

Appendix C.8 – Cheam First Nation

I – Background Information

Cheam First Nation (Cheam) is located in the Hope area of the Upper Fraser Valley, British Columbia (BC). Cheam has three reserves: Cheam Indian Reserve No. 1 (305.1 hectares [ha]), Tseatah Indian Reserve No. 2 (157.8 ha), and the shared Pekw'Xe:yles Reserve (10.3 ha), held in common with several other Stó:lō nations, in the eastern Fraser Valley. Cheam's total registered population is 537 (187 members are living on Cheam's reserves, 65 are living on other reserves, and 285 are living off-reserve).

The name "Cheam" is a Halq'eméylem word pronounced "Chiyó:m.", which means "wild strawberry place". The historic name of the band in full seems to have been "Lexwchiyó:m". Cheam is identified as being a band within the Pelhó'lhwx or Pilalt Tribe. Although included in the classification "upper Stó:lō" and sometimes grouped with the Tait or Chilliwack, Cheam is generally classified in the ethnographic literature as a distinct group, sometimes called "Pilalt".

Cheam members historically spoke Halq'eméylem, the language of the Upriver Stó:lō communities, which falls into the Coastal Salish language group. The [Report on the Status of B.C. First Nations Languages](#) [2014] states that amongst Stó:lō people, 1.4% are fluent speakers, 5.2% have some level of skill with the language, and 10.9% are learners. The *Coqualeetza Cultural Education Centre (2013), Language Needs Assessment #2186* states that Cheam has five fluent speakers of the language, 11 persons with some skill with the language, and 21 people learning the language.

Cheam writes of their reserves on their website: "Indian reserves are the remnants of "Our Land" they are the bits and pieces of our sovereignty, of our culture that have survived. They are monuments of our victory against extinction. They are symbols of continuing struggle against our oppression by the Europeans. Today an Indian reserve is a jail. Tomorrow it should be the basis of independence."¹ The Stó:lō often refer to *S'olh Temexw*, which is the name used by the Stó:lō people for their traditional territory. Cheam is not, however, a party to the Stó:lō Bands *Writ of Summons* submitted in 2003, and is not participating in BC Treaty Process.

II – Preliminary Strength of Claim Assessment

- The Project corridor transects Cheam's asserted traditional territory. Approximately 33 kilometres (km) of the proposed pipeline and one pipeline facility (Wahleach Station) would be located within *S'olh Temexw* as historically associated with Cheam.
- The Crown's preliminary assessment of Cheam's claim for Aboriginal rights over the section of the Project, from Chilliwack to the west through to Laidlaw to the east, is that Cheam's *prima facie* claim for rights are assessed as ranging from moderate to the west, to strong in the vicinity

¹ Cheam First Nation. 2016. History: Overview of History of the Stó:lō After Contact. Available at: <http://www.cheam.ca>

of their reserve, IR #1, to moderate in the vicinity of Mount Cheam and then weak from Peters Band's IR to Laidlaw'.

- The Crown's preliminary assessment of Cheam's *prima facie* claim for Aboriginal title over the section of the Project, on the south side of the Fraser River, from Chilliwack through to Laidlaw, ranges from moderate to the west, to strong in the vicinity of their current main reserve, IR #1, and dropping quickly to weak again east of Popkum.

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

Cheam participated in the National Energy Board (NEB) hearing process jointly with Chawathil First Nation (Chawathil). Cheam and Chawathil were active intervenors in the NEB review of the Project 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 the Major Projects Management Office's (MPMO) Issues Tracking Table Information Request ([A71253](#)).

The Major Projects Management Office (MPMO) offered Cheam \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Cheam an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Cheam 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 offered Cheam with \$5,000 in capacity funding to assist with the consultation process on October 19 and November 4, 2016 but did not receive a response.

Cheam and Chawathil met jointly with the Crown on April 28, 2016 to discuss the Project. Cheam also met again with the Crown on September 30, 2016. On June 15, 2016, Cheam Chief Ernie Crey was a co-author on a letter signed by collective of First Nations proposing an Indigenous oversight entity for the Project as a mitigation measure.

The Crown provided a first draft of the Consultation and Accommodation Report (the Report) to Cheam for review and comment on August 17, 2016. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016 and Cheam provided comments on both the first and second draft of this Report on November 15, 2016.

