

## Appendix C.7 – Chawathil First Nation

### I – Background Information

Chawathil First Nation (Chawathil) is a Stó:lō community whose asserted traditional territory (in conjunction with other Stó:lō communities) encompasses a large section within the Fraser Valley, British Columbia (BC). The community is found in the Hope area of the Upper Fraser Valley. No certain translation of Chawathil (pronounced “*Shi-wath-il*”) has been located, but the proper orthographic rendering appears to be Chowéthel. It appears to refer to a prominent gravel bar near the Katz Reserve.

Chawathil has five reserves: Chawathil Reserve no.4 (551.6 hectares [ha]), Greenwood Island Reserve no.3 (4 ha), Hope Reserve no.1 (3.9 ha), Schkam Reserve No.2 (54.3 ha), Tunnel Reserve no.6 (1.1 ha), and the shared Pekw'Xe:yles Reserve (10.3 ha), held in common with several other Stó:lō groups, in the eastern Fraser Valley. Chawathil's total registered population is 614 (304 members are living on Chawathil's reserves, 81 are living on other reserves, and 229 are living off-reserve).

Chawathil members historically spoke Halq'eméylem, the language of the Upriver Stó:lō communities, which falls into the Coastal Salish language group. Chawathil is understood to be a modern descendant of the group ethnographically identified as the Tait [Tít] Tribe. The Tait are one of several groups classified as Upper Stó:lō. Though similar language and customs appear to have been shared between the Upper Stó:lō groups, the Tait spoke a unique dialect. The Tait occupied a distinct territory, though there appears to have been some overlap in territorial use with other Upper Stó:lō groups.

Chawathil is a member of the Stó:lō Tribal Council, a political union of eight Stó:lō communities (including Chawathil). The Stó:lō often refer to *S'olh Temexw*, which is the name used by the Stó:lō people for their traditional territory. Chawathil is a party to the Stó:lō Nation protective *Writ of Summons*, which was filed in the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the writ. Chawathil assert a traditional territory as identified in a Band Council Resolution dated March 28, 2014.

### II – Preliminary Strength of Claim Assessment

- The Project corridor transects Chawathil's asserted traditional territory. Approximately 78 kilometres (km) of the proposed pipeline and two pipeline facilities (Hope Station and Wahleach Station) would be located within Chawathil's asserted traditional territory.
- Chawathil is understood to be a modern descendant of the group ethnographically identified as the Tait Tribe. The Crown's preliminary assessment of Tait's *prima facie* claim for rights over the area associated with the Project ranges from weak to strong. The portion that spans the

asserted territory falls within the area ethnographers attributed to the historic Tait territory and would support a strong *prima facie* claim.<sup>1</sup>

- The Crown’s preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz to Hope is considered moderate to strong, and the claim is strong for the portion of the Project in proximity to Hope. This is supported by the number of historic Tait village sites scattered from Popkum up through to Ruby Creek and on towards Hope, including the historic site of *C’Kals*, a large village site where Hope is now located. The stretch of territory northwest of Hope is assessed as having a moderate claim, and is considered an area likely utilized for resource gathering activities by those who occupied the Tait villages in and near Hope and northwards.

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

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

Chawathil participated in the National Energy Board (NEB) review process jointly with Cheam First Nation (Cheam) as intervenors and provided correspondence, information requests, written evidence during the hearing, as well as an oral summary argument on January 22, 2016 in Burnaby, BC. Cheam and Chawathil also responded to an Issues Tracking Table Information Request filed by the Crown ([A4R4Q2](#)).

Cheam and Chawathil together signed a contribution agreement with the NEB for \$36,920 in participating funding plus travel for two to the hearing. The Major Projects Management Office (MPMO) offered Chawathil \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Chawathil an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Chawathil signed a contribution agreement with the MPMO in response to the first of these offers, for a total of \$12,000 in allocated funding. EAO provided Chawathil with \$5,000 in capacity funding on October 24, 2016.

Cheam and Chawathil jointly met with the Crown on April 28, 2016 to discuss the Project. Chawathil met again with the Crown on October 17, 2016.

