

Appendix C.6 – Tsleil-Waututh Nation

I - Background Information

Tsleil-Waututh Nation (Tsleil-Waututh or TWN) is a Central Coast Salish community of 578 members that asserts a traditional territory as identified in their Tsleil-Waututh's [2009 Stewardship Policy](#). The traditional territory includes areas across the Lower Mainland of British Columbia (BC), including sections of the Lower Fraser River, Howe Sound, Burrard Inlet and Indian Arm.

There are three Tsleil-Waututh reserves with approximately 250 members living on the main reserve in North Vancouver. Tsleil-Waututh is currently in Stage 4, Agreement in Principle (AIP), of the BC Treaty Commission six-stage process.

Tsleil-Waututh traditionally spoke the dialect of Halkomelem, with Tsleil-Waututh meaning “people of the Inlet” in the traditional language. Creation stories and stewardship of lands and resources are central to Tsleil-Waututh's expression of its culture, spirituality and goals for the future, including economic independence.

Members hunt, gather, fish and engage in cultural activities such as traditional teaching and Potlaches. Tsleil-Waututh's community vision is to be able to eat marine food from their territory and practice ceremonies in clear water. Long term stewardship goals include restoration of Burrard Inlet in an effort to achieve this community vision.

Tsleil-Waututh's Marine Stewardship Program is an effort to restore the Burrard Inlet to its pre-contact status. The program has two key goals, both involving restoring Burrard Inlet to a condition where:

- a) Wild marine foods are abundant and safe to eat and a subsistence economy may be re-established; and
- b) Cultural work may occur in clean water, without exposure to contaminated sediment, at sites that are physically intact and free from impaired views, violations of privacy, and noise intrusions.

II - Preliminary Strength of Claim Assessment

- Tsleil-Waututh's traditional territory encompasses the proposed marine terminal and fuel storage facility expansion, and approximately 18 kilometres (km) of pipeline right-of-way (RoW). Approximately 45 km of marine shipping route would pass within Tsleil-Waututh's asserted traditional territory.
- The Crown's preliminary assessment of Tsleil-Waututh's claims for Aboriginal rights over the section of the Project that spans the terminus of the pipeline at the Burnaby holding facility to the Fraser River Crossing is assessed as a range from strong to moderate-to-strong *prima facie* Aboriginal rights claims as the pipeline gets closer to the Fraser River.
- The Crown's preliminary assessment is that Tsleil-Waututh has a *prima facie* Aboriginal title claim ranging from weak-to-moderate to strong over the section of the Trans Mountain pipeline

that spans the area from the terminus of the pipeline at the Burnaby holding facility to the area in and around the travel corridor to the Fraser River. The claim is strong in proximity to the terminus of the pipeline, which is in proximity to known Tsleil-Waututh village sites, and diminishes fairly rapidly as the pipeline stretches south towards the Fraser River crossing.

- The Crown's preliminary assessment of Tsleil-Waututh's *prima facie* claim for Aboriginal rights to harvest marine resources within the marine shipping corridor of the Project that spans from the terminus of the pipeline in Burnaby to the portion of the Strait of Georgia that is proximal to the South Arm of the Fraser River is assessed as ranging from strong to weak. The claim appears strong in the eastern portion of Burrard Inlet from the Belcarra area to the terminus in Burnaby, as this is an area that is in close proximity to a known Tsleil-Waututh village site. The claim is assessed as moderate within the central portion of the Burrard Inlet and weakens towards the Strait of Georgia.
- The Crown's preliminary assessment of Tsleil-Waututh's *prima facie* claim for Aboriginal title over the upland areas that roughly parallel the marine shipping corridor of the Project ranges from weak to strong. The stronger claims are in the middle portion of Burrard Inlet, particularly in proximity to Indian Arm. As the shipping route travels into western Burrard Inlet, the claim diminishes as this area was considered by ethnographers to be outside Tsleil-Waututh's core territory.¹

III - Involvement in the NEB and Crown Consultation Process

Given the nature and location of the Project, and its potential impact on Tsleil-Waututh's Aboriginal Interests, the Crown is of the view that the legal duty to consult Tsleil-Waututh lies at the deeper end of the *Haida* consultation spectrum. Tsleil-Waututh was placed on Schedule B of the section 11 order issued by the BC Environmental Assessment Office (EAO), which afforded Tsleil-Waututh opportunities to be consulted at a deeper level.

Tsleil-Waututh participated in the National Energy Board (NEB) review of the Project as an intervenor. Tsleil-Waututh conducted an independent assessment of the Project, which formed the majority of its written evidence provided during the NEB hearing process, and also informed the Tsleil-Waututh leadership's own decision whether to support or oppose the Project. Tsleil-Waututh filed written evidence with the NEB describing Tsleil-Waututh's asserted rights, customary law and stewardship objectives within its asserted traditional territory. Tsleil-Waututh also provided oral traditional evidence,

¹ Ministry of Justice, Aboriginal Research Division, Tsleil-Waututh First Nation: Review of Anthropological Sources, August 2010 (updated 2016); Jesse Morin for Tsleil-Waututh Nation, A Brief Critique of "Tsleil-Waututh Nation: A Review of Anthropological and Historical Sources" Ministry of Attorney General, 2010 (October 2014); Tsleil-Waututh Treaty, Lands and Resources, A Brief Summary of Additional Evidence Pertaining to Tsleil-Waututh's Aboriginal Interests in the Indian River Watershed and the Investigative Use Licence Proposed for Hixon Creek, June 2013; Tsleil-Waututh First Nation for Ministry of Forests, Tsleil-Waututh First Nation Traditional Use Study 1998-2000, June 2000; First Nations Oral History: Say Nuth Khaw Yum –Indian Arm Provincial Heritage Park, prepared by Tsleil-Waututh First Nation for BC Parks, March 2000; Ralph Drew, Native Legends of the Indian Arm Area; Jesse Morin, Tsleil-Waututh Nation's History, Culture and Aboriginal Interests in Eastern Burrard Inlet, May 25, 2015.

filed multiple rounds of information requests and responses to information requests by other intervenors including the Government of Canada [\[A71210\]](#), and provided a written summary argument and oral summary argument.

Tsleil-Waututh submitted detailed correspondence, both with the NEB and with the Crown (including Ministers). The Crown exchanged numerous pieces of correspondence with Tsleil-Waututh during 2015 regarding the Crown's proposed approach to consultation on the Project, and met with Tsleil-Waututh officials on August 12, 2015 (during the NEB hearing stage) to discuss these issues in person. At that meeting, the Crown noted that it would consider Tsleil-Waututh's own assessment findings in the documentation of potential Project impacts, including information found in *Tsleil-Waututh Nation's History, Culture, and Aboriginal Interest in Eastern Burrard Inlet*.

In 2015, Tsleil-Waututh initiated a Court action regarding the Project. At issue in the suit filed in 2014 was whether the Crown and NEB had failed in their constitutional duty to consult the Tsleil-Waututh as a First Nation. On January 22, 2016, Department of Justice sought and obtained a three-month adjournment in the litigation. As a result, Crown officials met with the Tsleil-Waututh on February 26 and April 5, 2016 to explore, without prejudice, the potential for alternative paths forward in resolving Tsleil-Waututh's concerns. At the April 5, 2016 meeting, Tsleil-Waututh's legal counsel and the Director of Lands and Resources indicated that they were only interested in an outcome that involved the Crown reversing its current position before the Court and therefore urged the Crown to remove any further suspension of the Court proceedings. On September 8, 2016, the Federal Court of Appeal dismissed Tsleil-Waututh's legal challenge, noting the lawsuit was premature as consultations on the Project were ongoing and that no decision had been made on the Project.

Tsleil-Waututh has met with the Ministers of Natural Resources and Transport on a number of occasions, and with senior federal officials throughout the spring and summer of 2016. Tsleil-Waututh indicated that the only means by which they would discuss the Project with the federal government would be through an engagement protocol. What followed was a four month period during which negotiations took place between the Crown and Tsleil-Waututh legal counsel and advisors to finalize a protocol that would be satisfactory to both sides. Tsleil-Waututh and the Crown signed an engagement protocol agreement on September 14, 2016. Chief Maureen Thomas of Tsleil-Waututh and the Minister of Natural Resources Canada, the Honourable Jim Carr, signed the protocol agreement.

Tsleil-Waututh maintains the following: "TWN possesses Aboriginal title and rights, including a stewardship right, in and throughout its traditional territory ("Territory"). The decision-making elements of TWN's rights provide it with, *inter alia*, the jurisdiction and authority to govern and manage the lands, waters, marine foreshore, air and resources in the Territory, and determine the uses to which they will be put. This jurisdiction and authority includes determining whether the Project should be permitted to proceed in the Territory, based on Tsleil-Waututh laws".² Canada states that: "Canada's authority to

² Crown- Tsleil-Waututh Engagement Protocol (signed 14th of September, 2016)

approve the Project is grounded in federal legislation... authority to undertake the Project is subject to the approval of the Governor in Council, which approval may only be given once Canada fulfills its constitutional duty to consult, and where appropriate, accommodate Aboriginal peoples.”

Pursuant to the engagement protocol’s workplan, twelve meetings were scheduled between September and November 2016 involving Crown officials and Tsleil-Waututh’s technical team. The Crown and Tsleil-Waututh leadership parties are scheduled to meet on November 28, 2016 in lieu of the final technical team meeting.

On November 17, 2016, Tsleil-Waututh sent a letter to Prime Minister Trudeau which outlines its disappointment with the protocol engagement on issues of marine shipping, economic need and the NEB process. Outside of discussions on climate change, Tsleil-Waututh does not feel that a nation-to-nation dialogue has been achieved within the engagement process. Tsleil-Waututh advised that it has decided to prepare a separate submission for Minister Carr and the GIC, which will be presented at the final protocol leadership meeting on November 28, 2016. Tsleil-Waututh extended an invitation to the Prime Minister to attend this meeting.

Both Natural Resources Canada’s Major Projects Management Office (MPMO) and EAO made several requests to Tsleil-Waututh for EAO’s participation in the Crown-Tsleil-Waututh engagement protocol meetings from September to November 2016, but Tsleil-Waututh indicated that they did not want EAO to participate. The reason for this involved Tsleil-Waututh’s position that the EAO-NEB Equivalency Agreement was enabling EAO to accept the NEB process, which Tsleil-Waututh view as fundamentally flawed. The MPMO noted that federal officials were jointly conducting consultation with the province of BC, and that the MPMO and EAO had a shared consultation record.

