

## Appendix B.9 – Nlaka’pamux Nation Tribal Council

### I – Background Information

The Nlaka’pamux Nation Tribal Council (NNTC) was established in the early 1980s to protect and promote the title and rights of the Nlaka’pamux Nation. The NNTC website states that “Nlaka’pamux title and rights are communal in nature and are shared by all members of the Nation. With our title and rights comes the responsibility to care for the land and resources for future generations<sup>1</sup>”. The NNTC members include Boothroyd Indian Band, Oregon Jack Creek Indian Band, Lytton First Nation, Spuzzum First Nation, Skuppah Indian Band and Boston Bar First Nation. NNTC was consulted on behalf of Boothroyd Indian Band, Oregon Jack Creek Indian Band, Lytton First Nation, Spuzzum First Nation, and Skuppah Indian Band, and therefore they are considered collectively in this appendix. Boston Bar First Nation was consulted separately and is discussed in a separate appendix.

The Nlaka’pamux (pronounced “*Ing-khla-kap-muh*”) people, whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops. The NNTC member bands are a party to the Nlaka’pamux Nation’s *Writ of Summons*, which was filed in the BC Supreme Court on December 10, 2003, asserting a traditional territory identified in the writ. The *Writ of Summons* also includes Lower Nicola Indian Band, Ashcroft Indian Band, Coldwater Indian Band, Cook’s Ferry Indian Band, Nicomen Indian Band, Nooaitch Indian Band, Shackan First Nation and Siska Indian Band.

The Crown reviewed this Report and appendix with the NNTC at a meeting on November 15, 2016. NNTC informed the Crown, in writing following that meeting, that they “categorically reject this report and appendix as being grossly inaccurate, misrepresenting NNTC’s views and perspectives, failing to reflect actual information they shared, inconsistent with the established law, and unresponsive to their concerns.” NNTC asked that the Crown place this statement at the beginning of the appendix, so that it is clear that this appendix does not reflect NNTC’s views. As discussed below, the NNTC provided the Crown with a report on an early draft of this appendix. NNTC also provided a separate submission to federal and provincial Ministers. The NNTC’s report and submission are available on EAO’s website.

### II – Preliminary Strength of Claim Assessment

- Approximately 226 kilometers (km) of the proposed pipeline right-of-way (RoW) and four pipeline facilities (i.e. Kamloops Terminal, Stump Station, Kingsvale Station and Hope Station) would be located within Nlaka’pamux asserted traditional territory. The RoW is approximately 37 km to the nearest Boothroyd community, 52 km to the nearest Lytton reserve, 65 km to the nearest Oregon Jack Creek reserve, 51 km to the nearest Skuppah reserve and 16 km to the nearest Spuzzum reserve.
- The Crown’s preliminary assessment of the Nlaka’pamux Nation’s claim for Aboriginal rights, over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a

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<sup>1</sup> <http://www.nntc.ca/aboutus.htm>

weak to strong *prima facie* claims. The areas assessed to have strong *prima facie* claims are in the vicinity of the Nicola Valley south towards the Coquihalla Lakes, which most available ethnographers indicate to be within the Nlaka'pamux territory, and there are some indications of Nlaka'pamux hunting, fishing, gathering uses in the Nicola valley area around the time of contact, with connecting trails. The claims diminish in the area north of Stump Lake, as it is unclear whether this falls within Nlaka'pamux territory, and there is indication of an ancestral connection between the Nlaka'pamux community who moved into the north end of Nicola Lake, intermarrying with the Stewix/Okanagan, which could support a moderate *prima facie* claim. The *prima facie* claim diminishes to weak in the vicinity of Hope as it is understood that area is outside the area ethnographers attribute to historic Nlaka'pamux use<sup>2</sup>.

- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal title over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The area assessed to have a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory, and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weaker claims include those outside the area ethnographers attribute to the Nlaka'pamux (e.g. north of Stump Lake to Kamloops, and in the vicinity of Hope) and there is no/limited indication of historic Nlaka'pamux use at 1846<sup>3</sup>.

