



BC EAO EAC Application – Tenas Project

PART C WET’SUWET’EN RIGHTS AND INTERESTS

Section 11.0 Wet’suwet’en Rights and Interests Assessment

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VERSION 1.0

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BC EAO EAC Application – Tenas Project

PART C WET'SUWET'EN RIGHTS AND INTERESTS SECTION 11.0 WET'SUWET'EN RIGHTS AND INTERESTS ASSESSMENT

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ABBREVIATIONS AND ACRONYMS

Abbreviation or Acronym	Long Form of Abbreviation or Acronym
AIR	Application Information Requirements
AGM	Annual General Meeting
ARD	Acid Rock Drainage
A2A	Alaska to Alberta Rail
BC	British Columbia
BC EAO	British Columbia Environmental Assessment Office
BC MECCS	British Columbia Ministry of Environment and Climate Change Strategy
BC MFLNRORD	British Columbia Ministry of Forests Lands and Natural Resource Operations and Rural Development
C	Chapter
CAC	criteria air contaminants
CDA	Canadian Dam Association
CEA	cumulative effects assessment
CO ₂	carbon dioxide
CMT	culturally modified trees
CNR	Canadian National Railway
<i>Constitution Act</i>	<i>Constitution Act</i> , 1982, Schedule B to the <i>Canada Act</i> 1982 (UK), 1982, c 11, (Government of Canada [GovCan] 1982)
COPC	Contaminants of Potential Concern
CPP	Coal Processing Plant
CR	concentration ratio
<i>Delgamuukw</i>	<i>Delgamuukw v British Columbia</i> 1997. SCC [1997] 3 SCR 1010 (Government of British Columbia [GovBC] 1997)
DFO	Department of Fisheries and Oceans Canada
EA	environmental assessment
EAC	Environmental Assessment Certificate
ESG	Environmental Social and Governance
FMSCMP	Fuel Management and Spill Control Management Plan (S13.0-C7)
FNFNES	First Nations Food, Nutrition & Environment Study
FSC	food, societal, and ceremonial
FSR	Forest Service Road
GHG	Greenhouse Gas
GovBC	Government of British Columbia
GovCan	Government of Canada
GTPR	Grand Trunk Pacific Railway

Abbreviation or Acronym	Long Form of Abbreviation or Acronym
HBC	Hudson's Bay Company
HCA	<i>Heritage Conservation Act</i> , RSBC 1996 c 187 (GovBC 1996a)
HHRA	Human Health Risk Assessment
HQ	Hazard Quotients
IBA	Impact Benefit Agreement
IC	Indigenous Communities
ICEP	Indigenous Consultation and Engagement Plan
ILCR	Incremental Lifetime Cancer Risk
INAC	Indigenous and Northern Affairs Canada
<i>Indian Act</i>	<i>Indian Act</i> , R.S.C., 1985, c. I-5 (Government of Canada [GovCan] 1985)
ISC	Indigenous Services Canada
KWES	Kyah Wiget Education Society
LNG	Liquified Natural Gas
LSA	Local Study Area
MAD	Mean Annual Discharge
ML	metal leaching
MOU	Memorandum of Understanding between Canada, British Columbia and Wet'suwet'en, As agreed on February 29, 2020 (Government of Canada [GovCan] et al. 2020)
NOx	nitrogen oxides
OW	Office of the Wet'suwet'en
PAA	Project Assessment Agreement
PAMP	Public Access Management Plan (S13.0-C16)
PM	particulate matter
PM2.5	particulate matter with diameter equal to or less than 2.5 micrometres (□m)
PM10	particulate matter with diameter equal to or less than 10 micrometres (□m)
Project	Tenas Project
RCP	Reclamation Closure Plan (S13.0-C15)
ROC	Receptors of Concern
ROM	run-of-mine
RSA	Regional Study Area
S	Section
SARA	<i>Species at Risk Act</i> , SC 2002, c 29 (Government of Canada [GovCan] 2002)
SDG	Sustainable Development Goals
SOx	sulfur oxides
SWF	Sovereign Wealth Funds
TAC	Tenas Access Corridor

Abbreviation or Acronym	Long Form of Abbreviation or Acronym
TCL	Telkwa Coal Limited
TEM	Terrestrial Ecosystem Mapping
TK	Traditional Knowledge
TRV	Toxicity Reference Values
<i>Tsilhqot'in</i>	<i>Tsilhqot'in Nation v. British Columbia</i> 2014, SCC 44, [2014] 2 SCR 257 (Government of British Columbia [GovBC] 2014)
TSP	total suspended particles
UBC	University of British Columbia
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGP	Guiding Principles on Business and Human Rights
USA	United States of America
VC	Valued Component
WLCS	Witsuwit'en Language and Culture Society
Wet'suwet'en	Wet'suwet'en Nation
WMC	Wet'suwet'en Matrilineal Coalition
WWI	World War I
WWII	World War II
YLP	The Yinka Dene Economic Development Limited Partnership
2SLGBTQQIA	Two Spirit Lesbian Gay Bisexual Transgender Queer Questioning Intersex Asexual

UNITS OF MEASURE

Abbreviation or Acronym	Long Form of Abbreviation or Acronym
<	less than
>	greater than
%	percent
ha	hectare
km	kilometre
km ²	square kilometre
kV	kilovolt
m	metre
m ²	square metre
V	volt

WET'SUWET'EN GLOSSARY OF TERMS

Anuk Nu'at'en/Inuk Nuatden (Wet'suwet'en Law) – A sophisticated legal order with principles and mandates that differ from Canadian Crown law. *Anuk Nu'at'en* pre-dates Canadian law and is inherent to the unceded Wet'suwet'en territory—it has never ceased. *Anuk Nu'at'en* does not need to be affirmed by the Canadian Crown to exist, however, it is still recognized by Canadian law and its continued application under Section 35 of the *Constitution Act*, 1982, Schedule B to the *Canada Act* 1982 (UK), 1982, c 11. (Government of Canada [GovCan] 1982).

Baht'lat (Potlatch) – Traditional feast system. A time for celebration, social and spiritual milestones, socialization, business/politics, bonding with First Nations beyond their territory.

Kungax/Cin K'ikh – Oral history that can have physical manifestations in the forms of totem poles, crests, and blankets or spiritual songs, dances and performances that tie the Wet'suwet'en to their territories.

Yex/Yikh(s) – Kin based groups often referred to as House groups. Each House group is an autonomous collective that has jurisdiction over one (1) or more defined geographical areas known as the House territory.

Yintah – Traditional territory of the Wet'suwet'en. *Yin* means “earth” or “land” and together with *tah* it means “territory”. Oral history tells that their ancestors have been on this land since time immemorial. It is the integral connection between both people and the land. This concept remains the focal point of Wet'suwet'en values as it inspires the awareness, importance, and interconnectedness of all living, and non-living aspects of the environment. It is a philosophy and ideology that everything is connected to the land.

Wet'suwet'en Nation – An Athabaskan culture related to inland Dene groups who speak a unique dialect which they share with the Nat'oot'en or Babine people.

WET'SUWET'EN CLANS AND HOUSES

Gilseyhu/C'ilhts'ëkhyu – Big Frog Clan

Yex T'sa Wit'ant'/Yikh Ts'iwit'an'/Yext'so wit'en – Thin House

Yex T'sa Wilk'us/Yikh Tsawilhiggis/Yexsowilkas - Dark House

Kayex/K'iy Yikh/KaiYex– Birchbark House

Liksilyu/Likhsilyu – Small Frog Clan

Tsee K'al K'e Yex/Tsë Kai K'iyikh/Tse Kalbai Yex – House on Top of the Flat Rock

Kwen Beegh Yex/Kwin Begh Yikh/Kwen Bea Yex - House Beside the Fire

G'en Egh La Yex/C'inegh Lhay Yikh/G'inehklai Yex – House of Many Eyes

Tsayu – Beaver Clan

Djakanyex/Djakan Yax/Tsa Kën Yikh – Beaver House

Tsa K'ex Yex – Rafters on a Beaver House

Laksamshu/Likhts'amisyu – Fireweed and Owl Clan

Tsaiyex/Tsai Yex/Sa Yikh – Sun House

Medzeyex/Misdzi Yikh/Medze Yex – Owl House

Gitdumden/Gidimt'en – Bear/Wolf Clan

Cassyex/Cas Yex/Cas Yikh – Grizzly House

Kaiyexweniits/Këyikh Winits/Keexwinits – House in the Middle of Many

Anaskaski/Insiggisgi – Where it Lies Blocking the Trail

**Disclaimer: In the case that there is a discrepancy in the spelling of Wet'suwet'en words, the spelling outlined by the Office of the Wet'suwet'en (OW) is followed.*

WET'SUWET'EN GOVERNANCE STRUCTURE

Elected Band Council – Governance system defined by the *Indian Act*, R.S.C., 1985, c. I-5 (Government of Canada [GovCan] 1985). Bands are led by band councils comprised of a chief and councillors, who are elected by band members typically every two (2) years under election procedures defined by the *Indian Act*, R.S.C., 1985, c. I-5 (GovCan 1985b).

Hereditary Clan and House System – Traditional system of governance and leadership represented by the Office of the Wet'suwet'en (OW).

Indian Act – The *Indian Act*, R.S.C., 1985 c.I-5 (GovCan 1985b) is the primary law the Canadian federal government uses to administer Indian status, local First Nations governments and the management of reserve land. It also outlines governmental obligations to First Nations peoples. The Act pertains to people with Indian Status; it does not directly reference non-status First Nations people, the Métis, or Inuit. First introduced in 1876, the Act subsumed several colonial laws that aimed to eliminate First Nations culture in favour of assimilation into Euro-Canadian society. The Act has been amended several times, most notably in 1951 and 1985, with changes mainly focusing on the removal of discriminatory sections.

Indian Reserve – An Indian Reserve is a tract of land set aside under the *Indian Act*, R.S.C., 1985 c.I-5 (GovCan 1985b) and treaty agreements for the exclusive use of an Indian band. Band members possess the right to live on reserve lands, and band administrative and political structures are frequently located there.

EXECUTIVE SUMMARY

This section of the Environmental Assessment Certificate (EAC) Application provides an assessment of Wet'suwet'en Rights and Interests in relation to the Tenas Project (Project). Consistent with Schedule B of the Order under Section 11 of the *Environmental Assessment Act, SBC 2018, c 5* (Government of British Columbia [GovBC] 2002), issued June 25, 2019, by the British Columbia Environmental Assessment Office (BC EAO) regarding Environmental Assessment (EA) of the Project, this section focusses on Rights and Interests of Wet'suwet'en, through the Office of the Wet'suwet'en (OW) Hereditary Chiefs. Background information is also provided regarding Wet'suwet'en First Nation, as identified in Schedule C of the Order under Section 11.

The OW is a coalition of Hereditary Clan Chiefs that operate under the traditional hereditary system of five (5) exogamous Clans: the Laksilyu, Gilseyhu, Laksamshu, Tsayu, and Gitdumden (OW 2015). The Wet'suwet'en First Nation (formerly known as Broman or Browman Lake Indian Band) is one of the five (5) band-governed Wet'suwet'en communities and it is located near Burns Lake.

The Project is located within Wet'suwet'en traditional territory. Most of the Project components, including the Minesite, fall within the C'inilh K'it territory of the Gitdumden Clan's Cas'Yex House. The Rail Loadout and portions of the Tenas Access Corridor (TAC) are located within the Cosl'et Bin territory of the Laksilyu Clan's Kwen Bea Yex House.

This assessment is prepared from existing publicly available desk-based references and does not yet include direct input from Wet'suwet'en. Engagement with Wet'suwet'en has followed the process laid out in the Communication and Engagement Agreement signed in April 2017 and the Tenas Project Assessment Agreement (PAA), between Telkwa Coal Limited (TCL) and the OW signed in August 2021. Subsection **9. Consultation and Engagement** describes how TCL developed and is implementing the Project's Indigenous Consultation and Engagement Plan (ICEP), and how Indigenous consultation and engagement informed the assessments.

The assessment begins with an articulation of known Wet'suwet'en Interests as related to the Project based on publicly available references, including Wet'suwet'en expressions of their interests in the context of other resource development projects. Five (5) components are then defined, representing Wet'suwet'en Rights and Interests, on which the effects assessment is carried out. These components are:

1. Wet'suwet'en System of Governance, *Anuk Nu'at'en*, and Aboriginal Right of Title;
2. Current Land Use and Resource Harvesting;
3. Cultural Heritage (Intangible Cultural Heritage and Physical Cultural Heritage subcomponents);
4. Community Well-being; and
5. Wet'suwet'en Health.

Potential effects of the Project on Wet'suwet'en Rights and Interests are identified and assessed for each component.

Mitigation measures to avoid or reduce potential effects on Wet'suwet'en Rights and Interests are summarized. The mitigation measures can also be viewed as opportunities for alignment of the interests of TCL and those of the Wet'suwet'en. All mitigation measures proposed across the EAC Application contribute to avoiding or reducing potential effects on Wet'suwet'en Rights and Interests. The following additional mitigations are proposed specifically to address Project effects to Wet'suwet'en Rights and Interests:

- ▶ collaborative governance;
- ▶ intergenerational trust fund;
- ▶ equity ownership;
- ▶ application of Environmental, Social & Governance (ESG) framework;
- ▶ Wet'suwet'en involvement in Project mitigation design and implementation;
- ▶ Wet'suwet'en involvement in Project monitoring design and implementation; and
- ▶ Wet'suwet'en involvement in Project Access Committee.

Even after the application of mitigation measures, all potential effects are identified as having residual effects. The residual effects identified across the five (5) components are:

- ▶ change in ability to fulfill fiduciary obligations to the *Yintah* and to future generations of Wet'suwet'en;
- ▶ change in integrity of Section 35, Aboriginal right of title;
- ▶ change in abundance or quality of wildlife, fish, and plant/vegetation resources;
- ▶ change in the utility of lands and waters for Wet'suwet'en land use and resource harvesting;
- ▶ change in Wet'suwet'en access to territory for land use and resource harvesting;
- ▶ change in sense of place and connection to land;
- ▶ change in Wet'suwet'en knowledge and cultural transmission;
- ▶ change to physical cultural heritage features;
- ▶ change in food and economic security;
- ▶ change in community cohesion;
- ▶ change in physical security, mental and emotional health;
- ▶ change in quality of air, water, and traditional foods; and
- ▶ change in Wet'suwet'en traditional food security.

Some of the residual effects are characterised as Unlikely. In the case of residual effects to integrity of Section 35, Aboriginal right of title, the residual effect is described as Unlikely but High risk. Due to the unique nature of Indigenous rights, the EAC Application makes no determination of the Significance of residual effects on Wet'suwet'en Rights and Interests.

Subsection 7. **Perspectives on Cumulative Effects** describes Wet'suwet'en perspectives on cumulative effects as documented in publicly available sources and provides context for the residual effects assessment and for Part C as a whole.

While the Project Area comprises a small percentage of Wet'suwet'en traditional territories, it appears evident that there is potential for effects on the rights of the Wet'suwet'en and their ability exercise their inherent Rights and Interests, especially those specifically related to laws and governance systems. The Wet'suwet'en have the greatest ability to understand their territory and the exercise of their rights. Fortunately, TCL and the OW are engaged through the PAA and have a structured process by which they can discuss and address these effects.

1. INTRODUCTION

This section of the Environmental Assessment Certificate (EAC) Application provides an assessment of Wet'suwet'en Rights and Interests in relation to the Tenas Project (Project). Consistent with Schedule B of the Order under Section 11 of the *Environmental Assessment Act*, SBC 2002, c 43 (Government of British Columbia [GovBC] 2002), issued June 25, 2019, by the British Columbia Environmental Assessment Office (BC EAO) regarding environmental assessment (EA) of the Project, this section focusses on Rights and Interests of Wet'suwet'en, through the Office of the Wet'suwet'en (OW) Hereditary Chiefs. Background information is also provided regarding Wet'suwet'en First Nation, as Wet'suwet'en First Nation were identified in Schedule C of the Order under Section 11.

The Wet'suwet'en are an Athabaskan culture related to inland Dene groups and speak a unique dialect, which they share with the Nat'oot'en or Babine people. The Wet'suwet'en are a matrilineal society organized into several exogamous clans. Within each clan are several kin based groups known as *Yikhs*, often referred to as House groups. Each House group is an autonomous collective that has jurisdiction over one (1) or more defined geographical areas known as the House territory. Within the context of Wet'suwet'en society, this ownership is a responsibility rather than a right. The Wet'suwet'en are stewards of the land. They are here to protect their traditional territories and to ensure that future generations of Wet'suwet'en can live and benefit from all that their ancestral land provides (OW 2011).

The OW is a coalition of Hereditary Clan Chiefs that operate under the traditional hereditary system of five (5) exogamous Clans: the Laksilyu, Gilseyhu, Laksamshu, Tsayu, and Gitdumden (OW 2015).

The Wet'suwet'en First Nation (formerly known as Broman or Browman Lake Indian Band) is one (1) of the five (5) band-governed Wet'suwet'en communities and is located near Burns Lake. The other four (4) Wet'suwet'en communities are Witset (formerly known as Moricetown), Skin Tyee, Hagwilget Village, and Nee-Tahi-Buhn.

In this document, the name "Wet'suwet'en" refers to all Wet'suwet'en, and "Wet'suwet'en First Nation" denotes the band. For describing and assessing Project effects on Wet'suwet'en Rights and Interests, the focus is at the level of the Wet'suwet'en as a whole, which includes the community of Wet'suwet'en First Nation.

The Project is located within Wet'suwet'en traditional territory. Most of the Project components, including the Minesite, fall within the *C'inilh K'it* territory of the Gitdumden Clan's *Cas'Yex* House. The Rail Loadout and portions of the Tenas Access Corridor (TAC) are located within the *Cos'et Bin* territory of the Laksilyu Clan's *Kwen Bea Yex* House (please refer to **Figure 2.8-2** in **2.8 Wet'suwet'en Traditional Territory, Communities and Reserves**).

1.1 Process of Developing Part C

In April 2017, the OW and Telkwa Coal Limited (TCL) signed a Communication and Engagement Agreement as an initial formal step in their relationship.

In July 2020, the OW provided to TCL, a Work Plan outlining the Wet'suwet'en Process to be followed for the Project. A Project Assessment Agreement (PAA) was signed in 2021 and provides guidance to TCL in relation to the Wet'suwet'en process.

The PAA includes a statement of recognition that "Wet'suwet'en Title and Rights exist throughout the *Yintah* and are collectively held by the thirteen Houses of the five clans being: (1) Kwen Bea Yex, G'inehklai Yex

and Tse Kalbai Yex (Laksilyu); (2) Yext'so wit'en, KaiYex and Yexsowilkas (Gilseyhu); (3) Cas Yex, Keexwinits and Anaskaski (Gitdumden); (4) MedzeYex and Tsai Yex (Laksamshu); (5) DjakanYax and Tsa k'ex Yex (Tsayu)."

While TCL is engaged directly with Wet'suwet'en through the terms of the Communication and Engagement Agreement, signed in April 2017, and the PAA, subsections **1-8** have been prepared from existing publicly available desk-based references and does not yet include direct input from Wet'suwet'en. During the EAC Application review phase, TCL will continue to work with the Wet'suwet'en to gather insight and information related to both this section and the broader EAC application. Outcomes from TCL's direct communications with Wet'suwet'en to date, and planned future activities, are reported in **9. Consultation and Engagement**.

2. WET'SUWET'EN BACKGROUND

This subsection provides a summary of aspects of Wet'suwet'en background. A more detailed description is provided in **Appendix 11.0-A Tenas Project: Cultural Use Study**.

2.1 Ethnography and Historic Background

Dizkle, the first settlement established by the Wet'suwet'en, Gitksan, Carrier, Sekani, and Tahltan peoples was situated in an area that is now known as Mosquito Flats on the Bulkley River, south of the Bulkley-Suskwa confluence. One (1) side of the river was called *Hahwilamax* and the other *Kwatso*. Along with houses along the two (2) opposite riverbanks, a large weir with fish traps connected the two (2) banks together. The two (2) groups would work together during salmon fishing season. The village was eventually abandoned when two (2) squirrels seen crossing the weir were deemed a bad omen. As a result, the Wet'suwet'en, Gitksan, Carrier, Sekani, and Tahltan dispersed to settle separate summer villages and seasonal territories. The Wet'suwet'en moved to *Siy'gehtiy* (Trout Creek) and eventually *Kyah Wiget* (Witset) (Jenness 1943, Rabnett 2000, Crossroads 2021).

Historically, the summer salmon fishery was central to the Wet'suwet'en way of life. During the rest of the year, family groups dispersed to their Houses' resource areas (Rabnett 2000). Fish bone artifacts found during an excavation in Witset (Morice town) indicate that the Wet'suwet'en have continuously inhabited this region for at least 6,000 years (Albright 1987, Crossroads 2021).

Clan wealth and prosperity was tied to the carefully structured control of locations used for hunting, fishing, foraging and other means of acquiring resources. This control and boundary establishment was maintained by Elders and Hereditary Chiefs through the feast system. Over time, oral histories, songs, dances, as well as family heirloom items were used to document these boundaries and site locations for each clan (Budhwa 2007).

The Wet'suwet'en have a matrilineal kinship society, with Clans that are divided into Houses. The Clans married members of other groups that resulted in alliances and trading opportunities, which fostered the transfer of technology and cultural practices. These marriages expanded the Wet'suwet'en economy and created complexity in government through the feast system and land use through trail systems (Rabnett 2000).

2.2 Language

The Wet'suwet'en speak Witsuwit'en, a dialect of Babine-Witsuwit'en. It is part of the Athabaskan (Dene) language family (WLCS 2018). Early ethnographers believed the Wet'suwet'en to be part of the Carrier Nation, as Witsuwit'en contains many linguistic similarities to Carrier, its sister language (Jenness 1943, Morice 1906). Today, however, the Wet'suwet'en and the Witsuwit'en language are recognized as a nation and language distinct from the Carrier, as well as from their neighbouring nations, the Nedut'en and Gitksan (Rabnett 2000, WLCS 2018). Currently, only about 5 percent (%) of Wet'suwet'en speak their language (TERA 2015; Crossroads 2021).

The WLCS provides various language and cultural programs, such as the Witsuwit'en Mentor Apprentice Program, Language Revitalization Project, Witsuwit'en History Book, and *Niwhkini, Niwh'it'wn* (Our language, Our ways). These programs teach Wet'suwet'en language, values, and life-ways to both Wet'suwet'en and non-Wet'suwet'en students (Morin et al. 2016, WLCS 2018). The Kyah Wiget Education Society (KWES) is responsible for all education matters in Witset and provides language and culture studies from kindergarten to Grade 12 (KWES 2018). In addition, New Hazelton Elementary School offers cultural

courses that teach children Witsuwit'en, Wet'suwet'en stories, and traditional activities (TERA 2015). In high school, students have the option to take similar cultural courses instead of French language classes (Crossroads 2021).

2.3 Wet'suwet'en Land Use Planning, Natural Resource Policies and Stewardship Principles

EAs are often quantitatively-driven through numerical methods of population counts, and spatial locations. However, the Indigenous worldview puts emphasis in landscape assessment through the values, stories and social connections of environmental components and dynamics (Crossroads 2021, Nadasdy 1999). These values, stories and connections to the land are passed through generations by ways of oral histories, traditional knowledge, and teachings. This provides Indigenous groups an incredible wealth of the knowledge of the landscape, which is integral to the future planning and sustainability of the land.

2.3.1 Wet'suwet'en Natural Resource Project Development Protocol

Wet'suwet'en policies related to natural resource management include the Wet'suwet'en Natural Resource Project Development Protocol (OW 2021a):

- ▶ assurance the development project will not pose a threat of irreparable environmental impacts;
- ▶ assurance the development project will provide positive socio-economic benefits for all Wet'suwet'en;
- ▶ assurance the development project will not jeopardize, prejudice, or otherwise compromise Wet'suwet'en title, rights, and interests; and
- ▶ environmentally responsible development of natural resources within Wet'suwet'en territory.

2.3.2 Witset First Nation Comprehensive Community Plan

The Witset First Nation Comprehensive Community Plan includes current community details, identifying struggles and problems and specifies possible solutions. The Comprehensive Community Plan addresses lands and Infrastructure improvement, including housing, education, support, community health and wellbeing, environment, and economic development (Witset First Nation 2018a). As part of the Comprehensive Community Plan, the Witset Community Land Use Plan provides a framework for land use and development in the community (Witset First Nation 2018b).

2.4 Populations

Wet'suwet'en traditional territory is comprised of 22,000 square kilometers (km²) and is home to 25,000 persons, roughly 5,000 of whom are Wet'suwet'en (British Columbia Ministry of Forests, Lands, Natural Resource Operations and Rural Development [BC MFLNRORD] 2017). This population resides in First Nations communities (Hagwilget, Nee-Tahi-Buhn, Skin Tyee, Wet'suwet'en Village, and Witset [Morcetown]) and their reserves (**Table 2.8-1, Figure 2.8-3**), larger communities (e.g., Burns Lake, Houston, Smithers, and Telkwa), and rural areas (Crossroads 2021).

Indigenous and Northern Affairs Canada (INAC) data states that there are 3,421 registered Wet'suwet'en members; 1,165 on-reserve and 2,256 off-reserve (INAC 2019). The OW reports that Witset has a total of 1,790 members, 661 on-reserve members and 1,129 off-reserve members (OW 2021a). The Wet'suwet'en First Nation reports 140 members, stating half live on-reserve, half off-reserve. Skin Tyee has a total of 134 members, on and off-reserve (Crossroads 2021).

Wet'suwet'en membership growth is predicted to maintain the trend of 1.2-1.5% annually. 11% of on-reserve members are over the age of 65, while 59% of on-reserve members are under the age of 40 (INAC 2019; Witset First Nation 2018a)

2.5 Governance (Hereditary and Band Level)

Since imposition of the *Indian Act*, R.S.C., 1985 c.I-5 (Government Canada [GovCan] 1985) (hereafter referred to *Indian Act*), there have existed two (2) parallel and overlapping network structures and systems governing Wet'suwet'en society. On the one (1) hand, governance of Wet'suwet'en members has traditionally been the responsibility of the hereditary House and Clan system. This system and its leadership are represented by the OW. On the other hand, the Wet'suwet'en band-level system, comprised of the Witset (formerly known as Moricetown), Hagwilget, Nee Tahi Buhn, Skin Tyee, and Wet'suwet'en First Nation bands (Crossroads 2021), are governed by Elected Band Councils. Both, the OW, as well as the elected band-level system, are able to enter into agreements with the provincial and federal governments for the purposes of self-determination and self-governance (Budhwa 2005, GovBC 2018).

The *Indian Act* governance structure, in terms of sustainability, and despite the structures ability to perpetuate itself through peripheral benefits to its membership, is unstable for a variety of reasons. First, Elected Band Councils that govern First Nations have typically been run on a two (2)-year election cycle, the result of which makes it difficult for membership to work together.

“The constant manoeuvring and strategizing for power in the next election pits community members, and frequently family members, against one another. The cohesive, traditional belief that rights are collectively held tends to get lost in the quest to win an election. Not all elected chiefs share the same priorities for how resources should be distributed within the community” (Joseph 2018).

Second is that it is emblematic of the *Indian Act*. Within the *Indian Act* structure, status homophily (McPherson et al. 2001) is, in a very real sense, entwined into the historical structure of Canadian indigenous society and represents a major fault line that cannot be underestimated. Indigenous peoples in Canada classified as “Status Indians” are registered per the *Indian Act* on the Indian Register— a central registry maintained by Indigenous Services Canada (ISC).

“Status Indians are issued a status card that contains information about their identity, their band, and their registration number... the Indian Act has historically stated that those with Indian status have rights to live on reserves, share in band monies, vote for band council and chief, and inherit band property.” (Hanson 2009).

By contrast, the traditional Wet'suwet'en governance structure is organized into five (5) hereditary clans and 13 houses with 38 House territories. Each of those houses has a position of House Chief, known as hereditary title, and secondary leaders known as Wing Chiefs. While the descendants of Head Chiefs stand to inherit title, the nomination of someone as an heir is based on the deportment and merit of the adult candidates and whether or not they have previously held a name (Jang and Stueck, 2020), so functions more like a meritocracy than an aristocracy. This reflects that complex ancestral governance structure, is not a monolithic ethnic state nor are family units the same as in European society. Rather family are very extended, and the structure follows a House and Clan system spanning thousands of people.

Essentially, this system is comprised of a multiplexity (McPherson et al. 2001) of overlapping networks that after thousands of years of development had been suppressed as the *Indian Act* attempted to supplant these structures via a racialized compartmentalization of indigenous peoples as Status Indians belonging to one (1) or another First Nation/Indian Reserve. As described by Granvetter (1974) “weak ties, often denounced

as generative of alienation, (Wirth 1938) are here seen as indispensable to individuals' opportunities and to their integration into communities; [by contrast] strong ties, breeding local cohesion, lead to overall fragmentation”.

Overall, the Elected Band Council governance structure can be characterised as hierarchical and closed versus the traditional, hereditary system which can be characterised as decentralized and open. The gaps between these governance structures have at times been exploited for achieving project development goals, exploitation that has driven Wet'suwet'en peoples into deep intra-community conflict. What is also notable, is that these structures often overlap through individuals that hold both hereditary title and elected positions on Band Councils. The following social network map (**Figure 2.5-1**) illustrates the connections and overlaps between the traditional governance regime and *Indian Act* governance as of October 2021.



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It is now generally recognized that division and fragmentation was the intention of the *Indian Act*. However, as Canada moves towards a more enlightened approach to Indigenous relations, the weak ties of the traditional governance structure of the Wet'suwet'en are formidable and have proven to be extraordinarily resilient.

2.6 Sustenance

Traditionally, the Wet'suwet'en maintained a semi-nomadic economy involving seasonal food gathering activities, which they used to take advantage of spatially and temporarily available resources. Most of their food was acquired during the summer salmon runs, when many Wet'suwet'en members would assemble at key fishing sites, such as *Kyah Wiget* (Witset). Besides salmon fishing, the Wet'suwet'en dedicated most of their time to resource gathering activities in their respective House territories (Morris et al. 2006; OW 2011, Crossroads 2021).

In terms of key traditional foods, salmon is a staple, high quality food for Wet'suwet'en. Fish and fish habitat are an integral environmental component to the Wet'suwet'en, as there is a substantial reliance on fish for sustenance, food security and the participation of in *baht'lats* (Wet'suwet'en parliament) through gifting (OW 2011, Crossroads 2021). Resident fish species that are predominant in Wet'suwet'en diet include lake trout, rainbow trout, Dolly Varden, bull trout, kokanee, and whitefish. Other important food fish include steelhead and lamprey (OW 2011).

The main animals that the Wet'suwet'en hunt and trap as a food source are moose, deer, and bear. The smaller game the Wet'suwet'en also hunt and trap as a source of food or fur include marmots, beaver, snowshoe hares, muskrats, squirrel, marten, weasel, lynx, groundhogs, and blue grouse (OW 2011).

A diverse array of plant species are used by the Wet'suwet'en for food and medicine. Plant foods include green vegetables, fruits and berries, inner bark–cambium, roots and rhizomes, mushrooms, and a few beverages. Medicines are derived from plant leaves or foliage, roots, and inner barks from a variety of species. Wet'suwet'en used about 60 plants for food, most of which are commonly harvested in forest or woodland settings. Berries were the most important plant food (OW 2011).

Appendix B of the **Tenas Project: Cultural Use Study (Appendix 11.0-A)** lists some prominent animal and plant species harvested by the Wet'suwet'en for subsistence and medicinal purpose

Important plant gathering happened in the spring and earlier summer, including the harvesting of the roots from cow parsnip, wild rhubarb, and fireweed. Plant bulbs and roots were roasted using hot rocks over the course of several days or eating fresh after harvesting. Inner bark (cambium) from pine trees was harvested, and sometimes poplar cambium as well (Hall 1992).

The strategies utilized when food harvesting required complex technologies such as weirs, traps, snares, and nets. This meant that resource gathering not only involved collection of food materials, but also food gathering materials as well (Rabnett 2000).

More details are provided in **6.4.2 Current Land Use and Resource Harvesting** and **6.4.5.1 Wet'suwet'en Traditional Food Security**.

2.7 Traditional and Preferred Future Economies

The Wet'suwet'en traditionally maintained an annual, cyclical subsistence strategy in which families relied on the seasonal occupation of different territories in order to take advantage of spatially and temporally variable resources, thus, increasing harvest, with a focus on salmon, and food security. The yearly

movement of a group or family through territories for this purpose is referred to as a seasonal round (Morris et al. 2006).

The Wet'suwet'en practice deliberate resource management strategies that are designed to ensure generational succession of territorial resources. Such strategies include rotating popular berry and hunting areas to avoid over-harvesting. Planned burning was also a major strategy used to ensure the productiveness of certain berry and root vegetable areas (Johnson 1999, 2013).

Management and stewardship over a territory was the responsibility of the House Chief for as long as he or she held the hereditary name (OW 2011). As such, House Chiefs, as well as House members, had to maintain detailed knowledge of resources' characteristics and environments, such as seasonal abundance and availability, in order to make informed decisions regarding which resources should be harvested at a given time.

Practicing traditional of managing their economy is more difficult in today's context, primarily due to the entrenchment of the colonial settler society. However, economic development continues to be a priority. For example, the Wet'suwet'en First Nation have created the Yinka Dene Economic Development Limited Partnership (YLP), which is 'the corporate business arm for the Wet'suwet'en First Nation' (Wet'suwet'en First Nation 2018a). It aims to foster financially stable economic development in the community that is consistent with its cultural and environmental values. Its "Key Objectives" are business development, employment creation, skills and training, and wealth creation (YLP 2013). YLP manages "all of the Nation[']s for-profit business ventures and employment and training matters," and aims to capture economic benefits that come from surrounding industry; such as logging, mining, and road construction (YLP 2013)" (Crossroads 2021).

"When the Burns Lake Mill exploded in January 2014, killing two Wet'suwet'en persons, the Wet'suwet'en First Nation's economy suffered, and a number of community members were out of work (Tech Support 2014). Since then, however, their economy has recovered, in large part due to their established revenue sharing agreements in forestry and mining, as well as benefits agreements with LNG projects (such as Coastal GasLink). These various agreements have led to increased community employment in resource development processes and improved local infrastructure, such as roads" (Crossroads 2021).

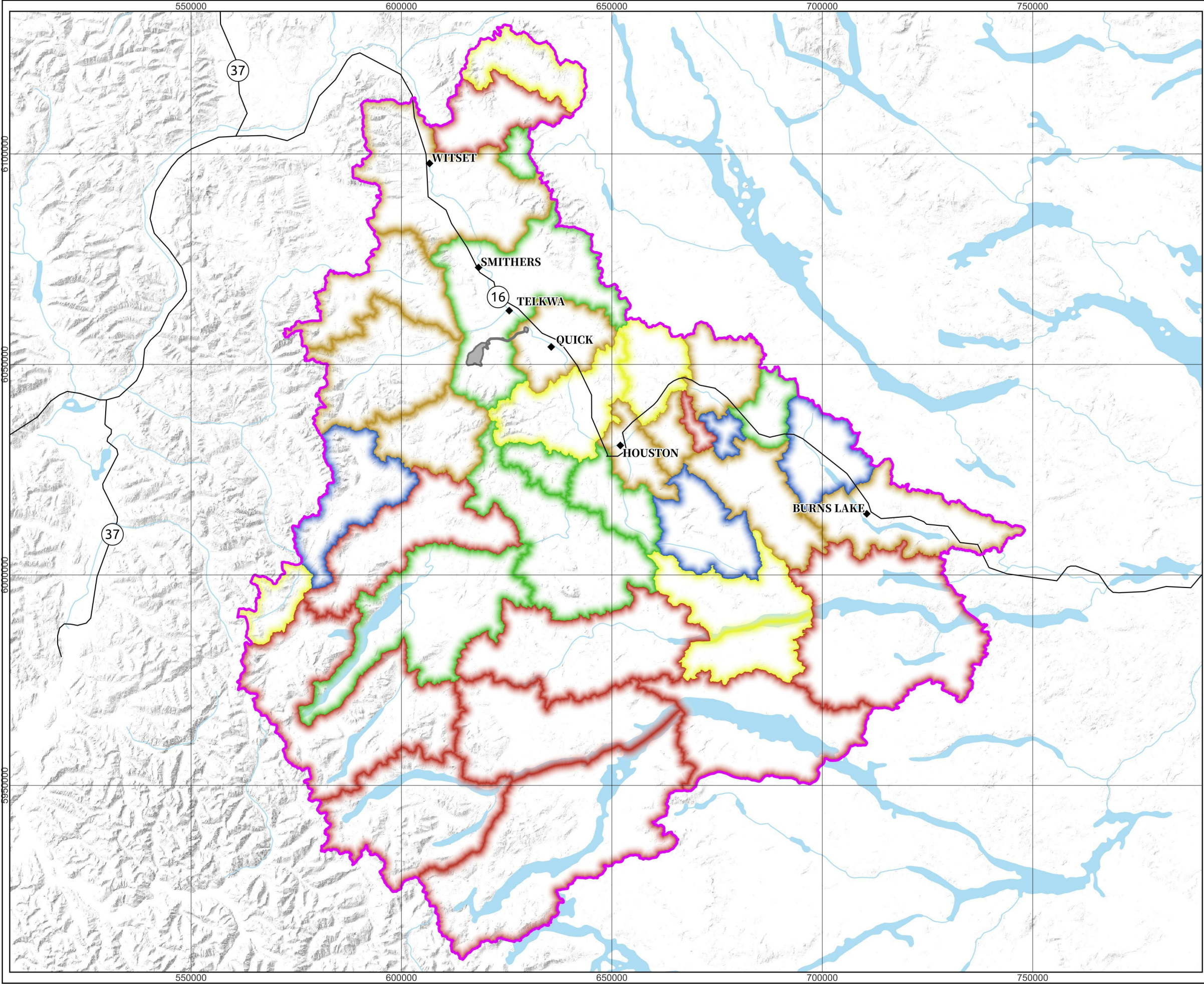
While pursuing economic and other projects, the Wet'suwet'en First Nation engages in collaboration with the other elected bands and strives for transparency with the OW and Hereditary Chiefs (Tech Support 2014). Though such transparency does not always occur, and many of their stances conflict, the Wet'suwet'en First Nation and the OW do engage in some collaboration. For example, the Wet'suwet'en First Nation, OW (representing the Wet'suwet'en Hereditary Chiefs), Hagwilget Village Council, Nee-Tahi-Buhn Band, Skin Tyee Nation, and Witset First Nation (as well as the Gitanyow Hereditary Chiefs, Gitxsan Nation, and Lake Babine Nation) are collaborating through the Skeena Sustainability Assessment Forum to establish a process for collecting trusted data on five (5) key environmental values: medicinal plants, grizzly bear, fish and fish habitat, moose, and wetlands, with the ultimate goal being to design and implement EA and monitoring protocols relevant to these values (Environmental Stewardship Initiative 2018). These protocols will better inform land stewardship and resource management decisions in their region. In April 2019, the Wet'suwet'en First Nation (2018b) hosted a Moose Management Summit in support of this endeavour (Crossroads 2021).

2.8 Wet'suwet'en Traditional Territory, Communities and Reserves

The Project falls within the traditional territory of the Wet'suwet'en, which encompasses approximately 22,000 km² of land in Northern British Columbia (BC), including most of the Bulkley and Morice River

drainage systems, as well as the western Fraser Basin headwaters (OW 2013a, 2013b). Each Yex (house within a clan) holds authority over the geographical territories that comprise Wet'suwet'en traditional territory (Budhwa 2005; Crossroads 2021) (**Figure 2.8-1**).

As noted in **1. Introduction**, the Project is located within Wet'suwet'en traditional territory. Most of the Project components, including the Minesite, fall within the C'inilh K'it territory of the Gitdumden Clan's Cas'Yex House. The Rail Loadout and portions of the TAC are located within the Cosl'et Bin territory of the Laksilyu Clan's Kwen Bea Yex House (**Figure 2.8-2**).