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

IV – Summary of Key Cheam Issues and Concerns Raised

The Crown has gained its understanding of Cheam's issues and concerns through Cheam and Chawathil's joint intervention in the NEB hearing process, and through direct engagement and consultation, which included a meeting in Chilliwack on April 28, 2016 and September 30, 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 concerns. The Crown is in receipt of an open letter sent to Prime Minister Justin Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark dated June 15, 2016, from a collective of Aboriginal groups, including Cheam. 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 Cheam, 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 Cheam's key Project-related issues and concerns are summarized below:

Methodology, Process and Consultation

Cheam stated it does not accept the Crown's reliance on the NEB process as an appropriate approach to discharge its legal duty to consult. Cheam also expressed their view that the NEB should have consulted with them on the list of issues that was considered during the project review. Cheam expressed the view that their consent is required for the Project to proceed and that Cheam has a right to manage their lands as holders of Aboriginal title.

Cheam also considered the amount of funding available insufficient to enable their meaningful participation. Cheam and Chawathil's letter from October 10, 2014 states that they were unable to provide the NEB panel with Oral Traditional Evidence due to a lack of funding. In the 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 Treasury Board Secretariat. Cheam and Chawathil expressed concern that there is a gap in information they would have liked to provide to the NEB (e.g. Oral Traditional Evidence) linked to restrictions in available funds, and this lack of funding has not allowed them to comment or assess gaps in the NEB conditions.

Cheam also noted their view that interaction with the proponent to date has been unsatisfactory

Cultural and Social Impacts

Cheam 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 known areas with culturally modified trees. It was mentioned at the April 28, 2016 meeting that Cheam and

Chawathil have documented 20,000 site-specific land use areas through their land use studies. Impacts to Bridal Veil Park, an important Cheam spiritual site, were also raised.

Environmental Impacts

Cheam stated they have a number of environmental concerns, including: potential environmental and cumulative environmental effects involving degradation of protected areas, wildlife and wildlife habitat, fish and other aquatic species in their habitat (especially impacts to spawning), water quality, air quality and greenhouse gas emissions, land erosion, pollutants from machinery and materials during construction, impacts on *Species at Risk*, the marine environment, the hydrology of wetlands, and potential impacts to the soils and geological structures along the proposed Project alignment.

Marine Impacts

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

Impacts on Aboriginal Rights

Cheam 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, traditional use sites associated with Cheam and Chawathil were identified, which include: trails and travelways, and sacred sites. Cheam is concerned that the proponent has not demonstrated an understanding of what Cheam require in order to exercise their traditional and current land uses now and in the future. In their Crown consultation meeting of September 30, 2016 Cheam expressed their concern that a catastrophic spill would impact their Aboriginal Interests.

Cumulative Effects

Cheam raised concerns about the cumulative effects of industrial development in its territory, on asserted territory land and water uses, and the disproportionate effect on the impoverished community members that rely on land uses for subsistence purposes. Cheam stated that it did not have the resources required to conduct a full accounting of the cumulative impacts on its territory from hunters, mining, forestry, and others, suggesting this to be a potential shortcoming in the NEB process as Cheam was not able to put this information on the record. Further disruption to hunting areas, as well as animal migration routes, was also raised as a concern.

Health and Human Safety

Cheam identified in conversations with the proponent their concerns regarding human safety and health and noted that community members are impacted by the threat of a spill, which results in increased anxiety and a potential disruption of their connection to the land.

Accidents and Malfunctions

Cheam identified significant concerns about adverse impacts which could result from an accident or malfunction and the 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 state in a letter from December 9, 2014, that they view the potential for a spill as highly concerning and highly significant. In its September 30, 2016 meeting with the Crown consultation team, Cheam indicated that emergency management is a key concern for Cheam.

Project Construction Phase

Cheam 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.

Accommodation Proposals

In his June 15 letter, Chief Crey proposed the creation of an Indigenous oversight committee. The oversight committee would be involved with determining the pipeline route and other specifics during the construction process and during operation. The proposal is based the model implemented by the Diablo Canyon Independent Safety Committee in California. Chief Crey proposes that the creation of such a committee be added to the NEB conditions and that it have the capability to work with the NEB, the proponent, and develop routing plans.

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 Cheam 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.

Cheam's Response to NEB Recommendation Report

As indicated in the June 15, 2016 letter and in its September 30, 2016 meeting with the Crown consultation team, Cheam considers the conditions in the *NEB Recommendation Report* insufficient and thus supports the establishment of an Indigenous oversight committee. In the same letter and at the September 30 meeting, Cheam indicated that it did not believe the NEB appropriately recognized Cheam's title rights. In its September 30, 2016 meeting with the Crown consultation team, Cheam expressed concern that the NEB process dominated the assessment of the Project, yet provided no opportunity to discuss rights and title, instead the NEB reduced discussion to land use interests.

V – Potential Impacts of the Project on Cheam'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 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 Cheam's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Cheam'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 Cheam's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Cheam, Cheam's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any EAC issued by the Province.

