

Appendix C.9 – Katzie First Nation

I - Background Information

Katzie First Nation (Katzie) is located along the Fraser River and is culturally and linguistically associated with the Stó:lō; however, Katzie operates independently of the broader Stó:lō Nation in its legal and political representations. Katzie members historically spoke the downriver dialect of Hən̓q̓əmin̓əm. Today the community has 562 members and five reserves: Katzie 1 (43.1 hectares [ha]), Katzie 2 (23.1 ha), Barnston Island 3 (54.6 ha), Pitt Lake 4 (214 ha), and Graveyard 5 (0.4 ha).

Katzie is currently at Stage Four (Agreement-in-Principle) in the British Columbia (BC) Treaty Commission's six-stage process. Within this process, Katzie filed a Statement of Intent (SOI) identifying an area described as its traditional territory.

II - Preliminary Strength of Claim Assessment

- Approximately 20 kilometres (km) of the proposed pipeline and one pipeline facility (Port Kells Station) would be located within Katzie's asserted traditional territory. The Project right-of-way is approximately 0.3 km from Katzie's Barnston Island 3 reserve.
- The Crown's preliminary assessment of Katzie's claims for Aboriginal rights over the section of the proposed pipeline from the Fraser River crossing to west of McMillan Island is assessed as ranging from a moderate to moderate-to-strong *prima facie* Aboriginal rights claim. The claim is strongest (i.e. moderate-to-strong) along the section of pipeline between Pitt River and Barnston Island.¹
- The Crown's preliminary assessment of Katzie's claim for Aboriginal title over the section of the proposed pipeline from the Fraser River crossing to west of McMillan Island is along a range from weak to moderate-to-strong. The claim is strongest (i.e. moderate-to-strong) in proximity to the historic village site on the south shore of the Fraser River east of Golden Ears Way.² Katzie maintains that it has a strong claim for Aboriginal rights and title in the Project area from the Fraser River crossing to west of McMillan Island.

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

¹ (KEHR) Katzie First Nation: Review of Ethnographic and Historical Sources (November 2012); (FRHL) Fraser River Head Lease Areas: Review of Ethnographic and Historical Sources (July 2014).

² Ibid.

Katzie participated in the National Energy Board (NEB) review of the Project as an intervenor and provided oral traditional evidence, multiple rounds of information requests and written evidence (including confidential traditional use information), written final argument, and oral summary argument. Katzie actively engaged with the Crown with respect to the Project review and consultation processes. For example, Katzie leadership met with the Crown consultation team as part of early engagement meetings in 2014. Moreover, Katzie responded to the Major Projects Management Office's (MPMO) June 22, 2015 Information Request, which invited Katzie's feedback on the Crown's Issues Tracking Table [\[A71227\]](#). Following the close of the NEB hearing record, Katzie met with the Crown consultation team on March 8, 2016 and September 28, 2016 to discuss outstanding issues related to the Project.

Katzie received \$41,250 in participant funding from the NEB plus travel for one to the hearing. The MPMO offered Katzie \$12,000 in participant funding to support Katzie's participation in Crown consultations following the close of the NEB hearing record. The MPMO offered Katzie an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Katzie signed contribution agreements in response to both of these offers, amounting to \$26,000 in allocated funding from the MPMO to the Katzie. On September 20, 2016, Katzie was issued \$5,000 in capacity funding by EAO to assist with the consultation process.

The Crown provided a first draft of the Consultation and Accommodation Report (Report) to Katzie for review and comment on August 17, 2016. Katzie provided comments on the draft Report to the Crown on October 13, 2016. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. While Katzie did not provide specific comments on the revised version of this report, Katzie did provide a separate Aboriginal group submission to the Crown on November 10, 2016.

IV - Summary of Key Katzie Issues and Concerns Raised

This section offers a summary of the key issues raised by Katzie, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown has gained its understanding of Katzie's issues and concerns through the community's involvement in the NEB process (including Katzie's submissions to the NEB and responses to the Crown's Information Request) as well as through consultation with the Crown. In addition, the Crown has considered information regarding the proponent's engagement with Katzie, as described in the proponent's Aboriginal Engagement Report (July 2016). The Crown's understanding of Katzie's key Project-related issues and concerns are summarized below.