Tenas Project

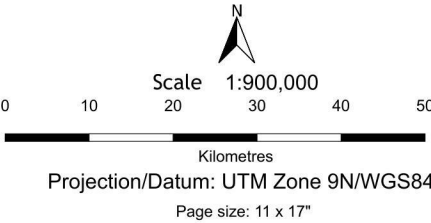
Wet'suwet'en Traditional Territory
and House Territories in Relation
to the Project Location

Legend

- Wet'suwet'en Traditional Territory
- Project Area
- Wet'suwet'en territories by clan
 - Gilseyu (Big Frog Clan)
 - Gitdumden (Wolf and Bear Clan)
 - Laksamshu (Fireweed and Owl Clan)
 - Laksilyu (Small Frog Clan)
 - Tsayu (Beaver Clan)

Sources

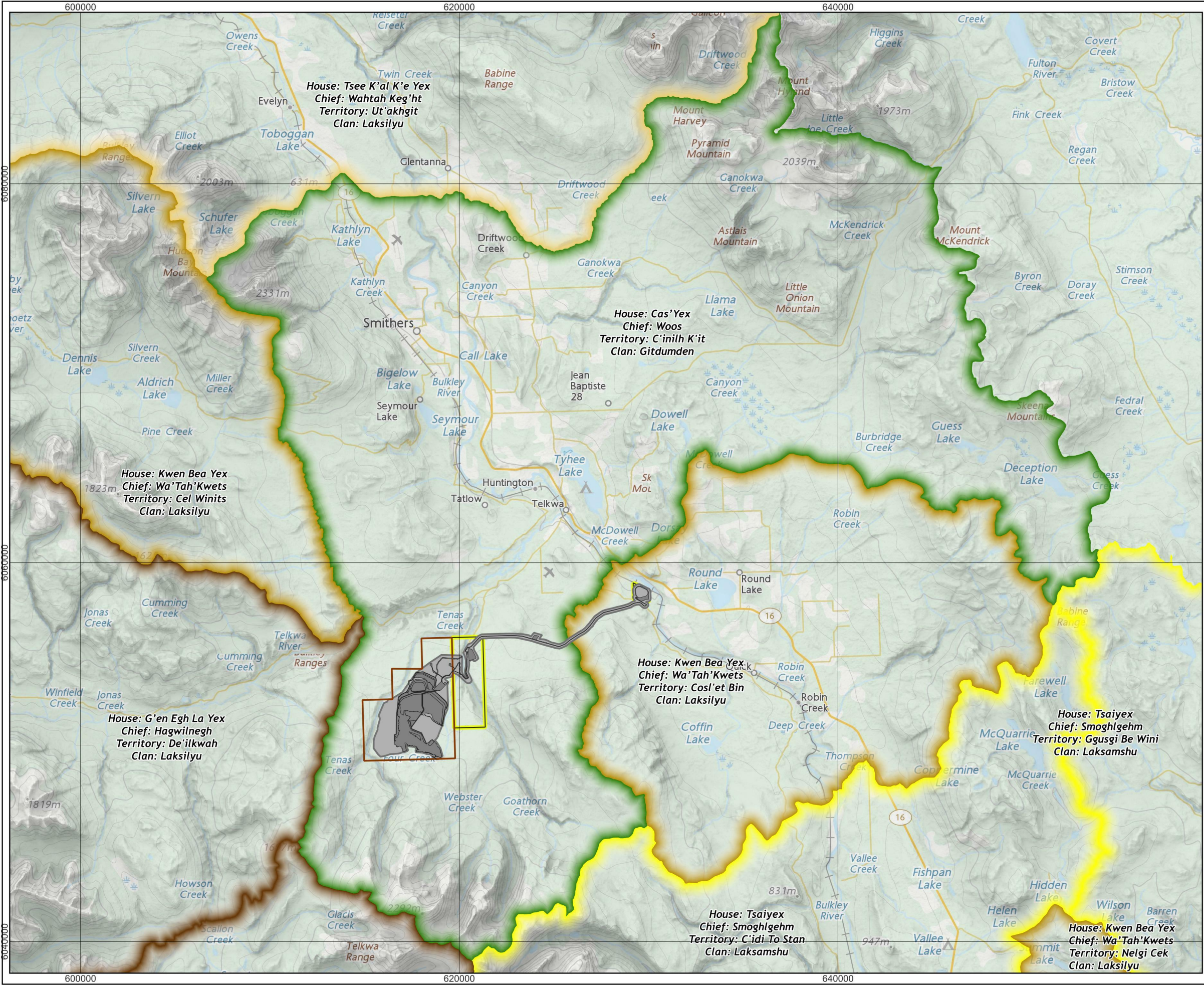
Project Area and Components: Allegiance Coal, April 26, 2021
Wet'suwet'en Territories: Office of the Wet'suwet'en
Basemap: Natural Resources Canada



Production Date: January 19, 2022

Figure 2.8-1





Tenas Project

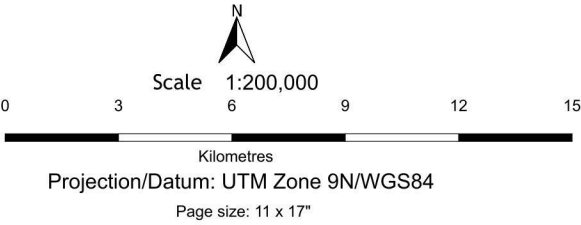
Wet'suwet'en House Territories
in Which the Project is Located

Legend

- | | |
|--------------------------------------|---|
| Project Components | Wet'suwet'en territories, by House |
| Project Area | Cas'Yex |
| Telkwa Coal Limited Private Property | G'en Egh La Yex |
| Tena's Coal Licenses | Kwen Bea Yex |
| | Tsaiyex |
| | Tsee K'al K'e Yex |

Sources

Project Area and Components: Allegiance Coal, April 26, 2021
Wet'suwet'en Territories: Office of the Wet'suwet'en
Basemap: Canada Basemap Transport (Natural Resources Canada)



Production Date: January 19, 2022

Figure 2.8-2



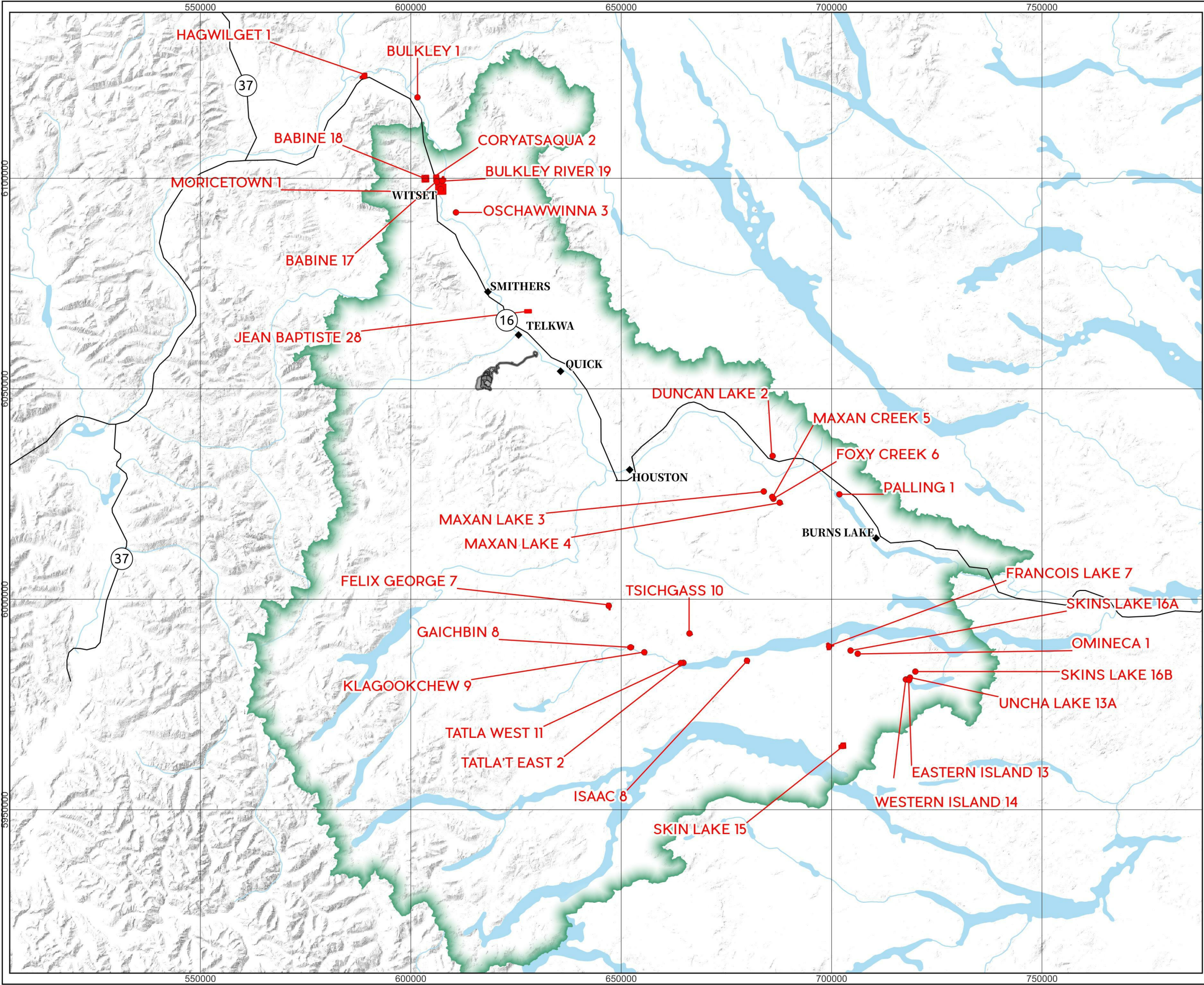
“For the Wet'suwet'en, the introduction of the Indian Act in 1867 was tremendously impactful to their life-ways, with two of the greatest initial impacts being the reserve system and the 1884 potlatch (baht'lat) ban. Implementation of the reserve system in Wet'suwet'en territories began in 1890. By the summer of 1891, reserves had been established in Hagwilget and Moricetown (Galois 1994)” (Crossroads 2021).

Under the band system, elected councils represent the individual Wet'suwet'en communities of Witset, Skin Tyee, Hagwilget Village, Wet'suwet'en First Nation (formerly known as Broman or Browman Lake Indian Band), and Nee-Tahi-Buhn. The reserves associated with each community are listed in **Table 2.8-1**, and the location of reserves is shown in **Figure 2.8-3**.

Table 2.8-1: Wet'suwet'en Communities and Reserves

Community	Reserves
Witset	▪ Babine 17 ▪ Babine 18 ▪ Bulkley River 19 ▪ Coryatsaqua ▪ Jean Baptiste 28 ▪ Moricetown 1 ▪ Oschawwinna
Skin Tyee	▪ Skins Lake 15 ▪ Skins Lake 16A ▪ Skins Lake 16B ▪ Tatlat't East 2 ▪ Uncha Lake 13A ▪ Western Island 14
Hagwilget Village	▪ Bulkley 1 ▪ Hagwilget 1
Wet'suwet'en First Nation (Formerly Broman Lake Band)	▪ Duncan (aka Broman) Lake 2 ▪ Felix George 7 ▪ Foxy Creek 6 ▪ Gaichbin 8 ▪ Klagookchew 9 ▪ Maxan Creek 5 ▪ Maxan Lake 3 ▪ Maxan Lake 4 ▪ Palling 1 ▪ Tatla West 11 ▪ Tsihgass 10
Nee-Tahi-Buhn	▪ Eastern Island 13 ▪ François Lake 7 ▪ Isaac (Gale Lake) 8 ▪ Omineca 1 ▪ Uncha Lake 13A

Source: Government of British Columbia (GovBC) 2021a.



Tenas Project

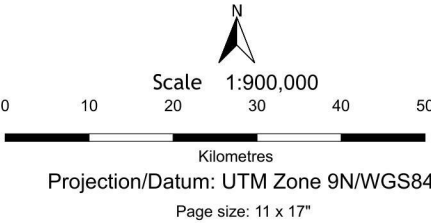
Wet'suwet'en Traditional Territory and Reserves in Relation to the Project Location

Legend

- Project Area
- Major Highway - Paved
- Communities
- Wet'suwet'en Reserves
- Wet'suwet'en Territories

Sources

Project Area and Components: Allegiance Coal, April 26, 2021
Wet'suwet'en Territories: Office of the Wet'suwet'en
Basemap: Natural Resources Canada



Production Date: January 19, 2022

Figure 2.8-3



2.9 Current Use of Land and Resources for Traditional Purposes

After European contact, the Wet'suwet'en extensively modified their land use activities. Despite this, land use practices remain consistent with traditional Wet'suwet'en values and interests.

When considering the traditional territories and their natural resources, the health of the land is essential for the Wet'suwet'en way of life. This health is safeguarded by the continuation of the feast system—the means through which many Wet'suwet'en management decisions are made (Crossroads 2021).

The Wet'suwet'en maintain a connection to their hereditary lands by way of *Yintah*, a fundamental aspect of their culture; it is the physical and spiritual connection that everything has to the land (Morris et al. 2006; OW 2013a). Under Aboriginal title, the Wet'suwet'en maintain the right to use land and resources for economic purposes, both traditional and contemporary (Crossroads 2021).

At present, many traditional use activities, such as fishing, hunting, trapping, and gathering, occur on the territories as they did historically. Prior to European settlement, elk, caribou, deer, bear, rabbits, sheep, and marten were the animals most frequently hunted by the Wet'suwet'en. In the early 1900s, however, sheep and caribou populations began to decrease, and moose and mule deer became more common (Rabnett 2000). Berries, including blueberries, huckleberries, and soapberries, were harvested and dried, and trees were used for medicines, tools, building, or firewood (Crossroads 2021).

Wet'suwet'en territories both historically and presently are connected by a vast trail network that has served as the foundation to their values, interests, and land use (Crossroads 2021). The trail network provided effective routes for trading, accessing important resources, as well as connectivity to spiritual sites, homeplaces and villages (OW 2011). The Telkwa Pass is an example of an essential trail corridor. This route served as an important connection between the Wet'suwet'en and their coastal trading partners, interlinked house territories, meeting places and resource gathering sites (Jenness 1943). Furthermore, trails defined territorial boundaries and allowed the individual house territories to adhere to them. Today, traditional sites are accessed through these historic trail networks and overall, contribute to Wet'suwet'en sense of place and connection with the *Yintah* (OW 2011). Trails are also presently utilized for cultural transmission, where youth are taught the origins of the trails by hiking them with knowledge holding adults and elders (Crossroads 2020).

More details are provided in **6.4.2 Current Land Use and Resource Harvesting**.

3. KNOWN WET'SUWET'EN INTERESTS

This subsection provides a historical context of the area of the Project, and then articulates known Wet'suwet'en Interests as related to the Project, based on publicly available references.

3.1 Historical Context of the Area of the Project

Wet'suwet'en oral tradition tells us that the Wet'suwet'en people have always been here (Morin 2011). Archaeological evidence indicates the Wet'suwet'en have continuously inhabited the region for at least 6,000 years (Albright 1987).

There is a long history of distant communities making plans for Wet'suwet'en territories, and this begins before the industrial revolution. Perhaps the earliest instance was in 1844. Although still unmapped (and unvisited) by European settlers, the Telkwa area was the subject of the famous “Fifty-four Forty or Fight” campaign in the United States of America (USA). Anti-slavery Democrats hoped to outflank pro-slavery Democrats by getting the USA to annex the Oregon Territory up to the latitude of 54°40' north. The line of 54°40' north runs approximately 750 metres (m) north of the Project's Rail Loop. In the end, the anti-slavery Democrats were unsuccessful, and instead the USA went to war with Mexico, acquiring Texas, New Mexico, Arizona, and California (Hite 2013a).

In 1833, an employee of the Hudson Bay Company, Simon McGillivray, travelled from Fort St. James to the confluence of the Skeena and Wedzin Kwah/Bulkley River. He called this latter river “Simpson's River.” His goal was to see whether a trading post at the confluence might be able to secure furs that would otherwise travel down the Skeena to Russian traders. His is the first account of Wet'suwet'en territory related by Europeans, Euro-Canadians, or Métis (Hite 2013b).

Two (2) Catholic missionaries, Father Demers, and Father Nobili, visited the region of the Project for a few years in the 1840s. Neighbouring nations acquainted the Wet'suwet'en with the Christian religion, leading to the adoption of several Christian customs (Jenness 1943).

The construction of the Collins Overland Telegraph as far as Kispiox in the 1860s had a lasting effect on patterns of settlement and travel in region. The telegraph line's purpose was to connect North America with Europe via the Bering Strait. Its North American terminus was New Westminster; arriving in Wet'suwet'en territory via what is today Burns Lake, it was built down the east side of the Wedzin Kwah/Bulkley River, past what are today called Round Lake and Tyhee Lake. Its further route to the crossing at Witset is today called the Telkwa High Road. This route subsequently became the primary line of travel for Euro-Canadians arriving in the valley, even though the telegraph project itself collapsed after the laying of the first trans-Atlantic cable in 1866. J.C. White's 1866 map “Route of the Telegraph Constructed and working, indicated Tyhee Lake at that time was named Maclure Lake, and Round Lake was Jerome Lake. Areas west of the Bulkley River were blank except for a few unlabelled lines indicating the presence of the Telkwa River (White 1866).

This absence of Euro-Canadian exploration on the west side of the Bulkley continued for some time. George Dawson's 1880 map showed the “Tel-kwa River” but no other details on the west side of the Wedzin Kwah/Bulkley River (Dawson 1881). Poudrier, surveying land on the east side of the river in 1893, reported, “The work was carried only to the river; the difficulty of crossing prevented carrying it beyond, although there is plenty of good land” (Poudrier 1893).

When the Yukon gold rush of 1900 occurred, the abandoned telegraph line was revived to create communication with Dawson City. The telegraph was constructed on the same route as in 1866, but this time was pushed all the way to the Yukon. Telegraph construction brought settlers, and surveyed parcels

encouraged them to stay. In 1901 the first coal claims were staked along the Telkwa River at Goat (now Goathorn) Creek; and the BC government sold territory the Wet'suwet'en were living on and cultivating near what is today Telkwa to settlers, displacing many families (Gitxsan 2013).

The North Coast Land Company in 1905 laid out a townsite for Aldermere at the south end of Maclure's Lake; the next year there were 74 settlers recorded in the valley. Morice's map of 1907 showed the townsite of Aldermere on the west side of the river, and a tributary of the Telkwa named "Goat Creek" (later Goathorn Creek) labelled for the first time (Morice 1907). In this same year, the town of Telkwa was laid out.

By 1910, extensive areas on the west side of the Bulkley, including the general area of the Project, had now been surveyed into sections (Roberts 1910). A bridge had been constructed across the Wedzin Kwah/Bulkley River at Telkwa, and the lands west of the river were recognized as coal-bearing (Leach 1908). The small amounts of coal mined there were used to power steam equipment, and for blacksmithing and heating.

These years saw a further increase in settlers, missionaries, and government authorities in Wet'suwet'en territories, the results of which produced long-lasting effects to Wet'suwet'en life-ways. For example, in the early 1900s, the organizations of Euro-Canadian settlers necessitated that all persons should have last names. Wet'suwet'en men, thus, began taking their fathers' first names as their last names.

Many changes to Wet'suwet'en society, however, were of a substantially larger magnitude. For example, Father Morice, for whom Moricetown (Witset) was named, burned all the local Chiefs' regalia, irrevocably damaging their belief system, and used the Wet'suwet'en as labourers to pan for gold (TERA 2015). Father Morice's cruel historical legacy contributed to the recent name change of Moricetown to Witset.

The Grand Trunk Pacific Railway (GTPR) affected life in the Wet'suwet'en territories in such a major way that it is worth examining the years 1910-1920 in detail. The railway brought with it, as it entered and descended the valley of the Wedzin Kwah/Bulkley River, settlement and an economic boom that had substantial effects on Wet'suwet'en life-ways. Wet'suwet'en along the route of the GTPR were displaced to facilitate the railway's construction (Gitxsan 2013).

By building the railway down the west side of the Wedzin Kwah/Bulkley River, GTPR created an alternate route of travel through the valley and made both the Hubert and Smithers sites practical. Hubert, on the west side of the Wedzin Kwah/Bulkley River, a few miles south of Telkwa, was the GTPR's first choice for its divisional point (halfway between Prince George and Price Rupert). However, after land speculators bought the site up, the railway privately abandoned the plan of putting its divisional point at Hubert (Kruisselbrink 2012).

The Aldermere Board of Trade strongly opposed a secondary plan to put the divisional point just across the river from Telkwa. In a resolution, the body said it "pledges itself to resist to the utmost the attempts on the part of the GTPR to thrust a station down our throats with its accompanying horde of shacks and cons" (Kruisselbrink 2012).

GTPR decided to build the divisional point some miles to the north, at what became Smithers. The GTPR sent surveyors to the Hubert site and had it divided into lots (Kruisselbrink 2012). Ultimately several buildings were constructed there by private interests, including a church and schoolhouse, both of which were later moved elsewhere in the valley when the Hubert site was abandoned (Gent 2016). A BC Land and Titles Search of relevant property parcels—PID # 013-581-180, # 015-077-802, # 012-469-301, # 015-103-765, and # 015-842-819—indeed indicates that the lands around the former settlement of Hubert have since been reverted to Crown land.

The construction of the GTPR disturbed Wet'suwet'en cemeteries and fishing/camping sites, while simultaneously limiting access to territories. A route running through Hazelton was chosen over a shorter route along the Telkwa and Zymoetz Rivers, specifically for the purpose of economic development within the Bulkley Valley and Babine Ranges (Lower 1940). The consequent increase in settlers and private-land ownership restricted access to traditional territories, resulting in a greater reliance on the monetary system by Wet'suwet'en persons.

Wet'suwet'en oral and documented history indicate that the lands around Smithers and Telkwa were used heavily until the Wet'suwet'en were evicted in the early 20th century and moved to small reserves nearby (McCreary 2018).

The construction of the railway created a further incentive for mining coal in the Telkwa area. Coal mined at the Telkwa Collieries, sited below the water table on the Telkwa River about four (4) miles from the confluence with the Wedzin Kwah/Bulkley River, was used by the railroad.

The GTPR soon went bankrupt because of the economic disruption of World War I (WWI). Its tracks were eventually acquired by the new, government-held Canadian National Railway (CNR). CNR treated the route to Prince Rupert as a secondary line, routing its main traffic to Vancouver (Kruisselbrink 2012).

After WWI, the Bulkley Valley was one of the designated “undeveloped” areas in BC where settlers and returning soldiers were directed. The community of Aldermere was gradually abandoned in favour of Telkwa, and today it is a forested site with interpretive signage and a trail.

Smithers, laid out by a subsidiary of GTPR, grew quickly in the interwar years. By 1920 it had 500 people, and by 1925, 1,000. In 1921 it became the first incorporated village in BC. It was built on a swamp and had considerable drainage challenges. Town population shrank during the Great Depression (Kruisselbrink 2012).

The 1920s saw a number of coal mines operating in the Goathorn Creek area and along the Telkwa River. Production peaked in 1926-27 at 1,700 tons per year, mostly mined in the winter due to water levels. Towards the end of the decade the province constructed a road to the collieries so that hauling of coal by horse and sleigh could be discontinued (TCL n.d.).

Bulkley Valley Collieries operated from 1937 to 1956 on Goathorn Creek with four (4) underground mines and a surface strip mine. From 1943 to 1952, 9,000 tons a year on average were sold, as far afield as Port Edward. But both industries and the railway were converting to oil-based fuels. Coal production dropped off after this, and the coal was used only locally (TCL n.d.).

World War II (WWII) saw the construction of the airport at Smithers, and after the war many immigrants into the valley arrived from Europe. By 1961 there were almost 2,500 people living in Smithers (Kruisselbrink 2012).

Bulkley Valley Collieries shut down in the 1970s. The last four (4) decades have seen some exploration for coal in the area, but no actual production (TCL n.d.).

In the last 20 years, population levels have changed little in the area. Smithers has floated between 5,000 and 6,000 people, while Telkwa has had around 1,400 people (Brinkhoff 2021).

The Bulkley Valley has changed to a mixed economy that combines tourism with forestry and mining and has seen considerable incoming “amenity migration” (Chipeniuk 2006). Amenity migration is the movement of people for pleasure rather than economic reasons (Chipeniuk 2004).

3.2 Wet'suwet'en Primary Interest

This articulation of known Wet'suwet'en interests begins with the primary interest - title of their territories. Wet'suwet'en understanding of title to lands exists pre-sovereignty occupation and has also been an enduring, well recognized characteristic of the Wet'suwet'en since first contact. This characteristic was, in fact, documented with historical reference, during court proceedings of *Delgamuukw v British Columbia*, SCC [1997] 3 SCR 1010 (GovBC 1997) (hereafter referred to as *Delgamuukw*), where Dr. Arthur Ray, an expert historical geographer with a special expertise in the Hudson's Bay Company (HBC) provided evidence specifically about HBC trader William Brown. Brown had first met the Wet'suwet'en in the 1820's with the establishment of Fort Kilmaurs on Babine Lake in 1822. Dr. Ray, using Brown's journals identifies the "The New Caledonia Carriers", including Wet'suwet'en, noting that among the people there, were recognized ranked Chiefs who "have certain tracts of country, which they claim an exclusive right to and will not allow any other person to hunt upon them" (OW 2014). Specific reference is also made to the Wet'suwet'en in Brown's 1826 report, wherein he records: "They reckon twenty chiefs of different gradations and 67 married men whom they denominate respectable, as being heads of families and possessors of lands. The following is a list of the chiefs...as they are placed at their feasts." (OW 2014). However, of most consequence to this discussion, is the following admission of Dr. Ray in court:

"Well, again it goes back to the problem Brown is having, is that these possessors of lands who are regulating access to the lands, and I must say when I read these for the first time, I was quite struck by this. I looked at Bay records for what was Northern Quebec, Northern Ontario, all through the west, and this is the first instance where I ran across Bay traders talking like this about men of property and possessors of lands, which struck me straight away that they are dealing with a very different system here than they were used to dealing with, and I re-iterate, my point is one of the reasons why he spent so much time talking about it, is an unusual situation for them to run into" (OW 2014).

In the contemporary period, it is Section 35 of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, (GovCan 1982) (hereafter referred to as the *Constitution Act*) which recognizes and affirms Aboriginal rights, including right of title, and from which all other Wet'suwet'en interests flow. Importantly, this articulation will describe how the primary interest of rights, which includes the right of title, functions systemically from the perspective of Wet'suwet'en society and its relationship with Canadian jurisprudence around Aboriginal rights. The intention for framing Wet'suwet'en interests in this manner, is for creating a path towards alignment with these interests and in function of the preservation of these rights per the Project.

Importantly, this articulation recognizes and will address the TCL's acknowledgement that

"Wet'suwet'en Title and Rights exist throughout the Yintah and are collectively held by the thirteen Houses of the five clans being: (1) Kwen Bea Yex, G'inehklai Yex and Tse Kalbai Yex (Laksilyu); (2) Yext'so wit'en, KaiYex and Yexsowilkas (Gilseyhu); (3) Cas Yex, Keexwinits and Anaskaski (Gitdumden); (4) MedzeYex and Tsai Yex (Laksamshu); (5) DjakanYax and Tsa k'ex Yex (Tsayu)" (OW and TCL 2021).

It is useful to begin this section by quoting the Wet'suwet'en articulation of their primary interest directly:

"As the Supreme Court of Canada's decision in Delgamuukw made clear, Aboriginal title is based on and informed by the Aboriginal people's special attachment or relationship to the land. The Wet'suwet'en's special relationship to the land, grounds and affirms our title. The Wet'suwet'en express their special relationship through how we organize ourselves on the land, though our governance system, our laws, feast, clans, houses, chiefs, our people's identification with the territory through our crests, Kungax, totem poles, and Baht'lats."

Individually and together these expressions of our special relationship to the land are integral to our distinctive Wet'suwet'en culture, and our title includes exclusivity and incorporates present-day needs" (OW 2014).

The essence of Wet'suwet'en interests reside in their Aboriginal rights under Section 35 of the *Constitution Act* and an inherent, constitutionally recognized Wet'suwet'en right of title to territory known to Wet'suwet'en people as the *Yintah*. For the Wet'suwet'en, this right of title is manifest and affirmed by the special relationship that Wet'suwet'en culture and peoples maintain with their lands. This relationship is at the core a fiduciary one (**Figure 3.2-1**). Wet'suwet'en security and identity are inextricably linked to their ancestral lands and positively correlated as being one in the same. Wet'suwet'en fiduciary obligations are expressed through their distinct governance system (*Anuk Nu'at'en*), which encompasses laws (*Kungax*), feasts (*Baht'lats*), Clans, Chiefs, and ordinary use of territorial resources (OW 2011).

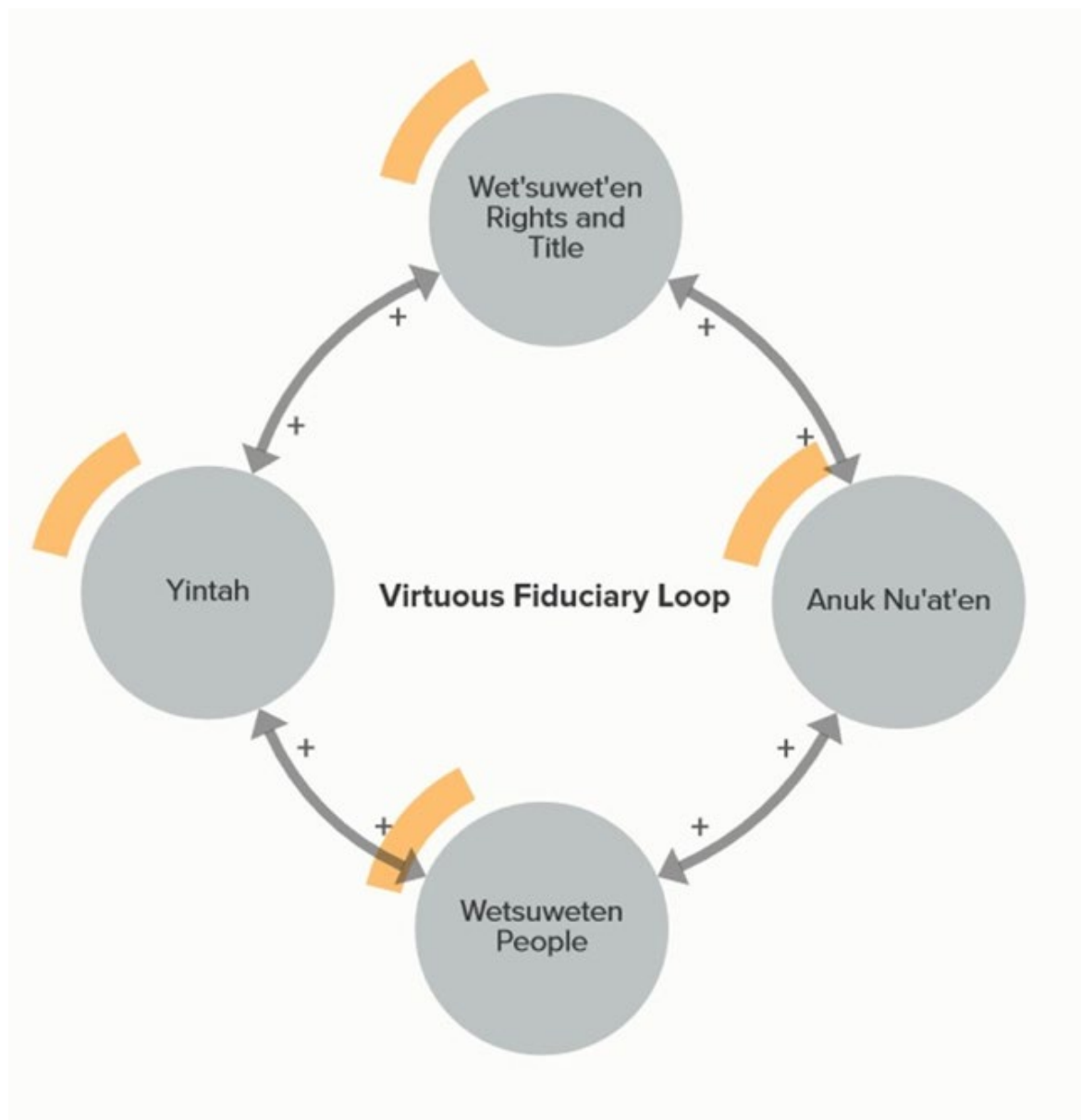


Figure 3.2-1: Systemic view of Wet'suwet'en Governance as a Virtuous Fiduciary Loop

This fiduciary relationship is also intergenerational and maintained through the passing down of hereditary title to individuals who are then charged with upholding the obligations of hereditary title to specific Wet'suwet'en House territories. The transfer and affirmation of these fiduciary obligations are executed during *Baht'lats* which essentially function in the same manner as sessions of Parliament, or in corporate terms an Annual General Meeting (AGM) of the shareholders. The following is a description of the significance and function of *Baht'lats*:

"Balhats were held outdoors in front of the hosting clan's smoke house during summer harvest and in our main summer villages. This was the only time everyone gathered together in one place. It was a time to celebrate and socialise. All of our Ancestors' social and spiritual milestones, such as marriages, funerals, adolescent rites of passage, the naming of newborn babies into the community, the building of a new house or raising of a totem pole were witnessed during the Balhats. It was also a time to deal with more serious issues.

Hosting clans welcomed and fed guests with large quantities of their best foods to thank them for witnessing important events and decisions that were made during the Balhats. This is why Balhats is often described as "feast". It was important that our guests never left hungry and that they were honoured with gifts of prepared foods, clothes, useful materials and tools. Our Hereditary Chiefs and nobility wore their best clothes exclusively during the Balhats. The use of ceremonial regalia symbolises our status, our influence, our membership to our houses and clans and most importantly our history as Witsuwit'en people. All these traditions are still important features of our Balhats today.

Feasts were used to settle arguments, demonstrate claims to territory, organise the winter's work, and uphold Witsuwit'en laws relating to the inheritance of chiefly names and house territories. The events and transactions that took place are referred to as 'it'ën in Witsuwit'en, often translated as "business" in English. As a result, there were and continue to be many types of feasts, each with their own functions, features and rituals" (Morin et al. 2016).

Section 35 of the *Constitution Act* states: "The existing Aboriginal and treaty rights of the Aboriginal peoples of Canada are hereby recognized and affirmed." Specific Aboriginal interests have been further defined, clarified, and described through the jurisprudence on a case-by-case basis. Notably, *Tsilhqot'in Nation v. British Columbia* 2014, SCC 44, [2014] 2 SCR 257 (GovBC 2014) (hereafter referred to as *Tsilhqot'in*) and *Delgamuukw* wherein these decisions outlined requirements for establishing the Aboriginal right of title.

The following diagram (**Figure 3.2-2**) illustrates a systemic view of how Section 35 of the *Constitution Act* functions within those decisions and clarifications made by the Supreme Court of Canada justices at *Tsilhqot'in* and *Delgamuukw*.

Importantly, Wet'suwet'en fiduciary obligations to the *Yintah* are not irreconcilable with how Aboriginal rights, including the right to title, work systemically within Canadian jurisprudence. From a systems perspective, *Anuk Nu'at'en* works synchronously and in concert with Aboriginal right of title, each reinforcing the other in a positive feedback loop of preservation of the Aboriginal right of title. The following systems map illustrates this (**Figure 3.2-3**).

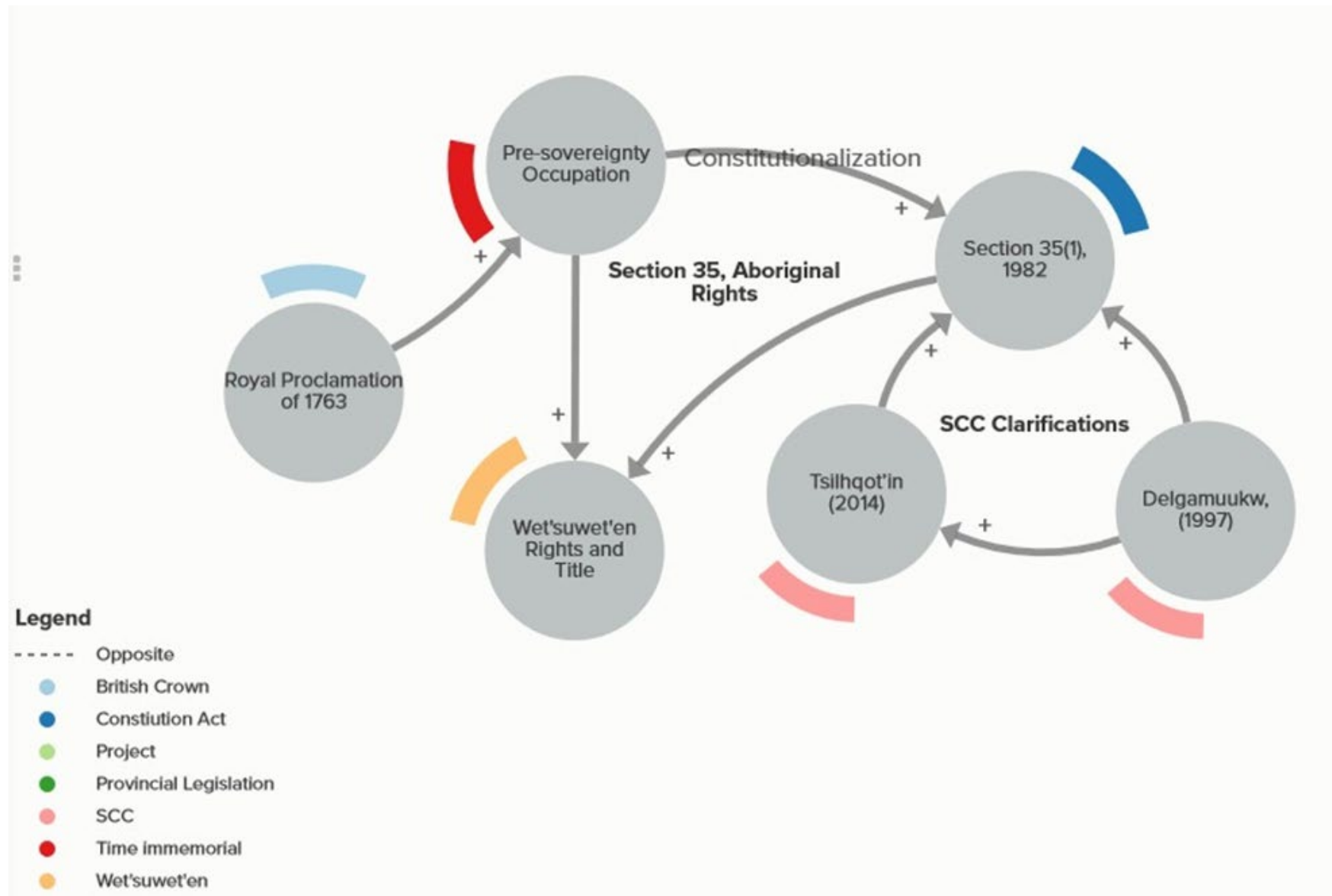


Figure 3.2-2: Systemic view of Wet'suwet'en Aboriginal Rights

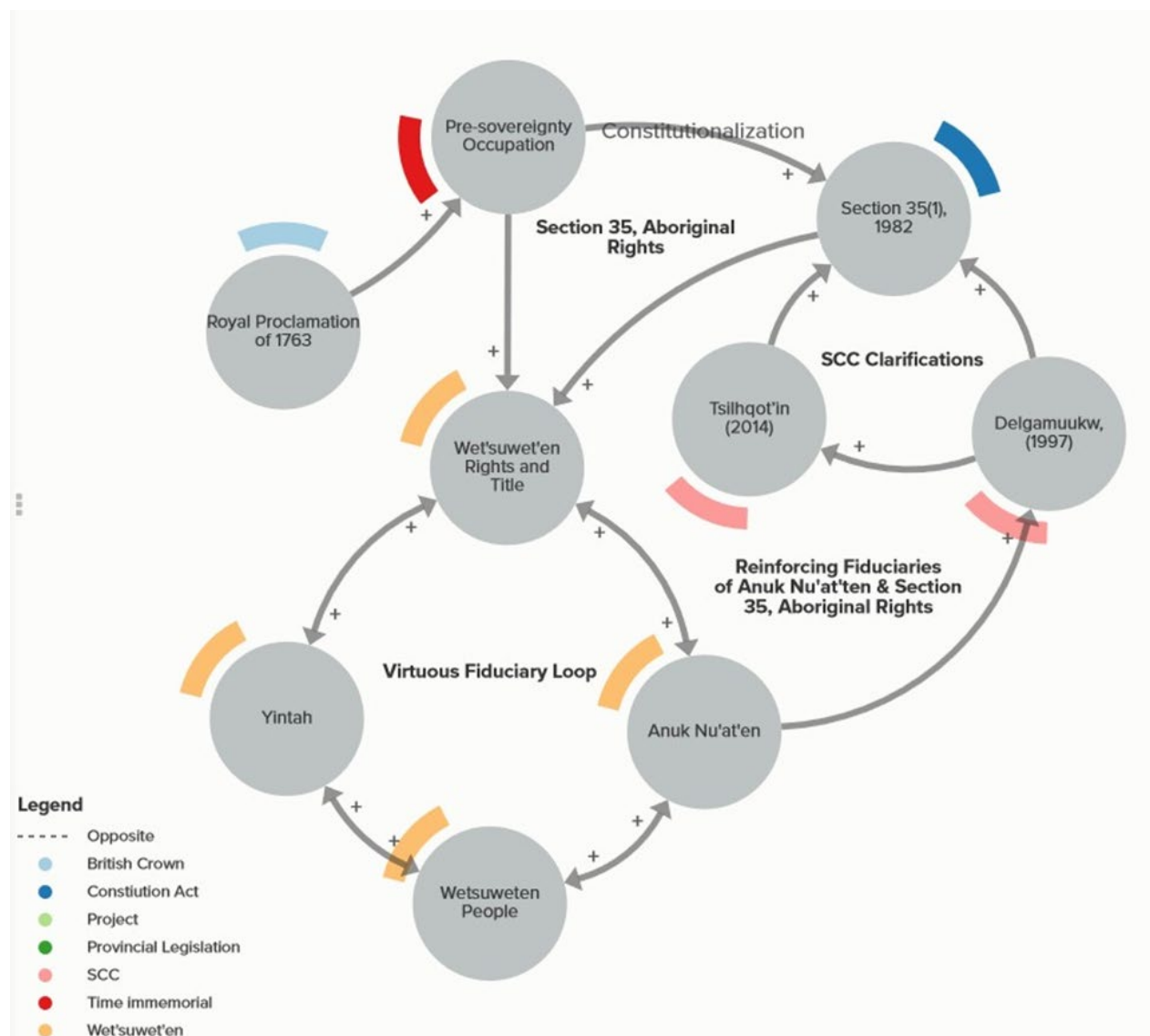


Figure 3.2-3: Systems view of Synchronous Fiduciaries of *Anuk Nu’at’en* within Section 35, Aboriginal rights and right of title

Most importantly, the fiduciary obligations placed upon hereditary title within the Wet'suwet'en governance system of *Anuk Nu'at'en* function synchronously with Aboriginal right of title. They are not irreconcilable with the development of new projects, provided that Wet'suwet'en leadership can continue to act as a fiduciary of the *Yintah* within the Project governance structure. For understanding this potential, it is critical to have a technical understanding of Canadian jurisprudence on Aboriginal right of title, specifically *Delgamuukw* and *Tsilhqot'in*, and how the Wet'suwet'en's special relationship to the land, grounds and affirms their title. The Wet'suwet'en expression of their special relationship to the land, though their system of governance – *Anuk Nu'at'en* – works within that. This will be described in detail in **6.5.3.1 Wet'suwet'en System of Governance, *Anuk Nu'at'en*, and Aboriginal Right of Title** specifically in the discussion of

the potential effect, 6.5.3.1.2 Change in Integrity of Section 35, Aboriginal right of title in the *Constitution Act*, and in **6.6 Mitigation Measures and Opportunities for Alignment of Interests**.

3.2.1 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

On February 12th, 2019, the Government of BC announced that “BC will be the first province in Canada to introduce legislation to implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), legislation co-developed with the First Nations Leadership Council and other Indigenous organizations.” (GovBC 2019d). Then on November 28th, 2019, Bill 41, *Declaration on the Rights of Indigenous Peoples Act* (GovBC 2019b), passed its 3rd reading with the BC legislature becoming law and affirming the province’s commitment to the principles of UNDRIP. (GovBC 2019c) The Government of Canada soon followed the Government of BC by passing Bill C-15, which was assented to on June 21, 2021 (GovCan 2021).

Both provincial Bill 41 and federal Bill C-15 are important acknowledgements that define the aspirations of both the Government of Canada and Government of BC for aligning provincial and federal laws with UNDRIP as a demonstrable action towards Indigenous reconciliation. Bearing in mind the novelty of traditional Indigenous governance regimes as being recognized in BC and Canada, these institutions are considered ancient relative to modern governance structures and have been resilient to over 150 years of oppression wrought by the *Indian Act*.

It should also be noted that this treatment of UNDRIP is not meant to detract from the centrality of Aboriginal Rights as understood under the *Constitution Act*. Rather, UNDRIP enables an understanding of the aspirations of both the province of BC, the federation of Canada, and Wet'suwet'en peoples in terms of how these aspirations are linked to addressing unmet human needs that are vital to reconciliation. UNDRIP also provides a platform from which to envision integration of the evolving field of corporate ESG principles (Environmental, Social and Governance) into new project development on Indigenous lands.

The following is a review of selected Articles from Bill 41, that are pertinent and vital acknowledgements of Indigenous governance and represent the intent of the province of BC in its present and future relations with the Wet'suwet'en and all other Indigenous communities in BC (GovBC 2019b):

“Article 3: Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 5: Indigenous peoples have 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 8:

1. *Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.*
2. *States shall provide effective mechanisms for prevention of, and redress for:*
 - a) *Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;*
 - b) *Any action which has the aim or effect of dispossessing them of their lands, territories or resources;*

Article 9: Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 11:

1. *Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.*

Article 18: *Indigenous peoples have 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.*

Article 19: *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.*

Article 20:

1. *Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.*

Article 25: *Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.*

Article 26:

1. *Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.*
2. *Indigenous peoples have 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, as well as those which they have otherwise acquired.*
3. *States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.*

Article 27: *States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.*

Article 32:

1. *Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.*
2. *States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands*

- or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.*
3. *States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate environmental, economic, social, cultural or spiritual impact” (GovBC 2019b).*

The Government of BC has been proactively publishing policy objectives that it will adhere to the principles of Bill 41 and publications in support of Bill 41, specifically:

- ▶ Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples (GovBC n.d.); and
- ▶ Declaration of the Rights of Indigenous Peoples Act, Draft Action Plan, Draft for Consultation (Rankin 2021).

