included in Westcoast's application and provided by Indigenous Peoples in the hearing. Westcoast also conducted field surveys in 2023 to validate its desktop assessment and provided its survey timing and methods. Westcoast submitted that its mitigation measures to reduce potential effects followed the standard hierarchy – avoid, minimize, restore, and if warranted, offset. Westcoast developed its measures based on its own standards, industry and regulatory guidelines, and provincial guidelines and frameworks.

Potential Project effects include the loss or alteration of native vegetation, rare and sensitive species and communities, and culturally important species and communities, as well as localized weed introduction or spread. These effects and related mitigation and monitoring, as well as Westcoast's commitments and the Commission's conditions, are discussed in the following subsections. Westcoast also identified Project effects on the loss or alteration of old growth forest within OGMAs and OGDAs. **Section 7.4.3** addresses these effects specifically.

7.4.2.1 Loss or alteration of native vegetation

Westcoast submitted that the total amount of native vegetation on the Project footprint (as of its January 2025 Project update) is approximately 719 ha (76 per cent of the footprint). The remaining approximately 227 ha (24 per cent of the footprint) consist of long-term anthropogenic disturbances, including industrial facilities, transportation, agriculture, and settlement.

Westcoast explained that loss or alteration of native vegetation may occur as a result of clearing during Project construction and vegetation maintenance during Project operations. Westcoast also stated that alteration of native vegetation may occur due to indirect effects from clearing and maintaining an open canopy at an early seral stage on the Project rights-of-way, which changes the physical conditions on the Project footprint and in adjacent vegetation communities. The wider the clearing, the greater the distance that indirect effects extend into adjacent plant communities. Westcoast submitted that the permanent pipeline and power line rights-of-way would be approximately 18 m and 90-100 m wide, respectively.

The Commission finds that Westcoast's Project design, including parallelling existing linear disturbances, combined with its mitigation measures, would help reduce the Project's overall effects on the loss or alteration of native vegetation. Westcoast proposed Project design measures such as aligning the Project parallel to existing rights-of-way and other disturbances, and co-locating Project components within or adjacent to existing disturbances. Westcoast indicated that the Project's pipeline and power line corridors parallel existing corridors for approximately 96 per cent and 100 per cent of their respective lengths. Westcoast's mitigation measures to minimize the loss of native vegetation include using existing access routes, narrowing the Project footprint at specific locations, using reduced disturbance methods (such as matting) where possible, and following its reclamation plan after construction.

In response to concerns raised about right-of-way width and the size of the Project footprint, Westcoast proposed mitigation measures such as narrowing the Project footprint at site-specific resource features. Westcoast stated that it is adjusting its vegetation management approach based on feedback received during engagement, recent updates to CSA Z662 (Clause 10.6), and to align with measures set out in the Blueberry River Implementation Agreement and the *Treaty 8 Planning and Mitigation Measures* (where applicable). Adjustments include minimizing brushing widths in riparian areas and evaluating opportunities to reduce vegetation management widths elsewhere on its pipeline rights-of-way.

Westcoast has not yet identified specific locations that can have reduced maintenance widths, or by how much they can be reduced. Westcoast explained that it must consider regulatory requirements and site-specific operational requirements when establishing right-of-way maintenance widths. For the power lines, Westcoast stated that it would adhere to the full security clearance requirements as per BC Hydro's Engineering Standards for Clearing Requirements.

Westcoast committed to evaluating the possibility of allowing vegetation not directly over the pipeline to grow beyond the typical vegetation density and foliar cover tolerance levels it has used to date. For the power lines, the height of the permitted vegetation regrowth would depend on many factors such as tree species, terrain, slope, and conductor height. Westcoast committed to allowing the area beyond the rights-of-way to naturally revegetate to a height that is not considered a threat to the power line operations. Westcoast also committed to having a qualified power line professional assess vegetation height during biannual inspections to identify danger trees for removal or tree

pruning. Westcoast would also engage qualified forestry professionals and consider BC Hydro guidance and standards in assessing vegetation heights.

The Commission finds that Westcoast's mitigation measures, including adjustments to its vegetation management approach, would help reduce the Project's overall effects on the loss or alteration of native vegetation and are responsive to concerns Westcoast heard during Project engagement. To oversee Westcoast's commitments with respect to operational clearing widths and permissible vegetation heights, the Commission considers it necessary to impose **Condition 29** (Operational Vegetation Management Plan), which would require Westcoast to specify the locations where it would reduce the operational clearing width, and the total widths of clearing at those locations. It would also require Westcoast to provide its methodology for assessing vegetation height and density to determine when vegetation management is required. These requirements are intended to provide clarity on widths and acceptable heights of managed vegetation during Project operations and to demonstrate where Westcoast has implemented its commitment to reducing maintained right-of-way widths where possible.

7.4.2.2 Rare and sensitive species and communities

Westcoast indicated that loss or alteration of rare and sensitive species and communities may occur from clearing during Project construction and from vegetation maintenance during Project operations. To mitigate effects on rare and sensitive species and ecological communities, Westcoast proposed standard mitigation measures for rare vegetation species and communities to avoid and reduce disturbance. This includes narrowing and adjusting workspace and using matting to reduce soil disturbance. Westcoast also proposed alternative construction and reclamation techniques such as transplanting and salvaging seed or sod. These measures are complemented by Westcoast's commitments to completing pre-construction surveys, flagging and/or fencing off species or communities of concern, and implementing its Vegetation Species and Communities of Concern Discovery Contingency Plan as needed during construction.

The Commission finds Westcoast's mitigation for rare species and ecological communities to be appropriate for minimizing the Project's residual effects. Westcoast's mitigation measures rely on standard practices and ongoing surveys to identify and protect sensitive habitats and species, including those important to Indigenous Peoples, throughout the Project lifecycle.

7.4.2.3 Culturally important species and communities

Westcoast submitted that due to the diversity and abundance of vegetation communities that are used for cultural practices, clearing of native vegetation within the Project footprint may result in a reduction of culturally important vegetation communities. Through its engagement activities, Westcoast identified several vegetation communities of concern, including alder forest, aspen forest, birch trees with chaga mushrooms, black moss and Labrador tea, and cedar forest, among others. In addition, Westcoast noted culturally important species such as a variety of berries, devil's club, lichens, mushroom varieties, and sage.

Many Indigenous communities highlighted the importance of culturally important species, including sweetgrass, squirreltail, peppermint, Labrador tea, Jack pine, balsam, juniper, pine mushrooms, diamond willow fungus, berry species, and many others. Some Indigenous communities submitted that harvesting sites are becoming increasingly scarce. As stated by Elder Pauline Michell of Kanaka Bar Indian Band:

> And I need to save the pine mushrooms. I need to harvest because that's our food. That's our food. I have never taught my kids, I have never taught my grandkids to go into the store and buy the mushrooms other people eat. I've never shown them that. I've only taught and showed them the pine mushrooms that is really sacred to us.

Westcoast's mitigation measures vary depending on the type, use, and location of culturally important vegetation communities. These measures may include pre-construction harvesting or salvage or involve site-specific reclamation measures. For example, Westcoast noted that communities or plant associations involving a fungus may require mature trees or shrubs before the fungus can inhabit the host. Westcoast also committed to notifying Indigenous community representatives about the construction schedule and communicating schedule changes that could affect community members.

To further protect culturally important vegetation, the Commission considers it necessary to impose the following:

- **Condition 9** (Updated EPPs) would require Westcoast to include all mitigation measures regarding culturally important vegetation in its updated EPPs, as well as its procedures for facilitating pre-construction harvesting by Indigenous Peoples. These would include general mitigation measures, such as contingency measures if culturally important vegetation is encountered, and site-specific measures tied to georeferenced sites.
- **Condition 29** (Operational Vegetation Management Plan) would require Westcoast to include all environmental protection procedures, mitigation measures, and commitments to avoid or minimize effects on culturally important vegetation, among others, during operational right-of-way clearing. Further, **Condition 29** would require Westcoast to include procedures for facilitating pre-clearing harvesting by Indigenous Peoples during operational vegetation management.
- Both **Conditions 9 and 29** also include reporting requirements regarding the incorporation of Indigenous knowledge into the plans, which is further expected to reduce effects on culturally important vegetation. Further, Indigenous monitoring carried out in accordance with **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) is also expected to reduce potential effects on culturally important vegetation through the identification of adaptive management measures as necessary.

The Commission recognizes that Project effects on culturally important species and communities are an important concern to Indigenous communities. The Commission supports Westcoast's commitments to continued engagement and communication with interested Indigenous Peoples regarding the scheduling of construction and clearing activities. With Westcoast's mitigation measures, commitments, and the Commission's conditions, the Commission is of the view that residual Project effects on culturally important species and communities would be reduced.

7.4.2.4 Weed management during construction and operations

Westcoast identified 61 previously observed weeds of concern within the Vegetation RSA. It indicated that Project construction and operations may result in the introduction or spread of weeds and invasive species of concern, which have the potential to outcompete native vegetation and alter the composition of vegetation communities. The Commission finds that Westcoast's mitigation

measures relating to weed management would reduce Project effects because the measures align with industry best practices and would continue to evolve through Westcoast's commitment to ongoing engagement to address environmental sensitivities and concerns raised.

Westcoast stated that the procedures included within the EPPs and Biosecurity Management Plans, including equipment cleaning protocols and ongoing monitoring, would guide weed management decision-making during the Project planning and pre-construction phases. Westcoast added that the results of pre-construction weed surveys would be incorporated into the Biosecurity Management Plans, which would be included in the updated EPPs filed before construction under **Condition 9** (Updated EPPs).

Cheam First Nation raised concerns about the invasive Himalayan blackberry and its impact on traditional and medicinal plants. Westcoast submitted that its Biosecurity Management Plan includes measures to reduce the risk of introducing weeds and plant species of concern, including invasive species. Westcoast also committed to continued engagement to address environmental sensitivities and concerns. Westcoast confirmed that updated data from surveys for weeds and plant species of concern can be shared with Indigenous communities upon request.

During Project operations, Westcoast indicated that it would rely on its Integrated Vegetation Management Plan (**IVMP**) to inform the range of techniques for vegetation management, including prevention, physical and mechanical controls, and herbicide treatments. Westcoast explained that these treatments are deployed through site-specific programs with the aim of applying effective and environmentally safe treatments. The IVMP is a guidance manual for Westcoast's operations and maintenance activities that explains the multitude of weed and vegetation management options that may be used across the Westcoast system. Westcoast stated that it engaged Indigenous communities on the renewal of the IVMP outside of Project-specific engagement, and the IVMP has now been approved by the BC Ministry of Environment and Parks. The IVMP is renewed regularly on a five-year basis. As the Project transitions from construction to operations, vegetation management activities would be implemented through annual operational plans that incorporate site-specific management and align with the IVMP.

Cook's Ferry Indian Band said that it discourages the use of chemical herbicides to control vegetation, and pesticides to manage forest diseases and pests, within the Project footprint and rights-of-way. They submitted that if all other options have been explored and chemical applications are a last resort, Cook's Ferry Indian Band must be clearly notified and afforded opportunities to allow its members to harvest traditional use species in advance. As stated by Chief Christine Walkem of Cook's Ferry Indian Band:

> And so I've heard stories where the pipeline area is sprayed for vegetation reasons, and that kills off the medicines, the foods, but it also impacts the wildlife that eat that and the insects that carry it from one place to another, the birds.

In response, Westcoast committed to only using herbicides that are approved by Health Canada and only engaging in operator-controlled, targeted applications conducted by certified herbicide applicators to avoid effects on non-targeted species. Westcoast also committed to avoiding herbicide application to high value harvesting areas that are used for traditional purposes, whenever possible.

The Commission finds that weed spread and the effects of weed management methods on non-target vegetation would be minimized during construction through Westcoast's Biosecurity

Management Plan and Westcoast's commitments to continued engagement on weed management. The Commission is satisfied with the information that Westcoast provided regarding its overarching IVMP and how the IVMP's application is combined with site-specific vegetation management strategies during Project operations. The Commission also recognizes Westcoast's ongoing engagement with Indigenous communities on the IVMP and on the Project's weed and vegetation management protocols.

To further address concerns regarding herbicide use, the Commission considers it necessary to impose **Condition 29** (Operational Vegetation Management Plan), which would require Westcoast to provide details on how it incorporated Indigenous knowledge and engagement results into its plan, as well as procedures for pesticide and herbicide use. This includes criteria for managing weeds and plant species of concern, procedures and decision-making frameworks for selecting site- and species-specific treatment and prevention measures, and details on how these procedures would be kept up to date throughout Project operations. Further, the residual Project effects of the spread of weeds and of issues related to weed management methods are expected to be reduced due to **Condition 9** (Updated EPPs), **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), and **Condition 41** (Post-construction environmental monitoring reports).

7.4.2.5 Reclamation

Westcoast stated that successful reclamation is a cornerstone of its mitigation for all Project effects on vegetation. Westcoast submitted that reclamation success is achieved when disturbed areas have been reclaimed to the intended land use and ecosystem function, or returned to equivalent land capabilities (conditions comparable to either pre-disturbance conditions, or adjacent or off right-of-way conditions). Westcoast committed to preparing a reclamation plan before starting construction to address measures required to return the Project footprint to an equivalent land capability. The Commission considers Westcoast's reclamation a key mitigation measure to minimize residual effects of the Project on vegetation overall.

The Commission received evidence and submissions on the importance of reclamation and Indigenous Peoples' participation in reclamation activities:

- Cook's Ferry Indian Band stated that, among other things, meeting equivalent land capability requirements (e.g., the restoration objective of the Project), adhering to federal and provincial requirements, and reestablishing land use of the Project area and surrounding traditional use areas must be a priority for the Project.
- Kelly Lake Cree Nation, Nicomen Indian Band, and Peters First Nation submitted that restoring land disturbed by the Project needs to follow the concepts of ecosystem restoration, instead of basic reclamation, to ensure that culturally significant flora and fauna are returned to the land base quickly and are healthy enough to harvest.
- Kelly Lake Cree Nation and Peters First Nation submitted that mitigation and restoration strategies need to respect the loss of many culturally sensitive species. They do not believe that standard reclamation practices are appropriate when repairing the land after a disturbance.
- Boston Bar First Nation stated their desire to be part of the restoration process, as they have Knowledge Keepers who can provide good input on restoration processes. As Elder Byron Spinks of Boston Bar First Nation stated:

> We'd like to be part of that restoration process to provide our input, not only through employment but through advice and input into how we see the land and how we can restore it, to see if there's some vegetation that can be introduced, reintroduced to that area that may have been lost. Because we go by cycles, and when the area, traditional area is burnt, we have different cycles for huckleberries coming first and forth. And we cultivate it in a way that through generation it will be restored. We're not looking at 150 years, but we're looking at 350-year cycles so it's a longer period of time.

- Similarly, Cook's Ferry Indian Band stressed that metrics used for evaluating rehabilitation should be developed in consultation with them to ensure land capability requirements reflect the needs and rights of their members.

In response, Westcoast indicated that it would integrate vegetation species of cultural and traditional importance into reclamation plans, where ecologically appropriate. It added that the identification of culturally important species and plants is being incorporated into Project planning through Westcoast- and Indigenous-led assessments or studies, including cultural walk-throughs. Westcoast committed to preparing reclamation plans that prioritize native species and to planning restoration efforts aimed at maintaining traditional harvesting areas and upholding seasonal growth cycles.

For non-agricultural areas, Westcoast stated that natural regeneration would be the preferred method for revegetation, which would promote native species re-establishment that is captured within the existing seed bank. This approach allows for species adapted to the area to regenerate and develop an early seral forest structure that is characteristic of the area and promotes ecological similarity. Westcoast explained that the post-construction environmental monitoring program would include vegetation surveys to identify if species that are ecologically suitable and are characteristic of early seral forest structure are establishing. Westcoast agreed that relying fully on the natural regeneration of disturbance areas can involve a longer timeline to reach mature, fully functioning, and thriving habitats. Planting woody species in combination with natural regeneration can increase the rate of vegetation establishment and suitable habitat recovery.

Westcoast clarified that it does not propose using offsetting as a mitigation strategy for any short-term environmental effects resulting from the Project. Westcoast stated that the permanent easement is not intended to reach pre-construction ecological function as it would remain active as a right-of-way for Project operations and maintenance purposes. However, Westcoast proposed reclaiming temporary workspace areas to be on a trajectory to reach pre-construction conditions.

Regarding Indigenous Peoples' participation in reclamation, Westcoast confirmed its commitment to continued engagement with Indigenous communities in preparing a reclamation plan and updating the EPPs.

Westcoast has yet to develop a detailed reclamation plan, which is typical for this stage of Project design. However, the Commission expects that the reclamation plan would be capable of addressing, to a meaningful extent, Indigenous Peoples' concerns outlined above regarding reclamation outcomes and their participation, given the following:

- Westcoast committed to continued engagement with Indigenous communities in developing and implementing its reclamation plan, and to integrating vegetation species of cultural and traditional importance into Project planning where appropriate.

- Westcoast plans to plant woody species in combination with natural regeneration in certain areas, which the Commission finds is appropriate for increasing the rate of vegetative and habitat recovery.
- The requirements of **Condition 9** (Updated EPPs) include establishing a reclamation plan with goals and measurable targets for reclamation, specific reclamation measures, a decision tree outlining adaptive management strategies, and criteria for evaluating success. The condition would also require a summary of Westcoast's incorporation of Indigenous knowledge and results from engagement activities, including with respect to the reclamation plan, consistent with its stated commitments.
- Indigenous monitoring carried out in accordance with **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) would support verifying the reclamation plan's efficacy.
- **Condition 41** (Post-construction environmental monitoring reports) would support successful reclamation trajectories by requiring Westcoast to prepare and file a post-construction monitoring report following each of the first, third, and fifth growing seasons after Project clean-up. **Section 7.2.2** further discusses **Condition 41**.

7.4.3 Project effects on old growth forest, mitigation, and monitoring

Westcoast anticipates that approximately 37.5 ha of OGMAs would be disturbed by the Project. Westcoast anticipates that one of these, OGMA KAM_TME_786, would be fragmented by the Project footprint. In addition, Westcoast expects that 13.3 ha of OGDAs would be disturbed, subject to field verification and subsequent updated impact analysis on the OGDAs that meet the priority deferral criteria. Westcoast is still identifying the precise area of disturbance and developing an updated patch analysis. Westcoast confirmed that field surveys were scheduled for 2025.

Cook's Ferry Indian Band stated that the Project intersects areas designated as OGMAs and OGDAs within Nlaka'pamux territory, and that their protection must be a priority. They emphasized that these forests have already experienced significant cumulative effects and the Project must adopt a precautionary and conservative approach with respect to any activities that may affect OGMAs and OGDAs. Similarly, Kelly Lake Cree Nation, Nicomen Indian Band, and Peters First Nation submitted that functional old growth forests are in decline due to cumulative effects of forestry, transportation, and other disturbances, including pipelines and electrical transportation systems. They explained that old growth forests provide unique habitat relied upon for many different wildlife species and are the home of many culturally significant vascular plants, non-vascular plants, and mushrooms. Xatśūll First Nation also reported witnessing the cumulative loss of old growth forests.

Nicomen Indian Band and Peters First Nation further explained that linear disturbances such as the Project change the functioning of important patches of old growth forest. They change the structure to an early seral patch of forest, the composition to different plant and animal species, and they affect wildlife movement. Linear features also alter the functioning of adjacent forests by changing patch sizes and creating edge effects. Cook's Ferry Indian Band said that in their experience, removing old growth trees (140 years and older) can have far-reaching consequences, including the risk of irreversible biodiversity loss in forest ecosystems.

Westcoast submitted that it implemented a mitigation hierarchy that considers avoidance, minimizing effects, restoration, and offsetting for OGMAs and OGDAs. Some of the approaches Westcoast is considering include minimizing the clearing width for new linear disturbance within OGMAs, modifying or minimizing operational footprints, installing markers to avoid accidental clearing, using minimal disturbance techniques to facilitate rapid regeneration, and offsets. Westcoast also committed to preparing a Forest Management and Old Growth Management Plan for unavoidable activities within OGMAs and OGDAs. Westcoast expected to complete this plan by the end of the fourth quarter of 2025.

Westcoast explained that it must apply for appropriate permits from the Province of BC for the removal of timber on the landscape, including within OGMAs. This process includes identifying suitable replacement areas, as needed, before construction and engaging in discussions with the relevant resource district. Mitigation measures include following the Planning and Operation Measures set out by the Province of BC, which include preserving high-value old growth features. Westcoast would apply a similar approach for OGDAs, depending on whether they meet priority deferral criteria.

Westcoast stated that its Forest Management and Old Growth Mitigation Plan would set out measurable indicators and threshold values to monitor and evaluate the success of forest health mitigation. It committed to engaging with potentially affected Indigenous Peoples when developing mitigation for this plan. Based on the finalized Project footprint, Westcoast would develop comprehensive mitigation measures that align with industry and provincial standards. Westcoast acknowledged Indigenous communities' interest in the plan and committed to providing an opportunity for them to review it once completed.

The Commission finds that the total area of disturbance expected to occur within OGMAs and OGDAs is large for a Project of this scope and scale. However, the Commission recognizes that Westcoast is in the Project planning and design stages and that it is focusing on the first steps of the mitigation hierarchy, specifically avoidance and minimizing effects, as described above. To assess the adequacy of Westcoast's mitigation measures to reduce and minimize Project effects on OGMAs and OGDAs, the Commission considers it necessary to impose **Condition 8** (Forest Management and Old Growth Mitigation Plan). This condition, which complements the Province of BC's permitting process for clearing within OGMAs and OGDAs, would require Westcoast to file a Forest Management and Old Growth Mitigation Plan that is informed by, among other things, engagement with Indigenous Peoples. Through this condition, Westcoast would also provide detailed information on how it is applying the mitigation hierarchy to reduce residual Project effects on old growth forest, including a rationale for why OGMAs and OGDAs cannot be avoided, if that is the case. Westcoast would also be required to provide a quantitative assessment of expected residual effects, including an evaluation of time lags between Project effects and ecological functioning after applying mitigation measures. Westcoast would also provide details of the replacement or other offset measures that it would implement and which are aimed at achieving no net loss of old growth forest within OGMAs and OGDAs.

Several Commission conditions address monitoring. **Condition 8** would require Westcoast to provide information related to post-construction monitoring of old growth forest within OGMAs and OGDAs. This monitoring would be evaluated through reports filed under **Condition 41** (Post-construction environmental monitoring reports). In addition, Indigenous monitoring carried out under **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) would support

verifying the efficacy of Westcoast's mitigation measures. The Commission is of the view that these requirements would increase transparency and accountability regarding the residual Project effects on OGMAs and OGDAs.

Overall, the Commission finds that Westcoast's approach to mitigation, its commitments, its continued engagement with affected Indigenous communities, the requirements of **Conditions 8 and 41**, and the provincial permitting process would reduce the residual Project effects on old growth forest.

7.4.4 Residual and cumulative effects

With Westcoast's mitigation, commitments, reclamation and restoration measures, and offset measures for OGMAs and OGDAs, along with the Commission's conditions, the Commission finds that the residual Project effects on vegetation are expected to be low to medium in magnitude and of medium significance, as described in **Table 7-2**. Residual Project effects would include the loss or alteration of native vegetation, rare and sensitive species and communities, culturally important species and communities, and old growth forest within OGMAs and OGDAs. They also include localized weed introduction or spread.

The Project's contribution to total cumulative effects is expected to be low, though the Commission finds that it would still contribute to existing cumulative effects on vegetation within the Vegetation RSA. The Vegetation RSA contains a number of existing developments of varying permanency amounting to approximately 44 per cent of the landscape, which cumulatively affect native vegetation, rare species and ecological communities, and increase the introduction and spread of weeds of concern. Because of this, the Commission agrees with Westcoast's assessment that overall cumulative effects across the Vegetation RSA would be of medium magnitude.

The Commission acknowledges Indigenous Peoples' ongoing concerns about cumulative effects contributing to the loss and degradation of culturally important vegetation communities and vegetation species used as food and medicine. However, the Commission accepts that the Project's contribution to the cumulative loss and alteration of native vegetation – which would include approximately 157 ha of long-term disturbance and approximately 150 ha maintained in an early seral state – represents a small (1 per cent) increase in long-term disturbance and early seral condition within the Vegetation RSA. For context, Westcoast stated that wildfire accounts for approximately 9.5 per cent of the cumulative disturbance.

With respect to old growth forest, Westcoast indicated that the Project would interact cumulatively with existing and reasonably foreseeable disturbances, increasing fragmentation of OGMAs and OGDAs, and widening existing rights-of-way. According to Westcoast, in many cases, the area of old growth forest affected by the Project is located within an area previously cleared for an existing disturbance, with Project effects coming from re-disturbance of that area that may have already started regenerating. Therefore, the Commission agrees with Westcoast that the Project's contribution to the cumulative effects on OGMAs or OGDAs is often in the nature of lengthening the time to restore previous disturbances, rather than creating an entirely new disturbance. For these reasons, the Commission considers the Project's contribution to total cumulative effects on OGMAs and OGDAs to be of low magnitude.

Table 7-2: Evaluation of significance of residual effects on vegetation

Vegetation		
Residual effects: • Loss or alteration of native vegetation and culturally important species • Loss of alteration of rare and sensitive vegetation species and communities • Localized weed introduction or spread • Loss or alteration of old growth forest		
Criteria	**Rating**	**Discussion**
Temporal extent	Medium to long term	Effects are expected to be medium term in duration for herbaceous vegetation temporarily disturbed by construction, which may take a few years to recover, to long term in duration for vegetation on the maintained portion of the rights-of-way and at facilities. Effects are expected to be long term in duration for old growth forest, which could take centuries or more to return to their original state.
Geographic extent	Local	Effects are expected to be limited to the LSA.
Magnitude	Low to medium (adverse)	Overall effects on vegetation are expected to be of low magnitude, given Westcoast's mitigation and commitments, expected reclamation plans and activities, and post-construction monitoring, in combination with the requirements of **Condition 9 (**Updated EPPs), **Condition 29** (Operational Vegetation Management Plan), and **Condition 41** (Post-construction environmental monitoring reports). However, the long-term loss and alteration of native vegetation on the maintained portion of the rights-of-way and at facilities is expected to be medium in magnitude. Residual Project effects on old growth forest are expected to be of low to medium magnitude based on Westcoast's commitments and mitigation, including offsetting residual Project effects and the requirements of **Condition 8** (Forest Management and Old Growth Mitigation Plan).
Cumulative effects	Medium (adverse)	Existing cumulative effects on vegetation are estimated to be medium in the Vegetation RSA as a result of the loss and alteration of native vegetation, rare species and ecological communities, and old growth forest. Although the Project would contribute additional effects to vegetation, given Westcoast's mitigation, commitments, and the Commission's conditions, including regarding offsetting residual Project effects on old growth forest, the Project's contribution to total cumulative effects is expected to be low, such that overall cumulative effects remain medium.

Significance	Medium (adverse)	Most effects on vegetation are expected to be medium term in duration, local, and of low to medium magnitude. In the case of old growth forest, and native vegetation subject to long-term disturbance on the managed part of the rights-of-way and facilities, residual Project effects are expected to last into the long term. While the Project's contribution to cumulative effects is expected to be low, it would contribute to existing medium disturbances to vegetation in the Project areas. With Westcoast's mitigation, commitments, and the Commission's conditions, including regarding offsets, Project effects are expected to be of medium significance.

7.5 Wetlands

Project activities, particularly those involving construction and operations near wetlands, may alter wetland function through changes in habitat structure, hydrology, and biogeochemical processes. Residual Project effects may include the alteration of wetland habitat function, hydrologic function, and biogeochemical function, which could result in temporary stress on plant communities, fragmentation of habitat, and changes to water quality and carbon storage.

The Commission finds that the implementation of Westcoast mitigation measures, commitments, and monitoring programs along with its compliance with **Condition 9** (Updated EPPs), **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), **Condition 21** (Contingency watercourse and wetland crossings), **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), **Condition 39** (Wetland Offset Measures Plan), and **Condition 41** (Post-construction environmental monitoring reports), would reduce the extent and magnitude of the effects on wetlands. As a result, any residual Project effects are expected to be short to long term in duration, localized within the LSA, and of low to medium magnitude. The Commission expects residual Project effects to be reduced given that the Project footprint does not cross any wetland conservation areas and affected wetlands subject to the requirements of the *Federal Policy on Wetland Conservation* would be offset as per **Condition 39**. Further, Westcoast's mitigation measures align with industry standards, and the CER would exercise its lifecycle regulatory oversight function, including through the condition compliance process.

The Commission determines that while the cumulative effects from existing and reasonably foreseeable developments may persist within the Wetland Function RSA, the Project's contribution to the total cumulative effects is expected to be medium. Overall, the Commission finds that Project effects on wetland function are likely to be of medium significance because of the duration of effects and the length of time it would take for wetlands to recover.

7.5.1 Relevant setting

Wetlands account for about 5 per cent or 5.28 million ha of BC's land base. The Project intersects five distinct wetland regions, including the Central Rocky Mountain Region, Continental Mid-Boreal, Intermountain Prairie Region, Pacific Temperate Region, and South Coastal Mountain Region, each with unique ecological characteristics. Regions in BC are divided into wetland classes (e.g., bog, fen, marsh, and swamp), and site associations based on, among other things, vegetation communities.

To assess potential effects, Westcoast defined the Wetland Function LSA as a 200-metre buffer around Project components, capturing indirect effects on wetland vegetation. The Wetland Function RSA was delineated based on watershed sub-basins, and was reduced to a 15-kilometre buffer when intersecting a watercourse, to account for cumulative effects from other land uses. These spatial boundaries align with typical vegetation assessments, recognizing that changes in plant communities are indicators of wetland function.

Westcoast identified 222 wetland crossings for the Project, of which 39 are located within the Green Lake area. Wetland crossings were listed multiple times where the feature is crossed in more than one location within the Project footprint. Of the field-surveyed wetlands, four (WET-325, WET-328, WET-329, and WET-333) are within the boundaries of Green Lake but are not crossed by the Project footprint. Several wetlands meet the no net loss requirements of the *Federal Policy on Wetland Conservation.* The Project footprint does not cross any designated wetland conservation areas.

In addition to pipeline routing, the CS-8A power line's revised alignment crosses one swamp for approximately 0.11 km (3.46 per cent of the power line route length) or 0.58 ha (1.93 per cent of the Project footprint). Westcoast anticipates that the Project would disturb 3,805.85 ha (16.95 per cent of the total wetland area) within the Wetland Function RSA. In addition, the Project is expected to result in approximately 0.43 ha of permanent wetland disturbance at CS-6B, for which offsets would be implemented to achieve no net loss of wetland function. Westcoast stated that no residual adverse effect is predicted for this disturbance.

Westcoast acknowledged that Indigenous Peoples have historically relied on wetland ecosystems as important venues for sustenance and survival. Indigenous medicines are known to grow in forested and open wetlands, and wetlands are valued by Indigenous Peoples because of their multifaceted ecological role and material connection to Indigenous ways of living. Nazko First Nation emphasized the ecological importance of wetlands. Specific wetland types (e.g., marshes, swamps, shallow water wetlands) offer particular benefits such as shoreline protection, sedimentation, and surface water storage According to Nazko First Nation, wetland functions vary depending on wetland type, landscape position, and specific site characteristics. For instance, bogs and fens have significant carbon storage capacity, while marshes and shallow water wetlands provide critical flood control and wildlife habitat, particularly for waterfowl and ungulates. Swamps offer cover and forage for various species and contribute to water quality, particularly in riparian zones.

Indigenous Peoples, including High Bar First Nation, highlighted the Green Lake area as a wetland area of particular importance. A Southwest Green Lakes site lies within the Wetland Function LSA and would be crossed by the CS-6B to CS-7 pipeline loop. Green Lake is included in the LSAs for a number of VCs relevant to Indigenous land and resource use, and Westcoast recognized its cultural significance to Indigenous Peoples. Existing land use around Green Lake has resulted in water quality issues and nutrient loading, which pose threats to habitat values in this system. This context reinforces the importance of adequate mitigation and monitoring strategies to reduce the Project's potential effects on wetlands in the Green Lake area.

7.5.2 Project effects, mitigation, and monitoring

The Commission finds that Project activities may result in temporary alteration or permanent loss of wetland functions. These effects are anticipated across all Project components (i.e., pipelines, power lines, and facilities). Alteration of wetland habitat function can cause stress on vegetative species or changes in successional pattern, interruption of wildlife movement, and fragmentation of natural habitats. Water quality (e.g., turbidity), carbon storage, and biogeochemical cycling could also be affected, potentially altering wetland biogeochemical function. Westcoast indicated that one wetland, a shrub swamp (WET-576) of approximately 0.43 ha, would be permanently disturbed due to construction at CS-6B.

To address these effects, Westcoast provided mitigation measures to protect wetlands during Project activities. These include avoiding wetlands where feasible, obtaining necessary permits, complying with the authorization conditions for any permanent wetland fragmentation or loss, and assessing wetlands for fish-bearing status before disturbance. Westcoast would replace salvaged wetland substrate, monitor the immediate effects of wetland crossing construction, schedule activities during dry or frozen conditions to minimize effects, and postpone crossing construction during excessive rain or flooding.

Westcoast also committed to implementing a Flood and Excessive Flow Contingency Plan, delaying clearing on approach slopes until just before crossing construction, and implementing best management practices to prevent deleterious substances or construction debris from entering wetlands. Additional mitigation measures include obtaining required documentation before starting any water withdrawal, installing erosion control measures during grading near wetlands, salvaging mineral soils in unsaturated wetlands and at open-cut crossings, allowing wetlands to naturally regenerate following construction, and recontouring to maintain hydrological flow and prevent drying or ponding. Westcoast committed to monitoring the immediate effects of wetland crossing construction (e.g., hydrologic connectivity, sedimentation) to assess the need for additional mitigation measures required to reduce identified effects, if warranted.

Kelly Lake Cree Nation submitted that Westcoast's ESA did not integrate Indigenous-led stewardship or traditional ecological knowledge, despite ongoing concerns raised about wetland degradation, hydrological changes, and loss of culturally significant habitats. They added that the mitigation and offset strategies outlined in the EPPs focus mainly on watercourse crossings and lack clear mechanisms for wetland-specific sustainability or meaningful Indigenous participation in offset planning and decision-making. While Westcoast did not fully address this concern, it indicated that it welcomes feedback on site-specific wetland crossing plans, by means of a cultural walk-through program or ongoing engagement.

The Commission notes that Westcoast's suite of mitigation measures are industry standard. The Commission finds that Westcoast's mitigation measures, including monitoring, would reduce the Project's effects on wetlands. **Section 7.5.2.1** discusses offsets, which comprise an important aspect of Westcoast's mitigation for wetlands. The Commission also recognizes that Westcoast revised its Project design to further reduce effects on wetlands by:

- moving a portion of the CS-6B to CS-7 pipeline loop away from Green Lake;
- revising the CS-8A power line route to avoid designated wetland conservation areas; and

- removing the CS-8B power line from the Project scope, which eliminated crossing five wetlands.

To further protect wetlands, and in response to comments received regarding the importance of Indigenous participation and decision-making in developing mitigations, the Commission considers it necessary to impose requirements in **Condition 9** (Updated EPPs) that would require Westcoast to include in its updated EPPs any revisions to its commitments regarding wetlands, a wetlands mitigation plan with site-specific mitigation measures, and descriptions of how Indigenous knowledge and engagement results have been integrated and incorporated. **Condition 9** is also responsive to High Bar First Nation's request to have Westcoast file the EAS. In addition, the Commission considers it necessary to impose **Condition 21** (Contingency watercourse and wetland crossings), which would require Westcoast to file site-specific information for fish-bearing wetlands, where the proposed primary crossing method is not feasible and a contingency crossing is required.

7.5.2.1 Offsets

Westcoast considers offsetting as the approach taken when an adverse effect cannot be avoided, minimized, or restored, or when there are any adverse effects with a time lag between the adverse effects and the effectiveness of mitigation measures. Wetland offsets are required for the permanent loss of wetlands on the Project footprint. The *Federal Policy on Wetland Conservation* mandates that there be no net loss of wetlands resulting from Project activities. Where a permanent loss of wetlands is anticipated, a Wetlands Offset Measures Plan would outline how the permanent loss of wetlands would be offset or compensated for no net loss, in compliance with the *Federal Policy on Wetland Conservation*.

Kelly Lake Cree Nation raised concerns that Westcoast's ESA relied on assumptions that mitigation and offsets would prevent residual adverse effects, without providing a detailed plan for ensuring functional equivalency in wetland compensation measures. They stated that the effectiveness of offset measures is estimated in vague terms and fails to address the risk of interim habitat loss before offset measures take effect. Wetland-dependent species rely on undisturbed ecosystems. Delays in ecosystem recovery can result in irreversible habitat degradation. Saulteau First Nation also requested additional details from Westcoast on the permanent loss of wetland habitat resulting from the Project and the feasibility of offsetting such losses. In response, Westcoast indicated that it would implement offsets to achieve no net loss of wetland function and to avoid the residual effect of permanent loss of wetland function, noting the *Federal Policy on Wetland Conservation*'s goal of no net loss. It also indicated that **Condition 39** (Wetland Offset Measures Plan) would address restoration and offsetting related to wetlands. In argument, Westcoast added that if offsetting is required, it would develop a final wetland offsetting plan based on the effectiveness of mitigation measures, in consultation with Indigenous Peoples and provincial and federal regulatory authorities.

Cook's Ferry Indian Band raised questions about offsetting, the minimum offsetting ratio and its alignment with Indigenous long-term stewardship and conservation objectives, and how Indigenous participation would be integrated into the Wetland Offset Measures Plan. In response, Westcoast indicated that the plan would include a minimum offsetting ratio of 2:1 to offset permanent loss of wetland function, in line with Cook's Ferry Indian Band's recommended minimum offsetting ratio. It added that it would consider the concept of equivalency when implementing offsets. Westcoast also indicated that the Wetland Offset Measures Plan would describe how it has taken Indigenous knowledge into account in developing the plan. It committed to engage on and incorporate, as appropriate, identified concerns with wetland mitigation and offsetting.

Based on the concerns raised, and to ensure the adequacy of Westcoast's wetland offsets, the Commission considers it necessary to impose **Condition 39** (Wetland Offset Measures Plan). Specifically, this condition would require Westcoast to identify the offset measures to be implemented and their locations, to explain the expected effectiveness of the offsets and the decision-making criteria for selecting offset measures, and to provide a schedule for implementing the offsets and the estimated completion dates. This condition would also require Westcoast to describe how it has taken Indigenous knowledge and results from its engagement with Indigenous Peoples into account in developing the plan.

7.5.3 Residual and cumulative effects

As described in **Table 7-3,** the Commission finds that the residual Project effects on wetlands, after the implementation of Westcoast's mitigation measures and its compliance with **Condition 39** (Wetland Offset Measures Plan) and **Condition 9** (Updated EPPs), are expected to be short to long term in duration, localized, and of low to medium magnitude. They would contribute low to medium total cumulative effects in the RSA, and have an overall significance of medium. Overall cumulative effects are expected to be medium to high. Several Commission conditions address monitoring. **Condition 9** would require Westcoast to provide information related to monitoring of wetland functions. This monitoring would be evaluated through reports filed under **Condition 41** (Post-construction environmental monitoring reports) as specified in **Condition 39**. In addition, Indigenous monitoring carried out under **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) would support verifying the efficacy of Westcoast's mitigation measures. The Commission is of the view that these requirements would increase transparency and accountability regarding the residual Project effects on wetlands.

Westcoast submitted that the combined effects of the Project on wetland function are of low to medium significance and its contribution to cumulative effects are low to medium. It also submitted that the total cumulative effects in the RSA are of medium to high significance. Kelly Lake Cree Nation disagreed with Westcoast's assessment of effects on wetlands, submitting that it minimizes potential effects by suggesting that slight reductions in wetland area may not result in an overall loss of function. According to Kelly Lake Cree Nation, even minor encroachments can disrupt wetlands.

High Bar First Nation submitted that no studies have been conducted to evaluate the Project's effects on Green Lake, despite the Project buffer intersecting with the lake. They also highlighted the need for more information, including pipeline alignment sheets, to determine the proposed crossing methods for wetlands and assess the potential effects and adequacy of mitigation measures. In response, Westcoast does not anticipate that the Project would have direct effects on Green Lake given the Project's distance from the lake and Westcoast's proposed planning, mitigation, and monitoring activities. Westcoast highlighted that concerns raised during engagement influenced Project routing, resulting in a portion of the CS-6B to CS-7 pipeline loop being routed further from Green Lake, as compared to existing pipelines.

Cook's Ferry Indian Band also raised concerns about the magnitude of Project effects on wetland function. They questioned the completeness of Westcoast's wetland function impact assessment, noting the lack of characterization of permanent features such as valve sites, power line structure locations, and access roads.

The Commission finds that the residual Project effects are expected to be low to medium in magnitude given the following:

- The proposed primary crossing method for all wetland crossings is open cut in dry or frozen-to-the-bottom conditions, which involves digging a trench and installing pipe through the wetland without flow isolation.
- Wetland functions are interdependent and disruptions can have effects on overall ecosystem health.
- Uncertainties due to ongoing planning and studies (which affect the magnitude of effects [e.g., the EAS is yet to be finalized]), weather fluctuations (i.e., the wetland crossing may not be dry or frozen to the bottom as anticipated during construction), and the length of time it takes for wetlands to naturally revegetate and re-establish post-clearing and disturbance.
- The expected effectiveness of Westcoast's mitigation measures, Westcoast's satisfaction of the Commission's environmental conditions, the incorporation of Indigenous knowledge and results from engagement into applicable wetland condition filings, and the ability of Indigenous monitoring to reduce Project effects as noted in **Section 7.2.3**.

Westcoast stated that while the Project would contribute to cumulative effects, its contribution would be reversible and of low magnitude, and no additional mitigation measures beyond Project-specific measures are warranted. The Commission took this view into account but emphasizes the importance of mitigation measures (including offsetting), ongoing monitoring, and adaptive management to effectively address cumulative effects.

The Commission accepts Westcoast's evidence that the potential residual Project effects are likely to interact with existing and reasonably foreseeable developments and that, given their low to medium magnitude, the Project's contribution to cumulative effects is also likely to be low to medium in magnitude. The Commission also accepts that total cumulative effects are expected to be medium to high in significance. This considers the existing wetland disturbance in the RSA, reasonably foreseeable developments (e.g., oil and gas activities), future disturbances potentially being underestimated due to limited spatial data for reasonably foreseeable developments, and that cumulative effects on wetland function are likely to increase regardless of the Project. Cumulative effects may also be intensified by external factors such as climate change, land use pressures, flooding, and wildfire activity.

The Commission finds the Project's overall effects to be of medium significance. This is based on the expected magnitude, extent, and duration of the residual Project effects; the expected effectiveness of Westcoast's mitigation measures, including offsets; Westcoast's satisfaction of condition requirements that are subject to ongoing CER regulatory oversight. It also considers the expected incorporation of Indigenous knowledge and engagement results with Indigenous Peoples into wetland-related condition filings and the participation of Indigenous monitors in the Project. In making this finding, the Commission agrees with Westcoast that cumulative effects on wetlands are expected to be medium to high in significance, but it is of the view that their significance on a standalone basis is medium given that there would be no significant change in cumulative effects from current levels. This is due to the Project's incremental contribution in light of other oil and gas activities in the RSA shown in Westcoast's quantitative assessment, and the expected effectiveness of the Commission's conditions and ongoing regulatory oversight in reducing effects. Overall, cumulative effects on wetlands are expected to remain regardless of the Project's contribution.

Table 7-3: Evaluation of significance of residual effects on wetlands

Wetlands		
Residual effects: • Alteration of wetland habitat function • Alteration of wetland hydrologic function • Alteration of wetland biogeochemical function		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	Effects are expected to be short term in duration for temporary disturbance of wetlands during Project construction and operations, and long term in duration to allow for the recovery of wetland functions in areas where there is no permanent loss of wetland function. The permanent loss of wetland function without appropriate offsetting is not anticipated for wetlands crossed by the Project.
Geographic extent	Local	Effects are expected to be localized within the Project footprint and the LSA.
Magnitude	Low to medium (adverse)	Project construction and operations are considered temporary disturbances. Westcoast would implement its mitigation measures during Project construction and operations to reduce the combined residual effects of the alteration of wetland function.
Cumulative effects	Medium to high (adverse)	Cumulative effects on wetland function in the Wetland Function RSA are likely to persist with or without the Project. While the Project's contribution to cumulative effects on wetland function is expected to be localized, of low magnitude, and of low to medium significance, the cumulative effects in the Wetland Function RSA is predicted to be of medium to high significance due to Westcoast's low to moderate level of confidence in its assessment and the uncertainties from external factors such as the effects of climate change and wildfire occurrences in the region. The Commission agrees with Westcoast that the total cumulative effects on wetland function are considered to be adverse with a medium to high significance.
Significance	Medium (adverse)	Generally, residual Project effects on wetlands are expected to be localized, short to long term in duration, and of low to medium magnitude. While the Project's contribution to cumulative effects is expected to be low to medium, it would contribute to the medium to high significance rating in the RSA when taking into account the unpredictable effects of climate change and wildfire occurrences in the RSA. With the implementation of Westcoast's mitigation measures and high confidence in the Commission's conditions, Project effects on wetlands are expected to be adverse with medium significance.

7.6 Water quality and quantity, and fish and fish habitat

The Commission finds that Project construction activities have the potential to affect surface water and groundwater quality and quantity through direct and indirect mechanisms. Residual Project effects may result from those activities, such as changes in surface water quality and quantity due to instream activities and vegetation clearing, which can increase erosion, suspended sediment concentrations, and surface runoff, potentially altering flow patterns and peak discharge rates during precipitation events.

Changes in fish habitat, riparian habitat, fish passage, fish mortality or injury risk can also occur due to Project activities. The anticipated residual Project effects on fish and fish habitat include the loss of riparian habitat at three compressor stations, the alteration of riparian habitat in pipeline and power line rights-of-way, and the disturbance of riparian habitat from increased public access during Project operations.

The Commission finds that the implementation of Westcoast's mitigation measures, commitments, and monitoring programs, along with its compliance with **Condition 9** (Updated EPPs), **Condition 13** (Finalized watercourse crossings inventory), **Condition 21** (Contingency watercourse and wetland crossings), **Condition 22** (*Fisheries Act* authorizations), **Condition 27** (Plan for hydrostatic test water withdrawal and discharge), and **Condition 39** (Wetland Offset Measures Plan) would reduce the extent and magnitude of the effects on fish and fish habitat and water quality and quantity. As a result, any residual Project effects are expected to remain. The types of residual effects depend on the species present, waterbody type, watercourse crossing methods, and the nature of the interaction.

The Commission finds that the residual Project effects on fish and fish habitat and water quality and quantity would be short to long term in duration, medium in magnitude, and have a medium contribution to cumulative effects in the RSA. The Commission finds that the Project's contribution to total cumulative effects would be medium in magnitude, with a medium overall significance.

7.6.1 Relevant setting

To assess the Project's effects on water quality and quantity, Westcoast defined the following five spatial boundaries, noting that Project components refer to the centreline of the pipeline loops and power lines and the centre point of the compressor stations:

1) Project footprint;
2) Surface Water LSA with a 500-metre buffer around Project components;
3) Groundwater LSA with a 100-metre buffer around Project components;
4) Surface Water RSA with a 15-kilometre buffer on the Project components or the upstream extent of the watershed sub-basins; and
5) Groundwater RSA with a 1-kilmetre buffer on the Project components.

To identify the Project effects on fish and fish habitat, Westcoast applied the following three spatial boundaries:

1) Project footprint, which extends 30 m on either side of the centreline of pipelines and power lines and includes a 30-metre buffer around the expansion footprint at compressor stations;
2) Fish and Fish Habitat LSA, which extends 100 m upstream and 300 m downstream of the centreline of the Project footprint and includes the area of riparian vegetation to a width of 30 m back from the top of each bank within the construction rights-of-way; and
3) Fish and Fish Habitat RSA, which is the extent of the watershed sub-basins reduced to a 15-kilometre buffer upstream and downstream of the watercourse crossing.

Westcoast assessed fish and fish habitat by watershed regions: Peace, Upper Fraser, Middle Fraser, Thompson, and Lower Fraser. Westcoast identified 180 waterbodies to be crossed and five aerial crossings.

Across the five watershed regions intersected by the Project's RSA, Westcoast determined that there are at least 75 fish species and subspecies present, including several aquatic species of management concern and of importance to Indigenous Peoples. Of these, three species are listed on Schedule 1 of the SARA:

- bull trout (*Salvelinus confluentus*) – Western Arctic and South Coast BC populations (Special Concern);
- Salish sucker (*Catostomus sp. or Catostomus sp. cf. catostomus*) (Threatened); and
- white sturgeon (*Acipenser transmontanus*) – Upper Fraser River population (Endangered)

Westcoast reported that the Project footprint intersects mapped critical habitat for Salish sucker. In addition, the Committee on the Status of Endangered Wildlife in Canada has proposed that 19 species and subspecies be listed or their status changed (i.e., species not already listed on Schedule 1 of the SARA). Eleven species are provincially blue- or red-listed.

Westcoast submitted that the majority of the Project's watercourse crossings are characterized by marginal or unsuitable habitat for the diverse life stages of fish (i.e., spawning, rearing, overwintering, and migration). Ten watercourse crossings exhibit spawning habitat, but most watercourses feature limited depth, lack of channel structure, and poorly defined drainage. Thirty-one watercourses have adequate depth and deep pools to support rearing, overwintering, and migration, with good vegetation and sufficient cover. The Commission notes that these numbers may vary because Westcoast was expected to complete field studies for fish and fish habitat in 2025 and more field assessments might be required once routing is finalized. The Commission considers that Westcoast's filings under **Condition 9** (Updated EPPs) and **Condition 13** (Finalized watercourse crossings inventory) would capture the most up-to-date information before starting construction.

7.6.2 Project effects, mitigation, and monitoring

In the following subsections, the Commission first provides an overview of the Project's watercourse crossings. The Commission then assesses topics related to water quality and quantity – namely, groundwater, surface water, hydrostatic testing, water quality and monitoring, flooding and standing water, as well as riparian habitat disturbance and slope instability. Following this, the Commission discusses fish and fish habitat, as well as aquatic species at risk.

7.6.2.1 Watercourse crossings

Westcoast stated that the primary crossing method for most Project watercourse crossings is trenched (isolated). The secondary method is mostly open cut if the watercourse is assessed by a qualified professional to be dry or frozen to the bottom. Westcoast identified four crossings (ID 96 – Parsnip River, ID 215 – Naver Creek, ID 406 – Maria Slough North, and ID 410 – Maria Slough South) where it would use a trenchless method (e.g., horizontal directional drill or direct pipe installation). The Commission finds that the four trenchless crossings would mitigate the loss or alteration of fish habitat at those sites. The Commission observes that, in general, trenched crossings may pose higher environmental risks.

Instream construction activities, such as trench dewatering at watercourse crossings and temporary vehicle crossing construction, have the potential to affect water quality. Instream construction activities can increase bank and channel erosion, which can result in increased suspended sediment concentrations in surface water. This potential effect has important linkages to fish and fish habitat, as a decline of water quality may affect fish and fish habitat. Westcoast stated that it would construct all watercourse crossings in accordance with permit approvals.

Through the CCC, Coldwater Indian Band raised concerns about Westcoast's classification of certain streams as non-fish bearing. They emphasized that this designation results in reduced protection for these waterbodies, even though they are ecologically connected to fish-bearing streams. They stressed that effects on "non-fish bearing streams" (e.g., from spills, runoff, and groundwater contamination) can still cause harm to fish habitats downstream.

Westcoast explained that its approach for selecting crossing methods is based on site-specific conditions, engineering design constraints, restrictive crossings, and environmental factors. Westcoast stated that crossing methods and timing are still under evaluation. Crossing methods are subject to change and would be updated as required before starting construction. Westcoast confirmed its intention to work within the reduced risk work window where practical, minimize the duration of instream work, and implement best management practices. Westcoast also mentioned that mitigation measures are provided in the ESA and the pipeline EPP and that it would develop site-specific crossing plans to mitigate adverse effects on fish and fish habitat.

Westcoast stated that it would monitor temporary vehicle crossings regularly to confirm that erosion and sediment control measures are adequate and that construction activities are not disrupting stream flow. Westcoast would also monitor the immediate effects of wetland crossing construction (e.g., hydrologic connectivity, sedimentation, fish salvage) to assess the need for additional mitigation measures to reduce identified effects.

To ensure appropriate oversight before starting construction of each crossing, and to reduce potential Project effects from watercourse crossings, the Commission considers it necessary to impose **Condition 13** (Finalized watercourse crossings inventory). This would require Westcoast to

file an updated inventory and details of all watercourse crossings. This includes information on the presence of fish and fish habitat upstream and downstream, the composition of riparian habitat, the fisheries timing windows of least risk, and an indication of any potential for the harmful alteration, disruption, or destruction of fish habitat or death of fish as defined by the *Fisheries Act*. This condition would also require Westcoast to identify site-specific mitigation and habitat enhancement measures to minimize effects. In addition, the Commission considers it necessary to impose **Condition 21** (Contingency watercourse and wetland crossings), which would require Westcoast to file revised information specific to any contingency crossing method used.

Westcoast's filings for these conditions would enable the Commission to assess updated site-specific effects on fish and fish habitat for each watercourse crossing and refer any crossings to DFO that may result in the harmful alteration, disruption, or destruction of fish habitat or death of fish. In response to comments received on potential conditions, the Commission included requirements in these conditions for Westcoast to explain how it incorporated Indigenous knowledge and results from Indigenous-led assessments or studies into the finalized watercourse crossings inventory and contingency plans. Westcoast must also provide a summary of its consultation with appropriate government authorities and Indigenous Peoples detailing how it addressed concerns or would resolve outstanding concerns.

7.6.2.2 Groundwater

The Project is expected to affect groundwater through a change in groundwater quality, as measured by turbidity, and change in water quantity. Peters First Nation shared this quote from one of their knowledge holders:

> When it rains, our water tastes horrible. We have well water, but it's checked maybe once a year. And in, I think townships and what have you, they say that the water should be checked once a month. Uh, so it would be nice if we could figure something out. It's about testing water more frequently.

The Project crosses mapped aquifers, categorized as bedrock aquifers and unconsolidated sand and gravel aquifers, most of which are mapped with no documented quality concerns. Westcoast explained that deeper aquifers are less likely to be affected by the Project, as excavations are expected to be relatively shallow (less than 30 m). There is potential for artesian conditions (when groundwater is trapped under pressure in a confined aquifer, causing the water level in a well to rise above the aquifer's upper boundary without pumping) at CS-3 and CS-5.

Westcoast's mitigation measures for changes to groundwater quality and quantity include obtaining a short-term water use permit from the BCER for the diversion and use of groundwater. Westcoast committed to mark known and identified aquifers and artesian sources, avoiding groundwater seepage areas, intercepting groundwater at well points before and during trenching, and monitoring groundwater during trenching in close proximity to known springs. Shallow groundwater would be diverted away from the pipeline trench to improve slope stability and prevent the saturation of backfilled materials. Groundwater flow patterns would be maintained where subdrains and stub berms would be installed during backfilling. Westcoast also committed to report any release of a toxic substance where there is a pathway to a nearby receptor such as groundwater or surface water, as per the CER's Event Reporting Guidelines.

Kelly Lake Cree Nation and Nazko First Nation raised concerns about Westcoast's ESA not sufficiently addressing the interconnectivity between surface water and deep aquifers, and a lack of

mitigation measures to address the risks posed by shallow groundwater at multiple compressor sites and artesian conditions at CS-3. Westcoast responded that the characterization of surface water quality was addressed in the ESA, the supplemental ESA, and the Aquatics Technical Data Report. Westcoast explained that the EPPs would include mitigation measures, Project-specific field studies, and input from Indigenous communities, landowners, regulatory authorities, and other stakeholders. Based on the evidence, and considering the geotechnical investigations completed in July 2024 indicating that artesian conditions are not anticipated during construction at CS-3 or CS-5, the Commission is satisfied that the risks identified by Kelly Lake Cree Nation and Nazko First Nation are adequately addressed.

7.6.2.3 Surface water

Instream construction activities such as trench dewatering at watercourse crossings and temporary vehicle crossings have the potential to affect water quality and alter natural flow patterns during isolation and dewatering of instream work areas. These activities can also increase bank and channel erosion, resulting in increased suspended sediment concentrations in surface water. In addition, vegetation clearing during construction in riparian zones and watersheds can negatively affect surface water quality and quantity as it increases surface erosion and sediment transportation during heavy precipitation and reduces vegetation cover that slows the velocity of surface runoff. This can lead to higher runoff rates and increased peak flows in downstream watercourses during heavy precipitation events.

Westcoast's mitigation measures for surface water quality and quantity include preventing construction materials and debris from entering a watercourse or wetland, implementing protection measures relating to nearby equipment activities, and engaging qualified professionals to develop a water quality monitoring and fish salvage plan. Westcoast would develop corrective actions if monitoring reveals turbidity beyond threshold monitoring values, prepare a reclamation plan to address land use or site-specific measures required to return the Project footprint to its former productive land use, and control surface drainage on the construction rights-of-way. To maintain unaltered flow patterns, Westcoast would also recontour beds and banks to the approximate pre-construction profile and channel configurations. The Commission finds that these mitigation measures are industry standard and capable of reducing Project effects on surface water.

7.6.2.4 Water withdrawal for hydrostatic testing

Westcoast stated that water withdrawal for hydrostatic testing has the potential to temporarily alter fish passage by lowering water levels. Water quality and quantity may also be affected by instream works and adjacent construction activities, including trench dewatering. Westcoast indicated that details on crossings and hydrostatic testing timing would be available once construction plans are finalized and water sources and hydrostatic testing timing are confirmed.

Westcoast's mitigations for hydrostatic testing include preparing a Hydrostatic Test Plan that includes the mitigation measures presented in the facilities and pipeline EPPs; obtaining the required approvals, licenses, and permits before starting any hydrostatic testing activities; conducting potential water source sampling and testing where applicable; and reducing the rate of water withdrawal or ceasing water withdrawal activities as needed.

Westcoast would monitor and record water withdrawal rates and, where warranted, source stream flows or water levels to confirm that the rate and total volume of water withdrawn do not exceed the approved volume or rate (typically 10 per cent of the watercourse stream flow or 10 per cent of the

volume) at the time of withdrawal, in accordance with applicable permits and approvals. Westcoast would monitor discharge locations to confirm that no erosion, flooding, or icing occurs.

Cook's Ferry Indian Band said that water withdrawals from watercourses and waterbodies are especially important to them as the Project area lies within the Nlaka'pamux Area of Interest, which is continually challenged by water scarcity. Increasing pressures for water use and dewatering exacerbate water scarcity issues, which Cook's Ferry Indian Band considers has effects on their rights and interests. Additional water withdrawals would affect water flows and temperature and would disrupt existing water regimes that support fish and wildlife habitat. Without identifying the waterbodies and quantities needed for withdrawals, Cook's Ferry Indian Band cannot be assured that the associated effects are sufficiently mitigated. Cook's Ferry Indian Band added that they are concerned about effects on the Nicola River watershed, the Coldwater River, and the Coquihalla River. They stated that these rivers were suffering from significant effects from development and water withdrawal, and that fishery stocks are consequently low. Regarding water crossings and methodologies, they shared that less instream work is better.

Cook's Ferry Indian Band and Saulteau First Nations expressed concerns about mitigation for water withdrawals, referencing Westcoast's reliance on past engagement efforts and the lack of consultation process for withdrawals during drought conditions. They requested updated withdrawal information (diversion rates, volumes, and sources) to assess potential effects on rights and interests based on current conditions. In response, Westcoast indicated that once construction plans are finalized and hydrostatic testing water sources and timings are confirmed, it would be able to provide further details. Westcoast further stated that the BCER would approve total quantities and daily rates and the environmental inspector would monitor water withdrawal to ensure compliance with the permit. Westcoast confirmed that the water quantity required for hydrostatic testing would depend on the length of the test section. It would only select water sources with sufficient capacity. Regardless of the withdrawal timing, Westcoast would be required to comply with the BCER's permit conditions.

Westcoast indicated that to manage water use, short-term water use permits are required under section 10 of the *Water Sustainability Act.*[70] These permits would outline the conditions under which Westcoast can withdraw water, as well as monitoring requirements. Westcoast committed to developing a dewatering management plan for construction in areas identified as having a high-water table. This plan, included in the facilities and pipeline EPPs, is separate from the hydrostatic test water withdrawal and discharge plan that is the subject of **Condition 27** (Plan for hydrostatic test water withdrawal and discharge), discussed in **Section 7.6.2.10**, as it would have different goals and requirements. Westcoast committed to engaging with Cook's Ferry Indian Band, including on matters under the *Water Sustainability Act*, and implementing measures to prevent the transfer of water withdrawn from one drainage basin into another.

Westcoast stated that it is considering Green Lake as a source for hydrostatic test water for the CS-6B to CS-7 pipeline loop. It committed to conducting appropriate studies to assess potential effects and mitigation to protect Green Lake and to engaging with potentially affected Indigenous Peoples through the BCER permitting process. Westcoast also committed to engaging Indigenous Peoples in developing water withdrawal plans and mitigation measures.

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[70] SBC 2014, c 15.

The Commission is satisfied that Westcoast's mitigation measures and commitments, along with the permitting requirements under the *Water Sustainability Act*, would be effective in reducing Project effects on water due to water withdrawals for hydrostatic testing.

7.6.2.5 Riparian habitat disturbance, bank protection, and slope instability

As Gary Seymour of Lheidli T'enneh First Nation stated:

> The cover in this province for our streams and rivers and that is, you know, constantly being cut away and it's rising the temperature of all the water. But I don't know if a lot of people know that 22 degrees and, you know, that's it for our rivers. Anything higher than that, everything in the river system will, you know, pretty much perish. So anything -- and I know a couple years ago, I think it was about four or five years ago, the Fraser was actually up to 21.5, and that's when we were finding the pools of dead salmon that were just -- it got too hot for them. They couldn't go any further. So they just, you know, parked in the backwater and ended up dying there.

Habitat disturbance

Westcoast reported that the area of riparian disturbance attributed to the Project within the Surface Water RSA is 90.02 ha, representing an increase from the existing baseline of approximately 0.06 per cent. The total cumulative riparian disturbance for the RSA is estimated at 39,113 ha, which includes disturbance from the Project and reasonably foreseeable developments. Based on the riparian area disturbance benchmarks, the existing riparian disturbance in the Surface Water RSA is classified as high, with the largest contributors to existing disturbance being forestry cutblocks, crop/pasture land, recreational sites, cities, towns, and communities.

Westcoast indicated that riparian vegetation within the Project footprint and temporary workspace would be cleared at trenched watercourse crossings (i.e., isolated or open cut), power line crossings, and new permanent footprint or temporary workspace at CS-2B, CS-4B, and CS-6B.

Project construction and operations would directly affect riparian vegetation that supports fish and fish habitat through vegetation clearing. While temporary workspace would be restored following construction, permanent footprints such as access roads would result in the loss of riparian habitat. In addition, riparian clearing associated with rights-of-way and vehicle crossings at watercourses may result in permanent alteration to riparian vegetation. Many watercourses would require riparian vegetation clearing, with three requiring permanent clearing for work at compressor stations, and multiple watercourses requiring routine vegetation maintenance along the permanent pipeline and power line rights-of-way. This would limit vegetation in those areas to low-lying shrubs.

Westcoast's mitigation measures include limiting clearing around trenched watercourse and wetland crossings to the removal of trees and shrubs along the trench line, installing signage around watercourses and wetlands, and salvaging shrubs and trees from the banks of fish-bearing watercourses. Westcoast would also postpone clearing approach slopes to watercourses and wetlands until before starting crossing construction, where practical.

Cook's Ferry Indian Band raised concerns about riparian zones that border streams and wetlands. They submitted that riparian protection measures such as setbacks are not well defined in Westcoast's ESA and lack consideration of provincial regulations, including the *Riparian Areas*

Protection Regulation,[71] though they acknowledged that the Project does not require adherence to this legislation. In response, Westcoast indicated that the EPPs include robust measures to protect riparian management areas. This includes delineating Riparian Management Zones, avoiding unnecessary removal of trees in sensitive areas, and implementing bank and riparian protection and reclamation measures, including storage and handling of deleterious substances.

With the implementation of Westcoast's mitigation measures, the Commission finds that the Project's effects on riparian habitat would be reduced.

Riparian bank protection (riprap) and slope instability

Westcoast submitted that areas of slope instability may occur where a trenched crossing method is used at watercourse crossings with steep, potentially unstable banks and approach slopes, which may affect the safety of the pipeline and water quality. To address these risks, Westcoast committed to providing additional measures to address site-specific slope stability issues at watercourses.

The Manitoba Métis Federation raised concerns that Westcoast's mitigation measures do not guarantee that soils and slopes would be stabilized. They added flow changes during spring melt would likely mobilize sediments without proper stabilization or erosion and sediment control techniques.

Westcoast agreed that slope instability could occur depending on terrain and geotechnical conditions but confirmed that there are currently no known or previously identified areas of slope instability on the Project footprint. Westcoast added that it engaged a geotechnical engineer to provide specialized advice during Project design and construction. Mitigation measures are being developed to address any risks relating to slope instability, if encountered.

Cook's Ferry Indian Band raised concerns about the specific locations for planned riprap installations and the alternatives considered. They submitted that Westcoast has not made a firm enough commitment to using alternatives to riprap for bank protection and affirmed their objection to the use of riprap, except in very special circumstances. In response, Westcoast committed to developing watercourse crossing restoration plans and to include them in the updated EPPs. Baseline fish habitat data collection would be implemented as part of the steps for watercourse restoration planning. Once watercourse crossing methods and designs are determined, suitable bed and bank reclamation methods would be evaluated, as well as the need for stabilization or protection measures. To avoid potential effects on aquatic species and habitat, biostabilization methods (e.g., coir wraps, brush layers, live stakes, seeding, crib walls, brush mattresses, tree revetments, root wads, coarse woody debris, wattle fences) would be the primary bank reclamation measures used before considering riprap. Westcoast confirmed that the use of riprap would only be considered under specific circumstances where studies indicate that other methods are not expected to provide sufficient protection. The decision-making process would be collaborative, with input from environmental inspectors, Indigenous monitors, contractor personnel, and qualified professionals, if required.

With respect to possible riprap locations, Westcoast stated that they have yet to be determined because an assessment of residual effects and site-specific mitigation measures for effects of riprap

[71] BC Reg 178/2019.

on aquatic species cannot be completed until, among other things, the amount of riprap has been estimated.

The Commission finds that Westcoast's industry standard mitigation measures and commitments, and its responses to Indigenous Peoples' concerns regarding riparian bank protection and slope stability along with its compliance with **Condition 9** (Updated EPPs), **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), are adequate for addressing the above-identified concerns.

7.6.2.6 Water quality and monitoring

Westcoast stated that Project activities (i.e., instream construction, trench dewatering, vegetation clearing, and hydrostatic test water discharge) have the potential to increase suspended sediment concentrations and increase temperature and turbidity in surface water, nearby wells, and aquifers.

The STSA, the Manitoba Métis Federation, and Saulteau First Nations raised concerns about the adequacy of water quality sampling and its timing.

As mitigation, Westcoast's commitments to monitor water quality include engaging a qualified professional familiar with the construction method being employed, and the sensitivities of the fish and fish habitat types that would be encountered. This individual would develop a water quality monitoring and fish salvage plan. The individual would also monitor for sediment events or inadvertent drilling fluid release during horizontal directional drilling activities at trenchless watercourse and wetland crossings, monitor for sediment events at trenched crossings, and perform fish salvage at applicable crossings in compliance with permits and approvals. Westcoast would develop corrective actions if monitoring reveals that turbidity or other values are approaching threshold monitoring values.

The Commission also notes Westcoast's commitment to ongoing engagement with Indigenous Peoples to discuss water quality monitoring. The Commission finds that Westcoast's mitigation measures and commitments are adequate for addressing the concerns raised on water quality and monitoring.

7.6.2.7 Flooding and standing water

Various participants raised concerns around flooding. These include Chawathil First Nation, Leq'á:mel First Nation, Coldwater Indian Band, Cook's Ferry Indian Band, Kanaka Bar Indian Band, Seabird Island Indian Band, Skeetchestn Indian Band, the STSA, Whispering Pines/Clinton Indian Band, and the City of Abbotsford. Westcoast also acknowledged the importance of Maria Slough for fishing and potential flood mitigation planning.

Westcoast's mitigation measures for flooding include scheduling instream work during periods of anticipated low precipitation and runoff, postponing crossings if excessive rain or flood conditions exist or are anticipated, and implementing a Flood and Excessive Flow Contingency Plan. Westcoast also committed to continued engagement with the Sumas Prairie Flood Mitigation Committee regarding the development of infrastructure and mitigation planning for large-scale flooding events in the Fraser Valley. The Commission finds that, beyond Project-related flooding, Westcoast's commitment is responsive to flooding concerns in the Fraser Valley area.

In response to Whispering Pines/Clinton Indian Band's questions regarding standing water, Westcoast stated that approximately 3 per cent of the existing right-of-way (swamp, marsh, fen and bog wetlands) has the potential to have standing water present at different times throughout the year, depending on weather and seasonality. Westcoast stated that both open water and standing water are naturally occurring for the wetland classes listed for the Project and the above wetland areas do not indicate areas of concern for wetland hydrology on the existing right-of-way. Westcoast also confirmed that there is limited potential for the Project to introduce contaminants to areas with standing water. The Commission finds Westcoast's response to be reasonable in addressing the concerns raised about standing water on the existing right-of-way.

7.6.2.8 Fish and fish habitat

The Project may affect fish and fish habitat through changes to fish species at risk, riparian habitat, fish mortality or injury risk, fish passage, and inter-basin transfer of aquatic organisms. Peters First Nation explained in their evidence that:

> The Upper Stalo traded up-river with the Thompsons and down-river with the tribes near the mouth. To the Thompsons they took dugout canoes, dried salmon, rush mats, and goat-wool blankets. For trade with down-river groups, dried salmon was the most important commodity, in return for which they obtained fish, wild potatoes, and sometimes sealskins.

Boston Bar First Nation's Elder Byron Spinks said in their evidence that:

> The fishing season is very important for our people to survive. In the past -- we use it to not only sustain our own selves, but we use it to trade with other Nations.

Westcoast stated that its mitigation measures for fish and fish habitat are industry standard. They include fish salvage before trenching at isolated fish-bearing watercourse and wetland crossings, implementing the Fish Species of Concern Discovery Plan as needed during construction, obtaining the required permits and approvals as per the *Fisheries Act* (if necessary), and implementing best management practices and a water quality monitoring program. Westcoast also committed to following the reduced risk work window for all fish-bearing watercourses.

For Cheam Slough (Site ID 411), a mapped critical habitat for Salish sucker, Westcoast committed to follow the reduced risk work window of August 1 to September 15. For this site, Westcoast proposed an isolated trenched crossing as the primary crossing method and open cut as the secondary method if watercourse is dry and frozen to the bottom. Westcoast assessed this site as likely dry or with isolated flow at the proposed right-of-way during winter. The site presents unsuitable salmonid spawning habitat due to the absence of coarse substrate. It provides only marginal rearing habitat due to seasonal flow. This site has abundant instream vegetation and when flooded conditions are present, woody debris is available, but there is little overhanging vegetation and deep pools. Fish habitat is limited by fine and organic substrates, seasonal low-stranding flow, poor water quality, and dense algae growth. The site also features isolated low-lying areas with limited seasonal surface flow connectivity. Westcoast stated that the planned instream work at this site would be completed over approximately two weeks.

Whispering Pines/Clinton Indian Band asked questions about incomplete fish and fish habitat studies in streams, rivers, and lakes and gave an example of fish loss in the Bonaparte River watershed due to recent fires. In response, Westcoast confirmed that neither fish nor fish habitat in the listed

waterbodies (Green Lake, Loon Lake, Rayfield River, Bonaparte River) are expected to be impacted by the Project. Westcoast explained that fish and fish habitat field studies corresponding to the expansion of CS-6B and the CS-6B power line were ongoing for 2025; however, fish population studies are not part of the Project's environmental assessment.

Lheidli T'enneh First Nation monitors ecosystems in their territory. They explained that their monitoring emphasizes water quality and fisheries (with a focus on whole-of-ecosystem effects and on areas with high impact and sensitivity). They stated that they have developed salmon rehabilitation projects at Willow River and Bear River. Regarding concerns raised about the salmon fishery and salmon restoration, Elder Les Baker of Lheidli T'enneh First Nation shared:

> In the last eight years we've had one open fishery. So for a people that used to live on the salmon in our river, we are reduced to having to buy it from other rivers which are impacted already. Skeena is already impacted and they're having a hard time trying to get salmon from them, so we do have a hatchery that we are starting to try and build our salmon back up. And I would just hate to have our salmon starting to get on the rebound so we can actually have a decent salmon fishery and by a decent salmon fishery, my mind is that any Lheidli T'enneh member that wants a salmon can go get a salmon when they need it, not, "Oh, you're allowed 10 because there's only this much." It's like they should be back to the numbers where, if we need salmon to survive or we want salmon to survive, we should be able to go and get it at any time that they're in the river and enough to sustain our families.

Westcoast stated that prior to filing its application, it revised the Project routing to minimize effects on Lheidli T'enneh First Nation traplines and watercourses.

Peters First Nation recommended restoring impacted lands to an improved state, including erosion improvements, replanting, water health improvements, and fish hatchery support. Westcoast acknowledged Peters First Nation's concerns about declining sturgeon, sockeye, and chinook salmon populations, and the community's interest in Indigenous-led hatcheries and aquatic habitat offsets. Westcoast committed to further discussions with Peters First Nation to explore opportunities to support such initiatives.

As per the March 2023 Memorandum of Understanding between the CER and DFO, the CER is referring watercourse crossing ID WC-411 to DFO for authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the *Fisheries Act*. This is due to the close proximity of any proposed work, undertaking, or activity at this site to the critical habit of Salish sucker, a species listed as Threatened on Schedule 1 of the SARA. The Commission is satisfied that any potential residual Project effects resulting from the Project on Salish sucker and their habitats would be addressed through DFO's regulatory process.

The Commission finds that Westcoast's mitigation measures would be effective in reducing Project effects on fish and fish habitat.

7.6.2.9 Aquatic species at risk under the SARA

Peters First Nation shared in their Nation-Led Traditional Use Study:

> So our resources are more than just resources, they are our extended family. They are our ancestors, our shxwelí (spirit or life force). Our shxwelí includes our parents, grandparents, great grandparents, cedar tree, salmon, sturgeon and transformer rocks…Our Elders tell us that everything has a spirit. So when we use a resource, like a sturgeon or cedar tree, we have to thank our ancestors who are transformed into these things.

As stated by Carrielyn Victor of Cheam First Nation:

> The sturgeon population of the lower Fraser is of particular concern. The gravel reach of the lower Fraser is also core Pilalt territory. The lower Fraser white sturgeon is a species that we have also a kinship relationship with. And there's a good story to go with it. We call sturgeon skwó:wech. If we do see a Sturgeon if we're near the river or we're fishing, it's always taken as a sign. And for anybody who's familiar with what it's like to read the earth's creatures as signs of something, you understand that if every time you see something it's important and you take it as a sign, every single species, every single member of that species is then important. They come when we need them, or we feel them, and sometimes they're holding space for our ancestors watching over us. It's not just a fish.

Westcoast stated that white sturgeon (listed as Endangered on Schedule 1 of the SARA) holds particular importance for Lheidli T'enneh First Nation, with the loss of this species representing a significant cultural and subsistence loss. Westcoast confirmed that the Project is located approximately 6 km from the mapped critical habitat for white sturgeon. No site-specific mitigation or habitat restoration was proposed because no work, undertaking, or activity would occur instream or within riparian areas of the mapped sturgeon habitat in the Upper Fraser Region. Westcoast submitted that sturgeon habitat would be unaffected and neither a *Fisheries Act* authorization nor a SARA permit is anticipated.

Westcoast stated that there are three designatable units of bull trout within the Fish and Fish Habitat RSA. The Western Arctic and South Coast Populations are listed as Special Concern on Schedule 1 of the SARA, while the Pacific Population is not listed. According to Westcoast, this species is also of importance to Indigenous Peoples, including Nazko First Nation. Mitigation measures for species of importance to Indigenous People, such as bull trout, were developed in accordance with Westcoast standards as well as regulatory guidelines from relevant local, provincial, and federal authorities, including the DFO Measures to protect fish and fish habitat, DFO Standards and codes of practice. Westcoast also mentioned that special management is required to protect habitat for fish species such as bull trout. This includes limiting equivalent clearcut area, reducing impacts to natural stream channel morphology, retaining old growth attributes and maintaining fish habitat and movement.

As previously mentioned, there is mapped critical habitat for Salish sucker listed as Threatened on Schedule 1 of the SARA. The mapped critical habitat is within Cheam Slough, which was assessed as both a watercourse crossing (Site ID 411) and a wetland crossing (WET-872) in 2023. The critical habitat is approximately 25 m downstream of the Project footprint, extends to the Fraser River confluence, and goes through Agassiz Slough. Westcoast stated that this area was experiencing

extreme drought during the 2023 field season. The water depth in Cheam Slough may be more suitable at the crossing location in regular precipitation years, such that important features (i.e., low velocity, deep and fine substrate pool habitat) could be used by Salish sucker. Westcoast confirmed that work would occur instream and within the riparian area with consideration of the Salish sucker's reduced risk work window.

On 25 June 2025, Cheam First Nation and Westcoast completed a joint site tour of the proposed route for the CS-8B to CS-9 pipeline loop on the Tseatah 2 reserve, as well as CS-9 on Cheam First Nation Reserve No. 1. The purpose was to discuss Project construction and interactions with the community and Cheam Slough. Discussions included potential construction methods for crossing Cheam Slough and effects on Salish sucker. Westcoast provided Cheam First Nation with information regarding the DFO permit application process, including mapping and information from Westcoast's environmental contractor.

The Commission finds that Westcoast's mitigation measures would be effective in reducing Project effects on aquatic species at risk.

7.6.2.10 Conditions relating to water quality and quantity, and fish and fish habitat

In addition to Westcoast's commitments to implement mitigation measures, the Commission considers it necessary to impose the following conditions to increase regulatory oversight and the protection of water quality and quantity, and fish and fish habitat:

- **Condition 9** (Updated EPPs) would require Westcoast to file updated commitments and mitigation measures regarding water and fish-related matters, a wetlands mitigation plan that includes site-specific mitigation measures, updated EAS, and site-specific plans for the use of riprap.
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) would require Westcoast to file a plan describing Indigenous Peoples' participation in monitoring activities during Project construction.
- **Condition 13** (Finalized watercourse crossings inventory) and **Condition 21** (Contingency watercourse and wetland crossings) would require Westcoast to file information on crossing methods, construction timing, and the presence of fish and fish habitat (including upstream and downstream). It would also require information on riparian habitat, applicable fisheries timing windows of least risk, and site-specific mitigation and habitat enhancement measures to minimize effects where there is potential for harmful alteration, disruption, or destruction of fish habitat or death of fish.
- **Condition 22** (*Fisheries Act* authorizations) would require Westcoast to file a copy of authorization(s) or Letter(s) of Advice as per paragraphs 34.4(2)(b) and/or 35(2)(b) of the *Fisheries Act*, where a work, undertaking, or activity may result in harmful alteration, disruption, or destruction of fish habitat or death of fish.
- **Condition 27** (Plan for hydrostatic test water withdrawal and discharge) would require Westcoast to file a plan identifying water withdrawal and discharge sites, details of any waterbodies that it would use (e.g., fish presence, water depth), and flow rates and volume information for both the withdrawal site and the proposed water withdrawal. The plan must include mitigation measures to protect water quality and quantity, and fish and fish habitat.

- **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) would require Westcoast to file a plan describing Indigenous Peoples' participation in monitoring activities during Project post-construction.
- **Condition 41** (Post-construction environmental monitoring reports) would require Westcoast to file reports that, among other things, include a summary of the methodology for post-construction environmental monitoring and criteria for success that are included within the EPPs, monitoring results and analyses, and corrective measures where unexpected outcomes and deviations from plans are found.

The Commission is of the view that with Westcoast's mitigations, its compliance with the above conditions, the involvement of Indigenous monitors in the Project, and the CER's role as a lifecycle regulator in assessing Westcoast's condition filings, Project effects on water quality and quantity, and on fish and fish habitat, would be reduced.

7.6.3 Residual and cumulative effects

As described in **Table 7-4**, the Commission finds that the residual Project effects on water quantity and water quality, and fish and fish habitat are expected to be short to long term in duration, local, and of medium magnitude. For water quality and quantity, the residual Project effects are expected to be of low magnitude and low significance. For fish and fish habitat, the residual Project effects are expected to be of medium magnitude and medium significance considering potential changes to fish habitat, riparian habitat, and fish mortality or injury risk. The overall significance of Project effects is expected to be medium.

The Commission finds that residual Project effects on water quality and quantity to be low to medium in magnitude and are unlikely to exceed water quality thresholds, aside from minor, localized, and short-term effects. In making this finding, the Commission considered Westcoast's mitigation described above, its satisfaction of the Commission's conditions, the mitigative effects of incorporating Indigenous knowledge and results from engagement with Indigenous Peoples, and the expected contributions of Indigenous monitoring.

The Commission finds that residual Project effects for riparian habitat are also expected to be low to medium in magnitude, taking into account the same considerations as above. The Commission expects that riparian vegetation loss or alteration would be limited in extent because it is expected to naturally regenerate. Temporary disturbance footprints would be re-established to the pre-construction ecological trajectories within the medium term, though alteration through ongoing right-of-way maintenance would be long term in duration.

The Commission finds that residual Project effects on fish and fish habitat would be low to medium in magnitude, taking into account the same considerations as above, Westcoast's compliance with the Commission's conditions, and monitoring.

Westcoast states that the Project's contribution to cumulative effects is low to medium. The Commission notes that studies are still ongoing for several watercourse and wetland crossings, and there is a high likelihood that new data may emerge, which may change the Project's contribution to effects. Westcoast stated that the crossing data currently on the hearing record are subject to change, and additional aquatic assessments are planned before starting construction.

Indigenous Peoples raised concerns about the adverse impacts on their way of life, including from a significant decline in fish populations, the negative effects of climate change including flooding, high water temperatures, and wildfires. They also spoke about the crucial need for fish hatcheries. Examples of other concerns raised include:

- Cook's Ferry Indian Band, Kelly Lake Cree Nation, Peters First Nation, Nazko First Nation, and Nicomen Indian Band raised concerns about the need to assess cumulative effects from water withdrawals, given the existing pressure on water resources. Westcoast did not respond to these concerns directly but has identified mitigation measures for water withdrawals in the Project EPPs. This includes verifying stream flow and volume and satisfying permit requirements before starting any water withdrawal or test water discharge activities.
- Prophet River First Nation stated that they have been testing water in their area, and hydrocarbons and contaminants have been found in the surface water. Not only is the health of the water being affected by industrial development, but the quantity of water is declining. Westcoast did not respond directly to these concerns but addressed the issue of contamination in its ESA, EPPs, and subsequent filings. It stated that there is no confirmation of third-party, onsite contamination and, therefore, a notice of contamination is not required. Westcoast also committed to following the requirements of the CER's Remediation Process Guide.
- Pukaist Nation submitted that mining and hydro projects have already affected water quality and fish. They expressed concerns that additional industrial development would further diminish their resources.

Based on an overall assessment of the evidence and submissions, including the concerns raised by Indigenous communities about cumulative effects, the Commission makes the following findings:

- The Project's overall contribution to cumulative effects on water quality and quantity to be medium (greater than Westcoast's rating of low). Total cumulative effects are assessed as medium which, while consistent with Westcoast's assessment, also factors in the anticipated mitigative effects of the Commission's conditions.
- The Project's overall contribution to cumulative effects on fish and fish habitat to be medium (greater than Westcoast's rating of low-medium). Total cumulative effects are assessed as medium, which is greater than Westcoast's assessment of low-medium, despite the anticipated mitigative effects of Commission conditions.

Table 7-4: Evaluation of significance of residual effects on water quality and quantity, and fish and fish habitat

Water quality and quantity, and fish and fish habitat		
Residual effects: Water quality and quantity • Change in surface water quantity and quality due to instream construction activities • Change in surface water quantity and quality due to vegetation clearing • Change in riparian habitat Fish and fish habitat • Change in fish habitat • Change in fish mortality risk or injury		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	Project effects on water quality and quantity are expected to be short to long term in duration and localized. Effects from the change in riparian habitat on fish and fish habitat due to vegetation loss and alteration would be limited in extent within the medium term. However, the alteration of riparian habitat associated with rights-of-way and the permanent loss of riparian habitat for three compressor station footprints is expected to be long term in duration.
Geographic extent	Local	Effects are expected to be localized within the Project footprint and the LSA.
Magnitude	Medium (adverse)	The magnitude of the residual Project effects of the Project on water quality and quantity is expected to be low, while for fish and fish habitat they are expected to be medium. The combined residual effects on those VCs would be of medium magnitude. This considers Westcoast's mitigation measures, including restoration and offset measures as per the *Fisheries Act*, and the Commission's conditions.
Cumulative effects	Medium (adverse)	The Project would contribute to existing effects on water quality and quantity, and fish and fish habitat, resulting in the loss of riparian habitat and permanent disturbance footprints at compressor stations. With Westcoast's mitigation measures, including restoration, potential offset measures as per the *Fisheries* Act, and the Commission's conditions, the Project's contribution to existing cumulative effects is expected to be medium.
Significance	Medium (adverse)	Most effects on fish and fish habitat and water quality and quantity are expected to be short term in duration, local, and of low to medium magnitude. In the case of the alteration of riparian habitat, residual Project effects are expected to last into the long term. The Project's contribution to cumulative effects is expected to be medium in magnitude and would contribute to the cumulative effects on water quality and quantity, and fish and fish habitat, in the RSA. While the effects of industrial activities and climate change, especially drought, wildfires, and flooding persist in the Project RSA, with the implementation of Westcoast's mitigation measures, including restoration, potential offset measures as per the *Fisheries Act,* and the Commission's conditions, the total cumulative effects on water quality and quantity, and fish and fish habitat, are expected to be medium in magnitude, warranting a medium significance rating.

7.7 Wildlife and wildlife habitat

The Commission finds that Project construction and operations activities have the potential to affect wildlife and wildlife habitat through direct and indirect mechanisms. These include the loss or alteration of wildlife habitat, barriers to wildlife movement, and an increased risk to wildlife health and mortality. Habitat disturbance may reduce habitat quality and effectiveness, displace wildlife, fragment habitat connectivity, and increase sensory disturbances such as noise, light, and human activity.

The Commission finds that the implementation of Westcoast's mitigation measures, commitments, and monitoring programs along with its compliance with the Commission's conditions, would reduce potential effects on wildlife and wildlife habitat, while residual Project effects are expected to remain. The Commission finds that these residual Project effects are predicted to be short to long term in duration, limited to the LSA, and of low to medium magnitude, depending on the focal species and nature of the interaction.

The Commission considers that overall cumulative effects on wildlife and wildlife habitat are expected to be medium in magnitude. Although the Project would contribute additional effects on wildlife and wildlife habitat, given the implementation of Westcoast's mitigation and commitments, and the Commission's conditions, including around offsetting residual Project effects where required and working towards no net loss, the Project's contribution to total cumulative effects is expected to be low. The overall significance of Project effects on wildlife and wildlife habitat is expected to be medium.

7.7.1 Relevant setting

The Project's north, central, and south sections cross a diversity of habitats across BC. Westcoast indicated that the Project may interact with federally and provincially designated species at risk, as well as migratory birds protected under federal regulations and other birds protected under BC's *Wildlife Act*. The Project footprint crosses delineated critical habitat polygons for the following 10 species at risk listed on Schedule 1 of the SARA:

- American badger, *jeffersonii* spp. (*Taxidea taxus jeffersonii*)
- barn owl (*Tyto alba*)
- Great Basin spadefoot (*Spea intermontana*)
- Lewis's woodpecker (*Melanerpes lewis*)
- Oregon forestsnail (*Allogana townsendiana*)
- Oregon spotted frog (*Rana pretiosa*)
- Southern mountain caribou (*Rangifer tarandus population*)
- spotted owl (*Strix occidentalis*)
- Western rattlesnake (*Crotalus oreganus*)
- Williamson's sapsucker (*Sphyrapicus thyroideus*)

Westcoast identified an additional 31 SARA-listed species and 31 wildlife species of special status (Committee on the Status of Endangered Wildlife in Canada, provincial designations) with potential

to interact with the Project. It also identified several culturally important species in the Project areas, which was supplemented by Indigenous knowledge shared in this hearing. Among others, these species include bear, moose, cougar, deer, mountain sheep, beaver, marten, and porcupine. **Chapter 10** provides additional details related to culturally important wildlife species.

To focus its assessment of potential effects on wildlife and wildlife habitat, Westcoast selected focal species according to several criteria, including the potential for Project interaction, human importance (such as traditional or cultural value), and feedback from Indigenous Peoples and regulatory authorities, among others. Given the Project's spatial distribution across BC and the variability in ecosystems encountered, Westcoast submitted that some wildlife focal species only have the potential to interact with select Project sections or components. The following species and communities were selected through this process:

- American badger, *jeffersonii* ssp.
- bats
- bears
- fisher (Columbian population)
- Southern mountain caribou
- ungulates
- mature and old forest birds
- spotted owl
- open habitat birds
- riparian and wetland birds
- Western screech owl (*kennicottii* ssp., *macfarlanei* ssp.)
- Williamson's sapsucker
- amphibians
- snakes and lizards
- Western painted turtle (Intermountain-Rocky Mountain population)
- Oregon forestsnail

Westcoast also assessed how the Project would affect furbearers of importance to Indigenous communities. It discussed interactions, mitigation, and cumulative effects.

Westcoast's assessment of potential effects on wildlife and wildlife habitat included the direct Project footprint, the LSA (a 1-kilometre buffer around the Project footprint) for evaluating direct and indirect Project effects, and the RSA (a 15-kilometre buffer around the Project footprint) for evaluating cumulative effects. For Southern mountain caribou, the RSA included the entire Kennedy Siding caribou range (Caribou RSA). The RSA was also broadened for grizzly bear, to the area of grizzly bear population units within 24 km of the Project footprint, approximating the size of an adult female grizzly bear home range (Grizzly Bear RSA). Westcoast's assessment considered Project construction and operations.

7.7.1.1 Field data and wildlife surveys

The Commission heard concerns regarding Westcoast's wildlife surveys. The Commission is satisfied that Westcoast, through continued consultation and engagement with regulatory authorities and Indigenous Peoples, and the requirements of **Condition 9** (Updated EPPs), would conduct an appropriate field data collection program.

Westcoast specified that its approach to identifying the presence of species and habitats integrates information compiled from available Indigenous knowledge, databases and mapping, field surveys conducted from 2023 to 2025, and pre-construction surveys to supplement baseline data and provide information on occupancy relative to the timing and location of Project activities. Westcoast explained that survey results are used to identify habitat features and locations that warrant site-specific mitigation, which are then incorporated into the EAS.

Cook's Ferry Indian Band raised concerns around appropriate protocols for species-specific surveys. In response, Westcoast confirmed that it is implementing appropriate wildlife survey protocols and timing for targeted species, as determined by qualified professionals, based on relevant provincial standards, guidelines, and protocols, as well as Project objectives. In addition, Westcoast would develop pre-construction survey protocols for birds (non-intrusive nesting surveys), bear dens, wildlife trees (e.g., cavity denning mammals, cavity nesting birds, roosting bats, stick nests), and amphibians (e.g., breeding waterbodies, dispersal habitats). These protocols would be reviewed by applicable provincial or federal regulatory agencies (e.g., BC Ministry of Water, Land and Resource Stewardship, ECCC) and Indigenous communities as part of the SARA or BC *Wildlife Act* permitting processes. Westcoast also stated that it would continue to engage with applicable regulatory authorities and interested Indigenous communities, including Cook's Ferry Indian Band, to develop pre-construction survey protocols and related mitigation measures.

ECCC stated that many of Westcoast's mitigation measures rely on using pre-construction sweeps. ECCC recommended that targeted species and habitat surveys be completed as soon as appropriate, with the pre-construction sweeps used only to confirm findings and/or identify any missed features during previous surveys. Westcoast agreed with this recommendation and confirmed that its 2023 to 2025 wildlife field program was designed to collect baseline information on wildlife species' occurrence, critical habitat, and site-specific habitat features that interact with the Project. Westcoast would integrate these findings into the mitigation measures described in the EPPs and, where appropriate, into its Project Resource Specific Mitigation Tables and the EAS. Westcoast explained that its pre-construction surveys are supplemental to this field program.

To confirm the appropriateness of final species-specific survey methods, upon which Westcoast's wildlife assessment and mitigation rely, the Commission considers it necessary to impose **Condition 9** (Updated EPPs). This condition would require Westcoast to include in its updated Wildlife and Wildlife Habitat Management Plan species-specific survey methods for pre-construction wildlife surveys, with references to best practices and confirmation that the survey methods satisfy applicable regulatory requirements. With Westcoast's ongoing engagement and this condition's requirements, the Commission is satisfied that wildlife and wildlife habitat would be appropriately identified, thereby establishing a solid foundation for implementing effective mitigation measures and reducing potential Project effects.

7.7.2 Project effects on wildlife (general), mitigation, and monitoring

The Commission finds that with Westcoast's mitigation measures, including reclamation plans and post-construction monitoring, its commitments, and its compliance with the Commission's conditions, residual Project effects on wildlife and wildlife habitat overall would be of low to medium magnitude.

For each focal species or community, Westcoast identified Project interactions and potential effects on wildlife habitat, wildlife movement, and wildlife health and mortality risk. Indigenous communities detailed similar interactions in their submissions, stating observations of changes in wildlife migration patterns and wildlife displacement due to industrial activity and linear disturbances, as well as decreased wildlife health and increased mortality from increased access and traffic. Westcoast identified mitigation measures for potential effects on wildlife focal species and evaluated the significance of residual Project effects for each.

In the following subsections, the Commission describes potential Project effects on wildlife habitat, wildlife movement, and wildlife health and mortality. The Commission also discusses specific concerns related to wildlife timing windows and setbacks, traffic, and access and human-wildlife conflict, as well as mitigation strategies, measures, monitoring, and its conditions. Given the importance of SARA-listed species' critical habitat, the Commission discusses predicted Project effects specific to Southern mountain caribou and other SARA-listed species separately in subsequent subsections.

7.7.2.1 Habitat loss or alteration

Westcoast submitted that Project activities such as clearing, mowing, moving brush piles, trenching, and maintaining buildings or power line structures may affect wildlife habitat and site-specific habitat features during Project construction and operations. Westcoast considered Project effects on habitat loss or alteration, including direct effects on habitat availability and indirect effects on habitat effectiveness from sensory disturbance, fragmentation, and edge effects. Lower Nicola Indian Band expressed concerns that linear disturbances from pipelines and transmission lines can degrade wildlife habitat and displace wildlife populations.

Westcoast's primary mitigation for habitat loss or alteration is Project routing. Westcoast submitted that fragmentation and edge effects would be minimized by locating the Project's pipeline and power line corridors parallel to existing corridors for approximately 96 per cent and 100 per cent of their respective lengths. Where practical, Westcoast would incorporate existing disturbances (e.g., shared roads or workspace on adjacent disturbances) into the Project footprint.

Cheam First Nation and Nicomen Indian Band raised concerns about habitat alteration from sensory disturbance. Cheam First Nation stated ongoing concerns around traffic, noise, lighting, and edge effects that alter wildlife presence and movement, which would be increased by the Project's additional looping. Nicomen Indian Band submitted that noise, vibration, and lighting can further degrade habitat effectiveness for breeding and migratory birds in particular, causing indirect habitat loss and increasing the likelihood of nest abandonment. To address some of these concerns, Westcoast proposed mitigation measures, including prohibiting construction personnel's recreational use of all-terrain vehicles and snowmobiles and using low or task-specific lighting (e.g., downturned shaded fixtures to prevent sky-lighting) on the construction rights-of-way and associated Project facilities. **Section 7.7.2.3** discusses construction timing in relation to sensitive wildlife time periods.

Westcoast committed to preparing a reclamation plan before starting construction to address measures required to return the Project footprint to its former land use. To oversee this commitment and mitigate habitat loss, the Commission considers it necessary to impose **Condition 9** (Updated EPPs), which would require Westcoast to file a reclamation plan detailing goals and measurable targets for reclamation and site-specific habitat restoration. The updated plans must include a detailed description of reclamation and restoration measures, criteria for determining success, and a decision tree for adaptive management measures and criteria for when these would be applied. As per **Condition 41** (Post-construction environmental monitoring reports), Westcoast would be required to document the trajectory, effectiveness, and corrective measures taken during post-construction reclamation.

The Commission finds that routing the Project adjacent to existing linear disturbances would reduce overall Project effects on habitat loss, fragmentation, and alteration. The Commission also finds that with Westcoast's mitigation measures, including those aimed at reducing sensory disturbance effects on wildlife, and the requirements of **Conditions 9 and 41**, residual Project effects on habitat loss or alteration would be minimized and their duration reduced.

7.7.2.2 Alteration of wildlife movement

The Commission accepts Westcoast's assessment that the Project may alter wildlife movement by creating barriers for some wildlife species and by reducing habitat connectivity. Based on Westcoast's mitigation measures and commitments, the Commission is satisfied that these effects would be minimized.

To address potential movement barriers during construction, Westcoast proposed standard mitigation measures such as leaving gaps in strung pipe and snow berms and installing soft plugs across open trenches in areas of high wildlife use. It would also monitor for any wildlife entrapment. These measures are intended to facilitate wildlife passage and allow access across the trench.

Lheidli T'enneh First Nation raised concerns about the impact of linear disturbances on wildlife movement. They explained that while effects on moose and deer are generally the same across wider and narrower rights-of-way, wider corridors have greater impacts on smaller fur-bearing animals such as mink and fisher. Westcoast acknowledged that the incremental widening of existing linear corridors may affect the movement of wildlife species, such as fishers, that are hesitant to cross gaps. Westcoast committed to evaluating opportunities to narrow the rights-of-way where possible. **Section 7.4.2.1** discusses this commitment.

7.7.2.3 Wildlife health and mortality

The Commission finds that the Project may affect wildlife health and mortality through interactions such as direct and sensory disturbance, vehicle strikes, changes in predation, and increased access and human-wildlife conflict. These effects are discussed in the subsections below, along with Westcoast's commitment to monitor effects. The Commission is of the view that with Westcoast's mitigation measures, commitments, monitoring, and the Commission's condition requirements, residual Project effects on wildlife health and mortality would be minimized.

Timing windows and setbacks

Westcoast explained that sensory disturbance caused by noise, vibration, light, and activity during sensitive timing windows may increase health or mortality risk through indirect disturbance of occupied habitats or displacement from preferred habitats at key life stages. The Commission finds that a key mitigation for effects on wildlife health and mortality is avoiding disturbance during sensitive timing windows and adhering to setback distances from wildlife features. In its EPPs, Westcoast provided a list of sensitive timing windows and setbacks for sensitive wildlife species and habitats, as well as migratory bird zone primary nesting periods. Westcoast also provided amphibian active and overwintering periods.

Westcoast stated that avoiding sensitive timing windows is the preferred mitigation strategy, whenever practical. However, it provided examples of situations where conflicting constraints may not always allow for complete avoidance. Westcoast stated that it would implement a wildlife management and documentation process if a sensitive timing window or wildlife feature cannot be avoided. This includes documenting the risk of disturbing a sensitive feature or encroaching on a timing window, establishing mitigation and monitoring measures, and/or engaging a third-party resource specialist or qualified professional to evaluate and provide recommendations.

ECCC stated that it does not recommend clearing vegetation within the general nesting periods, noting that such activities pose a high risk of contravening the *Migratory Birds Convention Act* and its regulations, as well as the SARA. In addition, ECCC does not recommend active nest searches or ongoing nest monitoring in most cases because of the high risks of disturbing or damaging nests, or flushing nesting birds and thus exposing the nests to predation or abandonment. Instead, ECCC recommended rescheduling work that could disturb or destroy nests if passive nest survey techniques (such as point counts) indicated the presence of nesting activity in an area. Any setbacks established to protect nesting migratory birds should be established on a case-by-case basis, according to ECCC's *Guidelines to avoid harm to migratory birds*. Similarly, Nicomen Indian Band recommended mitigation strategies that prioritized minimizing direct disturbances to nesting birds during critical breeding periods.

In response, Westcoast explained that its alternate mitigation for Project activities during nesting windows involves engaging qualified professionals to conduct non-intrusive nest surveys and establishing appropriate protective buffers for active nests. Westcoast's contractors would be required to adhere to the protective measures for active nests as recommended by those professionals. Westcoast submitted that this approach is consistent with industry best practices and is expected to mitigate the risk of flushing nesting birds or disturbing or damaging active nests. Westcoast added that its Breeding Birds and Nest Mitigation Plan in its EPPs aligns with ECCC's guidelines.

The Commission acknowledges the differences in approaches raised by ECCC, Nicomen Indian Band, and Westcoast with respect to surveys and vegetation clearing within the migratory bird nesting window. While ideally all construction would occur outside of this window, the Commission recognizes that this is not always possible due to conflicting least-risk windows for various species (e.g., breeding birds, species at risk, fish). In such cases, Westcoast must have a means to determine the timing of least overall impact at specific sites. The Commission is of the view that Westcoast's commitments to conduct non-intrusive surveys and to use qualified professionals align with industry best practices and may be necessary in certain circumstances. To verify the use of non-intrusive survey methods and associated mitigation measures for working within the migratory

bird nesting window, if unavoidable, the Commission considers it necessary to impose requirements in **Condition 9** (Updated EPPs). These would require Westcoast to identify methods for breeding bird surveys conducted a maximum of 48 hours before starting conducting work during restricted periods. Westcoast would also be required to confirm that the survey methods satisfy applicable regulatory requirements, and to describe the mitigation measures developed in accordance with ECCC's guidelines.

The Commission also expects Westcoast not to take advantage of any flexibility given to allow construction to occur within sensitive timing windows for reasons other than reducing environmental effects overall. For this reason, the Commission supports Westcoast's detailed documentation mechanisms. For additional accountability, the Commission considers it necessary to include a requirement in **Condition 26** (Construction progress reports) that would require Westcoast to identify any circumstances where species-specific setbacks and timing restrictions could not be met and the alternative mitigation that was implemented. Further, Westcoast would be required to confirm in its monthly construction progress reports whether any vegetation clearing or topsoil removal occurred outside of restricted periods for non-migratory birds protected under provincial jurisdiction and for migratory birds protected under federal jurisdiction. If Westcoast cannot provide this confirmation, it would be required to provide a summary of the results of surveys conducted before starting vegetation clearing or topsoil removal to identify any birds and active nests in directly affected areas, along with the alternative mitigation implemented. This reporting requirement is intended to increase transparency in Westcoast's decision-making related to construction within sensitive timing windows and setback distances. It is also intended to confirm that appropriate alternative mitigation was implemented in such cases.

With respect to other species with sensitive timing periods that are of interest to Indigenous Peoples, the Commission notes Westcoast's commitment to continue engaging with interested Indigenous Peoples and applicable regulatory authorities in developing mitigation. In response to a question from Cook's Ferry Indian Band regarding Westcoast's treatment of bear denning periods, Westcoast committed to considering the denning period for black bears separately from grizzly bears when the Wildlife and Wildlife Habitat Management Plan is updated before starting construction. Kelly Lake Cree Nation also submitted that Indigenous Peoples' participation should include a review of proposed timing windows, habitat protection measures, and monitoring protocols to ensure they reflect Indigenous knowledge of species life cycles and habitat use.

The Commission is satisfied that Westcoast's commitments, combined with the requirements of **Conditions 9 and 26**, would result in meaningful review and integration of feedback related to species with sensitive timing windows and setbacks. The updated EPPs required by **Condition 9** would include a plan-specific summary of Westcoast's incorporation of Indigenous knowledge and results of its engagement with Indigenous Peoples and regulatory authorities, including the Wildlife and Wildlife Habitat Management Plan. The Commission expects this process to capture and reflect Indigenous knowledge on, and regulatory authorities' experience with, species life cycles and habitat use.

Traffic impacts

Westcoast stated that Project-related traffic and equipment may increase the risk of vehicle strikes with wildlife. The Commission is of the view that Westcoast's mitigation for traffic, vehicles, and equipment-related wildlife incidents is appropriate and would reduce the risk to wildlife health and mortality associated with the Project. Species such as snakes and American badger, a species at

risk, are particularly vulnerable to road mortality. The Commission is of the view that Westcoast's mitigation measures go beyond standard mitigation practices and demonstrate consideration of species-specific requirements. In addition, Westcoast committed to processes for reporting, adaptive management, and documentation related to wildlife incidents, including road mortality.

During Westcoast's Project engagement, Indigenous Peoples expressed concerns about increased risks to snake mortality, particularly Western rattlesnake, due to road traffic. Westcoast also noted that road mortality is a main threat to American badger, with risks of Project-related vehicle strikes increasing when traffic volumes are highest (e.g., peak workforce during construction) and during seasons or times of day when American badger are moving or when visibility is low (e.g., during dawn, dusk, foggy conditions).

To address these risks, Westcoast proposed general mitigation measures such as confining motorized vehicle traffic and equipment to the approved and staked Project footprint and access roads, using multi-passenger vehicles, and posting lowered speed limit signage under specific conditions or areas where wildlife concerns have been identified. In areas identified as important for snake migration, Westcoast is considering additional measures such as using pilot vehicles, installing permanent fencing or underpasses, and awareness presentations to further reduce road mortality risks. The Commission expects to see Westcoast's final mitigation strategies in its updated Wildlife and Wildlife Habitat Management Plan, which would be included in its filing under **Condition 9** (Updated EPPs).

Westcoast further explained its procedures to monitor and adaptively manage mitigation success for wildlife interactions, including those related to Project traffic, vehicles, and equipment. These procedures include identifying, documenting, and tracking specific locations and site-specific mitigation measures, reasons for alternate mitigation (if applied), and any follow-up actions needed. Westcoast would assign responsibilities to its Environmental Inspectors and Environmental Advisors related to frequent reviews of wildlife encounter reports, identifying additional site-specific mitigation measures or follow-up measures where appropriate, and documenting these actions. Further, Westcoast committed to including an evaluation of mitigation success in its Project as-built reports.

In response to questions from Cook's Ferry Indian Band on reporting of incidental mortality, Westcoast explained that its Wildlife and Wildlife Habitat Management Plan included in its EPPs currently outlines procedures for reporting and tracking wildlife encounters but does not include incidental mortalities. To address this gap, Westcoast committed to updating its EPPs to require reporting incidental wildlife mortalities in its environmental inspection reports through all Project phases, including during post-construction environmental monitoring. The Commission finds Westcoast's reporting commitment to be responsive to the concerns raised, and that the transparency would promote confidence in Westcoast's mitigation measures.

Access and human-wildlife conflict

Intervenors raised concerns about the effects of access roads and linear sight lines on wildlife, including both increased predation and increased hunting by non-Indigenous people.
The Commission is of the view that Westcoast's mitigation measures for access management and line-of-sight controls include important measures to reduce residual Project effects on wildlife.

Cook's Ferry Indian Band, Prophet River First Nation, and Saulteau First Nations shared observations of increased wildlife predation along linear rights-of-way, as well as increased access and hunting pressures. As stated by Elder Tom Aird of Saulteau First Nations:

> The challenge for you is, what can we do better? That's the challenge. We've got equipment in there. Is this a chance for us to reduce the line-of-sights by building wildlife piles? Is there a chance to create wildlife habitat by flipping trees over and sticking them in the ground outside creating wildlife trees. This is a chance to do some of the stuff we did wrong better. If we don't recognize that and talk about that, we're just going to make the same mistakes. When you look at a pipeline right-of-way and you can see 10 kilometres up there, the success of predation on that pipeline right-of-way is staggering.

Prophet River First Nation and Yale First Nation raised concerns regarding the role of right-of-way access in enabling hunter access to wildlife. In addition, Nazko First Nation advocated for access control informed by Indigenous Peoples' participation and knowledge.

In response, Westcoast pointed to mitigation measures contained in its EPPs. It submitted that residual effects from increased access and sight lines would be reduced by installing access and line-of-sight barriers, reclaiming the Project footprint, and decommissioning and reclaiming temporary access at the end of construction. Westcoast stated that temporary access control measures during periods of inactivity during Project construction may include signs, gates, or other temporary barriers, or periodic monitoring and security to discourage human access on the Project footprint. Following construction, Westcoast would implement permanent access control measures in suitable locations, using a combination of immediate measures (e.g., barriers) and vegetation plantings that would eventually become permanent barriers.

The Commission considers Westcoast's mitigation measures and commitments as important measures to reduce Project effects on wildlife health and mortality. Accordingly, the Commission considers it necessary to impose a requirement in **Condition 41** (Post-construction environmental monitoring reports) that would require Westcoast to document, among other things, any failures in access control, including their locations and planned corrective measures and monitoring.

7.7.3 Project effects on caribou, mitigation, and monitoring

Westcoast stated that vegetation removal and ground disturbance from Project construction and operations would directly and indirectly affect vegetation cover and forage habitat used by Southern mountain caribou, primarily during periods of seasonal movement. Trenching and traffic during Project construction may also create temporary barriers to caribou movement and increase risks to caribou health and mortality. Increased predator access and efficiency along linear corridors can increase these risks. The Commission anticipates residual Project effects on Southern mountain caribou after mitigation. Recognizing the context of existing high cumulative effects, as described below, the Commission supports Westcoast's commitment to implementing offsets to mitigate residual Project effects. To ensure appropriate regulatory oversight over this approach, the Commission considers it necessary to impose seven conditions specific to Project effects on caribou. With the combination of Westcoast's mitigation, restoration, and offset measures, and the Commission's conditions, the Commission is of the view that the residual Project effects on caribou and the Project's contribution to cumulative effects are expected to be of low magnitude.

Southern mountain caribou are a species at risk listed as Threatened on Schedule 1 of the SARA. Westcoast indicated that 6.4 ha of Southern mountain caribou critical habitat are within the Project footprint at CS-2B, and an additional 66.6 ha of critical habitat (associated with 12 km of pipeline) are within the Project footprint of the CS-2B to CS-3 pipeline loop. These areas are designated type

1 matrix habitat within the Kennedy Siding caribou range, which is part of the Pine River Local Population Unit. Westcoast stated that this range is subject to high existing cumulative effects above the critical habitat disturbance threshold of 35 per cent, with range-scale disturbance estimates increasing from approximately 27 per cent in 2014 to approximately 38 per cent in 2018.

Westcoast's submitted that avoidance is the most effective approach in the mitigation hierarchy, followed by minimizing Project interactions with caribou habitat. It stated that it has taken steps to avoid caribou areas where practical, parallelling and using linear disturbances such as roads and previously-cleared corridors to reduce fragmentation, narrowing the Project footprint, and limiting temporary workspace in these areas. Where areas of additional temporary workspace and access roads needed for Project construction and operations are not yet identified, Westcoast committed to using existing access roads and locating temporary workspace within existing disturbances to the extent practical. Where avoidance is not possible, Westcoast proposed additional mitigation measures to reduce Project effects on caribou. These include soil stripping and handling procedures to reduce effects on ground lichen, scheduling pipe stringing and trenching outside of fall and winter migratory periods, and adding line-of-sight screens.

After mitigation, Westcoast submitted that residual effects on Southern mountain caribou would include loss or alteration of habitat (including mature conifer forest), barriers to movement, and increased risk to caribou health and mortality. To address these predicted residual effects, Westcoast committed to implementing caribou habitat restoration and offsets for the Project, in consultation with Indigenous communities and provincial and federal regulatory authorities. Westcoast stated that it would consider a combination of ecological and functional habitat restoration techniques on and off the Project footprint, with a target outcome of no net loss of caribou habitat resulting from the Project. Westcoast further stated that it would calculate the required offsets for caribou by assessing the combined residual direct and indirect effects of the Project after implementing onsite habitat restoration. Westcoast noted that the BC Ministry of Water, Land and Resource Stewardship has suggested using the BC Caribou Habitat Offset Decision Support Tool to estimate offset ratios. ECCC stated its support for Westcoast to engage with the Province of BC about using the support tool. ECCC also recommended continued consultation with Indigenous Peoples, ECCC itself, and provincial caribou experts. Westcoast agreed with ECCC's recommendations and confirmed that it has engaged and would continue to engage all identified parties regarding offsets for caribou, including on the use of the BC Caribou Habitat Offset Decision Support Tool.

To verify Westcoast's commitment to caribou habitat restoration and offsets, the Commission considers it necessary to impose **Condition 6** (Caribou Habitat Restoration Plan), **Condition 7** (Preliminary Caribou Habitat Offset Measures Plan), and **Condition 44** (Final Caribou Habitat Offset Measures Plan). Each of these plans would require Westcoast to file detailed information demonstrating its ability to contribute to achieving no net loss of caribou critical habitat, supported by clear and transparent rationales for all calculations and measures, and to document sources of uncertainty. In addition, each plan must include a plan-specific summary of Westcoast's consultation with potentially affected Indigenous Peoples and regulatory authorities, outlining how their recommendations were incorporated into the plans.

The Commission expects the Final Caribou Habitat Offset Measures Plan required by **Condition 44** to be similar to the preliminary plan filed under **Condition 7**, though Westcoast would file it following construction and it must include final offset calculations based on the residual effects after implementing the restoration measures outlined in the Caribou Habitat Restoration Plan filed under

Condition 6. To document the restoration measures implemented, the residual effects, and temporal delays and uncertainties, the Commission considers it necessary to impose **Condition 43** (Caribou Habitat Restoration Implementation Report) which would require Westcoast to report on its implemented caribou habitat restoration measures. Similarly, **Condition 46** (Caribou Habitat Offset Measures Implementation Report) would require Westcoast to document all offset measures implemented under its Final Caribou Habitat Offset Measures Plan required by **Condition 44**.

In requiring Westcoast to develop the above-noted plans, the Commission was mindful of the importance of engagement and cooperation with both Indigenous Peoples and regulatory authorities. Kelly Lake Cree Nation submitted that developing any offsetting, management, or mitigation strategies should be done in close collaboration with Indigenous communities, including Kelly Lake Cree Nation. Prophet River First Nation shared concerns related to **Conditions 6 and 7** when the Commission issued them for comment, submitted that developing an offset or mitigation strategy for caribou habitat is particularly challenging due to caribou's almost exclusive reliance on mature landscapes in forested or alpine areas. They stated that replacing these habitats and enhancing or creating similar ones is likely to take decades to centuries. They also argued that any offsetting or mitigation plans must include a suitable land base within caribou range in the Project areas and that any conditions regarding caribou must require Westcoast to implement a minimum 2:1 ratio for caribou protection. The Commission does not typically prescribe offset ratios, as different project circumstances and site- and landscape-specific elements may warrant different approaches and offset calculations. However, the Commission expects Westcoast to provide in its condition filings clear justification and rationale for its offset ratio calculations, including documented evidence that incorporates western science and Indigenous knowledge. The Commission is of the view that Westcoast's consultation on the plans would be important in identifying and supporting the most effective strategies for restoration and offsets.

The Commission is of the view that the timing for finalizing the Caribou Habitat Restoration and Offset Measures Plans would not be a barrier to their effectiveness. Tsʔéscenʔ First Nation raised concerns about the absence of a finalized Caribou Habitat Restoration and Offset Measures Plan and Westcoast's ability to adequately address the needs of this at-risk species. Similarly, Xatśūll First Nation expressed concerns regarding a condition to develop the caribou habitat restoration and offsets plans, describing it as a "plan to make a plan." In response, Westcoast took the position that its plans include proven mitigation measures used on other federally regulated pipeline projects, and which have undergone an adaptive management process and have been documented in post-construction monitoring reports. Westcoast also pointed to past projects and stated that a number of them have interacted with caribou habitat. Westcoast submitted that in its filed plans, it would provide additional information on the efficacy of mitigations developed for caribou habitat on previous projects. It also indicated that it is drafting its caribou plans with input from engagement and site visits, and that it would demonstrate in its engagement summaries that it has heard and incorporated input into the plans. The Commission is satisfied that Westcoast's engagement on the plans, combined with using known mitigation measures that are undergoing continual improvement, would be appropriate for preparing effective caribou habitat restoration and offset measures plans.

To verify and document the effectiveness of the restoration and offset measures used, the Commission considers it necessary to impose **Condition 45** (Caribou Habitat Restoration and Offset Measures Monitoring Program) and **Condition 47** (Caribou Habitat Restoration and Offset Measures Monitoring Reports). This monitoring program is a distinct program specific to caribou habitat restoration and offset areas, with a minimum monitoring period of 10 years due to the extended timelines involved in restoring, enhancing, or creating suitable caribou habitats. The Commission supports Prophet River First Nation's recommendation for Westcoast to regularly test and report on whether the caribou plans are achieving functionality and, if not, to amend and adapt the plans to ensure operational effectiveness in consultation and cooperation with affected Indigenous Peoples. This recommendation is addressed in **Condition 45**, which would require Westcoast to explain how it would confirm restoration and offset measure effectiveness based on monitoring results, and to provide protocols for how restoration and offset measures would be adapted as required. Consistent with the other caribou plans, **Condition 45** would require a plan-specific summary of Westcoast's engagement with potentially affected Indigenous Peoples and regulatory authorities, including how the results and recommendations were incorporated into the plans. **Condition 47** would require Westcoast to file caribou monitoring reports outlining the results of the program required by **Condition 45**, any adaptive management responses, and the schedule for reporting on monitoring results in accordance with the program.

7.7.4 Project effects on critical habitat for other wildlife listed under the SARA, mitigation, and monitoring

The Commission finds that potential Project effects on species at risk and critical habitat would be avoided, minimized, or mitigated appropriately through Westcoast's routing, surveys, site-specific mitigation, and commitments to ongoing engagement. The Commission also recognizes that additional surveys and baseline information collection are ongoing. With Westcoast's commitments and the Commission's conditions, the Commission is of the view that the residual Project effects on critical habitat are expected to be of low magnitude.

Westcoast provided an analysis of potential effects and mitigation for each of the 10 species at risk with critical habitat intersected by the Project footprint, including Southern mountain caribou which is discussed in **Section 7.7.3**. **Table 7-5** shows Westcoast's submissions on the approximate area of critical habitat for the remaining nine species at risk listed on Schedule 1 of the SARA with critical habitat intersected by the Project footprint. This total area is inclusive of existing disturbance (e.g., compressor stations). Westcoast stated that field studies in 2025 would further inform the extent of Project interactions with critical habitat, including quantifying areas of permanent, temporary, and indirect disturbance for each species.

Table 7-5: Approximate area of critical habitat located within the Project footprint

Species	Project component(s)	Area (ha) of critical habitat
American badger, *jeffersonii* ssp.	• CS-6A to CS-6B pipeline loop • CS-6B to CS-7 pipeline loop • CS-6B power line • CS-7 (no new disturbance)	175.2
barn owl	• CS-8A to CS-9 pipeline loop • CS-9 to Huntingdon pipeline loop • MS-16 (no new disturbance)	0.5
Lewis's woodpecker	• CS-7 (no new disturbance)	7.3
spotted owl	• CS-8B	6.2
Williamson's sapsucker	• CS-8A power line • CS-8A	30
Great Basin spadefoot	• CS-6B to CS-7 pipeline loop	5.6
Oregon spotted frog	• CS-8B to CS-9 pipeline loop	4.5
Western rattlesnake	• CS-7 (no new disturbance)	7.3
Oregon forestsnail	• CS-8B to CS-9 pipeline loop • CS-9 (no new disturbance)	4.7

The Commission is satisfied that the Project's routing avoids many potential effects on four of these species' critical habitat (Western rattlesnake, Lewis's woodpecker, spotted owl, and barn owl). Of these, Westcoast submitted that the Project would not result in any new disturbance within critical habitat for Western rattlesnake and Lewis's woodpecker. Project interactions with both species' critical habitat would be limited to upgrades at CS-7, which would be entirely within the existing facility. However, Westcoast stated that evidence of Lewis's woodpecker nesting was detected near the CS-7 to CS-8A pipeline loop, outside of designated critical habitat. It added that field surveys in 2025 would collect information to confirm potential interactions with Lewis's woodpecker habitat and inform Project mitigation, including habitat reclamation measures where applicable.