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

Given the nature and location of the Project, and the potential impacts of the Project on NNTC's Aboriginal Interests, the Crown is of the view that the legal duty to consult NNTC lies at the middle to deeper end of the *Haida* consultation spectrum. NNTC was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which afforded NNTC opportunities to be consulted at a deeper level.

On May 5, 2016, the NNTC met with the Crown and requested that consultation on the proposed Trans Mountain Expansion Project (TMX) between Boothroyd Indian Band, Lytton First Nation, Oregon Jack Creek Band, Skuppah Indian Band, and Spuzzum First Nation and the Crown consultation team, consisting of the EAO and Natural Resources Canada's Major Project Management (MPMO), proceed through the NNTC Shared Decision Making Board (SDMB), a bilateral process established by the NNTC and BC. The proposal was outlined in an email sent to Canada on May 11, 2016. On October 3, 2016 the NNTC met the Crown consultation team and the parties discussed the proposal to implement an expedited consultation process based the SDMB process. On October 11, 2016 the Crown consultation

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<sup>2</sup> Ministry of Justice, Aboriginal Research Division, Nlakapamux: Review of Ethnographic and Historical Sources (Revised November 20, 2013; Teit, James, "The Thompson Indians of British Columbia" in *Memoirs of the American Museum of Natural History*, Volume II, 1900.; Dawson, George M., "Notes on the Shuswap People of British Columbia" in *Transactions of the Royal Society of Canada*, Section II, 1891; Wyatt, David, "Thompson" in *Handbook of North American Indians*, Vol. 12, Washington: Smithsonian Institution, 1998.

<sup>3</sup> Ibid.

team wrote to the NNTC and agreed to implement the expedited consultation process as discussed at the meeting of October 3. The NNTC goal is to use TMX consultation in the SDMB process as a step to establishing a new pattern of Nation-to-Nation relations and implement the *United Nations Declaration on the Rights of Indigenous Peoples*.

The SDMB was established by BC and the NNTC under the 2014 Land and Resource Decision Making Pilot and the 2016 Amendment Agreement. The purpose of this agreement is to set out an approach to certain types of provincial land and resource decision making, and a process through which the Province will seek to fulfill its obligations to consult and, if appropriate, accommodate impacts to NNTC member bands' Aboriginal rights with respect to these decisions. The agreement is between the BC Ministry of Aboriginal Relations and Reconciliation, and the NNTC and the Nlaka'pamux member communities of Boothroyd Indian Band, Lytton First Nation, Oregon Jack Creek Band, Skuppah Indian Band, and Spuzzum First Nation. Boston Bar Indian Band, although part of the NNTC, are being consulted on TMX separately and not through the SDMB. This agreement did not include provincial environmental assessments or federal decisions.

Neither the NNTC nor its member bands submitted an application for funding to the National Energy Board (NEB). EAO and MPMO have made available \$10,000 and \$65,000 respectively to support the consultation process with NNTC through the SDMB process.

The Crown provided a first draft of this Report to NNTC for review and comment on August 17, 2016. A second draft of this Report was provided to Aboriginal groups for review and comment on November 7, 2016. The Crown has not received comments from NNTC.

#### **IV – Summary of Key NNTC Issues and Concerns Raised**

The Crown's understanding of the issues and concerns important to NNTC arises from participation in the SDMB process. The NNTC, and the five bands comprising the NNTC, did not participate in the NEB hearing process and did not actively engage with the proponent. The following discussion is the Crown's summary of and responses to the concerns raised and discussed in *Nlaka'pamux Nation Tribal Council Response to: Joint Federal/Provincial Draft Consultation and Accommodation Report for the Trans Mountain Expansion Project, draft dated August 17, 2016* (the NNTC Response) which was presented to the Crown consultation team and discussed at a meeting on November 10, 2016. An electronic version was provided to the Crown consultation team on November 12, 2016.

At the meeting on November 15, 2016, NNTC indicated that this Report was a preliminary analysis of issues and concerns they identified with the proposed Project and the Crown's early draft appendix. It was stressed that they had not yet had the time to complete a full analysis of the project, and that this would require more time and engagement with the proponent.

The NNTC describe the proposed expansion as a direct threat to their way of life. They say their culture, centred on the salmon, cannot be destroyed and rebuilt. They say the NEB Report considers what is potentially devastating to the Nlaka'pamux as an "acceptable risk."