These publications provide essential guidance to new project development. The first principle, that “The Province of British Columbia recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government,” effectively frames the baseline of provincial goals and the principles flowing from this baseline.

Despite the aspirations and high expectations around The United Nations Declaration on the Rights of Indigenous Peoples, this should not distract from the supremacy of Section 35 of the *Constitution Act* and its irreplaceable nature for protecting Aboriginal rights and title in Canada. Recent scholarship concerning Indigenous relations within a federalist system such as Canada's suggests that implementation of UNDRIP will take a considerable amount of time:

“Although federalism does allow for the recognition of multiple and coexisting orders of governments, once the jurisdictional structure of a federation is established, it becomes notoriously change-adverse. The constitutional framework of a federation is generally the product of complex negotiations between competing territorial interests, whose power and influence are reflected and reproduced in the federal bargain” (Papillon 2011).

For example, Wet'suwet'en rights and title are central to the ongoing Wet'suwet'en-Coastal GasLink conflict and as reviewed here Wet'suwet'en governance – *Anuk Nu'at'en* - forms the basis of Wet'suwet'en claims. Concerning governance, the Memorandum of Understanding between Canada, British Columbia and Wet'suwet'en, As agreed on February 29, 2020 (GovCan et al. 2020) (MOU) there exists a nuanced view. First, the following points are described in the MOU as “Immediate”:

1. *Canada and B.C. recognize Wet'suwet'en rights and title are held by Wet'suwet'en houses under their system of governance.*
2. *Canada and B.C. recognize Wet'suwet'en Aboriginal rights and title throughout the Yintah...*
4. *B.C. Commits to engage in these negotiations consistent with the Declaration on the Rights of Indigenous Peoples Act (GovCan et al. 2020).*

However, the “Immediate” section is followed by a section entitled “Agreement to be Negotiated of the Next Three Months”, wherein *Anuk Nu'at'en* is referenced specifically in the first item (note that this is spelled in the MOU as *Inuk Nuatden*):

1. Legal recognition that the Wet'suwet'en House are the Indigenous governing body holding the Wet'suwet'en Aboriginal rights and title in accordance with our Inuk Nuatden (GovCan et al. 2020).

The third section of the MOU entitled "Agreement to be Negotiated Over the Next Twelve Months" ends with the following two (2) points:

- 1. The specifics of how Aboriginal and Crown titles interface.*
- 2. The agreement recognizing Wet'suwet'en rights and title will be protected by Section 35 of the Constitution Act.*

Professor Pierrot Pierre Ross-Tremblay, the Canada Research Chair of the Institute of Indigenous Research and Studies at the University of Ottawa and other legal scholars have expressed that confidence in the MOU process may have been overstated, and that such an ambitious agenda will likely take many years:

"The ambitious aspect of the MOU lies perhaps in the timeframe provided to reconcile both hereditary sovereignty and the Indian Act structure of governance. Canada has imposed, in accordance with its constitutional regime of article 91(24) of the Constitutional Act, the Indian Act over First peoples' governance since 1876 and now establishes a three months calendar to resolve 150 years of conflicts and cultural assimilation that results from the imposition of the act. Many Indigenous communities, such as the Innu, have been negotiating for over four decades for the same issues addressed in this MOU and have not come to an agreement" (Ross-Tremblay et al. 2020).

With this perspective it is important to consider this as an evolving relationship within the context of how the relationship has functioned in the past. Specifically, the enduring effects that the past has had on the unmet human needs of the Wet'suwet'en. This perspective should inform new project development for shared prosperity and conflict prevention.

3.3 Unmet Human Needs

"Basic needs carry a heavy weight as facts, which political leaders may ignore, and often do ignore, only at heavy costs, for unmet basic needs don't go away in peace" (Bay 1990).

Understanding and addressing unmet human needs is a critical element for positively evolving the highly complex environment of resource development in BC. In the contemporary era, agreements with Indigenous Nations should be a function of preserving and reinforcing Aboriginal constitutional rights, as a necessary mechanism for meeting their basic human needs and towards reconciliation and mutual prosperity.

Historically, interests have been articulated in terms of infringements and mitigation of infringements. Such an approach carries the risk of negatively effecting claims to Aboriginal rights and title but also perpetuates systems of causation in terms of dominance and dependency. Safety/security, identity, self-esteem, cultural security, and freedom are human needs that must be fulfilled. The human needs approach provides an important conceptual tool that connects and addresses human needs on all levels. It recognizes the existence of negotiable and nonnegotiable issues that, unlike interests, cannot be traded, suppressed, or bargained for. The human needs approach makes a case for turning away from traditional negotiation models that do not take into account nonnegotiable issues (Marker 2003).

Human needs with regards the Wet'suwet'en can be articulated as two (2) essential elements. First is a need for "Security" which is understood as a need for structure, predictability, stability, and freedom from fear and anxiety. Within the Indigenous context the need for security is complex. Security is tied to identity and acutely for societies that have been disenfranchised from a prior colonial relationship (Burton 1990).

The second, linked need of "Identity" goes beyond a psychological 'sense of self,' and is defined as a sense of self in relation to the outside world. Identity becomes a problem when one's identity is not recognized as legitimate, or when it is considered inferior or is threatened by others with different identifications (Marker 2003).

3.3.1 Security

The MOU executed between the Governments of Canada, BC, and the Wet'suwet'en Hereditary Chiefs on May 14th, , represents clearly how Wet'suwet'en view their aspirations for security. Within this outline are key objectives stating that: *"Over the next three months, the parties will negotiate an agreement on jurisdiction over: 1) child and family wellness, 2) water, 3) Wet'suwet'en Nation reunification, 4) wildlife, 5) fish, 6) land-use planning, 7) land and resources, 8) revenue-sharing, compensation, and 9) informed decision-making"* (GovCan et al. 2020). All these issues are directly related to the security of the Wet'suwet'en people, economically as well as ecologically. Importantly, it recognizes that economics and ecology are not mutually exclusive.

The Wet'suwet'en have, until recently, lived outside the industrial economy; yet their communities continue to provide forms of physical security and a strong sense of group identity and autonomy. Community cohesion, economic self-sufficiency, a focus on the spiritual, and local control are values that Wet'suwet'en Hereditary leadership have not willingly surrendered, even for the promise of increased levels of material wealth. In fact, their resistance to avoiding economic forms of interaction which would give up political and economic control to forces outside the community itself have been exemplar in the province; most notably with *Delgamuukw* and more recently manifest in their resistance to several pipeline projects that have sought passage through the *Yintah*.

Compounding the systemic industrial processes that have 'modernized poverty' (Rader 1990) for Indigenous peoples in BC, is the enduring and severe structural impoverishment consequent from 150 years of the *Indian Act* and the processes that have been developed around the *Indian Act*, as means for which to preserve "Indian" interests and for meeting the minimum in terms of Section 35, Aboriginal rights. These processes have tended to compartmentalize Indigenous interests as pertaining to certain practices, customs, and traditions, while simultaneously excluding them from any equity ownership participation in the benefits from the natural resources extracted from their lands. From a socioeconomic perspective, the extreme poverty of Indigenous peoples "on-reserve" in BC, resulting from such exclusion and in contrast to the extraordinary wealth derived of BC's natural resources, reveals that the preservation of "Indian" interests as a function of the *Indian Act* are better described as "legitimizing myths" (Coleman 2014). In terms of power dynamics, legitimizing myths are generally designed for supporting and enhancing hierarchical relationships and dominant group superiority (Coleman 2014), often masquerading as "fairness-making" and "conflict-resolving" processes, thereby institutionalizing group dominance, bias, and conflict (Rapoport 1974).

For putting this into its proper context, in 2018, forestry, mining and oil and gas accounted for 64% of the province's exports, representing roughly 64% of \$111 Billion in export revenue counted in 2017, while fishing, hunting, and trapping statistically accounted for 0% (GovBC 2019a). Comparatively the BC EAO in January 2018, reported 20 active projects under review: 9 mining, two (2) transportation, two (2) liquefied natural gas, six energy, and one (1) water management representing a total potential capital investment in the province of over \$75,831,613,000 (British Columbia Ministry of Environment and Climate Change

Strategy [BC MECCS] and BC EAO 2018). This disparity between cultural and natural resources is further compounded by more personal, statistical realities. According to the Government of BC, median household income of British Columbians in 2015 was almost \$150,000 per year (GovBC 2019c), while Indigenous income statistics for the same year, published by the Minister of Indigenous Services Canada, in its Annual Report to Parliament (GovCan 2020) recorded the median income of a “registered Indian on reserve” in BC was \$19,613 per year (**Figure 3.3-1**). More locally to the Project, in the year 2015, the Witset First Nation, (formerly Moricetown), was recorded by Statistics Canada to have a median annual income for people 15 years or older of \$ 17,856.00 (Statistics Canada 2017), or in other terms \$49 per day.



Source: GovCan 2020

Figure 3.3-1: Median income, 2015, First Nations and non-Indigenous populations, aged 25-64, by region

These enormous inequities have direct effects on the power asymmetries between Indigenous communities and industry as well as Indigenous communities and government. Resource development interests are also systemically prone to leveraging such poverty as a coercive means achieving agreement with Indigenous communities.

For Wet'suwet'en communities, faced with the simultaneous erasure of their cultural and extreme depression of their traditional sources of economic well-being, they are left to little other options than to accept agreements that offer an exchange of cash payments and/or labour contracts for consent to new projects, and a marginal preservation of their cultural identity through the exercise of certain Aboriginal rights to subsistence activities. All of which is done at the expense of surrendering Aboriginal title rights; that specific Aboriginal right that would be most positively consequent to their cultural and economic well-being. Uniquely to Canada, that such agreements are constituent for communities that have been

systemically forced into Indian Reserves and into such an impoverished condition adds layers of intense colonial complexity and bridges into deep threats onto identity.

Within new project development and “consultation and accommodation” process, the structural impoverishment of Indigenous communities has created an exceptionally unbalanced environment. For example, an October 2020 study found that USA based Vault 100 Law Firms, were legal advisors on transactional work within the fossil fuel industry amounting to \$1.3 trillion of transactions between 2015 and 2019 and comparatively that no Vault 100 firm dedicated more than 11% of its billable hours to pro bono clients, and most dedicate substantially less (Hirschel-Burns et al. 2020).

This imbalance combined with the economic forces that drive project development coerce Indigenous communities into signing agreements that are suboptimal and far from being aligned with goals of reconciliation. To quote Brian Domney, former Director of Aboriginal Education in the BC Ministry of Education, Senior Treaty Negotiator and Director of Lands and Resource Policy for the BC Treaty Negotiation Office in the Ministry of the Attorney General,

“When you are a First Nation politician responsible for taking care of your people, trapped on a reserve in abject poverty under the Indian Act, after generations of oppression, and underfunded for statutory obligations by the federal government, when a corporation waves money under your nose, it’s a big temptation” (Domney 2020).

It is useful to examine the kind of agreements that results from such extreme power asymmetries. For example, the following sections of Part 5 in the Coastal GasLink Pipeline Project, Natural Gas Pipeline Benefits Agreement between Wet'suwet'en First Nation and the Government of BC, specifically insist on the surrender of Section 35, Aboriginal rights (GovBC and Wet'suwet'en First Nation 2014):

5.2 **Legal Challenges.** *Provided the Province is not in default if its obligations under this Agreement, Wet'suwet'en First Nations agrees not to bring any court actions or proceedings that directly or indirectly challenges any Government Actions in relation to the Coastal Gaslink Pipeline Project on the basis that the Province has failed to consult or accommodate Wet'suwet'en First Nation or on the basis that the Province has infringed any Wet'suwet'en First Nations Aboriginal rights, including Aboriginal title, recognized and affirmed by section 35 1) of the Constitution Act, 1982.*

5.3 **Release.** *On receipt of the Initial Payment under section 3.2 (a) Wet'suwet'en First Nations releases and discharges the Province from the following in relation to the Coastal GasLink Pipeline Project:*

- a) *All actions, causes of action, claims or proceedings arising from any legal obligation to consult and accommodate Wet'suwet'en First Nation's rights recognized and affirmed by section 35(1) of the Constitution Act, 1982; and*
- b) *All debts, duties, demands, damages, interest, fines and costs, expenses, and compensation whatsoever amount, nature and kind, including economic benefits, capacity funding and revenue sharing or payments to consult and accommodate or avoid infringement of Wet'suwet'en First Nation's rights recognized and affirmed by section 35(1) of the Constitution Act, 1982.*

- 5.4 **Interference.** *Wet'suwet'en First Nation agrees not to support or participate in any acts that frustrate, delay, stop or otherwise physically impede the right of the Province or the Coastal GasLink Pipeline Project proponent or any of their respective employees, contractors, agents, representatives or invitees to gain access to the Coastal GasLink Pipeline Project and to carry out any activities associated with the development and operations of the Coastal GasLink Project.*
- 5.5 **Assistance.** *Wet'suwet'en First Nation will assist the Province in seeking to resolve an action that may be taken by any Member that is inconsistent with this agreement.*

Considering the importance and historical weight Aboriginal rights carry with Indigenous peoples in Canada, project agreements with First Nations should be a function of First Nations exercising their constitutional rights not surrendering them. Such agreements are a direct threat to human security, as they reflect an attitude within resource development that treats Constitutional rights as a transitory, tradable commodity and are deeply disrespectful of the importance of the relationship Indigenous Canadians have with Section 35 of the *Constitution Act*. These agreements have also tended to deeply divide the communities, leading to conflict and the suppression of traditional family and community support systems which formerly were a major source of identity, recognition, and well-being.

The province aims to address this issue and is outlined in the province's Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples most succinctly by the second principle which states, "The Province of British Columbia recognizes that reconciliation is a fundamental purpose of Section 35 of the *Constitution Act*, 1982. (GovBC n.d.)"

The eighth Draft Principle also extends some acknowledgement concerning poverty, wherein,

"The Province of British Columbia recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with the federal government and Indigenous nations that promotes a mutually supportive climate for economic partnership and resource development" (GovBC n.d.).

Finally, and most appropriately, Action 1.2 of the province of BC's Draft Action Plan for the Declaration on the Rights of Indigenous Peoples Act (2021) states:

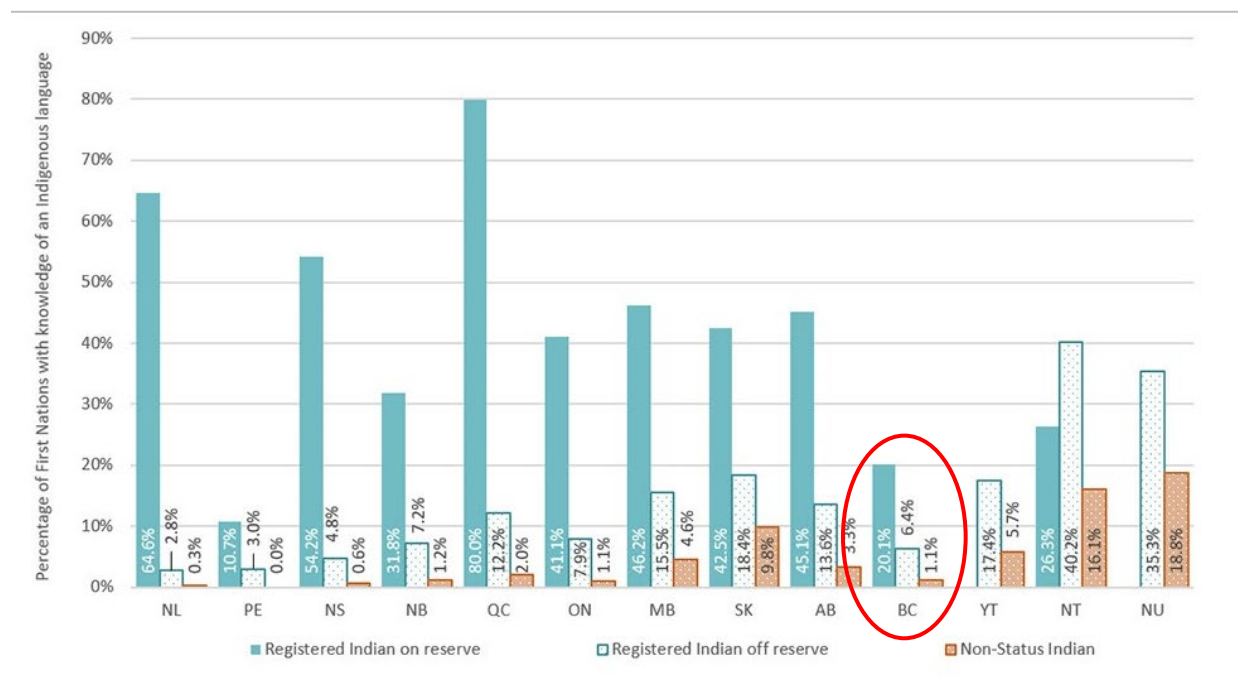
"Shift from short-term transactional arrangements to the co-development of long-term agreements that recognize and support reconciliation, self-determination, decision-making and economic independence" (GovBC n.d.).

3.3.2 Identity

One of the greatest challenges to Indigenous identity stems from the structural violence imposed by the *Indian Act*, the material and psychological consequences of which have been deeply traumatic onto indigenous communities and linger to this day (Fanon 1967). This is compounded culturally, by what can be described as the nexus between Wet'suwet'en cultural identity and the *Yintah*, which is positively and deeply correlated as being one in the same (OW 2020). This nexus, reflected in the Clan and House Governing Structure, is respected by all Wet'suwet'en, regardless of First Nation/Reserve affiliations but suggests that many Wet'suwet'en carry split identities; one born from the *Yintah*, and another derived from over 150 years of being designated to a specific Indian Reserve as wards of the Crown.

For example, Canada has only very recently begun to address one of the most egregious policies that formed part of the *Indian Act* and that represents a foundational policy of structural violence in Canada - The Indian Residential School System. This system required every indigenous child to attend a Residential School and went so far as to make it illegal for an indigenous child to attend any other educational institution. The two (2) principal objectives of the residential school system were to remove and isolate children from the influence of their homes, families, traditions, and cultures, for assimilating them into the dominant culture. These objectives were based on the belief that indigenous cultures were inferior and unequal. In fact, it was infamously said that the residential school system was designed, “to kill the Indian in the child” (Hanson 2009).

Possibly the most telling statistical evidence of government sponsored erasure of Indigenous culture is reflected in the number of First Nations with knowledge of an Indigenous language. Again, according to Government of Canada most recent reporting of Indigenous statistics published by the Minister of Indigenous Services Canada, in the Annual Report to Parliament (GovCan 2020). BC ranks among the lowest in the country. The following graphic illustrates this (**Figure 3.3-2**).



Source: GovCan 2020

Figure 3.3-2: Percentage of First Nations with knowledge of an Indigenous language, 2016, by region

In terms of social psychology, losses accumulate as does trauma, which will in turn will fuel a reactive environment, risking conflict and further deteriorating the well-being of those communities as well as precipitate unnecessary suffering. Threats that compound over generations inevitably lead to severe breaking points and conflict, which will impede new project development until such time as this human need is met. Communities that are not able to fund lengthy and costly litigation are forced to address their

security, including the wellbeing of their territories through those means available to them, which often manifests in protests and blockades; actions that can and do turn violent.

The Indian Reservation system and Elected Band Councils was designed to pave the way for the establishment of simple municipal institutions (Joseph 2018) and to date First Nations Reserves have been imagined as such by communities that neighbor those reserves. Recognition of the Wet'suwet'en traditional system of governance and title over its territories, will be a difficult leap in cognition for many, including many Wet'suwet'en on-reserve, but is an important element in supporting the re-establishment of Wet'suwet'en identity as legitimate with the Canadian federation. Such recognition also supports the rebuilding of Wet'suwet'en society as a whole and its ability to interact effectively with commercial and government enterprise seeking to benefit from their lands, so that Wet'suwet'en may decide and benefit in accordance with the actual value of those resources derived from their lands.

The fourth principle of the provinces Draft Principles seeks to address this: "The Province of British Columbia recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government" (GovBC n.d.). The fourth principle goes on to state that,

"Government-to-government relationships, including treaty relationships, therefore include:

- 1. Developing mechanisms and designing processes which recognize that Indigenous peoples are foundational to Canada's constitutional framework;*
- 2. Involving Indigenous peoples in the effective decision making and governance of our shared home;*
- 3. Putting in place effective mechanisms to support the transition away from colonial systems of administration and governance; and*
- 4. Ensuring, based on recognition of rights, the space for the operation of Indigenous jurisdictions and laws." (GovBC n.d.)*

3.4 Key Wet'suwet'en Environmental and Cultural Interests

This subsection describes Wet'suwet'en environmental and cultural interests which are most closely connected with the exercise of harvesting rights, with the continuity of culture and with the exercise of cultural practices on the land. These elements – water, fish, wildlife, heritage, and plants – are identified by the OW as key pillars which are integral to the Wet'suwet'en way of life. These elements have been identified in several regulatory submissions by the OW (e.g., OW2013b; OW 2014) as well as the Natural Resource Stewardship Monitoring and Assessment Report (BC MFLNRORD 2017). A similar group of values was identified and prioritized by the Skeena Sustainability Assessment Forum, in which Wet'suwet'en are collaborating – grizzly bear, fish and fish habitat, wetlands, moose and medicinal plants (GovBC n.d.).

3.4.1 Water

Within the area of the Project, the Bulkley and Telkwa Rivers and their continued health are of integral importance to the provision of salmon for the Wet'suwet'en people. Many Wet'suwet'en fishing camps have been recorded along the Telkwa and Bulkley rivers (Morris et al. 2006, Crossroads 2021).

Tenas and Goathorn Creeks, which fall within the Project Area, are tributaries of the Telkwa River and are important salmon spawning sites in the Bulkley Watershed (Crossroads 2021).

Alongside the importance of water for salmon fishing, the health of the watershed also partially determines the survival and disease rates of many fish species. Ensuring the quality of habitat for fish and other water inhabiting wildlife is vital to the well-being of the land, and concurrently the Wet'suwet'en (OW 2011).

3.4.2 Fish

The fish that are important to the Wet'suwet'en are both freshwater and saltwater species found throughout the Bulkley watershed. These include char, chinook, coho, pink, steelhead, and sockeye salmon, as well as bull trout, Pacific Lamprey, burbot, chub, dace, Dolly Varden, kokanee, lake trout, mountain whitefish, northern pike minnow, rainbow trout, sculpin, suckers, and white sturgeon, all of which are harvested in their respective seasons (Carrier Sekani Tribal Council 2006, BC MFLNRORD 2017, Morin et al. 2016, Morris et al. 2006, OW 2014). Sockeye are the most important fish to the Wet'suwet'en in the Bulkley River basin. They spawn in several places throughout the Project Area. Sockeye have several key subpopulations, including the most important to the Wet'suwet'en, the Morice sockeye subpopulation (OW 2011).

As illustrated in a map created as cartographic evidence for the *Delgamuukw* trial (**Appendix 11.0-B Fishing Sites, tok'k'et. Map 22 in Skoda 1987** and **Figure 6.4-2**), there are numerous Wet'suwet'en fishing sites (*tok'k'et*) along the Bulkley River, including several near the confluence of the Telkwa and Bulkley Rivers, and near the Project's Rail Loadout.

Wet'suwet'en fishing has had to adapt to the cumulative effects of coastal commercial fishing, major resource development projects, climate change, and fluctuating governmental policies (OW 2011).

3.4.3 Wildlife

The Regional Study Area (RSA), defined as the entire Wet'suwet'en territory, spanning approximately 22,000 km² (refer to **6.3.1 Spatial Boundaries**), contains, numerous hunting locations used regularly by the Wet'suwet'en. For example, Telkwa Pass is an area where Wet'suwet'en hunt grouse (TERA 2015; Crossroads 2021). Large game animals harvested by the Wet'suwet'en are black and grizzly bears, caribou, coyotes, deer, moose, mountain goats, and wolves. Some smaller game animals hunted include beaver, groundhogs, grouse, lynx, marmots, martens, snowshoe hares, squirrel, and weasel (Daly 2005, Johnson 1999, BC MFLNRORD 2017, Morin et al. 2016, Morris et al. 2006, OW 2011, 2014). Elders share the traditional values and methods of hunting by incorporating them into oral histories for children, with focus on respect for animals and territories (Jenness 1943, Crossroads 2021).

Any damage to the habitats of wildlife could disrupt breeding and rearing of new generations of wildlife, including birds (OW 2011).

3.4.4 Heritage

Wet'suwet'en heritage focuses on connection to the land just as much as physical sites and artifacts.

Some types of sites that may occur within the Project's vicinity include (Crossroads 2021):

- ▶ culturally modified trees (CMT): trees that have been altered through traditional forest use by Indigenous peoples;
- ▶ trails: routes of travel that exist between sites of habitation and/or locations associated with fishing, hunting, and/or plant collection;
- ▶ cultural features: human-modified component of an archaeological site;

- ▶ lithic scatters: stone artifacts, such as tools (e.g., projectile points, scrapers, and knives) and associated waste-flakes; and
- ▶ historic artifacts/features associated with mining and logging activity.

Near the Project, including at the Telkwa-Bulkley River confluence, archaeologists have found Wet'suwet'en heritage objects—such as lithic tools, debitage, and CMT, as well as permanent and semi-permanent village sites (Rabnett 2000, Crossroads 2021).

Since several archaeological sites have been discovered near the Project Area, there is a potential for further sites to be identified in the future. This, as well as the proximity to the Telkwa and Bulkley rivers, linked with Traditional Knowledge (TK) of the location, leads to the conclusion that the archaeological potential of the area is High (Crossroads 2021).

More information on heritage is presented in **6.4.3 Cultural Heritage**.

3.4.5 Plants

Plant gathering was a substantial part of the traditional Wet'suwet'en way of life, controlled strictly by seasonal availability. Not only were plants an important part of Wet'suwet'en diet, but they were also sources of medicine and materials for cultural goods and construction. Many plants had multiple uses; for example, moss (*yeen*), a non-dietary plant, could be used to preserve foods throughout the year, provide insulation for cabins, and as diapers for infants or menstrual pads for women (TERA 2015, Crossroads 2021).

At present, few Wet'suwet'en persons gather plants for food, medicine, and cultural goods due to concerns over contamination from industrial herbicides used by forestry companies. Those Wet'suwet'en who do harvest plants generally do so in forested areas or along waterways (BC MFLNRORD 2017).

The health and cleanliness of plant harvesting sites are both necessary to consider while gathering food and medicinal plants (Johnson 2013). Many Wet'suwet'en are currently finding that they must travel farther into their territories to gather many plants, as previous gathering sites have often been disturbed by industrial development and forestry (OW 2011).

4. POTENTIAL EFFECTS ON WET'SUWET'EN RIGHTS AND INTERESTS

4.1 Disturbances from the Project in Relation to Wet'suwet'en Rights and Interests

All Project components and activities that give rise to new surface disturbance, environmental, cultural, and socio-economic changes, sensory disturbance, and changes to access to portions of Wet'suwet'en territory have the potential to affect Wet'suwet'en Rights and Interests.

Potential Project related disturbances to Wet'suwet'en Rights and Interests include physical disturbances to the landscape such as clearing of vegetation for the construction of Project components and excavation of the open pit; related changes to the ecology of the area; changes to water flow patterns; pollution of air, water and other environmental media, elevated noise levels; greenhouse gas (GHG) emissions; traffic; dust; increased human presence; and construction of buildings.

While the Project entails many new disturbances, it should be noted that much of the Project Area (44%) has been previously subjected to timber harvesting and is now dominated by 10 to 40 year-old regenerating forest stands and an extensive network of resource roads, some of which continue to be used for recreational activities (**S4.0-C8 Wildlife Valued Component [VC]**).

As the Project is a greenfield operation, all required Mine Infrastructure will need to be constructed. As stated in **S1.0-C1 Overview of the Project Proponent Description** the components and activities described in this EAC Application do not comprise an initial stage or subcomponent of a larger project or planned later expansion but represent the entire Project envisioned. The Project includes the following major components:

- ▶ open pit;
- ▶ Coal Processing Plant (CPP), including the CPP sedimentation pond;
- ▶ coal handling systems for run-of-mine (ROM) coal, processed rock, and processed coal (including CPP conveyors, storage bins, and stockpiles);
- ▶ administration, first aid, maintenance/warehouse, mine dry, laboratory, light vehicle, mine rescue, and warehouse buildings;
- ▶ Surface Water Management Infrastructure, including the Project sedimentation ponds, such as the Tenas Control Pond dam and associated spillway, the CPP Sedimentation Pond, Rail Infrastructure Sedimentation Pond, Explosive Magazine Sedimentation Pond and Explosive Facility Sedimentation Pond, as well as erosion protection along Goathorn Creek tributary;
- ▶ temporary diversion berms and channels to collect and divert runoff around working areas;
- ▶ Potable Water Storage Pond and associated collection channel and distribution network, as well as water supply wells;
- ▶ fuel and lubricant storage facilities and distribution network;
- ▶ Explosive Magazine, storage silos, and vehicle wash and maintenance facilities, including the associated sedimentation ponds;
- ▶ propane storage facilities and distribution network (as required);
- ▶ solid waste management systems including landfill, recycling, and composting facilities;
- ▶ haul roads and access roads within the Minesite;

- ▶ TAC which encompasses an 11 kilometres (km) newly constructed Bypass Road and improvements to approximately 5 km of an existing Forest Service Road (FSR);
- ▶ a 3.5 km long 25 kilovolt (kV) powerline and a 25 kV to 600 kilovolt (kV) substation adjacent to the CPP;
- ▶ Rail Infrastructure consisting of processed coal stockpiles, scales, dust control facilities and a 2.5 km Rail Loop connected to the CNR track and the Rail Infrastructure Sedimentation Pond; and
- ▶ a permanent bridge over Goathorn Creek.

Figure 1.10-1 in **S1.0-C1** shows the location of the Project components. The maximum estimated total area disturbed by the Project (i.e., the area of an outline containing the Project components, buffers, and contingency areas) is approximately 1,853 hectares (ha) while the estimated Project footprint (where actual Project Components are on the landscape) is 830.1 ha. **Table 4.1-1** summarizes the areas of individual Project components.

At the end of the Operation Phase, the area of the proposed open pit will be approximately 285 ha and extend about 3,000 m from north to south, 1,500 m from west to east, and 100 to 150 m below the current topographic surface. Most of the open pit will be completely covered with overburden and rock to limit wall exposure areas to mitigate potential acid rock drainage (ARD) from the open pit walls (**S1.0-C1**).

Table 4.1-1: Summary of Tenas Project Component Footprints

Major Component	Subcomponent	Major Component Area (ha)	Subcomponent Area (ha)
Open pit related		293.3	
	Open pit including backfill areas	207.5	207.5
	Haul roads and service roads	31.0	31.0
	Cleared areas for access	54.7	54.7
Coal Processing Plant and ancillary buildings including processed coal, rock and run-of -mine coal stockpiles		15.2	
Material storage facilities		139.1	
	Rock and overburden (dams and buttresses)	106.2	106.2
	Reclamation materials stockpiles	32.9	32.9
Site water management infrastructure and discharges		300.4	
	Collection, diversion, and discharge channels	38.7	38.7
	Management, Sedimentation, and Control ponds	261.7	261.7
Explosive infrastructure	Includes access roads and sedimentation ponds		
Tenas Access Corridor including gravel quarries		60.3	
Power supply	Under all new powerlines excluding overlap		
Rail Infrastructure	Centre of Rail Loop excluded		
Mine Footprint Total		830.1	
Buffers and Contingency areas		1,025.0	
Project Area Total		1,855.1	

Note: ha=hectare

Airborne emissions generated by the Project include (**S1.0 C1**):

- ▶ criteria air contaminants (CACs) and GHG due to the operation of vehicles and heavy machinery, including carbon dioxide (CO₂), nitrogen oxides (NO_x), sulfur oxides (SO_x), and particulates;
- ▶ fugitive dust emissions (total suspended particles [TSP], particles with aerodynamic diameter smaller than 10 micrometres (PM₁₀), particles with aerodynamic diameter smaller than 2.5 micrometres (PM_{2.5}), associated with blasting, coal crushing and material handling by mining equipment and transfer activities, coal stockpiles, and road use; and
- ▶ methane gas associated with excavation of the coal deposit.

Liquid waste from the Project includes wastewater associated with vehicle washing and treated sewage effluent from the Sewage Treatment Plant, as well as surface water discharges from Project infrastructure such as the management and control ponds, water from which will eventually discharge into a tributary of Goathorn Creek. **S1.0-C1 Overview of Project Proponent Description** states that discharge water from the site will achieve water quality criteria required to protect drinking water, fish, and aquatic life downstream of the Project.

A dam breach inundation study was completed (**Appendix 1.0-AA SRK, Tenas Project Dam Breach Assessment Report**) to evaluate the consequence of dam failures and the associated dam classifications. Based on the analysis three (3) management pond dams and the Tenas Control Pond dam have been given hazard classifications of 'Very High', in accordance with Canadian Dam Association (CDA) guidelines (**S1.0-C1**).

4.2 Potential Effects from the Project on Wet'suwet'en Rights and Interests

This subsection summarizes a preliminary list of potential effects from the Project on Wet'suwet'en Rights and Interests. The listed effects are based on a review of effects identified for other mining and resource development projects in BC, including those identified by Wet'suwet'en. This list of effects is consolidated and added to in the effects assessed in **6.0 Scope of Assessment of Wet'suwet'en Rights and Interests** in relation to the components reflecting Wet'suwet'en Rights and Interests:

- ▶ change in Wet'suwet'en access to portions of the traditional territory and respective House territories;
- ▶ change in availability (quantity) or quality of wildlife and fish resources in due to direct mortality (resulting from traffic, contamination, attractants, hunting pressure) or alteration of movement (resulting from sensory disturbance, physical impediments, vigilance, habitat fragmentation);
- ▶ change in availability of plant resources (due to site clearing) and/or alteration (e.g., resulting from edge effects of clearing, roads, emissions, contamination);
- ▶ change in confidence in the safety and integrity of water and subsistence foods, due to real and/or perceived contamination of water, plants, and animals (e.g., as resulting from dust, chemicals, metals deposition on vegetation and soils, herbicides, spills, explosives);
- ▶ change in sense of place (e.g., due to landscape changes, increased traffic, sensory disturbance from noise and emissions, increased presence of people);
- ▶ change in mobility due to removal or disturbance of trails and waterways (resulting from site clearing, infrastructure), reduced safety on roads (resulting from traffic), removal of campsites (resulting from site clearing, infrastructure);

- ▶ change in sense of connection with land, spirit, and culture due to removal, alteration, and disturbance of burial sites, cultural heritage sites, spiritual and ceremonial sites, sites connected with important names, legends, and stories, and teaching and learning sites (resulting from site clearing, infrastructure, roads);
- ▶ change in community well-being as a result of social and economic changes in the territory; and
- ▶ change in integrity of Section 35, Aboriginal right of title.

5. ASSESSMENT METHODS AND INFORMATION SOURCES

This subsection of the EAC Application describes the methods for determining effects from the Project on Wet'suwet'en Rights and Interests. Key elements of the methods and a summary of information sources are described below.

5.1 Information Sources

The assessment was prepared from existing publicly available on desk-based references and does not include direct input from Wet'suwet'en. Engagement with Wet'suwet'en has followed the process as was laid out in the PAA between TCL and the OW.

Existing publicly available information, was gathered, and reviewed. Information on Wet'suwet'en background was compiled from the **Tenas Project: Cultural Use Study (Appendix 11.0-A)**, academic and historical resources from Wet'suwet'en engagement with courts of law, government, and other commercial and natural resource enterprises; other publicly available government and non-governmental resources related to Wet'suwet'en specifically and Indigenous people generally; as well as numerous resources from pertinent and consequential fields of academic study and research. The types of information sources gathered and reviewed include:

- ▶ documents on First Nations perspectives on environmental assessment, how to approach it, and elements to include;
- ▶ historical and ethnographic records regarding Wet'suwet'en;
- ▶ sources containing Wet'suwet'en commentary and critique on other proposed development projects;
- ▶ Aboriginal Interests sections of other EAC applications;
- ▶ legal sources, such as Supreme Court of BC and Supreme Court of Canada court transcripts and decisions related to Indigenous peoples of BC generally and the Wet'suwet'en specifically, especially the transcripts and decisions in *Delgamuukw* and *Tsilhqot'in*;
- ▶ legislative sources such as the *Constitution Act*, *Indian Act*, and Bill 41 *Declaration on the Rights of Indigenous Peoples Act*; SBC 2019, c 44 (GovBC 2019a);
- ▶ National Commissions and Inquiry sources such as the Truth and Reconciliation Commission and National Inquiry into Missing and Murdered Indigenous Women and Girls;
- ▶ government sources directly related to Indigenous affairs and reconciliation such as the MOU between Wet'suwet'en, governments of Canada and BC and other negotiation related documents, BC's Draft Action Plan for the Declaration on Rights of Indigenous Peoples Act, Draft Principles that Guide the Province of BC's Relationship with Indigenous Peoples;
- ▶ international normative frameworks such as UNDRIPs, the United Nations Sustainable Development Goals and United Nations Guiding Principles on Business and Human Rights;
- ▶ academic legal sources of analysis concerning Section 35, Aboriginal rights, specifically within the context of BC and more generally within the Canadian context;
- ▶ academic sources in anthropology;
- ▶ academic sources in ecology;
- ▶ academic sources related to conflict analysis, conflict resolution and conflict prevention;

- ▶ academic sources in complexity and dynamical systems theory of practice;
- ▶ academic sociological sources;
- ▶ academic sources in behavioural and social psychology,
- ▶ academic sociohistorical sources of analysis concerning colonial and post-colonial relationships;
- ▶ sources in business administration; and
- ▶ sources in development economics.

5.2 Effects Assessment and Mitigation Design

The methods for determining effects from the Project on Wet'suwet'en Rights and Interests involved several steps. First, the summary in **3. Known Wet'suwet'en Interests** was prepared based on existing information. Central to this summary was a study of how Rights and Interests have been described by Wet'suwet'en in their comments in relation to other proposed resource development projects, as well as Wet'suwet'en stewardship programs and principles.

The second step consisted of defining a comprehensive set of components and subcomponents representing Wet'suwet'en Rights and Interests, on which to carry out the effects assessment. Definition of the components began with the list included in the Application Information Requirements (AIR) for the Project. The list from the AIR was then cross-checked with Wet'suwet'en values expressed in *Delgamuukw*, in OW submissions regarding other development projects and the Aboriginal Interests sections of other EAC applications. Current jurisprudence, both provincial and federal, were examined, including new guidance from the Impact Assessment Agency of Canada (IAAC) as detailed in the Practitioner's Guide to Federal Impact Assessments Under the Impact Assessment Act, which includes several considerations regarding right of title, governance rights, and free, prior and informed consent, including the considerations on how these impacts could affect the exercise of rights that are related to governance (IAAC 2021). Based on this review and comparison, the component of "Wet'suwet'en system of governance, *Anuk Nu 'at'en*, and Aboriginal right of title" (sometimes also referred to as "Governance") was added to the list of components to be assessed.

The third step involved identifying the potential effects to be assessed in relation to each component, and the key potential effect pathways. Potential effects and effect pathways were identified through review of EAC applications for other proposed development projects, OW submissions regarding other projects, review of indicators and effects discussed in the VC chapters in **Part B S4.0-S8.0** of this EAC Application, as well as through professional knowledge and experience.

The potential effects for each component were then described based on defined spatial and temporal boundaries, the overview of the Project in **S1.0-C1**, the effects descriptions and findings of the VC chapters across the EAC Application. The description of potential effects on the Governance and Community Well-being components also considered extensive legal and legislative sources, National Commissions and Inquiry sources such as the Truth and Reconciliation Commission and National Inquiry into Missing and Murdered Indigenous Women and Girls, government sources directly related to Indigenous affairs and reconciliation, and numerous academic sources.

The identification of potential effects, and characterisation of residual effects aimed to reflect Wet'suwet'en perspectives (e.g., in relation to House territories, and in terms of generations for temporal scale). Importantly, the assessment does not automatically adopt the conclusions of other EA chapters and sections regarding the characterisations and Significance of effects, but rather aimed to consider them specifically from the Wet'suwet'en context, as much as could be done from desk-based references alone.

It was recognized that Wet'suwet'en may have a different interpretation of the significance of effects, and a different tolerance to environmental and social risk than is expressed in the VC chapters.

To identify residual effects, mitigations measures across the EAC Application were considered, and additional mitigations were proposed which address the Wet'suwet'en components, those of Governance and Community Well-being.

Each mitigation is the result of sound analysis and appropriate design. Data analysis and data interpretation revealed insights into the various issues and problems, both ecological and sociological. Based on the data, we were able to discern various underlying issues related to the Project. Unchecked and unaddressed, these issues turn into drivers, enablers, and motives for conflict, either latent or manifest. Addressing these underlying tensions through the proposed mitigations will allow for systemic change to take place with new resource development within Wet'suwet'en territory and within the emerging new context of Wet'suwet'en Aboriginal rights and title and in alignment with traditional Wet'suwet'en systems of governance and laws.

Mitigation design was aimed at systemic change, in how Wet'suwet'en relate to extractive resource developments within their territory, towards self-determination, economic self-reliance and in a manner that upholds and protects Wet'suwet'en Title and Rights including the decision-making processes of *Cas Yex* and *Kwen Bea Yex*. Mitigations were sought and are presented that enable mutual success for Project stakeholders, by tackling existing vulnerabilities in the system, and creating opportunities for intergenerational resiliency.

The assessment and suggested mitigations seek to address each problem at its respective level of change. Entry points were identified through the respective level of analysis (such as individual, group or regional level among many others) as well as based on normative frameworks (laws, procedures) for identifying and informing the components of Wet'suwet'en system of governance, *Anuk Nu'at'en*, and Aboriginal right of title, Current Land Use and Resource Harvesting, Cultural Heritage, Community Well-Being, and Wet'suwet'en Health. When possible, sophisticated visualization tools (*Kumu*) were applied for envisioning information systematically. Underlying all aspects of the assessment is the "Wet'suwet'en world view of *Yintah*, whereby everything is connected to the land. What affects one area will affect others" (OW 2013b).

Mitigations concerning Governance and Community Well-being, were applied to specific issues as follows:

- ▶ First, the inclusion of Wet'suwet'en Hereditary leadership at the project or company governance level preserving the continuum of Wet'suwet'en special relationship to the land for upholding the Wet'suwet'en claims to Aboriginal title as well as for fulfillment of Hereditary title holders' fiduciary obligations to the *Yintah* under Wet'suwet'en laws;
- ▶ Second, the creation of an Intergenerational Trust Fund with the OW for meeting the standard as described in *Tsilhqot'in*, 2014, specifically that lands cannot "be developed or misused in a way that would substantially deprive future generations of the benefit of the land" (*Tsilhqot'in*); and
- ▶ Third, that Wet'suwet'en be granted equity ownership in the project, in exchange for access to their lands, that in turn will transform the broader Wet'suwet'en community's relationship with the Project as mitigative of potential effects to on Community Well-being.