Peters First Nation submitted that the Project footprint intersects critical habitat for spotted owl in the Project's southern section that crosses Peters First Nation territory. They indicated that spotted owl face heightened risks due to habitat removal and potential nest disturbances during Project construction and operations. ECCC noted that the *Amended Recovery Strategy for the Spotted Owl caurina subspecies (Strix occidentalis caurina) in Canada* was published in 2024, after Westcoast filed its Project application. ECCC recommended that Westcoast consider this updated version in its impact assessment and mitigation design. In response, Westcoast confirmed that its mitigation measures align with the objectives and strategies of the updated version and that it would consider any further updates to the strategy in its Project planning and mitigation for spotted owl, to the extent that information is available before starting construction.

Westcoast indicated that in removing the CS-8B power line from the Project scope, Project interactions with spotted owl critical habitat (as designated by the amended recovery strategy

mentioned above) were reduced to approximately 3.57 ha of disturbance at CS-8B. This includes 2.24 ha of permanent footprint and 1.33 ha of temporary workspace. Westcoast noted that this site is located on private property, is highly fragmented, and has been substantively altered by the existing facility, roads, and rural development. In its current condition, this site is not considered suitable habitat for spotted owl. The Commission agrees that given the nature and location of the Project disturbance, the magnitude of Project effects on spotted owl critical habitat is expected to be low.

Similarly, Westcoast indicated that removing the CS-8B power line from the Project scope eliminated Project interactions with the majority of barn owl critical habitat. Westcoast estimated that 0.5 ha of critical habitat remains in the Project footprint, which is undergoing field surveys to further inform the extent of its interaction with the Project.

The Commission finds that Westcoast's approach to the mitigation hierarchy for critical habitat for the remaining six species is appropriate and would help reduce the residual Project effects. Westcoast submitted that its focus is on the first steps of the mitigation hierarchy (i.e., first avoiding, then minimizing and mitigating, then restoring onsite). ECCC recommended offsets for any effects on suitable habitats, critical habitats, or habitat features of species at risk that cannot be avoided. It also recommended that these be undertaken in accordance with ECCC's *Operational Framework for Use of Conservation Allowances* and in consultation with the appropriate regulators, Indigenous Peoples, and species experts. Westcoast responded that offsets are not expected to be necessary to address the anticipated residual effects that remain after its mitigation and onsite restoration. Nonetheless, Westcoast committed to replacing suitable nest trees for Williamson's sapsucker and Lewis's woodpecker outside the Project footprint to address the time lag for restored habitat to become functional for nesting. To account for uncertainty, Westcoast would replace a higher number of nest trees than are removed for the Project. In addition, Westcoast stated that it would continue to engage with Indigenous Peoples on its Wildlife Species at Risk Mitigation Plan, which would address planning and executing offsets proposed for species at risk critical habitat.

For Great Basin spadefoot and Oregon spotted frog, Westcoast submitted that there would be no residual effects that warrant offsets, as mitigation and habitat reclamation measures are expected to recover functional habitat for each species. In areas of known interaction with suitable Oregon spotted frog habitat and population at Maria Slough, Westcoast committed to trenchless crossings. It stated that reclamation, where appropriate, would target enhancing the habitat compared to current conditions (e.g., managing existing invasive plants and establishing native vegetation). Similarly, Westcoast stated that there is potential for enhancing Oregon forestsnail habitat via invasive plant management and reestablishing native vegetation and coarse woody debris cover that are important attributes for the species.

Regarding American badger *jeffersonii* ssp., Westcoast stated that Project effects do not align with any of the activities identified in the species' recovery strategy as being likely to result in the destruction of critical habitat. Accordingly, there are no predicted residual effects on American badger critical habitat that warrant offsets.

To account for information obtained in 2025 baseline surveys and to assure the Commission that appropriate site- and species-specific mitigation and restoration measures are being applied, the Commission considers it necessary to impose **Condition 10** (Wildlife Species at Risk Mitigation Plans). This condition would require Westcoast to provide detailed information on the critical habitat affected for each wildlife species and the mitigation and restoration measures that would contribute to achieving no net loss of critical habitat. Further, the plans must include a summary of Westcoast's

incorporation of Indigenous knowledge and engagement with potentially affected Indigenous Peoples and regulatory authorities specific to the plan, including how the results and recommendations were incorporated. Westcoast also committed to including in its reclamation plan and post-construction monitoring reports its goals, measurable objectives, and monitoring program for restoring species at risk critical habitat. Westcoast would conduct post-construction monitoring of critical habitat restoration and mitigation measures in accordance with **Condition 41** (Post-construction environmental monitoring reports).

The Commission is of the view that the timing for finalizing the Wildlife Species at Risk Mitigation Plans would not be a barrier to their effectiveness. Nazko First Nation and Nicomen Indian Band expressed concerns that Westcoast's mitigation relies too heavily on post-approval management plans, including the Wildlife Species at Risk Mitigation Plans, to determine mitigation efficacy. In response, Westcoast argued that its plans include proven mitigation measures used on other federally regulated pipeline projects, and which have undergone an adaptive management process and been documented in post-construction monitoring reports. Westcoast also stated that using post-approval plans allows more time for it to engage with Indigenous Peoples on those plans. It committed to demonstrating in the included engagement summaries that it has heard and incorporated input into the plans. Based on Westcoast's filed information and commitments, the Commission is satisfied that Westcoast's continued engagement, combined with its use of established and continually improving mitigation measures and its compliance with **Condition 41**, would support developing effective Wildlife Species at Risk Mitigation Plans that would reduce Project effects.

7.7.5 Residual and cumulative effects

As described in **Table 7-6**, the Commission finds that the residual Project effects on wildlife and wildlife habitat are expected to be short to long term in duration, local, and of low to medium magnitude. For most focal species, the residual Project effects are expected to be of low magnitude and significance. However, certain residual Project effects are expected to be of relatively elevated magnitude (low-medium to medium), including:

- loss or alteration of habitat for fisher, breeding and migratory bird communities, Williamson's sapsucker, amphibians, snakes and lizards, Western painted turtle, and Oregon forestsnail;
- barriers to movement for Oregon forestsnail; and
- increased risk to health and mortality for breeding and migratory bird communities, snakes and lizards, Western painted turtle, and Oregon forestsnail.

While the Project's contribution to total cumulative effects is expected to be low, the Commission finds that it would contribute to overall low to high cumulative effects on wildlife and wildlife habitat in the Project RSAs. Several Indigenous Peoples described existing adverse cumulative effects on wildlife and wildlife habitat in all areas of the Project, including changes to wildlife presence, altered predator-prey dynamics, and decreased health of individuals. Westcoast assessed the cumulative effects of existing activities and disturbances (anthropogenic and wildfire) and reasonably foreseeable developments, in combination with Project residual effects, based on temporal and spatial overlap within the Project RSA, Caribou RSA, and Grizzly Bear RSA. Westcoast assessed cumulative effects on habitat loss or alteration, barriers to movement, and increased risk to health and mortality.

In evaluating cumulative effects on habitat loss or alteration, Westcoast compared quantitative estimates of cumulative disturbance within the Project RSAs against ecological response thresholds identified in the literature. Ecological thresholds were indicated when cumulative habitat loss reached 50-90 per cent, with the highest risks associated with cumulative effects and habitat fragmentation occurring where landscape-scale habitat loss reached over 70 per cent. Westcoast estimated that cumulative disturbance across the Project Wildlife RSAs was approximately 54.4 per cent, with the Project contributing an additional 1 239.1 ha (0.1 per cent) of new disturbance. Notably, cumulative habitat loss varied widely by Project segment, ranging from 11.1 per cent in the CS-2B RSA (north section) to 80.8 per cent in the CS-9 to Huntingdon pipeline loop and MS-16 RSA (south section).

To assess cumulative barriers to movement and increased risk to health and mortality, Westcoast used qualitative and quantitative analyses. It identified widening an existing right-of-way as a potential adverse cumulative effect on ungulates and fisher movement. However, it argued that the Project would contribute negligibly to linear disturbance density and motorized access density, which are important metrics within the Grizzly Bear RSA.

Considering Westcoast's mitigation measures, its restoration and offset measures, and the Commission's conditions, the Commission finds that the overall significance of Project effects on wildlife and wildlife habitat is expected to be medium.

Table 7-6: Evaluation of significance of residual effects on wildlife and wildlife habitat

Wildlife and wildlife habitat		
Residual effects: • Habitat loss or alteration • Barriers to wildlife movement • Increased risk to wildlife health and mortality		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	Sensory effects on wildlife and increased mortality risk are expected to be short term in duration and limited to the construction phase. Medium- to long-term effects are due to habitat loss and would persist until the rights-of-way become sufficiently revegetated to provide effective habitat.
Geographic extent	Local	Effects are expected to be limited to the LSA.
Magnitude	Low to medium (adverse)	Overall effects are expected to be of low magnitude given Westcoast's mitigation measures and commitments, and the Commission's conditions. These commitments and conditions include offsetting residual effects on caribou critical habitat and preparing wildlife species at risk mitigation plans with the goal of no net loss of critical habitat. For species sensitive to forest cover loss and wetland/riparian alteration (e.g., fisher, some breeding and migratory bird communities, herptiles, Oregon forestsnail), effects may be of low to medium magnitude.

Cumulative effects	Medium (adverse)	The overall cumulative effects on loss or alteration of wildlife habitat in the Project RSAs range from low to medium in the north sections, medium to high in the south sections, medium in the Grizzly Bear RSA, and high in the Caribou RSA. Overall cumulative effects on barriers to wildlife movement and increased risk to wildlife health and mortality would be of medium significance. Although the Project would contribute additional effects on wildlife and wildlife habitat, given the implementation of Westcoast's mitigation measures and commitments, and the Commission's conditions, including regarding offsetting residual effects where required and working towards no net loss, the Project's contribution to total cumulative effects is expected to be low.
Significance	Medium (adverse)	Residual Project effects are expected to be short to long term in duration, local, and of low to medium magnitude. While the Project's contribution to cumulative effects is expected to be low, it would contribute to already low to high cumulative effects on wildlife and wildlife habitat in the Project areas. With Westcoast's mitigation measures and commitments, its restoration and offset measures, and the Commission's conditions, the significance of Project effects on wildlife and wildlife habitat is expected to be medium.

7.8 Air quality

The Commission finds that Project activities have the potential to affect air quality through emissions of air contaminants during both Project construction and operations. The Commission finds that construction-related emissions from the Project are anticipated to be minor, transient, and short term in duration. The Project involves adding electric motor drive compressor units and deactivating existing gas-fired compressor units at certain compressor stations. These changes are expected to result in a net reduction in ambient air pollutant concentrations during operations, with predicted levels remaining below regulatory standards.

The Commission finds that while the implementation of Westcoast's mitigation measures and commitments would effectively reduce potential effects on air quality, residual Project effects are expected to remain. The Commission determined that these residual Project effects are predicted to be short to long term in duration, localized within the LSA, and of low magnitude.

The Commission finds that the Project's contribution to total cumulative effects is expected to be negligible. This considers that air emissions from the Project are not expected to interact materially with emissions from existing and future projects and activities because the residual Project effects would be localized and would not overlap spatially with planned future projects. The overall significance on air quality is expected to be low, with no predicted exceedances of regulatory criteria or concerns regarding frequency, extent, or exposure of sensitive receptors.

7.8.1 Relevant setting

To assess the Project's potential effects on air quality, Westcoast studied an area that extended to a 5 km radius from the centreline of the Project footprint and a 30 km by 30 km square centered around each of the four upgraded compressor stations (CS-2B, CS-6B, CS-8A, and CS-8B). Westcoast used publicly available air quality monitoring and meteorological databases along with dispersion modelling of current emission sources at or near the Project components. Westcoast submitted that baseline air quality characterizations at all locations are below BC's air quality objectives and the *Canadian Ambient Air Quality Standards,* except for CS-2B where the maximum predicted concentrations at baseline exceeded the criteria for nitrogen dioxide (**NO_2**).

7.8.2 Project effects, mitigation, and monitoring

The Commission accepts Westcoast's identification of NO_2 and other oxides of nitrogen (**NO_x**), sulphur dioxide (**SO_2**), carbon monoxide (**CO**), and particulate matter (**$PM_{2.5}$/PM_{10}**) as criteria air contaminants (**CACs**) of concern that would result from the Project. Westcoast described emission sources during construction as fuel combustion from vehicles and equipment, dust, and smoke from burning cleared vegetation. During operations, new emissions sources would include a 20-megawatt natural gas-fired turbine compressor unit and a gas-fired power generator at CS-2B. Existing gas-fired compressor units at CS-6B, CS-8A, and CS-8B would be replaced with electric-driven units, which Westcoast submitted would not create emissions. The power lines themselves would not produce operational air emissions.

The following sections describe effects of Project construction and operational emissions, relevant mitigation, and a discussion about why additional air quality management and monitoring are not needed.

7.8.2.1 Construction emissions

Westcoast estimated that construction activities would emit approximately 137.8 tonnes of NO_2, 5.3 tonnes of SO_2, 1 088.1 tonnes of CO, 376.5 tonnes of $PM_{2.5}$, and 3 056.9 tonnes of PM_{10} across all Project components. The Commission finds that Westcoast's mitigation measures for construction-related emissions are in line with industry standards and best practices and is satisfied that they are capable of reducing the magnitude of CAC emissions from construction.

Regarding quantifying construction emissions, Westcoast did not conduct air dispersion modelling of construction emissions. Instead, it estimated the total construction emissions by calculating equipment and vehicle use from a sample of representative projects that were similar in size and scope, in combination with relevant emissions factors for fuel combustion, dust, and land clearing and burning. Westcoast then compared the construction emissions for each Project component against those generated by CS-8B, which has the lowest current operating emissions. Westcoast estimated that emissions from pipeline construction would be greater than those from current operations at CS-8B. However, these emissions would be of short duration (months) and transient over the 11 pipeline loops.

Similarly, Westcoast submitted that emissions from power line construction would be of short duration and transient. During construction, CO and $PM_{2.5}$/PM_{10} emissions would be higher than what is produced by current operations at CS-8B but there would be fewer NO_x and SO_2 emissions. Westcoast estimated that emissions from construction activities at each compressor station would

be less than what is generated from current operations at CS-8B, except for $PM_{2.5}$/PM_{10} emissions from land clearing at CS-6B and CS-8A.

ECCC commented that Westcoast did not account for construction-related emissions in its air dispersion modelling. However, the Commission is of the view that modelling construction emissions is not necessary because the transient, short-term nature of the construction emissions makes detailed modelling less useful. For linear projects such as this one, modelling construction air emissions at receptors is typically less critical than for projects where construction is localized and receptors are subject to longer exposure.

Xatśūll First Nation stressed that it is important that Project construction activities cause as little air pollution as possible to protect broader ecosystem health. They encouraged Westcoast to keep this goal in mind as it develops its contractor and operator training.

Westcoast's mitigation for construction-related emissions includes restricting vehicle idling time, ensuring that pollutant abatement equipment on vehicles and equipment is in good working order, and using approved dust suppressants when required. The Commission is satisfied with Westcoast's clarification in response to ECCC that reducing idling time would be implemented through contractor and operator training, and that maintaining equipment in working order would be done as per manufacturer specifications and frequency. In addition, Westcoast would salvage timber as per its Timber Salvage Plan. It would also follow BC's *Open Burning and Smoke Control Regulation*[72] and use BC's Venting Index when planning and scheduling burning. The Commission is satisfied that these mitigation measures are adequate to reduce the magnitude of CAC emissions from construction.

7.8.2.2 Operational emissions

Westcoast submitted that operational emissions from the four compressor stations to be upgraded include NO_2, SO_2, $PM_{2.5}$, and CO. The Commission finds that Westcoast's compressor unit upgrades are an appropriate and effective mitigation for the Project's operational air emissions because replacing the existing equipment with new gas-fired and electric motor drive compressor units would improve air emissions overall, including at sensitive receptor locations.

Westcoast's operational air emissions dispersion modelling estimates at each compressor station showed decreases in air emissions at each station compared to current levels. Further, the modelling predicted that CAC emissions would fall below BC's air quality objectives and the *Canadian Ambient Air Quality Standards* at sensitive receptor locations. The conservative modelling assumptions, based on continuous and simultaneous operations at maximum capacity, indicate that actual ambient concentrations during typical operations would likely be even lower.

The Commission notes that the primary reason for the decrease in operational emissions is the replacement of older technology with best available technology, including low NO_x combustion and electric-driven compressor units and connecting three compressor stations to the BC Hydro grid.

[72] BC Reg 152/2019.

7.8.2.3 Air quality management and monitoring

The Commission is of the view that additional air quality monitoring and verification, beyond what may be required by provincial permitting processes, is not necessary because the Project is expected to reduce overall air emissions by upgrading compressor station equipment. The Commission finds that Westcoast's Project design, including using electric motor drive units, would reduce air emissions and CACs at the upgraded compressor stations.

Given the projected overall emission reductions, the Commission is of the view that a separate air quality management plan and dedicated monitoring program, as recommended by ECCC, is not necessary for the Project. Similarly, the Commission considers a continuous monitoring and verification plan, as recommended by Kelly Lake Cree Nation, Nicomen Indian Band, and Peters First Nation, unnecessary given that the Project is expected to reduce overall emissions from current operational levels. Westcoast submitted that emissions during Project operations would be minimized by electrifying CS-6B, CS-8A, and CS-8B, by using best achievable technology for CS-2B, and through any conditions of the required Waste Discharge Authorization administered by the BC Ministry of Environment and Parks under the *Environmental Management Act.* The Commission is satisfied that, given Westcoast's mitigation measures and the overall reduction in air emissions, additional monitoring and verification is not warranted.

7.8.3 Residual and cumulative effects

As described in **Table 7-7**, the Commission finds that the residual Project effects on air quality after the implementation of Westcoast's mitigation would be adverse, short to long term in duration, local, of low magnitude, and of low significance. The Commission accepts Westcoast's submission that the residual effects on air quality would be localized and would not overlap spatially with residual effects from other planned projects and activities within the study areas.

Table 7-7: Evaluation of significance of residual effects on air quality

Air quality		
Residual effects: • Change in ambient air pollutant concentrations		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	Effects are expected to be short term in duration at any given location along the Project during construction, and long term in duration during Project operations at the four upgraded compressor stations.
Geographic extent	Local	Effects are expected to be limited to the LSA, with emission concentrations decreasing with distance from the Project.
Magnitude	Low (adverse)	Effects are expected to be of low magnitude given Westcoast's mitigation and the replacement of four older gas-fired turbine compressors with one newer gas-fired model and three electric motor drive compressor units.
Cumulative effects	Negligible (adverse)	Air emissions from the Project are not expected to interact materially with emissions from existing and future projects and activities because the residual Project effects are localized and do not overlap spatially with planned future projects. Existing baseline conditions were built into the assessment of Project effects.
Significance	Low (adverse)	Residual Project effects are expected to be short to long term in duration, local, of low magnitude, and negligibly expected to interact cumulatively with the effects of other activities.

7.9 Project contribution to atmospheric GHG emissions

The Commission finds that the residual Project effects on atmospheric GHG emissions would be long term in duration, global, low (positive) in magnitude, and of low significance. The Commission is of the view that the Project's contribution to atmospheric GHGs would not materially hinder Canada's ability to meet its climate change commitments.

7.9.1 Project effects, mitigation, and monitoring

The Commission finds that Westcoast's assessment of the Project's contribution to atmospheric GHG emissions follows the Filing Manual and guidance in ECCC's *Strategic Assessment of Climate Change* (**SACC**). The assessment included all relevant sources and calculations of emissions and appropriately evaluates best available technologies and practices. Westcoast considered the GHG emissions associated with both Project construction and operations and provided a credible plan that describes how the Project would achieve net-zero emissions by 2050. It also included an upstream emissions estimate.

In its assessment, Westcoast considered emissions of three GHGs – carbon dioxide, methane, and nitrous oxide. Westcoast stated that Project construction emissions would occur due to fuel combustion from vehicles and equipment, as well as land clearing for the pipelines, power lines, and facility expansions. During Project operations, emissions would be generated by a new 20-megawatt gas-fueled turbine compressor unit at CS-2B and three electric motor drive compressor units at CS-6B, CS-8A, and CS-8B. Westcoast submitted that no direct emissions would result from the electric motor drive compressor units, but indirect emissions would occur at BC Hydro's power generation facilities. Westcoast accounted for these acquired emissions in its calculations. In addition, Westcoast stated that taking three gas-fueled turbine compressor units out of service at CS-2B, CS-6B, and CS-8A would result in avoided emissions, as defined in the SACC, since the emissions exist before the Project and are removed as a result of it. Westcoast also conducted an assessment of upstream emissions following the Filing Manual and SACC guidance.

Through the CCC, Matsqui First Nation submitted that the Project would result in a substantial increase in GHGs and climate change effects. This was based on an environmental assessment undertaken by Westcoast in accordance with Matsqui First Nation's *Environmental Assessment Law* and terms of reference agreed to by Matsqui First Nation and Westcoast. Matsqui First Nation provided estimates to the CCC of total direct emissions from Project operations, upstream activities (gas extraction), and downstream activities (customer use). Westcoast clarified that the Matsqui First Nation environmental assessment was completed outside of the hearing, and that it included requests and requirements that differed from those in the Filing Manual, particularly with respect to including downstream GHG emissions. While the Commission acknowledges Matsqui First Nation's concerns, it cannot assign weight to the emissions estimates that the Nation provided without any supporting information on assessment methods, calculations, and assumptions. This information is not on the hearing record.

The Commission finds that Westcoast's GHG assessment methods are persuasive because they are consistent with the Filing Manual and align with the SACC and its associated draft technical guides. The CER's assessment process considers direct GHG emissions from a project's construction and operations as well as indirect GHG emissions from any acquired energy source (e.g., from a third party). When estimated upstream emissions are greater than 500 kilotonnes of carbon dioxide equivalent (**kt CO_2e**), the Filing Manual requires a quantitative estimate of upstream emissions based on a project's maximum throughput, and an analysis of incrementality. In line with the SACC and its associated draft technical guides, the Filing Manual does not require an estimate of downstream emissions. In determining net project GHG emissions for the purposes of achieving net-zero emissions, the CER adopts the SACC approach, which allows for subtracting avoided domestic GHG emissions from the sum of the project's direct and acquired operational emissions. Based on Westcoast's use of this framework, the Commission is satisfied that it can rely on Westcoast's methods and emissions estimates to draw conclusions about the magnitude of the Project's GHG emissions and its contribution to the Government of Canada's ability to meet its commitments in respect of climate change.

In the following subsections, the Commission discusses GHG emission generation from Project construction and operations, relevant mitigation and Commission conditions, and Westcoast's assessment of upstream emissions.

7.9.1.1 Construction GHG emissions

Westcoast submitted that the Project's total construction GHG emissions would be approximately 108.9 kt CO_2e. This includes estimated emissions from vehicles and equipment (22.58 kt CO_2e) and from land clearing (86.25 kt CO_2e), which reflects the revised CS-8A power line route and the removal of the CS-8B power line from the Project scope.

The Commission finds Westcoast's mitigation to be reasonable and consistent with industry best practices. Nazko First Nation recommended climate change measures, monitoring, mitigating, and reporting of construction-related GHG emissions. Westcoast submitted a suite of standard mitigation measures to reduce GHG emissions during construction. These included minimizing vehicle and equipment idling, maintaining equipment in good working condition as per manufacturer specifications, and implementing a reclamation plan. In addition, Westcoast provided an analysis of best available technology and best environmental practices to demonstrate how it considered existing and emerging technologies and practices in designing and planning the Project to limit its potential contribution to climate change. Westcoast identified best available technology and best environmental practices measures to reduce impacts on GHGs and carbon sinks from land clearing. These include biomass chipping and spreading, recovering merchantable timber, reclamation and revegetation, limiting surface disturbance where possible, and reclaiming all temporary access after construction to pre-construction conditions.

Given the amount of land clearing required for the Project, ECCC recommended that Westcoast evaluate the Project's impacts on carbon sinks based on the methodology outlined in the SACC and its draft technical guides. In response, Westcoast pointed to its quantitative carbon sink assessment, which estimated that tree removal within the Project footprint would result in the loss of carbon sequestration equivalent to 117 to 126 kt CO_2e over a 100-year period. The Commission finds Westcoast's calculation methods were consistent with established methodology. The Commission considered Westcoast's estimated carbon sink impact in its assessment of the Project's contribution to the Government of Canada's ability to meet its commitments in respect of climate change.

The Commission notes that Westcoast's construction emissions estimates are based on assumptions that may change during actual construction (e.g., type and number of vehicles and equipment used, fuel consumption, duration of construction, amount of land cleared, and timber salvaged). To ensure transparency and enhance regulatory oversight, the Commission considers it necessary to impose **Condition 40** (Quantification of construction-related GHG emissions) which would require Westcoast to confirm the final construction-related emissions from the Project. It would also require Westcoast to demonstrate the effectiveness of the mitigation measures applied during construction to minimize Project emissions (e.g., best available technology and best environmental practices, timber salvage). Westcoast submitted that to apply adaptive management in accordance with **Condition 40**, it would consider how GHG emissions generated from Project construction could be lowered for future projects. While Nooaitch Indian Band recommended expanding **Condition 40** to include upstream carbon emissions, the Commission determined that upstream emissions are regulated under separate processes and did not adopt this recommendation. The Commission accepts that Westcoast appropriately followed the Filing Manual and SACC guidance in its assessment of upstream emissions, as further discussed in **Section 7.9.1.3**.

7.9.1.2 Operational GHG emissions and net-zero plan

Westcoast estimated that the Project's annual operating GHG emissions would be 113.85 kt CO_2e, including both direct and acquired sources. According to Westcoast, direct operational emissions are expected to result from stationary combustion equipment at CS-2B (i.e., new gas-fueled compressor unit, generator), venting, and fugitive emissions across the Project. To manage fugitive emissions, Westcoast indicated that it would rely on its existing Leak Detection and Repair Program to limit releases. It also stated that negligible emissions would result from occasional maintenance and vegetation management during Project operations. Westcoast quantified the acquired emissions from the addition of electric motor drive compressor units at CS-6B, CS-8A, and CS-8B using the latest BC Hydro electrical emissions intensity factor and ECCC's electricity consumption emission intensity projection data.

Westcoast submitted that taking three existing gas-fueled compressor units out of service at CS-2B, CS-6B, and CS-8A, along with the associated equipment, would result in annual avoided emissions of approximately 228.43 kt CO_2e. As a result, Westcoast concluded that annual net emissions from Project operations would be negative, and therefore the Project is expected to contribute to Canada's emissions reduction targets. Westcoast submitted that Project construction and operational emissions would be offset through the emissions reduction and avoidance components of the Project.

The Commission finds that Westcoast demonstrated a clear and transparent path for the Project to align with Canada's net-zero target, as recommended by Cook's Ferry Indian Band. Westcoast projected that its Project design would achieve net negative GHG emissions (i.e., direct emissions and acquired emissions, less avoided emissions) throughout its operational life, ranging from approximately -17 kt CO_2e in the first year of Project operations to -114 kt CO_2e from the third year onward. Westcoast submitted that using electric motor drive technology for the Project aligns with Canada's efforts to reduce GHG emissions and with Enbridge's corporate commitments to reduce GHG emission intensity for its operations by 35 per cent by 2030 and achieve net-zero emissions by 2050.

While Cook's Ferry Indian Band submitted that it is unclear how operational GHGs would be regulated, reported, and enforced over the life of the Project to provide long-term accountability, in the absence of a condition requiring monitoring and verification of meeting net-zero commitments, the Commission is satisfied that existing regulatory frameworks provide sufficient oversight. This is because Westcoast is required to report annually on GHG emissions from its facilities that release 10 kt CO_2e or more per year under ECCC's GHG Reporting Program, and Westcoast stated that it would include Project emissions in its existing emissions reporting program. In addition, Westcoast must comply with the BC *Greenhouse Gas Industrial Reporting and Control Act*[73] and its regulations, which mandate reporting emissions over 10 kt CO_2e per year and independent verification of emissions reports for operations emitting more than 25 kt CO_2e. As the Project is part of Westcoast's T-South system, Westcoast would include Project emissions as part of its existing provincial reporting obligation.

The Commission finds that Westcoast's reliance on its corporate net-zero plan is appropriate in this case, given that the Project is designed to achieve net negative emissions. Westcoast confirmed that

[73] SBC 2014, c 29.

the Project's direct and acquired GHG emissions would be included in its corporate plan, which includes using carbon offsets to balance residual emissions in accordance with the SACC.

7.9.1.3 Upstream emissions

Westcoast calculated that estimated annual upstream GHG emissions for full operating years range from 487 to 575 kt CO_2e per year. It stated that it followed the SACC and its associated draft technical guides to conduct its upstream emissions assessment, which was required because estimated upstream emissions (i.e., emissions from gas production, gathering, processing, and transmission to the Project) were over 500 kt CO_2e. Westcoast took a conservative assumption that all the natural gas transported by the Project is entirely new production, and thus all predicted upstream emissions associated with the Project are incremental.

The Commission notes that the annual upstream emissions assumed to be incremental to the Project are greater than the annual net negative emissions from Project operations. However, the Commission recognizes that domestic upstream gas producers are also subject to regulatory frameworks and net-zero standards. As such, the Commission accepts that Westcoast's estimates of upstream emissions are based on a conservative assumption. The Commission considered Westcoast's estimated upstream emissions in its assessment of the Project's contribution to the Government of Canada's ability to meet its commitments in respect of climate change.

7.9.2 Residual and cumulative effects

As described in **Table 7-8**, the Commission finds that the residual Project effects on atmospheric GHGs, after accounting for Westcoast's mitigation measures, its corporate net-zero plan, and the Commission's conditions, would be long term in duration, global in extent, low (positive) in magnitude, and of low significance. While effects during construction are expected to be adverse, the operational phase is anticipated to result in an annual decrease in emissions from current operations that would offset the adverse construction effects over the Project's lifetime.

The Commission finds that the Project's contribution to atmospheric GHGs would not materially hinder Canada's ability to meet its climate change commitments to reduce GHG emissions. In making this finding, the Commission considered the magnitude of the Project's estimated GHG emissions during Project construction and operations and the fact that electrifying the system would reduce the overall operational GHG emissions from Westcoast's system. The Commission also considered Westcoast's mitigation measures; Enbridge's corporate net-zero plan; relevant laws, regulations, and policies; the Project's impacts on Canada's efforts to reduce GHG emissions; the estimated Project impact on carbon sinks; and the upstream emissions associated with the Project.

Table 7-8: Evaluation of significance of residual effects on atmospheric GHGs

Criteria	Rating	Discussion
Temporal extent	Long term	GHG emissions are expected to remain in the atmosphere for decades to centuries.
Geographic extent	Global	GHGs in the atmosphere are experienced as a global phenomenon.
Magnitude	Low (positive)	Effects during construction are expected to be adverse and of low magnitude given Westcoast's mitigation and the Commission's **Condition 40** (Quantification of construction-related GHG emissions). During Project operations, effects are expected to have a low positive impact on Canada's GHG emissions due to the replacement of gas-fueled compressor units and equipment with electric motor drive compressor units. These avoided emissions are expected to offset the adverse construction emissions over the Project's lifetime.
Cumulative effects	High (adverse)	Atmospheric GHGs have reached a critical threshold globally.
Significance	Low (adverse)	Residual Project effects are expected to be long term in duration, global, and of low (positive) magnitude. However, the Project would still contribute to atmospheric GHGs during construction and operations, albeit at a lower level than current operations. Given the context of high adverse cumulative effects, the significance of residual Project effects is considered low and adverse.

7.10 Project effects on the environment in the event of accidents and malfunctions

The Commission finds that Westcoast has adequately considered and reduced the probability and consequences of potential accidents and malfunctions, including from effects of the environment on the Project. The Commission is satisfied that Westcoast's mitigation measures are aligned with industry standards for preventing accidents and malfunctions, reducing their effects on the environment, and providing emergency and clean-up procedures. With Westcoast's commitments, mitigation measures, and the Commission's conditions, the Commission finds that the Project would have a low probability of causing high magnitude environmental effects due to accidents and malfunctions.

7.10.1 Relevant setting

According to Westcoast, accidents and malfunctions during Project construction and operations may include spills and releases, damage to third-party utilities, transportation accidents, or fires. In addition, the Project could be subject to natural hazards and conditions such as extreme weather events (e.g., heat, severe storms), changing climate trends, flooding, seismic activity, and wildfires.

7.10.2 Project effects, mitigation, and monitoring

Westcoast defines accidents and malfunctions as unplanned events that could result in adverse effects on human health, property, or the environment. These events may have a human cause (such as pipeline or equipment failure, human error, criminal activity) or be due to a natural hazard.

Westcoast identified specific mitigation measures for avoiding or reducing effects of potential accidents and malfunctions, which include established and proven mitigation measures and construction practices. These include designing the Project in accordance with CSA Z662:23 *Oil and Gas Pipeline Systems* and CSA C22.3 No. 60826:19 *Overhead Transmission Lines – Design Criteria.* They also include following contingency plans included in the EPPs, reporting leaks or failures, reviewing ground disturbance and line location documents, restricting burning, and following the contractor's Traffic Management Plan. Westcoast submitted that implementing its mitigation measures would reduce the probability of residual effects from accidents and malfunctions to low.

Regarding natural hazards and conditions, Westcoast stated that it would implement established and proven mitigation measures and construction practices during Project construction and operations to avoid or reduce the effects of the environment on the Project. Westcoast's EPPs document its environmental commitments and mitigation measures, which include contingency plans such as a Flood and Excessive Flow Contingency Plan, a Fire Contingency Plan, a Wet and Thawed Soils Contingency Plan, and a Soil Erosion Contingency Plan.

With respect to climate change impacts, Westcoast submitted that the Project would be designed, constructed, and tested in accordance with industry best practices and applicable requirements and standards. Westcoast would implement Enbridge's Integrity Assessment and Risk Management Plan to monitor and ensure the Project's integrity during operations. Westcoast therefore submitted that the Project is at low risk from climate change impacts.

7.10.2.1 Spills and releases

The Commission finds that Westcoast's mitigation measures for preventing, containing, and addressing spills and hazardous material releases are appropriate and aligned with industry best practices.

Westcoast stated that in most cases, residual effects after mitigation would be of low magnitude and short term in duration. It indicated that contaminant spills during Project activities could affect soil quality, water quality, and aquatic and terrestrial habitats. Westcoast submitted that given its spill prevention measures, spills affecting water quality and aquatic habitat would be unlikely to occur. Terrestrial spills would have localized effects, with the magnitude and duration of residual effects dependent on spill volume, location, and accessibility; the season; the nature of the contaminant; clean-up and reclamation activities; and site sensitivity.

In terms of a leak or failure of the Project, Westcoast explained that its mitigation measures include its compliance with applicable industry standards, regulations, and company protocols to prevent and respond to a rupture, leak, or failure of a Project component. Westcoast would conduct integrity monitoring and standard maintenance protocols to prevent potential damage and failure of a Project component. In the event of a rupture, leak, or failure during Project construction or operations, emergency shutoff valves would be remotely engaged, and Westcoast would implement the Project ERP and notify the appropriate regulators and emergency responders as required. Because the Commission considers it important for Westcoast to conduct emergency response exercises to test

its ERP and evaluate its implementation, the Commission considers it necessary to impose **Condition 42** (Emergency response exercise). **Chapter 6** provides further details on emergency management and **Condition 42**.

Westcoast submitted that the consequences of a pipeline or compressor station leak or failure would range from low to high, depending on whether unignited gas dissipated in the atmosphere or whether the release or rupture ignited to cause an explosion. Given Westcoast's mitigation measures that meet or exceed industry standards and regulatory requirements, Westcoast submitted that the likelihood of such a leak or failure is low.

The CCC reported that Louis Bull Tribe Elders expressed concern about a pipeline leak or release of gas and that they questioned the result and response if there was an accident or damage to the pipeline. Louis Bull Tribe stated that the damage to the air and wildlife surrounding the pipeline would be devastating, and that there could be no guarantees that a release would not happen. They also shared a concern about effects on fish and fish habitat from inadvertent releases or damage. Similarly, Nazko First Nation stated that spills and other accidents and malfunctions have devastating, long-lasting effects on the environment and the potential to prevent their members from being able to meaningfully exercise their section 35 rights in the vicinity where spills and accidents occur.

ECCC made recommendations regarding Westcoast's spill prevention, containment, and clean-up procedures during Project construction and operations. In response, Westcoast confirmed that its EPPs include measures to maintain suitable spill response materials to handle a product spill from the largest piece of equipment present during construction. It also requires Project personnel to use a number of preventative and corrective measures described in its EPPs. Westcoast explained that its Fuels and Hazardous Materials Spill Contingency Plan provides a base level of contingency actions to be implemented in the event of a release during Project construction, and that some details recommended by ECCC (such as supply lists and locations) would be incorporated into Project- or site-specific plans prepared by Westcoast's contractors for their scopes of work before starting construction. Westcoast agreed with ECCC about the importance of secondary containment to reduce the likelihood of spills entering the environment. Westcoast committed to detailing its requirements for secondary containment of fuel and hazardous substance storage in its updated EPPs, with consideration of guidelines set out in the *Environmental Code of Practice for Aboveground and Underground Storage Tank Systems Containing Petroleum and Allied Petroleum Products (PN 1326)*. Rather than using spill trays, absorbent pads, or liners under any equipment and vehicles not in use, which Westcoast stated would generate unnecessary waste, Westcoast would focus on preventative measures such as equipment inspection and maintenance programs that are consistent with industry best practices. Westcoast explained that spill prevention during Project operations would be governed by its ongoing environmental protection programs and internal operating procedures.

In response to questions from ECCC regarding the need for fuel storage and refueling within 100 m of waterbodies or wetlands, Westcoast provided examples of operational situations where such measures could not be avoided. These situations included established facility locations (e.g., compressor station site) in proximity to a wetland and at trenchless crossings where generator units for lighting or water pumps might need to be located within 100 m of a waterbody. Westcoast confirmed that in these situations, it would use additional mitigation measures that could include appropriate placement, secondary containment, signage, leak detection systems, documentation, spill kits, and awareness or handling training for personnel. In response to Cook's Ferry Indian Band,

who questioned the same, Westcoast submitted that its environmental mitigation measures in the EPPs have been successfully implemented on numerous pipeline projects in the past and satisfy the objective of ECCC's recommendations to ensure the protection of watercourses.

The Manitoba Métis Federation raised concerns about the release of drilling fluids from horizontal directional drilling, particularly at the Parsnip River crossing due to the potential for karst. They argued that essential environmental protection measures – such as oversight by a qualified professional and monitoring watercourses and wetlands crossed by horizontal directional drilling – require clear commitments by Westcoast, accompanied by monitoring and adaptive management plans.

While Westcoast stated that trenchless pipeline installation is considered one of the lowest-impact watercourse crossing techniques, it acknowledged that an inadvertent release of drilling mud during trenchless crossings could potentially alter upland, instream, or riparian habitat, and may result in fish mortality or injury. During such an event, Westcoast committed to implementing its Drilling Mud Release Contingency Plan, which includes measures for containment and site clean-up. If a release occurs in a watercourse, Westcoast would suspend drilling activities and implement measures described in its Drilling Mud Release Contingency Plan to reduce the effects of the release.

To confirm Westcoast's inclusion of all up-to-date mitigation measures and contingency plans within field documents, the Commission considers it necessary to impose **Condition 9** (Updated EPPs). With this condition and Westcoast's commitments, the Commission finds that the risks to the environment from spills and releases would be of low probability and of low magnitude in most cases.

7.10.3 Risks of residual effects

The Commission notes that various environments could be adversely affected by an accident or malfunction of the Project. The effect severity would depend on particular circumstances, such as the nature of the accident and the sensitivity of the local environment. The Commission finds that Westcoast has adequately considered and reduced the likelihood and consequences of potential accidents and malfunctions, including from effects of the environment on the Project, through its mitigation measures. The Commission is satisfied that Westcoast's mitigation is aligned with industry standards and best practices.

With respect to potential leaks and ruptures, the Commission finds that Westcoast's mitigation appropriately considers prevention, detection, containment, clean-up, and reporting. With the imposition of **Condition 9** (Updated EPPs), the Commission is satisfied that Westcoast's commitments would be appropriately documented and communicated for use in the field. As mentioned earlier in this chapter, the Commission added a requirement to **Condition 9** for Westcoast to report on its related engagement with potentially affected Indigenous Peoples, including plans to resolve outstanding issues and concerns or explain why Westcoast cannot resolve any. The Commission expects that Westcoast would address concerns of Indigenous Peoples related to potential accidents and malfunctions in a responsive manner. With these measures and documentation, the Commission is satisfied that potential risks of accidents and malfunctions would be adequately reduced, and potential effects appropriately mitigated.

8 Health, social, and economic effects

As part of its assessment of the Project, the Commission considered, the potential effects on health, social, and economic factors, including any cumulative effects, including the intersection of sex and gender with other identity factors and any such effects on Indigenous Peoples, set out in paragraph 183(2)(c) of the CER Act and the List of Issues. The Commission also considered all relevant evidence and submissions on the record to identify, assess, and manage these effects.

8.1 The Commission's assessment methodology and criteria of health, social, and economic effects

To assess the Project's health, social, and economic effects, the Commission applied the same VC-based approach it used to assess the Project's environmental effects, as described in **Section 7.1**. The Commission made significance determinations on the effects of the Project on human health, social and cultural well-being, human occupancy and resource use, heritage resources, infrastructure and services, and employment and economy using the criteria set out in **Appendix 5**.

The Commission recognizes that Indigenous Peoples have distinct rights, cultural practices, and knowledge systems, which has informed the Commission's assessment of the Project's health, social, and economic effects. In addition, the Commission has conducted a separate but inter-connected assessment of the effects of the Project on the rights of Indigenous Peoples, including on Indigenous land and resource use, which is in **Chapter 10**. The Commission's assessment of engagement activities between Westcoast and Indigenous Peoples, including how Indigenous knowledge informed the findings and Westcoast's mitigation measures in its ESA and Project design are found in **Chapter 11.** The Commission discusses Project effects on First Nation reserves in **Chapters 5, 9**, **and 10**.

Further, some socio-economic VCs and related topics overlap with the Commission's analysis in other chapters:

- Route selection, as a form of mitigation to avoid socio-economic features, is discussed in **Chapter 5**.
- Emergency management, accidents, and malfunctions are discussed in **Chapter 6**.
- Environmental matters, including those relating to air quality and culturally important plants, are discussed in **Chapter 7**.
- Environmental effects on federal lands are discussed in **Chapter 9**.
- The rights of Indigenous Peoples, including Traditional Land and Resource Use, is discussed in **Chapter 10**.
- Engagement with Indigenous Peoples, including engagement related to the Westcoast's ESA, is discussed in **Chapter 11**.

8.2 Overarching conditions relating to the health, social, and economic effects of the Project

The Commission considers it necessary to impose certain conditions that relate to the health, social, and economic effects of the Project. The majority of these are described in the individual VC discussions in this chapter and **Chapters 9 and 10,** where relevant. The Commission finds that these conditions, combined with the CER's lifecycle regulatory oversight, would contribute to reducing the Project's socio-economic effects.

8.2.1 Socio-economic Effects Monitoring Plan

Given the importance of mitigating the Project's socio-economic effects, as well as ensuring regulatory transparency and accountability regarding interests and concerns that were raised during this hearing, the Commission considers it necessary to impose **Condition 19** (Socio-economic Effects Monitoring Plan). This condition would require Westcoast to file a Project-related socio-economic effects monitoring plan for the Commission's approval, before starting construction.

In this plan for monitoring and addressing socio-economic effects during and after construction, Westcoast would be required to describe, among other things:

- the socio-economic effects that will be monitored, how they will be monitored, and roles and responsibilities relating to monitoring;
- how Westcoast will respond should an identified monitoring threshold be exceeded, including adaptive management processes; and
- how Indigenous knowledge and input received through Westcoast's engagement with Indigenous Peoples were incorporated into this plan (which is responsive to comments the Commission received on the importance of Indigenous knowledge and Indigenous communities' involvement in developing Project plans).

The Commission expects that Westcoast's Socio-economic Effects Monitoring Plan and plans for Indigenous Peoples' participation in construction and post-construction monitoring (see **Condition 11** [Plan for Indigenous Peoples' participation in construction monitoring] and **Condition 28** [Plan for Indigenous Peoples' participation in post-construction monitoring], discussed in **Chapter 7**) would work together in supporting monitoring opportunities for Indigenous Peoples, including with respect to socio-economic matters.

8.2.2 Socio-economic Effects Monitoring Final Report

To confirm that Westcoast implements **Condition 19** (Socio-economic Effects Monitoring Plan) appropriately, the Commission considers it necessary to also impose **Condition 38** (Socio-economic Effects Monitoring Final Report). This condition would require Westcoast to file a final report on the Project's socio-economic effects monitoring, which must include:

- a summary of the results and adaptive management measures from its Socio-economic Effects Monitoring Plan;
- discussions from the perspectives of Westcoast and potentially affected Indigenous Peoples of the overall effectiveness of the Socio-economic Effects Monitoring Plan; and

- a summary of Westcoast's related engagement activities with potentially affected stakeholders and Indigenous Peoples, including how the report incorporated recommendations received or otherwise changed based on issues, concerns, and recommendations identified during engagement.

In response to requests from Indigenous Peoples for enhanced opportunities for input into the Project, the Commission considers it necessary to include, in **Condition 38** (Socio-economic Effects Monitoring Report), requirements for Westcoast to explain how it prepared part d) of the final report in collaboration with interested Indigenous Peoples and to confirm that capacity funding was made available by Westcoast to support their participation.

8.3 Human health

The Commission finds that the Project would affect human health due to changes in air quality, community[74] health and safety, physical, spiritual and cultural health, and the acoustic environment. The Commission finds that these potential effects would be short to long term in temporal extent, range from the LSA to the RSA in geographical extent, range from low to medium (adverse) in magnitude, and low to medium (adverse) in total cumulative effects. With the implementation of Westcoast's mitigation measures and commitments, and the applicable conditions the Commission considers necessary to impose, the Commission finds that any residual Project effects on human health would be of low to medium (adverse) significance.

The Commission is of the view that infrastructure development can affect the health of Indigenous Peoples disproportionately, largely due to their unique cultural practices and connection to the land. The Commission notes that the human health VC overlaps with:

- route selection, discussed in **Chapter 5**;
- accidents and malfunctions, discussed in **Chapter 6** and
- air quality, discussed in this section and in **Chapter 7.**

Of note, the Commission discusses the effects of the Project due to inflows of workers into communities in **Section 8.4**, under Project effects on social and cultural well-being.

8.3.1 Relevant setting

The spatial boundaries when assessing human health are:

- Project footprint – direct disturbance by Project activities;
- LSA – a 1.5-kilometre buffer on Project components; and
- RSA – a 15-kilometre buffer on Project components.

With regard to assessing changes in the acoustic environment, the LSA includes a 1.5-kilometre buffer around the compressor station fence line, horizontal directional drilling, and direct pipeline installation activities, and around the Project footprint in accordance with the *British Columbia Noise*

[74] The term "community or communities" in this chapter is used to describe, depending on the applicable context, the cities, towns, municipalities, and municipal districts within the RSA. Where also referring to Indigenous Peoples and their communities, "Indigenous community or communities" is used.

Control Best Practices Guideline. During construction, there are 51 noise receptors (i.e., residences) identified as potentially being affected by noise caused by horizonal directional drilling and direct pipe installation, which would be used at four trenchless crossing locations and would lead to increased noise in those areas. During operations, there are 45 receptors that may be affected by noise from compressor stations.

8.3.1.1 Human health context for Indigenous Peoples

Indigenous Peoples historically have a relationship with the environment based on respect and reciprocity. Indigenous Peoples understood that the environment would provide food, medicines, shelter, clothing, and more if the natural world was treated with respect. An example of this is seen among the Stó:lō Peoples where human health was connected to spiritual and cultural activities, and an individual's health relied on the health of the Indigenous community. Through their connection to the Creator, land, air, water, fisheries and culturally important plants, they experienced a holistic healing power called shxwelí (spirit) through their connection to cultural practices and their ancestors.

Many Indigenous Peoples who presented oral Indigenous knowledge emphasized the interconnection between environmental health and access to traditional resources with sustaining their physical, spiritual, and cultural health. Boston Bar Indian Band, Cheam First Nation, Coldwater Indian Band, Kanaka Bar Indian Band, Pukaist Nation Development Corporation, and Saulteau First Nations described their past and current uses of traditional medicines in their territories. For example, Elder Pauline Michell of Kanaka Bar Indian Band said that "the Creator has blessed us by making all the food and the medicines for us on the land."

Coldwater Indian Band, Lheidli T'enneh First Nation, Saulteau First Nations, Seabird Island Band, and Skeetchestn Indian Band, and the STSA described noticing increasing health concerns in their Indigenous communities, which for some include cancer, diabetes, obesity and high cholesterol owing to a variety of factors, such as a decline in the availability of traditional foods and medicines and a lack of participation in seasonal harvesting activities. Cook's Ferry Indian Band shared that there is no alternative for the medicines that they get from the land. Sucker Creek First Nation shared that their people lost confidence in doctors, stating that going back to their traditional medicines is very important.

8.3.2 Project effects, mitigation, and monitoring

When assessing the effects of a project on human health, the Commission has regard to the CER Filing Manual definition, which defines this factor as "a state of complete physical, mental and social well-being, and the ability to adapt to the stresses of daily life; it is not merely the absence of disease or infirmity." The Commission therefore considered the adverse effects of the Project on physical health, as well as mental and social well-being (e.g., adverse emotional or social stressors potentially resulting from the Project).

8.3.2.1 Air quality

The Project would affect air quality through increased air pollution due to the Project's construction activities, as they could generate air emissions and dust which could affect health outcomes for Indigenous Peoples, residents and land users in the Project footprint. A change in ambient CAC concentrations due to Project construction and operations at the compressor station sites could also have negative effects on health outcomes for residents and land users, including Indigenous

Peoples, particularly for vulnerable groups or individuals, such as the elderly, children, people with disabilities and underlying health conditions, and pregnant women.

Cheam First Nation raised concerns about air quality with respect to an existing compressor station on their reserve where Project activities would also occur. Kelly Lake Cree Nation also shared concerns about air quality relating to dust pollution, particularly during the construction phase in residential areas. Westcoast indicated that construction is expected to be intermittent, short term, and transient. Effects on air quality are expected to be short term in duration, managed using proven mitigation measures and best management practices, and reversible once construction is complete.

The Commission accepts Westcoast's evidence that predicted CAC concentrations are unlikely to exceed the relevant regulatory criteria and result in harm to human receptors. However, the Commission finds there is still potential for nuisance effects for those living or travelling in proximity to the Project footprint and along haulage routes due to dust from construction traffic and activities. For all compressor stations, operational dispersion modelling results showed that air quality in the study area is improved by the Project since predicted concentrations of CACs are reduced with the replacement of the existing equipment with new gas-fired and electric motor drive compressors, including at sensitive receptor locations. Further, there is no measurable change in predicted concentrations of most CACs as they are less than the provincial thresholds**.**

In response to its own assessment and the inputs provided from Indigenous Peoples, Westcoast identified various measures to mitigate effects on air emissions during construction such as (among others) applying dust suppressants, limiting vehicle trips and idling, and using well-maintained equipment. Effects on air quality and mitigation measures are also discussed in **Chapter 7.**

8.3.2.2 Community health and safety

The Commission notes that Indigenous Peoples have raised concerns about the health and safety of their Indigenous communities due to a perceived threat of increased accidents and malfunctions because of the Project which could result in emotional and social stress. This stress was conveyed by Matriarch Sophia Moreno of Yale First Nation when she expressed safety concerns if the pipeline in their community were to burst and impact her grandchild. Westcoast's mitigation measures for health and safety concerns include ongoing emergency response planning and coordinating ongoing public outreach efforts for public pipeline safety and integrity. Westcoast also indicated that it would notify Indigenous Peoples of reportable spills or inadvertent drilling fluid releases within their traditional territories and, with respect to vehicular accidents, implement a Traffic Management Plan before starting construction, if requested by Indigenous communities. Westcoast's ESA section on accidents and malfunctions provides further mitigation measures. Indigenous Peoples are also expected to have opportunities to participate in construction and post-construction monitoring to oversee protection measures throughout the Project lifecycle, which could further alleviate safety-related apprehensions relating to accidents and malfunctions.

The Commission discusses pipeline integrity and emergency management in **Chapter 6.**

8.3.2.3 Physical, spiritual, and cultural health of Indigenous Peoples

The Commission finds that there would be Project effects on the physical, spiritual, and cultural health of Indigenous Peoples. In coming to this finding, the Commission considered the important interrelationship between the physical, spiritual, and cultural health and Indigenous Peoples' rights

that are assessed in **Chapter 10.** In particular, the Commission has taken into account the effects of the Project on the exercise of rights by Indigenous Peoples (e.g., changes to the quality, quantity or distribution of resources, changes in access to resources, changes to disruption of timing and seasonality of exercising rights, changes to locations or areas of cultural importance where rights are exercised) when making determinations about the effects of the Project on the physical, spiritual and cultural health for Indigenous Peoples. For example, loss of land during Project construction and operations could disrupt the timing and seasonality of exercising rights, as well as result in a decline in availability of traditional resources, causing emotional and social stress, particularly for Indigenous Peoples.

Many Indigenous intervenors provided oral Indigenous knowledge about how changes in their ability to exercise their rights would affect their physical, spiritual and cultural health:

- Cook's Ferry Indian Band, Louis Bull Tribe, Nazko First Nation, and Sucker Creek First Nation described how overlapping industrial developments are causing them to lose spiritual connection and traditional practices due to losing access to lands used for harvesting medicines and practicing ceremonies, for example. Williams Lake First Nation expressed concerns about the spiritual and cultural connection to the land being severed or discontinued when Indigenous Peoples don't have access to the land.
- Regarding a change in availability of medicinal plants, Cook's Ferry Indian Band, Lheidli T'enneh First Nation, and Skeetchestn Indian Band expressed concerns about a reduction in available plants for medicinal use. Chief Christine Walkem of Cook's Ferry Indian Band stated "the land has been damaged, it's been injured. It no longer carries the medicines, the animals, the water that it used to. The loss of these resources and the connection to the land impacts our mental health; it impacts our ability to share oral history." Elder Cliford Quaw of Lheidli T'enneh First Nation explained that "the bush is our supermarket, drugstore. Our people used to live on the land. Now it's so impacted (...) we almost have nothing." Elder Byron Binks of Boston Bar First Nation explained how the medicines that their community needs to sustain a healthy way of life have been impacted by industry.
- Coldwater Indian Band, Cook's Ferry Indian Band, Lheidli T'enneh First Nation, Louis Bull Tribe, and Prophet River First Nation all shared how changes in the quality of traditional resources can also impact human health. For example, Louis Bull Tribe and Prophet River First Nation expressed concerns about the health and quality of the animals they harvest.
- In addition to losing access to harvestable lands and noticing diminishing quantity and quality of the resources, Coldwater Indian Band and Lheidli T'enneh First Nation explained how their community members need to travel farther to harvest plants used for medicinal purposes.

Nicomen Indian Band expressed that it was important for their members to have advance notice of any construction so that they can harvest animals, plants, and medicines before any potential disturbances caused by the Project. Regarding mitigation measures, Williams First Nation wondered if enhancement programs would bring back their community's medicines.

Mark Peters of Peters First Nation shared that:

> Having our monitors present during construction will help us [reduce] impacts [on] our rights and stewardship and caretakers of the region. Involvement in restoration post-construction is also important to us to ensure all cultural and ecological values that interact in the area are protected and approved. Sunrise Project CS-8B-CS-9

> compressor stations is near to all [Peters First Nation] reserves. This area contains all types of cultural land use, including highly sensitive ancestral burial sites and spiritual areas.

Westcoast's mitigation measures that are relevant to the Project's effects on physical, spiritual, and cultural health and well-being of Indigenous Peoples include:

- Implementing cultural awareness programs, which may include training to help employees, consultants and contractors to acknowledge, respect, and understand that Indigenous Peoples have unique histories, cultures, protocols, values, beliefs, and governments.
- Maintaining regular communication with stakeholders and the public throughout construction to collect feedback and address concerns related to the Project activities and potential effects to cultural practices and values, as appropriate, for Indigenous Peoples.
- Conducting a baseline study of spiritual, cultural, and physical well-being of Indigenous Peoples being engaged on the Project to establish a benchmark against which to assess potential changes to well-being over the Project lifecycle.
- Developing and implementing a monitoring plan to assess potential changes to the well-being of Indigenous Peoples over the Project lifecycle.
- Developing an action plan to identify opportunities for enhancement of Indigenous Peoples' well-being (e.g. supporting intergenerational transfer of knowledge).
- Providing advance notice of construction areas and schedules to support Indigenous Peoples in identifying and, if desired, harvesting culturally significant or medicinal plant species that may only be identifiable during certain seasonal windows.

Westcoast further acknowledged the concerns raised about the physical, spiritual, and cultural health and well-being of Indigenous Peoples and said it strives to support Indigenous Peoples's priorities through its corporate social investment programs (e.g. Safe Communities, Vibrant Communities, and Sustainable Communities grants). Westcoast added that it is developing the Socio-economic Effects Monitoring Plan for the Project through engagement with potentially affected Indigenous stakeholders. Westcoast committed to continue to work with Indigenous communities to understand indicators of importance, as well as relevant thresholds and actions, that would support a robust plan.

8.3.2.4 Acoustic environment

Effects on human health are expected to occur through increased noise levels due to Project construction activities and during operations near compressor stations. The evidence shows that construction-related activities would increase noise levels due to additional traffic, horizontal directional drilling, and the use of other machinery required for construction. This is expected to increase noise at differing amounts along the Project route depending on the timing of construction, the construction activity, and the proximity to noise receptors (e.g., residential houses and neighbourhoods, trail users, etc.). The Commission accepts that there could be an increase in noise levels from compressor stations during operations and that noise levels may increase depending on the size and type of compressor station and the proximity of noise receptors. There may also be noise-related disruptions due to site-specific maintenance, as required.

The City of Abbotsford noted concerns about the level of noise to Huntingdon area and Arnold area neighborhoods during the construction of the CS-09 pipeline loop. This is particularly the case if trenchless construction is not used for highway crossings.

Kelly Lake Cree Nation raised concerns about the increase in traffic volume, noise, and dust caused by pipeline-related traffic. Cook's Ferry Indian Band shared that construction activities like new roads, increased traffic, and noise that disturbs the land make it harder for their members to hunt, fish, gather, travel, and just to be at peace. Cheam First Nation shared concerns about noise levels caused by an existing compressor station (CS-9), which the Commission notes is relevant to cumulative effects (which are discussed in Section 7.3.3). Coldwater Indian Band also shared concerns about an existing compressor station (CS-8A). Several other Indigenous communities shared similar concerns about the effects of noise and construction-caused disturbances on hunting, fishing, and traditional rights, as discussed further in **Chapter 10.**

Westcoast's acoustic assessments show that the Project would lead to construction-related noise and a potential increase in noise from compressor stations once they are in operation. The Commission accepts that Westcoast's acoustic assessments demonstrated that with mitigation, the operational noise levels would be within permissible sound levels. The Filing Manual refers to the provincial noise guideline and federal noise guidance for quantitative noise limits. Westcoast's assessments of construction and operational noise were appropriately based on the *Health Canada Guidance for Evaluating Human Health Impacts in Environmental Assessment: Noise* and the provincial BCER 2023 noise guidelines, respectively.

To mitigate changes in noise levels during construction, Westcoast has committed to:

- notifying applicable municipalities of construction schedule and working with them to develop strategies to communicate with potentially affected residents;
- implementing site-specific noise mitigation at compressor stations;
- using noise abatement equipment;
- establishing a protocol to address complaints in a timely manner;
- conducting short-term noise monitoring if noise complaints are received and implementing corrective actions as required; and
- using existing onsite buildings for screening, where practical.

To mitigate changes in noise levels during operations, Westcoast has committed to:

- implementing site-specific noise mitigation for compressor stations;
- minimizing vehicle noise;
- using noise abatement equipment for vehicles; and
- working with affected stakeholders and Indigenous Peoples if work cannot be completed in adherence to applicable noise bylaws.

Additional mitigation measures may be implemented near receptor locations to meet the established noise level recommendation. Westcoast continues to hold quarterly technical meetings with the City of Abbotsford to discuss the city's concerns, including discussing a permitting and inspection

approach and how Westcoast would mitigate noise and traffic effects. The Commission views this as Westcoast being responsive to the city's concerns.

Health Canada recommended potential mitigation measures given there was no specific noise condition, including advising nearby residents of construction activities and determining additional mitigation, addressing complaints in a timely manner, and, if required based on a complaint, conducting short-term noise monitoring and mitigation. Health Canada further supported creating a protocol for receiving and addressing noise-related complaints. Health Canada recommended noise mitigation measures be included in the EPPs. In response to Health Canada's recommendations, Westcoast proposed mitigation measures in its EPPs related to noise complaints, including establishing a procedure that addresses complaints in a timely manner. If work is anticipated outside of the construction activities hours (7 am to 7 pm), residents would be notified in advance, and Westcoast would engage with land users.

Several Indigenous Peoples also expressed concerns about noise mitigation. Kelly Lake Cree Nation, Nazko First Nation, Nicomen Indian Band, and Peters First Nation raised concerns with strategies used to address sound disturbances, citing a lack of consultation with Indigenous Peoples on determining acceptable noise thresholds and issues with the suitability of mitigation measures (e.g., Westcoast's response plan for noise complaints being reactive).

In response, Westcoast reiterated its commitment to continued engagement, and further collaboration to address noise-related concerns comprehensively. Westcoast committed to working collaboratively with Nicomen Indian Band and other affected Indigenous Peoples to address Project-related concerns. Westcoast's approach to engagement includes ongoing engagement to better understand culturally important sites and uses, and to refine mitigation accordingly. Westcoast also reiterated its view that a complaint-based approach for noise effects is appropriate mitigation. Westcoast's commitment includes remaining open to identifying where additional monitoring may be warranted to ensure that land users' specific concerns are considered in mitigation planning and implementation.

8.3.2.5 Other human health concerns of Indigenous Peoples

Kelly Lake Cree Nation, Nazko First Nation, Nicomen First Nation, and Peters First Nation submitted that there is a need for their Indigenous communities' specific information on human health to be considered by Westcoast, including from any cultural knowledge and land use and occupancy studies. These communities suggested that Westcoast should conduct a baseline study of the spiritual, cultural, and physical well-being of Indigenous communities being engaged on the Project, develop and implement a monitoring plan to assess potential changes to Indigenous well-being, and develop an action plan to identify opportunities for the enhancement of Indigenous well-being (e.g., supporting intergenerational transfer of knowledge).

Westcoast confirmed that it shared baseline information with these Indigenous communities. In addition to the mitigation measures outlined in its ESA related to human health, Westcoast also supported Indigenous Peoples to undertake Indigenous-led assessments or studies which can include information related to baseline spiritual, cultural, and physical well-being. Westcoast also described its process for developing the Socio-economic Effects Monitoring Plan for the Project, including its Community and Gender Safety Plan, and welcomed feedback on these plans from Indigenous Peoples. Westcoast further acknowledged Indigenous Peoples' concerns about their physical, spiritual, and cultural health and incorporated them into its ESA and proposed mitigation

measures. Westcoast has committed to continue to work with Indigenous Peoples to identify site-specific concerns or interests that may require specific mitigation or reclamation methods during Project construction.

The Commission finds that Westcoast has created reasonable opportunities for Indigenous Peoples to raise concerns with Westcoast about Project effects on human health, and that Westcoast has appropriately incorporated the feedback it received into the design of the Project. Overall, the Commission finds that Westcoast's mitigation measures, in addition to the conditions that the Commission considers necessary to impose, would be effective in reducing the Project's potential effects on human health. In addition to Westcoast's mitigation measures and commitments, the Commission considers it necessary to impose certain conditions to minimize the Project's effects on human health through continued CER lifecycle oversight and to incorporate Indigenous knowledge and the results of Westcoast's engagement with Indigenous Peoples into Project plans:

- **Condition 9** (Updated EPPs) would require Westcoast to file for Commission approval, before beginning construction of any relevant Project components (facilities, pipeline and power line), updated EPPs for that component that incorporate Indigenous knowledge and studies into construction and post-construction environmental plans. This responds to the evidence and submissions received from Indigenous Peoples about the importance of, and the Project's potential effects on, medicinal plants. The Commission also notes Westcoast's commitment to providing advance notice of construction to Indigenous Peoples so they may harvest their medicines before disturbances caused by the Project.
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) would require Westcoast to develop and file, for Commission approval, pre-construction and post-construction monitoring plans to make sure Indigenous Peoples can be involved in monitoring activities for the Project.
- **Condition 19** (Socio-economic Effects Monitoring Plan) and **Condition 38** (Socio-economic Effects Monitoring Final Report) would provide increased accountability and transparency on Westcoast's management of the Project's socio-economic effects, including human health, as requested by Indigenous intervenors, including Kelly Lake Cree Nation, Peters First Nation, Nazko First Nation, and Nicomen First Nation.

The Commission finds that Westcoast's mitigation measures, commitments, and the requirements of the Commission's conditions can effectively reduce the Project's effects on air quality, community health and safety, the physical, spiritual, and cultural health and well-being of Indigenous Peoples, and the acoustic environment.

8.3.3 Residual and cumulative effects

As described in **Table 8-1**, the Commission finds that the effects of the Project on human health would likely be short to long term in duration, local to regional in geographic extent, and low to medium (adverse) in magnitude. Considering the evidence provided by Indigenous Peoples in this hearing and the medium severity determination of the effects on the rights of Indigenous Peoples discussed in **Chapter 10**, the Commission finds that the total cumulative effects to be low to medium (adverse) in magnitude. The Commission notes that developments have affected the ability of Indigenous Peoples to travel across the land, access vital resources and areas of cultural importance, and partake in cultural traditions, which is important for the physical, spiritual, and cultural health of Indigenous Peoples. With the implementation of Westcoast's mitigation measures and commitments and any applicable conditions the Commission considers necessary to impose, the Commission finds that any residual Project effects on human health would be of low to medium (adverse) significance.

There is an interconnectedness between the potential effects of the Project on the health of Indigenous Peoples and the effects of the Project on the rights of Indigenous Peoples. As a result, the Commission's finding of low to medium (adverse) significance on human health is considered within the Commission's assessment of Project effects on the rights of Indigenous Peoples, discussed in **Chapter 10**.

8.3.3.1 Air quality

The Commission predicts residual effects on human health from changes in air quality due to physical construction activities that may occur because of the Project. As discussed in **Section 7.8**, the Commission finds a low (adverse) significance for air quality for the Project, which includes a finding that construction-related emissions from the Project are anticipated to be minor, transient, and short term in duration. Operations-related emissions are expected to result in a net reduction in ambient air pollutant concentrations, with predicted levels remaining below regulatory standards. This net reduction during operations is due to the Project electrifying two compressors and replacing another gas compressor with a higher-efficiency, lower-emissions model. Despite the net reduction during Project operations, the Commission notes that there would still be emissions from Project construction and during operations.

For human health effects associated with the emissions from Project construction, the Commission predicts that the potential residual effects of a change in air quality to be short term in duration, within the LSA, reversible, and low (adverse) in magnitude. Regarding human health effects from system emissions during operations, the Commission predicts potential residual effects to be long term in duration, continuous, reversible, and low (adverse) in magnitude, notwithstanding the general net reduction in ambient air pollutant concentrations.

8.3.3.2 Community health and safety

The Commission predicts residual effects on community health and safety in communities in the RSA due to apprehensions of accidents and malfunctions, which would be experienced mostly during Project construction. It also finds that the fear of accidents and malfunctions during Project operations can nonetheless cause emotional stress for residents and land users, resulting in adverse human health effects. As the Project components are largely situated along the T-South system, residents and land users who are already accustomed to the presence of existing infrastructure are less likely to experience emotional stress than if the Project components were

largely in undeveloped areas. However, there may be concerns from residents and land users in relation to the compressor station expansions. With Westcoast's implementation of its mitigation measures and commitments, and the Commission's conditions, the potential for emotional stress due to the fear of accidents and malfunctions is expected to be medium to long term in duration, within the RSA, and low (adverse) magnitude.

8.3.3.3 Physical, spiritual, and cultural health of Indigenous Peoples

The Commission predicts residual effects on the physical, spiritual, and cultural well-being of Indigenous Peoples arising due to adverse changes in subsistence activities and resources to be medium to long term in duration, within the RSA, and low to medium (adverse) in magnitude. The potential for disproportionate effects on Indigenous Peoples is higher due the close spiritual, cultural, and physical well-being connection between Indigenous Peoples and their use of traditional resources. The Commission is of the view that these findings related to the physical, spiritual, and cultural health of Indigenous Peoples are consistent with the medium (adverse) severity finding on effects to the rights of Indigenous Peoples discussed in **Chapter 10.**

The Commission finds that effects to traditional resources, such as the loss of access to culturally important plants in Indigenous Peoples' territories can cause the deterioration of Indigenous identity, which, in turn, can cause a deterioration of physical, spiritual, and psychological health. The Commission has considered the cumulative effects due to various kinds of developments in the Project areas, as described by Indigenous Peoples throughout the hearing.

8.3.3.4 Acoustic environment

The Commission predicts residual effects on the acoustic environment are expected to be short to long term in temporal extent, within the LSA, and medium in magnitude. The Commission notes that noise from Project construction and operations was identified as a concern through Westcoast's public engagement program. The Commission is satisfied that the acoustic assessments determined that noise levels both during Project construction and operations are predicted to be within permissible sound levels. Westcoast has committed to ongoing engagement around noise mitigation and addressing noise complaints, as required. The Commission considers necessary **Condition 9** (Updated EPPs) and **Condition 19** (Socio-Economic Effects Monitoring Plan), requiring Westcoast to engage with residents and report on any noise concerns that are raised.

The Commission heard concerns from Cheam First Nation that an existing compressor station (CS-9) continues to make noise, negatively affecting their community. As previously noted, Coldwater Indian Band also shared concerns about noise at an existing compressor station (CS-8A). While this compressor station and noise-related concerns fall outside of the Project scope, the Commission notes Westcoast's mitigation measures, including its commitments to ongoing engagement on noise concerns (including with Cheam First Nation specifically), and strongly encourages Westcoast to continue to resolve outstanding issues.

The Commission notes that Westcoast has actively continued to engage Indigenous Peoples and stakeholders throughout the hearing, which the Commission discusses in more detail in **Chapter 11**. Considering Westcoast's commitment to ongoing engagement, including its mitigation measures in the EPPs related to noise complaints and establishing a procedure that addresses complaints in a timely manner, as well as the CER's regulatory oversight through **Condition 19** (Socio-economic Effects Monitoring Plan) and **Condition 38** (Socio-economic Effects Monitoring Final Report), the Commission is of the view that noise levels during Project construction and operations, though

medium (adverse) in magnitude, can be appropriately addressed where concerns are raised. For example, the CER has the authority as a lifecycle regulator to require companies, including Westcoast, to conduct noise monitoring and demonstrate compliance with applicable provincial noise standards.

Table 8-1: Evaluation of significance of residual effects on human health

Human health		
Residual effects: • Change in health outcomes related to a change in air quality • Decline in community health and safety • Decline in physical, spiritual, and cultural health of Indigenous Peoples • Change in health outcomes related to a change in the acoustic environment		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	The Commission expects construction effects to be short to medium term (up to 2 years), and operational effects to be long term (30 years).
Geographic extent	LSA to RSA	The geographic extent for air emissions and acoustic environment would be limited to the LSA. The geographic extent for community safety and the physical, spiritual, and cultural health and well-being of Indigenous Peoples extends beyond the LSA into the RSA.
Magnitude	Low to medium (adverse)	With Westcoast's mitigation measures and the Commission's conditions, the Commission expects effects caused by Project construction and operations to be low to medium (adverse). Effects on the physical, spiritual, and cultural health for Indigenous Peoples are medium due the close connection between Indigenous Peoples and their use of traditional resources. Effects on the acoustic environment are medium because receptors within the LSA would be noticeably affected by noise from construction activities.
Cumulative effects	Low to medium (adverse)	The Commission finds low to medium (adverse) total cumulative effects for human health. The Commission notes that developments have affected the ability of Indigenous Peoples to travel across the land, access vital resources and areas of cultural importance, and partake in cultural traditions, which is important for the physical, spiritual, and cultural health of Indigenous Peoples.

Human health		
Significance	Low to medium (adverse)	Westcoast's mitigation measures and the Commission's conditions are anticipated to reduce the potential for adverse effects on human health. However, residual effects would be detectable in some areas. Indigenous Peoples expressed concerns that they feel an impoverishment of availability and a decline in the quality of medicines available for harvest throughout the Project footprint. With Westcoast's mitigation measures and the Commission's conditions, the positive effects from Project monitoring and transparency from **Conditions 19 and 38**, and considering total cumulative effects, the Commission finds the Project's overall effects on human health would be low to medium (adverse) significance.

8.4 Social and cultural well-being

The Commission finds that the Project would affect the social and cultural well-being of local communities and Indigenous Peoples along the Project footprint. The Commission finds that the potential effects would be short to long term in temporal extent, range from the LSA to national in geographical extent, range from low to medium (adverse) to low (positive) in magnitude, and low to medium (adverse) in total cumulative effects. While effects from construction on social and cultural well-being would be low to medium (adverse) in magnitude, once the Project is operational, the Commission expects residual effects, including those from reclamation and monitoring activities, to be lower in magnitude.

The Commission heard from Indigenous Peoples that effects on the social and cultural well-being of their communities often endure beyond the timeframes put forward by Westcoast. The Commission also heard that infrastructure development would affect Indigenous Peoples more severely due to the interconnectedness of their social and cultural well-being to the lands affected by the Project. With the implementation of Westcoast's mitigation measures and its compliance with the applicable Commission's conditions, including those related to the updated EPPs and the Socio-economic Effects Monitoring Plan (inclusive of Westcoast's Community and Gender Safety Plan), the Commission finds that any residual Project effects on social and cultural well-being would be of low to medium (adverse) significance.

8.4.1 Relevant setting

Due to the large geographic area of the Project, the Commission used a community RSA for its assessment of this VC that includes communities within or intersected by a 50-kilometre buffer from Project components. Five primary study regions comprised of distinct administrative or political regions have been defined for the socio-economic assessment in alignment with the regional districts where the Project is located. The five regional districts are:

- Peace River Regional District;
- Regional District of Fraser-Fort George;
- Cariboo Regional District;
- Tompson-Nicola Regional District; and

- Fraser Valley Regional District.

A sixth study region – the Metro Vancouver Regional District is located within the RSA. While there are no Project components within this regional district, the Commission notes communities within the Metro Vancouver Regional District may still be affected by the Project, although to a lesser degree than those where Project components are located.

The historical and current setting for Indigenous Peoples covers four broad regions:

- North Region – Anywhere in the RSA north of Prince George with overlaps with the Peace River Regional District and Regional District of Fraser-Fort George.
- Central Region – Between south of Prince George to north of Clinton with overlaps with the Regional District of Fraser-Fort George, the Cariboo Regional District, and the Tompson-Nicola Regional District.
- South-Central Region – Between south of Clinton and north of Meritt and located entirely within the Tomson-Nicola Regional District.
- South Region – From south of Meritt to the Canada-US border with overlaps with the Tompson-Nicola Regional District, Fraser Valley Regional District and Metro Vancouver Regional District.

The Commission considered that the historical and current context for Indigenous Peoples regarding their social and cultural well-being is tied to cultural, linguistic, and knowledge continuity and identity, spirituality, intergenerational knowledge transfer, and the exercise of rights, including on the lands. The Commission heard views to this effect during oral Indigenous knowledge sessions.

Chief Christine Walken of Cook's Ferry Indian Band explained how current industrial developments in their territory resulted in changes to the social and cultural well-being setting, saying:

> There's social and cultural well-being impacts. There's the increased privatization of land, which means there's no longer accessibility to certain lands where our members exercise their rights. It's not just an inconvenience. It's a loss of culture, it's a loss of connection, it's a loss of tradition. In order to carry on our traditions, we need to teach them, we need to be on the land. There's a connection with being on the land to learn your language. It's far more effective and powerful than a classroom.

Chief Christine Walken further explained that compounding the effect of losing access to lands for cultural use, is the legacy of residential schools, which saw Indigenous Peoples removed from their communities and their elders and knowledge keepers silenced.

In addition to the effects from the loss of access to lands, the decline in resources available for social and cultural use has also altered the relevant setting of social and cultural well-being for Indigenous Peoples. Chief Leah Stump of Nazko First Nation explained that salmon populations have been declining due to industrial development and climate change, and the importance of salmon to Nazko First Nation's culture, saying:

> (...) just to let you guys know the importance of the salmon has on us and the ceremonies that take place to call in the ancestors and that extra help to try to help

> us to -- so that we can, again, teach our younger generations the importance of having the salmon here for cultural purposes, for the food for the winter, for smoking them, for drying them.

Coldwater Indian Band explained that they have been in their territory since time immemorial and expect to stay there forever despite impacts from industrial development. Micheal Smithers shared:

> So when industry comes down to our valley and proposes a project, they're only there for a short time. They do the work, they follow procedure, standard operating procedure, and then leave. And then we're there -- we're still there. We're going to live there. We have to endure the impacts that industry has created.

The STSA expressed concerns that in the current assessment context, the social and cultural impacts on people can be overlooked.

8.4.2 Project effects, mitigation, and monitoring

The Commission finds that the Project would affect social and cultural well-being during Project construction and operations, especially during the two-year construction period. The Commission is of the view that Indigenous Peoples whose territories and reserves are in the community RSA, as well as individuals who use the Project footprint for social and cultural activities, would likely experience the greatest effects, including through interactions caused by an influx of workers into local host communities.

The Commission's evaluation of Project effects on social and cultural well-being focuses on several indicators within the areas described in the relevant setting. These indicators include effects on host communities' population demographics, disruptions to cultural events and activities, and local communities' quality of life.

8.4.2.1 Population demographics

Project-related population growth has the potential to change the demographics of host or nearby communities due to temporary workers and associated issues related to the potential for community and worker interactions.

For example, Chief Christine Walkem of Cook's Ferry Indian Band explained how an increase of workers could affect their community:

> One of the things that is concerning for a lot of our members is the activity that comes with the construction. There are new roads developed. There are employees who are brought in from other communities, other parts of BC, Canada, elsewhere. And when you bring folks in from other places, they learn new hunting areas. That puts pressure on an already pressurized system.

Westcoast's mitigation measures pertaining to effects on population demographics include sourcing workers and contractors from local communities, establishing temporary workforce accommodations, and prohibiting hunting or recreational fishing by Project personnel on (or in the vicinity of) the construction rights-of-way or associated Project sites. Further, Westcoast would prohibit the use of the construction rights-of-way, temporary access roads, or construction sites by Project personnel to access hunting or fishing sites.

8.4.2.2 Cultural events and activities

Westcoast submitted that construction activities have the potential to temporarily disrupt cultural events and activities. The presence of construction workers and associated traffic may disturb the socio-cultural setting (including heritage resources and cultural sites). Sensory disturbances (such as noise, dust, air quality, and effects on visual aesthetics from construction activities) may affect the experience of participating in cultural activities or community events near the Project. As an example, Peters First Nation expressed that, among other things, increased workers, traffic, and heavy machinery in areas heavily used by their community members – such as trails, name places, and ceremonial sites – could limit the sites' values and their community's ability to transfer knowledge to future generations if protections are not put into place.

To reduce disruption to cultural events and activities, Westcoast's mitigation measures include:

- scheduling construction to avoid community events;
- communicating construction plans with local communities;
- notifying representatives of Indigenous Peoples involved in Westcoast's engagement program before construction begins, providing details of construction activities and the schedule to help prevent or reduce effects on their operations or activities;
- communicating schedule changes that could affect Indigenous communities in a timely manner;
- notifying registered trappers, guides and outfitters, recreational clubs (e.g., snowmobile clubs, mountain biking clubs, horseback clubs) of construction details, including the route alignment and construction schedule, a minimum of two weeks before starting construction;
- designing the Project to parallel existing disturbances to avoid disturbance to lands potentially used for cultural activities; and
- confining construction activities to the approved construction rights-of-way and temporary workspace, as well as restricting construction traffic to existing roads, the construction rights-of-way, and approved access roads.

8.4.2.3 Community quality of life

Positive effects, including an increase in labour force activity and income, could result from participation in Project-related employment in the RSA. However, potential adverse interactions could also occur, including from interference with socio-cultural activities (as connected with the disruption of cultural events and activities, as discussed in Section 8.4.2.2) and from negative community and worker interactions.

Indigenous Peoples shared their views about the importance of their communities' quality of life and concerns regarding the adverse effects that the Project could have. For example:

- Nazko First Nation shared that it is critical to their members' well-being and capacity to carry out socio-cultural activities, practices, and pursuits. Participation in social and cultural activities in places used by members since time immemorial as part of their traditional territory, promotes the intergenerational transmission of culture, language, and knowledge from Elders to younger generations.

- Kanaka Bar Indian Band explained how harm to an Indigenous woman or someone identifying as 2SLGBTQI+[75] from issues related to temporary workers, harassment and assault in the workplace, rotational shift work, substance abuse, and addictions, or economic insecurity is not reversible. Whereas the increased presence of workers may be temporary, the impact of the harms is neither temporary nor reversible.
- Boston Bar First Nation, Cook's Ferry Indian Band, Peter's First Nation, Pukaist Nation Development Corporation, Saulteau First Nations, the STSA, and Seabird Island Band described how negative interactions between their community members and people coming into their territories for work diminished their communities' sense of well-being, stressing the importance of cultural safety. These communities also highlighted the need for plans to be developed for cultural safety, cultural competency, and human trafficking prevention.

To address these concerns, Westcoast committed to various mitigation measures relating to protecting community quality of life, including:

- providing cultural awareness and human trafficking awareness training to all Project workers and implementing Westcoast's Statement of Business Conduct;
- implementing Westcoast's After-Hours Safety, Respect for Communities, and other relevant policies;
- establishing a complaints process for Indigenous Peoples to raise concerns regarding construction or worker activities;
- informing local police, fire protection services, hospitals and other emergency providers of the construction schedule and key Project contact personnel;
- clearly identifying areas of the construction rights-of-way or access trails where access is restricted to essential Project construction personnel and equipment, and using signs and construction access markers to identify these locations; and
- directing other Project personnel and equipment around the restricted area via alternate access routes.

In addition, Westcoast stated that since 2023, it has contributed close to $2 million to Indigenous communities or organizations in BC to support their areas of interest such as culture and language preservation and the intergenerational transfer of knowledge via community gatherings.

In response to the interests and concerns raised by Indigenous Peoples about gender and culture-based violence and human trafficking, Westcoast acknowledged the importance of these concerns and the need for awareness and specific steps to help prevent their occurrence on the Project. Westcoast is preparing a Community and Gender Safety Plan as part of its overall management of the potential socio-economic effects of the Project. Westcoast submitted that its Community and Gender Safety Plan would account for both Indigenous and non-Indigenous community and gender safety, while considering the safety of more vulnerable groups or individuals (e.g., women, 2SLGBTQI+ people, youth, and Elders), and would take an equity-based approach where specific

[75] This acronym, which the Government of Canada adopted in 2022, represents Two-Spirit, lesbian, gay, bisexual, transgender, queer, intersex, and additional people who identify as part of sexual and gender diverse communities.

measures may be needed to mitigate effects on disproportionately affected Indigenous Peoples. The plan would also describe actions Westcoast would take to create a culture of sensitivity, safety, and inclusivity on the job site and in the local communities where it operates. The plan would include measurable mitigation measures, developed with Indigenous Peoples and local communities, with specific and geographic-based actions. In this regard, Westcoast committed to developing activities to implement the plan with Indigenous Peoples, which may include training, community workshops, or advisory participation to monitor issues raised during early engagement (e.g., such as safety for Indigenous women, racism or discrimination by contractors, and effects on youth and vulnerable populations). Westcoast further committed to working with potentially affected Indigenous Peoples and local communities to ensure concerns about community and gender safety are addressed and mitigated.

Regarding the issue of human trafficking, Westcoast accepted the importance of ensuring its employees and contractors receive human trafficking awareness training. Westcoast created a Human Rights Awareness and Human Trafficking Prevention Training program that employees and contractors on the Project would be required to complete before starting construction. Westcoast also committed to working with Indigenous communities, all levels of government, communities, and employees and contractors to raise awareness and support services for trafficking victims. In addition, Westcoast indicated that it supports anti-trafficking organizations, task forces and/or service providers for trafficking victims.

Westcoast also committed to providing cultural training for the Project, including Enbridge's mandatory Indigenous Cultural Awareness Training for all Project team members and contractors. Pukaist Nation, asked during oral summary argument, to co-develop cultural awareness training:

> We ask that all workers receive cultural awareness training, co-developed with our people, with our Elders so that when they are on the land, they understand that it is living history. This is not only about safety, it is about respect. We are ready to help design that training with Westcoast (...)

Westcoast has committed to incorporating cultural awareness training for the Project that is developed by, or in collaboration with, local Indigenous communities for specific regional areas, and highlighted that it has been engaging communities on customized cultural awareness training.

Overall, the Commission finds that Westcoast's mitigation measures can reduce effects on social and cultural well-being in the community RSA and are responsive to concerns that have been identified. To further reduce Project effects on social and cultural well-being, and to increase accountability and transparency regarding Westcoast's design and implementation of relevant mitigation measures, the Commission considers it necessary to impose monitoring and reporting requirements through **Condition 19** (Socio-economic Effects Monitoring Plan) and **Condition 38** (Socio-economic Effects Monitoring Final Report). The Commission has heard from Indigenous Peoples, and agrees, that protecting their communities, and vulnerable populations, from negative interactions with incoming temporary workers is particularly crucial to preserving cultural safety. For this reason, the Commission considers it necessary to include a specific requirement in **Condition 19** for Westcoast to provide its Community and Gender Safety Plan as part of the overall condition filing for Commission approval, to ensure that cultural safety-related effects, including those that are gender-related, are avoided and minimized.

Westcoast has made commitments to continue engaging with Indigenous Peoples on developing Project plans, including developing measurable mitigation measures with specific and geographic-based actions, and to continue its engagement activities to ensure concerns about community and gender safety are addressed and mitigated. The Commission therefore expects to see evidence of such continued engagement in Westcoast's condition filings, including in its Socio-economic Effects Monitoring Plan. The Commission is persuaded that Westcoast's mitigation measures, together with the Commission's conditions, would be effective in reducing potential Project effects on the social and cultural well-being of Indigenous Peoples and of local communities.

8.4.3 Residual and cumulative effects

As described in **Table 8-2**, the Commission finds that, with Westcoast's mitigation measures and the Commission's **Condition 9** (Updated EPPs), **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), and **Condition 19** (Socio-economic Effects Monitoring Plan), inclusive of Westcoast's Community and Gender Safety Plan, Project effects on social and cultural well-being would be low to medium (adverse) significance. In coming to this finding, the Commission considered the important interrelationship between the social and cultural well-being of Indigenous Peoples and the effects of the Project on the rights of Indigenous Peoples, which the Commission discusses in **Chapter 10**. In particular, the Commission has taken into account the effects of the Project on the exercise of rights by Indigenous Peoples when making determinations about the effects of the Project on the social and cultural well-being of Indigenous Peoples.

Regarding the indicators identified in **Section 8.4.2**, the Commission finds interactions during operations on changes in population demographics and the disruption of cultural activities are expected to be negligible because effects would be experienced most severely during construction and then would be unlikely to occur during operations. The remaining residual effects (i.e., after Westcoast's mitigation measures and compliance with the Commission's conditions) relate to community quality of life. Positive effects are expected due to increased labour force activity and income from Project-related employment, with such effects being low (positive) in magnitude. The Commission discusses the Project's effects on employment and economy in more detail in **Section 8.8**.

Westcoast's mitigation measures and the Commission's conditions are anticipated to minimize the potential for adverse social interactions of these workers with both nearby local and Indigenous communities. However, the Commission is persuaded by Indigenous participants' evidence and submissions that detectable residual effects would remain, though they would be manageable with Westcoast's mitigation measures and the Commission's conditions. The Commission is of the view that residual effects may disproportionately affect and be experienced by women, including Indigenous women, girls, and 2SLGBTQI+ persons. It expects Westcoast to avoid and minimize these effects through the design and implementation of its Community and Gender Safety Plan. The magnitude of effects on these demographics is anticipated to be low to medium (adverse), varying based on the size and location of the Project workforce in respect to local communities and Indigenous Peoples.

The Commission finds low to medium (adverse) total cumulative effects for social and cultural well-being, noting that historic industrial developments have contributed to an overall decline in the accessibility of land and resources available to Indigenous Peoples to exercise their unique social customs and transfer generational knowledge, which forms part of their community quality of life.

The Commission expects that Westcoast would fulfill its commitment, made in its ESA, to continue engaging with stakeholders, including Indigenous Peoples, to address concerns about cumulative effects on their social and cultural well-being.

Table 8-2: Evaluation of significance of residual effects on social and cultural well-being

Social and cultural well-being		
Residual effects: • Changes in population demographics • Disruption to cultural events and activities • Changes to community quality of life		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	The Commission expects construction effects to be short to medium term (up to 2 years), and operational effects to be long term (30 years).
Geographic extent	Communities that are within or intersected by a 50-kilometre buffer from Project components.	The Commission expects that people who live near, rely on services in, and/or undertake activities in the community RSA, to be the most affected.
Magnitude	Low to medium (adverse); low (positive)	With Westcoast's mitigation measures and the Commission's conditions, the Commission expects effects caused by Project construction and operations to range from low (positive) to low to medium (adverse). Low (positive) effects are expected in relation to community quality of life (e.g., due to increased labour force activity and income from Project-related employment). There would also be low to medium (adverse) expected effects owing to an increase of workers to, and near, communities where construction work is being completed.
Cumulative effects	Low to medium (adverse)	The Commission finds low to medium (adverse) total cumulative effects for social and cultural well-being, especially for Indigenous Peoples, noting that historic industrial developments have contributed to an overall decline in the accessibility of land and resources available to Indigenous Peoples, affecting their quality of life.

Social and cultural well-being		
Significance	Low to medium (adverse)	Westcoast's mitigation measures are anticipated to minimize the potential for adverse social interactions between temporary workers and nearby communities. However, a residual effect may remain detectable in host communities. Indigenous Peoples expressed that if negative interactions occur between their communities and workers, those effects would be felt long term. With Westcoast's mitigation measures, Project monitoring, and the Commission's conditions, as well as the Project's possible benefits, and considering total cumulative effects, the Commission finds the Project's overall effects would be low to medium (adverse) significance.

8.5 Human occupancy and resource use

The Commission finds that the Project would affect human occupancy and resource use. The potential effects would be medium to long term in temporal extent, within the local geographic extent, low to medium (adverse) in magnitude, and low (adverse) in total cumulative effects. This section contains the Commission's assessment of the Project's potential effects on general patterns of human occupancy and resource use, including effects on navigation and navigation safety, agriculture, commercial forestry and timber harvesting, oil and gas development and other industrial activities, as well as hunting, fishing, trapping, and recreation. With the implementation of Westcoast's mitigation measures and commitments, and the Commission's conditions, the Commission finds that any residual Project effects on human occupancy and resource use would be of low (adverse) significance.

8.5.1 Relevant setting

The Commission's assessment of the potential effects of the Project on human occupancy and resource use considered changes in existing land use patterns and opportunities for land use, taking into account past and present projects and physical activities that have influenced the baseline conditions for human occupancy and resource use. The Project's LSA[76] and RSA[77] include lands with various uses in each regional district, as shown in **Table 8-3**:

[76] The Project's LSA for human occupancy and use consists of the entire Project footprint plus a 1.5-kilometre buffer.

[77] The Project's RSA for human occupancy and use consists of the entire Project footprint plus a 15-kilometre buffer.

Table 8-3: Land uses crossed by the Project footprint by regional district

	Regional district				
Land use	**Peace River**	**Fraser-Fort George**	**Cariboo**	**Thompson-Nicola**	**Fraser Valley**
Residential areas	✓	✓	✓	✓	✓
Agricultural land reserves	✓	✓	✓	✓	✓
Range tenures		✓	✓	✓	
Parks and protected areas		✓			
Crown land reserves, withdrawals, and designated uses		✓	✓	✓	✓
Crown land notations		✓	✓	✓	✓
Timber salvage areas	✓				
Traplines and guide outfitter areas	✓	✓		✓	✓
Limited Entry Hunting zones	✓	✓	✓	✓	
Managed forest areas		✓	✓	✓	✓
Mining and aggregates		✓		✓	✓

The Project footprint overlaps with various land uses in the different regional districts, including parks and protected areas, residential areas, agricultural land use, areas for public hunting, fishing, trapping, guide outfitting and recreational activities, other land uses (e.g., forestry, oil and gas resources), and navigable watercourses. More specifically, the Project footprint overlaps with these features:

- the Giscome Portage Heritage Trail Protected Area and existing access in Tunkwa Provincial Park;
- six communities and 495 parcels of residential use;
- approximately 492 ha of agricultural land;
- 28 traplines;
- 30 timber agreements and various forestry-related tenures; and
- 25 navigable watercourses.

Current and future land use is determined by various land and resource management plans.[78] The Project footprint also crosses land that is included in various sustainable resource management plans, official community plans, and regional growth strategies.

[78] These provide strategic management planning for resources on Crown land.

8.5.2 Project effects, mitigation, and monitoring

The Commission considered these effects on human occupancy and resource use:

- changes to parks and protected areas;
- changes to residential areas;
- changes to agricultural land uses;
- changes to public activities, including hunting, fishing, trapping, guide outfitting, and recreational activities;
- changes to other land uses (forestry, mineral and subsurface resources, and industrial use); and
- changes in navigation and navigation safety.

For changes to parks and protected areas, Westcoast submitted that the CS-4A to CS-4B pipeline loop would be constructed within Westcoast's existing right-of-way through the Giscome Portage Heritage Trail Protected Area, with no new permanent right-of-way required. Temporary workspace within the Giscome Portage Heritage Trail Protected Area may be required if there is not enough space in the right-of-way to safely carry out construction activities. Westcoast engaged with Indigenous Peoples, Crown tenure holders, BC Parks, and other potentially affected stakeholders, and confirmed that it reduced the amount of temporary workspace in the Giscome Portage Heritage Trail Protected Area after engaging with BC Parks.

Other parks and protected areas could be affected by the loss of a resource or area resulting from construction activities, as well as nuisance effects associated with noise, dust, and visual quality both during construction and site-specific maintenance activities. Land users may also experience temporary access restrictions.

The Project footprint would cross six communities, including 495 parcels of land designated for residential use. Individuals closest to the Project footprint and those living in the LSA would experience effects of the Project construction and site-specific maintenance activities during operations. Potential changes to residential areas include disturbances to roads, land or other features, the presence of construction crews and equipment, access restrictions, as well as nuisance effects caused by construction and site-specific maintenance activities.

Approximately 492 ha of agricultural land would be cleared or disturbed along the rights-of-way for construction and for temporary workspace. The Project would affect agricultural lands during both Project construction and site-specific maintenance during operations. Agricultural lands surrounding the compressor stations that are being expanded would be permanently disturbed and affected. Landowners and land users of agricultural land could experience disruptions to access, cultivation, and harvesting activities. This includes limited or no use of land for crops, or disruption to grazing areas and related activities, during construction in those areas.

For changes to public hunting, fishing, trapping, guide outfitting and recreational activities, Westcoast indicated that it anticipates these activities would be disrupted due to construction activities, which would overlap with hunting seasons and trapping activities. It is expected the Project construction activities would create land disturbance, affect access, and create nuisance effects. Some recreational activities would also be affected by the Project's effects on wildlife species, and

fish and fish habitat. The Commission discusses the Project's environmental effects in more detail in **Chapter 7**. Nuisance effects, access, and other disturbances are expected during construction and could continue during site-specific maintenance activities.

The Project is also expected to affect timber harvesting due to access restrictions during construction and site-specific maintenance activities. The removal of merchantable timber along the Project footprint would result in a long-term effect on the available timber supply. The Project could also cause a reduction in land base for future subsurface resource activities where the Project footprint crosses mineral tenures, placer claims, and aggregate tenures. The Project would limit future use and access to select areas that could have future subsurface and extraction potential. Access to industrial use areas may also be restricted during construction activities.

The Project crosses 25 navigable watercourses, including four trenchless crossings.
While trenchless watercourse crossings generally do not cause disturbances related to human occupancy and resource use within a watercourse, they may result in minor access delays. Where trenching methods are used, recreational users would experience delays or disruption caused by instream disturbance. Navigation may also be affected where temporary vehicle crossings are used. Trenchless watercourse crossings are discussed further in **Chapters 6 and 7.**

Westcoast submitted that it would implement mitigation measures to reduce Project effects on human occupancy and resource use. These measures, which would address effects on several indicators of interest (e.g., parks and protected areas, public recreational activities, etc.), include:

- using route and site selection to avoid or minimize Project effects on sensitive environmental features and residential areas to the extent practical and establishing plans for alternate access routes to residential areas;
- obtaining permits and approvals, as required;
- using signs, construction access markers, and barriers where required, including placing warning signs 50 m upstream and downstream from construction sites along watercourse crossings;
- maintaining access to established recreation features throughout construction, to the extent practical;
- assisting in the safe passage of waterway users, completing instream activity as quickly as practical, complying with applicable notification requirements and confirming that vehicle crossings do not interfere with navigation at navigable watercourses or wetlands;
- communicating the construction schedules with landowners and land users;
- confining construction activities to the right-of-way and temporary workspace;
- limiting disturbance to ornamental trees, windbreaks, and shelterbelts, to the extent practical;
- providing compensation, as required and appropriate;
- completing cleanup along the construction right-of-way promptly after construction;
- following relevant soil-handling guidelines;
- cleaning mud off access roads after equipment crossing;
- advising if livestock are seen within construction right-of-way;

- prohibiting construction personnel from all-terrain vehicle and snowmobile use, and hunting and recreational fishing on right-of-way and facility sites;
- following existing tenure consultation agreements;
- educating on protocols for crossing pipelines with trucks and heavy equipment; and
- handling salvage wood appropriately.

To make sure that potential Project effects on human occupancy and resource are mitigated and monitored, and to enhance regulatory accountability and transparency, the Commission considers it necessary to impose requirements in **Condition 9** (Updated EPPs) to obtain updated EPPs from Westcoast, including those relating to reclamation and access management. The Commission also considers it necessary to impose **Condition 19** (Socio-economic Effects Monitoring Plan), to support appropriate monitoring of potential positive and adverse socio-economic Project effects, as well as **Condition 38** (Socio-economic Effects Monitoring Final Report), which would require Westcoast to provide updates on socio-economic monitoring and mitigation measures pertaining to human occupancy and resource use, including how concerns were addressed. The Commission finds that Westcoast's mitigation measures, in addition to monitoring and Westcoast's satisfaction of the Commission's conditions, would be effective in reducing potential adverse effects caused by the Project on human occupancy and resource use.

8.5.3 Residual and cumulative effects

As described in **Table 8-4**, the Commission finds that the Project would likely cause residual and cumulative effects in four areas related to human occupancy and resource which include parks and protected areas, residential areas, agricultural land uses, and non-Indigenous hunting, fishing, trapping, guide outfitting, and recreational activities. The Commission notes that it discusses Project effects on the exercise of Indigenous Peoples' rights relating to these activities in **Chapter 10**. The Commission finds that these potential Project effects would be medium to long term in temporal extent, within the local geographic extent (the LSA), low to medium (adverse) in magnitude, and low (adverse) in total cumulative effects. With the implementation of Westcoast's mitigation measures and commitments, Project monitoring, and the applicable conditions the Commission considers necessary to impose, the Commission finds that any residual Project effects on human occupancy and resource use would be of low (adverse) significance.

Residual effects on parks and protected areas are expected to be short to medium term in duration, local in geographic extent, and low (adverse) in magnitude. Westcoast's mitigation measures, particularly routing selection to parallel the T-South system and avoid impacting parks and protected areas, is appropriate and would reduce most residual effects. While residual effects due to the CS-4A to CS-4B pipeline loop and temporary workspace in the Giscome Portage Heritage Trail Protected Area are expected, this portion of the Project would be constructed within an existing right-of-way, with no new permanent right-of-way required. Temporary workspace may be required within the protected area if there is insufficient space on the right-of-way, though its spatial requirement has been reduced in response to Westcoast's engagement activities.

Residual effects on residential areas are expected to be short to medium term in duration, local in geographic extent, and low (adverse) in magnitude. Westcoast's proposed route avoids residential areas; however, local residents near the Project are likely to experience residual effects during Project construction (e.g., access disruptions, changes in traffic, nuisance noise and dust) and site-specific maintenance and monitoring activities (e.g., helicopter flyovers). These effects would likely

be limited after construction, as no further pipeline activities would occur aside from those relating to maintenance and monitoring.

The Commission finds that effects on agricultural land uses would be short to medium term in duration, local in geographic extent and low to medium (adverse) in magnitude. Given construction would be year-round, it would likely overlap with the agricultural season and may require landowners and land users to alter their farming or harvesting practices. However, no or limited economic losses are anticipated due to compensation arrangements between Westcoast and landowners and the ability for owners to seek redress through the CER Act's compensation provisions.

Residual Project effects on non-Indigenous hunting, fishing, trapping, guide outfitting, and recreational activities would be short to medium term in duration, local in geographic extent, and low to medium (adverse) in magnitude. These effects would be felt more in the Regional District of Fraser-Fort George, the Cariboo Regional District, and the Thompson-Nicola Regional District where more land is available for these types of activities. The Project's residual effects on recreational activities would occur mostly after landscape alteration for the right-of-way and during the time it takes for natural revegetation to occur.

The Commission finds the total cumulative effects of the Project on human occupancy and resource use are expected to be low (adverse), given the collective operation of Westcoast's mitigation measures, commitments, and the Commission's conditions. The Commission also accepts, based on Westcoast's evidence, that reasonably foreseeable projects would likely use appropriate mitigation measures which would serve to reduce cumulative effects. Cumulative effects would more likely to be experienced by residents in the RSA, particularly in the Fraser Valley Regional District, where there are more reasonably foreseeable projects anticipated (e.g., residential and commercial developments) than in other regional districts. The cumulative effects on agricultural land use is most likely to be felt in the Regional District of Fraser-Fort George, where the most agricultural land is crossed by the Project compared to other regional districts. Non-Indigenous hunting, fishing, trapping, guide outfitting and recreational activities, as well as parks and protected areas, may see overlapping cumulative effects given some of these activities take place in parks and protected areas. The cumulative disruption to these activities and locations may result in loss of opportunities for enjoyment due to access limitations or nuisance effects of noise, dust, and visual quality during construction and site-specific management activities.

Table 8-4: Evaluation of significance of residual effects on human occupancy and resource use

Human occupancy and resource use		
Residual effects: • Changes to parks and protected areas • Changes to residential areas • Changes to agricultural land uses • Changes to public activities, including hunting, fishing, trapping, guide outfitting, and recreational activities		
Criteria	**Rating**	**Discussion**
Temporal extent	Medium to long term	The Commission expects construction effects to be medium term, and operational effects to be long term.
Geographic extent	Local	The Commission expects that people who live near, rely on services, and/or undertake activities in the LSA, to be the most affected.
Magnitude	Low to medium (adverse)	The Commission expects, with Westcoast's implementation of its mitigation measures and commitments, and the Commission's conditions, that effects caused by Project construction and operation to be low to medium, depending on proximity to the Project.
Cumulative effects	Low (adverse)	The Commission expects the Project to contribute to cumulative effects on human occupancy and resource use. The Commission finds that with Westcoast's mitigation measures, including route selection, commitments, as well as Westcoast's compliance with **Condition 9** (Updated EPPs) and **Condition 19** (Socio-economic Effects Monitoring Plan), the total cumulative effects on human occupancy and resource use are predicted to be low (adverse).
Significance	Low (adverse)	Westcoast's mitigation measures and the Commission's conditions are anticipated to reduce the effects of the Project on human occupancy and resource use. However, residual effects on human occupancy and resource use still have the potential to affect the quality of life of individuals. With Westcoast's mitigation measures and the Commission's conditions, and considering total cumulative effects, the Commission finds the Project's overall effects would be of low (adverse) significance.

8.6 Heritage resources

The Commission finds that the construction and operation of the Project would affect heritage resources. These effects on heritage resources would be short to long term in duration, localized to the Project footprint, and low to medium (adverse) in magnitude. The Commission appreciates that Indigenous Peoples' experience with disturbances to heritage resources would likely be felt more strongly due to the connection between heritage resources and their ancestors. With this in mind, and considering the effects of historic and reasonably foreseeable developments, the Commission expects the Project's total cumulative effects for heritage resources would be low to medium (adverse) in magnitude.

With Westcoast's implementation of its mitigation measures (including its Heritage & Cultural Resource Discovery Contingency Plan) and commitments, Project monitoring, and Westcoast's compliance with **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), and **Condition 19** (Socio-economic Effects Monitoring Plan), and through permits from the BC government (which exercises provincial regulatory oversight over heritage resources), the Commission finds that any residual Project effects on heritage resources would be of low to medium (adverse) significance.

8.6.1 Relevant setting

The Project's potential effects on heritage resources are bounded spatially by the Project footprint, since potential effects on heritage resources are expected to be confined to where Project activities take place. For this reason, the LSA comprises the Project footprint.

8.6.1.1 Historical and current context

Previously identified pre-contact archaeological sites within the LSA were identified during archaeological assessments conducted for previous developments (e.g., industrial, forestry, urban) within the given study region. These archaeological sites indicated occupation by Indigenous Peoples in this area before European contact and provided evidence of diverse activities that reflect how the land was occupied and used. The sites include habitation sites, stone tool and stone tool manufacturing detritus sites, and transportation trails (e.g., Giscome Portage Trail). This is exemplified by Lheidli T'enneh First Nation describing conducting archaeology work in the Hixon, BC area and finding flakes at some of the sites. Similarly, Westcoast noted a discovery of a pit house village, relating to Coldwater Indian Band, along a portion of the original route for the CS-8A power line.

Vice-Chief Cheryl Rule of Coldwater Indian Band said:

> So we've lost important parts of their history, including pictographs and pit houses.

As further evidence, Elder Ursala Drynock of Nicomen Indian Band shared:

> We are the Nlaka'pamux in unceded territory of the Nlaka'pamux people on whole, and we have lived on this territory, this land, for hundreds of years. I will show an example that (...) a little area that has been archeologically dug, and it has shown that we as a people have lived along our area for thousands of years.

Heritage resources have also been altered along the Project footprint due to land and resource use. Activities that have resulted in the removal or alteration of heritage resources throughout BC include those relating to forestry, agriculture, industrial developments (e.g., oil and gas, transmission lines, facilities), mining, urbanization, residential developments, and transportation infrastructure.

8.6.1.2 Regulatory context

The regulatory setting regarding heritage resources in the Project footprint includes the *Heritage Conservation Act* of BC and the BC *Land Act*. The BC Ministry of Forests, Archaeology Branch exercises regulatory authority under the *Heritage Conservation Act* regarding the protection and alteration of designated archaeological or historic sites. The BC *Land Act* is a statute that can be used to protect public interests in Crown land through reservations or through designations to conserve natural or heritage resources. In addition to the provincial statutes, the following Indigenous heritage resources policies are in place covering the Project footprint:

- Lheidli T'enneh Heritage Policy;
- Neskonlith Indian Band Consultation Application;
- Tk'emlúps te Secwépemc Heritage Conservation By-law;
- Spuzzum First Nation Cultural Heritage Resources Policy;
- Upper Nicola Band Cultural Heritage Resources Policy; and
- Stó:lō Heritage Policy Manual.

Chief Tyrone McNeil of Seabird Island Band explained that the Stó:lō People have a Stó:lō Heritage Policy that should be implemented for the Project. He said:

> And again to Enbridge, don't fear that policy. We can work with you to ensure that our interests, particularly our own ancestral remains, are handled appropriately.

Williams Lake First Nation shared that their community drafted an ancestral remains protocol in accordance with Secwépemc law, protocols, and traditions to provide to contractors.

The Commission notes that heritage resources on reserve lands are under the management of the respective Indigenous communities. In the context of reserve lands affected by the Project, that includes Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Indian Band's reserve lands. The Commission discusses the Project relating to these Indigenous communities' reserve lands, including land requirements, in **Chapters 5 and 9**.

8.6.2 Project effects, mitigation, and monitoring

The Commission finds that the Project would affect heritage resources, particularly during the two-year construction period, through the loss or alteration of previously identified or unidentified archaeological and/or historic sites during Project construction and operations. This can occur through various activities, including vegetation clearing, grading, soil salvage, cleanup, worker access to heritage resources, surface and subsurface disturbance among other possible interactions.

In terms of mitigation measures, Coldwater Indian Band, Cook's Ferry Indian Band, Kelly Lake Cree Nation, Lheidli T'enneh First Nation, Nazko First Nation, Peters First Nation, and Pukaist Nation

shared their Indigenous knowledge about their connection to the territory and stressed the importance of protecting both known and previously undiscovered heritage sites within their respective territories during Project activities.

Matriarch Sophia Morena of Yale First Nation wondered what would happen to ancestral graves in her territory if the existing or new pipeline were to explode, saying:

> We have our cemetery, and that has all our ancestors, (...) because we're all connected as family, whether we're distant or not. But, in a way, what's going to happen to that when there will be an explosion? (...) But the whole thing is, what's really going to happen to our graveyard that's not going to ever -- like, if there ever will be an explosion and what would happen to that?

Westcoast proposed a suite of mitigation measures regarding heritage resources in its Cultural Resource Discovery Contingency Plan. The plan indicates that if a chance discovery of heritage resources is made, local Indigenous communities would be notified by Westcoast within a reasonable timeframe or as per specific community requests and relevant Indigenous policies, in addition to Westcoast's established practices. If human remains are discovered, local Indigenous communities would be notified by Westcoast and engaged within 24 hours or as per specific community requests and relevant Indigenous policies, in addition to Westcoast's established practices. The primary form of mitigation, if an archaeology site is identified, is site avoidance. Avoidance may be achieved by, among other things, changing the footprint so that it no longer intersects the archaeological site, staking and flagging the archaeological site boundary for avoidance, matting the archaeological site, or using trenchless construction methods where practical. Secondary mitigation measures include:

- suspending work in proximity to archaeological, paleontological or historical artifacts or sites (e.g., arrow heads, modified bone, pottery fragments, fossils) discovered during construction;
- clearly marking the discovery site with fencing, flagging, and signage installed along the buffer perimeter;
- pausing work at that location until permission is granted by the BC Ministry of Forests, Archaeology Branch and following the contingency measures identified in the Heritage and Cultural Resource Discover Contingency Plan in Westcoast's EPPs; and
- ensuring that all necessary approvals are acquired before starting construction activities, and that all permit and approval conditions are adhered to. This includes, where avoidance cannot be effected, obtaining the necessary approvals to clear a known heritage resource site and meeting applicable conditions (e.g., monitoring).

Cook's Ferry Indian Band, Kelly Lake Cree Nation, Nazko First Nation, Nicomen Indian Band, and Peters First Nation raised the following concerns about Westcoast's mitigation measures:

- Mitigation measures do not adequately account for the involvement of Indigenous communities in managing heritage resources, such that the potential residual effects have not been properly identified and accounted for. It is important to involve Indigenous Peoples in determining appropriate protections for heritage sites.
- In terms of notifying communities of heritage resource discoveries, a notification window is advisable (i.e. no more than 24 hours after discovery of the artifact). In the case of

> Indigenous communities that have dedicated monitors or guardians, or in Nazko First Nation's case, a dedicated natural resources department (with environmental and cultural protection and stewardship in its mandate), Westcoast must endeavor to inform these communities as soon as possible, with a minimum notification standard in line with the provincial archaeology branch.

Westcoast submitted that the notification guidance in the Heritage and Cultural Resource Discovery Contingency Plan is appropriate as it may not always be possible to notify affected Indigenous Peoples within 24 hours of a discovery. However, Westcoast also committed to ongoing engagement with Indigenous Peoples on updating its EPPs, which includes its Heritage and Cultural Resource Discovery Contingency Plan. Westcoast further confirmed that many Indigenous communities are already actively involved in the archaeology program for the Project, with some communities leading the program and field work in their respective territories. Westcoast provided these examples:

- Skeetchestn Indian Band's preferred archaeologist is acting as the BC Archaeology Branch permit holder for the archaeology work within Skeetchestn territory, and acting as program lead;
- Stó:lō Research and Resource Management Centre, in collaboration with the STSA, has been guiding Westcoast in the development and execution of a custom archaeology program in the area of the CS-8B to CS-9 and CS-9 to Huntingdon pipeline loops;
- Nlaka'pamux Nation Tribal Council has been supporting archaeology field studies within their traditional territory through their own archaeology company;
- Within Coldwater Indian Band territory, Westcoast has been using their preferred vendor to complete archaeological field studies. Westcoast continues to work with Coldwater Indian Band on the documentation and protection of the pit house village cultural site discovered where a portion of the CS-8A power line was to be constructed originally but was rerouted to protect the cultural site; and
- Westcoast has hired environmental team members and cultural guardians from interested Indigenous communities who are integrated into the archaeology field work crews. Environmental team members and cultural guardians have been participating in the field programs in 2023, 2024, and in the continuation of field archaeology work in 2025 to assess updates to workspace on the Project footprint. They are involved in identifying artifacts, culturally modified trees, and providing insight into identifying areas and objects of cultural significance. Identifying these cultural objects and areas increases the likelihood of identifying an archaeological site. For example, an environmental team member from Kelly Lake Cree Nation identified a medicinal plant which indicated the area required further archaeology assessment to confirm whether an archaeology site was present.

Of note, some Indigenous communities described positive experiences working with Westcoast as archaeological monitors in the past. Shelley Caillou of Kelly Lake Cree Nation said:

> And again, we commend Westcoast for providing training that was available to Kelly Lake Cree Nation participants. We had roughly 18 participants that periodically rotated doing various biophysical studies such as wildlife, aquatics, archeological, soil sampling, spawning. There are so many to note, but we were grateful for that training that allowed us to have -- which is really a requirement now in these days.

Gary Seymour of Lheidli T'enneh First Nation explained the importance and interest of their community to be involved in archeological work, saying:

> But it is an ongoing process and it would be nice, you know, to have more of our members get back into the archaeology and stuff like that, just, you know, just to, you know, have that knowledge of where you come from and what, you know, why we were in those areas, it would be, you know, something.

In addition, Westcoast submitted that it is using a collaborative tool known as a Community Interest and Response Table to track concerns of Indigenous Peoples and proposed mitigation and enhancement measures from Indigenous-led assessments or studies. Through ongoing engagement, Westcoast would review these tables with Indigenous Peoples to confirm whether its proposed mitigation measures address the concerns and interests raised. Westcoast would incorporate final (non-confidential) mitigation measures into its updated EPPs and EAS for the Project. Obtaining necessary permits and approvals and implementing the Heritage and Cultural Resource Discovery Contingency Plan included in the EPPs are some of the key mitigation measures to address cultural resources.

Westcoast has already begun implementing its mitigation measures, including through revising the CS-8A power line route to avoid heritage resources in the Coldwater Valley. While Lower Nicola Indian Band submits that this does not amount to sufficient accommodation for, among other things, the potential disturbance of culturally relevant sites, the Commission is of the view that the route revisions are an effective demonstration of mitigation and, moreover, that Westcoast's undertaking of archeological work to identify heritage sites, commitment to implementing mitigation measures, and indication of openness to reviewing mitigation with Lower Nicola Indian Band is responsive to its concerns.

Regarding monitoring, Cook's Ferry Indian Band, Nazko First Nation, Lheidli T'enneh First Nation, Peters First Nation, and Seabird Island Band stressed the importance of having monitors from their respective communities onsite during Project construction to ensure any potentially discovered heritage resources are handled properly. In addition to having monitors on site, Skeetchestn Indian Band expressed concerns about out-of-province consultants doing archaeology monitoring instead of local Skeetchestn people. Westcoast submitted that it continues to work with interested Indigenous Peoples to develop its Indigenous Monitoring Plan and that monitoring activities would be tailored to reflect each community's identified interests and concerns. Westcoast also said that monitoring activities would evolve based on ongoing feedback and site-specific conditions, and that Indigenous monitors would ultimately play a key role in observing, documenting, and reporting on construction activities to ensure that, among other things, cultural and community values are effectively respected during Project execution.

The Commission finds that Westcoast's mitigation measures, which are industry standard, and its commitments would reduce Project effects on heritage resources. The effectiveness of Westcoast's routing, the primary means of mitigation, was demonstrated through its avoidance of Coldwater Indian Band's heritage resources. Further supporting the effectiveness of Westcoast's mitigation is the evidence that Indigenous Peoples are engaged in carrying out archaeological work and would be involved in conducting construction and post-construction monitoring.

The Commission also finds that the notification procedures outlined in Westcoast's Heritage and Cultural Resource Discovery Contingency Plan are appropriate because the timing for notification

would be informed by specific community requests. The Commission notes it may not always be possible to notify affected Indigenous communities within 24 hours (e.g., Westcoast may not always be able to adequately assess a newly confirmed heritage resource and ascertain the relevant Indigenous community to notify within one day). The Commission expects Westcoast to fulfill its commitments regarding ongoing engagement with Indigenous Peoples on developing Project plans, including the updated EPPs, the Heritage and Cultural Resource Discovery Contingency Plan, and plans for Indigenous Peoples' participation in monitoring. These plans would be required under **Condition 9** (Updated EPPs), **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring).

The Commission emphasizes that Westcoast must meet all regulatory requirements set by each relevant BC authority for heritage resources. This includes completing any additional assessments or implementing other mitigation measures for newly discovered sites during fieldwork assessments, as well as implementing required construction monitoring or chance find notifications.
The Commission notes Westcoast has committed to meeting these obligations. With respect to requests by Indigenous Peoples for greater involvement in work relating to heritage resources, the Commission notes that provincial processes also require engagement with Indigenous Peoples on heritage clearances. During Project construction and operations, Westcoast may encounter chance finds that are historically and/or culturally important, making Westcoast's mitigation measures, combined with any additional provincial requirements, essential to reducing potential effects on heritage resources within the Project footprint.

To support appropriate regulatory oversight over potential Project effects on heritage resources and to further avoid, reduce, and minimize Project effects to this valued component of importance to Indigenous Peoples, the Commission considers it necessary to impose certain requirements in the following conditions:

- **Condition 9** (Updated EPPs) would require Westcoast to provide an updated Cultural Resource Discovery Contingency Plan, with descriptions of how Indigenous knowledge and the results of its engagement activities with Indigenous Peoples informed the plan's development.
- **Condition 15** (Outstanding Indigenous-led assessments or studies) would require Westcoast to file a report describing how it has integrated into the Project information from any additional Indigenous-led assessments or studies that were not filed during the hearing, which, as described above, is expected to inform Westcoast's Project plans, including the updated Cultural Resource Discovery Contingency Plan and Indigenous monitoring plans.
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), would support Indigenous Peoples' participation in Project-related construction and post-construction monitoring, including with respect to each Indigenous community's identified interests.
- **Condition 19** (Socio-economic Effects Monitoring Plan) would require Westcoast to prepare a plan, taking into account Indigenous knowledge and engagement with Indigenous Peoples, for monitoring potential adverse socio-economic effects of the Project during construction and post-construction, including those on heritage resources. This plan would address how Westcoast would respond if effects on heritage resources exceed identified thresholds.

- **Condition 38** (Socio-economic Effects Monitoring Final Report) would require Westcoast to file a final report on the Project's socio-economic effects monitoring, including with respect to heritage resources.

8.6.3 Residual and cumulative effects

As described in **Table 8-5**, the Commission finds that, with the implementation of Westcoast's mitigation measures and commitments (including its Heritage & Cultural Resource Discovery Contingency Plan), Project monitoring, and Westcoast's compliance with the Commission's conditions, and through obtaining permits from the appropriate BC authority with regulatory oversight over heritage resources, any residual Project effects on heritage resources would be of low to medium (adverse) significance.