Methodology, Process and Consultation

Katzie stated throughout the NEB hearing process and in subsequent interactions with the Crown that it does not believe that the NEB process is an appropriate forum for the Crown to discharge its legal duty to consult. Katzie stated that the Crown must engage in a fulsome and meaningful consultation process that is based on more than just the information that Aboriginal groups have been able to provide in the NEB process with the amount of funding provided. Katzie representatives also expressed a lack of faith and trust in the NEB to perform its responsibilities as a regulator effectively.

Katzie stated that funding from the NEB and the MPMO was not sufficient to support their full participation in the NEB review and Crown consultation processes, citing capacity constraints within their administration.

Katzie expressed concerns regarding data collection during the NEB review process, noting that the time horizon for collecting information on potential Project-related impacts should take place over many years to account for climate and weather variation. Katzie is also seeking additional information on how the Project could impact Katzie's rights and interests; to this effect, Katzie proposed a "Katzie Land Use and Occupancy Impact Assessment" at the March 8, 2016 Crown consultation meeting. Katzie is disappointed that the proponent turned down their request for funding to conduct such a study.

In their final argument to the NEB, Katzie stated that the proponent's engagement with the community has not been adequate, particularly in light of the proponent's decision not to fund a study of Katzie's traditional land use. Katzie goes on to state that the proponent "has not properly identified the Katzie's concerns with the proposed Project."³

Katzie also identified procedural concerns with respect to the Crown consultation process. In a letter dated October 13, 2016, Chief Miller reflected on the Crown consultation process to-date, explaining that from Katzie's perspective, the process has been an exercise in "information gathering" rather than a two-way dialogue. Chief Miller added that meaningful consultation is hindered by the time constraints under which the Crown operates.

Cultural and Social Impacts

Katzie raised concerns about the ability of Katzie members to transfer knowledge of their traditions to younger generations, should there be an oil spill. Katzie also noted that some ceremonial practices could be disrupted if the Project is approved, as these practices require privacy and the Project would bring more outsiders into the territory.

Environmental Impacts

Katzie identified a broad suite of environmental concerns relating to the impact of construction activities and the effect of a potential oil spill on the community.

Many of these concerns stem from the routing of the pipeline and the construction of watercourse crossings near sensitive fish habitat within Katzie territory. Katzie noted that its members harvest eulachon, salmon, and sturgeon in the area. Katzie raised similar concerns relating to the impact of an oil spill on wetlands and riparian habitats within their traditional territory (e.g. Parsons Channel). Wapato, a unique plant found along the banks of Pitt Lake and Pitt Polder, is another resource that bears cultural significance within these ecosystems. More broadly, Katzie's ability to exercise their

³ Katzie First Nation Final Argument, p. 16.

Aboriginal rights relies on the ecological functions performed by healthy wetlands. Katzie stated that an oil spill impacting any of these resources would have severe effects on Katzie's rights and culture.

The environmental integrity of Surrey Bend Regional Park is of particular concern to the community, including that of the wetlands within the park. Katzie identified Surrey Bend Regional Park as "one of the few areas in Katzie Territory close to Katzie residential reserves that is free from development and still available to Katzie members for cultural and traditional practices."⁴ For this reason, Katzie has suggested that the routing of the pipeline should be adjusted to avoid the park.

As stated in Katzie's 2015 cultural background report: "Katzie anticipates that the TMX Project will further decrease their access to lands for hunting, plant gathering and fishing and result in the conversion of lands to industrial sites as they become less desirable for other uses once a pipeline is present."⁵

Impacts on Aboriginal Rights

Katzie asserts unextinguished Aboriginal rights and title over its traditional territory. Katzie is concerned that the Project's construction and operations, and the impacts that would result from a spill, would seriously infringe Katzie's rights and title. Katzie identified some of the ways in which its Aboriginal rights could be impacted, including:

- Limited opportunities to exercise Aboriginal rights during construction and remediation of the environment;
- The potential loss of territory and resources as a result of pipeline construction in Katzie territory; and
- The potential use of Katzie Aboriginal title land by a third-party during pipeline construction, contrary to Katzie's chosen use and without benefit to Katzie, depriving Katzie of the economic benefit of the land.