These mitigation measures however are also designed as a complete set to work synchronously, wherein each mitigation contributes to and addresses the potential effects of the Project. Taken the potential for positive change is considerable. In characterising residual effects associated with these mitigation measures, expert analysis and judgment was applied for evaluating and describing the residual effects within the BC EAO framework. However, within an environment as complex as the *Yintah* in the contemporary period, the evaluations/characterisations are highly contextual.

6. SCOPE OF ASSESSMENT OF WET'SUWET'EN RIGHTS AND INTERESTS

This subsection provides assessment of the potential Project-related effects on Wet'suwet'en Rights and Interests.

6.1 Components for Wet'suwet'en Rights and Interests

Components representing Wet'suwet'en Rights and Interests are outlined in this subsection. They include:

- ▶ Wet'suwet'en System of Governance, *Anuk Nu'at'en*, and Aboriginal Right of Title
- ▶ Current Land Use and Resource Harvesting
- ▶ Cultural Heritage
 - ▶ Intangible Cultural Heritage subcomponent
 - ▶ Physical/Tangible Cultural Heritage subcomponent
- ▶ Community Well-being
- ▶ Wet'suwet'en Health

The components were identified based on previous Wet'suwet'en statements regarding their key interests and values in the context of natural resource stewardship and planning, responses to other proposed resource development projects (e.g., Northern Gateway Pipelines Project, Pacific Trails Pipeline, Coastal GasLink), OW input through the Project Working Group, and the components selected to represent First Nations Rights and Interests sections in other EAs. Wet'suwet'en Rights and Interests as described in **3. Known Wet'suwet'en Rights and Interests** are likewise reflected in the components.

Key Wet'suwet'en values within the context of resource development projects are summarized in the OW submission to the Department of Fisheries and Oceans Canada (DFO) in respect of the proposed Pacific Trails Pipeline project within Wet'suwet'en territory:

"The Wet'suwet'en are concerned about any potential effects on Wet'suwet'en lands and resources, including cumulative effects on Wet'suwet'en Rights and Title. They are also concerned about potential impacts to Wet'suwet'en cultural heritage, to Wet'suwet'en socio-cultural structure including governance, and to Wet'suwet'en fish, wildlife, vegetation, and territorial values" (OW 2013b).

While EA methodology calls for assessment framed in terms of specific VCs, in the Wet'suwet'en worldview all aspects of land and people are connected. The foundation and rationale for Wet'suwet'en values and interests is *Yintah*, a concept in which all environmental components—from plants and animals to waterways and mountains—are all interconnected and linked with the human world (OW 2011).

Thus, there is considerable overlap and interconnection between the components. Likewise, the other VC assessments across the five (5) pillars defined by BC EAO (environmental, economic, social, heritage and health) (BC EAO 2013) are relevant to the assessments of effects for Wet'suwet'en Rights and Interests. Nevertheless, the VC chapters most relevant to each Wet'suwet'en component are noted in **Table 6.1-1** as VC linkages.

Table 6.1-1: Components for Wet'suwet'en Rights and Interests

Wet'suwet'en Component	Subcomponents	Description and Rationale for Inclusion	VC Linkages
Wet'suwet'en System of Governance, <i>Anuk Nu'at'en</i>, and Aboriginal Right of Title	n/a	- Wet'suwet'en governance through their traditional system of <i>Anuk Nu'at'en</i> is a fiduciary relationship, wherein Wet'suwet'en hereditary title holders are duty bound to act in the best interests of the <i>Yintah</i> (including the specific values of water, wildlife, plants, fish, and heritage), and future generations. Governance is related to self-determination, jurisdiction, stewardship, and nationhood (Impact Assessment Agency of Canada [IAAC] 2021). - The link between <i>Anuk Nu'at'en</i> as the basis of Wet'suwet'en claims to Aboriginal right of title is of critical importance and cannot be considered incidental. Wet'suwet'en governance enables them to fulfill their fiduciary obligations to <i>Yintah</i>, including to the land and waters and these governance responsibilities extend to the people, as well as to future generations of Wet'suwet'en for strategic planning, management, and stewardship of their traditional lands and resources (IAAC 2021). - Wet'suwet'en Governance can be diminished if it is not effectively included and applied as a part of fully informed decision making and governance of the Tenas Project (Project). (i.e., informed decisions whether the Project should proceed, and, should it proceed, participation in governance of the Project during implementation).	- Relevant to management and decision making regarding Valued Components (VCs) - Decisions made through Wet'suwet'en governance take place at a scale beyond the individual VCs - The exercise of Wet'suwet'en Governance can influence outcomes for many VCs
Current Land Use and Resource Harvesting	n/a	The current use of lands and resources for traditional Wet'suwet'en purposes, such as hunting, trapping, fishing, and gathering, are Aboriginal rights protected by the <i>Constitution Act</i> S.35(1) (Government of Canada [GovCan] 1982) and Canadian jurisprudence. Wet'suwet'en harvesting rights include Food, Social and Ceremonial rights. Through changes to the environment and land use, the Project potentially affects land based practices and resources that are important for Wet'suwet'en harvesting for sustenance, trade, social, cultural, ceremonial, and spiritual purposes. Potentially affected elements include the environmental valued components considered in this Environmental Assessment Certificate (EAC) Application, those that correspond with the Wet'suwet'en pillars of water, wildlife, fish and fish habitat, and plants. Furthermore, the Project potentially affects access, travel routes and trails, which are needed for the current use of lands and resources for traditional purposes.	- Atmospheric Environment - Terrain and Soils - Surface Water - Groundwater - Aquatic Resources - Fish and Fish Habitat - Vegetation - Wildlife - Avian - Land and Resource Use - Human Health

Wet'suwet'en Component	Subcomponents	Description and Rationale for Inclusion	VC Linkages
Cultural Heritage	Intangible Cultural Heritage	- Intangible cultural heritage includes sense of place and connection to land, Wet'suwet'en knowledge and cultural transmission, including language, and spiritual and ceremonial practice. All aspects of Wet'suwet'en intangible cultural heritage are reliant on the health of the territories. - The Project has the potential to affect the experience and practice of Wet'suwet'en Intangible Cultural Heritage.	Environmental VCs (S4.0-C1 to C9) especially: - Atmospheric Environment - Surface Water - Aquatic Resources - Fish and Fish Habitat - Vegetation - Wildlife Also: - Visual Resources - Land and Resource Use - Community Well-being - Heritage Resources - Human Health
	Physical/Tangible Cultural Heritage	Physical aspects of Wet'suwet'en cultural heritage include artifacts, features of the landscape that have been altered through use by Indigenous peoples, such as culturally modified trees (CMT), traditional use sites (harvesting and cultural use areas), sacred/spiritual sites, trails, and habitation sites such as cabins and camps, regardless of their status under the <i>Heritage Conservation Act</i> , RSBC 1996 c 187 (Government of British Columbia [GovBC] 1996a) (<i>HCA</i>). The Project has the potential to affect Physical Cultural Heritage through ground disturbance, changes to terrain, removal of vegetation.	- Vegetation - Wildlife - Land and Resource Use - Heritage Resources
Community Well-being	n/a	Through change in the local and regional communities, demographics, land use and economies, the Project potentially affects existing and future economic and social well-being of Wet'suwet'en citizens. Community well-being is reflected through the state of basic universal human needs such as Security and Identity. The human need of Security is inextricably linked to the component of Wet'suwet'en system of governance, <i>Anuk Nu'at'en</i> , and Aboriginal right of title	Environmental VCs (S4.0-C1 to C9) - Demographics - Labour Market - Economic Development - Infrastructure and Services - Land and Resource Use - Community Well-being - Human Health

Wet'suwet'en Component	Subcomponents	Description and Rationale for Inclusion	VC Linkages
Wet'suwet'en Health	n/a	The health of Wet'suwet'en people includes physical, mental, emotional health and spiritual connection. This component focusses on potential changes in health from biophysical determinants of health, as well as traditional food security. Mental and emotional health are discussed in the Wet'suwet'en Community Well-being component. The importance of and effects to spiritual connection are discussed to some extent in Intangible Cultural Heritage, and also underlies every aspect of the assessment, even when not explicitly stated. The Project potentially affects the physical health of Wet'suwet'en people by generating and releasing pollutants that affect the water quality, environmental media quality, air quality, safety or perceived safety of traditional foods and medicinal plants. The Project also potentially effects Wet'suwet'en food security though changes in the availability of traditional foods that are safe or perceived as safe to consume. As depicted in the Wet'suwet'en Holistic Wellness Concept, <i>Yintah</i> is at the centre. Any Project effects to the <i>Yintah</i> – to the land and waters and Wet'suwet'en peoples connection to land - have an effect on Wet'suwet'en health. Project effects to Wet'suwet'en Governance, Current Land Use and Resource Harvesting, Cultural Heritage, and Community Well-being likewise affect Wet'suwet'en physical, mental, emotional health and spiritual connection in multiple interconnected ways. Changes to any aspect of health can manifest at a physical level.	▪ Human Health Environmental VCs, especially: ▪ Atmospheric Environment ▪ Terrain and Soils ▪ Surface Water ▪ Groundwater ▪ Fish and Fish Habitat ▪ Vegetation ▪ Wildlife ▪ Avian Also dependent on: ▪ Land and Resource Use ▪ Community Well-being ▪ Heritage

6.2 Indicators

Indicators are quantitative or qualitative measures used to describe existing conditions and trends, and to evaluate potential Project effects and cumulative effects on components or subcomponents. Indicators for Wet'suwet'en Rights and Interests components and subcomponents and the rationale for the selection of those indicators are provided in **Table 6.2-1**.

Table 6.2-1: Indicators for Components Reflecting Wet'suwet'en Rights and Interests

Indicator	Rationale for Selection
Wet'suwet'en System of Governance, <i>Anuk Nu'at'en</i>, and Aboriginal Right of Title	
Change in Ability to Fulfill Fiduciary Obligations to the <i>Yintah</i> and to Future Generations of Wet'suwet'en	The absence of effective Wet'suwet'en participation in the governance of the Project, would disable the Wet'suwet'en hereditary leadership in meeting their fiduciary obligations to those specific Wet'suwet'en House territories within the <i>Yintah</i> , in which the Project will be operating, as well as future generations of Wet'suwet'en.
Change in Integrity of Section 35, Aboriginal Right of Title	The integrity of Wet'suwet'en Section 35, Aboriginal right of title could potentially be damaged if they are not part of Project governance for projects that will use House territories.
Current Land Use and Resource Harvesting	
Change in Abundance or Quality of Wildlife, Fish and Plant/Vegetation Resources	The Project may affect the populations and quality of wildlife, fish and plants and may cause the loss, alteration or connectivity of their respective habitats that are important for Wet'suwet'en sustenance and cultural uses, including downstream from the Project.
Change in the Utility of Lands and Waters for Wet'suwet'en Land Use and Resource Harvesting	The Project potentially affects the utility of portions of the Wet'suwet'en territory for cultural land uses and resource harvesting through changes in the presence and quality of wildlife, fish, and plants, through changes to levels of sensory disturbance (noise, air emissions, visual quality), changes to presence of others (workers and public), changes in real or perceived safety and integrity of water and harvested resources.
Change in Wet'suwet'en Access to Territory for Land Use and Resource Harvesting	The Project potentially limits the ability of Wet'suwet'en to practice traditional land uses, cultural activities, and resource harvesting by limiting access to portions of their territory.
Wet'suwet'en Intangible Cultural Heritage Subcomponent	
Change in Sense of Place and Connection to Land	The Project potentially affects Wet'suwet'en sense of place and connection to land through changes to terrain and ecology, clearing of vegetation, sensory disturbance from Project generated by noise and air emissions, changes in visual quality, and increased traffic and presence of workers and other people in the area near the Project.
Change in Wet'suwet'en Knowledge and Cultural Transmission	The Project potentially affects Wet'suwet'en knowledge and cultural transmission by Project effects to the <i>Yintah</i> , and by restricting access and reducing the land base in which cultural transmission can occur.
Wet'suwet'en Physical Cultural Heritage Subcomponent	
Changes to Physical Cultural Heritage Features	▪ The Project potentially affects physical cultural heritage features through ground disturbance, alteration of terrain and removal of vegetation. ▪ The Project increases the risk of disturbing, destroying, or losing physical cultural heritage features that are not yet identified.

Indicator	Rationale for Selection
Community Well-being	
Change in Food and Economic Security	The creation of a “boom town” as a result of the extraction industry often results in high rates of inflation and an increased cost of living in the host communities.
Change in Community Cohesion	The Project has the potential to effect community cohesion by exacerbating already existing divisions between Wet'suwet'en who choose to participate in industrialized processes for creating economic and household security versus those who choose to pursue traditional processes for creating economic and household security
Change in Physical Security, Mental and Emotional Health	▪ The Project has the potential to increase risks to the physical security of Wet'suwet'en women as there has been a recognized link between “boomtown” environments that emerge around resource extraction projects and violence against Indigenous women and girls, as well as increased sex industry activities in those areas. ▪ The Project has the potential to affect the mental and emotional health of Wet'suwet'en by shifts in cognition concerning the forces that are determinant on both their immediate well-being and long-term well-being in terms of the Project life and the effects the Project might have on future generations of Wet'suwet'en and their ability to survive and provide for their families within their territories
Wet'suwet'en Health	
Change in Quality of Air, Water and Traditional Foods	The Project potentially affects Wet'suwet'en Health due to changes in air quality through the emission of pollutants containing criteria air contaminants (CACs) and Contaminants of Potential Concern (COPCs), to which Wet'suwet'en may be exposed in environmental media.
Change in Wet'suwet'en Traditional Food Security	▪ The Project has the potential to reduce the extent of available traditional/subsistence foods and plant medicines, thus decreasing food security for Wet'suwet'en. ▪ The Project may affect the real and perceived safety and integrity of subsistence foods and plant medicines, causing Wet'suwet'en people to avoid harvesting, thus decreasing food security for Wet'suwet'en people.

6.3 Assessment Boundaries

6.3.1 Spatial Boundaries

Spatial boundaries for the assessment of the Project effects on Wet'suwet'en Rights and Interests include a Local Study Area (LSA) and a RSA. The same spatial boundaries are applied in **7.0 Perspectives on Cumulative Effects**.

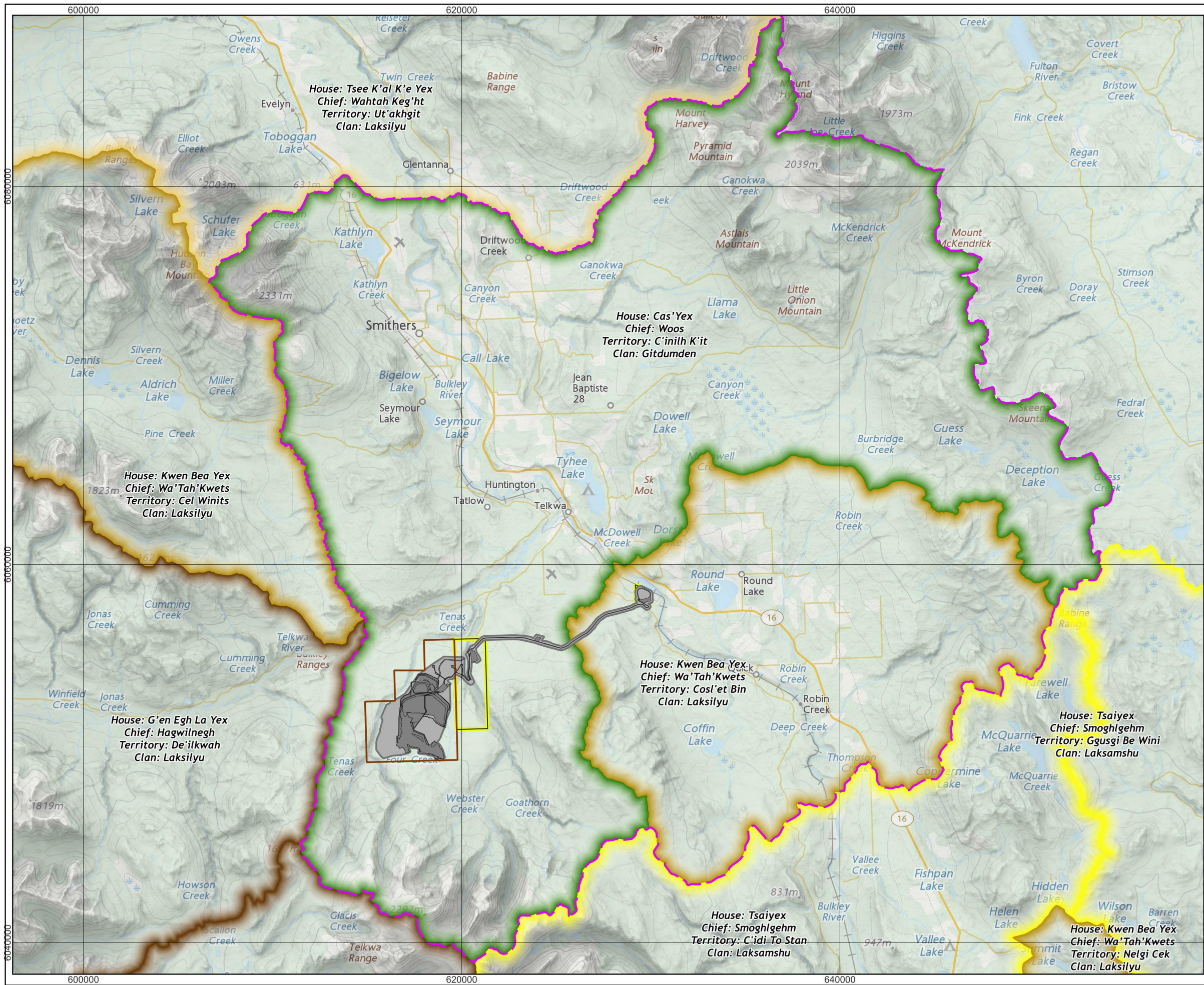
The LSA is the area of the two (2) Wet'suwet'en House territories in which the Project components are located (**Figure 6.3-1**). The majority of the Project components, including the Minesite are located within the *C'inilh K'it* territory of the *Gitdumden* Clan's *Cas'Yex* House (Morris et al. 2006). The Rail Loadout and part of the TAC are located within the *Cos'et Bin* territory of the *Kwen Bea Yex* House of the *Laksilyu* Clan.

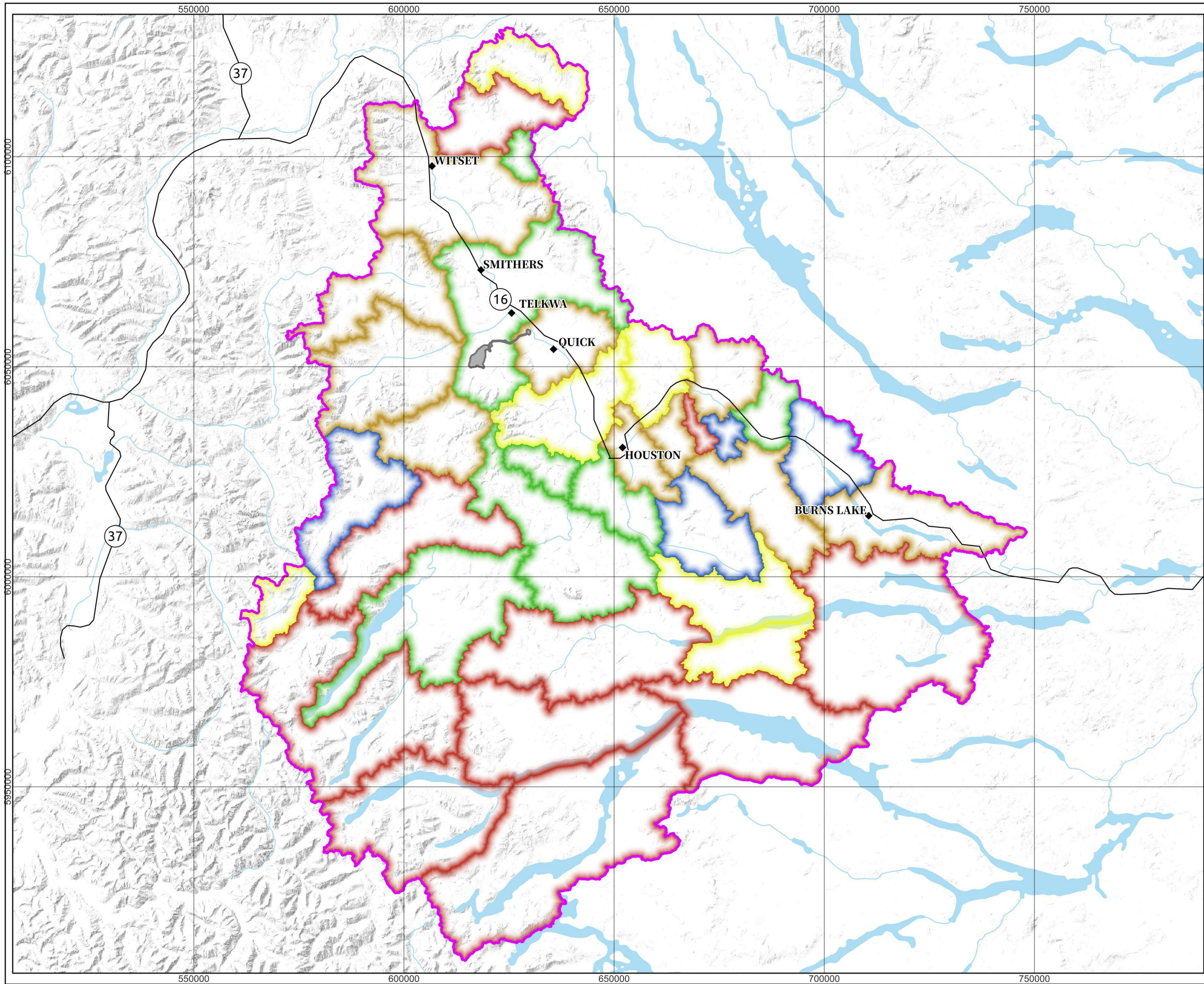
House groups and associated territories are an important unit of Wet'suwet'en society, governance, and land stewardship. "The House is a partnership between the people and the territory, which forms the primary unit of production supporting the subsistence, trade, and cultural needs of the Wet'suwet'en" (OW 2011). Effects to Wet'suwet'en Rights and Interests are thus most meaningfully described with reference to the affected House territories. Wet'suwet'en have stated that project risk estimates should apply to Wet'suwet'en House territories or the Wet'suwet'en territory as a whole (OW 2013a).

The RSA is the entire Wet'suwet'en territory (**Figure 6.3-2**), spanning approximately 22,000 km² of land in Northern BC, including most of the Bulkley and Morice River drainage systems, as well as the western Fraser Basin headwaters (Budhwa 2005. OW 2013a, 2013b). Due to the interconnectedness of House territories within Wet'suwet'en territory, society, and governance, it is relevant to focus regional assessment at this scale, especially for the assessment components of Wet'suwet'en System of Governance, *Anuk Nu'at'en*, and Aboriginal right of title, and Community Well-being, which speak to the entire Wet'suwet'en society.

The assessment at times refers to the Project Area – meaning the area where ground-disturbance and Project activities will occur, and within which the Project will be constructed and operated, including the Minesite and access routes. The Project Area encompasses 1,853 ha and is a conservative estimate of the area of direct disturbance effects on the components representing Wet'suwet'en Rights and Interests. The Project Area is described in detail in **S3.0-C1-3 Assessment of Boundaries** of the **EAC Application**.

The assessment of Wet'suwet'en Rights and Interests includes some description of findings from other VC chapters in the EAC Application, including acknowledgement of the LSAs and RSAs from those other VC chapters. However, the spatial boundaries for the Wet'suwet'en assessment remain as the LSA and RSA described above.





Tenas Project

Regional Study Area for
Wet'suwet'en Rights and Interests:
Wet'suwet'en Traditional Territory

Legend

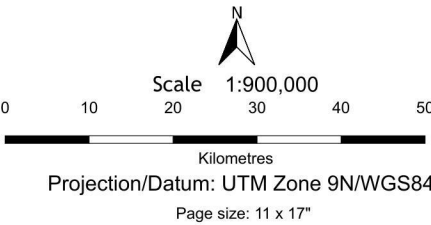
- Regional Study Area for Wet'suwet'en Rights and Interests - Wet'suwet'en Traditional Territory
- Project Area

Wet'suwet'en territories
by clan

- Gilseyu (Big Frog Clan)
- Gitdumden (Wolf and Bear Clan)
- Laksamshu (Fireweed and Owl Clan)
- Laksilyu (Small Frog Clan)
- Tsayu (Beaver Clan)

Sources

Project Area and Components: Allegiance Coal, April 26, 2021
Wet'suwet'en Territories: Office of the Wet'suwet'en
Basemap: Natural Resources Canada



Production Date: January 17, 2022

Figure 6.3-2



6.3.2 Temporal Boundaries

The temporal boundaries for the assessment of potential Project effects on Wet'suwet'en Rights and Interests encompass the time periods during which the Project is expected to affect Wet'suwet'en Rights and Interests. These include the entire mine life (26.5 years) and Project phases consisting of the Construction, Operation, Decommissioning and Reclamation phases while the Post-Closure phase extends for approximately for another 25 years (**Table 6.3-1**), as well as earlier, during the hiring stage, and for governance, prior to and throughout these four main phases.

Table 6.3-1: Temporal Boundaries for the Tenas Project

Phase	Year	Duration (years)	Description of Activities
Construction	-0.5 to 0	1.5	Site clearing, soil salvage, open pit development, building construction, service and haul road development, Rail Infrastructure construction, bridge construction and development of onsite utilities and services. Development of mine rock, and overburden storage piles, stockpiling of reclamation material such as soil, overburden and other materials suitable for reclamation. Development of water management systems and management ponds for storage of potentially acid generating (PAG) materials.
Operation	1 to 21	21	Development of the open pit through drilling, blasting, loading, and hauling functions. Development of mine rock, and overburden storage piles, stockpiling of reclamation material such as soil, overburden and other materials suitable for reclamation. Development of water management systems and management ponds for PAG storage. Conducting coal processing, stockpiling of raw coal prior to processing, and stockpiling of processed coal prior to shipping. Progressive reclamation will be accomplished during operation including, where available, reclamation activities such as sloping, topsoil placement and revegetation.
Decommissioning and Reclamation	22 to 25	4	Tear-down of infrastructure onsite plus reclamation activities, including sloping of storage piles, backfill materials, and placement of reclamation materials including growth media, overburden and non-PAG rock for management pond covers and revegetating surfaces that are planned to be reclaimed.
Post-closure	26 to 50	10	Active: This involves the filling of the open pit with water, monitoring of vegetation growth and water quality for both groundwater and surface water and wildlife. Control and sedimentation ponds may still be needed for settling of total suspended solid levels. The management ponds are left as dry land reclamation except for portions that will be left as open water.
		15	Passive: This stage is when the control and sedimentation ponds are no longer required for settling of total suspended solid (TSS) levels and the management ponds are left as dry land reclamation except for portions that will be left as open water. Telkwa Coal Limited (TCL) is now simply monitoring the site.

6.3.3 Technical Boundaries

Technical boundaries refer to technical constraints imposed on the assessment by limitations in the ability to predict the effects of the Project.

Technical boundaries for the assessment of Wet'suwet'en Rights and Interests include that **S11.0-C1-8** are written from desk-based references, without direct Wet'suwet'en input, as Wet'suwet'en engagement is occurring through a parallel process outlined in the PAA. As such, this assessment was conducted with an emphasis on regional (rather than site specific) information regarding Wet'suwet'en land use and values within and near the Project Area.

Limitations in quantitative data-analysis were identified during desk-based research of the socio-economic baseline. Due to the small population sizes of Wet'suwet'en communities, quantitative data gathered from census studies were often obscured for privacy and confidentiality purposes (Crossroads 2021).

Furthermore, there is limited publicly available empirical data regarding Wet'suwet'en physical health and community well-being indicators.

6.4 Existing Situation

This subsection describes the existing situation with regards to the components reflecting Wet'suwet'en Rights and Interests.

6.4.1 Wet'suwet'en system of Governance, *Anuk Nu'at'en*, and Aboriginal Right of Title

Wet'suwet'en governance is described at length in sections **2.5** and **3.2**. The following is a summary of key points.

The Wet'suwet'en governance system of *Anuk Nu'at'en* is important and relevant in the assessment of the Project as Wet'suwet'en governance through their traditional system of *Anuk Nu'at'en* is a fiduciary relationship, wherein Wet'suwet'en hereditary title holders are duty bound to act in the best interests of the *Yintah* (including the specific values of water, wildlife, plants, fish, and heritage), and future generations. This fiduciary duty extends to preservation of Wet'suwet'en rights, under Section 35 of the *Constitution Act*, 1982 and specifically the right to title. Wet'suwet'en governance form the basis of their claim to Section 35, Aboriginal rights and right of title per the *Constitution Act*, 1982.

The link between *Anuk Nu'at'en* as the basis of Wet'suwet'en claims to Aboriginal right of title is of critical importance and cannot be considered incidental. The Wet'suwet'en system of governance represents their principle interest in their lands, interests that are of central significance to their culture, and satisfies the requirements of the land being integral to the distinctive culture of Wet'suwet'en title-holders, as is stated by the court in *Delgamuukw*:

"Although [the requirement that the right be "integral" and of central "significance" to the culture of the claimant] remains a crucial part of the test for aboriginal rights, given the occupancy requirement in the test for aboriginal title, I cannot imagine a situation where this requirement would actually serve to limit or preclude a title claim. The requirement exists for rights short of title because it is necessary to distinguish between those practices which were central to the culture of claimants and those which were more incidental. However, in the case of title, it would seem clear that any land that was occupied pre-sovereignty, and which the parties have maintained a substantial connection with since then, is sufficiently important to be of central significance to the culture of the claimants. As

a result, I do not think it is necessary to include explicitly this element as part of the test for aboriginal title” (Christie 2021).

The fulsome exercise of their governance enables Wet'suwet'en to carry out their fiduciary obligations to *Yintah*, including to the land and waters, the people, as well as to future generations of Wet'suwet'en.

Wet'suwet'en Governance can be diminished if it is not effectively included and applied as a part of fully informed decision making and governance of the Project (i.e., informed decisions whether the Project should proceed, and also, should it proceed, participation in governance of the Project during implementation).

Wet'suwet'en practice of their traditional governance system of *Anuk Nu'at'en* is integral to claims of Aboriginal rights and right of title because once this title has been established, the Wet'suwet'en may use the land, on an exclusive basis for many kinds of purposes, including commercial purposes unrelated to Aboriginal practices. Aboriginal title also extends to the natural resources (Mainville 2001), which includes resources considered for the Project.

6.4.2 Current Land Use and Resource Harvesting

The territories of the Wet'suwet'en have sustained both places of refuge and vital resources for approximately the past 10,000 years, with historical markers and remnants scattered and scoured along their extensive landscape (OW 2014). Wet'suwet'en continue to participate in an adapted land-based economy that relies on the resources of their House territories. Under Aboriginal title, the Wet'suwet'en possess the right to the use of their land and resources for traditional and contemporary use (Crossroads 2018). Thus, there is increasing obligation of the Canadian Constitution to protect, maintain and ensure the long-term integrity of the landscape and its dynamic components.

The Wet'suwet'en peoples rely upon environmentally robust and healthy environments comprised of safe and reliable waterways, atmospheric environments, land, vegetation, and wildlife. Land use and resource harvesting has been practiced by the Wet'suwet'en over centuries with the connection between subsistence activities and social structures, local landscapes, and the broader regional environment (OW 2014). The Wet'suwet'en have a detailed knowledge and understanding of the environment, each resource within it, the seasonal variability, abundance levels and spatial availability. This knowledge has been, and continues to be, essential for decision making in local governance, subsistence harvesting, the continuity of culture and the ever-evolving relationship with the *Yintah*.

To ensure future harvest successes, the Wet'suwet'en practice a deep respect for the land and the wildlife that lives upon it. This respect for the land is an integral component of Wet'suwet'en traditional values and teachings that have been integrated into oral histories and have been passed on through generations through traditional knowledge and teachings (Jenness 1943).

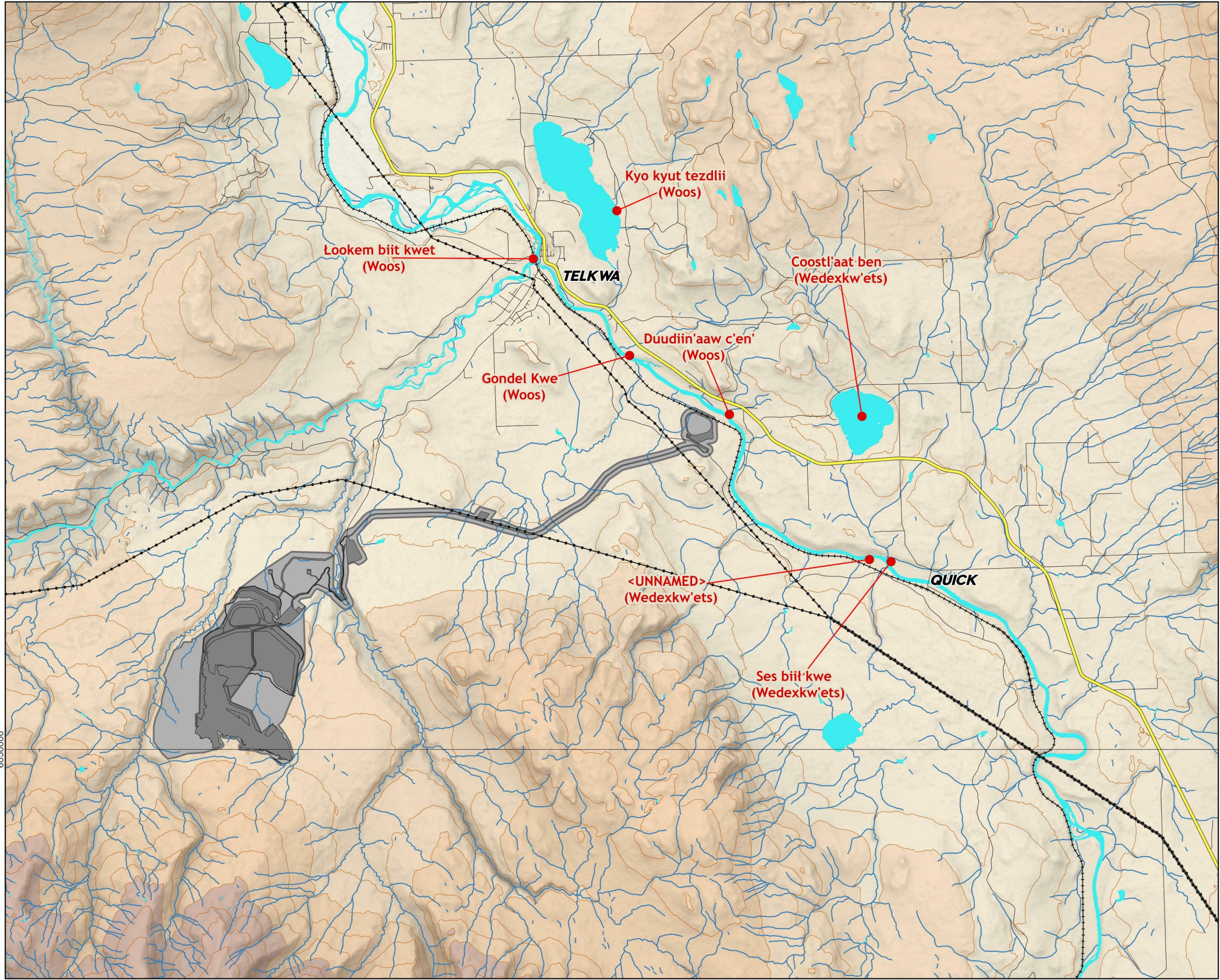
The Wet'suwet'en harvest and utilize several game species including: black and grizzly bears, caribou, coyotes, deer, moose, mountain goats, wolves, beaver, groundhogs, lynx, marmots, hares, squirrel, and weasel (Daly 2005; Johnson 1994; BC MFLNRORD 2017; Morin et al. 2016; Morris et al. 2006; OW 2011, 2014).

Wildlife habitat alteration and loss are at the forefront of Wet'suwet'en concern due to the pre-existing effects on the landscape that have already occurred resulting in loss of wildlife populations, habitat fragmentation and the overall degradation to integral habitat for breeding and rearing (OW 2014). For example, the Telkwa caribou herd has experienced decline in recent decades. The most recent available survey information for the herd reported a minimum count of 25 caribou in the spring of 2019 (Hoffman and Grant 2019). A recovery strategy has been created to protect the population and promote growth.

Since time immemorial, the Wet'suwet'en have maintained an extensive knowledge of the seasonal round and have practiced a seasonal resource harvest from their territories (OW 2014). With the existing involuntary and forced reduction in the ability to practice seasonal rounds due to colonization, the privatization of land from agriculture, and the ultimate habitat loss and fragmentation, there have been extensive effects to wildlife movement on the Wet'suwet'en landscape.

Fish and fish habitat are an integral environmental component to the Wet'suwet'en, as there is a substantial reliance on fish for sustenance, food security and the participation of in *baht'lats* (Wet'suwet'en parliament) through gifting (OW 2011, Crossroads 2021). Wet'suwet'en's Indigenous rights include rights to fish for the purpose of food, social, and ceremonial use. Wet'suwet'en harvest a variety of anadromous and non-anadromous fish species. Fish harvested by the Wet'suwet'en include: char, chinook, coho, pink, and sockeye salmon, as well as steelhead, bull trout, and Pacific lamprey; and the freshwater species they typically gather are: burbot, chub, dace, Dolly Varden, kokanee, lake trout, mountain whitefish, northern pike minnow, rainbow trout, sculpin, suckers, and white sturgeon (CSTC 2006; BC MFLNRORD 2017; Morin et al. 2016; Morris et al. 2006; OW 2014).

Known Wet'suwet'en fishing sites are located at many places along the Bulkley River. In mapping produced for the *Delgamuukw* case, to support the plaintiff's evidence (**Appendix 11.0-B**), identified fishing sites include *Duudliin'aaw c'en'* (which is also a totem site as described in **6.4.3.2**), *Gondel Kwe*, 2.3 km downstream of the Rail Loadout, and *Lookem biit kwet*, 6 km downstream of the Rail Loadout at the confluence of the Bulkley and Telkwa rivers (**Figure 6.4-1**).



Tenas Project

Wet'suwet'en Fishing Sites Near the Project

Legend

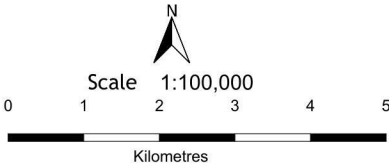
- Fishing Sites from Delgamuukw map No. 22 (Skoda 1987)
- Project Components
- Project Area
- Railway
- Electric Transmission Line

Sources

Project Area and Components: Allegiance Coal, April 26, 2021

Fishing Sites: from Map 22, Cartographic Support for the Plaintiffs' Evidence, Gitksan and Wet'suwet'en Chiefs, 1987, Lou Skoda

Basemap: Natural Resources Canada



Projection/Datum: UTM Zone 9N/WGS84

Page size: 11 x 17"

Production Date: January 19, 2022

Figure 6.4-1



Anthropogenic effects to fish, fish habitat and fish health have already been observed on the landscape, including the contaminated waters and fish stocks of Goosly Lake from the effects of the Equity Mine (TERA 2015). The Wet'suwet'en are currently experiencing considerable barriers to accessing fish as a safe and healthy resource for subsistence and cultural activity.

Plants and vegetation are integral components to Wet'suwet'en rights and interests, as they provide sustenance, medicine, and cultural use such as dyes and pigments, fibrous materials for crafts, and wood (Crossroads 2021). From time immemorial, the Wet'suwet'en have foraged, gathered, and harvested plants, and currently harvest an average of 60 plants. The increase of anthropogenic disturbance in the Wet'suwet'en territories has already created substantial obstacles for the Wet'suwet'en to engage in the cultural practice of plant resource harvesting. The Wet'suwet'en require easily accessible areas for plant harvesting for Elders to readily access proximal areas to harvest and engage in cultural teachings to younger generations (Crossroads 2020). With the influx of anthropogenic disturbance, the Wet'suwet'en have found that they need to travel further distances to locate and harvest preferred plant species that are healthy and not contaminated (OW 2011, Crossroads 2021).

The utility of lands and the waters within their territory is critical for the Wet'suwet'en to exercise their rights of land use and resource harvesting. From time immemorial, the Wet'suwet'en have utilized the landscape to provide essential resources for sustenance and cultural practices. To ensure the integrity and continuity of these valued resources, Wet'suwet'en Hereditary Chiefs review and implement sustainable methodologies (BC MFLNRORD 2017, Crossroads 2021).

In recent decades, there has been a substantial decline in Wet'suwet'en persons engaging in the gathering of food, medicine, and cultural goods (Crossroads 2021). These declines can be attributed to the concerns over the contamination of environmental resources from resource extraction and industrial development activities (Crossroads 2021). Furthermore, local game, fish and plant resource declines have been observed on the landscape and are feared to continue with the onset of new development activities (BC MFLNRORD 2017).

Wet'suwet'en rights and interests are practiced throughout their territory in dynamic environments and landscapes that change in response to seasonal variations, wildlife dynamics, and environmental change. The Wet'suwet'en concept of *Yintah* is the integral connection between both people and the land. This concept remains as the focal point of Wet'suwet'en values as it inspires the awareness, importance, and interconnectedness of living, and non-living aspects of the environment (Crossroads 2021). Accessibility of the Wet'suwet'en territory is not only critical for subsistence harvesting and activities, but for the essential cultural learning, teaching and continuation of Wet'suwet'en culture for generations to come.

6.4.3 Cultural Heritage

The Wet'suwet'en Cultural Heritage component includes two (2) subcomponents – Intangible Cultural Heritage and Physical Cultural Heritage.

6.4.3.1 Intangible Cultural Heritage

Intangible cultural heritage includes sense of place and connection to land, Wet'suwet'en knowledge and cultural transmission, including language, and spiritual and ceremonial practice. All aspects of Wet'suwet'en intangible cultural heritage are reliant on the health of the territories.

A sense of place is the connection to and understanding of a landscape shared within a community (Johnson 2013). It encompasses environmental, cultural, and psychological facets that contribute to overall Wet'suwet'en ways of health and well-being. In Wet'suwet'en culture, the physical and spiritual connection to land flows from the concept of *Yintah*. It is through both physical and spiritual experiences in their territories that Wet'suwet'en individuals develop psychological connections to their lands.

When considering Wet'suwet'en heritage, a sense of place and connection to land are just as important as physical traditional use sites and material artifacts. For many Wet'suwet'en persons, their memories of past activities on their territories—and the knowledge of heritage sites and artifacts that prior activities produce—are deeply important for their cultural attachments to places (OW 2011).

Wet'suwet'en sense of place is related to the land as a whole, as well as to places with particular heritage value. *Yintah* informs values, uses, and management of heritage sites of which evoke a sense of place amongst Wet'suwet'en persons (Morris et al. 2006). Wet'suwet'en place names reflect their cultural connection to specific lands and waters. Some Wet'suwet'en place names in the LSA are shown in the **Tenas Project: Cultural Use Study (Appendix 11.0-A)**, including *Centeel Kwa* (Tenas Creek) and *Tsayhnii Kwe* (Goathorn Creek).