Tsleil-Waututh signed a contribution agreement with the NEB for \$40,000 in participant funding, plus costs to cover travel of two people to attend the hearing. The MPMO offered Tsleil-Waututh \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Tsleil-Waututh an additional \$14,000 to support its participation in consultations following the release of the *NEB Recommendation Report*. Tsleil-Waututh signed contribution agreements with the MPMO in response to both of these offers, for a total of \$26,000 in allocated funding. EAO has provided Tsleil-Waututh \$5,000 in capacity funding to support participation in consultation with the Crown.

As laid out in the protocol agreement, the Crown has agreed to pay for Tsleil-Waututh’s costs, expenses, and disbursements associated with the engagement protocol, up to a maximum of \$400,000.

The Crown provided a first draft of this Report to Tsleil-Waututh for review and comment on September 28, 2016. A second draft of this Report was provided to Tsleil-Waututh for review and comment on November 4, 2016. Tsleil-Waututh provided a letter on November 7, 2016 where Tsleil-Waututh raised concern with the contents of the Report.

IV - Summary of Key Tsleil-Waututh Issues and Concerns Raised

This section offers a summary of the key issues raised by Tsleil-Waututh, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown's assessment of the impact of the Project presented in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of Tsleil-Waututh's key Project-related issues and concerns are summarized below:

The Crown has gained its understanding of Tsleil-Waututh's issues and concerns through Tsleil-Waututh's involvement in the NEB process, including the responses Tsleil-Waututh provided to Natural Resources Canada on its Information Request (IR) addressed to them, through written and oral evidence, through continued participation within the Crown-Tsleil-Waututh engagement protocol, and through other consultation and correspondence with the Crown. The Crown's understanding of Tsleil-Waututh's key Project-related concerns is summarized below. This is a summary of issues raised by Tsleil-Waututh, and does not present the views of the Crown as to whether it agrees or not with the positions of Tsleil-Waututh. The Crown's assessment of the potential impacts of the Project, as presented in the subsequent section, incorporates a consideration of these issues and includes the Crown's views and conclusions.

Pursuant to its Stewardship Policy, Tsleil-Waututh conducted an assessment of the Project, through which Tsleil-Waututh concluded that the Project: "(i) will deprive past, current, and future generations of TWN people of the control and benefit of the water, land, air, and resources in TWN's Territory; and (ii) does not represent the best use of TWN's Territory and more particularly the waters, lands, air, and resources to satisfy the needs of TWN's ancestors, or present and future generations of Tsleil-Waututh people".³ Based on these findings, Tsleil-Waututh Chief and Council decided to reject the Project, to not grant Trans Mountain authorization under Tsleil-Waututh law for the Project to proceed, and to withhold its consent to the Project proceeding in Tsleil-Waututh's territory.

Additionally, Tsleil-Waututh's assessment of the Project filed as evidence with the NEB sets out Tsleil-Waututh's views of the consequences of the Project proceeding to construction and operation. In particular, Table 7 of the Tsleil-Waututh Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal⁴ (presented as Figure 1 below) identifies the potential impacts from the Tsleil-Waututh perspective.

³ Crown- Tsleil-Waututh Engagement Protocol (September 14, 2016).

⁴ See NEB filing reference [A4L6A5](#) (Tsleil-Waututh Treaty, Lands & Resources Department, May 2015)

Figure 1: Summary of Tsleil-Waututh Title, Rights, and Interests and of Proposed Effects and Consequences

TSLEIL-WAUTUTH TITLE RIGHTS, AND INTERESTS	MARINE SHIPPING DIRECT EFFECTS	OIL SPILL EFFECTS	CONSEQUENCES	CUMULATIVE EFFECTS	DURATION	EFFECTS ON TSLEIL-WAUTUTH COMMUNITY
<i>Archaeological and Cultural Heritage Sites</i>	Shoreline erosion	Water and air pollution; sediment contamination; shoreline cleanup damage	Loss, damage, or contamination of important places and archaeological resources; loss of the knowledge and wisdom of the ancestors	More physical damage to sites already harmed by past development; setback to Tsleil-Waututh cultural renaissance	Irreversible, permanent effects of great impact on Tsleil-Waututh community	Disturbance of our ancestors will harm our community cohesion; without the knowledge and wisdom of the ancestors, we cannot recover from the residential school era nor carry out our environmental stewardship responsibilities
<i>Contemporary Economy</i>	On-water hazards; perceived pollution; physical obstruction; disturbances to views	Water and air pollution; sediment contamination	Loss of business or economic opportunities and revenues; drop in property values (including Tsleil-Waututh's commercial real estate development on our reserve)	Further negative economic impacts on Tsleil-Waututh Nation and its members	Effects for the duration of the project or longer in the case of an oil spill	Diminished ability to participate in the contemporary economy and corresponding adverse impacts on Tsleil-Waututh Nation and its members
<i>Cultural or Spiritual Practices and Places</i>	Perceived pollution; physical obstruction; loss of quiet or privacy; shoreline erosion; disturbances to views	Water and air pollution; sediment contamination; shoreline cleanup damage	Loss, damage, or contamination of important places; hindrance of and failure to provide conditions for cultural work; interference with ceremonies for our ancestors; loss of the knowledge and wisdom of the ancestors; loss of connection to our waters and lands; risk to the health and safety of our cultural practitioners	More physical damage to sites already harmed by past developments; further interruption of our obligations to our ancestors; setback to Tsleil-Waututh cultural renaissance	Places = irreversible, permanent effects of great impact on Tsleil-Waututh community Practices = effects of great impact on Tsleil-Waututh community for the duration of the project or longer in the case of an oil spill	Without the knowledge and wisdom of the ancestors and the spirit world, we cannot recover from the residential school era nor carry out our environmental stewardship responsibilities; important gains we have achieved in enhancing our culture would be lost or substantially reduced
<i>Cultural Transmission</i>	Perceived pollution; physical obstruction; loss of quiet or privacy; disturbances to views	Water and air pollution; sediment contamination	Loss of traditional knowledge; hindrance of and failure to provide conditions for cultural work; loss of language skills; loss of connection to our waters and lands; opportunities for cultural transmission reduced or eliminated	Further alienation of Tsleil-Waututh youth from Tsleil-Waututh elders and their knowledge of history, traditional ways and skills; setback to Tsleil-Waututh cultural renaissance	Irreversible, permanent effects of great impact on Tsleil-Waututh community	Failure to care for and educate our youth will deny Tsleil-Waututh a healthy and prosperous future; a reduction in the number of family or community gatherings will leave individuals feeling isolated and the community without cohesion
<i>Cultural Travel</i>	On-water hazards; perceived pollution; physical obstruction	Water and air pollution; sediment contamination	Hindrance of and failure to provide conditions for cultural work; loss of connection to our waters and lands; risk to the health and safety of our cultural practitioners	Additional obstacles to free movement throughout Burrard Inlet; reduced access to harvest and cultural sites; reduced connection to our waters and lands	Effects for the duration of the project	Activities such as our canoe races are very important to our community, and having even more tankers parked in the way will seriously detract from our cultural work
<i>Environmental Integrity and Stewardship Responsibility</i>	Acoustic disturbance; on-water hazards; perceived pollution; physical obstruction; loss of quiet or privacy; shoreline erosion; disturbances to views	Water and air pollution; sediment contamination; loss, harm, or contamination of habitat or species; shoreline cleanup damage	Disruption of biophysical processes and food-web dynamics; loss of connection to our waters and lands	Further exceedance of Burrard Inlet's environmental carrying capacity and greater delay in achieving Tsleil-Waututh stewardship objectives; additional impediments to the restoration of our subsistence economy; setback to Tsleil-Waututh culture renaissance	Effects for the duration of the project as well as irreversible, permanent effects of great impact on Tsleil-Waututh	Failure to care for our waters and lands will deny future generations the benefit of our territory and of the wisdom of our ancestors
<i>Individual and Community Health</i>	On-water hazards; physical obstruction; loss of quiet or privacy; disturbances to views	Water and air pollution; sediment contamination; loss, harm, or contamination of habitat or species	Dietary change and health effects from lack of resources; hindrance of and failure to provide conditions for cultural work	Additional risk of disease or illness; further reduction in quality of life	Effects for the duration of the project of great impact on Tsleil-Waututh	Diabetes and cancer rates are high in the community and the proposal will only make them worse; the proposal threatens many elements of community health—natural resources, security, community cohesion and well-being, and self-determination
<i>Marine Fish and Wildlife Habitat and Species; Resource Access and Harvest or Use; Subsistence Economy</i>	Acoustic disturbance; perceived pollution; physical obstruction; shoreline erosion	Water and air pollution; sediment contamination; loss, harm, or contamination of habitat or species; shoreline cleanup damage	Decrease in habitat quality or quantity and in species abundance; local extinction of culturally important species; change in species composition and behaviour; fewer available resources and traditional staple foods, leading to dietary change, health problems, and fewer opportunities to trade or sell harvested resources; forced transition to a wage-based economy; loss of livelihood options; interference with ceremonies for our ancestors; loss of the knowledge and wisdom of the ancestors; loss of connection to our waters and lands	Further delay in achieving Tsleil-Waututh stewardship objectives; additional impediments to restoration of our subsistence economy and to our livelihood options; further interruption of obligations to the ancestors	Effects for the duration of the project as well as irreversible, permanent effects of great impact on Tsleil-Waututh	Failure to care for our waters and lands will deny future generations the benefit of our territory and the wisdom of our ancestors
<i>Title, Governance, and Future Benefit</i>	Violation of Tsleil-Waututh law	Violation of Tsleil-Waututh law	If implemented without Tsleil-Waututh consent, the TMEX proposal denies the right of current and future generations to control and benefit from our waters and land	Further compromises Tsleil-Waututh's ability to uphold our stewardship obligations in Burrard Inlet	Irreversible, permanent effects of great impact on Tsleil-Waututh community	Failure to care for our waters and lands will deny future generations the benefit of our territory and the wisdom of our ancestors
<i>Tsleil-Waututh Reserve</i>	Shoreline erosion; perceived pollution; disturbances to views	Water and air pollution; sediment contamination; shoreline cleanup damage	Damage to infrastructure and to visual quality; loss of land base; loss of business or economic opportunities or revenues	More physical damage to sites already harmed by past development	Effects for the duration of the project as well as irreversible, permanent effects of great impact on Tsleil-Waututh and its community	
<i>Water</i>	Perceived pollution	Water or air pollution; sediment contamination	Hindrance of and failure to provide proper conditions for cultural work; risk to the health or safety of cultural practitioners	More contamination of already polluted water, making it even more hazardous	Effects for the duration of the project (and potentially beyond) of great impact on Tsleil-Waututh	Clean water is the foundation of our community and culture, and we cannot accept a proposal that will make it dirtier