### Impacts to Fisheries due to a Spill

NNTC has concerns over the possibility of a catastrophic impact on the fishery, in particular the salmon fishery, which could have a devastating impact to the Nlaka'pamux people. The NNTC notes that 70% of reportable leaks from the original pipeline are more likely to occur at pump stations and terminals and two pump stations are proposed for Nlaka'pamux territory. The proponent has noted that since 1961 there have been 82 spills along the pipeline system that were reported to the NEB, some of which were below the reportable threshold of 1.5 m<sup>3</sup>, three of which were over 1000 m<sup>3</sup>.<sup>4</sup> NNTC is concerned that a pipeline spill is a certainty on the project at some point in its lifetime. The Crown acknowledges that in the event of a pipeline spill there is the potential for serious impacts on Nlaka'pamux Nation's fishery.

There are numerous factors that would influence the severity and type of effects associated with a pipeline spill, and the consequences of a spill to Aboriginal groups has a high degree of uncertainty.

In respect of small spills, the NEB found that over the life and length of the Project, the probability of occurrence is high. The seriousness of impact on Aboriginal Interests would depend on the size, location and conditions of a spill and the effectiveness of response measures. Aboriginal peoples who rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill regardless of its size.<sup>5</sup>

A credible worst-case spill has the potential to result in serious impacts on Aboriginal Interests. The NEB's assessment is that there would be a very low likelihood of such an occurrence. The NEB noted that although impacts from a credible worst-case spill would be adverse and probably significant, natural recovery of the impacted areas and species would likely return most biological conditions to a state generally similar to pre-spill conditions. Such recovery may be as quick as a year or two for some valued components, or may take as long as a decade or more for others. Valuable environmental values and uses could be lost or diminished in the interim. For some valued components, including certain species listed under SARA, recovery to pre-spill conditions may not occur. Therefore, the NEB requires finalized Emergency Response Plans (Conditions 125 and 126), and to identify high consequence areas, including species at risk critical habitat, and incorporate these considerations into the development of their Emergency Response Plans. EAO also proposes a number of conditions that would further mitigate the impacts of a pipeline spill, including the preparation of geographic response plans in consultation with Aboriginal groups and regulatory agencies.

All NEB regulated companies are required to have an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency. The company's management system and processes must also be evident in its emergency management program. If a pipeline spill incident does occur, the NEB will verify that there is adequate and appropriate clean-up and full remediation of any environmental effects resulting from the incident. The company must conduct, to the NEB's

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<sup>4</sup> <https://www.transmountain.com/uploads/pages/1473171061-Aug-2016-Spill-Chart-for-posting-FINAL.pdf>

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

satisfaction, a complete clean-up and remediation of any adverse environmental effects. The NEB has recently made all emergency management programs publicly available, and emergency management plans will become publicly available in spring 2017.

See Section 4.3 of this Consultation and Accommodation Report for a more comprehensive discussion on impacts associated with spills.

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3 of this Report). A number of recommended NEB conditions require the proponent to file reports that would monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by the NNTC, the proponent would implement several mitigation measures to reduce potential effects to species important for Nlaka'pamux fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least risk biological windows in an attempt to avoid causing serious harm to fish, has committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat, and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat.

#### Spill and Leak Potential Impacts

The NNTC has concerns over the potential for a spill or leak and the consequences to human and ecosystem health and toxicology. The NNTC express concerns that the NEB did not conduct a human health risk assessment for a possible pipeline malfunction along the terrestrial portion of the proposed route. The Crown acknowledges NNTC's concerns regarding spills, and the potential for a spill to impact Nlaka'pamux Nation's use and occupation of Nlaka'pamux Nation territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Nlaka'pamux Nation has for its territory, and the potential toxic consequences to human and ecosystem health.

Chemical contamination of country foods may occur from pipeline leaks/ruptures affecting wild game, fish and vegetation. Measures to minimize the likelihood of accidents and malfunctions, resulting in oil spills also serve to mitigate the impacts of spills on human health resulting from contamination of country foods. The NEB recommended a number of conditions related to the protection of human health and safety that would limit Project impacts on country foods.