The Commission finds the potential residual effects involving loss or alteration of identified and previously unidentified archaeological sites would be limited to the Project footprint where ground disturbance occurs. The temporal extent for effects is anticipated to be short to long term, as any ground disturbance activities during Project construction and operations have the potential to affect identified or previously unidentified protected heritage resources, though with rare frequency. Indigenous engagement and monitoring are anticipated to identify specific concerns relating to archaeological sites, as well as inform the design and implementation of mitigation measures that would be developed in conjunction with the Archaeology Branch of the BC Ministry of Forests. In addition, although it is preferred to leave archaeological sites undisturbed, adverse effects from their excavations can be mitigated to a degree by the recovery of knowledge about the site if the learnings are shared with interested Indigenous Peoples. Thus, after Westcoast's required mitigation measures are implemented, and compliance with both federal and provincial regulatory requirements, the magnitude of the residual effects of loss or alteration of identified or previously unidentified archaeological sites is considered to be low to medium.

Regarding cumulative effects, the Commission notes that the Project footprint overlaps areas where heritage resources connected to Indigenous Peoples have been altered and disturbed by repeated developments. The Commission finds that total cumulative effects for heritage resources would be low to medium (adverse). While chance finds during Project construction and operations activities are rare, the effect may be high and have a long-term duration for affected Indigenous Peoples. In that event, Westcoast would be required to implement its mitigation measures for heritage resources. One mitigation is Westcoast's Cultural Resource Contingency Discovery Plan, which would be developed with the benefit of Indigenous knowledge and engagement. The plan must ensure Westcoast's compliance with relevant BC requirements on heritage resources and is expected to outline the appropriate consideration of available Indigenous policies.

Table 8-5: Evaluation of significance of residual effects on heritage resources

Heritage resources		
Residual effects: • Loss or alteration of previously identified or undiscovered heritage resources		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	The Commission expects that the loss or alteration of identified or unidentified heritage sites may occur during construction (short to medium term), and possibly during operations (medium to long term) when operations and maintenance activities require physical disturbance of the environment.
Geographic extent	Project footprint	The Commission expects that lands within the Project footprint would be affected by Project construction and operations.
Magnitude	Low to medium (adverse)	With Westcoast's mitigation measures, commitments, Project monitoring, and the Commission's conditions, the Commission expects effects caused by Project construction and operations to be low to medium (adverse) magnitude. The Commission notes that implementing mitigation measures is anticipated to preserve the scientific, public, economic, and ethnic significance of any previously identified or unidentified heritage sites that are encountered.
Cumulative effects	Low to medium (adverse)	The Commission finds low to medium (adverse) total cumulative effects for heritage resources. While chance finds during Project construction and operations activities are rare, the effect may be high and have a long-term effect for affected Indigenous Peoples.
Significance	Low to medium (adverse)	The Commission finds the overall Project effects would be of low to medium (adverse) significance. Westcoast's mitigation measures, commitments, Project monitoring, and the Commission's conditions are expected to sufficiently reduce any negative Project effects. In the event of chance finds during construction, Westcoast's mitigation measures would be implemented, including its Cultural Resource Contingency Discovery Plan. The plan would ensure Westcoast's compliance with relevant BC requirements on heritage resources and is expected to outline the appropriate consideration of available Indigenous policies.

8.7 Infrastructure and services

The Commission finds that the Project would affect infrastructure and services along the Project route. These effects on infrastructure and services would be short to medium term in temporal extent, within regional geographic extent, low to medium (adverse) in magnitude, and low to medium (adverse) total cumulative effects. With the implementation of Westcoast's mitigation measures and the requirements in **Condition 19** (Socio-economic Effects Monitoring Plan), the Commission finds that any residual Project effects on infrastructure and services would be of low (adverse) significance.

8.7.1 Relevant setting

The Project is located in areas with significant infrastructure and services, increasing as the Project continues south and population density increases. In particular, the Project would affect transportation, power supply, waste management, water supply, emergency and healthcare services, accommodations, recreation/leisure services, and education services in these regional districts:

- Peace River Regional District;
- Regional District of Fraser-Fort George;
- Cariboo Regional District;
- Thompson-Nicola Regional District;
- Fraser Valley Regional District; and
- Metro Vancouver Regional District.

Each regional district has waste management available and has at least one fire station. All regional districts have either a provincial or municipal police presence, with some having two or more. There is linear infrastructure in all regional districts, including power lines, pipelines, and subsurface linear rights-of-way. Healthcare facilities are available throughout the province, with distances to these facilities for Project workers varying depending on the location of Project work. Recreation and leisure facilities are found within all regional districts and, with the exception of the Fraser Valley Regional District and the Metro Vancouver Regional District, are located primarily within cities or towns with a concentrated population. There are schools near the Project footprint and the RSA.

Accommodation types and availability vary across regional districts, with some within the RSA and some outside of it. These include short-term rentals, hotels, campsites, and recreational vehicle parks. Westcoast proposed two temporary workforce accommodations in the northern portion of the Project. During peak construction, temporary accommodation in the District of Mackenzie would house up to 700 pipeline construction workers, while temporary accommodation in the Pine Pass area would house up to 150 facility construction workers.

8.7.2 Project effects, mitigation, and monitoring

The Commission considered that the Project, largely due to its temporary workforce, would cause temporary effects on infrastructure and services, including:

- increased demands on transportation infrastructure to access Project work sites, which could affect traffic volumes and result in increased maintenance costs;
- physical disturbances to roads;
- increased demands on water, wastewater, and solid waste management systems;
- increased demands on emergency and healthcare services and facilities, potentially affecting the levels of service provided to local residents;
- increased demands on accommodations;
- increased demands on recreational facilities, affecting the availability, use, and enjoyment of those facilities by local residents and tourists; and
- changes in demand for educational services.

The City of Abbotsford expressed concerns with the CS-9 to Huntingdon pipeline loop within city boundaries, as it crosses Vye Road and Lamson Road and two water mains in those vicinities. The city is concerned about road access for residents and those working in the area, and for emergency services and vehicles servicing municipal infrastructure. The city also asked that Westcoast provide it with a copy of its traffic management or access control management plans. The Commission discusses the city's engineering-related concerns about pipeline crossings in **Chapter 6**.

Cook's Ferry Indian Band raised concerns that smaller communities such as Merritt and Othello were not properly accounted for in Westcoast's discussions on workers' accommodations. Kanaka Bar Indian Band indicated that an increase in population during construction could place further strain on community infrastructure and services, noting that the baseline capacity for services like healthcare is already diminished and slowly recovering after the 2023 Lytton fire.

Elder Yvonne Tupper of Saulteau First Nations raised concerns about the influx of workers the Project would bring to their region, saying:

> My understanding is there's 600 workers that is projected for this project. So I'm worried about camps, I'm worried about the influx of workers coming to our region. With our health care, my background, I have 20 years in health. So the stress of doctors, our hospitals, our social workers, our housing, not only for Saulteau First Nations, but for the services that we have in Chetwynd and around the area.

As a general mitigation measure, Westcoast committed to notifying all relevant municipalities of the construction schedule before commencing construction and working with authorities to develop communication strategies for residents. This applies to all types of infrastructure and services, including linear and power supply infrastructure, recreation and leisure facilities, and educational facilities. In addition, Westcoast proposed a variety of mitigation measures to address Project effects on specific types of infrastructure and services as described in **Sections 8.7.2.1 to 8.7.2.6**.

8.7.2.1 Transportation infrastructure

Westcoast committed to notifying Indigenous Peoples and stakeholders involved in Westcoast's engagement program of the construction schedule before commencing construction, or as otherwise required by crossing agreements. Westcoast would also follow the mitigation measures identified in its Access Management Plan and Traffic Management Plan. Construction traffic would be restricted to existing roads, construction rights-of-way, and approved shooflies, while construction activities would be confined to construction rights-of-way and approved temporary workspace. In addition, workers would be transported in multi-passenger vehicles. Westcoast would also upgrade and maintain roads as needed to accommodate equipment.

8.7.2.2 Waste management

Westcoast committed to transporting, handling, using, and disposing of hazardous materials safely, following all applicable laws and its Waste Management Plan and Fuels and Hazardous Materials Spill Contingency Plan. All construction waste would be collected in waste containers and taken to an approved facility for disposal. Measures would be in place to prevent construction materials and debris from entering watercourses and wetlands. Westcoast would place collection receptables and portable toilets on suitable land. Abrasive sandblasting waste would also be contained and disposed of properly.

8.7.2.3 Water supply

Westcoast committed to identifying and marking registered water wells within 100 m of the Project footprint and replacing the potable water supply if a well is damaged during construction. Westcoast would sample and analyze domestic water intakes and wells, as part of its engagement with landowners. Westcoast would also verify that adequate stream flow or volume is present for its wells testing programs.

8.7.2.4 Emergency services and healthcare facilities

Westcoast committed to making sure Project personnel are aware of emergency contact information included in its EPPs. Westcoast would also notify local emergency service providers of the construction schedule and provide details for key Project contacts. In addition, two temporary workforce accommodations are being considered near or within the District of Mackenzie to house construction workers at the northern end of the Project. These accommodations would include onsite first aid facility staffed with a paramedic, nurse, and ambulatory technician, as well as an ambulance. Security would be provided at both the accommodations and worksites. Westcoast would also require safety training for all construction personnel and visitors, implement its Statement on Business Conduct, and implement policies on after-hours safety and respect for communities.

8.7.2.5 Temporary workforce accommodation

Westcoast would engage and coordinate with local authorities, service providers, and businesses on the issue of worker accommodation, as required, and committed to continuing engagement with local communities, governments, and stakeholders to address local requirements and concerns. While no agreements are currently in place, the District of Mackenzie Council passed a resolution supporting the construction of temporary workforce accommodations for the Project. Westcoast would file the final location(s) for the temporary workforce accommodations before construction begins and include mitigation measures related to those temporary workforce accommodations in its Socio-economic Effects Monitoring Plan.

The Commission finds that Westcoast's mitigation measures would be effective in reducing the Project's potential effects on infrastructure and services. In addition, the Commission considers it necessary to ensure appropriate monitoring and reporting is in place for potential Project socio-economic effects, including on infrastructure and services, and therefore considers it necessary to impose **Condition 19** (Socio-economic Effects Monitoring Plan) and **Condition 38** (Socio-economic Effects Monitoring Final Report).

8.7.2.6 Recreation and leisure facilities, and educational facilities

Westcoast is committed to notifying applicable municipalities of the construction schedule before starting construction and working with municipal authorities to develop communication strategies with residents.

The Commission finds that Westcoast's mitigation measures, Project monitoring, and compliance with the applicable conditions, would be effective in reducing potential adverse effects caused by the Project on infrastructure and services. Other than for the indicators assessed in this section, the Commission predicts that the residual and cumulative effects of the Project on infrastructure and services would be negligible and would not carry forward a further effects assessment for these indicators.

8.7.3 Residual and cumulative effects

As described in **Table 8-6**, the Commission finds that the Project would cause greater than negligible residual and cumulative effects in four areas related to infrastructure and services:

- an increase in road traffic;
- physical disturbances to roads;
- an increase in demand for emergency and healthcare services; and
- an increase in demand for accommodation.

With the implementation of Westcoast's mitigation measures, the effects of Project monitoring, and Westcoast's compliance with **Condition 19** (Socio-economic Effects Monitoring Plan), the Commission finds that any residual Project effects on infrastructure and services would of be of low (adverse) significance.

The Commission finds that residual effects from increased road traffic would be short to medium term in duration, local to regional in geographic extent, and low to medium (adverse) in magnitude. Areas with lower population densities, such as the Peace River Regional District, are more likely to experience these effects, especially where increased workforce accommodation demands are expected. However, because employees work in shifts and would need to access the worksite at different times, it is unlikely that all workers would be travelling on the same segment of Highway 97 (the nearest main road to the CS-2B to CS-3 pipeline loop) at once, even during peak construction. Further, temporary workforce accommodations would reduce the effects on road traffic by reducing the distance and time travelled on local roads by the workforce during construction.

The residual effects of physical disturbances to roads are likely to be short to medium term in duration, local to regional in geographic extent, and low to medium (adverse) in magnitude. The Project would create residual and cumulative effects by potentially causing physical disturbances to roads due to road crossings. The extent of these disturbances would depend on the type of crossing

methods used, and Westcoast plans on using a variety of crossing methods. Crossings may disrupt access to roads and areas for motorists, who may need to find an alternative route; though the disruption would be short to medium term. The Commission notes that Westcoast committed to additional mitigation measures to reduce the effects of the Project on individuals using shared public roads affected by physical disturbance.

Regarding residual Project effects on regional emergency and healthcare services, the Commission finds the residual effects would likely be short to medium term in duration, local to regional in geographic extent, and low to medium (adverse) in magnitude. The Peace River Regional District and the Thompson-Nicola Regional District reported that existing emergency and healthcare services are already highly utilized in their districts, noting that they have a lower-than-average proportion of residents with a regular healthcare provider. Indigenous Peoples and local residents also raised that increased demand may exacerbate existing concerns and shortages. The Commission notes that the available medical and security services (e.g., in temporary workforce accommodations), Westcoast's training to Project personnel and implementation of safety policies would reduce the strain on emergency and healthcare services.

For the residual effects on accommodations, the Commission finds effects would likely be short to medium term in duration, local to regional in geographic extent, and low to medium (adverse) in magnitude. While the Project would cause an increase in demand for accommodation for a limited period of time, mostly during Project construction, it is likely to create challenges in the northern areas of the Project that have limited available accommodations. However, the two temporary workforce accommodations planned by Westcoast in the District of Mackenzie region (i.e., in the McLeod Lake area and the Pine Pass area) would help reduce effects on regional accommodations.

The Commission finds the total cumulative effects of the Project on infrastructure and services are low to medium (adverse). Reasonably foreseeable developments and activities, such as the Giscome Quarry and Lime Project near Prince George, which are occurring at the same time as the Project, would likely also use major and regional highways. Historic and reasonably foreseeable developments may also contribute to road disturbances in varying amounts, depending on the type of road crossing techniques used. Cumulative effects relating to road disturbances may be more noticeable in less populated areas, since major road networks in heavily populated and industrialized areas are generally designed for higher traffic loads. There is also potential for workforces from other reasonably foreseeable developments to contribute cumulatively to an increase in demand on emergency and healthcare services, as well as accommodation.

Table 8-6: Evaluation of significance of residual effects on infrastructure and services

Infrastructure and services		
Residual effects: • Increase in road traffic • Physical disturbance to roads • Increase in demand for emergency and healthcare services • Increase in demand for accommodation		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to medium term	The Commission expects construction effects to be short to medium term.
Geographic extent	Regional	The Commission expects that people who live near, rely on services, and/or otherwise engage in activities in the LSA to be the most affected. Given the range of infrastructure and services available in each region and how they are connected across regions, those living within the RSA may also experience effects from the Project.
Magnitude	Low to medium (adverse)	With Westcoast's mitigation measures, Project monitoring, and the Commission's conditions, the Commission expects effects caused by Project construction and operations to be low to medium, depending on the proximity to the Project.
Cumulative effects	Low to medium (adverse)	The Commission expects the Project to contribute to infrastructure and services' overall cumulative effects. The Commission finds low to medium (adverse) total cumulative effects for infrastructure and services.
Significance	Low (adverse)	Westcoast's mitigation measures and the Commission's conditions are anticipated to minimize the potential for adverse effects on infrastructure and services. However, a residual effect may be detectable in some areas. With Westcoast's mitigation measures and the Commission's conditions (particularly, **Condition 19** [Socio-economic Effects Monitoring Plan] and **Condition 38** [Socio-economic Effects Monitoring Final Report]), as well as the positive effects from Project monitoring, and considering total cumulative effects, the Commission finds the Project's overall effects on infrastructure and services would be low (adverse) significance.

8.8 Employment and economy

The Commission finds that the Project would positively affect employment and economy. The Project's contributions to employment and economy would be short to medium-term (up to 2 years) during construction, long term for operational effects (approximately 30 years), range from local to national (LSA to national geographic extent). While there are low to medium (adverse) total cumulative effects on Indigenous Peoples, due to the effects of industrial development to traditional economies over time, the Commission finds that – with the implementation of Westcoast's mitigation measures and its compliance with the conditions the Commission considers necessary to impose – residual Project effects on employment and economy would be of low (positive) significance.

The Project's positive contributions to employment and economy are reflected in various metrics. For example, it is expected to generate more than 18,275 full-time equivalent jobs (plus temporary and self-employment opportunities), increase labour income by up to $1.681 billion, and contribute up to $3.385 billion to Canada's gross domestic product. The Project's benefits have been acknowledged by various stakeholders, as evidenced by the 84 letters of comment filed on the record in support of the Project, including from individuals, businesses, unions, and industry workers and councils.

The Commission also heard concerns from Indigenous Peoples that they may not receive satisfactory economic and employment benefits from the Project. Despite Westcoast's proposed economic inclusion initiatives that would apply to the Project, such as its Indigenous Reconciliation Action Plan, the Commission considers it necessary to impose **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples) to improve transparency and promote regulatory accountability in this area. This condition would require Westcoast to file an update on Project-related employment, contracting, procurement, and training for Indigenous Peoples. In this update, Westcoast would be required to include, among other things, summaries on an Indigenous community-specific basis of Westcoast's engagement on these matters, how applicable Westcoast plans, policies, and practices are applied, and a description of their outcomes.

This section focuses on Project effects specific to employment, contracting, procurement, and training. The Commission discusses effects on the rights of Indigenous Peoples in **Chapter 10**, and Westcoast's engagement with Indigenous Peoples, as well as Project benefit agreements, in **Chapter 11**.

8.8.1 Relevant setting

The Commission considered Project effects and benefits extending from the LSA to the national geographic extent. For the purpose of evaluating effects on affected communities and Indigenous Peoples, the Commission focused its assessment on those potentially affected within the RSA, which includes communities that are within (or are intersected by) a 50-kilometre buffer from Project components and within BC's borders. For rural areas, the RSA includes electoral areas crossed by Project components. The RSA is intended to include within the Commission's assessment, communities that are near enough to the Project to have employment and economic interactions (e.g., as potential sources of labour, goods or services, or infrastructure and services).

The RSA comprises six regional districts (Peace River Regional District, Regional District of Fraser-Fort George, Cariboo Regional District, Thompson-Nicola Regional District, Fraser Valley Regional District, and Metro Vancouver Regional District) where resource-based, goods-production, mining, agriculture, tourism, and public administration economic activities take place. Based on 2021 information, the labour force among the districts varies significantly, ranging between 2,695 to

568,130 individuals. The labour force includes an average of 42 to 49 per cent females and 2 to 18 per cent identifying as Indigenous Peoples. Unemployment rates in 2021 ranged from 7.6 to 10 per cent, with average unemployment rates at 7 to 10 per cent and 9 to 11 per cent for Indigenous Peoples.

8.8.1.1 Setting for Indigenous economies

The Commission received evidence that, historically the lives of precontact Indigenous Peoples included subsistence activities across wide geographic areas. These subsistence activities served spiritual, cultural, social, and economic systems founded in sharing resources from fishing, hunting, and gathering. For example, Seabird Island Band and Stó:lō Peoples engaged in trade of dried fish, although Stó:lō Peoples have more recently begun participating in wage roles, shifting away from their traditional economic system. The evidence indicates that hunting, fishing, and trapping are no longer economically viable for Indigenous Peoples as the sole source of economic activity. Highlighting how projects can affect Indigenous Peoples' economies, Kelly Lake Cree Nation raised concerns during oral Indigenous knowledge sessions that industrial developments have economic effects on trappers' livelihoods.

Several Indigenous intervenors shared their knowledge about their economic contexts, historic and current, during oral Indigenous knowledge sessions:

Mike Anderson of Skeetchestn Indian Band explained how in 1910 they:

> (...) saw legislation come in to stifle First Nations' land claims, stifle First Nations' society. They took away the potlatch system. Potlach system was about redistribution of wealth. (...) Our economy is totally dependent upon natural resources. We don't really get a share of those natural resources, or very little.

Elder Chris Wycotte of Willams Lake First Nation shared:

> I think we have a lot of work to do and it starts with the companies that come and do business in our territories. I think at one time we said we were beggars in our own land. We should be the wealthiest people around, but we are not. So that has to change.

Chief Darwin Douglas of Cheam First Nation explained:

> Our people are rich. We're some of the most wealthy people on this earth, in this country, but not through our bank accounts or the Canadian dollar. In that respect, we're poor. But we consider ourselves rich people because we remember who we are. We still have a system of governance. We still have an economy. We still have a system of belief and practice.

Regarding their participation in economic activities with proponents, Chief Dalton Silver of Sumas First Nation shared:

> I think, you know, experiences that we've had -- and it's only of recent times where we're actually involved with the construction of certain things, infrastructure, highways and different things going through our territory, but we don't have any

> careers flowing from that reality is, we have jobs during the construction part of it and then it's done.

Terrence Paul of Nazko First Nation described how living on reserves impedes their community members' participation in the economy, saying:

> As Indigenous peoples and as Nazko First Nations, Dakelh people, we live in reserves, federal reserves. These are not Indian reserves; these are federal reserves. And these reserves are designed to maintain control over the Indigenous Peoples and to isolate them away from the resources, isolate them away from mainstream society settler communities, and away from the economy.

8.8.1.2 Context on the economic inclusion of Indigenous Peoples

Westcoast described Enbridge's Indigenous Reconciliation Action Plan (**IRAP**) and the Stonlasec8 Indigenous Alliance Limited Partnership (**Stonlasec8 Partnership**) as part of the economic benefits of the Project to Indigenous Peoples and indicated that the IRAP applies to Westcoast.

The IRAP outlines Enbridge's economic inclusion and partnership commitments intended to support Indigenous financial partnerships, supplier capacity development, and Indigenous procurement initiatives. Westcoast stated that, as part of the IRAP, Enbridge is committed to economic Reconciliation by maximizing economic inclusion opportunities for its projects and operations. It also strives to create and support positive and mutually beneficial effects, opportunities, and partnerships.

Westcoast noted that under the IRAP, from January 2023 to the end of 2030, Enbridge is committing an additional $1 billion in Indigenous spending across its North American projects and operations, which includes the Project. This includes total spending on Indigenous businesses, on direct and indirect subcontracting opportunities, as well as wages paid to Indigenous workers by Enbridge contractors.

Consistent with the IRAP, Westcoast's evidence indicates that its Indigenous spend on the Project in May 2024 was approximately $10.7 million. By October 2024, Westcoast had tracked an additional $11.3 million in Indigenous spend on the Project for various work, including surveys, geotechnical drilling, archaeological studies, medical services, helicopter services, surveying, and traffic management (i.e., indicating total spend of more than $22 million). By May 2025, Westcoast's Indigenous spend on the Project had increased by more than $5 million, in excess of $27 million.

Westcoast also highlighted, as an example of how the IRAP strives to create, engage in, and stimulate positive and mutually beneficial financial effects, opportunities and potential partnerships with Indigenous communities and businesses, a transaction whereby Enbridge entered into an agreement with the Stonlasec8 Partnership to become part owners of the Westcoast system. Under the agreement, a group of Indigenous communities, including many potentially affected by the Project, would benefit directly from the Westcoast system through a partnership that provides a 12.5 per cent ownership interest. Westcoast submitted that the revenue could help support their housing, essential infrastructure, cultural preservation, and environmental stewardship. Westcoast further confirmed that the Stonlasec8 Partnership would have the option to invest in the Project if it is approved, as well as in future expansions of the Westcoast system.

Because of the lack of detailed evidence about how the IRAP applies specifically to the Project, including on Enbridge's allocation from the overall Indigenous spend to the Project, and about the

Stonlasec8 Partnership (including its composition and the option that it has to invest in the Project should it be approved), the Commission has not treated these factors as enhancements forming part of its assessment of Project effects on employment and economy. Nevertheless, this information forms part of the context within which Project effects would occur and, as positive economic benefits, supports the Commission's overall assessment that the Project is in the public interest.

8.8.2 Project effects, enhancements, and monitoring

The Commission finds that the Project would positively affect employment and the economy, including through increased employment, contracting, procurement, and training opportunities, as well as higher government revenues from taxation, particularly during the two-year construction period. Potential benefits during operations are expected to be fewer due to decreased demand for goods and services.

The Project would result in direct employment benefits, including those related to Project construction, indirect benefits, including employment related to the supply of goods and services for construction, as well as direct and indirect business opportunities related to contracting and procurement. The average size of the construction workforce is expected to range from 500 to 1,000 workers, with an expected peak of over 2,500 workers in the third quarter of 2027. There would be an estimated five new full-time equivalent positions created for Project operations. The Project is expected to generate more than 20,700 full-time equivalent person-years of employment across Canada during development and construction, with most employment effects occurring in BC (72 per cent or 14,900 full-time equivalent person-years of employment). Increased labour income of more than $1.876 billion throughout Canada (direct, indirect, and induced labour income) is expected, and almost $1.375 billion of this increased labour income would occur in BC.

Total Project expenditures would generate gross domestic product of up to $3.385 billion in Canada including direct, indirect, and induced effects, which would be greatest in BC. They would also generate federal government tax revenues of up to $305 million and provincial tax revenues of up to $394 million in BC. Construction of the Project would generate demand for goods, services, and workers, which would contribute to the local and regional economy. There should also be increased tax revenues during Project construction due to, among others, sales and fuel tax. Project operations would generate municipal property tax revenues to host regions. Not all communities in the Project footprint would be equally affected by the Project, since effects vary based on various factors, including distance from the Project, proximity to worker accommodations, location among transportation routes, and whether the Project would draw on community services or infrastructure.

Supporting these economic and employment effects are 84 letters of comment from a broad range of stakeholders, including from a variety of municipalities, businesses, chambers of commerce, unions, industry councils, and individuals in support of the Project, which cite benefits of increased employment, economic activity and growth, and revenues in the region of the Project and the province of BC.

Indigenous Peoples including Cook's Ferry Indian Band, Kelly Lake Cree Nation (including through As'in'î'wa'chî Ni'yawak Nation businesses and partners), Louis Bull Tribe, Lower Nicola Indian Band, Nicomen Indian Band, Peters First Nation, Prophet River First Nation, Pukaist Nation, Skeetchestn Indian Band, Saulteau First Nations, and Tsq̓éscen̓ First Nation expressed interest in participating in Project enhancements on employment and economy, including through employment, contracting, procurement, and training opportunities.

Chief Christine Walkem of Cook's Ferry Indian Band conveyed their community's interest in participating in Project work, saying:

> We have a strong need to be involved and have commitments to training, to job readiness, to hiring of our members as well as other economic benefits (…) That keeps economic activity within our territory. It feeds our people.

The Commission also heard various interests and concerns from Indigenous communities about the Project's effects on employment and the economy:

- Seabird Island Band indicated that Westcoast should prioritize Indigenous-owned and operated businesses for Project contracting.
- Saulteau First Nations conveyed a similar sentiment when sharing oral Indigenous knowledge, expressing disappointment at seeing out-of-province workers while their young community members are not given the same opportunities.
- Nazko First Nation and Seabird Island Band identified, among other things, a need for training and education to increase employability of their members.
- Similarly, Nicomen Indian Band indicated a focus on improving their members' employability through dedicated training and employment programs.
- Cheam First Nation and the STSA expressed dissatisfaction with inadequate and/or short-term opportunities for economic inclusion, such as potential jobs, subcontracting, and procurement opportunities.
- Chawathil First Nation, High Bar First Nation, Seabird Island Band, and Williams Lake First Nation indicated a need for longer-term, sustainable, economic benefits from the Project.
- Cook's Ferry Indian Band, Kelly Lake Cree Nation, Métis Nation British Columbia, and Williams Lake Indian Band raised the need for targets and metrics to track economic inclusion, including employment, contracting and procurement opportunities.

Westcoast identified enhancement measures and made commitments that would enhance the Project's positive effects on employment and the economy, including:

- informing municipalities, Indigenous Peoples, and economic development agencies of the Project and workforce details;
- working with communities and Indigenous Peoples to source local trades people and services;
- using a platform to collect and store resumes from the local and Indigenous workforce, which would be accessible to Project contractors to support sourcing local and Indigenous employment;
- engaging with Work BC, Skills Trade BC, the Construction Foundation of BC, and unions, to gain an understanding of existing training programs and policies to inform Westcoast's employment and training plans;
- conducting outreach to post-secondary institutions as part of the approach to identify and enhance training and employment opportunities for Indigenous and non-Indigenous workers. Westcoast would incorporate information from this engagement, along with existing federal

and provincial employment and training programs for Indigenous and non-Indigenous communities, to identify and address skill gaps, training needs, work placement issues, and barriers to employment; and

- sponsoring the Jill of All Trades program and Sky Keepers program to increase Indigenous women's participation in construction, as well as the Outland Youth Employment Program, which focuses on equity and opportunity for Indigenous youth.

In response to the interests and concerns raised by Indigenous Peoples, Westcoast provided evidence of additional measures that it would take to enhance Indigenous Peoples' participation in Project employment, contracting, procurement, and training opportunities. For example, Westcoast indicated that it would:

- use dedicated resources from its Supply Chain Indigenous Engagement team to implement and oversee the deployment of Enbridge's Socio-Economic Requirements of Contractors process for engaging local Indigenous businesses. Enbridge's process requires the prioritization of businesses affiliated with local Indigenous communities based on proximity to Project work locations, as part of Westcoast's contracting and subcontracting procurement strategy;
- use dedicated personnel to engage with Indigenous communities about their interests and needs as it relates to skills, training, and employment. This support is intended to take place at an Indigenous community level to assess community needs and goals, and to assist with community workforce development plans;
- engage Indigenous Skills and Employment Training Strategy service delivery organizations across Project areas to create a common understanding of job and training requirements, and program offerings, that may support Indigenous and non-Indigenous workers and reduce barriers to employment;
- engage with Working Warriors, an Indigenous-owned business, which provides an online platform designed to connect Indigenous people with employment opportunities, training programs, and resources; and
- support Indigenous communities with capacity requirements and training for Indigenous community members to participate in ongoing fieldwork as environmental team members and cultural guardians, as well as for future construction monitoring.

Westcoast indicated that it does not have specific targets related to employment, contracting, procurement and training for the Project and, instead, highlighted the foregoing measures to increase economic opportunities for Indigenous Peoples. For example, Westcoast confirmed that Enbridge's Socio-Economic Requirements of Contractors process would be mandatory for all major sourcing events and that Westcoast would evaluate proponent (i.e., contractor) bids for, among other things, the depth, breadth, and overall quantitative value of opportunities afforded to Indigenous Peoples. Proposals from contractors that demonstrate higher measurable inclusion of Indigenous subcontractor businesses would have a competitive advantage in Westcoast's evaluation process. Westcoast submitted that Enbridge's Socio-Economic Requirements of Contractors process would drive economic inclusion results ensuring opportunities to achieve meaningful economic benefit through the participation of Indigenous businesses as contractors and subcontractors.

Westcoast also submitted that its procurement and inclusion strategy for the Project is consistent with Enbridge's broader IRAP Plan commitment for Indigenous economic inclusion. Westcoast highlighted, as evidence of economic inclusion specific to Indigenous Peoples, its greater than $27 million in Indigenous spend on the Project up to May 2025 for various scopes of work. Westcoast confirmed that it has engaged, and would continue to engage, with Indigenous Peoples on matters relating to contracting, employment, procurement, and training opportunities.

The Commission finds that Westcoast's enhancement measures for employment and economy are appropriate, and that the Project is expected to have positive effects in the RSA. Among other things, Westcoast has committed to advancing numerous employment, contracting, procurement, and training measures and benefits, many that are responsive to the concerns raised by Indigenous Peoples.

On the duration of Project benefits, the Commission accepts that most Project economic and employment benefits would accrue during construction and that, by extension, opportunities during the operational phase would decrease. However, Westcoast has committed to, and therefore must as a regulatory requirement, continue engagement on employment, contracting, procurement, and training with interested Indigenous Peoples during operations. The Commission is also persuaded that establishing fixed targets for employment, contracting, procurement, and training is not warranted in this case. and notes that not all Indigenous Peoples expressed an interest in participating in these opportunities, the differing capacities of Indigenous Peoples to fulfill targets, the variability of labour force availability in different regional districts (and among Indigenous communities), and ongoing evidence that Westcoast has offered economic opportunities to Indigenous communities (e.g., through increasing Indigenous spend during the hearing). Moreover, regarding proposals for targets, no detailed approach has been put forward as to how targets should be allocated amongst various communities.

The Commission notes that some Indigenous Peoples, including Cook's Ferry Indian Band, Nazko First Nation, and Skeetchestn Indian Band, tied economic opportunities to accommodations and Reconciliation. The Commission discusses this, which for the Project includes but is not limited to economic benefits, in **Chapters 10 and 11**. Others, like Driftpile Cree Nation cited broader potential economic benefits such as a youth complex. Project benefit, relationship, and other forms of agreements, which may be capable of considering these forms of broader economic requests, are raised in **Chapter 11**. The Commission encourages Westcoast to continue engaging on potential economic opportunities for Indigenous Peoples, taking into account each Indigenous community's interests.

Despite the overall positive effects of the Project, the Commission considers it necessary to impose conditions to further support and enhance regulatory transparency and oversight over Project effects on employment and economy, including for Indigenous Peoples:

- Condition 12 (Update on employment, contracting, procurement, and training for Indigenous Peoples) would increase transparency regarding Westcoast's hiring, contracting, procurement, and training for Indigenous Peoples. In response to concerns raised by Indigenous Peoples on greater robustness and transparency regarding economic opportunities, the Commission has strengthened the condition from what was initially proposed. The condition would now require Westcoast to, among other things, report on its engagement with Indigenous Peoples on this topic, on how its applicable plans, policies, and practices relating to employing, contracting, procuring from, and training Indigenous Peoples

were applied, with a description of their outcomes, and the information would be provided on a disaggregated basis.

- Condition 19 (Socio-economic Effects Monitoring Plan) and Condition 38 (Socio-economic Effects Monitoring Final Report) would further support beneficial Project effects on employment and economy. These conditions would require Westcoast to, among other things, file the plan for Commission approval, which would include matters relating to employment and economy, and file a final report on how monitoring and adaptive management enhanced positive Project effects.

Condition 11 (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) would support Indigenous Peoples' participation in both Project construction monitoring and post-construction monitoring activities and, from an employment and contracting perspective, would benefit Indigenous Peoples given Westcoast's confirmation that Indigenous monitors would be remunerated in accordance with market-based rates.

With Westcoast's implementation of its enhancement measures (including Enbridge's Socio-Economic Requirements of Contractors process and Indigenous Skills and Employment Training Strategy), commitments to ongoing engagement, and compliance with the Commission's conditions, the Commission expects that there would be opportunities available for communities in the RSA and Indigenous Peoples to benefit economically from the Project.

8.8.3 Residual and cumulative effects

As described in **Table 8-7**, the Commission expects the Project to have positive residual effects on employment and economy through increased contracting, training, procurement, and employment opportunities, as well as increased revenue for local, provincial, and federal governments. The Commission considered Westcoast's economic inclusion initiatives as important context within which these Project effects would occur. The Commission finds that these potential effects would be short to long term in temporal extent, LSA to national in geographic extent, and low (positive) in magnitude. While there is evidence of potential adverse effects, such as Cheam First Nation's concern that the Project may affect their economic goals relating to agriculture and tourism in their territory, the overall record indicates positive residual effects.

These positive benefits would occur in an area where Indigenous Peoples' traditional economies have experienced, and continue to experience, adverse residual effects from cumulative industrial activity. Kelly Lake Cree Nation's concern about effects on trappers is an example. For this reason, the Commission finds that total existing cumulative effects for employment and economy for Indigenous Peoples is low to medium (adverse), when traditional economies are considered. Despite this, the Project's overall contribution to overall cumulative effects would be positive. With Westcoast's implementation of its enhancement measures and compliance with the conditions the Commission considers necessary, the Commission finds that any residual Project effects on employment and economy would be of low (positive) significance.

Table 8-7: Evaluation of significance of residual effects on employment and economy

Employment and economy		
Residual effects: • Increase in employment, contracting, procurement, and training opportunities for both Indigenous Peoples and non-Indigenous people • Increase in local, provincial, and federal government revenues		
Criteria	**Rating**	**Discussion**
Temporal extent	Short to long term	Opportunities for employment, contracting, procurement, and training would likely be highest during construction (up to 2 years) and extend, with reduced opportunities, to post-construction phases (30 years). Economic benefits from increased revenues for local, provincial, and federal governments would continue throughout operations.
Geographic extent	LSA to national	Individuals, businesses, non-Indigenous communities, and Indigenous Peoples within BC would benefit the most from employment, contracting, procurement, and training opportunities. Westcoast committed to local and Indigenous employment on the Project. Project expenditures are expected to contribute to Canada's gross domestic product and raise tax revenues at the regional, provincial, and federal level.
Magnitude	Low (positive)	Benefits related to the construction phase of the Project, through both direct and indirect employment, contracting, procurement, and training would be noticeable for the individuals, businesses, non-Indigenous communities, and Indigenous Peoples that are involved. Fewer positive effects for the operational period are expected.
Additional context	N/A	The Commission considered evidence related to economic inclusion (e.g., the IRAP and recent developments regarding the Westcoast system, including the offer for 38 Indigenous communities through the Stonlasec8 Partnership to own 12.5 per cent interest in the Westcoast's system) as broad context within which the Project effects would occur. The Commission is of the view that these recent developments may facilitate the flow of employment and economic benefits to potentially affected Indigenous Peoples.
Cumulative effects	Low (positive), low to medium (adverse)	The total cumulative effects on employment and economy are positive overall. The Commission finds the total cumulative effects for Indigenous Peoples to be low to medium (adverse) when existing cumulative effects to traditional economies are assessed.
Significance	Low (positive)	With Westcoast's implementation of its enhancement measures and compliance with the conditions the Commission considers necessary to impose, the Commission finds that any residual Project effects on employment and economy would be of low (positive) significance.

9 Project effects on federal lands

Certain Project components would cross federal lands, consisting of the reserve lands of Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band. In accordance with section 82 of the IA Act, the Commission considered the environmental effects associated with Project components on these federal lands. The Commission has determined that carrying out these components is not likely to cause significant adverse environmental effects. While Project effects are expected, the Commission is satisfied that Westcoast's mitigation measures, the Commission's conditions, and the expected effect of Indigenous Peoples' monitoring activities are appropriate to address potential adverse environmental effects on federal lands.

Further, the Commission finds that Project effects on reserve lands would be mitigated through negotiated community-specific mitigation measures. This is due to the ability of Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band to consent, or not consent, to Westcoast taking possession of, using, or occupying reserve lands for specified activities under subsection 317(1) of the CER Act. **Chapters 5, 10, and 11** discuss the consents needed by Westcoast under this provision.

9.1 Section 82 of the IA Act

Before exercising any power or performing any duty or function under the CER Act that could permit the Project to be carried out on federal lands, section 82 of the IA Act requires the Commission, as a federal authority, to determine whether the Project is likely to cause significant adverse environmental effects on those lands. Section 81 of the IA Act defines environmental effects as "changes to the environment and the impact of these changes on the Indigenous Peoples of Canada and on health, social or economic conditions." Section 84 of the IA Act sets out the factors the Commission must consider.

9.2 Legal framework and methodology

The Commission has evaluated the entire Project under the CER Act, including its environmental effects (**Chapter 7**); its social, health, and economic effects (**Chapter 8**); and its effects on the rights of Indigenous Peoples (**Chapter 10**). The assessments in those chapters account for Project components on federal lands, which were assessed relative to the factors under CER Act section 183 and the requirements of the Filing Manual. As the Commission explains in those chapters, it evaluated the potential effects of the Project, including cumulative effects, on biophysical and socio-economic VCs using the methodology, criteria, and ratings described in those chapters.

In addition to the Commission's assessments in those chapters, section 82 of the IA Act requires the Commission to make a separate determination on whether the environmental effects associated with Project components on federal lands are likely to cause significant adverse environmental effects on federal lands. As such, the significance determination in this chapter is restricted to environmental effects on federal lands. For clarity, this determination is not an impact assessment of a designated project (as described under sections 9, 21, and 22 of the IA Act).

Under section 82 of the IA Act, the Commission must not exercise any power or perform any duty or function conferred on it under the CER Act that could permit the Project to be carried out on federal lands unless:

a) the Commission determines that the carrying out of the Project is not likely to cause significant adverse environmental effects; or

- the Commission determines that the carrying out of the Project is likely to cause significant adverse environmental effects and the Governor in Council decides, under subsection 90(3), that those effects are justified in the circumstances.

Because the Commission's determination is based on whether the Project is likely to cause significant adverse environmental effects, the associated methodology is focused on significance. This differs from the methodology the Commission used to assess the entirety of the Project under the CER Act. Subsection 84(1) of the IA Act requires that the Commission base its determination on the following factors:

a) any adverse impact that the Project may have on the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*;

b) Indigenous knowledge provided with respect to the Project;

c) community knowledge provided with respect to the Project;

d) comments received from the public under subsection 86(1); and

e) the mitigation measures that are technically and economically feasible and that would mitigate any significant adverse environmental effects of the Project that the authority is satisfied will be implemented.

The Commission received submissions on the factors set out in paragraphs 84(1)(a), (b), (c), and (e) regarding Project effects on federal lands, mainly from Cheam First Nation and Seabird Island Band. These are described below where applicable. No member of the public that filed a letter of comment indicated that their comments were being provided under subsection 86(1), through the notice published on the Canadian Impact Assessment Registry (Reference No. 89113).

In this chapter, the Commission only discusses VCs that it considers relevant to its federal lands determination. Not all VCs addressed elsewhere in the report are raised here. The Commission considers the mitigation measures described below as technically and economically feasible, is satisfied that they will be implemented given Westcoast's commitments and the applicable conditions and finds that they would mitigate any significant adverse environmental effects on federal lands.

9.3 Project components on federal lands

Westcoast has been operating existing pipeline infrastructure on Cheam First Nation and Seabird Island Band reserve lands for many decades. In addition, Westcoast has been operating pipelines within a right-of-way that crosses McLeod Lake 5 reserve. Westcoast stated that, consistent with Project routing as a whole, a combination of pipeline looping and compressor station modifications along its existing pipeline system is preferred over routing options that are not along the system or that would require new compressor stations. In refining the Project design, Westcoast also

considered ground truthing, terrain and constructability, environmental features, and engagement feedback.

The Project includes these components on federal lands:

- a portion of the CS-8B to CS-9 pipeline loop located on Seabird Island Band's reserve for approximately 6.5 km;
- a portion of the CS-8B to CS-9 pipeline loop located on Cheam First Nation's Tseatah 2 reserve for approximately 0.98 km;
- facility upgrades and modifications at the existing CS-9 on Cheam First Nation's Cheam 1 reserve; and
- temporary workspace required for construction and laydown areas, located on McLeod Lake 5 reserve at the northernmost end of the CS-3 to CS-4A pipeline loop.

The CS-8B to CS-9 pipeline loop parallels Westcoast's existing right-of-way on Cheam First Nation's Tseatah 2 reserve. Westcoast also has an existing lease with Cheam First Nation to operate the CS-9 facility on the Cheam 1 reserve. The CS-8B to CS-9 pipeline loop similarly parallels Westcoast's existing right-of-way on Seabird Island Band's reserve, except where Westcoast modified the route in response to Seabird Island Band's specific requests. **Table 9-1** summarizes the areas required for Project components on federal lands.

Table 9-1: Areas required for on-reserve Project components

	Right-of-way	Temporary workspace	Temporary access	Total
Seabird Island Band reserve	7.73 ha	43.31 ha	0.63 ha	51.67 ha
Cheam First Nation reserves	1.45 ha	3.52 ha	0 ha	4.97 ha
McLeod Lake 5 reserve	0 ha	1.05 ha	0.10 ha	1.15 ha

9.4 Environment

The Commission discusses, in detail, overall Project effects, mitigation measures, monitoring, conditions, and residual and cumulative effects in **Sections 7.2 to 7.10**. The Commission's assessment of the Project's effects on federal lands in this chapter does not repeat the detailed discussions in **Chapter 7**. Instead, the Commission examines the effects specific to the Project components on federal lands and highlights key mitigation and monitoring measures, as well as conditions the Commission considers necessary to impose. Based on the specific assessments contained in the following subsections, as informed by referenced information in **Chapter 7**, the Commission expects that overall residual changes to the environment on federal lands would be minimized.

9.4.1 Relevant setting

The temporary workspace proposed within McLeod Lake 5 reserve, at the northern end of the CS-3 to CS-4A pipeline loop, traverses forested land located within the Nation Grizzly Bear Population Unit. The temporary workspace also crosses one non-classified stream.

The Project footprint of the CS-8B to CS-9 pipeline loop crosses Seabird Island Band's reserve and Cheam First Nation's Tseatah 2 reserve. Westcoast submitted that 11.9 km (86 per cent) of land use along the CS-8B to CS-9 pipeline loop is agricultural, including provincially designated Agricultural Land Reserve.

On Seabird Island Band's reserve, the Project traverses critical habitat for two species listed as endangered on Schedule 1 of the SARA – Oregon spotted frog (*Rana pretiosa*), and Oregon forestsnail (*Allogona townsendiana*). The Project also traverses one unnamed tributary to Maria Slough South, eight wetlands (including Maria Slough North), and Agricultural Land Reserve.

There is potential for the following additional species listed on Schedule 1 of the SARA to interact with Project construction and operations on federal lands:

- band-tailed pigeon (*Patagioenas fasciata)*
- barn owl (*Tyto alba*)
- barn swallow (*Hirundo rustica*)
- common nighthawk (*Chordeiles minor*)
- evening grosbeak (*Coccothraustes vespertinus*)
- great blue heron, *fannini* ssp. (*Ardea Herodias fannini*)
- horned grebe (*Podiceps auritus*)
- horned lark (*strigata* ssp., *Eremophilia alpestris strigata*)
- little brown myotis (*Myotis lucifugus*)
- monarch (*Danaus Plexippus*)
- Northern red-legged frog (*Rana aurora*)
- Northern rubber boa (*Charina bottae*)
- olive-sided flycatcher (*Contopus cooperi*)
- rusty blackbird (*Euphagus carolinus*)
- short-eared owl (*Asio flammeus*)
- Western bumble bee, *occidentalis* ssp. (*Bombus occidentalis occidentalis*)
- Western grebe (*Aechmophorus occidentalis*)
- Western toad (*Anaxyrus boreas*)
- Western screech-owl, *kennicottii* ssp. (*Megascops kennicottii kennicottii*)

9.4.2 Project effects, mitigation, and monitoring

The Commission is of the view that Project effects on relevant environmental VCs on federal lands would be similar to the effects the Commission assessed for the Project overall. These effects would therefore require similar mitigation and monitoring to minimize the magnitude and duration of any residual effects.

Westcoast focused its biophysical assessment of Project effects on federal lands on five VCs – soils, vegetation, wetlands, fish and fish habitat, and wildlife and wildlife habitat. In addition to these VCs, the Commission also assessed GHG emissions and changes to carbon sinks associated with the Project, as per the Impact Assessment Agency of Canada's *Projects on federal lands and outside Canada: Guidance document on sections 81 to 91 of the Impact Assessment Act.* As GHGs are a global phenomenon, Project contributions to atmospheric GHG emissions remain the same both on and off federal lands. Therefore, the conclusions reached in **Section 7.9** remain the same.

Westcoast made commitments and identified mitigation measures specific to each VC, which are discussed in the subsections below in the context of federal lands. In addition, the Commission considers it necessary to impose conditions to further reduce Project effects on the environment, including on federal lands. Conditions that apply across all VCs are discussed in **Section 7.2** and include:

- **Condition 9** (Updated EPPs), which would require Westcoast to prepare and file an update of its environmental protection measures for the Project, including those on federal lands.
- **Condition 41** (Post-construction environmental monitoring reports), which would require Westcoast to, among other things, report on the extent to which the goals and measurable targets stated in the EPPs are achieved, and to undertake corrective actions where needed.
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), which would require Westcoast to file, for the Commission's approval, its plans for Indigenous monitoring during and after construction. When these plans are implemented, Indigenous monitoring is expected to reduce potential effects on all VCs by increasing the identification of environmental effects (i.e., potential changes to the environment, and the impact of these changes on Indigenous Peoples and on health, social, or economic conditions) and identifying adaptive management measures, as necessary. As described in **Chapter 7**, Westcoast has made commitments to, among other things, tailor monitoring activities to community interests and concerns and define the roles of Indigenous monitors.

Overall, the Commission is satisfied that Westcoast's mitigations, the Commission's conditions, and the expected contributions of Indigenous Peoples' monitoring activities would reduce the biophysical effects of the Project on federal lands.

9.4.2.1 Agricultural Land Reserve

Westcoast submitted that potential changes to Agricultural Land Reserve on federal lands may occur. These include decreased soil quantity and quality due to soil handling activities; compaction, rutting, or pulverization during construction activities; changes in contour following construction; and wind or water erosion after removing vegetation cover. Effects also include decreased soil quality due to the presence of bedrock and stones following construction, contamination from spot spills, and exposing already contaminated soils.

Westcoast anticipates that these effects may occur on Seabird Island Band's reserve and Cheam First Nation's Tseatah 2 reserve. Neither of these communities provided Indigenous knowledge specifically related to Project effects on Agricultural Land Reserve. However, Cheam First Nation mentioned in their oral Indigenous knowledge session that the community has taken back control of all their agricultural lands and bought two farms to begin a regenerative farming initiative to feed their people and others locally.

Westcoast indicated that it would implement established and proven mitigation measures and construction practices to avoid or reduce potential effects on soil and soil productivity, as outlined in the EPPs. Examples of measures include salvaging soil and implementing contingency plans for erosion, sediment control, soil handling and spills. Westcoast would implement a Fuel and Hazardous Material Spill Contingency Plan as mitigation for soil contamination. Westcoast stated that for Agricultural Land Reserve, it may use minimal disturbance techniques to narrow the right-of-way width or trench width stripping to reduce the extent of disturbance to soils and vegetation.

Westcoast stated that soil would be monitored as part of the post-construction environmental monitoring program. Westcoast also said that reclamation efforts and environmental rehabilitation are addressed through mitigation included in the EPPs.

In addition to these mitigations, the Commission considers it necessary to impose requirements in **Condition 9** (Updated EPPs), which would require Westcoast to include in its updated EPPs any revisions to the plans resulting from its commitments relating to soil mitigation described above; site-specific plans for erosion, sediment control, and riprap use; as well as reporting on Westcoast's incorporation of Indigenous knowledge and engagement results with Indigenous Peoples into the plan. The Commission also considers it necessary to impose **Condition 18** (Construction Emergency Response Plan(s)), which would require Westcoast to include spill contingency measures that it would employ in response to accidental spills.

9.4.2.2 Vegetation

Westcoast submitted that potential Project changes to vegetation, including forested areas, may occur on federal lands. These include the loss or alteration of communities and species of concern – including native vegetation, rare species and communities, culturally important species and communities, and old growth forest – and the introduction or spread of weeds and invasive plant species and forest pests. These changes may occur due to land use changes, vegetation clearing, and disturbance associated with Project construction and operations. In addition, the introduction and spread of weeds of concern and forest pests may further affect vegetation health and composition.

Westcoast anticipates that these changes may occur on the McLeod Lake 5 reserve. McLeod Lake Indian Band stated that they would like to be engaged and involved in reclamation to ensure that it is done to their own standards, with the correct reseeding.

Westcoast pointed to the mitigation measures described in its EPPs to reduce the Project's residual effects. These measures include, among others, conducting pre-construction vegetation surveys for species and communities of concern and including site-specific mitigation in Westcoast's EAS, executing weed control in accordance with Westcoast's Biosecurity Management Plan, and reducing surface and vegetation disturbance to the extent practical to promote natural vegetation regeneration.

In addition, the Commission considers it necessary to impose requirements in **Condition 9** (Updated EPPs) and **Condition 29** (Operational Vegetation Management Plan) to further reduce residual effects on vegetation, including on forested land and culturally important plant communities. These include requiring Westcoast to include mitigation measures for culturally important vegetation, as well as procedures for facilitating pre-construction harvesting by Indigenous Peoples and for pesticide and herbicide use during Project construction and operations. Both conditions would require Westcoast to provide details on how it incorporated Indigenous knowledge and engagement results into its plans.

9.4.2.3 Wetlands

Westcoast submitted that potential Project changes to wetlands may occur on federal lands. These include the permanent loss of wetland habitat and associated hydrologic and biogeochemical functions in areas of permanent disturbance, and temporary alteration of wetland habitat and functions in areas of temporary disturbance. **Section 7.5** discusses details of these effects and the associated mitigations. Westcoast anticipates that these effects may occur on Seabird Island Band's reserve and Cheam First Nation's Tseatah 2 reserve.

Westcoast's ESA outlines the approach to achieving no net loss of wetland function in alignment with the *Federal Policy on Wetland Conservation*. To evaluate potential and actual effects, Westcoast would measure key indicators through a wetland landscape functional assessment before and after Project construction. The Commission notes that all wetlands within the impacted federal lands are subject to no net loss requirements.

Westcoast indicated that to achieve no net loss of wetland function as set out in the *Federal Policy on Wetland Conservation*'s, it has developed mitigation according to the standard hierarchy – avoid, mitigate, restore, and, if warranted, offset. Westcoast developed its mitigation measures in accordance with its standards, as well as industry and regulatory guidelines. Examples of mitigation measures to protect wetlands include installing signage at the riparian management areas around wetlands, delineating areas where riparian vegetation is to be maintained or salvaged, scheduling instream work during periods of anticipated low precipitation and runoff, and implementing best management practices to prevent deleterious materials or construction debris from entering wetlands.

The Commission considers it necessary to impose requirements in **Condition 9** (Updated EPPs) for Westcoast to include in its updated EPPs any revisions to its commitments regarding wetlands, a wetlands mitigation plan with site-specific mitigation measures, and descriptions as to how Indigenous knowledge and engagement results have been integrated and incorporated into the plans. In addition, the Commission considers it necessary to impose **Condition 21** (Contingency

watercourse and wetland crossings) for fish-bearing wetlands where the proposed primary crossing method is not feasible and a contingency crossing is required. The Commission also considers it necessary to impose **Condition 39** (Wetland Offset Measures Plan) which would require Westcoast to identify, after beginning Project operations, the offset measures to be implemented, the expected effectiveness of offsets, the decision-making criteria for selecting offset measures, and the schedule for offset implementation and estimated completion dates.

9.4.2.4 Fish and fish habitat

Westcoast submitted that potential Project changes to fish and fish habitat may occur on federal lands, including the loss or alteration of fish and riparian habitats. In particular, there is an increased risk to fish health and mortality, of creating obstacles to fish movement, and of transferring invasive aquatic organisms between watersheds. **Section 7.6** discusses details of these effects and the associated mitigations.

Westcoast anticipates that these effects may occur on the McLeod Lake 5 reserve and Seabird Island Band's reserve. Cheam First Nation submitted that the Project runs adjacent to the Fraser River, which would increase sedimentation, change runoff, or create barriers to access and can adversely affect coho, chum, and trout habitat.

Westcoast indicated that it would implement established and proven mitigation measures and construction practices to avoid or reduce adverse effects on fish and fish habitat and to protect riparian areas and maintain habitat quality, as outlined in its EPPs. Examples of measures that may be implemented include fish salvage by a qualified professional, complying with DFO's measures to protect fish and fish habitat, and avoiding clearing within riparian areas. The measures also include cleaning instream equipment and applying bank and riparian protection, reclamation measures as per Westcoast's Site-Specific Watercourse Crossing Execution Plan, and measures associated with trenchless crossings.

Seabird Island Band raised concerns through the CCC about effects on water and the environment that could affect Maria chinook and Christmas sockeye, which are unique to Maria Slough on their reserve. They also stated the need for offsetting requirements to ensure that the Project does not affect riparian restoration and efforts to reopen the slough to the river. Seabird Island Band also provided comments on flooding and erosion on their reserve lands, potential widening of Maria Slough, and their interest in flood and erosion mitigation for the Fraser River.

Westcoast noted the importance of Maria Slough for fishing for Seabird Island Band and, therefore, proposed crossing Maria Slough North using the trenchless direct pipe installation technique as its primary crossing method to avoid changes to fish habitat. Alterations to the channel bed and banks, and direct disturbance to Maria Slough, are not expected. Westcoast also acknowledged Seabird Island Band's concerns regarding flooding and erosion. Westcoast proposed scheduling instream work during periods of anticipated low precipitation and runoff, postponing crossings if excessive rain or flood conditions exist or are anticipated, and implementing its Flood and Excessive Flow Contingency Plan. Westcoast committed to continued engagement with the Sumas Prairie Flood Mitigation Committee regarding the development of infrastructure and mitigation planning for large-scale flooding events in the Fraser Valley.

The Commission considers it necessary to impose **Condition 9** (Updated EPPs), which would require Westcoast to include in its updated EPPs site-specific plans for erosion and sediment control and the use of riprap. The Commission also considers it necessary to impose **Condition 13**

(Finalized watercourse crossings inventory), which would require Westcoast to file an updated inventory and details of all watercourses to be crossed by the Project. In addition, the Commission considers it necessary to impose **Condition 21** (Contingency watercourse and wetland crossings), which would require Westcoast to file site-specific information for each contingency crossing. In the event that Westcoast requires a *Fisheries Act* authorization for any crossings within federal lands, the Commission considers it necessary to impose **Condition 22** (*Fisheries Act* authorizations) which would require Westcoast to file a copy of any authorization in accordance with paragraphs 34.4(2)(b) and/or 35(2)(b) of the *Fisheries Act* where a work, undertaking, or activity may result in death of fish, or the harmful alteration, disturbance, or destruction of fish habitat. If an authorization is not required, Westcoast would be required to file a copy of any Letter of Advice issued by DFO.

9.4.2.5 Wildlife and wildlife habitat

Westcoast submitted that the Project may affect wildlife on federal lands – including grizzly bear, Oregon spotted frog, Oregon forestsnail, migratory birds, and other species at risk listed in **Section 9.4.1** – and wildlife habitat through the loss or alteration of habitat, barriers to movement, and increased risk to health and mortality. **Section 7.7** discusses details of these effects and their associated mitigation. Westcoast anticipates that these effects may occur on all three communities' reserve lands.

To discharge its obligations under subsections 77(1) and 79(1) of the SARA, the Commission notified and consulted with the Minister of the Environment, Climate Change and Nature. The Commission identified the adverse effects on each listed species and considered the impacts on the critical habitat of Oregon spotted frog and Oregon forestsnail, as discussed in **Sections 7.7.2 and 7.7.4**. The Commission considers that, in accordance with subsections 77(1) and 79(2) of the SARA:

- all reasonable alternatives to the activities that would reduce the impact on the species' critical habitat have been considered and the best solution has been adopted;
- all feasible measures will be taken to minimize the impact of the activity on the species' critical habitat;
- measures will be taken to avoid or lessen adverse effects of the Project on listed species and its critical habitat on federal lands and to monitor them; and
- mitigation and monitoring measures would be consistent with any applicable recovery strategies and action plans.

Through the CCC, Seabird Island Band indicated that their preferred route for the Project across their reserve required further investigations by Westcoast, and SARA permits from ECCC, because planned survey activities along this route may affect the critical habitat for Oregon spotted frog and Oregon forest snail. Westcoast stated that findings from proposed species surveys would inform future mitigation measures for Project construction on the reserve, such as adjusting the Project's routing alignment to avoid or mitigate potential effects on species at risk. Seabird Island Band added that Westcoast would need additional permit(s) for activities related to Project construction. Westcoast confirmed that it would adhere to the conditions of the SARA permit(s) for both species and that the terms and conditions of the permit(s) would supersede Westcoast's mitigation measures where they differ.

In addition, the Commission considers it necessary to impose **Condition 9** (Updated EPPs), which would require Westcoast to include an updated Wildlife and Wildlife Habitat Management Plan in its

updated EPPs. This plan contains mitigation measures such as timing restrictions and setbacks for sensitive wildlife species and habitats, including those for grizzly bear, SARA-listed species, and migratory bird zone primary nesting periods, as well as amphibian active and overwintering periods. The EPPs also include a Breeding Birds and Nest Mitigation Plan. The Commission considers these mitigation measures key to reducing Project effects on wildlife and wildlife habitat, including SARA-listed species, on federal lands. For additional accountability, the Commission considers it necessary to impose a requirement in **Condition 26** (Construction progress reports) for Westcoast to identify any circumstances where species-specific setbacks and timing restrictions could not be met and the alternative mitigation is implemented. **Section 7.7.2.3** discusses additional details on these measures. The Commission also considers it necessary to impose **Condition 10** (Wildlife Species at Risk Mitigation Plans). The Commission expects that Westcoast's filing under this condition would cover all instances of critical habitat for Oregon spotted frog and Oregon forestsnail, both on and off federal lands.

9.4.2.6 GHG emissions

Westcoast stated that Project construction emissions would occur due to fuel combustion from vehicles and equipment, as well as land clearing. It submitted that taking three existing gas-fueled compressor units out of service at three sites, along with the associated equipment, would result in annual avoided emissions and a reduction in annual GHG emissions from current operational levels. **Section 7.9** provides further details on these effects and Westcoast's mitigation measures and net-zero plan.

In addition to these mitigations, the Commission also considers it necessary to impose **Condition 40** (Quantification of construction-related greenhouse gas emissions), which would require Westcoast to confirm the Project's final construction-related GHG emissions and to demonstrate the effectiveness of the mitigation measures applied in minimizing emissions (e.g., best available technology and best environmental practices, timber salvage).

9.4.3 Project residual effects on the environment

The Commission is of the view that the Project's residual effects on the VCs within federal lands discussed in **Section 9.4** would mirror those for the Project as a whole. Westcoast committed to continuing engagement with McLeod Lake Indian Band, Cheam First Nation, and Seabird Island Band to discuss any concerns about Project planning and potential Project-related effects, as well as mitigation measures to minimize potential adverse effects on reserve lands.

The Commission expects that with the implementation of Westcoast's mitigation measures, monitoring (including the incorporation of Indigenous Peoples' contribution to monitoring activities), and Westcoast's compliance with the Commission's conditions, the changes to the environment caused by the Project on federal lands would be minimized. This conclusion considers the Indigenous knowledge described in **Section 9.4**, taking into account the concerns raised and specific mitigation measures that the Commission has determined are responsive and expected to mitigate adverse environmental effects when implemented. The Commission also notes that – because Westcoast requires Band Council consent to take possession of, use, or occupy reserve lands for specified purposes and activities under subsection 317(1) of the CER Act – additional mitigation measures or monitoring activities may be negotiated that could further reduce the Project's residual effects on biophysical changes.

9.5 Health, social, and economics conditions

In this section, the Commission provides its assessment of how changes to the environment on federal lands could impact health, social, and economic conditions. For convenience and concision, references below to Project effects refer to impacts on health, social, and economic conditions from changes to the environment.

9.5.1 Relevant setting

Cheam First Nation follows the Cheam First Nation Land Code 2016, which was established in 2016 in accordance with the *Framework Agreement on First Nation Land Management* and *First Nations Land Management Act, 1999* (Government of Canada 2024). This land code outlines, among other things, Cheam First Nation's authority to manage and protect their reserve lands. Cheam First Nation is part of the Pelólxw Tribe, a distinct group of Stó:lō Nation. The Stó:lō Service Agency provides these services to Stó:lō communities – health services, dental care, early childhood development, education support, family services, home and community care, primary care, justice program services, an Elders lodge, and wellness services.

Seabird Island Band follows the Seabird Island Land Use Plan 2017-2032, which reflects the community's vision for sustainable development and growth. Seabird Island Band has been successful in providing health, community development, and social wellness programs. Seabird Island Band's medical and dental offices also provide different community health services, including doctors and a pharmacy.

The McLeod Lake Indian Band Land Use Plan 2021 describes the current use of reserve lands, and the allowable land uses for future developments, including a health clinic. McLeod Lake Indian Band aims to develop a culture and wellness camp to address mental health and addiction issues. McLeod Lake Indian Band's Social and Health Department runs several programs to support community health, including counselling and emotional support, parent support programs, and a peer mentoring group. The Health Department also provides Elder support programs and wellness programs for community members, including massage and reflexology, youth counselling, and medicine walks. The relevant setting is further described in **Sections 9.3, 9.4.1, and 9.6.1**.

9.5.2 Project effects, mitigation, and monitoring

Changes to the environment due to carrying out the Project on federal lands would have impacts on health, social, and economic conditions that overlap with those associated with Project components that are not on federal lands. They would also involve similar mitigations and monitoring. The main potential effects that would occur on federal lands consist of changes to the acoustic environment; air quality; temporary population demographics; employment, contracting, procurement and training; and community safety and social issues. **Chapter 8** provides further details on these and other effects that are applicable to the entire Project footprint.

Effects on acoustic environment primarily consist of construction noise. Cheam First Nation expressed concern that the Project may disrupt their use and enjoyment of their reserve lands, including due to noise from a compressor station on their reserve where Project activities would take place. The expected effects on air quality would mainly comprise air emissions and dust. Cheam First Nation also raised concerns about air quality with respect to the compressor station on their reserve.

The Project would also affect population demographics and community safety due to potential changes to the demographics of host or nearby communities from temporary workers and the potential for negative community and worker interactions. For example, Seabird Island Band raised concerns about potential negative interactions between their community members and workers coming from outside to work on the Project.

Effects on employment, contracting, procurement, and training are also anticipated. For example, an increase in labour force activity and income is expected. Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band (through the CCC) each expressed interest in participating in the Project in various ways, including in monitoring, inspection, reclamation, and training.

Regarding mitigation measures, the Commission notes that some of the same mitigation and enhancement measures related to human health, social and cultural well-being, and employment and economy that Westcoast would apply to the Project as a whole would be similarly applicable to Project components on federal lands.

For effects on the acoustic environment, Westcoast's mitigations include using noise abatement equipment, conducting noise monitoring in response to complaints and implementing corrective actions, using buildings for screening where practical, and implementing site-specific noise mitigation for compressor stations. **Section 8.3.2.4** discusses noise mitigations in detail. Westcoast also indicated that it would conduct ongoing engagement regarding noise concerns, including with Cheam First Nation about the existing compressor station on their reserve lands.

To address effects on air quality, Westcoast's mitigation measures include applying dust suppressants, limiting vehicle trips and idling, and using well-maintained equipment to mitigate effects on air quality. **Sections 7.8 and 8.3.2.1** also discuss air quality mitigations.

Regarding Project effects from temporary changes to population demographics, including Seabird Island Band's concern about potential negative interactions with workers, Westcoast's mitigation measures include sourcing workers and contractors from local communities and establishing temporary workforce accommodations. Mitigation measures also include providing cultural awareness and human trafficking awareness training to Project workers, establishing a complaints process for community members to raise concerns regarding Project construction or worker activities, and preparing and implementing a Community and Gender Safety Plan as part of Westcoast's overall management of potential socio-economic effects. **Section 8.4.2.3** also discusses these mitigations.

For effects on employment, contracting, procurement, and training, Westcoast proposed enhancements and mitigations, including using dedicated resources from its Supply Chain Indigenous Engagement team to implement and oversee the deployment of Enbridge's Socio-economic Requirements of Contractors process for engaging local Indigenous businesses. Westcoast would also use dedicated personnel to engage with Indigenous communities about their interests and needs as they relate to skills, training, and employment. Westcoast would support Indigenous communities with capacity requirements and provide training for community members to participate in ongoing fieldwork as environmental team members and cultural guardians, as well as in Project construction monitoring. **Section 8.8.2** discusses details of enhancements relating to employment, contracting, procurement, and training.

In addition to Westcoast's mitigation measures, the same conditions that the Commission considers necessary to impose on the Project as a whole would apply equally to Project components on federal lands. Certificate and order conditions that the Commission expects would reduce adverse (or increase positive) effects on health, social, and economic conditions, and which are discussed in **Chapters 7, 8, and 10,** include:

- **Condition 9** (Updated EPPs)
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring)
- **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples)
- **Condition 19** (Socio-Economic Effects Monitoring Plan)
- **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring)
- **Condition 38** (Socio-Economic Effects Monitoring Final Report)

9.5.3 Project residual effects on health, social, and economic conditions

With Westcoast's implementation of its mitigation measures and its compliance with the Commission's conditions, the following residual effects on health, social, and economic conditions on federal lands would result from changes to the environment caused by Project construction and operations.

Regarding human health, the Project would result in nuisance effects from noise effects during Project construction and operations. Sound levels caused by construction would be temporary and would comply with Health Canada's *Guidance for Evaluating Human Health Impacts in Environmental Assessment: Noise*. Westcoast's acoustic assessments demonstrated that during Project operations, with mitigation, operational noise levels would be within permissible BCER 2023 noise guideline levels. Regarding Cheam First Nation's noise concerns, the Commission is satisfied that short-term daytime construction noise at the existing compressor station on Cheam First Nation's Reserve 1 would likely be imperceptible because construction would primarily occur within an enclosed operating compressor station. Where noise concerns arise, Westcoast committed to conducting short-term noise monitoring and implementing corrective actions as required.

Regarding air quality, Project construction and operations on federal lands would result in nuisance effects on air quality. The Commission accepts Westcoast's evidence that predicted CAC concentrations are unlikely to exceed the relevant regulatory criteria and result in harm to human receptors.

Regarding social and cultural well-being, there would be effects on the safety and social issues identified above relating to changes in population demographics and interactions between community members and temporary workers. These effects are expected to be minimized due to Westcoast's mitigation measures and its compliance with the Commission's conditions.

The Project would result in positive effects relating to economic opportunities. For example, the Commission notes Westcoast's commitment to source workers from local communities wherever possible. Overall, positive residual effects are expected to flow to Seabird Island Band, Cheam First Nation, and McLeod Lake Indian Band through, among other things, direct economic benefits

(e.g., through any agreements relating to consents under subsection 317(1) of the CER Act) and increased employment, contracting, procurement, training, and spending in the communities.

The Commission expects that with the implementation of Westcoast's mitigation and economic enhancement measures and its compliance with the Commission's conditions, the adverse effects on human health and social and cultural well-being are expected to be minimized, and the positive effects on employment and economy are expected to be enhanced, on federal lands. In addition to Westcoast's mitigation and enhancement measures, the Commission also notes that negotiations and any concluded agreements between Westcoast and each Indigenous community relating to consents required under subsection 317(1) of the CER Act could affect residual effects. McLeod Lake Indian Band, Cheam First Nation, and Seabird Island Band are best placed to identify for themselves the appropriate measures to include in any negotiated agreement to minimize adverse, and maximize positive, Project effects relating to health, social, and economic conditions on reserve lands.

9.6 Rights of Indigenous Peoples

The following subsections provide the Commission's assessment of how changes resulting from the environmental effects on federal lands could impact the rights of Indigenous Peoples on federal lands, specifically Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band. In conducting its assessment, the Commission considered effects on the rights of Indigenous Peoples, including the effects on Indigenous land and resource use.[79] This was reflected in evidence from Indigenous intervenors describing the interconnectedness between their rights and how their rights were exercised historically and currently through both traditional and contemporary practices.

For convenience and concision, references below to Project effects refer to impacts on the rights of Indigenous Peoples from changes to the environment.

9.6.1 Relevant setting

As noted in **Section 9.5.1**, Cheam First Nation is part of the Pelólxw Tribe, a group within Stó:lō Nation. Cheam First Nation has two main reserves – Cheam 1 and Tseatah 2. The Cheam 1 reserve is approximately 821 acres in size and is located on the south bank of the Fraser River and the north shore of Cheam Lake. The Tseatah 2 reserve is approximately 231 acres in size and is located on the north bank of the Fraser River, 2 miles south of the town of Agassiz.

Cheam First Nation described negative effects from multiple existing rights-of-way (including T-South) traversing their two primary reserves. Cheam First Nation shared that if they had the opportunity to make an informed choice now, they would not allow pipelines on their reserve. They elaborated that Highway 9, the T-South system, the Trans Mountain pipeline, the railway, and the large BC Hydro rights-of-way take up approximately 27 per cent of Cheam 1 reserve land. Cheam First Nation stated that areas of the Cheam 1 reserve adjacent to CS-9 and the Westcoast right-of-way are limited in use and value and are unsafe. However, the Commission notes Westcoast's assertion, which Cheam First Nation did not dispute, that the community prefers to

[79] In this report, the Commission uses the term "Indigenous land and resource use" instead of "traditional land and resource use," noting that the word "traditional" could imply only past or non-modern uses. "Indigenous land and resource use" better captures the way in which Indigenous Peoples have described their historical, traditional, and contemporary land and resource use in this hearing.

negotiate a land agreement based on the Project's proposed routing through their reserve, as opposed to Westcoast pursuing an alternative route.

Seabird Island Band is located along the banks of the Fraser River. In their oral Indigenous knowledge session, Chief Jim Harris shared that their reserve is within the traditional territory of the Tiyt, ranging from Agassiz Rosedale bridge up to Yale. He shared that telephone wires, hydro lines, pipelines, highway, railway, and fiberoptics traverse Seabird Island Band's land, dividing it in half. He also described how a lack of dike protection on the southern portion of the reserve is limiting how the community can use the land. Seabird Island Band also shared, through the CCC, that they collaboratively developed a route with Westcoast to minimize routing through Certificate of Possession holders' lands. Nevertheless, they were still concerned about cumulative effects on the community, cultural resource use, and effects to water affecting chinook and sockeye salmon fishing.

The main community of McLeod Lake Indian Band is located near the unincorporated village of McLeod Lake, approximately 150 km north of Prince George on Highway 97. McLeod Lake Indian Band did not make any direct submissions to the Commission regarding the Project.

Westcoast confirmed that it considered relevant Indigenous land use plans as part of its ESA for the on-reserve Project components. For example, Westcoast considered:

- Cheam First Nation Land Code 2016, which provides Cheam First Nation the ability to manage and protect their reserve lands, as well as pass laws applying to their lands.
- Seabird Island Band Land Code 2009 and Seabird Island Land Use Plan 2017-2032, which contain the community's vision for sustainable development and growth. The land use plan provides land use principles and priorities to guide decision-making, with the goal of improving quality of life and economic prosperity for community members, with community development being at the core of the plan.
- McLeod Lake Indian Band Land Code, which provides McLeod Lake Indian Band with the ability to manage their reserve land. McLeod Lake Indian Band Land Use Plan 2021 also provides a community-driven decision-making tool to guide land management on McLeod Lake Indian Band's reserve lands.
- The S'ólh Téméxw Use Plan and Stó:lō Heritage Policy Manual, which would apply to Cheam First Nation and Seabird Island Band.

9.6.2 Project effects, mitigation, and monitoring

For on-reserve Project components, Westcoast identified the following potential effects on the rights of Indigenous Peoples:

- changes to the quality, quantity, or distribution of resources involved in, or required for, the exercise of rights;
- loss or alteration of access to resources used or required to exercise rights;
- changes to, or disruption of, timing and seasonality for the exercise of rights;
- loss or alteration of culturally important areas where rights are exercised; and

- inconsistency with Indigenous cultural traditions, laws, and governance systems that inform how Indigenous Peoples exercise their rights.

Cheam First Nation stated that they continue to identify the effects of right-of-way "stacking" as a challenge in reviewing the Project because it highlights that they did not provide free, prior, and informed consent for the original pipeline and they have never been properly compensated for rights-of-way that have permanently and adversely impacted their reserve lands. Cheam First Nation shared that there are spiritual impacts on their members, who live with fear of explosions and the presence of natural gas on-reserve. According to Cheam First Nation, this results in limitations on future uses of the land, not just the rights-of-way but also the adjacent lands due to setbacks. The presence of the rights-of-way also restricts Cheam First Nation's preferred use of their reserve lands for member housing, cultural and spiritual uses, and for economic development. According to Cheam First Nation, the exercise of traditional practices cannot occur within the pipeline right-of-way because the right-of-way area is disturbed. Cheam First Nation further submitted that the Project runs next to the Fraser River, which can adversely affect their fishing patterns and frequency relating to coho, chum, and trout.

Cheam First Nation recommended that adverse effects on their traditional territory and reserve lands be mitigated through the protection of existing habitats. This would include recognizing and protecting traditional land use during Project restoration, as informed by engagement with Cheam First Nation's knowledge holders. Cheam First Nation argued that the federal government must be required to provide replacement reserve lands. The Commission discusses this request in **Chapter 11** where the duty to consult and accommodate is addressed.

Westcoast confirmed that there are no additional site-specific mitigation measures or residual effects for the on-reserve Project components beyond those proposed for the entirety of the Project. However, as noted in **Chapter 10**, Westcoast has developed collaborative Community and Interest and Response Tables for engaging with Indigenous Peoples and confirmed that mitigation measures developed in response to Cheam First Nation's specific concerns would be documented using this tool.

The Commission notes that Seabird Island Band expressed concerns about on-reserve effects on their rights. However, these focused on cumulative effects, which are discussed in **Section 9.7**.

McLeod Lake Indian Band did not make any direct submissions to the Commission about Westcoast's requirements for temporary workspace on the McLeod Lake 5 reserve. Through updates filed by Westcoast, the Commission understands that ongoing engagement is occurring and that Westcoast is in discussions with McLeod Lake Indian Band to negotiate the terms of a temporary workspace permit and other mutual Project-related benefits.

Chapter 10 provides the Commission's full assessment of Westcoast's mitigation measures that are intended to reduce Project effects on the rights of Indigenous Peoples**,** which includes a detailed list of all mitigation measures that the Commission has not reproduced here. The Commission is of the view that these relevant mitigation measures would equally apply to Project components on federal lands (i.e., on-reserve components) and, for the reasons provided in **Chapter 10**, would effectively reduce effects on the rights of Indigenous Peoples.

Further, the same conditions that the Commission considers necessary for the Project as a whole are equally applicable to the on-reserve Project components. These include the following conditions

relevant to the Commission's assessment of potential effects on the rights of Indigenous Peoples related to federal lands:

- **Condition 9** (Updated EPPs), discussed in **Chapters 7 and 10**
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), discussed in **Chapter 10**
- **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples), discussed in **Chapters 8 and 10**
- **Condition 15** (Outstanding Indigenous-led assessments or studies), discussed in **Chapter 10**
- **Condition 16** (Support for Indigenous Peoples to review Westcoast's condition filings), discussed in **Chapter 11**
- **Condition 19** (Socio-economic Effects Monitoring Plan), discussed in **Chapters 8 and 10**
- **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), discussed in **Chapter 10**
- **Condition 38** (Socio-economic Effects Monitoring Final Report), discussed in **Chapters 8 and 10**

These conditions (except Condition 16) collectively include requirements for Westcoast to file information on its engagement and collaboration with Indigenous Peoples; how Indigenous knowledge informed the condition filings; mitigation and enhancement measures related to Indigenous rights, land, and resource use; and specific roles Indigenous Peoples would have during pre-construction, construction, and post-construction activities.

The Commission notes that while all condition requirements must be fulfilled, the specific content of certain filings may be affected by negotiated agreements relating to consents required under subsection 317(1) of the CER Act. For example, **Conditions 11 and 28** relate to plans for Indigenous Peoples to participate in construction and post-construction monitoring. The extent to which Indigenous Peoples outside of reserves may be involved in monitoring activities on-reserve may be the subject of such negotiated agreements. Should any agreements be concluded regarding site-specific and/or community-specific monitoring for on-reserve Project components, the Commission expects to see that information reflected in the monitoring plans filed under **Conditions 11 and 28**. Similarly, **Conditions 12 and 19**, which relate to updates on employment, contracting, procurement, and training for Indigenous Peoples and a Socio-economic Effects Monitoring Plan, would include information based on preferences shared with Westcoast by Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band. Any such measures should be included in those condition filings. For clarity, the Commission expects Westcoast to specify in its condition filings whether any site-specific mitigation or enhancement measures were developed for the on-reserve Project components through negotiated agreements, and to describe the measures.

9.6.3 Project residual effects on the rights of Indigenous Peoples

With the implementation of Westcoast's mitigation measures and its compliance with the Commission's conditions, and having considered the expected contributions of Indigenous Peoples' monitoring activities, the Commission finds that residual effects of the Project on the rights of Indigenous Peoples on federal lands would remain. Most residual effects would occur during Project construction, a period of up to two years (though likely shorter at any given location). After construction, restoration activities would begin, and the rights-of-way would start to become accessible again for Indigenous Peoples to practice their rights. There would be a long-term residual effect with the addition of a permanent new right-of-way on Cheam First Nation and Seabird Island Band reserve lands. Given the differing nature of their effects, the Commission discusses separately below the residual effects resulting from on-reserve pipeline rights-of-way and those resulting from on-reserve temporary workspace.

9.6.3.1 On-reserve pipeline rights-of-way

Project effects on reserve lands stemming from pipeline rights-of-way would remain. These effects would mostly occur during Project construction, for up to two years. Given that only certain Project components are proposed to be constructed on-reserve, the duration of construction activities on federal lands may not take two years. After construction and restoration, there would still be a longer-term residual effect because of the additional permanent right-of-way next to the T-South system right-of way on Cheam First Nation's Tseatah 2 reserve and Seabird Island Band's reserve.

After construction, restoration activities would begin and the areas needed for construction would become accessible again to reserve residents, including the right-of-way. However, the permanent rights-of-way on Cheam First Nation and Seabird Island Band reserve lands would create new encumbrances to land use until the Project is decommissioned or abandoned. Specifically, a new encumbrance of 10-18 m would result in future land use restrictions because of operational and safety limitations. These new limitations would be in addition to existing restrictions related to the right-of-way that is already in place.

The incremental encumbrance resulting from paralleling the existing right-of-way would be long term in duration and would incrementally add to the existing right-of-way's current encumbrance (e.g., by an additional 10-18 m, subject to any different right-of-way widths that Cheam First Nation and Seabird Island Band may agree upon with Westcoast as part of any Band Council consents under subsection 317(1) of the CER Act and applicable regulatory requirements). As noted in **Section 9.3**, a portion of the CS-8B to CS-9 pipeline loop would not parallel the existing right-of-way on Seabird Island Band's reserve, which was an avoidance measure requested by Seabird Island Band.

9.6.3.2 On-reserve temporary workspace

In the case of temporary workspace on the McLeod Lake 5 reserve, the residual effects would be short term to medium term in duration, limited to the construction period, and would cover a relatively small area. Once the temporary workspace is no longer needed, and restoration is completed, the affected area would once again become available to McLeod Lake Indian Band.

9.6.3.3 Opportunities for ongoing input into Project plans and mitigations

Westcoast has made several commitments related to Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band that must be fulfilled. Among them are:

- Westcoast committed to documenting mitigation measures developed in response to Cheam First Nation's specific concerns in a Community Interest and Response Table. Westcoast committed to working with Cheam First Nation using that tool to review identified concerns and recommended actions, seek feedback, and ensure that Indigenous knowledge and priorities are meaningfully integrated into Project planning, implementation, and post-construction monitoring.
- Westcoast committed to continue engaging with Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band to discuss any concerns about Project planning and potential Project-related effects, as well as mitigation measures to minimize potential adverse effects on reserve lands.

9.7 Cumulative effects

As part of its significance determination, the Commission considered cumulative effects on environmental, health, social, and economic VCs, and on the rights of Indigenous Peoples, on federal lands. This involved taking into account the evidence, including Indigenous knowledge, and submissions described in this chapter.

The Commission acknowledges that the Project's residual effects would combine with the effects of other past and reasonably foreseeable developments on reserve lands (e.g., the existing compressor station on Cheam First Nation's reserve lands, and the T-South system and other linear development on the reserve lands of Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band). These past developments have contributed, and are expected to continue contributing, to increased environmental effects, as defined by the IA Act, on the reserve lands of Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band.

Cheam First Nation shared with the CCC that they are dealing with many existing effects on their reserves, as described in **Section 9.6.1**. They argued that the Commission should find that cumulative effects in their territory are already high and that any further authorization must be conditioned to avoid, minimize, and offset incremental effects. Cheam First Nation also stated that the most significant effect of the Project on their community is the loss of reserve lands.

During their oral Indigenous knowledge session, Seabird Island Band expressed concerns about telephone wires, hydro lines, pipelines, highways, and railways dividing their lands. In addition, through the CCC, they raised concerns that the Project would add to the infrastructure present in their core community area, limiting space for Seabird Island Band's own use. They also stated concerns about cumulative effects on current infrastructure, adding that the southern portion of their reserve is being eroded and the reserve is losing land.

The Commission has taken these cumulative effects into account in making its significance determination in **Section 9.8**. In doing so, the Commission recognized as context that the Project's direct contribution to cumulative effects on federal lands would only take place with the Band Council consent of Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band.

9.8 Significance determination

After considering the Project's potential effects, the implementation of Westcoast's mitigation measures and its compliance with the Commission's conditions, the expected outcomes of Project monitoring (including by Indigenous Peoples), and cumulative effects, the Commission has determined that carrying out the Project is not likely to cause significant adverse environmental effects on federal lands. In particular, the Commission notes that:

- Having considered Project effects on Agricultural Land Reserve, vegetation, wetlands, fish and fish habitat, wildlife and wildlife habitat, and GHG emissions, the Commission expects that with the implementation of Westcoast's mitigation measures, monitoring (including incorporating Indigenous Peoples' contribution to monitoring activities), and Westcoast's compliance with the Commission's conditions, the changes to the environment caused by Project construction and operations on federal lands would be minimized.
- The Commission is satisfied that Westcoast's mitigation measures would be implemented and are technically and economically feasible. These mitigations, in combination with the Commission's conditions, and the added layer of protection created by directly involving Indigenous Peoples in monitoring activities, would be effective in mitigating environmental effects on federal lands.
- Changes to the environment from carrying out the Project on federal lands are expected to be minimized. As a result, effects of these changes on health, social, and economic conditions, as well as on Indigenous Peoples, would occur but, in aggregate, this is not likely to cause significant adverse environmental effects.
- When assessing overall significance, the Commission balances residual adverse Project effects against positive effects, especially relating to increased employment, contracting, procurement, and training opportunities.
- Westcoast's commitment to ongoing engagement with Cheam First Nation, Seabird Island Band, and McLeod Lake Indian Band to address Project-related effects and mitigation measures is further expected to support a reduction of impacts of concern. There would be a permanent right-of-way on Cheam First Nation's and Seabird Island Band's reserves, and temporary workspace on McLeod Lake Indian Band's reserve, which would add to existing cumulative effects. However, this would only occur with the consent of these communities. For example, Seabird Island Band provided consent and Cheam First Nation prefers to negotiate a land agreement based on the proposed Project routing that crosses their reserve. The provision of consent, and any associated agreements, would represent a positive expression of a right of self-governance, the importance of which Cheam First Nation emphasized in argument.
- Through Westcoast's negotiations with these communities regarding consent, as demonstrated by its ongoing collaboration with Seabird Island Band on routing, the Commission expects that the significance of the Project's environmental effects on-reserve would be further reduced. This is consistent with Cheam First Nation's assertions that they have a right to set their own standards and conditions for matters on reserve (for example, regarding the environment and fisheries).

Regardless of the Commission's determination required by section 82 of the IA Act, subsection 317(1) of the CER Act sets out that Westcoast must not, for the purpose of constructing a pipeline or engaging in the activities referred to in paragraph 313(a) of the CER Act, take possession of, use, or occupy lands in each impacted reserve, within the meaning of subsection 2(1) of the *Indian Act*, without the consent of each community's Band Council. **Chapter 5** provides a detailed discussion regarding the required CER Act subsection 317(1) consents.

The Commission understands that Westcoast and the STSA have been working on specific Project requirements through the STSA's ICA, which is anticipated to be completed in January 2026. According to the STSA, producing the ICA is part of their regulatory process and is critical for informed decision-making. The Commission acknowledges that Cheam First Nation and Seabird Island Band, both of whom are STSA members, represented themselves in this hearing. However, the Commission expects Westcoast continue working with the STSA to identify any additional potential mitigation measures resulting from the STSA's ICA that could be applicable to on-reserve Project components. In **Chapter 10**, the Commission provides further views regarding the STSA's ICA.

10 Effects on the Rights of Indigenous Peoples

This chapter provides the Commission's analysis and findings on the Project's potential effects on the rights of Indigenous Peoples, including any effects on Indigenous land and resource use. In undertaking its assessment, the Commission relied on the methodology described in the Filing Manual. **Appendix 6** provides the criteria, ratings, and considerations that the Commission used to evaluate the severity of Project effects. The Commission recognizes the interconnectedness between the Project's effects on the rights of Indigenous Peoples and its effects on environmental and on socio-economic VCs. The Commission's assessments of environmental and socio-economic matters are found in **Chapters 7 and 8**, respectively.

As described in **Table 10-4** at the conclusion of this chapter, the Commission finds that the Project's effects on the rights of Indigenous Peoples would likely be short term to long term in duration, local to regional in geographic extent, medium (adverse) in magnitude, and medium (adverse) in total cumulative effects. With the implementation of Westcoast's mitigation and enhancement measures, and the conditions that the Commission considers necessary to impose, the Commission finds that the potential adverse effects on the rights of Indigenous Peoples would be of medium (adverse) severity.

10.1 The Commission's approach

As discussed in **Chapter 2**, in assessing the Project's effects on the rights of Indigenous Peoples, the Commission considered section 35 of the *Constitution Act, 1982* and the Commission's duty to uphold the honour of the Crown in all of its dealings with Indigenous Peoples. The Commission also considered the factors described in subsection 183(2) of the CER Act with respect to the Project's effects on the rights of Indigenous Peoples and concerns raised related to the current use of lands and resources for traditional purposes. It also considered subsection 56(1) of the CER Act, which requires the Commission to consider any adverse effects that a decision, order, or recommendation it makes may have on the rights of Indigenous Peoples. Finally, the Commission took into account how the UN Declaration, as affirmed through the UN Declaration Act, would inform how the CER, as a federal regulator, approaches its legal duties and obligations.

In previous reports and decisions[80] consistent with Filing Manual guidance, the Commission assessed project effects on the rights of Indigenous Peoples separately from the effects on Indigenous land and resource use.[81] For this Project and report, the Commission has combined its analysis into a single assessment. In undertaking a single assessment, the Commission considered the significant overlap between Indigenous participants' descriptions of their rights, their land and resource use, the ways in which those rights are practiced, and how the Project may affect the practice of their rights. In the hearing, Indigenous participants described an interconnectedness between their rights and how their rights are exercised, both historically and through current traditional practices and contemporary practices. While an assessment of project effects on rights is slightly broader – considering matters related to Indigenous cultural traditions, laws, and governance

[80] For example, see NEBC Connector*, supra* note 23 at Sections 6.2.2 and 6.4.2.

[81] In this report, the Commission uses the term "Indigenous land and resource use" instead of "traditional land and resource use," noting that the word "traditional" could imply only past, or non-modern uses. "Indigenous land and resource use" better captures the way in which Indigenous Peoples have described their historical, traditional, and contemporary land and resource use in this hearing.

systems – the Commission is of the view that its single-assessment approach captures the substance of both assessments without duplicating the same general assessment steps and conclusions regarding effects on Indigenous land and resource use. For the purposes of this chapter, any reference to the Commission's assessment of effects on the rights of Indigenous Peoples is meant to include its assessment of effects on Indigenous land and resource use.

Throughout the hearing, the Commission heard about the interconnectedness between the Project's potential effects on the rights of Indigenous Peoples and its potential effects on environmental and socio-economic VCs. Indigenous participants consistently shared information about their role as stewards of their lands and territories, and the close connection between those lands and their culture.

Timber Bigfoot of Prophet River First Nation shared:

> (…) every tree, every animal, every body of water has a significant meaning. They all have their purpose and they are all equal. (…) When it comes to the First Nation people, we respect our land, and that's why we're here today is because the land kept us alive for all these years. And it's a very close connection that we have.

The Commission appreciates the importance of the environmental and socio-economic setting necessary to support the meaningful exercise of rights by Indigenous Peoples. As such, the Commission adopted an interconnected approach for assessing effects on rights.[82] An interconnected approach also captures the relationships and interactions between aspects of the landscape, the resources used by Indigenous Peoples, and the values, knowledge, customs, and socio-cultural systems associated with their identity and cultural continuity. The results of this approach are described throughout this report.

This interconnection is reflected through several effects pathways that the Commission considered in its assessment. An effects pathway is a tool that can be used to show the relationship between project-related activities and interactions with the biophysical or socio-economic environment, which can result in effects on those biophysical and socio-economic VCs. In turn, these interactions can lead to potential effects on the rights of Indigenous Peoples who rely on the biophysical and socio-economic environment to exercise their rights. **Table 10-1** provides an example of a simplified effects pathway related to right-of-way clearing. It is not specific to this Project. Rather, it demonstrates how the tool can be applied to understand potential effects.

Table 10-1: Generic example of a simplified effects pathway related to right-of-way clearing

Project activity	Disturbance	Potential effects (VCs)	Potential effects on the rights of Indigenous Peoples (linked to a VC)
Right-of-way clearing during construction	Vegetation removal	• Decreased wildlife habitat • Decreased plants	• Less wildlife available for hunting • Fewer medicinal plants available for gathering

[82] An "interconnected approach" that allows for a distinct rights assessment yet recognizes the importance of the biophysical and socio-economic VCs that are foundational to the practice of rights, has been expressly considered in past Commission recommendations. For example, see NEBC Connector, *supra* note 23 at Section 6.2.1.

Considering specific effects pathways can help the Commission better understand how the social, cultural, and physical experiences associated with the practice of rights can have direct or indirect links to potential effects on other VCs. The Commission's assessment of effects on environmental VCs (**Chapter 7**) and on socio-economic VCs (**Chapter 8**) is therefore essential to understanding the context for Indigenous Peoples to meaningfully practice their rights. Where applicable in **Section 10.4**, the Commission identifies where a potential effect on the rights of Indigenous Peoples also has linkages to potential effects on environmental and socio-economic VCs.

10.2 The Commission's methodology and criteria for assessing Project effects on the rights of Indigenous Peoples

To assess Project effects on the rights of Indigenous Peoples, the Commission applied the effects assessment methodology described in the Filing Manual:

1) Describe the Indigenous and Treaty rights of the potentially affected Indigenous Peoples in the project area.
2) Describe how Indigenous and Treaty rights are exercised or practiced in the project area.
3) Describe the context in which the Indigenous and Treaty rights are exercised or practiced in the project area.
4) Describe the project's potential effects on the exercise or practice of Indigenous and Treaty rights in the project area.
5) Describe the measures to be implemented by an applicant to avoid, reduce, or eliminate potential adverse effects of the project on the exercise of Indigenous and Treaty rights. Also describe any measures that would enhance or support the exercise or practice of Indigenous and Treaty rights in the project area.
6) Where there may be any residual effects, after mitigation measures are implemented, and that are related to the project, describe the nature and extent of these, including their contribution to any potential cumulative effects.
7) Determine the severity of the project effects on the rights of Indigenous Peoples.

In its letter of 6 December 2024 attaching the Hearing Order, the Commission referred to the effects assessment methodology described in the Filing Manual and to its October 2023 report for the NEBC Connector to illustrate how the seven-step methodology is applied. The Commission confirmed at the outset of this hearing that it would be guided by this same approach for assessing the Project's effects on rights, as may be supplemented by parties' submissions in the hearing (i.e., in evidence, oral Indigenous knowledge, argument).

The Commission notes that several Indigenous participants, including High Bar First Nation, raised general concerns with the methodology described in the Filing Manual, indicating that it was outdated. Other participants, including Nazko First Nation and Driftpile Cree Nation, took issue with how Westcoast had applied or described the methodology upon which it relied. While the Commission considered these submissions in its assessment, it also notes that no alternate framework was proposed to replace or supplement the Commission's approach described in its letter of 6 December 2024. As a result, the Commission proceeded to apply the methodology identified at the outset of the hearing process, without any substantive changes.

Indigenous participants brought forward, both directly on the hearing record and indirectly through the CCC, a breadth and depth of evidence. They shared information about their communities, the nature of their rights and how rights are exercised or practiced in the Project areas, as well as how the Project may affect those rights. **Section 10.3** provides a high-level summary of these submissions. While the Commission considered the submissions received from different rights holders about their unique experiences practicing their rights, and about their lands, common themes emerged.

To assess the overall Project effects on the rights of Indigenous Peoples, the Commission considered how the Project could affect their ability to exercise those rights. After evaluating and accounting for Westcoast's mitigation measures to avoid, reduce, or eliminate potential adverse effects on rights, as well as conditions that the Commission considers necessary to impose, the Commission identified any residual effects, including cumulative effects. Based on that assessment, the Commission attributed an overall severity finding to the Project's effects on the rights of Indigenous Peoples. In **Section 10.4.1**, the Commission further describes the identification of potential effects used in its assessment and the linkages to the environmental and socio-economic VCs that are interconnected with the exercise of rights.

The Commission adopted a sliding scale as a continuum to indicate the degree to which the Project may affect the rights of Indigenous Peoples. **Appendix 6** identifies the criteria, ratings, and considerations that the Commission applied to evaluate the severity of these Project effects. As set out in **Table 10-2**, which is reproduced from **Appendix 6**, the levels of low, medium, and high provide a relative approximation of the degree of severity, which considers the temporal extent, geographic extent, magnitude of residual Project effects, and the Project's contribution to cumulative effects.

Table 10-2: Degree of severity used in evaluating the Project's effects on the rights of Indigenous Peoples

No or negligible	No or negligible Project effects
Low	If adverse, effects are easily managed and widely accepted by Indigenous Peoples, or allow the continuation of the exercise of rights in an identical or almost identical way
Medium	If adverse, effects raise concerns but remain below environmental, regulatory, or social standards or tolerance; are expected to affect quality of life but are generally accepted by Indigenous Peoples; or allow the continuation of the exercise of rights in a reasonably similar or modified way
High	If adverse, effects are generally not accepted by Indigenous Peoples; are beyond environmental, regulatory, or social standards or tolerance; are incompatible with Reconciliation or the meaningful practice of rights by Indigenous Peoples; or, generally, if total cumulative effects are high (and adverse), unless the magnitude is no or negligible or positive

Chapter 9 provides the Commission's effects assessment required under section 82 of the IA Act related to federal lands impacted by the Project (in this case, the reserve lands of Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band). The federal lands assessment under

the IA Act applies a methodology and overall significance determination that differ from those used for the Commission's other effects assessments related to the Project.

10.3 Description of the rights of Indigenous Peoples

In providing the descriptions of rights in the entirety of **Section 10.3**, the Commission relied on evidence and knowledge provided directly by Indigenous participants in this hearing (e.g., written evidence, IR responses, oral Indigenous knowledge, Indigenous-led assessments or studies). It also considered the CCC's submissions and Westcoast's evidence.

Westcoast stated that wherever possible, it developed its evidence regarding the rights of Peoples, including Indigenous land and resource use, through its engagement with potentially affected Indigenous Peoples. Westcoast relied on information collected through its engagement with participating Indigenous communities, their Indigenous-led assessments or studies, relevant biophysical and socio-economic information collected for its ESA, and its review of publicly available literature. Westcoast's filings on the hearing record were further informed by evidence provided by Indigenous Peoples in the hearing, including oral Indigenous knowledge, the Indigenous-led assessments or studies filed, as well as other submissions made.

10.3.1 Rights of Indigenous Peoples

The Project components overlap traditional territories of Indigenous Peoples who have asserted or established rights, including Treaty rights, recognized and affirmed under section 35 of the *Constitution Act, 1982*. Sources of rights exercised by Indigenous Peoples in the Project areas are described in **Sections 10.3.2 to 10.3.4**, along with community-specific descriptions for those included on the Crown List for the Project. The sources of rights are not mutually exclusive (e.g., a First Nation may be a signatory to Treaty 8 and assert and continue to exercise section 35 rights in addition to, or distinct from, their Treaty rights).

In its third report, the CCC described the CER's approach to adding Indigenous Peoples to the Crown List. The CCC indicated that potentially affected Indigenous Peoples are added without the CCC conducting a strength of claim analysis or an assessment of the severity of potential effects on their rights.

10.3.2 Treaty 8

Part of the Project is located within the boundaries of Treaty 8 territory. Treaty 8 rights are protected under section 35 of the *Constitution Act, 1982* and include "the right to pursue their usual vocations of hunting, trapping, and fishing throughout the tract surrendered." Treaty 8 rights are considered to extend to include reasonably equivalent harvesting practices, such as gathering and other cultural pursuits, which were used to make a livelihood before signing the Treaty and continue to exist today.

10.3.3 Reserve lands

Westcoast proposed that, subject to obtaining Band Council consent, the Project use reserve lands held by Cheam First Nation, McLeod Lake Indian Band, and Seabird Island Band. Both Cheam First Nation and Seabird Island Band have land codes that require permits to use and occupy lands on reserve. As set out in subsection 317(1) of the CER Act and discussed in **Chapter 5**, Westcoast is required to obtain the consent of the Band Council of those Nations before taking possession of, using, or occupying these reserve lands.

10.3.4 Inherent section 35 rights

The Project crosses the unceded traditional territories of several Indigenous communities who assert Indigenous and title rights that are recognized and affirmed under section 35 of the *Constitution Act, 1982*. These Indigenous communities make up the majority of those included on the Crown List. The rights identified by these Indigenous communities may be asserted or established.

A number of participants described their relationship within a broader Nation. For example, High Bar First Nation, Skeetchestn Indian Band, and Tsq̓éscenˀ First Nation stated that they are part of the Secwépemc Nation, which is comprised of 17 member communities. Whispering Pines further identified that they are a party to the Secwépemc Nation Writ of Summons, filed with the BC Supreme Court in December 2003, asserting Indigenous title to the Secwépemc Nation Territory. Siska Indian Band submitted that they have shared Aboriginal title with the other 14 Bands of the Nlaka'pamux Nation. A number of other Indigenous participants are parties to the Nlaka'pamux Nation's Writ of Summons filed with the BC Supreme Court in December 2003, asserting shared Indigenous title to the Nlaka'pamux Area. These are Ashcroft Indian Band, Boston Bar First Nation, Coldwater Indian Band, Cook's Ferry Indian Band, Kanaka Bar Indian Band, Lower Nicola Indian Band, Nicomen Indian Band, Nooaitch First Nation, Siska Indian Band, and Spuzzum First Nation.

The Commission received evidence and submissions from several Métis communities, either directly on the hearing record or indirectly through the CCC. This includes submissions from the BC Métis Federation, Kelly Lake Métis Settlement Society (Apetokosan Nation), the Manitoba Métis Federation, and the Métis Nation British Columbia.

10.3.5 Community-specific descriptions of rights and how rights are exercised

This section contains community-specific descriptions for 57 of the 73 Indigenous communities and organizations on the Crown List for which information is available on the hearing record about how their rights are exercised in the Project areas. No community-specific descriptions are included for the remaining 16 Indigenous communities on the Crown List because the hearing record does not contain information about them. These are Aitchelitz First Nation, Kelly Lake Métis Settlement Society, Kwaw'Kwaw'Apilt First Nation, Shxw'ōwhámél First Nation, Shxwhà:y Village, Skawahlook First Nation, Skowkale First Nation, Skwah First Nation, Skwlāx te Secwepemcúl̓ecw (Little Shuswap First Nation), Soowahlie First Nation, Sq'ewlets First Nation (Scowlitz), Squiala First Nation, Sts'ailes, Sumas First Nation, Tzeachten First Nation, and Yakweakwioose First Nation.

10.3.5.1 Ashcroft Indian Band

Ashcroft Indian Band was an intervenor in the hearing but did not make any submissions. The following information was provided by the CCC and Westcoast. Ashcroft Indian Band is located along the shores of the Thompson River and was traditionally known as the Nlaka'pamux.The Nlaka'pamux traditional territory extends south across the Canada-US border into Washington State in the North Cascades, west to Harrison Lake, north to Hihium Lake, and east to Okanagan Lake and the Okanagan River. Ashcroft Indian Band fishes in the Thompson River and use the land for cultural and subsistence activities.

Ashcroft Indian Band raised concerns about the cumulative effects from the Project on forest fire risks in the area, and the resulting smoke and air quality effects on community members.

10.3.5.2 Blueberry River First Nations

Blueberry River First Nations participated in the hearing by filing a letter of comment. Blueberry River First Nations is a Treaty 8 signatory and is located in northeastern BC. Their Treaty rights include hunting, trapping, and fishing. Blueberry River First Nations depends on rivers for drinking water and uses travel ways south of the Peace River to access hunting grounds. In the past, they expressed concerns that development projects can facilitate increased access to these traditional travel ways for non-Indigenous recreationalists, which affects the use of these trails for traditional practices, has larger negative effects on the ecosystem, and can lead to increased hunting.

Blueberry River First Nations is concerned about the upstream development facilitated by the Project. They expect that a significant portion of the Project's 300 MMcf/d of transport capacity would come from the Blueberry River Claim Area. They are concerned about the Project's effects on their constitutionally protected Aboriginal and Treaty Rights, as well as the implications for their work with the Province of BC regarding the Blueberry River Implementation Agreement. Blueberry River First Nations is also concerned about the Commission's ability to properly assess the Project's cumulative effects and of its decision regarding their Treaty rights, given the lack of information regarding potential induced impacts from the Project.

10.3.5.3 Bonaparte First Nation

Bonaparte First Nation did not register as an intervenor or file a letter of comment. The following information was provided by the CCC and Westcoast. Bonaparte First Nation is a member of the Shuswap Nation Tribal Council of the Secwépemc (Shuswap) people and is located near Cache Creek, BC. They have multiple reserves making up 1,878 ha. Bonaparte First Nation has a population of 1,150, many of whom reside off reserve. Their traditional territory (Secwepemcúl'ecw) spans a large area from the Columbia River valley along the Rocky Mountains, west to the Fraser River, and south to the Arrow Lakes.

Wildlife, vegetation, and fish are important resources for Bonaparte First Nation's community. They view the Bonaparte River and Kamloops Lake as important waterbodies in their traditional territory for cultural practices and sustenance. The health of the Bonaparte River system and associated habitats is threatened by instream and upland activities, including infrastructure development.

10.3.5.4 Boothroyd Band

Boothroyd Band was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by Westcoast. Boothroyd Band is a member of the Nlaka'pamux, an interior Salish Nation. Nlaka'pamux traditional territory extends south across the Canada-US border, into Washington State in the North Cascades, west to Harrison Lake, north to Hihium Lake, and east to Okanagan Lake and the Okanagan River. The Nlaka'pamux engage in traditional hunting and Boothroyd Band has concerns regarding a decrease in the number of successful hunts. Boothroyd Band also engages in traditional plant harvesting. They historically relied upon salmon caught in the Fraser River as a sustenance source and have reported a decrease in the number of salmon returning to the Fraser River watershed. Their members have expressed concerns about declining fish populations, emphasizing the cultural, economic, and health values of fishing.

10.3.5.5 Boston Bar First Nation

Boston Bar First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Boston Bar First Nation is located in the Fraser Canyon, in and around Boston Bar, BC. They steward a traditional territory and 12 reserves within it. Their territory extends as far southwest as the Lower Mainland, southeast past Princeton to Cathedral Provincial Park, northwest almost to Lillooet, north to Ashcroft, and northeast to Lac le June. The community uses the land for trapping, wildlife harvesting, plant and earth material harvesting, trails, occupancy, and fixed cultural sites. Boston Bar First Nation noted their connection to the land for food and medicine, and that Boston Bar is a gathering spot with many trading trails in the area. They also raised the importance to their community of the Anderson and Skuzzy Creek watersheds. The Project areas include sites mapped for wildlife, harvesting, occupancy (such as overnight sites), fixed cultural sites (e.g., gathering places), and grease trails that connect sites from the Fraser Canyon to the area around Merritt.

10.3.5.6 BC Métis Federation

The BC Métis Federation was an intervenor in the hearing and made submissions. The BC Métis Federation is a non-profit association dedicated to supporting Métis communities and their members in BC. For their members, wildlife harvesting is an important cultural practice for subsistence and economic purposes. They harvest plants for food, spiritual, and ceremonial purposes. Members have expressed concerns about the effects of ongoing development on fish spawns, fish habitat, and water quality. The BC Métis Federation has noted that Project areas surrounding Summit Lake, including river crossing and road crossing areas, are high traffic areas for deer, moose, and black bears.

10.3.5.7 Chawathil First Nation

Chawathil First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by Westcoast. Chawathil First Nation identify as Stó:lō or are culturally affiliated with Stó:lō traditions. Their members often prefer to live on reserve, closer to family and support systems offered by their community. On-reserve housing is more affordable than off-reserve, and the community offers cultural facilities and services. Being closer to family and a support system reduces feelings of disconnection and isolation from cultural values.

For Chawathil First Nation, hunting and trapping created a strong sense of community. Hunters and trappers provided meat and materials for cultural and ceremonial purposes that could be used to trade for other goods or gift to other villages. Their community members emphasized the importance of preserving sacred locations for fasting and purification rituals, which are often linked to specific waterbodies, because they are meant to endure over time.

10.3.5.8 Cheam First Nation

Cheam First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Cheam First Nation, also known as Xwchíyò:m, is part of the Pelólxw Tribe, a distinct group of the Stó:lō Nation. The community is located along the Fraser River near Agassiz, BC and has two main reserves – Cheam 1 and Tseatah 2. The Cheam 1 reserve is approximately 821 acres in size and is located on the south bank of the Fraser River and the north shore of Cheam Lake. The Tseatah 2 reserve is approximately 231 acres in size and is located on the north bank of the Fraser River, two miles south of the town of Agassiz.

Cheam First Nation filed a document titled *Preliminary High Level Summary of Cheam First Nation's Traditional Use Based upon the Documentary Record*, which summarizes cultural activities and land uses, including fishing, hunting, plant gathering, visiting spiritual sites, and engaging in socio-economic activities. Cheam First Nation submitted that the Project would have significant adverse effects on their ability to practice their traditional ways of life. They are concerned about effects on soil, surface water, groundwater, fish and fish habitat, wetland function, vegetation, wildlife, and wildlife habitat, which could affect their ability to exercise their rights.

A portion of the CS-8B to CS-9 pipeline loop would cross Cheam First Nation's reserve lands, which the Commission discusses in this chapter and in **Chapters 5 and 9**.

10.3.5.9 Coldwater Indian Band

Coldwater Indian Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Coldwater Indian Band is a C'eletkwmx People who belong to the Nłeʔkepmx Nation. Coldwater Indian Band's offices are located in Merritt, BC. Coldwater Indian Band is primarily concerned with the CS-8A power line going through the Coldwater Valley. They highlighted ecological concerns with the Project's effects on wildlife and wildlife habitat, particularly species at risk with critical habitats. The area surrounding the proposed power line has been a significant source of cultural heritage and resource harvesting for their community for generations. Coldwater Indian Band also noted the cumulative effects of industrial development exacerbating harms, including on harvesting and hunting in the area.

10.3.5.10 Cook's Ferry Indian Band

Cook's Ferry Indian Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Cook's Ferry Indian Band is within the Nlaka'pamux Nation government, with their main community located near Spences Bridge, BC. They have a total of 26 separate reserve parcels within the Nicola and Thompson River valleys, including near Merritt. The territory of the Nlaka'pamux Nation covers over 34,500 square kilometres of land recognized as south-central BC and Washington State. Cook's Ferry Indian Band currently uses, and has traditionally used, the Nlaka'pamux territory for fishing, hunting, trapping, and gathering food plants and medicines.

The Project would cross forested, wetland, and historically disturbed lands that contribute to the loss or alteration of culturally important vegetation communities and species that Cook's Ferry Indian Band's members use in transferring important knowledge and preparing food and medicines. Given the Project components' locations and the large geographical area the Project encompasses, there is a high potential of the Project affecting Cook's Ferry Indian Band's rights and traditional land use, especially as their members do not always use existing roads or cutlines to access traditionally used areas.

10.3.5.11 Doig River First Nation

Doig River First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Doig River First Nation is a Treaty 8 signatory and is located in northeastern BC. Their members have the constitutionally protected right to hunt, fish, and trap throughout Treaty 8 territory.

Doig River First Nation has noted that the health and population of several wildlife species have changed, including a decline in caribou populations. They have also expressed concerns about the adverse effects of industrial activity on fish populations, including on fish spawning, fish habitat, fish

migration, species composition, and contamination within the Peace River Valley waterways. Doig River First Nation uses water as a major means of transportation and has several routes and trails associated with the numerous waterbodies in their traditional territory, including the Peace River.

10.3.5.12 Driftpile Cree Nation

Driftpile Cree Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Driftpile Cree Nation is a Cree-speaking nation with a population of approximately 3,266 members, located on the south shore of Lesser Slave Lake. Their reserve, comprised of approximately 6,354.8 ha, is located on the south shore of Lesser Slave Lake, approximately 74 km west of the town of Slave Lake, Alberta. Driftpile Cree Nation is a Treaty 8 signatory and has constitutionally protected rights to hunting, trapping, and fishing.

Driftpile Cree Nation stated that their members harvest ceremonial medicines and other supplies in at least six locations near Westcoast's existing right-of-way between Prince George and Abbotsford. Community members sometimes harvest plants and medicines near Hundred Mile House. Driftpile Cree First Nation noted that in the summer, they bus their Elders to BC to allow them to pick berries near Westcoast's existing right-of-way. Driftpile Cree Nation is concerned about the cumulative effects of industrial development on their ability to exercise their rights.

10.3.5.13 ?Esdilagh First Nation

?Esdilagh First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by Westcoast. ?Esdilagh First Nation is also known as Alexandria Band/First Nation and is one of six members of the Tŝilhqot'in National Government. ?Esdilagh First Nation has a population of almost 300 members, of which more than 50 live on reserve. ?Esdilagh means "where the land meets the water." Esdilagh First Nation's traditional territory is located on both sides of the Fraser River between Williams Lake and Quesnel.

Their community relies on moose for food, social, and ceremonial purposes. They have noticed a decline in moose population throughout their traditional territory. ?Esdilagh First Nation has raised concerns about how projects in their traditional territory may result in changes to or loss of wildlife habitat quality and quantity, changes to wildlife movement from sensory and physical disturbance, and wildlife mortality. They also noted the marked decline in several historical salmon runs.

10.3.5.14 Foothills First Nation

Foothills First Nation was an intervenor in the hearing and made submissions. Their main community is located in Kelly Lake, BC, just west of the BC-Alberta border. Foothills First Nation members also live in Grande Prairie, Dawson Creek, Chetwynd, and throughout the Peace River region. Foothills First Nation's asserted traditional territory extends from the BC-Alberta border in the east to the Peace River area in the north. It stretches south to the Treaty 6 and Treaty 8 boundary near Jasper, Alberta.

Foothills First Nation engages in hunting, trapping, fishing, plant harvesting, and spiritual activities throughout their asserted traditional territory. Foothills First Nation raised concerns relating to potential Project effects, the importance of waterbodies, cumulative effects, and the potential for increased upstream development and effects on migratory animals.

10.3.5.15 Halfway River First Nation

Halfway River First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Halfway River First Nation is a Treaty 8 signatory and their main community is located northwest of Fort St. John, BC. Halfway River First Nation has 304 registered members, of whom 137 members live on reserve.

Halfway River First Nation members have the constitutionally protected right to hunt, fish, and trap throughout Treaty 8 territory. This area extends from northeastern BC, through Alberta, and into northwestern Saskatchewan, and includes parts of the southern Northwest Territories.

Halfway River First Nation emphasized their concerns regarding disruptions to wildlife habitats and migration patterns, with a particular focus on moose, caribou, and other ungulates. They also emphasized that the presence of invasive species leads to environmental degradation and adversely affects the ecological function of habitats. Fishing is of significant importance for Halfway River First Nation, as is the Halfway River itself. Community members have observed a decline in fish populations. Related to another project, they have observed a decline in river levels. They have expressed concerns about contamination of watercourses and riparian areas due to spills, leaks, and sedimentation from construction activities.

10.3.5.16 High Bar First Nation

High Bar First Nation was an intervenor in the hearing and made submissions. Llenllenéy'ten, also known as High Bar First Nation, is one of 17 First Nations that, today, compose the Secwépemc Nation, within Secwepemcúĺecw. The community is located in the BC Interior, close to Clinton. Their traditional territory encompasses a large cultural landscape stretching between the Coast and Rocky Mountains along and around portions of the Fraser, North Thompson, South Thompson, and Columbia River drainages in BC's Southern Interior. Within these homelands, the core area habitually used, occupied, and caretaken by the community includes lands and waters on both sides of the Fraser River between Big Bar and Kelly Creeks.

The Project is located approximately 70 m from Green Lake, through High Bar First Nation's key land use area, within their traditional territory. This area is used for hunting, harvesting, gathering, and cultural and spiritual activities. The Project would affect the community's ability to carry out activities associated with their title and rights and would also directly affect the quality of the area, including effects on water, wildlife, fish, plants, and their associated habitats. By creating more access and bringing more people to the area, effects would be magnified. Effects would not end upon Project completion. Given the maintenance of the pipeline and its associated roads for the lifetime of the pipeline, effects would continue into the foreseeable future.

10.3.5.17 Kanaka Bar Indian Band

Kanaka Bar Indian Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Kanaka Bar Indian Band is also known as "T'eqt"aqtn'mux" or "the crossing place people." Their community is located south of Lytton, BC. Kanaka Bar Indian Band is one of 15 Indigenous communities that form the Nlaka'pamux Nation that would be affected by the Project, with a collective territory encompassing significant portions of the Thomson-Fraser and Nicola regions. As a member of the Nlaka'pamux Nation, Kanaka Bar Indian Band has Aboriginal title and exercises rights recognized and affirmed under section 35 of the *Constitution Act, 1982*.

Kanaka Bar Indian Band said that the Project would create new and cumulative effects that would impact their territory and rights. They expressed concern removing plants during construction and would like to see Westcoast ensure that the same species removed during construction are replanted during reclamation, especially for plant species used for medicines and traditional practices. Kanaka Bar Indian Band also indicated a preference for access roads to be deactivated after construction to minimize effects on wildlife and traditional hunting practices.

10.3.5.18 Kelly Lake Cree Nation (As'in'î'wa'chî Ni'yaw Nation)

Kelly Lake Cree Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Kelly Lake Cree Nation territory is traditionally known as As'in'î'wa'chî Ni'yaw Nation and consists of approximately 800 individuals, 225 of whom live in Kelly Lake, BC. Kelly Lake Cree Nation's traditional territory extended from the plains between northeastern BC and Alberta to the Rocky Mountain Trench, with no rigid boundaries and instead following seasonal rounds. The community continues to use their territory for lifestyle and subsistence purposes, including hunting, trapping, and fishing.

Project components would run through and be adjacent to their traditional territory boundary, cultural and traditional activities and land use sites, and vital resource areas. The community raised concerns about potential effects and cumulative effects from the Project on their traditional land use, cultural practices and pursuits, the exercise of rights, their ability to hunt and trap, and the availability of healthy wildlife populations.

10.3.5.19 Kelly Lake First Nation

Kelly Lake First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Kelly Lake First Nation is located around Kelly Lake, near the BC and Alberta border, south of Dawson Creek. Kelly Lake First Nation has about 400 members, who live both on and off reserve.

Kelly Lake First Nation has identified site-specific Project effects, including those related to the ability for upland forests and vegetation to regenerate after construction, water reduction and drinking water quality, aqua life and the entire bio-diverse ecosystem, birds' natural rhythm, migration patterns, the abundance of large and small game, birds and instream or riparian life, and traditional trails and campsites. Fish populations have reportedly declined in response to the drastic drop in water levels resulting from oil and gas activity within the region. Kelly Lake First Nation anticipates further damage to fish populations as a result of contamination and habitat destruction from Project construction at watercourses. They raised concerns regarding a decrease in water levels, contaminated tap water, reduced water quality from stream flow blockages, and waste introduced into water sources.

10.3.5.20 Kwantlen First Nation

Kwantlen First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Kwantlen First Nation is located on McMillan Island near Fort Langley, BC. Their traditional territory covers an area from Richmond and New Westminster in the west, to Surrey and Langley in the south, east to Mission, and to the northernmost reaches of Stave Lake.

Kwantlen First Nation has expressed concerns about diminishing fish stocks, particularly eulachon and sturgeon. The loss of the ability to harvest these species has increased the significance of

salmon for sustenance and cultural practices. Waterbodies hold a pivotal role for their members who have raised concerns about the potential adverse effects from industrialization on their traditional activities, especially fishing and resource gathering and potential cumulative effects. Kwantlen First Nation also expressed concerns about potential Project effects on archaeological sites, particularly in the Stave River area and villages along the Salmon River. They emphasized the imperative for additional archaeological studies.