Having the ability to access heritage sites, including capacity to use trails and identify landmarks, is crucial for Wet'suwet'en persons to sustain a sense of place. A sense of place is dependent on both the transmission of Wet'suwet'en cultural knowledge and the ability of Wet'suwet'en persons to access heritage sites and foster a connection to their traditional territories.

The integrity and safety for human consumption of water, traditional foods and medicinal plants are likewise important aspects of intangible cultural heritage.

6.4.3.2 Physical Cultural Heritage

Physical aspects of Wet'suwet'en cultural heritage include artifacts, features of the landscape that have been altered through use by Indigenous peoples, such as CMT, traditional use sites (harvesting and cultural use areas), sacred/spiritual sites, trails, and habitation sites such as cabins and camps, regardless of their status under the *Heritage Conservation Act*, RSBC 1996 c. 187 (GovBC 1996a) (*HCA*).

Some, but not all, aspects of Wet'suwet'en Physical Cultural Heritage are addressed in the **Heritage Resources VC (S7.0-C1)**, under both the Archaeological Resources subcomponent (reflecting *HCA* sites) and Historic and Cultural Sites subcomponent. A summary of known information regarding physical cultural heritage in the vicinity of the Project follows.

There are 11 known archaeological sites within the Heritage RSA, of which nine (9) are protected under the *HCA* (**Table 4.2-1 in S7.0-C1**). The cultural heritage features at the sites include human remains, a marker stone, cache pits, house pits, CMT, a cultural depression, lithics, faunal, fire broken rock and historic structures.

There are seven (7) identified Historic and Cultural Sites within the Heritage LSA (**Table 4.2-2 and Figure 4.2-1 in S7.0-C1**). These sites are not protected under the *HCA* but may have value to Wet'suwet'en. These sites include three (3) post-1846 CMT, three (3) historic sites associated with the Bulkley Valley Collieries 1, 2, and three (3) mine sites, and the Hubert town site, which is shown in **Figure 4.2-1 in S7.0-C1** as being located within the Project Rail Loadout. During the archaeological overview assessment phase for the Project, the OW and some House members stated that a cultural trail exists in the vicinity of Tenas Creek (OW 2018).

As noted in the **S7.0-C1**, there are no known sacred areas within the Heritage Resources RSA. However, it remains possible that sacred areas do exist within the Heritage RSA that have not been publicly identified.

An additional cultural site of note is a site known as *Dudii Nai C'en*, located either at Hubert or across the *Wedzin Kwah*/Bulkley River from Hubert. In testimony during *Delgamuukw*, Gisday'wa (Alfred Joseph)

described the site as featuring two (2) totem poles and a gravestone (GovBC 1987, 1988) The most relevant testimony begins on page 1524 (GovBC 1987):

13 Q You have referred to a headstone in your evidence,
14 Mr. Joseph, and you referred to a headstone of your
15 Uncle Thomas George, the former Gisdaywa. Where was
16 that headstone erected?
17 A The first stone was erected at his home.
18 Q And where was that located?
19 A That is at east of Telkwa, place called Hubert.
20 THE COURT: I am sorry, Hubert?
21 MR. RUSH:
22 Q Hubert, yes. And was that stone erected at a place
23 where there were totem poles belonging to the
24 family?
25 A Yes.
26 Q And was there a pole that was belonging to Gisdaywa
27 located there?
28 A Yes.

The testimony continues as follows on page 1525 (British Columbia 1987):

1 Q All right. Have you seen that pole standing and in
2 this location?
3 A Yes.
4 Q And the pole on the left, what is that?
5 A That's the pole of Smogelgem.
6 Q And Smogelgem -- now, my lord, Smogelgem is 60 on
7 the plaintiff's list. Was Tsaibesa in the House of
8 Smogelgem?
9 A Yes.
10 Q Now, I want to show you photograph number five, if
11 you will look at that, please? Do you recognize
12 that scene?
13 A Yes.
14 Q And you have seen this, have you?
15 A Yes.
16 Q And it shows again what appears to be the pole of
17 Gisdaywa on the right?
18 A Yes.
19 Q And the pole of Smogelgem on the left?
20 A Yes.
21 Q And does that picture, does it accurately show what
22 you remember seeing when you saw that scene?
23 A Yes.
24 Q All right. That's at Hubert, is it?
25 A Yes, that's at Hubert.
26 Q Thank you. Are those poles standing today, Mr.

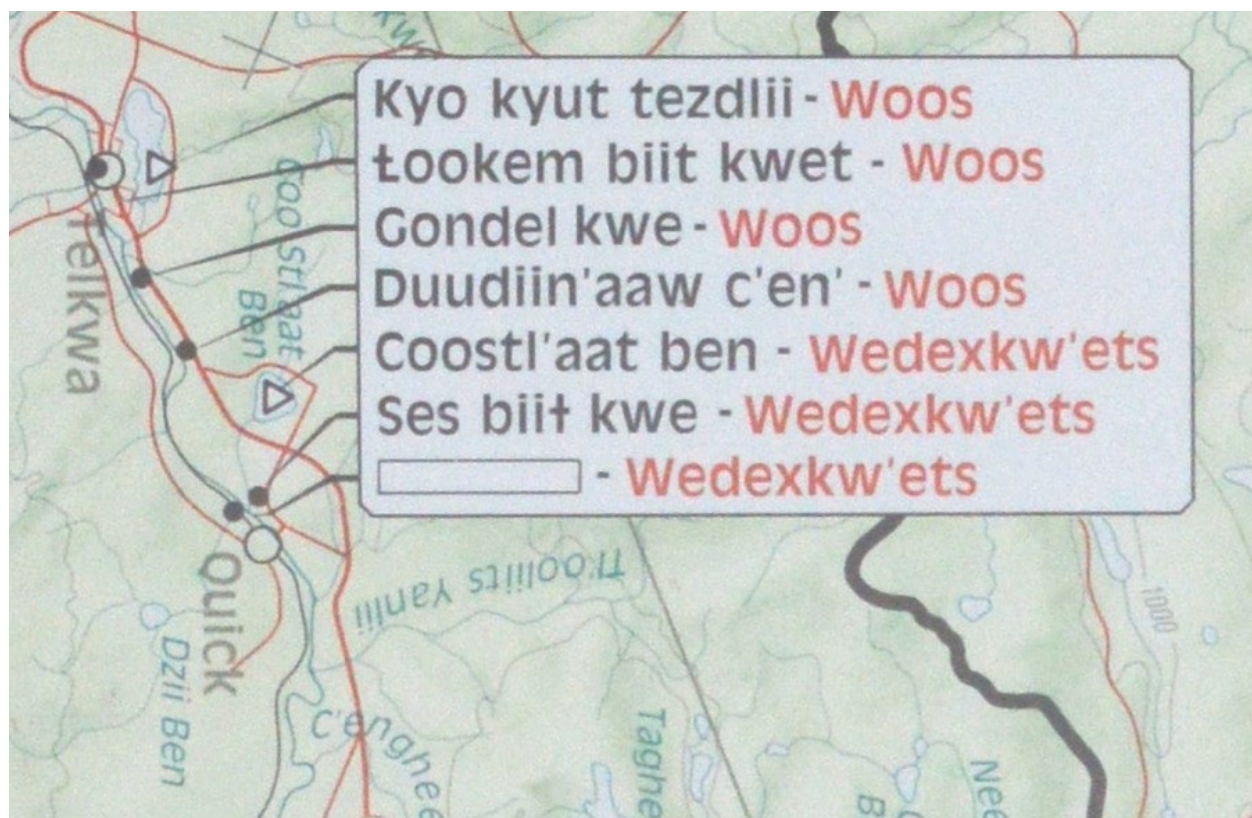
- 27 Joseph?
- 28 A No, they are down.
- 29 Q And are they -- have they fallen to the ground in
- 30 and around the area?
- 31 A Yes.
- 32 Q Are they still there
- 33 A Yes, they are.

And later on page 2145 (GovBC 1988):

- 18 A The reason it's called Esghel, this burl on the ground
- 19 is supposed to have been carved out, hollowed out and
- 20 so it would be lighter. And whenever the house of
- 21 Kaiyexweniits had a feast, that burl was put on the
- 22 back of this man on the bottom of the pole. As if he
- 23 were packing. That's why they call it the pack man.
- 24 Q This is one of the crests of Kaiyexweniits, is it?
- 25 A Yes.
- 26 Q Now, the place where these two poles are located,
- 27 is -- do you know the place, where that is located?
- 28 A Yes.
- 29 Q What is it?
- 30 A It's -- they call it the area right there, where it is
- 31 Dudii nai c'en'.
- 32 Q And that is across from Hubert station?
- 33 A Yes.
- 34 Q And Hubert station is between Quick and Telkwa?
- 35 A Yes.
- 36 Q Thank you.

In mapping produced for the *Delgamuukw* case, to support the plaintiff's evidence, on map 22, "Fishing Sites," (**Appendix 11.0-B**) the site of *Dudii Nai C'en* (spelled "*Duudiin'aaw c'en*") is shown on the east side of the river and is associated with Chief Woos (Cas'Yex house) (Skoda 1987) (**Figure 6.4-1 and 6.4-2**). In the oral testimony however, the site is described at one point as being "at Hubert" (GovBC1987) and later as being "across from Hubert station" (GovBC 1988).

Additional fishing sites identified on the map produced for the *Delgamuukw* case include *Gondel Kwe*, 2.3 km downstream of the Rail Loadout, and *Lookem biit kwet*, 6 km downstream of the Rail Loadout at the confluence of the Bulkley and Telkwa rivers (**Figure 6.4-1 and 6.4-2**).



Note: The map was drawn with east originally at the top and has been rotated 90° to put north at the top.

Figure 6.4-2: Detail from Map 22, "Fishing Sites, tok'k'et " in Skoda 1987

6.4.4 Community Well-being

The existing situation for Wet'suwet'en with regards to Community Well-being is described in **3.3 Unmet Human Needs** through the lens of basic human needs. As described in **3.3 Unmet Human Needs**, human needs with regards the Wet'suwet'en can be articulated as two (2) essential elements. First is a need for "Security" which is understood as a need for structure, predictability, stability, and freedom from fear and anxiety. Within the Indigenous context the need for security is complex. Security is tied to identity and acutely for societies that have been disenfranchised from a prior colonial relationship (Burton 1990).

The second, linked need of "Identity" goes beyond a psychological 'sense of self,' and is defined as a sense of self in relation to the outside world. Identity becomes a problem when one's identity is not recognized as legitimate, or when it is considered inferior or is threatened by others with different identifications (Marker 2003).

The existing situation for Wet'suwet'en poses challenges to both of these needs, including factors such as poverty, inequities of wealth distribution, disparities between values placed on cultural and natural resources, power asymmetries between Indigenous communities and industry as well as Indigenous communities and government, and the negative effects of the *Indian Act*.

6.4.5 Wet'suwet'en Health

Health, in the context of Wet'suwet'en communities, is a multifaceted construct that interconnects with many aspects of their realities and differs from how 'health' is generally understood by Westerners. Quantitative health measures are often not culturally relevant. "Wet'suwet'en have a holistic conceptualization of health with the spirit constituting a dominant force in the physical-mental-spiritual complex. That spirit also interconnects the individual with the family, House/Clan, village, tribe, and the land" (Joseph 1992). Thus, connections with their culture, each other, and their traditional territories are paramount to Wet'suwet'en health and well-being. Harming one of these factors—for example, impeding access to traditional territories and resource use, or disrupting traditional forms of governance—has the potential to harm the wellbeing of Wet'suwet'en communities (Crossroads 2021; **Appendix 11.0-A**).

As illustrated by the Wet'suwet'en Holistic Wellness Conceptual Framework (**Figure 6.4-3**), central to Wet'suwet'en wellness are cultural and community connectedness and the health of Wet'suwet'en territories.



Source: Hagwilneghl, Michell, and Lewis 2018

Figure 6.4-3: Wet'suwet'en Holistic Wellness Conceptual Framework

The five (5) themes depicted in the Framework are:

1. Being Seen/Being Heard (e.g., youth engagement and leadership);
2. *Hiltus* (Strengths) (e.g., the Wet'suwet'en are a land-based people);

3. Spirituality (e.g., rituals and Elder guidance);
4. Sustainable Livelihood (e.g., sustainable resource use), and
5. Social Responsibility (e.g., inclusivity, addressing addictions and other social issues).

Traditional forms of governance such as the feast system is interconnected with Wet'suwet'en health due to how it fosters relationships between clans and houses, as well as stewardship of the land.

Due to the importance of connectedness to the land in Wet'suwet'en culture, the health of the land and waters is integral to health of the people.

Statistical health data on the Wet'suwet'en is generally not available. Data concerning to the Upper Skeena Health Area and Burns Lake Health Area encompasses the Wet'suwet'en but is not specific to Indigenous and non-Indigenous populations, much less to the Wet'suwet'en specifically. One relevant study - the First Nations Food, Nutrition and Environment Study (FNFNES), considers First Nations across Canada. The study reports that the health of many First Nations adults is compromised with very high rates of smoking, obesity (double the obesity rate among Canadians), and with one-fifth of the adult population suffering from diabetes (more than double the national average) (University of Ottawa, Université de Montréal, and Assembly of First Nations 2021).

6.4.5.1 Wet'suwet'en Traditional Food Security

Food security, especially in regard to the availability of and access to traditional foods, is an important factor for Wet'suwet'en Health. The Food and Agricultural Organization of the United Nations (2003) presents the following as a working definition of food security:

“Food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life”.

In Canada and the U.S., the term “food insecurity” is commonly used to describe households and individuals who identify as not having enough income to cover food costs. This section and the related effect assessment focusses on food security primarily in terms of the importance of and availability of traditional foods. Additional aspects of food security are discussed in the sections regarding Wet'suwet'en Community Well-being.

The value of traditional foods goes beyond mere subsistence for Wet'suwet'en and extend to cultural maintenance and intergenerational knowledge transmission, and the practice of governance.

While research data regarding the availability of traditional food and the status of food security specific to Wet'suwet'en are not readily available, the findings of recent research at the provincial (BC) and federal level can reasonably be inferred to be relevant to the experience of Wet'suwet'en community members. The FNFNES, for example, is based on collaborative research with 92 First Nations across Canada. Key findings of the study include that traditional food systems remain foundational to First Nations' health and well-being, having multiple core values for First Nations such as enhanced nutrition and health, food security, ways of knowing and an ongoing connection to land and water. The FNFNES study found that traditional food is generally preferred to store-bought food, of superior nutritional quality, and that its inclusion significantly improves diet quality. The study found that traditional food access does not meet current needs. Over half of adults reported that harvesting traditional food is impacted by industry-related activities, as well as climate change. (University of Ottawa, Université de Montréal, Assembly of First

Nations 2021). In BC 72% of First Nations households experienced a traditional food shortage in the last 12 months and worried about the status of their traditional food supply (Batal et al. 2021).

“Traditional food has key nutritional, cultural, spiritual, and economic values for First Nations peoples and is often more nutrient dense than commercially available ‘market’ or store-bought food replacements. As the proportion of traditional food decreases in the diet of First Nations, there is a risk of a decrease in the nutritional quality of the diet and rise in nutrition-related health problems such as anemia, heart disease, obesity, osteoporosis, cancer, infections, diabetes, and tooth decay” (Kuhnlein and Receveur 1996 in Chan et al. 2019).

“However, due to environmental degradation, socioeconomic, systemic, and regulatory barriers, many First Nations face three to five times the rate of food insecurity than the Canadian population overall. Families with children are affected to an even greater degree” (FNFNES 2022). Almost half of on-reserve First Nations households were food insecure, and the prevalence was higher than that for non-Indigenous households in Canada.

In terms of key traditional foods, salmon is a staple, high quality food for Wet'suwet'en. From the late 1950s, the Moricetown Canyon fishery fulfilled the food, societal, and ceremonial (FSC) needs of the Wet'suwet'en. However, since 2001, sockeye escapements in the Morice and upper Bulkley systems have been so low as to preclude Wet'suwet'en sockeye fishing. Voluntary conservation measures by Wet'suwet'en have imposed hardship on community members (OW 2011).

Resident fish species that are predominant in Wet'suwet'en diet include lake trout, rainbow trout, Dolly Varden, bull trout, kokanee, and whitefish. Other important food fish include steelhead and lamprey (OW 2011).

The main animals the Wet'suwet'en hunt and trap as a food source are moose, deer, and bear. The smaller game the Wet'suwet'en also hunt and trap as a source of food or fur include marmots, beaver, snowshoe hares, muskrats, squirrel, marten, weasel, lynx, groundhogs, and blue grouse (OW 2011).

A diverse array of plant species are used by the Wet'suwet'en for food and medicine. Plant foods include green vegetables, fruits and berries, inner bark—cambium, roots and rhizomes, mushrooms, and a few beverages. Medicines are derived from plant leaves or foliage, roots, and inner barks from a variety of species. Wet'suwet'en used about 60 plants for food most of which are commonly harvested in forest or woodland settings. Berries were the most important plant food (OW 2011).

Appendix B of the **Tenas Project: Cultural Use Study (Appendix 11.0-A)** lists some prominent animal and plant species harvested by the Wet'suwet'en for subsistence and medicinal purpose

In Wet'suwet'en communities, the importance of traditional food resources extends beyond solely subsistence and connects with cultural continuity and governance. For example, the gifting of fish and other foods during *baht'lats* is an important aspect of Wet'suwet'en governance. Wet'suwet'en are concerned that the combined effects of numerous factors—climate change, proposed large scale linear developments (e.g., oil and gas pipelines), and timber harvest—will continue to harm subsistence animal populations and thus, negatively affect their food security, the sustainability of their House territories, and, ultimately, the continuity of their culture (Crossroads 2021).

6.5 Assessment of Potential Effects on Wet'suwet'en Components

The information provided within this subsection includes:

- ▶ identification of potential interactions between the Project and components representing Wet'suwet'en Rights and Interests;
- ▶ an assessment of the potential Project-related effects on Wet'suwet'en Rights and Interests, for each Wet'suwet'en component and subcomponent identified in section 6.1;
- ▶ a summary of mitigation measures to avoid or reduce potential effects on Wet'suwet'en Rights and Interests, as well as identification of opportunities for alignment of interests; and
- ▶ a characterisation of Project residual effects on Wet'suwet'en Rights and Interests after mitigation, including Likelihood, Confidence and Risk, incorporating the findings of the VC chapters in the Application most relevant to Wet'suwet'en interests.

Due to the unique nature of Indigenous rights, the EAC Application makes no determination of the significance of residual effects on Wet'suwet'en Rights and Interests.

The assessment is made from the basis that the entire traditional territory is important to Wet'suwet'en Rights and Interests.

This assessment is conducted through/with the lens of the "Wet'suwet'en world view of *Yintah*, whereby everything is connected to the land. What affects one area will affect others." (OW 2013b).

Detailed descriptions of the existing conditions, potential effects and mitigations for VCs connected to Wet'suwet'en Rights and Interests are provided in **Part B S4.0-S8.0** and are summarized in **Tables 15.1-1 Summary of Proposed Mitigation Measures** and **15.2-1 Summary of Residual Effects** in **S15.0 Conclusion**.

6.5.1 Limitations of this Assessment

This assessment is based on desk-based references, and does not include direct input from Wet'suwet'en, other than that provided by OW through the Working Group, such as comments on VC scoping and the draft AIR. Engagement with Wet'suwet'en has followed the process laid out in the PAA, between TCL and the OW. Outcomes of that process are provided in **9. Consultation and Engagement**.

The existence of site-specific information in publicly available literature regarding Wet'suwet'en land use, heritage and other values in the Project Area is limited. Hence, other than a few exceptions, it is generally not possible for the assessment to discuss Project effects at a site-specific level.

6.5.2 Potential Project-related Interactions with Wet'suwet'en Rights and Interests

The purpose of this subsection is to identify potential interactions between environmental and social changes caused by the Project and components reflecting Wet'suwet'en Rights and Interests. Potential interactions are identified in **Table 6.5-2**, using the terms provided in **Table 6.5-1**.

Interactions expected to result in potential effects on components reflecting Wet'suwet'en Rights and Interests are discussed further in **6.5.3 Potential Effects**.

Table 6.5-1: Potential for Interaction between the Wet'suwet'en Components and the Tenas Project

Term	Definition
No Interaction	Project activity will not interact with the component, no effect is expected; no further consideration is warranted.
Interaction	Interaction between the Project activity and Wet'suwet'en components may have a substantive influence on the short- or long-term integrity of the component. The potential effect(s) of the interaction is considered further in the effects assessment.

Notes: Project=Tenas Project

For the component **Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal Right of Title**, the interaction will occur, and the associated effect will manifest at the overall Project phase level (i.e., Construction, Operation, Decommissioning and Reclamation, and Post-closure phases), rather than with respect to a particular Project activity. This is because the aspects of the Project that will interact with Wet'suwet'en governance are associated with collective rather than specific Project activities. Further, because the Wet'suwet'en governance system of *Anuk Nu'at'en* forms the basis of Wet'suwet'en claims to Section 35, Aboriginal rights and right of title.

Table 6.5-2: Interactions between Components reflecting Wet'suwet'en Rights and Interests and the Tenas Project

Project Activities	Wet'suwet'en Rights and Interests Components and Subcomponents					
	Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal Right of Title	Current Land Use and Resource Harvesting	Intangible Cultural Heritage	Physical Cultural Heritage	Community Well-being	Wet'suwet'en Health
Construction						
Transportation of equipment, materials, and personnel	X	X	X		X	X
Site clearing (surveying, clearing, grubbing, soil salvaging)	X	X	X	X	X	X
Construction of Surface Water Management Infrastructure, including channels and ponds (sedimentation, control, management, storage)	X	X	X	X	X	X
Construction of Bypass Road and quarries from the Minesite to the Rail Infrastructure	X	X	X	X	X	X
Improvements to existing private road and Forest Service Roads	X	X	X	X	X	X
Construction of haul roads and service roads within the Minesite	X	X	X	X	X	X
Construction of the permanent Goathorn Bridge Crossing over Goathorn Creek	X	X	X	X	X	X
Construction of the Coal Processing Plant	X	X	X	X	X	X
Construction of fuel and lubricant storage facilities and distribution network	X	X	X	X	X	X
Construction of administration buildings (first aid, maintenance, mine dry, warehouse, laboratory, parking, and vehicle wash facilities)	X	X	X	X	X	X
Construction of a 25 kilovolt (kV) powerline and a 600 volt (V) substation adjacent to the Coal Processing Plant	X	X	X	X	X	X
Construction of Rail Infrastructure including Rail Loop and Loadout connecting to the existing main Canadian National Railway line	X	X	X	X	X	X

Project Activities	Wet'suwet'en Rights and Interests Components and Subcomponents					
	Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal Right of Title	Current Land Use and Resource Harvesting	Intangible Cultural Heritage	Physical Cultural Heritage	Community Well-being	Wet'suwet'en Health
Installation of water supply wells, storage, and distribution system	X	X	X	X	X	X
Construction of the water discharge infrastructure	X	X	X	X	X	X
Construction of storage piles for overburden, rock separated from coal in Coal Processing Plant, and stockpiles for topsoil and vegetation management	X	X	X	X	X	X
Construction of material handling systems for Minesite, including run-of-mine coal, processed coal, process rock conveyors, and stockpiles	X	X	X	X	X	X
Construction of solid waste management systems including recycling and composting facilities	X	X	X	X	X	X
Construction of Explosives Magazine (storage building)	X	X	X	X	X	X
Employment and labour	X				X	X
Operation						
Mining the open pit (soil salvaging, drilling, and blasting, excavation of material, dewatering, loading, hauling, unloading)	X	X	X	X	X	X
Operation of Surface Water Management Infrastructure including channels and ponds (sedimentation, control, management, storage)	X	X	X	X	X	X
Maintain and use Bypass Road and quarries from the Minesite to the Rail Infrastructure	X	X	X	X	X	X
Maintain improved private and Forest Service Roads	X	X	X	X	X	X
Maintain haul roads within the Minesite, including service roads	X	X	X	X	X	X
Maintain permanent bridge over Goathorn Creek	X	X	X	X	X	X
Operate Coal Processing Plant	X	X	X		X	X

Project Activities	Wet'suwet'en Rights and Interests Components and Subcomponents					
	Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal Right of Title	Current Land Use and Resource Harvesting	Intangible Cultural Heritage	Physical Cultural Heritage	Community Well-being	Wet'suwet'en Health
Maintain fuel and lubricant storage facilities	X	X			X	X
Maintain administration buildings (first aid, maintenance, mine dry, warehouse, laboratory, and vehicle wash facilities)	X				X	X
Maintain 25 kV powerline and a 600 V substation adjacent to the Coal Processing Plant	X		X	X	X	X
Transportation of equipment, materials, and personnel	X	X	X		X	X
Maintain and use Rail Infrastructure including Rail Loop and Loadout connecting to the existing main Canadian National Railway line	X	X	X	X	X	X
Operate water supply wells, storage, and distribution system	X	X	X	X	X	X
Operate the water discharge infrastructure	X	X	X	X	X	X
Maintain storage piles for overburden, rock separated from coal in Coal Processing Plant, and stockpiles for topsoil and vegetation management	X	X	X	X	X	X
Operate material handling systems for Minesite, including run-of-mine coal, processed coal, process rock conveyors, and stockpiles	X	X	X	X	X	X
Operate solid waste management systems including recycling and composting facilities	X	X			X	X
Maintain Explosives Magazine (storage building)	X				X	X
Progressive reclamation	X	X	X	X	X	X
Employment and labour	X				X	
Decommissioning and Reclamation						
Dismantle and remove mining equipment and facilities (including powerline, Rail Infrastructure)	X	X	X	X	X	X
Transportation of equipment, materials, and personnel	X	X	X		X	X

Project Activities	Wet'suwet'en Rights and Interests Components and Subcomponents					
	Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal Right of Title	Current Land Use and Resource Harvesting	Intangible Cultural Heritage	Physical Cultural Heritage	Community Well-being	Wet'suwet'en Health
Reclamation and closure activities at Minesite	X	X	X	X	X	X
Reclamation and closure of Bypass Road and haul roads, including quarries	X	X	X	X	X	X
Reclamation and closure of permanent bridge over Goathorn Creek	X	X	X	X	X	X
Reclamation and closure of powerlines	X	X	X	X	X	X
Reclamation and closure of Rail Infrastructure	X	X	X	X	X	X
Implement post-mining systems and monitoring	X	X	X		X	X
Employment and labour	X				X	
Post-closure						
Maintain post-mining systems and ongoing monitoring	X	X	X		X	X
Transportation of equipment, materials, and personnel	X	X	X		X	X
Employment and labour	X				X	

Notes:

Interaction (X): Interaction between the Project activity and the component may have a substantive influence on the short- or long-term integrity of the component. The potential effect(s) of the interaction is considered further in the effects assessment.

No interaction (blank cell): Project activity will not interact with the component; no effect is expected; no further consideration is warranted.

6.5.3 Potential Effects

In this subsection the potential Project-related effects are described for each component and subcomponent representing Wet'suwet'en Rights and Interests.

6.5.3.1 *Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal Right of Title*

As described in this section, two potential effects are identified with regards to the Wet'suwet'en system of governance, *Anuk Nu'at'en*, and Aboriginal right of title:

- ▶ change in ability to fulfill fiduciary obligations to the *Yintah* and to future generations of Wet'suwet'en; and
- ▶ change in integrity of Section 35 Aboriginal right of title.

6.5.3.1.1 *Change in Ability to Fulfill Fiduciary Obligations to the Yintah and to Future Generations of Wet'suwet'en*

Although the Wet'suwet'en traditional governance system of *Anuk Nu'at'en* falls outside of common perceptions of Indigenous governance per the *Indian Act*, this system has been recognized by the Supreme Court of Canada in *Delgamuukw*, inclusive that Aboriginal title is an ancestral right protected under the Section 35 of the *Constitution Act*. Section 35 explicitly recognizes and affirms the existing Aboriginal and treaty rights of the Aboriginal peoples of Canada. The term "Aboriginal peoples of Canada" includes the First Nation, Inuit and Métis peoples of Canada and does not distinguish between traditional governance regimes and *Indian Act*, Elected Band Councils as Aboriginal rights, including right of title are held collectively. The nature of these *sui generis* rights also implies a fiduciary relationship to the land and that is intergenerational.

The Wet'suwet'en system of governance, as described in **3. Known Wet'suwet'en Interests**, is also a fiduciary relationship between those who hold hereditary title over house territories and the *Yintah* generally. This fiduciary obligation is also intergenerational and maintained through the passing down of hereditary title to individuals who are then charged with upholding those obligations.

The nature of these fiduciary obligations means that any agreements concerning new projects that offer an exchange of cash payments and/or jobs for providing consent to projects within the *Yintah*, but do not include Wet'suwet'en leadership at the Project governance level equate to a loss of control over the wellbeing of their territories, those who live within them and including a loss of control over their inherent right to Aboriginal title, to which Wet'suwet'en Hereditary Chiefs also hold fiduciary obligations to protect. Essentially, the absence of effective Wet'suwet'en participation in the governance of the Project, would disable the Wet'suwet'en Hereditary Chiefs in meeting their fiduciary obligations to the lands in which the project will be operating, as well as to future generations of Wet'suwet'en. This effect would apply throughout each phase of the Project (Construction, Operations, Decommissioning and Reclamation, Post-closure phases).

6.5.3.1.2 *Change in Integrity of Section 35 Aboriginal Right of Title*

Notwithstanding the permanence of Aboriginal rights and title according to the Section 35 relative to new provincial legislation; while implementation of Bill 41 is developed, and Wet'suwet'en negotiations with provincial and federal governments concerning rights and title continue; Wet'suwet'en "consent" to any new projects without addressing the need for integral Wet'suwet'en participation in project governance, would severely affect Wet'suwet'en rights and their claim to the right of title.

The elements for meeting the standard of Aboriginal title as was articulated in *Tsilhqot'in* are that it applies to land under Aboriginal occupation prior to sovereignty, and that “it must be sufficient, it must be continuous (where present occupation is relied on); and it must be exclusive.” (GovCan 2014a). Further, Aboriginal title can only be established by court order or by agreement between the group concerned and the Crown, while also constituting “an independent legal interest, which gives rise to a fiduciary duty on the part of the Crown.” (GovCan 2014b). The land cannot “be developed or misused in a way that would substantially deprive future generations of the benefit of the land” (GovCan 2014c). And finally, it restricts governments from legislating “in a way that results in a meaningful diminution of an Aboriginal or treaty right unless such an infringement is justified in the broader public interest and is consistent with the Crown’s fiduciary duty owed to the Aboriginal group” (GovCan 2014d).

Tsilhqot'in is significant with regards Wet'suwet'en Interests as Wet'suwet'en leadership is, since May 14, 2020, engaged in a negotiation with both the Governments of BC and Canada over Aboriginal rights and title. A negotiation resulting from a severe conflict in which the Wet'suwet'en Hereditary Chiefs strongly asserted their opposition to the development of the Coastal GasLink liquid natural gas (LNG) pipeline project. A conflict that has, in several instances, divided the communities of the *Yintah* and been a source of considerable suffering for people in the region. An understanding of the issues that are principal to these negotiations must be considered prominently when evaluating the proposed project. Particularly with regards to the preservation of Wet'suwet'en rights and their right of title to territory.

Tsilhqot'in is significant in a second respect as it follows closely deliberations made by the Supreme Court of Canada during *Delgamuukw*. *Delgamuukw* now forms an integral and ever-present part of the cultural lexicon of Northern BC and concerned the very Wet'suwet'en Nation being considered here. The most salient of these deliberations and that informed decisions at *Tsilhqot'in* concerns the issue of title as it relates to the continuity of Indigenous people's relationship to the territory.

The Wet'suwet'en have been communicating their conceptualization of the Wet'suwet'en continuity of their relationship to their territory for many decades, or at the very least beginning in the 1970's when the *Gitksan*-Carrier Tribal Council was formed—later renamed the *Gitksan*–Wet'suwet'en Tribal Council - who sent their first official joint land claim declaration to the government in 1977. Then in 1984, 51 *Gitksan* and Wet'suwet'en Hereditary Chiefs made a formal statement of claim against the Province of BC, a case then filed as *Delgamuukw & Gisday Wa*, and what is now discussed as *Delgamuukw*.

The Delgamuukw & Gisday'wa, case marked the first-time oral traditions were used as admissible evidence in support of Indigenous rights and interests. In addition, the Supreme Court ruling affirmed the constitutional right of Aboriginal title under *Section 35(1) in the Constitution Act, 1982* (Mills 2005, Mills 2008), as well as acknowledged the existing claim that the Wet'suwet'en and Gitksan had to unceded traditional territories. The transcripts *Delgamuukw* have provided exhaustive evidence, including extensive testimonials concerning “pre-sovereign occupation”, “continuity of occupation,” and “exclusive occupancy.” Included in this enormous body of evidence are “uses of land” as well as “cultural relationships with the land.” The *Delgamuukw* transcripts are a 369 volume transcript consisting of 67 volumes bound in black buckram with gold lettering and shelved on the top floor of the University of British Columbia (UBC) Law Library at KEB529.5.L3 B757.

Delgamuukw, however, articulated a limitation on that title. Limitations which frame why Aboriginal title is defined as *sui generis*. According to the Justices at *Delgamuukw*, and later supported by those at *Tsilhqot'in*, Indigenous peoples cannot do anything with the land to which Aboriginal title is claimed that is inconsistent with how they use the land or impair the ability of future generations to use the land at the time Aboriginal title was crystalized. Essentially, the land belongs to the current generation as well as future generations, which in turn implies a fiduciary obligation on the generation making the claim.

The following excerpt from *Delgamuukw* spells out the nature of this fiduciary obligation:

"128 Accordingly, in my view, lands subject to aboriginal title cannot be put to such uses as may be irreconcilable with the nature of the occupation of that land and the relationship that the particular group has had with the land which together have given rise to aboriginal title in the first place. As discussed below, one of the critical elements in the determination of whether a particular aboriginal group has aboriginal title to certain lands is the matter of the occupancy of those lands. Occupancy is determined by reference to the activities that have taken place on the land and the uses to which the land has been put by the particular group. If lands are so occupied, there will exist a special bond between the group and the land in question such that the land will be part of the definition of the group's distinctive culture. It seems to me that these elements of aboriginal title create an inherent limitation on the uses to which the land, over which such title exists, may be put. For example, if occupation is established with reference to the use of the land as a hunting ground, then the group that successfully claims aboriginal title to that land may not use it in such a fashion as to destroy its value for such a use (e.g., by strip mining it). Similarly, if a group claims a special bond with the land because of its ceremonial or cultural significance, it may not use the land in such a way as to destroy that relationship (e.g., by developing it in such a way that the bond is destroyed, perhaps by turning it into a parking lot)" (GovBC 1997).

Importantly, *Delgamuukw* does make provisions for an evolved relationship with territories, so as to not preclude Indigenous peoples from fully benefiting from that title:

"Per Lamer C.J. and Cory, McLachlin and Major JJ.: Aboriginal title encompasses the right to exclusive use and occupation of the land held pursuant to that title for a variety of purposes, which need not be aspects of those aboriginal practices, customs and traditions which are integral to distinctive aboriginal cultures. The protected uses must not be irreconcilable with the nature of the group's attachment to that land.

Aboriginal title is sui generis, and so distinguished from other proprietary interests, and characterized by several dimensions. It is inalienable and cannot be transferred, sold or surrendered to anyone other than the Crown. Another dimension of aboriginal title is its sources: its recognition by the Royal Proclamation, 1763 and the relationship between the common law which recognizes occupation as proof of possession and systems of aboriginal law pre-existing assertion of British sovereignty. Finally, aboriginal title is held communally.

The exclusive right to use the land is not restricted to the right to engage in activities which are aspects of aboriginal practices, customs and traditions integral to the claimant group's distinctive aboriginal culture. Canadian jurisprudence on aboriginal title frames the "right to occupy and possess" in broad terms and, significantly, is not qualified by the restriction that use be tied to practice, custom or tradition. The nature of the Indian interest in reserve land which has been found to be the same as the interest in tribal lands is very broad and incorporates present day needs. Finally, aboriginal title encompasses mineral rights and lands held pursuant to aboriginal title should be capable of exploitation. Such a use is certainly not a traditional one (GovBC 1997).

The idea of Aboriginal fiduciary obligations as proof of title Wet'suwet'en governance through their traditional system of *Anuk Nu'at'en* is one that most perceptively frames the Wet'suwet'en primary interest as preserving the integrity of their title claim. A claim that is being actively negotiated now under the MOU, As agreed on February 29, 2020 (GovCan et al. 2020). The fiduciary duty conscribed under *Anuk Nu'at'en* also works in concert and within a positive feedback loop with how Aboriginal rights and title are understood under the Section 35 of the *Constitution Act*, and through clarifications articulated at *Delgamuukw*.

This feedback loop has three (3) elements; First, as a fiduciary to the *Yintah*, Wet'suwet'en hereditary title holders are duty bound to act in the best interests of the *Yintah*, which includes water, wildlife, plants, fish, and heritage. Second, this fiduciary duty naturally extends to preservation of Wet'suwet'en rights, and specifically the right to title, under Section 35 of the *Constitution Act*. As *Delgamuukw* has articulated, that same duty of preserving the land is also in function of preserving the bond between Wet'suwet'en people and the land. To quote *Delgamuukw* again on this point specifically:

"If lands are so occupied, there will exist a special bond between the group and the land in question such that the land will be part of the definition of the group's distinctive culture. It seems to me that these elements of aboriginal title create an inherent limitation on the uses to which the land, over which such title exists, may be put... it may not use the land in such a way as to destroy that relationship... in such a way that the bond is destroyed..."
(GovBC1997).

The following focused systems map (**Figure 6.5-1**) illustrates how Wet'suwet'en fiduciary obligations to the *Yintah* and Aboriginal title over the *Yintah* are reinforced by the federal Crown's fiduciary obligations to Aboriginal peoples and their interests.

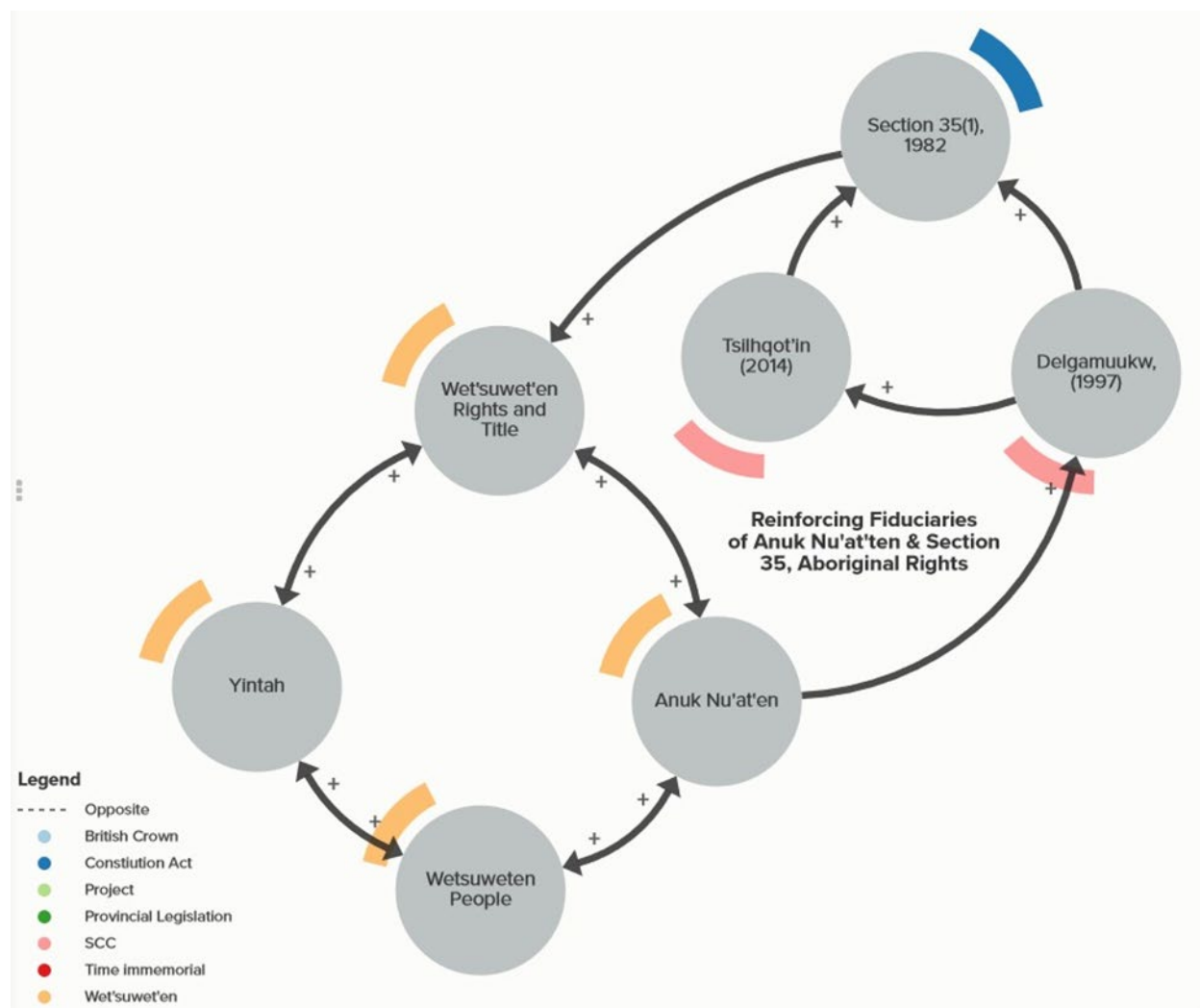


Figure 6.5-1: Focused Systems view of Synchronous Fiduciaries of Anuk Nu'at'en within Section 35, Aboriginal rights and right of title

The third and important reinforcing element of this positive feedback loop of fiduciary obligations is the special “fiduciary relationship” that exists between the federal Crown and the Wet'suwet'en peoples for protection of those rights also described in *Delgamuukw*:

166 The manner in which the [federal] fiduciary duty operates with respect to the second stage of the justification test -- both with respect to the standard of scrutiny and the particular form that the fiduciary duty will take -- will be a function of the nature of aboriginal title. Three aspects of aboriginal title are relevant here. First, aboriginal title encompasses the right to exclusive use and occupation of land; second, aboriginal title encompasses the right to choose to what uses land can be put, subject to the ultimate limit that those uses cannot destroy the ability of the land to sustain future generations of aboriginal peoples; and third, that lands held pursuant to aboriginal title have an inescapable economic component (GovBC 1997).

Three fiduciary obligations together, reinforce one another and create a system wherein Hereditary Chiefs and the federal government must always act in the best interests of one another, the *Yintah* and the future communities of Wet'suwet'en who will continue to inhabit and govern the *Yintah*. These obligations are the Wet'suwet'en connection to the land and clarifications at *Delgamuukw* about how a community's connection with the land is to be understood are also described:

“Per Lamer C.J. and Cory, McLachlin and Major JJ.: If present occupation is relied on as proof of occupation pre-sovereignty, there must be a continuity between present and pre-sovereignty occupation. Since conclusive evidence of pre-sovereignty occupation may be difficult, an aboriginal community may provide evidence of present occupation as proof of pre-sovereignty occupation in support of a claim to aboriginal title. An unbroken chain of continuity need not be established between present and prior occupation. The fact that the nature of occupation has changed would not ordinarily preclude a claim for aboriginal title, as long as a substantial connection between the people and the land is maintained. The only limitation on this principle might be that the land not be used in ways which are inconsistent with continued use by future generations of aboriginals” (GovCan 1997).