Key concerns identified in Tsleil-Waututh's assessment include the risk of marine spills and increased industrialization of Burrard Inlet including from marine vessel traffic and disturbance from the expansion of the Westridge Marine Terminal (WMT). Concerns are that the Project will lead to further negative environmental, economic, cultural, social and spiritual impacts on Tsleil-Waututh members and a reduction in their ability to pursue long-term stewardship objectives. Other concerns identified include:

- Impacts on cultural transmission and community cohesion;
- Impacts on subsistence travel and restrictions on movement within Burrard Inlet;
- The loss or reduced availability of traditional foods and the potential effects on cultural and ceremonial activities;
- Potential damages to infrastructure and visual quality;
- Potential contamination of sacred areas including ancient village sites and cemeteries;
- Noise disturbance;
- Loss of economic opportunities and revenues, as well as a reduction in property values; and
- Potential impacts to community and individual health, as well as security issues and risks to safety.

Methodology, Process and Consultation

In addition to the substantive issues raised are procedural concerns about the consultation and NEB regulatory review and environmental assessment, which was seen by the Tsleil-Waututh as disrespectful of their asserted governance rights in Burrard Inlet and Indian Arm. Tsleil-Waututh's legal challenge of the NEB process outlines a series of arguments reflecting procedural concerns, including a lack of adequate consultation on the scope of the environmental assessment and the list of issues to be examined by the NEB in the hearing process. In addition, Tsleil-Waututh has indicated its view that the Crown must receive the consent of Tsleil-Waututh prior to issuing any approvals for the Project.

In February and April 2016, Tsleil-Waututh corresponded with BC to express concerns about the EAO-NEB Equivalency Agreement, and to express the view that the Province should terminate the Equivalency Agreement for the Project. Following written correspondence from EAO, senior provincial officials met with Tsleil-Waututh and Squamish Nation in June 2016 to discuss the nations' questions and concerns regarding the provincial environmental assessment process for this Project. Tsleil-Waututh and Squamish Nation wrote to EAO on August 24, 2016 to clarify their concerns and proposed next steps regarding: the need to consult on and terminate the Equivalency Agreement; the need to amend the Section 11 Order to address several aspects, including the potential for Squamish Nation to undertake its own EA and to account for the assessment already undertaken by Tsleil-Waututh; and, to clarify any limits on provincial decision-making authority.

In numerous NEB filings, correspondence and meetings with the Crown, including a July 22, 2016 meeting with the federal government, Tsleil-Waututh identified additional Project-related and procedural concerns as follows:

- The high risk and severe consequences of shipping diluted bitumen;

- The nature of consultation between Tsleil-Waututh and government decision-makers was not seen as leading to a joint decision-making process based on achieving consent;
- Inadequate Crown consultation with Tsleil-Waututh; and
- The view that the NEB did not consider the evidence that the Tsleil-Waututh put forward as part of the review.

At an engagement protocol meeting on October 20, 2016, Tsleil-Waututh questioned the relevance of participating in the NEB process as, in their perspective, the Project will be approved regardless of consultation with Aboriginal groups. Tsleil-Waututh noted that the Project review and consultation process appears to be more about politics than stewardship of the Earth.

At an engagement protocol meeting on October 21, 2016, Tsleil-Waututh asserted that in the case of a strong claim, such as Tsleil-Waututh's, it is of the view that consent of the Project would be required.

Tsleil-Waututh has articulated its disagreement with the Crown's assessment of Tsleil-Waututh's preliminary strength of claim. Furthermore, Tsleil-Waututh expressed disagreement with the Crown's assessment of Project impacts on Tsleil-Waututh's Aboriginal Interests. In a letter dated November 7, 2016, Tsleil-Waututh outlined its dissatisfaction with the Crown's strength of claim assessment, which, in Tsleil-Waututh's perspective, ignores its expert assessment entitled *Tsleil-Waututh Nation History, Culture and Aboriginal Interests in Eastern Burrard Inlet* as well as other traditional evidence it filed with the NEB. Tsleil-Waututh maintains that it proved Aboriginal title and rights over Eastern Burrard Inlet during the NEB review process.

Cultural and Social Impacts

On July 5, 2015, the MPMO wrote to Tsleil-Waututh describing the Crown's preliminary understanding of the potential adverse impacts of the Project on Tsleil-Waututh's Aboriginal Interests within the Project area. The following potential impacts were described:

- Construction of new pipeline segments including delivery lines from the Burnaby storage facility to the WMT could temporarily affect fishing, hunting, trapping and harvesting, as well as access to culturally important sites.
- Construction and operation of an expanded WMT could involve long-term changes to the foreshore area at the terminal site, potentially displacing fishing and other marine harvesting activities, as well as certain cultural or spiritual practices resulting from:
 - Direct loss or alteration of marine aquatic and bird habitat;
 - Temporary changes to water and sediment quality;
 - Ongoing sensory disturbance to marine species and birds including indirect effects from increased underwater noise; and
 - Impeded access, movement and activity within the marine environment due to marine vessel traffic.

Other cultural and social impacts that Tsleil-Waututh has communicated to the Crown during in-person engagement protocol meetings include:

- Tsleil-Waututh's limited ability to use local beaches for cultural practices, traditional knowledge sharing, spiritual ceremonies and activities associated with shellfish harvesting;
- Acoustic disturbances to southern resident killer whale populations; and
- Diminished community access to traditional foods, such as salmon.

In an engagement protocol meeting on September 15, 2016, Tsleil-Waututh emphasized that its traditional territory along Burrard Inlet is enjoyed by all people, not just their community. Tsleil-Waututh noted the different activities that people do around the territory, such as fishing, canoeing, kayaking and paddle-boarding. Being close to downtown Vancouver, people appreciate this area for its multi-use purposes, which Tsleil-Waututh fears will be compromised by the increase in tanker traffic.

Environmental Impacts

Tsleil-Waututh explained that its main consultation area encompasses Mount Garibaldi in the north and the 49th parallel in the south, west to Gibsons and east to Coquitlam Lake. In terms of environmental effects, Tsleil-Waututh emphasized that its main focus is the degradation of Burrard Inlet.

Tsleil-Waututh described that it does not wish for Burrard Inlet to be considered a lost cause. Over the past 30 years, Tsleil-Waututh has taken extensive remediation action to improve the health of the Inlet. There is significant concern that these efforts will be reversed if the Project is approved as Burrard Inlet is seen by Tsleil-Waututh as beyond the threshold of what it can endure due to other industrial activities.

At a protocol engagement meeting on September 27, 2016, Tsleil-Waututh asked the Crown to consider the proximity of their territory to the WMT (2 km across the inlet from Tsleil-Waututh's main reserve), which they fear will result in: physical obstruction and disturbance to views; acoustic disturbance; perceived pollution; on-water hazards; and, loss of quiet and privacy. Tsleil-Waututh explained that it has seen numerous changes on its lands and waters over the course of 125 years of industrialization. Tsleil-Waututh indicated that prior to contact with Europeans, their lands were naturally abundant with plentiful fisheries, beaches lined with kelp and seaweed, availability of five different types of clams and easy access to berries and roots along Burrard Inlet (the community has a saying "when the tide went out, the table was set"). In the wintertime, community members would live together and survive off food that had been preserved, such as smoked salmon, which marked an important time for the passing of oral histories to younger generations. Following contact, Tsleil-Waututh began to see many changes within their community, emphasizing that any further development to Burrard Inlet could result in irreversible damage. Tsleil-Waututh pinpointed that the current volume of pollutants in the inlet is 25 times greater than in 1950.

Another concern Tsleil-Waututh has raised is the continued pollution of Burrard Inlet and its impacts on activities of cultural importance within the community. In 1972, Fisheries and Oceans Canada closed clam harvesting along Burrard Inlet due to high volumes of pathogens within the water. According to

Tsleil-Waututh, these harvests were critical for community livelihoods and sustenance, as well as for cultural transmission and the maintenance of ancestral connections. Tsleil-Waututh noted that this October marked the first year that the clam harvest was re-opened in the community and, as a result, a community celebration and feast will be held in November 2016. There is fear that further damage and degradation of Burrard Inlet will result in the permanent closure of clam harvesting, and thus a loss of spiritual relationships between future generations and ancestors.

Tsleil-Waututh is also concerned about negative environmental effects on salmon populations in Burrard Inlet and the Fraser River. Prior to contact, Tsleil-Waututh noted that it had access to 1 kilogram (kg) of salmon per day. However, due to diminished salmon flows in recent years, Tsleil-Waututh now has access to 1 kg of salmon per week. As far back as Tsleil-Waututh people can remember they have been allocated 7,000 salmon from the Fraser River annually; however, every year the population and the amount that can be harvested diminishes. Elders and community members rely on the salmon for their own sustenance, their health, their connection to the water and to their ancestors, and the strength to pass through the winter stages. The community fears that an oil spill in the Fraser River or in Burrard Inlet could eliminate the entirety of the salmon population. As such, Tsleil-Waututh raised serious concerns regarding the adverse environmental effects from the Project on Tsleil-Waututh's salmon restoration efforts, as well as the impact that a major oil spill would have on an already depleted salmon population. From Tsleil-Waututh's perspective, these represent consequences that are immeasurable for the community and its culture.

Tsleil-Waututh added that there was no quantitative analysis in the NEB report to address the vulnerability of the salmon stocks. Based on this, Tsleil-Waututh finds that the NEB provided too narrow a view on the effects of the Project on marine wildlife, and lacked a full understanding of the resilience of the salmon population to withstand an oil spill.