10.3.5.21 Leq'á:mel First Nation

Leq'á:mel First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Leq'á:mel First Nation is located approximately 22 km east of Mission, BC. Leq'á:mel First Nation is a member of the Stó:lō Nation, whose traditional territory, or *S'olh Temexw*, extends from above Yale to Langley, BC.

Community members are concerned about invasive plants and the loss of wildlife and wildlife habitat on Leq'á:mel lands. They report witnessing significant reductions in numerous fish populations within the region. Leq'á:mel First Nation has identified that drinking water is sourced from shallow aquifers that are at risk of contamination, including from industrial land use. They are also concerned about the impacts of human activities, such as land development and resource extraction, which are altering the natural landscape and overall ecosystem health. Leq'á:mel First Nation finds that these changes may lead to various adverse effects, including habitat loss and degradation for fisheries, and reduced habitat connectivity and sedimentation due to construction and land development.

10.3.5.22 Lheidli T'enneh First Nation

Lheidli T'enneh First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Lheidli T'enneh First Nation, historically known as the Fort George Indian Band, is a sub-group of the "Dakelh" People whose traditional territory includes the City of Prince George and surrounding areas in BC. Their community has over 800 members, of whom approximately 100 are located on reserve.

Hunting elk and moose, gathering culturally important plants, fishing, sacred sites, and gathering areas for community members are important to their way of life. They are concerned that effects of projects from noise pollution and disturbance to land, fish, and wildlife habitat could result in alienation from the landscape.

10.3.5.23 Lhoosk'uz Dené Nation

Lhoosk'uz Dené Nation was an intervenor in the hearing but did not make any submissions. The following information was provided by the CCC and Westcoast. Lhoosk'uz Dené Nation has 232 members and is located west of Quesnel, BC. They are a member of the Carrier Chilcotin Tribal Council. Their community is remotely located, without all-season road access, and includes multiple reserves, with most of the population living on the Kluskus reserve. Lhoosk'uz Dené Nation is a part of the Southern Dakelh, or Carrier, cultural tradition whose traditional territory spans the BC Interior from the Coast Mountains in the west to the Rocky Mountains in the east and extends to the Omineca Mountains in the north. The Blackwater River, also known as the West Road River, flows through the middle of this territory.

Hunting and trapping are traditional practices that occur almost year-round and are used for consumption, trade, technology, and personal use. Plant harvesting is a culturally important activity for their members for subsistence, ceremonial, economic, and medicinal purposes. Fish is a main

food source. Lhoosk'uz Dené Nation also continues to use many trails and travel ways within their traditional territory for access to hunting, fishing, trapping, gathering, and camping areas, as well as for trade and recreation purposes.

10.3.5.24 Lhtako Dene Nation

Lhtako Dene Nation was an intervenor in the hearing but did not make any submissions. The following information was provided by the CCC and Westcoast. Lhtako Dene Nation is a Dakelh (Carrier) First Nations government in the northern Fraser Canyon region of BC. Their main community is located just south of Quesnel. Lhtako Dene Nation has a registered population of 209 members, about half of whom live on reserve. The community is part of the Dakelh, or Carrier, cultural tradition whose traditional territory spans Interior BC from the Coast Mountains in the west to the Rocky Mountains in the east and extends to the Omineca Mountains in the north. Lhtako Dene Nation's traditional territory includes the Chilcotin, Blackwater, Dean, and Quesnel River watersheds.

Lhtako Dene Nation hunts wild game and gathers traditional plants throughout their traditional territory for subsistence, trade, harvesting, medicine, and other purposes. They reported a decline in large game in the area, causing members to travel further to hunt. Lhtako Dene Nation fishes year-round and has raised concerns related to environmental effects on fishing activities, specifically fish poisoning. Water health has also been raised as an important issue because it directly relates to water-based traditional practices, with concerns about water quality, quantity, groundwater and aquatic ecosystems, and subsequent effects on plant and animal species.

10.3.5.25 Louis Bull Tribe

Louis Bull Tribe was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Louis Bull Tribe is one of four Indigenous Nations with reserves in Maskwacis, Alberta and is a Cree speaking tribe. Louis Bull Tribe's reserve is located south of Edmonton and is comprised of approximately 3,600 ha with a population of 2,507 members. They hold inherent Aboriginal and Treaty Rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. Louis Bull Tribe is a Treaty 6 signatory.

Louis Bull Tribe members gather traditional plants and medicines for foundational smudges. Community members described the impacts of the cumulative effects of industrial development, noting that there is nearly no land remaining in Treaty 6 territory that is suitable for the exercise of their rights. The community raised concerns related to effects on wildlife, including the quantity and quality of larger wildlife that affects the community's food source; traditional medicines and plants that have always been harvested but for which the community is now forced to travel further away; water; and fish and fish habitat. Louis Bull Tribe also expressed concerns about how increased population, workforce accommodation, and traffic may affect the safety of Indigenous women and girls, as well as access to housing due to higher rent costs.

10.3.5.26 Lower Nicola Indian Band

Lower Nicola Indian Band was an intervenor in the hearing and made submissions. Lower Nicola Indian Band occupies an area near Nicola Lake and their territory extends north to Hihium Lake, east to Okanagan Lake and the Okanagan River, south into the North Cascades in Washington in

the US, and west to Harrison Lake. They still rely heavily on their territory for fishing, hunting, trapping, berry and medicine harvesting, and other forms of resource harvesting. The community has concerns that disturbances can negatively modify watershed hydrology, riparian environments,

wildlife habitat, and vegetated ecosystems, and that there could be severe effects on fish habitat and reduced species habitat. Lower Nicola Indian Band stated that their concerns are particularly acute in the area in and around the proposed CS-8A power line and its close proximity to the Coldwater River.

10.3.5.27 Lytton First Nation

Lytton First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by Westcoast. Lytton First Nation is a member of the Nlaka'pamux, a BC Interior Salish Nation whose traditional territory extends south across the Canada-US border into Washington State in the North Cascades, west to Harrison Lake, north to Hihium Lake, and east to Okanagan Lake and the Okanagan River. The Stein River water system is a significant resource because it provides water for many Lytton First Nation members and sustains areas of fresh spring water.

Lytton First Nation reported a noticeable change in wildlife behavior, particularly a decline in goat populations in the region, attributed to the impact of logging activities. The community's hunting grounds have also been affected by forest fires, and they expressed concern that hunters must now travel further to find game species. Lytton First Nation emphasized the cultural and ecological significance of Pasulko Lake, which serves as a sacred site and a gathering place for members. It is also a critical habitat for wildlife and fish, and where Lytton First Nation members gather food plants, mushrooms, and medicinal resources, underlining the importance of protecting this area for cultural continuity, a sense of place, and overall well being.

10.3.5.28 Manitoba Métis Federation

The Manitoba Métis Federation was an intervenor in the hearing and made submissions. The Manitoba Métis Federation is the recognized self-government of the Manitoba Métis, also known as the Red River Métis. They rely on and use the lands, waters, and resources of their traditional territory throughout Manitoba and within the historic Northwest to exercise their constitutionally protected rights and maintain their distinct customs, traditions, and culture. The Manitoba Métis Federation identified concerns related to direct and cumulative effects on hunting and access to hunting areas, fishing, trapping, harvesting of plants used for food and medicines, and access and use of significant cultural or spiritual sites or areas.

10.3.5.29 Matsqui First Nation

Matsqui First Nation participated in the hearing by filing a letter of comment. Matsqui First Nation (Máthxwí) is a Stó:lō Community whose traditional territory, S'ólh Téméxw, extends from above Yale to Langley, BC. The community holds five reserves with a total area of approximately 430 ha. Their main community is located north of Abbotsford, BC. Matsqui First Nation has interests in the land and resources in the lower Fraser River, down river of Sawmill Creek. Members gather common plants such as medicinal tea leaves, cow parsnips leaf steams, huckleberries, and skunk cabbage. The Fraser River is an important salmon waterway and salmon is extremely valuable for their community as a key food source and for its cultural importance and economic benefits. Matsqui First Nation has expressed ongoing concerns regarding sewage treatment and disposal within the community. Members also have winter homes in the area, especially along watercourses.

10.3.5.30 McLeod Lake Indian Band

McLeod Lake Indian Band did not register as an intervenor or file a letter of comment. Individual members of McLeod Lake Indian Band (Ernest, Monique, Pearl, and Ron Last) registered as intervenors but did not make submissions. The following information was provided by the CCC and Westcoast. The main community of McLeod Lake Indian Band is a Treaty 8 signatory and is located near the unincorporated village of McLeod Lake, north of Prince George. The community has almost 600 members, of whom approximately 100 live on reserve. McLeod Lake Indian Band practices hunting and trapping. Their Elders reported that animal populations have declined and moose health has notably deteriorated. McLeod Lake Indian Band harvests plants for a variety of uses, including medicinal, ceremonial, and consumption. Fishing in lakes and streams across their traditional territory remains an important harvesting tradition. They have observed a decrease in fish consumption due to concerns about methylmercury contamination. McLeod Lake Indian Band raised concerns regarding potential effects on species at risk, caribou and caribou habitat, traditional plant harvesting, and culturally modified trees.

Westcoast proposed locating temporary workspace on McLeod Lake Indian Band's reserve lands, which the Commission discusses in this chapter and in **Chapters 5 and 9**.

10.3.5.31 Métis Nation British Columbia

The Métis Nation British Columbia was an intervenor in the hearing and made submissions. The Métis Nation British Columbia represents 39 Métis chartered communities in BC and over 98,000 self-identified Métis people in BC. Métis Nation British Columbia members emphasize that there must be a respect for the land itself, and a balance between the natural resources' spiritual, ecological, and economic values and members' social, cultural, and traditional needs. The Métis Nation British Columbia prioritizes the conservation of biological diversity, soil, water, fish, wildlife, visual management, as well as other natural resources. Their members harvest wildlife, vegetation, and fish. Harvested foods are essential to the diets of many of their members and are a key component of Métis culture. They are concerned about the impacts of ongoing development on wildlife, bird populations, fish, and water.

10.3.5.32 Nazko First Nation

Nazko First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Nazko First Nation is located in the north-central interior of BC and has a registered population of 435, 114 of whom live on one of two inhabited reserves. Their reserves are located around the community of Nazko, BC. Their traditional territory extends from the Nechako River south and east of the Fraser River, east of the Fraser River southwest to above White Pelican Park, west outside Itcha Ilgachuz Park, northeast to Kluskoil Lake Park, north including Finger-Tatuk Park, and northeast to the Nechako River. Nazko First Nation possesses and exercises rights recognized and affirmed by section 35 of the *Constitution Act, 1982.* They continue to actively use their traditional territory for purposes of sustenance and subsistence. Members hunt, trap, fish, gather, and prepare resources for use as food, medicine, and material goods.

Nazko First Nation identified concerns related to direct and cumulative effects on hunting and access to hunting areas, fishing, trapping, harvesting of plants used for food and medicines, and access and use of significant cultural or spiritual sites or areas. Nazko First Nation shared their observations about how hunting and trapping have been affected by habitat degradation; wildfires; predation; increased access; decreased thermal, mineral, and security cover (moose); and impacts on fisher habitat and salmon.

10.3.5.33 Neskonlith Indian Band

Neskonlith Indian Band was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Neskonlith Indian Band is located in south central BC and consists of three reserves. Neskonlith Indian Band has about 690 members, of whom 270 members live on the main reserves.

Neskonlith Indian Band engages in extensive use of their territory, including hunting, establishing vegetable farms, and harvesting roots, berries, and medicinal plants. Salmon is a keystone species to their culture and traditional way of life, and as a core food source for some. Their members reported that Secwépemc fisheries have faced destruction and loss due to industrial development, pollution, and overfishing. Neskonlith Indian Band considers their community as a caretaker of the Shuswap Lakes watershed and has concerns about contamination and overall water quality due to industrial activities.

10.3.5.34 Nicomen Indian Band

Nicomen Indian Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Nicomen Indian Band is located near Lytton, BC and is situated within the traditional territory of the Nlaka’pamux Nation. Their membership consists of 133 individuals, of whom 83 members reside on the reserve.

Nicomen Indian Band exercises Aboriginal rights and interests throughout the entire Nlaka’pamux territory, which they describe as their community. They gather medicinal plants such as tamarack and wild onions, as well as berries such as raspberries, huckleberries, and soapberries. Community members continue to hunt game such as deer and elk in the Coquihalla River valley and fish in local rivers and lakes such as the Coquihalla River and Fraser River, which provide essential food and maintain cultural practices. The Highland Valley area has numerous sacred sites, including puberty sites, healing sites, and religious and shamanic training areas. These places are essential to the spiritual well-being and cultural identity of Nicomen Indian Band, playing a key role in individual and communal ceremonies.

Nicomen Indian Band has concerns regarding the potential effects and cumulative effects from the Project on their traditional land use, cultural practices and pursuits, and exercise of rights. They identified concerns related to direct and cumulative effects on hunting and access to hunting areas, fishing, trapping, harvesting of plants used for food and medicines, and access and use of significant cultural or spiritual sites or areas.

10.3.5.35 Nooaitch Indian Band

Nooaitch Indian Band was an intervenor in the hearing and made submissions. Nooaitch Indian Band is a Nlaka’pamux First Nations government in the BC Southern Interior, surrounding the City of Merritt. Nooaitch Indian Band exercises rights held under section 35 of the *Constitution Act, 1982.* They also claim environmental stewardship responsibilities in accordance with Nlaka'pamux laws.

Their members have identified concerns related to environmental effects on traditional activities such as hunting, trapping, and plant gathering (e.g., berries, plants, tree bark, roots). They are concerned about their ability to continue traditional activities on their reserves and traditional territory, and the resulting effects on wildlife and wildlife habitat. Nooaitch Indian Band used a variety of species for traditional purposes, including ungulates (deer, moose, elk), birds (goose, grouse), rodents (muskrat,

porcupine), and reptiles (snakes). Nooaitch Indian Band uses several plants (cedar, mushrooms) for traditional purposes.

Their territory overlaps with the Coldwater River which, together with its watershed, is an area of critical wildlife habitat and immense importance to Nooaitch Indian Band. They are also concerned about wildlife habitat fragmentation that affects wildlife populations and the ability to hunt and about continued cumulative environmental, social, and cultural impacts from (pipeline) operations. In addition, they raised concerns about effects on fish habitat, fishing, and traditional plant harvesting.

10.3.5.36 Oregon Jack Creek Indian Band

Oregon Jack Creek Indian Band was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by Westcoast. Oregon Jack Creek Indian Band is a member of the Nlaka'pamux, a BC Interior Salish Nation whose traditional territory extends south across the Canada-US border into Washington State in the North Cascades, west to Harrison Lake, north to Hihium Lake, and east to Okanagan Lake and the Okanagan River. They hold six reserves with a total area of approximately 822 ha. Their main community is located south of Ashcroft, BC. The community's registered population is 74, with 23 members living on reserve. There is limited publicly available information regarding Oregon Jack Creek Indian Band's interests in wildlife, vegetation, fish, and water.

10.3.5.37 Peters First Nation

Peters First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Peters First Nation is an Upper Stó:lō community located on the banks of the Fraser River, near Agassiz, BC. Their traditional territory centers around the Fraser River and stretches from the Hozameen Mountain Range in the east, up the Fraser Canyon to Hell's Gate and Port Douglas in the north, west to Stave Lake and Aldergrove, and to the Canada-US border in the south. Their community has approximately 175 members, 45 of whom live on their reserve lands.

Community members hold social and cultural gatherings and hunt and trap for subsistence and cultural purposes. The community also reports several spiritual sites near the Project. Many members continue to fish, harvest plants, and camp with family and friends in the territory. Fishing for subsistence is an important part of members' lives. Peters First Nation has concerns regarding potential effects and cumulative effects from the Project on their traditional land use, cultural practices and pursuits, and exercise of rights. Peters First Nation noted the higher concentration of fishing sites in and around the Project compared to other traditional land use sites. They are concerned about environmental impacts of pipeline projects on wildlife populations and water quality, and subsequent effects on the health and distribution of fish and on the quality and quantity of plant and fungi species.

10.3.5.38 Popkum First Nation

Popkum First Nation was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Popkum First Nation is located on the Fraser River, south of Hope, BC. Popkum First Nation is a member of the Stó:lo Nation and has two main reserves. Popkum First Nation highlighted the significance of deer in their hunting practices and traditionally important plants that are harvested. Fishing remains a crucial aspect of Popkum First Nation's social, cultural, spiritual, and economic fabric.

Popkum First Nation stated that the Project has the potential to cause adverse impacts on their community's rights and interests and their ability to maintain their culture, traditions, and way of life. They also noted the presence of different endangered species in and around the main reserves and that the area surrounding the reserves has geohazard sensitivities. Popkum First Nation's specific concerns include impacts on fisheries and species at risk, such as white sturgeon. Popkum First Nation raised concerns regarding Project effects on the Fraser River and its adjacent banks. This includes concerns about water quality, effects on fish and fishing activities, as well as the protection of wildlife habitats such as red-tailed hawk nests, riparian areas, and wetlands.

10.3.5.39 Prophet River First Nation

Prophet River First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Prophet River First Nation is a Dane-zaa community and a Treaty 8 signatory. Their reserve is located south of Fort Nelson, BC. Their traditional territory covers approximately 25,000 square kilometres from the Rocky Mountains to the boreal forest east of the Prophet River, falling roughly between Fort Nelson and Fort St. John, including around Charlie Lake and Prophet River. Prophet River First Nation has a registered population of 299 people, of whom 186 members live off reserve. Prophet River First Nation has inherent rights recognized and affirmed by section 35 of the *Constitution Act, 1982.* They practice their rights through hunting, trapping, and fishing throughout Treaty 8 territory.

Prophet River First Nation raised concerns regarding their ability to undertake undisputed Treaty rights to hunt, fish, and trap in their traditional territory. They also raised concerns about the decline in water quality, which in turn impacts their community's ability to fish, as well as cumulative Project effects on Treaty rights and traditional lands.

10.3.5.40 Pukaist Nation

Pukaist Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. The People of Pukaist Nation are an Indigenous collective within the Nlaka'pamux Nation and have a traditional territory of roughly 34,000 ha bounded by Ashcroft and Spences Bridge. Pukaist Nation relies on the Thompson River and surrounding creek for salmon, deer, medicines, and plants.

Fishing has been described as the lifeblood of the Nlaka'pamux Nation. As fish populations continue to decline, Nlaka'pamux Nation members find it increasingly difficult to harvest these resources and provide food for their family and community. The Fraser and Thompson River watersheds are regarded as culturally significant waterbodies to Nlaka'pamux communities. These rivers and their tributaries are the place of many traditional practices, including hunting and fishing.

Pukaist Nation's Elders noted that mining and hydro projects have already affected water quality and fish, and they expressed concerns that additional industrial development would further diminish their resources. Pukaist Nation advised the CCC that they have no major concerns regarding cultural or spiritual areas, gathering activities, unique species, or medicines. Their primary interest in the Project is in economic participation and benefits.

10.3.5.41 Saulteau First Nations

Saulteau First Nations was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Saulteau First Nations is located at the east end of Moberly Lake and is a Treaty 8 signatory. Woodland caribou are a culturally significant species to Saulteau First Nations. The protection and health of caribou habitat is critical to them. The loss of resources such as culturally important species (e.g., caribou), or access to areas to practice cultural activities and pass down knowledge across generations, disrupts the very fabric of their traditions and heritage. They noted the abundance of healthy berries and lichen for caribou and birch trees, which are used for crafts, tea, and a heating source in winter. Saulteau First Nations expressed concerns about the impacts that past and future developments have had on their traditional use of lands and resources. This includes increasing mercury levels in fish; declining fish, fur-bearer, animal and plant populations; and changing species composition.

10.3.5.42 Shackan Indian Band

Shackan Indian Band was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Shackan Indian Band is a Nlaka'pamux First Nations government located east of Spences Bridge and 40 km west of Merritt. Shackan Indian Band uses badger, bear, deer, owls, and woodpecker for traditional purposes. They highlighted the interconnectedness of their ecosystem, emphasizing the role of lakes and rivers in maintaining healthy fish populations. They also emphasized the importance of gathering traditional medicinal plants and food, highlighting the significance of vegetation in their members' cultural practices, which includes various medicinal plants, berries, mushrooms, and other integral flora. Shackan Indian Band engages in fishing activities at Nicola Lake and Chataway Lake to acquire essential resources such as kokanee salmon and trout.

Shackan Indian Band raised concerns about rising water temperatures affecting fish survival in the Coldwater River. They have also raised the issue of the potential effects of linear disturbances such as pipelines on wildlife accessibility, potentially leading to reduced hunting opportunities and negative effects on wildlife populations. Shackan Indian Band noted concerns about effects on wildlife and wildlife habitat and vegetation.

10.3.5.43 Skeetchestn Indian Band

Skeetchestn Indian Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. In October 2025, Skeetchestn Indian Band filed a letter indicating that they were providing their support for the Project, conditional on their reaching agreement with Westcoast and executing the terms of the agreement that was under negotiation at the time.

Skeetchestn Indian Band is part of the Secwépemc Nation. Skeetchestnúlecw (Skeetchestn Indian Band's territory), situated in south-central BC, encompasses four reserves west of the village of Savona in the Deadman River valley. Hunting and trapping practices are sources of subsistence and intergenerational knowledge transfer, with deer, moose, and beaver being significant game species, and various mammals such as beaver, coyote, and marten being trapped. Community members gather and use approximately 60 to 70 different plant species for ceremonial and spiritual purposes throughout their traditional territory.

Skeetchestn Indian Band has concerns about Project effects on hunting, gathering, and fishing. They said that habitat loss and water contamination have critically undermined their relationship with the land. Skeetchestn Indian Band also has concerns about cumulative effects on traditional harvesting areas and sacred sites such as Green Lake, Bonaparte Lake, and Tunkwa Lake.

10.3.5.44 Siska Indian Band

On 26 September 2025, the CCC advised that Siska Indian Band had been added to the Crown List. Siska Indian Band subsequently registered as an intervenor and was confirmed as such on 29 September 2025. They were able to participate in the remaining hearing steps and made submissions. Siska Indian Band has inherent rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. Siska Indian Band submitted that their territory is vital to continuing their way of life, including for ceremonial, spiritual, harvesting, fishing, and hunting purposes.

Siska Indian Band stated that the Project is within their traditional territory and would adversely affect their Aboriginal rights and title, which they share jointly and equally with the other 14 Nlaka'pamux Bands. In addition to their concern that their community was not consulted on Westcoast's original pipeline, Siska Indian Band raised concerns that Westcoast's existing and proposed pipelines represent cumulative impacts that erode Siska Indian Band's ability to sustain their culture and traditional way of life, which has a detrimental and cumulative impact on the community.

10.3.5.45 Spuzzum First Nation

Spuzzum First Nation was an intervenor in the hearing but made no submissions. The following information was provided by the CCC and Westcoast. Spuzzum First Nation is a member of the Nlaka'pamux, a BC Interior Salish Nation whose traditional territory extends south across the Canada-US border into Washington State in the North Cascades, west to Harrison Lake, north to Hihium Lake, and east to Okanagan Lake and the Okanagan River. Spuzzum First Nation holds 16 reserves and the main community is located on a reserve near Spuzzum.

Spuzzum First Nation traditionally harvests various berries, vegetables, and mushrooms. Cedar root is considered one of the most significant resources harvested because of its use in the culturally important practice of basketmaking. Spuzzum First Nation expressed concerns about declining fish populations, emphasizing the cultural, economic, and health values of fishing. Salmon plays a central role in the economic, cultural, and spiritual focus of Spuzzum First Nation.

Spuzzum First Nation raised concerns regarding a decrease in the number of successful hunts, as reported by community members and hunters. They also expressed concern that maps and data collected at culturally significant hunting areas are becoming publicly available. This is increasing public use of and hunting in those areas, which is contributing to the additional pressure of regional wildlife populations.

10.3.5.46 Sq'éwqel (Seabird Island Band)

Seabird Island Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Seabird Island Band is located along the banks of the Fraser River near Agassiz, BC. Seabird Island Band has over 1,000 members, of whom approximately 600 members live on reserve. They raised concerns about the pipeline route through their reserve and cumulative effects on the community and cultural resource use. They also raised concerns about impacts on water affecting chinook and sockeye salmon fishing, as well as on traditional plant harvesting. Seabird Island Band also expressed concerns related to an increase in flood risk and flood mitigation

resulting in a decrease in reserve land resources. They stated that the Project is adding to the amount of infrastructure present in the core community area, limiting space available for their own use.

A portion of the CS-8B to CS-9 pipeline loop would cross Seabird Island Band's reserve lands, which the Commission discusses in this chapter and in **Chapters 5 and 9**. As noted in **Chapter 5**, Seabird Island Band signed a Band Council Resolution providing their Chief and Council's consent for Westcoast to take possession of, use, and occupy Seabird Island Band's reserve lands for the purposes of the proposed pipeline loop, subject to and in accordance with the terms of a right-of-way agreement that was being negotiated.

10.3.5.47 Stswecme'c Xget'tem First Nation (Canoe Creek)

Stswecme'c Xget'tem First Nation (Canoe Creek) was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Stswecme'c Xget'tem First Nation is a northern Secwépemc Nation in the Cariboo region of BC that consists of two Indigenous communities. Stswecme'c Xget'tem First Nation has about 760 members, many of whom live away from the community in urban areas. Stswecme'c Xget'tem First Nation has asserted that they hold constitutionally protected rights, which encompass the right to hunt, fish, trap, and gather plants within their territory, along with Aboriginal title to their land.

Stswecme'c Xget'tem First Nation noted that despite facing environmental challenges such as fish poisoning and climate change impacts, they remain committed to preserving their fishing traditions and stewarding fish habitats. For Stswecme'c Xget'tem First Nation, climate change poses a significant threat to fish, fish habitats, and fisheries, necessitating adaptable fisheries management practices.

10.3.5.48 Sucker Creek First Nation

Sucker Creek First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Sucker Creek First Nation is a Treaty 8 signatory, located on the southwestern shore of Lesser Slave Lake at Enilda, east of High Prairie, Alberta. Sucker Creek First Nation has approximately 2,099 members, with 60 per cent living off reserve in Calgary, Edmonton, Vancouver, and Prince George. Sucker Creek First Nation estimates that approximately 150 members reside in Prince George, BC.

Their community members possess inherent Creator-given Indigenous rights in addition to Treaty and Aboriginal rights recognized and affirmed by section 35 of the *Constitution Act, 1982.* Sucker Creek First Nation said that traditional activities (including hunting and berry harvesting) occur near Bear Lake and the Fraser River, as well as fishing and medicinal harvesting by Lesser Slave Lake. They expressed concerns regarding the Project's cumulative effects on their members' ability to exercise their rights, specifically related to access to traditional areas, effects on wildlife for hunting and fishing, and harvesting of medicines. Sucker Creek First Nation also expressed concerns related to water quality and quantity and effects on the use of water resources.

10.3.5.49 Tsay Keh Dene

Tsay Key Dene was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Tsay Keh Dene is located 567 km from Prince George, BC. Tsay Keh Dene's traditional territory extends from Mount Trace in the north, west to South Pass Peak, east to Mount Laurier, and south to Nation River in BC.

Tsay Keh Dene uses bighorn sheep and wolf as a traditional resource. They also harvest whitefish. They have traditionally hunted caribou (wedzih) for sustenance, which is considered to be a cultural keystone. Community members have noted a steep decline in caribou populations within their traditional territory. Members reported that moose, identified as a main food source, have been pushed away by logging activities, and populations are lower than previously recorded. They have also reported sites in their traditional territory for gathering medicinal and subsistence plants such as berries. They are concerned that forestry activity has led to food scarcity.

10.3.5.50 Tsq̓éscen̓ First Nation

Tsq̓éscen̓ First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Tsq̓éscen̓ First Nation is a Secwépemc community located in the South Cariboo region of BC and are members of the Shuswap Nation. Tsq̓éscen̓ First Nation's territory starts near Albreda and follows the Fraser River north of McBride and south-west towards Lac la Hache. Their territory encompasses Flat Lake, the easternmost portion of Quesnel Lake, the eastern portion of Horsefly Lake, and the entirety of Lac la Hache, Green, Canim, Mahood, Clearwater, Murtle, Hobson, and Azure Lakes.

Tsq̓éscen̓ First Nation relies on their inherent rights over their territory, as affirmed and protected by section 35 of the *Constitution Act, 1982.* Tsq̓éscen̓ First Nation has used the land and resources within their territory for their sustenance and livelihood. The lakes within their territory are of particular and central importance to their distinctive culture and way of life.

Tsq̓éscen̓ First Nation has significant concerns related to the Project's effects on their ability to exercise their section 35 rights, specifically as they relate to hunting, fishing, gathering traditional plants and medicines, access and use of cultural sites, access to hunting and harvesting areas, use of traditional trail systems, and water quality. Tsq̓éscen̓ First Nation engages in year-round hunting of various species, including moose, deer, elk, and bears, with a focus on fall harvesting because animals are fattened for winter. They emphasized the cultural significance of communal fishing activities and the importance of salmon to their community.

10.3.5.51 Union Bar First Nation

Union Bar First Nation was an intervenor in the hearing but made no submissions. The following information was provided by the CCC and Westcoast. Union Bar First Nation is an independent Stó:lo Community located near Hope, BC. Union Bar First Nation's traditional territory extends from the west side of Harrison Lake to Manning Provincial Park in the east, north to the area south of Yale, and south to the Canada-US border. They hold seven reserves with a total area of approximately 499 ha. Union Bar First Nation's members have expressed concerns about declining fish populations, emphasizing the cultural, economic, and health values of fishing. There is limited publicly available information regarding Union Bar First Nation's interests in wildlife, vegetation, fish and water.

10.3.5.52 Upper Nicola Indian Band

Upper Nicola Indian Band was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. Upper Nicola Indian Band is located about 45 km east of Merritt, BC. Their traditional territory extends through a large part of the southern interior of BC and into the northern portion of Washington State in the US.

Upper Nicola Indian Band expressed concerns related to effects on wildlife habitat fragmentation, a decrease in access to cultural areas, and effects on water quality and quantity. They emphasized the significance of wildlife, including diverse animals, birds, and waterfowl, and the importance of respecting wildlife cycles linked to seasonal changes. Upper Nicola Indian Band also emphasized the significance of collecting traditional food, medicinal plants, and berries across their territory, including the extraction of healing pitch from specific trees for medicinal ointments. Community members expressed concerns regarding potential herbicide spraying that would have negative effects on the traditional plants in the area and runoff into streams, rivers, and groundwater. Upper Nicola Indian Band stressed the importance of considering invasive fish species and their effect on water quality, particularly focusing on Nicola Lake and the Nicola River.

10.3.5.53 West Moberley First Nations

West Moberly First Nations was not an intervenor in the hearing and did not file a letter of comment. The following information was provided by the CCC and Westcoast. West Moberly First Nations has one reserve at the west end of Moberly Lake in BC. As a Treaty 8 signatory, West Moberly First Nations members have the constitutionally protected right to hunt, fish, and trap throughout Treaty 8 territory.

West Moberly First Nations expressed concerns regarding effects on caribou habitat and areas of cultural significance (e.g. Green Lake). Caribou are an important part of West Moberly First Nations' cultural identity and human health and well-being. Caribou support the community's subsistence lifestyle and are featured in their traditional stories, songs, and legends. Community members are concerned about the potential for altering ungulate populations and habitat as development increases, especially for moose, elk, deer, caribou, bison, and stone sheep populations.

West Moberly First Nations also highlighted a significant dependence on the harvesting of plants, trees, and berries within their traditional territory. They are concerned about disturbances to rare and important ecosystems, such as old growth forests, south aspect grassland, shrubs, and aspen slopes. West Moberly First Nations has expressed difficulty in finding undisturbed areas for cultural activities due to the increase in access from development.

10.3.5.54 Whispering Pines/Clinton Indian Band

Whispering Pines/Clinton Indian Band was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. In October 2025, they filed a letter indicating that they had come to an agreement in principle with Enbridge that addressed their concerns. Based on Enbridge's commitments, Whispering Pines/Clinton Indian Band further indicated that they were prepared to support the Project.

Whispering Pines/Clinton Indian Band is located near Kamloops, BC. They are known as the Pelltiq't People and are part of the Shuswap Nation Tribal Council, with a population of 232 people. Their traditional territory spans from Kelly Lake on the west side, Bonaparte Lake to the east, and north past Green Lake up towards Quesnel Lake.

Whispering Pines/Clinton Indian Band adheres to the rights of the Indigenous Peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*. They emphasized the significance of plant gathering within their community. Fishing is culturally important to them, with benefits including uniting community members, facilitating knowledge transfer to younger generations, and supplying food for community events.

Whispering Pines/Clinton Indian Band raised concerns regarding potential Project effects on hunting and trapping activities, traditional plant harvesting, and fishing. They also expressed concerns about the increase in wildlife predation on traditional ungulate species afforded by the linear pipeline right-of-way and potential overhunting. They indicated concerns about effects on areas of cultural significance. (Whispering Pines/Clinton Indian Band also expressed apprehension about changes in wildlife behaviour and habitat suitability, which could have effects on hunting practices and cultural traditions.

10.3.5.55 Williams Lake First Nation

Williams Lake First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Williams Lake First Nation is a member of the Secwépemc Nation, whose traditional territory spans a large area from the Columbia River valley along the Rocky Mountains, west to the Fraser River and south to the Arrow Lakes. Williams Lake First Nation has eight reserves in BC's Cariboo District.

Williams Lake First Nation has inherent rights recognized and affirmed by section 35 of the *Constitution Act, 1982.* Their community relies heavily on wildlife as subsistence, cultural, and economic resources. Species such as moose, deer, elk, caribou, bears, and small game animals are not only essential food sources but also hold cultural significance.

Williams Lake First Nation raised concerns about effects on moose and other wildlife of significant importance to their harvesting practices. They are also concerned about degradation of traditional use areas, including berry patches and medicinal plant gathering sites. They expressed concerns about the protection of cultural heritage and cultural identity. Williams Lake First Nation emphasized the generational tradition of hunting moose and deer and the value in passing down essential skills and knowledge to younger community members.

10.3.5.56 Xatśūll First Nation

Xatśūll First Nation was an intervenor in the hearing and made submissions. Xatśūll First Nation forms a part of the broader Secwépemc Nation. Their reserve lands are located at Deep Creek and Soda Creek. Xatśūll First Nation has a traditional territory covering 180,000 square kilometers from the west of the Fraser River to the east of the Rocky Mountains, and from its northern limit above the upper Fraser to south of the Arrow Lakes. Xatśūll First Nation's rights and interests are intricately connected to the lands, waters, and resources in their territory.

Xatśūll First Nation raised concerns related to effects on water quality, air quality, noise, wildlife, fish, vegetation, and ecological health. These could have effects on rights related to habitation and cultural gathering areas, subsistence and livelihood (e.g., hunting, fishing, trapping, plant gathering), sacred places, archaeological sites, and community well-being. Trapping holds significance for them as a pathway for the transmission of cultural values and traditions to continuing generations. Xatśūll First Nation highlighted the intergenerational transfer of fishing traditions and the importance of salmon harvesting in connecting their communities to the land. Fishing and the practices around it remain a significant aspect of Xatśūll First Nation's culture and subsistence, particularly of chinook and sockeye.

10.3.5.57 Yale First Nation

Yale First Nation was an intervenor in the hearing and made submissions, including oral Indigenous knowledge. Yale First Nation is located in the Fraser Canyon, near Agassiz, BC. Yale First Nation includes 16 parcels of reserve lands, with members residing on four of the reserve parcels. Community members collectively hold and exercise inherent and Aboriginal rights related to the lands and waters within their territory, which are protected pursuant to the *Constitution Act, 1982*. Yale First Nation also holds stewardship responsibilities and decision-making authority in respect of their territory pursuant to their own customary laws and practices.

Yale First Nation raised concerns about Project effects on their ability to practice their rights, including effects on fishing, trapping, hunting, and harvesting medicinal plants for cultural purposes. Yale First Nation shared their observations about decreases in wildlife, overhunting associated with increased access and traffic, loss of traplines, diminished salmon and eulachon fisheries, diminished traditional plants, and associated effects on human and cultural health due to the Westcoast's existing pipelines, highway, railway, and electrical transmission lines.

10.4 Project effects on the rights of Indigenous Peoples

In assessing the Project's effects on the rights Indigenous Peoples, using the approach and methodology described in **Sections 10.1 and 10.2**, the Commission defined the spatial boundaries where rights are exercised as follows:

- Project footprint – the area directly disturbed by Project activities, including associated physical works
- LSA – a 1.5-kilometre buffer around the Project footprint
- RSA – a 15-kilometre buffer around the Project footprint

The Commission further defined the temporal boundaries for the rights assessment as:

- Construction – 2 years
- Operations – at least 30 years

10.4.1 Identification of potential effects on the rights of Indigenous Peoples

The Commission accepts the scope of Westcoast's assessment of potential effects on the rights of Indigenous Peoples. The Commission finds that the key indicators, potential interactions, and effects that Westcoast identified are appropriate because they meet Filing Manual guidance and are consistent with the ways in which Indigenous Peoples described their rights and potential Project effects on those rights during the hearing.

Westcoast selected a number of key indicators to represent Project activities and associated potential effects on assess. This was based on Westcoast's understanding of how rights are practiced in and around the Project areas, as informed by Indigenous Peoples through early engagement activities. For each key indicator, Westcoast identified a number of expected Project interactions, where a range of Project activities resulting from the Project could lead to changes in the key indicators. Through that analysis, Westcoast identified a number of potential effects that could be assessed to demonstrate and measure potential changes resulting from the Project.

Nazko First Nation raised concerns that during the development of Westcoast's ESA, key indicators were only received from a single Indigenous Nation, rather than all Indigenous Nations that should have been engaged. However, the Commission is satisfied that the five potential effects or changes that Westcoast identified are representative of how Indigenous Peoples exercise their rights in and around the Project areas. The key indicators selected were based on Westcoast's description of Indigenous communities' contributions to its ESA and other primary and secondary data sources Westcoast described in its ESA. Further, the evidence filed by Indigenous Peoples and Westcoast in the hearing demonstrates that the five potential effects or changes originally identified in the ESA remain appropriate. **Sections 10.4.2.1 to 10.4.2.5** describe some of the evidence received from Indigenous participants regarding potential Project effects that align with the potential effects or changes identified by Westcoast.

The Commission assessed the Project's effects on the rights of Indigenous Peoples using the same key potential effects as those selected by Westcoast. These potential effects are carried into the subsequent assessment related to mitigation and conditions, residual and cumulative effects, and an overall severity finding with respect to effects on the rights of Indigenous Peoples.

Table 10-3 identifies the Project's effects on the rights of Indigenous Peoples that the Commission assessed, based on the key indicators and main Project activities identified by Westcoast. The listed Project activities are not exhaustive. Rather, they are representative of the main Project activities related to construction and operations that could have potential effects on the rights of Indigenous Peoples. This table also illustrates the key linkages between effects on the rights of Indigenous Peoples and certain environmental and socio-economic VCs.

Table 10-3: Assessment of Project effects on the rights of Indigenous Peoples

Key indicator	Project activities	Potential effects	Potential effect on rights assessed	Linkages to other VCs
Quantity, quality, and distribution of resources	• Vegetation clearing, brushing, and instream work may result in physical changes to currently used wildlife, vegetation, fish, and water resources, sites, or areas • Vegetation clearing, soil disturbance, open-trench construction, and instream work may result in habitat alteration or affect habitat quality for fish and wildlife species	• Changes may occur due to loss or alteration of wildlife, vegetation, fish, and aquatic resources and their habitats • Loss or alteration of traditional resources and their habitats may affect the ability to exercise rights, including hunting, trapping, fishing, and harvesting for food, medicinal, and material purposes	Change to quality, quantity, or distribution of resources involved in or required for the exercise of Indigenous rights	• Vegetation • Fish and fish habitat • Water quality and quantity • Wildlife and wildlife habitat • Soils • Human health • Social and cultural well-being
Access to resources	• Construction activities may disrupt or alter access to current use areas	• Changes may occur due to disruption or alteration of current use areas, including	Change in access to resources used or required to	• Vegetation • Fish and fish habitat

Key indicator	Project activities	Potential effects	Potential effect on rights assessed	Linkages to other VCs
	• Construction activities may result in physical changes to currently used vegetation resources, sites, or areas • Construction and operations may cause barriers to wildlife mobility • Construction and operations may result in changes to, or disruption of, access to trails, travel ways, and waterways	trails, travel ways, and waterways • Loss or alteration of access may affect the ability to exercise rights, including hunting, trapping, fishing, water quality, and harvesting for food, medicinal, and material purposes • Right-of-way and access roads may increase access by non-Indigenous harvesters or land users	exercise Indigenous rights	• Water quality and quantity • Wildlife and wildlife habitat • Human health • Social and cultural well-being
Timing and seasonality	• Construction and operations may result in changes to, or disruption of, harvesting timing and seasonality • Project activities would restrict access during active construction in the Project footprint	• Change to timing and seasonality of exercising rights may occur due to disruption of harvesting methods or timing • Potential seasonal disruptions due to construction activities could result in missed opportunities to exercise rights	Change to, or disruption of, timing and seasonality of exercising Indigenous rights	• Vegetation • Fish and fish habitat • Wildlife and wildlife habitat
Locations or areas of cultural importance	• Construction activities may disrupt or alter culturally important locations • Construction and operations may result in sensory effects related to noise, dust, and air emissions that may result in changes in the experience of exercising rights	• Alteration to harvesting areas, cultural and spiritual sites, habitation sites, trails, and travel ways • Loss or alteration of culturally important locations may affect the ability of Indigenous communities to practice cultural activities, ceremonies, and intergenerational transfer of knowledge	Change to locations or areas of cultural importance where Indigenous rights are exercised	• Vegetation • Fish and fish habitat • Wildlife and wildlife habitat
Cultural laws, traditions, and governance systems	• Construction and operations may contribute to existing barriers to cultural use sites and activities	• Effects on Indigenous cultural traditions, laws, and governance systems may occur due to reinforcing existing barriers to	Change to an Indigenous community's cultural traditions, laws, and governance	Social and cultural well-being

Key indicator	Project activities	Potential effects	Potential effect on rights assessed	Linkages to other VCs
	• Construction and operations may contribute to existing barriers to implementing traditional legal processes and protocols • Construction and operations may be inconsistent with Indigenous land use plans	cultural activities and Indigenous legal systems • Alteration of the ability to make decisions regarding land use	systems that inform the manner in which they exercise Indigenous rights	

10.4.2 Assessment of Project effects on the rights of Indigenous Peoples

Indigenous intervenors shared significant evidence about the ways in which the Project may affect the exercise of their rights, as well as their use of land and resources. **Sections 10.4.2.1 to 10.4.2.5** describe concerns and consistent themes heard related to each of the five key potential effects assessed.

10.4.2.1 Change to quality, quantity, or distribution of resources

Several Indigenous communities provided evidence related to Project effects on the quality, quantity, or distribution of resources used to exercise their rights. Maurice Michell of Kanaka Bar Indian Band stated:

> Today we are stewards of our land. We teach the people how to harvest, and how to pick berries, and how to hunt. We tell the people, don't be careless with what you harvest and what you pick. Today we try to teach our people to be really respectful for our land.

Other concerns heard include:

- Cheam First Nation is concerned about potential effects on food security.
- Nicomen Indian Band discussed the importance of protecting food, water, and medicine sources.
- Several Indigenous communities shared concerns about the availability of traditional foods and traditional medicines. This includes Boston Bar First Nation, Coldwater Indian Band, Driftpile Cree Nation, Kanaka Bar Indian Band, Lheidli T'enneh First Nation, Nazko First Nation, Prophet River First Nation, Saulteau First Nations, Skeetchestn Indian Band, Sucker Creek First Nation, and Yale First Nation.
- Boston Bar First Nation has an interest in plant and earth harvesting centers along the Fraser River. They advised Westcoast that harvesting provides food, medicine, trade resources, and cultural continuity.
- Louis Bull Tribe is concerned about effects on traditional medicines and plants that have always been harvested. They are now forced to travel further away to find their medicines.

- Kanaka Bar Indian Band raised concerns about effects on traditional Nlaka'pamux hunting grounds within the areas of Project-related development and temporary infrastructure.
- Whispering Pines/Clinton Indian Band said that to maintain the populations of wildlife harvested in their traditional territory, management strategies are necessary to protect habitat and these common wildlife populations.
- Boston Bar First Nation values wildlife harvesting. Fishing along the Fraser and Nahatlach Rivers and Scuzzy Creek is central to their way of life.
- Several Indigenous communities, including Boston Bar First Nation, shared concerns about effects on fish and fish habitat, including the quality fishing sites.
- Cheam First Nation has concerns about the loss of fish populations jeopardizing community-wide harvesting, sustenance, and well-being.
- Indigenous intervenors referenced several articles of the UN Declaration in support of the protection of traditional food and medicines that support the practice of rights. This includes Article 24 (the right to maintain traditional health practices) and Article 29 (the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources).

10.4.2.2 Change in access to resources used or required to exercise rights

Several Indigenous communities provided evidence related to Project effects on access to resources used or required to exercise their rights. Terrence Paul of Nazko First Nation shared:

> Access to land after construction often increased for hunters and recreation enthusiasts and it disturbs traditional use. We're going to have to look at how can we work together on maintaining safety and our traditional access to our sustenance and our sacred sites and the lands itself.

Other concerns heard include:

- Several Indigenous communities raised concerns that Project rights-of-way would provide increased access to the public and increased tourism. This includes Coldwater Indian Band, Kelly Lake Cree Nation, Lheidli T'enneh First Nation, Nazko First Nation, and Saulteau First Nations.
- Cook’s Ferry Indian Band has concerns about increased non-First Nations hunting and access because of development. They requested that Westcoast and interested Indigenous communities co-develop monitoring metrics, thresholds, and success criteria, including for environmental management and socio-economic reporting.
- Kelly Lake First Nation, Skeetchestn Indian Band, and Sucker Creek First Nation have concerns about maintaining future access to sites to harvest and hunt.
- Nicomen Indian Band seeks to maintain unfettered access to key harvesting and fishing areas, ensuring the integrity of their traditional practices. Their Indigenous knowledge holders have raised concerns that Project-related activities may restrict access to important berry-picking and plant-harvesting sites, significantly disrupting these time-honoured traditions.

- Peters First Nation said that the health and access of the lands and resources within the area are imperative to their way of life.
- Spuzzum First Nation requested access control for land users in Nlaka'pamux traditional territory. They have concerns about increased outside access (e.g., skiers, garbage) following a previous transmission project.
- Tsq̓éscen̓ First Nation raised concerns about Project effects (e.g., habitat fragmentation, increased public access, and disrupted trapline access) that could threaten trapping.
- Xatśūll First Nation noted that maintaining access ensures intergenerational knowledge transmission, cultural continuity, and Indigenous rights. Industrial development pressures underscore the urgency of preservation, stewardship, and the protection of these significant cultural landscapes.
- Yale First Nation wants to retain access to cultural sites without impeding the Project. They also raised concerns regarding existing pipeline right-of-way access management that provides the broader public with easy access to Yale First Nation's territory. This includes use by non-Indigenous hunters resulting in increased access and overhunting.
- Indigenous intervenors referenced several articles of the UN Declaration in support of their rights to continued access to the resources used or required to exercise rights. This includes Article 11 (the right to protect their culture), Article 25 (the right to maintain and strengthen their distinctive spiritual relationship with their traditional territories), and Article 26 (the right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use).

10.4.2.3 Change to, or disruption of, timing and seasonality of exercising rights

Several Indigenous communities provided evidence related to Project effects on the timing and seasonality of exercising their rights. Elder Byron Spinks of Boston Bar First Nation shared:

> The name Tuckkwiowhum means the best berry picking spot in the nation, and there's a reason for that. Because of the seasonal cycles we have from the spring, we have different various fruits and medicines that we gather at this time. We look forward to the spring because it's a new beginning for our life, our community. It's a new cycle that we're beginning. And we go through summer and we go into fall. Each season we have different berries and harvest different salmons and animals during those seasons.

Other concerns heard included:

- Several Indigenous communities shared concerns about the broader effects of climate change on hunting grounds, medicinal grounds, and seasonal rounds. This includes Boston Bar First Nation, Driftpile Cree Nation, Kanaka Bar Indian Band, Lheidli T'enneh First Nation, Peters First Nation, and Saulteau First Nations.
- Indigenous intervenors referenced several articles of the UN Declaration related to protecting the timing and seasonality for exercising their rights. This includes Article 11 (the right to protect their culture), Article 25 (the right to maintain and strengthen their distinctive spiritual relationship with their traditional territories), and Article 26 (the right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use).

10.4.2.4 Change to locations or areas of cultural importance where rights are exercised

Several Indigenous communities provided evidence related to Project effects on areas of cultural importance where their rights are exercised. Terrence Paul of Nazko First Nation shared:

> Sacred and cultural sites, another value. And these are very, very significant, these sacred cultural sites. These are not just archeological sites, like we already have legal statutes to protect and accommodate archeological sites. But these sacred cultural sites in areas where we have known to have areas that have historical – Nazko historical connections to the areas, pick houses, and other cultural sites would be like burial grounds and old grave sites. And some oral history of how we used to live in certain areas that are now underneath modern-day colonial structures.

Other concerns raised included:

- Several Indigenous communities, including Cheam First Nation, Lheidli T'enneh First Nation, Nazko First Nation, and Pukaist Nation shared concerns about changes to culturally important sites.
- Some Indigenous communities, including Saulteau First Nations, shared concerns about changes to trading trails and travel ways.
- Boston Bar First Nation is concerned about disturbances to grease trails and safeguarding cultural sites across Fraser Canyon.
- Coldwater Indian Band is concerned about the Boston Bar Trail and protecting cultural landmarks.
- High Bar First Nation has concerns about protecting water, including in the Green Lake area. They stated that the short list of likely items to discuss once the Commission's report is released is likely around the protection of water.
- High Bar First Nation refers to Green Lake as "the place from where news is spread," and identified the area as a historic and ongoing summer gathering site for Secwépemc Peoples that holds cultural, spiritual, and ecological value. They raised concerns about the CS-6B to CS-7 pipeline loop in the area of Green Lake, as well as the cumulative effects, ecological degradation, and erosion of cultural use due to increased access and long-term disturbance.
- Nazko First Nation is concerned about permanent loss of use and access to their community members due to right-of-way clearing.
- Peters First Nation is concerned with culturally significant areas within the CS-8B to CS-9 pipeline loop corridor that would require protection.
- Skeetchestn Indian Band shared information about traditional activities, highlighting the importance of Green Lake, Bonaparte Lake, Cherry Creek, Loon Lake, and Tunkwa Lake. They described how they know Green Lake by the Band's placename "Kwalt Úwe Peséllkwe" and that it is a gathering and meeting place between Northern and Southern Secwépemc.
- Tsq̓éscen̓ First Nation identified Green Lake as a culturally significant site and Little Green Lake as having many archaeological sites. They also identified Green Lake as a food fishery and connectivity corridor that should be buffered from industrial activity. Their interim study

identified traditional land use features that overlap with the Project, with four being in the Green Lake area.

- Tsq̓éscen̓ First Nation advised that sacred places, archaeological sites, named places, and ancestral trails are integral to Aboriginal title, cultural identity, and knowledge transfer. These require protection from disturbance.
- Tsq̓éscen̓ First Nation stated that Project effects on their ability to fish, hunt, and gather plants, medicines, and berries are significant, as are effects on their ability to travel throughout their territory, their displacement from their territory, their ability to govern their title lands, and effects on Green Lake.
- Whispering Pines/Clinton Indian Band identified Green Lake as an area of cultural significance to their community and southern Secwépemc communities.
- Xatśūll First Nation urged protecting named, sacred, and archaeological places that embody stories, memory, and ancestral ties. They are also concerned that industry activity disrupts camping, gathering, hunting, fishing, trapping, and plant harvesting.
- Williams Lake First Nation shared that at the top of an escarpment is where construction of the CS-5 to CS-6A pipeline loop would take place, and that the Project would be in their backyard. Community members would see its construction daily.
- As discussed in **Section 2.4.4**, Indigenous intervenors referenced several articles of the UN Declaration related to protecting the locations or areas of cultural importance where rights are exercised. This includes Article 11 (the right to protect their culture), Article 25 (the right to maintain and strengthen their distinctive spiritual relationship with their traditional territories), Article 26 (the right to own, use, develop, and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use), and Article 29 (the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources).

10.4.2.5 Change to an Indigenous community's cultural traditions, laws, and governance systems

Several Indigenous communities provided evidence related to Project effects on their cultural traditions, laws, and governance systems. Vice-Chief Cheryl Rule of Coldwater Indian Band shared:

> We all value our land and how we eat and how we harvest because we're thinking about seven generations. We're not thinking about just us. We're talking about our future. And our future is to have all these things that we have been growing up with, all these values brought forward.

Other concerns heard included:

- Some Indigenous communities, including Saulteau First Nations, Seabird Island Band, and Yale First Nation spoke of how their different worldviews share a common understanding that future generations are stewards of the land.
- Coldwater Indian Band and Saulteau First Nations raised concerns regarding cultural safety.
- Kelly Lake Cree Nation is concerned about discrimination by Project construction staff. They said that it is important that all construction staff receive cultural awareness or cultural

competency training, and that subcontractors need to have awareness of community-specific cultural protocol and requirements to treat the land and their members with respect.

- Seabird Island Band has concerns about how the Project may impede future Indigenous land use plans that the community has developed, including their proposed Cultural Centre and Community Land Use Plan.
- Several Indigenous communities shared concerns about effects that development in general has had on their cultural traditions, language, and way of life. This includes Cheam First Nation, Coldwater Indian Band, Nazko First Nation, Sucker Creek First Nation, and Yale First Nation.
- Indigenous intervenors referenced several articles of the UN Declaration related to protecting cultural traditions, laws, and governance systems. This includes Article 3 (the right to freely determine their political status and freely pursue their economic, social, and cultural development) and Article 5 (the right to maintain and strengthen their distinct political, legal economic, social, and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social, and cultural life of the State). It also includes Article 18 (the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions) and Article 20 (the right to maintain and develop their political, economic, and social systems or institutions, to be secure in their own means of subsistence and development, and to engage freely in all their traditional and other economic activities).

10.5 Mitigation

Westcoast identified a suite of mitigation measures to reduce Project effects on the rights of Indigenous Peoples, including many measures that would be applied to the biophysical VCs related to the practice of rights. These include standard, Project-specific mitigation measures, which are those measures that have been used and proven to be effective on other linear projects (including, but not limited, to CER-regulated projects) and designed to meet various regulatory requirements. As “standard” mitigation measures, they are continually being verified by companies and regulators through projects that are constructed, operated, and monitored. Through adaptive management processes, mitigations applied to other projects’ construction and operations are reviewed for efficacy. Where appropriate, they can be modified and applied to future projects. Westcoast noted that these Project-specific measures were identified through early engagement to address the Project’s effects and are described in its ESA. Westcoast also identified a number of mitigation measures through its ongoing engagement activities, including the hearing process, after it filed its application. These include Westcoast’s commitment to collaboratively develop additional mitigation measures with Indigenous Peoples that are responsive to specific community requests identified through ongoing engagement.

The Commission finds that Westcoast’s mitigation measures, some of which are summarized in the following subsections, are appropriate and commensurate with the nature and scope of the Project. The Commission further finds that the measures identified, together with the conditions that the Commission considers necessary to impose, would be effective in reducing Project effects on the rights of Indigenous Peoples. In making these findings, the Commission notes the following:

- Westcoast indicated that the standard Project-specific mitigation measures proposed were established and had proven to be effective on other linear projects. Westcoast referenced the other projects and the provincial and federal standards and best management practices that it considered. It also identified additional mitigation measures to respond to various interests and concerns raised by Indigenous Peoples through engagement since filing its application.
- While the Commission has not relied on the BCER's *Treaty 8 Planning and Mitigation Measures* in its assessment, these measures may be applied as part of the future provincial permitting process for the Project.
- Westcoast made a number of commitments and described a number of mechanisms through which Indigenous Peoples can continue to raise concerns and influence the Project's design, construction, and operations, including through new or refined mitigation measures. These mechanisms include ongoing engagement activities and the ongoing development and incorporation of Indigenous-led assessments or studies.
- The Commission identified several conditions that it considers necessary to impose to further mitigate Project effects on the rights of Indigenous Peoples. These include conditions for ongoing monitoring by Indigenous Peoples**.** The Commission's conditions incorporate submissions from Indigenous Peoples, where possible and appropriate.
- The CER is a lifecycle regulator. If the Project is approved, the CER would regulate it from pre-construction, through and after construction, and into operations. This would include assessing the Project's compliance with CER regulations and with certificate and order conditions. Through compliance activities, the CER would verify the implementation of Westcoast's mitigation measures identified and the commitments it made in this hearing, as captured in the conditions the Commission considers necessary to impose (e.g., **Condition 9** [Updated EPPs]). Westcoast's implementation of its mitigation measures and commitments would also be verified through **Condition 2** (Design, location, construction, and operations), which would require Westcoast to design, construct, and operate the Project in accordance with, among other things, the commitments made and the information included in its Project application and related submissions. The CER would also continue to consider concerns raised by Indigenous Peoples throughout the Project's lifecycle.

10.5.1 Project-specific mitigation

The Commission finds that Westcoast's mitigation measures are appropriate and commensurate with the scope and nature of the Project and are aligned with the standard mitigation hierarchy – avoid, mitigate, restore, and, if warranted, offset. The Commission is satisfied that Westcoast has demonstrated that its mitigation measures for the Project reflect a consideration of input from, and ongoing commitments to, Indigenous communities, regulatory agency representatives, and stakeholders; the results of completed environmental field studies; provincial and federal standards and best management practices; relevant guidance documents authored by Westcoast for its operations; and Westcoast's review of, and learnings from, the post-construction environmental monitoring reports for other projects (Westcoast's and other recently constructed federal and provincial projects).

A number of Westcoast's mitigation measures aimed at reducing Project effects on the rights of Indigenous Peoples are described in this section. Westcoast's EPPs provide additional mitigation measures related to biophysical and socio-economic VCs, which are interconnected with and

informed the Commission's assessment of the Project's effects on the rights of Indigenous Peoples discussed in this chapter. **Chapters 7 and 8** provides the Commission's assessment of mitigation measures related to biophysical and socio-economic VCs.

10.5.1.1 Mitigation related to change to quality, quantity, or distribution of resources

To address the concerns and issues raised related to changes to the quality, quantity, or distribution of resources used to exercise rights, Westcoast proposed the following mitigation measures:

- Locate extra temporary workspace to avoid sensitive environmental features, heritage, and cultural locations.
- Confine construction activities to the approved construction rights-of-way and approved temporary workspace. Restrict construction traffic to existing roads, the construction rights-of-way, approved access roads, and shooflies.
- Prohibit the recreational use of all-terrain vehicles and snowmobiles by construction personnel on the construction rights-of-way or at associated Project facility sites.
- Install signage following clearing to alert workers of the presence of sites to be avoided or where special measures are necessary.
- Craft inspectors, in collaboration with environmental inspectors, would re-confirm that feature markers installed during survey activities to identify site-specific resources are in place and are maintained throughout topsoil salvage and grading activities.
- Provide cultural awareness training to all workers and contractors employed on the Project.
- Implement the mitigation measures associated with known traditional land and resource use sites.
- Develop an Indigenous communications protocol for notifying Indigenous communities of construction-related and cultural activities happening in the Project areas.
- Notify Indigenous communities of reportable spills or inadvertent drilling fluid releases within their traditional territories.
- Implement Westcoast's post-construction environmental monitoring program.

Westcoast proposed several other mitigation measures related to soil, vegetation, water quality and quantity, fish and fish habitat, wetland function, wildlife and wildlife habitat, and acoustic and atmospheric environments.

10.5.1.2 Mitigation related to change in access to resources used or required to exercise rights

To address the concerns and issues raised related to changes in access to resources used or required to exercise rights, Westcoast proposed the following mitigation measures:

- Develop an Indigenous communications protocol for notifying Indigenous communities of construction-related and cultural activities happening in the Project areas.
- Before starting construction, notify representatives of Indigenous communities involved in Westcoast's engagement program of the construction details and schedule to prevent or

reduce effects on their operations or activities. Communicate schedule changes that could affect these communities in a timely manner.

- Maintain access to established recreation features throughout construction, to the extent practical.
- Prohibit the recreational use of all-terrain vehicles and snowmobiles by construction personnel on the construction rights-of-way or at associated Project facility sites.
- Confine construction activities to the approved construction rights-of-way and temporary workspace. Restrict construction traffic to existing roads, the construction rights-of-way, approved access roads, and shooflies.
- Use existing access to the extent practical, including existing municipal, provincial, industrial, and private roads. Upgrade and maintain roads to the applicable Project engineering/construction specification to accommodate construction equipment during the period of planned use.
- If warranted, use signage, gates, and barriers to block unauthorized travel along the construction rights-of-way and access roads following clearing. Keep access blocked and assign security personnel, if warranted.
- Where warranted, employ matting along access roads where potential for compaction and rutting exists (i.e., low-lying lands) or soil durability is anticipated to be poor.
- Construct access roads using existing trails, where suitable.
- Implement a series of identified mitigation measures when deactivating and reclaiming access roads.
- Westcoast proposed several other mitigation measures related to soil, vegetation, water quality and quantity, fish and fish habitat, wetland function, wildlife and wildlife habitat, and acoustic and atmospheric environments.

10.5.1.3 Mitigation related to change to, disruption of, timing and seasonality of exercising rights

To address the concerns and issues raised related to changes to, or disruption of, timing and seasonality of exercising rights, Westcoast proposed the following mitigation measures:

- Develop an Indigenous communications protocol for notifying Indigenous communities of construction-related and cultural activities happening in the Project areas.
- Before starting construction, notify representatives of Indigenous communities involved in Westcoast's engagement program of the construction details and schedule to prevent or reduce effects on their operations or activities. Communicate schedule changes that could affect these communities in a timely manner.
- Consult the Line List regarding limitations to the placement of waste collection receptacles and portable toilets. Prohibit installing waste collection receptacles or portable toilets on sensitive land uses and environmental features.
- Engage with representatives of Indigenous communities involved in Westcoast's engagement program to seek alignment with Indigenous land use plan objectives.

- Engage with representatives of Indigenous communities involved in Westcoast's engagement program to codevelop measures to avoid interference with cultural practices.
- Westcoast proposed several other mitigation measures related to soil, vegetation, water quality and quantity, fish and fish habitat, wetland function, wildlife and wildlife habitat, and acoustic and atmospheric environments.

10.5.1.4 Mitigation related to change to locations or areas of cultural importance where rights are exercised

To address the concerns and issues raised related to changes to locations or areas of cultural importance where rights are exercised, Westcoast proposed the following mitigation measures:

- Develop an Indigenous communications protocol for notifying Indigenous communities of construction-related and cultural activities happening in the Project areas.
- Before starting construction, notify representatives of Indigenous communities involved in Westcoast's engagement program of the construction details and schedule to prevent or reduce effects on their operations or activities. Communicate schedule changes that could affect these communities in a timely manner.
- Implement the mitigation measures associated with known traditional land and resource use sites.
- Consult the Line List regarding limitations to the placement of waste collection receptacles and portable toilets. Prohibit installing waste collection receptacles or portable toilets on sensitive land uses and environmental features.
- If sites not previously identified are discovered during construction, implement the contingency measures identified in the Traditional Land and Resource Use Sites Discovery Contingency Plan, which is included in the EPPs).
- Notify Indigenous communities of reportable spills or inadvertent drilling fluid releases within their traditional territories.

Westcoast proposed several other mitigation measures related to soil, vegetation, water quality and quantity, fish and fish habitat, wetland function, wildlife and wildlife habitat, and acoustic and atmospheric environments.

The Commission also considers routing changes that are responsive to concerns raised to be a Project-specific mitigation. Such iterative refinements are consistent with the first objective of standard mitigation hierarchy – to avoid potential Project effects. **Chapter 5** discusses the Commission's assessment of routing, including changes made as a result of Westcoast's engagement with Indigenous Peoples.

Indigenous participants raised a number of concerns regarding the protection of wildlife and wildlife habitat that are of value to the practice of rights (i.e., cultural importance or harvesting significance). Westcoast responded that its route selection criteria and objectives for the Project expressly included avoiding interactions with certain specific wildlife habitats in the LSA and reducing the Project footprint, including co-locating Project components within or adjacent to existing linear disturbances to reduce residual and cumulative effects, land fragmentation, and the use of

unencumbered lands. **Chapter 7** provides the Commission's assessment of Project effects on wildlife and wildlife habitat.

For approximately 96 per cent of their total length, the pipeline loops would be located adjacent to Westcoast's existing rights-of-way or other linear disturbances (e.g., roads, power line rights-of-way). For the remaining four per cent where co-location is not feasible, Westcoast further considered various factors and rationale to reduce Project effects, which included considerations related to safety, integrity, environment, constructability, terrain, access, and feedback from Indigenous communities and stakeholders.

10.5.1.5 Mitigation related to change to an Indigenous community's cultural traditions, laws, and governance systems

To address the concerns and issues raised related to changes to an Indigenous community's cultural traditions, laws and governance systems, Westcoast proposed the following mitigation measures:

- Develop an Indigenous communications protocol for notifying Indigenous communities of construction-related and cultural activities happening in the Project areas.
- Engage with representatives of Indigenous communities involved in Westcoast's engagement program to:
    - obtain applicable permits or approvals;
    - seek alignment with Indigenous land use plan objectives; and
    - codevelop measures to avoid interference with cultural practices.

Westcoast explained that the mitigation measures in its ESA and EPPs have been successfully implemented on other recent pipeline projects. It expects similar success when implementing these measures for the Project. Westcoast predicted that its mitigation measures, combined with its management plans (e.g., Wildlife and Wildlife Habitat Management Plan, contingency plans) and monitoring plans set out in the EPPs and further defined through the Commission's conditions, would be effective in reducing Project effects on the rights of Indigenous Peoples.

10.5.1.6 Additional Project-specific mitigation measures identified through ongoing engagement

Westcoast identified a number of additional mitigation measures to address the Project's effects on the rights of Indigenous Peoples and concerns raised through ongoing engagement since filing its application. Some examples are detailed in this section.

Harvesting

During the oral Indigenous knowledge sessions, several communities raised concerns regarding the protection of culturally important vegetation, including clearing and opportunities to pre-harvest traditional plants, berries, and medicines before starting construction (e.g., diamond willow, ragroot, bullrushes, medicinal plants, lichen for caribou, huckleberries). Those who raised such concerns include Cheam First Nation, Coldwater Indian Band, Driftpile Cree Nation, Kelly Lake Cree Nation, Lheidli T'enneh First Nation, and Saulteau First Nations.

In response, Westcoast provided Indigenous communities with notice and information on potential construction timelines, as well as shapefiles of early activities planned for the spring and summer of 2026, so Indigenous communities have the opportunity to locate and harvest those areas. The Commission has extended these notice requirements through **Condition 9** (Updated EPPs), which requires Westcoast to include in its updated EPPs procedures for facilitating pre-construction harvesting by Indigenous Peoples.

Kanaka Bar Indian Band further requested that the same plant species removed during construction be replanted during reclamation, especially for species used for medicines and traditional practices. Westcoast acknowledged this concern and committed to replanting culturally important species during reclamation.

Nooaitch Indian Band requested capturing and restoring diverse Saskatoon berry species as part of their community practices. Westcoast agreed to explore collaboration on restoring native species and ensuring sustainable practices. Westcoast further indicated that it is assessing restoration plans for the Project.

Peter First Nation expressed interest in Indigenous-led hatcheries and aquatic habitat offsets due to declining sturgeon, sockeye, and Chinook salmon populations. Westcoast expressed an interest in further discussing and exploring opportunities to support such initiatives with the community.

Community safety

In response to concerns regarding cultural safety, Westcoast submitted that it is engaging Indigenous communities to develop its Indigenous Cultural Awareness and Human Trafficking Prevention training, which would be mandatory for all Project staff. Input from affected Indigenous Peoples would guide actions that reflect community, gender, and cultural safety priorities. Westcoast noted that this would be reflected in the Community and Gender Safety Plan that Westcoast would be required to include in its filing under **Condition 19** (Socio-economic Effects Monitoring Plan).

Westcoast explained that it continues to hold community roundtables, including custom engagements related to gender and cultural safety where those interests have been raised, and to develop mitigation through collaboration with communities, as required.

Ongoing engagement and monitoring

As a result of ongoing engagement, Westcoast developed and implemented a Cultural Walk-Through Program. Westcoast noted that this program allows it to participate in site visits with Elders and community members and participate in-field guided walks along the proposed routes. Westcoast committed to continue incorporating the Indigenous knowledge gained through this program into Project planning.

Westcoast also created a community-by-community summary table to track concerns raised by Indigenous Peoples regarding potential Project effects on their rights, culture, and way of life, or any other areas of interest. Westcoast described this Community Interest and Response Table as a collaborative tool that tracks Westcoast's response to concerns raised, as well as any proposed mitigation and enhancement measures identified.

Westcoast stated that it would include Indigenous Peoples in ongoing environmental field studies, offered cultural walk-throughs within Project areas of interest to them, and engaged in site-specific mitigation discussions for identified cultural sites of significance. This work would continue leading up to Project construction.

Access and traffic management

High Bar First Nation, McLeod Lake Indian Band, and Spuzzum First Nation indicated to Westcoast the need for further access management planning, including how to manage a potential increase in use of access roads by non-Indigenous hunters. Upper Nicola Indian Band also expressed interest in access management specifics, such as using gates and patrols, and wish to approve mitigation related to their community. Westcoast acknowledged these concerns and committed to engaging these communities further regarding a potential access management plan.

Kanaka Bar Indian Band indicated a preference for access roads to be deactivated after construction to minimize effects on wildlife and wildlife habitat and traditional hunting practices. Westcoast proposed a map review session to support a cultural walk-through with Kanaka Bar Indian Band and to identify key areas of interest and species ahead of construction.

Westcoast also confirmed that it would implement a traffic management plan in response to Kelly Lake First Nation's and Seabird Island Band's concerns regarding increased construction traffic and vehicles.

Cultural preservation

Popkum First Nation highlighted the spiritual significance of mountain goat. In response, Westcoast stated that it would strive to minimize effects on wildlife using mitigation measures described in the EPPs.

Peters First Nation submitted that more Indigenous-centric, community-specific mitigation and response measures are required to address concerns related to social and cultural well-being. Westcoast stated that it would continue engaging Indigenous Peoples regarding socio-economic effects, including through socio-economic community roundtables, to understand how to best mitigate those effects, while being cognizant that effects on social and cultural well-being may vary by community.

The Commission is satisfied that these additional mitigation measures to be identified through ongoing engagement, once finalized and implemented, would further reduce Project effects on the rights of Indigenous Peoples. These measures are responsive to the concerns raised through engagement and demonstrate Westcoast's commitment to continue working to address rights and interests identified, as Project details continue to be refined. The Commission expects that the mitigation measures developed after the close of the hearing record would be described in the updated EPPs that Westcoast would file under **Condition 9** (Updated EPPs). Through this condition, the CER would retain its oversight to review Westcoast's mitigation measures and ensure that they are sufficient to manage Project effects on Indigenous Peoples, as intended.

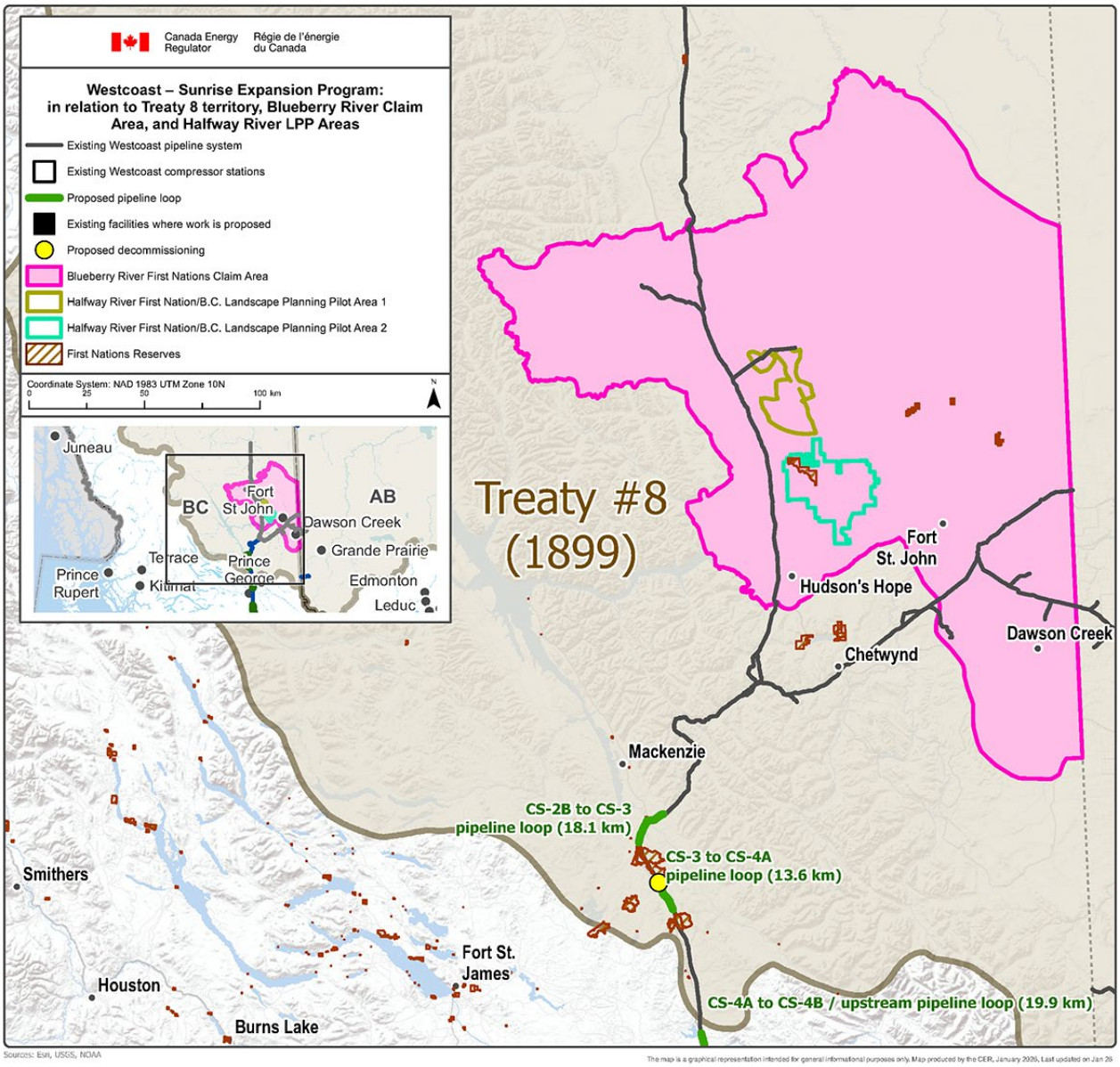
10.5.2 BC cumulative effects framework and Treaty 8 Planning and Mitigation Measures

The Commission has considered participants' submissions with respect to the BC cumulative effects framework and the BCER's *Treaty 8 Planning and Mitigation Measures*. However, the Commission's assessment does not rely on these measures as a form of mitigation for the Project because the Project does not intersect the Blueberry River Claim Area and Westcoast stated that it is unclear if the *Treaty 8 Planning and Mitigation Measures* would apply to federally regulated projects that do not overlap with that specific claim area. While the BCER may apply additional mitigation measures to the Project following the provincial permitting process, the Commission notes that such measures are uncertain at this time and would be additive to those applied through this hearing.

In its application, Westcoast referred to the BC cumulative effects framework developed and established by the Province of BC, Blueberry River First Nations, and some BC-based Treaty 8 Indigenous communities in response to the *Yahey* decision. **Chapter 2** provides a high-level summary of the BC Supreme Court's decision in *Yahey*, as well as the various agreements and regulations that have been entered into or enacted following that decision**.**

Westcoast confirmed that there are no Project components located within the Blueberry River Claim Area, which includes the Halfway River LPP Areas, as shown in **Figure 10-1**. Westcoast submitted that given the locations of the Project components, the BC cumulative effects framework's contemplated land disturbance caps, limitations on new disturbances, and restoration fund payments are not applicable to the Project.

Figure 10-1: The Project in relation to Treaty 8 territory, Blueberry River Claim Area, and Halfway River LPP Areas



Westcoast further noted that the BCER requires that proponents follow the *Treaty 8 Planning and Mitigation Measures* for all applicable energy resource projects in Treaty 8 territory. Westcoast indicated that these mitigation measures are a result of the Blueberry River Implementation Agreement and Consensus Document, as well as other agreements entered into between the Province of BC and BC-based Treaty 8 Indigenous communities. However, in Westcoast's view, there is some uncertainty as to how the BCER's Mitigation Measures might apply to CER-regulated projects that do not overlap any of the polygons delineated by the BC cumulative effects framework, all of which are within the Blueberry River Claim Area. Nonetheless, Westcoast advised that it has considered the most up-to-date measures outlined by the BCER in its Project planning for components in Treaty 8 territory. It expects that applying these measures where warranted would strengthen its approach to managing potential adverse cumulative Project effects on the rights of Indigenous Peoples.

Indigenous Peoples raised a number of concerns regarding the strategies that Westcoast proposed to address cumulative effects on the rights of Indigenous Peoples in Treaty 8, including with respect to the *Treaty 8 Planning and Mitigation Measures.* Concerns included:

- Driftpile Cree Nation argued that Westcoast has predicted a reduction of cumulative effects on the rights of Indigenous Peoples due to the *Treaty 8 Planning and Mitigation Measures*. However, Westcoast has not substantiated how it factored these measures into its findings or which of the measures it would implement.
- Nazko First Nation and Prophet River First Nation both argued that although Westcoast acknowledged that the Project would likely contribute to cumulative effects on the rights of Indigenous Peoples, it has not proposed any measurable, concrete, or practical strategies to address these effects. Nor has Westcoast committed to implementing any of the *Treaty 8 Planning and Mitigation Measures.*

Based on the wording of the *Treaty 8 Planning and Mitigation Measures,* it appears that these measures could be applied to all relevant projects being considered in applications to the BCER within Treaty 8. However, the Commission has not relied on these measures through its assessment because their applicability would ultimately be determined by the responsible regulatory authority, the BCER, at the time that Westcoast makes an application to them related to the Project. If any additional mitigation measures are required at the time of the BCER's permitting (e.g., for approvals required under the *Land Act* or *Forest Act*), the BCER would apply those measures through that regulatory process. The Commission is of the view that any additional mitigation measures to be applied to help manage ongoing cumulative effects in the region would be additive to any measures identified through the Commission's process.

As is common practice, any relevant revisions or additions to mitigation measures required for the Project by other permitting regulators would be incorporated into the EPPs, EAS, and Socio-economic Effects Monitoring Plan. The CER would review these documents through condition compliance activities related to **Condition 9** (Updated EPPs) and **Condition 19** (Socio-economic Effects Monitoring Plan). To ensure transparency regarding the potential incorporation of the *Treaty 8 Planning and Mitigation Measures*, the Commission considers it necessary to include a requirement in each of these conditions that would require Westcoast to reference any of the *Treaty 8 Planning and Mitigation Measures* that are found to be applicable to the Project at the time of its provincial permitting.

10.5.3 Opportunities for ongoing input into Project plans and mitigations

The Commission finds that Indigenous Peoples would be able to continue to raise concerns and influence the Project's design, construction, and operations, including through new or refined mitigation measures. In reaching this conclusion, the Commission considered Westcoast's ongoing engagement activities and commitments generally described in this chapter and in **Chapter 11**. The Commission also considered Westcoast's commitments related to the ongoing development and incorporation of outstanding studies, including Indigenous-led assessments or studies, as well as **Condition 15** (Outstanding Indigenous-led assessment or studies), which would require Westcoast to reasonably incorporate the results of these assessments or studies into its Project plans.

10.5.3.1 Indigenous-led assessments or studies

Indigenous-led assessments or studies can provide valuable community-specific knowledge regarding the rights and interests of affected Indigenous communities and potential project effects, based on their unique perspectives and worldviews. These assessments or studies, which can take different forms, can help inform a project's design and planning, as well as mitigation measures to be applied. The Commission is satisfied that there have been meaningful opportunities for interested Indigenous Peoples to complete an Indigenous-led assessment or study regarding Westcoast's Project. The Commission is further satisfied that, as a result of the commitments made, Westcoast would continue to work with Indigenous Peoples to incorporate the results of ongoing and planned Indigenous-led assessments or studies into the Project, including through the development of mitigation measures.

Through early Project planning and engagement efforts, Westcoast offered interested communities the opportunity to scope and conduct a range of community-led studies, including traditional land use studies, community-led field studies, and Indigenous-led assessments or studies. Westcoast stated that it provided reasonable capacity support for these studies. In the hearing, Westcoast provided information about ongoing and planned studies, including identifying the participating Indigenous communities, the types of studies being undertaken, brief descriptions, and their status.

Westcoast further committed to continuing to work with Indigenous Peoples on ongoing and planned Indigenous-led assessments or studies and to incorporate the relevant information and knowledge, once completed, into the Project. Westcoast's plans in this regard are as follows:

- Request a meeting to review the information.
- Identify agreed-upon mitigation measures within the EPPs and EAS.
- Where acceptable mitigations are general in nature, incorporate them within the EPPs, as the documents are updated from time to time. If the information is site-specific, and Indigenous communities agree that it can be shared publicly, include the information in the EAS, which may be in the form of a live digital platform or hard copy.
- Use the Community Interest and Response Tables to track concerns raised by Indigenous Peoples about Project effects on their rights, culture, way of life, or any other areas of interest, as well as proposed mitigation and enhancement measures. Westcoast plans to reach out to all Indigenous communities who have completed an Indigenous-led assessment or study to discuss their concerns or proposed mitigation measures, using this collaborative tool as a basis for the discussion.

The Commission heard a number of concerns from Indigenous intervenors regarding the opportunities available to complete an Indigenous-led assessment or study during the hearing process, and about how the results of those assessments or studies would be incorporated into the Commission's assessment on the Project. Nooaitch Indian Band argued that Westcoast should not unilaterally determine the weight or relevance of Indigenous Peoples' findings. Rather, the Commission should require that all Indigenous-led assessments or studies, including those undertaken by Nooaitch Indian Band and the broader Nlaka'pamux Nation, be received, reviewed, and applied as independent and authoritative evidence in the Commission's report.

The Commission notes that once an Indigenous-led assessment or study was completed, it could be provided directly to the Commission through the hearing process or to Westcoast, based on the

participating Indigenous community's preference. In addition to the Indigenous-led assessments or studies completed and incorporated into the Project application (through the ESA), the Commission received 11 directly on the hearing record. The Commission understands that another five were provided directly to Westcoast during the course of the hearing, which Westcoast summarized in its reply evidence. The Commission confirms that it has considered and has referenced throughout this report each of the Indigenous-led assessments or studies provided on the hearing record, either directly by Indigenous intervenors, or indirectly through Westcoast's evidence.

The Commission also heard concerns from Driftpile Cree Nation, Nazko First Nation, and Prophet River First Nation about their inability to complete their traditional land and resource use study in time to be considered through the hearing process. Driftpile Cree Nation argued that the Commission should, though conditions, require Westcoast to facilitate Driftpile Cree Nation's fieldwork-based study. Prophet River First Nation argued that allowing Indigenous-led assessments or studies to be filed after the Project is approved would leave Westcoast to its own discretion to determine whether or not to address concerns raised. In their view, the conditions imposed should include a process for the Commission and affected Indigenous communities to review Westcoast's report filed under **Condition 15** (Outstanding Indigenous-led assessments or studies) and to determine whether Westcoast must implement mitigation measures recommended by the Indigenous-led assessments or studies provided after any Project approval.

In considering the concerns raised, the Commission notes Westcoast's commitments to continue working with Indigenous Peoples to incorporate Indigenous-led assessments or studies as they become available, including to identify agreed-upon mitigation measures, have them incorporated into the Project plans, and track concerns raised through the Community Interest and Response Tables. Given the valuable community-specific Indigenous knowledge shared regarding Project effects, the Commission encourages Westcoast to continue making meaningful efforts to provide interested Indigenous Peoples the opportunity and capacity to undertake their Indigenous-led assessments or studies. As detailed in **Section 11.2.3**, Westcoast has made a number of changes to the Project's design scope and plans in response to input received during engagement activities, including through the review and consideration of Indigenous-led assessments or studies.

To ensure that the Commission retains appropriate oversight over the manner in which outstanding Indigenous-led assessments or studies are incorporated into the Project plans, the Commission considers it necessary to impose **Condition 15** (Outstanding Indigenous-led assessments or studies), which would require Westcoast to report on the status of any outstanding Indigenous-led assessments or studies that are underway or planned. Through this condition, Westcoast would be required to describe, before starting construction, how it would integrate any assessment findings into the Project, as Westcoast continues to refine the Project's design. This includes any Project-specific mitigation measures that Westcoast and Indigenous communities may agree upon as a result of the Indigenous-led assessments or studies, as well as any revisions that may be required to other plans for the Project, such as those required by **Condition 9** (Updated EPPs) and **Condition 19** (Socio-economic Effects Monitoring Plan). Through **Condition 15**, Westcoast would also be required to report on how it would identify and mitigate potential Projects effects on those Indigenous Peoples whose assessments or studies would not be completed prior to construction. The Commission is not persuaded to amend this condition to provide specific direction or review processes related to these assessments or studies, as Driftpile Cree Nation and Prophet River First Nation suggested. Rather, the Commission finds that the updated reporting requirements described in **Condition 15** would provide for additional transparency as to how Westcoast would incorporate the results of outstanding Indigenous-led assessments of studies into Project plans.

10.5.4 Commission conditions

As noted throughout this chapter, the Commission considers it necessary to impose a number of conditions to address Project effects on the rights of Indigenous Peoples. These conditions would supplement Westcoast's mitigation measures and, as discussed throughout this report, incorporate or address certain comments and concerns raised by Indigenous Peoples. These conditions include those listed below, which are aimed at both directly reducing the Project's effects on the rights of Indigenous Peoples, and indirectly reducing the Project's effects on rights due to the interconnection between the practice of rights and certain biophysical and socio-economic VCs:

- **Condition 5** (Plan for notifying Indigenous Peoples of condition filings)
- **Condition 9** (Updated EPPs)
- **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring)
- **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples)
- **Condition 15** (Outstanding Indigenous-led assessments or studies)
- **Condition 16** (Support for Indigenous Peoples to review Westcoast's condition filings)
- **Condition 19** (Socio-economic Effects Monitoring Plan)
- **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring)
- **Condition 38** (Socio-economic Effects Monitoring Final Report)

Each of these conditions includes requirements for Westcoast to provide information related to its engagement and collaboration with Indigenous Peoples and, where relevant, how Indigenous knowledge and the results from Indigenous-led assessments or studies and the Community Interest and Response Tables informed the condition filings and mitigation and enhancement measures related to the rights of Indigenous Peoples. They would also require Westcoast to outline specific roles that Indigenous Peoples would have during pre-construction, construction, and post-construction activities.

The Commission notes that several additional conditions (namely, **6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 21, 27, 28, 29, 38, 39, 41, 44, and 45**) across all subject matters include a requirement for Westcoast to explain how its condition filings were informed through engagement with Indigenous Peoples (including how Indigenous knowledge informed the filings). Including engagement requirements in specific conditions would provide the Commission further opportunities to continually assess how Westcoast's ongoing engagement activities have informed the Project's design and plans through pre-construction, construction, and operations. Several conditions (**9, 10, 19, 38, 45, and 47**) also include an adaptive management component that would require Westcoast to explain how any plans and/or reports were modified and adapted based on engagement and monitoring outcomes.

The Commission expects Westcoast to include additional site-specific and/or community-specific mitigation measures in its EPPs, EAS, and Resource Specific Mitigation Tables that Westcoast continues to develop and refine. Each of these would be required as part of Westcoast's filings under **Condition 9**. Additional mitigation measures developed collaboratively through the Community Interest and Response Tables would also be included in the EPPs. This must include

any known site-specific traditional land and resource use mitigation, subject to any request for confidentiality.

As introduced in **Chapter 8**, the Commission considers it necessary to impose **Condition 38** (Socio-economic Effects Monitoring Final Report), which is the final summary related to **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples) and **Condition 19** (Socio-economic Effects Monitoring Plan), both of which were key topics of interest for Indigenous intervenors. In the final report related to the Socio-economic Effects Monitoring Plan, the Commission would benefit from an added discussion regarding the efficacy of the plan, including from the perspectives of Indigenous Peoples. For this reason, **Condition 38** includes requirements for discussions on the perspectives of both Westcoast and Indigenous Peoples on the overall effectiveness of the Socio-economic Effects Monitoring Plan. The Commission expects Westcoast to explain how it worked collaboratively with interested Indigenous Peoples to develop the section describing their perspectives. The Commission also expects Westcoast to provide confirmation that capacity funding was made available to Indigenous Peoples to support this collaborative work.

10.5.4.1 The STSA's proposed conditions

The Commission considered the STSA's request to make their ICA enforceable as a condition to any Project certificate, but finds that there are no authorities under the CER Act or otherwise that would allow for the relief sought. The Commission is nonetheless satisfied that elements of the STSA's ICA could be applied and incorporated to inform the Project's design, construction, and operations, as well as mitigation measures applied. In reaching this conclusion, the Commission considered Westcoast's commitments, as well as **Condition 15** (Outstanding Indigenous-led assessments or studies), which the Commission has strengthened to better reflect the assessment being undertaken by the STSA, as an Indigenous governing body.

The STSA advised that they are a co-regulator within S'ólh Téméxw (shared asserted territory of the Stó:lō people) and were conducting their own ICA for the Project. The STSA anticipates completing their ICA in January 2026. They submitted that the Project cannot be found to be in the public interest, and the Commission cannot satisfy its statutory duties, unless the Commission formally recognizes the STSA's ICA, inclusive of its conditions, as enforceable, co-equal conditions to which any Project certificate would be subject. As such, the STSA requested that the Commission include a condition in any certificate issued that would make all conditions, mitigation measures, and commitments in their ICA (once issued) enforceable. In the alternative, the STSA asked the Commission to defer its recommendation under section 183 of the CER Act until such time as the STSA's ICA is complete.

As described in **Chapter 2**, the Commission finds that there is no basis under the CER Act or otherwise at law that would allow the Commission to formally recognize the STSA's ICA, inclusive of its conditions, as enforceable, co-equal conditions to any Project certificate. The requirements under paragraph 183(1)(b) of the CER Act for the Commission to set out the conditions in its report to the Minister do not allow the Commission to adopt the conditions of another party (including an Indigenous governing body) without the Commission's own analysis as to whether those conditions would be necessary or in the public interest, consistent with the CER Act. There is similarly no basis under the CER Act that would allow the Commission to defer its report for any reason. Rather, under subsection 183(4), the Commission's report must be submitted to the Minister within the time limit set by the Lead Commissioner. Only the Minister may order extensions.

The Commission notes the STSA's position that their ICA is an exercise of Stó:lō governance and jurisdiction over S'ólh Téméxw and represents the practical implementation of articles 18 and 27 of the UN Declaration. The Commission further accepts that the STSA plays an important role, as an Indigenous governing body, in coordinating and representing the collective interests of its member Nations related to land and resource activities within their territories. The Commission accordingly expects Westcoast to continue engaging with the STSA to ensure that its member Nations' perspectives and knowledge can be reasonably integrated into the Project. The Commission heard that in the past, this has included opportunities for Stó:lō-led field studies, consideration of culturally and environmentally significant areas, and collaboration on design and mitigation strategies that serve to avoid or otherwise minimize impacts on values within S'ólh Téméxw. The Commission further notes Westcoast's commitments to the ongoing efforts with the STSA's ICA process and expects Westcoast to continue actively collaborating with the STSA on their ICA and to integrate the results into Project planning, as appropriate.

To ensure that the results of the STSA's ICA, once completed, would be transparently and collaboratively integrated to the extent possible into Westcoast's Project planning and mitigation measures, the Commission considers it necessary to strengthen **Condition 15** (Outstanding Indigenous-led assessments or studies). This condition expressly recognizes the assessment being undertaken by the STSA as an Indigenous governing body, and highlights its importance. This condition would also require Westcoast to provide information on the issues, concerns, and recommendations raised through outstanding Indigenous-led assessments or studies, including any assessments undertaken with or by Indigenous governing bodies such as the STSA, as well as how outstanding issues were resolved and how potential effects would be identified and mitigated for those assessments not completed before construction begins.

In addition, as noted in **Chapter 2**, the Commission's hearing process will be followed by the Governor in Council's decision-making process. Through that process, the Governor in Council may have an opportunity to consider submissions from the STSA, including those related to their ICA, any conditions attached to it, and how its findings and conditions may apply to the Project.

10.5.4.2 Offsets

The Commission considered the general requests and interests raised by Indigenous Peoples regarding offsets. The Commission finds that offsets are not necessary to further reduce the Project's effects on the rights of Indigenous Peoples, including Indigenous land and resource use. In reaching this conclusion, the Commission considered the standard mitigation hierarchy, which focuses on avoidance and mitigation before considering offsets, in light of the Commission's overall conclusions on the Project's potential adverse effects on the rights of Indigenous Peoples, which the Commission has found to be of medium severity with the implementation of Westcoast's mitigation measures and the Commission's conditions. The Commission also considered the relevant provincial and federal offsetting policies or frameworks that may require the application of offsets for the effects of projects or other activities on the rights of Indigenous Peoples.

Some Indigenous participants broadly discussed the need for offsets to reduce Project effects on the rights of Indigenous Peoples. This includes:

- Driftpile Cree Nation, Louis Bull Tribe, and Kanaka Bar Indian Band specifically noted the apparent absence of an offset measures plan to manage cumulative effects on the rights of Indigenous Peoples.
- Peters First Nation recommended offsetting cumulative effects on Indigenous interests through support for water monitoring and treatment, infrastructure, health and wellness, and additional offset lands for harvesting/traditional land use.
- Cook's Ferry Indian Band argued that it is necessary for Westcoast submit a mitigation and offset plan, which should specify intended offsetting measures for the Nlaka'pamux area.
- Nazko First Nation argued that Westcoast has not provided specific measures, including any restoration or offsetting measures, for their or the Commission's review pertaining to the cumulative Project effects on Nazko First Nation's section 35 rights.

In response to Driftpile Cree Nation, Westcoast confirmed that it had not proposed any offsets to reduce Project effects on the rights of Indigenous Peoples, including any cumulative effects. Rather, based in part on early feedback from certain Treaty 8 Nations regarding a preference for remediation and reclamation over offsets, Westcoast explained that its approach focused on direct mitigation measures, following the mitigation hierarchy, to reduce adverse cumulative effects on the rights of Indigenous Peoples and traditional land and resource use.

The Commission accepts that, consistent with the standard mitigation hierarchy, offsets may be considered appropriate where a project's overall residual effects on the rights of Indigenous Peoples, including Indigenous land and resource use, are assessed to be of a high severity, even after applying the first three steps (avoid, reduce, restore). In a scenario where avoidance, reduction, and restoration measures are applied but the resulting residual effects are considered to be of high severity, the final option of the mitigation hierarchy is to consider applying offsets to counteract these residual effects and further reduce a project's severity finding. As described in **Section 10.6.2**, the Commission has found that with the implementation of Westcoast's mitigation and enhancement measures, and the Commission's conditions, the Project's potential adverse effects on the rights of Indigenous Peoples would be of medium severity. Accordingly, and based on the standard mitigation hierarchy (which Westcoast has applied), the Commission is satisfied that an offset plan is not necessary to reduce the Project's effects on the rights of Indigenous Peoples.

The Commission notes that there are several provincial and federal offsetting policies or frameworks that mandate the application of offsets, including where there is a stated policy objective based on "no net loss" or "net gain." The Commission is not aware of, and no submissions were received regarding, any such framework pertaining to offsets for the rights of Indigenous Peoples, including Indigenous land and resource use, that would apply to the Project. However, Westcoast confirmed that it would consider offsets described by DFO regarding fish and fish habitat, by the Province of BC regarding OGMAs, and by ECCC regarding wetlands and caribou. **Chapter 7** discusses these biophysical offsets, including the policies and frameworks that guide the offset requirements and implementation. That chapter further describes the related conditions that the Commission would impose for certain biophysical offsets, including for caribou and caribou habitat (**Conditions 6, 7, 43, 44, 45, 46, and 47**), old growth forest (**Condition 8**), and wetlands (**Condition 39**).

10.5.5 Indigenous monitoring and oversight

The Commission is of the view that monitoring by Indigenous Peoples would be an integral aspect of this Project because it can provide meaningful opportunities for the sharing and incorporation of Indigenous knowledge, worldviews, and oversight during pre-construction, construction, and post-construction activities. Involving Indigenous Peoples in monitoring would also be of value in verifying the effectiveness of mitigation and enhancement measures, as well as other aspects of implementing Project plans, such as restoration.

The Commission finds that with the Commission's conditions related to Indigenous monitoring, as described in **Section 10.5.5.1**, and Westcoast's commitments to work collaboratively with Indigenous Peoples to develop and refine plans associated with those conditions, there would be meaningful opportunities for Indigenous Peoples to be in involved in Project monitoring and oversight.

During the hearing, the Commission heard from Indigenous Peoples about their strong interest in being involved in a variety of monitoring activities, including through the development of Westcoast's monitoring plans. The Commission heard about both Project-specific monitoring and the potential need for a broader oversight forum or advisory committee, which the Commission addresses in the following subsections.

10.5.5.1 Project-specific monitoring

In its application, Westcoast described the important role of monitoring by Indigenous Peoples on the Project, including involving Indigenous Peoples in early Project planning and field work preparation. These roles included working as environmental team members and cultural guardians in preparing the application and supporting environmental field studies. The Commission also heard from many Indigenous Peoples about the need to be involved in monitoring activities and programs related to construction and post-construction activities and about defined roles for Indigenous environmental and cultural monitors. Such submissions were received in evidence received from the BC Métis Federation, Boston Bar First Nation, Cheam First Nation, Kelly Lake Cree Nation, Lheidli T'enneh First Nation, Louis Bull Tribe, Nazko First Nation, Nicomen Indian Band, Peters First Nation, Seabird Island Band, Sucker Creek First Nation, and Prophet River First Nation.

Indigenous participants shared their interest in helping to shape the monitoring plans being developed for the Project. They provided views on key roles that would be required, including cultural and land guardians, resource specialists, and environmental and archaeological monitors. They also noted the importance of Indigenous monitors in ensuring that regulatory standards and outcomes related to the protection of both rights and environmental effects are achieved. Specific submissions heard about monitoring and oversight include:

- Cook's Ferry Indian Band stated that they require monitoring and reporting of cumulative effects in the Project areas, including the Nlaka'pamux Traditional Area of Interest. They want to ensure that environmental mitigation, reclamation, and cumulative effects monitoring achieve outcomes that safeguard both ecological integrity and the exercise of Aboriginal rights.
- Cheam First Nation requested the inclusion of water and wildlife technicians and Cheam First Nation's guardian program in ongoing field studies. They argued that they require an

opportunity to adequately review and to be consulted by the CCC and Westcoast on construction and post-construction monitoring, including the development of the monitoring program in conjunction with Westcoast in a process funded by Westcoast.

- High Bar First Nation said that they discussed their participation in ongoing monitoring with Westcoast. They stated that it is important that someone is actually watching the conditions and that standards are being met. High Bar First Nation also requested Indigenous-led oversight through resource specialists and land guardians.
- Kelly Lake First Nation said that it is important that the proponent engages on a monitoring plan early on, so that they can review it and any changes or feedback can be incorporated into the plan.
- Leq'á:mel First Nation explained that they have well-trained cultural guardians and environmental monitors with degrees in wildlife and biology available for subcontract work. They noted the importance of involving cultural guardians in post-construction environmental monitoring and reclamation work.
- Nooaitch Indian Band argued that the Commission must establish clear, enforceable mechanisms for the CER's independent compliance monitoring throughout the Project's entire lifecycle. They stated that Westcoast must fund and implement a comprehensive Indigenous monitoring program for the Nlaka'pamux Nation.
- Peters First Nation shared that there is no indication of commitments to Indigenous-led monitoring, enforcement of protections against habitat loss, or engagement in fisheries management beyond the standard regulatory framework. They argued that Indigenous monitors should have defined roles, authority to conduct site visits, and opportunities to participate in data collection and adaptive management. Peters First Nation has also encouraged the inclusion of Indigenous perspectives in determining monitoring triggers and reclamation success criteria.
- The STSA expressed an interest in an updated construction plan, monitoring methods, and recommended screening during low water table.
- Councillor Cunningham of Sucker Creek First Nation shared:

  > We as a people, we need to be out there to help monitor, to bring forth our concerns and educate so that if we're going to develop that we do it in a way, hopefully, that we can co-exist and still have our people following their traditions and the way of life that they're so used to, the hunting, the fishing, the gathering, the gathering medicinal properties. Tsq̓éscen̓ First Nation emphasized a number of mitigation measures through its Cultural Use Study. They emphasized community-led monitoring, training, and cultural safeguards to protect territory and sense of place. They also recommended cultural and Indigenous monitoring.

- Upper Nicola Indian Band requested that their community-led guardians and Indigenous monitors be involved. Specifically, they want field presence during Project construction and operations with authority to recommend stop-work on cultural and environmental non-compliance. They also want to be involved in joint reporting to the CER.

- Whispering Pines/Clinton Indian Band noted that a comprehensive ongoing monitoring program is essential to ensure that all mitigation process and practices are carried out according to detailed implementation guidance to maximize the likelihood of success.
- Williams Lake First Nation recommended Indigenous environmental and archaeological monitors be present through all Project phases to safeguard cultural, environmental, and heritage values, ensuring their integration into Project decisions and long-term stewardship.

Westcoast proposed a number of measures to support Indigenous monitoring for the Project and as to develop the draft monitoring plans. This includes:

- Westcoast explained that it developed a Cultural Walk-Through Program for each Project component. The intent of this initiative is to complement the ongoing collection and integration of Indigenous knowledge into Project planning, and to continue identifying any culturally significant areas or sites that should be considered and that may be added to the EPPs and within the draft Indigenous Monitoring Plan, as appropriate.
- Westcoast submitted that it was developing the draft monitoring plan and that planned Indigenous-led assessments or studies and pending cultural walk-throughs are key sources of information that would directly inform the plan. Westcoast acknowledged Indigenous communities' engagement capacity constraints, in particular over the summer months, and the importance of taking the necessary time to engage with them to design and scope the draft monitoring plan.
- Westcoast confirmed that the monitoring plan would be adaptive, incorporate Indigenous knowledge, support training and employment, and include community-specific monitoring during construction and the implementation of protection measures.
- Westcoast confirmed that it would incorporate Indigenous communities' input and recommendations into the monitoring plan prior to filing it with the CER.

The Commission notes Indigenous participants' strong interest in monitoring and confirms the critical importance of their involvement in monitoring during the Project's construction and post-construction phases. Meaningful Indigenous involvement in monitoring would provide important verification of the effectiveness of Westcoast's mitigation and enhancement measures, as well as oversight on key areas of concern, such as post-construction restoration activities. For these reasons, the Commission considers it necessary to impose **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring). These conditions would require Westcoast to file plans, for Commission approval, describing Indigenous Peoples' participation in monitoring activities during both Project construction and operations. In response to comments received from Westcoast and Indigenous participants, including Nicomen Indian Band and Peters First Nation, regarding longer-term monitoring beyond construction and into post-construction activities, the Commission separated the requirements related to Indigenous Peoples' participation in monitoring into two distinct conditions. Imposing a separate condition for post-construction monitoring would also provide additional transparency and clarity, as requested by Kelly Lake Cree Nation and Nazko First Nation, around monitoring-related commitments and plans spanning the Project's entire lifecycle.

Several Indigenous participants, including Kanaka Bar Indian Band and Xatśūll First Nation, raised concerns that Westcoast's management and monitoring plans to reduce Project effects were not finalized before the hearing record closed, but were in development and subject to ongoing

engagement. Xatśūll First Nation noted that without finalized plans, there would be no way for the Commission to know whether the included measures would actually mitigate or accommodate any adverse effects at the time the Project is approved.

The Commission is satisfied that when considered in light of the Commission's conditions, Westcoast's approach to developing its monitoring plans is appropriate, consistent with past practice, and provides a sufficient basis for the Commission and Indigenous Peoples to understand the plans' core elements. In reaching these conclusions, the Commission considered the information that Westcoast provided in its application and supplemental filings regarding key elements of its monitoring plans. Westcoast anticipates that, at a minimum, these plans would include a description of the roles and responsibilities of monitors, a process for incorporating and responding to feedback, and considerations for training and capacity to support Indigenous Peoples' participation.

Given the importance of the monitoring plans and the ongoing nature of their development, the Commission declines Westcoast's suggestion that the monitoring plan condition filings need not require Commission approval. Maintaining the approval requirement would allow the Commission to retain appropriate oversight, ensuring that the final plans provide meaningful opportunities for Indigenous monitoring over the Project's lifecycle.

In response to recommendations made by the CCC and Indigenous participants, including Cheam First Nation and Lower Nicola Indian Band, the Commission considers it necessary to strengthen **Conditions 11 and 28** to include, among other things, descriptions of how Westcoast's engagement with Indigenous Peoples, as well as Indigenous knowledge and the results from Indigenous-led assessments or studies and Westcoast's Community Interest and Response Tables, informed the development of the monitoring plans. These conditions would also require Westcoast to describe where it has not made changes to its monitoring plans based on the issues, concerns, recommendations, and Indigenous knowledge received, and to explain why not.

Conditions 11 and 28 would further require that the monitoring plans include details on the scope of monitoring activities, the roles and responsibilities of Indigenous monitors, how existing community-based monitoring programs may be leveraged or integrated into the monitoring plans, and how Westcoast would use and incorporate monitoring information and apply it to the Project. The Commission is satisfied that these requirements for direct involvement of Indigenous Peoples in various phases of Project monitoring are responsive to a number of interests identified by Indigenous participants and can help reduce Project effects on the rights of Indigenous Peoples.

The Commission heard concerns from a number of Indigenous participants, including Nooaitch Indian Band and Tsq̓éscenˀ First Nation, that the monitoring plans lacked any mechanism to ensure that Indigenous Peoples would be appropriately authorized to provide oversight and input. Westcoast stated that the roles and responsibilities of Indigenous monitors are generally expected to include observing construction activities, identifying and documenting environmental and cultural concerns, and communicating those observations to both Westcoast and to the monitors' respective communities. Westcoast proposed a flexible approach that allows for tailored participation based on each community's interest, capacity, and proximity to the Project. Westcoast emphasized the importance of active, knowledgeable Indigenous monitors in providing cultural oversight. The Commission expects to see these commitments and expectations, confirming the clear roles and responsibilities for Indigenous Peoples, described in the final monitoring plans filed under **Conditions 11 and 28**.

Further suggestions were made to have a process in place to allow for issues or non-compliances to be brought forward, investigated, and appropriately addressed. The Commission expects, consistent with requirements set out in **Conditions 11 and 28**, that Westcoast would describe in its monitoring plans how it applied information gathered through monitoring activities to the Project, including how issues of non-compliance may be brought forward and considered through Project activities.

The Commission recognizes that the extent and level of Indigenous Peoples' participation in the Project would vary on a community-by-community basis. The decision to participate, and the extent of participation, ultimately lies with each interested Indigenous community. The Commission expects Westcoast to make meaningful offers to all interested Indigenous Peoples who request to participate, and to provide the necessary training and associated training-related capacity funding to support their participation.

The Commission notes that there may be additional site-specific and/or community-specific monitoring required for Project components on the reserve lands resulting from the ongoing negotiation process for consents related to those components (discussed in **Chapters 5 and 9**). If any site-specific and/or community-specific monitoring is further negotiated for the on-reserve Project components, the Commission expects to see that information reflected in the monitoring plans filed under **Conditions 11 and 28.**

Further details on the roles and responsibilities of Indigenous monitors with respect to monitoring the Project's socio-economic effects would be included in Westcoast's filings under **Condition 19** (Socio-economic Effects Monitoring Plan) and **Condition 38** (Socio-economic Effects Monitoring Final Report). Through these conditions, Westcoast would also be required to describe the feedback mechanism for how real-time information provided by Indigenous monitors would be received and used by Westcoast.

The Commission further expects that once Westcoast hires trained and qualified Indigenous monitors onto the Project, the actual employment-related outcomes would be captured in the engagement summaries included in Westcoast's filings under **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples) and **Condition 38**.

Finally, the Commission heard that some Indigenous communities, including Kelly Lake Cree Nation and Sucker Creek First Nation, believe the term "monitor" minimizes the role of an Indigenous monitor to an observer and that they prefer the term "technician" or other terms that are more proactive. The Commission recognizes this concern but also notes that the term "monitor" is commonly used by environmental field and construction staff in environmental management. The Commission agrees that the role of environmental and Indigenous monitors is more than just as an observer. There is an expectation that monitors are empowered to identify concerns and then influence what happens when that concern is shared. Monitors work with CER inspectors and Westcoast's field staff as defined by the roles and responsibilities in the EPPs, Socio-economic Effects Monitoring Plan, and Indigenous monitoring plan. For the purpose of this report and related conditions that would be imposed if a certificate is issued, the Commission maintains the term "monitor." If Westcoast and participating Indigenous Peoples decide to use different terms for the Project, these can be reflected in the roles and responsibilities sections of the plans filed under **Condition 9** (Updated EPPs), **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), and **Condition 19** (Socio-economic Effects Monitoring Plan).

10.5.5.2 Oversight forum or advisory committee

The Commission considered the requests of various Indigenous participants to impose a condition for the development of a broader oversight body. The Commission is not persuaded that an additional oversight forum or committee is required or appropriate in light of the size, scale, and nature of the Project, which is largely comprised of a series of pipeline loops within the T-South system. Rather, the Commission is of the view that Westcoast's commitments and the Commission's conditions related to Indigenous monitoring, as described in **Section 10.5.5.1**, are sufficient to ensure that there would be meaningful opportunities for Indigenous Peoples to be involved in Project monitoring and oversight over the lifecycle of the Project.

Various Indigenous communities submitted that some form of additional oversight body should be considered. This includes:

- The Project would benefit from an oversight forum that is similar to the Indigenous Advisory and Monitoring Committees (**IAMCs**) established for the Trans Mountain Expansion Project and the Line 3 Replacement Project. Communities suggesting this included Cook's Ferry Indian Band, Kanaka Bar Indian Band, and Nooaitch Indian Band.
- Subject to further internal discussion, Kanaka Bar Indian Band suggested that an IAMC-like body for the whole Westcoast system, rather than just the proposed expansion, may make the most sense.
- Kanaka Bar Indian Band specifically indicated that an IAMC would fulfill the CER's commitments under Shared Priority Measure 34 of the UN Declaration Act's Action Plan.
- Several Indigenous communities – including Cook's Ferry Indian Band, Driftpile Cree Nation, Louis Bull Tribe, Lower Nicola Indian Band, Prophet River First Nation, Pukaist Nation, and Sucker Creek First Nation – argued for an IAMC-type of oversight forum.

The IAMCs established for past projects were the result of Government of Canada commitments related to more complex pipeline systems. The Project primarily involves constructing and operating 11 pipeline loops that would form part of the T-South system. Developing an oversight body related solely to the Project could create operational inconsistencies when the Project is incorporated into, and begins operating within, the broader T-South system. The Commission is further not persuaded that the Project – given its size, scale, and nature – justifies the significant effort that would be required to develop a related oversight body for Westcoast's broader pipeline system.

In considering whether a condition for an oversight forum is necessary for the Project, the Commission also considered some of the underlying interests reflected in Indigenous participants' submissions, including those from Sucker Creek First Nation and Louis Bull Tribe. In particular, the Commission heard that such a forum would ensure that Indigenous Peoples are included in the continued, independent, and ongoing monitoring of the Project, and would provide an opportunity for Indigenous Peoples to play a role in ensuring Westcoast's compliance with its commitments and the Commission's conditions. The Commission also considered the various opportunities afforded to Indigenous Peoples with respect to Project monitoring and oversight, as set out in **Section 10.5.5.1**. As noted, the Commission expects that through Westcoast's monitoring plans filed under **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), Indigenous Peoples would play an important role in identifying concerns and verifying the effectiveness of mitigation and enhancement measures, as well as other aspects of the

implementation of Project plans. The Commission is of the view that these opportunities are sufficient and appropriate, in light of the size, scope, and nature of the Project – being comprised largely of a series of pipeline loops that would form part of T-South and Westcoast's broader pipeline system.

As previously noted, the Commission is not persuaded that an oversight body for Westcoast's broader pipeline system would be appropriate, as a result of the Project. While not determinative to its decision not to impose an oversight body, or otherwise considered as a "mitigation measure" for the Project, the Commission also highlights as relevant to the interests and concerns raised by Indigenous Peoples, a number of ongoing initiatives being undertaken by the federal government and CER to establish a systemic approach (beyond a project-specific level) for Indigenous monitoring and oversight across multiple projects, and multiple companies that the CER regulates. These include, among others, the CER's commitment to develop a systemic model for Indigenous involvement in compliance and oversight, referenced under Shared Priority Action Plan Measure 34 of the UN Declaration Act Action Plan. As well, the CER's detailed, multi-phased review of the OPR which contemplates amendments to prevent and address adverse effects on the rights of Indigenous Peoples (or the management of socio-economic effects).

These initiatives are being developed through engagement, and in collaboration with, Indigenous Peoples and are separate from any project-specific hearing process. In the Commission's view, these broader approaches can engage a wider range of Indigenous Peoples in monitoring and oversight activities related to CER-regulated infrastructure, in a more consistent and systemic manner.

10.6 Project effects after applying mitigation and conditions

The Commission finds that residual Project effects on the rights of Indigenous Peoples may remain after Westcoast applies mitigation measures and satisfies the Commission's conditions. These effects would likely be short term to long term in duration, local to regional in geographic extent, medium in magnitude, and medium in total cumulative effects. With the implementation of Westcoast's mitigation and enhancement measures, and the Commission's conditions, the Commission finds that the potential adverse effects on the rights of Indigenous Peoples and on their use of land and resources would be of medium severity.

In reaching its conclusions, the Commission considered the rich knowledge that Indigenous Peoples shared throughout the hearing. The Commission finds the Indigenous knowledge shared about Indigenous Peoples' challenges in passing down their way of life and culture to future generations to be compelling and the Commission considered the potential long-term Project effects in its assessment.

The Commission's understanding of the Project's effects on the rights of Indigenous Peoples is also informed through the CCC's multiple filed reports regarding the Project. The Commission appreciates the time and effort that Indigenous communities have spent and continue to spend in participating in supplemental consultation processes.

10.6.1 The Project's residual effects

The Commission is of the view that residual Project effects on the rights of Indigenous Peoples may remain after Westcoast applies mitigation measures and satisfies the Commission's conditions. These residual effects would result in changes to Indigenous land and resource uses, including hunting, trapping, fishing, plant and medicine harvesting, and cultural and spiritual practices. Most residual effects would occur during construction, a period of up to two years. Following construction, restoration activities would begin and the rights-of-way would start to become accessible again.

10.6.1.1 Westcoast's assessment of the Project's residual effects

Westcoast explained that it was conservative in its assessment approach. Its assessment assumed that Indigenous rights, land and resource use, activities, and locations have the potential to be affected on accessible lands and waters within the Project assessment areas that overlap with the traditional territories of potentially affected Indigenous communities. Westcoast further noted that although the destruction of areas of spiritual and cultural importance may be prevented through mitigation measures such as flagging and avoidance, the importance of these sites dictate that potential effects be carried through for further assessment.

Westcoast submitted that residual effects on the exercise or practice of Indigenous and Treaty rights as a result of the Project are likely. If they occur, the overall degree to which Project activities affect the exercise or practice of Indigenous and Treaty rights would be reduced with implementation of mitigation and enhancement measures, as well as ongoing engagement during Project construction and operations.

Westcoast indicated that all Project components have the potential to affect the exercise or practice of Indigenous and Treaty rights, including the power lines, compressor station work, and pipeline loops. Permanent rights-of-way for power lines and pipeline loops would result in permanent loss or alteration of Indigenous land and resource use areas. The expanded physical footprint of compressor stations would restrict access to some locations. The visual presence of compressor stations and power lines may also influence how Indigenous communities view the quality of traditional resources used for food, medicinal, and material purposes. Noise and other effects (e.g., on air quality) from compressor stations and power lines may also affect the experience of being on the land in proximity to those Project components. Not all residual effects would be able to be mitigated, and this may have an adverse effect on the exercise or practice of Indigenous and Treaty rights where these Project components are present.

Westcoast submitted that reclamation and remediation are expected to occur following construction, which would largely mitigate effects on subsistence harvesting, the use of associated traditional land and resource use sites, and associated knowledge transfer. Given the short to extended effects on these resources, Westcoast expects the combined residual effects on subsistence harvesting to be short to extended in duration and reversible. However, the loss of cultural sites due to perceived effects on resources and traditional land and resource use locations would be extended in duration and only reversible upon abandonment and site remediation.

Westcoast anticipates that residual effects would be restricted to the LSA, long term in duration, periodic in frequency, reversible, and low to medium in magnitude. The probability of residual effects is high, given the location of the Project throughout BC and the number of potentially affected Indigenous Peoples. Westcoast's confidence in its assessment is moderate because it has a good understanding of cause-and-effect relationships using data pertinent to the Project, as well as

outside the Project areas. Westcoast found that the potential residual effects are of low to medium significance with respect to traditional land and use, and of medium significance with respect to the exercise of rights, for all Project components.

10.6.1.2 The Commission's assessment of the Project's residual effects

The Commission applied its own criteria and ratings to its assessment regarding the temporal extent, geographic extent, and magnitude of residual Project effects on the rights of Indigenous Peoples. The Commission recognizes the importance that Indigenous Peoples place on being able to exercise their rights within the Project footprint, the LSA, and the RSA. Through written evidence and oral Indigenous knowledge, Indigenous Peoples explained how they historically used the lands, waters, and resources for a range of activities, including hunting, trapping, fishing, harvesting, and gathering. They also explained how Indigenous land and resource use is a part of their connection to the land. The Commission also heard about how the Project could potentially affect access to sites of cultural and spiritual importance.

The Commission notes that once restoration activities are completed, there would be a permanently cleared right-of-way that is 18 m wide or less, as evaluated on a site-specific basis (see **Chapter 7** for further discussion). This would be a long-term residual effect of the Project. A permanent right-of-way can have drawbacks and benefits. It can provide increased access and travel ways for Indigenous Peoples but also increased access for the public. Westcoast proposed mitigation measures to help manage these access effects.

The Commission finds that Westcoast's mitigation measures and its commitments to further refine access management mitigation informed by ongoing engagement would be effective in addressing Indigenous Peoples' concerns regarding access management. Westcoast included in its EPPs a number of access management mitigation measures to help reduce potential Project effects on the rights of Indigenous Peoples, including Indigenous land and resources use. A number of Indigenous communities shared concerns regarding access management plans for the Project, noting that Westcoast has committed to working with those specific communities to discuss these matters further. The Commission would expect to see any additional access management mitigation reflected in the updated EAS that would be filed with **Condition 9** (Updated EPPs). The Commission notes that this filing would also be provided to interested Indigenous Peoples through **Condition 5** (Plan for notifying Indigenous Peoples of condition filings). If a stand-alone access management plan is determined to be necessary as a result of the discussions between Westcoast and Indigenous communities, or any other management plans are determined to be necessary as these plans continue to develop, the Commission would expect to see such plans included in Appendix D – Management Plans of the EPPs filed under **Condition 9** (Updated EPPs).

The Commission finds that a number of routing decisions made with respect to the Project could help mitigate potential Project effects. This includes Westcoast's proposed route, which would locate the pipeline loops and power lines almost entirely parallel to existing linear disturbances. The Commission also finds that locating the Project facilities within existing facilities reduces further potential effects on the rights of Indigenous Peoples, including Indigenous land and resource use. Westcoast committed to using existing access roads, where possible, to limit the creation of new, unwanted access roads, as well as environmental effects more broadly. The Commission heard that access is a key concern of Indigenous Peoples, both in the creation of new access and maintaining access for Indigenous Peoples to areas of importance to them. Co-location adjacent to or on existing linear disturbances or facilities would limit new access and the need to maintain it.