The “unbroken chain of continuity” for the Wet'suwet'en is their governance system of *Anuk Nu'at'en* and forms the basis of Wet'suwet'en claims to Section 35, Aboriginal rights and right of title. The fiduciary relationship of *Anuk Nu'at'en* with House territories, in theory, works synchronously and in concert with Aboriginal rights and the right of title, provided that each element is able to reinforce the other in preservation of those rights. Because Section 35, Aboriginal rights and right of title are considered *sui generis* and held collectively, the Wet'suwet'en are also held to specific standards in order for a court or agreement with the Crown to establish the Aboriginal right of title; Negotiations for which are presently underway.

Tsilhqot'in Nation v. British Columbia [2014] further outlines that, once established, Aboriginal title constitutes an “independent legal interest, which gives rise to a fiduciary duty on the part of the Crown.” Such title confers rights akin to fee simple—occupancy, enjoyment of economic benefits, control over use and management — but subject to a major restriction in that the title is a collective one, so that the land cannot “be developed or misused in a way that would substantially deprive future generations of the benefit of the land.” (Swain and Baillie 2015).

That the Wet'suwet'en will be held to such unique and specific standards with regards to Aboriginal rights and right of title, also implies unique responsibilities and risks that would potentially negate Wet'suwet'en claims should the Wet'suwet'en consent to a project without having met the unique legal standards in a manner that is consistent with the basis of Wet'suwet'en claims to Aboriginal right of title. The following systems map illustrates such a potential effect (**Figure 6.5-2**).

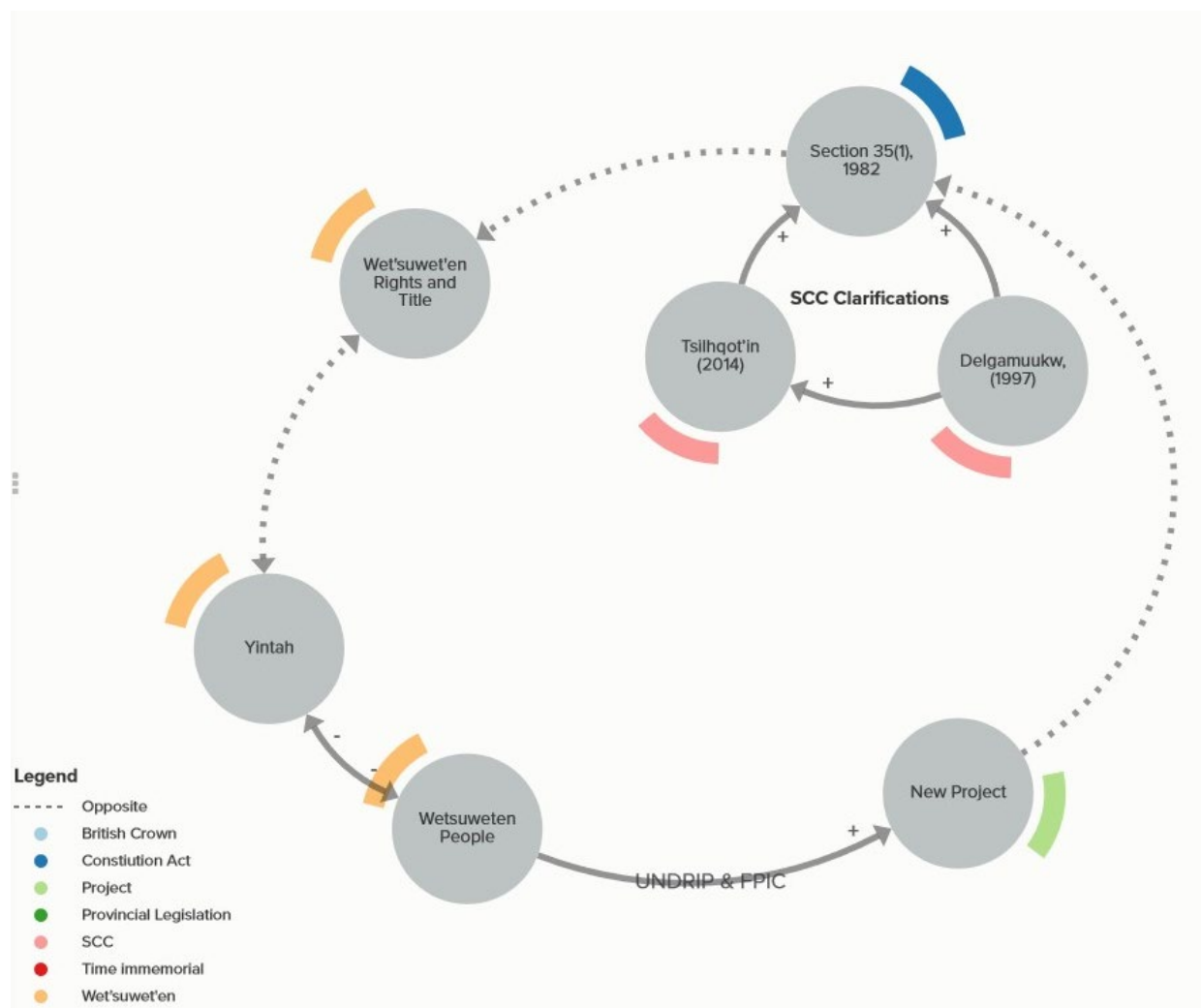


Figure 6.5-2: Systems view of potential effects of a new project on the integrity of Wet'suwet'en Section 35, Aboriginal rights and right of title in the absence of collaborative governance

The following quote from the Supreme Court of Canada justices at *Tsilhqot'in*, 2014 highlights the importance of taking due care to preserve the Aboriginal interest of title, especially considering that the Wet'suwet'en are currently in negotiations with the governments of BC and Canada concerning Aboriginal rights and title in accordance with their system of governance:

"At the claims stage, prior to establishment of Aboriginal title, the Crown owes a good faith duty to consult with the group concerned and, if appropriate, accommodate its interests. As the claim strength increases, the required level of consultation and accommodation correspondingly increases. Where a claim is particularly strong—for example, shortly before a court declaration of title—appropriate care must be taken to preserve the Aboriginal interest pending final resolution of the claim" (GovCan 2014).

6.5.3.2 *Current Land Use and Resource Harvesting*

Given the dynamic Wet'suwet'en relationship with the *Yintah* and the interconnectedness of aspects of the environment, there are widespread interactions of Project-related effects among the environmental values. Effects on one (1) aspect of the environment interact with others, and ultimately have potential to alter the Wet'suwet'en relationship with the environment, including current land use and resource harvesting practices.

Three potential effects are predicted and assessed in relation to Wet'suwet'en Current Land Use and Resource Harvesting:

- ▶ change in abundance or quality of wildlife, fish, and plant/vegetation resources;
- ▶ change in the utility of lands and waters for Wet'suwet'en land use and resource harvesting; and
- ▶ change in Wet'suwet'en access to territory for land use and resource harvesting.

6.5.3.2.1 *Change in Abundance or Quality of Wildlife, Fish and Plant/Vegetation Resources*

The abundance and quality of wildlife, fish and vegetation resources is integral to Wet'suwet'en cultural practices and to the meaningful exercise of Wet'suwet'en harvesting rights. Potential Project effects to these resources in turn affect Wet'suwet'en land use and resource harvesting. Potential effects for each respective group (wildlife, fish, and plants/vegetation) are described below. Effects on Wet'suwet'en Health of changes in the quality of resources, considering Project-related contaminants, is discussed **6.5.3.5** and **6.7.6** in the Wet'suwet'en Health component.

6.5.3.2.1.1 *Changes to Wet'suwet'en Wildlife Resources*

As highlighted in the Project's effects assessment of the **Wildlife VC (S4.0-C8)** and **Avian VC (S4.0-C9)** VC's, potential effects to Wet'suwet'en wildlife resource use and harvesting include:

- ▶ alteration and/or loss of habitat;
- ▶ change in mortality; and
- ▶ change in movement patterns.

Wildlife habitat alteration and loss is expected to occur during Project phases. While most of the Project effects are expected to occur during the Construction Phase, effects will extend through Project phases at both local and regional spatial scales until Project activities decrease, Project components are removed, and disturbed habitat is revegetated and starts to provide suitable habitat. Alteration and loss of habitat may result from site clearing, soil salvaging and stockpiling, grading and the building of new infrastructure, and may lead to potential effects to wildlife within the Wet'suwet'en territorial landscape.

Project-related habitat alteration risks to wildlife habitat can be attributed to displacement, increased wildlife vigilance and the threat of contamination from dust, spills, metal leaching (ML) and ARD or other hazardous materials on both the landscape and aquatic habitat environments. Edge effects can also affect wildlife and may result in lower occupancy or use, reduced survival and lower reproductive success.

Potential Project effects to wildlife quantity (i.e., population abundance and distribution) may result from change in mortality due to loss of habitat, collisions (i.e., with vehicles, trains, equipment, and Project components), changes in animal health, sensory disturbances (e.g., vehicle traffic, dust deposition, or human presence) and changes in predator-prey dynamics.

Further Project effects to wildlife include the influences on wildlife movement on the landscape. Changes in movement patterns may affect the ability of wildlife to interact (e.g., breed, aggregate, access food, and escape predators) and may result in changes to population abundance and distribution. Project-related changes to habitat connectivity may also affect wildlife movement patterns.

The combination of habitat alteration and loss, wildlife mortality and changes in movement patterns may affect the abundance and quality of wildlife resources on the Wet'suwet'en landscape and have potential effects on the Wet'suwet'en's ability to exercise their land use and harvesting rights, and associated cultural practices, teaching and activities.

6.5.3.2.1.2 Changes to Wet'suwet'en Fish and Fish Habitat Resources

As described in the **Fish and Fish Habitat VC (S4.0-C6)**, potential effects to fish and fish habitat are:

- ▶ change in fish habitat associated with changes in habitat structure and cover, sediment concentrations, water temperature, food and nutrient concentrations, contaminant concentrations, baseflows and migration and access to habitats. Effects include changes to the areal extent of available fish habitat due to the destruction or alteration of fish habitat, changes in baseflows, degradation of water quality, or creation of barriers to fish passage; and
- ▶ change in fish health – change in fish health, abundance, or the condition due to direct effects, stranding, or degradation of water quality.

Potential effects to fish and fish habitat will be seen across phases of the Project, with increased effects in the Construction and Operation phases, which may cause alterations to the aquatic landscapes and fish habitat. Phases of the Project may pose a risk of discharge or seepage of mine water containing metals and other constituents into fish-bearing watercourses. These discharges have the potential to affect water quality and aquatic life through toxic effects or by altering conditions for growth for aquatic organisms (refer to **S4.0-C6**).

The heightened risks of change to fish from habitat alteration/loss of habitat, and potential changes to water quality have potential long- lasting effects on the Wet'suwet'en ability to harvest fish resources and/or confidence in their safety for human consumption.

6.5.3.2.1.3 Changes to Wet'suwet'en Plant and Vegetation Resources

As highlighted in the **Vegetation VC (S4.0-C7)**, potential effects to Vegetation, and hence also to Wet'suwet'en vegetation use and harvesting include:

- ▶ alteration/loss of vegetation, ecosystems, and wetlands; and
- ▶ deposition of trace metals and/or dust on plants and soil, which can result in uptake by plants.

The accessibility, quantity and quality of plant resources may be negatively affected in phases of the Project. Specifically, during the Construction Phase, and early in the Operation Phase, land clearing and grubbing are anticipated to result in the greatest contribution to loss of vegetation. Throughout Project phases, there may be an increased risk of the deposition of contaminants on plants, thus causing barriers to safe harvesting of plants for Wet'suwet'en consumptive and non-consumptive uses (discussed further in **Human Health VC S8.0-C1** and the discussion of effects to the Wet'suwet'en Health component in **6.5.3.5**, and **6.7.6**).

Project effects to plant/vegetation quality and abundance have potential lasting effects on the Wet'suwet'en's ability to practice and participate in the harvesting and use and vital plant resources.

6.5.3.2.2 Change in the Utility Of Lands and Waters for Wet'suwet'en Land Use and Resource Harvesting

In order for Wet'suwet'en to be able to meaningfully exercise their land use and resource harvesting rights, the land and waters of the territory need to be in a healthy condition.

Potential effects on the utility of lands and waters for Wet'suwet'en land use and resource harvesting are outlined across many of the Project's VC effects assessments including: **Atmospheric Environment VC (S4.0-C1)**, **Terrain and Soils VC (S4.0-C2)**, **Surface Water VC (S4.0-C3)**, **Groundwater VC (S4.0-C4)**, **Aquatic Resources VC (S4.0-C5)**, **Fish and Fish Habitat VC (S4.0-C6)**, **Vegetation VC (S4.0-C7)**, and **Wildlife VC (S4.0-C8)**. Potential effects include:

- ▶ alteration and/or loss of habitat/terrain/soils (**S4.0-C6, S4.0-C7, S4.0-C7, S4.0-C8**);
- ▶ change in fish and wildlife health/mortality (**S4.0-C8, S4.0-C6**);
- ▶ change in fish and wildlife movement patterns (**S4.0-C8, S4.0-C6**);
- ▶ deposition of trace metals and risk of contamination of plants, water, and soil (**S4.0-C1 through S4.0-C8**).

The utility of lands and waters for Wet'suwet'en land use and resource harvesting is potentially affected in phases of the Project. During the Construction, and Operation phases, the key effects on landscape utility may result from the alteration and loss of habitat, and changes to terrain and soils. Alteration of the landscape through site clearing and subsequent construction may have widespread effects to the functionality of the landscape for cultural and subsistence activities.

The Construction, and Operation phases may also cause changes in fish and wildlife health, mortality, and movement patterns. These effects may cause detrimental effects to the population integrity of several species of Wet'suwet'en interest. These effects could occur through the heightened risk of entrapment, attractants, collisions, and contaminants, with the ultimate result of increased mortality. Changes in the population quantity and quality of various species could result in alteration of wildlife movement patterns and the fragmentation of habitat. These direct and indirect effects to fish and wildlife may hinder the Wet'suwet'en's ability to utilize important resources on their landscape.

Finally, increased risks to the contamination of plants, water, and soil may have effects throughout phases of the Project. The deposition of trace metals, as well as the increase of CACs, may result in the deposition of contaminants through leaching, spills, dust and other ambient pollutants. These risks could have direct effects on the quality of wildlife, water quality, integrity of fish and fish habitat and quality of plants and vegetation.

The potential effects listed above will also be found in the remaining three phases of the Project. Several VC chapters state that severity of effects may lessen in the latter phases of the Project. Conversely, it is not guaranteed that the environment and its dynamic components will fully recover, regardless of reclamation efforts.

As noted in the **Land and Resource Use VC (S6.0-C4)**, Project-generated noise, air emissions and changes to visual quality may contribute to a sensory disturbance to land users, including Wet'suwet'en, during the Project phases of Construction, Operation, Decommissioning and Reclamation. More information is available in **S6.0-C2 Visual Resources VC** and **S4.0-C1 Atmospheric Environment VC** of the **EAC Application**.

Increases in the presence of people (workers and public) associated with the Project activities and access changes may also affect the utility of lands for Wet'suwet'en.

The potential effects described above have implications for the health Wet'suwet'en lands and waters, and hence their utility for sustenance and cultural practice, teaching and cultural continuity for both current and future generations.

6.5.3.2.3 Change in Wet'suwet'en Access to Territory for Land Use and Resource Harvesting

The Project may affect Wet'suwet'en access to and mobility within portions of *Cos'et Bin* and *C'inilh K'it* House territories (**Figure 6.3-1**) through Project-related access restrictions. As described in the **Land and Resource Use VC** chapter (**S6.0-C4**), for public and worker safety, a "No Unauthorized Entry, Hunting, and Fishing" boundary will be established at the outset of the Construction Phase around the Project Area to prevent unauthorized access for the life of the Project following the *Mines Act*, RSBC 1996, c 293 (GovBC 1996c), and *Land Act*, RSBC 1996, c 245 (GovBC 1996b) requirements. As noted in **6.3.1 Spatial Boundaries**, the Project Area is defined as the area where ground-disturbance and Project activities will occur, and within which the Project will be constructed and operated, including the Minesite and access routes - approximately 1,853 ha in total.

Other than for Minesite workers, there will be no access to the Minesite, Bypass Road, Rail Loop, and Rail Loadout areas. During the Post-closure Phase, access to some areas that were removed from use during active Project phases will be restored.

The access restrictions will affect some current trails (motorized and non-motorized use) and access points that fall within the Project Area. An existing access trail on the west side of Goathorn Creek can be used as an alternate access trail to Hunter Basin and other recreational sites. While a portion of this trail that turns west towards the Project Area will be blocked off by a physical berm, TCL will improve the existing trail by trimming overgrown vegetation.

A permanent bridge over Goathorn Creek will be constructed to accommodate trucks travelling to and from the Minesite. A previous bridge built over Goathorn Creek was washed out in 2013. The new bridge will change how areas on the west side of Goathorn Creek are accessed and potentially improve access for Wet'suwet'en (as well as for commercial and recreational land users) to surroundings areas such as Hunter Basin, Webster Lake, and the Hankin Plateau trailhead.

During the Post-closure Phase, continued maintenance of post-mining systems and ongoing monitoring implemented initiated during the Decommissioning and Reclamation Phase may affect access to some areas, including mine pits and monitoring stations. Access to some areas that were removed from use during active Project phases will be restored during the Post-closure Phase.

Limiting Wet'suwet'en access to portions of their traditional lands can lead to a multitude of effects including a reduced ability to gather or hunt important resources required for sustenance and the continuation of Wet'suwet'en culture through land-based teachings and cultural activities.

Further details regarding Project effects to access are provided in **S6.0-C4**, in the context of commercial and public recreational land users.

6.5.3.3 Cultural Heritage

Any development that transforms Wet'suwet'en territory will also inevitably affect their cultural resources (Budhwa and McCreary 2013). Three (3) potential effects are predicted in relation to Wet'suwet'en Cultural Heritage:

- ▶ change in sense of place and connection to land;

- ▶ change in Wet'suwet'en knowledge and cultural transmission; and
- ▶ changes to physical cultural heritage features.

These potential effects are described in the subsections below.

6.5.3.3.1 Intangible Cultural Heritage - Change in Sense of Place and Connection to Land

The Project potentially affects Wet'suwet'en sense of place and connection to land through sensory disturbances such as Project-generated noise, air emissions and changes to visual quality, through deposition of dust on plants and soil, changes to water quality, and other changes to the landscape and ecology with which Wet'suwet'en culture is interwoven. Activities leading to disruptions in sense of place occur throughout the Construction, Operation and Decommissioning and Reclamation phases, and to a certain extent during Post-Closure Phase.

Project activities that may disrupt a sense of place and connection to land include during Construction and Operations include site clearing, construction of roads, buildings, powerlines, and rail infrastructure, changes in water flows due to water diversions, mining of the open pit, changes in visual quality, increased industrial and public traffic and Project generated noise, effluents, and emissions. These activities and related changes to the environment make it difficult to identify in the same way as before with the area that is changed by Project clearing, excavation, and infrastructure, and with the air, water, lands, fish and wildlife and plants potentially affected by effluents and emissions.

During the Decommissioning and Reclamation Phase, Project generated noise, traffic, changes in visual quality and increased human presence may potentially continue to diminish Wet'suwet'en sense of place and connection to land, as they may during the earlier Project phases.

During the Post-closure Phase, remaining changes to terrain and soils, vegetation and visual quality and ongoing water discharge from mine area (regardless of the presence of water contaminants) have potential to continue affecting Wet'suwet'en sense of place and connection to land.

Wet'suwet'en concerns or uncertainty about the safety and integrity of water downstream from the Project may also change the sense of connection with those waterways. Given that sense of place is connected to carrying out cultural practices on the land, a decrease in harvesting practices due to perceptions of contamination has potential to affect sense of place and connection to land. In particular, Wet'suwet'en sense of place and connection at downstream cultural and fishing sites along the Bulkley River may also be diminished. Such sites include *Duudiin'aaw c'en'* (located across the river from or within the Rail Loadout), *Gondel Kwe* (2.3 km downstream of the Rail Loadout) and *Lookem biit kwet* (6 km downstream of the Rail Loadout, at the confluence of the Bulkley and Telkwa Rivers (**Figure 6.4-1**).

For Wet'suwet'en people, especially for members of *Cas'Yex* and *Kwen Bea Yex* houses, in whose house territories the Minesite components will be located, mere knowledge of the landscape changes may affect their sense of place and connection with the territory.

Restrictions to access around the Project have potential to prevent or make it more difficult for Wet'suwet'en to visit some heritage areas and features. Restrictions to access would occur during Construction, Operations, and Decommissioning and Reclamation Phases, and to a certain extent during the Post-Closure Phase.

6.5.3.3.2 Intangible Cultural Heritage - Change in Wet'suwet'en Knowledge and Cultural Transmission

Transmission of TK among community members and between generations is an essential function of Wet'suwet'en culture.

Yintah encompasses the physical experiences acquired while in the territories; for example, while undertaking resource activities. These physical experiences are important for learning daily traditional activities and the practical management of resources. For example, a Hereditary Chief must be able to exemplify a physical and spiritual connection to a territory in order to properly manage that territory.

Transmission of Wet'suwet'en knowledge and culture, is reliant on activities and time spent in territories, which in turn is dependent on the health of the territories. If the territories are not healthy, resource activities and, thus, transmission of related traditional knowledge will be diminished.

Knowledge of the language as essential to continuance of Wet'suwet'en ways of knowing. The possibility to fully learn and know the language is inextricably linked with land-based cultural practice, which in turn depends on access to the land, and a healthy territory.

The Project potentially affects Wet'suwet'en knowledge and cultural transmission by restricting access, by reducing the landbase on which cultural transmission can occur, and through Project effects water, wildlife, fish, plants, and heritage features. The functional landbase for knowledge and cultural transmission will be reduced by the extent of the Project Area (approximately 1,853 ha). This is the area where ground-disturbance and Project activities will occur, and within which the Project will be constructed and operated, including the Minesite and access routes, plus additional areas that will be affected by Project generated noise, effluents, and emissions.

Spiritual and ceremonial practice is integral to Wet'suwet'en culture, including knowledge and cultural transmission. Spiritual protocols could be practiced anywhere on the landbase, for example as part of preparing for a hunt. The Project potentially affects Wet'suwet'en spiritual and ceremonial practice by changes such as restrictions to access and reduction of the landbase in which spiritual and ceremonial practice can occur, by deposition of dust and pollutants on medicinal plants, by disturbances from Project generated noise and traffic, and real or perceived change in water quality, fish, and wildlife.

6.5.3.3.3 Physical Cultural Heritage – Changes to Physical Cultural Heritage Features

With recognition that even the most thorough assessment may not identify all of the cultural features within an area, this assessment incorporates the risk of disturbing, destroying or altering physical cultural heritage features that are not yet identified. Both known and as-yet unknown features are considered.

The Project potentially affects Wet'suwet'en physical cultural heritage features through changes in their presence, number, type, and significance (**S7.0-C1**). Potential effects to physical cultural heritage features are caused primarily by Project-related ground disturbance, and thus are most likely to occur during the Construction and Operation phases, when the majority of ground disturbance takes place. Effects are still possible during the Decommissioning and Reclamation Phase, as there is potential for further ground disturbance during removal of infrastructure and through the movement of previously disturbed materials. Additional Project effects on Wet'suwet'en Physical Cultural Heritage are unlikely during the Post-Closure Phase. Indirect effects due to increased human presence in the area are possible through all phases, though less so during the Post-Closure Phase.

Given that archaeological sites have been identified close to and within the Project Area and that the archaeological potential of the area is high (Crossroads 2021), there is a strong possibility of further physical cultural heritage features of importance to Wet'suwet'en being identified in the Project Area in the future. The cultural heritage importance of the LSA for Section 11 is highlighted by the presence of a totem and headstone site at *Dudii nai c'en'*, located either at Hubert or across the *Wedzin Kwah*/Bulkley River from Hubert. In **S7.0-C1 Figure 4.2-1** Hubert is shown as located within the Rail Loadout. Based on the extent of currently available information, it is unclear whether the totem and headstone site at *Dudii nai c'en'* is located within the Rail Loadout.

Seven (7) known historic sites would be affected by the Project, none of which qualify for automatic protection under the *HCA*. The sites consist of three (3) sites associated with previous mining activity, three (3) post-1846 CMTs and the Hubert town site. Mitigation measures are provided in **S7.0-C1-5.3**.

6.5.3.4 Community Well-being

Three (3) potential effects are identified and assessed with regards to Wet'suwet'en Community Well-being:

- ▶ change in food and economic security;
- ▶ change in community cohesion; and
- ▶ change in physical, mental, and emotional health.

These three potential effects are described in the subsection below.

6.5.3.4.1 Change in Food and Economic Security

For the Wet'suwet'en, the idea of scarcity and economic hardship arises from colonial and modernizing experiences as described in **3. Known Wet'suwet'en Interests**. Although these forces are still resisted, the colonial experience has been that their traditional capacities and skills have become inadequate for supporting their wants because of an ever-growing need for industrial services.

"A crucial aspect of the generation of artificial scarcity is the dissociation of needs from the means of satisfaction. After a certain point in the industrial process, this separation destroys peoples' experience of being active agents in their own lives" (Rader 1990).

This effect is also directly linked to community cohesion, described below. For Wet'suwet'en who favour a society governed along traditional lines, extractive industrial projects represent a process whereby social resources are taken out of Wet'suwet'en control, suppressing non-industrial initiatives, and at the expense of traditional family and community support systems which were formerly a major source of identity, recognition, and physical security (Rader 1990). A position that is at severe odds with Elected Band Councils that are in many respects forced by the realities of the *Indian Act* to accept industrial means of generating cash income for benefit of their constituents.

These threats to food and economic security are potentially compounded by the effects of a "boom town" resulting from the Project. The "boom town" condition consequent of industrial extraction often results in high rates of inflation and an increased cost of living in the host communities. For Wet'suwet'en who prefer or are dependent on more traditional means of satisfying needs and not participant in the industrial processes and means of compensation, creates a condition where in the little cash that they may have buys less and less, while simultaneously diminishing their primary source of needs satisfaction.

One of the key findings in The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls National Commission was that Indigenous women are disproportionately impacted by the “boom town” condition, in terms of increased economic insecurity (Library of Congress 2019).

6.5.3.4.2 Change in community cohesion

The Project has the potential to effect community cohesion in two manners that are distinct but carry a risk of combining into something more severe. Practically speaking, division will be in terms of those Wet'suwet'en that pursue more traditional forms of satisfying needs through means such as hunting and fishing, with those that satisfy needs through compensation and/or revenue derived from participation in the industrial processes created by the Project.

These divisions risk evolving along political lines due to the already existing tensions within the *Yintah* caused by divisions over oil and gas pipelines and specifically Coastal GasLink. It cannot be understated that the division within Wet'suwet'en society between Hereditary and Elected Band Council leadership has generally followed the lines of the former being in favour of more traditional means for which to meet needs, while the latter is more accepting of benefits derived from the industrial processes for meeting needs.

Further, is the question of authority as described in below in **7.5 Implications of Coastal GasLink Effects for the Tenas Project**. The Wet'suwet'en community has been deeply influenced by how Government of BC and Coastal GasLink undertook to clear a legislative path for the pipeline project and recent government efforts for remedying this has only intensified these divisions. Hereditary and Elected Band Council leadership are now unable to ascertain their degree of interdependence, particularly with regards to goals (Lewicki and Tomlinson 2014), or the degree of relative power within the relationship (Kim et al. 2005).

6.5.3.4.3 Change in Physical Security, Mental and Emotional Health

The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls begins with “Women are the heart of their Nations and communities”. During the National Inquiry, the commissioners heard “how the absence of women, girls, and Two Spirit Lesbian Gay Bisexual Transgender Queer Questioning Intersex Asexual (2SLGBTQIA) people has a profound and ongoing impact on communities, and how their gifts, as shared in distinctive roles and responsibilities, are crucial to community wellness, to help communities thrive. These roles and responsibilities are linked to various systems of Indigenous laws and rights that flow from them” (Library of Congress 2019)

Two (2) key findings of the commission were: 1) that there is substantial evidence of a fundamental problem demonstrated in the correlation between resource extraction and violence against Indigenous women, girls, and people. 2) that those Industries that create a “boom town” environment are implicated in increased rates of drug and alcohol-related offences, sexual offences, domestic violence, and gang violence, as well as sex industry activities in the host communities and that these occurrences disproportionately impact Indigenous women, girls, and 2SLGBTQIA people (Library of Congress 2019).

Wet'suwet'en society, like many Indigenous societies, is structured along matrilineal lines, in social-psychological terms, losses accumulate as does trauma, and thus the staggering losses associated with extractive resource projects in Northern BC, will have a direct and profound effect on community mental and emotional health, should a “boom town” condition occur with the Project.

6.5.3.5 Wet'suwet'en Health

The Wet'suwet'en Health component assesses the potential for the Project to affect the health of Wet'suwet'en individuals and community, considering changes to human health from alterations in quality

of water and foods and potential change in food security and availability of traditional foods. This section draws largely from the **Human Health VC (S8.0-C1)**, highlighting areas that are particularly relevant to Wet'suwet'en. The **Human Health VC** assessment (**S8.0-C1**) speaks to potential effects to Wet'suwet'en Health, for example, by including First Nations as Receptors of Concern (ROCs), by considering effects on Indigenous Residential Land Users, and by including Wet'suwet'en subsistence foods among those assessed for changes.

While acknowledging that there are many determinants of human health, the assessment in **S8.0-C1** focusses on physical human health as affected by biophysical environmental factors and biochemical linkages such as quality of air, water, soil, and subsistence foods. Study results from other VCs linked to the Human Health VC were used to inform the Human Health effects assessment.

Sensory disturbances such as from Project generated noise also have potential health implications. These are discussed in **S4.0-C1 Atmospheric Environment VC** and the **Human Health VC** assessment (**S8.0-C1**).

Technical boundaries noted in **Human Health VC (S8.0-C1)** are relevant to the assessment of Wet'suwet'en Health, in particular the definition of human receptor locations. Technical boundaries for Human Health included the following:

- ▶ For the assessment of effects from changes in air quality, it was assumed that Indigenous (and non-Indigenous) peoples could be present throughout the Human Health LSA (**Figure 3.2-1**) and throughout the year, including adjacent to the Project Area (**S8.0-C1-3.2.4.4.1 Air Quality**) The Project Area is the area within which the Project will be constructed and operated, including the mine site and access routes. The Project footprint is within the Project Area and is where ground will be disturbed, and Project activities will occur;
- ▶ The assessment of potential changes to drinking water quality assumes that land users (including Indigenous hunters, trappers, and gatherers) may drink surface water from streams anywhere inside the Human Health LSA during the ice-free period of the year, which may or may not be treated for chemical contaminants (e.g., metals) (**S8.0-C1-3.2.4.4.2 Drinking Water**);
- ▶ The assessment of potential changes to soil quality (i.e., soil COPC concentrations) assumes that land users (including Indigenous hunters, trappers, and gatherers) can be in contact with soil throughout the Human Health LSA during snow-free periods of the year (**S8.0-C1-3.2.4.4.3 Soil**); and
- ▶ The subsistence foods assessment assumes that land users (including Indigenous hunters, trappers, and gatherers) consume subsistence foods harvested from throughout the Human Health LSA, thus, there are no specific receptor locations. To provide a conservative estimate of human exposure to COPCs from subsistence foods, it is assumed that 100% of the subsistence foods a person consumes annually were collected or hunted from within the Human Health LSA (**S8.0-C1-3.2.4.4.4 Subsistence Foods**).

Information relevant to Wet'suwet'en Health, including qualitative and quantitative information on subsistence food use by Wet'suwet'en, was sought and included in the **Human Health Risk Assessment (HHRA) (Appendix 8.1-A)** and **Human Health VC** assessment (**S8.0-C1**). The subsistence foods identified for evaluation in the **HHRA** were moose, mule deer, American black bear, snowshoe hare, grouse, rainbow trout, berries, and above-ground plants (**S8.0-C1-4.2.5.4 Subsistence Food Quality**)

Human Health ROCs is the technical term applied to people anticipated to be present in the Human Health LSA. Consideration of Wet'suwet'en members was included in the quantitative evaluation in the **HHRA** through the ROC group of Indigenous and non-Indigenous Resident Land Users (infants to adults). These

ROCs live in the Human Health LSA in residential areas (e.g., Telkwa and rural residences) and spend time fishing, hunting, collecting, or farming subsistence foods for their own consumption (in addition to eating store-bought foods). They may drink water from groundwater at their residences and/or surface water while spending time on the land within the LSA. Identified receptor locations included a Wet'suwet'en cabin, based on information from consultation on the draft AIR. As locations for subsistence food hunting and gathering were not known, vegetation and soil sampling locations were incorporated as conservative receptor locations (**S8.0-C1-4.2.2 Human Health Receptors of Concern and Receptor Locations**).

Wet'suwet'en Health is potentially affected by Project-related changes in environmental media i.e., air quality, drinking water quality, soil quality and quality of subsistence foods. As noted in **S8.0-C1-4.2.4 Types, Sources, and Transport Pathways of Contaminants of Potential Concern**, Indigenous and non-Indigenous Resident Land Users (the human receptor group including Wet'suwet'en people) can come in contact with contaminants of potential concern (COPCs) through the following exposure pathways:

- ▶ inhalation of CACs in air;
- ▶ incidental ingestion of soil;
- ▶ ingestion of drinking water from groundwater and surface water;
- ▶ ingestion of subsistence foods;
- ▶ dermal contact to soil; and
- ▶ ingestion of market (store-bought) foods.

Potential Project-related effects on Wet'suwet'en Health are due to change in the concentration of CACs in air; change in concentration of COPCs in environmental media (air, drinking water, soil, subsistence foods); and related changes to food security for traditional foods. The Wet'suwet'en Health component discusses these changes in terms of the following potential effects:

- ▶ change in quality of air, water and traditional foods; and
- ▶ change in Wet'suwet'en traditional food security

6.5.3.5.1 Change in Quality of Air, Water and Traditional Foods

The Project potentially affects Wet'suwet'en Health due to changes in air quality through the emission of pollutants containing CACs. Metals associated with dust can be emitted by the Project and have the potential to affect Wet'suwet'en Health through inhalation of metals, primarily during the Operation Phase.

Project elements and activities associated with potential changes to air emissions include exhaust from generators, equipment and machinery, vehicles, or fugitive dust from use of the TAC and the handling and stockpiling of waste rock, raw and washed product coal, and overburden and topsoil, to human receptors through the inhalation pathway.

Potential effects to air quality are highest during the Operation Phase. Effects during the Construction, Decommissioning and Reclamation, and Post-closure phases are expected to be lower than effects during the worst-case year of the Operation Phase.

The Project presents further potential effects to Wet'suwet'en Health from exposure to environmental media with elevated concentrations of COPC, especially in water and traditional (subsistence) foods. Toxicity occurs if a person ingests enough water, soil, or food with sufficiently high concentrations of COPCs, such that toxicity thresholds are surpassed. Effects during the Construction, Decommissioning and Reclamation,

and Post-closure phases are expected to be lower than effects during the Operation Phase. Indirect effects can originate from deposition of dust-associated metals onto soils and onto vegetation, as well as subsequent transfer via the food chain to subsistence foods ingested by people.

COPCs that were not identified as COPCs in the Base Case (in baseline conditions) but were predicted to become COPCs in the Project Case (i.e. with implementation of the Project) are listed below (**S8.0-C1 Table 4.2-1**):

- ▶ PM₁₀ in air;
- ▶ arsenic in subsistence foods;
- ▶ cadmium in subsistence foods;
- ▶ chromium in air and subsistence foods;
- ▶ copper in subsistence foods;
- ▶ lithium in surface water, groundwater, and subsistence foods;
- ▶ selenium in surface water;
- ▶ thallium in subsistence foods; and
- ▶ zinc in subsistence foods.

Changes in surface water quality have the potential to affect Wet'suwet'en Health either directly through ingestion of drinking water or indirectly through the food chain through ingestion of subsistence foods. Project water discharge is expected to occur as a result of precipitation and runoff in excess of water demand within storage facilities and will be directed to Goathorn Creek via the Tenas Control Pond. Discharge will occur throughout phases of the Project during the open water season. Although no specific surface waterbodies within the Human Health LSA or RSA were identified as drinking water sources during traditional land uses, it was assumed for the purpose of the assessment that surface water could occasionally be used for drinking in the summer (when surface water is not covered by ice).

Groundwater may also change as a result of contact (surface) water infiltrating into the groundwater system during phases of the Project. During the Operation Phase, contact water (i.e., dust deposition, open pit wall weathering, ML/ARD drainage, and/or blasting) is expected to infiltrate underneath the waste and water management facilities into the ground and migrate slowly through the groundwater system into the valleys, where it may reach areas with private wells.

The Project may potentially effect soil quality through change in COPC concentrations in surface soil from deposition of metals in dust. Potential effects on Wet'suwet'en Health from a change in soil COPC concentrations can be either direct (i.e., via incidental ingestion of soil or dermal contact with soil) or indirect (i.e., via the food chain). Effects to soil quality are expected primarily during Construction and Operation Phases. Once deposited, metals will likely persist in surface soil into the future unless they are transformed and mobilized by microbial action, leached into deeper soils, or are taken up by plants and stored in their tissues. Based on the prevailing wind directions, soil quality may be affected by dust deposition predominantly east-northeast of the Project.

Potential effects from the Project on the quality (i.e., metal composition) of traditional foods may occur due to changes in water quality (e.g., due to Project-related seepage or discharge) or due to changes in soil and vegetation quality (i.e., due to deposition of dust). The primary exposure pathway for traditional food species to Project-related contaminants is via the food chain. Potential Project-related effects on traditional foods could occur throughout Construction, Operation, Reclamation and Decommissioning, and Post-

closure phases, but depend on the timing of potential effects on air (dust) and surface water. While deposition of dust-associated metals on soil and vegetation is expected to be most prevalent in the Construction, and Operation phases, seepage and discharge of metals to surface waters may occur predominantly during Operation, and Reclamation and Decommissioning phases, and diminishing in Post-closure.

Inadvertent spills or leaks may also affect the quality of environmental media. These are assessed separately in **S9.0 Accidents and Malfunctions** and in the **Fuel Management and Spill Control Management Plan (S13.0-C7) (FMSCMP)**.

6.5.3.5.2 Change in Wet'suwet'en Traditional Food Security

Traditional foods are central to Wet'suwet'en food security. The Project potentially affects Wet'suwet'en food security through changes in the availability and quality (i.e., freedom from contaminants) of traditional foods. Effects related to changes in abundance/availability of traditional foods (wildlife, fish, and vegetation) as well as changes in access are described in the Current Land Use and Resource Harvesting component (**6.5.3.2** and **6.7.3**) and considered in this section as to their effects on traditional food security.

In additions to changes in availability, the Project may also cause changes in traditional food security due to change in the Wet'suwet'en community members' confidence in the safety of water and traditional foods, due to real and perceived contamination of water, plants, fish and wildlife. Such a change in confidence is possible regardless of the predicted and actual level of environmental media contaminants generated by the Project in relation to human health safety thresholds.

Such a change in confidence also potentially leads to changes in the rate of consumption of traditional foods. Concern regarding the safety of water and traditional foods may cause some Wet'suwet'en members to avoid areas near the Project and/or reduce their consumption of traditional foods, thus effecting their health on multiple levels (psychological/emotional due to changes in relationship with the *Yintah*, and physically due to changes in the amount of traditional foods consumed).

Throughout Project phases, the Project may potentially affect Wet'suwet'en perception of the safety and integrity of the water downstream from the Project. The psychological effect of uncertainty in this regard could cause some Wet'suwet'en people to hesitate to harvest traditional foods in certain areas, including at downstream fishing sites along the Bulkley River.

6.6 Mitigation Measures and Opportunities for Alignment of Interests

This subsection provides mitigation measures to avoid or reduce potential effects on Wet'suwet'en Rights and Interests. The mitigation measures can also be viewed as opportunities for alignment of the interests of TCL and those of Wet'suwet'en.

As a baseline, all mitigation measures proposed across the EAC Application, as summarized in **Tables 15.1-1** and **15.2-1 (S15.0 Conclusions)**, including **S13.0 Management Plans**, contribute to avoiding or reducing potential effects on Wet'suwet'en Rights and Interests. Proposed mitigations include those incorporated into Project design and as well as non-design mitigation measures such as best management practices and proven and/or accepted mitigations used by similar projects.

In the following subsections, additional mitigations, and opportunities for alignment of interest are proposed for addressing adverse Project effects to Wet'suwet'en Rights and Interests. While some mitigations are more specific to certain Wet'suwet'en components, in general the mitigations presented in this subsection address the Project components and subsequent potential effects.

The proposed mitigations in this subsection are intended as guidance to inform discussions for the formal PAA, which has been established between TCL and the OW.

6.6.1 Collaborative Governance

For upholding and protecting Wet'suwet'en Title and Rights including the decision-making processes of *Cas Yex* and *Kwen Bea Yex*, new projects must align with *Anuk Nu'at'en* for working in function of preserving and supporting that system. *Anuk Nu'at'en* represents the “unbroken chain of continuity” as is required by for upholding title claims as part of their rights under Section 35(1) of the *Constitution Act*. New projects that do not align with *Anu Nu'at'en* throughout their project life would invalidate the Wet'suwet'en claim of Aboriginal right of title over the territory.

By TCL adopting a collaborative governance model for the Project, would enable Wet'suwet'en participation at the board and senior manager levels for making informed decisions through each phase of the Project (Construction, Operation, Decommissioning and Reclamation, and Post-closure). In such a framework exercise of *Anuk Nu'at'en* enables the Wet'suwet'en to fulfill their obligation of ensuring that the Project is operated in a manner that will not misuse the lands and that the benefits of the Project are able to endow future generations of the “benefit of the land” as is stipulated by Supreme Court of Canada decisions at *Tsilhqot'in*. Such an approach would potentially be interpreted as a means of meeting the necessary standards in function of preserving and upholding title claims Section 35, Aboriginal rights and right of title. The following system map (**Figure 6.6-1**) shows how Wet'suwet'en Aboriginal right of title could be upheld and reinforced in this framework and within the context of the Project development.