From Katzie's perspective, the Project will use land that is "inconsistent with Katzie's Aboriginal title."⁶

Cumulative Impacts

Katzie identified concerns resulting from the amount of industrial development activity that has taken place around them and along the Fraser River. Specifically, Project-related pollution (air, water, noise, and light) is an ongoing concern of the community. Katzie believes that industrial development is partly responsible for community health problems. Katzie noted its concern that cumulative impacts have not been adequately addressed by Trans Mountain's Environmental and Socio-Economic Impact Study as the content of the study does not address Katzie's specific concerns.

⁴ Ibid., p. 17.

⁵ *Katzie and the TMX Project: Cultural Background Report*, 2015, p. 12.

⁶ Letter from Chief Susan Miller, addressed to Ross Neil, October 13, 2016.

Economic Impacts

The proponent's Aboriginal Engagement Report highlights Katzie's concerns that the community will not benefit from the long-term economic benefits of the Project.

Health and Human Safety

Katzie identified concerns for human health and safety, including living with the fear of a potential catastrophic accident due to industrial development. This concern was articulated by a Katzie elder when he provided Oral Traditional Evidence at the NEB hearings: "I fear what's coming...I fear for a train going down our tracks loaded with oil. I remember the furious story about Quebec, how many lives were lost there" [A4D5T4].

Accidents and Malfunctions

Katzie identified a number of ways in which a spill could impact them:

- A spill could contaminate lands and foul waterbodies where Katzie exercise their Aboriginal rights, including the shores of Katzie IR Nos. 1, 2, and 3, Yorkson Creek, Barnston Island, Surrey Bend, Parsons Channel, Pitt River, and, more generally, the Fraser River and Crown lands;
- A spill could have both acute and long-term toxic effects on fish, wildlife, and vegetation (including medicinal and sustenance plants);
- A spill could result in cultural losses, impeding the transfer of hunting and fishing knowledge to younger generations and harming community participation in cultural traditions;
- Spill remediation could restrict access to resources, further causing cultural disruption; and,
- A spill could result in cleanup activities that cause further damage to the environment and to ancient village sites.

Katzie also expressed concerns about pipeline monitoring, spill preparedness, and spill response times. For example, Chief Miller noted the proximity of some sections of the pipeline to the Fraser River (i.e., less than 1 km) and the speed with which oil from a potential spill could reach Parsons Channel: the proponent estimates that spilled oil in a stream could reach Parsons Channel in less than two minutes.⁷ The Fraser River is home to Katzie's traditional fishing grounds and is therefore vitally important to Katzie members. For Katzie, the existing pipeline and proposed Project presents an unacceptable level of risk as a result of the long-term impacts that an oil spill would have on the environment and on Katzie's Aboriginal rights.

Project Construction Phase

Katzie identified some of the ways in which the Project's construction phase could result in adverse impacts:

⁷ Ibid.

- The construction of the pipeline in Katzie territory has the potential to impact Katzie cultural heritage, including known and unknown archaeological sites⁸;
- The construction of the pipeline in Katzie territory has the potential to impact fishing, hunting and vegetation gathering, thereby impacting the ability to share food resources and the ability to teach Katzie traditions to future generations;
- The construction of the pipeline in Katzie territory has the potential to stall, undermine or significantly alter treaty land selection;
- The construction of the pipeline in Katzie territory has the potential to further increase industrial density;
- The construction of the pipeline in Katzie territory has the potential to impact fish and plant habitat relied on by cultural keystone species, including salmon, eulachon, sturgeon, and wapato; and
- The construction of the pipeline in Katzie territory has the potential to result in the loss of territory and resources, resulting in reduced ability for Katzie to participate fully in ancient cultural traditions based on notions of reciprocity.