Tsleil-Waututh shared with the Crown the significant spiritual importance of the killer whale ("black fish"), as they are known to enter nearby waters during sensitive periods for the community and during cultural events. However, Tsleil-Waututh was not expressly noted by the NEB as an Aboriginal group that identified the social and cultural importance of the killer whale. Tsleil-Waututh has voiced concern that increased underwater noise from the proposed WMT expansion and increased tanker traffic could disturb the killer whale population within Burrard Inlet. Tsleil-Waututh further highlighted that this risk cannot be quantified due to the fact there are no underwater noise studies for Burrard Inlet. Tsleil-Waututh's main concern is that underwater noise could permanently drive the killer whale population away from the community. Building on this, Tsleil-Waututh referenced the long-term effects of the Exxon Valdez oil spill in Prince William Sound, Alaska in 1989, on local orcas and the surrounding ecosystem. Two decades later, Tsleil-Waututh referenced data that indicated the orca population had still not fully recovered. From Tsleil-Waututh's perspective, this is not acceptable as it will unquestionably lead to a loss of culture if future generations do not have the opportunity to experience killer whales in local waterways.

Given the cultural value of killer whales, Tsleil-Waututh raised concern that there are no mitigation measures proposed by either the proponent or the NEB to mitigate impacts on the southern resident killer whale population. As such, Tsleil-Waututh would like to see Canada attempt to fill in these knowledge gaps to ensure that killer whales will be protected during Project construction and operation.

Tsleil-Waututh highlighted that they have been part of the land around Burrard Inlet since time immemorial. Over the last few decades, Tsleil-Waututh has noticed a change along the shorelines, which they attribute to the strength of tides, the increase in tanker traffic and rising sea levels. As a result, Tsleil-Waututh identified that numerous community members have experienced a loss of property and shoreline due to erosion (see page 77 of Tsleil-Waututh assessment for pictures). One community member in particular has had to build a wall around his house to prevent water from entering his basement, which has already been redone once. Additionally, Tsleil-Waututh noted that another community member's property has lost 50 to 60 feet of land in certain areas since the 1950s. Given that Project approval would mean the increase of tanker traffic (from one laden tanker per week to one laden tanker per day passing through the Inlet), Tsleil-Waututh fears that it will lose more of its territory, including burial sites (some of which date back 6,000 years) and that future generations will not be able to enjoy the land in the same way that their ancestors had.

Tsleil-Waututh noted that armoring has been completed along certain areas of the shoreline to minimize erosion; however, as of yet, nothing has been put in place around the east end of the Tsleil-Waututh reserve. Where armoring has been conducted, Tsleil-Waututh pinpointed that there has been noticeable adverse effects. For instance, Elders are no longer able to access certain beaches due to potential danger that boulder-based rip raps pose. In Tsleil-Waututh's perspective, the mitigation measures that had to be instituted are an impediment to cultural exchanges with Elders along the beach front and shoreline. Tsleil-Waututh feel that the potential for erosion was inadequately addressed by the NEB, and, as a result, would like to ensure that the risk of erosion is well-documented along with the adverse effects of potential mitigation measures on Tsleil-Waututh culture.

Economic Impacts

At an engagement meeting on September 28, 2016, Tsleil-Waututh highlighted its park management and cultural tourism activities which Tsleil-Waututh believe will be adversely impacted by the WMT and an increase in tanker traffic. Takaya Tours, a Tsleil-Waututh-owned environmental and cultural tourism company, uses the waters and lands around Burrard Inlet and Indian Arm for hiking expeditions, canoe and kayaking tours, and outdoor equipment rentals. In 2015, 3,000 people participated on Takaya kayak trips and over 5,000 kayaks rentals were documented. Tsleil-Waututh explained that an increase in tanker traffic could inhibit its ability to conduct tours on the water, citing what they believe will be a constant battle with tankers and their wake for space on the water. Further, Tsleil-Waututh views the expansion of the WMT and increased tanker traffic as a threat to the eco-tourism industry which depends on the cleanliness of Burrard Inlet.

In 1993, Tsleil-Waututh opened the first phase of Raven Woods developments, which are luxury condos built and sold on Tsleil-Waututh reserve land. Operated by Takaya, Tsleil-Waututh's majority-owned real

estate development company, Raven Woods houses over 2,000 individuals who pay property tax directly to the Tsleil-Waututh government. In 2001, Tsleil-Waututh acquired an additional 800 acres of land surrounding the Indian River (which constitutes the majority of the valley floor). In 2014, Tsleil-Waututh, along with Squamish and Musqueam, signed a historic protocol outlining how the three parties will share economic benefits stemming from Crown land sales. This agreement also provides equity ownership to over 200 acres of land in the metro Vancouver area. Around this time, Tsleil-Waututh also purchased Willingdon Lands in Burnaby and the Liquor Distribution Branch warehouse site in Vancouver.

In relation to its real estate investments, Tsleil-Waututh emphasized that expansion of the WMT and increased tanker traffic could heavily impact its property assets and economic viability. It was noted that Tsleil-Waututh property sales in Metro Vancouver are of particular value as they offer ocean views and are in close proximity to hiking trails and forested areas. As such, Tsleil-Waututh believes that expansion of the WMT and increased tanker traffic could infringe upon the value of their real estate.

In Tsleil-Waututh's perspective, a healthy environment underlines a healthy economy. As such, Tsleil-Waututh believes that the Project will challenge the sustainable vision that it has set out in its environmental stewardship policy, something that Tsleil-Waututh has been working on for over 30 years. Tsleil-Waututh noted that the work they have undertaken associated with the proposed Project has been a significant drain on human and financial resources, which could otherwise have been used to further their growing industries.

Health and Human Safety

Tsleil-Waututh has raised the potential for effects to individual and community health and to the enjoyment of the area adjacent to the WMT as a result of the Project. According to Tsleil-Waututh, these effects may result from: changes to air quality; noise and visual disturbance both from the WMT and marine vessels transiting through or anchored in eastern Burrard Inlet; risk of disease; contamination of wild foods; loss or harm to species' habitats significant to Tsleil-Waututh; dietary changes and health effects from lack of adequate resources, including traditional staple foods; inability to provide conditions suitable for cultural work and work within the community; and other negative impacts on quality of life.

In terms of the effects of marine shipping on community health, within their assessment of the Project, Tsleil-Waututh identified the danger of on-water hazards and physical obstructions, loss of quiet or privacy, and overall disturbances to views. Relating to the potential of oil spills, Tsleil-Waututh highlighted adverse impacts including water and air pollution, sediment contamination, and harm to marine and shoreline-based habitats for culturally significant animals. Tsleil-Waututh has raised serious concerns regarding the adequacy of oil spill response and the potential adverse effects of a spill on the health of the community and surrounding ecosystems. In Tsleil-Waututh's perspective, the health of the community and the health of the Inlet are synonymous; as such, impacts on one will adversely impact the other and vice versa.

Additionally, Tsleil-Waututh noted that a number of community members who continued to harvest clams along the Burrard Inlet (post-1972 closure) have developed cancer. As it is not certain whether the two incidents are directly related, Tsleil-Waututh has asked that this link be studied. Due to increased levels of pollutants in the Inlet, Tsleil-Waututh would like to see more resources devoted to understanding the effects of water pollution on those who live along the shoreline and on those who use the Inlet as a main source of livelihood. Tsleil-Waututh has deemed this study essential to help ensure that it is able to maintain the health of its community and its culture; Tsleil-Waututh noted that this study should be undertaken before the Project is approved, to understand whether and to what effect it would cause increased level of pollutants within the Burrard Inlet.

Accidents and Malfunctions (marine/terrestrial)

One of the major concerns raised by Tsleil-Waututh is the potential threat of an oil spill. In Tsleil-Waututh's perspective, both the risk and likelihood of a spill are too high, particularly given that crude oil will be transported through a city of nearly 1.3 million people. Early in 2016, Tsleil-Waututh published a preparedness plan for oil spills. Compared to the findings of the proponent, one of the fundamental points of disagreement within Tsleil-Waututh's plan is the likelihood of an oil spill. As noted by Tsleil-Waututh, Tsleil-Waututh and the proponent agree on the consequences of a spill; however, they do not agree on the probability that a spill will occur. Tsleil-Waututh concludes that there is 65% probability of a spill, small or large, in 35 years; and 85% probability of a spill, small or large, in 50 years.

Further, at an engagement protocol meeting held on September 27, 2016, Tsleil-Waututh referenced Dr. Thomas Gunton's findings that a Project-related oil spill is inevitable, which Tsleil-Waututh noted deviates from the conclusions of the NEB report:

- 58 to 98% likelihood of a tanker spill, small or large, over the course of 50 years;
- 83% likelihood of a spill of any size at WMT; and
- 37% likelihood of a major spill.

Tsleil-Waututh noted they have limited confidence in emergency preparedness and response at all levels of government. Referencing the accidental oil products delivery line rupture (that took place in Burnaby on July 24, 2007), Tsleil-Waututh felt that the response time was immensely inadequate and was hindered by confusion over jurisdiction: the spill began on land and moved to the water. Tsleil-Waututh expressed frustration as it felt that the right parties did not take sufficient responsibility for the spill clean-up causing further delays and jeopardizing the state of Burrard Inlet. Additionally, Tsleil-Waututh said that the knowledge of their Elders, who predicted where the oil would go, was largely ignored in the wake of the spill and as a result, response efforts were focused in the wrong direction.

Given the currents of the Burrard Inlet, Tsleil-Waututh highlighted that oil stranding is a serious threat with long-lasting adverse effects. Following the accidental oil supply pipeline rupture of 2007, Tsleil-Waututh explained that a large portion of the spilled oil stranded along the north shore of Vancouver, and was not adequately managed due to different views relating to the severity of the spill.

Tsleil-Waututh added that it was not until a representative from Environment Canada came to its territory that anyone realized how far the oil had travelled and where exactly it was stranded.

Tsleil-Waututh is concerned about the response time required for a spill at the WMT. Tsleil-Waututh noted that there are many factors which affect the efficiency of spill response, notably weather, time of day and time of year. As seen with the recent diesel spill in Bella, Bella, Tsleil-Waututh is of the view that crews were less effective in collecting the diesel in the evening compared to the day. Tsleil-Waututh explained that it does not feel there is adequate technology to effectively clean up an oil spill. In Tsleil-Waututh's perspective, if clean-up cannot retrieve 100% of the spilled oil, then it poses too great a threat to water quality and surrounding ecosystems.