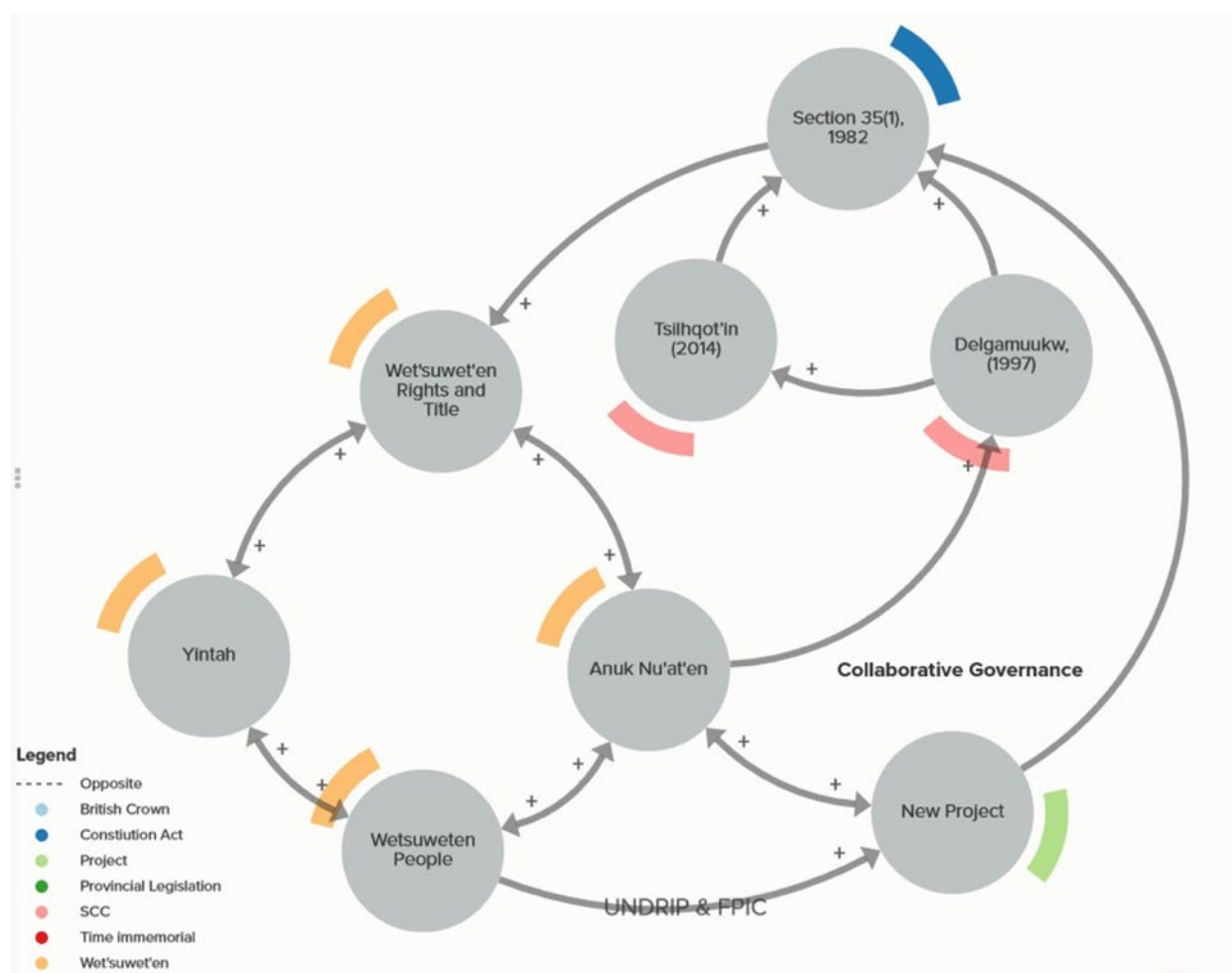
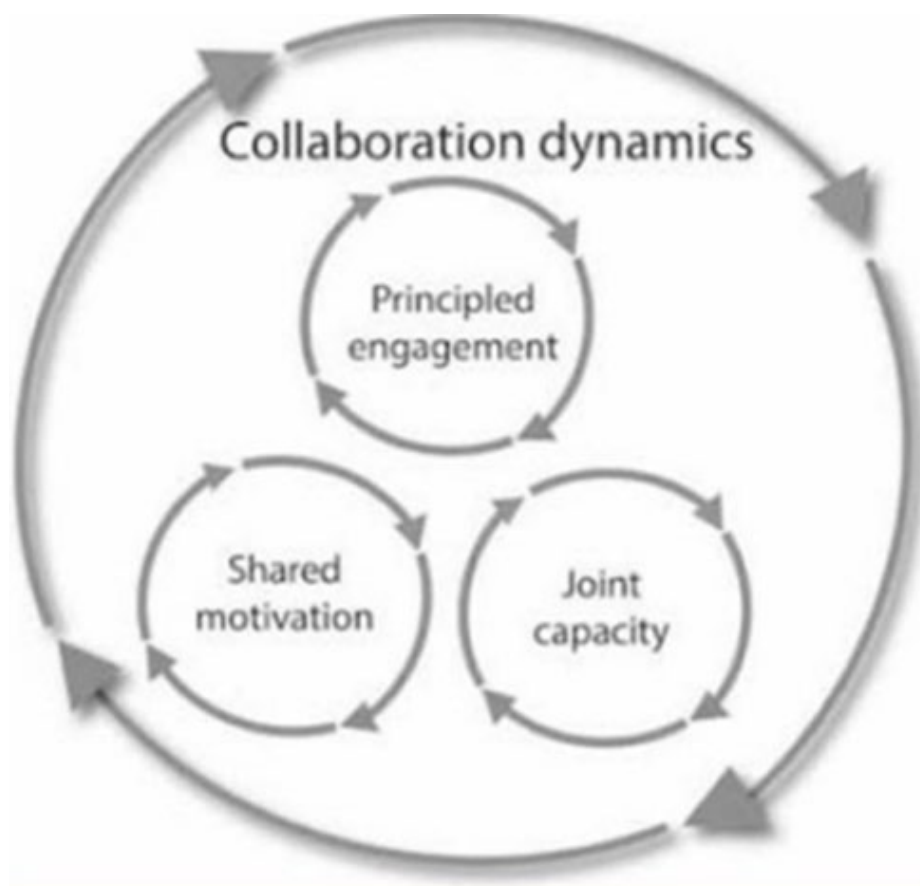


Figure 6.6-1: Systems view of collaborative governance as a means for supporting and reinforcing Wet'suwet'en Section 35, Aboriginal rights and right to title per the Tenas Project

Natural resource projects in the *Yintah* are unique because they require solutions that are both collaborative and environmentally sustainable. This requires that stakeholders and resource managers understand the technical boundaries of sustainability as well as each other's needs, interests, and positions. Espoused in the notion of collaborative governance are numerous values that are consequential to mutual success: diversity and inclusion, transparency and shared information, democratic engagement, and power sharing (Emerson and Nabatchi 2015). There is considerable complexity for successful development of a project within the *Yintah* and the problems that must be solved for upholding Wet'suwet'en Aboriginal rights and right of title requires a framework that enables cross-boundary collaboration.

“Collaboration dynamics, which are on the process side of the collaborative governance equation, consists of three interacting components (Figure 6.6-2), each of which contains four elements: (1) principled engagement, which contains discovery, definition, deliberation, and determination; (2) shared motivation, which contains trust, mutual understanding, internal legitimacy, and commitment; and (3) the capacity for joint action, which contains procedural and institutional arrangements, leadership, knowledge, and resources. These elements work together dynamically to reinforce their individual components, and the three

components work together in an interactive and iterative way to reinforce one another”
(Emerson and Nabatchi, 2015).



Source: Emerson and Nabatchi 2015

Figure 6.6-2: Collaboration dynamics

Capacity training in this regard will include training in effective corporate governance that can help Wet'suwet'en leadership increase project accountability and responsiveness to stakeholder and investor concerns. This would include training in sophisticated understandings of the Project board's role and responsibilities as well as characteristics of successful boards, such as:

- ▶ ensuring proactive governance and preparing for potential risks;
- ▶ recognizing key considerations of compensation and succession planning;
- ▶ defining strategies for board members, executives, and other ESG integrators to respond to conflicting demands and societal challenges of the organization; and
- ▶ planning for how to manage the competing interests of stakeholders and shareholders.

Importantly, a collaborative governance model empowers Wet'suwet'en leadership with the ability to implement policies and standards of conduct that would mitigate the most egregious potential effects against Wet'suwet'en physical security, mental and emotional health.

Finally, evolving inclusive and sustainable leadership practices through collaborative governance is demonstrably supportive of Wet'suwet'en self-determination as rights and title holders of their lands and of their position as fiduciaries of the *Yintah*.

6.6.2 Intergenerational Trust Fund

Supreme Court of Canada justices' decision at Tsilhqot'in, 2014, and specifically, that lands cannot "be developed or misused in a way that would substantially deprive future generations of the benefit of the land" (GovCan 2014c) frames exceptionally well the standard that must be met for preserving Wet'suwet'en title.

The Project can contribute to the creation and management of an Intergenerational Trust Fund that will be held in trust by the OW and managed in conjunction with the Project. For upholding the standard for Wet'suwet'en Aboriginal right of title towards intergenerational equity and fiscal sustainability would require that a portion of revenues from the Project will be saved for future generations of Wet'suwet'en. This is the way future generations can derive benefits from the land that will be used for the Project as well as provide some resiliency long term from the temporarily high income resulting from a "boom town" condition during the Project lifetime.

Examples of this are Sovereign Wealth Funds (SWF) such as Norway's oil fund managed by Norway's Central Bank – Norges Bank. The aim of the oil fund is to ensure responsible and long-term management of revenue from Norway's oil and gas resources, so that this wealth benefits both current and future generations. The fund's formal name is the Government Pension Fund Global (Norges Bank Investment Management 2020). Another example of an SWF, on a scale more in line with the *Yintah* and Wet'suwet'en is the Nauru Intergenerational Trust Fund. The Republic of Nauru was commonly seen as a precautionary tale of both unsustainable mining and the failure of poorly managed public trust funds. The Nauru Intergenerational Trust Fund was introduced to protect present and future generations of Nauru from the boom-and-bust cycles associated conditions with resource development in the Republic of Nauru (Rajah 2017).

6.6.3 Equity Ownership

Uniquely and in contrast to First Nation governments "on-reserve," projects that are developed off-reserve and on traditional Wet'suwet'en territories and in partnership with traditional Wet'suwet'en Governance structures, enables the Wet'suwet'en to provide access to their land holding as a contribution to the Project in exchange for a percentage of equity ownership in the Project. Provided, of course, that due care is taken for ensuring that the Aboriginal right of title is not infringed upon by the Project. A case further strengthened by the formal recognition of both the Governments of BC and Canada that;

"1. Canada and B.C. recognize that Wet'suwet'en rights and title are held by Wet'suwet'en houses under their system of governance; 2. Canada and B.C. recognize Wet'suwet'en Aboriginal rights and title throughout the Yintah" (GovCan et al. 2020).

Federal and provincial governments strongly support Indigenous ownership as furthering reconciliation and as a step towards Indigenous peoples' economic self-sufficiency. Given the current environment of increasing opposition to proposed energy projects the model going forward of involving Indigenous peoples as equity participants in these projects is also seen as an effective way of securing their support and mitigating completion risks (Cameron et al. 2019).

Examples of Indigenous equity ownership in projects include:

- ▶ The federal government's announcement in February 2020 that, further to a multi-step engagement process announced in 2019, it is launching a new series of consultations with Indigenous groups to determine how they may take part in the ownership of the Trans Mountain pipeline and expansion project; and
- ▶ An announcement by the Alaska to Alberta Rail (A2A) project in November that it is committed to making 49% of the equity in the A2A project available to Indigenous communities.

Finally, a very recent article in The Alberta Law Review summarizes the benefits of Indigenous equity ownership in natural resource projects:

The evolution towards IC [Indigenous Communities] equity ownership that the natural resource sector has experienced over the past few years has operated to bridge the distance between mitigation, a key component of the IBA [Impact Benefit Agreements] model, and more comprehensive alignment between ICs and EIPPs [Energy Industry Project Proponent] in the form of meaningful IC ownership and sharing of project revenue streams. This transition to equity ownership has been embraced by many ICs as a model through which ICs can enhance the long-term prosperity of their communities while at the same time exerting control and influence over the fundamental commercial underpinnings of such developments, and as a means for IC owners to have a seat at the table when it comes to project development matters such as stewardship, sustainability, and preservation of Indigenous traditions and culture. Similarly, EIPPs recognize that alignment through equity partnership transactions with ICs not only serves to mitigate investment uncertainty but also in many instances reinforces long-held corporate values and underscores the organization's commitment to ESG [Environmental, Social and Governance] performance. As barriers to access to capital are surmounted and the market continues to assert that the recognition and inclusion of Indigenous perspectives is an essential measure of business performance, we would anticipate that Indigenous equity ownership transactions in the energy sector will continue to be prevalent and that the momentum of this trend will only intensify (Warrier et al. 2021).

Ownership combined with governance changes the dynamics of how a community relates to a project and has the potential to eliminate the kinds of effects that are commonly seen in resource extraction in Northern BC. Equity ownership in the project, inclusive of collaborative governance enables Wet'suwet'en participation in the process of project development, the operations of the project and project decision making. This in turn opens space for dialog over issues where there may not be alignment and a chance for mediation for overcoming disagreement. The inclusion of equity ownership further enables an environment for finding alignment and resolution over issues at the project governance level. Vitally it takes project development on Indigenous territories out of a reactive environment, which tends to lead to conflict, negatively effecting parties.

Wet'suwet'en equity participation in the Project is a necessary part for fulfilling economic reconciliation objectives as outlined by Call to Action No. 92 of the Truth and Reconciliation Commission, Business and Reconciliation, and specifically point ii:

ii. Ensure that Aboriginal peoples have equitable access to jobs, training, and education opportunities in the corporate sector, and that Aboriginal communities gain long-term sustainable benefits from economic development projects.

Most importantly, and particularly for mitigation of potential effects to Community Well-being, community equity ownership in a project changes the dynamic of the relationship the community has with a project by shifting the relationship from one that is transient and transactional to one of mutual responsibility, benefit, and security. Ownership increases the resiliency of the community long term and generationally. Corporate and community interests are better aligned as the community perception towards the project becomes one wherein the Project is viewed as creating positive long-term benefits for the entire community and their quality of life, rather than certain specific, shorter-term benefits to employees and sub-contractors associated with the Project.

6.6.4 Environmental, Social and Governance (ESG) and New Project Development

Application of an ESG framework for the Project could contribute to mitigation of some potential effects and towards alignment of Wet'suwet'en and TCL interests. ESG is driving companies to review their sustainability, social contract, and governance over these areas. The United Nations (UN) Guiding Principles on Business and Human Rights (UNGP) has over 16,000 participating companies (UN 2011).

The UNGP has a framework of Protect, Respect, and Remedy. Protect includes the state duty to protect by safeguarding human rights through appropriate policies, regulation, and adjudication. Respect is the corporate responsibility whereby the company must "Know and Show" human rights impacts and steps to mitigate and eliminate. Remedy requires access to remedy whereby states and companies must remedy abuses through judicial and non-judicial means. Financial institutions implement high standards through various organizations such as the Equator Principles to determine, assess and manage environmental and social risk. The Equator Principles include:

1. Review and Categorization;
2. Environmental and Social Assessment;
3. Applicable Environmental and Social Standards;
4. Environmental and Social Management Systems and Equator Principles Action Plan;
5. Stakeholder Engagement;
6. Grievance Mechanism;
7. Independent Review;
8. Covenants;
9. Independent Monitoring and Reporting; and
10. Reporting and Transparency (UN 2011).

Wet'suwet'en participation in project governance as well as equity securities for a company wanting to do business on their lands enables them to fulfill their fiduciary duties with transparency and to benefit of the land and the people who occupy that land. ESG includes assessing sustainability through climate impact and social impact. While the ideal world envisions zero emissions and zero hunger and poverty globally, the reality is that there are trade-offs. A balanced transparent system can enable a positive outcome for all stakeholders.

These would also be in alignment with the United Nations Sustainable Development Goals (SDGs) (**Figure 6.6-3**).

SUSTAINABLE DEVELOPMENT GOALS



Figure 6.6-3: United Nations Sustainable Development Goals

In terms of Unmet Human Needs and those Interests vital to the Wet'suwet'en, the following selected SDGs should be drivers of new project development:

1. No Poverty
6. Clean Water and Sanitation
14. Life Below Water
15. Life of Land
16. Peace, Justice and Strong Institutions
17. Partnerships for the Goals

6.6.5 Wet'suwet'en Involvement in Project Mitigation Design and Implementation

Consultation and engagement with the OW are included among a number of the mitigation measures and environmental management plans across the EAC Application. In-depth involvement of Wet'suwet'en and integration of TK in design and implementation of Project mitigations is critical in order to most effectively design and implement mitigations for the Project, especially in regard to Wet'suwet'en Rights and Interests. This is consistent with recent recommendations from BC Mining Law Reform (BC Mining Law Reform 2021). Specific aspects for which a meaningful Wet'suwet'en role is important include:

- ▶ determining end-land use objectives for the Project Area during the Post-Closure Phase, to be included in the **Reclamation and Closure Plan (S13.0-C15) (RCP)**;
- ▶ restoration plans for vegetation including requirements for restoration of particular species and targets for percent ground cover and height of desired species, before reclamation work can be deemed complete;
- ▶ access management, in a way specific to Wet'suwet'en needs and concerns;
- ▶ mitigations for effects to cultural heritage; and
- ▶ the development and implementation of adaptive management measures in the event that mitigation measures are not successful and/or issues are detected through monitoring.

6.6.6 Wet'suwet'en Involvement in Project Monitoring Design and Implementation

TCL will have the Wet'suwet'en be involved in the design, management, and implementation of Project related monitoring programs, especially regarding water quality. This would be consistent with recommendations from the FNFES study (University of Ottawa, Université de Montréal, and Assembly of First Nations 2021) and BC Mining Law Reform (BC Mining Law Reform 2021). It is also recommended that a related communications program be developed to specify how and in what intervals the monitoring results will be communicated to Wet'suwet'en community members. Monitoring reporting for Wet'suwet'en community members need to be provided in accessible language.

6.6.7 Wet'suwet'en Involvement in Project Access Committee

TCL will have Wet'suwet'en involvement in the Project Access Committee to reflect access requirements to and beyond the Project Area for the Wet'suwet'en for land use and resource harvesting purposes .

6.7 Residual Effects on Wet'suwet'en Rights and Interests

This subsection provides a characterisation of Project's residual effects on Wet'suwet'en Rights and Interests after mitigation using the methodology described in **S3.0 Assessment Methodology** of the **EAC Application** and considering the findings of the VC chapters that are the most relevant to Wet'suwet'en

Rights and Interests. Residual effects are effects that remain after the implementation of all mitigation measures and management strategies. Potential effects discussed in **6.5.3 Potential Effects** are identified as having residual effects.

Due to the unique nature of Indigenous rights, the EAC Application makes no determination of the significance of residual effects on Wet'suwet'en Rights and Interests.

The characterisation is based on the premise that areas of Wet'suwet'en territory are important to Wet'suwet'en Rights and Interests.

The effect characterisations in this section are partly dependent on the results of the VC assessments in **Part B S4.0-S.8.0** of the **EAC application**. Almost all the VC chapters, in assessing Project effects on VCs, have concluded that there are no significant residual effects after mitigations. However, Wet'suwet'en may have a different interpretation of significance of the effects, and the trust in or view of whether the mitigations are sufficient to conclude no significance. Furthermore, the effects on Wet'suwet'en people, society and culture may be different than those concluded with regards to individual environmental VCs. As expressed in the Final Written Argument of the OW to the Joint Review Panel for the Enbridge Northern Gateway Project (OW 2013a):

"...the company had all along assumed that if it concluded that its project is unlikely to have significant adverse effects on the Wet'suwet'en natural environment, it could then immediately conclude that (whatever changes its project might cause in the natural environment) there would be no significant adverse effects on Wet'suwet'en society, economy, and culture..." (paragraph 4).

"To the Wet'suwet'en's frustration, in its dealings with them, Enbridge, relying on its assumption, demonstrated no interest in investigating its project's potential adverse effects... In consequence, Enbridge had no useful information to offer the Panel about its project's adverse environmental effects on Wet'suwet'en health and socio-economic conditions, Wet'suwet'en cultural heritage or the Wet'suwet'en people's current use of lands and resource for traditional Wet'suwet'en purposes" (paragraph 5).

"The difficulty was increased by the fact that Enbridge had in effect dismissed such concerns by subordinating questions on the probability of adverse effects on Wet'suwet'en society, economy and culture to questions on the probability of adverse effects on the natural environment..." (paragraph 7).

Bearing in mind the above statement of the OW, the following assessment takes into consideration the results of the other VC chapters, but also goes further to consider them in the context of Wet'suwet'en society, economy, and culture (within the limits of a desk-based exercise) and does not automatically assume that the effects on Wet'suwet'en will be the same as concluded in the chapters in **Part B S4.0-S.8.0** of the **EAC Application**.

6.7.1 Evaluation Criteria for Residual Effects

6.7.1.1 Definitions of Residual Effects Characteristics

Residual effects on the components representing Wet'suwet'en Rights and Interests have been characterised in terms of Magnitude, Geographic Extent, Duration, Frequency, Reversibility, and Context. Definitions and ratings for each residual adverse effect characteristic are provided in **Table 6.7-1**.

Table 6.7-1: Definitions of Characteristics of Residual Effects on Wet'suwet'en Rights and Interests

Residual Effect Characteristic	Definition	Rating
Magnitude	Severity of the residual effect	<u>For Governance:</u> None: No loss of Aboriginal right of title High: Loss of Aboriginal right of title <u>For Cultural Land Use and Resource Harvesting, Cultural Heritage, Community Well-being and Wet'suwet'en Health:</u> Low: No change to existing situation, or improvement of existing situation. Moderate: Limited to moderate change to existing situation High: Major change relative to existing situation
Geographic Extent	The geographic area over which the residual effect is expected to occur	Project Area: The effect is restricted to the Project Area Local: The effect is limited to the LSA or a portion of the LSA. Regional: The effect extends to the RSA or a portion of the RSA. Beyond Regional: The effect extends beyond the RSA.
Duration	The length of time over which the residual effect is expected to persist	Short-term: From months to less than one generation (less than 25 years) Medium-term: The effect extends for at least one generation, less than two generations (25-49 years) Long-term: More than two generations (50 years or longer)
Frequency	How often the residual effect is expected to occur	Infrequent: The effect occurs several times at sporadic intervals Frequent: The effect occurs many times, but not continuously. Continuous: The effect occurs continuously.
Reversibility	The degree to which the residual effect can be reversed once the activity causing the residual effect ceases	Fully reversible: Effects will diminish to existing situation Partially reversible: Effect will partially diminish to existing situation Irreversible: Effect will remain and is considered permanent.
Context	The extent to which the Wet'suwet'en Rights and Interests component has been affected by past and present environmental and socio-economic processes and conditions, their sensitivity to the Project-related residual effect, and their ability to recover from that effect (i.e., resilience).	Low: Limited extent of effects by other conditions in existing situation, low sensitivity, and high resiliency Moderate: Moderate extent of effect by other conditions in existing situation, moderate sensitivity, and moderate resiliency High: Large extent of effects by other conditions in existing situation, high sensitivity, and low resiliency.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area; Governance=Wet'suwet'en System of Governance, Anuk Nu'at'en, and Aboriginal right of title.

6.7.1.2 Likelihood

Likelihood refers to the probability that the predicted residual effect will occur including consideration of the likelihood that the mitigations will be successful. Likelihood is defined as Likely or Unlikely:

- ▶ **Unlikely:** Low probability of an effect; or
- ▶ **Likely:** Moderate-to-High probability of an effect.

6.7.1.3 Confidence and Risk

Limitations of existing data and uncertainty associated with the assessment were characterised by assigning a Level of Confidence for each residual effect. Confidence can also be understood as the level of uncertainty or risk associated with the residual effects assessment and is a measure of how well residual effects are understood and the quality of the input data. Factors considered in assigning Confidence include the reliability of information and methods used to predict Project effects, confidence regarding the effectiveness of mitigation measures and certainty of the predicted outcome. Confidence estimates support the evaluation of risk associated with the residual effects of the Project.

Confidence predictions are defined as High, Moderate, or Low as follows:

- ▶ **Low Confidence:** is assigned when the component and/or Project interaction (cause-effect relationships between the Project and the component) is not well understood, the information on which to base the assessment is limited, and/or the mitigations have not been proven effective;
- ▶ **Moderate Confidence:** is assigned where the component is understood in similar contexts and effects have been documented in the larger regional area or in the literature, there is a moderate amount of information on which to base the assessment, and/or the mitigations have been proven effective elsewhere; or
- ▶ **High Confidence:** is assigned when the component, and Project interactions (cause-effect relationships between the Project and the component) are well understood, there is a large amount of information on which to base the assessment, and the mitigations have been proven effective.

6.7.2 Wet'suwet'en System of Governance, *Anuk Nu'at'en*, and Aboriginal Right of Title

Section 35, Aboriginal right of title already holds the Wet'suwet'en to unique and specific standards as well as implies unique responsibilities and risks that could potentially negate Wet'suwet'en claims. With active participation in Project governance and equity ownership in the Project, this level of responsibility increases substantially. In this regard, the Wet'suwet'en would have a large stake in actively ensuring the protection of Section 35 Aboriginal right of title.

Given that the Wet'suwet'en are in advanced negotiations with the Federal Crown concerning Aboriginal right of title, the following judgment from Supreme Court of Canada justices at *Tsilhqot'in* can not be overstated:

"At the claims stage, prior to establishment of Aboriginal title, the Crown owes a good faith duty to consult with the group concerned and, if appropriate, accommodate its interests. As the claim strength increases, the required level of consultation and accommodation correspondingly increases. Where a claim is particularly strong — for example, shortly before a court declaration of title — appropriate care must be taken to preserve the Aboriginal interest pending final resolution of the claim" (GovCan 2014).

Negotiations as described in the MOU and agreed on February 29, 2020 (GovCan et al. 2020) are contemplating governance and *Anuk Nu'at'en* specifically. The first item of the second section entitled "Agreement to be Negotiated over the Next Three Months" is as follows:

1. Legal recognition that the Wet'suwet'en House are the Indigenous governing body holding the Wet'suwet'en Aboriginal rights and title in accordance with our Inuk Nuatden (GovCan et al. 2020).

The MOU also includes the following two (2) points to be negotiated:

1. The specifics of how Aboriginal and Crown titles interface; and
2. The agreement recognizing Wet'suwet'en rights and title will be protected by Section 35 of the *Constitution Act* (GovCan et al. 2020).

The uncertainty lies around how the Project, despite mitigation efforts, may affect the territorial claim being negotiated. Prior to *Tsilhqot'in*, Aboriginal title claims were treated on a site-specific basis. Since *Tsilhqot'in* Aboriginal title can now be treated territorially. However, the concept of the "Wet'suwet'en House" as being "the Indigenous governing body holding the Wet'suwet'en Aboriginal rights and title" (GovCan et al. 2020) creates significant complexity in determining how Aboriginal right of title will be treated and if territorial Aboriginal right of title will be affected should a Wet'suwet'en House territory, such as those that are contemplated for this Project, damage a House claim.

The mitigative measures proposed in **6.6 Mitigation Measures and Opportunities for Alignment of Interests** call for several important and long-term establishments by the Project. First, the inclusion of Wet'suwet'en Hereditary leadership at the Project or company governance level thus preserving the continuum of Wet'suwet'en special relationship to the land for upholding the Wet'suwet'en claims to Aboriginal title as well as for fulfillment of Hereditary title holders' fiduciary obligations to the *Yintah* under Wet'suwet'en laws. Second, the creation of an Intergenerational Trust Fund with the OW for meeting the standard as described in *Tsilhqot'in*, specifically that lands cannot "be developed or misused in a way that would substantially deprive future generations of the benefit of the land" (GovCan 2014). Third, that Wet'suwet'en be granted equity ownership in the project, in exchange for access to their lands, that in turn will fundamentally transform the Wet'suwet'en community's relationship with the Project.

These important and progressive measures, designed and proposed within the context of Bill 41, *Declaration on the Rights of Indigenous Peoples Act* (GovBC 2021b) and the Truth and Reconciliation Commission of Canada: Calls to Action, depend on Government of BC and Government of Canada recognition of who the rights holders are and with whom these long-term engagements must be made. Given that the Project is not located on First Nations reserve lands, the Project is taking the most prudent and relevant course available to it, by designing and proposing mitigation measures to be implemented with the OW.

6.7.2.1 Residual Effect to Ability to Fulfill Fiduciary Obligations to the Yintah and to Future Generations of Wet'suwet'en

As explained in the preface above (6.7.2), the context within which the proposed Project would interface is extremely complex. Due to the nature of Wet'suwet'en Aboriginal right of title, and how this is directly linked with their ability to fulfill fiduciary obligations to the *Yintah*, while it is unlikely, a residual effect may occur despite application of the proposed mitigation measures. This residual effect is characterised below in **Table 6.7-2**.

Table 6.7-2: Summary of the Residual Effects Characteristics Ratings for Ability to Fulfill Fiduciary Obligations to the *Yintah* and to Future Generations of Wet'suwet'en

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Low	Collaborative Governance of the Project is in alignment with <i>Anuk Nu'at'en</i> and maintaining Wet'suwet'en governance over territories for fulfilling their fiduciary obligations.
Geographic Extent	Regional	▪ The Project is within the House Territories of <i>Cas Yex</i> and <i>Kwen Bea Yex</i>. Fiduciary obligations of Hereditary Chiefs of these house territories will be defined under Wet'suwet'en law. ▪ Wet'suwet'en Intergenerational Trust Fund may be determined by Wet'suwet'en Hereditary Chiefs in capacities beyond house territories as per their laws. ▪ Wet'suwet'en equity ownership in the Project may be determined by Wet'suwet'en Hereditary Chiefs according to their laws.
Duration	Long-term	Potential effects and mitigation measures contemplated here are considered intergenerational and long term.
Frequency	Continuous	If a residual effect occurred, it would occur continuously.
Reversibility	Irreversible	Fulfilling fiduciary obligations to the <i>Yintah</i> and future generations are inconceivable in the absence of collaborative governance, Intergenerational Trust, and equity ownership.
Context	High	The effects of Coastal GasLink on new Project development and the treatment of Wet'suwet'en traditional system of governance in relation to Hereditary Chiefs' fiduciary obligations to the <i>Yintah</i> and future generations has had deep effects on Wet'suwet'en society as is described in 7.5 Implications of Coastal GasLink Effects for the Tenas Project .

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.2.1.1 Likelihood

With the application of the proposed mitigation measures (especially collaborative governance, intergenerational trust fund and equity ownership), the probability of a residual adverse effect to Wet'suwet'en ability to fulfill fiduciary obligations to the *Yintah* and to future generations of Wet'suwet'en is **Unlikely**. Many possible measures for upholding Wet'suwet'en Aboriginal title as pertaining to its system of Governance – *Anuk Nu'at'en* – will have been taken.

6.7.2.1.2 Confidence and Risk

The Confidence is **High** that the mitigations measures of collaborative governance and intergenerational trust fund will mitigate the residual effect. Collaborative governance gives Wet'suwet'en more control and accountability regarding aspects of how the Project is carried out and the intergenerational trust fund enables the Project to contribute substantially to the benefit of future generations of Wet'suwet'en.

The measures undertaken are specific to Wet'suwet'en laws and are not dependant on outside factors, such as government.

6.7.2.2 Residual Effects to Integrity of Section 35, Aboriginal Right of Title

As explained in the preface above (6.7.2), the context within which the proposed Project would interface is extremely complex. While it is unlikely, residual effects to the Integrity of Section 35, Aboriginal right of title may occur despite application of the proposed mitigation measures. The residual effect is characterised in **Table 6.7-3**.

Table 6.7-3: Residual Effects Characteristics for Integrity of Section 35, Aboriginal Right of Title

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	High	Loss of Aboriginal right of title. If an effect occurred, the magnitude would be High.
Geographic Extent	Regional	Treatment of Aboriginal rights and right of title have traditionally been site specific. However, the Wet'suwet'en claim to Aboriginal right of title is territorial. It is impossible to determine how these will be treated.
Duration	Long-term	Aboriginal rights and right of title are held communally and their impacts felt intergenerationally
Frequency	Continuous	If a residual effect occurred, it would be Continuous.
Reversibility	Irreversible	Energy project development objectives in the <i>Yintah</i> would indicate that any loss of Aboriginal right of title would be irreversible.
Context	High	The effects of Coastal GasLink on new Project development and the treatment of Wet'suwet'en traditional system of governance in relation to Hereditary Chiefs' fiduciary obligations to the <i>Yintah</i> and future generations has had deep impacts on Wet'suwet'en society as is described in 7.5 Implications of Coastal GasLink Effects for the Tenas Project .

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.2.2.1 Likelihood

With full implementation of the proposed mitigation measures, especially collaborative governance, intergenerational trust fund and equity ownership, the likelihood of a residual effect to Wet'suwet'en Integrity of Section 35, Aboriginal right of title is **Unlikely**. Based on the standards discussed in this document, there shouldn't be a risk to title. Extensive measures for upholding Wet'suwet'en Aboriginal title as pertaining to its system of Governance – *Anuk Nu'at'en* – would have been taken.

6.7.2.2.2 Confidence and Risk

Confidence is **High** that the mitigations measures of collaborative governance and intergenerational trust fund will be effective, but it is High risk to proceed with the Project regardless for the reasons described below.

First, it is impossible to ignore the following from *Delgamuukw*: “if occupation is established with reference to the use of the land as a hunting ground, then the group that successfully claims aboriginal title to that land may not use it in such a fashion as to destroy its value for such a use (e.g., by strip mining it).”

Second, “Legal recognition that the Wet'suwet'en House are the Indigenous governing body holding the Wet'suwet'en Aboriginal rights and title in accordance with Anuk Nuatden” (GovCan et al. 2020) is presently under negotiation between the Wet'suwet'en Hereditary Chiefs and the Governments of BC and Canada.

6.7.3 Current Land Use and Resource Harvesting

Despite the extensive mitigations outlined for the Project (**S15.0 Conclusions-Tables 15.1-1 and 15.2-1**), residual effects are predicted for Wet'suwet'en Current Land Use and Resource Harvesting. Three (3) residual effects are identified:

- ▶ change in abundance or quality of wildlife, fish, and plant/vegetation resources;
- ▶ change in the utility of lands and waters for Wet'suwet'en land use and resource harvesting; and
- ▶ change in Wet'suwet'en access to territory for land use and resource harvesting.

Residual effects to Wet'suwet'en Current Land Use and Resource Harvesting can be attributed to the connection and relationship among several environmental effects and their compounding effect pathways. Residual effects are characterised in the subsections below.

6.7.3.1 *Residual Effects to Abundance and Quality of Wildlife, Fish and Plant/Vegetation Resources*

The abundance and quality of wildlife, fish and vegetation resources is integral to Wet'suwet'en cultural practices and the exercise of Wet'suwet'en harvesting rights. Residual project effects to the abundance and quality of these resources ultimately affects Wet'suwet'en land use and resource harvesting.

In **S4.0-C8 Wildlife VC**, the following residual effects were identified and characterised for Furbearers, Caribou, Grizzly Bear, Moose, Bats and Western Toad:

- ▶ alteration and/or loss of habitat;
- ▶ change in mortality; and
- ▶ change in movement patterns.

Among the species/species groups assessed, Moose in particular is identified as being culturally important to Wet'suwet'en for food and cultural goods. Suitable Moose habitat within the Project Area is expected to be cleared during the Construction and Operation Phases and indirectly affected outside the Project Area during Project phases. Mitigation measures are expected to reduce, but not eliminate the risk of Moose mortality and changes in movement patterns.

Despite the identified effects, after characterisation the Project-related residual effects on Furbearers, Caribou, Grizzly Bear, Moose, Bats, and Western Toad were predicted to be **Not Significant** and were not expected to alter the population viability, persistence, or integrity of the Wildlife VC beyond an acceptable level (i.e., remains sustainable and is available to contribute to ecological function). Contributing to the determination of no significance is the recognition that the Project will be constructed almost entirely on in areas previously disturbed by forestry cutblocks, infrastructure and agricultural land use.

In **S4.0-C6 Fish and Fish Habitat VC**, a residual effect related to change in fish habitat was predicted. As detailed in **S4.0-C6**, changes in habitat structure due to diversion of flows from Tenas Creek tributaries and from changes in base flows in Four Creek are predicted to result in residual effects, including effects to Dolly Varden spawning and overwintering habitat on Four Creek. Temporary elevations of sediment levels

in local watercourses may occur during Construction, but sediment concentration levels are expected to return to baseline levels immediately following Construction activities. Potential effects on fish habitat resulting from changes in water quality were identified and residual changes to water quality parameters are predicted to remain throughout phases of the Project including Post-closure.

Residual effects on fish habitat comprise the diversion and infilling of several Tenas Creek tributaries within the mine footprint, and the loss of wetted usable fish habitat within the Four Creek mainstem resulting from the development of the open pit and subsequent reduction of groundwater seepage. Reduction of wetted usable fish habitat in the Four Creek mainstem includes an estimated loss of 191 square metres (m²) of spawning and overwintering habitat for the residential population of Dolly Varden.

Overall, the Project is predicted to result in changes to fish habitat, through change in habitat structure, change in water quality, and change in base flows. Nevertheless, for reasons detailed in **S4.0-C6**, the Project residual effects on Fish and Fish Habitat are assessed to be **Not Significant** and the Project effects are not expected to alter the productivity and viability of the Fish and Fish Habitat VC as losses to fish habitat productivity will be offset as required by the *Fisheries Act*, 1985, c F-14 (GovCan 1985a).

Tables 5.4-3 and 5.4-4 in S4.0-C6 Fish and Fish Habitat VC chapter states that no measurable effects to fish habitat will occur outside of the Fish and Fish Habitat LSA, which encompasses fish habitats within the Project footprint; areas of Four Creek, Tenas Creek, and Goathorn Creek downstream of the footprint; and from 100 m upstream to 300-1,000 m downstream on watercourses crossed by the proposed TAC.

S4.0-C3 Surface Water VC identified residual Project effects to:

- ▶ Surface Water Quantity (Mean Annual Discharge [MAD], seasonal flow distribution, change in low and high flows); and
- ▶ Surface Water Quality (change in modelled parameter concentrations, change in other measurable water quality parameters).

Residual effects to Surface Water Quantity are predicted to be limited to Four Creek. Changes to water quality are predicted within the catchment areas of Four Creek and Tenas Creek.

S4.0-C7 Vegetation VC identified and characterised the following residual Project effects:

- ▶ alteration/Loss of Old Growth Forest, Wetlands, Listed Ecological Communities, Culturally Important Species, and Rare Plants and Lichens; and
- ▶ trace metals deposition on Old Growth Forest, Wetlands, Listed Ecological Communities, Culturally Important Species, and Rare Plants and Lichens.

As detailed in **S4.0-C7**, alteration/loss of Old Growth Forest is expected to reduce the prevalence of Old Growth Forest ecosystems within the Vegetation RSA, and potentially alter areas of Old Growth Forest outside of the Project Area due to indirect Project effects. It is anticipated that up to 12.0% of Old Growth Forest within the Vegetation RSA may be altered or lost due to the Project. Up to 20.2% of Wetlands within the Vegetation RSA are expected to be altered or lost. Existing Old Growth Forest within the Vegetation RSA is already fragmented by historic forestry activities and Wetlands in the Vegetation RSA have likewise been historically disturbed by forestry and surrounding land uses such as cultivation and pasture.

Up to 1,378.5 ha (4.7%) of ecosystems supporting Culturally Important Species within the Vegetation RSA is anticipated to be removed during site clearing during the Construction Phase (Error! Reference source not found. in **S4.0-C7**). An additional 1,719.2 ha (5.8%) of ecosystems that support Culturally Important

Species within the Vegetation RSA may experience indirect Project effects during Project Phases. Culturally Important Species are common within the Vegetation RSA—a landscape that has experienced historic fragmentation and indirect disturbance resulting from cutblocks, forestry roads, and agricultural land use.

Trace metals deposition on vegetation types has a high potential high potential to occur during the Construction, Operation, and Decommissioning and Reclamation phases through dust, air emissions, and surface water runoff. Trace metals deposition may occur within up to 1,719.2 ha (5.8%) of ecosystems with the potential to support Culturally Important Species within the Vegetation RSA. The deposition of trace metals on Culturally Important Species is expected to be Long-term (greater than [>] 52 years) because of the extended time periods often necessary for trace metals to attenuate in the soil. Accumulated trace metals deposited on above-ground plant tissues (e.g., stems, leaves, and twigs) is expected to be Fully Reversible within two (2) to five (5) years following the end of the Project Operation Phase (i.e., after 26 years) by annual leaf drop and weathering.

The residual effect characteristics ratings for change in abundance and abundance of wildlife, fish and plants/vegetation are presented in **Table 6.7-4**.

Table 6.7-4: Residual Effect Characteristics Ratings for Change in Abundance or Quality of Wildlife, Fish and Plants/Vegetation

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Moderate	A moderate degree of change in Abundance or Quality of Wildlife, Fish and Plants/Vegetation will be observed due to Project activities
Geographic Extent	Regional	Some effects (e.g., indirect effects to Moose mortality) extend beyond the LSA, into adjacent House territories in the RSA
Duration	Long-term	- Effects to some wildlife, fish and vegetation resources are expected to last more than one generation e.g., 37 years after clearing before Moose, Grizzly Bear and Caribou habitat is restored to a functional level. Some effects, such as those to fish habitat in the Project Area, will last in perpetuity (though offset by creation of new habitat). - Effects to some water quality aspects will last through Post-Closure Phase – i.e., 50 years. - The deposition of trace metals on Culturally Important plant Species is expected to be Long-term (>52 years) because of the extended time periods often necessary for trace metals to attenuate in the soil.
Frequency	Continuous	The combination of effects to water, wildlife, fish, and plants will result in a Continuous effect on Wet'suwet'en land use and resource harvesting.
Reversibility	Partially-Reversible	Some changes affecting Wet'suwet'en land use and resource harvesting may be reversed in the latter phases of the Project through reclamation and offsetting activities. Other effects are deemed irreversible.
Context	High	The Wet'suwet'en heavily rely on water, wildlife, fish and plants for sustenance, cultural activities, knowledge transmission and resources for <i>baht'lats</i> . These resources are already heavily affected across the territory by other activities/projects and by climate change, thus making remaining resources ever more important.

Notes: >=greater than; LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.3.2 *Residual Effects to the Utility of Lands and Waters for Wet'suwet'en Land Use and Resource Harvesting*

The utility of the lands and waters is integral to Wet'suwet'en participation in cultural practices and the exercise of Wet'suwet'en harvesting rights.

Effects to utility of lands and waters are follow from Project-related changes to ecology, access, sensory disturbance and human presence. Examples of these changes include the alteration and loss of terrestrial and aquatic habitat, change in habitat connectivity and the movement of wildlife and the changes to the quality and safety of land and aquatic habitat (e.g., contaminants).

With the establishment of the Project Area and local sensory disturbances, the utility of the lands and waters for Wet'suwet'en land use and resource harvesting will be diminished. A residual effect associated with sensory disturbance is expected throughout the Active Phases of the Project (Construction, Operation, Decommissioning and Reclamation phases).

The potential effects to numerous environmental values (e.g., as identified in the VC chapters for Wildlife, Water, Fish and Fish Habitat, Terrain and Soils, Atmospheric Environment) may decrease the utility of the landscape for Wet'suwet'en subsistence and cultural activities.

The residual effect characteristics ratings for change in utility of lands and waters for Wet'suwet'en Land Use and Resource Harvesting are presented in **Table 6.7-5**.