Cheam completed a joint TLRU study with Chawathil which was submitted confidentially to the NEB. The report provided a baseline inventory of harvesting and fixed cultural sites which current Cheam 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. Cheam also conducted a Cultural Use Assessment (CUA) for the Project in 2014, which provided information on subsistence and cultural activities practiced throughout Cheam's asserted traditional territory; however, site-specific TLRU information was not provided. In its Supplemental Technical Reports ([A4S7I7](#), [A3Z4Z2](#)), the proponent summarized and estimated approximate distances and directions from the proposed pipeline corridor based on information in the redacted version of the AUOD study and the CUA. Cheam also conducted a joint, third-party Integrated Cultural Assessment (ICA) ([A3Z4Z2](#), [A3Z4Z3](#), [A3Z4Z4](#), [A3Z4Z5](#)) with Sumas First Nation, Aitchelitz First Nation, Kwaw-Kwaw-Apilt First Nation, Shxwhá:y Village, Skowkale First Nation, Skwah First Nation, Soowahlie Indian Band, Squiala First Nation, Tzeachten First Nation and Yakwekwioose First Nation led by Ts'elxweyeqw Tribe Management Limited (TTML). The report provides information regarding subsistence and cultural activities that are practiced throughout Stó:lō asserted traditional territory. The results of the TTML TLRU are summarized in the Supplemental Technical Report ([A3Z4Z2](#)). Traditional cultural practices identified by Cheam include, fishing, hunting, trapping, drying meat, tanning hides, drying fish, red cedar carvings, four-day fast and longhouse, winter dance, mask dance, regalia placement, cleansing/bathing, fasting/sweat ceremony/burning for ancestors, weaving, carving, plant gathering, and torch lighting.

Impacts on Hunting, Trapping and Plant Gathering

As described in their TLRU, hunting and trapping are undertaken by both traditional and modern practices, and are important to Cheam for ceremonial and subsistence purposes. Mountain goat, elk, deer, moose, bear, grouse and various game and birds were identified by Cheam as species that are hunted, of which deer is of particular importance. Plants are harvested for subsistence, medicine, building materials and ceremonial purposes. Cheam Lake is an area that holds cultural and spiritual significance to the Cheam culture.

Cheam did not identify any hunting, trapping or plant gathering sites as part of the CUA. As part of the AUOD study, Cheam and 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, Cheam and Chawathil harvest animals for subsistence purposes, and harvest ceremonial plants, construction wood, firewood, wood carving, food plants and medicinal plants. As summarized in TTML TLRU study, Sumas Mountain and Mount Cheam were identified as hunting sites, and Sumas Sloughs and Bowman's Island were identified as trapping sites used by Stó:lō community members.

Cheam identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including loss of berries, traditional medicines, and harvesting opportunities, loss of plants and medicinal resources relied on by Cheam members, and impacts on a wide variety of wildlife species:

- Potential Project and cumulative effects involving the degradation of wildlife and wildlife habitat (such as bear, deer, elk, beaver and cougar habitat), land erosion, pollutants from machinery and materials during construction, impacts on Species at Risk, and potential impacts to the soils;
- Project-related construction activities that could impact deer hunting grounds;
- Project-related construction activities, such as cedar removal and waste of cedar timber;
- The use of pesticides on the RoW and associated toxicity; and
- Oil spill impacts on the environment.

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, lichens and vegetation communities of concern, old growth forests, wetlands, and wildlife and wildlife habitat (including species at risk-listed species). If the Project is approved, the NEB conditions 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 Cheam, the proponent would implement several mitigation measures to reduce potential effects to species important for Cheam'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.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Cheam'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 Cheam, the proponent would implement several mitigation measures to reduce potential effects to Cheam 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 regarding the integration of 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 Cheam, Cheam'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 Cheam'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 Cheam;
- Project-related pipeline and facility construction and routine maintenance activities within Cheam's traditional territory are temporary and thus, likely to cause minor disruptions to Cheam'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 identified by Cheam regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

Cheam identified many concerns related to environmental effects of the Project on fishing activities. As summarized in their TLRU, fishing is considered to be central to Cheam culture and is used for cultural, subsistence and economic purposes. Cheam did not identify any fishing sites during the CUA. 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. Stó:lō community members also identified eight waterways and 16 unnamed channels as fishing sites

during the TTML TLRU study. Site-specific locations in relation to the Project were not provided. Cheam community members identified Hunter Creek as an important location for fishing and recreation. Cheam members also expressed concern about potential disturbances to salmon spawning beds and habitats.

In addition to providing traditional use information, Cheam raised specific concerns with potential Project impacts relating to their Aboriginal right to fish:

- Potential Project and cumulative effects involving the degradation of fish and fish habitat, including impacts on fish and other aquatic species in their habitat (especially to spawning), water quality, and the marine environment, pollutants from machinery and materials during construction, and impacts on *Species at Risk*;
- Project-related construction activities that could impact fishing in the Fraser River, thereby impacting a source of income and important traditional activity;
- Expansion of marine activity and increased marine traffic in the Salish Sea and Burrard Inlet; and
- Oil spill impacts on the environment.