The Commission heard concerns regarding effects on Indigenous Peoples' use of watercourses in the Lower Mainland, which are of high value and importance to them. This includes the Fraser River. The Commission notes that no Project components would be located in or around the Fraser River that would result in Project interactions with the river. Therefore, any potential effects would be avoided. In general, where Indigenous Peoples have identified important watercourses, they would either be avoided by using trenchless methods or Westcoast would apply appropriate in-stream mitigation. **Chapter 7** provides additional details related to potential Project effects on watercourses and waterbodies.

The Commission is satisfied that through Westcoast's route selection process, the Project would avoid Green Lake. The Commission learned from Indigenous communities about the historical and contemporary importance of the lake itself, and the larger Green Lake area. Westcoast confirmed that it considered Green Lake in various VCs of its assessment. Westcoast confirmed that the proposed pipeline route deviates from the existing pipeline route in the area and would be located on the west side of the existing paved Green Lake North Road. This would increase the Project's distance from the lake by approximately 60 to 100 m when compared to the existing pipelines. Westcoast does not anticipate that the Project would have direct effects on Green Lake given its distance from the lake and adequate Project planning, mitigation, and monitoring.

In this section, the Commission provides additional analysis on its residual effects assessment for the five potential changes related to the rights of Indigenous Peoples, including Indigenous land and resource use. The Commission further characterizes the temporal extent, spatial extent, and magnitude for the residual effects for each of the five potential changes assessed.

Change to quality, quantity, or distribution of resources

The Commission finds that the Project's potential residual effects on the quality, quantity, or distribution of resources required for the exercise of rights would be:

- Temporal extent: short to medium term (for construction) to long term (for operations)
- Geographic extent: Project footprint, LSA, and RSA
- Magnitude: low to medium

During construction, land disturbance activities, including clearing and grading, may lead to a loss or alteration of important vegetation species used for food and medicines. The alteration or destruction of wildlife habitat due to construction activities may change the distribution or quantity of wildlife (including birds, amphibians, and ungulates) available for Indigenous land users to harvest. Vegetation that is relied on for wildlife habitat may be altered or removed through activities such as grading and clearing and altered through the introduction of invasive species. Instream works and adjacent construction activities may cause changes to the quantity of surface water that may be relied on for things such as drinking or cultural or spiritual use.

Change in access to resources used or required to exercise rights

The Commission finds that the Project's potential residual effects on access to resources used or required to exercise rights would be:

- Temporal extent: short to medium term (for construction)
- Geographic extent: Project footprint and LSA

- Magnitude: low to medium

Vegetation clearing and land disturbance within construction areas may temporarily affect existing trails or access routes. The creation of new access routes or an increased knowledge of resource use areas due to Project activities may expand the use of current areas by non-Indigenous harvesters or recreationalists. Increased traffic is also expected within the LSA during Project construction and operations.

The Commission recognizes that there would be access restrictions to the rights-of-way and adjacent areas during Project construction. Although disruptive, these effects would only occur during construction. The Commission finds that Westcoast's mitigation measures and commitments to further its access management planning, as well as the Commission's conditions, would help reduce the magnitude of the effects.

The Project's operational rights-of-way would provide similar access opportunities to Indigenous Peoples as currently exists given that for approximately 96 per cent of their total length, the pipeline loops would be located adjacent to Westcoast's existing rights-of-way or other linear disturbances (e.g., roads, power line rights-of-way).

Change to, or disruption of, timing and seasonality of exercising rights

The Commission finds that the Project's potential residual effects on the timing and seasonality of exercising rights would be:

- Temporal extent: short to medium term (for construction) and long term (for operations)
- Geographic extent: Project footprint, LSA, and RSA
- Magnitude: medium

Effects on the timing and seasonality of exercising rights would vary based on an activity's seasonality (i.e., the time of year of when the activity would occur relative to when construction may occur), but effects may occur during a higher sensitivity timing period, such as during active harvesting. Potential seasonal disruptions due to construction activities could result in missed opportunities to exercise rights, including hunting, trapping, fishing, and harvesting for food, medicinal, and material purposes.

Change to locations or areas of cultural importance where rights are exercised

The Commission finds that the Project's potential residual effects on locations or areas of cultural importance where rights are exercised would be:

- Temporal extent: short to medium term (for construction) and long term (for operations)
- Geographic extent: Project footprint and LSA
- Magnitude: low to medium

The Project has the potential to adversely affect locations of current use through real and perceived effects, including harvesting areas, cultural and spiritual sites, habitation sites, and other cultural activity locations, including trails and travel ways.

Sensory effects (including noise, vibrations, and dust) may affect the experience of land users. Land users may avoid trails and travel ways due to these disturbances during construction. They may also avoid resource harvesting locations and habitation or camp sites and sites of spiritual or ceremonial use. Wildlife may also be affected by these sensory disturbances and avoid vibrations or noises within the LSA. Indigenous Peoples may need to travel farther distances to harvest fish and wildlife due to species displacement during construction, and periodically during operations.

Residual effects on locations of current use – including harvesting areas, cultural and spiritual sites, habitation sites, and other cultural activity locations – would largely be restricted to the LSA. Most residual effects are likely to occur during construction, though perceived and visual effects would extend through operations.

Change to an Indigenous community's cultural traditions, laws, and governance systems

The Commission finds that the Project's potential residual effects on Indigenous communities' cultural traditions, laws, and governance systems that inform the manner in which Indigenous and Treaty rights are exercised would be:

- Temporal extent: short to medium term (for construction) and long term (for operations)
- Geographic extent: Project footprint, LSA, and RSA
- Magnitude: medium

Project activities may be inconsistent with Indigenous cultural traditions, laws, and governance systems. Loss or alteration of traditional resources, or access to them, may adversely affect cultural connections to the land, water, and resources. Project activities may contribute incrementally to the restrictions or barriers to implementing traditional legal processes and protocols. Project activities may also be inconsistent with Indigenous land use plans.

10.6.1.3 The Project's contribution to cumulative effects

The Commission finds that total cumulative effects would be medium (adverse). The Commission is of the view that after Westcoast's implementation of mitigation measures, and the imposition of the Commission's conditions, there would be some residual Project effects that would combine with the residual effects of past and reasonably foreseeable future projects. These residual cumulative effects would result in changes to Indigenous land and resource use, including hunting, trapping, fishing, plant and medicine harvesting, and cultural and spiritual practices. Most residual cumulative effects would occur during construction, a period of up to two years. Following construction, restoration activities would begin and the rights-of-way would start to become accessible again.

For the Project's contribution to cumulative effects on the rights of Indigenous Peoples, the Commission applied the RSA used by Westcoast, which is a 15-kilometre buffer on Project components. The Commission considered the Project's contribution to total cumulative effects in combination with the residual effects of existing and reasonably foreseeable projects.

The Commission heard considerable evidence from Indigenous participants regarding the cumulative effects of historical development in the Project areas on their ability to exercise their rights, culture, and way of life on the accessible lands and waters within their traditional territories. The Commission recognizes that with all development there are effects, and some communities may feel, or perceive to feel, these effects differently. Appropriate mitigation is required to reduce these

Project-specific and predicted cumulative effects to the extent practical. In addition to its assessment of the Project's contribution to cumulative effects on the rights of Indigenous Peoples provided in this chapter, the Commission provides its assessment for select environmental and socio-economic VCs that are interrelated with the exercise of rights in **Chapters 7 and 8**.

In considering the Project's potential cumulative effects on the rights of Indigenous Peoples, the Commission took into account the extensive concerns and submissions raised by Indigenous Peoples on the hearing record about the cumulative effects of the T-South system and other development in the RSA. Some of the general concerns raised include:

- Several Indigenous communities described the effects of railways, highways, power lines, mines, existing pipelines, and other developments within their traditional territories that have contributed to a reduction in available land and resources to practice their rights. Communities that described this include Boston Bar First Nation, Coldwater Indian Band, Kanaka Bar Indian Band, Nazko First Nation, Peters First Nation, Seabird Island Band, Skeetchestn Indian Band, and Yale First Nation.
- Councillor Giroux of Driftpile Cree First Nation shared:

  > I always think about how the impact of the water – because there is a lot of river courses and I know there's an existing line there because my grandkids often ask me why machines and whatnot, what are they doing there. They go, 'They're wrecking the land, Papa. Why are they wrecking the land?' And then you've got to sit down and talk to your grandchild or your great-grandchild and talk to them about what's happening. I mean, they kind of shake their heads, but when a small child needs to know and you think about the future for them.

- Tsq̓éscenˀ First Nation raised concerns about cumulative Project effects when coupled with Westcoast's existing pipeline system and other industrial projects in the region. They have concerns that the Project would significantly expand the lifespan of Westcoast's system, which would result in longer-term effects.
- Kanaka Bar Indian Band submitted that Westcoast has not identified any direct measures that would mitigate or offset cumulative Project effects on the rights of Indigenous Peoples. They added that the Project would continue the trend of industrial effects within Nlaka'pamux territory that have impacted the stewardship and governance of the lands, waters, and resources of the Nlaka'pamux People, including Kanaka Bar Indian Band.
- Sucker Creek First Nation argued that that the Project's contribution to cumulative effects would have a lasting impact on their future generations and their members' ability to maintain their traditional ways of life as set out in Treaty 8.
- Yale First Nation said that they have been unfairly burdened with the costs of managing impacts as a result of Westcoast's existing pipeline. Costs are expected to increase as a result of the Project. Yale First Nation stated that the Commission has to look back to historical impacts in its assessment of the Project, adding that Westcoast is only looking forward.

As noted previously, appropriate mitigation is required to reduce Project-specific effects and predicted cumulative effects, to the extent practical. Through the hearing, the Commission considered the manner in which some of the effects identified may be reduced, as discussed in the following paragraphs.

Cheam First Nation expressed concerns regarding the effects of Westcoast's existing system on their Indigenous rights and title, as well as the cumulative effects of multiple infrastructure corridors across Cheam First Nation's reserve lands, which have resulted in their rights being diminished in a meaningful and significant way. Cheam First Nation noted the significant disruption from CS-9, located in the populated area of Cheam First Nation's Reserve 1. They noted that reserve lands adjacent to the compressor station are limited in use, are potentially unsafe, and devalued due to their proximity to the pipeline. Chief Darwin Douglas of Cheam First Nation shared:

> Now that gets a train track coming through it and a train track right beside it on the other side of the river. And then a highway right through the middle, and then another highway right beside it. And then a pipeline. Then a great big compressor station.

Elder Sydney Douglas, also of Cheam First Nation, added:

> (...) we've been encroached by a lot of utilities, and it kind of set back our ability to use a lot of our lands in ways that would benefit us economically because we're restricted to certain uses within all these rights-of-way.

The Commission heard from Westcoast that it conducted a site visit with representatives of Cheam First Nation at the proposed location for the CS-8B to CS-9 pipeline loop on their reserve, the Cheam Slough, and culturally important areas. The purpose was to discuss the community's interests, history, and how Westcoast and Cheam First Nation can begin to work together on proposed field activities. The Commission notes, as described in **Chapter 9**, that Project effects, including any cumulative effects specifically on Cheam First Nation's reserve lands, would be further mitigated through additional negotiated, community-specific mitigation measures. This is a result of Cheam First Nation's ability under subsection 317(1) of the CER Act to consent, or not consent, to Westcoast taking possession of, using, or occupying their reserve lands for the Project.

Skeetchestn Indian Band expressed concerns about the broader impact of pipelines on their section 35 constitutionally protected rights, including potential cumulative effects from existing and proposed infrastructure. The community argued that the Project threatens to perpetuate the environmental, cultural, and spiritual degradation already suffered by Skeetchestn Indian Band as a result of more than six decades of pipeline activity in their territory. Westcoast responded that disturbances would be minimized by siting the Project adjacent to existing rights-of-way, and that it is supporting community-specific assessments.

Xatśūll First Nation argued that the Project would contribute to existing cumulative effects related to the continued reduction in land use areas, the permanent loss of culturally significant medicinal and ceremonial plants, and the ongoing decline of culturally important wildlife species. These losses would contribute to continued feelings of cultural loss, impeded and restricted knowledge transmission, as well as a reduced ability to exercise rights. Through the CCC's filings, the Commission learned about a letter that Xatśūll First Nation sent to the CCC, the Province of BC, and Natural Resources Canada. The letter raised a number of issues related to the CER's consultative process for, and the Commission's assessment of, the Project. It also set out what Xatśūll First Nation described as a failure to consider and address the cumulative effects of the Crown's approvals and decision within Xatśūll First Nation's territory. Xatśūll First Nation proposed negotiating a resolution to issues around cumulative effects through the creation of a fully funded table with Canada and the Province of BC. This would include capacity funding for Xatśūll First Nation to conduct cumulative effects assessment and mitigation work related to Xatśūll First Nation's

territory. The Commission notes that this table, if established as described, could help to address concerns raised by Xatśūll First Nation with respect to cumulative effects. Through its decision-making process, the Governor in Council may also have an opportunity to consider submissions from Xatśūll First Nation related to these issues.

Nazko First Nation and Nicomen Indian Band indicated that it is not appropriate for others to determine cumulative effects on their traditional land use, resources, and exercise of rights. An inclusive and culturally appropriate step in a cumulative effects assessment is to determine the cultural criteria and relevant metrics important to the community that would be used to effectively inform the foundation of past, current, and future analyses. The Commission notes that, as described in **Chapter 11,** its hearing process has provided a number of opportunities for potentially affected Indigenous Peoples to provide evidence on potential Project effects, as well as submissions on how the Commission should undertake its assessment of the Project. In making its recommendation and decisions related to the Project under the CER Act, the Commission considered the evidence received through its hearing process. The Commission notes that Westcoast also provided extensive evidence in the hearing on the ways in which it has sought to obtain and integrate Indigenous knowledge into its assessment of the Project's effects on the rights of Indigenous Peoples. The Commission describes its methodology for assessing the Project's effects on the rights of Indigenous Peoples in **Sections 10.1.1 and 10.1.2**.

Lower Nicola Indian Band argued that the impacts from cumulative effects on their Indigenous rights and title – which Westcoast indicated would be of medium significance – require accommodation. Lower Nicola Band stated that the Commission could accommodate the infringement of their Aboriginal rights by including a condition that would require Westcoast to implement culturally informed and site-specific mitigation measures. As highlighted in **Section 10.5.4** and otherwise discussed throughout this report, the Commission has strengthened a number of conditions to have Westcoast better reflect how the results of its engagement activities, as well as Indigenous knowledge and the results from Indigenous-led assessments or studies, have informed condition filings and mitigation and enhancement measures, including those related to the rights of Indigenous Peoples. In particular, the Commission confirms that **Condition 9** (Updated EPPs), **Condition 11** (Plan for Indigenous Peoples' participation in construction monitoring), **Condition 15** (Outstanding Indigenous-led assessments or studies), **Condition 19** (Socio-economic Effects Monitoring Plan), **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), and **Condition 38** (Socio-economic Effects Monitoring Final Report) all contain these express requirements. The Commission expects that through these condition filings, and Westcoast's ongoing engagement activities more broadly, Westcoast would continue to involve and meaningfully and reasonably incorporate the concerns, issues, and recommendations of Indigenous Peoples.

Blueberry River First Nations filed a letter of comment raising concerns with potential upstream development associated with the Project. The Commission considered the opportunities available to Blueberry River First Nations to raise concerns on the hearing record through ongoing engagement with Westcoast, supplemental consultation activities with the CCC, and as an intervenor in the Commission's hearing process. The Commission also considered the substantive concerns raised with respect to the Project's potential effects, including cumulative effects, on the community due to a potential increase in upstream development.

The Commission is satisfied that sufficient opportunities were afforded to Blueberry River First Nations to raise concerns and have them addressed through the hearing process. Westcoast provided an update summarizing the community-specific interests and concerns raised through its

ongoing engagement activities, including with Blueberry River First Nations. Westcoast highlighted the specific concerns raised, together with its response, and also noted its willingness to continue engaging with the community on Project-related matters. Further, in its filed reports, the CCC highlighted the information shared and opportunities provided to Indigenous Peoples on the Crown List, including Blueberry River First Nations, to meet to discuss concerns. The CCC identified concerns raised by Blueberry River First Nations in early engagement. Despite ongoing offers to meet, Blueberry River First Nations had not engaged with the CCC since early engagement. Finally, despite being identified on the Crown List at the outset of the hearing, Blueberry River First Nations chose not to participate as an intervenor in the hearing, which is the primary venue for Crown consultation. Had they done so, they could have asked questions of Westcoast, filed studies, provided oral Indigenous knowledge, and provided argument regarding their interests, concerns, and rights.

Through their letter of comment, Blueberry River First Nations directly raised a number of concerns with respect to the Project's cumulative effects and the corresponding impact on their rights. In **Chapter 4**, the Commission responds to the concerns raised about upstream supply, upstream well development, and connectivity to Westcoast's Aspen Point Program. As discussed in **Section 10.5.2**, the Project does not overlap the Blueberry River Claim Area and the Commission did not receive any evidence on the hearing record suggesting that the Project would result in any new disturbances within that claim area. The Commission is satisfied that the BCER would canvas and address any upstream development in the Blueberry River Claim Area, or broader Treaty 8 territory, at the time of provincial permitting, in accordance with the BC cumulative effects framework that was put into place as a result of the *Yahey* decision. This would include any additional mitigation measures that may be imposed at that time to further reduce the Project's potential cumulative effects.

For the Commission, route selection is a key mitigation that helps reduce a project's overall effects and its contribution to cumulative effects. Westcoast has selected pipeline and power line routes that parallel existing linear disturbances for almost the entirety of the Project. Co-location is an important mitigation as it reduces the need for greenfield development. While adding to an existing linear disturbance could incrementally increase the zone of influence of project effects on certain VCs, it would still result in a reduced effect, as compared to greenfield disturbances. The Commission is of the view that adding rights-of-way adjacent to existing rights-of-way is an appropriate mitigation that can reduce potential effects stemming from new linear disturbances that, if built in isolation, could further transect and fragment the landscape.

In assessing the Project's overall cumulative effects, the Commission also considered that the Project largely consists of a series of pipeline loops, instead of a single continuous linear disturbance. This would result in significant breaks in ground disturbances along the existing Westcoast system that the Project mostly parallels. Although the Project begins near Chetwynd, BC and ends near the Canada-US border in the Lower Mainland, the actual continuous disturbance is significantly less than the actual distance between these two locations. The Project consists of approximately 139 km of pipeline, spread over 11 pipeline loops, 2 overhead power lines (approximately 10 km in total), and modifications and upgrades within or adjacent to existing Westcoast compressor stations and a meter station. The breaks in development would help minimize overall Project effects on rights, when compared to having a continuous, linear disturbance.

The Commission observes that the Project components proposed in the Lower Mainland are in areas that are already predominately disturbed and where historical development has resulted in less available land on which Indigenous Peoples can practice their rights. These existing disturbances include those used for industrial agriculture purposes, highways, other existing pipelines, and commercial developments. Although the Project components proposed in the Lower Mainland would contribute to cumulative effects in the area, co-locating these components along the T-South system is preferred over establishing new rights-of-way.

10.6.2 Severity finding on Project effects on the rights of Indigenous Peoples

As described in **Table 10-4**, the Commission finds that the potential Project effects on the rights of Indigenous Peoples would likely be short term to long term in duration, local to regional in geographic extent, medium (adverse) in magnitude, and medium (adverse) in total cumulative effects.

With Westcoast's implementation of its mitigation and enhancement measures, as well as the Commission's conditions, the Commission finds that the potential adverse effects on the rights of Indigenous Peoples would be of medium (adverse) severity.

Table 10-4: Evaluation of severity of Project effects on the rights of Indigenous Peoples

Rights of Indigenous Peoples		
Criteria	**Rating**	**Discussion**
Residual effects: • Change to quality, quantity, or distribution of resources • Change in access to resources used or required to exercise rights • Change to, or disruption of, timing and seasonality of exercising rights • Change to locations or areas of cultural importance where rights are exercised • Inconsistency with Indigenous cultural traditions, laws, and governance systems		
Temporal extent	Short to long term	Project effects are expected to be short term to long term in duration, occurring during the construction period and into post-construction. In the short term, construction would limit access to the rights-of-way. In the medium term, once construction is complete and restoration is ongoing, Indigenous communities would have access to the permanently maintained 18-metre-wide (or less) rights-of-way for the pipeline components. However, use of the rights-of-way would be altered due to vegetation clearing and potential changes in wildlife movements while restoration is ongoing. Long-term effects would include effects on harvesting, hunting, and trapping on the permanently maintained rights-of-way due to reduced vegetation available and potential changes in wildlife movements. Long-term effects would remain for the overhead power lines because of their 60- to 100-metre-wide rights-of-way.

Rights of Indigenous Peoples		
Criteria	**Rating**	**Discussion**
		The area underneath the power lines would have permanent vertical post structures.
Geographic extent	Local to regional	Project effects are expected to extend into the LSA and RSA. This geographic extent applies to changes to the availability of resources through loss of habitat, changes in access to resources through altered travel routes, and changes to sites or areas of cultural importance through clearing and sensory disturbances.
Magnitude	Medium (adverse)	Effects from Project construction and operations are expected to be medium in magnitude, depending on each Indigenous community's practices. During construction, the Project footprint would not be accessible to Indigenous Peoples. Following construction, the rights-of-way and temporary workspace areas within the Project footprint would require time for restoration to be fully achieved. Once restoration is complete, Indigenous Peoples would regain access to the Project footprint and permanent rights-of-way. Given that the Project is largely comprised of a series of pipeline loops and not one continuous pipe installation, large areas between the Project's start and end points would remain undisturbed by the Project. The Project's pipeline and power line components would be almost entirely co-located with existing linear disturbances. The facility work associated with the Project would occur on or adjacent to existing facilities operated by Westcoast, which are all previously disturbed and fenced-in facilities. The power line components would have permanent vertical post structures associated with them that would limit land use beneath the overhead lines.
Cumulative effects	Medium (adverse)	Although the Project would contribute additional effects on the rights of Indigenous Peoples, including Indigenous land and resource use, with the implementation of Westcoast's mitigation measures, and the Commission's conditions, the Commission finds that the total cumulative effects are expected to be medium (adverse). Overall, given that the Project is largely comprised of a series of pipeline loops and not one continuous pipe installation, large areas between the Project's start and end points would remain undisturbed by the Project. The Project's pipeline and power line components would be

Rights of Indigenous Peoples		
Criteria	**Rating**	**Discussion**
		almost entirely co-located with existing linear disturbances. The facility work associated with the Project would occur on or adjacent to existing facilities operated by Westcoast, which are all previously disturbed and fenced-in facilities. The Project's pipeline, power line, and facilities components would all incrementally contribute to adverse cumulative effects. However, co-locating Project components adjacent to or within existing disturbances reduces the incremental effects (compared to new greenfield disturbances).
Severity	Medium (adverse)	With Westcoast's mitigation measures and the conditions that the Commission considers necessary to impose, the Commission finds that the Project's potential adverse effects on the rights of Indigenous Peoples, including Indigenous land and resource, use would be of medium severity.

11 Duty to consult and accommodate

Regulatory tribunals such as the Commission must perform the duties and exercise the powers assigned to them in their governing legislation, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982* and other applicable laws. The Commission is satisfied that its recommendation, determinations, and decisions made in relation to the Project are consistent with section 35 of the *Constitution Act, 1982* and the honour of the Crown.

The Commission is of the view that the consultation undertaken through the Commission's hearing process has been adequate for the purpose of the Commission's recommendation to the Minister and the Commission's determinations and decisions on the Project. Further, the mitigation measures identified, including the conditions that the Commission considers necessary or in the public interest to impose, are similarly adequate to accommodate the potential effects of the Project on the rights of Indigenous Peoples, revealed through the consultation process. The Commission confirms that it has taken the UN Declaration and UN Declaration Act into account in designing the GH-001-2024 hearing process and in considering its responsibilities in relation to the Crown's duty to consult and accommodate for this hearing. The Commission is therefore satisfied that the Crown's duty to consult and accommodate has been met.

In reaching its conclusions on the duty to consult and accommodate, the Commission considered the engagement activities undertaken by Westcoast, together with the hearing process that the Commission established and the early and supplemental consultation activities undertaken by the CCC. All of these activities undertaken with potentially affected Indigenous Peoples collectively form the consultative process which the Commission assessed against the Crown's duty to consult and accommodate.

The CER tailors the scope and nature of its engagement and Crown consultation activities to the complexity of a proposed project and its potential effects, as well as the needs of potentially affected Indigenous Peoples. The Commission notes that its hearing process for the Project was robust and designed to satisfy the duty at the high end of the spectrum. The Commission is of the view that its process was also sufficiently flexible to allow for a consideration of the laws, knowledge, and practices of Indigenous Peoples. The engagement and consultation activities undertaken reflected efforts to find mutual agreement with Indigenous Peoples, in a manner consistent with Reconciliation and the principles of the UN Declaration.

Chapter 2 provides additional context for the legal framework applied by the Commission in considering how the duty to consult and accommodate was assessed for this hearing.

11.1 Westcoast's engagement with Indigenous Peoples

As part of its assessment as to whether the Crown's duty to consult and accommodate was met, the Commission considered the evidence surrounding Westcoast's engagement activities with Indigenous Peoples potentially affected by the Project, both before and during the hearing process.[83] The Commission finds that Westcoast adequately designed and implemented its engagement program and activities, based on the expectations described in the Filing Manual[84] and the CER's Early Engagement Guide,[85] taking into account the scope of the Project.

The Commission also considered Westcoast's assertion that while consent may not always be possible, through its engagement program, it aims to secure the free, prior, and informed consent of Indigenous Peoples in relation to the Project. The Commission is satisfied that the approach Westcoast identified, as discussed in this section, demonstrates good faith efforts to reach mutual agreement with Indigenous Peoples, consistent with the principles of the UN Declaration, in particular those in relation to consent described in Article 32.

11.1.1 Westcoast's engagement program

The Commission finds that Westcoast adequately designed and implemented its engagement program and activities in a manner that:

- allowed for the identification of potentially affected Indigenous Peoples early in the planning phase;
- provided Project information through a variety of mechanisms;
- facilitated the collection of local Indigenous knowledge and traditional land use information;
- allowed for the interests and concerns of Indigenous Peoples, including Project effects on their rights, to be considered and potentially resolved or mitigated; and
- maintained ongoing communications with Indigenous Peoples, with a view to developing long-term relationships during Project operations.

11.1.2 Identification of potentially affected Indigenous Peoples

Westcoast stated that it identified Indigenous Peoples potentially affected by the Project based on a number of factors. Namely, Westcoast considered, and took into account, the guidance set out in the CER's Early Engagement Guide, the scope and location of the Project, Westcoast's operating experience in the Project areas, the CER's preliminary Indigenous traditional territory analysis, and the Crown List for the Project. Westcoast advised that where an Indigenous community was added to the Crown List, or otherwise identified an interest in the Project, it would provide Project information to that community, including mapping, and offer to meet to discuss their specific interests in the Project, with capacity support if requested.

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[83] See *Haida, supra* note *21* at para 53, where the Supreme Court of Canada confirmed that the Crown may delegate procedural aspects of consultation to industry proponents.

[84] Found at https://www.cer-rec.gc.ca/en/applications-hearings/submit-applications-documents/filing-manuals/filing-manual/.

[85] Found at https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/early-engagement-guide/.

The Commission notes the concerns raised by the Manitoba Métis Federation, Nazko First Nation, Prophet River First Nation, and Siska Indian Band with respect to Westcoast excluding them from early engagement activities during the Project's planning phase. These Indigenous communities argued that this exclusion negatively impacted their ability to have their concerns about the Project fully understood, shared, and addressed in a meaningful way.

In response, Westcoast stated that regardless of when an Indigenous community was added to the Crown List, its approach has been consistent. That is, Westcoast would conduct outreach, share information about the Project, and offer capacity funding to engage and review Project information, in an effort to understand the potential effects of the Project on affected Indigenous Peoples.

The Commission is satisfied that through this approach, Westcoast has taken appropriate steps to engage with Indigenous communities upon learning of their potential rights and interests in the Project areas. The Commission is further satisfied that Indigenous communities who were engaged later in the process have since had the opportunity to make their interests and concerns about the Project known and considered, through both engagement with Westcoast and the Commission's hearing process. The Commission expects Westcoast to adhere to its commitment to continue engaging with Indigenous Peoples on the Crown List as well as any Indigenous communities who express an interest or provide new information regarding the potential effects of the Project on their rights.

11.1.3 Provision of Project information and collection of Indigenous knowledge

Westcoast began engaging with Indigenous communities in January 2023, during the Project's early design phase. Its engagement activities incorporated a variety of mechanisms, including:

- sending Project information packages;
- providing Project updates and other communications;
- creating a virtual open house;
- requesting feedback on draft community profiles to support the ESA;
- attending community meetings and dialogue sessions;
- making presentations;
- sponsoring and attending community-led events;
- sharing technical data;
- participating in multi-lateral meetings with the CCC and Indigenous communities;
- offering training and participation in field studies and cultural walk-throughs;
- making procurement opportunities available for contracting; and
- funding Indigenous-led studies.

The Commission notes that several of the engagement opportunities identified by Westcoast specifically allowed for the collection of local Indigenous knowledge and traditional land use information. Of note, Westcoast stated that both before and after filing its application, Indigenous Peoples were engaged and shared Indigenous knowledge through Westcoast's environmental and

archaeology field studies program. Environmental team members and cultural guardians were identified by participating communities and then participated in these field studies. Westcoast stated that as of June 2025, there had been 4,134 environmental team member and/or cultural guardian field participation days with 33 Indigenous communities having participated in readiness training. Westcoast further participated in cultural walk-throughs and funded Indigenous-led assessments or studies. As described in **Chapter 10**, some of these Indigenous-led assessments or studies were filed directly on the record, whereas others were provided solely to Westcoast, for their incorporation into Project design and mitigation measures.

11.1.4 Consideration of the rights, interests, and concerns of Indigenous Peoples

Throughout this proceeding, Westcoast filed updates on its engagement activities with Indigenous Peoples, including in response to intervenors' written evidence, oral Indigenous knowledge, each of the CCC's filed reports, Indigenous-led assessments or studies, and IRs. Through these updates, Westcoast provided substantial and detailed engagement logs and summaries of its engagement activities with Indigenous Peoples, which established a fulsome record of how it engaged with communities as the hearing progressed, seeking to understand their rights, interests, and concerns and to address them. In Westcoast's January 2025 Project update, it described its ongoing engagement activities and how Indigenous knowledge and feedback led to, and was incorporated in, various changes to Project planning and design. Westcoast's submissions and the Commission's hearing process provided Indigenous participants with a variety of opportunities to respond to the company's characterization of its engagement activities and results. Collectively, their submissions provided a substantial record for the Commission's consideration.

To support Indigenous participants in navigating a voluminous record, Westcoast also created, and continues to update, a community-by-community summary table of Westcoast's responses to key topics and concerns raised by Indigenous Peoples regarding the Project, starting from early engagement. As set out in greater detail throughout this report, including in **Chapter 10**, Westcoast identified a number of additional mitigation measures through its engagement activities. These measures aim to avoid or reduce potential Project effects on the rights and interests of Indigenous Peoples.

11.1.5 Ongoing communication with Indigenous Peoples

There were a variety of views shared on the record regarding the adequacy of Westcoast's engagement program and activities. A number of Indigenous participants, including some communities who had shared early concerns about Westcoast's engagement, reported an improved engagement experience with Westcoast or provided support for the Project. This includes submissions from the BC Métis Federation, High Bar First Nation, Kelly Lake First Nation, Nicomen Indian Band, Nooaitch Indian Band, Peters First Nation, Skeetchestn Indian Band, and Whispering Pines/Clinton Indian Band. There were also communities who maintained their concerns about Westcoast's engagement, stating that it was not adequate or meaningful and did not address how Westcoast would adopt their input. For example, outstanding concerns were raised by Coldwater Indian Band, Cook's Ferry Indian Band, Kanaka Bar Indian Band, Louis Bull Tribe, Sucker Creek First Nation, and Yale First Nation.

During the hearing, Westcoast made various commitments on the record in relation to its ongoing engagement with Indigenous Peoples, including efforts being undertaken through Enbridge's Indigenous Reconciliation Action Plan. The Commission expects Westcoast to continue engaging

with Indigenous Peoples potentially affected by the Project to understand and address additional interests or concerns that may emerge throughout the Project's lifecycle, and to incorporate ongoing information received, including Indigenous knowledge, into Project planning and execution.

Having considered concerns raised by some Indigenous participants, the Commission considers it necessary to include a provision in a number of conditions (namely, **Conditions 6, 7, 8, 9, 10, 11, 12, 13, 15, 19, 21, 27, 28, 29, 38, 39, 41, 44, and 45**) to ensure that Westcoast continues to meaningfully engage with interested Indigenous Peoples on the Project. This provision would require Westcoast to describe how it has responded to the issues, concerns, and recommendations received through engagement, how it would resolve outstanding concerns, and how it incorporated input received through its engagement with Indigenous Peoples into the related condition filing. Including engagement reporting requirements in specific conditions would provide the Commission with further opportunities to continually assess how Westcoast's ongoing engagement activities inform its Project design and plans throughout Project pre-construction, construction, and operations.

To support participation in the Project, Westcoast offered capacity funding to all Indigenous Peoples on the Crown List and others who expressed interest in engaging on the Project. Westcoast further committed to providing reasonable capacity funding to support lifecycle engagement activities, including for the review of post-approval condition filings, based on each Indigenous community's level of interest and capacity. The Commission notes Kelly Lake First Nation's concern that capacity funding related to condition compliance can be inadequate.

For greater transparency surrounding ongoing capacity funding, the Commission considers it necessary to impose **Condition 16** (Support for Indigenous Peoples to review Westcoast's condition filings), which would require Westcoast to file a report detailing its support for Indigenous Peoples to review Westcoast's condition filings throughout Project construction and operations. The Commission accepts that the amount of capacity funding may vary depending on each Indigenous community's interest and participation in reviewing condition filings and their existing capacity to undertake this work. For this reason, the Commission does not prescribe minimum thresholds or other benchmarks.

11.1.6 Free, prior, and informed consent

Westcoast submitted that while consent may not always be possible, through its engagement program, it aims to secure the free, prior, and informed consent of Indigenous communities in relation to the Project. In recognizing that consent may not be possible, Westcoast asserted that "free, prior and informed consent is a process, not a right."

In **Chapter 2,** the Commission provides its summary of the concept of free, prior, and informed consent, noting submissions on the record and the Commission's past decisions and recommendations. The Commission agrees, consistent with the decision in *Kebaowek,* that free, prior, and informed consent provides a right to a robust process, although it is not a veto or a right to a particular outcome.[86]

In assessing Westcoast's assertions regarding its efforts to secure consent from affected Indigenous Peoples, the Commission considered Westcoast's overarching engagement approach and the

[86] *Supra* note 24 at para 131.

general submissions of participating Indigenous Peoples on that approach (as generally described in **Section 11.1.5**). The Commission also considered Westcoast's evidence on benefit agreements entered into or being considered for the Project, along with submissions from Indigenous participants on whether they would provide consent for the Project and how that consent may be secured.

Based on the record, the Commission is satisfied that Westcoast's engagement efforts in relation to the Project demonstrate good faith efforts to find mutual agreement and secure the free, prior, and informed consent of Indigenous Peoples in a manner consistent with the principles of the UN Declaration, including Article 32.

11.1.7 Project benefit agreements

In assessing Westcoast's engagement approach, the Commission considered evidence submitted on various forms of benefit agreements that Westcoast and individual Indigenous communities are considering or have signed in relation to the Project. The Commission is of the view that benefit agreements, while not required, can help address economic or other project-related interests, or serve as a form of accommodation for project effects on the rights of Indigenous Peoples. Further, while signing a benefit agreement does not necessarily signify consent for a project by the Indigenous party, these agreements often demonstrate good faith efforts to amicably address concerns and reach some form of mutual agreement. In this regard, these agreements are consistent with the objectives of consent, as framed through Article 32 of the UN Declaration.

In the context of the Project, the Commission heard a number of general submissions from Indigenous participants about the importance of relationship building, relationship agreements, mutual economic benefits, and Project-related benefits or other forms of direct agreements. Indigenous communities further observed that benefit agreements can support positive relationships and allow concerns to be resolved bilaterally and collaboratively. Given their confidential nature, Project benefit agreements were not factored in as a mitigation or enhancement measure as part of the Commission's assessment of the Project's effects on the rights of Indigenous Peoples (see **Chapter 10**). Nonetheless, the Commission is of the view that such agreements can generally address economic interests or act as a form of accommodation for project effects on the rights and interests of Indigenous Peoples.

The Commission also heard from Indigenous participants who publicly disclosed that they have executed Project benefit agreements with Westcoast or are in the process of doing so. Specifically, the BC Métis Federation and Kelly Lake First Nation have reached agreements and have included letters of support for the Project. Whispering Pines/Clinton Indian Band stated that they had come to an agreement in principle with Enbridge that addressed their concerns, which resulted in their withdrawal from oral summary argument. Skeetchestn Indian Band provided its support for the Project, conditional upon reaching an agreement and executing the terms of the agreement that is currently under negotiation with Westcoast. Westcoast stated that it remains in discussions with Seabird Island Band to finalize the terms of a right-of-way agreement and other mutual Project-related benefits. Westcoast advised that it is engaged in dialogue with more than 20 Indigenous communities regarding Project benefit agreements, based on interest and the level of potential Project effects. These agreements, which are confidential and in various stages of negotiation, set out ways in which the parties can mutually benefit from the Project, as well as the terms and timelines for agreed-upon benefits. In addition to Project benefit agreements, other forms of agreements signed, or being considered, include capacity funding agreements and relationship agreements.

11.1.8 Submissions regarding consent

As part of its assessment, the Commission also considered the submissions of Indigenous participants – made directly on the record or indirectly through the CCC's filings – as to whether consent had been secured for the Project and, if not, the conditions upon which it could be secured. The Commission notes that while Westcoast was not required to obtain the consent of Indigenous Peoples with respect to the Project, submissions on this point can support findings of the overall success of Westcoast's implementation of its engagement program. They can also support findings on the good faith efforts of the parties to reasonably address concerns and find mutually acceptable arrangements.

The Commission notes that many Indigenous participants argued that they could not provide their consent for the Project for a variety of reasons, and until certain additional measures were taken. This includes submissions from Cheam First Nation, Coldwater Indian Band, Cook's Ferry Indian Band, Driftpile Cree Nation, Kanaka Bar Indian Band, Louis Bull Tribe, Lower Nicola Indian Band, Nazko First Nation, Prophet River First Nation, Sucker Creek First Nation, Tsq̓éscen̓ First Nation, and Yale First Nation. A number of other Indigenous participants have provided varying levels of consent for the Project, including the BC Métis Federation, Foothills First Nation, Kelly Lake First Nation, Skeetchestn Indian Band, and Whispering Pines/Clinton Indian Band. As described in more detail in **Section 11.2.2**, the CCC advised that it sought information directly from Indigenous participants as to whether the Project had their support. The CCC noted that while some communities were able to express full support and consent, others were still acquiring necessary information or moving through their decision-making process.

The Commission is of the view that meaningful engagement does not necessarily lead to the resolution of all key concerns raised, and consent or agreement is not always possible. However, based on the evidence, the Commission is satisfied that Westcoast's engagement program was sufficient and demonstrated genuine efforts to identify and address concerns and issues raised, incorporate feedback into the Project's design which led to various Project scope refinements, and work collaboratively with Indigenous Peoples towards resolving their concerns and issues. The Commission notes that Westcoast's substantive engagement record, responses to concerns and issues, Project scope refinements, and consideration and negotiation of benefit agreements demonstrate good faith efforts to find mutual agreement with Indigenous Peoples potentially affected by the Project, in a manner consistent with the principles of the UN Declaration, including Article 32.

11.2 The CER's consultation with Indigenous Peoples

As first noted by the Commission in its notice of public hearing issued on 30 July 2024, the Commission's hearing process was the primary forum for Crown consultation with Indigenous Peoples for the Project. The Commission is satisfied that its hearing process, which was designed to satisfy the duty at the high end of the spectrum, was sufficiently thorough and accessible to Indigenous Peoples to enable them to understand the Project and its potential effects on their rights and interests, as well as to provide evidence and raise concerns for the Commission's consideration.

The Commission is also satisfied that its hearing process adequately took into account the principles of the UN Declaration where raised. Through this report, the Commission considered how the UN Declaration may impact its obligations to satisfy the duty to consult and accommodate.

11.2.1 The Commission's hearing process

In the companion decisions of *Clyde River* and *Chippewas*, the Supreme Court of Canada acknowledged that the National Energy Board (now, the Commission) has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures.[87] In reaching its determinations on whether the National Energy Board's statutory authorities were sufficient to satisfy the duty, the Supreme Court of Canada specifically noted as follows:

> (…) Given the [National Energy Board's] expertise in the supervision and approval of federally regulated pipeline projects, the [National Energy Board] is particularly well positioned to assess the risks posed by such projects to Indigenous groups. Moreover, the [National Energy Board] has broad jurisdiction to impose conditions on proponents to mitigate those risks. Additionally, its ongoing regulatory role in the enforcement of safety measures permits it to oversee long-term compliance with such conditions.[88]

The Supreme Court of Canada in *Chippewas* went on to determine that in that case, the Crown's constitutional obligations had been upheld and that the consultation undertaken was manifestly adequate – even assuming the duty at the highest end of the spectrum.[89] In reaching this conclusion, the Court found that the affected community was provided an adequate opportunity to participate in the decision-making process, the National Energy Board sufficiently assessed the potential effects on the rights of Indigenous Peoples, and that the National Energy Board provided appropriate accommodation through the imposition of conditions.[90]

In finding that the parties were given a sufficient opportunity to make submissions as part of an independent decision-making process (consistent with *Haida*, at para 44), the Court noted that:

- an oral hearing was held;
- early notice of the hearing process was provided to affected Indigenous communities;
- participant funding was provided, which allowed for the preparation and filing of evidence, including an expertly prepared "preliminary" traditional land use study;
- parties could ask and receive a response to written IRs; and,
- parties could make closing oral submissions.[91]

The Court also noted that where deep consultation is required, written reasons will often be necessary to permit Indigenous Peoples to determine whether their concerns were adequately considered and addressed. The Court highlighted that written reasons can also foster Reconciliation, and where Aboriginal and Treaty rights are asserted, the provision of reasons denotes respect.[92]

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87 *Clyde River, supra* note 18 at paras 31-34; *Chippewas, supra* note 19 at para 48.
88 *Chippewas*, *supra* note 19 at para 48.
89 *Ibid* at para 43.
90 *Ibid* at para 51.
91 *Ibid* at para 52.
92 *Ibid* at para 62.

As further described in **Chapter 2**, the Commission also considered how the UN Declaration can be considered as a contextual factor in assessing the adequacy of Crown consultation. The Commission notes that, in this matter, it considered how the UN Declaration gave rise to an enhanced obligation to consult and required robust processes that consider Indigenous laws, knowledge, and practices. In designing its process, the Commission considered Indigenous rights holders' points of view and modified its processes in response to certain requests and suggestions made by Indigenous Peoples.

The Commission's GH-001-2024 hearing process provided potentially affected Indigenous Peoples with opportunities to understand the Project and its potential effects on their rights and interests, and to submit evidence and raise concerns for the Commission's consideration. Through this report, the Commission is providing Indigenous Peoples with written reasons, including **Chapter 10,** which is focused on the rights of Indigenous Peoples, to allow them to determine whether their concerns have been adequately considered and addressed. As detailed in this section, the Commission's process was flexible and included various targeted steps – such as oral Indigenous knowledge sessions and an additional opportunity to file Indigenous-led assessments or studies on the record after the initial intervenor evidence deadline – to facilitate the submission of evidence from Indigenous Peoples, including information about their laws, knowledge, and practices.

The hearing process provided a variety of opportunities for Indigenous Peoples to share information and make submissions to the Commission, and to obtain information from Westcoast about the Project. These opportunities included:

- **Providing comments on the application's completeness**, **hearing steps, and timing**: The Commission's decision to seek comments on completeness was atypical, and responsive to a suggestion from the CCC and requests from several Indigenous communities to allow input on whether or not the application was complete. The Commission provided reasons in its completeness determination and subsequent process documents, including:
    - **Providing additional process information or clarity where requested**: For example, the Commission described the methodology for the assessment of effects on rights and how parties could make submissions on the methodology through the hearing.
    - **Describing how comments received were considered**: For example, how the Commission chose which workshops would or would not be offered during the hearing, and how the Commission incorporated certain suggestions to promote cultural inclusivity into its hearing.
    - **Advising how comments resulted in changes to the Commission's process**: For example, the Commission's decision to set a second, dedicated deadline for Indigenous Peoples to file Indigenous-led assessments or studies that were completed later in the process.
- **Sharing oral Indigenous knowledge**: Indigenous intervenors could provide oral Indigenous knowledge in three different locations along the Project route. These sessions took place in February 2025 (Prince George, BC), April 2025 (Kamloops, BC), and May 2025 (Chilliwack, BC). One community's virtual participation was accommodated.
- **Asking questions of Westcoast, the CCC, and intervenors**: Parties and the CCC could ask each other two rounds of written IRs to test their evidence and submissions.
- **Filing written evidence:** Intervenors could file written evidence which, as noted in the Hearing Order, could take the form of reports, studies, photographs, drawings, as well as

their knowledge of the lands, the issues being considered, and the potential effects of the Project. Evidence could also include their views in relation to Westcoast's evidence.

- **Filing Indigenous-led assessments or studies**: In addition to the opportunity to file written evidence, Indigenous intervenors could file additional Indigenous-led assessments or studies approximately 15 weeks after the initial written evidence deadline.
- **Filing comments on potential conditions**: The Commission sought written comments on potential conditions from participants. As discussed throughout this report, the Commission revised approximately 30 conditions, and added three conditions, in response to comments received.
- **Participating in a conditions workshop**: To assist participants in developing their written comments on potential conditions, the CER held a two-day virtual workshop to provide a forum for attendees to learn about and exchange their views and perspectives on potential conditions. Through early comments, a number of participants requested that workshops be incorporated into the process. The CCC specifically requested a conditions workshop, noting that past conditions workshops had been well received and helpful to Indigenous communities.
- **Filing written argument**: Through this step, parties could present and argue their views and opinions about the Project and make submissions on any relief they were seeking, including changes to potential conditions. Parties could also provide legal arguments or issues for the Commission to consider in its recommendation and decisions on the Project.
- **Providing oral summary argument**: Intervenors who filed written argument could also provide an oral summary of their written submission, and reply to Westcoast's argument, directly in front of the Commission.

The Commission sought to design its hearing process in a manner that was culturally inclusive. The Commission sought input from Indigenous intervenors to better understand and integrate their preferred cultural and spiritual protocols into the hearing process where possible. For example, the Commission avoided scheduling major hearing steps during the summer months, recognizing the importance for Indigenous Peoples to be on the land during that time. During the oral Indigenous knowledge sessions, the Commission welcomed opening and closing prayers or songs, drumming ceremonies, brushoff ceremonies, visual presentations, and opportunities for community members of all ages (from youth to Elders) and backgrounds to share oral Indigenous knowledge in ways consistent with their traditions and unique needs. The Commission aimed to make the sessions less formal and more iterative by facilitating open introductions, clarifying questions, and collaboratively reviewing visual aids such as maps. By creating space for these practices, the Commission sought to foster a welcoming and respectful environment that helped honour Indigenous traditions, supported the meaningful participation of Indigenous Peoples in the hearing process, as well as further develop cultural awareness and competency for all participants, including the Commission.

To facilitate the participation of Indigenous Peoples and reduce any administrative burdens, Indigenous Peoples potentially affected by the Project who registered to participate were not required to provide a justification to be granted intervenor status. Those on the Crown List, and those who provided information about how the Project would potentially affect them (if not on the Crown List), could register at any point during the hearing and participate in the remaining process steps. Through numerous procedural updates and rulings, the Commission also adjusted certain hearing steps and deadlines for Indigenous intervenors, both in response to requests received, and on the Commission's own accord.

In developing its hearing process and in making procedural adjustments and accommodations, the Commission sought to balance its obligations to support the meaningful participation of Indigenous Peoples in its hearings (consistent with sections 6 and 74 of the CER Act, and Article 18 of the UN Declaration) and to make decisions in a manner that is procedurally fair, inclusive, and timely. The Commission also sought to ensure that its process was aligned with the Government of Canada's commitment to achieving Reconciliation and the continuing evolution of the Canadian legal framework, which now includes the UN Declaration. As noted by the Federal Court in *Kebaowek,* processes that meaningfully accommodate Indigenous collectives' perspectives help to ensure that the ongoing Crown-Indigenous relationship can be strengthened over time.[93] **Appendix 3** provides the timetable of events for the hearing. **Appendix 4** describes rulings and procedural updates issued by the Commission, through which process adjustments and accommodations were made.

In addition to the opportunities provided through the hearing process, the Commission notes that Process Advisors were readily available to all participants, including Indigenous Peoples, to provide process information, answer questions, and support their effective participation in the hearing. The CER also provided funding to support Indigenous Peoples' participation in the hearing through its Participant Funding Program.[94] All Indigenous communities on the Crown List were offered participant funding of up to $140,000, to participate in both the hearing and supplemental Crown consultation activities (totalling $6.78 million), subject to actual participation. As of the date of this report, 48 Indigenous communities had signed contribution agreements totaling as much as $5.4 million.

As discussed in greater detail in **Chapter 3**, a number of Indigenous intervenors submitted that their ability to genuinely or meaningfully participate in the Commission's process was compromised due to, among other things, a lack of early notification of the hearing process, restrictive hearing timelines, and uncertainties regarding some of the Project details. The Commission is satisfied that based on the extensive process steps outlined above, and despite the challenges identified, Indigenous Peoples were provided opportunities to meaningfully participate in the Commission's process, and to have their views heard and considered.

Through the hearing process, Indigenous Peoples shared a wealth of information, including with respect to their rights and interests. They shared how they may be affected by the Project and how any Project effects may be mitigated or avoided. The Commission considered the information and submissions made in its assessment of the Project, including what mitigation measures are necessary to accommodate the potential effects of the Project on the rights of Indigenous Peoples.

11.2.2 The CCC's supplemental consultation activities

In addition to the opportunities for Indigenous Peoples to engage directly with Westcoast and participate in the Commission's hearing process, the CCC conducted early engagement activities (before Westcoast filed its application) and supplemental consultation activities throughout the hearing process. These supplemental activities supported the Commission's hearing process by

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93 *Supra* note 24 at para 139.

94 The CER's Participant Funding Guide explains which intervenors are eligible for funding and is found at https://www.cer-rec.gc.ca/en/applications-hearings/participate-hearing/hearing-process/participant-funding-program/participant-funding-guide.html.

providing an additional forum for Indigenous Peoples to bring their concerns and interests forward for consideration by the Commission and Westcoast.

The CCC noted that before the early engagement phase, the CER developed a Crown consultation list – known as a Crown List – to identify Indigenous Peoples that may be potentially affected by the Project and to whom the CER, as an agent of the Crown, may owe a duty to consult. The CCC advised that the Crown List for the Project was developed using multiple sources of information, including from Indigenous communities, from Crown-Indigenous Relations and Northern Affairs Canada, and from Westcoast. The CCC indicated that the Crown List may be updated and refined throughout the Commission's assessment of the Project based on a number of factors, including new information from Indigenous communities and updated Project information.

The CCC began consulting with Indigenous Peoples about the Project during the early engagement phase, beginning in February 2024. Following the four-month early engagement phase, the CCC filed its Early Engagement Report on 30 May 2024, summarizing its activities and the information gathered from Indigenous Peoples during that period. The report also included suggestions for the Commission and Westcoast regarding the Commission's upcoming hearing process.

The CCC stated that during the Commission's hearing process, it undertook supplemental consultation activities which included:

- proactively reaching out to Indigenous Peoples on the Crown List, including those who were participating in the Commission's process and those who were not;
- providing information about the Project and the Commission's hearing process;
- conducting information sessions;
- meeting directly with potentially affected Indigenous Peoples both remotely and in person in their communities, to discuss the Project and gather information about their rights, interests, and concerns; and
- facilitating discussions between Indigenous communities, Westcoast, and other government departments.

Indigenous Peoples could participate in the Commission's hearing process solely through consultation activities with the CCC, solely as a party to the Commission's hearing, or through both activities. As noted in **Section 11.2.1**, participant funding was provided, based on the process or processes through which the Indigenous participant was engaged.

Through three reports filed on the record, the CCC provided a summary of its consultation activities with both Indigenous intervenors and Indigenous Peoples who did not participate directly in the Commission's hearing process. The CCC explained that these reports were developed collaboratively with Indigenous Peoples on the Crown List with whom it consulted, for the Commission's consideration. In each of its three reports, summarized below, the CCC included information and updates on the consultation activities it undertook during the reporting period, along with a summary of the results of these activities:

- **Report No. 1** (13 February 2025) – The CCC provided an overview of consultation activities since its Early Engagement Report, including holding an information session, engaging on and amending the Crown List, meeting with federal and provincial government officials and Westcoast, and meeting directly with Indigenous Peoples to learn more about their concerns

with the Project. This report also provided a detailed summary of community-specific concerns regarding the Project's potential effects on their rights and interests.

- **Report No. 2** (5 June 2025) – The CCC provided an update on its consultation activities since the last reporting period, including its efforts to directly engage with and provide Project and process updates to Indigenous communities on the Crown List. The CCC also noted that in advance of the CER's conditions workshop, it conducted a "conditions 101" information session, as well as tailored one-on-one sessions, to share foundational information about conditions. The report again contained community-specific sections, detailing information received on Project effects, concerns, and interests, as well as potential solutions and proposed mitigations.
- **Report No. 3** (23 September 2025) – The CCC's final report followed a similar format, outlining consultation activities undertaken and the results of those activities on a community-by-community basis. In this reporting period, the CCC also explicitly asked each Indigenous community whether the Project had their support and, if not, why not. In its report, the CCC noted that while some Indigenous communities were able to express full support and consent, other Indigenous communities were still acquiring necessary information or moving through their decision-making process.

The CCC also participated in a number of hearing steps that contributed to the evidentiary record, directly and indirectly. This included asking and responding to IRs, attending the conditions workshop, and providing written comments on the potential conditions for the Project. While the CCC did not provide argument, its final report to the Commission provided an update on the perspectives that Indigenous Peoples shared with the CCC. The CCC attended the oral argument sessions to observe and listen.

Indigenous participants raised varying perspectives about the efficacy of the CCC's consultation activities. However, the Commission is of the view that the supplemental consultation activities undertaken by the CCC provided an additional avenue for Indigenous Peoples to raise concerns about the Project and the Commission's process, through direct, two-way dialogue. The CCC's submissions helped to support and inform the Commission's overall assessment of the Project, including whether the duty to consult and accommodate, as appropriate, had been met for the purposes of the Commission's recommendation and decisions on the Project.

The CCC confirmed that it would continue to consult on the Project beyond its final report to the Commission and that once the hearing record closed, the CCC would transition from supporting the Commission's assessment process to supporting the Governor in Council decision-making process. The CCC advised that its consultation during that phase will rely on the Commission's assessment of the Project's effects on Indigenous and Treaty rights and interests, and the Commission's recommendation and decisions, including with respect to conditions of any approval to address these effects. The CCC further advised that after completing its consultation activities, it will prepare and submit a report to the Minister, summarizing its consultation activities with Indigenous Peoples on the Crown List. Through that report, the CCC will outline any outstanding concerns and how potential Project effects may be addressed through measures such as Westcoast's mitigation measures and commitments, and the conditions that the Commission considers necessary to impose on the Project (set out in **Appendix 1**).

11.2.3 Measures to accommodate potential Project effects on the rights of Indigenous Peoples

The Commission finds that the mitigation and enhancement measures[95] identified through the hearing process, and the conditions that the Commission considers necessary to impose on the Project (which are summarized in this report), are adequate to accommodate the Project's potential effects on the rights of Indigenous Peoples, revealed through the consultation process. In considering the adequacy of the accommodation measures identified, the Commission took into account its overall assessment of the potential effects of the Project on the rights of Indigenous Peoples, as outlined in **Chapter 10**. Namely, as described in that chapter, the Commission finds that the potential effects of the Project on the rights of Indigenous Peoples would likely be short term to long term in duration, local to regional in geographic extent, medium (adverse) in magnitude, and medium (adverse) in total cumulative effects. As further explained in **Chapter 10**, with the implementation of Westcoast's mitigation and enhancement measures, and the Commission's conditions, the Commission finds that the potential adverse effects on the rights of Indigenous Peoples would be of medium severity.

Canadian courts have consistently held that consultation can identify a need to accommodate Indigenous Peoples' rights if those rights may be adversely affected by a proposed project.[96]

Where accommodation is required, the Crown must balance the concerns of Indigenous Peoples reasonably with the potential impact of the decision on the asserted right or title and with other societal interests. The process of seeking compromise attempts to harmonize potentially conflicting interests and move further down the path of Reconciliation. The duty requires good faith efforts to understand each other's concerns and move to address them.[97] When viewed in the context of the UN Declaration, there is a heightened emphasis on processes and practices that are directed toward finding mutual agreement.[98]

Mitigation measures along with the additional conditions the Commission considers necessary to impose are discussed throughout this report. In particular, in **Chapters 7, 8, and 10**.

While not an exhaustive list, the actions, mitigations, and conditions that would be considered accommodations in this matter include, among others:

- Changes and refinements that Westcoast made to the Project design and scope based on input received during engagement activities, including:
    - not proceeding with a potential CS-2 to CS-2B pipeline loop, to address concerns with potential effects on caribou habitat and further environmental effects from a second crossing of the Pine River;
    - not proceeding with the electrification of CS-2B, which would have required a new 45-kilometre-long power line in the Southern Mountain Caribou Range;

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[95] As described in Chapter 10 (and otherwise set out in the Filing Manual), in considering a project's effects on the rights of Indigenous Peoples, the Commission considers mitigation measures, together with measures that would enhance or support the exercise or practice of Indigenous and Treaty rights in the project area (referred to as "enhancement measures").

[96] *Haida, supra* note 21 at paras 47, 49-50.

[97] *Ibid* at paras 48 to 50.

[98] *Kebaowek*, *supra* note 24 at para 130.

- splitting the initially planned CS-4A to CS-4B pipeline loop into two separate pipeline loops (upstream and downstream), to avoid effects on a trapline and a pipeline crossing of the Salmon River;
- not proceeding with a potential 12.5-kilometre-long pipeline loop option between CS-5 and CS-6A;
- deviating a portion of the CS-6B to CS-7 pipeline loop adjacent to the southwestern boundary of Green Lake, to increase the distance of the route from the lake;
- reducing the length of the CS-7 to CS-8A pipeline loop from 21 km to 4.1 km, to avoid Tunkwa Provincial Park;
- not proceeding with a potential 4.8-kilometre-long pipeline loop between CS-8A and CS-8B, to avoid a pipeline crossing of the Coldwater River;
- reducing the length of the CS-8B to CS-9 pipeline loop by 3.5 km, which avoids crossing the Fraser River and potential effects on the Fraser River ecosystem;
- reducing the length of the CS-9 to Huntingdon pipeline loop and proposing multiple re-routes in this area, to avoid known and potential cultural sites; and
- proposing an alternative, much shorter, route for the CS-8A power line, and removing the 6-kilometre-long power line that was to supply CS-8B with electricity, to avoid effects on environmental features and cultural sites of significance.

- Mitigation measures identified through Westcoast's engagement activities to avoid or reduce potential Project effects on the rights and interests of Indigenous Peoples, such as:
  - developing and executing a custom archaeology program;
  - developing a Cultural Walk-Through Program; and
  - developing a socio-economic effects management plan, including a community and gender safety plan.

- Benefit agreements entered into between Westcoast and individual Indigenous communities.
- Commission conditions to specifically address the rights and interests of Indigenous Peoples potentially affected by the Project, such as:
  - **Condition 16** (Support for Indigenous Peoples to review Westcoast's condition filings);
  - **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples); and
  - **Condition 19** (Socio-economic Effects Monitoring Plan).

- Modifications made by the Commission to the potential conditions based on input received directly from Indigenous intervenors or through the CCC's submissions, including:
  - **Condition 5** (Plan for notifying Indigenous Peoples of condition filings) and **Condition 23** (subsection 317(1) consents) were added;
  - **Conditions 6, 7, 8, 9, 10, 11, 12, 13, 15, 19, 21, 27, 28, 29, 38, 39, 41, 44, and 45** were strengthened to require Westcoast to describe how issues and concerns identified through engagement were addressed and how the underlying filing (the subject of the condition) has been changed to reflect what was heard through engagement;
  - **Condition 38** (Socio-economic Effects Monitoring Final Report) was strengthened to require Westcoast to work collaboratively with Indigenous Peoples, to report on their

perspectives on the overall effectiveness of the socio-economic effects monitoring plan; and

- In response to concerns raised, a number of conditions were revised to clarify what would be required to satisfy the condition (e.g., **Condition 6** [Caribou Habitat Restoration Plan] was revised to require Westcoast to provide additional explanations for how objectives would be met, supporting evidence for calculations, and anticipated timelines for restoration measures).

- The Commission's decision to partially deny Westcoast's request for an exemption from the CER Act's PPBoR requirements. This decision was made in response to concerns raised by Indigenous Peoples about the CS-8A power line's potential effects on their rights and the request for deeper engagement with Westcoast on its routing.

The Commission heard from Lower Nicola Indian Band that Westcoast's decision to reduce the length of the CS-8A power line cannot be considered a form of accommodation because the revised route, while alleviating some of their concerns, would still have an effect on their rights. While this reduction in the length did not eliminate the concerns raised by Lower Nicola Indian Band, the Commission is satisfied that this design change represented efforts to address the concerns raised (including regarding effects on rights) and to harmonize conflicting interests. As such, this change can be considered as a form of accommodation to be considered together with all mitigation measures to address the potential effects of the Project on the rights of Indigenous Peoples.

Ultimately, the Commission finds that the mitigation measures identified, including the conditions that the Commission considers necessary to impose to accommodate the rights of Indigenous Peoples, are adequate to address the potential effects of the Project on their rights revealed through the consultation process. The mitigation measures identified revealed good faith efforts to understand each other's interests and concerns, take steps to respond to them, and reach an outcome that was directed toward mutual agreement.

12 Conclusion on public convenience and necessity

Having considered the entirety of the GH-001-2024 hearing record and taken into account all considerations that appear to be relevant and directly related to the Project, the Commission finds that the Project is required by the present and future public convenience and necessity. The Commission therefore recommends that the Governor in Council approve the Project and direct the Commission to issue a certificate under section 186 of the CER Act, authorizing the Project's construction and operations. In **Appendix 1**, the Commission sets out the conditions it considers necessary or in the public interest to which the certificate would be subject if the Governor in Council were to direct that a certificate be issued.

In arriving at this conclusion, the Commission finds that the Project's potential benefits outweigh its potential burdens and that the Crown's duty to consult and accommodate Indigenous Peoples for the purpose of its recommendation and decisions on the Project has been met.

The various factors the Commission considered in its assessment of the Project must be viewed together in their appropriate context. In the Commission's view, the benefits of the Project are considerable and would accrue throughout the life of the Project. Among other things, the Project would benefit the Canadian economy, Indigenous Peoples, various levels of government, and Canadian oil and gas producers and other stakeholders by:

- responding to a need for additional capacity, driven primarily by the projected shortfall in natural gas when the Woodfibre LNG export facility commences operations;
- increasing market access for producers;
- contributing to economic growth, including an expected contribution of up to $3.385 billion to Canada's gross domestic product;
- enhancing infrastructure resilience;
- increasing employment, training, and procurement opportunities for Indigenous Peoples and Indigenous-owned businesses, as well as non-Indigenous individuals, businesses, and communities;
- providing tax revenue for governments; and
- adding commercial benefits to local, regional, provincial, and national economies.

However, the Commission also recognizes that the opportunities and benefits of the Project come with burdens, including potential adverse effects on:

- the environment, including on vegetation and wetlands, fish and fish habitat, and wildlife and wildlife habitat;
- infrastructure and services;
- human health and socio-cultural well-being, including for Indigenous Peoples;
- human occupancy and resource use;
- heritage resources;
- the ability of Indigenous Peoples to exercise their rights; and
- on Indigenous Peoples' land and resource use.

The Commission weighed these burdens and benefits and considered how the burdens identified could be mitigated through additional measures such as Commission conditions, taking into account all evidence and Indigenous knowledge submitted on direct effects, mitigations, and cumulative effects. The Commission's suite of conditions reflects comments received through the hearing process from participants, including from Indigenous Peoples and the CCC. The conditions set out in **Appendix 1**, many of which the Commission considers necessary to mitigate Project effects on the rights and interests of Indigenous Peoples, were a critical component in the Commission's balancing of interests in relation to the Project.

The Commission understands that sometimes parties disagree on the evidence and facts. Other times, parties agree on the facts but differ in their views and opinions on the conclusions that ought to be reached. In carrying out its hearing process, the Commission listened carefully and took these diverse views into account. The Commission remains cognizant that the public interest is both regionally and nationally based and is therefore understood to be inclusive of all Canadians, including Indigenous Peoples. It is through this lens that the Commission undertook its balancing of the relative benefits and burdens of the Project and was able to conclude that the Project is in the Canadian public interest.

Having undertaken a thorough assessment of the Project, the Commission concludes that the Project would serve the public interest. With Westcoast's implementation of its mitigation measures and commitments, including its continued engagement and collaboration with Indigenous Peoples and others affected by the Project, as well as the Commission's conditions, the Project's benefits outweigh its burdens.

The Commission's recommendation, determinations, and decisions, as well as the complete reasons for them, are contained in the principal opinion (**Chapters 1 to 12**), its supporting appendices, and the response of Commissioner Penney (**Chapter 15**). The reasons of the majority may also be supplemented by the concurring opinion of Commissioner Luciuk (**Chapter 14**) and areas of concurrence by Commissioner Grimoldby (**Chapter 13**), as described in those chapters, where they align with the principal opinion and the response of Commissioner Penney.

13 Opinion of Commissioner Grimoldby

The scope of these reasons is limited to matters on which I reach different conclusions than the principal opinion: the duty to consult and accommodate, and the specific issues identified in each section below. These reasons do not undertake a separate assessment of the Project's effects on the rights of Indigenous Peoples. These reasons also do not reject the CER's assessment methodology, nor do they seek to present an alternative or substitute methodology.

There appears to be considerable overlap between these reasons and those in the principal opinion, with divergence principally on how contextual factors related to the lands at issue are considered and how to apply the *Haida* spectrum analysis. For Indigenous communities not specifically addressed in these reasons, I take no issue with the principal opinion's ultimate conclusions. I note only that I would have arrived at those conclusions through analysis of each community's participation levels and positioning on the *Haida* spectrum considering the totality of the evidence, which in most such cases would be at the lower end, yielding substantively similar outcomes for different reasons. This focused approach is standard practice for separate reasons and should not be construed as a deficiency in analysis.

As these reasons are focused on specific areas of divergence, I have not exhaustively catalogued every fact or issue where views may differ. Where these reasons reach different conclusions, they do so as an exercise of adjudicative responsibility, not as critique. I note that certain characterizations of these reasons elsewhere in this Report do not appear to fully, or in all cases accurately, reflect the analysis and conclusions set out herein.

13.1 Legal framework for the duty to consult and accommodate

I write separately to explain a different understanding of the legal framework governing the Crown's duty to consult and, where appropriate, accommodate than set out in **Chapter 2**. In my view, the characterization of the duty to consult in **Chapter 2** does not sufficiently account for the distinctions between reserve lands, Treaty 8 lands, and unceded lands over which Aboriginal title is asserted. The nature of the lands at issue in this case is a significant contextual factor informing the content of the duty and how it may have been discharged in each case. A proceeding that engages all three territorial categories simultaneously involves a nuanced consideration and application of the consultation spectrum. The starting point for my analysis is the Supreme Court of Canada's decision in *Haida*, which confirms that the duty to consult arises when the Crown has knowledge of the potential existence of Aboriginal rights or title and contemplates conduct that may adversely affect them. The Supreme Court confirmed in *Haida* that the content of the duty varies with the circumstances, though it is always grounded in the honour of the Crown and the objective of Reconciliation. *Haida* recognized two factors that guide the spectrum analysis: the strength of the claimed right and the seriousness of the potential impact.[99] Strong *prima facie* claims paired with significant impacts appear to indicate the Crown toward the deep end of the consultation spectrum is engaged, while weaker claims with minor impacts may involve more modest procedural obligations.[100] Moreover, good faith consultation may reveal a duty to accommodate, or to take steps

[99] *Supra* note 21 at para 39.
[100] *Ibid* at paras 43-45.

to avoid irreparable harm on Aboriginal rights or title pending a final resolution.[101] The *Haida* spectrum is not a rigid, universal standard. It demands attention to the particular context to determine what is required to maintain the honour of the Crown.

While *Haida* notes the strength of a right is one factor in assessing the degree of consultation owed, the Commission is not a court and does not conduct a strength of claim analysis, whether to decide the degree of consultation owed or if a right exists. Despite accepting rights as asserted, the Commission does assess the severity of potential impacts on those asserted rights when determining the extent of consultation needed. This evaluation involves consideration of, among other things, the evidence from proponents and communities on a project's effects, as well as the Filing Manual's guidance on evaluating project impacts. The strength of claim and severity of a project's impacts, however, are just some of the contextual features that now inform the *Haida* spectrum placement.

The Supreme Court of Canada has recognized the contextual aspect of the duty to consult since *Haida.* In *Mikisew Cree First Nation v Canada (Minister of Canadian Heritage)*, the Court noted that "[t]he determination of the content of the duty to consult will, as *Haida* suggests, be governed by the context."[102] The Court held that, where Treaty lands are at issue, the terms of the applicable Treaty is a contextual factor that shapes the Crown's obligations. The "history of dealings between the Crown and a particular First Nation" is another contextual factor.[103] A project's location on Treaty lands, as well as impacted nation's "history of dealings" with the Crown, are due consideration in characterizing the duty to consult.

Since *Mikisew,* courts have recognized other contextual factors. In particular, the UN Declaration now has been recognized as an interpretive lens for the Crown's constitutional obligations. The Supreme Court of Canada has held that the UN Declaration forms part of Canada's "domestic positive law" since the enactment of the UN Declaration Act.[104] Through the UN Declaration Act, Parliament has directed that federal laws must be interpreted consistently with the UN Declaration. The Supreme Court has also relied upon the UN Declaration as an interpretive lens.[105] The UN Declaration's role as an interpretive tool was recently confirmed by the BC Court of Appeal, who concluded that the UN Declaration "should be applied as a weighty source for the interpretation of Canadian law."[106] Drawing on these jurisprudential developments, the Federal Court in *Kebaowek,* concluded the UN Declaration was another contextual factor informing the duty to consult. Specifically, *Kebaowek* held that the concept of "free, prior and informed consent" expressed in the UN Declaration "requires an enhanced and more robust [consultation] process" that is "tailored to consider…Indigenous laws, knowledge, and practices" and "directed towards finding mutual agreement."[107]

I note, as well, that the principal opinion's agreement with Westcoast's characterization of free, prior and informed consent as "a process, not a right" does not appear to engage with *Kebaowek*'s direction that free, prior and informed consent requires consultation "directed towards finding mutual agreement,"[108] which speaks to the orientation and objective of the process rather than merely its

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[101] *Ibid* at para 50.
[102] 2005 SCC 69 at para 63 [***Mikisew***].
[103] *Ibid.*
[104] *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families*, 2024 SCC 5 at para 15.
[105] *Dickson v Vuntut Gwitchin First Nation,* 2024 SCC 10 at para 117.
[106] UN Declaration Act; Supreme Court's guidance; *Gitxaala, supra* note 15 at para 78.
[107] *Supra* note 24 at para 133.
[108] *Ibid*.

procedural form. The Federal Court's reasoning in *Kebaowek* emphasizes that free, prior and informed consent-aligned processes must be "tailored to consider...Indigenous laws, knowledge, and practices" and oriented toward achieving mutual agreement – substantive requirements that go beyond procedural compliance.

In my view, the statement that "FPIC is not a veto" is well understood, was reflected by the Federal Court in *Kebaowek*, and is also not the question before us. Contrasted with characterizations of, or re-statements about, what free, prior and informed consent is *not*, characterizations of what free, prior and informed consent *is* as reflected in applicable jurisprudence and relevant, contemporary applications tend to be helpful in informing related considerations before the Commission. These can assist in advancing the analysis of whether consultation processes demonstrate the substantive aspects articulated in *Kebaowek* and reflected in the UN Declaration. Considerations of whether consultation processes were robust, tailored to Indigenous perspectives, directed toward mutual agreement, and responsive to Indigenous laws, knowledge, and practices – the affirmative content of free, prior and informed consent as articulated in the jurisprudence – can be particularly helpful and insightful for the purposes of the Commission's determinations. The principal opinion's selective reliance on this well-understood concept as articulated by the Court in *Kebaowek* and Westcoast's restatement of this concept in its argument does not answer any question before the Commission for this Project and does not engage with how that well-understood concept fits and should be considered in light of the Court's complete set of reasons and findings in *Kebaowek* regarding substantive and practical aspects of free, prior and informed consent -aligned consultation processes.

Lastly, it bears underscoring that the consultation spectrum is not a novel concept, nor a recent development flowing from the UN Declaration's developing interpretive role. The notion that consultation obligations vary along a spectrum dates back to at least 2004 and the *Haida* case itself. The Court in *Haida* used the spectrum concept to explain that consultation varies with the "particular circumstances" and the "precise requirements [of the duty to consult] will vary with the circumstances."[109] Appellate courts have applied and affirmed the spectrum concept repeatedly, including in judicial reviews involving the National Energy Board (the CER's predecessor).[110] In *Bigstone,* for instance, the Federal Court of Appeal accepted the Crown's assessment that the high end of the *Haida* spectrum was owed, given the presence of Treaty rights and "moderate to high" impacts on those rights.[111] In argument, Westcoast also acknowledged the *Haida* spectrum applied in this case. However, Westcoast maintained that the Supreme Court of Canada's duty to consult case law did not distinguish between *asserted* rights, which it said were at issue here, whether those asserted rights were in respect of reserve, treaty, or unceded title lands. Westcoast, though, accepted the Supreme Court held in *Tsilhqot'in Nation v British Columbia*[112] that *proven* Aboriginal title does impact spectrum placement.

This brings me to the contextual features of the particular lands at issue here.

To begin, there are multiple Indigenous nations in these proceedings that claim impacts to asserted, unceded Aboriginal title lands. The majority of the route, over 100 km, is within territories where Aboriginal title has never been extinguished. Moreover, many of these Nations are actively

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[109] *Supra* note 21 at paras 43-44.
[110] *Gitxaala, supra* note 15; *Tsleil-Waututh, supra* note 37; *Bigstone Cree Nation v Nova Gas Transmission Ltd.,* 2018 FCA 89 at para 48 [***Bigstone***].
[111] *Bigstone, supra* note 110 at para 35.
[112] 2014 SCC 44 [***Tsilhqot'in***].

negotiating modern Treaty settlements as part of the BC Treaty Commission (**BCTC**) process. The federal Crown is a full party to those negotiations, not an observer. These negotiations contemplate land transfers, resource revenue-sharing, co-management, and recognition of governance authority. The Supreme Court of Canada has recognized that the Crown's participation in a modern Treaty negotiation process with a title-asserting Nation impacts the consultation obligations owed to the Nation.[113] Thus, in my view, the involvement here of asserted, unceded title lands, for which negotiations with the Crown are ongoing, is a factor which merits consideration.

In this context, the honour of the Crown does not permit the federal Crown to compartmentalize its conduct. It may be difficult for the Crown to acknowledge, through Treaty negotiations and as a participant in the BCTC process, that the Nations' claims may be material enough to justify a process being undertaken to consider nation-to-nation agreements involving land and governance, while taking or proceeding on a position in a regulatory proceeding that the same or similar claims may have a lesser effect or may be of lesser substantive importance or weight. For the purposes of the Commission's determinations in this matter, this would mean that the duty to consult for certain communities would be different and lesser than in the BCTC process, at the low or mid-range of the *Haida* spectrum, without evidentiary or legal foundation. The federal Crown "cannot cavalierly run roughshod over Aboriginal interests where claims affecting these interests are being seriously pursued," to echo *Haida* (para 27). It may be difficult to accept that the Crown may, without evidentiary or other foundation, in this context recognize a degree of consultation and accommodation that is not at least commensurate to the rights it acknowledges or which may be at issue in concurrent modern Treaty-making process it is involved in.

Tsilhqot'in reinforces why in some cases the assertion of title may shift the duty towards the middle or deeper ends of the *Haida* spectrum. In *Tsilhqot'in*, the Supreme Court of Canada confirmed that even prior to a formal declaration of title, the Crown owes a substantive duty to consult and, where appropriate, accommodate in a manner proportionate to the strength of the claim and the potential for adverse impacts. After title is proven, the Crown must obtain consent or justify infringements under a stringent test.[114] Although title has not yet been declared in the areas at issue here, the reasoning in *Tsilhqot'in* underscores the seriousness of the underlying land interest being asserted and reinforces why claims of this nature tend to favour consultation occurring at the middle to deepest ends of the spectrum.

The Treaty 8 Nations in these proceedings raise specific considerations as well. These considerations favour the deep and deepest ends of the consultation spectrum. As a starting point, impacts on Treaty rights favour the high end of the spectrum, those rights being relatively well-established for the purposes of these reasons. However, the conditions of the Treaty lands, particularly the presence of cumulative effects concerns and evidence supporting them can shift the spectrum to its highest ends.

Approximately 31 km of the route crosses Treaty 8 territory, running from the Willow Flats and Azouzetta areas south toward McLeod Lake and Summit Lake. These segments lie outside the Blueberry River Claim Area and the High Value 1 areas assessed in *Yahey.* In *Yahey,* the BC Supreme Court concluded that the cumulative effects of industrial development in the Blueberry River Claim Area had significantly diminished the Blueberry River First Nations' ability to exercise their Treaty rights under Treaty 8 to maintain their traditional way of life (para 3). As a result, the

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[113] *Taku River Tlingit First Nation v British Columbia (Project Assessment Director),* 2004 SCC 74 at para 32 [***Taku River***].

[114] *Supra* note 112 at para 76.

Court found there were no longer sufficient and appropriate lands in Blueberry River First Nations' territory to allow for the meaningful exercise of their Treaty rights. While the Treaty 8 lands involved here are outside the Blueberry River Claim Area, *Yahey* nevertheless provides context when characterizing the degree of consultation and accommodation required here for the Treaty 8 Nations.

In particular, *Yahey* makes clear the importance of carefully assessing cumulative impacts within the individual traditional territories of the Treaty 8 Nations. To begin with the Court concluded that "while the Treaty covers a large area, the rights are exercised in the areas over which a First Nation traditionally hunted, fished and trapped."[115] Treaty 8 Nations' rights, in other words, are exercised in specific areas, both distinct and overlapping. Additionally, *Yahey's* assessment of cumulative effects was grounded in detailed evidence regarding conditions in the Blueberry River Claim Area. The Court consistently referred to "Blueberry's territory" and "Blueberry's traditional territories" rather than making broader declarations. Treaty 8 is not monolithic and consideration must be given to community-specific evidence establishing comparable conditions.

Additionally, *Yahey* underscores that multiple smaller impacts in Treaty 8 may accumulate into a significant diminishment of a First Nation's ability to exercise Treaty rights. As a result, where the hearing record shows that a Treaty 8 Nation's traditional territory is already affected by prior development, such that the ability to exercise rights may be significantly diminished, the incremental contribution from new development may attract a proportionately high degree of consultation, particularly where questions arise whether the remaining lands will continue to support the meaningful exercise of Treaty 8 rights. In such circumstances, consultation should trend toward the *Haida* spectrum's highest ends.

As well, the meaningful exercise standard discussed in *Yahey* clarifies that the relevant question is not whether Indigenous Peoples can exercise their rights at all, but whether they can do so in a meaningful way as part of their way of life. The Crown's power to authorize development is not infinite; it cannot permit so much cumulative disturbance that meaningful exercise of rights is no longer possible.

This assessment is territory-specific and qualitative, considering not only whether rights can technically be exercised but whether the cultural context, preferred locations, and intergenerational transmission essential to meaningful exercise remain intact. The meaningful exercise standard requires that rights remain exercisable within this complete context – not merely in whatever diminished form cumulative effects may leave available.

Finally, the route crosses three reserve lands. Reserve lands attract consultation at the highest ends of the *Haida* spectrum. Reserve lands are federal lands held in trust by the Crown under section 91(24) of the *Constitution Act, 1867.* Section 35 of the *Constitution Act, 1982* extends further protection, so too do statutory provisions, such as section 317 of the CER Act. Their constitutional status, and the federal fiduciary obligations owed towards them, imports the highest ends of the *Haida* spectrum.

Taken together, these contextual elements demonstrate a more nuanced application of the *Haida* spectrum than is reflected in **Chapter 2**.

At the high end of the spectrum, meaningful consultation tends to involve early and proactive engagement, comprehensive disclosure of information, integration of Indigenous knowledge systems

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[115] *Supra* note 17 at para 24.

such as traditional land use studies, written responses to Indigenous concerns, capacity support, and evidence that Indigenous communities had a genuine opportunity to influence project design. In addition to these elements, at the highest end, consultation moves in orientation to consent-seeking approaches and may involve co-management or partnership arrangements, enhanced accommodation measures, and respect for the possibility that consent may not be given. These features reflect both deep consultation and the guidance emerging from the case law interpreting the UN Declaration that free, prior and informed consent-aligned processes must be robust, tailored to the Indigenous perspective, and directed toward mutual agreement. Additionally, a finding that the duty to consult has been satisfied is more likely where the proposed mitigation and accommodation is proportional to the severity of impacts and responsive to the range of potential effects on section 35 rights, including cultural transmission, harvesting, spiritual and ceremonial practices, governance, socio-economic conditions, and cumulative impacts. Similarly, mitigation and accommodation that extends across project phases, and that is capable of addressing direct, residual, and cumulative effects, may be more likely to support a finding that the duty to consult has been met.

I would add, lastly, that it may be difficult to find the duty to consult is met where essential information remains outstanding, such as where key plans are incomplete, mitigation has not been specified in sufficient detail, Indigenous communities have not had the opportunity to review or comment on proposed approaches as well as provide early input, or input at all, into a Project and proposed mitigations, or where substantive consultation and provision of outstanding information is deferred to post-approval planning. These concerns are heightened where the applicable spectrum position is at the high or highest end.

13.2 Treaty 8 Nations

Seven Treaty 8 Nations[116] presented evidence of environmental degradation stemming from cumulative effects in their territories. Each of the Treaty 8 Nations participating in this proceeding appears to attract consultation at least at the high end of the *Haida* consultation spectrum, given that Treaty rights – which are collective in nature though exercised by individual members[117] – tend to favour high end positioning at baseline. In these unique circumstances, where cumulative effects evidence indicates compromised territorial conditions, positioning on the spectrum may move towards the highest end, where deep consultation can shift further in orientation towards consent seeking.

In assessing the adequacy of consultation and accommodation for Treaty 8 Nations, I have taken into consideration the evidence on the hearing record, the court's finding in *Yahey*, and the Commission's prior decisions in the NEBC Connector Project (2022) and Taylor to Gordondale (2025).[118] While *Yahey* addressed conditions specific to Blueberry River First Nations' territory within the Blueberry River Claim Area, the Court's analytical framework, including its recognition that cumulative industrial development can reach a point where it significantly diminishes the meaningful

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[116] Blueberry River First Nations, Prophet River First Nation, Saulteau First Nations, Kelly Lake Cree Nation, Kelly Lake First Nation Society, Driftpile Cree Nation, and Sucker Creek First Nation.

[117] See *Behn v Moulton Contracting Ltd*, 2013 SCC 26. In *Behn,* the Supreme Court of Canada confirmed that Aboriginal and Treaty rights are collective in nature and are held by the First Nation as a collective (at paras 29 - 30). Notwithstanding these features, the Supreme Court recognized a dual aspect to these rights, i.e., they may at times be assigned to or exercised by individual members and entitlements may be created in favour of individuals (despite their collective character) (at para 35). The duty to consult, however, is owed to the collective rights holder (i.e., the Aboriginal group that holds the rights, not individual members) (at paras 29 - 30).

[118] *Yahey, supra* note 17; *NEBC Connector, supra* note 23; *Taylor to Gordondale, supra* note 33.

exercise of Treaty 8 rights, may inform the assessment of cumulative effects in Treaty 8 territory more broadly. The *Yahey* decision forms part of the contextual background for assessing impacts to rights in this case, though its specific findings about territorial conditions do not automatically extend to other Treaty 8 territories; application outside the Blueberry River Claim Area requires community-specific evidence establishing comparable conditions.

The highest end of the spectrum includes both procedural opportunities to participate and degrees of substantive expectations. As discussed above, the expectations for deep consultation at this level include:

- early and proactive engagement;
- sufficient time for communities to meaningfully assess project information;
- the provision of comprehensive technical materials (covering, particularly, details on monitoring or mitigation);
- the integration of Indigenous knowledge and land use information;
- good-faith responses to concerns;
- genuine opportunity for communities to influence project design;
- community-informed mitigation and, if necessary, accommodation; and,
- a partnership-focused approach.

Evidence from the Treaty 8 Nations detailed significant environmental transformation from industrial development, including wildlife loss in key harvesting areas, widespread contamination, water insecurity, and the substantial erosion of meaningful land-based practices. For Blueberry River First Nations, these conditions are not only asserted but were judicially recognized in *Yahey*, where the BC Supreme Court found that cumulative industrial disturbance had reached the "tipping point" and had significantly diminished the Nation's ability to meaningfully exercise Treaty 8 rights.

Indeed, Westcoast's own evidence acknowledges that the Project will contribute to "adverse residual cumulative effects" in Treaty 8, which it "predicted to have high significance" on the exercise of Indigenous and Treaty rights in Treaty 8 territory.[119] Westcoast's acknowledgement appears to apply across Treaty 8 territory and therefore, to each Treaty 8 Nation participating in these proceedings.

These admitted conditions underscore that consultation and accommodation at the high or moving towards the highest end of the *Haida* spectrum is indicated for Treaty 8 Nations in this case, based on the potentially significant impacts or contributions thereto that may result from new industrial developments contributing to the remaining, diminished baseline that must enable now and continue to enable the practice and exercise of rights within Treaty 8 territories. The Commission must consider whether the consultation and accommodation of the Treaty 8 Nations is proportionate to the Project's impact. Where a proponent's evidence recognizes[120] that project effects contribute

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[119] Westcoast Energy Limited Partnership, *Reply evidence*, Filing C35520-2 (7 July 2025) at para 53.

[120] Nothing in my reasons should be taken as discouraging proponents from presenting evidence that acknowledges potential impacts on Indigenous Peoples. Where the evidentiary record supports such recognition, it is both appropriate and necessary to articulate it clearly. However, corresponding mitigation or accommodation measures must be commensurate with the nature and extent of the impacts recognized.

materially and meaningfully to already significant cumulative disturbances, the duty to consult and accommodate tends to attract a corresponding depth and response.

The table below summarizes the *Haida* spectrum positioning indicated in this case. Westcoast's admission that cumulative effects are of "high significance" becomes part of the positioning analysis, elevating the starting point for all affected Treaty 8 Nations.

Rights category	Impact severity	Spectrum position
Treaty 8 areas with high cumulative effects	High	High, and may move towards Highest end in some cases
Treaty 8 areas with high cumulative effects	Medium	High end
Treaty 8 areas with high cumulative effects	Low/Negligible	Medium to High end

Using the spectrum above, I find that for four Treaty 8 Nations, there are some outstanding issues on the relevant indicators for high and highest-end consultation that suggest Westcoast should engage in further efforts at consultation and engagement. These additional efforts are needed to ensure the expectations for the duty to consult at the high to highest ends of the *Haida* spectrum are met.

Westcoast's subsequent errata later reclassifying its "high significance" finding to a "medium significance" finding appears to rely on expected or anticipated benefits from the 2023 BC agreements and a future regional cumulative effects regime that does not yet exist (as I detail in **Section 13.7.7**) as the rationale for the change. Notably, both the 2023 BC agreements and the prospect of a regional cumulative effects regime existed at the time Westcoast prepared its original ESA; neither represents a changed circumstance justifying reclassification. Further, neither the existence nor the adequacy of such measures can be presumed for purposes of assessing present consultation obligations relative to this Project. As such, I give low weight to the errata's rationale for the material significance reclassification as well as to its resulting lowered significance determination.

13.2.1 Blueberry River First Nations

Blueberry River First Nations is a Dane-zaa Nation and a Treaty 8 signatory whose traditional territory lies within northeastern BC. Their territory has been the subject of extensive cumulative-effects litigation culminating in *Yahey*, where the BC Supreme Court determined that cumulative industrial disturbance had reached the "tipping point" and had "significantly diminished" Blueberry River First Nations' ability to meaningfully exercise Treaty 8 rights within a region of their territory termed as the Blueberry River Claim Area. Blueberry River First Nations is the only Treaty 8 Nation in this proceeding with legally established findings of compromised territorial conditions. Considering Blueberry River First Nations' Treaty 8 status and the degree of cumulative disturbance judicially recognized within their territory, Blueberry River First Nations attracts consultation at the high end of the *Haida* spectrum, rising towards the highest end where consultation shifts in orientation towards consent-seeking.

Blueberry River First Nations participated in this proceeding through an eight-page letter of comment filed 13 May 2025. Blueberry River First Nations identifies the Project as a project that, though routed 60-120 km from the Blueberry River Claim Area, is closely linked to upstream gas production in their territory and therefore, a serious driver of further cumulative effects in the region. This

connection is central to their concerns and is supported, in part, by Westcoast's own Wood Mackenzie analysis. The areas where Blueberry River First Nations' position on the adequacy of consultation appears to depart significantly from Westcoast's concern the Project's linkage to upstream development, consideration of the *Yahey* decision, as well as the degree and severity of the Project's potential impacts, including enabling impacts, on their territory.

Westcoast's Wood Mackenzie report, filed as expert economic analysis, identifies 'the connectivity of existing and planned pipeline systems' as 'an additional factor driving production growth in British Columbia' and forecasts the Project will be 'highly utilized' as 'a vital conduit' to demand markets.[121] This acknowledgment appears to validate the potential causal mechanism that Blueberry River First Nations identifies: pipeline infrastructure does not merely respond to upstream development but may shape when, where, and how that development occurs. The evidence on this hearing record projects BC natural gas production doubling by 2040, with numerous other LNG[122] and natural gas infrastructure projects in development at federal and provincial levels contributing to this growth trajectory. At the same time, Wood Mackenzie's projections that drilling efficiencies will offset impacts from this likely production growth remain projections only, and there appear to be significant uncertainties regarding the BC provincial agreements with Treaty 8 Nations and how they have or will address the contemplated impacts within their retrospective temporal scope and purposes. The principal opinion does not appear to provide reasons addressing these uncertainties.

No authority or evidence appears to have been filed on the record indicating that pipeline infrastructure is merely "responsive to" rather than influential of upstream development patterns. Assertions in the principal opinion about what producers would "typically" do in hypothetical circumstances do not appear to be grounded in evidence on this record. The evidence that was filed, from Westcoast's expert, identifies pipeline connectivity as a factor driving production growth rather than merely responding to it.

Despite the acknowledgment, Westcoast argues in its reply evidence and subsequent filings that upstream development is outside the scope of the assessment and consultation process for the Project. Moreover, Westcoast's ESA Section 18 categorizes Project-specific and cumulative impacts on Indigenous rights as "Low to Medium." This characterization does not appear to account for the judicially recognized diminished baseline conditions in Blueberry River First Nations territory. In *Yahey*, the Court found that Blueberry River First Nations' territory had reached the "tipping point," with 85 per cent of lands within 250 m of industrial disturbance – conditions the Court found constituted ongoing infringement of Treaty 8 rights.

Blueberry River First Nations' evidence highlights a fundamental contradiction: Westcoast's own expert acknowledges a potential infrastructure-production linkage, yet Westcoast did not generally consider, factor in, or incorporate potential upstream development impacts that the Project is expected to induce relative to Blueberry River First Nations' concerns and proposed mitigations. Blueberry River First Nations states that Westcoast did not meaningfully align its consultation approach with the legal findings in *Yahey*. Blueberry River First Nations' letter of comment underscores that the Blueberry River Claim Area is already at (or beyond) the "tipping point," that

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[121] Westcoast Energy Inc., Response to CER IR No. 2.2c), Filing C34446-3 (30 April 2025) at 4 and 8 [**Response to CER IR 2.2**].

[122] Consistent with these projections, the Commission recently approved, for instance, an amended export licence for the Cedar LNG facility with a 40-year term, Filing C37621 (9 December 2025).

85 per cent of the Nation's territory lies within 250 m of industrial disturbance.[123] Blueberry River First Nations raises the Blueberry River Implementation Agreement, which was entered into with the Province of BC in 2023 following *Yahey* and aimed at mitigating and managing cumulative effects in the Blueberry River Claim Area. Blueberry River First Nations noted that nothing in the hearing record addresses the Project's interaction with disturbance caps in the Blueberry River Claim Area. Blueberry River First Nations' letter of comment states that the restoration fund established under the Blueberry River Implementation Agreement was designed to address disturbances that existed at the time of *Yahey* – not to offset new impacts from projects approved after the 2021 decision. Blueberry River First Nations also notes the Project must adhere to the principle of individual project accountability,[124] whereby individual projects must each be accountable for their impacts (being, in this case, a driver of upstream development). Blueberry River First Nations, finally, disputes Westcoast's characterization of the severity impact, pointing to the *Yahey* findings as demonstrating existing conditions of high severity impacts to rights.

The principal opinion concludes that Blueberry River First Nations' concerns regarding upstream development will be appropriately regulated by BC under the Blueberry River Implementation Agreement framework. The principal opinion does not provide reasons addressing how reliance on uncertain and future provincial processes and measures in any measure discharges the federal Crown's duty to consult and accommodate for this Project. Treaty 8 is a federal treaty, yet the principal opinion does not explain how the federal Crown's constitutional duty may be delegated to provincial regulation, particularly where the federal project may be likely to enable upstream development not within federal jurisdiction which may then bring to bear related potential cumulative effects concerns. Moreover, the Blueberry River Implementation Agreement's framework – including disturbance caps and the restoration fund – applies specifically to the Blueberry River Claim Area. The principal opinion does not appear to contain reasons reconciling its reliance on the Blueberry River Claim Area-specific Implementation Agreement as mitigation for the Project with its distinction of the Project from *Yahey*-specific considerations on the basis that the Project's route lies outside the Blueberry River Claim Area, as do the lands from which its production will be sourced.

For Blueberry River First Nations, weaknesses appear on several key indicators of deep consultation. To begin, the hearing record does not appear to contain evidence of early, proactive engagement tailored to their unique legal and territorial context. The record contains no Nation-specific consultation plan, and no evidence that Blueberry River First Nations was approached early to discuss the upstream implications of the Project in light of the *Yahey* findings. Nor can it be said that Blueberry River First Nations was provided comprehensive information in response to their requests. The Nations' central question (where the additional 300 MMcf/d of gas would be produced) was not answered on the record.

Blueberry River First Nations does not appear to have had a genuine opportunity to influence the Project, perhaps because their primary concern (upstream development in the Blueberry River Claim Area) was not substantively addressed. Relatedly, their substantive concerns do not appear to have been addressed. The record shows no change to mitigation, monitoring, or assessment boundaries

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[123] I note that other First Nations, including participants in these proceedings, may also assert traditional territory in the Blueberry Claim Area. While this issue is not before the Commission in these proceedings, the Court in *Yahey* acknowledged that the traditional territory of other First Nations may overlap with the Blueberry Claim Area (*supra* note 17 at paras 606 – 607).

[124] Per *Yahey, supra* note 17 at para 1807.

as a result of Blueberry River First Nations' comments or any further consultation. Key concerns also remain unaddressed, including:

- the relationship between the Project and future drilling in the Blueberry River Claim Area;
- how the Project aligns with the disturbance caps and restoration pathways in the Blueberry River Implementation Agreement;
- Project-specific accountability for induced impacts, as affirmed in *Yahey*.

Taken together, these apparent deficits in consultation seem to underscore an absence of a partnership-focused engagement approach with Blueberry River First Nations. In contrast to the expectations for high to highest end consultation, Westcoast appears to have engaged with Blueberry River First Nations primarily in a limited and largely procedural manner. As is apparent through the review of the First Nations listed below Blueberry River First Nations is the only community that is the subject of judicial findings recognizing compromised territorial conditions, yet it appears to have received more limited engagement than other Treaty 8 Nations. Given all these considerations, I find that further efforts are needed from Westcoast to ensure the Crown meets its duty to consult with regard to Blueberry River First Nations.

I note that Blueberry River First Nations' letter of comment does not appear to request denial of the Project. Rather, Blueberry River First Nations' submissions appear to seek information and assessment regarding the upstream development the Project may induce. This may be relevant to the question of whether Blueberry River First Nations' concerns can be addressed through appropriate conditions.

13.2.2 Prophet River First Nation

Prophet River First Nation is a Treaty 8 signatory Nation of the Dane-zaa people, whose traditional territory lies in a region increasingly described by the community as a "refuge area" for other Treaty 8 Nations. This characterization arises from a transforming regional landscape marked by significant industrial development, environmental contamination, wildlife decline, and major hydrological and climatic changes. Prophet River First Nation's land users described these cumulative transformations in their oral Indigenous knowledge evidence, providing detailed observations about declines in moose populations, lake and river contamination, and the increasing reliance of neighbouring Nations on the Prophet River area as one of the last remaining relatively intact land bases in the region. Prophet River First Nation appears to attract consultation at the high end of the *Haida* spectrum considering its Treaty 8 status, its evidence of cumulative effects, and its role as a regional refuge area subject to increasing harvesting pressures.

Prophet River First Nation participated in the Project proceeding through multiple avenues: oral Indigenous knowledge evidence, comments on conditions jointly with Saulteau First Nation, and a final written argument. Together, these filings offer a comprehensive depiction of the cumulative-effects baseline in their territory and highlight numerous procedural and substantive concerns regarding Westcoast's consultation approach.

Several discrepancies emerge between Westcoast's characterization of its consultation efforts and Prophet River First Nation's account of the adequacy of those efforts. In particular, the extent of early engagement, the adequacy of time allotted for traditional land and resource use studies, and the severity of impacts from the Project on their territory.

Prophet River First Nation disputes the timeliness of its engagement on the Project. Neither Westcoast nor the CER initially listed Prophet River First Nation as a potentially affected community. Prophet River First Nation's final written argument indicates that they were only contacted after registering as an intervenor on 1 November 2024. This initial exclusion may have had cascading procedural consequences, potentially delaying the start of consultation and limiting the time available to prepare materials. This contrasts with Westcoast's filings, which frame engagement activities as though they were timely and complete.

Westcoast provided Prophet River First Nation with 37 days to conduct a comprehensive traditional land and resource use study. Prophet River First Nation, however, indicates it requires six months to a full year to prepare. Prophet River First Nation's evidence indicates that they did not have sufficient time, as a result, to gather meaningful Indigenous knowledge, map contemporary or historic land uses, or consult land users and Elders to capture their lived experiences of the severity of cumulative effects in their territory.

Westcoast and Prophet River First Nation also differ on the Project's severity of impacts. Westcoast's ESA Section 18 characterizes project impacts for Prophet River First Nation rights as "Low to Medium." In contrast, Prophet River First Nation provided evidence demonstrating high severity impacts across their land base. Prophet River First Nation shared evidence in its oral Indigenous knowledge session that its territory already exhibits:

- a reduction in moose sightings, from "70 - 80 moose" in a 20 - 30 km area to only "two moose" in an approximately 90 km round trip;
- contamination affecting river systems, including longstanding hydrocarbon leakage from the Alaska Highway site into surface waters above the Prophet River; and
- severe impacts from any project like the Project to animals, ecosystems and waters.

Additionally, the conclusions drawn from my application of the Filing Manual's methodology for assessing the severity of a project's impacts do not align with Westcoast's characterization of the Project's impacts. While the breadth of Prophet River First Nation's impact evidence is moderate, the depth of its impact evidence is high and includes quantified wildlife declines, specific evidence on environmental contamination, and evidence of glacier loss. This suggests consistency of impacts across multiple impact pathways. Notably, Westcoast's ESA ratings appear to diverge sharply from this body of evidence. This discrepancy undermines Westcoast's position that it had meaningfully considered Prophet River First Nation's evidence.

Moreover, several indicators of deep consultation at the high end of the *Haida* spectrum do not appear to have been met for Prophet River First Nation. Prophet River First Nation's exclusion from the initial list of affected communities may not be consistent with the requirement for early, proactive engagement. Nor does Prophet River First Nation appear to have been afforded sufficient time, having been given only 37 days to conduct a traditional land and resource use study, insufficient time for meaningful knowledge gathering, land-user interviews, or site visits.

While Prophet River First Nation provided oral Indigenous knowledge evidence, the record does not appear to show how this evidence was incorporated into Westcoast's assessment and mitigation decisions. It is difficult to conclude that Prophet River First Nation's concerns were all substantively addressed or that it had a genuine opportunity to influence the Project. Draft Condition 14, which would allow Westcoast to unilaterally decide post-GIC approval how concerns would be addressed, appears inconsistent in orientation with the collaborative approaches expected at the high end of the spectrum. Prophet River First Nation also raised concerns about notifications occurring *after* work

was already completed. This suggests that Westcoast's processes may not have been structured to support the integration of Prophet River First Nation's input. As a result of these concerns, the record suggests that Westcoast should engage in further efforts to ensure Prophet River First Nation receives consultation commensurate with the *Haida* spectrum's high end.

13.2.3 Saulteau First Nations

Saulteau First Nations is a Treaty 8 Nation composed of Dane-zaa and Cree peoples whose traditional territory lies in northeastern BC. Saulteau First Nations participated in this proceeding through oral Indigenous knowledge evidence and comments on conditions jointly with Prophet River First Nation. Their evidence reflects one of the most comprehensive environmental and rights-based analyses in the hearing record. Saulteau First Nations led detailed technical and Indigenous knowledge-based analyses related to industrial development in its territory and the Project. This evidence described widespread ecosystem alteration, significant wildlife decline, hydrological changes associated with drought, and intergenerational effects on cultural and harvesting practices. In light of all of these considerations, Saulteau First Nations attracts a high degree of consultation.

The primary discrepancy arising from the record between Westcoast and Saulteau First Nations's evidence concerns the severity of the Project's impacts. Westcoast's ESA Section 18 characterizes the Project's impact as "Low to Medium," whereas Saulteau First Nations's evidence contains some of the clearest indicators of cumulative impacts in Treaty 8. Elders described:

- significant industrial presence including seismic lines, roads, well sites, gas plants, mines, dams, hydroelectric corridors, and wind energy developments;
- an approximately 70 per cent moose population decline between 2000 and the mid-2010s; and,
- predator highway creation through linear disturbances, including pipeline rights-of-way.

These concerns are supported with reference to the CER's methodology for assessing the Project's impacts. Saulteau First Nations presents a moderate-to-high breadth of evidence in its oral Indigenous knowledge evidence and comments on conditions. The depth of impacts in evidence from the Project's contributions are high given the diminished baseline conditions, including over 10,000 well sites across Saulteau First Nations territory. Consistency in evidence across multiple impact pathways is also high, with multiple Elders raising similar concerns. Westcoast's ESA, however, assigns low-to-medium ratings that diverge from the substantive, quantified evidence presented by Saulteau First Nations, a discrepancy that tends to undermine Westcoast's assertions that it meaningfully considered Saulteau First Nations's evidence and input.

This discrepancy in characterizing the Project's impact may bear on another key indicium of deep, high-end consultation that does not appear to be present in Saulteau First Nations's case: substantively addressing the Nation's concerns. Saulteau First Nations proposed several structural accommodation measures in its comments on conditions. These measures were targeted, Project-specific, grounded in technical environmental analysis, and responsive to the cumulative-effects conditions Saulteau First Nations faces. Key proposals included:

- a land exchange concept analogous to Agricultural Land Reserve protection mechanisms;
- enhanced zones of influence of 1000 - 2000 m for assessing disturbance effects on species at risk;

- establishment of an Indigenous Advisory and Monitoring Committee with shared governance or decision-making authority;
- 10-year post-construction monitoring; and
- a 2:1 caribou habitat protection ratio.

Westcoast did not fully adopt or address all of these proposals, responding instead by proposing standard mitigation including monitoring, protection ratios (i.e., the offset ratio for habitat protection to disturbances), and 500 m zones of influence. The mixed record of substantive engagement with Indigenous-proposed mitigations aimed at enabling the continued exercise and practice of rights may reflect a narrower, unilateral approach to mitigation that does not appear to be aligned with the expectations for high-end consultation. In light of the above, it appears to me that further efforts from Westcoast are needed to ensure that the consultation provided to Saulteau First Nations is commensurate with the expectations at the high end of the *Haida* spectrum.

13.2.4 Kelly Lake First Nation Society

Kelly Lake First Nation Society is a Cree community with deep historical roots in the Kelly Lake region. Its membership traces descent from five founding families who lived in deliberate isolation to maintain a traditional, land-based way of life. Kelly Lake First Nation Society describes a near-total transformation of their territorial landscape over recent decades, including drastic declines in wildlife, water quality degradation, and disruptions to traditional harvesting areas. Kelly Lake First Nation Society participated in the Project proceeding through oral Indigenous knowledge evidence during the 8 April 2025 hearing in Kamloops, eight pages of written evidence, and comments on conditions. As a result, the evidentiary record for Kelly Lake First Nation Society is limited, and yet, the substance of their oral Indigenous knowledge evidence reflects significant cultural and environmental impacts relevant to consultation depth. Accordingly, Kelly Lake First Nation Society attracts consultation at the high end of the *Haida* spectrum based on their asserted rights and the level of cumulative effects they described.

Westcoast confirms Kelly Lake First Nation Society was engaged through its participation in the hearing process, beginning at least in early engagement in 2023. Westcoast's filings reference Kelly Lake First Nation Society only within broader, regional engagement summaries, but no community-specific responses, accommodation discussions, or targeted mitigation measures appear in the record. The primary deficiencies in Kelly Lake First Nation Society's consultation arise from this limited participation, which contrasts with the expectations for high-end consultation that contemplate a multi-stage, iterative process where Indigenous input and knowledge informs project design and mitigation. Kelly Lake First Nation Society's limited engagement does not appear to have allowed for this type of process or for Westcoast to meaningfully engage with or respond to their evidence. The limited engagement was also noted subsequent to the oral Indigenous knowledge evidence that was provided about ecological degradation as well as the loss of cultural continuity and food security.

The evidence reflects the project is likely to contribute to cumulative impacts but the record does not reflect mitigations or responses to the specific issues raised. In light of the above, it appears to me that further efforts from Westcoast are needed to ensure the duty to consult is adequately fulfilled.

13.2.5 Kelly Lake Cree Nation

Kelly Lake Cree Nation, also known as the As'in'î'wa'chî Ni'yawak, is a Cree Nation whose traditional territory spans approximately 42,000 km² across the BC–Alberta border. Chief Cliff Calliou provided evidence that Kelly Lake Cree Nation had been invited to sign Treaty 8 but was unable to make the journey at the time due to other contemporaneous happenings in the community, and that the community had lived off the land almost exclusively until the late 1960s. Kelly Lake Cree Nation participated extensively in the proceeding, including via oral Indigenous knowledge evidence, written evidence, comments on conditions, a Nation-led Cumulative Knowledge and Land Use Study, and final written argument. Their evidence describes a major transformation from a land-based, traditional way of life to a Nation facing significant difficulties continuing traditional practices due to widespread industrial disturbance in their territory. Kelly Lake Cree Nation attracts consultation at the high end of the *Haida* spectrum based on its territory within Treaty 8 and the evidence of cumulative effects affecting its territory.

The primary theme with Kelly Lake Cree Nation's consultation concerns the extent to which its concerns were substantively addressed. Kelly Lake Cree Nation provided 31 recommendations addressing caribou, wetlands, monitoring, cumulative effects methodology, notification timeframes, and Indigenous-led participation in environmental review. Westcoast filed responses to all 31 recommendations, but several of these do not appear to have been substantively addressed:

- Wetland Mitigation Plan: Kelly Lake Cree Nation requested a plan for review. Westcoast stated a plan "will be filed," but none had been filed as of the close of record.
- Caribou-specific measures: Kelly Lake Cree Nation sought species-specific protections. Westcoast referred to existing ESA sections and EPPs but did not adopt the requested measures.
- Continuous monitoring: Kelly Lake Cree Nation requested continuous monitoring for key indicators. Westcoast declined, characterizing such monitoring as unwarranted.
- 24-hour notifications: Kelly Lake Cree Nation requested specific emergency and construction notification timeframes. Westcoast declined to adopt specific timeframes.
- Cumulative effects methodology: Kelly Lake Cree Nation requested an Indigenous-developed methodology. Westcoast retained its existing ESA methodology.

Nevertheless, the record does show extensive and timely engagement between Kelly Lake Cree Nation and Westcoast, leading me to find that several other indicators of high-end consultation appear to have been met. Kelly Lake Cree Nation registered as an intervenor in August 2024 and participated across multiple stages, including oral Indigenous knowledge, written evidence, conditions comments, and final argument. Kelly Lake Cree Nation was able to bring forward a comprehensive evidentiary record, facilitating the integration of Indigenous knowledge through oral Indigenous knowledge and a Nation-led Cumulative Knowledge and Land Use Study. Westcoast provided a thorough response to many of its recommendations. As such, I am satisfied that, based on the scale of engagement, consultation with Kelly Lake Cree Nation has been commensurate with the expectations at the high end of the *Haida* spectrum.

13.2.6 Driftpile Cree Nation

Driftpile Cree Nation is a Treaty 8 signatory located in Alberta, with a significant off-reserve population residing in BC, with many members that exercise rights in areas that intersect with or lie near the Project route. Driftpile Cree Nation participated in the proceeding through an oral Indigenous knowledge session, comments on conditions jointly with Sucker Creek First Nation and Louis Bull Tribe, and a final written argument. Their evidence addresses contamination, wildlife decline, ecosystem changes, and harvesting conditions. Driftpile Cree Nation attracts consultation at the high end of the *Haida* spectrum based on its Treaty 8 status, evidence of cumulative territorial impacts, and based on the evidence that Driftpile Cree Nation members actively harvest and travel in the BC region of Treaty 8 where Project-related activities occur.

The primary discrepancy arising from Westcoast and Driftpile Cree Nation's respective evidence concerns the Project's potential impact, particularly on food supply. Elder Peter Okimaw described the need to travel long distances, such as north of Hinton to the Berland River, to harvest moose that are "not contaminated." He also reported the appearance of blue and green algae in waters where it had never historically appeared, including the west basin of Lesser Slave Lake. These concerns relate directly to the safety of country foods and the interconnection between water systems, contamination, and wildlife health.

The principal deficit apparent in Driftpile Cree Nation's consultation relates to the extent Driftpile Cree Nation's concerns were substantively addressed by Westcoast. Notwithstanding this, I find that further activities from Westcoast are not necessary in Driftpile Cree Nation's case to ensure the duty to consult is met. I reach this conclusion primarily because Driftpile Cree Nation had multiple, meaningful opportunities to participate and to share its concerns on the record. In the circumstances, the combination of Driftpile Cree Nation's procedural participation across multiple filings, and Westcoast's proposals for standard mitigation and monitoring measures, is sufficient for me to find that the Crown's duty to consult for Driftpile Cree Nation is met at this stage, particularly considering that ongoing engagement can further address Driftpile Cree Nation's concerns as the process continues.

13.2.7 Sucker Creek First Nation

Sucker Creek First Nation is a Treaty 8 signatory located in Alberta with a substantial off-reserve membership residing in BC. 115 to 150 Sucker Creek First Nation members live within BC, including 46 residing in Prince George. Many Sucker Creek First Nation members hunt, fish, gather, and travel across BC's Treaty 8 region, including in and near the Project area. As with Driftpile Cree Nation, Sucker Creek First Nation participated in the Project proceeding through an oral Indigenous knowledge session, jointly filed comments on conditions with Driftpile Cree Nation, and a final written argument. Their evidence focuses on fish contamination, animal health, water degradation, restrictions on access to traditional areas, and intergenerational impacts on Treaty 8 rights and land-based cultural practices. Sucker Creek First Nation attracts consultation at the high end of the *Haida* spectrum, consistent with their Treaty 8 rights and the cumulative-effects conditions in their evidence.

As with other Treaty 8 Nations, Sucker Creek First Nation's evidence establishes a greater potential for serious impacts from the Project than Westcoast acknowledges. Sucker Creek First Nation's oral Indigenous knowledge evidence documents several concerns arising from development in its traditional territory. For example, Sucker Creek First Nation members reported mercury warnings so severe that fish from certain watersheds were described as "not fit for children" and "not fit for pregnant women." Members described moose "smaller in size," frequently "carrying diseases and

cysts," and fish species "carrying cysts." Sucker Creek First Nation also identified metal gates blocking access to culturally important and historically used harvesting areas.

Westcoast's filings appear to address some but not all of Sucker Creek First Nation's concerns. Despite this, I find that further activities from Westcoast are not necessary in Sucker Creek First Nation's case to ensure the duty to consult is met. As with Driftpile Cree Nation, Sucker Creek First Nation had multiple, meaningful opportunities to participate and to place its concerns on the record. As with Driftpile Cree Nation, in the circumstances, the combination of Sucker Creek First Nation's procedural participation across multiple filings, and Westcoast's proposed standard mitigation and monitoring measures, is sufficient for me to find that the Crown's duty to consult for Sucker Creek First Nation is met at this stage. Similar to Driftpile Cree Nation, Westcoast's ongoing engagement can further address Sucker Creek First Nation's concerns on access, animal health, contamination and effects on its BC membership as the process continues.

13.2.8 Treaty 8 conclusion

The evidentiary record demonstrates that each of the seven Treaty 8 communities attracts consultation at the high to highest end of the *Haida* spectrum, arising from a combination of Treaty 8 status, the extensive evidence of cumulative-effects degradation and in the case of Blueberry River First Nations, judicial findings of territorial compromise. Westcoast's own acknowledgment that the Project will have "adverse residual cumulative effects…predicted to have high significance" in Treaty 8 territory is a critical factor to be considered in assessing any level of mitigation proposed and attracts consultation that is both rigorous and responsive to Indigenous knowledge, lived experience, and rights impacts. When the adequacy of consultation is assessed against these standards, several patterns emerge across the seven communities:

- lack of cumulative-effects integration in the ESA and mitigation planning;
- incomplete or insufficient Indigenous knowledge integration;
- failure to address Nation-specific concerns; and
- discrepancies between Westcoast's low-to-medium severity ratings, its high residual effects significance evidence, and the Nations' high-severity cumulative-effects evidence.

As a result of the above, I find that there are sufficient outstanding issues that do not appear to have been addressed commensurate with expectations for high to highest-end consultation for four Treaty 8 communities, such that consultation should continue to occur through the remaining process steps. In my view, this is needed to ensure the expectations for consultation towards the higher ends of the *Haida* spectrum are met. That said, the record is sufficient, for me to conclude that consultation at this stage has been adequate for Driftpile Cree Nation, Sucker Creek First Nation, and Kelly Lake Cree Nation.

As I explain further below, these observations regarding consultation do not necessarily preclude a recommendation in favour of the Project. Weaknesses on various consultation indicators may, in some circumstances, be addressed at remaining stages through measures including recommendations for further consultation and conditions as well as accommodation where appropriate. The conditions discussed below are designed to address the issues identified above, including co-development measures for outstanding plans, an offsets condition for Treaty 8 Project components, and preservation of the detailed route hearing process for route segments where further consultation may be indicated. These conditions provide a framework through which

consultation should continue, and in which mitigation or accommodation may be understood and agreed to before or within the detailed route hearing process.

13.3 Unceded title lands

Sixteen First Nations with asserted Aboriginal title to unceded lands advanced significant evidence in this proceeding regarding the Project's impacts on their territories. The Nations raised serious concerns about the Project's implications on multiple dimensions, from land and water to cultural continuity and governance. These concerns were supported with detailed and in some cases Indigenous-led assessments and studies, oral Indigenous knowledge, technical submissions, and legal arguments.

The depth of consultation these Nations attract varies across the medium to highest ends of the *Haida* spectrum. Five Nations tend to be situated at the highest end, where consultation can shift further in orientation toward consent-seeking, based on the degree of direct impacts, residual effects, and cumulative effects borne out in their evidence. The remaining 11 tend to occupy the high to medium end of the spectrum, reflecting significant but comparatively less evidence across the range of potential Project impacts. Nevertheless, across this range, the expectations for deep consultation are substantive.

The analysis of the Project's impacts for the unceded title lands references the distinctions between direct impacts, residual impacts and cumulative effects. The Filing Manual, as well as the Impact Assessment Agency of Canada's guidance, similarly distinguish between project impacts in this manner. Direct effects which are those arising from physical project activities and the immediate footprint before mitigation, and residual effects, which are those effects that remain after the mitigation hierarchy[125] has been applied. The Filing Manual also considers cumulative effects, which combine the project's contributions with historic activities, existing development, and reasonably foreseeable future projects. This classification scheme is a useful lens for examining the Project's impacts to unceded title lands and ultimately, assessing the sufficiency of proposed mitigation and accommodation measures. My analysis for the unceded title lands relies upon this lens as a factor in assessing the adequacy of consultation.

As I explain below, a consistent pattern emerges in the record for these communities. Westcoast's proposed standardized mitigations and commitments largely address direct, construction-period impacts across the record. However, some direct impacts may require further mitigation, particularly in the case of Lower Mainland communities where title is not asserted over large, contiguous territories and multiple Nations share governance.[126] Many residual effects also appear to remain unaddressed. This reflects a theme in Westcoast's approach to the mitigation and accommodation measures proposed by communities. Communities repeatedly sought measures based on their needs, which in many cases are not well captured in current standard, generic mitigation measures. These needs and requests were largely unaddressed. This evidence about the consultation that

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[125] Under the Filing Manual (Section A.2.6.2), the mitigation hierarchy requires proponents to first avoid effects through design and routing; where avoidance is not feasible, they must reduce impacts through measures, then compensate for unavoidable effects (e.g., habitat offsets), and monitor effectiveness with adaptive management. Residual effects are characterized only after applying this hierarchy and reflect what remains once avoidance, reduction, compensation, and monitoring commitments are implemented.

[126] For instance, the Nlaka'pamux Nations, the Nations comprising the STSA, and similar Indigenous bodies.

occurred in those aspects of the process here leads me to conclude that further efforts are required from Westcoast to ensure the duty to consult is met for these 16 Nations.

13.3.1 The *Haida* spectrum for unceded title lands

As noted, the Nations asserting title to unceded lands tend to attract consultation across the *Haida* spectrum.

As the evidence examined below demonstrates, the Part 1 communities are those whose evidence tends to most clearly demonstrate significant direct, residual, and cumulative effects. Their evidence tends to establish not merely Project-specific disruptions but potentially serious and enduring impacts to their rights and asserted title interests. That combination of high potential severity and well-articulated risk to rights, title, and related interests tends to attract consultation at the highest end of the *Haida* spectrum, where consent-seeking consultation and, where appropriate, mitigation and accommodation are expected to be at their most robust and responsive.

The evidence for the Part 2 and 3 communities reveals meaningful distinctions in scope and record of impacts. The Part 2 communities presented evidence in relation to concerns that span multiple dimensions (e.g., environmental, cultural, governance, and systems-level cumulative change), though the evidence tends to be less tightly mapped to the impact pathways of direct, residual, and cumulative effects than that of the Part 1 communities. Nonetheless, as the analysis below makes clear, the overall record for the Part 2 communities still suggests substantial risk to the meaningful exercise of rights, placing these communities at the high end of the *Haida* spectrum. The Part 3 communities, by contrast, tend to raise a more limited set of impact pathways or have a less comprehensive record. This tends to attract consultation at the medium end of the *Haida* spectrum (i.e., consultation that is meaningful and in good faith and yet adjusted to a comparatively narrower range of impacts, mitigations and, where indicated, accommodations).