Based on work done by Nuka Research within the Salish Sea, Tsleil-Waututh concluded that the best case scenario for spill clean-up is in the summer and in Central Harbor where it is estimated that even then, only approximately 75% of spill oil could be retrieved. Tsleil-Waututh explained that this does not give them comfort regarding the expansion of the WMT and increased tanker traffic. In its view, there is too much risk associated with this Project. Tsleil-Waututh expressed that it is unfair that they take all of the risk without garnering any of the benefit.

Tsleil-Waututh also raised issues with projected oil spill compensation. Tsleil-Waututh is of the view that there is not adequate funding available to address damages caused by a worst case oil spill scenario. Tsleil-Waututh cited that a worst case spill would exceed the international and domestic compensation fund ceilings by \$2.9 billion and that current programs do not include compensation for cultural loss.

Tsleil-Waututh noted that smaller spills frequently occur during tanker loading whose impacts accumulate in the local environment. Further, Tsleil-Waututh emphasized that a spill of any size would inevitably strand and compile along the shorelines of Burrard Inlet, which could not be cleaned up effectively. Tsleil-Waututh concluded that any spills, regardless of the size, could have major consequences on various environmental and cultural aspects of Burrard Inlet including:

- Traditional clam harvests;
- Traditional water-based activities, such as canoeing and kayaking;
- Sustenance and livelihood based activities, such as fishing for crab, prawns and salmon within Indian Arm and the Burrard Inlet;
- Cultural ceremonies which take place on the beaches of the Burrard Inlet;
- Culturally and spiritually significant community visits from southern resident killer whales;
- Transportation routes for forestry products;
- Infrastructure and visual quality of Burrard Inlet;
- Water tourism activities offered by Takaya Tours; and
- Real estate initiatives, property assets and economic viability, given that many of Tsleil-Waututh condominiums offer waterfront views.

Tsleil-Waututh's Response to NEB Recommendation Report

Throughout the engagement protocol, Tsleil-Waututh emphasized its view that the NEB review represented a flawed and deficient process as it did not provide an adequate assessment of potential Project impacts on the community and its surrounding lands and waters. Tsleil-Waututh noted concern that the information it submitted during the NEB hearing process was largely ignored or overlooked, which included its independent assessment of the Project entitled *Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal*, its expert report entitled *Tsleil-Waututh Nation's History, Culture and Aboriginal Interests in Eastern Burrard Inlet*, its oral traditional evidence, its views on oil spills and the recognition of its rights and title. Tsleil-Waututh expressed frustration that the NEB did not have a mandate to consider rights and title issues. On June 20, 2016, Tsleil-Waututh filed a judicial review (FCA Court File No. A-232-16) to challenge perceived legal errors associated with the NEB process.

Tsleil-Waututh is dissatisfied that only 56 of the 157 NEB conditions relate to Burrard Inlet, and that those 56 focus predominantly on standards and not on mitigation or emergency preparedness planning and response. Tsleil-Waututh identified that 151 of the conditions involved further planning processes, and were not, in its view, relevant to the determination of impacts or outcomes. Tsleil-Waututh expressed the view that the conditions were not clear on whether Aboriginal groups would be involved. Within its assessment of the Project, Tsleil-Waututh considered all of the NEB conditions and concluded that there is nothing in the conditions that will tangibly reduce the risk of an oil spill and the effects of marine shipping. In Tsleil-Waututh's perspective, having one condition that relates to oil spill clean-up is not sufficient, and demonstrates that the NEB did not fully consider its submission. Tsleil-Waututh also feels that the conditions overlooked concerns relating to air quality and diluted bitumen submergence. Tsleil-Waututh proposed that the GIC refer conditions back to the NEB to be better defined, such as which Aboriginal groups will be affected by each condition.

Another issue Tsleil-Waututh raised was the lack of specificity within the NEB conditions, which they fear will lead to a lack of accountability of the proponent. For instance, Tsleil-Waututh noted that condition 109 is insufficient to mitigate any risk as it is too vague regarding which permits will need to be issued for the Project to move forward. Tsleil-Waututh highlighted its overall frustration with the NEB process as they felt that their evidence and issues were not fully considered due to the NEB's narrow scoping of the assessment, lack of integration of assessment factors of importance to Aboriginal groups into the assessment and the inadequacy of mitigation as a result of this narrow scope of review. As such, Tsleil-Waututh concluded that a GIC decision would be based on ill-informed information.

At an engagement protocol meeting on November 9, 2016, Tsleil-Waututh raised concern that the proponent will take one billion dollars in cash flow from the Canadian economy if the Project is approved. Tsleil-Waututh explained that this will benefit partners of the proponent who are primarily not Canadian and questioned whether this was a sound investment of Canadian infrastructure. Tsleil-Waututh noted that this issue was placed on the NEB record but was not adequately considered.

Tsleil-Waututh also noted that the NEB panel did not consider Trans Mountain's shipping contracts, signed in 2012, during the review phase of the Project. Within the contracts, Tsleil-Waututh identified a clause which states that shippers must speak well of the Project until Kinder Morgan receives the Certificate of Public Convenience and Necessity. Based on this, Tsleil-Waututh questioned the authenticity of support that has been shown for the Project.

Tsleil-Waututh also questioned the evidence and figures that the NEB relied on as part of their economic analysis. Tsleil-Waututh noted that the NEB used \$5.4 billion as the capital cost of the Project, while the proponent used \$6.8 billion. Within the NEB report, Tsleil-Waututh advised that \$5.4 billion was the only figure considered. As such, Tsleil-Waututh feels that the NEB omitted the actual capital cost of the Project and its accompanying tolls rates from its analysis and subsequent conclusions, which in Tsleil-Waututh's perspective signifies a faulty and unreliable process.

Tsleil-Waututh also challenged the existence of foreign markets as current markets are primarily based between Washington State and California. In its view, the NEB overemphasized the presence of offshore and accessible markets to present the Project as more viable and cost-beneficial. Tsleil-Waututh noted that the volume of non-US exports has fallen significantly in recent years, and cited Shell who predicted a decline in the demand for oil in five years. Additionally, Tsleil-Waututh noted that the NEB report relied heavily on the Canadian Association of Petroleum Producers' (CAPP) 2015 forecast. In Tsleil-Waututh's view, CAPP 2015 represents a survey of intentions through which companies have the ability to overestimate the amount of oil they can realistically produce. Tsleil-Waututh added that the NEB overlooked Energy Futures 2016, released following the close of the NEB hearing, which provides a forecast based on lower production and supply figures. Tsleil-Waututh feels that the NEB report did not integrate the most up-to-date information on Canadian oil production, which makes it appear that there is excess demand for oil when there is not.

Proposals for Crown Action

At an engagement protocol meeting on September 15, 2016, Tsleil-Waututh indicated that it would be open to a discussion on alternative "means" to the Project, such as the refinement of oil in Alberta. Tsleil-Waututh noted that alternative means to the Project were not adequately canvassed within the NEB assessment. As such, Tsleil-Waututh concluded that it was the Crown's duty to consider all possible Project alternatives, as well as alternative means of carrying out the Project.

At an engagement protocol meeting on October 20, 2016, Tsleil-Waututh questioned how Project approval could be incorporated into the Paris climate change agreement reductions, and how a GIC decision could be made with imperfect information relating to GHG emissions. Tsleil-Waututh stated that consultation on the methods for calculating upstream GHG emissions should have occurred before findings were finalized and used to provide input for the Project assessment, which, in Tsleil-Waututh's view, falls short of nation-to-nation relations and requirements of deep consultation on the *Haida* spectrum. Currently, Tsleil-Waututh is seeking a climate change impact study to better understand the GHG effects of the Project, and how emissions affect cumulative climate change projections. Tsleil-Waututh added that this study should also address whether environmental effects could be justified,

and whether the Pan-Canadian emission reduction targets can be met with the Project in place. In Tsleil-Waututh's perspective, the NEB report excludes the current GHG emissions methodology and the projected effects of GHG emissions on climate change. Tsleil-Waututh recommends that the GIC refer the Project back to the NEB for re-examination under CEAA 2012 as Project approval is dependent on a public interest justification of environmental impacts. In Tsleil-Waututh's view, an environmental assessment under CEAA 2012 determines the significance of environmental effects, likelihood of occurrence, and whether effects are justifiable. In contrast, Tsleil-Waututh's view is that the NEB review process was narrower in scope and did not consider whether significant effects would be justifiable. Tsleil-Waututh expressed the view that under the NEB Act, the NEB pursues a public interest justification based on a cost benefit analysis and overlooks the environmental protection piece.

Tsleil-Waututh described their view that none of the CEAA s.19 factors for marine shipping were adequately considered in the NEB review. With reference to Table 7 of Tsleil-Waututh's environment assessment, Tsleil-Waututh noted that the NEB did not effectively consider marine shipping related impacts on their community, including a lack of determination of likely effects as well as justification of such effects. Tsleil-Waututh noted their view that section 6 of CEAA 2012 would prohibit any responsible authority from authorizing any federal legislation if a significant effects justification test failed. Tsleil-Waututh concluded that current levels of marine shipping are already too high, and, in response, proposed a joint recommendation be sent to the GIC requiring a further assessment of marine shipping by the proponent. Tsleil-Waututh also proposed that an additional recommendation be sent to the GIC to require a re-determination of Aboriginal rights and title for purposes of Project review.

At engagement protocol meetings on October 27, 2016 and November 9, 2016, Tsleil-Waututh elaborated on its dissatisfaction with the consultation and decision-making processes. In order for Tsleil-Waututh to have confidence in the process and given its view of Tsleil-Waututh jurisdiction, rights and title, it explained that a joint recommendation report on behalf of Tsleil-Waututh and the Crown should be sent up to the GIC. In Tsleil-Waututh's perspective, it is insufficient for the Crown to draft a report that assesses the issues of its community through the current Crown consultation process. Tsleil-Waututh indicated their understanding that a joint submission to the GIC would require a revised mandate which is not provided for in the protocol. Tsleil-Waututh sent a letter detailing a new engagement protocol mandate on November 3, 2016 and a proposal for joint recommendations on November 7, 2016 to the federal Crown. On November 10, 2016, the Crown met with Tsleil-Waututh to further discuss the joint recommendation. It was explained that a joint recommendation could not fit within the framework of the existing protocol agreement. In a letter dated November 17, 2016, Tsleil-Waututh detailed that it will present a separate submission as a substitute to the Crown's Report to Minister Carr at the final leadership protocol meeting on November 28, 2016.