The Crown provided a first draft of the Consultation and Accommodation Report (the Report) to Chawathil for review and comment on August 17, 2016. A second draft of this Report was provided to

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<sup>1</sup> Stó:lō First Nations: Traditional Territories of the “Upriver” Halkomelem or “Upper Stó:lō” – Review of Ethnographic and Historical Sources (Nov 18, 2013); A Stó:lō-Coast Salish Historical Atlas (2001); Stó:lō Nation Traditional Use Study (Jan 30, 1998).

Aboriginal groups for review and comment on November 1, 2016 and Chawathil provided comments on both the first and second draft of this Report on November 15, 2016.

Chawathil provided a separate Aboriginal group submission to the Crown on November 15, 2016.

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

The Crown gained its understanding of Chawathil's issues and concerns through Cheam and Chawathil's joint intervention in the NEB hearing process and through consultation, which included a meeting in Chilliwack on April 28, 2016 and a meeting on October 17, 2016. In addition, the Crown has considered information regarding the proponent's engagement with Cheam and Chawathil, as described in the proponent's Aboriginal Engagement Report (July 2016). Cheam and Chawathil also responded to an Issues Tracking Table Information Request submitted to them by the Crown by further elaborating their procedural concerns. The Crown is also in receipt of an open letter sent to Prime Minister Justin Trudeau, Alberta Premier Rachel Notley, and BC Premier Christy Clark from a collective of Aboriginal groups, including Chawathil. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

This section offers a summary of the key issues raised by Chawathil, 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 Chawathil's key Project-related issues and concerns are summarized below:

##### *Methodology, Process and Consultation*

Chawathil stated they do not accept the Crown's reliance on the NEB process as an appropriate approach to discharge its legal duty to consult. Chawathil believes that their consent is required in order for the Project to proceed, and that Chawathil has a right to manage their lands as holders of Aboriginal title.

Chawathil also found the amount of available funding to be insufficient to enable their meaningful participation. A letter received from Cheam and Chawathil in October 10, 2014 states that they are unable to provide the NEB panel with Oral Traditional Evidence due to a lack of funding. In their meeting of April 28, 2016, Cheam and Chawathil drew attention once more to concerns surrounding funding; specifically, the restrictive conditions on funding, the inability to access funding for traditional land use studies or hire technical experts, and a lack of opportunity to engage directly with the NEB. Cheam and Chawathil expressed concern that there is a gap in the information they would have liked to provide to the NEB (e.g., Oral Traditional Evidence) as linked to restrictions in available funds, which has not allowed them to comment or assess gaps in the NEB conditions. In a meeting on October 17, 2016, with the Crown consultation team, Chawathil indicated that it did not receive funding to hire an expert to advise them on the NEB's terms and conditions and stated their view that the funding process is disproportionate and unfair.

Chawathil has also noted that their interaction with the proponent to date has been unsatisfactory.

#### Cultural and Social Impacts

Chawathil raised concerns about potential impacts to archaeological artifacts, as well as potential impacts on known sacred and ceremonial sites, including recreational areas, historic trail systems, and culturally modified trees. It was mentioned in the April 28, 2016 meeting that Cheam and Chawathil have documented 20,000 site-specific land use areas through their land use studies. Loss of the spiritual connection with their land is concerning to Chawathil, especially for the youth and future generations. Access to Mount Hope Lookout Trail was also raised, in particular a disruption to access and construction during the hiking season.

#### Environmental Impacts

Chawathil stated they have a number of environmental concerns, including: potential environmental and cumulative environmental effects involving degradation of protected areas, wildlife and wildlife habitat (such as bear, deer, elk, beaver and cougar habitat), fish and other aquatic species in their habitat (especially impacts to spawning), water quality, air quality and greenhouse gas emissions, land erosion, increased sediment in watercourses from construction, pollutants from machinery and materials during construction, impacts on species at risk, the marine environment, the hydrology of wetlands, and potential impacts on the soils and geological structures along the proposed Project alignment.

#### Marine Impacts

Chawathil registered concerns relating to the proposed expansion of marine activity and increased marine traffic in the Salish Sea and Burrard Inlet.

#### Impacts on Aboriginal Rights

Chawathil described concerns about the potential for the Project to adversely impact their Aboriginal rights, including rights associated with hunting, traditional foods and resources, as well as medicinal plant gathering. In the proponent's supplemental Traditional Land Use submission of July 21, 2014, multiple traditional use sites associated with Cheam and Chawathil were identified which include: trails and travelways, and sacred sites. Chawathil is concerned that the proponent has not demonstrated an understanding of what Chawathil requires in order to exercise their traditional and current land uses, both now and in the future. Chawathil feels that their involvement within the NEB process was not fruitful as it did not take into account evidence which they provided on Aboriginal title.