13.3.2 Part 1: Nations tending to attract consultation at the highest end of the *Haida* spectrum

Part 1 community summaries

Cook's Ferry Indian Band

Cook's Ferry Indian Band is one of 15 Scw’exmx bands within the Nlaka'pamux Nation, with territory in south-central BC. Cook's Ferry Indian Band participated in the Project proceeding through written evidence, oral Indigenous knowledge and a final written argument.

Cook's Ferry Indian Band described a territory already experiencing extensive disturbance and resource stress, submitting that approximately 65.48 per cent of its lands have been disturbed (the highest in the record). Chief Christine Walkem's oral Indigenous knowledge evidence reinforced this baseline: "A third of our territory has been directly altered by human activity... it's not just land, it's human impact, it's spiritual impact, and it's ceremonial impact." Cook’s Ferry Indian Band also documented food security risks, including evidence that 80 per cent of hunters were unable to access sufficient elk meat. They proposed a suite of 59 recommendations and 18 conditions aimed at strengthening protection, monitoring, and Indigenous decision-making authority over environmental management.

Westcoast responded to Cook's Ferry Indian Band’s recommendations in part by referencing standard EPP measures. In aggregate, Westcoast’s filings maintain reliance on general,

proponent-led frameworks rather than reflecting Cook's Ferry Indian Band's specific, Band-proposed measures. Westcoast's ESA characterized residual effects on Cook's Ferry Indian Band's rights as medium significance. This assessment does not appear to have considered Cook's Ferry Indian Band's quantified disturbance baseline or its 59 mitigation recommendations.

Direct Project impacts to Cook's Ferry Indian Band's rights appear partially mitigated. Territorial disturbance from the Project footprint tends to be reduced through co-location with existing linear features, and standard EPP measures appear to address construction-phase effects on land, water, and vegetation.

Residual impacts to rights appear to remain in several respects. The 65.48 per cent territorial disturbance baseline, the highest quantified in the record, does not appear to have been factored into Westcoast's impact characterization or mitigation calibration. Similarly, the 80 per cent elk harvest failure rate does not appear to have been considered in the wildlife impact assessment. Herbicide management would avoid only certain high-value areas "where possible" rather than involving communities in these identifications. The requested 2:1 wetland offset ratio was not adopted.

In sum, Westcoast's proposed measures appear to mitigate certain direct, Project-specific impact pathways. However, the mitigation proposed does not consider or factor in the degraded baseline conditions, meaning incremental Project contributions may not be calibrated accordingly. Cook's Ferry Indian Band's final written argument states that they cannot consent to the Project without conditions calibrated to these concerns.

High Bar First Nation

High Bar First Nation (Llenllenéy'ten) is a Secwépemc Nation in the central interior of BC. High Bar First Nation participated in the Project proceeding through an Impact Assessment Report.

High Bar First Nation identified a concentration of culturally significant places and ongoing use activities in the Project area. The Project is in close proximity (approximately 68.69 m) to Teltsíṁten (Green Lake), which is a central gathering place for Secwépemc peoples meaning "the place from where news is spread." The Nation's Report recorded 93 types of activities occurring in the study area, including cultural and spiritual practices (49 activities), subsistence and harvesting (25 activities), habitation (13 activities), and transportation (6 activities). Community evidence further indicated that 27 of the 93 activities (nearly 30 per cent) have already been interrupted by prior development, with cultural and spiritual activities most affected (14 interrupted) followed by subsistence and harvesting activities (11 interrupted). Causes of interruption include private property restrictions, park regulations, habitat degradation, and wildlife population declines. This evidence may indicate a baseline of diminished cultural practice and increased sensitivity to additional disturbance.

High Bar First Nation also provided evidence of an estimated 7,000-year archaeological presence in the study area. Thirty Areas of Archaeological Potential directly intersecting the pipeline were also identified, along with 199 registered archaeological sites within the broader study area defined in the Impact Assessment Report by Llenllenéy'ten based on traditional knowledge of land use in the Teltsíṁten region.

Westcoast's filings addressed these concerns through its standard heritage mitigation framework in its ESA. The record does not indicate that Westcoast altered the route to increase the distance from

Teltsíṅten or commit to specific measures for the 30 identified Areas of Archaeological Potential. Westcoast's ESA (Table 18-4) characterized residual effects on High Bar First Nation's rights as low to medium significance and proposed standard mitigation measures.

Several impacts central to High Bar First Nation's rights as described in its evidence are not substantively addressed. The close proximity to Teltsíṅten remains, leaving the possibility of a permanent spiritual, visual and sensory effect on a sacred gathering place. For the 30 Areas of Archaeological Potential, Westcoast's reliance on general protocols results in medium residual effects by Westcoast's own assessment, yet with no specific commitments to avoid or provide enhanced protection for individual Areas of Archaeological Potential sites. With respect to the 27 activities already disrupted, Westcoast's approach can be viewed as additive to a degraded baseline. The proposed mitigation does not incorporate this degraded baseline into its impact characterization, meaning the incremental Project contribution to already-disrupted cultural practices may not be calibrated accordingly.

Overall, while Westcoast's standard heritage measures appear to address certain Project-specific construction pathways at a general level, the record shows a lack of rationale as to why High Bar First Nation's request for route-level avoidance of Teltsíṅten and site-specific protection of Areas of Archaeological Potential was not possible. High Bar First Nation's identified impact pathways therefore remain, at best, only partially addressed.

S'ólh Téméxw Stewardship Alliance (STSA)

STSA represents 17 Stó:lō Nations in the lower Fraser Valley of BC. STSA participated in the Project proceeding through an ICA framework filing. Work on the ICA is ongoing, with completion expected for January 2026.

STSA proposed a comprehensive stewardship and co-governance approach for the Project, rooted in its inherent jurisdiction and articles 18 and 27 of the UN Declaration. STSA's ICA articulates four interconnected dimensions of Stó:lō culture: Principles and Teachings (Sxwōxwiyám, Slha:éywelh), the Individual (Health/Shxwelí), the Collective (cultural well-being and identity), and Time/Intergenerational Relations (Tómiyeqw, responsibility across seven generations past and future). The ICA employs a Cultural Wheel methodology that maps connections between traditional activities and cultural values, with line-weight indicators documenting how external pressures have weakened these linkages over time. The ICA is proposed as a functional equivalent to Westcoast's ESA when evaluating effects on Indigenous rights and interests. STSA advanced 43 proposed conditions centered on compliance mechanisms, co-development, Indigenous monitoring, and emergency response.

Westcoast's filings did not incorporate STSA's governance proposals or its ICA framework into the Project. Westcoast stated it "cannot be bound by studies or assessments undertaken by Indigenous groups that are not filed on the evidentiary record," declined co-development of plans across multiple conditions as "impractical," and confirmed that Indigenous monitors would participate within a to-be-developed plan.

Several impact pathways central to STSA's evidence are only partially addressed by Westcoast's approach. STSA's co-regulatory role is declined and the ICA framework is not integrated into the Project. Cultural transmission is treated at a general level in Westcoast's Cultural Walk-Through Program. While the program is intended to address physical heritage site identification, it does not assess or map to all of the same aspects as the ICA identifies, including activity-value linkages and

weakened cultural connections as set out in STSA's Cultural Wheel methodology. The assessment approaches are not reconciled as to areas of alignment and divergence in the evidentiary record. Indigenous monitoring may not address STSA's requested standard for Indigenous oversight and authority. Intergenerational effects are assessed through Westcoast's standard ESA framework excusive of any reflection of STSA's Tómiyeqw (seven-generation) methodology.

Westcoast characterized residual effects on Indigenous rights as low-medium magnitude and reversible in ESA Table 18-6. STSA's Cultural Wheel methodology documents a different category of effects – the progressive weakening of connections between traditional activities and cultural values – that does not appear to be captured or considered within Westcoast's assessment. Westcoast proposed standard Table 18-4 mitigation measures for STSA.

STSA's final written argument maintains that the Commission cannot make a fully informed recommendation without the completed ICA (expected January 2026), and that without binding incorporation of ICA conditions, the exercise of Stó:lō governance authority over S'ólh Téméxw is "nullified." STSA requests, in order of preference: (1) a condition incorporating all ICA measures as enforceable through the certificate; (2) deferral until the completed ICA is filed; or (3) acknowledgment that consultation remains incomplete without ICA integration.

In sum, Westcoast's proposed measures appear likely to address certain direct, Project-specific impact pathways through standard mitigation and to some extent, the Cultural Walk-Through Program, however effects appear to remain. Additionally, the completed ICA is not at this time part of the evidence before the Commission.

Tsq'éscen' First Nation

Tsq'éscen' First Nation (Canim Lake Band) is a Secwépemc Nation in BC, known as the "Lakes People" of the Northern Shuswap. Tsq'éscen' First Nation participated in the Project proceeding through written evidence, an Interim Cultural Use Study, comments on conditions, and a final written argument.

Tsq'éscen' First Nation described an extensive interaction between the Project and its territory, noting that approximately 29 km of pipeline would cross Tsq'éscen' First Nation lands and intersect 25 fish-bearing waterbodies. The Nation identified the Green Lake Priority Area as particularly sensitive, documenting 16 archaeological sites within 2 km of the lake and 3 sites within 150 m of the Project footprint, and the lake's role as a hub for the traditional trail network connecting Tsq'éscen' territory.

Tsq'éscen' First Nation also provided cumulative disturbance estimates within the RSA of 50-62 per cent (approaching 70 per cent threshold identified in community evidence). The drivers of this disturbance were documented as approximately 40 per cent wildfires and 49 per cent forestry cut blocks. Tsq'éscen' First Nation characterized this as a "high cumulative-effects risk" baseline in their Interim Cultural Use Study.

As a full participant in Northern Secwepemc te Qelmucw Treaty negotiations, Tsq'éscen' First Nation asserted that its lands have 'never surrendered, ceded, or consented to development,' withheld consent to the Project. It invoked Article 32(2) of the UN Declaration to state that its free, prior, and informed consent is required before approval, which it withheld. On that basis, Tsq'éscen' First Nation recommended that the Commission dismiss the Application as not in the public interest. In the alternative, if a certificate is recommended, Tsq'éscen' First Nation requests conditions requiring

free, prior, and informed consent before construction commences, co-development of Project Plans with Tsq'éscen' before CER filing, a benefit agreement before construction, and all additional conditions in Tsq'éscen' First Nation's comments on conditions.

Westcoast's response to Tsq'éscen' First Nation's concerns addressed several areas. On Green Lake, Westcoast indicated the route would not be altered to increase separation or provide enhanced protection for identified archaeological sites. Westcoast offered general heritage mitigation measures, including cultural walk-throughs and a Discovery Contingency Plan, to manage site-specific risks during construction. On the UN Declaration, Westcoast's position is that the UN Declaration does not require consent for Project approval under current Canadian law and that the consultation process has been adequate under applicable regulatory frameworks. On cumulative effects, Westcoast applied its standard ESA methodology and did not appear to consider or reflect Tsq'éscen' First Nation's threshold-based analysis. Westcoast characterized residual effects on Tsq'éscen' First Nation's rights as low-medium magnitude and reversible (ESA Table 18-6) and proposed standard mitigation measures (ESA Table 18-4).

Xatśūll First Nation

Xatśūll First Nation (Soda Creek) is a Secwépemc Nation in BC, the northernmost community of the Secwépemc people with a traditional territory of approximately 180,000 km². Xatśūll First Nation participated in the Project proceeding through a Cultural Knowledge, Land Use, and Cumulative Effects study, comments on conditions, and a final written argument.

Xatśūll First Nation's Cultural Knowledge, Land Use, and Cumulative Effects study documented extensive traditional land use across multiple categories: 209 cultural knowledge and land use sites, including 40 hunting locations, 29 fishing areas, and 41 plant-gathering areas. The study also documented archaeological evidence spanning more than 4,000 years. The study employed an Indigenous methodology centered on Secwépemc worldviews, establishing culturally relevant baselines and thresholds of usability for traditional practices.

Xatśūll First Nation described a degraded ecological baseline throughout its territory. Three community-defined thresholds are in evidence as already surpassed: traditional water sources are no longer safe to drink; fish harvesting at Quesnel Lake is no longer reliable; and peaceful enjoyment of spiritual sites has been compromised. The Cultural Knowledge, Land Use, and Cumulative Effects study links these threshold exceedances to a history of cumulative environmental stress, including the Mount Polley Mine spill, contamination from pulp mills, Fraser River salmon collapse, declining moose and mule deer populations, invasive species displacing native vegetation, and the near-extinction of culturally important brown trout.

Xatśūll First Nation recommended against issuing a certificate and characterized Westcoast's approach as a "plan to make a plan," which is insufficient under the standards articulated in *Haida* and *Tsleil-Waututh*. Xatśūll First Nation's final written argument emphasized that accommodation must be responsive at the time of approval, and that early-stage, ill-defined initiatives cannot satisfy the Crown's constitutional obligations.

Westcoast applied its standard ESA methodology to assess effects on Xatśūll First Nation's rights and interests, which did not consider or reflect the Cultural Knowledge, Land Use, and Cumulative Effects study's findings regarding surpassed thresholds or its Indigenous-led cumulative effects framework. Westcoast proposed standard mitigation measures and the record does not indicate measures beyond Project-specific mitigation responsive to the threshold exceedances in Xatśūll

First Nation's evidence were proposed. Co-development of management plans was described as "impractical" for several proposed conditions.

As a result, several impact pathways raised by Xatśūll First Nation are not addressed or are only partially addressed. For spiritual and ceremonial impacts, Xatśūll First Nation provided evidence of an already-surpassed threshold affecting peaceful enjoyment of spiritual sites, whereas Westcoast characterizes these as "perceived effects" without measures calibrated to the evidence.

13.3.3 Thematic analysis: trends informing the duty to consult analysis for Part 1 communities

Having reviewed the community-specific evidence, it is possible to identify several trends in the Project's unaddressed impacts on the Part 1 communities as well as Westcoast's approach to mitigation and accommodation. These trends, as I explain, lead me to conclude that Westcoast needs to engage in further efforts to ensure the duty to consult is met for the Part 1 communities. I begin with the themes in Westcoast's approach to mitigation and accommodation.

Westcoast's responses generally declined mitigation and accommodation measures that would afford the Part 1 Nations responsibility or authority. Requests for shared responsibility and co-development are declined or characterized as impractical. Similarly, proposals for offsets to address impacts to Indigenous rights are rejected on the basis that the Filing Manual "does not indicate that offsets are required." Indigenous-based cumulative baselines or threshold-based assessments are not reflected in the Project. In several instances, communities asked for concrete, enforceable measures (such as fixed riparian setbacks, real-time flow monitoring prior to diversions, and a 2:1 wetland offset ratio). However, Westcoast's responses either deferred specifics to future plans, committed to avoid an impact with caveats or declined the request outright. Route modifications to increase the right-of-way's distance from sacred sites were also declined in some instances. This evidence appears to illustrate a consistent pattern of limiting mitigation or accommodation to predominantly minimal standards, seeking to use a mitigation across several layers of impacts with no legal authority for this proposition, and lack of or incomplete reflection of Indigenous knowledge and methodologies into Project aspects.

At the same time, Westcoast's mitigation approach, including co-location with existing linear disturbances and its Cultural Walk-Through Program, does appear likely to substantially address many categories of direct impacts. Standard EPP measures appear likely to address soil, water, vegetation, fish, wildlife, and air impacts and provide general environmental protection. Westcoast commits to maintaining access to various areas during construction through notifications and access protocols. Taken together, these steps represent the core of Westcoast's "project-specific" mitigation toolbox and do appear likely to reduce or avoid some immediate, physical construction impacts.

However, it is clear the misalignment between the Part 1 communities and Westcoast on mitigation and accommodation leaves some direct impacts unaddressed. Communities repeatedly sought enforceable default timelines for notifications, species-specific mitigation for cultural keystone species, and seasonal restrictions tied to ceremonial or harvesting periods. However, Westcoast declined to commit to default timelines or species-specific measures and did not agree to the proposed seasonal restrictions, while noting it may have flexibility "where practical." Requests to alter routing to increase distance from highly significant sites, such as Teltsíṅten (Green Lake), a central Secwépemc gathering place located 68.69 m from the proposed pipeline, were not accepted. Co-development of plans proposed by STSA and others was deemed impractical for multiple conditions. These positions leave notable community concerns unaddressed at the direct-impact

stage, such as High Bar First Nation's emphasis on permanent effects at Teltsíṅten and STSA's call to embed its ICA framework as enforceable conditions rather than as advisory input.

My concerns regarding unaddressed direct impacts are particularly acute for Part 1 Nations with smaller land bases in the Lower Mainland region, such as the STSA communities and Nlaka'pamux Nations like Cook's Ferry Indian Band. Standardized mitigation measures may leave some direct impacts unaddressed for these communities, owing to the incremental and contributive impacts on their smaller territorial areas, which must bear those added burdens while still supporting the same land-based rights exercise and practice.

The residual effects after mitigation further highlights the disconnect. Westcoast generally rates residual impacts as low to medium magnitude, short term to extended in duration, and reversible across local to regional boundaries. In contrast, community evidence documents residual impacts that could add to or exceed thresholds already at risk and function as additive burdens to an already constrained baseline. Xatśūll First Nation's Cultural Knowledge, Land Use, and Cumulative Effects study identifies three surpassed thresholds, for instance, which are not captured by Westcoast's residual ratings.

The shortcomings on residual effects are linked to Westcoast's general response to cumulative effects concerns. Filing Manual Section A.2.7.2 directs applicants to describe measures "beyond project-specific mitigation already considered" for cumulative effects, and its guidance indicates that "various forms of compensation (e.g., habitat offsets) should also be considered as part of an applicant's proposed mitigation, as appropriate." However, for the Part 1 communities, Westcoast relies on the same Table 18-4 measures in its ESA used for direct impacts to address cumulative effects. It does not incorporate territorial disturbance thresholds or community defined cultural thresholds into its assessment, nor does it propose restoration or offsetting "beyond project specific mitigation," notwithstanding the Filing Manual's guidance. Consequently, there is a mixed record on several core indicators for the highest end of the *Haida* spectrum for the Part 1 communities due to the uneven pockets of alignment, which also suggests further efforts will be needed from Westcoast to ensure the duty to consult is met for the Part 1 communities.

Having considered whether comprehensive information was provided to communities in technical materials, the record indicates that Westcoast provided standard EPP or ESA measures and relied heavily on co-location with existing linear disturbance. However, Part 1 communities consistently identified gaps where they sought species-specific, waterbody-specific, aquifer-specific, or health- and safety-specific detail, as well as clarity on monitoring and enforceability. Moreover, several of Westcoast's proposed measures were not complete when the record closed in these proceedings, such as Westcoast's Indigenous Monitoring Plan. This pattern suggests that while standard project materials were provided, they may not demonstrate the specificity expected to meet the "comprehensive technical materials" indicator as understood at the deep-consultation end. When specific concerns are raised, communities may reasonably expect degrees of tailored and specific measures rather than generic or standard ones.

The record also suggests only partial integration of Indigenous knowledge and land-use information in many cases. Communities provided extensive oral Indigenous knowledge evidence and Indigenous-led studies that framed impacts through threshold-based cumulative baselines. Westcoast stated it would not be bound by Indigenous-led assessments and declined to incorporate suggested frameworks into enforceable conditions or to accept suggested tailored and specific community proposed conditions.

With respect to good-faith responses to concerns and a genuine opportunity to influence project design, the record shows some examples of responsiveness. However, the dominant theme is that communities' proposals based on community defined thresholds, as well as requests for co-development and shared responsibility were characterized as impractical or declined. This does not appear to be compelling evidence of a genuine opportunity to influence the Project at the depth contemplated by highest-end consultation.

Given the above, it is difficult to see the indicators of substantively addressing communities' concerns and a partnership approach at this stage at the highest end of the *Haida* spectrum applies for the Part 1 Nations. Communities explicitly advanced requests for offsets, restoration, shared responsibility, or enhanced protection tied to heavily degraded baselines. Westcoast's position on declining shared responsibility and its reliance on standard mitigation, even where communities documented extensive pre-existing disturbance, suggests that the mitigation/accommodation response may not substantially address the Part 1 communities' concerns. For instance:

- Cook's Ferry Indian Band's requests for elk-specific, aquifer-specific, and culturally differentiated protections within a territory it quantifies as significantly disturbed;
- High Bar First Nation's concerns about sacred site proximity and archaeological potential areas, where route-level avoidance was not adopted beyond general discovery processes; and,
- Xatśūll First Nation's community-defined thresholds for water, fish, and spiritual use, which were not accommodated through restoration or offsetting beyond standard mitigation.

It bears emphasizing that Westcoast's apparent principal reliance on standard mitigation measures is arguably inconsistent with Supreme Court of Canada guidance. The Court has affirmed that mitigation and accommodation must be tailored to the distinctive character of Indigenous rights, which are not simply a kind of environmental impact to be minimized. The Court has stated that section 35 rights must be considered "as rights in themselves," not "as an afterthought to the assessment of environmental concerns."[127] In *Clyde River*, for instance, the Supreme Court found a commitment to noise monitoring "was no concession at all, since it is a requirement" under existing regulatory standards that "would be included in virtually all seismic testing projects."[128] In contrast, the Court has approved of measures that specifically respond to Indigenous concerns and are not subsumed within ordinary environmental measures.[129] The upshot of the Supreme Court's direction is that generic mitigation measures that apply regardless of the specific rights at issue may not, without more, constitute mitigation or accommodation for those rights.

In light of this Supreme Court direction, the Commission considers whether proposed mitigation or accommodation measures respond to the specific impacts identified through community evidence, rather than presuming standard environmental protection measures address the distinct dimensions of section 35 rights. Where a single mitigation measure is said to addresses multiple distinct impact pathways (e.g., impacts to hunting, harvesting practices, cultural or spiritual practices simultaneously), the evidentiary record may need to demonstrate the connection between the proposed measure and each identified impact pathway. In my view, Westcoast's evidence does not necessarily establish the appropriate link between the proposed standard measures and the specific

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[127] *Clyde River*, *supra* note 18 at para 51, applied in *Tsleil-Waututh, supra* note 37.
[128] *Clyde River, supra* note 18 at para 51.
[129] As in *Chippewas, supra* note 19, the companion decision to *Clyde River, supra* note 18.

Indigenous concerns they are intended to address. This gap underscores my finding that the indicators of substantively addressing communities' concerns and a partnership approach are not fully demonstrated on this record.

The principal opinion lists measures in **Section 11.2.3** under the heading "measures to accommodate." However, the mere labeling of measures as "accommodation" does not make them so. Many measures listed including environmental monitoring, reclamation, and notification protocols are standard Filing Manual requirements that would apply to any project regardless of Indigenous presence. The question is not whether measures exist, but whether they are responsive to the specific rights impacts identified by each community and whether they discharge the constitutional duty. The principal opinion does not appear to undertake this analysis.

The principal opinion refers to certain measures as "enhancements" that go beyond standard mitigation. However, this intermediate category appears to have no foundation in the *Haida*/*Taku River*/*Clyde River* jurisprudence, which distinguishes between what is required to address environmental effects and what is required to accommodate effects on section 35 rights. There is no recognized "enhancement" middle ground that partially discharges the duty. Either a measure addresses the specific rights impact identified by the community (accommodation), or it does not.

The principal opinion at **Section 11.2.1** relies on *Chippewas* for the proposition that the Commission's hearing process can satisfy the duty to consult, citing the Court's finding that consultation in that case was "manifestly adequate – even assuming the duty at the highest end of the spectrum." However, the companion decision in *Clyde River* demonstrates that procedural adequacy does not guarantee substantive adequacy. In *Clyde River*, the Supreme Court found that reliance on standard regulatory measures, without more, failed to accommodate the specific rights at issue. In this regard, a key distinction between *Chippewas* and *Clyde River* turns on whether proposed measures are responsive to specific Indigenous concerns or merely generic regulatory requirements. The principal opinion does not appear to explain why Westcoast's reliance on standard mitigation measures – applied uniformly across communities regardless of their specific concerns, territorial contexts, or cumulative effects baselines – constitutes accommodation within the meaning of *Chippewas* rather than the parallel inadequate generic approach found wanting in *Clyde River*.

Overall, while the record supports a finding that the basic procedural elements of highest end consultation have been met, further efforts from Westcoast are needed to ensure the substantive outcomes required at the highest end of the *Haida* spectrum are reached for the Part 1 communities.

13.3.4 Part 2 and 3: Nations attracting consultation at the high and medium end of the *Haida* spectrum

Part 2 community summaries

Cheam First Nation

Cheam First Nation (Xwchíyò:m) is part of the Pelólxw Tribe, a distinct group of the Stó:lō Nation. CFN participated in the Project proceedings through oral Indigenous knowledge evidence, a Traditional Use Study and a final written argument.

Cheam First Nation's Traditional Use Study provided detailed evidence of traditional activities within unceded territory, including fishing (chinook salmon, sockeye salmon, sturgeon, trout), hunting (elk, deer, mountain goats, bears, migratory birds), and plant gathering for both food (strawberries,

salmonberries, blueberries, huckleberries) and medicinal purposes. The community name derives from ci'am, the Halq'eméylem word for strawberry. Knowledge Keeper Carrielyn Victor identified the gravel reach as "one of the richest locations for lower Fraser white Sturgeon" with spawning locations in the vicinity. She also emphasized the importance of medicinal plants, noting "hundreds of medicines" with "kinship relationships" connecting the community to place. Cheam First Nation's evidence also documented stl'aleqem sites – spiritual locations described as immovable and permanently significant.

Cheam First Nation's Traditional Use Study presented a cultural framework grounded in four interconnected dimensions: sxwōxwiyám (ancestral teachings), slha:éywelh (guiding principles and laws), shxwelí (life force), and tómiyeqw (seven generations past and future). The Traditional Use Study documented traditional socio-economic systems including reciprocal gift exchange, potlatch, labour exchange, and market exchange.

Westcoast proposed mitigation measures for the identified impact pathways. Physical footprint effects would be addressed through co-location with the existing right-of-way. Sturgeon habitat concerns appear likely to be addressed through Fish and Fish Habitat mitigation in the ESA, including instream work protocols. Vegetation and plant gathering areas appear likely to be addressed through general EPP measures. Spiritual and heritage sites appear likely to be addressed in some aspects through the Cultural Walk-Through Program and Traditional Land and Resource Use Sites Discovery Contingency Plan.

Cheam First Nation's unceded lands evidence described traditional activities and cultural values qualitatively but did not include quantified territorial disturbance analysis or threshold-based cumulative effects assessment of the type provided by some other communities. The concerns raised regarding sturgeon spawning habitat and medicinal plant protection could be addressed by Westcoast's standard mitigation framework, though these are general rather than species-specific or site-specific commitments. The Cultural Walk-Through Program could provide opportunities to identify stl'aleqem sites, dependent on factors including Cheam First Nation's participation and Westcoast's responsiveness to identified sites.

For Cheam First Nation's unceded lands, Westcoast's proposed mitigation measures appear to substantially address the direct and residual impacts identified in the community's evidence. The record does not indicate that Cheam First Nation raised cumulative effects concerns requiring measures beyond Project-specific mitigation.

Lower Nicola Indian Band

Lower Nicola Indian Band is a Nlaka’pamux Nation in the central interior of BC. Lower Nicola Indian Band participated in the Project proceeding through an Indigenous-Led Safety Study, comments on conditions, and a final written argument. Lower Nicola Indian Band described being “in the blast zone” of industrial development for over six decades, noting that Westcoast's T-South system has been operational for over 65 years with portions within Lower Nicola Indian Band's territory and in close proximity to its reserves. Lower Nicola Indian Band's evidence indicated that access to its territory to engage in fishing, hunting, trapping, berry and medicine harvesting has been restricted both temporarily and permanently by mining, forestry, and utility construction activities. It noted that the proposed Project footprint lies between approximately 0.5 and 47 km from its reserve lands, and that the CS-8A power line is located in an area already significantly impacted by numerous, densely distributed linear disturbances from roadways, the existing T-South system, and existing

transmission lines. Lower Nicola Indian Band's evidence identified more than 120 traditional food species and over 200 medicinal plants that could be affected.

The Indigenous-Led Safety Study by Dr. Najmedin Meshkati spoke to potential systemic safety culture deficiencies in Westcoast's operations evidence, including potential insufficient balancing of production pressure with safety, inadequate information systems, normalization of deviance with weak MOC procedures, and organizational tolerance of inadequate systems. Lower Nicola Indian Band requested an IAMC as a "true co-governance body" for emergency response and Project oversight. Lower Nicola Indian Band also stated that it does not support or consent to the Project.

Westcoast responded that its existing safety management systems are adequate. It disagreed there was a need to make Supervisory Control and Data Acquisition and leak detection improvements. It proposed a liaison-based approach with Lower Nicola Indian Band and emergency exercises on a three-year cycle. Westcoast did not specifically address the Indigenous-Led Safety Study findings.

Regarding Lower Nicola Indian Band's request for a Project-specific IAMC, Westcoast responded that such committees were used for the Trans Mountain Expansion Project and Enbridge Pipelines Inc.'s Line 3 Replacement Program (**Line 3**) prior to the CER Act taking effect in 2019, but that "the regulatory framework has evolved since then," pointing to the CER's governance and the Indigenous Advisory Committee established in 2020, and separately CER's ongoing OPR review.[130] Westcoast submitted that the Indigenous Monitoring Plan combined with "the CER's integrated approach to Indigenous inclusion, provide a comprehensive and effective means of addressing Indigenous interests and concerns without the need for a separate Project-level committee." Overall, Westcoast relied on its general construction and operations framework to manage Lower Nicola Indian Band's concerns.

Westcoast's ESA characterized residual effects on Lower Nicola Indian Band's rights as medium significance and proposed standard mitigation measures.

Several impacts identified by Lower Nicola Indian Band appear only partially addressed or remain unaddressed by these measures. With respect to safety culture concerns, Westcoast's filings do not engage with the Indigenous-Led Safety Study's cultural threat and cultural defense framework analysis and emergency response time requests appear unresolved.

I note the principal opinion rejects Lower Nicola Indian Band's submission that route modifications, particularly Westcoast's decision to reduce the length of the CS-8A power line, are not a form of accommodation where effects on rights remain. However, the principal opinion does not appear to provide legal support or authority for the proposition that in these circumstances the reduction in proposed power line length and other changes to the Project design and scope can be considered as a form of accommodation. While avoidance and length reductions are well-established measures in the mitigation hierarchy set out in the Filing Manual, this does not automatically or without explicit foundation mean they also constitute a form of accommodation for the purposes of the Crown's constitutional duty. In this context, mitigation addresses environmental and project-specific effects; accommodation may be to address potential adverse effects on section 35 and Treaty rights or enable the continued exercise and practice of rights on these lands. The Supreme Court of Canada

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[130] As explained in my reasons below on the conditions proposed in the principal opinion, I disagree with the principal opinion that systemic CER initiatives, whether planned or ongoing, such as the Indigenous Advisory Committee or the OPR review are relevant or related to the Project and could constitution a form of mitigation or accommodation for Project impacts.

in *Clyde River* drew this very distinction, holding that section 35 rights must be considered "as rights in themselves" and not "as an afterthought to the assessment of environmental concerns."[131] In this sense, the principal opinion may conflate mitigation measures with accommodation without supporting legal authority.

Skeetchestn Indian Band

Skeetchestn Indian Band is a Secwépemc Nation in BC. Skeetchestn Indian Band participated in the Project proceeding through oral Indigenous knowledge evidence and a final written argument. Skeetchestn Indian Band described its community as predominantly land-based, with approximately 89 per cent of members identifying as hunters and gatherers. It noted that while 36 salmon runs traverse its territory, resource depletion within its territory compels it to rely on other Nations to obtain moose, deer and fish. It also stated that members have been “fenced off” from traditional hunting, fishing, and gathering areas due to development. Skeetchestn Indian Band opposed the issuance of a certificate unless five conditions were met:

- a Skeetchestn Indian Band-led Cultural Heritage Overview Study;
- funding to build emergency response capacity;
- co-developed baseline criteria that incorporate traditional ecological knowledge;
- a pipeline decommissioning plan; and,
- fiscal accommodation commensurate with that offered to municipalities.

Westcoast proposed mitigation for some identified impact pathways. For cultural heritage concerns, Westcoast offered the Cultural Walk-Through Program rather than the requested Skeetchestn Indian Band-led study. For emergency response, Westcoast maintained a liaison approach without funding. Westcoast relied on its standard ESA methodology without integrating traditional knowledge about baseline conditions. Westcoast's ESA characterized residual effects on Skeetchestn Indian Band's rights as medium significance and proposed standard mitigation measures.

Direct Project impacts to Skeetchestn Indian Band's rights appear partially mitigated. Westcoast's Cultural Walk-Through Program could provide some protection for cultural transmission during construction. Standard EPP measures address construction-phase effects on land, water, and vegetation.

Residual impacts to rights remain in several respects. Rights exercise and food security concerns for a community where 89 per cent of members rely on hunting and gathering as food sources are proposed to be addressed through general environmental mitigation rather than measures calibrated to these rights, practices, and incorporating traditional ecological knowledge.

Yale First Nation

Yale First Nation is a Nlaka’pamux Nation in BC. Yale First Nation participated in the Project proceeding through oral Indigenous knowledge evidence, comments on conditions, and a final written argument. Yale First Nation requested amendments to 15 conditions organized around 3

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[131] *Supra* note 18 at para 51.

themes: Commission approval for plans affecting Indigenous rights, territory-specific notifications, and meaningful participation in plan development.

Yale First Nation asserts that consultation in this case falls at the high end of the *Haida* spectrum, given that the pipeline right-of-way bisects Lukseetsissum Indian Reserve No. 9 and the risk of adverse impacts on already-diminished rights is serious, citing *Haida*. Yale First Nation submits that the Commission's engagement must be informed by the UN Declaration, relying on *Kebaowek*. Yale First Nation characterizes Westcoast's approach as "a box-ticking exercise, rather than engaging with Yale in a meaningful and respect-driven way." Yale First Nation requests conditions requiring implementation of STSA's ICA recommendations and ongoing cumulative effects monitoring of the T-South system's contributions to impacts on Indigenous rights.

Chief Troy Peters stated that Yale First Nation has lost access to 47 per cent of its traditional lands and that the existing pipeline being expanded by the Project runs approximately 20 feet from community homes. Yale First Nation identified 10-12 unauthorized access roads along the right-of-way that facilitate illegal hunting, poaching, and security threats to community members. On engagement, Yale First Nation described a June 2025 cultural walk-through that Westcoast conducted "entirely in vehicles" in the Chilliwack/Abbotsford area rather than on Yale territory, despite Elders being prepared to share knowledge onsite. Yale First Nation Elders understand the loss of fish as resulting from their inability to steward fish and key species in accordance with traditional protocols. Yale First Nation withholds consent to the Project pending meaningful engagement.

Yale First Nation described cumulative impacts on its territory from approximately 65 years of pipeline development and operations. Chief Troy Peters stated that the Project area within its territory has seen a dismantling of traditional land use and practices across generations. The Nation reported that Ruby Creek salmon ceased spawning roughly 20 years ago and that eulachon runs disappeared in the 1980s. Life expectancy was reported to be in decline, with current deaths occurring in the 50s and 60s. Elders and matriarchs expressed sustained fear of living near pipeline rights-of-way due to perceived risks of explosion and breach.

Westcoast proposed mitigation for certain identified impact pathways. For cumulative effects concerns, Westcoast applied its standard ESA framework. For food sovereignty concerns, Westcoast referenced general mitigation measures. For engagement concerns, Westcoast committed to continued engagement opportunities and pointed to offered cultural walk-throughs. For economic equity concerns, Westcoast pointed to general socio-economic opportunities associated with the Project. Westcoast's ESA characterized residual effects on Yale First Nation's rights as medium significance and proposed standard mitigation measures.

Direct Project impacts to Yale First Nation's rights appear to be partially mitigated. Standard EPP measures appear to address construction-phase effects on land, water, and vegetation. Cultural walk-throughs would tend to provide some opportunity for site identification during construction.

However, residual impacts to rights remain in several respects. The existing cumulative impacts articulated by Yale First Nation do not appear to have been factored into Westcoast's impact characterization or mitigation calibration and incremental Project effects are assessed without reference to or engagement with these concerns. Health and quality-of-life concerns associated with disrupted traditional practices are not addressed beyond general Project measures. Yale First Nation's characterization of engagement indicates a gap between the Nation's expectation for a collaborative, relationship-based approach and what has occurred to this point.

Part 3 communities summaries

Coldwater Indian Band

Coldwater Indian Band is a Nlaka’pamux Nation located in the central interior of BC. Coldwater Indian Band participated in the Project proceeding through oral Indigenous knowledge evidence, joint comments on conditions, and a final written argument.

Coldwater Indian Band described a current degraded ecological baseline supporting rights exercise and practice, where salmon harvests have fallen significantly and the fish that have remained have showed signs of contamination in some cases. The Coldwater River was said to be warming beyond levels that have previously been supportive of salmon. Coldwater Indian Band also provided evidence of extensive cultural losses from a 2021 flood. Vice-Chief Cheryl Rule raised community safety concerns, noting at least 15 people missing from the Merritt area over five years and broader risks to women and girls.

Westcoast responded by pointing to standard environmental protection measures and assessments in its ESA and EPPs, including water quality protection and assessment as well as salmon habitat mitigation. For community safety, Westcoast stated that a Community and Gender Safety Plan would be developed. Westcoast characterized residual effects on Coldwater Indian Band's rights as low to medium magnitude, and proposed standard mitigation measures.

Regarding direct impacts to rights, Westcoast's proposed mitigation appears to address some but not all pathways in evidence. Westcoast's ESA identifies high-vulnerability aquifers in the Project area, including Aquifer 74 and Aquifer 382, but does not appear to specifically consider or factor in existing degraded water quality conditions Coldwater Indian Band described in evidence. Westcoast’s EPP measures and ESA assessment appear likely to mitigate Project-specific effects but may not have appropriately considered or factored in existing degraded conditions currently affecting water sources.

For salmon habitat, the ESA’s instream protocols provide Project-specific protection, but the collapsed baseline of the salmon populations described in evidence does not appear to have been clearly considered or factored in the assessment and resulting conclusions as well as Project-specific mitigation measures. For community safety, Westcoast developing a Community and Gender Safety Plan later in the process meant for Coldwater Indian Band that it did not help shape that plan in early engagement that could then be tested in the regulatory process, as well as potential effects ongoing through the construction period when Vice-Chief Rule's identified risks may be most acute.

For access to traditional resources, the Project adds incremental linear disturbance through the CS-8A power line, reduced from 21 km to 3 km following engagement and which Coldwater Indian Band's final written argument characterized as the lesser harm option given existing cumulative effects. However, even at 3 km, the 138 kV power line will create a permanent 80- to 100-metre-wide cleared corridor subject to ongoing vegetation management throughout operations, with power line vegetation height assessed biannually. Westcoast's access mitigation includes general access maintenance during construction and 95 per cent co-location with existing linear disturbances. These measures address construction-period disruption, but the permanent power line corridor represents an additional long-term access and land use change within Coldwater Indian Band's territory.

Residual impacts to rights remain in several respects. Coldwater Indian Band 's evidence documents degraded conditions for water quality and salmon, but Westcoast's assessment does not factor these existing conditions into its impact characterization or mitigation calibration. Community safety measures are deferred to post-approval rather than developed collaboratively with communities, prior to construction. The permanent power line corridor, while reduced through engagement, adds new long-term access and land use change. Coldwater Indian Band's final written argument states that the Nation cannot consent to the Project given these outstanding concerns.

Kanaka Bar Indian Band

Kanaka Bar Indian Band (T'eqt''aqtn'mux) is an Nlaka'pamux Nation in the central interior region of BC. Kanaka Bar Indian Band participated in the Project proceeding through oral Indigenous knowledge evidence and a final written argument. Kanaka Bar Indian Band was excluded from the Project's early engagement phase from 30 January to 30 May 2024 and was added to the Crown consultation list in June 2024. As a result of this, Kanaka Bar Indian Band did not participate in the four-month early engagement phase during which 47 consultation meetings were held with Crown List communities. Kanaka Bar Indian Band was not able to join opportunities to: inform the CCC's Early Engagement Report filed with the Commission; provide input into Westcoast's ESA baseline development and VC selection; participate in the 2023 to 2024 field studies (biophysical, archaeological, and traditional ecological knowledge); propose community-led traditional land use studies; and contribute to the CCC's seven suggestions for Commission and proponent consideration. The ESA and application were filed on 30 May 2024, the same day the early engagement phase concluded and before Kanaka Bar Indian Band was added to the Crown List. Kanaka Bar Indian Band described substantive harms from cumulative impacts across its territory ("death by a thousand cuts"). Kanaka Bar Indian Band requested an IAMC with co-regulatory authority.

As with other communities, Westcoast rejected the request for an IAMC with decision-making authority. Regarding a request for cumulative effects offsets, Westcoast stated that the Filing Manual "does not indicate that offsets are required" for Indigenous rights impacts.

Westcoast's ESA characterized residual effects on Kanaka Bar Indian Band's rights as medium significance, with a medium contribution to cumulative effects. This assessment appears to have been developed without Kanaka Bar Indian Band's baseline input due to their late addition to the Crown List. Westcoast proposed standard Table 18-4 mitigation measures but stated it is "not contemplating implementing offset measures."

Kanaka Bar Indian Band's concerns do not appear to be substantively addressed within Westcoast's proposed measures. Kanaka Bar Indian Band's late inclusion in the process resulted in their baseline input and condition proposals not getting captured early in the process.

Nazko First Nation

Nazko First Nation is a Southern Dakelh/Carrier community whose traditional territory encompasses seven rivers, numerous creeks and lakes, and an extensive network of culturally significant lands and waters that the Nation considers sacred. Nazko First Nation participated in the Project proceeding through oral Indigenous knowledge evidence, a preliminary Cultural Knowledge, Land Use and Occupancy Study, and written evidence. Nazko First Nation described declines in moose, deer and caribou populations. It noted that salmon are no longer travelling as far upstream.

Nazko First Nation also emphasized procedural concerns with Westcoast's consultation, including late engagement (being added to the process after Project design was largely finalized). Its Cultural Knowledge, Land Use and Occupancy study remains in progress. However, the preliminary study recommended consultation before pre-construction monitoring, a collaborative stewardship approach, co-developed monitoring programs, Indigenous monitors throughout the Project lifecycle, restriction to existing roads, and a 24-hour notification window for activities.

Westcoast proposed mitigation for certain identified impact pathways. For the requested 24-hour notification window, Westcoast responded that a fixed window may not always be possible. Westcoast agreed to develop an Indigenous Monitoring Plan but not a co-developed monitoring framework. Westcoast indicated it would use existing access to the extent practical rather than committing to the requested restriction to existing roads. Westcoast's ESA characterized residual effects on Nazko First Nation's rights as medium significance and proposed standard mitigation measures.

Direct Project impacts to Nazko First Nation's rights appear partially mitigated. The use of existing access can help reduce need for new access disturbance. Standard EPP measures appear to address construction-phase effects on land, water, and vegetation, while residual impacts to rights remain. Nazko First Nation's late addition to the process led to a limited opportunity for the community participate in shaping baseline information and the Project in the early engagement phase. The declined pre-activity notification window leaves the specific timing notification need unresolved.

Nooaitch Indian Band

Nooaitch Indian Band is an Nlaka'pamux Nation near Merritt in the southern interior of BC. Nooaitch Indian Band participated in the Project proceeding through comments on conditions and a final written argument. Nooaitch Indian Band explained that its territory has experienced over 65+ years of the T-South system pipeline operations. Nooaitch Indian Band identified what it characterized as double standards in the process, where energy companies may rely on general assertions of mitigation and accommodation while Indigenous Nations are required to provide extensive specificity. Nooaitch Indian Band opposed the Project unless seven mandatory conditions are met:

- independent CER oversight with enforceable compliance monitoring;
- an Indigenous Monitoring Program with on-site authority to halt activities;
- a co-developed, Indigenous-led environmental management strategy;
- a collaborative decision-making framework with shared authority;
- recognition of Indigenous-led assessments as independent and authoritative evidence;
- resolution of outstanding concerns before construction; and
- joint post-construction monitoring with binding recommendations.

Westcoast proposed responses to certain identified impact pathways. For environmental management, Westcoast characterized co-development as impractical. For shared decision-making authority, Westcoast declined. For Indigenous-led assessments, Westcoast stated it could not be bound by studies not on the evidentiary record. For outstanding concerns, Westcoast indicated these would be addressed through standard conditions, but not necessarily all before construction.

Westcoast's ESA characterized residual effects on Nooaitch Indian Band's rights as medium significance and proposed standard mitigation measures.

Direct Project impacts to Nooaitch Indian Band's rights appear partially mitigated. Standard EPP measures appear to address construction-phase effects on land, water, and vegetation. Co-location with existing linear features tends to help reduce new footprint.

Residual impacts to rights appear to remain in several respects. Nooaitch Indian Band's seven conditions are not reflected in Westcoast's proposals. Shared responsibility and oversight measures are declined or not adopted. Indigenous-led assessments are not recognized within Westcoast's framework. The evidentiary double standard identified by Nooaitch Indian Band where proponents may rely on general assertions while Indigenous Nations must provide extensive specificity was not addressed by Westcoast.

Peters First Nation

Peters First Nation is a Coast Salish/Upper Stó:lō community of approximately 175 members, with three reserves that all interact with the proposed Project. Peters First Nation participated in the Project proceeding through oral Indigenous knowledge evidence, written evidence, a Traditional Use Study, and comments on conditions. Peters First Nation described 538 km new non-Project related disturbance within its territory. It stated that its members no longer fish for sturgeon due to population decline, citing this as an example of existing cumulative impacts that have altered their way of life.

Westcoast proposed mitigation for certain identified impact pathways. For partnership involvement, Westcoast responded that engagement with Peters First Nation is ongoing. For sturgeon, Westcoast considered general environmental mitigation measures sufficient. For offsets, Westcoast stated that the Filing Manual does not indicate that offsets are required for impacts on Indigenous rights. For monitoring, Westcoast referenced an Indigenous Monitoring Plan to be developed through draft conditions rather than co-developed. Westcoast's ESA characterized residual effects on Peters First Nation's rights as medium significance and proposed standard mitigation measures.

Direct Project impacts to Peters First Nation's rights appear partially mitigated. Westcoast's reliance on co-location with existing linear disturbances can help reduce new footprint. Standard EPP measures appear to address construction-phase effects on land, water, and vegetation.

Residual impacts to rights appear to remain in several respects. Offsets requested by Peters First Nation are declined.

Siska Indian Band

Siska Indian Band is an Nlaka’pamux Nation in BC. Siska Indian Band participated in the Project proceeding through a final written argument. Siska Indian Band was added to the Crown consultation list on 29 September 2025, late in the hearing process, and advised that this timing prevented it from preparing a Traditional Use Study of its own. Siska Indian Band therefore relied on Boston Bar First Nation’s Traditional Use Study for evidence relating to shared Nlaka’pamux territory. Siska Indian Band maintained that its late addition to the Crown Consultation List for the Project meant that it missed key hearing milestones, including opportunities to comment on conditions.

Substantively, Siska Indian Band asserted shared Aboriginal title with 14 other Nlaka'pamux Bands. It noted the presence of the Trans Mountain and T-South pipelines on its territory. It invoked the UN Declaration to underscore that free, prior, and informed consent is required for the Project. Siska Indian Band sought acknowledgment that consultation had been inadequate and requested conditions that would prohibit construction until the duty to consult was discharged and withheld their consent.

The record indicates no response from Westcoast to Siska Indian Band's concerns, with the timing of Siska Indian Band's addition to the process as a likely reason for the absence of engagement details or responsive mitigations or accommodations in Westcoast's filings following Siska Indian Band's addition to the process.

Direct Project impacts to Siska Indian Band's rights cannot be fully assessed based on the limited record. In the same way, residual impacts may remain in several respects.

Williams Lake First Nation

Williams Lake First Nation is a Secwépemc Nation in BC. Williams Lake First Nation participated in the Project proceeding through oral Indigenous knowledge evidence, comments on conditions, and a final written argument. Williams Lake First Nation described a compromised territory following 2017 wildfires, explaining that high-intensity burns destroyed centuries-old Douglas fir stands. Williams Lake First Nation stated that the draft conditions proposed in the record are fundamentally inadequate, characterizing them as procedural rather than substantive. It observed a broader pattern in which First Nations are informed after-the-fact rather than treated as genuine partners in stewardship and identified caribou habitat restoration as a priority. Williams Lake First Nation opposed the Project unless four guiding principles are reflected in enforceable commitments:

- collaborative development of plans that affect rights and territories;
- enforceability and transparency through clear, measurable obligations rather than qualifiers such as to the extent practicable;
- long-term stewardship extending through operations and decommissioning; and,
- resourcing and capacity via mandatory funding to enable effective participation.

Westcoast proposed responses to certain identified impact pathways. For co-development of plans, Westcoast responded that co-development of several conditions is "impractical." For employment and contracting, Westcoast pointed to voluntary and general broad Enbridge policies rather than Project-specific measures. Westcoast did not agree to required monitoring funding and indicated that a Caribou Habitat Restoration and Offset Management Plan would be developed under draft conditions, rather than including consideration of Williams Lake First Nation's proposed framework. Westcoast's ESA characterized residual effects on Williams Lake First Nation's rights as medium significance and proposed standard mitigation measures.

Direct Project impacts to Williams Lake First Nation's rights appear partially mitigated. Standard EPP measures appear to address construction-phase effects on land, water, and vegetation. Co-location with existing linear features can help reduce new footprint. A Caribou Habitat Restoration and Offset Management Plan is contemplated under draft conditions and remains to be finalized.

Residual impacts to rights appear to remain in several respects. Co-development is characterized as impractical, leaving Williams Lake First Nation's first guiding principle (collaborative development of

plans affecting rights and territories) unaddressed. Long-term stewardship is given limited consideration, without capacity funding to sustain Indigenous roles through operations. Employment and contracting opportunities related to the Project remain vague.

13.3.5 Thematic analysis: trends informing the duty to consult analysis for the Part 2 and 3 communities

Consistent with the Part 1 community analysis, the hearing record for the Part 2 and 3 communities reflects similar patterns in the Project's impacts and Westcoast's approach to mitigation and accommodation. These trends, like the Part 1 communities, lead me to conclude that further efforts are required from Westcoast to ensure the duty to consult is met for the Part 2 and 3 communities.

Westcoast substantially addresses certain direct impacts. Much new disturbance appears minimized through approximately 95 per cent substantial co-location with existing right-of-way. The Cultural Walk-Through Program may help protect known heritage sites. In Coldwater Indian Band's case, the CS-8A power line route was modified after a pit house village discovery, reflecting site-specific avoidance when cultural and heritage resources are identified. Standard environmental protection measures in Westcoast's ESA and EPPs appear likely to mitigate some of the environmental impacts raised by the communities on soil, water, vegetation, fish, wildlife, and air. Access during construction appears to be managed through notifications and access protocols.

However, misalignments on mitigation and accommodation appear to result in direct impacts. Westcoast's responses generally decline measures that would confer shared authority (e.g., IAMC models and co-development generally). Westcoast noted that such committees were used for Trans Mountain and Line 3 prior to the CER Act taking effect in 2019, but that "the regulatory framework has evolved since then," pointing to the CER's integrated approach via its governance and its Indigenous Advisory Committee established in 2020 as well as the CER's ongoing OPR review. Westcoast also submitted that the Indigenous Monitoring Plan combined with "the CER's integrated approach to Indigenous inclusion, provide a comprehensive and effective means of addressing Indigenous interests and concerns without the need for a separate Project-level committee." Westcoast also did not accept requests to create fixed notification timelines and enforceable obligations, expand commitments beyond standard Project methodologies, or adopt mitigation measures that were culturally specific.

Similarly, Westcoast denied a request from several communities for communication before herbicide application to harvesting areas. Westcoast responded that it will avoid herbicide application to known harvesting areas "when practical," noting it would not always be practical to avoid or communicate in advance. Westcoast's evidence describes its IVMP framework and general commitments but does not provide operational detail on herbicide practices for the power line portions during operations, the frequency of herbicide application along the right-of-way, whether full security clearing involves routine herbicide use, primarily mechanical methods, or other approaches, or how biannual vegetation assessments translate into actual herbicide decisions, and the qualified language ("when practical," "where possible") is a concern for some communities. Clearer advance application schedules and notification protocols remain to be developed in a manner that aligns with community expectations.

Westcoast generally characterized impacts as low to medium in magnitude, short term or temporary, and reversible. At the same time, the evidentiary record from the Part 2 and 3 communities describes enduring effects involving changes to resources and access, timing and seasonality,

locations of cultural importance, and Indigenous governance. In multiple instances, the Project's contributions to cumulative effects remain substantively unaddressed in Westcoast's framework.

Similarly, this approach may result in unaddressed cumulative effects, for which Westcoast applies standard mitigation. As noted for the Part 1 communities, Filing Manual Section A.2.7.2 directs applicants to describe measures "beyond project-specific mitigation already considered" for cumulative effects, and its guidance indicates that "various forms of compensation (e.g., habitat offsets) should also be considered as part of an applicant's proposed mitigation, as appropriate." However, for multiple Nations (as for the Part 1 communities), Westcoast relies on the same Table 18-4 measures used for direct impacts to address cumulative effects. Offsets are declined on the grounds they are not required by the Filing Manual. As a result, Westcoast's proposed environmental measures may not be calibrated to the cumulative effects concerns described by many Nations. This includes the densely distributed linear disturbances in Lower Nicola Indian Band's territory; Coldwater Indian Band's and Peters First Nation's collapsed rights-supporting resource baselines; Nooaitch Indian Band and Yale First Nation's 's 65+ year exposure to T-South operations as well as Yale First Nation's account of six decades of pipeline development bisecting their territory and dismantling traditional land use; Williams Lake First Nation's post-wildfire forest conditions and caribou habitat needs; and Cheam First Nation's reserve encumbrance (27 per cent with multiple rights-of-way and facilities) as indicators of compounded effects.

Considering the above, there is a mixed record on several core indicators of deep consultation at the high to medium end of the *Haida* spectrum for the Part 2 and 3 communities. While there is evidence of standard engagement activity and some impact-management measures that may address some localized, Project-specific effects, the overall pattern shows limited incorporation of community-defined information and parameters, opportunities for collaboration and participation, and cumulative effects mitigation or accommodation. All of this suggests that further efforts from Westcoast may be needed to ensure the duty to consult is met for the Part 2 and 3 communities.

With respect to the provision of comprehensive information, Westcoast's approach reflected a reliance on standard methodologies in its ESA and EPPs. However, several communities sought more tailored and enforceable technical specificity, including for species-specific responses, aquifer-specific commitments, and fixed notification protocols. Westcoast's reliance on generalized measures suggests that the technical information did not consistently reach the depth of specificity expected where consultation is intended to be "deep."

The integration of Indigenous knowledge and land use information in the Project appears uneven. The Part 2 and 3 communities provided extensive oral Indigenous knowledge, cultural frameworks, and governance principles that framed impacts through cultural survival, intergenerational transmission, and Indigenous assessments of ecological baselines. Yet, as noted, Westcoast's responses frequently pivoted to standard methodologies. These patterns may indicate that while Indigenous knowledge was heard, community-shaped mitigation and accommodation was limited.

Regarding good faith responses to concerns and genuine opportunity to influence Project design, Westcoast declined requests for co-development and shared authority across multiple communities. These aspects suggest that the Part 2 and 3 communities may not have had a genuine opportunity to influence the Project, identify concerns, and have Westcoast reflect the knowledge shared into mitigation or accommodation.

Ultimately, these issues point to the most significant and consistent shortfalls under the indicators associated with substantively addressing Indigenous concerns and a partnership approach. The Part

2 and 3 communities repeatedly advanced mitigation packages that went beyond standard, generic mitigations, while Westcoast's position was that offsets are not required in the Filing Manual. This pattern may suggest that some community concerns were not substantively addressed in Westcoast's mitigation and accommodation framework.

The analysis above supports the conclusion that further efforts are needed from Westcoast to ensure consultation for the Part 2 and 3 communities aligns with the medium to high end of the *Haida* spectrum. There is evidence of procedural engagement and some limited responsiveness. However, the record more strongly reflects a proponent-led, standardized mitigation approach than a shared, enforceable, and collaboratively developed approach.

13.3.6 Unceded title lands conclusion

The record demonstrates that while Westcoast's standardized measures reduces certain immediate direct impacts, substantive gaps remain across various impact pathways for the 16 Nations asserting Aboriginal title. There is also a mixed record for the parties on several indicators associated with the level of consultation on the *Haida* spectrum. These outcomes lead me to conclude that Westcoast should engage in further efforts to ensure the duty to consult is satisfied for these communities.

13.4 Reserve lands

Three First Nations with reserve lands affected by the Project filed evidence on its impacts to their reserve lands. The Nations described reserve landscapes already shaped by decades of infrastructure, land loss, and cultural change, and they situate the Project's incremental effects within these conditions rather than as isolated, short-term disturbances. Consultation for all three Nations is ongoing, as none has provided final consent to the Project pursuant to section 317 of the CER Act.

When reserve lands are impacted, consultation tends to operate at the highest end of the *Haida* spectrum, oriented toward consent-seeking in approach. Indicia of adequate consultation in this context may include capacity support, opportunities for partnership and/or co-management, and clear, enforceable measures that reflect the reality of reserve-specific contexts.

As demonstrated in the record, Westcoast clearly addresses some direct and immediate construction impacts with the use of standardized mitigation including co-location, route and right-of-way width adjustments, cultural walk-throughs, and general EPP commitments. However, several issues remain outstanding. Section 317 consents are not in place for two Nations and remain conditional for one. Reserve-specific governance concerns and tenure issues persist, which may be approached in a manner informed by the relevant articles of the UN Declaration. Key monitoring, safety, and other plans were characterized as to be developed and not able to be tested by communities on the record. Additionally, the STSA, which counts Seabird Island Band as a member, continues to work on an ICA, estimated for completion in January 2026. These considerations suggest that while consultation to this point has occurred and has in some aspects been generally adequate, ongoing consultation from Westcoast in the next steps of the process remains needed to ensure the duty is met for these communities' reserve lands within this process.

13.4.1 *Haida* spectrum

Reserve lands tend to occupy the highest end of the *Haida* spectrum. In this context, consultation moves in orientation toward consent-seeking approaches, underpinned by the established rights status of reserve lands, the Crown's federal fiduciary obligations towards these lands, and the statutory consent requirement under section 317 of the CER Act. All of these factors underscore the requirements and guidance provided in existing legislation and the common law which speak to the highest level of protection being reflected for a reserve land base. Among other things, at this end of the spectrum, consultation tends to involve a robust approach to sharing of comprehensive technical information, demonstrated integration of Indigenous knowledge, a genuine opportunity for communities to influence project design, substantively addressing concerns (including calibrated, specific measures) and, where appropriate, a partnership relationship.

13.4.2 Reserve lands – community summaries

Cheam First Nation

As noted above, Cheam First Nation (Xwchíyò:m) is part of the Pelólxw Tribe, a distinct group of the Stó:lō Nation. Cheam First Nation has a dual territorial context, with reserve lands and unceded title lands impacted by the Project. Cheam First Nation participated in the Project through oral Indigenous knowledge evidence, a Traditional Use Study, and a final written argument. The Project's footprint on Cheam First Nation reserve lands is 1.45 ha of right-of-way and 3.52 ha of temporary workspace. The Project crosses Tseatah Reserve No. 2 over roughly 970 m of existing right-of-way.

Cheam First Nation describes an actively burdened reserve land base. While the Project footprint is located on Tseatah Reserve No. 2, Cheam First Nation's evidence describes cumulative effects across their reserves. Cheam Reserve No. 1 (~821 acres), located on the south bank of the Fraser River, is where Westcoast's existing compressor station is sited and where approximately 27 per cent of the reserve is already encumbered by overlapping rights-of-way. Tseatah Reserve No. 2 (~231 acres), located on the north bank of the Fraser River approximately 2 miles south of Agassiz, is where the Project pipeline crossing occurs. While the two reserves are separated by the Fraser River they are linked through Cheam First Nation's governance and land management under their Land Code. The community reports ongoing effects from the existing on-reserve compressor station, including audible whistles and wildlife disturbance. Cheam First Nation fears health risks from the compressor station's emissions and seeks clear disclosure and continuous air quality monitoring. Cheam First Nation notes Westcoast's crossing at Ferry Island and states that successive projects have chopped up the reserve. Consent under section 317 has not been provided and Cheam First Nation notes that no Land Code ratification vote has occurred.

On the mitigation of the Project's impacts to Cheam First Nation reserve lands, Westcoast relies on standard co-location mitigation to reduce new disturbance. It applies standard EPP commitments, cultural walk-throughs, and a discovery contingency for heritage sites. For vegetation, Westcoast states that herbicides will be avoided "where possible" in high-value areas. Westcoast characterizes air quality effects as short term and disagreed continuous monitoring is needed. Westcoast submits that section 317 is a construction timing provision, meaning that consent may be obtained before construction. If Cheam First Nation's consent is not obtained, Westcoast proposes to extend CS-9 to the Huntingdon loop and to build parallel facilities off Cheam First Nation reserve lands.

Several direct impacts appear substantially addressed by the proposed standard mitigation measures. Co-location tends to reduce additional clearing and new disturbance. EPP commitments can help manage construction disturbance. Cultural walk-throughs are aimed at avoiding or

responding to heritage finds. That said, some impacts do not yet appear to have been addressed. Governance requirements under the Land Code do not appear to have been considered in Westcoast's proposed mitigation. Air quality monitoring was declined. The Project's contributions to cumulative effects, including the 27 per cent pre-existing encumbrance and broader fragmentation of reserve lands, do not appear to have been considered in proposed mitigation. From Cheam First Nation's perspective, effects associated with the proximity of a compressor station to community members, health risks, and long-term infrastructure burdens may persist.

Seabird Island Band

Seabird Island Band (Sq'ewqel) is a Stó:lō community (Xwélmexw) in the Fraser Valley of BC. Seabird Island Band has a dual territorial context, with reserve lands and unceded title lands impacted by the Project. Seabird Island Band participated in the Project proceedings through oral Indigenous knowledge evidence and filed a band council resolution providing conditional consent to the Project, subject to finalization of a right-of-way agreement. The proposed reserve footprint is the largest of the three crossings. It totals 51.67 ha, comprising 7.73 ha of right-of-way, 43.31 ha of temporary workspace, and 0.63 ha for access.

Seabird Island Band's evidence describes a diminishing land base and food security risks on reserve lands. Community members reported the historical loss of about 1,600 acres to the Fraser River and an ongoing loss of roughly 10 acres per year. They also described the collapse of salmon harvests and health impacts tied to dietary change, including elevated rates of diabetes, kidney disease, and obesity. Tyrone McNeil provided anthropological context for the baseline: "we've got anthropological evidence that as the earliest Europeans came, they did studies on how much salmon were consumed by the Pacific Northwest tribes and it varied from 300, 350 pounds, 400 pounds, 500 pounds, came to us as Stó:lo people, 1,000 pounds per capita. It's in our DNA." Seabird Island Band emphasized floodplain exposure and a power and capacity imbalance in engagement with the proponent and regulators. Janice Parsey stated plainly: "We're in a huge floodplain, and it's going to happen. It's not a matter of not going to happen."[132] It situated these issues within a broader colonial history, including fragmentation of the Tiyt tribes and the destruction by the river of the original village site.

Westcoast responded with several Project-specific measures. It continues to negotiate the right-of-way agreement and referenced enhanced pipe specifications in engagement. It offered capacity funding and participation in a Cultural Walk-Through Program. It also implemented route modifications and right-of-way width reduction to limit new disturbance, from 18 m to 10 m to avoid the cultural centre and high-density areas.

Several direct impacts appear substantially addressed by these proposed mitigations. As I found with Cheam First Nation, Westcoast has minimized some direct impacts through a combination of co-location with existing right-of-way, EPP commitments, and cultural walk-throughs. Capacity funding has also helped support participation.

Nevertheless, some residual impacts do not yet appear to have been addressed. The project's permanent right-of-way (7.73 ha) and substantial temporary workspace (43.31 ha) represent the largest reserve footprint in the proceeding. Floodplain vulnerability is met with standard emergency

[132] I take notice that, as of writing in December 2025, significant flooding has occurred in the Abbotsford and the Sumas Prairie region, areas proximate to Seabird Island Band's reserve lands. While these events occurred after the record closed in these proceedings, their occurrence reflects the concerns raised in Seabird Island Band's oral Indigenous knowledge evidence.

planning rather than flood-specific and reserve-specific measures. The Project's contributions to cumulative impacts in landscapes that support rights exercise and practice while high floodplain vulnerability and actual flooding events are being experienced do not appear to be considered in the proposed mitigation, which is not necessarily responsive to Seabird Island Band's concerns. Moreover, Seabird Island Band's conditional consent was not fully finalized at the close of the record and, as noted, STSA's ICA is not yet complete, though it may inform the mitigation and accommodation measures appropriate here. In sum, while route and width changes appear to address some direct and immediate construction effects, residual and cumulative impacts on Seabird Island Band's reserve lands remain from their perspective.

McLeod Lake Indian Band

As noted above, McLeod Lake Indian Band (Tsek'hene First Nation) is a Treaty 8 adherent with a traditional territory of approximately 108,000 km². McLeod Lake Indian Band participated in Project consultation, as evidenced in Westcoast's responses to Commission IR No. 3 and its attachment.

The proposed reserve interaction is limited. The footprint consists of 1.05 ha of temporary workspace and 0.10 ha of access, for a total of 1.15 ha. There is no permanent right-of-way proposed on reserve lands. Section 317 consent was not on the record at the close of proceedings, with discussions ongoing. McLeod Lake Indian Band's evidence also indicates a dual context (Treaty 8 Nation with reserve lands), though these rights contexts were not differentiated in Westcoast's assessment of impacts to Indigenous rights.

Westcoast proposes standard EPP measures to manage construction disturbance for the temporary footprint. It characterizes the interaction as minimal because no permanent facilities are proposed on reserve lands.

Direct project impacts to McLeod Lake Indian Band's reserve lands appear to be substantially addressed by the temporary nature of the construction footprint. No permanent right-of-way is proposed. Standard EPP measures appear to manage construction disturbance for the temporary workspace (1.05 ha) and access (0.10 ha). Residual impacts appear minimal given the absence of permanent facilities on reserve.

13.4.3 Thematic analysis: trends informing the duty to consult analysis for the reserve lands

The community-specific analysis for reserve lands indicates that consultation has generally been adequate to date. With the final section 317 consents outstanding, however, consultation remains ongoing. The consultation process remains incomplete at this stage as a result. In my opinion, Westcoast's ongoing efforts at consultation are appropriate and needed as well, given there remains unaddressed direct and residual impacts. Westcoast's approach to cumulative effects also does not appear to reflect alignment with the guidance in the Filing Manual.

Several direct impacts on reserve lands that are generally addressed through Westcoast's standardized measures (i.e., co-location, cultural walk-throughs, and EPP commitments to manage environmental impacts). Westcoast's engagement with Seabird Island Band also resulted in modifications to the route and right-of-way. That said, some direct impacts raised by reserve communities are not generally addressed within Westcoast's approach. Cheam First Nation's Land Code requirements remain unresolved. Requests specifically relating to certain health concerns and depreciated baselines were declined or not reflected in mitigation or accommodation measures (e.g., air quality concerns, salmon population decline). Requests for Indigenous- focused cumulative

effects assessment and default notification timelines (including 24-hour commitments for heritage discoveries or spills) were redirected to standard methodologies or qualified as not always possible. These responses from Westcoast may leave some concerns regarding direct impacts unaddressed.

Several of Westcoast's plans, moreover, that are relevant to reserve lands mitigation remained outstanding at the close of the record, including: an Indigenous Monitoring Plan, updated EPPs, a Socio-economic Effects Monitoring Plan, and a Community and Gender Safety Plan. Westcoast's outstanding plans may further limit the ability to meet the highest end indicators. The absence of completed, reviewable plans reduces opportunities for communities to both assess the adequacy of mitigation or accommodation measures and provide early or any input on those measures. Westcoast's reliance on unfiled and outstanding plans seems inconsistent with its position, taken throughout the proceedings, that it will not respond to Indigenous studies or assessments that are not on the record. If Westcoast relies on plans not yet created or filed as establishing mitigation, it may be difficult to reconcile the position that Indigenous studies or assessments that are in progress but not on the record cannot establish concerns warranting mitigation.

Westcoast characterized residual effects after mitigation as low to medium in magnitude. Community evidence on reserve lands presents a different picture. Cheam First Nation identifies 27 per cent of Reserve No. 1 already encumbered and ongoing effects from compressor station operations on the lands. Seabird Island Band describes approximately 1,600 acres lost historically to river erosion and roughly 10 acres lost annually, together with floodplain vulnerability and health impacts from dietary changes following salmon decline. From the communities' perspectives, these residuals are persistent and cumulative, and they are not fully taken into account as territorial conditions by standard Project level- mitigation.

Lastly, Westcoast adopted a similar approach to managing cumulative effects on reserve as it has for Treaty 8 and unceded title lands, adopting standard, Project-specific mitigation measures for both direct and cumulative effects. Again, this approach does not seem to address the direction in Section A.2.7.2 of the Filing Manual, which states applicants to describe mitigation measures "beyond project-specific mitigation already considered" for cumulative effects. Nevertheless, the ongoing consultation in this process, including the section 317 consent process and execution of a right-of-way agreement, provides the mechanism through which these matters can be addressed prior to construction.

This thematic analysis informs my conclusion that further efforts from Westcoast are needed to ensure the indicators of consultation at the highest end of the *Haida* spectrum are met.

With respect to providing comprehensive information and complete responses to concerns, the record is uneven. There are partial responses to some of Cheam First Nation's and Seabird Island Band's concerns. Although standard materials and information were provided, they were not always followed up with specific, comprehensive information and documented responses tied to the communities' specific concerns. Evidence of integration of Indigenous knowledge and land use information is similarly mixed. Westcoast's reliance on standardized methodologies does not clearly integrate, for instance, Seabird Island Band's reserve-specific data on baselines for land loss or food security, nor Cheam First Nation's own experiences from members living in proximity to a compressor station.

Evidence of good faith responses and opportunities to influence Project design is also mixed. Westcoast altered the Project route and right-of-way for Seabird Island Band. For Cheam First Nation, however, their governance requirements remain to be reflected in Westcoast's proposed measures. Similarly, STSA (of which Seabird Island Band is a member) did not see their

governance-related requirements incorporated into Westcoast's proposed measures. Reflections of a consent-seeking, partnership approach do not appear to be present on the record.

Several articles of the UN Declaration provide guidance on the expectations for consultation on reserve lands. As section 317 of the CER Act seemingly recognizes, development on reserve lands has implication for community's self-governance of their lands and Indigenous land tenure. These issues, in turn, engage multiple articles of the UN Declaration. In addition to the concept of free, prior and informed consent in Article 32, Articles 3–5, and 18 affirm Indigenous Peoples' rights to self-determination and participation in decision-making affecting their rights via their own institutions. Article 26 affirms rights to develop and control lands Indigenous Peoples have traditionally owned or otherwise acquired. These articles highlight the importance of processes that aim for consent and promote tenure agreements as well as respect internal governance frameworks (like Cheam First Nation's Land Code).

In sum, it appears that consultation was generally adequate. However, the mixed record on several highest-end *Haida* spectrum indicators suggests further efforts are needed. Since section 317 consultation is ongoing, this process (as well as other Project steps) provides Westcoast opportunities to complete this work.

13.4.4 Views on Chapter 8 – Federal lands

I wish to briefly note my agreement with several of my colleague's conclusions and findings in **Chapter 8** respecting the reserve lands. I agree with the interpretation of the consent requirement in section 317 of CER Act, particularly that consent may be obtained at a time prior to construction. I also agree with the Project footprint presented in Table 9-1 and have also used this data as the starting point in considering the Project's interaction with reserve lands. Like my colleague, in assessing the adequacy of consultation, I also rely on the finding that Seabird Island Band's alignment and right-of-way width were modified in response to that Band's specific requests. My colleague and I also share similar findings on the cumulative effects baselines on these lands (e.g., 27 per cent encumbrance from existing right-of-way on Cheam First Nation lands) and recognize lasting residual effects from a permanent right-of-way. I reach a different conclusion, however, on the need for further efforts at consultation, owing to my findings on the indicators for highest-end consultation on the *Haida* spectrum.

13.4.5 Reserve lands conclusion

To conclude, consultation has been generally adequate for the reserve lands and the process remains ongoing. Westcoast's standardized measures reduce certain direct impacts. Yet substantive gaps remain across several impact pathways. This, coupled with the absence of section 317 consents and mixed results on multiple highest end *Haida* indicators, leads me to conclude that Westcoast is to engage in further consultation to ensure the duty to consult is met for the reserve lands communities.

13.5 Métis participants

Three Métis organizations participated in this proceeding. Section 35 of the *Constitution Act, 1982* recognizes and affirms the existing Aboriginal and Treaty rights of the "Indian, Inuit and Métis peoples of Canada." The *Haida* spectrum framework applies to consultation with Métis communities, with spectrum positioning informed by the strength of the Aboriginal rights claim and the seriousness

of potential impacts on the right claimed. As the Supreme Court of Canada's jurisprudence makes clear, the content and scope of Métis section 35 rights differ from those of First Nations in material respects, and these differences inform how the *Haida* spectrum is applied.[133]

13.5.1 The Supreme Court and Métis rights

The Supreme Court of Canada has addressed Métis rights in several decisions that may inform the Commission's determinations and recommendations in this proceeding.

In *R. v Powley*,[134] the Court established the framework for recognizing Métis Aboriginal rights under section 35. Under *Powley*, a Métis community seeking to establish an Aboriginal right must demonstrate: the existence of a historic rights-bearing Métis community in the relevant area; a contemporary community that maintains continuity with that historic community; the claimant's membership in that community; and the existence of a traditional practice integral to the community's distinctive culture.

In *R. v Blais*,[135] released the same day as *Powley*, the Court held that Métis were not included in the term "Indians" in the Natural Resources Transfer Agreement, and therefore could not claim the same hunting rights as "Indians" under that agreement. This decision reinforces the constitutional distinction between Métis rights and treaty rights held by First Nations signatories.

In *Manitoba Métis Federation Inc v Canada (Attorney General)*,[136] the Court addressed the honour of the Crown in the context of implementing constitutional obligations to Métis. In the specific context of the *Manitoba Act* land grants at issue, the Court found that Métis held land individually rather than collectively and therefore could not establish Aboriginal title. The Court held that the honour of the Crown required diligent fulfillment of constitutional obligations to Métis, even where a full fiduciary duty was not triggered.[137]

In *Daniels v Canada (Indian Affairs and Northern Development)*,[138] the Court held that Métis and non-status Indians are "Indians" for the purpose of Parliament's law-making jurisdiction under section 91(24) of the *Constitution Act, 1867*. The Court confirmed that a fiduciary relationship exists between the Crown and Métis peoples. This jurisdictional determination grounds the federal Crown's consultation obligations toward Métis communities in federal regulatory proceedings such as this one. Importantly, the Court in *Daniels* declined to apply the *Powley* criteria for determining who falls within federal jurisdiction under section 91(24), noting that "*Powley* was developed specifically for purposes of applying s. 35, which is about protecting historic community-held rights. Section 91(24) serves a very different constitutional purpose."[139] The consultation duty accordingly may arise from the constitutional relationship itself, not from satisfaction of *Powley* thresholds. However, *Powley*

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[133] The framework set out in these reasons does not contemplate Alberta Métis Settlements, which may occupy a distinct position within broader categories of Métis communities and organizations. There may be certain factors that distinguish Alberta Métis Settlements from other Métis communities/organizations and these may be considered in spectrum positioning in appropriate circumstances. These factors may include statutory recognition under the *Alberta Metis Settlements Act* and regulations thereto, collective land tenure, and territorial governance structures. No Alberta Métis Settlements participated in this proceeding, and this issue is not engaged by the facts here.

[134] 2003 SCC 43 at paras 10-13, 17-33 [***Powley***].

[135] 2003 SCC 44.

[136] 2013 SCC 14 at paras 46-64.

[137] *Ibid* at paras 73, 92-94.

[138] 2016 SCC 12 at paras 1 and 50 [***Daniels***].

[139] *Ibid* at para 49.

may remain relevant to assessing the strength and nature of specific section 35 rights claims for purposes of spectrum positioning under *Haida*.

Most recently, in *Saskatchewan (Environment) v Métis Nation – Saskatchewan*,[140] the Court unanimously reaffirmed that the duty to consult operates pending final determination of Aboriginal rights claims. The Crown cannot avoid consultation on asserted title or rights simply because those claims remain unproven or are the subject of ongoing litigation. As the Court emphasized, the duty to consult serves "to provide protection to Aboriginal and treaty rights" while land and resource claims are ongoing, and to further "the goals of reconciliation between Aboriginal peoples and the Crown."[141] The Court further noted that both sides must be governed by a duty of mutual good faith, with the Crown possessing "the intention of substantially addressing [Aboriginal] concerns as they are raised."[142] The Court emphasized that court procedures should "facilitate, not impede, the just resolution of Aboriginal claims").[143]

These decisions establish a rights framework for Métis peoples that is constitutionally distinct from both Treaty rights and Aboriginal title. The *Powley* framework creates a rights architecture that differs from that applicable to Treaty 8 Nations or Aboriginal title asserting Nations. The threshold inquiry requires demonstration of a historic rights-bearing community in the relevant geographic area, continuity with a contemporary community, and that the practice claimed was integral to the community's distinctive culture.[144]

Once these threshold elements are established, however, the Supreme Court in *Powley* was clear that the resulting harvesting right is general rather than species-specific: the right attaches to hunting for food within the traditional territory of the historic community, not to particular species or micro-locations.[145] The distinction lies in the threshold proof required to establish the right, not in a narrower scope of the right once established.

13.5.2 BC context

The evidentiary record in this proceeding does not appear to establish historic Métis communities with site-specific harvesting practices along the Project corridor. The threshold requirements under *Powley* relative to a historic rights-bearing Métis community, combined with the limited evidentiary foundation for such communities along the Project corridor in BC, appears to position consultation in this case for Métis participants toward the lower end of the *Haida* spectrum.

13.5.3 Métis participants

Métis Nation British Columbia

Métis Nation British Columbia represents over 98,000 self-identified Métis people in BC. Métis Nation British Columbia's Region 7 encompasses northeastern BC, overlapping with Treaty 8 territory. Métis Nation British Columbia conducted community meetings in July 2024 with three communities in this region. The territorial nexus to areas where Métis harvesting practices were

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[140] 2025 SCC 4 at paras 50-51
[141] *Ibid* at para 50, citing *Rio Tinto* at para 34.
[142] *Ibid* at para 51, quoting *Haida* at para 42.
[143] *Ibid* at para 68.
[144] *Supra* note 134 at paras 21-33.
[145] *Ibid* at paras 43 and 50.

identified for Métis Nation British Columbia Region 7 may suggest spectrum positioning in the lower to middle range, which may indicate consultation on site-specific and identified concerns.

Métis Nation British Columbia also filed comments on draft conditions addressing employment and contracting, environmental protection, and community safety. These concerns relate to potential generalized Project impacts rather than site-specific traditional practices. Métis Nation British Columbia's participation may suggest positioning toward the lower end of the spectrum.

BC Métis Federation

The BC Métis Federation identified site-specific concerns regarding wildlife and plant resources in wetlands around the Summit Lake expansion area. This participation reflects an example of a focus on a practice-specific nature of Métis rights. Where a community identifies concrete impact pathways affecting specific traditional practices in specific locations, consultation should be aimed at addressing those concerns. The BC Métis Federation's participation may suggest positioning in the lower-middle range of the spectrum, with Project-specific consultation on identified wetland, plant, and wildlife concerns.

Manitoba Métis Federation

In November 2024, Canada and the Manitoba Métis Federation signed the Red River Métis Self-Government Recognition and Implementation Treaty, the first modern Treaty between Canada and a Métis nation, formally recognizing the Manitoba Métis Federation as the government of the Red River Métis. This recognized governmental status does not, however, appear to establish a territorial nexus or connection to a project located entirely within BC. The Manitoba Métis Federation does not appear to have established on the record a territorial connection to the Project area or identify site-specific traditional practices that could be affected. While the Commission accepts rights as asserted for the purposes of participation in its proceedings, for consultation adequacy purposes, the absence of demonstrated territorial nexus or identified impact pathways may be a factor that suggests that the Manitoba Métis Federation's participation rights may not give rise to a substantive Crown consultation duty in relation to this Project.

13.5.4 Consultation adequacy finding

The Métis organizations that participated in this proceeding received the opportunity to identify concerns through the hearing process. Westcoast's ESA addressed potential project interactions with Métis communities, including effects on resource quality and distribution, access to resources and cultural locations, environmental protection, and timing and seasonality of harvesting activities. The concerns raised by Métis Nation British Columbia and the BC Métis Federation regarding employment, contracting, and community safety appear to be general in nature and appear likely to be addressed by Westcoast's proposed mitigation measures.

In light of the above, consultation with Métis organizations appears adequate at this stage of the process. This finding does not preclude ongoing engagement through construction and operations, particularly regarding site-specific concerns.

13.6 Consultation issues across territorial contexts

I make a brief comment on several issues with respect to consultation that are common across all three territorial contexts. These issues reinforce my findings above that further efforts from Westcoast are needed to ensure the duty to consult is met for the Project.

In terms of the scope of these reasons, I do not suggest the standard is or should be perfect agreement between Indigenous Peoples and proponents, nor that wholesale acceptance of all Indigenous-proposed measures is required. Similarly, I do not find that standard mitigation measures are inherently inadequate, insufficient, unresponsive, or defective, nor do I disregard their efficiency in addressing project-specific environmental effects. Standard measures, including co-location with existing linear disturbances and EPP commitments, do appear likely to address many categories of direct, Project-specific impacts across all three territorial contexts involved here. However, the question for consultation adequacy at the higher ends of the *Haida* spectrum is whether proposed measures are responsive to the specific impacts on section 35 rights identified through community evidence, and whether Indigenous input had a genuine opportunity to shape Project design. The Supreme Court in *Clyde River* held that measures "included in virtually all" projects under standard regulatory requirements cannot, without more, constitute accommodation for section 35 rights (para 51). The issue reflected in these reasons is that systematically declining categories of Indigenous-proposed measures such as co-development, shared responsibility, and offsets without engaging with their merits, and relying on the same standard measures across communities with different territorial contexts and impact severities, may not reflect the calibrated, proportionate response that the *Haida* spectrum contemplates.

These reasons accept the principal opinion's environmental significance determinations and VC findings. The environmental evidence forms part of the baseline upon which the Indigenous rights analysis proceeds. The divergence arises in how that evidence connects to consultation adequacy and accommodation requirements. As the Supreme Court held in *Clyde River*, section 35 rights must be considered "as rights in themselves" and not "as an afterthought to the assessment of environmental concerns." Environmental mitigation may address environmental effects while leaving effects on Indigenous rights unaddressed. Accordingly, a finding that environmental effects are mitigated does not necessarily establish that effects on Indigenous rights have been mitigated and accommodated where indicated.

These reasons also assess the Project's effects on Indigenous rights through the same underlying analytical framework as the principal opinion, including the five effect categories identified in the Filing Manual: changes to resource quality, quantity, or distribution; changes to access; changes to timing and seasonality; changes to locations of cultural importance; and changes to cultural traditions, laws, and governance systems. The presentation differs in that these reasons integrate the effect categories within community-specific analyses organized by territorial context, reflecting evidence and worldviews from Indigenous participants that rights are experienced holistically rather than in discrete categories. This presentational difference does not reflect a methodological departure.

To be clear, the use of cumulative effects evidence to inform spectrum positioning is distinct from conflating cumulative effects with Project effects. Cumulative effects assessment under Filing Manual Section A.2.7 considers the project's residual effects in combination with other physical facilities or activities that have been or will be carried out. The Filing Manual guidance indicates that an increased level of detail may be required where intensive development of the region has occurred or where particular environmental or socio-economic sensitivities are involved, such as significant Indigenous traditional use. Where baseline conditions are compromised, this may inform the depth of consultation required and the calibration of mitigation and accommodation measures to the Project's incremental contributions. This approach maintains the distinction between what effects the Project causes and what consultation those effects require given the existing territorial context. References to "residual impacts" or "residual effects" throughout these reasons denote effects remaining after Westcoast's proposed mitigation measures. References to baseline conditions or

cumulative effects context describe the existing territorial setting that informs spectrum positioning and consultation depth. These definitions are applied consistently throughout.

The principal opinion at **Section 15.4.2** appears to characterize these reasons as reflecting "a more expansive set of requirements and/or expectations for deep consultation." The *Haida* framework is inherently flexible, requiring that consultation be "adapted to the circumstances" with the "controlling question in all situations" being "what is required to maintain the honour of the Crown" in the specific context.[146] These reasons do not expand that framework but instead apply it to the specific territorial contexts and evidence before the Commission.

The jurisprudence has also developed since *Haida*. Decisions including *Mikisew*, *Tsilhqot'in*, *Clyde River*, and *Kebaowek* have elaborated on what consultation may require in particular circumstances – including where Treaty rights, Aboriginal title, or established rights are at issue, and where impacts are significant. These reasons consider and integrate that jurisprudence.

The principal opinion, by contrast, applies a uniform "deep end" finding to all communities without differentiating by territorial context, rights category, or impact severity. If the question is which approach more closely reflects *Haida* framework indicia and expectations for contextual, proportionate consultation, it is not these reasons that appear to depart from established principles.

13.6.1 Westcoast's outstanding commitments

First, the scale of outstanding information in these proceedings from Westcoast appears to be broad and significant. The record demonstrates that more than 60 commitments, plans, agreements, and future filings remain outstanding from Westcoast as of the close of the proceeding, as detailed in **Annex 1** to this report. These include numerous pre-construction plans that have not yet been filed, such as the updated EPPs, Indigenous Monitoring Plan, Reclamation Plan, Wildlife Species at Risk Mitigation Plan, and multiple caribou and wetland offset measures. They also include foundational field studies and baseline data, incomplete technical documents, and Project elements still in development, such as the finalized construction footprint, detailed engineering, worker accommodation locations, and hydrostatic test water sources. Without access to complete information, the communities are unlikely to be able to reasonably determine the complete picture of potential project impacts, the sufficiency of proposed mitigation, or the implications for their rights and interests.

While the existence of outstanding items is not determinative of whether consultation has been adequate, the volume and breadth of outstanding information is a factor weighing against a positive finding that the expectations for high to higher-end consultation have been met at this point. Substantially incomplete information about the Project may limit each community's ability to adequately assess the Project's potential impacts. In this case, many of the outstanding plans and studies or part of a form the basis of conclusions in the principal opinion as well as its recommended conditions, acceptable mitigation measures, and the identification and proposed protection of culturally and ecologically sensitive areas.

To be clear, my concern is not simply that plans will be filed after a certificate is issued. Rather, my concern is that the scale and breadth of outstanding information limits the ability of Indigenous communities to meaningfully assess the Project's potential impacts on their rights during the consultation process as embodied in the hearing process that has occurred to date. Without access

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[146] *Supra* note 21, at paras 43 and 45.

to complete information, communities are unlikely to be able to reasonably determine the complete picture of potential Project impacts, the sufficiency of proposed mitigation, or the implications for their rights and interests.

This concern does not create the inconsistency the principal opinion may suggest. If comprehensive information had been available during early engagement and the Commission's hearing process, and if co-development of key plans had occurred during that period as contemplated by the Filing Manual and as requested by numerous Indigenous communities, the conditions I recommend would not need to require co-development of those same plans post-approval. The need for these is a consequence of, not a contradiction with, the outstanding information concerns I identify.

The broad scale and scope of outstanding information in this case is a significant factor that should be considered in assessing whether consultation to date has been satisfactory and whether the Project’s impacts have been capable of being meaningfully understood and addressed by Westcoast. To put it simply, the sum of these deficiencies leaves questions unanswered at a stage where clarity should reasonably be expected.

The principal opinion refers to "binding commitments from Westcoast to continue engaging with Indigenous Peoples in order to inform the Project, including its related plans." It should be noted that proponent commitments are not binding on their own and without more, in the regulatory sense, whereas conditions imposed by the Commission are legally enforceable. This distinction appears to be well understood by Indigenous communities on the record. Cook's Ferry Indian Band (final written argument), for example, distinguishes between voluntary commitments and enforceable conditions, observing that "[w]ithout enforceable conditions mandating co-development, Indigenous participation remains procedural rather than substantive." Several communities including Cheam First Nation, Cook's Ferry Indian Band, Coldwater Indian Band, Lower Nicola Indian Band, and Kanaka Bar Indian Band also requested that Westcoast's voluntary commitments be converted into enforceable conditions, which may suggest that communities perceive a material difference between the two.

13.6.2 Temporal and spatial boundaries

Second, I note certain observations regarding the temporal and spatial boundaries employed in Westcoast's ESA.

With respect to temporal boundaries, Westcoast's ESA at section 17.5.2 applies a minimum duration of 30 years for assessing Project effects. However, the evidentiary record indicates that a longer temporal horizon may be supported in this case. Wood Mackenzie's projections suggest the Project could operate for 40 years or more, and the existing T-South pipeline system that the Project would expand has already been in operation for approximately 65 years. Given these factors, I would find a minimum assessment duration of 40 years to be reasonable for evaluating potential long-term effects, particularly those relevant to residual impacts and the Project’s contributions to cumulative effects as well as any related impacts on Indigenous rights and interests.

This minimum temporal boundary appears likely to provide a more complete picture of how Project effects may interact with existing and reasonably foreseeable developments over time, which is a relevant consideration in assessing the adequacy of consultation regarding potential impacts to rights. With regard to the principal opinion, I was unable to locate where it engaged with these reasons on the rights impacts dimensions of the additional decade of impacts it mentions, nor where in the evidence Westcoast’s measures for 30 years minimum of operations versus 40 years are found, whether they are the same, and how those factors impacted the standard mitigations proposed to each community.

Regarding spatial boundaries, the three scales employed in the ESA at Section 17.5.1 are reasonable for the purposes of identifying and assessing direct Project effects. In terms of the principal opinion's conclusion that enlarging the assessed area may have the unintended effect of diluting the Project's contribution to cumulative effects, I was not able to identify any evidence underpinning that conclusion.

In my view, analysis at Treaty-based and traditional or asserted territorial scales may have been helpful in informing the Commission's determinations, particularly with respect to cumulative effects on Indigenous rights and land use. Assessment at the scale of Treaty territories and traditional territories can provide important context for understanding how Project-specific effects may contribute to broader patterns of disturbance within the lands on which Indigenous communities practice and exercise their rights. This can be a relevant consideration in the consultation analysis, as the effects of linear infrastructure on rights-based land use are often well understood in relation to the territorial context within which those rights are exercised. In my view, the broad scope and scale of outstanding information, as well as the temporal and spatial limitations of Westcoast's ESA, reinforce the need for Westcoast to engage in further efforts to consult and address the concerns of certain Indigenous communities. The possibility that Westcoast's ESA underestimates the extent of Project impacts, or has not yet captured and assessed them, underscores the need to ensure appropriate efforts have been made to identify as well as mitigate those impacts. Additionally, continued efforts at consultation will provide Westcoast additional time to receive and reflect the input of Indigenous Peoples as Project plans are developed.

13.6.3 Impact benefit agreements

The principal opinion states at **Section 11.1.7** that "[t]he Commission is of the view that benefit agreements, while not required, can help address economic or other project-related interests, or serve as a form of accommodation for project effects on the rights of Indigenous Peoples." The principal opinion appears to treat benefit agreements as a form of accommodation for Project effects on the rights of Indigenous Peoples.

However, the confidential nature of most of these agreements means the Commission cannot assess the agreements generally or whether they address specific identified Project impacts on section 35 and/or Treaty rights as distinct from commercial, economic, or other interests specifically. Accommodation under the *Haida* spectrum framework is intended to be responsive to the specific potential adverse effects on rights revealed through consultation. The principal opinion does not explain how confidential agreements not on the evidentiary record, can be assessed as adequate accommodation for identified rights impacts resulting from the Project or for which communities. Moreover, as the principal opinion itself acknowledges, "entering into a benefit agreement does not necessarily signify consent for a project by the Indigenous party." The principal opinion's treatment of benefit agreements as accommodation or as a factor to which any weight is given at all does not appear to have an evidentiary foundation and may conflate commercial, economic, or other interests with the duty to accommodate relative to the Project's potential adverse effects on section 35 rights.

13.6.4 CCC's consultation activities

The principal opinion relies on the CCC's supplemental consultation activities as supporting its finding that the duty to consult has been met. However, the CCC filed detailed comments on potential conditions containing numerous specific recommendations that do not appear to have been considered in the principal opinion's reasons or adopted in the principal opinion's conditions. These include:

- recommendations for community-by-community disaggregated reporting;
- a suggestion to expand Condition 3 (Environmental Protection) to explicitly address Indigenous rights and Reconciliation (not solely protection of the environment); and
- requirements for Westcoast to work directly and collaboratively with communities before filing plans with the Commission.

The CCC also transmitted ECCC's recommendations for GHG mitigation conditions aligned with the Strategic Assessment of Climate Change.

Of particular significance, several CCC recommendations have co-developmental characteristics. The CCC recommended that Westcoast work with Indigenous communities *before* plans are submitted to the Commission, that Indigenous community-based monitoring programs be integrated into Project monitoring, that training be developed "in partnerships with Indigenous communities," and that Westcoast "engage with Indigenous communities on appropriate thresholds" for socio-economic effects monitoring. These recommendations contemplate a collaborative role for Indigenous communities providing for meaningful input into plan development – approaches that Westcoast characterized as "impractical." The CCC identified a need for co-developmental approaches that Westcoast declined to adopt.

Further, the evidentiary record reveals an apparent tension in Westcoast's position. Westcoast's own evidence documents several instances of successful large-scale and complex multi-party collaborative measures on this Project, including 4,134+ Environmental Team Member and Cultural Guardian field participation days, 99 communities participating in field studies, 33 communities in training programs, and 8 community roundtables – all involving coordination across multiple complex technical disciplines and diverse interests. Yet Westcoast characterized co-development of certain condition-specific plans as "impractical," citing the number of groups involved.

The principal opinion also does not appear to contain reasons explaining which of the CCC's recommendations were adopted, which were not, and why. Nor does it appear to reconcile the CCC's co-developmental recommendations with Westcoast's position that such approaches are impractical, or address the apparent tension between Westcoast's demonstrated collaborative capacity and its characterization of co-development as impractical. The selective reliance on CCC consultation activities only to support an adequacy finding, while not addressing these substantive matters, raises questions about whether the principal opinion's reasons and recommended conditions adequately respond to the concerns identified by the CCC in its Crown consultation work.

13.6.5 Indigenous evidence

Indigenous communities filed evidence that, in some cases, appears to characterize impacts differently from the characterizations that appear to be contained in the principal opinion, including within Indigenous-led assessments, oral Indigenous knowledge, and written submissions describing what communities understood to be higher severity impacts in their territories. I have not identified in the principal opinion a finding or reasons explaining how Indigenous community evidence was weighed against Westcoast's ESA assessments, or the basis on which Westcoast's characterizations were preferred where the evidence may have conflicted.

The Filing Manual contemplates that Indigenous-led assessments and oral Indigenous knowledge constitute forms of evidence to be considered in the Commission's assessment. Where such evidence may conflict with proponent assessments, reasons explaining how the conflict was

resolved – and what weight was given to each – may assist in demonstrating that the duty to consult has been discharged.

The principal opinion mentions, without defining, an "interconnected approach" to assessing effects on Indigenous rights for the Project. There is an effects pathway provided, one example in **Chapter 10** (Table 10-1) expressly described as "not specific to this Project" but as a "generic example." The chapter does not appear to provide Project-specific pathways or trace Indigenous evidence through the approach. Table 10-3 identifies "linkages" between effects and VCs as categorical associations rather than traced pathways showing how Indigenous evidence informed any assessment, which I was unable to locate in the chapter. The 57 community-specific descriptions at **Section 10.3.5** are not organized by the effects pathways described, and Indigenous evidence is characterized throughout as "concerns." A primary mechanism for interconnection in the chapter appears to be cross-referencing to other chapters. I was unable to locate a rights assessment for each of the 73 communities individually using the interconnected approach described.

The principal opinion's assessment references that the Project's loops "minimize total disturbance compared to continuous linear development." However, the applicable legal framework assesses a project's effects on Indigenous rights, not whether those effects may be less than a hypothetical alternative design. I am not aware of authority supporting a comparative frame in which effects on rights are assessed against a hypothetical project rather than in light of the one before the Commission.

The principal opinion appears at times to characterize the *Haida* spectrum as "novel" and as a departure from "the regulator's longstanding practices," and "established internal authority" yet does not define these practices or this authority, identify the decisions grounding the asserted practices or authority, or explain why these would be binding in this case. These reasons apply the *Haida* spectrum, a framework established in 2004 and refined over two decades of jurisprudence. The principal opinion's "interconnected approach," by contrast, has not been used in any previous National Energy Board or CER report and does not appear to have been applied to the evidence in **Chapter 10**. As I am unfamiliar with this approach and how it is to be applied and as I was unable to locate where the principal opinion applied it to the evidence on this record for each community, I am unable to offer observations on its merits or comment on whether I would concur with it; I note only the apparent tension in these respective characterizations.

I observe that some aspects of the principal opinion provide detailed reasons explaining why the analytical approach in these reasons should not be adopted and address at length various other matters. By contrast, I have not identified in the principal opinion reasons of similar length or specificity explaining why the requests in evidence from communities for assessment methodology input and refinements, enforceable participatory mechanisms, co-developed plans, and responsibility in Project oversight were not adopted. The principal opinion appears to mention these requests, but the basis for declining them does not appear to be set out with the same level of detail as the response to these reasons.

I raise this observation not as a criticism, but because the presence or absence of reasons addressing specific community requests may be relevant to assessing whether the principal opinion demonstrates the responsiveness to Indigenous concerns that the duty to consult contemplates.

13.6.6 Process characterizations

The principal opinion asserts at **Section 15.4.1**, paragraph 30 that the Commission's hearing process was designed "consistent with the regulator's long-standing practices" and "by the full Panel" to satisfy the duty to consult "at the deep end of the *Haida* spectrum for all potentially affected Indigenous Peoples."

In terms of "the regulator's long-standing practices," the principal opinion does not appear to provide clear guidance on what it intends that term to mean, nor cite any prior Commission or National Energy Board decisions, or other authority establishing the practices asserted, noting there may be a wide and deep variety of such practices historically with the National Energy Board and currently with the CER. The *Haida* framework, by its nature, contemplates differentiated consultation based on the strength of asserted rights and the severity of potential impacts, which does not tend to involve uniform or pan-Indigenous treatment yielding uniform adequacy findings. In terms of the process being designed "by the full Panel," I am not able to agree that this is an accurate characterization or that this occurred in all cases during the proceeding.

In terms of the process satisfying the duty to consult "at the deep end of the *Haida* spectrum for all potentially affected Indigenous Peoples," the principal opinion asserts this however does not appear to define what that standard entails or explain how the hearing process was designed with its satisfaction as a guiding consideration. The assertion that providing equal procedural opportunities to all communities satisfies the duty at the "deep end" for all communities appears to conflate procedural design with substantive discharge of the Crown's constitutional obligations. Whether the duty was satisfied for any particular community tends to involve similar territorial differentiation and community-specific analyses as are set out in these reasons. The principal opinion also finds that "far greater consideration should have been given" by these reasons to certain consultation activities; yet no legal authority or supporting evidence for this assertion is identified.

The principal opinion states that while a spectrum analysis "could be a valid approach," it is "not the approach that has been taken by the CER, or the National Energy Board before it, to date." This characterization does not appear to account for *Clyde River* and *Chippewas*– companion decisions in which the Supreme Court of Canada reviewed National Energy Board processes against the *Haida* spectrum.

In *Chippewas*, the Court upheld the National Energy Board 's process where, unlike in *Clyde River*, the National Energy Board "reviewed the written and oral evidence of numerous Indigenous interveners and identified, in writing, the rights and interests at stake" and "assessed the risks that the project posed to those rights and interests" before imposing "binding conditions of accommodation.” The Court confirmed that this approach "does not necessitate a formulaic '*Haida* analysis' in all circumstances;" what is necessary is an indication that the decision-maker "took the asserted Aboriginal and treaty rights into consideration and accommodated them where appropriate.”

These reasons endeavour to provide that indication by examining the specific rights engaged in each territorial context, assessing the potential impacts to those rights based on the evidentiary record, and evaluating whether proposed accommodations respond to the identified impacts in a manner proportionate to the position on the *Haida* spectrum.

The principal opinion at **Chapter 15** states that the hearing process "met the key indicia for deep consultation described in the cases referenced above." The cases cited describe indicia beyond those the principal opinion references. The basis for the selection of which indicia are "key," from

which cases, and why, does not appear to be explained in the principal opinion. The principal opinion at **Chapter 15** also references a "proper approach" to assessing whether the Crown's duty has been discharged, and in some instances characterizes certain approaches as "appropriate." These approaches and appropriateness thresholds are not defined. Without definition, it is difficult to assess how these characterizations inform the principal opinion's analysis or how they relate to the established jurisprudence.

The CCC's process, the Commission's hearing process, and Westcoast's engagement activities each reflect and have a role in the Crown's duty to consult and accommodate on this Project – a multifaceted approach that is well understood, as I detail at **Sections 13.6.4** and **13.6.5** of these reasons. The CCC's process may have been sufficient for the purposes of the Commission's determinations relative to the application. However, Westcoast's activities remain incomplete and ongoing, as does the Commission's process and the steps beyond, including the Governor in Council process; any PPBoR approval processes; condition compliance phases; and lifecycle oversight. The question these reasons address is what further consultation and accommodation is required given the territorial contexts at issue, and that question necessarily examines the substance of what has been proposed by Westcoast and what gaps if any remain.

13.7 Concurring reasons on Chapter 4: Need for the Project

I concur in the principal opinion's conclusion that the Project is needed and economically feasible. The Project addresses an anticipated capacity shortfall on a highly utilized system, is supported by long-term firm contracts, and is underpinned by adequate supply from the Montney Formation.

However, I write separately to address matters where the principal opinion's **Chapter 4** analysis has implications for its Indigenous rights assessment that its **Chapter 4** does not address, or where I reach other findings based on the same evidentiary record. These matters concern the Wood Mackenzie analysis and its implications for Blueberry River First Nations' concerns, and the relationship between the Sunrise Expansion Program and the Aspen Point Program.

These additional findings inform my analysis regarding the adequacy of consultation for Blueberry River First Nations. They do not affect my concurrence in the conclusion that the Project is needed and economically feasible.

13.7.1 The Wood Mackenzie analysis

The principal opinion relies extensively on Westcoast's Wood Mackenzie expert analysis to support its findings on supply adequacy. Wood Mackenzie's analysis concludes that sufficient natural gas supply will remain available despite restrictions under the *Treaty 8 Planning and Mitigation Regulation* and associated agreements, due to technological advances in drilling and what is characterized as a relatively small contribution of HV1 areas to overall production. I accept these conclusions for the purpose of assessing economic feasibility. The Wood Mackenzie analysis appears reasonable in this sense and is in this sense largely undisputed on the record.

However, the same Wood Mackenzie analysis also contains conclusions that bear on the Indigenous rights assessment in ways the principal opinion does not address. Wood Mackenzie identifies "the connectivity of existing and planned pipeline systems, like those owned by Westcoast, to growing demand from LNG export terminals" as "an additional factor driving production growth in British Columbia.” Wood Mackenzie forecasts that "the Sunrise Expansion will have sufficient access to natural gas volumes to keep it highly utilized through the forecast period" and concludes that the

"Sunrise Expansion is expected to remain highly utilized and be a vital conduit for low-cost natural gas to reach demand markets served by T-South throughout the forecast period."[147] Westcoast describes Wood Mackenzie's methodology as analyzing "the relationship between existing well sites, their production, and permitted sites in relation to historical, current, and near-future oil and gas market dynamics."[148] This analysis appears significant. Westcoast's expert analysis, which identifies pipeline connectivity as a factor driving production growth and forecasts the Project will be highly utilized as a vital conduit to demand markets, appears to support a potential causal mechanism that Blueberry River First Nations identifies in their letter of comment, namely that the Project may influence upstream development patterns in areas connected to Blueberry River First Nations territory.

The principal opinion at paragraph 112 states that "Wood Mackenzie's findings are further supported by a Peters & Co. report, which the Commission raised through an IR." I note that the Peters & Co. report was not prepared for this Project. Reference xiii) in the IR 2.2 preamble identifies it as having been filed by a different proponent, for a different project in the NEBC Connector proceeding (OH-001-2022) in 2022-2023. Westcoast cross-referenced this report from a prior proceeding rather than commissioning Project-specific analysis of its own. As such, I find the weight to be given to a report prepared for a different project in a different proceeding by a different proponent, and the extent to which its conclusions apply to the specific circumstances of this Project and its potential upstream development implications, to both be low in this case.

Wood Mackenzie's analysis, which identifies pipeline connectivity as a factor driving production growth and forecasts the Project will be "highly utilized" as "a vital conduit," tends to support arguments that use the following line of reasoning: pipeline infrastructure influences drilling patterns and timing by creating market access; the Project adds 300 MMcf/d of transportation capacity; this capacity must be filled with gas production to achieve the forecast high utilization; Wood Mackenzie projects that "Montney acreage within British Columbia is forecast to be the primary driver of natural gas production growth across the WCSB;" the principal opinion acknowledges that "the Blueberry River Claim Area and producing areas of the Montney Formation have significant geographic overlap;" therefore, the Project will influence upstream development in areas including Blueberry River First Nations territory.

At the same time, Westcoast's proposed mitigation in ESA Section 18 addresses only direct construction impacts along the pipeline route. No mitigation or accommodation appears to be proposed for the Project's upstream development impacts in areas where Wood Mackenzie forecasts production growth will occur to supply the Project's anticipated high utilization as a vital conduit to demand markets. The principal opinion's **Chapter 4** does not address this and takes the approach that it is sufficient to consider Wood Mackenzie's evidence for economic purposes only.

For purposes of the Indigenous rights analysis in **Chapter 10**, it appears that Wood Mackenzie's report, which identifies "the connectivity of existing and planned pipeline systems" as "an additional factor driving production growth" and forecasts the Project will be "highly utilized" as "a vital conduit" connecting Montney supply to demand markets,[149] could also speak to and supports a potential causal mechanism between pipeline infrastructure and upstream development, which may be a factor that is relevant and material to consider when assessing consultation adequacy for Blueberry

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[147] Response to CER IR 2.2, *supra* note 121 at 4 and 8.
[148] Westcoast Energy Inc., Response to CER IR 2.2 and further responses to CER IR No. 1.1, 1.15 a), and 1.28, Filing C33913 (26 March 2025).
[149] Response to CER IR 2.2, *supra* note 121 at 4 and 8.

River First Nations. The same evidence that supports supply adequacy also appears to validate Blueberry River First Nations' core concern: that the Project will drive upstream development in areas connected to Blueberry River First Nations territory, with uncertain cumulative effects that have not been identified as flowing from the federal Crown's determinations in this process, assessed, and mitigated or accommodated.

13.7.2 Technological projections and binding commitments

The principal opinion's **Section 4.2.1.3** finds that advances in drilling technology and increased reuse of existing land disturbances are expected to allow supplies to reach projected levels despite disturbance restrictions. The principal opinion relies heavily on Wood Mackenzie's projections that 97 per cent of wells use horizontal drilling, that average lateral lengths have increased to over 9,500 feet, that the share of wells drilled on existing pads will rise from 50 per cent in 2025 to 73 per cent in 2040, and that higher production levels can be achieved with fewer new well pads, smaller overall land impacts, and mitigated cumulative environmental effects.

I concur that these projections may support supply adequacy findings for economic feasibility purposes. However, for purposes of the principal opinion's Indigenous rights assessment, I observe the following. These are generalized, industry-wide projections, not commitments from producers who will supply gas for the Project. Those producers are unidentified in the evidence. No evidence appears to establish that Project-specific producers and shippers have committed to employ these drilling practices. The principal opinion's recommendation does not include conditions requiring that Project-related production employ horizontal drilling, extended laterals, or existing pad utilization at the projected rates. No monitoring or reporting requirement exists that would verify whether these practices are or will be employed for all production supplying the Project.

Blueberry River First Nations has raised concerns in their letter of comment that longer laterals change the nature of impacts rather than eliminating them, concentrating subsurface effects from single surface locations rather than reducing overall impact. Blueberry River First Nations' position appears to be that technology has not eliminated impacts but has changed their nature, and that cumulative effects from multiple wells on single pads concentrate impacts around existing locations.

The principal opinion's reasoning appears to proceed as follows: industry-wide trends show improving drilling technology; therefore, it is reasonable to assume that Project-related production will use these technologies; therefore, cumulative effects will be mitigated because this technology will be used for the Project. The first premise is supported by the evidence. However, the second premise is an assumption that does not appear to be supported based on the record. No evidence establishes that unidentified producers and shippers with various or other non-northeastern BC production sources will employ these practices for Project-related production. The conclusion does not appear to follow as there is no evidentiary bridge connecting industry trends to specific Project-related production on this record.

The principal opinion concludes that the Commission did not receive any contrary information with respect to this evidence about anticipated technological improvements, their effects, or their expected adoption by industry. With respect, not only is that not a determinative question for the Commission in relation to this evidence, Blueberry River First Nations' letter of comment raises concerns about whether these technological approaches actually reduce cumulative impacts even if implemented, and about the absence of commitments that these practices will be employed even where they do tend to result in the projected efficiencies.

Mitigation and accommodation for impacts on Treaty rights involves measures responsive to the specific impacts identified as a result of the Project and its contributions. Projections about what unidentified producers may do in unspecified locations without binding commitments, conditions, or verification do not appear to reflect mitigation or accommodation. For purposes of the Indigenous rights analysis in **Chapter 10**, I am unable to rely on uncommitted and generalized technological assumptions as a basis for finding that Blueberry River First Nations' concerns about residual and cumulative effects or contributions thereto from the Project have been adequately addressed.

To be clear, I do not doubt that technological advances in drilling may end up occurring as or similar to projected. My observation is that for purposes of assessing whether impacts on Indigenous rights have been mitigated or accommodated, generalized industry projections serve a different evidentiary function than binding commitments. The same evidence may reasonably support an economic feasibility finding while being insufficient to establish that specific impacts on specific rights have been addressed through specific measures.

13.7.3 Production growth and the *Yahey* context

The principal opinion finds that new disturbances will likely remain below established limits even as BC's natural gas production doubles. The evidence projects BC natural gas production rising from approximately 8 Bcf/d in 2025 to 16 Bcf/d in 2040.

This projection should be considered in light of the landscape conditions described in *Yahey*. The BC Supreme Court found that cumulative industrial disturbance in Blueberry River First Nations' territory had already reached the "tipping point" in 2021 and had "significantly diminished" Blueberry River First Nations' ability to meaningfully exercise Treaty 8 rights. The Court found 85 per cent of Blueberry River First Nations territory was within 250 m of industrial disturbance. If current disturbance levels already exceed what is compatible with meaningful Treaty rights exercise, a question arises about whether doubling production, even in the case where an assumption was made that this was possible using reduced disturbance per unit of production, is compatible with the continued exercise and practice of those rights.

The projection that production can double while disturbances remain within limits does not appear to account for natural well decline rates requiring makeup drilling to maintain production, supporting infrastructure requirements for expanded operations, or cumulative effects from concentrated multi-well pad development. The principal opinion does not contain reasoning or findings addressing these concerns or how they bear on its assessment of Blueberry River First Nations' position.

The evidence on this record projects BC natural gas production doubling by 2040 and identifies several other LNG and natural gas infrastructure projects at various stages of federal and provincial approval, including Woodfibre LNG, LNG Canada,[150] and Coastal GasLink, contributing to this growth trajectory.[151] The evidence does not appear to address whether Wood Mackenzie's projections regarding drilling efficiencies would materialize as projected, particularly given significant uncertainties regarding the implementation and effectiveness of the BC provincial agreements with Treaty 8 Nations.

For purposes of the Indigenous rights analysis, it appears to me that while the principal opinion's acceptance of production doubling within current disturbance limits is reasonable in terms of the

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[150] Both of these projects have 40-year export licenses.

[151] As noted above, the Commission recently approved an amended export licence for the Cedar LNG facility with a 40-year term, *supra* note 122.

economic assessment, the principal opinion does not adequately engage with the *Yahey* context in its reasons or at all to support its findings on the Wood Mackenzie report and conclusions. The question is not simply whether technological advances can reduce disturbance per unit of production.

13.7.4 High value areas and development concentration

The principal opinion notes that only a small fraction of natural gas is produced from HV1 areas in northeast BC, approximately 9.8 per cent in 2024, and that roughly 89 per cent of drilled BC Montney wells are located outside of HV1 and Halfway River LPP areas. The principal opinion treats this as supporting a certain type of supply adequacy, namely that sufficient resources exist outside or are accessible from outside protected areas.

The same finding has implications for the Indigenous rights assessment that the principal opinion does not address or provide in its reasons. The principal opinion acknowledges geographic overlap between the Blueberry River Claim Area and the Montney gas resource, noting that "the Blueberry River Claim Area and producing areas of the Montney Formation have significant geographic overlap." The principal opinion does not, however, connect this observation to Project-related supply specifically or address its implications for the assessment of impacts on Blueberry River First Nations' Treaty rights.

The HV1 protections under the Blueberry River Implementation Agreement address legacy disturbance and establish caps on new disturbances. They do not address the residual or cumulative effects of production growth driven by new pipeline capacity including the Project. If development is concentrated outside HV1 areas, this could concentrate impacts in portions of Blueberry River First Nations territory that do not benefit from HV1 protection, potentially exacerbating rather than mitigating rights-impacting cumulative effects in those areas.

The Blueberry River Implementation Agreement itself recognizes this limitation. Section 21.3 expressly provides that Blueberry River First Nations "does not consent to the extension, amendment or renewal of the environmental assessment certificates for the West Coast Gas Transmission or Prince Rupert Gas Transmission pipeline projects, or any other new pipeline or other projects that could increase the amount of disturbance from new wells or pipelines within the Claim Area." The Province of BC agreed that "nothing in this Agreement prevents [Blueberry River First Nations] from challenging any such project for breach of its Treaty Rights or failure of consultation or accommodation." This provision demonstrates that both Blueberry River First Nations and the Province of BC recognized that pipeline projects enabling increased production require separate assessment and accommodation beyond what the Blueberry River Implementation Agreement provides.

The fact that sufficient resources exist outside HV1 areas supports Wood Mackenzie's conclusion that "the Sunrise Expansion will have sufficient access to natural gas volumes to keep it highly utilized through the forecast period" with "significant production growth expected outside of the First Nations Agreement areas."[152] However, it also means that Project-related production may occur within Blueberry River First Nations' territory in areas where provincial agreements may not provide mitigation. For purposes of the Indigenous rights analysis, this supports Blueberry River First

[152] Response to CER No. 2.2, *supra* note 121 at 4.

Nations' concern that the Project will drive development with cumulative effects in their territory that have not been adequately assessed or accommodated.

13.7.5 Blueberry River First Nations and reliance on provincial regulation

Blueberry River First Nations raised concerns that the Project is integrally linked to the expansion of gas infrastructure and gas production in the Blueberry River Claim Area. Blueberry River First Nations' letter of comment posed specific questions: where will the additional 300 MMcf/d be produced over the Project's operational life; how many new well sites and supporting infrastructure will be needed; and what will be the cumulative impacts on their traditional territory.

Blueberry River First Nations' position is grounded in the *Yahey* decision, which found that cumulative industrial disturbance in Blueberry River First Nations territory had reached the "tipping point" and had "significantly diminished" Blueberry River First Nations' ability to meaningfully exercise Treaty 8 rights within the Blueberry Claim Area. Blueberry River First Nations cited *Yahey* describing "death by a thousand cuts";[153] finding insufficient lands for meaningful exercise of rights;[154] ordering negotiation of enforceable cumulative effects mechanisms;[155] and addressing the requirement to assess future effects.[156] The principal opinion responds to these concerns by concluding that Blueberry River First Nations' concerns regarding the impacts of upstream development will be appropriately regulated by BC, including under the *Treaty 8 Planning and Mitigation Regulation* and associated agreements.

I respectfully find this response does not adequately address Blueberry River First Nations' position as advanced in the evidence for the following reasons. Treaty 8 is a federal Treaty. The honour of the Crown is engaged when the federal Crown, through its agent the Commission, considers a project that will influence development affecting Treaty 8 rights. The existence of provincial regulatory mechanisms does not discharge the federal Crown's consultation obligations.

Blueberry River First Nations' letter of comment expressly states that the provincial Implementation Agreement framework is not working effectively to address cumulative effects. The principal opinion does not engage with this evidence. Reliance on provincial regulation by the principal opinion does not address the questions Blueberry River First Nations actually posed. Blueberry River First Nations asked Westcoast to identify where the additional 300 MMcf/d will be produced and to assess cumulative impacts. The response that provincial regulation exists does not answer these questions.

The principal opinion's analysis concludes that the producing areas of the Montney Formation significantly overlap with the Blueberry Claim Area. If the principal opinion accepts that production will occur within Blueberry River's Claim Area, and accepts Wood Mackenzie's identification of pipeline connectivity as a factor driving production growth, then the principal opinion appears to have implicitly found the potential causal connection Blueberry River First Nations identifies. Deferring to provincial regulation does not address the federal Crown's role for the purposes of this Project.

For purposes of the Indigenous rights analysis in **Chapter 10**, I find that this deferral in the principal opinion does not adequately address Blueberry River First Nations' concerns. Blueberry River First Nations' evidence establishes a judicially determined baseline of compromised territorial conditions under *Yahey*, a specific mechanism by which the Project will contribute to further cumulative effects

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[153] *Supra* note 17 at para 1780.
[154] *Ibid* at para 1130.
[155] *Ibid* at para 1894.
[156] *Ibid at* paras 1735, 1781-1782, and 1805.

through upstream development to supply 300 MMcf/d, and Wood Mackenzie's analysis identifying pipeline connectivity as a factor driving production growth and forecasting high utilization as a vital conduit to markets. The principal opinion does not address this evidence, but instead defers to a provincial framework that Blueberry River First Nations' evidence indicates is not effectively addressing cumulative effects. This gap appears material to the assessment of consultation adequacy for Blueberry River First Nations.

13.7.6 Relationship between the Sunrise Expansion Program and the Aspen Point Program

The principal opinion concludes that the evidence does not indicate an interdependence between the Sunrise Expansion Program and Westcoast's Aspen Point Program projects. I do not undertake an independent assessment of whether Sunrise functionally enables Aspen Point-related upstream development. Rather, I address the implications of the principal opinion's **Chapter 4** analysis for its Indigenous rights assessment.

The principal opinion offers an acknowledgement that the Project has "an indirect relationship with upstream development" but does not cite authority or evidence establishing that this relationship is merely "indirect" rather than influential or enabling. The principal opinion reasons for this appear to be that most of the Aspen Point Program volumes are destined for Alberta or LNG export via CS-16, not the T-South system, and that specific production sources may be delivered from various sources other than the Aspen Point Program. The principal opinion concludes these projects are therefore not interdependent.

In my view, the evidence may support a different characterization. The principal opinion states at paragraph 92 that Aspen Point's "potential upstream impacts materialize largely independently of the Project." No evidence or legal authority appears to support this proposition. The physical system integration described in the principal opinion's own **Chapter 4** – where T-North feeds T-South at CS-2 – and Wood Mackenzie's analysis identifying pipeline connectivity as a factor driving production growth, tend to indicate the opposite.

Next, the principal opinion appears to consider only physical flow of molecules and does not address functional linkage in terms of cumulative enabling of upstream development. For Blueberry River First Nations and Treaty 8 Nations, the relevant question is where production occurs – not where produced volumes flow after extraction. Impacts to land and to the pathways supporting rights exercise arise at the point of production, likely in Treaty 8 territories in this case, regardless of whether those volumes are ultimately destined for CS-16, T-South, or other markets. No legal authority appears to have been filed on the record establishing that downstream destination of volumes is determinative of, or should override other factors in, considerations relevant to Indigenous rights.