At the protocol engagement meeting held on October 28, 2016, Tsleil-Waututh provided a list of further research and work required by the Crown, which it feels is currently deficient and should result in the process not being approved. Summarized below, these represent topics that Tsleil-Waututh wishes to be further consulted on:

- Accommodation of title and governance rights;

- Likelihood of adverse impacts of spills and shipping;
- New technologies or innovations to address likelihood and consequences of spills;
- Climate change impacts on reserve;
- Designated Project (in terms of marine shipping and lack of conditions thereof);
- NEB consultation;
- Polluter pays principle review and spill compensation:
 - Tsleil-Waututh sees deficiencies within this principle, and would like Canada to provide a re-evaluation for improvement;
- Spill clean-up end points based on net environmental improvements;
- Underwater noise and cumulative effects (specifically in Burrard Inlet);
- Cumulative impacts on physical health of individuals; and
- Potential consequences of an oil spill on an already vulnerable and depleted salmon population.

In addition, to ensure confidence in emergency preparedness, Tsleil-Waututh proposed that it would need to jointly make decisions with the Canadian Coast Guard related to emergency response and marine shipping safety. Tsleil-Waututh explained that a tripartite system of response planning would be most effective, which would include representation from the federal government, provincial government and First Nations governments. Tsleil-Waututh emphasized that its governance rights must be recognized on a nation-to-nation level. In association with their environmental stewardship policy, Tsleil-Waututh also explained that for the Project to infringe on its territory they would need to receive net environmental benefits; for Tsleil-Waututh, industry-based projects need to contribute to the upward trajectory of the Burrard Inlet environment.

At an engagement protocol meeting on October 21, Tsleil-Waututh stated that as matters now stand Tsleil-Waututh would reject the Project. However, there could be a reconsideration if certain factors change, including the development of adequate measures to monitor and rehabilitate the Inlet (including current conditions and harvesting limitations), amelioration of oil spill cleanup capacity and the Crown's agreement to a joint-decision making capacity. Tsleil-Waututh added that a different commodity being transported in the pipeline and in ships would change the perception of risk.

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 Tsleil-Waututh 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.

V - Potential Impacts of the Project on Tsleil-Waututh's Aboriginal Interests

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests are provided in Sections 2.4.3 and Section 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group may be particularly important and valuable for specific qualities associated with traditional cultural or

spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

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

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

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

The Crown understands that Tsleil-Waututh conducted a third-party study titled *Tsleil-Waututh Nation's History, Culture, and Aboriginal Interest in Eastern Burrard Inlet*. In May 2015, the complete study was filed confidentially as written evidence and a redacted version was filed publicly⁵. Tsleil-Waututh also completed an assessment report titled *Assessment of the Trans Mountain Pipeline and Tanker Expansion Proposal*⁶. In its Supplemental Technical Reports ([A4S717](#), [A4S718](#)), the proponent estimated approximate distances and directions from the pipeline corridor, WMT, and marine shipping lanes based on traditional land and marine resource use (TLRU/TMRU) information in Tsleil-Waututh's reports.

Impacts on Hunting, Trapping and Plant Gathering

According to Tsleil-Waututh's written evidence, community members historically hunted waterfowl, marine and terrestrial mammals within terrestrial environments adjacent to rivers, streams and lakes in the North Shore Mountains on a regular basis. Species hunted include deer, elk, swans, ducks, geese, grebes, grouse, rabbits, squirrels, bears, cougars, eagle, seals and sea lions. Tsleil-Waututh community members also hunted game such as mountain goats in high elevation regions. Bird hunting is currently not allowed by community members on or around Tsleil-Waututh I.R. Burrard Inlet #3 due to firearm regulations. In terms of plant gathering activities, Tsleil-Waututh community members historically harvested crab apples, berries (blueberry, salmon berry, salal, huckleberry red elderberry, thimble berry and black caps), kelp, and nettles. These species were harvested along the near-shore area of Burrard Inlet within 8 km of villages and camps, as well as in terrestrial environments near rivers, streams, and lakes in the North Shore Mountains. Currently, community members gather salmon berry, salal, cascara,

⁵ NEB Filings: [A4L5Z4](#), [A4L5Z5](#), [A4L5Z6](#), [A4L5Z7](#)

⁶ NEB Filings: [A4L5Z9](#), [A4L6A0](#), [A4L6A1](#), [A4L6A2](#), [A4L6A3](#), [A4L6A4](#), [A4L6A5](#)

licorice root and devil's club on Burrard Inlet I.R. #3. Tsleil-Waututh members no longer harvest plants in the intertidal zone.

Tsleil-Waututh identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including: loss of berries, other traditional foods and medicines, and harvesting opportunities; contamination of traditional foods and surrounding ecosystems; changes in air quality; sediment contamination; and, reduction in Tsleil-Waututh's environmental stewardship capability. Tsleil-Waututh also raised concerns about the loss or alteration of bird and marine habitat, as well as sensory disturbance to marine and bird species, and potential cumulative effects to wildlife habitat and species.

As described in the *NEB Recommendation Report*, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants and lichens and vegetation communities of concern, old growth forests, wetlands, terrestrial wildlife and wildlife habitat (including species at risk), marine mammals, and marine birds. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering activities (see Section 4.3.1 and 4.3.3 of this Report). In addition, the proponent would implement several mitigation measures to reduce potential effects to species important for Tsleil-Waututh's hunting, trapping, and plant gathering activities. The proponent has stated that it 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 (including a marine mammal protection program [NEB Condition 132]). The NEB imposed Condition 81 that requires the proponent to develop a WMT-specific EPP, including mitigation and monitoring plans, to be finalized in consultation with Fisheries and Oceans Canada (DFO) and potentially affected Aboriginal groups. The proponent is also required to conduct a post-construction monitoring program for marine mammals from the expansion of the WMT and post-construction monitoring reports. The proponent has committed to various mitigation measures to reduce effects of construction and operation of the WMT on marine birds and has committed to compile information regarding marine bird mortality and collision events and to include that information in post-construction monitoring reports. For the marine shipping component of the Project, the proponent will also develop plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups.

Tsleil-Waututh identified a total of 11 hunting and plant gathering sites in their TLRU/TMRU studies. None of the sites identified are within the proposed pipeline corridor, although three hunting sites and one plant gathering site are within 2 km of the pipeline corridor and/or WMT. Tsleil-Waututh did not identify trapping sites.

Tsleil-Waututh raised concerns with potential Project-related impacts on specific locations and access to hunting, trapping, and plant gathering activities, including adverse impacts on subsistence travel and restrictions of movement within Burrard Inlet. Project-related pipeline construction and routine maintenance is expected to cause short-term, temporary disruptions to Tsleil-Waututh's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities.

The Crown understands that with pipeline construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Tsleil-Waututh. For traditional activities directly affected by the construction and operation of the WMT, these activities are not likely to occur within the expanded water lease boundaries during the operational life of the Project. Project-related marine shipping including increased use of available anchorage sites on the eastern side of Burrard Inlet is expected to disrupt Tsleil-Waututh's marine vessels and harvesters, and this could disrupt activities or access to hunting, trapping, and plant gathering sites. NEB conditions, if the Project is approved, may either directly or indirectly avoid or reduce potential access-related impacts associated with hunting, trapping, and gathering sites (see Section 4.3.1 and 4.3.3 of this Report) and the proponent would implement several mitigation measures to reduce potential effects on Tsleil-Waututh's hunting, trapping, and plant gathering activities.

These mitigations include management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs. The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access to Tsleil-Waututh's traditional lands. The proponent has committed to minimizing the development of access routes, controlling public access along the construction right-of-way, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent has also committed to work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Tsleil-Waututh prior to construction, the sites will be assessed, and appropriate mitigation measures will be implemented.

As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Tsleil-Waututh community members to take measures to reduce potential disruptions from tankers and allow planning for hunting, trapping and plant gathering activities to take place that minimizes disturbance from Project-related tankers. Reduced harvests, while not expected to occur from temporary access restrictions, could impact Tsleil-Waututh cultural activities and sharing of marine food with the community. The proponent committed to working with Tsleil-Waututh to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Tsleil-Waututh expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including: the loss or reduced availability of traditional foods; contamination of wild foods and dietary changes; health effects from lack of adequate and culturally sensitive resources; the permanent closure of clam harvests and other harvesting activities; loss of spiritual connections between ancestors and future generations; diminished quality of health; potential effects on cultural and ceremonial activities (particularly along the shorelines of Burrard Inlet); and, loss of community cohesion and cultural transmission. Short-term, temporary disruptions to Tsleil-Waututh's hunting, trapping, and plant gathering activities from Project-related construction and routine maintenance activities could temporarily alter the behaviour of community members during construction. 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.

The Crown understands that Tsleil-Waututh may experience noise disturbances and interruptions to traditional activities due to the WMT and Project-related marine shipping activities, and community members could be discouraged from travelling to hunting, trapping, and plant gathering sites that require these members to cross shipping lanes or navigate through marine areas occupied by anchored vessels. NEB conditions, if the Project is approved, may either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (see Section 4.3.1 and 4.33 of this Report) and the proponent would implement several mitigation measures to reduce potential effects to Tsleil-Waututh's hunting, trapping, and plant gathering activities. The proponent is committed to using an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project and will communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program.