The Crown is 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 Katzie. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

Accommodation Proposals

Katzie submitted proposals to address some of its procedural concerns. Specifically, Katzie has requested:

- Support for a Katzie Land Use and Occupancy Impact Assessment, which would inform how the Project could impact Katzie rights and interests;
- Capacity funding (from the Crown or the proponent) that covers the costs of Katzie's review and analysis of the Project as well as required responses from Katzie (e.g. for government referrals);
- An extension to the federal government's decision-making timeframe; and
- Mechanisms to address Katzie's concerns (e.g. re-routing the pipeline in Katzie territory, enhanced spill response, and opportunities for Katzie members to participate in spill response efforts).

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 Katzie 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.

⁸ Confidential mapping provided by Trans Mountain to Katzie shows archaeological sites both within and in close proximity to the proposed pipeline Right of Way (RoW).

Katzie's Response to NEB Recommendation Report

During a consultation meeting with the Crown on September 28, 2016, Katzie representatives expressed their concerns with some of the NEB conditions. Notably, Katzie sought a condition to make proponent funding for traditional land use studies available for all Indigenous groups. Katzie also requested:

- A condition requiring the proponent to list the Aboriginal groups with whom they did not conduct traditional land use studies;
- A condition requiring the proponent to provide a rationale for why traditional land use research was not pursued for each of these groups; and
- A commitment by the NEB to determine whether the proponent's efforts in this regard were appropriate.

For Katzie, a comprehensive understanding of how the Project would specifically impact Katzie Aboriginal Interests is necessary to inform a discussion about mitigation.

These concerns were echoed in an October 13, 2016 letter addressed to the Crown in which Chief Miller disagrees with the NEB's assessment of the proponent's engagement activities. Chief Miller reports that proponent engagement with Katzie has not been adequate.

The October 13th letter further elaborated on some of Katzie's concerns with respect to the *NEB Recommendation Report*. In particular, Katzie disagrees with the NEB's assessment that the risk of an oil spill is low; for Katzie, the risk threshold is much higher. From Katzie's perspective, the NEB also has not fully considered the impacts of the Project on Katzie's Aboriginal Interests, including potential adverse impacts on critical ecosystems and cultural sites as well as potential implications for Katzie's asserted Aboriginal rights and title. According to Katzie, the NEB's conclusions are not supported by evidence in light of unresolved information gaps, including the NEB's inadequate assessment of alternatives to the Project, knowledge gaps relating to the fate and behaviour of diluted bitumen, and the lack of a comprehensive, Katzie traditional land and resource use study. For all of these reasons, Chief Miller concludes that the *NEB Recommendation Report* is not a reliable source on which the Crown should build its consultation efforts and its understanding of Project-related impacts on Katzie Aboriginal rights.⁹

Katzie also raised concerns regarding specific conditions in the *NEB Recommendation Report*:

- "Condition 7 [Environmental and socio-economic assessment – route re-alignments] applies only to route realignment outside the applied-for corridor width of Trans Mountain's preferred route."¹⁰
- "Condition 60 [Environmental and socio-economic assessment – s.58 temporary construction lands and infrastructure] addresses early works under section 58 of the *NEB Act*. The Katzie First

⁹ Letter from Chief Susan Miller, addressed to Ross Neil, October 13, 2016.

¹⁰ Ibid.

Nation asked the NEB to not grant a section 58 order for early works in Katzie Territory. Condition 60 does not provide the protection sought by Katzie.”¹¹

Moreover, through Crown consultation meetings and from recent correspondence, the Crown consultation team understands that capacity constraints are an ongoing concern for Katzie, particularly in light of NEB conditions that require the proponent to continually engage with Aboriginal groups, should the Project proceed.

V - Potential Impacts of the Project on Katzie’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), including by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Katzie’s Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Katzie’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 Katzie’s Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Katzie, Katzie’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.