In the case of a spill or accident, the NEB found that the effects on human health that may result from a spill or accident would be largely limited to mild and transitory effects. The NEB concluded that based on the evidence presented, there would likely be potential adverse effects on human health for those people in the vicinity of a spill, but that these effects would be limited in duration and magnitude and therefore these are not likely to cause significant adverse effects on human health.

The NEB also concluded that, in the event of a spill, depending on the extent and location of the spill, response time and the effectiveness of response measures, there could be significant adverse environmental effects to the use of lands, waters and resources for traditional purposes. The proponent has, in the event of a spill, committed to consulting with affected Aboriginal communities to identify mutually acceptable in-kind or replacement measures to replace or offset impacts directly related to, and caused by, the spill.

As discussed above, the proponent is required to have an emergency management program and plans, and in the event of If a pipeline spill incident does occur, the NEB will verify that there is adequate and appropriate clean-up and full remediation of any environmental effects resulting from the incident. The NEB and EAO would require the proponent to identify Aboriginal groups to be included in its consultation plan for review of the project's emergency management program and plans.

### Cumulative Effects

The NNTC stated that their territory is a transportation corridor: two railroads, the Trans-Canada Highway and numerous utilities pass in close proximity to the Fraser and Thompson Rivers and the impacts of this project must be understood in the context of the cumulative effects of other linear developments that pass through the Nlaka'pamux Territory. The Crown acknowledges NNTC's concerns that there are already multiple existing linear developments that pass through the Nlaka'pamux Nation's traditional territory that are having an existing impact, and that this project needs to be assessed in the context of cumulative effects.

With respect to the total cumulative effects of the Project on traditional land and resource use (TLRU) and Traditional Marine Resource Use (TMRU), factoring in the suite of mitigation measures to address biophysical effects that support these activities, the NEB determined that the Project's contribution to cumulative effects on the TLRU and TMRU were not significant.

The NEB took the approach that if the total cumulative effects were considered to exceed a relevant threshold for a particular valued component, or found to be substantial, then effects on that component would generally be found to be significant unless the Project contribution to total cumulative effects was determined to be inconsequential. The NEB observed that for various valued components, cumulative effects were already significant without the Project. For example:

- Numerous watersheds crossed by the proposed pipeline corridor could be considered significantly impacted by cumulative effects due to past industrial and urban development has reduced the quality and quantity of surface water;
- Current and historical activities have reduced the abundance and health of fish species and the quality of habitat within the pipeline corridor. For some species and watersheds, existing cumulative effects could be considered substantial or above environmental regulatory thresholds;

- A relatively high percentage (approximately 39%) of soils in the local study area for the Project are already disturbed and therefore cumulative effects on soil and soil productivity is already significant; and
- Presence of weeds and resulting adverse effects is already substantial in some areas with high existing disturbance.

The NEB requires, and EAO proposes, a number of conditions relevant to the mitigation of cumulative effects, including conditions for vegetation management and watercourses, wildlife species and ecosystems that have been particularly vulnerable to cumulative effects.

#### Impacts to Access and Specific Sites

The NNTC has concerns over the possibility of access restrictions during operations to harvest medicines and foods, hunt, fish, trap and practice their spirituality. The Crown acknowledges that Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Nlaka'pamux Nation's access to hunting, trapping, fishing, plant gathering, and certain traditional and cultural activities, largely confined to the Project footprint for the pipeline and associated facilities. Construction and reclamation activities disruptions to access may result in a loss of harvesting opportunities for Nlaka'pamux Nation. If construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Nlaka'pamux Nation community members. There could be reduced access to travelways, habitation sites, gathering sites, and sacred areas.

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to hunting, trapping, fishing, plant gathering, and traditional sites (Section 4.3 of this Report). Further, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites, such as management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs that monitor access control measures. The Access Management Plan would reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access to Nlaka'pamux Nation's traditional lands. EAO's proposed conditions would further mitigate impacts to key sites through additional access management planning requirements and additional requirements to consult and engage Aboriginal groups prior to and during construction. The proponent has committed to minimizing the development of access routes, controlling public access along the construction RoW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent would work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, fishing, plant gathering, and traditional sites are identified during ongoing engagement with Nlaka'pamux Nation prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Nlaka'pamux Nation to develop strategies to most effectively communicate the construction schedule and work areas to community members.