#### Cumulative Effects

Chawathil raised concerns about the cumulative effects of industrial development within their traditional territory. Chawathil stated that they did not have the resources required to conduct a fulsome accounting of the cumulative impacts on their territory from hunters, mining, forestry, and others, suggesting this could be a potential shortcoming in the NEB process as Chawathil was not able to put this information on the record.

### Economic Effects

Chawathil is concerned that Trans Mountain's economic commitments to First Nations (such as training, employment, and contracting opportunities) lack real definition and force, and are unlikely to contribute to a substantial benefit within the community.

### Health and Human Safety

Chawathil identified concerns regarding emergency preparedness in the community and human safety and health, noting that community members are impacted by the threat of a spill, which results in increased anxiety among community members and a potential disruption of their connection to the land. This concern was emphasized again during the October 17, 2016 meeting with the Crown consultation team. The use of pesticides on the Right of Way (RoW) and associated toxicity was also raised as a concern. Chawathil expressed their view that First Nations were not incorporated into Trans Mountain spill response planning in a significant way.

### Accidents and Malfunctions

Chawathil identified significant concerns about adverse impacts resulting from an accident or malfunction leading to a release of pipeline contents into the environment. A leak in or near the Fraser River or its tributaries could contaminate fish habitat for species of cultural and economic importance. Cheam and Chawathil stated in a letter from December 9, 2014 that they view the potential for a spill as deeply concerning and highly significant. At the October 17, 2016 meeting with the Crown consultation team, Chawathil also expressed concern about how snowfall and other weather conditions could affect pipeline pressure.

### Project Construction Phase

Chawathil expressed concerns about Project-related construction activities, including the following: cedar removal and waste of cedar timber, impact on fishing in the Fraser River (which is a source of income and important traditional activity), impacts on deer hunting grounds and erosion on hillsides if trees are cleared.

### ***Chawathil's Response to NEB Recommendation Report***

In the October 17, 2016, meeting with the Crown consultation team, Chawathil indicated that during the NEB review process, the proponent failed to provide un-redacted emergency management documents. Following the release of the *NEB Recommendation Report* in May 2016, the NEB ordered all pipeline companies to release their full emergency response manuals. Chawathil would like to ensure that the Crown ensures a proper emergency preparedness and response regime is in place and properly analyzed. Chawathil believes additional assessment on emergency response is required before a decision. Chawathil finds that the NEB conditions focus on filing plans with the NEB and do not impose standards for engaging First Nations on the development of draft plans in advance of a final plan being submitted for approval to the NEB. As such, Chawathil finds that many of the NEB conditions that include a requirement for the proponent to engage with them lack specific standards for what meaningful engagement means in the context of condition compliance.

## **V – Potential Impacts of the Project on Chawathil’s Aboriginal Interests**

A discussion of the Crown’s assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Sections 2.4.3 and 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 Chawathil’s Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Chawathil’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.

At the October 17, 2016 meeting with the Crown consultation team, Chawathil emphasized the importance of water in terms of cultural practices, spirituality, livelihoods, and passage rights. It was noted that from Bellemont, there are more than 40 streams that run through Chawathil’s traditional territory. Should there be a leak or break in the pipeline, 20 kilometers of traditional fishing area could be negatively affected. There is also concern in the community regarding flooding. There is expected to be another large flood in the next 50 years that would rival the 1894 flood, when the entire community was submerged.

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 Chawathil’s Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Chawathil, Chawathil’s engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate (EAC) issued by the Province.

Chawathil completed a joint traditional land and resource use (TLRU) study with Cheam, which was submitted confidentially to the NEB. The report provided a baseline inventory of harvesting and fixed cultural sites which current Chawathil community members have used in their lifetime. A report entitled, *Assessment of Use and Occupancy Data within Proximity to Existing and Proposed TMPL Corridors* (AUOD) ([A4Q2D1](#)) was filed as written evidence in 2015. Traditional cultural practices identified by Chawathil include canoe pulling, use of medicinal plants, basket weaving, fishing and hunting.