Katzie completed a third-party study in 2015 titled *Katzie First Nation and the TMX: Cultural Background*. The report includes a summary of ancient, historical and contemporary connection to the Katzie territory and resources, with particular focus on those locations most likely to be directly or indirectly impacted by the Project. The third-party study was filed as confidential evidence with the NEB in May 2015 [A4LOH8]. On October 13, 2016, Katzie provided this confidential information to the Crown with the stated purpose of demonstrating how a lack of resources has limited the community’s ability to study the impacts of the Project on Katzie Aboriginal rights. While this cultural background report does

¹¹ Ibid.

not represent a comprehensive traditional land use study, it nevertheless lends context for understanding how the Project might impact Katzie Aboriginal rights.

Public information on Katzie was also provided in *Volume 5B* [[A3S1S0](#)] of the Project Application.

Impacts on Hunting, Trapping and Gathering

As described in *Volume 5B* of the Project Application, duck-net sites are located on the marshy flats east of the Pitt River near Widgeon Creek, approximately 13.2 km northeast of the proposed pipeline corridor. Marshy areas within the asserted traditional territory are used by community members for plant gathering, including cranberry and wapato. Cranberry bogs, both individually and communally owned, are located approximately 4 km north of the proposed pipeline corridor on both sides of Pitt River. *Katzie First Nation and the TMX: Cultural Background* further describes Katzie's traditional hunting, trapping, and gathering activities, highlighting that deer hunting traditionally occurred in the area south of the Fraser River and north of Highway #1.

Katzie identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including lost harvesting opportunities and diminished quality of harvested resources. 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 Katzie, the proponent would implement several mitigation measures to reduce potential effects to species important for Katzie'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.

Katzie raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities. These concerns include increased barriers to accessing traditional resources and practices and potential impacts of increased access to the land by members of the public. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Katzie's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown appreciates that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Katzie. If the Project is approved, the NEB conditions 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 Katzie, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Katzie'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 disturbances to Katzie members accessing their 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 Katzie prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Katzie to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Katzie 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 impacts to cultural keystone species, cultural traditions, and the transmission of knowledge from one generation to the next. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Katzie's hunting, trapping, and plant gathering activities. The Crown appreciates 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 Katzie, the proponent would implement several mitigation measures to reduce potential effects to Katzie 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 interested 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 Katzie, Katzie'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 Katzie'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 Katzie;
- Project-related pipeline and facility construction and routine maintenance activities within Katzie's traditional territory are temporary and thus, likely to cause minor disruptions to Katzie'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 Katzie regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

According to *Volume 5B* of the Project Application, sockeye and other salmon species were historically fished by Katzie community members from a variety of fishing stations and seasonal villages along the Fraser, Pitt and Alouette Rivers. The mouth of the Pitt River in particular is known as an important fishing site, located approximately 10 km northeast of the proposed pipeline corridor. Sturgeon are caught in Pitt Lake and sucker fish are caught at Sheridan Hill, approximately 21 km and 12 km north of the proposed pipeline corridor, respectively. A variety of fish in Alouette and North Alouette Rivers also represent key fishing sources, approximately 10 km northeast of the proposed pipeline corridor. Katzie's 2015 cultural background study emphasizes the important role that Parsons Channel plays in Katzie's traditional fishing activities: "It is here that Katzie continue to practice many of the traditions taught to them by their forefathers and their connection to the river and the salmon remains strong."¹²

Katzie identified many concerns related to environmental effects of the Project on fishing activities. These concerns include potential negative impacts of the Project on the environmental integrity of waterbodies and riparian areas within Katzie's territory, as well as lost harvesting opportunities and diminished quality and quantity of fish and other resources. 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 and 4.3.3 of this Report). A

¹² *Katzie and the TMX Project: Cultural Background Report*, 2015, p. 11. Provided in confidence to the Crown, must be redacted if appendix is released publically.

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 Katzie, the proponent would implement several mitigation measures to reduce potential effects to species important for Katzie'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.