### Herbicide Impacts

The NNTC have concerns over the use of herbicides and the possible uptake of herbicides by wildlife and fish used for traditional food, and contamination being transferred to the consumer. The Crown acknowledges NNTC's concerns regarding the use of herbicides and the possible uptake of herbicides by wildlife and fish used for traditional food, and contamination being transferred to the consumer.

The proponent would implement several mitigation measures to reduce potential effects to species important for Nlaka'pamux Nation's hunting, trapping, fishing, and plant gathering activities. The proponent is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP), and the vegetation and wildlife management plans. The proponent is also committed to meeting with Nlaka'pamux Nation to further discuss and address concerns, where possible, prior to the start of construction.

NEB condition 45 requires the proponent to file, prior to construction, an updated Weed and Vegetation Management Plan that includes a summary of weed survey results, mitigation and monitoring that would be undertaken during and after construction and throughout the operational life of the project, and consideration of the potential adverse effects of treatment measures. The proponent must also provide a summary of consultation with potentially affected Aboriginal groups and provide a description and justification for how the proponent has incorporated the results of its consultation, including any recommendations from those consulted, into the plan. EAO proposes a condition that would require the proponent to consult with Aboriginal groups regarding options for vegetation control before using herbicides within an Aboriginal group's traditional territory.

### GHG Impacts

The NNTC have concerns over the impacts of GHG emission effects on the future environment, substantially affecting the availability of traditional food sources and other resources such as water and forests, as well as increasing the risk of fire.

The NEB accepted the proponent's analysis that the Project would generate 1,020,000 tonnes of CO<sub>2</sub>e during construction (primarily from land clearing) and 407,000 tonnes per year of CO<sub>2</sub>e during annual operations. The NEB noted that construction-related GHGs are not reportable under any existing federal regulations, however given the substantial amount of anticipated emissions, the NEB included condition 140 requiring quantification of the total direct GHGs after all construction activities are complete and condition 142 requiring development of an offset plan for the Project's entire direct construction-related GHGs. The intent would be to confirm there are no net GHGs from Project construction.

EAO proposes conditions particularly related to greenhouse gas emissions (GHG) within BC, which would require the proponent to quantify and report GHG emissions in a manner that is consistent with BC's

*Greenhouse Gas Industrial Reporting and Control Act* and accompanying regulations and to purchase all GHG emissions offsets for emissions within BC through the BC Carbon Registry.

With respect to GHGs emitted during annual operations, the NEB found these would be below national reporting thresholds. In addition, Environment and Climate Change Canada (ECCC) conducted an assessment of the upstream GHG emissions associated with the Project.

The Crown notes that neither the direct nor the upstream GHG emissions of a particular project can be linked to local changes to the environment. However, a project's direct and upstream GHG emissions are an important consideration for the decision makers because they would contribute to global GHG emissions and subsequent climate change impacts. The Governments of Canada and British Columbia are committed to addressing climate change, and the Government of Canada is working in collaboration with provincial and territorial governments, municipalities and Indigenous peoples.

#### Impacts to Wetlands

The NNTC have concerns over the loss of wetland function and the loss of wetland rare plants and plants of conservation concern. The Crown acknowledges that project-related construction and routine maintenance is expected to cause medium-term effects on disturbed wetlands, and wetlands would generally suffer some loss or alteration of function until successfully reclaimed, although some function would generally continue during that time. Effects are expected to be mostly limited to the Project footprint, although changes in wetland functions (such as hydrology and biogeochemistry) have the potential to affect adjacent wetlands and nearby surface waters.

The NEB is of the view that the effects of pipeline and power line construction on wetlands, and of the effectiveness of related mitigation and remediation, are generally well understood. NEB Conditions 41 and 156 require Trans Mountain to provide an update on the mitigation, reclamation and monitoring measures for wetlands prior to construction in the Wetland Survey and Mitigation Plan, and an evaluation of reclamation success five years post-construction in the Wetland Reclamation Evaluation Report and Offset Plan. The NEB wetland conditions would require offsets to be implemented for any temporary or ongoing loss in any individual wetland function for wetlands in areas to which the Federal Policy on Wetland Conservation applies. In all other areas, the conditions would require offsets for any ongoing loss to overall wetland function still evident at the end of the five-year post-construction monitoring program.