### ***Impacts on Hunting, Trapping and Plant Gathering***

Traditional harvesting is an important element of both the livelihood and culture of Chawathil. Historically, Chawathil members have used medicinal plants, and community members continue to gather mushrooms and wild berry species for food. Community members also use regalia made from hunted game and bird feathers in traditional ceremonies.

Chawathil identified concerns regarding Project-related effects on wildlife and wildlife habitat, the environment, and their Aboriginal rights. 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, vegetation communities of concern, old growth forests, wetlands, and wildlife and wildlife habitat (including at risk-listed species). NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering (Section 4.3.1 of this Report). With regards to specific concerns raised by Chawathil, the proponent would implement several mitigation measures to reduce potential effects to species important for Chawathil's hunting, trapping, and plant gathering activities. The proponent is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction of 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 Wildlife Management Plans.

The area of the Fraser Valley downstream of the Fraser Canyon, at the confluence of the Pitt and Fraser rivers, has been traditionally used for plant gathering, specifically bog cranberries and wapato. As part of the AUOD study, Chawathil identified hunting and plant gathering sites. Forty-nine bird features (duck, grouse, other birds), 286 mammal features (deer, elk, moose, other mammals), and 406 plant and tree features (berries, ceremonial plant, construction wood, firewood, food plant, medicine plant, other plant (or wood), specialty wood) were identified within 1 km of the proposed pipeline corridor. At these sites, Chawathil harvests wildlife, ceremonial plants, construction wood, firewood, food plants and medicinal plants.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Chawathil'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 construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Chawathil. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites (Section 4.3.1 of this Report). With regards to specific concerns raised by Chawathil, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Chawathil's hunting, trapping, and plant gathering activities, such as management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs that monitor access control measures. The Access Management Plan is intended

to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access Chawathil's traditional lands. The proponent has committed to minimizing the development of access routes, controlling public access along the construction right-of-way (RoW), selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent 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 Chawathil prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Chawathil to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Chawathil 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. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Chawathil's hunting, trapping, and plant gathering activities. The Crown understands that this short-term disruption could temporarily alter the behaviour of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). With regards to specific concerns raised by Chawathil, the proponent would implement several mitigation measures to reduce potential effects to Chawathil's hunting, trapping, and plant gathering activities. The proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. 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 that are interesting in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Chawathil, Chawathil's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Chawathil's hunting, trapping and plant gathering activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:



- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Chawathil;
- Project-related pipeline and facility construction and routine maintenance activities within Chawathil's traditional territory are temporary and thus, likely to cause minor disruptions to Chawathil's community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

### ***Impacts on Freshwater Fishing***

Chawathil identified concerns related to the environmental effects of the Project on fish and other aquatic species, fish habitat, and member's Aboriginal rights to fish. In particular, salmon and salmon fishing are of great importance as a primary source of income and sustenance to Chawathil community members.

As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish and fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. 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 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Chawathil, the proponent would implement several mitigation measures to reduce potential effects to species important for Chawathil'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. The proponent has also 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.

Fishing activities are mostly practiced along the Fraser River and the Fraser Canyon, an area where salmon are most abundant and conditions are suitable for preparing the meat (wind-drying). Marine mammals, shellfish and molluscs are traditionally harvested at the mouth of the Fraser River. As part of the AUOD study, Cheam and Chawathil identified 546 fishing features (ooligan, salmon, sturgeon, trout, other fish), and 21 other aquatic life features (crayfish) within 1 km of the proposed pipeline corridor.

Chawathil raised concerns with the Project's potential impacts on specific locations related to their fishing activities, including the effects of construction on the Fraser River as well as expanded marine traffic in the Salish Sea and Burrard Inlet. Project-related construction and routine maintenance

activities are expected to cause short-term, temporary disruptions to Chawathil's access to fishing activities. The Crown understands that 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 Chawathil community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for Chawathil (Section 4.3.2 of this Report). With regards to specific concerns raised by Chawathil, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important Chawathil's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Chawathil's traditional lands, as described in the Access Management Plan. The proponent committed to working with Chawathil to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Chawathil expressed concerns regarding the direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of their fishing activities. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Chawathil'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. If the Project is approved, the NEB conditions would either directly or indirectly reduce the potential effects on social, cultural, spiritual or experiential effects associated with fishing activities (Section 4.3.2 of this Report).