The Crown has considered available information from the NEB process, consultation with Tsleil-Waututh, Tsleil-Waututh engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province. In consideration of this information, the Crown expects that the impacts of Project construction and operation, and Project-related marine shipping activities on Tsleil-Waututh's hunting, trapping and plant gathering activities would be negligible to minor. The Crown expects minor impacts as a result of the pipeline, and these effects would primarily occur during construction. The Crown expects negligible impacts as a result of the WMT and Project-related vessels, and these effects would occur during construction and operations. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related pipeline, facility, and WMT construction and operation, and marine shipping activities are likely to have low to moderate magnitude environmental effects on terrestrial, aquatic, and marine species harvested by Tsleil-Waututh;
- Construction of WMT, the pipeline and associated facilities are likely to cause short-term temporary disruptions to Tsleil-Waututh's community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint; Project-related marine shipping activities are likely to cause temporary disruptions to activities or access to sites during the period of time Project-related tankers are in transit through Tsleil-Waututh's traditional territory; and
- Concerns identified by Tsleil-Waututh regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing, and Marine Fishing and Harvesting

According to Tsleil-Waututh's written evidence, community members historically harvested and fished numerous species along the near-shore of Burrard Inlet and within rivers, streams and lakes in the North Shore Mountains north of Burrard Inlet on a regular basis. These species include anchovy, clam, eulachon, herring, lingcod, mussel, oyster, rockfish, salmon, trout, cod, flounder, sole, sea urchin, crab, shrimp, smelt and sole. In the 1960s, most community members stopped harvesting shellfish along Burrard Inlet beaches as a result of pollution, although some members still harvest shellfish along the beach on Indian Reserve No. #3. Fisheries and Oceans Canada closed shellfish harvesting in Burrard Inlet in 1972, although a limited opening took place in October 2016. Currently, community members harvest crabs and prawns in Burrard Inlet and fish sockeye and Chinook salmon along multiple rivers and creeks. The Fraser River is still actively used for fishing sockeye in August, with the Indian River accessed later in the summer months for chum. Other important species for Tsleil-Waututh include chinook, prawn, crab, bivalves and marine birds. Historically, eulachon, sturgeon and herring were harvested. A common Tsleil-Waututh teaching by Elders is that "when the tide went out, the table was set."⁷

Tsleil-Waututh identified many concerns related to environmental effects of the Project on fishing activities, in particular: the loss of traditional resources such as salmon, prawns and clams; loss or reduction to marine aquatic and bird habitat; temporary changes to water and sediment quality; disruption of increased tanker traffic on traditional fishing areas and reduction in subsistence travel; contamination of fishing areas and wild foods; loss of economic opportunities and revenues; and sensory disturbance to marine species. Concerns related to potential cumulative effects to marine fish and wildlife habitat and species were also raised. As described in the *NEB Recommendation Report*, Project-related activities could result in low to moderate magnitude effects on freshwater and marine fish and fish habitat, surface water and marine water quality. Moderate effects to fish and fish habitat in the terrestrial and aquatic environments would be localized to individual watercourse crossings, and effects to marine fish and fish habitat would be limited to a few or many individuals, where any potential serious harm would be compensated by offset measures.

⁷ <http://www.twntation.ca/About%20TWN/Our%20Territory.aspx>

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 and 4.3.3 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts on freshwater fish and fish habitat, marine fish and fish habitat, and riparian habitats (NEB Conditions 71, 75, 92, 151, and 154). With regard to specific concerns raised by Tsleil-Waututh, the proponent would implement several mitigation measures to reduce potential effects to species important for Tsleil-Waututh's fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least risk biological windows in an attempt to avoid causing serious harm to fish, has committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat, and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat. Further, the proponent has completed a preliminary offsetting plan for impacts on fish and fish habitat associated with construction and operation of the WMT. For Project-related marine shipping activities, the proponent will require all tankers to process and empty their bilges prior to arrival and lock the discharge valve of the bilge water while in Canadian waters.

Tsleil-Waututh identified six marine and six freshwater fishing sites in their TLRU/TMRU studies. Four of the marine fishing sites are within the Marine RSA⁸ and one of the sites (i.e. commercial fishing, crab and prawn harvesting in Burrard Inlet) would require community members to cross the marine shipping lanes to access the fishing site. One of the freshwater fishing sites (i.e. food, social and ceremonial harvesting of Sockeye Salmon in the Fraser River) is located within the proposed pipeline corridor, while the remaining five sites are more than 2 km from the Project area.

Tsleil-Waututh raised concerns with potential Project-related impacts on specific locations and access to freshwater fishing and marine fishing and harvesting activities, including erosion and the loss of land, direct loss or modification to marine aquatic and bird habitats, changes to water and sediment quality, sensory disturbances to marine environment and species, reversal of Tsleil-Waututh remediation efforts within the Burrard Inlet, and reversal of Tsleil-Waututh remediation efforts to salmon populations in the Fraser River. Project-related pipeline construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Tsleil-Waututh's access to freshwater fishing activities. 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 Tsleil-Waututh community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation.

⁸ The area extending beyond the LSA boundary (i.e. the zone of influence or area where the element and associated indicators are most likely to be affected by Project-related marine vessel traffic.) where the direct and indirect influence of other activities could overlap with project-specific effects and cause cumulative effects on the environmental or socio-economic indicator.

The Crown understands that fishing and harvesting activities directly affected by the construction and operation of the WMT are not likely to occur within the expanded water lease boundaries during the operational life of the Project (NEB Report p. 279). Impacts on navigation, specifically in eastern Burrard Inlet, would exist for the lifetime of the Project, and would occur daily for varying amounts of time depending on the transiting vessels and anchored vessels. Project-related marine vessels are expected to cause temporary disruptions to Tsleil-Waututh's marine fishing and harvesting activities. Community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes or navigate through marine areas occupied by anchored vessels. Disruptions to Tsleil-Waututh's marine fishing and harvesting activities are likely to be temporary when accessing fishing sites in the Burrard Inlet that require crossing shipping lanes, as community members would be able to continue their movements shortly after the tanker passes. Disruptions would be more frequent as a result of anchored tankers within the eastern arm of Burrard Inlet.

NEB conditions, if the Project is approved, may either directly or indirectly avoid or reduce potential access-related impacts associated with freshwater and marine fishing and harvesting sites important for Tsleil-Waututh (Section 4.3.2 and 4.3.3 of this Report) and the proponent would implement several mitigation measures to reduce potential effects on freshwater and marine fishing and harvesting activities. These mitigations include access management plans, scheduling and notification of Project activities including Project-related marine vessel traffic, and environmental monitoring programs. As previously discussed, the proponent is committed to minimize disturbance to access by Tsleil-Waututh of its traditional lands, as described in the Access Management Plan. The proponent committed to working with Tsleil-Waututh to develop strategies to most effectively communicate the construction schedule and work areas to community members. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a marine public outreach program (NEB Condition 131). This communication would allow Tsleil-Waututh community members to take measures to reduce potential disruptions from tankers and allow planning for marine fishing and harvesting activities to take place that minimizes disturbance from Project-related tankers.

Tsleil-Waututh expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing and harvesting activities, including impacts on cultural transmission and community connections to ancestry, limited use of beaches for knowledge sharing activities, impeded access to movement within Burrard Inlet due to increased marine vessel traffic, loss or reduced ability to maintain traditional foods within local diets, dietary changes and health effects from lack of traditional staple foods, and potential contamination of sacred sites including fishing areas along the Burrard Inlet and Indian Arm.

As described previously, the Project pipeline and facility construction and routine maintenance is expected to cause short-term, temporary disruptions to Tsleil-Waututh's fishing activities. The Crown understands that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. Through the construction and operation of the WMT, the Crown understands that Tsleil-Waututh may

experience noise disturbances and interruptions to cultural ceremonies along the shoreline, and loss or damage to visual quality of the Burrard Inlet. Project-related marine vessels are expected to cause temporary disruptions to Tsleil-Waututh's marine fishing and harvesting activities whereas increased use of anchorage sites by Project-related marine vessels may cause more frequent disruptions in eastern Burrard Inlet. The Crown understands that community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes or to travel through or around established anchorage sites. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Tsleil-Waututh community members to take measures to reduce potential disruptions from tankers and allow planning for cultural events to take place that minimizes disturbance from Project-related tankers.

The Crown has considered available information from the NEB process, consultation with Tsleil-Waututh, Tsleil-Waututh engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province. In consideration of this information, the Crown expects that Project construction and operation, and Project-related marine shipping activities would have up to moderate impacts on Tsleil-Waututh's freshwater fishing and marine fishing and harvesting activities. The Crown expects minor-to-moderate impacts to fishing and marine harvesting as a result of the pipeline, and these effects would primarily occur during construction. The Crown expects moderate impacts as a result of WMT construction, operations and Project-related marine vessels. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related pipeline, facility, and WMT construction and operation, and marine shipping activities are likely to have low to moderate magnitude environmental effects on freshwater and marine species harvested by Tsleil-Waututh;
- Construction of WMT, the pipeline and associated facilities are likely to cause short-term temporary disruptions to Tsleil-Waututh's community members accessing traditional freshwater fishing and marine fishing and harvesting sites within the Project footprint; Project-related marine shipping activities are likely to cause temporary disruptions to activities or access to sites during the period of time Project-related tankers are in transit through Tsleil-Waututh's traditional territory and frequent disruption at anchorage sites; and
- Concerns identified by Tsleil-Waututh regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing and marine fishing and harvesting activities.

Impacts on Other Traditional and Cultural Practices

According to Tsleil-Waututh's written evidence, community members historically used marine waters as travelways from villages and camps, as well as for travel to outer Burrard Inlet. Community members also conducted resource harvesting activities on these historical travelways. Currently, Tsleil-Waututh community members use traditional canoe travelways for cultural tourism and traditional activities such

as canoe racing. Community members currently maintain racing canoes, war canoes, and kayaks for daily use on travelways throughout the Project's Marine RSA, including the eastern area of Burrard Inlet and Indian Arm. Tsleil-Waututh Elders stated in their written evidence that sacred areas within the Marine RSA are used for ritual bathing activities. Community members partake in ritual bathing in isolated creeks and rivers along Burrard Inlet where they perceive the water is pure. Bathing practices in Burrard Inlet do not occur regularly as a result of increased marine vessel traffic and pollution.

In the terrestrial environment, Tsleil-Waututh community members historically gathered in areas along the near-shore of Burrard Inlet to seek habitation in villages and camps and to build canoes. Salmon is very important to ceremonial events and social gatherings. In its written evidence, Tsleil-Waututh stated the existence of several archaeological sites such as historical resource harvesting camps and occupied villages within the study area. Historically, Tsleil-Waututh community members travelled to cliffs or rock shelters for spiritual and ceremonial purposes. Pictographs were located close to waterbodies or waterfalls and spiritual practice and training was conducted within remote sacred areas.