#### Impacts to Archaeology

The NNTC have concerns over the loss of archeology sites due to inadequate archeology surveys and modelling. Overall, the Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support potentially affected Aboriginal groups' ongoing involvement and participation in the proponent's detailed Project planning, including the development of site-specific measures or pipeline routing to further avoid or mitigate adverse impacts on Aboriginal Interests.

NEB Condition 100 requires the proponent to confirm that it has received archaeological and heritage resource permits and clearances from the British Columbia Ministry of Forests, Lands and Natural Resource Operations. In BC, archaeological resources are administered under BC's *Heritage Conservation Act*, and the proponent has committed to meeting these legislative requirements. In addition to these requirements, EAO proposes Condition 25 that requires the proponent to engage Aboriginal groups on the reporting, management and mitigation of impacts to archaeological and heritage resources.

#### *Social, Cultural, Spiritual, and Experiential Impacts*

NNTC expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, fishing, plant gathering, and spiritual activities, including effects on Aboriginal harvesting practices and subsistence living, as Nlaka'pamux Nation members continue to use the lands and waters to gather foods and medicinal plants. The Crown acknowledges that project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Nlaka'pamux Nation's hunting, trapping, fishing, plant gathering, and spiritual activities. The Crown appreciates that this short-term disruption could temporarily alter the behaviour of community members' traditional activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members.

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities (Section 4.3 of this Report). The proponent has also committed to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

#### *Methodology/Process/Consultation*

The NNTC expressed that the NEB process does not provide for the kind of engagement that NNTC wants with the Crown, as it relies on letters, written arguments and a formal court-like hearing process. In going forward, the NNTC would like to have a process developed that encompasses Nlaka'pamux understanding and framing, both of the nature of appropriate consultation and the issues embedded in the pipeline expansion.

The Crown came to an agreement with the NNTC for an approach to consultation for the federal and provincial assessments of TMX that was developed in consideration of the federal review timelines. The Crown is open to looking at ways in which consultation can potentially continue through the SDMB post-certificate, if federal and provincial certificates are issued for TMX.

In their report and during the November 15, 2016 meeting, the NNTC expressed strong concern with the untimely and limited spatial data provided by the proponent during the expedited SDMB consultation process. NNTC also indicated at the meeting that after they conducted their own initial analysis, they

needed engagement with the proponent and their technical experts for NNTC to complete their analysis and form conclusions regarding the Project.

The Crown followed up with the proponent immediately following this meeting and they confirmed that there had been delays in the provision of some of the data, in part because they were unclear about exactly what was requested, but that the data had been provided the afternoon of November 15, 2016. The proponent also indicated their willingness to work with NNTC to support their ongoing analysis of the Project. The Crown has committed to continuing to engage with NNTC and the proponent to support these efforts, as requested.

### ***Accommodation Proposals***

The NNTC outlined several accommodation measures during a technical meeting with the Crown held on October 20, 2016. These measures were included in the NNTC Response tabled at the technical meeting held on November 10, 2016. Some of these proposed accommodation measures included:

- The NNTC would like further studies for herbicides, greenhouse gas emissions and spills;
- The NNTC wants to be involved in the design of the archaeological assessment modelling and in conducting the assessment on the RoW;
- The NNTC wants to be involved in the design of integrated vegetation management to reduce the use of herbicides on the RoW; and
- The Shared Decision Making Board process set up with BC should be expanded to include the government of Canada.

Sections 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups. Accommodations proposed by NNTC that the Crown has not responded to directly via letter will be otherwise actively considered by decision-makers weighing Project costs and benefits with the impacts on Aboriginal Interests. EAO and NEB conditions all include additional requirements regarding herbicides and vegetation management, GHG emissions, and spills, including the requirement for the proponent to engage with Aboriginal groups prior to using herbicides within their traditional territories. The Crown has informed the proponent of the desire of NNTC to be involved in archaeological assessment modelling, and the requirements associated with this will continue to be addressed during permitting under BC's *Heritage Conservation Act*.