Table 6.7-5: Residual Effects Characteristics Ratings for Change in Utility of Lands and Waters for Wet'suwet'en Land Use and Resource Harvesting

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	High	Change in utility will occur through the loss of access to lands and change in the quality and quantity of resources for harvesting and cultural activities, Project-generated pollutants, and access restrictions.
Geographic Extent	Local	Effects to utility will occur within the Project Area and extend to other parts of the LSA.
Duration	Medium-term	The effects will occur throughout the life of the Project and lessen during Reclamation Phase activities. Some effects, such as pollutants on the soil, will extend to more than two generations (beyond 50 years).
Frequency	Continuous	Effects will be Continuous throughout the life of the Project.
Reversibility	Partially Reversible	Effects to utility can partially return to existing conditions after the Decommissioning and Reclamation Phases
Context	High	The utility of lands and waters for Wet'suwet'en land use and resource harvesting is already disrupted by many existing projects and activities, as well as by climate change.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.3.3 *Residual Effects to Wet'suwet'en Access to Territory for Land Use and Resource Harvesting*

The Wet'suwet'en's ability to access their territory for land use and resource harvesting is integral to the rights to practice traditional activities, such as hunting, gathering trapping, fishing, and to teaching, learning and cultural continuity.

A residual effect from a change in access for Wet'suwet'en land use and resource harvesting is expected throughout the Active phases of the Project (Construction, Operation, Decommissioning and Reclamation). Mitigation measures (as summarized in **S6.0-C4 Land and Resource Use VC** and in **Tables 15.1-1** and **15.2-1** of **S15.0 Conclusions**) will not fully mitigate the predicted effects.

As noted in **S6.0-C4**, Construction Phase-related clearing and preparation of the Project are expected to result in restricted access for some areas that will continue throughout the Construction, Operation, and Decommissioning and Reclamation Phases of the Project, mitigated by establishing and implementing a **Public Access Management Plan (S13.0-C16) (PAMP)** to mitigate potential safety issues related to public access to the Project Area, and the replacement of the Goathorn Creek Bridge. Access to the Minesite, Bypass Road and Rail Loop will be prohibited due to public safety considerations. Access across the Goathorn Creek Bridge will be escorted. An existing access trail on the west side of Goathorn Creek can be used as an alternate access trail to Hunter Basin and other recreational sites. While a portion of this trail that turns west towards the Project Area will be blocked off by a physical berm, TCL will improve the existing trail by trimming overgrown vegetation;

Access is predicted to be substantially restored during the Post-closure Phase, except for open pit areas where access will continue to be restricted for public health and safety.

The residual effect characteristics ratings for change in Wet'suwet'en access to territory for land use and resource harvesting are presented in **Table 6.7-6**.

Table 6.7-6: Residual Effect Characteristics Ratings for Change in Wet'suwet'en Access to Territory for Land Use and Resource Harvesting

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Moderate	The severity of the residual effect of access restrictions is Moderate.
Geographic Extent	Local	Access restrictions will apply to the Project Area (the Minesite and associated infrastructure). Effects to mobility may extend into portions of the LSA.
Duration	Medium-term	- Access restrictions will be established at the outset of the Construction Phase and will be in effect throughout the Construction, Operation, and Decommissioning and Reclamation phases of the Project (at least 30.5 years) which is more than one (1) generation. - Access will be largely restored during the Post-closure Phase, except for open pit areas where access will continue to be restricted for health and safety reasons.
Frequency	Continuous	Residual effects to access will occur continuously throughout the Project life.
Reversibility	Partially Reversible	Except for open pit areas where access will continue to be restricted for health and safety reasons, access will be largely restored during the Post-closure Phase.

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Context	High	Access to the traditional territory for land use and resource harvesting is a Wet'suwet'en right. Access to important areas of the territory have already and recently been restricted due to other resource development projects. Sensitivity to the effects of limited access is high.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.3.3.1 Likelihood

The Likelihood of residual effects to the abundance and quality of wildlife, fish and plant/vegetation resources, utility of lands and waters for Wet'suwet'en land use and resource harvesting and change in Wet'suwet'en access to territory for land use and resource harvesting is **Likely**.

6.7.3.3.2 Confidence and Risk

Confidence in the assessment is **Moderate**. The types of changes associated with the Project are known from other projects to lead to effects on Current Land Use and Resource Harvesting. However, the assessment is made without site specific information regarding the extent of Wet'suwet'en land use in the Project Area.

6.7.4 Cultural Heritage

Even with implementation of the mitigation measures summarized in **Tables 15.1-1 and 15.2-1** of **S15.0 Conclusions**, Wet'suwet'en may still experience that there are effects to Cultural Heritage.

Three (3) residual effects are identified in relation to Wet'suwet'en Cultural Heritage:

- ▶ change in sense of place and connection to land;
- ▶ change in Wet'suwet'en knowledge and cultural transmission; and
- ▶ changes to physical cultural heritage features.

6.7.4.1 Residual Effects to Sense of Place and Connection to Land

The residual effect characteristics for change in sense of place and connection to land are presented in **Table 6.7-7**.

Table 6.7-7: Summary of Residual Effects Characteristics for Change in Sense of Place and Connection to Land

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	High	Project-related clearing and alterations to the landscape, as well as sensory disturbances pose major changes for sense of place and connections to land.
Geographic Extent	Local	Effects are most pronounced in the Project Area, but extend further for sensory disturbance, emissions, indirect effects, and concerns about integrity of water downstream.

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Duration	Long-term	Effects from sensory disturbance will diminish after Operation (20 years) and will gradually diminish overall with reclamation and regrowth of vegetation (i.e., after 30 or 40 years for some areas). Other features will remain on the landscape, such as portions of management ponds that will be left as open water.
Frequency	Continuous	From the onset of Construction, effects to sense of place and connection to land will be Continuous.
Reversibility	Partially Reversible	Some aspects leading to the effects are reversible or partially reversible with reclamation or ceasing of sensory disturbance. Others, such as such as portions of management ponds that will be left as open water, will not be reversed.
Context	High	Sense of place and connection to land for Wet'suwet'en is already disrupted by many existing projects and activities, as well as by climate change.

6.7.4.1.1 Likelihood

Given the degree of landscape change proposed in the Project Area (across approximately 1,853 ha) and adjacent areas, the Likelihood of residual effects to sense of place and connection to land is **Likely**.

6.7.4.1.2 Confidence and Risk

Confidence in the assessment is **High**. The types of changes associated with the Project are known from other projects to lead to effects on sense of place and connection to land.

6.7.4.2 Residual Effects to Wet'suwet'en Knowledge and Cultural Transmission

The residual effect characteristics for Wet'suwet'en knowledge and cultural transmission are presented in **Table 6.7-8**.

Table 6.7-8: Summary of Residual Effect Characteristics Ratings for Change in Wet'suwet'en Knowledge and Cultural Transmission

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	High	Project-related clearing and alterations to the landscape, and ecology, as well as access restrictions, present serious challenges to Wet'suwet'en knowledge and cultural transmission in the affected areas.
Geographic Extent	Local	Effects are most pronounced in the Project Area, but extend further for sensory disturbance, emissions, indirect effects, and concerns about integrity of water downstream.
Duration	Long-term	Effects will gradually diminish with restoration of access, reclamation, and regrowth of vegetation. However, it will take more than 50 years (more than two generations) for vegetation and ecology (with which cultural transmission is inextricably connected) to reach a mature stage.

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Frequency	Continuous	From the onset of Construction, effects to knowledge and cultural transmission will be Continuous throughout the Project.
Reversibility	Partially Reversible	Some aspects leading to the effects are reversible or partially reversible over time with reclamation,
Context	High	Wet'suwet'en knowledge and cultural transmission is already disrupted by many existing projects and activities, as well as the ongoing effects of colonization.

6.7.4.2.1 Likelihood

Given the degree of landscape change proposed in the Project Area (across approximately 1.853 ha) and adjacent areas, and restrictions to access, the Likelihood of residual effects to Wet'suwet'en knowledge and cultural transmission is **Likely**.

6.7.4.2.2 Confidence and Risk

Confidence in the assessment is **High**. The types of changes associated with the Project are known from other projects to be associated with effects to knowledge and cultural transmission.

6.7.4.3 Residual Effects to Physical Cultural Heritage Features

S7.0-C1 Heritage VC concludes that following the implementation of proposed mitigation measures and management strategies, effects from the Project on known and as-yet unknown Heritage Resources due to changes in presence, number, type, and/or significance are anticipated to be negligible and thus does not identify any residual effects. Depending on the feature, mitigation measures include consultation with the OW to determine preferred mitigation measures. For example, if avoidance is not possible, prior to alteration of any post-1846 CMTs, the OW will be consulted to determine, if necessary, the preferred mitigation measures (**S7.0-C1**).

However, it is difficult to determine prior to discussion with Wet'suwet'en and with only incomplete information about physical cultural heritage features, whether mitigations will in all cases be able to prevent residual effects.

Given the high archaeological potential of the Project Area and adjacent areas, the Likelihood of some degree of residual effect occurring to Physical Cultural Heritage Features over the life of the Project is **Likely**.

However, there is not enough information on which to conduct a full characterisation of residual effects to Physical Cultural Heritage. If such a characterisation was completed, the Level of Confidence in it would be **Low**.

6.7.5 Community Well-being

For 150 years since implementation the *Indian Act*, the Wet'suwet'en have existed within a system that was studied and modelled by Afrikaner's in designing and implementing South Africa's apartheid system (Saul 2010). The structural violence of the *Indian Act* has resulted in severe fragmentation of Wet'suwet'en society causing deep economic inequities and intergenerational trauma. Mitigation measures proposed in

6.6, specifically **Collaborative Governance, Intergenerational Trust Fund, and Equity Ownership** in the Project, are designed for interactively addressing these issues, towards a more resilient and sustainable society, while also upholding Wet'suwet'en Aboriginal rights and right of title.

Equity ownership is foundational for addressing Wet'suwet'en Community Well-being. However, as has been seen in the decolonization of any society by another, there are uncertainties. Residual effects on Food and Economic Security, Community Cohesion and Physical Security, Mental and Emotional Health after application of this mitigation measure are difficult to predict. The dismantling of such a violent and insidious colonial construct as the *Indian Act* and disentangling its social effects is highly complex.

The principal objective with mitigation measures is for enhancing communication, building trust, coordinating efforts, and responding to Wet'suwet'en needs. The success of the measures will depend on the ability to build trust between Wet'suwet'en and project developers as well as within the Wet'suwet'en community itself. Trust is the connective tissue that holds communities and the body politic together and makes them more resilient to hardship. The type of trust that can grow between neighbors over time is particularly sturdy. When political decisions over scarce resources are made in a context devoid of trust, something else quickly fills the void: "suspicion" (Coleman 2021). From such suspicion over another industrial project in the *Yintah*, comes a detachment from the Project, increasing the Likelihood and Magnitude of the residual effects characterised below.

6.7.5.1 Residual Effects to Food and Economic Security

For reasons explained in the preface above (**6.7.5**), even with application of the proposed mitigation measures there could still be a residual effect to Food and Economic Security for Wet'suwet'en. This residual effect is characterised in **Table 6.7-9**.

Table 6.7-9: Summary of Residual Effects to Food and Economic Security

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Low	The mitigation measures proposed here will be transformational in positive sense with Wet'suwet'en community relationship to the Project.
Geographic Extent	Regional	▪ The Project is within the House Territories of <i>Cas Yex</i> and <i>Kwen Bea Yex</i>. Wet'suwet'en participation in the governance will be determined under Wet'suwet'en law. ▪ Wet'suwet'en Intergenerational Trust Fund may be determined by Wet'suwet'en Hereditary Chiefs in capacities beyond house territories as per their laws ▪ Wet'suwet'en equity ownership in the Project may be determined by Wet'suwet'en Hereditary Chiefs according to their laws.
Duration	Long-term	Due to the complexity of the situation, it is difficult to predict the duration of this potential residual effect with confidence. It is possible that the effects would span multiple generations.
Frequency	Continuous	Should residual effects occur to Food and Economic Security, they are predicted to occur continuously.
Reversibility	Fully Reversible	Residual effects could be reversed to a point, with dedicated efforts such as mitigations proposed in 6.6 .

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Context	Low	From a sociohistorical perspective, mitigation measures proposed here may take some time to counteract the cycles of causation that have occurred over time.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.5.1.1 Likelihood

With full application of the proposed mitigation measures, especially collaborative governance, intergenerational trust fund and equity ownership in the Project, it is **Unlikely** that there will be a residual effect Food and Economic Security for Wet'suwet'en.

6.7.5.1.2 Confidence and Risk

The mitigation measures proposed will have a transformational balancing effect on food and economic security for those participating in the industrial processes as well as those who choose not to. The Confidence in this assessment is **High**.

6.7.5.2 Residual Effects to Community Cohesion

For reasons explained in the preface above (6.7.5), even with application of the proposed mitigation measures there could still be a residual effect to Community Cohesion for Wet'suwet'en. This residual effect is characterised in **Table 6.7-10**.

Table 6.7-10: Summary of Residual Effects to Wet'suwet'en Community Cohesion

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Low	The mitigation measures proposed here will be transformational in a positive sense with Wet'suwet'en community relationship to the Project.
Geographic Extent	Regional	- The Project is within the House Territories of <i>Cas Yex</i> and <i>Kwen Bea Yex</i>. Wet'suwet'en participation in the governance will be determined under Wet'suwet'en law. - Wet'suwet'en Intergenerational Trust Fund may be determined by Wet'suwet'en Hereditary Chiefs in capacities beyond house territories as per their laws - Wet'suwet'en equity ownership in the Project may be determined by Wet'suwet'en Hereditary Chiefs according to their laws.
Duration	Medium-term	Due to the complexity of the situation, it is difficult to predict the duration of this potential residual effect with confidence. It is possible that the effects would span at least one generation.
Frequency	Continuous	Should residual effects occur to Wet'suwet'en Community Cohesion, they are predicted to occur continuously.
Reversibility	Fully Reversible	Residual effects could be reversed to a point, with dedicated efforts such as mitigation measures proposed in 6.6. However, to the extent that distrust and trauma are continued they could become increasingly difficult to reverse.

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Context	Low	From a sociohistorical perspective, mitigation measures proposed here may take some time to counteract the cycles of causation that have occurred in as a result of Coastal GasLink.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.5.2.1 Likelihood

Due to the current situation regarding Coastal GasLink, and other complex sociohistorical factors, it is **Likely** that there would still be a residual effect to community cohesion despite mitigations, although the Magnitude would be **Low**.

6.7.5.2.2 Confidence and Risk

Confidence in the proposed mitigations is **High**, but they will take time to take effect.

First, effects of Coastal GasLink development processes on community cohesion continue to flare in violence. New project development in the *Yintah* and within the environment created by Coastal GasLink, will carry risk regardless of mitigations

Second, “legal recognition that the Wet'suwet'en House are the Indigenous governing body holding the Wet'suwet'en Aboriginal rights and title in accordance with Anuk Nuatden” (GovCan et al. 2020), is presently under negotiation between the Wet'suwet'en Hereditary Chiefs and the Governments of BC and Canada. These negotiations will be determinant of how the Wet'suwet'en community leadership understands their degree of interdependence, particularly with regards to goals (Lewicki and Tomlinson 2014), and the degree of relative power within the relationship (Kim et al. 2005).

6.7.5.3 Residual Effects to Physical Security, Mental and Emotional Health

For reasons explained in the preface above (6.7.5), even with application of the proposed mitigation measures there could still be a residual effect to Wet'suwet'en Physical Security, Mental and Emotional Health. This residual effect is characterised in **Table 6.7-11**.

Table 6.7-11: Summary of Residual Effects to Physical Security, Mental and Emotional Health

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Low	The mitigation measures proposed here will be transformational in positive sense with Wet'suwet'en community relationship to the Project.
Geographic Extent	Regional	The Project is within the House Territories of <i>Cas Yex</i> and <i>Kwen Bea Yex</i> . Wet'suwet'en participation in the governance will be determined under Wet'suwet'en law. Wet'suwet'en intergenerational trust fund may be determined by Wet'suwet'en Hereditary Chiefs in capacities beyond house territories as per their laws Wet'suwet'en equity ownership in the Project may be determined by Wet'suwet'en Hereditary Chiefs according to their laws.

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Duration	Long-term	Due to the complexity of the situation, it is difficult to predict the duration of this potential residual effect with confidence. It is possible that the effects would span multiple generations.
Frequency	Continuous	Should residual effects occur they would be continuous, throughout the life of the Project.
Reversibility	Full reversible	Effects could be reversed to a point, with dedicated efforts such as pointed to in the mitigations in 6.6. However, to the extent that distrust and trauma are continued they could become increasingly difficult to reverse.
Context	Low	From a sociohistorical perspective, mitigation measures proposed here may take some time to counteract the cycles of causation that have become habituated through resource development in the region.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.5.3.1 Likelihood

It is **Unlikely** that there will be a residual effect, but mitigation measures may take time, and the current situation may take time to dissolve. The collaborative governance model proposed for the Project is also critically important in helping change the current patterns of causality. Project leadership defines code of conduct and the relationship the Project will have with the community

6.7.5.3.2 Confidence and Risk

Confidence in this assessment is **High**. The mitigations proposed represent a fundamental shift in socio-economic processes within the *Yintah*.

6.7.6 Wet'suwet'en Health

Even with the application of mitigation measures, residual effects to Wet'suwet'en Health are possible. These include:

- ▶ change in quality of air, water, and traditional foods; and
- ▶ change in Wet'suwet'en traditional food security.

6.7.6.1 Residual Effects to Quality of Air, Water and Traditional Foods

The assessment of biophysical residual effects on the Human Health VC (i.e., due to changes in environmental quality) is based on the results of the quantitative **HHRA** in **Appendix 8.1-A**, which followed established risk assessment methodology from Health Canada and the BC Ministry of Health.

After application of the proposed mitigation measures, the following residual effects were identified and characterised for the Human Health VC in **S8.0-C1-5.4**, and are relevant for Wet'suwet'en Health:

- ▶ residual effects on Human Health due to Project-related changes in Air Quality from CACs;
- ▶ residual effects on Human Health due to Project-related changes in metal COPCs concentrations in environmental media, including an assessment specifically for Indigenous and non-Indigenous Residential Land Users (Adults and Toddlers) for:

- ▶ non-carcinogenic metal COPCs (all exposure pathways); and
- ▶ carcinogenic metal (COPCs (ingestion pathway only).

The detailed characterisations of residual effects on Human Health due to changes in air quality and environmental media are provided in **S8.0-C1-5.4**. Due to the highly technical and detailed nature of the information, the reader is recommended to refer to that section for details of the characterisations. The following paragraphs summarize some of the key points most relevant for Wet'suwet'en and provide a characterisation focussed specifically for Wet'suwet'en.

In terms of residual effects on Human Health due to changes in air quality, it was predicted that Project contributions to maximum predicted concentrations of particulate matter (PM), NO₂ and dustfall may exceed ambient air quality criteria in a small area at and southeast of the Minesite and CPP (see **S4.0-C1**). Due to Project-related access restrictions, it was deemed unlikely that land users, including Wet'suwet'en, will spend a substantial amount of time in this location over the course of the Project.

For non-carcinogenic COPCs, the changes in the Human Health VC, as estimated by Hazard Quotients (HQs) in the Project Case, are predicted to increase up to 300% (thallium) relative to the Base Case. Increases in thallium concentrations in water and fish tissue were predicted for Goathorn Creek, Four Creek, Tenas Creek, and Telkwa River (at the confluence with Tenas Creek) close to the Minesite but are not predicted to extend to the Bulkley River. Effects are predicted to persist throughout the Project phases.

Regarding the risk of ingestion of carcinogenic COPCs for Indigenous and non-Indigenous Residential Land Users, the assessment looked at the pathways of drinking water, soil ingestion, soil dermal contact, and subsistence foods. The subsistence foods assessed were moose meat, moose liver and kidney, deer meat, deer liver and kidney, black bear, grouse, snowshoe hare, rainbow trout, berries, and garden produce. Increases in arsenic in fish and drinking water were predicted close to the Minesite but were not predicted to extend to the Bulkley River. Contributions of arsenic to drinking water in surface water discharges are anticipated to occur only during winter months. Residual effects from ingestion of subsistence foods (fish) are only predicted to occur if local non-anadromous fish are consumed. No effects are expected from consumption of anadromous species, such as salmon, which are consumed most often (refer to **S8.0-C1 Table 5.4-11**).

Wet'suwet'en health could potentially be affected throughout the life of the Project (**S8.0-C1**). While the Project's residual effects on the Human Health VC were predicted to be **Not Significant**, the same determination may not equally apply to Wet'suwet'en Health. For example, in terms of Context for the residual effects characterisation for Human Health due to changes in environmental media quality, the assessment in **S8.0-C1** notes that people can have varying degrees of sensitivity and ability to adapt to stressors (resiliency), depending on multiple of other non-biophysical factors (such as individual-specific socio-economic, genetic, health (physical, spiritual, or cultural) factors). Due to the complex legacies of colonialism, Wet'suwet'en people may have more pre-existing health stressors than the general population. For example, although everyone is at risk from the health effects of air contaminants, certain individuals are more susceptible such as children, the elderly, and people with cardio-respiratory health problems (Health Canada 2016a). As noted earlier, a comprehensive study of First Nations across Canada found that the health of many First Nations adults is compromised with very high rates of smoking, obesity (double the obesity rate among Canadians), and with one-fifth of the adult population suffering from diabetes (more than double the national average) (University of Ottawa, Université de Montréal, and Assembly of First Nations 2021). Given those findings, it can conservatively be inferred that due to existing health challenges, for many Wet'suwet'en the resilience to additional health stressors may be lower than that of the general population.

Due to their unique relationship with the land, Wet'suwet'en community members may have a different perspective on environmental risk and risk tolerance in regard to what are acceptable levels of environmental contaminants as compared to standard thresholds and guidelines, no matter how conservative. The entire lifeways and culture of Wet'suwet'en are connected to their House territories and the *Yintah*. There is no other place they can go to that has the same meaning and connection. If their lands, waters, and food sources are contaminated, the Wet'suwet'en people will have lost a portion of their territory. From this perspective, the Wet'suwet'en bear a higher level of risk from environmental changes than does society in general. Likewise, if it turns out that Project-related contaminants of water, traditional foods and other environmental media are higher than predicted, and especially if the contamination is technically not possible to remediate in the short term, the effects for Wet'suwet'en are particularly serious. Due to the interconnection of House territories, how Houses exchange resources and depend on one another, effects in the Houses encompassed by the Human Health LSA could affect other Wet'suwet'en Houses beyond those directly affected. Thus, the Geographic Extent of health effects extends to the entire Wet'suwet'en society, and the entire territory.

The residual effect characteristics ratings for changes to quality of air, water, and traditional foods, as they relate to Wet'suwet'en, are presented in **Table 6.7-12**. See **S8.0-C1-5.4** for detailed characterisations of residual effects on the Human Health VC.

Table 6.7-12: Residual Effect Characteristics Ratings for Changes to Quality of Air, Water and Traditional Foods

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Moderate	Changes to quality of air and environmental media are predicted, though described in S8.0-C1 as generally being below thresholds of health concern, or not.
Geographic Extent	Regional	Direct and indirect effects occur in the LSA, but may extend to the RSA through distribution and exchange of goods among Houses
Duration	Long-term	Changes to some environmental media (e.g., soil) may last more than two (2) generations.
Frequency	Frequent	Health effects from air quality changes are deemed frequent, and others infrequent.
Reversibility	Partially reversible	Some effects are fully reversible, others, such as exposure to carcinogenic COPCs are partially reversible
Context	Moderate	Due to existing health challenges, some Wet'suwet'en have lower resilience to additional health stressors than the general population.

Notes: COPC=Contaminants of Potential Concern; LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.6.1.1 Likelihood

As noted in **S8.0-C1-5.4.2.2**, the residual effects on Human Health (and thus also Wet'suwet'en Health) due to changes in Project-related contributions of PM_{2.5} and PM₁₀ are considered **Unlikely** since the associated concentration ratios (CRs) are less than the threshold or, when already above the threshold in the Base Case (in Telkwa), the increase in the CR due to the Project is less than 5% and unlikely to be measurable given inter-annual variability in PM_{2.5} and PM₁₀ concentrations.

As noted in **S8.0-C1-5.4.3.4**, residual effects on Human Health due to changes in concentrations of COPCs in environmental media are considered **Unlikely** since the Project-related incremental changes in HQs and

Incremental Lifetime Cancer Risk (ILCRs) are low, with higher contributions from market foods compared to contributions from the Project. Measurable changes to Human Health are deemed **Unlikely** to occur.

6.7.6.1.2 Confidence and Risk

As noted in **S8.0-C1-5.4.2.3**, the Level of Confidence regarding the prediction of Human Health effects from change in air quality is **High** as a quantitative assessment and modelling were completed using Project-specific and receptor-specific information where possible.

As noted in **S8.0-C1-5.4.3.5**, the Level of Confidence regarding the prediction of Human Health effects from change in environmental media quality is **Moderate** as a quantitative assessment was completed using regulator-provided Toxicity Reference Values (TRV) thresholds of which some (e.g., thallium) have higher levels of uncertainty. Standard HHRA models and Project-specific and receptor-specific information were used where possible. Conservative assumptions were made to increase confidence in the HHRA modelling.

Uncertainty exists with respect to the type and concentration of trace metals that may be deposited, their bioavailability, and the responses of individual vegetation species to trace metals (**S4.0-C7**).

6.7.6.2 Residual Effects to Traditional Food Security

Residual effects to Wet'suwet'en traditional food security occur directly within the LSA for Wet'suwet'en Rights and Interests (i.e., the House territories in which Project components are located), and throughout the RSA—the entire Wet'suwet'en territory—due to the interconnections among Houses for distribution of traditional food resources. Given the interconnectedness of Houses, it is important to recognize that most of the Project components are located within a *Cas Yex* House territory, the same House group affected by the development of Coastal Gaslink Project in their *Ludis Bin* territory.

Potential effects to Wet'suwet'en traditional food security occur during Project phases. During the Construction and Operation Phases, activities such as site clearing, construction of roads and Rail Infrastructure and powerline and substation and construction of other Project infrastructure may lead to loss of wildlife habitat and vegetation and decrease the extent of area available for Wet'suwet'en traditional food sourcing.

For example, up to 1,378.5 ha (4.7%) of ecosystems supporting Culturally Important Species within the Vegetation RSA is anticipated to be removed during site clearing during the Construction Phase (Error! Reference source not found. in **S4.0-C7**). An additional 1,719.2 ha (5.8%) of ecosystems that support Culturally Important Species within the Vegetation RSA may experience indirect Project effects during Project phases (**S4.0-C7**).

During the Operation Phase, the effects of habitat loss extend and expand to include potential wildlife mortality (e.g., due to collisions) and displacement (e.g. due to noise and traffic). Project related emissions and water discharges during the Operation Phase potentially may lead to contaminants in water, wildlife, fish, and vegetation (e.g., through metal dust on plants and soil, contaminants in water, and potentially building up in fish and wildlife through the food chain).

The duration of residual effects to traditional food security would be multi-generational. Given that the Project Area will be removed from territory for at least one generation, and that decreases in availability of traditional foods for the current generation could lead to a gap in the next generation. Decreases in the availability or consumption of traditional food may lead to decreased opportunities for cultural transmission, potentially leading to inter-generational effects on rates of traditional food consumption due to lack of knowledge in future generations regarding how to harvest and prepare traditional foods.

Potential effects to Wet'suwet'en confidence in the safety of water and traditional foods, due to real and perceived contamination, are predicted to begin during the Construction Phase and continue throughout the entire Project life and potentially longer.

Since the Human Health risk assessment found that the largest contribution to risks of COPCs was from market foods, a decrease in availability of traditional foods could potentially increase Wet'suwet'en reliance on market foods, thus increasing their exposure to COPCs.

Due to ongoing incremental decreases in traditional food gathering areas across the territory (**Figures 7.2-1 to 7.2-4 in 7.2**), every part of Wet'suwet'en territory is ever more important. The Project will remove access to and/or change habitat in 1,853 ha, or less than 0.1%, of Wet'suwet'en territory for 26-50 or more years (i.e., for one-two [1-2] generations).

Project-related effects to Wet'suwet'en food security would be compounded by existing and growing effects from climate change and other existing and planned development projects across Wet'suwet'en territory. Given the existing challenges, Wet'suwet'en resilience to additional changes in availability of healthy traditional foods, and hence food security, is Low.

While much of the Project Area (44%) has been previously subjected to timber harvesting and is now dominated by 10 to 40 year-old regenerating forest stands and an extensive network of resource roads, the Project is still considered a greenfield operation. The lands within the Project Area have more usefulness for Wet'suwet'en traditional food in their current state than they will during the life span of the Project, until ecosystem values are re-established. While there are other areas Wet'suwet'en can access for traditional foods, away from the Project, the Project does remove a small amount of area (1,853 ha or less than [$<$] 0.1% of the traditional territory), decreasing overall traditional food sourcing opportunities. The removal of any amount of area has an effect, adding to the removals from other projects.

The residual effect characteristics ratings for change in Wet'suwet'en traditional food security are presented in **Table 6.7-13**.

Table 6.7-13: Residual Effect Characteristics Ratings for Change in Wet'suwet'en Traditional Food Security

Residual Effects Characteristic	Rating	Summary Rationale for Rating
Magnitude	Moderate	The severity of residual effects to traditional food security is Moderate.
Geographic Extent	Regional	Residual effects are based on effects that occur within both the LSA and RSA. Due to societal sharing of resources between Houses, effects of changes to traditional food security extend to the RSA.
Duration	Long-term	Direct effects leading to decreased traditional food security are expected to take place over the life of the Project and longer, due to potential gaps in learning opportunities for one or two generations.
Frequency	Continuous	Effects to traditional food security are expected to occur throughout the life of the Project, and longer.
Reversibility	Partially Reversible	Effects to food security are expected to diminish as habitat returns after reclamation, but some habitat effects and access restrictions will persist.
Context	High	Stressors on traditional food security are already high due to other development projects and activities across Wet'suwet'en territory, and due to climate change. Resilience to additional effects is low.

Notes: LSA=Local Study Area; Project=Tenas Project; RSA=Regional Study Area

6.7.6.2.1 Likelihood

Project-related residual effects on Wet'suwet'en traditional food security are **Likely**, as the Project will decrease access to portions of the territory, reduce and alter areas of wildlife habitat and cultural use plants, and potentially cause some Wet'suwet'en people to avoid traditional foods from some areas due to real or perceived contamination.

6.7.6.2.2 Confidence and Risk

The Confidence regarding the predicted residual effects on Wet'suwet'en traditional food security is **Moderate**. Uncertainties include a lack of site-specific or quantitative information regarding level of consumption of traditional foods in areas that would be affected by the Project. However, given that use patterns change over time, and considering the interconnectedness of the House territories and ecology, and the Long-term Duration of the effect (i.e., at least a generation, in some cases two) the Confidence is Moderate that there will be a residual effect.

7. PERSPECTIVES ON CUMULATIVE EFFECTS

This subsection describes Wet'suwet'en perspectives on cumulative effects, as documented in existing publicly available resources and discusses the residual effects of the Project in the context of other industrial and environmental effects, considering known Wet'suwet'en perspectives.

7.1 Introduction to Cumulative Effects

Since the beginning of colonization, and predominantly in recent decades, the Wet'suwet'en have experienced the imposition of numerous land and resource development projects within their Territories. A cumulative effects assessment (CEA) is a globally relevant practice that is employed to account for effects to both social and environmental components that aims to address the past, present and future effects of human activities and natural processes (Blakley and Russell 2021). By conducting a CEA, there is an opportunity to determine priorities and strategies for ethical development and strive to avoid the “death by a thousand cuts” (Booth and Skelton 2011). These cuts represent the accumulation of residual effects from, at times, seemingly minor project-induced changes that can negatively interact and create abrupt shifts in ecological and social systems (Foley et al. 2017).

As stated in the Final Written Argument of the OW to the Joint Review Panel for the Northern Gateway project (OW 2013a), the EAC Application needs to consider both the incremental effects the project will have on Wet'suwet'en House territories, and the present state of Wet'suwet'en society and culture after the last 150 years of impacts.

“Our people have been killed by epidemic and disease. Our language has been taken from us, cultural practices have been made criminal, and our children have been sent to residential schools. We have been and continue to be the target of racism and physical, sexual and emotional abuse.”

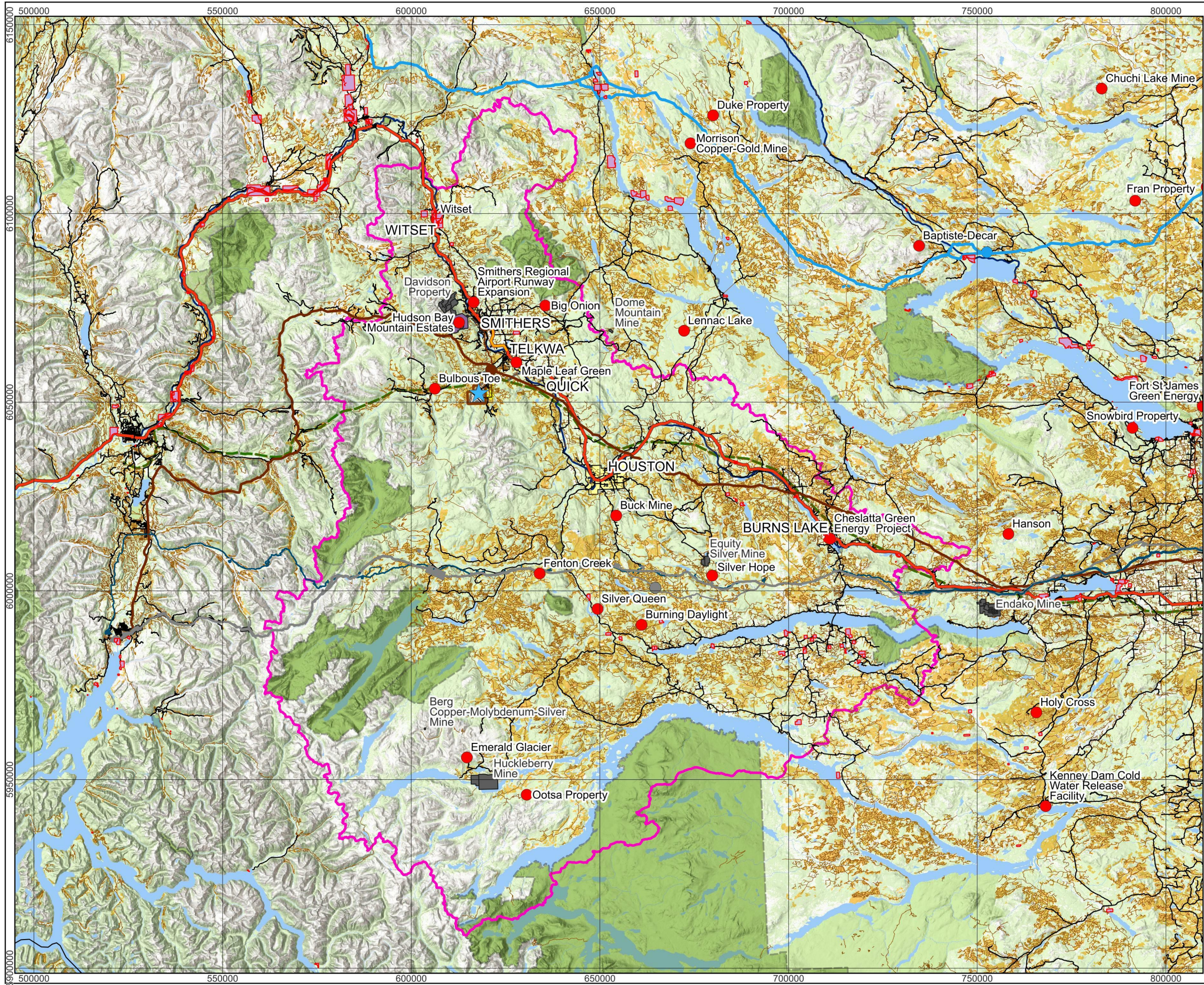
Consideration of the Project needs to be made considering these cumulative social and cultural effects.

7.2 Geographical Context

It is suggested that the spatial scales in the CEA should encompass the interactions between both the local and regional processes related to the Project Area (Therivel and Ross 2007).

This discussion of cumulative effects applies the LSA, and RSA spatial boundaries as defined in **6.3.1 Spatial Boundaries**. As described in that subsection, the LSA is the area of the two (2) Wet'suwet'en House territories in which the Project components are located (**Figure 6.3-1**). The RSA is the entire Wet'suwet'en territory (**Figure 6.3-2**).

Figures 7.2-1 to 7.2-4 illustrate the Wet'suwet'en territory as a whole and the most affected House territories in relation to existing and proposed development projects and activities.



Tenas Project

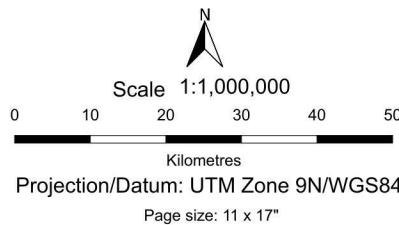
Present and foreseeable projects and activities
and Wet'suwet'en Traditional Territory

Legend

- | | |
|--|---|
| ★ Telkwa Coal Project | ■ Mining Leases |
| ● Project | ■ Coastal GasLink Pipeline Ltd. |
| ● Pacific Northern Gas Compressor Site | ■ Pacific Trail Pipelines Management Inc. |
| — Highway | ■ Prince Rupert Gas Transmission Ltd. |
| — Road - Primary/Secondary | ■ Pacific Northern Gas Ltd. |
| — Road - Tertiary/Trail | ■ Cutblocks (since 1980) |
| — 500 kV Transmission Line | ■ Municipalities |
| — 138 kV Transmission Line | ■ Park or Protected Area |
| — Railway | ■ Telkwa-Smithers Bike Trail |
| ■ Telkwa Coal Limited Private Property | ■ Wet'suwet'en Territories |
| ■ Tenas Coal Licenses | ■ First Nation Reserves |

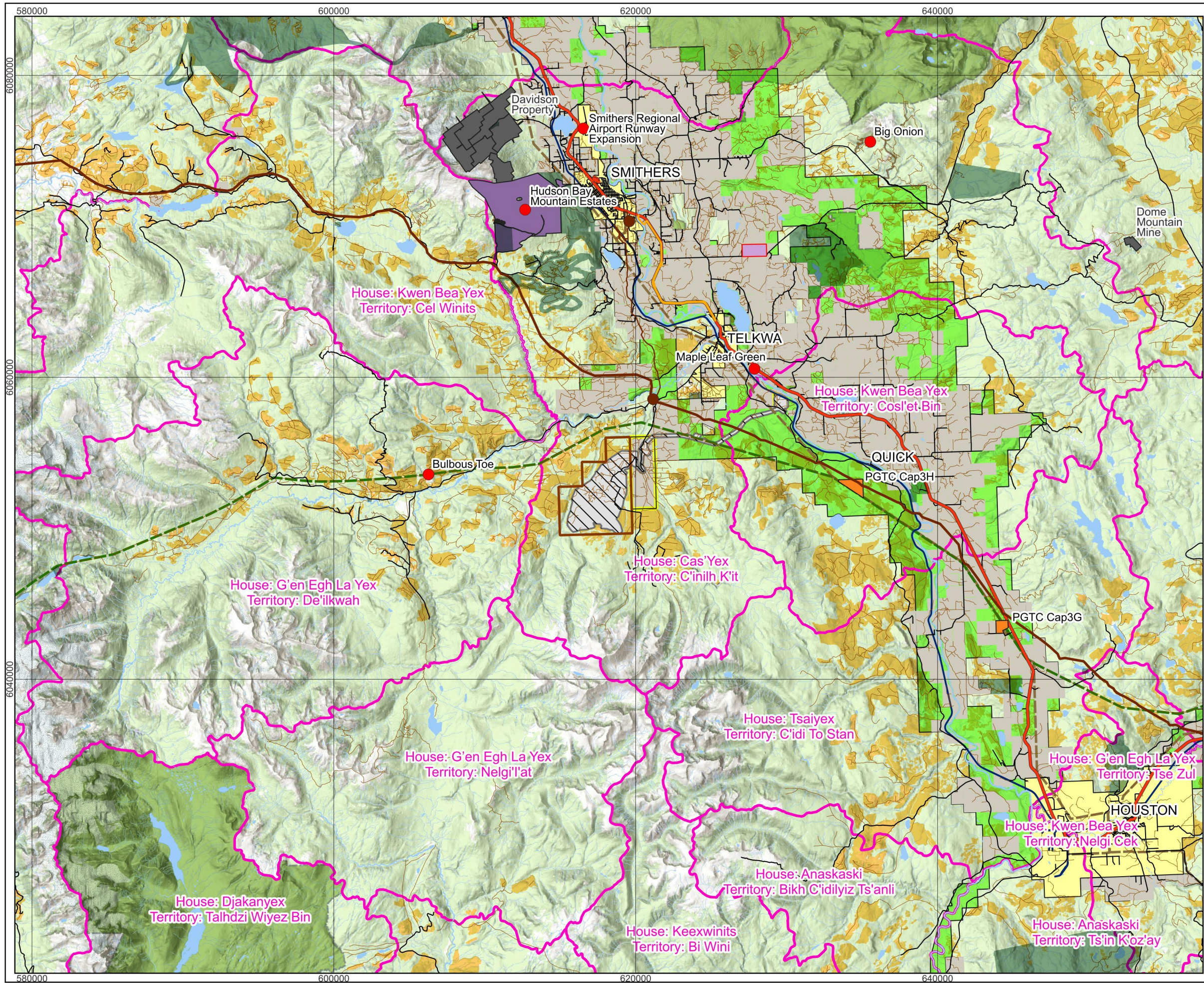
Sources

Basedata: Province of BC, Natural Resources Canada
Project Area and Components: Allegiance Coal, April 26, 2021, October 20, 2021
Wet'suwet'en Territories: Office of the Wet'suwet'en
Basemap: ESRI World Topo Base (WMS)



Production Date: January 10, 2022

Figure 7.2-1



Tensas Project

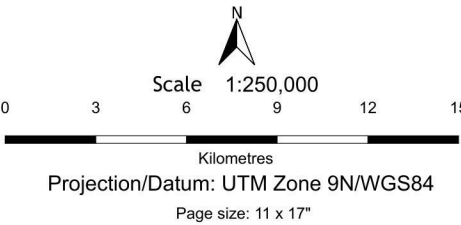
Present and foreseeable projects and activities
and Wet'suwet'en House Territories
near the Tensas Project

Legend

- | | |
|--|------------------------------|
| ● Projects | ■ Pacific Northern Gas Ltd. |
| ● Pacific Northern Gas Compressor Site | ■ Cutblocks (since 1980) |
| — Highway | ■ Municipalities |
| — Road - Primary/Secondary | ■ Park or Protected Area |
| — Road - Tertiary/Trail | ■ Recreation Site |
| — 500 kV Transmission Line | ■ Telkwa–Smithers Bike Trail |
| — 138 kV Transmission Line | ■ BCHydro Capacitor Lots |
| — Railway | ■ Agricultural Land Reserve |
| ▨ Project Area | ■ General Private Land |
| ▨ Telkwa Coal Limited Private Property | ▭ Wet'suwet'en Territories |
| ▭ Tensas Coal Licenses | ▭ Wet'suwet'en Reserves |
| ■ Mining Leases | |

Sources

Basedata: Province of BC, Natural Resources Canada
Project Area and Components: Allegiance Coal, April 26, 2021, October 20, 2021
Wet'suwet'en Territories: Office of the Wet'suwet'en
Basemap: ESRI World Topo Base (WMS)



Production Date: January 10, 2022

Figure 7.2-2