Section 4.2.1.2 of the principal opinion establishes that the T-North system delivers gas to the T-South system at CS-2 near Chetwynd, that combined T-North system capacity to CS-2 is 2,907 MMcf/d, and that this is sufficient to meet the T-South system's contracted requirements. The Aspen Point Program expands T-North by 535 MMcf/d. By the principal opinion's reasoning, gas gathered through T-North, including Aspen Point Program capacity, flows to T-South. The statement that there is no evidence on the record that any volumes from the Aspen Point Program will come onto the Project appears to focus solely on specific volume allocation while appearing not to address the actual physical system integration that **Chapter 4** itself describes.

The principal opinion suggests that the Project's 300 MMcf/d could come from existing production being transported on other transportation systems, existing production that is shut in or in storage, or wells that are currently already approved by the BCER. This reasoning does not appear to support the conclusion drawn. If existing production on other systems is diverted to T-South, this creates a shortfall elsewhere requiring new production to backfill. Shut-in wells exist in some cases because of lack of takeaway capacity; bringing them online requires gathering infrastructure, which is what the Aspen Point Program provides. Already approved wells are future wells requiring both gathering infrastructure and transportation capacity. Each of these alternatives either moves the problem elsewhere or literally demonstrates the functional linkage rather than disproving it.

Wood Mackenzie's analysis, which identifies "the connectivity of existing and planned pipeline systems" as "an additional factor driving production growth" and forecasts infrastructure projects will be "highly utilized" as "vital conduit[s]" connecting supply to demand,[157] supports the conclusion that pipeline infrastructure influences when and how drilling occurs by creating market access. This analysis applies to both Aspen Point, which provides gathering capacity in northeastern BC, and Sunrise, which provides transportation capacity to southern and other markets.

The Commission approved the Aspen Point Program in December 2024. That approval enabled gathering capacity from northeastern BC. However, without corresponding transportation capacity to markets, the Aspen Point Program's potential upstream impacts had not yet crystallized, as gathering capacity without transportation capacity tends to limit production economics and takeaway options. If the Commission now recommends approval of this Project (and the Governor in Council directs that a certificate be issued), the impacts of both federal approvals crystallize together: the Aspen Point Program's gathering capacity combined with Sunrise's transportation capacity enables the conditions and drivers for upstream development that both projects anticipate and that Wood Mackenzie’s analysis indicates will occur.

This is not a matter of one project depending on the other in the economic sense the principal opinion addresses. It is a matter of recognizing that when the federal Crown approves both the gathering infrastructure and the transportation infrastructure intended to benefit and serve a producing region, it may consider as a factor in its determinations any cumulative enabling effect of both federal approvals.

For purposes of the Indigenous rights analysis in **Chapter 10**, I find that the Sunrise Expansion Program and the Aspen Point Program are physically and functionally linked and that any related cumulative enabling of upstream development in northeastern BC may be considered as a factor in the determinations before the Commission. The evidence demonstrates physical system integration, with T-North feeding T-South at CS-2; commercial structure, with firm contracts requiring production; and Wood Mackenzie’s analysis identifying pipeline connectivity as a factor driving production growth and forecasting high utilization. For Blueberry River First Nations, whose territory overlaps with the areas where both projects will enable development, this functional linkage appears material to assessing the Project's contribution to cumulative effects on Treaty 8 rights.

The principal opinion states that views expressed in the Commission's Aspen Point decision are "applicable here." To the extent this suggests that findings from a prior proceeding are determinative of matters in this proceeding, the relationship between this approach and the Commission's obligation to assess each application on its own merits is not addressed.

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[157] Response to CER IR 2.2, *supra* note 121 at 4 and 8.

13.7.7 Conclusion on need for the Project

While concurring in the principal opinion's conclusion that the Project is needed and economically feasible, I make the following additional findings for purposes of the Indigenous rights analysis.

With respect to the Wood Mackenzie analysis, the principal opinion finds that it supports supply adequacy. I concur in that finding. However, the analysis supports a potential causal mechanism between pipeline infrastructure and upstream development. This analysis, combined with Wood Mackenzie's forecast that "Montney acreage within British Columbia is forecast to be the primary driver of natural gas production growth across the WCSB"[158] and the acknowledged geographic overlap between the Blueberry River Claim Area and the Montney Formation, validates Blueberry River First Nations' core concern that the Project will drive upstream development in areas connected to Blueberry River First Nations territory, with uncertain cumulative effects that have not been assessed or accommodated. This is a factor that may be relevant and material to consider when assessing consultation adequacy for Blueberry River First Nations.

I am not persuaded that industry trends and technological projections support supply within disturbance limits, as the principal opinion finds. There is no evidentiary bridge connecting industry trends to specific Project-related production and no commitments from the producers of the Project's gas supply. I am not persuaded that generalized technological assumptions are a basis for finding that Blueberry River First Nations' concerns have been adequately addressed.

The principal opinion also finds that production can double within disturbance limits. While this finding is reasonable in terms of the economic assessment, the principal opinion does not adequately engage with the *Yahey* context of already-compromised territorial conditions or address physical plausibility concerns regarding well decline rates and makeup drilling requirements.

The principal opinion finds that sufficient resources exist outside protected, HV1 areas. I agree development appears likely to occur within the Blueberry River Claim Area outside HV1 areas. But this may concentrate impacts in portions of Blueberry River First Nations territory that do not benefit from HV1 protection. The Blueberry River Implementation Agreement itself recognizes that pipeline projects enabling increased production require separate assessment and accommodation beyond what the Implementation Agreement provides.

Unlike the principal opinion, I find that reliance on provincial regulation does not adequately address Blueberry River First Nations' position as advanced in the evidence. Westcoast's own expert identifies pipeline connectivity as a factor driving production growth. Deferring to the province does not acknowledge the federal Crown's role in creating a potential causal mechanism for further cumulative effects in the Blueberry River Claim Area. These considerations appear material to the assessment of consultation adequacy for Blueberry River First Nations.

The principal opinion finds no interdependence with Aspen Point. I find that the Project and the Aspen Point Program are physically and functionally linked, and that federal Crown conduct or decisions which contemplate potential enabling of upstream development in northeastern BC may be considered as a factor in the determinations before the Commission. For Blueberry River First Nations, whose territory overlaps with the areas where both projects will enable development, this functional linkage appears material to assessing the Project's contribution to cumulative effects on Treaty 8 rights.

These findings inform my analysis of consultation adequacy for Blueberry River First Nations.

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[158] *Ibid* at 4.

13.8 Section 214 exemptions

Westcoast has requested that the Commission exempt the Project from detailed route approval processes pursuant to section 214 of the CER Act.

I would recommend the exemptions be granted for activities on existing station property, including the pig launcher/receiver and tie-in installations and assemblies, as well as temporary construction-related infrastructure required for Project construction. I would not grant section 214 exemptions for activities related to the pipeline loops or the power lines that does not occur on existing station property. This includes no section 214 exemptions for activities occurring off existing station property related to:

- pipeline right-of-way preparation activities (including clearing, grading, stripping, and topsoil storage) and conducting trenchless crossings in select areas along the pipeline route; and,
- the power lines and substations required to deliver electrical power to the new electric motor driven compressor units at the three existing compressor stations (CS-6B, CS-8A, and CS-8B).

13.8.1 The legal framework

Section 214 of the CER Act permits the Commission to exempt a company from the detailed route approval process where the Commission is satisfied the process is not required in the circumstances. The detailed route approval process under Part 5 of the CER Act involves the publication and service of notice of the proposed detailed route of the pipeline, filing of notices of opposition by landowners or persons who anticipate that their lands may be adversely affected, and public hearing if needed in respect of such notices of opposition. This process can provide landowners and other affected parties an opportunity to raise concerns and find resolution relative to specific routing and land requirements for a pipeline before it proceeds to the construction phase.

13.8.2 Reasons for denial – pipelines and power lines

Elsewhere in these reasons, I find that Westcoast must engage in further efforts to ensure the Crown's duty to consult has been met for certain Indigenous communities in both Treaty 8 territory and unceded territories. Where that is so, the granting of a broad section 214 exemption for route segments within those communities' traditional territories removes a procedural opportunity that could facilitate consultation and mutual agreement.

To be clear, my finding is not that the duty to consult was inadequately discharged in a manner requiring the Commission to recommend withholding approval. Rather, I find that the duty to consult is ongoing for certain communities and has not yet been fully met at this stage of the regulatory process. This is consistent with the phased consultation described in *Bigstone*, which recognizes that the regulatory recommendation is one stage in the Crown's consultation process, not the final determination of consultation adequacy.

Assessment of whether the duty to consult has been met for affected communities is integral to the public interest determination. As the Federal Court of Appeal recognized in *Tsleil-Waututh*, "a project authorization that breaches the constitutionally protected rights of Indigenous peoples cannot serve

the public interest."[159] Consideration of whether consultation requirements have been adequately addressed for the affected route segments is therefore consistent with, and not separate from, assessment of the public interest.

Further, I do not suggest that the detailed route hearing process should be used to re-hear or re-litigate matters determined in this certificate proceeding. Rather, the detailed route hearing process addresses route-specific matters including the best possible detailed route, methods of construction, and timing of construction that are themselves appropriate subjects for continued engagement and consultation with affected Indigenous communities. The principal opinion acknowledges that detailed Project designs and plans would be "refined or finalized through detailed routing and engineering" after Project approval. The detailed route hearing process can serve as the procedural mechanism through which that refinement occurs, and through which affected parties may participate in that refinement. This acknowledgment appears consistent with preserving, rather than exempting, the procedural mechanism specifically designed to address detailed routing – particularly for communities whose concerns about routing and construction methods remain outstanding.

The detailed route hearing process provides a structured forum for addressing outstanding concerns about specific route segments. It can create a positive incentive for continued engagement between Westcoast and affected Indigenous communities. It affords the Commission an opportunity to assess site-specific issues raised by communities whose concerns were not adequately addressed during the application proceeding. And it protects procedural rights for Indigenous Peoples whose section 35 rights and interests are affected by the routing of these facilities.

The Governor in Council decision-making process, the detailed route hearing process, and the condition compliance phase are not mutually exclusive mechanisms for continued consultation. Each may occur, and each may contribute to ensuring that the Crown's duty is met. The Governor in Council process addresses whether to accept the Commission's recommendation and approve the Project as a whole. The detailed route hearing process addresses site-specific routing, methods, and timing. The condition compliance phase addresses the development and refinement of management plans, monitoring protocols, and other Project-specific measures – many of which involve requirements for Indigenous engagement. Preserving these mechanisms is consistent with the phased consultation framework recognized in the jurisprudence, and with the ongoing nature of the regulatory relationship throughout the Project lifecycle.

I am also not persuaded that the conclusion stated in the principal opinion is based on sufficient reasoning to support the distinction drawn between the CS-8A power line and other linear facilities. If concerns about Indigenous engagement and routing adequacy support denying exemption for CS-8A, similar reasoning and resulting conclusions would apply to the pipeline loops and the CS-6B power line where communities have raised concerns that remain unresolved. The principal opinion does not appear to explain what distinguishes the Indigenous concerns supporting denial of the CS-8A exemption from concerns raised by other Indigenous communities about pipeline loops and the CS-6B power line. If concerns about routing adequacy are sufficient to preserve the detailed route hearing process for CS-8A, similar concerns raised by other communities may warrant similar treatment for other linear facilities within their traditional territories.

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[159] *Supra* note 37 at para 507, citing *Clyde River* at para 40.

Lastly, the principal opinion finds the reasons for the requested exemptions "compelling." However, the principal opinion does not appear to explain how it considered Indigenous Peoples' evidence and submissions that requested denial of the exemptions, or the weight given to those requests relative to the proponent's reasons for seeking exemption.

13.8.3 Preserving flexibility

The denial of section 214 exemptions entails preservation of procedural steps that ensure consultation continues and concerns may be addressed before related authorizations are determined.

This approach is consistent with the phased consultation framework taken by the Federal Court of Appeal in *Bigstone*. The Court affirmed that project approval is "simply one stage in the process by which a development moves forward."[160] The Court further held that "the Crown's duty to consult and accommodate does not come to an end once the approval of a project has been given, but subsists at later stages of the development process."[161]

The Court also rejected the argument that conditions requiring future engagement constituted improper delegation, noting that given the ongoing regulatory role and predictive nature of environmental assessment, "it is not surprising that the statute specifically envisages the possibility of 'follow up' programmes."[162] The detailed route approval process I would preserve for pipeline loops and power lines is such a mechanism – a procedural step through which continued consultation may be undertaken, and concerns addressed and followed up on before those related authorizations are determined.

This approach preserves Indigenous Peoples' procedural rights while preserving space for and allowing continued engagement and consultation. If outstanding concerns are addressed either before or after statements of opposition are filed or detailed route hearings commence, Westcoast may apply to the Commission to dispense with further hearing process for those route segments. This ideally creates an incentive for meaningful continued consultation without prejudicing Westcoast's ability to proceed should it receive certificate authorization from the Governor in Council and detailed route approval from the Commission. Resolutions reached through continued consultation and engagement may also obviate the need for detailed route hearings entirely. In this way, the procedural steps I would preserve are intended to provide pathways for parties to continue to engage and agree on what works for them during this phase of the process and find mutual agreement wherever possible.

13.9 Conditions

I concur with the principal opinion's recommendation that the Project is in the public interest and that a certificate should be issued, subject to conditions. However, I write separately to address what I view as missing aspects in the principal opinion's recommended conditions and to provide guidance on how these might be addressed.

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[160] *Supra* note 110 at para 59, citing *Taku River* at para 45.
[161] *Ibid* at para 59.
[162] *Ibid* at para 57.

The principal opinion's conditions do not appear to adequately respond to the Project's impacts, as established in the record, nor provide opportunities to mitigate or accommodate those impacts to Indigenous Peoples in a way that enables participation and involvement in the Project. The principal opinion's conditions appear to rely primarily on an "engagement summary" model, requiring Westcoast to report on engagement activities it offered, after the fact, and explain how any concerns were addressed. However, a co-development approach is more supported for certain conditions affecting Indigenous rights and interests based on the evidence in this proceeding, the Commission's previous decisions, and the legal framework governing the Crown's duty to consult indicate.

My analysis of the principal opinion's conditions begins with a review of the relevant background from the Filing Manual, the UN Declaration, and the Commission's previous decisions. I then briefly comment on the many requests for participatory mechanisms, and the principal opinion's treatment of this issue, before turning to my proposed modifications to the recommended conditions. The modifications are aimed at ensuring that Westcoast conducts the further activities necessary to ensure the duty to consult is met, thereby enabling the Commission's recommendation that the Project is in the public interest. I have set out specific language reflecting my proposed modifications to the conditions in **Annex 2**.

13.9.1 Filing Manual guidance on plan development

The Filing Manual, Section A.2, provides guidance on how applicants should engage with Indigenous Peoples in developing plans and mitigation measures. The Filing Manual contemplates that for projects with significant potential impacts on Indigenous rights, engagement should inform plan development – not merely provide an opportunity to comment on completed plans.

This distinction – between engagement that shapes plan content and engagement that responds to a completed plan – is one pathway through which the difference between consultation at the lower end of the *Haida* spectrum (notice and opportunity to comment) and consultation at the higher end (meaningful participation in decision-making) can be reflected.

13.9.2 The UN Declaration and the Federal Implementation Framework

The UN Declaration Act provides that federal decision-makers are required to consider the UN Declaration in exercising their statutory functions.

In *Kebaowek*, the Federal Court addressed the application of the UN Declaration in regulatory decision-making. The Court held that the UN Declaration "is an interpretive lens to be applied to determine if the Crown has fulfilled its obligations prescribed at law."[163] The Court emphasized that UN Declaration Act provides for immediate application, not delayed implementation,[164] and that failure to consider the UN Declaration context constitutes "an error of law."[165] The Court further held that "[p]rocess rights must be considered from the perspective of the rights holding collective" to ensure consultation processes "align with the spirit of reconciliation."[166] The UN Declaration's emphasis on cooperation and participation in decision-making indicates that meaningful participation

[163] *Supra* note 24 at para 76.
[164] *Ibid* at para 99.
[165] *Ibid* at para 134.
[166] *Ibid* at para 139.

in plan development – not merely an opportunity to comment – is expected in furtherance and satisfaction of the duty to consult.

13.9.3 Previous Commission decisions

The Commission's approach to Indigenous participation in plan development and proposals from proponents for mitigation or accommodation can be seen and is reflected in previous decisions including NOVA Gas Transmission Ltd.'s North Corridor Expansion Project (**North Corridor**), NEBC Connector, and Taylor to Gordondale.[167] North Corridor and Taylor to Gordondale provide the most applicable guidance for situations where proponents have not proactively proposed mitigation or accommodation measures in their applications, and NEBC Connector for situations where proponents do so early in the process.

In North Corridor, the Commission recommended conditions requiring enhanced Indigenous participation in plan development. Condition 36 required the proponent to seek to establish an Indigenous Working Group to inform caribou habitat restoration planning, offset measures, monitoring, and collection of caribou-specific Indigenous knowledge. The Commission also required 786 ha of caribou habitat offsets – a requirement that preceded *Yahey,* demonstrating that it was the case pre-*Yahey* that cumulative effects may in some cases require mitigation or accommodation beyond standard mitigation. The Governor in Council enhanced the Commission's conditions, adding Condition 35, requiring capacity funding for Indigenous review of condition filings, and amending the caribou-related conditions to require description of Indigenous Working Group collaboration and incorporation of Indigenous knowledge.

In Taylor to Gordondale, the Commission recommended Condition 17 (Indigenous Project Committee) to provide for operational oversight, capacity funding, and collaborative responsibility for offset implementation, continuing through pre-construction and one year post-operations. The Commission recommended conditions setting out that proponents are to provide draft plans to Indigenous Peoples for review and comment before filing with the CER, explain engagement results in filings, and justify where Indigenous input was not incorporated. The Commission also required an Offset Measures Plan (Condition 39) despite the proponent proposing no offsets. The Commission determined that offsets may be required as a mitigation or accommodation measure regardless of proponent proposals.

In NEBC Connector, the proponent included detailed offset proposals in its application from the outset, underpinned by assessment evidence acknowledging significant impacts to and contributions to cumulative effects as they pertain to rights. This allowed parties to engage in considerable dialogue and consultation about impacts to be mitigated and technical considerations as offset details were developed collaboratively during the proceeding. This is what the Commission's process is designed to facilitate, and it tends to result in responsive, manageable conditions for all involved. However, where proponents have not undertaken this work in advance, the NEBC Connector decision is of limited utility and guidance in this respect.

Where proponents do not proactively address accommodation measures in early engagement activities and their applications, the Commission's approach as set out in North Corridor and Taylor to Gordondale is instructive. In those proceedings, the Commission determined that enhanced

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[167] Filing C08154; *NEBC Connector*, *supra* note 23; *Taylor to Gordondale*, *supra* note 33.

Indigenous participation and offset measures were required based on the evidentiary record, notwithstanding that such measures were not proposed by the proponent.

The Commission's prior decisions also demonstrate that offset conditions have been recommended across the full range of findings on the severity and significance of impacts to Indigenous rights and to enable the continued exercise and practice of those rights. This trend may be instructive on the approach to take for offsets on this Project. In North Corridor, the Commission found effects on Indigenous rights were of "low to moderate magnitude" and "not likely to be significant" – the lowest end of any severity or significance spectrum – yet nonetheless imposed 786 ha of caribou habitat offset conditions which were also intended to ensure the continued practice and exercise of rights. In NEBC Connector, medium severity was assessed with company-proposed offsets included with the application. In Taylor to Gordondale, the project's effects on Indigenous rights were of high severity and an offset condition was recommended.

A notable aspect of difference as between North Corridor, Taylor to Gordondale, and this Project is that both North Corridor and Taylor to Gordondale involved largely Treaty territory, namely Treaties 8 and 6 in both cases and without unceded or reserve territories, unlike this Project. The territorial differentiation needed when the three contexts, such as those in this Project are engaged, was not needed in the case of North Corridor or Taylor to Gordondale.

Lastly, the principal opinion references the Commission's Taylor to Gordondale decision as an example of assessing section 214 exemption requests based on the public interest. The principal opinion, however, does not appear to detail or engage with the different facts and substantive reasons in that decision which grounded the recommendation to grant the requested exemptions nor demonstrate how that decision should be an example that guides the Commission on that issue.

13.9.4 Considerations relevant to conditions advancing Reconciliation

Conditions which are designed in part to address duty to accommodate obligations and advance Reconciliation operate under different evaluative principles than technical or operational conditions. While the latter may be appropriately assessed against specific, measurable, achievable, relevant, and time-bound (**SMART**) criteria, as generally reflected in the technical conditions the CER recommends, conditions that have Reconciliation and/or accommodation focus aspects may serve some purposes that are not generally reducible to quantitative metrics. That a condition may not satisfy all parameters of a regulatory objective, such as meeting SMART criteria, is no bar to its imposition where it may be required to discharge the Crown's duty to consult and where appropriate accommodate.

Just as courts have recognized that Aboriginal rights claims must not be held to evidentiary standards designed for other legal contexts,[168] and that the duty to consult and accommodate is proportionate and contextual, varying with circumstances along a spectrum,[169] conditions addressing impacts on section 35 rights need not rigidly conform to evaluative frameworks or criteria designed for operational and technical matters.

Section 35 of the *Constitution Act, 1982* protects rights that do not tend to be amenable in all cases to purely quantitative assessment. The conditions recommended here provide pathways for

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[168] *R. v Van der Peet*, [1996] 2 SCR 507 at para 68.
[169] *Haida*, *supra* note 21 at paras 39 and 43-45.

meaningful co-development and Indigenous participation. Their success will be evident in whether communities experience meaningful co-development and involvement as contemplated.

13.9.5 Submissions and evidence related to conditions

The conditions that I have recommended in my reasons have been informed by submissions from participants and the totality of the evidence on the record. The applicable case law supports the Commission's practice of providing opportunities for participants to comment on potential operational and technical conditions, especially where they may impact the safety of people and property.[170] The law does not require pre-disclosure to parties of exact wording for all possible conditions. However, the Commission's practice of seeking comments on the List of Issues and potential conditions, any of which may reasonably ground potential conditions, ensures an appropriate level of procedural fairness and provides opportunities for participants to weigh in on the matters involved.

13.10 Community requests for participatory mechanisms

The evidentiary record includes specific requests from Indigenous communities for governance and participatory roles that extend beyond monitoring. These include:

Treaty 8 Nations:

- Driftpile Cree Nation, Louis Bull Tribe, and Sucker Creek First Nation: Through a joint submission, these Nations recommended an IAMC with decision-making authority, modeled on the Trans Mountain Expansion Project approach. These Nations stated that current draft conditions "rely too heavily on Westcoast self-oversight with insufficient enforcement mechanisms" and that "co-regulatory oversight" is necessary given the scale of the Westcoast system (2,900+ km of pipeline, 3.6 Bcf/d capacity).
- Prophet River First Nation: Requested Indigenous regulatory oversight committees modeled after the Trans Mountain Expansion Project approach. Prophet River First Nation emphasized that Indigenous monitors should have regulatory oversight authority, not merely consultative roles.
- Saulteau First Nations: Requested Indigenous-led oversight with operational authority, including a minimum 2:1 ratio for caribou habitat protection. Saulteau First Nations also proposed an IAMC for ongoing Project oversight.

Unceded territory Nations:

- Lower Nicola Indian Band: Requested an IAMC with decision-making authority over environmental management. Lower Nicola Indian Band’s Indigenous-led safety study recommended IAMC as a "true co-governance body" with emergency response co-decision-making authority.
- Kanaka Bar Indian Band: Requested co-governance mechanisms for Project oversight, including an IAMC similar to the Trans Mountain Expansion Project and Line 3 that would provide co-regulatory oversight throughout the Project lifecycle.

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[170] See *Flamborough (Town) v Canada (National Energy Board)*, [1987] FCJ No 460 (FCA).

- Nicomen Indian Band: Expressed interest in participatory vehicles with meaningful decision-making roles, including Cultural and Environmental Monitors throughout the Project lifecycle with responsibilities for construction, post-construction, spill response, reclamation, restoration, wetlands, watercourses, and vegetation management.
- Williams Lake First Nation: Through their final written argument, proposed four guiding principles: (1) Collaborative development – Nations involved in plans affecting their rights and territories; (2) Enforceability and transparency – clear, measurable obligations; (3) Long-term stewardship – participation extending through operations and decommissioning; and (4) Resourcing and capacity – mandatory funding to enable effective roles.
- Cook's Ferry Indian Band: Requested "measurable shared governance (not just mitigation)," "Indigenous authority embedded in conditions (not deferred)," "co-development of all management plans," and "funded participation throughout project life." Cook's Ferry Indian Band stated it could not consent to the Project without conditions addressing these requirements.
- Peters First Nation: Requested genuine collaboration rather than information-sharing, direct participation in plan development rather than feedback on completed plans, and Indigenous monitors on-site during construction with authority beyond observation.
- STSA: Through their Indigenous-led Impact and Cumulative Assessment, identified governance impacts and requested participatory vehicles for Project oversight.
- High Bar First Nation: Suggested an IAMC-like body with monitoring and enforcement mechanisms.

These requests indicate that, for these communities, the principal opinion's recommended conditions' monitoring roles do not adequately address their participation expectations.

Specific plan development concerns

Multiple communities raised concerns that engagement on plan development occurred too late in the process to meaningfully influence plan content. Examples include:

- concerns that mitigation measures were finalized before Indigenous knowledge was integrated;
- requests that Indigenous-led studies be completed before plans are finalized;
- concerns that "engagement summaries" document Westcoast's response to concerns but do not demonstrate that Indigenous input shaped plan content.

The principal opinion's treatment of participatory processes & offsets

The principal opinion's recommended conditions repeatedly scaffold onto an "engagement summary" model which positions Indigenous Peoples as reviewers of completed plans or parts thereof they did not participate in developing and which may not reflect all or any of the information provided by and important to communities as it pertains to their rights. For communities at the higher end of the *Haida* spectrum, this approach does not appear to reflect expectations for "deep consultation, aimed at finding a satisfactory interim solution."

The distinction is significant. An engagement summary reports on what Westcoast did in response to concerns. Reflecting a co-development aspect allows an opportunity for parties to develop and document how dialogue, collaboration, and Indigenous input grounded and shaped plans.

The principal opinion's recommended conditions also do not include an offset condition to mitigate or accommodate impacts to rights. The principal opinion justifies the absence of an offset condition on the basis that "offsets may be considered appropriate where a project's overall residual effects on Indigenous rights, land and resource use are assessed to be of a high severity," and that because the Project's effects are assessed as medium severity, offsets are unnecessary.

This reasoning raises several concerns. First, the Filing Manual does not establish a "high severity" threshold for considering offsets. Filing Manual Section A.2.7.2 directs applicants to describe mitigation measures "beyond project-specific mitigation already considered" for any cumulative effects and indicates that "various forms of compensation (e.g., habitat offsets) should also be considered as part of an applicant's proposed mitigation, as appropriate." These directions in the Filing Manual are not restricted to when the severity of cumulative effects are high or reach a particular threshold, but apply at *any* severity level. The principal opinion does not explain why the Filing Manual's guidance should be read to require "high severity" effects before offsets are considered, despite this not appearing anywhere in the Filing Manual, nor does it cite any authority – legal, evidentiary, or from prior Commission decisions – for this limitation.

Second, the principal opinion's reasoning does not cohere with the Commission's established practice. This represents a significant departure from the Commission's approach in its previous decisions in North Corridor, NOVA Gas Transmission Ltd.'s West Path Delivery 2023 Project (**West Path Delivery 2023**), NEBC Connector, and Taylor to Gordondale,[171] all of which recommended various offset conditions. The Commission's prior decisions demonstrate that offsets have been recommended across the full range of severity and significance findings – not only where effects were assessed as "high severity."

In North Corridor, the Commission found effects on Indigenous rights were of "low to moderate magnitude" and "not likely to be significant" – the lowest end of any severity or significance spectrum – yet nonetheless imposed 786 hectares of caribou habitat offset conditions. The NEBC Connector decision assessed effects as medium severity with the company-proposed offset package already included in the assessment. The decision demonstrates that medium severity findings do not preclude offsets. In Taylor to Gordondale, the Commission assessed effects on Treaty 8 Nations as high severity and recommended offsets.

The trajectory across these three decisions is clear: offsets have been applied at every level of severity or significance finding – from "low to moderate / not likely significant" (North Corridor) through medium severity (NEBC Connector) to high severity (Taylor to Gordondale). The common thread is not a severity threshold but rather the cumulative effects context in Treaty 8 territory and what accommodation measures are appropriate in the circumstances – precisely the contextual inquiry the Filing Manual contemplates.

The principal opinion's statement that "The Commission accepts that... offsets may be considered appropriate where a project's overall residual effects... are assessed to be of a high severity" does

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[171] Filing C19229; *NEBC Connector supra* note 23; *Taylor to Gordondale, supra* note 33.

not appear to find support in the Commission's institutional practice. I am not aware of the Commission having previously articulated or applied such a threshold. The principal opinion does not cite any authority for this proposition, does not acknowledge its lack of consistency with three prior decisions, and does not explain why a "high severity" threshold should now exist and be determinative given the lack of support for this proposition noted above.

The Filing Manual's "any cumulative effects" standard and the full trajectory of North Corridor, NEBC Connector, and Taylor to Gordondale all support offset conditions regardless of whether effects are assessed as low, medium, or high severity. The question under the Filing Manual is whether offsets are "appropriate" in the circumstances – a contextual inquiry informed by cumulative effects evidence.

The Supreme Court of Canada in *Vavilov* found that where a decision departs from established practices, it "bears the justificatory burden of explaining that departure in its reasons."[172] The principal opinion appears to create a new threshold that may not be consistent with the Filing Manual and appears to inconsistently depart from three prior decisions without addressing them or explaining the basis for any departures.

Commissioner Luciuk's concurrence takes the view that the offset condition was not put before participants such that they could tender evidence and argument, and that "ad hoc" development of offset conditions creates uncertainty. In my view, the List of Issues published at the outset of this proceeding included the potential effects of the Project on Indigenous rights and the appropriateness of proposed mitigation measures. Communities filed extensive evidence on cumulative effects and inadequacy of standard mitigation, and multiple communities explicitly requested offset measures in their conditions comments. The issue was squarely before the Commission.

The suggestion that offset conditions must emerge from proponent proposals inverts the statutory framework. Subsection 183(1) directs the Commission to recommend conditions that are "necessary or in the public interest." The offset condition proposed in these reasons adapts directly from the Commission's previously recommended condition in Taylor to Gordondale, representing application of developing Commission precedent rather than ad hoc invention. Moreover, as noted above, Filing Manual Section A.2.7.2 establishes the applicable framework by directing applicants to describe mitigation measures "beyond project-specific mitigation already considered" for cumulative effects and indicating that offsets "should also be considered... as appropriate." This guidance was available to Westcoast when preparing its application; Westcoast's choice not to propose offsets does not render the framework non-existent or the matter outside the scope of the proceeding.

13.10.1 Conditions

To address the issues identified above, I would impose conditions or add inclusions to the conditions in the principal opinion, enabling co-development of certain plans affecting Indigenous rights and interests. Co-development, as I would define it for these conditions, involves:

a) Westcoast sharing draft plans or plan elements with interested Indigenous Peoples at a stage where Indigenous input can meaningfully influence plan content;

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[172] *Supra* note 26 at para 131.

b) providing capacity-supported opportunities for Indigenous Peoples to contribute knowledge, recommendations, and proposed measures through means they deem appropriate (written, verbal, meetings, field visits, workshops, or other methods);

c) Westcoast demonstrating in its filings how Indigenous input informed specific elements of the plan; and

d) where Indigenous-proposed measures or recommendations were not adopted, providing a rationale as to why not.

This approach does not require consensus or consent. It requires that plans be developed *with* Indigenous Peoples' meaningful participation, not developed *by* Westcoast and then presented for comment.

The principal opinion declines to adopt the term "co-development" on the basis that "the term can be interpreted in different ways" and that its use "could result in less clarity and a misalignment of expectations." I was unable to identify evidence on the record of any community expressing confusion about co-development or indicating concern that the term would create misaligned expectations. To the contrary, communities used the terminology themselves and specifically requested co-development arrangements. Cook's Ferry Indian Band requested co-development of all management plans. Lower Nicola Indian Band requested co-development with decision-making authority. Nazko First Nation requested co-developed monitoring programs.

The concern that the term could cause confusion appears to reflect an interpretation of what communities might experience, rather than what communities have expressed on the record. I note that where terminology requires clarification, the Commission routinely provides definitions in its decisions. A definition could have been adopted, as I have done in this section, rather than declining the term on the basis of potential interpretive variability.

The condition modifications set out below demonstrate the practical application of co-development. These modifications do not introduce uncertainty; rather, they provide a structured framework for the collaborative plan development that communities requested.

The principal opinion suggests that its condition requirements for engagement are "virtually the same" as those proposed in these reasons using the term co-development. If the requirements were substantively equivalent, one might expect communities to have expressed satisfaction with the engagement model in the principal opinion's conditions. The record may suggest otherwise. Communities specifically requested co-development arrangements, which may indicate they perceived a difference between the approaches.

The distinction communities appear to draw is between reviewing completed plans and participating in plan development – between providing input that may or may not be incorporated, and substantive collaboration on plan content. Whether this distinction is material is a matter on which reasonable decision-makers may differ. I note it here because the record reflects this distinction in the evidence and submissions of multiple communities.

The principal opinion notes that 19 conditions "have been strengthened to ensure that Indigenous communities would have meaningful opportunities to engage with Westcoast." The strengthening of standard conditions can be a positive development. However, the number of standard conditions strengthened may not, on its own, demonstrate or conclusively determine that consultation requirements have been met for communities whose circumstances place them at the high to

highest end of the *Haida* spectrum. The relevant inquiry may be whether the content of those conditions is responsive to the specific concerns and requests raised by those communities.

I would apply the co-development inclusions to the following conditions where:

a) a plan addresses matters directly affecting Indigenous rights or culturally significant resources;

b) Indigenous knowledge is directly relevant to plan content; and

c) communities have requested meaningful participation or involvement.

Caribou conditions (6, 7, 44, 45)

Caribou habitat restoration and offset measures involve site selection, species selection, restoration methods, and success criteria – all areas where Indigenous knowledge is directly relevant. Multiple Treaty 8 Nations and other Indigenous communities identified caribou as central to their rights and cultural practices. Saulteau First Nations specifically requested a minimum 2:1 ratio for caribou habitat protection.

The principal opinion's conditions require engagement summaries but do not require that Indigenous input shape restoration or offset site selection. Given the significance of caribou to Treaty rights and the cumulative effects context, I find that co-development of these plans is appropriate.

Conditions 6, **7**, **44**, **and 45** would include requirements that Westcoast demonstrate how the plans were co-developed with interested Indigenous Peoples, how Indigenous knowledge informed specific plan elements (site selection, species selection, restoration methods, monitoring methodology), and rationale where Indigenous-proposed measures were not adopted.

Condition 45 (Caribou Habitat Restoration and Offset Measures Monitoring Program) would also include opportunities for Indigenous Peoples to participate in monitoring activities, assessment of measure effectiveness, and adaptive management recommendations.

Indigenous monitoring conditions (11, 28)

These conditions address Indigenous Peoples' participation in monitoring – they are inherently about Indigenous involvement. It is incongruous for a plan *about* Indigenous participation to be developed by Westcoast with Indigenous input sought only after the plan is completed. The evidence includes requests from multiple communities for more robust roles and responsibilities and participation in adaptive management decisions.

Conditions 11 and 28 would be revised to require that the plan be co-developed with potentially affected Indigenous Peoples. The engagement summary section would be replaced with a co-development description documenting how the scope, methodology, and frequency of monitoring activities were developed with Indigenous Peoples' input.

I would also add requirements for defined response protocols when Indigenous monitors raise concerns, and mechanisms for Indigenous monitors to participate in adaptive management decisions when monitoring indicates mitigation measures are not performing as anticipated.

Socio-economic Effects Monitoring Plan (Condition 19)

The effectiveness of socio-economic monitoring depends on identifying indicators and thresholds that capture effects meaningful to affected communities. If indicators are selected by Westcoast without Indigenous input, the monitoring will not capture effects that communities experience.

STSA's Indigenous-led Impact and Cumulative Assessment identified socio-economic effects – including effects on governance, cultural continuity, and community safety – that may not be captured by standard socio-economic indicators. Multiple communities raised concerns about missing and murdered Indigenous women and girls and community safety impacts.

Condition 19 would require that the plan be co-developed with potentially affected Indigenous Peoples, with specific requirements for how Indigenous Peoples' input informed indicator and threshold selection, how community-identified socio-economic concerns were integrated into monitoring methods, and rationale where Indigenous-proposed indicators were not adopted.

Updated Environmental Protection Plans (Condition 9)

The EPPs address site-specific mitigation for culturally important vegetation, reclamation goals, wildlife management, and other matters directly affecting Indigenous rights. Indigenous knowledge is directly relevant to these plan elements.

Condition 9 would include territorial differentiation, requiring that for components affecting Treaty 8 territory, unceded territories, or reserve lands, relevant plan sections demonstrate how they were co-developed with interested Indigenous Peoples. I would add Commission approval for this condition to ensure adequacy before construction proceeds.

Plan for hydrostatic test water withdrawal and discharge (Condition 27)

Several communities provided evidence regarding Green Lake's cultural and ecological significance. The proposed condition specifically references Green Lake but relies on engagement summary rather than co-development for withdrawal parameters.

Condition 27 would require that for water withdrawal from Green Lake or other waterbodies identified by Indigenous Peoples as having particular cultural significance, withdrawal parameters (timing, rates, volumes) be co-developed with interested Indigenous Peoples.

Forest Management and Old Growth Mitigation Plan (Condition 8)

Old growth areas have significant cultural value to many Indigenous communities. Multiple communities identified connections to old growth forests, including for medicinal plants, wildlife habitat, and cultural practices.

Condition 8 would require that the plan be co-developed with interested Indigenous Peoples, with specific requirements for how Indigenous knowledge informed identification of old growth areas of particular cultural importance and how Indigenous input shaped avoidance, minimization, and offset decisions.

Other conditions with co-development potential

The following conditions would also benefit from co-development elements:

- **Condition 10** (Wildlife Species at Risk Mitigation Plans): Species-specific mitigation, seasonal timing restrictions, and habitat identification.
- **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples): Training programs and contracting opportunities designed with community input on needs and preferences.
- **Condition 13** (Finalized watercourse crossings inventory): Crossing-specific mitigation at culturally significant watercourses.
- **Condition 29** (Operational Vegetation Management Plan): Pre-clearing harvesting procedures and protections for culturally important vegetation.
- **Condition 39** (Wetland Offset Measures Plan): Offset location selection and measure design.

The principal opinion's approach to Indigenous participation and co-development

As noted above, many of my recommended conditions incorporate elements of Indigenous participation and co-development in measures related to monitoring, the environment, and socio-economic effects.

In my view, this approach is consistent with past Commission decisions. The Commission has consistently recommended Indigenous participation mechanisms in its prior decisions: an Indigenous Working Group in North Corridor, an Indigenous Oversight Group in West Path Delivery 2023, and an Indigenous Project Committee in Taylor to Gordondale. Each of these projects was smaller in scope and scale than Sunrise. The principal opinion does not appear to mention this or explain the basis for any departure from these decisions.

The principal opinion distinguishes the Trans Mountain Expansion Project and Line 3 IAMCs as being for "more complex pipeline systems." Enbridge, the corporate parent of Westcoast Energy, participates in the Line 3 IAMC, which has operated under an IAMC framework since 2017. The principal opinion does not address this corporate precedent or explain why Westcoast should have no participatory mechanism at all on this Project when Enbridge has demonstrated both capacity and willingness to operate under such structures.

Further, the principal opinion's characterization of Trans Mountain Expansion Project and Enbridge's Line 3 each as a "more complex pipeline system" is unsupported. As an approximation, the Westcoast system spans approximately 2,900 km from Fort Nelson, BC to the Canada-US border and is roughly 2.5 times larger than the Trans Mountain system and 2.7 times larger than the Canadian portion of Line 3 (Hardisty, Alberta to Gretna, Manitoba). Sunrise alone affects over 80 Indigenous communities, comparable to the 109 communities on the Line 3 Crown List. Considering an approximate comparison of the two systems noted by the principal opinion and the Westcoast system, it remains the only one of these without an IAMC, despite involving comparable numbers of Indigenous communities and traversing exceptionally complex territorial contexts. The principal opinion does not appear to cite evidence for its complexity characterization. The distinction appears to be asserted rather than established on the record.

The conditions I would propose create collaboration and co-development requirements that embed Indigenous participation directly into plan development and project implementation. Combined with the preservation of the section 214 detailed route process, this approach maintains consistency with the Commission's established practice of ensuring meaningful Indigenous participation in major pipeline projects, while adapting the form of that participation to this Project's specific circumstances.

Conditions respecting offsets

Consistent with the approaches taken in North Corridor, West Path Delivery 2023, NEBC Connector, and Taylor to Gordondale, I would impose an offset condition for the Project. Filing Manual Section A.2.7.2 indicates that offsets "should also be considered as part of an applicant's proposed mitigation, as appropriate." Where standard mitigation may not be sufficient to accommodate project residual impacts and contributions to cumulative effects, offsets can enable the continued exercise and practice of rights.

I would recommend a condition requiring an Offset Measures Plan, adapted from Taylor to Gordondale's Condition 39. As in that case, the plan would be filed within 90 days after obtaining Leave to Open and would require:

- goals and measurable objectives focusing on offsetting the operational right-of-way;
- preference for restoring native vegetation, including culturally significant plants, aimed at improving exercise of Indigenous rights;
- offset ratios using appropriate starting points based on land type and disturbance status;
- optionality for offset measures (direct restoration, contributions to restoration funds, land securement, Indigenous-proposed alternatives, or combinations);
- monitoring, reporting, and adaptive management; and
- demonstration that the plan was co-developed with interested Indigenous communities.

The proposed wording for the offset condition in **Annex 2** does not impose offset requirements for Project components on reserve lands within the meaning of subsection 2(1) of the *Indian Act*. I agree with the principal opinion's interpretation of the consent requirement in section 317 of the CER Act, namely that consent may be obtained at a time prior to construction. Consultation with respect to reserve lands should be aimed at obtaining Band Council consents under subsection 317(1) prior to construction on those lands. Westcoast's evidence indicates that construction on reserve lands may occur later in the construction schedule (late 2026 or 2027), providing time for this consultation to continue. The subsection 317(1) process supports Indigenous communities' decision-making with respect to their reserves.

Conditions respecting Canadian participation in engineering and construction

I agree with the principal opinion that the Project would benefit local, regional, provincial, and national economies, and finds that the socio-economic benefits related to the construction phase of the Project, through direct, indirect, and induced employment, and contract and procurement opportunities, would benefit local and Indigenous communities, as well as workers from other areas of BC. I also concur with the principal opinion's satisfaction with Westcoast's evidence of these potential Project benefits to employment and the economy. It also appears to me that Westcoast has established appropriate mitigation and management measures to reduce negative impacts of the

Project on employment and the economy, and enhancement measures to increase positive impacts on those aspects.

To further encourage the positive impacts to the Canadian economy, I would recommend imposing a new condition (Canadian participation in engineering and construction). The new condition would require Westcoast to file a report detailing the extent to which Canadians and Canadian companies had an opportunity to participate in the engineering and construction of the Project.

Commissioner Luciuk's concurrence declines this condition on the basis that there was "no direct evidentiary foundation" and the issue was "neither proposed nor discussed on the record." With respect, subsection 183(2)(i) of the CER Act expressly provides that the Commission "may have regard to the extent to which Canadians and Canadian companies have an opportunity to participate in the engineering and construction of the pipeline." This statutory consideration, which Parliament included in the section governing the Commission's recommendation, provides foundation for a not-for-approval reporting condition as recommended in these reasons.

13.10.2 Conditions respecting oversight committees

I agree with the principal opinion's conclusion at **Section 10.5.5.2** that an oversight committee is not needed as a condition for this Project. In my view, this is not needed here in light of the territorially segmented areas of work and expansion nature of the Project, Westcoast's proposed mitigations and commitments, and the conditions I would recommend. I disagree, however, that potential or planned as well as ongoing CER systemic initiatives render an oversight committee unnecessary, as the principal opinion suggests.

The principal opinion references these initiatives – including Shared Priority Measure 34 of the UNDA Action Plan and the CER's National Indigenous Monitoring Framework – while acknowledging they are "separate from any Commission hearings on specific projects, including this Project." This acknowledgment is well-founded, as there does not appear to be a direct connection between this work and the Project.

In my view, for the reasons outlined below, it is inappropriate to rely on such broad, systematic measures in assessing consultation adequacy for this Project. Rather, no oversight committee condition is needed for this Project not because of any systematic measure, but a detailed route hearing in a section 214 process provides an adequate forum for further consultation (as my reasons on the section 214 above explains). The route hearing process, coupled with the conditions requiring Indigenous participation in construction monitoring (**Condition 11**) and post-construction monitoring (**Condition 28**), provides meaningful and Project-related Indigenous oversight opportunities.

Evidentiary foundation

There is no evidence on this record, or at all, that current CER project-specific and corridor-specific approaches to Indigenous monitoring and oversight are insufficient. The IAMCs established for the Trans Mountain Expansion Project and Enbridge Pipelines Inc. Line 3 have been characterized as highly successful and have operated on an indeterminate basis effectively with funding windows tied to specific projects and their activities. These project- and corridor-specific arrangements provide funding certainty, accountability, and community-specific focus. Proponents have provided dedicated funding for project-specific monitoring. Community-specific concerns have been addressed through community-specific arrangements.

The communities in this proceeding who requested IAMC-level oversight did so based on Project-specific concerns about cumulative effects, monitoring, and responsibilities in their territories. There is no evidence or legal authority on this record that supports the proposition that broad, non-project-specific systemic initiatives can or should properly fulfill or substitute for the Project-specific accommodation that the Crown's duty to consult requires.

Action Plan Measure 34 and CER initiatives

The CER's ongoing review of the OPR and Filing Manual was initiated in January 2022, predating the release of the UNDA Action Plan in June 2023, and therefore cannot be characterized as work undertaken in response to Action Plan Measure 34. Even where subsequent phases of the OPR and Filing Manual review project could have been broadened or amended to consider the UNDA Action Plan generally, Measure 34 specifically, or the related Recommendation #2 from Appendix D of the IAMC evaluation (which called for development of the CER's National Strategy for Indigenous Monitoring with a target completion date of March 2025), there is no indication this occurred. I am unaware of whether the March 2025 target completion date for Recommendation #2 was achieved. Accordingly, the CER initiatives referenced by the principal opinion do not appear to have any connection to this Project.

West Path Delivery 2023 and the Indigenous Collaborative Mechanism

The West Path Delivery 2023 proceeding (GH-002-2020) provides an example of why caution may be prudent when considering the degree of reliance, if any, that should be placed on contemplated or in-development broader systemic initiatives and structures. In that proceeding, the Commission recommended, although not by way of condition, that an Indigenous Oversight Committee be co-developed for the NOVA Gas Transmission Ltd. system.

Following that recommendation, the CER launched the NOVA Gas Transmission Ltd. Indigenous Collaborative Mechanism initiative in Fall 2022 to co-develop this oversight structure with Indigenous communities. This initiative involved substantial CER and Indigenous engagement and capacity over approximately 18 months, including:

- Leadership meetings (December 2022 - March 2023): Six meetings between CER and Indigenous leadership
- Co-writing Leadership Meeting Summary Report (Spring - Fall 2023): A final report co-written with Indigenous community volunteers
- Technical Workshops (February - April 2024): Five workshops engaging approximately 55 Indigenous communities across Alberta and northeast BC, with participation from First Nations and Métis communities
- Co-writing Technical Workshop Summary Report (2024): A comprehensive report co-developed with 17 Indigenous co-writers

The technical workshop report resulting from the initiative articulates detailed foundational values, guiding principles, and 17 key features for a proposed collaborative mechanism, including governance structures, Indigenous-led monitoring, consensus-based decision-making, and long-term visions for Indigenous regulatory authority.

As of the time of this writing in January 2026, there does not appear to have been a public update provided on this initiative since April 2024. The subsequent steps that had been planned to follow the technical workshops, including co-developing the actual collaborative mechanism itself, do not appear to have occurred as scheduled.

Implications for reliance on systemic initiatives

This experience is a reminder that broader systemic initiatives – whether Commission-recommended structures or CER-led policy frameworks – may not proceed as contemplated or at all, even after years of engagement and considerable expenditure of time and resources by Indigenous participants and others. Accordingly, I am not persuaded that reliance on these initiatives is appropriate in assessing consultation adequacy for this Project. Such initiatives may or may not:

- come into existence at all, or in the form or for the purposes contemplated;
- address the specific concerns raised by Indigenous communities regarding this Project or apply to the Project specifically; or
- survive changes in CER priorities or funding decisions.

13.10.3 Project-specific implications

My agreement that no oversight committee condition is needed for this Project is informed by my position on section 214 exemptions, set out elsewhere in these reasons. By preserving the detailed route hearing process for the linear facilities, a Project- and corridor-specific process remains available and can enable continued Indigenous consultation. This mechanism:

- already exists in the CER Act and is tied to this specific Project;
- provides a known, structured process with procedural rights for Indigenous Peoples whose section 35 rights and interests are affected to address outstanding concerns about specific route segments;
- may create an incentive for continued consultation between Westcoast and affected Indigenous communities; and
- is not typically subject to the same uncertainties as the systemic initiatives discussed above.

If remaining consultation concerns are addressed before detailed route hearings commence, Westcoast may apply to the Commission to dispense with the hearing for those route segments. This provides a pathway for parties to continue to engage toward resolution. Resolutions reached through continued engagement and consultation may obviate the need for detailed route hearings entirely.

Combined with the conditions requiring Indigenous participation in construction monitoring (**Condition 11**) and post-construction monitoring (**Condition 28**), this approach is intended to provide meaningful and Project-related Indigenous oversight opportunities.

13.10.4 Conclusion on conditions

In conjunction with the section 214 process, the amended conditions proposed here would ensure that Westcoast undertakes the further efforts necessary to ensure the duty to consult is met for several Indigenous communities. As the thematic analysis in the preceding duty to consult analysis

revealed, Westcoast’s proposed measures did not seem to consistently address the specific impacts from the Project on Indigenous rights. Standardized environmental measures were repeatedly relied upon. Cumulative effects were not addressed with efforts beyond Project-specific measures. Requests for communities for greater oversight in Project operations, as well as notification on activities that may affect them, were commonly denied. This resulted in a mixed record on several of the relevant *Haida* spectrum indicators, particularly genuine opportunities to influence Project design and substantively addressing Indigenous concerns. The section 214 process, and the amended conditions here, create additional forums to ensure these issues are appropriately addressed throughout the Project lifecycle. This result provides the Crown with greater assurance that the duty to consult has been fulfilled for the Project.

Process observations

I concur with Commissioner Luciuk's description of the process established by the Lead Commissioner's first instruction. I offer additional observations.

The first instruction from the Lead Commissioner issued on 19 November 2025 did not appear to provide reasons for why the instruction was issued. Section 41 of the CER Act authorizes the Lead Commissioner to give instructions "to ensure that an application before the Commission is dealt with in a timely manner." The first instruction did not appear to identify any evidence that any time limit was at risk, of any delay in the proceeding or any missed deadline, or of any other verified information or circumstance reasonably indicating or demonstrating a timeliness concern.

In this case, in response to the Lead Commissioner's instruction, a process was created and implemented in which staff and one Commissioner, exclusive of the two other Commissioners on the Panel, selected which findings and recommendations, if any, from the other two Commissioners would be accepted into the principal opinion. Through the structure of the process created, it appears that staff participated in determining not only the content of the Commission's reasons for decision, but the decisions and recommendations themselves.

I am not aware of any documented safeguards that appeared to define or limit this staff role. The process did not appear to create the conditions asserted at paragraphs 3 and 149 of the principal opinion, nor did it appear to create or communicate a mechanism for Commissioners to decline or object. The Commissioners whose findings and recommendations were not accepted were directed to prepare separate reasons. I have not waived any privilege at any time during this process and my findings and recommendations on the Project appear in these reasons because no other avenue appeared to exist.

On 16 January 2026, all Panel Members provided final approvals of their reasons for the Report in accordance with the imposed process. The Hearing Manager confirmed the same day that all Panel approvals had been received.

Subsequently, during the afternoon of 19 January 2026, the principal opinion authors advised they had undertaken a further round of substantive revisions after final approvals had occurred and submitted significant changes to their approved reasons. The principal opinion authors advised that as a result, revisions to concurring and minority reasons were to be provided to staff by the following morning. Among the revisions made to the approved principal opinion was the removal of a sizeable amount of content that included portions of some iterations of my draft reasons, presented in a three-part structure, as well as analytical treatment of what the principal opinion had characterized as their evolution. Only my draft reasons were included in the principal opinion and received this

treatment; the principal opinion had not included the various draft iterations of its or the concurring opinion's draft reasons or subjected them to the same characterizations or treatment. Pursuant to the imposed process, and as a result of the post-approval additional revisions from the principal opinion authors, I submitted revisions for these reasons on the morning of 20 January 2026 to conclude the process.

On 21 January 2026, the Lead Commissioner issued a second instruction to the Panel pursuant to section 41 of the CER Act. It did not appear to provide reasons for why it was issued and I am not aware of what if any circumstance may have prompted it. All reasons had been approved by the Panel the week before the second instruction was issued. The second instruction identified no evidence that any time limit was at risk, that there was any delay in the proceeding, that any missed deadline had occurred, that there was any issue with the approved reasons, or of any other verified information or circumstance reasonably indicating or demonstrating a timeliness concern. The Report is currently scheduled to be issued almost two weeks in advance of the time limit referred to in subsection 183(4) and section 42 of the CER Act.

I am not aware of prior or other current proceedings under the CER Act where one or more section 41 instructions of this nature were issued, including in all previous instances of dissenting reasons. I have also observed other matters involving section 183 of the CER Act where time limits were confirmed to be at risk. In none of those instances, as far I am aware, were any section 41 instructions issued.

The second instruction directed all three panel members to submit yet another round of post-approval revisions, but unlike the first instruction, without having received or reviewed the final versions of all reasons. In addition to the roles of staff and one Commissioner described earlier in this section, the second instruction appears to result in a process by which staff and one Commissioner will select which final edits from which Panel Member will be allowed to be applied to their own reasons.

I am not aware of any documented safeguards that would prevent the Lead Commissioner from reviewing draft or approved reasons and subsequently issuing instructions under section 41 or taking measures under section 42 of the CER Act. Section 41 authorizes instructions where necessary to ensure that an application before the Commission is dealt with in a timely manner. Section 42 may be engaged where the Lead Commissioner is satisfied that a time limit is not likely to be met. Neither instruction in this case appeared to identify facts, evidence or information engaging these statutory criteria, nor did either appear to be based on such facts, evidence or information.

While the second instruction indicated the Lead Commissioner had received information from staff, the content of this information, how the staff who provided it came by the information, when and why the information was provided, how it was verified, and what role if any the staff had in the process were not disclosed. The second instruction also stated that after the deadlines set by the Hearing Manager had passed, deliberation continued and Panel Members made further edits to their opinions. This characterization does not appear to reflect awareness of or account for the fact that final approval of all reasons had been provided by all Panel Members on 16 January 2026. I am not aware of any post-approval deliberations having occurred as described in the second instruction in which I was included, nor am I aware that deliberations occurred as characterized in the principal opinion generally.

I am also not able to confirm concurrences with earlier versions of the principal opinion, as no opportunity appeared to exist in the imposed process to do so before the simultaneous provision of revised finalized reasons expected on 22 January 2026. The process does not appear to allow for

the opportunity to remove aspects of these reasons that may be addressed in the revised finalized versions of the principal opinion or concurring reasons. Accordingly, and to the extent content appears in these reasons but is not connected to or cross-referenced with the reasons of my colleagues, this should be attributed to the structure of the imposed process rather than to oversight or omission on my part.

Annex 1 – List of Westcoast's outstanding commitments

This is a non-exhaustive compilation of all outstanding commitments, plans to be filed, agreements pending, and future actions that Westcoast has committed to but not yet completed, based on my review of the evidentiary record in the Project proceeding. Items are organized by category and include source evidence references with Filing IDs and page/section numbers where available. In total, I have identified over 60 outstanding items.

Part 1: Environmental and management plans to be filed

1.1 Pre-construction plans (tied to potential conditions)

Plan	Potential condition	Expected timing	Status
Updated Environmental Protection Plan (EPP)	Condition 8	90 days pre-construction	Not filed
Forest Management and Old Growth Mitigation Plan	Condition 7	Q4 2025	Not filed
Reclamation Plan	Condition 8	Pre-construction	Not filed
Indigenous Monitoring Plan	Condition 9	Pre-construction	In development - no draft available
Caribou Habitat Restoration Plan (CHROMP)	Condition 5	Q4 2025	Not filed
Preliminary Caribou Habitat Offset Measures Plan	Condition 6	Q4 2025	Not filed
Final Caribou Habitat Offset Measures Plan	Condition 42	Post-approval	Not filed
Wildlife Species at Risk Mitigation Plan	Condition 10	Pre-construction	Not filed
Wetland Offset Measures Plan	Condition 36	Pre-construction	Not filed
Timber Salvage Plan	EPP requirement	Pre-construction	Not filed
Hydrostatic Test Plan	Condition 25	60 days pre- testing	Not filed
Dewatering Management Plan	EPP requirement	Pre-construction	Not filed
Water Quality Monitoring Plan	EPP requirement	Pre-construction	Not filed
Blasting Plans	EPP requirement	Contractor- prepared	Not filed

1.2 Construction and operations plans

Plan	Timing	Status
Socio-economic Effects Monitoring Plan	Pre- construction	Under development
Community and Gender Safety Plan	Pre- construction	Under development
5-Year Post-Construction Environmental Monitoring Program	Post- construction	Not filed (Years 1, 3, 5)
Breeding Birds and Nest Mitigation Plan	Pre- construction	Framework exists; details pending
Integrated Vegetation Management Plan (IVMP) Update	2025 renewal cycle	Undergoing renewal
ML/ARD Contingency Plan	Pre- construction	To be included in updated Pipeline EPP

Part 2: Environmental studies and surveys outstanding

2.1 Field studies and baseline data

Study/survey	Expected timing	Status
2025 Wildlife Field Program (comprehensive)	March-September 2025	Ongoing/partially complete
Old Growth Field Verification	Q2 2025	Pending
Forest Health Surveys	2025 (delayed from 2024)	Delayed
Pre-construction Species-at- Risk Surveys	Pre-construction	Methodology to be finalized
Updated Critical Habitat Spatial Analysis (10 wildlife species)	Q4 2025	Pending
Site-Series Specific Disturbance Maps (caribou)	Pre-construction	Not provided

2.2 Outstanding data commitments to Indigenous Peoples

Data/study	Recipient(s)	Status
Baseline inventory data sharing	Various FNs	Partially complete (March-April 2025)
TLU site incorporation into alignment sheets	All Indigenous groups	Not yet incorporated
Cultural Heritage Overview Assessment (CHOA) incorporation	Peters FN	Findings to be incorporated into ESA/EPPs

Part 3: EAS and technical documents

3.1 Draft EAS

Document	Current status	Outstanding updates
Draft Pipeline EAS	Filed (preliminary routing only)	Proposed construction footprint, associated workspaces, detailed engineering, TLRU sites
Draft Powerline EAS	Initial draft provided (CS-6B, CS-8A)	Further refinement pending
Site-specific watercourse crossing plans	Not filed	To be prepared by contractors
Site-specific wetland crossing plans	Not filed	To be prepared pre-construction

3.2 Project footprint finalization

Status: Project footprint not finalized as of close of record

Outstanding elements:

- Finalized construction footprint
- Associated temporary workspaces
- Worker accommodation areas (still being identified)
- Water sources for hydrostatic testing (to be confirmed Q4 2025)

Part 4: Section 317 consents – reserve lands

4.1 Consent status summary

First Nation	Reserve	Consent status	Outstanding requirement
Seabird Island Band	Sq'ewqel Reserve	Conditional	Right-of-way agreement finalization
Cheam First Nation	Tseatah Reserve No. 2	Not provided	Fundamental objection to project
McLeod Lake Indian Band	McLeod Lake Reserve	Not provided	Discussions ongoing

Part 5: Indigenous engagement commitments

5.1 Project benefit agreements

Category	Status
Executed agreements	20+ (specific identities confidential)
Agreements in negotiation	Multiple (number unspecified)
Publicly confirmed	Kelly Lake FN, BC Métis Federation

5.2 Indigenous-led studies

Indigenous Participant	Study status	Westcoast response
Cook's Ferry Indian Band	Filed June 12, 2025 (confidential)	Commitment to respond
Multiple other communities	Various stages (completed to in-progress)	Responses ongoing

5.3 Outstanding engagement commitments

Commitment	Status
Cultural Walk-Throughs	6 groups completed; 15+ in progress; 5 declined
Recurring meetings with Indigenous groups	Ongoing
Socio-economic community roundtables	8 held Dec 2024-June 2025
Indigenous participation in field studies	Ongoing

Part 6: Monitoring and reporting commitments

6.1 Construction phase monitoring

Commitment	Details
Indigenous Monitoring Program	To be developed with community input; draft not available
Environmental Inspector	Field oversight with authority to pause work
Construction progress reports	To Indigenous groups if requested

6.2 Post-construction monitoring

Monitoring type	Duration/frequency	Status
Post-Construction Environmental Monitoring (PCEM)	Years 1, 3, 5	Potential Condition
Caribou habitat restoration effectiveness	TBD (decades may be required)	Framework pending
Wetland function monitoring	TBD	Plan not filed
GHG emissions verification	Annual	Potential Condition

6.3 Operations phase commitments

Commitment	Frequency
Emergency Response Exercises	3-year cycle with Indigenous liaison
Spill notification to Indigenous groups	"Timely" - case-by-case basis (declined 24-hour commitment)
Heritage find notification	"Reasonable timeframe" (declined 24-hour commitment)
Powerline vegetation height assessment	Biannually by qualified professionals

Part 7: Regulatory filings and permits pending

7.1 Federal/provincial authorizations

Authorization	Status
DFO Request for Review - Salish Sucker Critical Habitat	To be submitted
BC Heritage Conservation Act - Archaeological Impact Assessment reports	To be supplied to potentially affected Indigenous groups

7.2 Condition filings timeline (proposed)

Filing	Timing relative to construction
Updated EPP	90 days prior
Indigenous Monitoring Plan	Pre-construction
Forest Management/Old Growth Plan	90 days prior
Hydrostatic Water Withdrawal Plan	60 days prior to testing
Construction Progress Reports	During construction
As-built drawings	Post-construction

Part 8: Technical and engineering items outstanding

8.1 Design and engineering

Item	Status
Final pipeline routing	Preliminary
Detailed engineering	In progress
Trenchless crossing design (Cheam Slough)	Being considered
Site-specific erosion control plans	To be developed
Riprap use decision points	To be made during construction

8.2 Construction planning

Item	Expected timing	Status
Construction schedule notification	Prior to commencement	Pending
Worker accommodation locations	As Project planning progresses	Still being identified; 2 camps confirmed (Mackenzie up to 700; Pine Pass up to 150)
Hydrostatic test water sources	Q4 2025	Undetermined

Part 9: Items declined or not committed to

The following items were requested by Indigenous participants but declined or not committed to by Westcoast:

Requested Item	Westcoast response
24-hour notification for heritage finds	Declined
24-hour notification for spills	Declined
Species-specific mitigation (fish, birds)	General measures stated adequate
Continuous air quality monitoring	Declined
Indigenous-centric cumulative effects assessment	Referred to standard ESA methodology
Biodegradable hydraulic oil	Impractical
Spill trays for overnight equipment	Impractical
Blanket offsetting for all species at risk	Declined
ESTMA revenue sharing reporting	Not subject to ESTMA

Annex 2 – Proposed amendments to conditions

The following sets out the condition language I would add to the conditions in the principal opinion, as well as the offset measures condition I would recommend. These additions implement the co-development approach described in my reasons and are aimed at addressing the issues identified regarding the duty to consult.

1. Caribou Habitat Restoration Plan (Condition 6)

Add new subsection g.1):

g.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., meetings, field visits, written materials, workshops, or other means deemed appropriate by the parties);

ii) how Indigenous knowledge informed restoration site selection, species selection for replanting, and restoration methods;

iii) any restoration measures or locations proposed by Indigenous Peoples; and

iv) if Indigenous-proposed measures or locations were not adopted, a rationale as to why not.

2. Preliminary Caribou Habitat Offset Measures Plan (Condition 7)

Add new subsection h.1):

h.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed offset location identification and measure selection;

iii) how Indigenous Peoples participated in the development of the methodology to calculate offsets in f);

iv) any offset measures or locations proposed by Indigenous Peoples; and

v) if Indigenous-proposed measures or locations were not adopted, a rationale as to why not.

3. Forest Management and Old Growth Mitigation Plan (Condition 8)

Add new subsection c.1):

c.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed the identification of old growth areas of particular cultural importance;

iii) how Indigenous input shaped avoidance, minimization, and offset decisions for old growth areas; and

iv) if Indigenous-proposed measures were not adopted, a rationale as to why not.

4. Updated Environmental Protection Plans (Condition 9)

Add "for Commission approval" to condition: The updated EPPs serve as a comprehensive pre-construction framework where co-development elements across multiple environmental aspects come together. Commission approval ensures adequacy of co-development processes and plan content before construction.

Add new subsection j.1):

j.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed site-specific mitigation measures for culturally important vegetation in d) and reclamation goals and targets in g);

iii) how Indigenous input shaped wildlife and wildlife habitat management measures in e); and

iv) if Indigenous-proposed measures were not adopted, a rationale as to why not.

5. Wildlife Species at Risk Mitigation Plans (Condition 10)

Add new subsection f.1):

f.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed species-specific mitigation measures, including measures for species identified by Indigenous Peoples as culturally significant or as indicators of ecosystem health;

iii) how Indigenous input shaped seasonal timing restrictions for construction activities affecting wildlife species at risk;

iv) how Indigenous knowledge contributed to the identification of critical habitat areas and features; and

v) if Indigenous-proposed measures were not adopted, a rationale as to why not.

6. Plan for Indigenous Peoples' participation in construction monitoring (Condition 11)

Replace subsection a) with:

a) a description of how the plan was co-developed with potentially affected Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., meetings, workshops, written materials, or other means deemed appropriate by the parties);

ii) how the scope, methodology, and frequency of monitoring activities in g) were developed with Indigenous Peoples' input;

iii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them;

iv) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and

v) how the plan incorporated recommendations or otherwise changed based on the co-development process.

7. Finalized watercourse crossings inventory (Condition 13)

Add new subsection j.1):

j.1) for watercourse crossings identified by Indigenous Peoples as having particular cultural significance:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed the selection of crossing methods and timing for culturally significant watercourses;

iii) how Indigenous input shaped site-specific mitigation and habitat enhancement measures;

iv) any crossing-specific mitigation measures proposed by Indigenous Peoples; and

v) if Indigenous-proposed mitigation measures were not adopted, a rationale as to why not.

8. Socio-economic Effects Monitoring Plan (Condition 19)

Remove "for Commission approval": filing with the CER is sufficient. Staff expertise on these matters is an important factor in my finding in this case that an additional layer of Commission approval would appear to be burdensome and inefficient given the extensive technical expertise supporting the work of the Commission as an expert tribunal.

Add new subsection e.1):

e.1) a description of how the plan was co-developed with potentially affected Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous Peoples' input informed the selection of socio-economic effects to be monitored in a), including indicators and thresholds;

iii) how community-identified socio-economic concerns were integrated into monitoring methods in b);

iv) indicators identified by Indigenous Peoples for monitoring effects on their communities, including effects on traditional land use and harvesting activities, community safety, and cultural continuity; and

v) if Indigenous-proposed indicators or monitoring methods were not adopted, a rationale as to why not.

9. Plan for hydrostatic test water withdrawal and discharge (Condition 27)

Add new subsection f.1):

f.1) for water withdrawal from Green Lake or other waterbodies identified by Indigenous Peoples as having particular cultural significance, a description of input or recommendations from interested Indigenous Peoples, including:

i) how timing of water withdrawal was determined to avoid periods of cultural or ceremonial importance;

ii) opportunities for interested Indigenous Peoples to participate in monitoring water withdrawal activities; and

iii) if Indigenous-proposed parameters or measures were not adopted, a rationale as to why not.

10. Plan for Indigenous Peoples' participation in post-construction monitoring (Condition 28)

Remove "for Commission approval": filing with the CER is sufficient. Staff expertise on these matters is an important factor in my finding in this case that an additional layer of Commission approval would appear to be burdensome and inefficient given the extensive technical expertise supporting the work of the Commission as an expert tribunal.

Replace subsection a) with:

a) a description of how the plan was co-developed with potentially affected Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how the scope, methodology, and frequency of monitoring activities in g) were developed with Indigenous Peoples' input;

iii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; and

iv) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not.

11. Operational Vegetation Management Plan (Condition 29)

Add new subsection h.1):

h.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed the identification of culturally important vegetation requiring protection during operational vegetation management;

iii) how procedures for facilitating pre-clearing harvesting by Indigenous Peoples in e) were developed with Indigenous Peoples' input, including notification timelines and access protocols;

iv) how Indigenous input shaped the decision-making framework for pesticide and herbicide use in f), including identification of areas where herbicide application should be avoided or subject to advance notification;

v) any vegetation management procedures or protections proposed by Indigenous Peoples; and

vi) if Indigenous-proposed procedures or protections were not adopted, a rationale as to why not.

12. Power system protection for compressor stations, substations, and power lines (Condition 30)

Remove "for Commission approval": filing with the CER is sufficient. Staff expertise on these matters is an important factor in my finding in this case that an additional layer of Commission approval would appear to be burdensome and inefficient given the extensive technical expertise supporting the work of the Commission as an expert tribunal.

13. Wetland Offset Measures Plan (Condition 39)

Add new subsection h.1):

h.1) a description of:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed offset location selection, including identification of wetlands of particular cultural significance;

iii) how Indigenous input shaped offset measure design and the selection of offset or compensation measures in c);

iv) any offset measures or locations proposed by Indigenous Peoples; and

v) if Indigenous-proposed measures or locations were not adopted, a rationale as to why not.

14. Final Caribou Habitat Offset Measures Plan (Condition 44)

Add new subsection h.1):

h.1) a description of how the plan was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed final offset location selection in e) and measure design;

iii) how Indigenous Peoples participated in the assessment of offset measure effectiveness in c); and

iv) if Indigenous-proposed measures or locations were not adopted, a rationale as to why not.

15. Caribou Habitat Restoration and Offset Measures Monitoring Program (Condition 45)

Add new subsection d.1):

d.1) a description of how the monitoring program was co-developed with interested Indigenous Peoples, including:

i) the means by which information was shared between Westcoast and Indigenous Peoples;

ii) how Indigenous knowledge informed monitoring methodology, timing, duration, and success criteria;

iii) opportunities for Indigenous Peoples to participate in field monitoring and data collection, assessment of restoration and offset measure effectiveness, and adaptive management recommendations; and

iv) if Indigenous-proposed monitoring methods or success criteria were not adopted, a rationale as to why not.

16. Proposed new condition – Offset Measures Plan

Comment regarding rationale for proposed starting offset ratios

The Offset Measures Plan condition sets out starting point offset ratios for consideration that reflect consistency and coherence with the Commission's previous decisions on recent CER Act section 183 applications since the CER Act came into force. The ratios set out below are proportionate to the circumstances and context here, and are lower than those imposed in the Commission's recent Taylor to Gordondale decision. This calibration reflects the different territorial contexts of the two projects:

- **Taylor to Gordondale** was predominantly located within the Blueberry River Claim Area, where the BC Supreme Court in *Yahey*, found that cumulative industrial disturbance had reached the "tipping point" and had "significantly diminished" Blueberry River First Nations'

ability to meaningfully exercise Treaty 8 rights. The higher ratios in Taylor to Gordondale (4:1 for undisturbed Crown land, 2:1 for disturbed Crown land) were calibrated to those recognized compromised conditions.

- **Sunrise** routes through Treaty 8 territory (approximately 31 km) and appears likely to gather production from the Treaty 8 NEBC Connector area in BC, but the Project's route is located outside the Blueberry River Claim Area. While Westcoast has acknowledged that the Project will contribute to "adverse residual cumulative effects" of "high significance" in Treaty 8 territory, the conditions along the Sunrise route are distinct and not currently the subject of judicial findings with potential relevance to the determinations before the Commission, as opposed to Project location or routing involving the Blueberry River Claim Area as was the case in *Yahey*.

Offset Measures Plan

Westcoast must file with the CER for Commission approval, **within one year after commencing operations**, an offset measures plan. Offset measures completed under **Condition 39** (Wetland Offset Measures Plan) may be considered toward the offset requirements under this condition, provided Westcoast demonstrates how those measures contribute to the goals and measurable objectives in part a).

The plan must include:

a) the goals and measurable objectives, including:
   i) the overall goal of offsetting the area of the operational right-of-way on disturbed and undisturbed lands in British Columbia, comprising:
      1) for pipeline loops, the permanent pipeline right-of-way that will undergo vegetation maintenance during operations (approximately 18-m wide, or as reduced through engagement);
      2) for power lines, the permanent power line right-of-way that will undergo vegetation maintenance during operations (approximately 60-80 m wide for 69 kV lines and 80-100 m wide for 138 kV lines);
   ii) a preference for restoring native vegetation, including culturally significant plants, aimed at improving the exercise and practice of Indigenous and Treaty rights; and
   iii) a discussion of how the goals and measurable objectives were influenced by co-development with Indigenous Peoples;
b) a description of how the principles of offsets were followed by Westcoast, including but not limited to permanence, effectiveness, and additionality;
c) the methodology used to quantify offsets, including:
   i) offset ratios, calculated using a starting point of:
      1) 2-to-1 for undisturbed Crown land,
      2) 1-to-1 for disturbed Crown land,
      3) 0.5-to-1 for undisturbed private land, and
      4) 0.25-to-1 for disturbed private land;
   ii) justification of offset ratios, including an assessment of temporal, spatial, and delivery risk multipliers, and any deviations from the starting points noted in (c)(i) above; and
   iii) the rationale and supporting evidence for the methodology;

d) quantification of the offsets determined for the Project, using the methodology in part (c);

e) a description of the offset measures that will be initiated and completed for the Project, including as appropriate:

    i) a description of restoration offset measures that will be implemented by Westcoast, including:

        1) maps and environmental alignment sheets showing offset locations;

        2) the spatial extent of each offset location and an evaluation of habitat type and quality at and adjacent to the location;

        3) the quantifiable targets and performance metrics for each offset measure to be implemented;

        4) an explanation of how the measures and locations will provide wildlife habitat and support traditional land and resource use (TLRU) activities; and

        5) an explanation of how the measures and locations meet the principles of conservation offsets; or

    ii) a description of funded restoration offset measures to be carried out by a third party, including an explanation of the mechanisms to ensure successful implementation; or

    iii) contributions to existing restoration funds or programs, land securement or protection measures developed with interested Indigenous Peoples, or alternative offset measures proposed by Indigenous Peoples and agreed to by Westcoast; or

    iv) a combination of the above;

f) a plan for monitoring and reporting on offset success, including a discussion on potential necessary adaptive management;

g) a description of how the plan was co-developed with interested Indigenous Peoples, including:

    i) the means by which information was shared between Westcoast and Indigenous Peoples;

    ii) how Indigenous Peoples participated in the identification of offset locations and measures;

    iii) any offset measures or locations proposed by Indigenous Peoples; and

    iv) if Indigenous Peoples' proposed measures or locations were not adopted, a rationale as to why not; and

    v) an engagement summary demonstrating that Westcoast provided appropriate government authorities and interested Indigenous Peoples an opportunity to review and comment on the plan before filing it with the CER, including:

        1) a description of and justification for how Westcoast has incorporated the results of its engagement into the plan; and

        2) if any results were not incorporated, a rationale as to why not.

17. Post-construction reports

Socio-economic Effects Monitoring Final Report (Condition 38), add:

g.1) a description of how Indigenous Peoples' participation in monitoring activities informed the results and any adaptive management measures implemented.

Caribou Habitat Restoration Implementation Report (Condition 43), add:

f.1) a description of how Indigenous Peoples' input during co-development of the Caribou Habitat Restoration Plan (Condition 6) influenced the restoration measures implemented.

Caribou Habitat Offset Measures Implementation Report (Condition 46), add:

g.1) a description of how Indigenous Peoples' input during co-development of the offset measures plans influenced the offset measures implemented.

18. Proposed new condition – Canadian participation in engineering and construction

Canadian participation in engineering and construction

Westcoast must file with the CER**, within 30 days after commencing operations**, a report detailing the extent to which Canadians and Canadian companies had an opportunity to participate in the engineering and construction of the Project.

14 Opinion of Commissioner Luciuk

This chapter, and the balance of the report, have been prepared in accordance with the directions of the Lead Commissioner. Pursuant to section 41 of the CER Act and in the interests of expeditiousness mandated by subsection 31(3) of the Act, the Lead Commissioner directed that a principal opinion be authored by the Presiding Commissioner, regardless of whether the principal opinion formed a majority or minority view on any issue, with remaining Commissioners to "adopt, concur and/or dissent with the views of the principal opinion." The Lead Commissioner also provided timelines for the drafting of the report.

I have carefully considered the hearing record and reviewed multiple iterations of my Panel colleagues' opinions. In exercising my independent decision-making authority, I concur with my colleagues in recommending approval of the Project on the basis that it is, and will be required by, the present and future public convenience and necessity. I adopt the reasons outlined in **Chapters 1 to 12 and 15**, and related appendices, for this recommendation and the decisions and determinations below:

- I concur with the principal opinion in granting the orders and other relief sought by Westcoast under sections 214, 97, and 226 of the CER Act and section 45.1 of the OPR. The relief is in the public interest.
- Like my Panel colleagues, I would deny the exemption from PPBoR requirements in relation to the CS-8A power line.
- I concur with the principal opinion in determining, under section 82 of the IA Act, that the Project is not likely to cause significant adverse environmental effects on federal lands.

The principal opinion contains detailed analysis of an extensive record before the Commission. The reasons of Commissioner Grimoldby further engage in detail with matters pertaining to the rights of Indigenous Peoples. Rather than reiterating reasons and analyses available elsewhere in this report, the remainder of my opinion highlights or expands on the points that were particularly persuasive to me in reaching determinations on matters where the Panel is not unanimous.

Duty of fairness

The Commission is required to conduct its proceedings in accordance with the duty of procedural fairness, which both my colleagues consider. The content of that duty is context specific but requires that parties have a meaningful opportunity to know and respond to the case. While a question of degree, in my view, the reasons, recommendations, and decisions of the principal opinion rest more squarely on information provided by the participants and the CCC with the benefit of reasonable notice and in accordance with our duty to act fairly as a tribunal.

Chapters 3 and 15 (including **Sections 15.3, 15.4.1, 15.4.8, 15.4.10, and 15.6**) of the principal opinion address the duty of fairness and consider whether and how participants had an opportunity to meaningfully influence the decisions of the Commission in this hearing. Noting the contextual nature of procedural fairness, I highlight the following circumstances that, in my view, are relevant factors in determining what constitutes reasonable notice of the case to be met and support the approach in the principal opinion. First and foremost, the Commission's recommendations and decisions have significant consequences for the participants in the hearing – notably the company that proposes to invest approximately $3.99 billion dollars in the Project (and its current and

prospective shippers who rely on adequate pipeline system capacity), and the Indigenous intervenors and communities who clearly described their distinct interests, the potential effects on their rights and their views on the Project (both in support and against). The honour of the Crown is engaged and informs the calibration of notice to Indigenous Peoples regarding relevant matters being considered by the Commission, while also being a distinct legal obligation. Further, the significance of the public interest determination in this hearing also favours ensuring that all participants – and potentially interested parties – understand, in detail, the issues and decisions the Commission is considering. Collectively, these factors support that participants in this hearing reasonably expected notice to be clear and specific, not obscure or generic. This notice expectation applies to issues, the methodologies that underpinned key determinations (such as the framework selected to assess the duty to consult), and potential outcomes. The requirement is heightened where the Commission departs from an established framework or outcome (e.g. unique technical conditions) which promotes a balance between regulatory predictability and flexibility essential to the Commission's work.

For clarity, I considered all relevant information put onto the record by parties, including the authorities they cited, such as the Commission's past decisions. In my assessment of the record, I was mindful that the Commission's report in Taylor to Gordondale (OH-001-2024) was issued after the close of the hearing record in this proceeding and could not have been raised or addressed by parties.

Regarding offsets, I concur with both my colleagues that established technical and regulatory frameworks have underpinned the biophysical offsets directed in prior Commission decisions. I concur with the principal opinion that no similarly established framework or practice exists for flexible offsets applied to broadly address potential effects on the rights of Indigenous Peoples, as described by Commissioner Grimoldby in her proposed Offset Measures Plan condition. Neither Westcoast as part of its application, nor the Commission as part of its potential conditions (or through the Filing Manual), put the issue of this offset regime forward in this hearing, such that participants would have had a fulsome opportunity to tender relevant evidence and argument and respond to each other. As a practical matter, that reduced the evidentiary record that could inform whether the condition is necessary, in the public interest, or appropriately refined and calibrated for this Project (e.g., ratios). The breadth and detail of the proposed Offset Measures Plan condition, including its many constituent elements, underscore the importance of evaluating its design and implementation with the benefit of evidence and argument. More broadly, a new category of offsets, developed on an ad hoc basis in individual applications rather than collaboratively and through a policy-based approach, creates uncertainty for parties appearing before the Commission on a wide range of CER-regulated infrastructure projects. In any event, having concurred in the severity and significance findings set out in the principal opinion, including the adequacy of the mitigations and accommodations already required by the Commission, I do not consider the new offset condition to be necessary or in the public interest.

Jurisdiction

Regarding the Project's influence on upstream development, I do not find the same regulatory nexus between the upstream development subject to provincial jurisdiction and the Project as Commissioner Grimoldby does in her reasons. I acknowledge that the Commission, pursuant to its federally delegated authority, has a shared role with provincial governments in some areas – particularly with respect to the rights of Indigenous Peoples and the protection of the environment. However, as a federal regulator of energy transportation infrastructure, the Commission must appropriately calibrate its focus on the demonstrable effects of the Project before us and matters within our jurisdiction. To do otherwise may lead to duplication, potential inconsistencies, and an inappropriate amplification of the perceived severity of adverse effects that form part of the Commission's duty to consult and public interest analysis, with distorting effects on conditions that may be recommended.

Duty to consult

Regarding the duty to consult, there is considerable overlap between the legal frameworks described by Commissioner Penney and Commissioner Grimoldby. I am of the view that the Commission's process and additional CER consultation activities enabled consultation at the deep end of the *Haida* spectrum, under both the CER framework applied by Commissioner Penney and the more contextual approach described by Commissioner Grimoldby. I consider the breadth and depth of the CER's process to be extensive. In particular, the Commission's use of the regulatory timeframe was a significant factor in my conclusion that the duty to consult was met. The Lead Commissioner set a 450-day time limit for the Commission's process, which is the maximum amount of time permitted under subsection 183(4) of the CER Act. The full amount of time was used by the Panel to offer meaningful, flexible, and diverse opportunities for Indigenous participation and influence, as detailed in **Section 11.2** of the principal opinion. Through the hearing process and early engagement by Westcoast and the CCC, the CER has sustained active Crown consultation over a period of two years, and provided opportunities for engagement that were aimed at finding mutual agreement and that created a foundation for consent to be provided, or withheld, on a free, prior, and informed basis.

Consistent with *Bigstone* and the decision-making contemplated by the CER Act, I concur with Commissioner Grimoldby's reminder that the Crown's duty to consult and accommodate does not come to an end with the issuance of the Commission's report. Additional consultation will precede the Governor in Council's decision, allowing continued consideration of the status of consents required under subsection 317(1) of the CER Act, the treatment of the STSA's outstanding ICA and the STSA-Canada Protocol, as well as any other matter that the Governor in Council may view as relevant. If the Project is approved, conditions imposed on Westcoast would be subject to the CER's condition compliance process, including conditions regarding ongoing engagement, and there would be continued regulatory oversight by the CER related to this Project. Together, these processes adequately ensure meaningful engagement and provide foundations for appropriate ongoing Crown consultation, I reiterate, however, that that the Commission's processes met and exceeded the duty to consult and I do not consider that any additional processes before the Commission are needed to cure any deficiencies in the duty to consult, as assessed for the purposes of this report.

Conditions

Regarding conditions, subsection 183(1) of the CER Act directs the Commission to include conditions with its recommendation that are "necessary or in the public interest." In discharging this specific statutory duty, the Panel is unanimous in recommending most of the conditions set out in the principal opinion. I concur with the principal opinion regarding necessary conditions. Having considered the other conditions and amendments to conditions recommended by Commissioner Grimoldby, I offer the following additional conclusions.

Regarding engagement with Indigenous Peoples, including with respect to the ongoing development and finalization of Project plans, my colleagues are substantially aligned, but for Commissioner Grimoldby's proposed insertion of "co-development" terminology in certain conditions. There is Panel consensus around the four elements that promote Indigenous Peoples' meaningful participation in the development of plans described in Commissioner Grimoldby's opinion. Namely, where a condition requires a plan that addresses matters directly affecting the rights of Indigenous Peoples or culturally significant resources, where Indigenous knowledge is directly relevant to a plan's content, or where communities have requested meaningful participation or involvement, Westcoast should:

1) describe how it shared information (including drafts or elements of draft reports) in a timely manner to enable consideration and incorporation of Indigenous input;
2) describe how it offered capacity support – already reflected in **Condition 16** (Support for Indigenous Peoples to review Westcoast's condition filings) and Westcoast's commitment to providing reasonable capacity funding to support lifecycle engagement activities – that enables Indigenous input (including knowledge, recommendations, and proposed measures offered through means that communities deem appropriate);
3) show how Indigenous input was incorporated into plans; and
4) provide rationale for instances where input is not incorporated.

I would amend **Conditions 6, 7, 8, 9, 10, 11, 13, 19, 28, 29, 39, 44, and 45** to include an obligation for Westcoast to generally describe the means by which information is shared between the company and Indigenous Peoples, as recommended by Commissioner Grimoldby in **Annex 2** to her opinion and agreed to by Commissioner Penney. This additional requirement enhances transparency and would assist in understanding how engagement is conducted in accordance with the Commission's expectations. In my view, the obligations regarding ongoing engagement described above, in conjunction with other conditions set out in the principal opinion, are clear and robust, and avoid unnecessary ambiguity that may arise from the inclusion of the concept of co-development without Indigenous Peoples' consent or consensus, as described in Commissioner Grimoldby's opinion.

Regarding Commissioner Grimoldby's proposed new condition that would require Westcoast to file a report detailing the extent to which Canadians and Canadian companies had an opportunity to participate in the engineering and construction of the Project, I consider there to be adequate information on the record to demonstrate the economic benefits flowing from the Project, including considerations listed in paragraph 183(2)(i) of the CER Act, and to support the Panel's public interest determination. However, in my view, there is no direct evidentiary foundation upon which the Panel could assess the purpose of and need for, as well as defensibility of, a condition linked to Canadian content in engineering and construction, as such a condition was neither proposed nor discussed on the record.

Finally, I concur with Commissioner Grimoldby that the EPP updates required by **Condition 9** (Updated EPPs) should be filed with the Commission for approval and note that Commissioner Penney has agreed. While this condition only pertains to outstanding updates, the submissions from several participants favour a for-approval condition. Regarding **Condition 30** (Power system protection for compressor stations, substations, and power lines), I concur with Commissioner Penney that the filings, which include electrical power system design details, should be for Commission approval. I also concur with her that **Condition 19** (Socio-economic Effects Monitoring Plan) and **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring) should also remain for Commission approval.

In closing, I wish to thank my colleagues for their considered opinions. I also express deep gratitude to the staff of the CER who assisted the Panel throughout the hearing process. Their extensive technical expertise supports the effectiveness of the Commission's impartial and independent decision-making and the work of the Commission as an expert tribunal.

15 Response of Commissioner Penney to the opinions of Commissioner Grimoldby and Commissioner Luciuk

15.1 Introduction

1. As the author of the principal opinion (**Chapters 1 to 12**), this is my response to Commissioner Grimoldby's concurring and dissenting opinion contained in **Chapter 13** and to Commissioner Luciuk's concurring opinion in **Chapter 14**.

2. As described in this report's preamble, to ensure that the report could be prepared in a timely way, the Lead Commissioner issued instructions to the Panel under section 41 of the CER Act. In accordance with these instructions, I prepared the principal opinion and my Panel colleagues could adopt, dissent, and/or concur with it, based on our ongoing deliberations and their independent views. As part of our deliberations, and in accordance with the process established following the Lead Commissioner's instructions, my colleagues and I exchanged draft opinions, shared written comments, and then concurrently exchanged final opinions.

3. After exchanging final opinions in accordance with the process established, my colleagues and I each provided a series of revised and iterative final opinions to respond to each other's opinions or to supplement our own opinions, as we each deemed appropriate. These series of exchanges were reflective of the ongoing deliberative process that was undertaken and, through them, final opinions continued to substantively develop.

4. Following the iterative exchange of numerous final opinions, which involved ongoing substantial revisions (including after a version that was signed-off), the Lead Commissioner issued a subsequent instruction under section 41 to ensure that the report could be issued efficiently and in a timely manner. Specifically, noting that deliberations had been ongoing for 12 weeks, and in order to bring finality to the process in a clear and fair manner, the Lead Commissioner set a date by which all final revisions were to be provided through a concurrent exchange. This instruction did not expressly provide for an opportunity for additional replies. As the final exchange of opinions was undertaken concurrently, my response in this chapter should be read in light of this context. Further, silence on any topic raised in my colleagues' opinions should not be interpreted as my concurrence or dissent.

5. I would like to express my gratitude to my Panel colleagues for their thoughtful contributions to the overall report, and for the opportunities that we had to deliberate throughout the hearing process. Together, the principal, concurring, and dissenting opinions demonstrate rigorous administrative decision-making at work for the public interest. Each Panel member was free to make their respective recommendation, determinations, and decisions. They were also able to express their findings, views, and reasoning, in accordance with their conscience and opinions, through this comprehensive report, while still meeting our collective obligations and the statutory timeline set out in the CER Act.

6. Despite the differences of opinions, I note that the full Panel unanimously agrees that the Project is, and will be, in the present and future public convenience and necessity. We recommend that the Governor in Council approve the Project and direct the Commission to issue a certificate under section 186 of the CER Act. The Commission also agrees on many areas of the principal opinion, including:

(a) The requirements of procedural fairness have been met for the Commission's hearing (**Chapter 3**).

(b) The Project is needed (**Chapter 4**).

(c) Westcoast's financial arrangements for the Project are acceptable (**Chapter 4**).

(d) Westcoast's expected land requirements and routing are appropriate (**Chapter 5**).

(e) Westcoast can design, construct, and operate the Project in a safe and secure manner that protects people and the environment, in compliance with applicable regulations, standards, and industry codes (**Chapter 6**).

(f) An exemption from the requirement to obtain leave to open for certain Project components should be granted (**Chapter 6**).

(g) An exemption from the PPBoR requirements for activities on existing station property, including the pig launcher/receiver and tie-in installations and assemblies, as well as temporary infrastructure required for Project construction should be granted (**Chapter 5**).

(h) An exemption from joint examination requirements under the OPR should be granted (**Chapter 6**).

(i) Approving the decommissioning of a pipeline segment as part of the Project is in the public interest (**Chapter 6**).

(j) Westcoast's proposal to include the cost of the Project in the T-South system's cost of service and tolled on a rolled-in basis is appropriate (**Chapter 4**).

(k) The Project is not likely to cause significant adverse environmental effects on federal lands (**Chapter 9**).

(l) The Commission can recommend, and the Governor in Council can direct, the issuance of a certificate for the Project without Westcoast having first obtained Band Council consents under subsection 317(1) of the CER Act. However, Westcoast must obtain these consents in order to take possession of, use, or occupy reserve lands for specified purposes, in accordance with that provision (**Chapter 5**).

7. Having reviewed each of my colleagues' opinions, I concur with Commissioner Luciuk's opinion, including her views on the conditions proposed by Commissioner Grimoldby. Despite the many areas over which I diverge from Commissioner Grimoldby, I concur with two of her recommendations on certain conditions – notably with respect to making updates to the EPPs for Commission approval and to refine reporting requirements in relation to Indigenous engagement. **Appendix 1** of the principal opinion has been modified accordingly.

15.2 Overview of Commissioner Grimoldby's opinion and response

8. In **Section 13.1**, Commissioner Grimoldby outlines her legal framework for the duty to consult and accommodate. Using this framework, she then endeavours to undertake a *Haida* spectrum analysis to determine the adequacy of consultation and accommodation for certain Indigenous Peoples, which she frames through her understanding of their rights as Treaty 8 Nations (**Section 13.2**),[173] those with asserted Aboriginal title to unceded lands (**Section 13.3**),[174] those with reserve lands that would be affected by the Project (**Section 13.4**),[175] and with respect to Métis participants (**Section 13.5**). While discussing the adequacy of consultation and accommodation for Indigenous communities across these "territorial contexts," my colleague makes assertions about the Project's effects on the rights of Indigenous Peoples. She also describes where she believes additional efforts are required of Westcoast to meet the Crown's duty to consult and accommodate.

9. **Section 13.6** contains general critiques of Westcoast's approach to consultation across "territorial contexts," focusing on outstanding information about the Project and the temporal and spatial boundaries employed by Westcoast to evaluate Project effects on the rights of Indigenous Peoples in its ESA. Observations about the CCC, evidence from Indigenous Peoples, and the Commission's hearing process are also contained within this section. In **Section 13.7**, Commissioner Grimoldby provides concurring reasons on the Project's need and economic feasibility but offers different findings about the Project's contribution to upstream development in Northeastern BC and potential effects on Blueberry River First Nations. In **Sections 13.8 and 13.9**, Commissioner Grimoldby explains why she would deny certain PPBoR exemptions, and would impose different conditions, to address the consultation issues she identifies.

10. I wish to highlight an important observation regarding Commissioner Grimoldby's opinion. In her introduction, my colleague indicates that she did not undertake an assessment of Project effects on the rights of Indigenous Peoples. With respect, I do not understand this statement. In **Sections 13.6 and 13.6.6**, my colleague expressly states that she assessed Project effects on the rights of Indigenous Peoples. This would explain why her reasons contain assertions about Project effects on individual communities,[176] from which my colleague then draws conclusions about what is needed in terms of mitigations and accommodations for the entire

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[173] Seven communities are identified as "Treaty 8 Nations." For clarity, Kelly Lake Cree Nation and Kelly Lake First Nation are neither signatories to Treaty 8 nor have they signed adhesion to the treaty. Rather, my colleague indicates that they "have territory within Treaty 8."

[174] This section discusses the STSA. While not a rights-bearing entity, the STSA intervened in this hearing on behalf of 7 of the 17 Stó:lō Nations they represent.

[175] **Chapter 10** also describes the general source of rights exercised by Indigenous Peoples in the Project areas (defined as Treaty 8 territory, reserve lands, and inherent section 35 rights). However, unlike my colleague, these summaries are provided as general context to help frame the nature and extent of rights practiced in the Project areas, rather than as a mechanism for establishing delineated categories of rights relative to which the Project's effects are assessed and corresponding depths of consultation for individual communities.

[176] Examples of my colleague seeking to conduct aspects of an effects assessment and arriving at her conclusions regarding effects include: (i) in her discussion on Prophet River First Nation, my colleague finds that the Nation had provided evidence demonstrating a "consistency of impacts across multiple impact pathways;" (ii) for certain communities, my colleague indicates that "the evidence tends to be less tightly mapped to the impact pathways of direct, residual, and cumulative effects" than other communities; and (iii) my colleague also shares her views on the efficacy of Westcoast's mitigations where, in some cases, she concludes that residual effects or impact pathways remain after mitigation (e.g., for High Bar First Nation and Lower Nicola Indian Band).

Project, ultimately relying on these conclusions to justify a series of new or revised conditions. Based on my reading of her opinion in its entirety, my colleague seems to undertake some form of assessment and reach conclusions on the Project's effects on rights (at least for a limited subset of communities).

11. My response to Commissioner Grimoldby's opinion can be summarized as follows:

    - Respectfully, I am unable to concur with the approach described in **Sections 13.1 to 13.6** to assess the Project's effects on the rights of Indigenous Peoples. There is no demonstrated application of any comprehensive or systematic technical methodology to determine the Project's effects on rights (or on any related biophysical or socio-economic VCs), which represents an important analytical defect. There are also no findings on the Project's overall effects on the rights of Indigenous Peoples. The absence of findings, and lack of analytical rigour, affects my ability to fully understand and potentially concur with the subsequent conclusions reached about additional mitigations and accommodations that she suggests are required.
    - I am not entirely aligned with Commissioner Grimoldby's framing of the duty to consult and accommodate, and how it applies. I remain satisfied that the consultation undertaken through the Commission's hearing process has been adequate for the purpose of the Commission's recommendation to the Minister and the Commission's determinations and decisions on the Project. I also remain of the view that the mitigation measures identified and the conditions that the Commission considers necessary or in the public interest to impose are adequate to accommodate the potential effects of the Project on the rights of Indigenous Peoples. As such, while I agree with certain condition amendments proposed by Commissioner Grimoldby (as noted in paragraph 7 above), I do not share her views that supplemental requirements for conditions are necessary to satisfy the duty to consult and accommodate, including the need for co-development language and an offset plan to address the Project's effects on the rights of Indigenous Peoples.
    - We have differing views on the Project's relationship to upstream development in northeastern BC and about how potential effects on Blueberry River First Nations are considered. I take a different view on the Project's contribution to upstream development based on the evidence on the hearing record. With regard to potential induced upstream effects, I afford a greater recognition of the Province of BC's jurisdiction over resource development and the cumulative effects framework that the province developed jointly with Blueberry River First Nations, as well as with other Treaty 8 Nations, and which includes elements of shared decision-making and co-management.
    - We also diverge on the test for PPBoR exemptions and whether they should be granted. I remain of the view that the requested PPBoR exemptions should be granted, except for the CS-8A power line.

12. As my response is focused on these topics, I have not exhaustively catalogued every fact or issue where our views may differ. To understand my views, this chapter should be read together with the entirety of the principal opinion (**Chapters 1 to 12**).

13. I note that certain of Commissioner Grimoldby's characterizations of the principal opinion omit aspects of, or otherwise mischaracterize, my views. Rather than responding to each instance where this occurs, I would simply emphasize that the principal opinion, as supplemented by this chapter, should be read in its full context when considering my colleague's critiques.

15.3 The opinion's approach to assessing the Project's effects on the rights of Indigenous Peoples, and resulting findings, are deficient

14. With respect, I am not aligned with the approach described in **Sections 13.1 to 13.6** to assess the Project's effects on the rights of Indigenous Peoples. The approach, which pairs a *Haida* spectrum analysis with limited conclusions on Project effects, neither coherently assesses the Project's effects on the rights of Indigenous Peoples nor does it align with established effects assessment methodology, including any methodology identified by participating Indigenous Peoples. The approach is also defective in that it does not consider all potentially affected Indigenous Peoples, does not demonstrate a systematic technical effects assessment, and contains important conceptual and factual errors.

15. My primary technical concern is that the opinion makes certain conclusions on Project effects but does not contain information and discussion demonstrating that an effects assessment methodology, or another analytically rigorous approach, has been applied to assess the Project's effects.

16. Since the CER Act came into force in 2019, the Commission has substantively used the methodology described in the Filing Manual to assess a given project's effects on rights, including in the pipeline certificate applications for the NEBC Connector and West Path Delivery 2023. Adhering to a thorough methodology to assess a project's effects on the rights of Indigenous Peoples is fundamental to a valid technical assessment.

17. Consistent with past practice, the principal opinion relies on the CER's methodology to assess the potential effects of this Project on rights that involves a series of steps and interim findings to reach an ultimate conclusion on effects. The general approach taken, consistent with the general steps outlined in **Section 10.2**, involved the following:

    (a) Consider and describe the Indigenous and Treaty rights of potentially affected Indigenous Peoples, including how rights are exercised or practiced in the project area, and their relevant context. This context may include the existing setting of the land base where rights are practiced. The consideration of rights is based on all of the evidence filed on the hearing record and allows for an overall understanding of the nature and extent of the rights of Indigenous Peoples and how they are practiced in the project area.

    (b) Consider and describe a project's potential effects on the rights of Indigenous Peoples. This aspect of the assessment focuses on the effects of the project applied for and, at this stage, does not bring in broader cumulative effects. This is distinct from the approach taken by my colleague, who intermixed the Project's effects with historical impacts. For example, in discussing effects on Prophet River First Nation, she describes the Project's effects as including "longstanding hydrocarbon leakage from the Alaska Highway site into surface waters" and "a reduction in moose sightings…."

    (c) Consider and describe the mitigation and enhancement measures to be implemented by the proponent, as well as the conditions that the Commission would impose, to mitigate potential adverse effects of the project on the rights of Indigenous Peoples or enhance positive effects. The proponent's mitigation and enhancement measures are first described in the application (as detailed through its ESA) and evolve based on the proponent's ongoing engagement and assessment of the project's potential effects.

Conditions that the Commission may impose may also evolve based on the input, evidence, and arguments submitted by Indigenous Peoples through the hearing process.

(d) Based on the Commission's assessment of the information identified in (a) to (c) above, it makes a number of clear findings on the residual project effects on the rights of Indigenous Peoples that may remain after a proponent applies mitigation measures and satisfies the Commission's conditions.

(e) Based on its findings on residual project effects, the Commission makes a series of additional findings on the total cumulative effects that would remain, based on the residual effects of the project being considered, combined with the residual effects of past and reasonably foreseeable future projects. This assessment takes into account the concerns and submissions of Indigenous Peoples in relation to cumulative effects that were raised on the hearing record.

(f) Based on its findings as described in (d) and (e) above, and using the criteria described for its analysis, the Commission reaches its conclusion on the severity of the project's effects on the rights of Indigenous Peoples.

18. In contrast, the discussion of the Project's effects in **Sections 13.1 to 13.6** does not contain analyses demonstrating the implementation of the CER's, or any other, established methodology that can support valid findings.[177] Unlike the principal opinion, **Sections 13.1 to 13.6** do not contain:

(a) A clear and comprehensive description of the rights of potentially affected Indigenous Peoples and how they are practiced in the Project areas. Given the prominence afforded to different territorial contexts in the opinion, it is not clear how these contexts would influence her assessments of how rights are exercised or practiced (e.g., how hunting rights may differ between Treaty 8 Nations and those with asserted Aboriginal title to unceded lands).

(b) A substantive treatment of the Project's effects on the exercise or practice of rights, including an evaluation of interrelated environmental and socio-economic effects and a delineation of specific interactions between Project components and the exercise or practice of rights. Moreover, the opinion's description of the Project's effects on rights are often intermingled with references to various historical impacts, appearing to conflate different types of effects.[178]

(c) A comprehensive assessment of specific mitigations identified by Westcoast in its application filings (e.g., ESA, EPPs), as well as those that were developed after the application was filed and identified through the hearing process.

(d) Clear and comprehensive findings on residual and cumulative effects on the rights of Indigenous Peoples in the Project areas, as well an overall finding on the severity of the Project's effects on rights.

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[177] Indigenous participants and the CCC identified several other methodologies through the hearing.

[178] In contrast, the principal opinion clearly identifies a number of potential Project effects, and assess five specific effects on the rights of Indigenous Peoples, including: (i) change in quality, quantity, or distribution of resources for the exercise of rights; (ii) change in access to resources used or required to exercise rights; (iii) Change to, or disruption of, timing and seasonality of exercising rights; (iv) Change to locations or areas of cultural importance where rights are exercised; and (v) change to an Indigenous community's cultural traditions, laws, and governance systems.

19. While Commissioner Grimoldby uses certain assessment-adjacent terminology[179] to make assertions on the severity of the Project's effects on rights, a chain of reasoning demonstrating a technical analysis – one based on a comprehensive, systematic, and methodologically sound approach – is absent.

20. Further, I note that many observations about effects and required mitigations are qualified. The opinion contains many moderated assertions such as "residual effects also appear to remain," "some direct impacts may require further mitigation," and "incremental project contributions may not be calibrated accordingly." In my view, the opinion lacks clear and comprehensive findings to support the conclusions reached on supplementary mitigations or conditions required.

21. In addition, the discussion on the rights of Indigenous Peoples is not comprehensive in that it does not consider all Indigenous communities that may be affected by the Project. Rather, a spectrum analysis is only undertaken for about one-third of the 73 Indigenous communities on the Crown List. As discussed in **Section 15.4.1**, I also disagree with this approach to consultation.

22. Certain assertions about Project effects also contain notable conceptual errors. The discussions about Cheam First Nation, Prophet River First Nation, Saulteau First Nations, and Seabird Island Band conflate baseline cumulative effects with Project effects. For instance, **Section 13.4.3** describes a cumulative effects baseline for Cheam First Nation's and Seabird Island Band's reserve lands but calls them residual effects. Distinguishing between cumulative effects and Project effects is essential in an effects assessment because, among other things, one does not necessarily equate to the other. These errors, together with the methodological concerns outlined above, raise questions about the reliability of the opinion's assertions about Project effects.

23. Ultimately, the opinion does not contain clear findings on the Project's overall effects on the rights of Indigenous Peoples. It is also unclear to what extent my colleague concurs with the principal opinion's findings on effects that are described in **Chapter 10**. The principal opinion's findings include, among other things, that the potential Project effects on the rights of Indigenous Peoples would likely be short term to long term in duration, local to regional in geographic extent, medium (adverse) in magnitude, and medium (adverse) in total cumulative effects. With the implementation of Westcoast's mitigation and enhancement measures, and the Commission's conditions, the principal opinion finds that the potential adverse effects on the rights of Indigenous Peoples would be of medium (adverse) severity.

24. For the effects assessment, the principal opinion uses a temporal boundary of at least 30 years for Project operations and a 15-kilometre RSA spatial boundary, consistent with Westcoast. The principal opinion's temporal boundary is compatible with the 40-year boundary proposed by Commissioner Grimoldby in **Section 13.6.2**, since the 30-year boundary was a minimum. Further, I am not persuaded that a larger spatial boundary is appropriate as my colleague suggests since, among other things, enlarging the assessed area may have the unintended effect of diluting the Project's contribution to cumulative effects.

25. The lack of clear and transparent findings on the Project's overall direct effects in my colleague's reasons constrains the extent to which one can fully understand (and evaluate) the

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[179] For example, the reasons contain technically imprecise terminology such as "consistency of impacts across multiple impact pathways" and "depth of impacts in evidence from the Project's contributions are high."

basis upon which my colleague later concludes that additional mitigation or accommodation measures are required.

26. In making the above observations, I considered my colleague's view that a "presentational difference" does not reflect a methodological departure and that her "focused approach" to separate reasons (i.e., her reasons being limited to matters on which she reaches different conclusions) should not be construed as a deficiency in analysis. With respect, I disagree. Where there is divergence on a matter of substantive import – in this case, the Project's effects on the rights of Indigenous Peoples – clear and coherent reasoning and findings are essential.

27. To be clear, Commissioner Grimoldby's opinion contains conclusions about Project effects on some of the Indigenous communities on the Crown List that diverge from the principal opinion. These conclusions directly impact her findings about needed mitigations and accommodations through a suite of revisions or additions to conditions set out in the principal opinion that would apply to the entire Project. One would therefore expect, even in separate reasons, a chain of reasoning demonstrating a proper effects assessment for all affected communities, based on an identified methodology. My colleague's reasons do not contain this analysis, nor does she otherwise concur with the principal opinion's findings on effects (including as they relate to those communities she discusses).

28. Before concluding my response on my colleague's technical approach, I wish to highlight the novelty of my colleague's assessment of Project effects based on "territorial contexts" underpinned by a *Haida* spectrum analysis undertaken for only select communities, without adequate notice, after significant consultation has already been conducted, and then using those results to inform an assessment of mitigations and conditions for the entire Project, as well as future engagement activities. While I agree that the *Haida* spectrum is not new, I am unaware of a similar framework or analytical approach having ever been undertaken at the CER or the National Energy Board before it.

29. In *Vavilov*, the Supreme Court of Canada indicated that parties affected by decisions of administrative bodies like the Commission are entitled to expect a certain level of consistency. To ensure coherence and predictability, like cases will generally be treated alike. Where a decision-maker departs from longstanding practices or established internal authority, it bears the justificatory burden of explaining that departure in its reasons. In this instance, I do not see an adequate reason for this departure.

30. Moreover, this new approach to effects assessment was not identified, discussed, or confirmed on the hearing record as the methodology that the Commission would consider or could use to assess the Project's effects on rights. In fact, the opposite is true. In its 6 December 2024 cover letter to the Hearing Order, the Commission expressly referred parties to the CER's methodology based on the Filing Manual and did not indicate that a spectrum approach to consultation was being considered. The CCC also confirmed on the record that the CER currently does not undertake a spectrum analysis when assessing the duty to consult.[180] It would appear that the approach taken by my colleague would be unexpected.

[180] In its Report No. 3, the CCC confirmed that when Indigenous communities assert that their rights may be impacted by a proposed project, the CER's current approach is not to perform a strength of claim or assess the severity of potential effects on rights when it compiles the Crown's List.

15.4 The legal framework for the duty to consult and accommodate, and its application

31. In **Chapter 11**, the principal opinion finds that the duty to consult and accommodate has been met for the purpose of the Commission's recommendation and decisions on the Project. Indeed, the Commission can only find a project in the public interest if the Crown's duty to consult and accommodate has been met.[181]

32. This finding was based on the collective consultation activities undertaken with potentially affected Indigenous Peoples, including the hearing process that the Commission established, the early and supplemental consultation activities undertaken by the CCC, and the engagement undertaken by Westcoast. The Commission's hearing process was designed to satisfy the duty at the deep end of the *Haida* spectrum for all participating Indigenous Peoples, regardless of their strength of claim. Further, the process was sufficiently flexible to allow for a consideration of the laws, knowledge, and practices of Indigenous Peoples, and reflected efforts to find mutual agreement with Indigenous Peoples, in a manner consistent the principles of the UN Declaration and *Kebaowek* (see **Sections 2.4.2 and 2.4.3**).

33. I therefore respectfully disagree with any suggestion that the collective engagement and consultation activities undertaken with Indigenous Peoples in relation to the Project are insufficient. I also disagree that supplemental activities are otherwise required to meet the Crown's duty to consult for the purpose of the Commission's recommendation to the Minister and the Commission's determinations and decisions on the Project (including for the limited number of Indigenous communities identified in my colleague's opinion).

34. Similarly, having considered the detailed effects assessments contained in the principal opinion, which takes into account Indigenous knowledge, mitigations, and the Commission's conditions, I remain of the view that the duty to accommodate effects that have been revealed through consultation has been met and do not find that the majority of the conditions and measures proposed by my colleague are required.

35. My colleagues and I concur on the importance of ongoing engagement between Westcoast and Indigenous Peoples through the Governor in Council's decision-making phase and through the Project's lifecycle. This is reflected in numerous conditions set out in the principal opinion. For clarity, where I continue to diverge with the views of Commissioner Grimoldby is in her findings that additional engagement is required beyond the hearing process to address perceived deficiencies in the Crown's duty to consult.

36. **Section 13.6.1** critiques the principal opinion's references to binding commitments from Westcoast to continue engaging with Indigenous Peoples. My colleague asserts that proponent commitments are not binding on their own, whereas conditions imposed by the Commission are legally enforceable. I do not understand this concern, given that **Condition 2** (Design, location, construction, and operations) and **Condition 3** (Environmental protection) make commitments on the hearing record binding, consistent with the Federal Court of Appeal's jurisprudence.[182]

37. In the following sections, I describe the primary points of divergence in relation to both the legal framework for the duty to consult and how it applies to the facts on this hearing record,

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[181] *Chippewas*, *supra* note 19 at para 59; *Clyde River*, *supra* note 18 at para 40.
[182] *Manitoba Métis Federation Inc v Canada (Energy Regulator)*, 2023 FCA 24 at para 132.

which I believe contributed to the differences between the principal opinion and those contained in **Chapter 13**.

15.4.1 The *Haida* spectrum analysis undertaken to assess the duty to consult and accommodate is inappropriate in the circumstances

38. Consistent with the regulator's long-standing practices, the Commission designed its hearing process having regard to the relative complexity and potential effects of the Project, and the needs of potentially affected Indigenous Peoples. Based on these considerations, the Commission's hearing process for the Project was robust, designed by the full Panel – including my colleague – to satisfy the duty to consult and accommodate at the deep end of the *Haida* spectrum for all potentially affected Indigenous Peoples.

39. A strength of claim analysis for specific rights-holders, on a community-by-community basis, was not raised, discussed, or conducted through the Commission's hearing process. Rather, all interested Indigenous Peoples were afforded the same opportunities to participate in the hearing and to access participant funding from the CER for both the Commission's process and the supplemental consultation undertaken by the CCC.

40. The CCC stated that it similarly did not undertake a strength of claim analysis on a community-by-community basis or otherwise seek to restrict procedural opportunities based on the outcomes of such an analysis. Because all communities were afforded opportunities for deep consultation without distinction, I do not understand, and strongly oppose, my colleague's suggestion in **Section 13.1** that the "federal Crown" is taking a position that some claims lie at the low or mid-range of the *Haida* spectrum, or is otherwise "cavalierly run[ing] roughshod over Aboriginal interests."

41. I further disagree with conducting a *Haida* spectrum analysis for this hearing at this time. Adopting a novel framework to assess the Crown's duty to consult and accommodate after the hearing record has closed, without advance notice to parties of this intention and with the result of designating various Indigenous communities lower on the *Haida* spectrum, would appear unfair if not possibly inconsistent with the honour of the Crown. Potentially affected Indigenous Peoples on the Crown List could reasonably have expected that they would be afforded full and equal consultation opportunities through the Commission's hearing and the CCC's activities, consistent with the approach communicated and implemented through the hearing process.

42. I am also concerned about the practical implications of my colleague's approach for the remaining Project-related engagement and consultation activities. It is not clear what the result of my colleague's assessment would be for Indigenous communities that fall at the low to medium end of the *Haida* spectrum. For example, it is unclear if they would be entitled to fewer participatory opportunities compared to communities on the high end, in the subsequent Governor in Council decision-making process. It is also unclear if they would, as suggested by Commissioner Grimoldby, not be entitled to the same post-hearing engagement opportunities with Westcoast during the Project's lifecycle (possibly including with respect to participating in condition filings). The practical uncertainties reinforce my view that it is inappropriate to introduce and then conduct a form of spectrum analysis here.

43. In making these observations, I do not mean to imply that it would never be appropriate for the Commission to undertake a spectrum analysis or design a hearing process in a manner that takes into consideration the relative strength of claim of individual participating Indigenous communities. While this could be a valid approach, and the Crown may undertake a spectrum

analysis to establish consultation processes against which the duty will be assessed, that is not the approach that has been taken by the CER, or the National Energy Board before it, to date.

44. Significant changes to the CER's processes to incorporate a spectrum analysis, which could impact how the Commission designs its process or understand project effects (and assess appropriate mitigations or other accommodation measures) would need to be clearly defined and transparently communicated to potentially affected parties, including Indigenous Peoples and the proponent, from the very earliest stages of a project (i.e., early engagement). I see no reference in my colleague's opinion to the Commission's or National Energy Board's long-standing practices or an adequate explanation that would justify a novel approach in these circumstances, noting that there is no requirement for the Crown to undertake a *Haida* analysis to meet its consultation obligations.[183]

15.4.2 Differences on the legal framework on the duty to consult and accommodate

45. For the following reasons, I respectfully disagree with my colleague's assessments and suggestions about what deep consultation requires of proponents or expects them to substantively achieve.

46. The Supreme Court in *Haida* describes deep consultation as involving opportunities to make submissions, to participate in the Crown's decision-making process, and for the provision of written reasons. In *Clyde River*, the Court identified participant funding as another procedural protection that may be indicative of deep and meaningful consultation.[184] As my colleague notes, decisions since *Haida* have developed the law surrounding the duty to consult. This includes the decision of the Federal Court in *Kebaowek*, which considered the duty to consult in light of the UN Declaration. In **Chapter 2**, I discuss how the UN Declaration has been considered in the principal opinion, including as context for the duty to consult. These considerations about the UN Declaration extend to this response.

47. As discussed in **Chapter 11**, I am of the view that the hearing process for the Project met the key indicia for deep consultation described in the cases referenced above. As set out in that chapter, the Commission's process enabled Indigenous Peoples to make submissions, formally participate in the Crown's decision-making process, and was sufficiently flexible to allow for a consideration of the laws, knowledge, and practices of Indigenous Peoples. The engagement and consultation activities also reflected efforts to find mutual agreement with Indigenous Peoples, consistent with the findings of the Federal Court in *Kebaowek*.

48. Commissioner Grimoldby identifies a number of perceived deficits in the engagement undertaken by Westcoast with Indigenous Peoples, finding that Westcoast's engagement efforts and related mitigations did not meet a more expansive set of requirements and/or expectations for deep consultation. Specifically, in certain instances, my colleague suggests that the "highest" end of the spectrum may create "substantive expectations" for co-management or a partnership-focused approach, and for agreement on certain substantive outcomes.

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[183] *Chippewas*, *supra* note 19 at paras 47 and 66 (see also *Lummi Nation v Canada (Attorney General)*, 2025 FC 1986, at para 150).

[184] *Clyde River*, *supra* note 18 at para 47.

49. With respect, I do not see any clear legal requirement for the assessment or suggestion, as they appear in the analyses in **Sections 13.1 to 13.6**, that deep consultation now requires or expects proponents to, among other things, agree with co-governance, co-development, or co-regulation proposals, or agree to tailor project plans to reflect community requests in every instance. While meaningful engagement on these topics, and a genuine consideration of input for incorporation into projects, are important and may in certain circumstances be expected, I am unaware of any legal authority that would, even for the high end of the duty to consult and accommodate, clearly impose the above-described requirements or expectations, or otherwise require agreement or responsiveness on substantive outcomes in every instance. Efforts that are directed to finding mutual agreement can still allow for compromises informed by a balancing of varied, sometimes conflicting, interests.

15.4.3 The duty to consult and accommodate should focus on the Commission's hearing as the primary forum for consultation, as supplemented by the CCC's consultation activities and Westcoast's engagement

50. In undertaking her assessment of the duty to consult and accommodate related to the Project, my colleague focuses primarily on Westcoast's engagement activities with Indigenous communities and the outcomes of that engagement. With respect, this is neither a legally sound nor fair approach to determining whether the duty has been satisfied.

51. It is well-established law that the duty to consult and accommodate rests with the Crown. While procedural aspects of the duty to consult can be delegated to proponents, as was partially the case here, the responsibility to discharge the duty belongs to the Crown.[185] As a result, any serious examination of whether the duty has been met must necessarily focus on the Crown. Despite this, Commissioner Grimoldby's opinion contains:

    (a) Nominal discussion of the many consultation opportunities offered through the Commission's hearing process, which was the primary forum for consultation for this proceeding (**Section 11.2.1**).

    (b) No substantive analysis of the supplemental consultation efforts undertaken by the CCC through early engagement and through the hearing process (**Section 11.2.2**).

    (c) Limited reference to the subsequent process to be undertaken by the Governor in Council after the release of this report, including efforts by the CCC to support that process. As confirmed by the Supreme Court of Canada in *Chippewas,* where a regulatory process being relied on to satisfy the duty does not achieve adequate consultation or accommodation, it is the Crown that must take further measures to meet its duty.[186]

52. I therefore find that the degree of focus Commissioner Grimoldby places on Westcoast's engagement when assessing the duty to consult is imbalanced and unrepresentative of the proper approach to assessing whether the Crown's duty has been discharged. A far greater consideration should have been given to the consultation afforded through the hearing, as supplemented by the CCC. Such consultations are detailed in **Chapters 10 and 11 and Appendices 3 and 4** of the principal opinion. The discussion on Westcoast's engagement activities, which also formed part of the overall consultation activities, and which I found

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[185] *Haida*, *supra* note 21 at para 53.
[186] *Chippewas*, *supra* note 19 at para 22, citing *Ross River Dena Council v Yukon*, 2012 YKCA 14.

generally appropriate notwithstanding that it did not resolve all concerns, is found in **Section 11.1**.