Katzie raised concerns with the Project's potential impacts on specific locations on or along key waterbodies, including, the Parsons Channel, Surrey Bend Regional Park, the Fraser River, and its tributaries. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Katzie's access to fishing activities. The Crown appreciates 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 Katzie community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for Katzie (Section 4.3.2 of this Report). With regard to the Surrey Bend Regional Park, NEB Condition 7 requires the proponent to file an environmental and socio-economic assessment for the route re-alignment that must include, among other things, potential residual effects, mitigation measures, and a summary of consultations with potentially affected Aboriginal groups. With regards to specific concerns raised by Katzie, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Katzie's fishing activities. As previously discussed, the proponent is committed to minimizing disturbances to Katzie members accessing their traditional lands, as described in the Access Management Plan. The proponent committed to working with Katzie to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Katzie expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including the ability to share food resources, the dissemination of knowledge to future generations, and other cultural traditions. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Katzie's fishing activities. The Crown appreciates 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 Katzie, Katzie'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 Katzie'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 Katzie;
- Project-related pipeline and facility construction and routine maintenance activities within Katzie's traditional territory are temporary and thus, likely to cause minor disruptions to Katzie'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 Katzie regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

Volume 5B of the Project Application describes more than 10 villages throughout Katzie's asserted traditional territory, where community members would live in temporary dwellings while moving to various sites within the territory to hunt, fish and harvest plants. *Katzie First Nation and the TMX: Cultural Background* explains how the Katzie People traditionally navigated the Salmon, Nicomekl, and Serpentine Rivers by canoe in order to visit family and friends.¹³

Katzie identified an ancient village site, "Halkomelem," near the Katzie Indian Reserve at Pitt Meadows, as well as village sites located in Grant Narrows Regional Park and at Barnston Island and Yorkson Creek in Langley. An important ceremonial site, the Stone Man, was identified at David Pool on the Alouette River. The cultural background study elaborates on archaeological sites situated close to the Project pipeline corridor but also notes that there may be unrecorded archaeological sites, as a comprehensive understanding of archaeological site distribution and density is limited.

Katzie identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including potential impacts on spiritually and culturally important sites and reduced privacy due to more outsiders in the territory. 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 Katzie, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Katzie'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

¹³ *Katzie and the TMX Project: Cultural Background Report*, 2015, p. 11.

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 ongoing consultation and engagement with local and Aboriginal governments.

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 appreciates that Katzie'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 Katzie's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. If the Project is approved, the NEB conditions 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.

Katzie 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 affecting the transmission of Katzie culture and language to the next generation and reduced participation in cultural traditions resulting from the loss of territory and resources. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Katzie'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 Katzie, Katzie'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 Katzie'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 Katzie's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Katzie's traditional territory are temporary and thus, likely to cause minor disruptions to Katzie'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 Katzie regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

The Crown has actively consulted with Katzie 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. Katzie's concerns related to Aboriginal title include:

- Impacts that could impede or disrupt Katzie's use of its asserted traditional territory, including access restrictions, disturbance to the land, potential loss of territory and resources during construction, and alterations to treaty land selection;
- Activities that affect Katzie's ability to manage and make decisions over the Project area, including the inability to manage the area in a manner consistent with Katzie's objectives and traditions; and
- Project-related activities that affect Katzie's economic development aspirations for its asserted traditional territory, including potentially lost economic benefits from the area impacted by the Project.

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 Katzie's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

Katzie expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the effects of a spill on Katzie's ability to exercise their Aboriginal rights as well as their ability to preserve the environment and culturally significant sites.

The Crown understands Katzie's concerns regarding spills, and the potential for a spill to impact Katzie'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 Katzie 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 Katzie's Aboriginal Interests and concerns raised by Katzie during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Katzie'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 spill.¹⁴

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 Katzie'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 Katzie'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 Katzie 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 Katzie, as discussed in Sections 4 and 5 of the main body of this report.

¹⁴ Trans Mountain Final Argument, p. 85 and 207