Tsleil-Waututh identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including impacts on archaeological and cultural heritage sites, such as the loss, damage, or contamination of places of importance, archaeological resources, and/or sacred areas including ancient village sites and cemeteries; loss of traditional land through erosion; adverse cultural effects of armoring as a tool to erosion mitigation; and, loss of connections between ancestors, current generations and future generations. Tsleil-Waututh also raised concerns about impacts on their subsistence economy, such as fewer opportunities to trade or sell harvested resources, forced transition to a wage-based economy, loss of livelihood options, and inability to provide cultural work and work within the community and on the reserve.

The Crown acknowledges the high cultural value of killer whales to the Tsleil-Waututh, and the lack of mitigation measures proposed by either the proponent or the NEB to mitigate impacts on the Southern resident killer whale population. The Crown further acknowledges that Tsleil-Waututh would like to see Canada attempt to fill any knowledge gaps with respect to the effects of underwater noise or marine shipping on killer whales within Burrard Inlet, to ensure that the species can be afforded adequate protection during Project construction and operation. Sections 4.3.3 and 4.3.4 of this report discuss the adverse impacts of Project-related marine shipping on the Southern resident killer whale which is applicable to Tsleil-Waututh's concerns.

Concerns regarding potential effects on Tsleil-Waututh's ability pursue its environmental stewardship policy and its restoration efforts within the Burrard Inlet were also expressed. As described in Section 4.3.4 of this Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources and the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Tsleil-Waututh's traditional and cultural practices. An environmental education program

will be developed and implemented to ensure that all personnel working on the Project are informed of the location of known sacred sites and burial sites. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW finalisation, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other on-going consultation and engagement with local and Aboriginal governments.

Tsleil-Waututh identified a total of 18 cultural sites in the marine and terrestrial environments in their TLRU/TMRU studies⁹. Within the Marine RSA, Tsleil-Waututh identified four cultural sites including two trails/travelways and two sacred areas. Two of the cultural sites would require crossing the marine shipping lanes: canoeing and kayaking travelways in Burrard Inlet; and accessing ritual bathing activities and pictographs. In terms of land uses, Tsleil-Waututh identified 14 cultural sites including 11 habitation sites and three sacred areas. One sacred area (i.e. pictographs in the Fraser Valley) was identified within the proposed pipeline corridor. Tsleil-Waututh identified no habitation sites within the proposed pipeline corridor although one site was identified within 2 km of the WMT. No community gathering places were identified within the Marine RSA.

Tsleil-Waututh raised concerns with potential Project-related impacts to specific locations and access to other cultural and traditional practices, including impacts on cultural or spiritual practices and places, and cultural travel and restriction of access, movement and activity within Burrard Inlet, such as the interference of ceremonies and loss of connection to waters and lands. Project-related pipeline and facilities activities are expected to cause short-term disruptions that temporarily affect the ability of Aboriginal groups to access land, waters or resources for traditional purposes. The Crown understands that Tsleil-Waututh's opportunities for certain traditional and cultural activities will be temporarily interrupted, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Tsleil-Waututh's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities.

The Crown understands that there will be temporary interruptions to Tsleil-Waututh's traditional and cultural practices, and there could be reduced access to traditional and cultural sites during Project operational activities. The expansion of WMT could impose restrictions on Tsleil-Waututh's ability to use the water and surrounding lands for traditional activities, given the acoustic and visual disturbance of WMT construction. Particularly, the Crown recognizes the location of Tsleil-Waututh's traditional territory with emphasis that its main reserve is located directly across the Inlet from WMT. However, the Crown notes that effects of construction on cultural activities would be temporary, lasting until the completion of the WMT expansion. As outlined in Section 4.3.4 of this Report, the NEB concluded that

⁹ The previous version of this appendix indicated 29 cultural sites in the marine and terrestrial environments. Upon further review of the proponent's Supplemental Technical Reports, the 11 historical villages identified as gathering places in [A4S718](#) are the same as the 11 historical villages identified as habitation sites in [A4S717](#).

Project construction and operation would result in temporary impacts on Tsleil-Waututh's use of water and water-based resources for traditional purposes. Project-related marine shipping activities and increased use of available anchorage sites for vessels could potentially disrupt traditional activities, travelways and cultural tourism (e.g. when tours can enter the water given the passing of tankers up the inlet) and navigation across parts of eastern Burrard Inlet.

Conditions in the *NEB Recommendation Report*, if the Project is approved, may either directly or indirectly avoid or reduce potential impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). The proponent will be required to manage access to culturally sensitive sites and implement an access management plan, and the proponent has committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project. The Crown notes that tankers will remain within existing shipping lanes and anchorages, and the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131).

Tsleil-Waututh expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, including impacts on cultural transmission and community cohesion, such as the loss of traditional knowledge, loss of language skills, and reduction or elimination of opportunities for cultural transmission. Tsleil-Waututh also raised concerns about the risk to the health and safety of cultural practitioners, individual and community health, such as dietary and health effects from a lack of resources such as traditional foods, as well as the hindrance of and failure to provide conditions for cultural work. Temporary interruptions may occur to Tsleil-Waututh's cultural and spiritual practices, which could alter their participation in these activities during Project construction and operation activities, as well as during the transit of marine vessels associated with the Project.

The Crown has considered available information from the NEB process, consultation with Tsleil-Waututh, Tsleil-Waututh engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province. In consideration of this information, the Crown expects that Project construction and operation, and Project-related marine shipping activities, would have up to moderate impacts on Tsleil-Waututh's other traditional and cultural practices. The Crown expects minor-to-moderate impacts as a result of the pipeline, and these effects would primarily occur during construction. The Crown expects moderate impacts as a result of the WMT and Project-related vessels, and these effects would occur during construction and operations. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related pipeline, facility, WMT construction and operation, and marine shipping activities are likely to have low to moderate magnitude environmental effects on traditional and cultural resources;
- Construction of the WMT, pipeline and associated facilities are likely to cause short-term temporary disruptions to Tsleil-Waututh's community members accessing traditional and

cultural practice sites within the Project footprint; Project-related marine shipping activities are likely to cause temporary to ongoing disruptions to activities or access to sites during the period of time Project-related tankers are in transit through or at anchor within Tsleil-Waututh's traditional territory; and

- Concerns identified by Tsleil-Waututh regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

The Crown notes that portions of the Project would be located within areas of Tsleil-Waututh's traditional territory assessed as having strong *prima facie* claim to Aboriginal title, in the vicinity of the terminus of the pipeline and in the middle portion of Burrard Inlet, particularly in proximity to Indian Arm.

Within the area of the proposed WMT expansion and fuel storage facility expansion, in addition to a section of pipeline RoW and the marine shipping component and anchorages within eastern Burrard Inlet, the Crown understands that Tsleil-Waututh assert responsibilities for management and governance. Tsleil-Waututh also asserts that others are to observe and follow Tsleil-Waututh protocols when accessing lands, waters and resources within this area.

The Crown has actively consulted with Tsleil-Waututh throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Tsleil-Waututh throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Tsleil-Waututh's use of its asserted traditional territory, including effects from potential spills, marine shipping, and construction and operation of the WMT;
- Activities that could affect Tsleil-Waututh's ability to manage and make decisions over the Project area, including impacts to infrastructure, effects on the land base, and delays to Tsleil-Waututh achieving their environmental stewardship objectives; and
- Project-related impacts that could affect Tsleil-Waututh's economic development aspirations for its asserted traditional territory, such as the reduction or elimination of current and future generations to control and benefit from their waters and lands, the impediment to cultural and environmental tourism based activities, and the loss of business or economic opportunities or revenues, land investments and property sales.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial, marine and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on

the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. It is noted that Tsleil-Waututh has not executed a Mutual Benefits Agreement with the proponent.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion that the Project is expected to have minor-to-moderate impacts on Tsleil-Waututh's asserted Aboriginal title within the Project area.

Impacts Associated with Accidental Pipeline, Terminal, and Tanker Spills

Tsleil-Waututh has consistently expressed concerns related to direct and indirect effects of Project-related oil spills from marine vessels, the WMT, pipeline and facilities on their Aboriginal Interests. Specific concerns about potential adverse impacts in the event of an oil spill include water and air pollution, sediment contamination, loss, harm, or contamination of habitat or species, reduction in property values and real estate investment, security risks and issues to safety, inadequate emergency preparedness and response, issues of jurisdiction, impact of oil stranding on shorelines, insufficient domestic and international compensation funds, adverse effects on sustenance and livelihoods, impacts on forestry transportation routes, poor visual quality, diminishment of eco-tourism industry, and shoreline cleanup damage. The consequences of accidental oil spills on key Tsleil-Waututh Aboriginal Interests such as archaeological and cultural sites as well as marine fish and wildlife habitat species are presented in the summary table below taken from Tsleil-Waututh's assessment of the Project (Figure 1).

The Crown understands Tsleil-Waututh's concerns regarding spills, and the potential for a spill to impact Tsleil-Waututh's use and occupation of its traditional territory, ability to make governance decisions over the area impacted, and the potential for a spill to adversely impact environmental integrity, community health and the economic development aspirations that Tsleil-Waututh have within its territory.

A discussion of the potential impacts of accidental spills 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 Tsleil-Waututh's Aboriginal Interests and concerns raised by Tsleil-Waututh during the NEB process and Crown consultation process, an oil spill associated with the Project could result in minor to serious impacts on Tsleil-Waututh's Aboriginal Interests, depending on the magnitude of the spill. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline, terminal or tanker spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.¹⁰

¹⁰ Trans Mountain Final Argument, p. 85 and 207

VI - Conclusion

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline and marine safety regimes would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations of the pipeline and WMT, as well as Project-related marine shipping activities between the WMT and the 12 nautical mile limit (J-buoy) through the Salish Sea and Strait of Juan de Fuca, the Crown expects impacts of the Project on the exercise of Tsleil-Waututh Nation's Aboriginal Interests would be up to moderate.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Tsleil-Waututh Nation's 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, as well as the involvement of Tsleil-Waututh Nation in emergency response planning activities. The federal Crown is considering additional responsive measures that would further accommodate the potential adverse impacts of the Project on Tsleil-Waututh Nation, as discussed in Sections 4 and 5 of the main body of this Report.