As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish, 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. If the Project is approved, the NEB conditions 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 Cheam, the proponent would implement several mitigation measures to reduce potential effects to species important for Cheam'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.

In consideration of the information available to the Crown from the NEB process, consultation with Cheam, Cheam'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 Cheam'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 Cheam;

- Project-related pipeline and facility construction and routine maintenance activities within Cheam's traditional territory are temporary and thus, likely to cause minor disruptions to Cheam'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 Cheam regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

Cheam identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including to spiritually and culturally important sites. As summarized in their TLRU, historically Cheam used the Fraser River and its tributaries as travelways. Although less common, traditional travel (canoeing) is still used for participation in spiritual and ceremonial activities, plant gathering, hunting, and fishing, and seasonal travel. Trails were also used as a means of transportation and travel, to participate in spiritual and ceremonial activities, and to gather, hunt and fish. Historical trails and travelways continue to be used by some community members today, and are located throughout the TRLU Regional Study Area (RSA).

Cheam did not identify any specific travelways during the CUA or AUOD Study, or habitation sites during the CUA. As part of the AUOD study, Cheam and Chawathil identified one habitation site (cabin) and 124 gathering places (112 ceremonial site features and 12 other overnight features) within 1 km of the proposed pipeline corridor. Nine sacred sites were identified during the CUA; however the specific locations or proximities to the Project Area were not provided. Sacred sites are located at Jones Creek, Wahleach Creek, Eyteleq's Creek, W'is Creek, Yellow Creek, Bridal Falls Creek, Elk Creek and Mount Cheam, and include regalia storage, pithouse, ceremony structure, bathing areas, and sites used for spiritual practices (including fasting). As part of the AUOD study, Cheam and Chawathil identified fixed cultural sites such as 27 death sites, 45 other cultural sites, 12 sacred sites and 37 storied landform sites located within 1 km of the proposed pipeline corridor. Stó:lō Nation identified four sacred areas located within 4 km of the Project Area: Cultus Lake, Mount Cheam, Mount Hope and Lady Franklin Rock. Echo Island, Mount Slease and Mount McGuire are located more than 12 km from the Project Area. Sumas Lake, an important historical site, is crossed by the proposed pipeline corridor. Coqualeetza, approximately 1.6 km northwest of the Project Area, is considered a significant historical and cultural site. As summarized in their TLRU study, Stó:lō community members identified 14 trails and travelways; however site-specific locations in relation to the Project Area were not provided. During the TTML TLRU study, Cheam bighouse was identified as a gathering place. Stó:lō community members identified six burial sites, 11 Sxwo:yxwey places, 18 puberty places, 11 smilha/syuwel places, 10 historic bathing sites and 17 current bathing sites located within 100 m of the proposed pipeline corridor. Site-specific locations were not provided in the ICA.

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. If the Project is approved, the NEB conditions 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 Cheam, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Cheam'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.

In addition to providing traditional use information, Cheam raised specific concerns with potential Project impacts relating to other traditional and cultural practices:

- Potential Project impacts on archaeological artifacts, and known sacred and ceremonial sites, including recreational areas, historic trail systems, and known areas with culturally modified trees;
- Loss of the spiritual connection with the land, especially for the youth and future generations;
- Impacts to Bridal Veil Park; and
- Threat of an oil spill and potential impacts of an oil spill, resulting in increased anxiety and a potential disruption of Cheam community members' connection to the land.

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 Cheam'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 Cheam'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 that are interested in providing traditional knowledge related to the location and construction of the Project.

As described previously, the Crown understands that Project-related activities may result in temporary interruptions to Cheam'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 Cheam, Cheam'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 Cheam'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 Cheam's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Cheam's traditional territory are temporary and thus, likely to cause minor disruptions to Cheam's 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 Cheam 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 Cheam's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spill

Cheam expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, particularly impacts on the Fraser River in the event that a spill occurs up-river of the reserve and flows down river.

The Crown also understands Cheam's concerns regarding spills, and the potential for a spill to impact Cheam'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 Cheam 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 Cheam's Aboriginal Interests and concerns raised by Cheam during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Cheam'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. In making this general conclusion, 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 spill².

VI – Conclusions

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 Cheam'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 Cheam'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 Cheam in emergency response planning activities. The federal Crown is also considering incremental measures that would further accommodate the potential adverse impacts of the Project on Cheam, as discussed in Sections 4 and 5 of the main body of this Report.

² Trans Mountain Final Argument, p. 85 and 207