15.4.4 Adequacy of consultation should not rely mainly on the participatory choices of Indigenous communities

53. My colleague appears to judge, at least for certain Indigenous Peoples, the adequacy of consultation based on the degree of their participation in the hearing. For instance, part of her reasoning that the duty has been met for Driftpile Cree Nation accounted for "the combination of [Driftpile Cree Nation's] procedural participation across multiple filings." Yet for Blueberry River First Nations and Kelly Lake First Nation Society, she finds that their lack of participation contributed to additional consultative efforts being required on Westcoast's part to ensure that duty has been met.

54. I do not find that that the degree of participation by an Indigenous community necessarily indicates a defect in how consultation was achieved through the hearing. As described in **Chapters 3, 9, and 10**, extensive notice was provided about the Project, the Commission's hearing, and how Crown consultation was to be accomplished, including to potentially affected Indigenous Peoples, so that they could be aware of the available consultation opportunities. Thereafter, Indigenous communities, including Blueberry River First Nations and Kelly Lake First Nation Society, had ample opportunities to participate in the Commission's hearing process and were able to make choices in that regard.

55. As Indigenous communities' involvement in the hearing varied based on their own preferences and decision-making, a seeming lack of participation does not indicate that the Crown has not afforded opportunities for deep consultation. For instance, a community that places greater value on providing oral Indigenous knowledge than written evidence may opt to only provide oral evidence. Their decision to forego written evidence should not be interpreted as a weakness in the consultative process.

56. Even if the degree of participation is to be given weight, I note that in several places, my colleague's references to consultation and engagement with Indigenous Peoples contain errors and/or incomplete descriptions of the evidence. For example, the opinion states that Xatśūll First Nation participated in the Project proceeding through a Cultural Knowledge, Land Use, and Cumulative Effects study, and by providing comments on conditions and final written argument. However, the opinion does not convey that the Nation also, among other things, provided comments on completeness, filed IRs, participated in the conditions workshop, and brought and commented on various motions. With respect, any assessment of the sufficiency of consultation and engagement based on participation must consider the entirety of a community's participation as reflected in the hearing record.

15.4.5 There was sufficient information on the record to enable deep consultation

57. Unlike my colleague, I find that there was adequate information on the record for Indigenous communities to sufficiently assess potential Project effects and mitigations for the purpose of engaging in deep consultation. I am satisfied that the information filed is typical for this initial stage of the Project's regulatory lifecycle. I am also satisfied that certain detailed Project designs, plans, and additional information would be filed during the condition compliance phase, informed by future steps that typically, or can only, occur after a project is approved. This forthcoming information includes, among other things, plans and information that would

be refined or finalized through detailed routing and engineering, or after Westcoast retains contractors and confirms procurement strategies.

58. Nevertheless, through the Project application and related submissions, and as further developed through the hearing process, extensive information about the Project was filed on the record, including proposed mitigations. This information includes the following, which address topics of concern identified by my colleague:

- Project information, including a Project update and map book describing the Project's components, refinements, and locations
- Pipeline, power line, and facilities EPPs
- Contamination Discovery Contingency Plan
- Final Cleanup Delay Contingency Plan
- Fire Contingency Plan
- Fish Species of Concern Discovery Contingency Plan, which, in addition to industry standard mitigation measures for fish and fish habitat, addresses aquatic species at risk (e.g., sturgeon and salmon)
- Flood and Excessive Flow Contingency Plan
- Fuels and Hazardous Materials Spill Contingency Plan
- Heritage and Cultural Resource Discovery Contingency Plan
- Vegetation Species and Communities of Concern Discovery Contingency Plan
- Soil Handling Contingency Plan
- Traditional Land and Resource Use Sites Discovery Plan
- Biosecurity Management Plan
- Wildlife and Wildlife Habitat Management Plan
- Integrated Vegetation Management Plan
- Forest resources baseline assessment
- Evidence about plans and mitigation measures, including those related to forest management and old growth forest, reclamation, caribou, wildlife species at risk, ungulates (including elk), operational vegetation management, wetland offsets, aquifer contamination, Indigenous monitoring, and socio-economic effects monitoring.

59. Significant technical information, including results from surveys, studies and/or sampling with respect to vegetation, forest (including old growth), wildlife and wildlife habitat, fish and fish habitat, and wetlands are also on the record, allowing for meaningful consideration by Indigenous Peoples.

60. In addition to filing extensive Project information on the hearing record, Indigenous Peoples also had opportunities through the hearing to obtain additional information from Westcoast and the CCC through IRs and to seek an opportunity for oral cross-examination. Communities could also receive information from Westcoast through engagement. Indicative, to a degree, of the amount and quality of information available, is that no party sought to cross-examine

Westcoast or brought motions to compel more fulsome IR responses through the process established by the Commission in Procedural Update No. 6. In short, I am satisfied that the record contained enough information to enable deep consultation.

61. As a result of the commitments Westcoast has made about continued engagement with Indigenous Peoples and the conditions set out in the principal opinion (as described in **Section 11.1.5**), I am satisfied that Indigenous Peoples would continue to have opportunities to meaningfully engage with Westcoast to obtain information about, and to influence, the ongoing development of the Project and related plans.

62. I am also satisfied that through future Project phases, including the condition compliance phase, Indigenous Peoples would continue to have opportunities to raise concerns, and potentially have them addressed by the CER, regarding the sufficiency of relevant Project plans and details.

63. As discussed in the principal opinion and repeatedly confirmed by the Courts,[187] the CER is a lifecycle regulator and has an ongoing role in the oversight of the conditions imposed, as well as other safety and environmental protection measures. For this Project, this includes conditions established to ensure the ongoing role of Indigenous Peoples, and the incorporation of their input, in developing the Project and its related plans. As the Supreme Court recognized in *Taku River*,[188] a project's approval is "simply one stage in the process by which a development moves forward." The CER's ongoing oversight allows Indigenous Peoples to continue raising concerns and, as necessary, to have them addressed. Where a CER decision affecting the rights of Indigenous Peoples is required, it would, as with all such decisions before the federal regulator, engage the honour of the Crown.

15.4.6 Westcoast's mitigation measures, as a form of accommodation, would be effective in reducing Project effects on the rights of Indigenous Peoples

64. Commissioner Grimoldby takes issue with the sufficiency of Westcoast's mitigations on the basis that they are standard and are generally not responsive to the concerns of Indigenous Peoples. I do not share the same perspective.

65. As described throughout the principal opinion, I find that Westcoast's mitigations would be effective in reducing the Project's effects, including on environmental and socio-economic VCs, as well as on the rights of Indigenous Peoples. Having reviewed the hundreds of detailed mitigations contained in Westcoast's filings, including in its various protection plans, I am of the view that while continual improvements are expected, the plans are appropriate for the nature and magnitude of expected Project effects.

66. I agree with Commissioner Grimoldby that standard mitigations are not inherently inadequate or defective. They are standard because they work, having been developed, used, refined, and validated over time on regulated projects and infrastructure. Such mitigations provide uniform methods for measuring effects, provide a baseline of established effectiveness, and can produce reliable results. Many standard mitigations are the product of development with input

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[187] See *Bigstone*, *supra* note 110 at para 56 and 59 (citing from *Taku River*, *supra* note 113 at para. 40; *Gitxaala*, *supra* note 15 at para 177; *Chippewas*, *supra* note 19 at para 48; *Tsleil-Waututh*, *supra* note 37 at para 349-351).
[188] *Taku River*, *supra* note 113 at para 45.

from various stakeholders, Indigenous Peoples, provincial and federal standards, and best management practices.

67. While standard mitigations are not perfect and can be improved, including through input received from Indigenous Peoples, I take a different view on their efficacy and ability to respond to the concerns of Indigenous Peoples, particularly given the requirements included in the conditions set out in the principal opinion for various plans to reflect input from ongoing engagement, in response to concerns raised by Indigenous Peoples. I find that my colleague's critique of mitigations contained in Westcoast's ESA – which was filed in May 2024, over six months before the Hearing Order was issued, and supplemented in January 2025 through Westcoast's Project update – do not adequately account for developments on the hearing record and future updates that would be made through the Project's lifecycle, including through ongoing engagement and condition filings.

68. Further, as discussed in **Section 10.5.1.6**, Westcoast has modified or developed certain mitigations in response to requests from Indigenous Peoples. Where mitigations may not yet have been revised in response to requests, I am of the view that ongoing engagement activities, coupled with condition requirements for the incorporation of engagement input and Indigenous knowledge into the Project, can be sufficiently responsive to address communities' underlying concerns. Mitigations and opportunities for engagement are discussed in **Chapters 10 and 11**, including in **Sections 10.5, 11.1, and 11.2.3**.

69. In addition, when considering my colleague's views on mitigations, I note instances where perceived deficiencies with mitigation measures were based on omissions or mischaracterizations of the complete evidence on the hearing record. I outline several examples below that are representative of these errors. Misapprehensions of evidence may explain in part why my colleague's views on required mitigations or consultations depart from my own.

70. In **Sections 13.2 and 13.2.8**, my colleague relies on Westcoast's acknowledgment that the Project would have adverse residual cumulative effects predicted to have "high significance" in Treaty 8 territory as "a critical factor" to be considered in assessing mitigations. This misapprehends Westcoast's evidence. By way of errata filed in the hearing, Westcoast corrected its assessment of Project effects regarding Treaty 8 territory to indicate that there are no situations of residual effects or cumulative effects that are of high significance due to, in part, the BC cumulative effects framework. My colleague's framing of the errata as a "material significance reclassification" in **Section 13.2** is, with respect, factually incorrect. Westcoast explained – and the record plainly demonstrates – that a correction was made to align with all other findings in the ESA where Westcoast had already indicated a medium significance finding on rights, and a low to medium significance finding on traditional land and resource use (i.e., Westcoast's assessment was never "high"). While there is evidence on the hearing record from Indigenous Peoples about high cumulative effects in Treaty 8 territory, the opinion's reliance on Westcoast's acknowledgment to inform the need for supplemental mitigations is misplaced.

71. Further, areas of the opinion describe Indigenous monitoring roles as standard or as otherwise being insufficient, requiring additional accommodations through conditions. From a mitigation perspective, this is notable because the efficacy of a number of mitigations would be supported by monitoring by Indigenous Peoples over both the construction and operations phases. However, my colleague's characterization that monitoring would be standard or otherwise insufficient does not reflect the evidence on the hearing record:

(a) The hearing record describes a number of avenues for Indigenous Peoples' monitoring through the Project's lifecycle. For example, the pipeline EPP expressly states that Indigenous monitors would work with the company's construction management team during construction; communicate insights and awareness to Westcoast about areas where environmental, cultural, and archaeological values and features may be present; observe field studies or environmental alterations; provide input and comments to support a culturally appropriate approach to construct the Project that respects Indigenous traditions, values, and beliefs; and support heritage or cultural resource discovery assessments.

(b) Specific examples of meaningful monitoring roles include those relating to wetlands and hydrostatic test water withdrawal. For wetlands, there is evidence that the Indigenous monitoring plan would include information on reporting and communication expectations, including details on communicating information regarding the loss and rehabilitation of habitat. Similarly, for hydrostatic test water withdrawal, Indigenous monitors' input would be gathered and documented in reporting during field activities.

(c) Consistent with the foregoing is Westcoast's expectation that the Indigenous monitoring plans to be developed in accordance with the two conditions noted in (d) below would include, at minimum:

- Indigenous knowledge and input gathered from Indigenous communities;
- a description of roles and responsibilities of community monitors and participating organizations;
- a process for incorporating and responding to feedback;
- the scope and geographic focus of monitoring activities; and

(d) considerations for training and capacity to support Indigenous Peoples' meaningful participation.

(e) Further, consistent with the Commission's expectations outlined in the principal opinion, the conditions identified regarding Indigenous monitoring (**Conditions 11 and 28**) make clear that the Indigenous monitors' role would be collaborative and extend beyond an observer role. These conditions would require, among other things, that Westcoast's monitoring plans describe the roles and responsibilities of Indigenous monitors, including the process for incorporating and responding to their feedback.

72. Based on the evidence and the conditions set out in the principal opinion relating to Indigenous monitoring plans, I see no basis for describing Indigenous Peoples' monitoring as standard or otherwise insufficient or to suggest that mitigations or accommodations should therefore be enhanced based on my colleague's mischaracterization of the potential role and efficacy of a number of mitigations identified and conditions that would be imposed in relation to Indigenous monitoring.

73. I also respectfully disagree with my colleague's view that Project mitigation measures and enhancements (including ones that may already be the subject of regulatory requirements or Filing Manual guidance) cannot meaningfully address and accommodate Project effects on rights, especially since Indigenous communities themselves raised many as being important. My views in this respect are contained in **Sections 10.5.1 and 11.2.3**.

74. Collectively, with respect, my colleague's evidentiary omissions and mischaracterizations impact my ability to align with my colleague's findings on mitigations. However, I recognize concerns raised by Indigenous Peoples about the adequacy of Westcoast's mitigations and the importance of ensuring meaningful participation and input from Indigenous Peoples into the Project's design and plans, including as it relates to developing mitigations. The principal opinion therefore bolstered numerous conditions (as compared to potential conditions issued for participants' comments during the hearing) to ensure the perspectives of Indigenous Peoples – including Indigenous knowledge – would be accounted for, and incorporated, into the Project where appropriate.

15.4.7 The conditions that the Commission considers necessary to impose are adequate and do not need to be supplemented to accommodate the Project's effects on the rights of Indigenous Peoples

75. As explained in **Chapter 10**, I find that the mitigation measures identified, including the conditions that the Commission considers necessary to impose, are adequate to accommodate the Project's effects on the rights of Indigenous Peoples revealed through the consultation process. My conclusion accounts for, among other things, Westcoast's mitigation and enhancement measures, Indigenous Peoples' future participation in monitoring, and the conditions that the Commission would impose.

76. This is my response to Commissioner Grimoldby's description of the principal opinion's conditions as not being adequately responsive to concerns raised by Indigenous Peoples, including through the CCC, as well as to her proposed conditions.

77. I respectfully disagree that the conditions described in the principal opinion need to be revised as suggested by Commissioner Grimoldby. The 47 conditions outlined in **Appendix 1** to the principal opinion are comprehensive and are responsive to issues raised, and comments received, from Indigenous Peoples and the CCC. Numerous changes were made to the potential conditions regarding which the Commission sought comments, to address comments and strengthen transparency, accountability, and the protection of the rights of Indigenous Peoples. Many of these changes are discussed throughout the principal opinion, including in **Section 11.2.3**. For example, in response to comments from Indigenous Peoples and/or the CCC:

- Changes were made to 19 conditions to strengthen their requirements relating to engagement.
- Changes were made to 16 conditions to specifically address the inclusion of Indigenous knowledge in condition filings, including various plans and reports.
- Changes were made to 12 conditions to integrate Westcoast's community-specific Community Interest and Response Tables into condition filings.
- Changes were made to **Condition 12** (Update on employment, contracting, procurement, and training for Indigenous Peoples) for the inclusion of community-specific information on Project-related employment, contracting, procurement and/or training.
- Changes were made to **Condition 29** (Operational Vegetation Management Plan) to include requirements relating to pre-clearing harvesting by Indigenous Peoples during operation vegetation management.

- **Condition 23** (Subsection 317(1) consents) was added, related to Band Council consents under subsection 317(1) of the CER Act.
- **Condition 5** (Plan for notifying Indigenous Peoples of condition filings) was added, which would require Westcoast to file a plan for notifying Indigenous Peoples of condition filings.
- **Conditions 12, 16** (Support for Indigenous Peoples to review Westcoast's condition filings)**, 25** (High-potential near misses)**,** and **42** (Emergency response exercise) were maintained despite Westcoast's objections.
- Changes were made to **Condition 38** (Socio-economic Effects Monitoring Final Report) to include a requirement for Westcoast to collaborate with Indigenous Peoples to develop aspects of the Socio-economic Effects Monitoring Final Report.

15.4.8 General response regarding Commissioner Grimoldby's proposed amendments to conditions

78. With respect, I disagree with removing the requirement for Commission approval of filings made under **Condition 19** (Socio-economic Effects Monitoring Plan), **Condition 28** (Plan for Indigenous Peoples' participation in post-construction monitoring), and **Condition 30** (Power system protection for compressor stations, substations, and power lines).[189] In each case, I continue to be of the view that approval is required for Commission oversight, with the support of technical staff's expertise. Given the overall lack of justification for these changes, I am not persuaded that they should be made.

79. I am not aligned with my colleague's proposed new condition (Canadian participation in engineering and construction). Based on the hearing record, I am satisfied that the Project would result in the economic benefits that my colleague seeks to address through this condition and am not persuaded that it is necessary. As this condition was neither specifically identified, nor generally discussed, through the hearing, I also find that there is no compelling evidence or argument on the hearing record to demonstrate that this condition is necessary or otherwise in the public interest given the evidence already on the record.

80. Having considered the requirements Commissioner Grimoldby would impose in certain conditions, and Commissioner Luciuk's opinion in this respect, I concur with including a requirement in **Conditions 6, 7, 8, 9, 10, 11, 13, 19, 28, 29, 39, 44, and 45** for Westcoast to generally describe the means by which information is shared between the company and Indigenous Peoples for the purpose of related engagement on the applicable condition filings. While the principal opinion already contains robust requirements on engagement, which were enhanced based on comments received during the hearing, this additional requirement would provide greater transparency and clarity on how Westcoast conducts this engagement and meets its commitments in this area.

81. I also concur with Commissioner Grimoldby and Commissioner Luciuk that filings made under **Condition 9** (Updated EPPs) should be for Commission approval, for the reasons expressed in Commissioner Luciuk's concurring opinion.

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[189] Note that **Condition 30** (Power system protection for compressor stations, substations, and power lines) involves the Commission's receipt and assessment of details of Westcoast's electrical power system design to ensure the electrical facilities' safe and reliable operation (see **Section 6.2.4.3**).

82. I would like to speak to my colleague's view that conditions designed in part to address duty to accommodate obligations and advance Reconciliation may not need to be SMART (**Section 13.9.4**). My observation, consistent with past precedents,[190] is that SMART conditions are fundamental to achieving regulatory predictability and objectives by ensuring, among other things, that imposed requirements are relevant to the applicable project and can be complied with, and assessed, in a manner that promotes clarity and certainty. In my view, conditions can be both SMART and contribute to satisfying the duty to consult and, where appropriate, accommodate. This includes conditions that the Commission considers necessary to impose for this Project.

15.4.9 Co-development requirements for conditions

83. I also respectfully disagree with the following specific changes proposed by my colleague.

84. In **Sections 13.9 and 13.9.7**, Commissioner Grimoldby states that the principal opinion's conditions position Indigenous Peoples as reviewers of completed Project plans through an "engagement summary" model, and that the conditions do not adequately enable their participation in plan development. She proposed a version of co-development for various conditions instead. I do not agree with my colleague's framing of the principal opinion's conditions as an engagement summary model or that her suggested changes are required.

85. The sections' treatment of the principal opinion's conditions does not fully reflect that 19 of them have been strengthened to ensure that Indigenous communities would have meaningful opportunities to engage with Westcoast to inform the Project's design and plans throughout pre-construction, construction, and operations. Respectfully, the discussion also does not consider how Westcoast's binding commitments to engage with Indigenous Peoples and the bolstered conditions work together to enhance meaningful engagement, transparency, and regulatory accountability.

86. My colleague's reasons also do not acknowledge that the principal opinion's condition requirements for engagement (described in **Section 11.1.5**) are virtually the same as those that she now proposes in **Section 13.9.7**, using her own definition of co-development. Both sets of engagement requirements contemplate the provision of draft plans, where appropriate, and regulatory accountability through reporting on how Indigenous Peoples' input is incorporated into condition filings. Capacity funding for reviewing condition filings and lifecycle engagement activities, which is referenced in my colleague's proposed condition language, is supported by **Condition 16** (Support for Indigenous Peoples to review Westcoast's condition filings) in the principal opinion, as well as in Westcoast's funding commitments.

87. In my view, these similarities eliminate the need for my colleague's suggested changes. In addition, I would not adopt the proposed definition of co-development contained in **Section 13.9.7** because the term can be interpreted in different ways and, moreover, the meaning that my colleague suggests is inconsistent with how it is understood by some Indigenous Peoples on the record – namely, as involving consensus or consent (both of which my colleague expressly states would not be required by her version of "co-development"). These divergent interpretations serve to highlight the interpretive risks of using this term in this instance.

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[190] For example, see the National Energy Board's OH-001-2016 Reasons for Decision regarding the Line 10 Westover Segment Replacement Project (A81483-1, PDF page 24 of 165).

88. I continue to be of the view that the principal opinion's conditions – informed by and bolstered as a result of input received through the hearing process – would allow for Indigenous Peoples to meaningfully influence the Project's design and related plans, and would require Westcoast to transparently demonstrate how relevant knowledge, input, and recommendations have been incorporated. The proposed use of the term "co-development" would have no practical benefit – and could result in less clarity and a misalignment of expectations – where the term is simply being used to describe substantively similar requirements as those currently described in the principal opinion.

89. In further support of my views on this point, I note (as more fully described in **Section 10.5.3**) that Indigenous Peoples have had, and would continue to have, meaningful opportunities to provide input into the Project, including its related plans:

    (a) Before the hearing, during early engagement – For example, these engagements informed the development of Westcoast's ESA and led to changes in Project planning and design, such as refinements to Project routing as described in **Chapters 5 and 11**.

    (b) During the hearing, including through regulatory process engagement – For instance, when Vice-Chief Cheryle Rule of Coldwater Indian Band raised human trafficking concerns during their oral Indigenous knowledge session, she was asked for recommendations on what the company could do to help mitigate risks. Westcoast submitted that it is engaging with Indigenous communities to develop a Community and Gender Safety Plan. In addition, Westcoast committed to incorporating cultural awareness training that is developed by, or in collaboration with, Indigenous Peoples.

    (c) After the hearing, as part of the Project's lifecycle – there are binding commitments from Westcoast to continue engaging with Indigenous Peoples in order to inform the Project, including its related plans.

15.4.10 Offsets for Project effects on the rights of Indigenous Peoples

90. I am also unable to agree with Commissioner Grimoldby's proposal in **Section 13.9.7** for offsetting the operational rights-of-way to mitigate or accommodate effects on rights. I respectfully do not see findings or reasoning within the opinion or otherwise that justify imposing such offsets. To do so would require reliance on the last resort option within the standard mitigation hierarchy, would disregard Commission precedent on offsets for rights, and require the creation of a new plan without the topic having been substantively canvassed on the hearing record.

91. My colleague's opinion that offsets are needed is also not grounded in a technical assessment of the Project's effects on rights (including their relationship with biophysical and socio-economic VCs), or otherwise anchored in findings, that can support a need to offset all operational rights-of-way.

92. Unlike for this Project, offsets for the NEBC Connector that were proposed by the proponent were amply supported by comprehensive findings and reasoning on project effects identified through the hearing and considered in the context of other mitigation measures and imposed conditions. I do not see similar analytical underpinnings in **Chapter 13** that could justify the suggested offsets. This includes offsets for Crown, private, disturbed, and greenfield lands that were not substantively debated by the parties or raised by the Commission in this proceeding. I also find that the hearing record does not enable me to understand how offset plans for rights should be applied in a principled fashion.

93. In addition, it is unclear why imposing offsets before first imposing other forms of mitigation, in accordance with the standard mitigation hierarchy (avoid, minimize, restore and, if warranted, offset), is appropriate. I do not see compelling reasons to depart from the standard mitigation hierarchy, which the parties cited (e.g., Cook's Ferry Indian Band) and which the Commission has used for past project assessments (e.g., for the NEBC Connector). I am also not persuaded that the benefit of offsets outweighs those of other mitigations, that their disadvantages (e.g., the time lag required for offsets to gain functionality) outweigh their benefits, or that these issues have been adequately canvassed in this proceeding in a manner that can allow for an informed approach to offsets.

94. I agree with Commissioner Luciuk that it is important for offsets to have been canvassed on the record, especially given the complexity of the proposed condition for an offset measures plan. The proposed condition requirements cover, among other things: offset goals and measurable objectives, vegetation restoration, offset principles (e.g., permanence, effectiveness, additionality), methodology for offsets (e.g., various offset ratios and their justifications, including temporal, spatial, and delivery risk multipliers), offsets quantification, offset measures (e.g., spatial extents, quantifiable targets, performance metrics, funded restoration offset measures carried out by a third party, contributions to existing restoration funds or programs, land securement or protection measures), and monitoring plan elements. The extensive requirements described in the proposed condition underscore the importance of thoroughly canvassing the underlying details on the record. This did not take place before my colleague suggested that this condition be imposed.

95. The principal opinion's effects assessment (contained in **Chapters 7, 8, 9, and 10**) reveals that offsets are not required or otherwise appropriate to mitigate Project effects on the rights of Indigenous Peoples. Supporting this conclusion are the principal opinion's findings that the potential adverse effects on the rights of Indigenous Peoples would be of medium severity, with the implementation of Westcoast's mitigation and enhancement measures, and the Commission's conditions. Westcoast's mitigation measures are consistent with the standard mitigation hierarchy, are appropriate, and commensurate with the scope and nature of the Project.

96. My conclusion is consistent with past National Energy Board and Commission recommendations. Offsets for effects on rights were not recommended for North Corridor and West Path Delivery 2023. The circumstances giving rise to the offset plan condition for the NEBC Connector are further distinguishable. As my colleague identifies, the offset condition in that case was proposed by the proponent in the application and, unlike this Project, the NEBC Connector was located in the Blueberry River Claim Area. The need for offsets was also underpinned by sound findings, and the conditioned plan was developed during the proceeding through robust debate. Taylor to Gordondale was likewise located in the Blueberry River Claim Area. However, unlike for the NEBC Connector, the offset plan condition was recommended without a similarly substantial development on the record as to what it should entail.[191] This

[191] The Commission's recommendation for the NEBC Connector illustrates the importance of substantively considering offsets during a hearing before imposing a condition. The offset plan was developed through various iterations during that hearing, including through technical workshops, Commission guidance, IRs, and written filings. Therefore, parties had opportunities to obtain, provide, and test evidence and submissions about various foundational offset issues like equivalency, additionality, location, timing, duration, and accountability relating to offsets. In that proceeding, the Commission also had a record that included information on, among other things, offset goals, measurable objectives, offset and restoration preferences, appropriate offset ratios, as well as roles and responsibilities relating to offsets. This enabled the Commission in that proceeding to require an offset plan

line of past recommendations supports my view that my colleague's suggested offset condition is not needed or appropriate in this case.

15.4.11 Upstream development and Blueberry River First Nations

97. I am not aligned with how Commissioner Grimoldby characterizes the Project's relationship with upstream development in northeastern BC and its effects on the rights of Blueberry River First Nations. My views are based on my assessment of Blueberry River First Nations' letter of comment and their concerns as reflected through engagement summaries on the hearing record; Westcoast's expert evidence on the Project's linkage to upstream development, including the Wood MacKenzie report; and recognition of the Province of BC's jurisdiction over upstream resource development, as well as the BC cumulative effects framework established to respond to the *Yahey* decision.

98. I acknowledge that the Project has an indirect relationship with upstream development in northeastern BC. However, I do not agree with my colleague's characterization that "the Project will drive upstream development in areas connected to Blueberry River First Nations territory, with uncertain cumulative effects that have not been assessed or accommodated."

99. Through their letter of comment, Blueberry River First Nations raised concerns that the Project would drive and enable upstream development. No substantive evidence to this effect, including expert evidence, was raised by the community, and the letter is unsworn evidence. In contrast, Westcoast offered sworn evidence in response to IRs and in uncontested expert evidence through Wood MacKenzie's report.

100. Commissioner Grimoldby identifies that the Wood Mackenzie report establishes a potential causal mechanism linking the Project and upstream development. However, the Wood Mackenzie report does not characterize pipeline infrastructure as the primary driver of upstream development and this finding disregards other evidence offered by Westcoast on the hearing record.

101. Wood Mackenzie's analysis states that natural gas production growth in the WCSB is driven principally by the economic competitiveness and the size of the untapped Montney resource. Pipeline connectivity is identified as an additional factor that supports production growth by linking supply to demand, including LNG export terminals and existing markets in southern BC and the US Pacific Northwest. The Wood Mackenzie report does not conclude that pipeline capacity additions, in and of themselves, cause upstream development to occur.

102. This distinction is important. Blueberry River First Nations' position, and my colleague's reasoning, rely on a linear cause-and-effect model in which added transportation capacity necessarily induces upstream production in specific areas, including the Blueberry River Claim Area. The evidence supports a more nuanced relationship. While pipelines can influence the timing and economics of development by making it easier to reach markets and obtain better prices, they do not unilaterally determine whether, where, or how production occurs. Those decisions are primarily driven by resource quality, production costs, market demand, and regulatory considerations.

103. Consistent with this, Westcoast's evidence explains that pipeline expansions are generally responsive to upstream development rather than determinative of it. Producers typically enter

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through a condition that was clear in the plan's purpose and how it could be planned, implemented, reported on, measured, and assessed.

into long-term transportation commitments after identifying a resource and confirming its commercial viability, not in advance of such determinations. Northeast BC is served by four major natural gas transmission systems – Westcoast, NGTL, Alliance, and Coastal GasLink. If the Project does not proceed, the underlying gas resource would remain economical and producers would still have incentives to develop it. In that case, producers could seek incremental takeaway capacity on alternative systems such as NGTL or Alliance to move gas out of the region.

104. Regarding the Project's relationship with Westcoast's Aspen Point Program, the evidence demonstrates that the Project does not functionally enable Aspen Point Program-related upstream development. While the Aspen Point Program will provide additional transmission capacity that supports increased gas gathering in northeastern BC, the hearing record shows that the vast majority of the program's volumes are contractually destined for delivery to the Sunset Creek compressor station (CS-16)[192] which serves Alberta markets and LNG export pathways. CS-16 is located at a different point on the T-North system than CS-2, which is the receipt point relevant to deliveries onto the T-South system. As such, the Aspen Point Program's commercial and physical orientation is toward CS-16 rather than toward the T-South system.

105. Westcoast's published contract information website, referenced on the record, confirms this distinction. Most contracts associated with the Aspen Point Program are for delivery to CS-16. If that program's volumes were intended to flow to CS-2 and onward to the T-South system, corresponding contractual commitments and associated expansions on the T-North system would be required. The evidence shows that no such expansions are necessary or planned. Consistent with this, Westcoast stated that the T-North system capacity is already sufficient to meet the T-South system's contract requirements at CS-2 once the Project is in service, and that no T-North system expansions are required to deliver incremental volumes to the T-South system. This indicates that the Project would not complete or unlock an enabling pathway for Aspen Point Program-related production.

106. Accordingly, while the Aspen Point Program may enable gathering capacity for certain upstream developments, its potential upstream impacts materialize largely independently of the Project. The Project would not provide the transportation capacity necessary to make Aspen Point Program-related production economical, nor does it functionally link the Aspen Point Program's gathering capacity to T-South system markets. The record therefore does not support a finding that the Project and the Aspen Point Program are integrally linked. For all of these reasons, I cannot agree with my colleague that the Project is integrally linked to upstream development related to the Aspen Point Program.

107. Based on my assessment of the evidence and submissions on the Project's relationship on upstream development, including my assessment of whether it functionally enables Aspen Point Program-related upstream development, I remain of the view that the Project is not a primary driver of upstream development in northeastern BC. Rather, development is driven by the underlying economic resource, while the particular transmission system on which that gas is transported is largely interchangeable. While the Project may contribute to the broader

[192] The Sunset Creek delivery point at CS-16 is connected to the NGTL system and to the Coastal Gas Link pipeline, with a capacity of over 1 Bcf/d of exports from the Westcoast system to other systems (more than the capacity of the Aspen Point Program expansion).

market conditions that support Montney development, the evidence does not support the conclusion that the Project would itself drive or direct upstream development in Blueberry River First Nations' territory in the causal manner suggested by my colleague. The relationship between pipeline capacity and upstream activity is contextual and indirect, rather than a necessary or independently sufficient cause of development. This is not a situation where "but for" the Project, upstream development would not occur.

108. Despite the absence of a direct causal relationship between the Project and upstream developments, I acknowledge and, contrary to the concerns expressed by Commissioner Grimoldby, the principal opinion responded to the concerns raised through Blueberry River First Nations' letter of comment. **Chapter 4** discusses concerns raised about upstream supply, upstream well development, and connectivity to the Aspen Point Program. **Sections 10.5.2 and 10.6.1.3** address concerns about the Project's cumulative effects, and the corresponding effects on rights.

109. Contrary to my colleague's suggestions in **Section 13.2.1**, Blueberry River First Nations' question about the source of the Project's supply was addressed through Westcoast's evidence on the hearing record – specifically, through its reply evidence (paragraphs 121 to 130), where it summarized its response to the various concerns raised through the community's letter of comment. While Westcoast was unable to identify the precise source of the Project's supply, it responded reasonably to this question and, ultimately, this evidence factored into my assessments below.

110. In response to concerns about producers' adoption of technological advancements – when considered in the context of assessing the Project's effects on rights – I would highlight that Wood Mackenzie's expert evidence about this adoption was not based on generalized or abstract assumptions about future production practices. Rather, the undisputed opinions were grounded in well-level, spatial, production, and permitting data for the BC Montney Formation, which is the relevant supply basin for the Project. The analysis examined the number of wells required to achieve the projected increase in production and assessed how that development could occur through a combination of new drilling and re-using existing well pads. This directly addresses land disturbance implications at the basin level, rather than relying on generic statements about technological improvement.

111. As described by Wood Mackenzie, the analysis relied on the geoSCOUT platform and directly sourced BCER datasets, including spatial, production, well status, and geospatial relationships between surface and bottomhole locations. This enabled Wood Mackenzie to model historical and current production patterns and to assess how existing production locations influence future development potential. The analysis therefore reflects established and observable development trends in the BC Montney, rather than speculative or aspirational assumptions.

112. Wood Mackenzie's findings are further supported by a Peters & Co. report, which the Commission raised through an IR. That report reaches similar conclusions regarding future Montney development intensity and aligns with the broader evidence on producers' behaviour in the basin. Together, these sources provide a consistent, data-driven view of how incremental production to supply the Project would likely be developed.

113. Some of the practices identified by Wood Mackenzie, such as horizontal drilling, longer laterals, and pad re-use, are industry-wide trends, and the analysis demonstrates how those practices are already being applied in the specific geographic and regulatory context of the BC Montney. I find this evidence to be reliable and consistent with ongoing market monitoring and

publicly stated strategies of major Montney producers. Based on the above, I do not share my colleague's concerns about producers' adoption of technological developments.

114. I also disagree with my colleague's assertion that the principal opinion was unresponsive to concerns raised through Blueberry River First Nations' letter of comment, due to the principal opinion's conclusions that the impacts of upstream development would primarily, and more appropriately, be addressed and regulated by the BC provincial regulator. References to the BCER and any mitigation measures it may require, as well as the BC cumulative effects framework more generally in the principal opinion, do not represent unsupported reliance on "future and uncertain provincial processes and measures" as my colleague suggests. Instead, the principal opinion appropriately recognizes the Province of BC's jurisdiction over natural resource development in the province, and its valid permitting authorities, consistent with the powers afforded to it under the Constitution.

115. The BC measures and processes to address cumulative effects were raised by parties through evidence and submissions on the hearing record. Participants' submissions on the BC cumulative effects framework and the BCER's *Treaty 8 Planning and Mitigation Measures* are discussed in **Section 10.5.2**. My general conclusion is that since there are no Project components located within the Blueberry River Claim Area, the BC cumulative effects framework and *Treaty 8 Planning and Mitigation Regulation* do not apply to the Project. The principal opinion does not rely on the BCER's *Treaty 8 Planning and Mitigation Measures,* which I understand apply more broadly to all projects within Treaty 8 territory because their applicability would ultimately be determined by the provincial regulator during the permitting process. Rather than relying on these measures, the principal opinion confirms that, if applied, these mitigations would be additive to the mitigations and accommodations identified through the Commission's process.

116. While it is not necessary to assess the adequacy of the measures adopted by the provincial regulator, in light of the concerns identified by my colleague regarding their potential uncertainty and efficacy, I observe that the BC cumulative effects framework is the result of a number of agreements entered into by Blueberry River First Nations, as well as other BC-based Treaty 8 Nations, with the Province of BC. These agreements include co-development aspects and related regulation, and are a meaningful vehicle to address concerns about cumulative effects that were confirmed by the *Yahey* decision. Accordingly, they should be given due respect, in recognition of Blueberry River First Nations' decision to enter into the agreement and their ongoing efforts to execute its terms. In this respect, I do not share my colleague's view that there are significant uncertainties regarding the general implementation and effectiveness of the Province of BC's agreements with Treaty 8 Nations, as they relate to Blueberry River First Nations.

117. I also highlight the following evidence on the hearing record, which is more indicative of a finding that the BC cumulative effects framework is capable of addressing future upstream cumulative effects, regardless of their relationship to the Project:

    (a) The Province of BC and Blueberry River First Nations entered into the Blueberry River Implementation Agreement in direct recognition of the *Yahey* decision. This agreement provides for a collaborative approach to land, water, and resource stewardship with the objective of ensuring Blueberry River First Nations' members will be able to meaningfully exercise their Treaty rights.

    (b) The Blueberry River Implementation Agreement puts in place an approach to collaborative resource management and the protection of treaty rights in the Blueberry

River Claim Area. It uses a number of different mechanisms and initiatives to address cumulative effects, including restoration and land protection measures to govern oil and gas activities and annual limits on new oil and gas activity-related disturbance on Crown land.

(c) New disturbances capped under the agreement cover new activities outside existing oil and gas-related disturbances. Disturbance caps have been established for all areas of the Blueberry River Claim Area, including those outside of HV1. New disturbances in excess of the annual caps cannot be allocated by the Province of BC unless an exception is granted by Blueberry River First Nations.

118. In support of her view that the BC cumulative effects framework is uncertain, my colleague references, in **Section 13.7.5**, Blueberry River First Nations' letter of comment as expressly stating that the BC Implementation Agreement framework is not working effectively. With respect, this is incorrect. The letter says no such thing.

119. I acknowledge that there is a lack of precise information about the location, footprint, or timing of potential future upstream development that may potentially relate to the Project, as well as the source of the Project's gas supply. However, I am of the view that at the time additional upstream development is sought and new land disturbances are proposed, the provincial Crown – in exercising its authorities in relation to resource developments – would be required to meet the duty to consult and accommodate with respect to any adverse effects on the rights of Indigenous Peoples that may result from its authorizations or decisions.

120. In addition to the provincial regime being capable of addressing cumulative effects, I also observe that advances in drilling technology and increased re-use of existing land disturbances in northeastern BC would also be able to contribute towards reducing the potential effects arising from any incremental upstream development from the Project on the rights of Indigenous Peoples, including those of Blueberry River First Nations. While these technological advancements are discussed as part of the principal opinion's assessment of the adequacy of natural gas supply in areas subject to land restrictions in accordance with the Blueberry River Implementation Agreement and *Treaty 8 Planning and Mitigation Regulation*, a similar reasoning could be applied to the concerns about upstream effects.

121. On this point, I note an apparent contradiction in **Section 13.7.2** where my colleague concurs that projections, including those relating to advances in drilling technology, may support supply adequacy findings for economic feasibility purposes. Despite agreeing with these projections, when the same facts are considered for the purposes of the assessment of effects on the rights of Indigenous Peoples, the section raises doubts about the adoption of such technologies. This apparent discrepancy is difficult to reconcile.

122. In addition, I disagree with my colleague that the various observations in the principal opinion regarding the relevant provincial permitting and land use processes would somehow represent a delegation of the Crown's duty to consult to the provincial regulator, as it relates to Blueberry River First Nations. As described in **Chapter 11**, I am satisfied that the Commission's process was robust and was designed to meet – and indeed met – the duty to consult at the high end of the *Haida* spectrum. There has been no delegation of the duty to the provincial Crown as it relates to Blueberry River First Nations' concerns.

123. After being engaged by the CCC from the very outset, Blueberry River First Nations chose to participate in the Commission's hearing process by filing a letter of comment. Blueberry River First Nations' choice on their method of participation does not detract from the importance of

the issues they raise, but rather highlights that their limited participation was the result of their own decisions rather than any procedural shortcomings. The community was offered the same opportunities as other potentially affected Indigenous Peoples to raise concerns and have them addressed through the hearing process through a variety of procedural steps, as well as supplemental consultation through the CCC and engagement with Westcoast. Further, the principal opinion and these reasons address the concerns that Blueberry River First Nations brought forward. I therefore do not share my colleague's concerns about the extent to which Blueberry River First Nations was consulted.

124. In closing, I wish to emphasize that the Crown is responsible for satisfying the duty in relation to the recommendation and decisions being considered for the matters under its jurisdiction. I do not agree that the fact that Blueberry River First Nations entered into Treaty 8 with the federal Crown somehow creates an obligation on the federal Crown to satisfy the duty for all authorizations, irrespective of the jurisdiction of the relevant decision-maker. The duty to consult falls to the emanation of the Crown, either federal or provincial, in relation to conduct within its jurisdiction,[193] and this constitutional ordering must be respected.

125. This recognition of the Province of BC's jurisdiction over upstream developments and the provincial Crown's duty to consult and accommodate is consistent with the Commission's recent views expressed for the Aspen Point Program. For that project, the Commission stated that "[i]f any new upstream projects are proposed, the cumulative impacts of those projects will be assessed by the relevant regulator" and "…the Commission does not determine whether upstream projects in the Province of BC will be acceptable or have the appropriate mitigations, as these will be determined by the parties to the Implementation Agreement," under the provincial cumulative effects framework. I see these views as being applicable here.

15.5 Commissioner Grimoldby's approach to denying PPBoR exemptions

126. In **Section 13.8**, Commissioner Grimoldby denies certain PPBoR exemption requests made by Westcoast. Her reason is to provide procedural flexibility for Indigenous Peoples to be engaged by Westcoast and consulted through the detailed route process and ensure that the Crown's duty to consult has been met. I disagree with this assessment and approach.

127. In discussing the denial, my colleague asserts that the detailed route process can be used to assess concerns of Indigenous communities that were not adequately addressed during this hearing. This suggestion runs contrary to longstanding National Energy Board and Commission precedent, based on the clear wording of section 203 the CER Act, that detailed route hearings do not afford parties the opportunity to rehear or relitigate issues from past proceedings.[194] Instead, the matters to be assessed through detailed route hearings focus on the best possible detailed route of a Project component, the most appropriate methods of construction, and the most appropriate timing of construction.

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[193] *Grassy Narrows First Nation v Ontario (Natural Resources),* 2014 SCC 48 at para 30.

[194] For example, see the National Energy Board's MH-3-2007/MH-1-2008 detailed route Reasons for Decision dated 9 September 2008 in relation to the Brunswick Pipeline Project (A19976-1, PDF page 20 of 137), and the Commission's MH-027-2020 detailed route decision dated 4 November 2020 relating to Semá:th First Nation for the Trans Mountain Expansion Project (C09379-1, PDF page 5 of 26), both of which state that detailed route hearings are not for reconsidering issues already addressed in a certificate hearing.

128. Given the limitations of the detailed route hearing process, including the focused subject matters that may be canvassed through that process, I do not agree that holding additional detailed route hearings would reflect an appropriate option to address perceived gaps in consultation from the Commission's certificate hearing process. Rather, the proposed approach may create expectations that cannot reasonably be achieved through those hearings, within the existing regulatory framework under the CER Act.

129. In my view, consistent with the decision of the Supreme Court in *Clyde River*,[195] the correct response to a finding that the duty to consult and accommodate was inadequately satisfied for an application under section 183 of the CER Act is to recommend that approval of the project be withheld, absent additional consultation from the Crown as the final decision-maker. It is not appropriate to suggest that future processes, especially one legislatively intended for a different purpose, should be repurposed to satisfy the duty.

130. I further observe that my colleague's decision in **Section 13.8** relies on a novel test that has never been articulated or applied by the Commission when deciding whether to grant PPBoR exemptions. Since the CER Act came into force in 2019, and as recently as for Taylor to Gordondale, the Commission has assessed exemption requests based on what is in the public interest. In light of the purpose of the detailed route hearing process, the test is not based on preserving procedural flexibility for supplemental engagement and consultation opportunities, which is the test my colleague uses.

131. Without sufficient reasons explaining the departure from the Commission's longstanding public interest approach, or how the detailed route hearing process could be expanded to allow for the consultations contemplated by my colleague, I cannot agree with the test that she uses or the resulting denials (other than for the CS-8A power line). Among other things, the test disregards relevant issues, including the reasons for the requested exemption, which in this case I found compelling. More fundamentally, I disagree that preserving the detailed route hearing process is needed for Westcoast to continue to engage meaningfully with Indigenous communities on matters not captured through this GH-001-2024 hearing process. Westcoast made numerous commitments on the hearing record to engage with Indigenous Peoples over the Project's lifecycle and would be accountable for fulfilling them through **Condition 1** (Condition compliance).

132. In **Chapter 5**, the principal opinion finds that the PPBoR exemptions, other than for the CS-8A power line, are in the public interest. This decision is founded on a detailed assessment that carefully weighed Westcoast's reasons for the requested exemption, the overall lack of specific route-related objections, Westcoast's commitments, and the Commission's conditions. The distinguishing reason for denying the exemption for the CS-8A power line was grounded in specific concerns about that Project component raised by Coldwater Indian Band and Lower Nicola Indian Band, which focused on areas that are directly captured within a detailed route hearing process (i.e., the best possible route, and the methods and timing of construction).

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[195] *Clyde River*, *supra* note 18 at para 39.

15.6 Note on the process

133. Given the presence of substantive concurring and dissenting opinions, and Commissioner Grimoldby's observations in **Section 13.10** on the process by which the report's recommendation, determinations, and decisions were reached, it is appropriate to briefly comment on the deliberative process and the Lead Commissioner's instructions. For certainty, the following observations are not intended to be, nor should they be construed as, a waiver of this Panel's deliberative privilege, which is reserved.

134. I would first note that I do not share Commissioner Grimoldby's process concerns about the Commission's decision-making process and strongly disagree with her characterizations, including with respect to the Lead Commissioner's instructions, our deliberations (including through exchanges of opinions that developed over time), and the role of support staff.

135. The process through which each Commissioner arrived at their opinions involved extensive deliberations, including with respect to the principal opinion's structure and content. These deliberations included numerous meetings that allowed Commissioners to provide their views to each other and to staff supporting the process, and additional opportunities for written exchanges, both before and after the Lead Commissioner's initial instructions.

136. Throughout this process, each Commissioner was required to, and did, form their own recommendations, determinations, and decisions regarding the Project, including their related findings and reasoning, in accordance with their own conscience and opinions, working with staff to support their incorporation into the report.

137. The Lead Commissioner's instructions, which to the principal opinion author's knowledge no Panel member sought to have changed, expressly directed that the Hearing Manager (a staff member) establish dates for exchanging draft opinions, written comments on draft opinions, and final opinions. The Hearing Manager established dates in accordance with the instructions. Commissioners exchanged draft opinions and shared comments before concurrently exchanging final opinions based on these dates. Additional deliberations took place, including further exchanges of many final written opinions (as described above) and, thereafter, steps were taken to finalize the report in accordance with further instructions issued by the Lead Commissioner.

138. In my view, the process to arrive at the Commission's recommendation, determinations, and decisions for the Project – both before and after the Lead Commissioner's instructions – was carried out in a manner that afforded substantial deliberative opportunities and ensured each Panel member's freedom to decide in accordance with their conscience and opinions, including through the freedom to adopt, concur, or dissent with the principal opinion.

Appendix 1 – Conditions

The conditions set out in this appendix represent the majority's conditions, as reflected in the entirety of the report.

In these conditions, the following terms are defined as:

CER	Canada Energy Regulator
Commission	Commission of the Canada Energy Regulator
construction	Any in-field activity that may have an effect on the environment and that is necessary for preparing or installing **any Project component** Construction activities include mowing, clearing, drilling, blasting, grading, boring, trenching, backfilling, and reclamation activities. Construction activities **do not** include activities associated with surveying, or data collection activities such as biophysical or geotechnical investigations.
electrical facilities	Collectively, the two power lines, as well as the electrical substations within the boundaries of CS-6B, CS-8A, and CS-8B, all of which form part of the Project
for Commission approval	Where a condition requires a filing for Commission approval, Westcoast must not commence the indicated activity until the Commission issues its written approval of that filing
operations	When the Project is opened for storage and the transmission of products described in Schedule A of the [certificate/order] "After commencing operations" means conducting an activity after product has started flowing in a pipeline.
operations of the electrical facilities	When the power lines are energized "Prior to commencing operations of the electrical facilities" means conducting an activity before the first power line is energized. "After commencing operations of the electrical facilities" means conducting an activity after both power line are energized.

post-construction	The period after construction is complete, following final clean-up through to the completion of reclamation activities Post-construction activities include monitoring to evaluate the success of reclamation activities, compliance with commitments, and stabilizing disturbed lands.
power lines	The two overhead power lines to CS-6B and CS-8A, each of which forms part of the Project
Project	Westcoast's Sunrise Expansion Program, inclusive of all of its components, as applied for and updated during the GH-001-2024 proceeding
Project components	The three components that Westcoast applied for as part of the Project: • pipeline loops – collectively, the 11 natural gas pipeline loops • power lines – collectively, the two power lines • facilities – collectively, the modifications and upgrades at 11 existing compressor stations (including the electrical substations) and at an existing meter station
Westcoast	Westcoast Energy GP Inc. on behalf of Westcoast Energy Limited Partnership

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
General				
1	**Condition compliance** Westcoast must comply with all conditions contained in this [certificate/order], unless the Commission otherwise directs.	✓	✓	✓
2	**Design, location, construction, and operations** Westcoast must cause the approved Project to be designed, located, constructed, installed, and operated in accordance with the specifications, standards, plans, commitments made, and other information included in its Project application and its related submissions.	✓	✓	✓
3	**Environmental protection** Westcoast must 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 its Project application and its related submissions.	✓	✓	✓
4	**Instrument expiration (sunset clause)** This [certificate/order] will expire on **[three years from the date that this [certificate/order] is granted]** unless construction in respect of the Project has commenced by that date.	✓	✓	✓
Prior to construction				
5	**Plan for notifying Indigenous Peoples of condition filings** Westcoast must file with the CER, **within 14 days after the issuance of this [certificate/order] for the Project,** a plan for notifying Indigenous Peoples of condition filings. The plan must include: a) a description of how Westcoast will provide notifications to interested Indigenous Peoples of all condition filings, within 2 days of each filing, throughout Project construction and operations and how it will seek to identify which condition filings each community is interested in receiving; b) confirmation that interested Indigenous Peoples will be provided notification of each condition filing within 2 days after filing it with the CER, unless an opt-out request has been received; and c) confirmation that Westcoast will post each condition filing on its website within 7 days after filing it with the CER.	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
6	**Caribou Habitat Restoration Plan** Westcoast must file with the CER, **at least 90 days prior to commencing construction** within Southern Mountain caribou range, a Caribou Habitat Restoration Plan for the portions of the Project located within Southern Mountain caribou range. The plan must include: a) the goals and measurable objectives of the plan and an explanation of how they contribute to achieving no net loss of caribou critical habitat; b) a quantification of the Project's anticipated direct and indirect disturbance to caribou critical habitat before implementing restoration measures, including supporting evidence for the calculations of indirect disturbance and a breakdown of the type and quality of disturbed habitat; c) a description of the caribou habitat restoration measures available and considered for implementation (e.g., toolbox of options), and the expected effectiveness of each measure as supported by documented evidence, including a discussion of uncertainty; d) an identification of the proposed restoration sites within the Project footprint, including: i) a table identifying the restoration sites, including location, spatial extent, a description of habitat quality, site-specific restoration activities, and potential challenges; ii) maps or environmental alignment sheets showing the locations of the restoration sites; iii) the quantifiable targets and performance measures for each restoration measure to be implemented; and iv) the decision-making criteria that will be used to finalize site selection; e) a quantitative assessment of the total area of direct disturbance to caribou critical habitat that will be restored in relation to the Project's disturbance to caribou critical habitat as quantified in b), the duration of the disturbance, and the spatial extent of the remaining direct and indirect residual effects to be offset; f) a schedule outlining when caribou habitat restoration measures will be initiated and completed, and an anticipated timeline for impacted habitat to reach functional habitat status; and g) a summary of Westcoast's related engagement with Environment and Climate Change Canada, appropriate provincial authorities, and potentially affected Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them;	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received.			
7	**Preliminary Caribou Habitat Offset Measures Plan** Westcoast must file with the CER, **at least 90 days prior to commencing construction** within Southern Mountain caribou range, a preliminary Caribou Habitat Offset Measures Plan for the portions of the Project located within Southern Mountain caribou range. The preliminary plan must be a standalone document that includes: a) the goals and measurable objectives of the plan, including the strategies for offsetting all residual effects resulting from the direct and indirect disturbance of caribou critical habitat caused by the Project, the principles of conservation offsets followed by Westcoast, an explanation of how the proposed offsets align with the applicable caribou Recovery Strategy(ies) and Caribou Recovery Partnership Agreement, and an explanation of how the goals and objectives contribute to achieving no net loss of caribou critical habitat; b) quantification of the Project's anticipated direct and indirect disturbance to caribou critical habitat after implementing restoration measures; c) a comprehensive description of the potential offset measures available and considered for the Project (e.g., toolbox of options), including details of the expected effectiveness of each measure as supported by documented evidence, a discussion of uncertainty, and alignment with the goals and principles of the plan; d) the decision-making framework used to select offset measures and offset locations based on the goals and principles, as well as landscape-specific and site-specific characteristics; e) a list of potential offset measures and locations, including a discussion of how these meet the principles of conservation offsets and applicable caribou range planning objectives; f) the proposed methodology to be used to calculate offsets, including offset ratios, the methodology's rationale, and supporting evidence; g) a proposed schedule indicating when offset measures will be initiated and completed; and h) a summary of Westcoast's related engagement with Environment and Climate Change Canada, appropriate provincial authorities, and potentially affected Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them;	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received.			
8	**Forest Management and Old Growth Mitigation Plan** Westcoast must file with the CER, **at least 90 days prior to commencing construction** within Old Growth Management Areas (**OGMAs**) and Old Growth Deferral Areas (**OGDAs**), a Forest Management and Old Growth Mitigation Plan. The plan must include: a) a summary of Westcoast's forest health field assessments and associated final mitigation and management strategies; b) a mitigation plan for OGMAs and OGDAs that includes: i) a description of how the avoid, minimize, mitigate, and offset hierarchy was considered in developing the plan, with rationales for progressing from avoidance to mitigation to offsets; ii) the completed assessment of the OGMAs and OGDAs that directly interact with the Project footprint, including a summary of the results of field surveys, the final area of new disturbance within OGMAs and OGDAs, changes in relevant landscape metrics (including patch sizes and linear disturbance densities), and a justification for each new disturbance, explaining why it could not be avoided and how the impact is being minimized as per requirement (b)(i); iii) the expected residual effects (including quantification) on OGMAs and OGDAs, including a discussion of the potential for time lags between when Project effects occur and when mitigation measures become fully functional; iv) details of the replacement or other offset measures that will be implemented to compensate for residual effects, including an explanation with rationales for the amount and type(s) of replacements or other offsets required, how these will contribute to achieving no net loss of old growth forest within OGMAs and OGDAs, a timeline for their implementation, and how suitable replacement areas for OGMAs and OGDAs that meet provincial deferral criteria for old forest are selected; and v) details on post-construction monitoring, including corrective actions that might be necessary and the circumstances under which each such action would be taken; c) a summary of Westcoast's related engagement with appropriate government authorities and potentially affected Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops);	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received; and d) confirmation that Westcoast will update the relevant Environmental Protection Plan(s) to include any relevant information from the Forest Management and Old Growth Mitigation Plan.			
9	**Updated Environmental Protection Plans** Westcoast must file with the CER for Commission approval, **at least 90 days prior to commencing construction of each Project component,** an updated Environmental Protection Plan specific to Project construction for that component. Each updated plan must include: a) revisions resulting from evidence, commitments made by Westcoast, and other relevant information included in its Project application and its related submissions; b) updated environmental alignment sheets; c) environmental mitigation measures, criteria for implementing these measures (including site-specific plans for erosion and sediment control and the use of riprap), and any updates to contingency plans and management plans applicable to all Project phases and activities; d) general and site-specific mitigation measures for culturally important vegetation, including preferred mitigation for each site georeferenced in environmental alignment sheets, and procedures for facilitating preconstruction harvesting by Indigenous Peoples; e) an updated Wildlife and Wildlife Habitat Management Plan that includes: i) species-specific survey methods for pre-construction wildlife surveys, including references to best practices and confirmation that the survey methods satisfy applicable regulatory requirements; ii) survey methods for breeding bird surveys to be conducted a maximum of 48 hours prior to vegetation clearing or topsoil removal during restricted periods for non-migratory birds protected under provincial jurisdiction and for migratory birds protected under federal jurisdiction, including references to best practices and confirmation that the survey methods satisfy applicable regulatory requirements; iii) a description of mitigation measures for breeding birds found during surveys conducted as per requirement e)ii), as recommended by a qualified biologist and in accordance with Environment and Climate Change Canada's *Guidelines to avoid harm to migratory birds* (or its replacement) and other applicable regulatory requirements; and	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	iv) a description of site-specific and species-specific mitigation measures to reduce direct and indirect Project effects on wildlife species at risk and species of cultural importance and their habitats, including relevant references to Westcoast's Wildlife Species at Risk Mitigation Plan(s) (**Condition 10**); f) a wetlands mitigation plan that includes all site-specific mitigation measures for all wetlands that are impacted by the Project; g) a reclamation plan that describes goals and measurable targets for reclamation and site-specific habitat restoration, including a detailed description of reclamation and restoration measures and criteria for determining success, as well as a decision tree for adaptive management measures and criteria for when these would be applied; h) a summary of the plan for Indigenous Peoples' participation in Project construction and post-construction monitoring activities (required by **Condition 11 and Condition 28**) or, if a summary of the post-construction plan is not yet available, an outline of what Westcoast expects to include in that plan; i) in an appendix, a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; j) in an appendix, a summary of Westcoast's related engagement with potentially affected Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received; and k) a revision log of the updates made to the plan, including references to where they can be found in the updated plan and references from the GH-001-2024 proceeding record that led to each update.			
10	**Wildlife Species at Risk Mitigation Plans** Westcoast must file with the CER, **at least 90 days prior to commencing construction of each pipeline loop, power line, and facility that interacts with critical habitat**, a Wildlife Species at Risk Mitigation Plan that includes: a) for each wildlife species with critical habitat potentially affected:	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	i) the location, types, biophysical attributes, and total spatial area directly and indirectly affected by permanent and temporary Project disturbance for each type of critical habitat; ii) a detailed description of measures that will be used to avoid the destruction of critical habitat; and iii) a detailed description of mitigation and habitat restoration measures to be implemented to reduce direct and indirect Project effects on critical habitat, including how these measures will contribute to achieving no net loss of critical habitat, and detailed criteria that describe the circumstances under which each measure will be applied; b) confirmation that all site-specific measures are included in the environmental alignment sheets and that the Environmental Protection Plan(s) contain references to this plan wherever relevant; c) measurable targets for evaluating the success of mitigation and habitat restoration measures, and the corresponding monitoring and adaptive management protocols to follow during and following construction; d) details on how the mitigation, critical habitat restoration measures, and monitoring measures are consistent with applicable Recovery Strategies and Action Plans; e) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; and f) a summary of Westcoast's related engagement with appropriate government authorities and potentially affected Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received.			
11	**Plan for Indigenous Peoples' participation in construction monitoring** Westcoast must file with the CER for Commission approval, **at least 90 days prior to commencing construction**, a plan describing Indigenous Peoples' participation in monitoring activities during Project construction. The plan must include:	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	a) a summary of Westcoast's related engagement and planning activities with potentially affected Indigenous Peoples to develop opportunities for their participation in monitoring activities, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received; b) a description of how existing Indigenous community-based monitoring programs were integrated into the plan; c) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; d) a list of Indigenous Peoples (i.e., Indigenous communities) who have reached an agreement with Westcoast to participate in monitoring activities, and the nature of their role in monitoring; e) a list of Indigenous Peoples (i.e., Indigenous communities) who have expressed an interest in, but have not yet reached, an agreement with Westcoast to participate in monitoring activities, an explanation as to why such agreements have not yet been reached, and a description of how their views and concerns have been or will be incorporated into or accommodated by the plan (Westcoast may make a request to the Commission for confidential treatment of this information, as it deems appropriate); f) a description of the anticipated training and participation requirements, and potential certifications for the monitors; g) the scope, methodology, frequency, and justification for monitoring activities to be undertaken by Westcoast and each participant identified in d), including those elements of construction and geographic locations that will involve monitors, such as pre-construction activities; h) a description of the roles and responsibilities of Indigenous monitors with respect to monitoring activities during construction; i) a description of how Westcoast will use and incorporate the information gathered through the monitors' participation and apply it to the Project;			

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	j) a description of the method, form, and timeframe by which Westcoast will provide the information gathered through the monitors' participation to potentially affected Indigenous Peoples; k) confirmation that Westcoast has provided or will provide the plan to each of the relevant contractors involved in construction; l) confirmation that Westcoast has integrated the information provided in g) into the updated Environmental Protection Plan(s) (**Condition 9**); and m) a description of the contractor oversight measures to ensure adherence to the plan for Indigenous Peoples' participation in construction monitoring.			
12	**Update on employment, contracting, procurement, and training for Indigenous Peoples** Westcoast must file with the CER, **at least 60 days prior to commencing construction,** an update on Project-related employment, contracting, procurement and training opportunities for Indigenous Peoples that includes: a) a summary of Westcoast's related engagement with Indigenous Peoples regarding Project-related employment, contracting, procurement and/or training, including a description of: i) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; and ii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; b) a summary of how applicable plans, policies and practices (e.g., Enbridge's Indigenous Reconciliation Action Plan, Socio-Economic Requirements of Contractors, Indigenous Skills and Employment Training Strategy, Use of Community Employment and Training Coordinators, Working Warriors, etc.) were applied with a description of their outcomes; and c) a table describing, with respect to each Indigenous People it has engaged with regarding Project-related employment, contracting, procurement and/or training, how applicable plans, policies and practices (e.g., Enbridge's Indigenous Reconciliation Action Plan, Socio-Economic Requirements of Contractors, Indigenous Skills and Employment Training Strategy, use of Community Employment and Training Coordinators, Working Warriors, Community and Gender Safety Plan etc.) are being applied and their outcomes.	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
13	**Finalized watercourse crossings inventory** Westcoast must file with the CER, **at least 60 days prior to commencing construction for each watercourse crossing**, the following: a) the name of the watercourse and an identifier; b) the location of the crossing, including Global Positioning System (Universal Transverse Mercator) or latitude/longitude coordinates; c) the primary and contingency crossing methods; d) the planned construction timing; e) information on the presence of fish habitat (as defined by the *Fisheries Act*) upstream, downstream, and at the crossing location; f) information on the composition of riparian habitat upstream, downstream, and at the crossing location; g) the applicable fisheries timing window of least risk; h) an indication of whether there is potential for harmful alteration, disruption or destruction of fish habitat or death of fish (as defined by the *Fisheries Act*) as a result of either the primary or contingency crossing method; and i) if the primary watercourse crossing method has the potential for the harmful alteration, disruption, or destruction of fish habitat or death of fish, site-specific information for the watercourse crossing including: i) detailed crossing-specific design drawings; ii) photographs upstream, downstream, and at the crossing location that are dated and labelled appropriately, with the instream and riparian habitat clearly shown; iii) a description of the fish species and habitat quality present upstream, downstream, and at the crossing location, and an indication of whether fish spawning is likely to occur within the immediate area; iv) a description of the riparian habitat present upstream, downstream, and at the crossing location and the extent to which it would be altered, disrupted, or destroyed by the crossing and associated works; v) the planned timing of construction relative to the fisheries timing window of least risk; vi) the site-specific mitigation and habitat enhancement measures to minimize impacts, including the use of any spawning deterrents; vii) any potential residual effects; viii) proposed reclamation measures; ix) a description of how Westcoast has taken available and applicable Indigenous knowledge and results from Indigenous-led assessments or studies into	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	consideration in developing the finalized watercourse crossing inventory, and how such information was integrated into the inventory or, if this information was not integrated, an explanation as to why not; and x) a summary of Westcoast's related engagement with appropriate government authorities and potentially affected Indigenous Peoples, including a description of: 1) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); 2) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; 3) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and 4) how Westcoast incorporated recommendations or otherwise changed crossings based on the issues, concerns, and recommendations received.			
14	**Quality assurance and compliance for the electrical facilities** Westcoast must file with the CER, **at least 60 days prior to commencing construction of the electrical facilities**, a Quality Assurance and Compliance Program for the electrical facilities. The program must describe the methods by which Westcoast will ensure the electrical facilities are designed, constructed, and operated in conformity with the conditions of this certificate, including the designs, specifications, standards, plans, commitments made, and other information included in Westcoast's Project application and its related submissions. This program must also include: a) a process or procedure by which any person designing, constructing, and operating the Project will be able to identify company designs, specifications, standards, plans, commitments made, and other relevant information included in Westcoast's Project application and its related submissions (collectively, in this condition, the **requirements**); b) processes or procedures to monitor, measure, document, and report on compliance with the requirements; c) the position title of the person(s) responsible for each aspect of the Quality Assurance and Compliance Program; d) the qualifications, description of the job role, and the position title of each person authorized to stop work, as necessary, should the work be in non-compliance with the requirements; e) a process or procedure to identify and implement any corrective actions as a result of any non-compliances with the requirements; f) a process or procedure to evaluate the effectiveness of the corrective actions taken as a result of any non-compliances; and	✓		

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	g) methods by which adherence to the Quality Assurance and Compliance Program will be monitored, measured, documented, and reported to Westcoast's management.			
15	**Outstanding Indigenous-led assessments or studies** Westcoast must file with the CER, **at least 45 days prior to commencing construction,** a report on any outstanding Indigenous-led assessments or studies for the Project, including any assessments undertaken with or by Indigenous governing bodies, including the S'ólh Téméxw Stewardship Alliance. The report must include: a) a summary of the status of additional Indigenous-led assessments or studies; b) a description of how Westcoast has integrated into the Project information from any additional Indigenous-led assessments or studies that were not filed, or on which it did not report, during the GH-001-2024 proceeding, or justification for why Westcoast has not integrated this information; c) a description of any outstanding concerns raised by potentially affected Indigenous Peoples regarding potential effects of the Project, including on their current use of lands and resources, and which includes: i) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; and ii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; d) if applicable, a summary of any outstanding Indigenous-led assessments or studies that will not be completed prior to commencing Project construction, including an explanation for why they are not being completed prior to construction and an estimated completion date; e) for any Indigenous-led assessments or studies not completed prior to construction, provide a description of how Westcoast will identify and mitigate potential effects of the Project on these Indigenous Peoples, including on their current use of lands and resources; and f) additional descriptions, if any, beyond what is required in applicable condition filings, of how Westcoast has incorporated any revisions necessitated by the Indigenous-led assessments or studies into the relevant Environmental Protection Plan(s), Socio-economic Effects Monitoring Plan, or other plans where required by other relevant conditions for the Project (and identify those plans).	✓	✓	
16	**Support for Indigenous Peoples to review Westcoast's condition filings** Westcoast must file with the CER, **at least 45 days prior to commencing construction,** a capacity funding report that describes Westcoast's support for Indigenous Peoples to review Westcoast's condition filings throughout Project construction and operations. The report must include:	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	a) a list of potentially affected Indigenous Peoples that were offered capacity funding to support their review of Westcoast's condition filings; and b) a summary of all outstanding issues or concerns raised by Indigenous Peoples regarding the status of funding to support their review of condition filings, including: i) how Westcoast intends to resolve those outstanding issues or concerns; or ii) if outstanding issues or concerns will not be resolved, an explanation as to why not.			
17	**Construction Safety Manuals** Westcoast must file with the CER, **at least 45 days prior to commencing construction** of each Project component, a Construction Safety Manual specific to construction of that component, pursuant to section 20 of the *Canadian Energy Regulator Onshore Pipeline Regulations*. Each manual must include: a) the safety-related responsibilities of Westcoast and contractor managers and supervisors; b) a description of the method or program established by Westcoast to fulfill its responsibilities under sections 18 and 19 of the *Canadian Energy Regulator Onshore Pipeline Regulations*; c) any special conditions, as referred to in paragraph 18(1)(a) of the *Canadian Energy Regulator Onshore Pipeline Regulations*, associated with construction and any special safety practices or procedures necessitated by the conditions or features specific to the construction; d) positions of the persons, with suitable qualifications, who are responsible for supervising and performing inspections during Project construction; e) positions of the persons within Westcoast who are accountable for ensuring that contractors adhere to established safety performance requirements; f) positions of the persons authorized to halt a construction activity, as required by paragraph 18(1)(d) of the *Canadian Energy Regulator Onshore Pipeline Regulations*; g) Westcoast's policy for the internal classification and reporting of hazards, incidents, and near misses, and the process for reporting on such matters; h) the methodology used to ensure that employees and other persons working with or on behalf of the company are competent (have sufficient expertise, knowledge, and training) to carry out their assigned tasks; and i) the safety practices and procedures to be followed during construction or, if any of the required practices or procedures are not yet available, an explanation as to why it cannot be provided and when the information will be available and included in the manual.	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
18	**Construction Emergency Response Plan(s)** Westcoast must file with the CER, **at least 30 days prior to commencing construction**, the Project-specific Emergency Response Plan(s) that will be implemented during the Project's construction phase and confirmation that a copy of the plan will be provided, upon request, to Indigenous Peoples and other organizations and agencies who may be involved in emergency response. The plan(s) must include spill contingency measures that Westcoast will employ in response to accidental spills attributable to construction activities, 24-hour medical evacuation, fire response, and security.	✓	✓	
19	**Socio-economic Effects Monitoring Plan** Westcoast must file with the CER for Commission approval, **at least 30 days prior to commencing construction**, a plan for monitoring potential positive and adverse socio-economic effects of the Project during construction and post-construction. The plan, inclusive of Westcoast's Community and Gender Safety Plan, must include descriptions of: a) the socio-economic effects that will be monitored (including specific indicators and any identified thresholds); b) how these socio-economic effects will be monitored (including methods, timing, data collection, review, and reporting); c) who is responsible for monitoring (including roles and responsibilities); d) how Westcoast will respond should an identified threshold be exceeded (including adaptive management processes and responses); e) how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; and f) a summary of Westcoast's related engagement activities with potentially affected Indigenous Peoples, landowners, communities, local and regional authorities, and service providers, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received.	✓	✓	

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20	**Schedule and progress of construction of electrical facilities** a) Westcoast must file with the CER, **at least 30 days prior to commencing construction of the electrical facilities**, a construction schedule for the electrical facilities showing major construction tasks, the estimated timeline associated with each task, and task interdependencies. b) Westcoast must file with the CER, **quarterly during construction of the electrical facilities**, construction progress reports for the electrical facilities that include a summary of: i) construction progress with respect to the electrical facilities construction schedule; ii) any deviations from the electrical facilities construction schedule and implications of those deviations on that schedule; and iii) any safety and security issues and issues of non-compliance, and the measures taken or to be taken to resolve each issue and non-compliance.	✓		
21	**Contingency watercourse and wetland crossings** a) For each fish-bearing watercourse and wetland crossing where Westcoast will employ a contingency crossing method instead of its proposed primary crossing method, and where there is no potential for harmful alteration, disruption, or destruction of fish habitat or death of fish (as defined in the *Fisheries Act*), Westcoast must file with the CER, **at least 14 days prior to construction of the contingency crossing,** a notification to this effect. In each notification, Westcoast must explain why the contingency method is being employed and how it will not result in harmful alteration, disruption, or destruction of fish habitat or death of fish (as defined in the *Fisheries Act*) and provide a summary of the differences between the primary and contingency crossing methods. b) For each fish-bearing watercourse and wetland crossing where Westcoast will employ a contingency crossing method instead of its proposed primary crossing method, and where there is potential for harmful alteration, disruption, or destruction of fish habitat or death of fish (as defined by the *Fisheries Act*), Westcoast must file with the CER, **at least 30 days prior to construction of the contingency crossing**: i) confirmation of the contingency crossing method that will be employed, the rationale for employing that method, and a summary of the differences between the primary and contingency crossing methods; ii) the following site-specific information: 1) detailed crossing-specific design drawings; 2) photographs upstream, downstream, and at the crossing location (including Global Positioning System [Universal Transverse Mercator] or latitude/longitude coordinates) that are dated and labelled appropriately, with the instream and riparian habitat clearly shown;	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	3) a description of the fish species and habitat quality present upstream, downstream, and at the crossing location, and an indication of whether and when fish spawning is likely to occur within the immediate area; 4) a description of the riparian habitat present upstream, downstream, and at the crossing location and how it would be altered, disrupted, or destroyed by the crossing and associated works; 5) the planned timing of construction relative to the fisheries timing window of least risk; 6) the site-specific mitigation and habitat enhancement measures to minimize impacts, including the use of any spawning deterrents; 7) any potential residual effects; 8) proposed reclamation measures; and 9) a description of how Westcoast has taken available and applicable Indigenous knowledge and results from Indigenous-led assessments or studies into consideration in developing contingency watercourse and wetland crossings, and how such information was integrated into contingency planning or, if this information was not integrated, an explanation as to why not. c) In its filings under a) and b), Westcoast must provide a summary of Westcoast's related engagement with appropriate government authorities and potentially affected Indigenous Peoples and stakeholders regarding the works and any habitat enhancement measures proposed, including a description of: i) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; ii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iii) how Westcoast has incorporated recommendations or otherwise changed the works and any habitat enhancement measures based on the issues, concerns, and recommendations received. d) Westcoast must file with the CER, **within 30 days after commencing operations,** confirmation that any contingency watercourse crossings identified in a) and b) were the only contingency watercourse crossings implemented during pipeline construction.			
22	***Fisheries Act* authorizations** a) For any work, undertaking, or activity in or near water that requires authorization under paragraphs 34.4(2)(b) and/or 35(2)(b) of the *Fisheries Act*, Westcoast must file with the CER, **at least 14 days prior to commencing the respective work**, **undertaking, or activity**, a copy of the authorization under paragraphs 34.4(2)(b) and/or 35(2)(b) of the *Fisheries Act*.	✓	✓	

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	b) For any work, undertaking, or activity in or near water that was referred to Fisheries and Oceans Canada and where it was determined that an authorization under paragraphs 34.4(2)(b) and/or 35(2)(b) is not required, Westcoast must file with the CER, **at least 14 days prior to commencing the respective work, undertaking, or activity**, a copy of any Letter of Advice issued by Fisheries and Oceans Canada.			
23	**Subsection 317(1) consents** a) Westcoast must file with the CER, **at least 14 days prior to taking possession of, using, or occupying land in a reserve as contemplated by subsection 317(1) of the CER Act**, confirmation that it has obtained the requisite Band Council consent from Cheam First Nation or McLeod Lake Indian Band; or b) if the Band Council of Cheam First Nation or McLeod Lake Indian Band decides not to provide consent, Westcoast must file with the CER, **within 14 days of learning of each decision**, an update describing the steps Westcoast will take to address the lack of consent along with any relevant timelines.	✓	✓	
24	**Construction schedule** Westcoast must file with the CER, **at least 14 days prior to commencing construction**, a detailed construction schedule identifying major construction activities (excluding the electrical facilities), and must notify the CER of any modifications to the schedule as they occur.	✓	✓	
During construction				
25	**High-potential near misses** During construction, Westcoast must file with the CER, **within 72 hours after discovering a high-potential near-miss** (i.e., an event where a reasonable and informed person would determine that under slightly different circumstances, there would have been a high likelihood for serious injury or death to a person), a preliminary incident report that includes: a) the date of the event and when it was discovered; b) the location of the event; c) a description of the event; and d) the immediate corrective action taken by Westcoast.	✓	✓	
26	**Construction progress reports** Westcoast must file with the CER, **on a monthly basis after construction begins until construction is complete**, a construction progress report (excluding the electrical facilities). Each report must include: a) information on the activities carried out during the reporting period;	✓	✓	

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	b) any environmental, socio-economic, safety and security issues, and issues of non-compliance, including any circumstances where species-specific setbacks and timing restrictions could not be met and the alternative mitigation implemented; c) the measures undertaken to resolve each issue and non-compliance; d) confirmation that any vegetation clearing or topsoil removal occurred outside of restricted periods for non-migratory birds protected under provincial jurisdiction and for migratory birds protected under federal jurisdiction, or a summary of the results of survey(s) conducted a maximum of 48 hours prior to vegetation clearing or topsoil removal to identify any birds and active nests in areas that would be directly affected in the event of vegetation clearing or topsoil removal during restricted periods for non-migratory birds protected under provincial jurisdiction and for migratory birds protected under federal jurisdiction; and e) information on safety key performance indicator trends (e.g., hazard identification reports, near-miss reports, cumulative total and contractors' recordable injury rates and/or frequency, total and contractor lost time injury rates and/or frequency, total and contractor preventable motor vehicle incident rates and/or frequency), and respective benchmarks set by Westcoast.			
27	**Plan for hydrostatic test water withdrawal and discharge** Westcoast must file with the CER, **at least 90 days prior to any water withdrawal and pressure testing**, a field plan for hydrostatic test water withdrawal and discharge for the Project that includes: a) all sources of hydrostatic test water and discharge sites, including, for any waterbodies, the water depths, bathymetry, and potential fish presence; b) the flow rate and water volume at each water withdrawal site, and the proposed water withdrawal rates and volumes; c) a description and quantification of any vegetation required to be cleared to access and transport the hydrostatic test water; d) specific mitigation measures that Westcoast will implement at water withdrawal and discharge sites, including at Green Lake, during water transportation and associated activities and during hydrostatic testing, with the goal of protection for: i) the environment; ii) water quality and quantity; and iii) fish and fish habitat; e) a description of how Westcoast has taken available and applicable Indigenous knowledge and results from Indigenous-led assessments or studies into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; and f) a summary of Westcoast's related engagement with appropriate government authorities and potentially affected Indigenous Peoples, including a description of:	✓	✓	

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	i) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; ii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iii) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received.			
28	**Plan for Indigenous Peoples' participation in post-construction monitoring** Westcoast must file with the CER for Commission approval, **within 60 days after the date Westcoast files its first leave to open application for any component of the Project**, a plan describing Indigenous Peoples' participation in monitoring activities during Project post-construction. The plan must include: a) a summary of Westcoast's related engagement and planning activities with potentially affected Indigenous Peoples to develop opportunities for their participation in monitoring activities, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received; b) a description of how existing Indigenous community-based monitoring programs were integrated into the plan; c) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; d) a list of Indigenous Peoples (i.e., Indigenous communities) who have reached an agreement with Westcoast to participate in monitoring activities, and the nature of their role in monitoring; e) a list of Indigenous Peoples (i.e., Indigenous communities) who have expressed an interest in, but have not yet reached, an agreement with Westcoast to participate in monitoring activities, an explanation as and a description of how their views and concerns have been or will be incorporated into or accommodated by the plan (Westcoast may make a request to the Commission for confidential treatment of this information, as it deems appropriate);	✓	✓	

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	f) a description of the anticipated training and participation requirements, and potential certifications for the monitors; g) the scope, methodology, frequency, and justification for monitoring activities to be undertaken by Westcoast and each participant identified in d); h) a description of the roles and responsibilities of Indigenous monitors with respect to monitoring activities during post-construction; i) a description of how Westcoast will use and incorporate the information gathered through the monitors' participation and apply it to the Project; and j) a description of the method, form, and timeframe by which Westcoast will provide the information gathered through the monitors' participation to potentially affected Indigenous Peoples.			
29	**Operational Vegetation Management Plan** Westcoast must file with the CER, **within 60 days after the date Westcoast files its first leave to open application for any component of the Project**, a Project-specific Operational Vegetation Management Plan. The plan must include: a) operational vegetation management procedures, including all environmental protection procedures, mitigation measures, commitments made by Westcoast, and other relevant information from its Project application and its related submissions, that will be implemented to avoid or minimize potential adverse environmental and socio-economic effects during operational vegetation clearing of the pipeline and power line rights-of-way, including impacts on wildlife, waterbodies, riparian areas, and culturally important vegetation; b) the locations and site-specific widths to be cleared during operations for those sites where there is a reduction in the width to be cleared as compared to the permanent pipeline rights-of-way; c) the methodology for assessing vegetation density/foliar cover and height when determining when vegetation management is needed; d) a description of procedures to coordinate operational vegetation management when adjacent to Westcoast's pipeline rights-of-way or access roads and third-party linear developments; e) procedures for facilitating pre-clearing harvesting by Indigenous Peoples during operational vegetation management; f) a description of the procedures for pesticide and herbicide use, including: i) criteria describing when and where problem vegetation will be managed; ii) management procedures and the decision-making framework for selecting appropriate prevention and treatment measures for specific habitats, weed species, land uses, and land management plans; and iii) an explanation of how each management procedure and the decision-making framework will be considered and kept up to date in terms of selecting	✓	✓	

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	prevention and treatment measures for specific habitats, weed species, land uses, and land management plans; g) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; h) a summary of Westcoast's related engagement with appropriate government authorities, affected landowners/tenants, and potentially affected Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received; and i) confirmation that Westcoast has updated or will update its relevant operations manual(s) for the Project to include any relevant information from the plan, and that Westcoast will include all relevant information from the plan in its training programs for employees and contractors.			
30	**Power system protection for compressor stations, substations, and power lines** Westcoast must file with the CER for Commission approval**, at least 90 days prior to commencing operations of the electrical facilities**, the following details of its electrical power system design for each compressor station, substation, and power line: a) single line diagrams issued for construction for the power system and protection equipment; b) descriptions of the overcurrent and ground fault protection schemes including: i) a summary of coordination studies between the upstream and downstream protective devices; ii) relay settings and time-current curves; iii) the specification of neutral grounding resistors; iv) specifications of contactors, fuses, circuit breakers, and transformers; and v) a description of all other electrical protection schemes, relay settings, and trip characteristics; and	✓		

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	c) a description of the ground fault and arcing fault protection designs, including: i) a means to clear ground faults without intentional time delay if the fault currents exceed the design limit set by the neutral grounding resistors; ii) a means to prevent reverse power feeding a fault from the stored energy of other motors running from the same bus, where applicable; iii) a means to prevent large circulatory currents caused when multiple motors (or other three-phase loads) become faulted at the same time, where applicable; and iv) a means to prevent electrical faults from exceeding design limits and escalating to arcing faults.			
31	**Reliability standards** Westcoast must file with the CER, **at least 90 days prior to commencing operations of the electrical facilities**, confirmation that throughout its lifecycle, the Project will comply with applicable reliability standards approved by the British Columbia Utilities Commission, in addition to any applicable criteria, requirements, policies, or guidelines of the Western Electricity Coordinating Council that may apply.	✓		
32	**System impact studies prior to energization** Westcoast must file with the CER, **at least 30 days prior to commencing operations of the electrical facilities**: a) confirmation that final electric service agreements necessary to the Project's interconnection to the BC Hydro system were executed; and b) a letter of confirmation from BC Hydro that the final impact studies have indicated that the Project will have no negative effect on the electric grid.	✓		
33	**Technical specification updates** Westcoast must file with the CER, **at least 10 days prior to filing its final leave to open application,** any technical specification updates for the Project, as it was applied for. Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade, or material that do not impact any other aspect of the Project, as approved.	✓	✓	
Post-construction and during operations				
34	**Unplanned power line outage of electrical facilities** Westcoast must file with the CER, **within 7 days after an unplanned power line outage of the electrical facilities**, a report that includes: a) the date, time, and duration of the outage;	✓		

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	b) the location of the outage; c) the facility name and affected pipeline segment(s); d) the cause of the outage, if known; and e) any corrective action taken or proposed to be taken by Westcoast to mitigate the impacts of the outage and prevent a reoccurrence.			
35	**Condition compliance reporting by the Accountable Officer** Westcoast must file with the CER, **within 30 days after commencing operations**, confirmation that the approved Project was constructed in compliance with all applicable conditions in this [certificate/order]. If compliance with any of these conditions cannot be confirmed, Westcoast must include details as to why compliance cannot be confirmed. The filing required by this condition must include a statement confirming that the signatory to the filing is the Accountable Officer of Westcoast, appointed as Accountable Officer pursuant to section 6.2 of the *Canadian Energy Regulator Onshore Pipeline Regulations*.	✓	✓	✓
36	**As-built electrical drawings** Westcoast must file with the CER, **within 60 days after commencing operations of the electrical facilities**, as-built drawings and single line diagrams identifying the locations of all electrical facilities.	✓		
37	**Geographic information system data** Westcoast must file with the CER, **within 90 days after commencing operations,** as-built geographic information system data in the form of Esri® shapefiles. The shapefile filing must be signed by the Accountable Officer of the company and must include the following: a) A polyline layer that contains pipeline segment centre lines where each segment has unique attribute values of outside diameter, wall thickness, maximum operating pressure, external coating, field-applied girth weld coating, pipe manufacturing specification and depth of cover. If the values of a pipeline change along its length, the pipeline must be segmented at that point. b) A polyline layer that contains the power lines associated with the Project. c) Point layers that contain the names and other attributes of all pipeline facilities (e.g., compressor and meter stations). All layers must be in the NAD83 CSRS (EPSG:4617) spatial reference system, and conform to the following: i) The unit of measure for numerical attributes must be metric. ii) Details of the degree of accuracy for the geospatial data must be, or be better than, +/-0.1 m (e.g., seven decimal digits for geometry).	✓		

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38	**Socio-economic Effects Monitoring Final Report** Westcoast must file with the CER, **within 6 months after commencing operations**, a Socio-economic Effects Monitoring Final Report for the Project that includes: a) a summary of the monitoring results and adaptive management processes and responses that were applied under the Socio-economic Effects Monitoring Plan (**Condition 19**); b) the final outcomes of all Project-related employment, contracting, procurement, and training for Indigenous Peoples (**Condition 12**); c) a discussion, **from Westcoast's perspective**, of the overall effectiveness of the Socio-economic Effects Monitoring Plan, including: i) a description of the efficacy of the specific indicators and identified thresholds used in the plan; ii) a description of any issues or limitations regarding the data sources needed for the plan; and iii) a summary of positive aspects and challenges with implementing the plan; d) a discussion, **from the perspectives of potentially affected Indigenous Peoples**, of the overall effectiveness of the Socio-economic Effects Monitoring Plan; e) a summary of how Westcoast worked with Indigenous Peoples to develop the discussion in d), including: i) a description of how Westcoast collaborated with Indigenous Peoples to develop d); ii) a description of how Westcoast and participating Indigenous Peoples resolved differences where consensus was not reached on the perspectives shared in d) (e.g., through potentially developing addendums to this report for participating Indigenous Peoples to reflect their views); and iii) confirmation that Westcoast made capacity funding available to support Indigenous Peoples' participation in developing d); f) a summary of Westcoast's related engagement activities with potentially affected Indigenous Peoples, landowners, communities, local and regional authorities, and service providers, including a description of: i) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; ii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iii) how Westcoast incorporated recommendations or otherwise changed the final report based on the issues, concerns, and recommendations received; and	✓	✓	

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	g) an update on any previously unidentified mitigation measures that Westcoast may implement to mitigate potential ongoing socio-economic effects during Project operations.			
39	**Wetland Offset Measures Plan** Westcoast must file with the CER, **within 90 days after commencing operations**, a Wetland Offset Measures Plan for any wetlands to which the Federal Policy on Wetland Conservation applies. The plan must outline how permanent loss to wetlands resulting from the Project will be offset or compensated for no net loss, in accordance with the Federal Policy on Wetland Conservation. The plan must also include: a) a description of site-specific details and maps showing the locations of permanent wetland loss as a result of Project activities, as well as any other locations where wetlands were affected by the Project; b) an explanation of how wetland function will be measured as part of the post-construction monitoring program and confirmation that any resulting accidental permanent loss to wetlands will be quantified and reported to the CER as part of **Condition 41**; c) a list of the offset or compensation measures that will be implemented to address permanent loss of wetlands as identified in a) and b) above; d) an explanation of the expected effectiveness of each offset measure described in c) and the relative value of each offset measure towards achieving the offset; e) the decision-making criteria for selecting the specific offset measures described in c) and the offset ratios that will be used and under what circumstances; f) a schedule indicating when measures will be implemented and estimated completion dates; g) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not; and h) a summary of Westcoast's related engagement with appropriate government authorities and potentially affect Indigenous Peoples, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received.	✓	✓	

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40	**Quantification of construction-related greenhouse gas emissions** Westcoast must file with the CER, **within 90 days after commencing operations**, a quantitative assessment of the actual direct greenhouse gas emissions generated from Project construction, including from all temporary infrastructure and right-of-way preparation. The assessment must include: a) the methodology used for the assessment, including the sources of greenhouse gas emissions, assumptions, and methods of estimation related to: i) vehicle and equipment use; ii) fuel consumption; iii) land clearing and timber salvage; and iv) changes to carbon sinks; b) the total direct greenhouse gas emissions generated from Project construction after implementing mitigation measures, including emissions generated by vehicles and equipment and those associated with land clearing and changes to carbon sinks; and c) a comparison and discussion of the direct greenhouse gas emissions calculated in b) with the emissions predicted in Westcoast's Project application and its related submissions, including how the direct greenhouse gas emissions could have been further mitigated.	✓	✓	
41	**Post-construction environmental monitoring reports** Westcoast must file with the CER, **on or before 31 January following each of the first, third, and fifth complete growing seasons after completing final clean-up of the Project**, a post-construction environmental monitoring report. Each report must include: a) a summary of the methodology for monitoring and criteria for success included within the Environmental Protection Plan(s) and the Wildlife Species at Risk Mitigation Plan(s), as well as a description of any other or modified methodology or criteria employed, with rationales; b) the monitoring results and an analysis of those results, with documentation and photographic evidence, including discussion on the effectiveness of the implemented mitigation and reclamation measures; c) a description of any unexpected outcomes, deviations from plans, ineffective mitigation, corrected reclamation trajectories, and failures in access control, including the location(s) of each, as well as planned corrective measures with a schedule and ongoing monitoring plan; d) if goals and measurable targets stated in the Environmental Protection Plan(s) and the Wildlife Species at Risk Mitigation Plan(s) have not been achieved or there are issues identified with respect to the success of the reclamation measures	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	implemented by the fifth-year report, a reporting schedule for monitoring progress towards those objectives, as well as corrective actions to meet them; e) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the report, and how such information was integrated into the report or, if this information was not integrated, an explanation as to why not; and f) a summary of Westcoast's related engagement with appropriate government authorities and potentially affected Indigenous Peoples, including a description of: i) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; and ii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not.			
42	**Emergency response exercise** a) Westcoast must conduct, **within 2 years after commencing operations**, a functional or full-scale emergency response exercise to evaluate the implementation of its Emergency Response Plan. b) Westcoast must file with the CER, **at least 45 days prior to the date of the exercise required in a)**: i) the date of the exercise; ii) the location of the exercise; iii) a description of the anticipated scenario; iv) the names of relevant response partners, including the CER, involved in the exercise planning; and v) the names of organizations (e.g., agencies, municipalities, first responders) and Indigenous Peoples who have been or will be invited to participate in or observe the exercise. c) Westcoast must file with the CER, **within 45 days after completing the exercise in a)**, an Exercise After-Action Report.	✓	✓	
43	**Caribou Habitat Restoration Implementation Report** Westcoast must file with the CER, **within 90 days after implementing all caribou habitat restoration measures**, a Caribou Habitat Restoration Implementation Report. The report must include: a) a table describing the caribou habitat restoration measures implemented, including their locations and spatial extent, a description of the adjacent off-right-of-way habitat, and any site-specific challenges encountered;	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	b) a detailed discussion regarding any modifications to the type and location of caribou habitat restoration measures implemented compared to those outlined in the Caribou Habitat Restoration Plan (**Condition 6**), including a comprehensive explanation and rationale for any changes made; c) visual representation (e.g., photos, video) of the caribou habitat restoration measures implemented; d) updated environmental alignment sheets showing the locations of the caribou habitat restoration measures and any changes that occurred during implementation; e) a quantitative assessment of: i) the area of caribou critical habitat that was directly and indirectly disturbed by the Project, accounting for the residual effects associated with on-right-of-way restoration measures (e.g., temporal delay, effectiveness) and/or unrestored areas (e.g., operational right-of-way); and ii) a calculation of the initial offset value of residual effects; and f) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, Indigenous monitoring on the Project, and Westcoast's Community Interest and Response Tables into consideration in developing the report, how such information was integrated into the report or, if this information was not integrated, an explanation as to why not.			
44	**Final Caribou Habitat Offset Measures Plan** Westcoast must file with the CER, **within 90 days after implementing all caribou habitat restoration measures**, a final Caribou Habitat Offset Measures Plan. The final plan must be a standalone document that includes: a) the goals and measurable objectives of the plan, including the strategies for offsetting all residual effects resulting from the direct and indirect disturbance of caribou critical habitat caused by the Project, the principles of conservation offsets followed by Westcoast, and an explanation of how the proposed offsets align with the applicable caribou Recovery Strategy(ies) and Caribou Recovery Partnership Agreement and how they contribute to achieving no net loss of caribou critical habitat; b) quantification of the Project's direct and indirect disturbance to caribou critical habitat after implementing restoration measures, as calculated in the Caribou Habitat Restoration Implementation Report (**Condition 43**); c) any modifications to the potential offset measures available and considered for the Project (e.g., toolbox of options), the expected effectiveness of each measure as supported by documented evidence, and the discussion regarding uncertainty, as initially described in the preliminary Caribou Habitat Offset Measures Plan (**Condition 7**);	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	d) any modifications to the decision-making framework used to select offset measures and offset locations, as described in the preliminary Caribou Habitat Offset Measures Plan (**Condition 7**); e) the offset measures and locations selected for implementation, including: i) maps and environmental alignment sheets showing offset locations; ii) the spatial extent of each offset area and an evaluation of habitat type and quality at and adjacent to the site; iii) the quantifiable targets and performance measures for each offset measure to be implemented; and iv) how the measures and locations meet the principles of conservation offsets and applicable caribou range planning objectives; f) a quantitative assessment of: i) the area of caribou critical habitat that was directly and indirectly disturbed by the Project, accounting for the residual effects from restoration measures (e.g., temporal delay, effectiveness) and/or unrestored areas (e.g., operational right-of-way); ii) the total area of caribou habitat designated for offsets implementation; and iii) the projected final offset value of residual effects based on the offsets to be implemented, including an assessment of temporal, spatial, and delivery risks, as well as the anticipated offset ratios; g) a detailed timeline for implementing offset measures, including provisions for updating the final offset value to address unforeseen delays; h) a summary of Westcoast's related engagement with Environment and Climate Change Canada, appropriate provincial authorities, and potentially affected Indigenous Peoples regarding the final plan, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the plan based on the issues, concerns, and recommendations received; and i) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, and Westcoast's Community Interest and Response Tables into consideration in developing the plan, and how such information was integrated into the plan or, if this information was not integrated, an explanation as to why not.			

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
45	**Caribou Habitat Restoration and Offset Measures Monitoring Program** Westcoast must file with the CER, **within 90 days after implementing all caribou habitat restoration measures**, a Caribou Habitat Restoration and Offset Measures Monitoring Program for monitoring and verifying the effectiveness of the caribou habitat restoration and offset measures implemented as part of the Caribou Habitat Restoration Plan (**Condition 6**) and final Caribou Habitat Offset Measures Plan (**Condition 44**). The program must include: a) the activities, methodology, and protocols for monitoring of the restoration and offset measures, including: i) the timing, duration, and frequency of monitoring for each type of measure implemented, with supporting rationale; ii) the study design for monitoring, including the type and number of sampling and control locations, and the rationale supporting the statistical validity of the design; and iii) an explanation of how effectiveness of the restoration and offset measures will be confirmed based on monitoring results; b) protocols for how restoration and offset measures will be adapted, as required, based on the monitoring results to ensure that all Project residual effects continue to be offset; c) a schedule, spanning a minimum of 10 years, for filing reports of monitoring results and the adaptive management responses with the CER and any federal or provincial authorities or Indigenous Peoples who expressed interest in receiving copies of the reports; d) a summary of Westcoast's related engagement with Environment and Climate Change Canada, appropriate provincial authorities, and potentially affected Indigenous Peoples regarding the monitoring program and schedule for reporting, including a description of: i) the means by which information was shared between Westcoast and Indigenous Peoples (e.g., in writing, meetings, field visits, workshops); ii) all issues, concerns, and recommendations received and how Westcoast has addressed or responded to them; iii) how Westcoast intends to resolve those that are outstanding or, if any will not be resolved, an explanation as to why not; and iv) how Westcoast incorporated recommendations or otherwise changed the program based on the issues, concerns, and recommendations received; and e) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, Indigenous monitoring on the Project, and Westcoast's Community Interest and Response Tables into consideration in developing the program, and how such information	✓	✓	

#	Conditions	CER Act section 186 certificate	CER Act section 214 order	OPR section 45.1 order
	was integrated into the program or, if this information was not integrated, an explanation as to why not.			
46	**Caribou Habitat Offset Measures Implementation Report** Westcoast must file with the CER, **within 60 days after implementing all caribou habitat offset measures**, a Caribou Habitat Offset Measures Implementation Report. The report must include: a) a table describing the offset measures implemented, including the location and spatial extent of each offset area, an evaluation of habitat type and quality at and adjacent to the site, and any site-specific challenges encountered; b) a detailed discussion regarding any modifications to the type and location of offset measures implemented compared to those outlined in the final Caribou Habitat Offset Measures Plan (**Condition 44**), including a comprehensive explanation and rationale for any changes made; c) visual representation (e.g., photos, video) of the offset measures implemented; d) updated maps and environmental alignment sheets showing the locations of the offset measures; e) a quantitative assessment of the final offset value of residual effects based on the offsets implemented, including the temporal, spatial, and delivery risks applied and the final offset ratios; f) an evaluation of the offsets applied against the goals, objectives, and principles of the Final Caribou Habitat Offset Measures Plan; and g) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, Indigenous monitoring on the Project, and Westcoast's Community Interest and Response Tables into consideration in developing the report, how such information was integrated into the report or, if this information was not integrated, an explanation as to why not.	✓	✓	
47	**Caribou Habitat Restoration and Offset Measures Monitoring Reports** Westcoast must file with the CER, **in accordance with the schedule referred to in the Caribou Habitat Restoration and Offset Measures Monitoring Program** (**Condition 45**), caribou monitoring reports. Each report must include: a) the results of the program, any adaptive management responses, and the schedule for filing reports on monitoring results in accordance with the program; and b) a description of how Westcoast has taken available and applicable Indigenous knowledge, results from Indigenous-led assessments or studies, Indigenous monitoring on the Project, and Westcoast's Community Interest and Response Tables into consideration in developing the reports, and how such information was integrated into the reports or, if this information was not integrated, an explanation as to why not.	✓	✓	

Appendix 2 – List of intervenors

Abbotsford Fire Rescue Service
Alberta Department of Energy and Minerals
Ashcroft Indian Band
BC Métis Federation
Boston Bar First Nation
BP Canada Energy Group ULC
British Columbia Hydro and Power Authority
Canadian Association of Petroleum Producers
Cheam First Nation
City of Abbotsford
Coldwater Indian Band
Collaborative Group of Landowners Affected by Pipelines
Cook's Ferry Indian Band
Driftpile Cree Nation
Export Users Group
Foothills First Nation
FortisBC Energy Inc.
High Bar First Nation
Ho, Angela
Kanaka Bar Indian Band
Kelly Lake Cree Nation
Kelly Lake First Nation Society
Last, Ernest
Last, Monique
Last, Pearl
Last, Ron
Lheidli T'enneh First Nation
Lhoosk'uz Dene Nation
Lhtako Dene Nation
Louis Bull Tribe
Lower Nicola Indian Band
Manitoba Métis Federation
Métis Nation British Columbia
Natural Resources Canada
Nazko First Nation
NGTL GP Ltd., as general partner and on behalf of NGTL Limited Partnership
Nicomen Indian Band
Nooaitch Indian Band
Peters First Nation
Powerex Corp.
Prophet River First Nation
Province of British Columbia
Pukaist Nation
S’ólh Téméxw Stewardship Alliance
Saulteau First Nations
Siska Indian Band
Skeetchestn Indian Band
Sloan, Doug
Spelqweqs Development LP
Spuzzum First Nation
Sq'ewqel (Seabird Island Band)
Studney, Christopher
Sucker Creek First Nation
Tenaska Marketing Canada
Tourmaline Oil Corp.
Trans Mountain Pipeline ULC
Ts’elxwéyeqw Tribe
Tsq̓éscen̓ First Nation
Union Bar First Nation
Whispering Pines/Clinton Indian Band
Williams Lake First Nation
Xatśūll First Nation
Yale First Nation

Appendix 3 – Timetable of events

This table outlines key process steps, filings, and deadlines in the hearing, reflecting procedural adjustments made by the Commission to the timetable of events established in the Hearing Order. **Appendix 4** details the adjustments made, both broadly and for specific parties.

Who	Process step or filing	Date or deadline
Westcoast	Project notification	30 January 2024
CCC	Early Engagement Report reflecting the early engagement phase with potentially affected Indigenous Peoples	30 May 2024
CER	Summary of issues heard during the public early engagement phase	
Westcoast	Project application	
Commission	Notice of public hearing and information on the registration to participate process and participant funding	30 July 2024
Potential intervenors	Registration to participate process	1-31 August 2024
Commission	List of parties	6 September 2024
Intervenors, CCC, Westcoast	Comment process on the preliminary List of Issues and potential process steps (including completeness)	13 September – 16 October 2024
Commission	Completeness determination	19 November 2024
Westcoast	Supplemental evidence	3 December 2024
Commission	Hearing Order	6 December 2024
Commission	IR No. 1 to Westcoast	11 December 2024
Westcoast	Response to Commission IR No. 1	8 January 2025
Intervenors, CCC	IR No. 1 to Westcoast	14 January 2025
Indigenous intervenors	Oral Indigenous knowledge (Prince George, BC)	5 February 2025
Westcoast	Response to intervenor and CCC IR No. 1	28 January 2025
Intervenors, CCC, Westcoast	Motion to compel process regarding intervenor and CCC IR No. 1 to Westcoast	30 January – 6 February 2025
CCC	Report No. 1	13 February 2025
Intervenors	Written evidence	27 February 2025
Commission	IR No. 2 to Westcoast	11 March 2025
Intervenors, CCC, Westcoast	IR No. 1 to intervenors	13 March 2025
Intervenors, Westcoast	IR No. 1 to the CCC	
Intervenors, CCC	Response to intervenor, CCC, and Westcoast IR No. 1	3 April 2025
Westcoast	Response to Commission IR No. 2	4 April 2025

Who	Process step or filing	Date or deadline
Indigenous intervenors	Oral Indigenous knowledge (Kamloops, BC)	7-11 April 2025
Intervenors, CCC, Westcoast	Motion to compel process regarding intervenor, CCC, Westcoast IR No. 1 to intervenors and the CCC	
All participants	Written comment process on potential conditions	17 April – 2 June 2025
All participants	Virtual conditions workshop	29-30 April 2025
Commission	IR No. 3 to Westcoast	23 May 2025
Commenters	Letters of comment	13 May 2025
Indigenous intervenors	Oral Indigenous knowledge (Chilliwack, BC)	26-30 May 2025
CCC	Report No. 2	5 June 2025
Indigenous intervenors	Additional Indigenous-led assessments	12 June 2025
Westcoast	Reply evidence	7 and 10 June 2025
Westcoast	Response to Commission IR No. 3	16 June 2025
Intervenors, CCC, Westcoast	IR No. 2 to intervenors	24 July 2025
Intervenors, Westcoast	IR No. 2 to the CCC	
Commission	IR No. 4 to Westcoast	
Intervenors, CCC, Westcoast	Response to intervenor, CCC, and Westcoast IR No. 2	7 August 2025
Westcoast	Response to Commission IR No. 4	
Intervenors, CCC, Westcoast	Motion to compel process regarding intervenor, CCC, and Westcoast IR No. 2 to intervenors, CCC, and Westcoast	14-28 August 2025
Intervenors, Westcoast	Affidavits adopting evidence	2 September 2025
Commission	IR No. 5 to Westcoast	5 September 2025
Westcoast	Response to Commission IR No. 5	15 September 2025
CCC	Report No. 3	23 September 2025
Westcoast	Written argument	2 October 2025
Intervenors	Written argument	9 October 2025
Intervenors, Westcoast	Oral summary argument and oral reply argument (Calgary, Alberta)	22-24 October 2025
n/a	Close of record	24 October 2025
Commission	Report to the Minister	30 January 2026
n/a	Legislated time limit	12 February 2026

Appendix 4 – Summary of procedural adjustments and accommodations

This table lists all instances where the Commission adjusted the hearing schedule (i.e., the timetable of events) established in the Hearing Order, both broadly and for specific parties. It also includes decisions to grant confidential treatment of filings, accept late filings, and accommodate Indigenous Peoples' scheduling preferences for oral hearing steps. The documents listed can be found in the CER's online public registry in Folder 4456536.

Document	Procedural adjustment(s) or accommodation(s) made
Ruling No. 1	• Accepted late registrations to participate as intervenors from the Export Users Group and Nicomen Indian Band • Allowed Indigenous Peoples affected by the Project (including those on the Crown List) to register as intervenors at any time without having to justify or explain their late registrations
Procedural Update No. 1	• Accepted a late notice of intent to provide oral Indigenous knowledge from Nooaitch Indian Band • Accommodated Indigenous Peoples' scheduling requests for their oral Indigenous knowledge sessions in Prince George, BC
Ruling No. 3	• Granted an extension to Nicomen Indian Band to file IR No. 1 to Westcoast • Extended deadlines for subsequent hearing steps – Westcoast's response to Nicomen Indian Band's IR No. 1 and related motion to compel steps
Ruling No. 4	• Granted an extension to Saulteau First Nations to file IR No. 1 to Westcoast • Extended deadlines for subsequent hearing steps – Westcoast's response to Saulteau First Nations' IR No. 1 and related motion to compel steps
Ruling No. 5	• Extended motion to compel deadlines for the parties and the CCC related to their IR No. 1 to each other, in response to High Bar First Nation's request
Ruling No. 6	• Granted Powerex Corp.'s motion to compel Westcoast to provide further responses to specific portions of its IR No. 1
Ruling No. 7	• Granted Lower Nicola Indian Band an extension to file written evidence and IR No. 2 to Westcoast • Extended deadlines for subsequent hearing steps – Parties' and the CCC's IR No. 1 to Lower Nicola Indian Band and Lower Nicola Indian Band's IR response
Procedural Update No. 2	• Accommodated Indigenous Peoples' scheduling requests for their oral Indigenous knowledge sessions in Kamloops, BC
Ruling No. 8	• Accepted a late notice of intent to provide oral Indigenous knowledge from Tsq̓éscen̓ First Nation
Ruling No. 10	• Granted Westcoast an extension to file certain responses to Commission IR No. 2
Ruling No. 11	• Accepted Tsq̓éscen̓ First Nation's late response to Westcoast's IR No. 1
Ruling No. 13	• Granted Westcoast's request for confidentiality related to its further responses to Powerex Corp.'s IR No. 1

Document	Procedural adjustment(s) or accommodation(s) made
Procedural Update No. 5	• Accepted late notices of intent to provide oral Indigenous knowledge from Saulteau First Nations and Boston Bar First Nation • Accommodated Indigenous Peoples' scheduling requests for their oral Indigenous knowledge sessions in Chilliwack, BC
Transcript Volume 14	• Accommodated Cook's Ferry Indian Band's request to provide oral Indigenous knowledge virtually
Ruling No. 14	• Granted Westcoast an extension to file comments on potential conditions
Ruling No. 15	• Accepted Foothills First Nation's late comments on potential conditions
Ruling No. 16	• Accepted a late letter of comment from the Chilliwack Chamber of Commerce and the Harrison-Agassiz Chamber of Commerce
Ruling No. 17	• Granted extensions to Cheam First Nation, Prophet River First Nation, and High Bar First Nation to file their Indigenous-led assessments or studies • Extended deadlines for subsequent steps – Westcoast's reply evidence and the parties' and the CCC's IR No. 2 to each other • Granted Cook's Ferry Indian Band and the STSA's requests for confidentiality related to their Indigenous-led assessments or studies
Ruling No. 18	• Granted Peters First Nation an extension to file their Indigenous-led assessment or study
Ruling No. 19	• Accepted a filing made by Lower Nicola Indian Band, despite Westcoast's request that the Commission reject it
Ruling No. 20	• Accepted a filing made by Whispering Pines/Clinton Indian Band as late written evidence and comments on potential conditions
Ruling No. 21	• Granted Westcoast's request for confidentiality regarding its response to Commission IR No. 2.
Comment process	• Sought comments from the parties' and the CCC on whether to hold oral cross-examination
Procedural Update No. 6	• Determined that oral cross-examination was not needed given that no party or the CCC requested it • Added a motion to compel process for the parties' and the CCC's IR No. 2 to each other, in lieu of oral cross-examination
Ruling No. 22	• Accepted Cook's Ferry Indian Band's late-filed affidavit
Procedural Update No. 8	• Accommodated Indigenous Peoples' scheduling requests for their oral summary argument sessions
Ruling No. 25	• Granted Cheam First Nation an extension to file supplemental written argument
Procedural Update No. 9	• Accepted Siska Indian Band's and Pukaist Nation's late registrations to provide oral summary argument, and accommodated their stated availabilities
Procedural Update No. 10	• Accepted Cook's Ferry Indian Band's late registration to provide oral summary argument, and accommodated their stated availability

Appendix 5 – Significance criteria used in evaluating the Project's environmental and socio-economic effects

Criteria	General description	
	Ratings	**Rating definitions**
Temporal extent	*How long will residual Project effects last?* **Rating** denotes total duration of residual Project effects (i.e., adverse or positive effects after mitigation and enhancement measures are considered), including the time for the affected valued component to recover or return to baseline (unless permanent). **Discussion** might include: • the Project lifecycle stage(s) (e.g., construction or operations) in which interactions are expected (including the duration of such interactions and whether they occur once, multiple times, or continuously); • the duration of the effects resulting from those interactions; • recovery/return times; • reversibility (e.g., whether and, if so, how long it might take for a valued component to recover or return to baseline or for people to resume undertaking an activity); • sensitivity regarding duration (e.g., if environmental, social. or cultural effects extend for a generation, might they become permanent); • sensitivity regarding timing (e.g., does an effect occur during a critical stage in the lifecycle of a species, or at a critical time in the year for undertaking activities); and/or • uncertainties.	
	Short term	Days – weeks – a few months
	Medium term	Many months – years
	Long term	Decades – permanent
Geographic extent	*How large an area will be influenced by residual Project effects?* **Rating** denotes the general area within which residual Project effects are expected to influence the biophysical and human environment, or the undertaking of activities, recognizing that assessment areas may vary depending on the affected valued component being considered. **Discussion** might include: • how well the areas used in the assessment align with areas important to affected valued components (e.g., the ranges of wildlife species' populations); • the importance of the areas affected (e.g., critical habitat for species, areas of high unemployment where jobs or infrastructure will be added); and/or • uncertainties.	
	Project footprint	The area directly disturbed by Project activities, including associated physical works
	Local	Local study area (as defined by Westcoast for this Project)
	Regional	Regional study area (as defined by Westcoast for this Project)
	National or global	Beyond the regional assessment area

<table>
<tr><td>Magnitude</td><td colspan="2">How substantial are residual Project effects within the temporal and geographic extents?
Rating denotes how much or how intensely the residual Project effects influence the biophysical and human environment, or the undertaking of activities, within the temporal and geographic extents, including whether the effects are adverse or positive.
Discussion might include:
sensitivities or responsiveness of affected valued components;
the extent to which quality of life is affected;
how the magnitude might vary between different stages of the Project lifecycle;
a comparison to natural or normal variability;
a comparison to relevant sustainability thresholds, standards, and targets;
the likelihood of mitigation measures successfully reducing adverse effects or of enhancement measures increasing positive effects; and/or
uncertainties.</td></tr>
<tr><td></td><td>No or negligible</td><td>No or negligible residual Project effects</td></tr>
<tr><td></td><td>Low</td><td>Slight effects (e.g., affects only a few individuals of a species or community; individuals will commonly adapt or become habituated; if adverse, effects are easily manageable)</td></tr>
<tr><td></td><td>Medium</td><td>Moderate effects (e.g., affects numerous individuals; noticeably affects the resource or parties involved)</td></tr>
<tr><td></td><td>High</td><td>Substantial effects (e.g., if adverse, includes substantial harm, loss, stress, or displacement; if positive, includes substantial benefits or opportunities)</td></tr>
<tr><td>Cumulative effects</td><td colspan="2">If relevant, what are the total cumulative effects (i.e., the Project’s residual effects in combination with the effects of other past, present, and reasonably foreseeable projects and activities)?
Rating denotes the total cumulative effects, including whether the effects are adverse or positive.
Discussion might include:
the extent to which Project effects overlap or combine with effects of other projects and activities;
how total cumulative effects could vary over time and space;
a comparison to relevant sustainability measures;
the Project’s relative contribution to total cumulative effects; and/or
uncertainties.</td></tr>
<tr><td></td><td>No or negligible</td><td>No or negligible total cumulative effects</td></tr>
<tr><td></td><td>Low</td><td>Total cumulative effects raise no or minor concerns or benefits</td></tr>
<tr><td></td><td>Medium</td><td>Total cumulative effects raise concerns/benefits and (if adverse) prompt cautionary measures (e.g., species designated as Special Concern)</td></tr>
</table>

	High	Total cumulative effects raise substantial concerns/benefits (e.g., if adverse, total cumulative effects have reached or passed sustainability measures, resulting in species designated as Threatened or Endangered; the undertaking of activities is substantially diminished)
Significance	*Considering the temporal extent, geographic extent, and magnitude of residual Project effects, and considering these in light of relevant cumulative effects, how significant are the Project effects?* **Rating** denotes the significance of the Project effects, including whether the effects are adverse or positive. **Discussion** might include, for example, whether the precautionary principle was applied to address uncertainties.	
	No or negligible	No or negligible Project effects
	Low	If adverse, effects are easily managed and widely accepted by society, or of little concern If positive, effects provide limited benefits.
	Medium	If adverse, effects raise concerns but remain below environmental, regulatory, or social standards or tolerance; or are expected to affect quality of life but are normally accepted by society. Despite adverse effects, activities can continue in a reasonably similar or modified way If positive, effects provide some meaningful benefits
	High	If adverse, effects are generally not accepted by society; are beyond environmental, regulatory, or social standards or tolerance; are expected to affect quality of life, resulting in lasting stress; will substantially affect practices or customs; are inconsistent with accepted land use plans; or, generally, if total cumulative effects are high (and adverse), unless the magnitude is no or negligible or positive If positive, effects provide substantial and broad net-gain

Appendix 6 – Severity criteria used in evaluating the Project's effects on the rights of Indigenous Peoples

Criteria	General description	
	Ratings	**Rating definitions**
Temporal extent	*How long will residual Project effects last?* **Rating** denotes the total duration of residual Project effects (i.e., adverse or positive effects after mitigation and enhancement measures are considered), including the time for the exercise of rights to recover or return to baseline (unless permanent). **Discussion** might include: • the Project lifecycle stage(s) (e.g., construction or operations) in which interactions are expected (including the duration of such interactions and whether they occur once, multiple times, or continuously); • the duration of the effects resulting from those interactions; • recovery/return times; • reversibility (e.g., whether and, if so, how long it might take for Indigenous Peoples to resume undertaking activities and exercising their rights); • sensitivity regarding duration (e.g., if the effects on the exercise of rights extend for a generation, might they become permanent); • sensitivity regarding timing (e.g., do the effects occur during a critical stage in the lifecycle of a species, or at a critical time in the year for exercising rights); and/or • uncertainties.	
	Short term	Days – weeks – a few months
	Medium term	Many months – years
	Long term	Decades – permanent
Geographic extent	*How large an area will be influenced by residual Project effects?* **Rating** denotes the general area within which residual Project effects are expected to influence the rights of Indigenous Peoples, recognizing that assessment areas may vary depending on the specific rights being considered. **Discussion** might include: • how well the areas used in the assessment align with areas important for the rights of Indigenous Peoples (e.g., the location of the community's traditional or treaty territory, or the relevant areas for the exercise of rights); • the importance of the areas affected (e.g., critical habitat for species, preferred areas for activities); and/or • uncertainties.	
	Project footprint	The area directly disturbed by Project activities, including associated physical works.
	Local	Local study area (as defined by Westcoast for this Project)
	Regional	Regional study area (defined by Westcoast for this Project)
	National or global	Beyond the regional assessment area

Magnitude	*How substantial are residual Project effects within the temporal and geographic extents?* **Rating** denotes how much or how intensely the residual Project effects influence the rights of Indigenous Peoples within the temporal and geographic extents, including whether the effects are adverse or positive. **Discussion** might include: • sensitivities or responsiveness of Indigenous Peoples to exercise their rights; • the extent to which quality of life is affected; • how the magnitude might vary between different stages of the Project lifecycle; • the likelihood of mitigation measures successfully reducing adverse effects or of enhancement measures to increasing positive effects; and/or • uncertainties.	
	No or negligible	No or negligible residual Project effects
	Low	Slight effects (e.g., no or negligible effects are expected to occur within areas of preferred use or known areas for the exercise of rights; the exercise of rights would continue in the same or similar manner as before; if adverse, effects are easily manageable)
	Medium	Moderate effects (e.g., affects numerous individuals, noticeably affects the rights of Indigenous Peoples, effects have a moderate likelihood of occurring within areas of preferred use or known areas for the exercise of rights)
	High	Substantial effects (e.g., if adverse, the exercise of rights is substantively diminished or lost; the effect has a high likelihood of occurring within areas of preferred or exclusive use or known areas for the exercise of rights; if positive, includes substantial benefits or opportunities)
Cumulative effects	*If relevant, what are the total cumulative effects (i.e., the Project's residual effects in combination with the effects of other past, present, and reasonably foreseeable projects and activities)?* **Rating** denotes the total cumulative effects, including whether the effects are adverse or positive. **Discussion** might include: • the extent to which Project effects on the rights of Indigenous Peoples overlap or combine with effects of other projects and activities; • how total cumulative effects could vary over time and space; • a comparison to relevant sustainability measures; • the Project's relative contribution to total cumulative effects; and/or • uncertainties.	
	No or negligible	No or negligible total cumulative effects
	Low	Total cumulative effects raise no or minor concerns or benefits
	Medium	Total cumulative effects raise concerns/benefits and (if adverse) prompt cautionary measures (e.g., the Project

		affects one of only a few culturally important areas where rights can still be practiced in a preferred manner)
	High	Total cumulative effects raise substantial concerns/benefits (e.g., if adverse, total cumulative effects have reached or passed community thresholds, laws, or norms; the exercise of rights is substantially diminished)
Severity	*Considering the temporal extent, geographic extent, and magnitude of residual Project effects, and considering these in light of relevant cumulative effects, how severe are the Project effects on the rights of Indigenous Peoples?* **Rating** denotes the severity of the Project effects, including whether the effects are adverse or positive. **Discussion** might include, for example, whether the precautionary principle was applied to address uncertainties.	
	No or negligible	No or negligible Project effects
	Low	If adverse, effects are easily managed and widely accepted by Indigenous Peoples, or allow the continuation of the exercise of rights in an identical or almost identical way
	Medium	If adverse, effects raise concerns but remain below environmental, regulatory, or social standards or tolerance; are expected to affect quality of life but are generally accepted by Indigenous Peoples; or allow the continuation of the exercise of rights in a reasonably similar or modified way
	High	If adverse, effects are generally not accepted by Indigenous Peoples; are beyond environmental, regulatory, or social standards or tolerance; are incompatible with Reconciliation or the meaningful practice of rights by Indigenous Peoples; or, generally, if total cumulative effects are high (and adverse), unless the magnitude is no or negligible or positive