### **V – Potential Impacts of the Project on NNTC's Aboriginal Interests**

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

The NNTC did not participate in the NEB process and did not complete a traditional land and resource use study for the Project. Late in the Crown consultation/SDMB process, the NNTC indicated that it was going to provide more specific information, but, as discussed above, the proponent did not deliver the spatial data required in an expeditious manner for NNTC to complete their review for the purposes of this assessment. As a result, the Crown has limited information on the specific sites and resources used by NNTC for traditional purposes that could be impacted by the Project. NNTC identified concerns during the Crown consultation process, which the Crown has taken into consideration in its assessment of potential impacts on NNTC's Aboriginal Interests.

The general direct and indirect effects of the Project on Aboriginal Interests, along with key mitigation measures, are described in Section 4.3 of the main body of this Report. As described in that section, routine Project-related activities are likely to result in low to moderate impacts on the lands, waters and resources that Aboriginal groups use to exercise their hunting, trapping, plant gathering, fishing, and other traditional activities. Short-term, temporary access disruptions to traditional activities are expected, although these impacts would be localized within the Project footprint for the pipeline and associated facilities. In consideration of the information available to the Crown from the NEB process, Crown consultation with NNTC, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, the Project is expected to result in a minor impact on NNTC's Aboriginal Interests.

A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on NNTC's Aboriginal Interests, concerns raised by NNTC during the Crown consultation process, and the distance of NNTC's asserted traditional territory to the Project area, a pipeline spill associated with the Project could result in minor to serious impacts on NNTC's exercise of Aboriginal Interests, depending on the characteristics and severity of the spill. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty.

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

The Project would be located within an area of Nlaka'pamux Nation's traditional territory that the Crown has assessed as having strong *prima facie* claim to Aboriginal title in the vicinity of Merritt. There are indications of several historic villages in proximity to the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weak claims include those outside the area ethnographers attribute to the Nlaka'pamux (e.g. north of Stump Lake to Kamloops, and in the vicinity of Hope) and there is no/limited indication of historic Nlaka'pamux use at 1846. NNTC has expressed that Nlaka'pamux Nation has inherent rights and title throughout the extent of its territory, and that the existence of this required consent based decision-making and title-based fiscal relations with federal and provincial government, including revenue sharing. NNTC noted at the November 15, 2016 meeting

that based on the information they currently have, and because they had not yet been able to complete an adequate analysis of the Project, they would not be able to consent to the Project at this time.

Specific concerns related to Aboriginal title raised by NNTC during the Crown consultation process include:

- Impacts that could impede or disrupt Nlaka'pamux Nation's use of its asserted traditional territory, including access restrictions to resources and disruption of traditional activities; and
- Potential of the Project to affect Nlaka'pamux Nation's ability to manage and make decisions over the Project area.

A description of the general potential impacts of the Project on Aboriginal title are discussed in Section 4.3.5 of the Consultation and Accommodation Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. The Crown understands that, in addition to NEB conditions that would require the proponent to report on heritage resources and traditional use investigations (NEB Conditions 97 and 100), the proponent has committed to meeting with NNTC prior to the start of construction to discuss and address concerns, where possible.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5 of this Report, the Project is expected to have minor impacts on NNTC's asserted Aboriginal title to the proposed Project area.

## **VI – Conclusions**

The Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The proponent commitments, recommended NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations, the expected impacts of the Project on the exercise of NNTC's Aboriginal Interests would be minor. If there is a pipeline spill associated with the Project, it could result in minor to serious impacts on NNTC's Aboriginal Interests, depending on the nature of the spill and other factors.

The consultation requirements provided by the NEB and EAO in the various conditions would support NNTC's ongoing involvement and participation the proponent's detailed project planning, including the development of site-specific measures to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of NNTC in emergency response planning activities. It is noted that the federal Crown is also considering incremental measures that would further accommodate the

potential adverse impacts of the Project on NNTC, as discussed in Sections 4 and 5 of the Consultation and Accommodations Report.