In consideration of the information available to the Crown from the NEB process, consultation with Chawathil, Chawathil's 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, Project construction and routine maintenance during operation are expected to result in a minor impact on Chawathil's freshwater fishing activities. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Chawathil;
- Project-related pipeline and facility construction and routine maintenance activities within Chawathil's traditional territory are temporary and thus, likely to cause minor disruptions to Chawathil's community members accessing traditional fishing sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Chawathil regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

### ***Impacts on Other Traditional and Cultural Practices***

Chawathil identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including to spiritually and culturally important sites.

Other traditional and cultural practices sites include trails and travelways, habitation sites, gathering places, and sacred areas. As part of the AUOD study, Chawathil and Cheam identified one habitation site (cabin) and 124 gathering places (112 ceremonial site features and 12 other overnight features), and 121 sacred areas (27 death sites, 45 other cultural sites, 12 sacred sites and 37 storied landform sites) within 1 km of the proposed pipeline corridor. Four Stó:lō Nation sacred areas are located within 4 km of the proposed pipeline corridor: Cultus Lake, Mount Cheam, Mount Hope and Lady Franklin Rock. Three Stó:lō Nation sacred areas are located more than 12 km from the proposed pipeline corridor: Echo Island, Mount Slease, and Mount McGuire. Sumas Lake, an important historical site, is crossed by the proposed pipeline corridor. Coqualeetza, approximately 1.6 km northwest of the proposed pipeline corridor, is considered a significant historical and cultural site.

Chawathil identified concerns regarding the environmental effects of the Project on other traditional and cultural practices, including impacts on archaeological artifacts and known sacred and ceremonial sites, including recreational areas, historic trail systems, and known areas with culturally modified trees. As described in Section 4.3.4 of the 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 (Section 4.3.4 of this Report). With regards to specific concerns raised by Chawathil, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Chawathil's traditional and cultural practices. 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 finalization, 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 ongoing consultation and engagement with local and Aboriginal governments.

Chawathil raised concerns with the Project's potential impacts relating to Mount Hope Lookout Trail and increased access to the land by members of the public due to Project-related activities. Project-related 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 Chawathil's opportunities for certain traditional and cultural activities will be temporarily interrupted during construction and routine operation, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Chawathil's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific sites and access to physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown notes the proponent's commitment to ongoing engagement

with Aboriginal groups regarding the integration of traditional knowledge related to the location and construction of the Project.

Chawathil expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its traditional and cultural practices, including impacts on Chawathil's spiritual connection with the land, especially for youth and future generations. As described previously, the Crown understands that Project-related activities may result in temporary interruptions to Chawathil's cultural and spiritual practices, or that their participation in the traditional activity is curtailed, during Project construction and routine maintenance activities.

In consideration of the information available to the Crown from the NEB process, consultation with Chawathil, Chawathil's 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, Project construction and routine maintenance during operation are expected to result in a minor impact on Chawathil's other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on Chawathil traditional and cultural practices;
- Project-related construction and routine maintenance activities within Chawathil traditional territory are temporary and thus, likely to cause minor disruptions to Chawathil community members accessing traditional and cultural practice sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Chawathil regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

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

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 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.

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 impacts on Chawathil's asserted Aboriginal title to the proposed Project area.

### ***Impacts Associated with Accidental Pipeline Spill***

Chawathil expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly:

- The possible destruction of Chawathil's territory considering the constrictive nature of the Fraser Valley;
- The importance of water for cultural practices, spirituality, livelihoods, and passage rights;
- The more than forty streams that run through Chawathil's traditional territory;
- The twenty km of traditional fishing area that could be threatened by a terminal spill;
- The potential for a spill to compound the existing flood risk facing the community; and
- The consumption of traditional sources of food.

The Crown also understands Chawathil's concerns regarding spills, and the potential for a spill to impact Chawathil's use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Chawathil has for its territory.

A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on Chawathil's Aboriginal Interests and concerns raised by Chawathil during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Chawathil's Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. The Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.<sup>2</sup>

### **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 safety regime would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Chawathil's Aboriginal Interests would be minor.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Chawathil'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 Chawathil in emergency response planning activities. The federal Crown is also considering incremental

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<sup>2</sup> Trans Mountain Final Argument, p. 85 and 207

measures that would further accommodate the potential adverse impacts of the Project on Chawathil, as discussed in Sections 4 and 5 of the main body of this report.