

## Appendix D.14 – Semiahmoo First Nation

### I - Background Information

Semiahmoo First Nation (Semiahmoo) are Coast Salish people. Semiahmoo's asserted traditional territory includes part of the Lower Mainland area in British Columbia (BC), including sections of the Fraser River and the Strait of Georgia. In meeting with Crown officials, Semiahmoo described themselves as "ocean people" and part of a transboundary nation that includes the Lummi in the United States (US). Semiahmoo used to be reef fishers, with up to 27 fishing nets at one time in Boundary Bay. Semiahmoo members historically spoke the Halkomelem language.

Semiahmoo has one reserve (129.1 hectares [ha]) located near the US international boundary, along Semiahmoo Bay and bordering the cities of Surrey and White Rock, BC. As of March 2016, Semiahmoo's registered population totals 97 individuals with 51 living on-reserve.

### II - Preliminary Strength of Claim Assessment

Aspects of the Project right-of-way (RoW) as well, as the marine shipping areas, are within Semiahmoo's asserted traditional territory:

- Approximately 64 kilometres (km) of the proposed pipeline and four pipeline facilities, including Sumas Station, Sumas Terminal, Border Traps, and Port Kells Station, would be located within Semiahmoo's traditional territory.
- Approximately 63 km of the marine shipping route would pass within the western part of Semiahmoo's asserted traditional marine territory.

The Crown's preliminary assessment of Semiahmoo's claims for Aboriginal rights over the section of the Project pipeline that spans the area from the TransCanada Highway corridor in Coquitlam to the valley west of Vedder Mountain is assessed as a *prima facie* range from weak to moderate. The claim is moderate in proximity to the Salmon River and Fort Langley and diminishes to the east and west of this area.

The Crown's preliminary assessment is that Semiahmoo has a weak *prima facie* claim for Aboriginal title over the section of the Project pipeline that spans the area from the TransCanada Highway corridor in Coquitlam to the valley west of Vedder Mountain.

The Crown's preliminary assessment of Semiahmoo's *prima facie* claim for Aboriginal rights to harvest marine resources within the marine shipping corridor of the Project that spans from the Strait of Georgia that is proximal to Richmond to the southern portion of Semiahmoo's traditional territory adjacent to Cordova Bay on Vancouver Island range from weak to moderate. Semiahmoo is assessed as having a weak Aboriginal rights claim along the shipping route adjacent to Richmond to Tsawwassen. The claim appears to be moderate along the portion of shipping route that follows the international boundary adjacent to Point Roberts and south towards Saanich on Vancouver Island. Ethnographers suggest that Semiahmoo's traditional territory at the time of contact was below the Canadian border in

Drayton and Birch Bay and also utilized the San Juan Islands. The Semiahmoo had important connections with Saanich groups on the Saanich peninsula and the Southern Gulf Islands, and there is some evidence to suggest that Semiahmoo had access to resources within these areas.

The Crown's preliminary assessment is that Semiahmoo has a weak *prima facie* claim for Aboriginal title over the marine shipping route upland areas for the Project that are proximal to Richmond to the southern portion of Semiahmoo's traditional territory adjacent to Cordova Bay on Vancouver Island. At 1846, Semiahmoo core territory is associated with Boundary Bay, Birch Bay, Point Roberts and Semiahmoo Bay. The Semiahmoo moved to this area before 1846 to assume the southern portion of Snokomish territory who had succumbed to epidemics. This area is approximately 30 km from the shipping route as it travels along the international boundary adjacent to Point Roberts.

### **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 Semiahmoo's Aboriginal Interests, the Crown is of the view that the legal duty to consult Semiahmoo lies at the lower end of the *Haida* consultation spectrum. In consideration of the Project intersecting with Semiahmoo asserted traditional territory, Semiahmoo was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which afforded Semiahmoo opportunities to be consulted at a deeper level.

On August 27, 2014, the proponent filed a letter of support for the Project with the NEB from Semiahmoo which stated that Semiahmoo "acknowledges and agrees that it is satisfied with the mitigation measures provided by Trans Mountain in respect of the Expansion and further agrees that there has been adequate consultation for the Project on the understanding that Semiahmoo First Nation is still exploring adequate accommodation measures with government." <sup>1</sup>

Semiahmoo did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB. Semiahmoo's engagement in consultation activities with the Crown began with correspondence in the post-NEB hearing phase. The Crown met with Semiahmoo at the Semiahmoo reserve on April 14, 2016.

The Major Projects Management Office (MPMO) offered Semiahmoo \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Semiahmoo an additional \$7,000 to support their participation in consultations following the release of the NEB Recommendation Report. Semiahmoo did not sign contribution agreements with the MPMO and did not make use of this funding opportunity.

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<sup>1</sup> B271 - Trans Mountain Pipeline ULC - Letter of Support from Semiahmoo First Nation (A63175) < <https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2525076&objAction=browse>>

Semiahmoo signed a letter of support with the proponent on August 27, 2014 formally withdrawing any objection to, and expressing support for the Project.

The Crown provided a first draft of this Report to Semiahmoo for review and comment on August 17<sup>th</sup>, 2016. The Crown did not receive comments from Semiahmoo on the draft Report.

A second draft of this Report was provided to Aboriginal groups for review and comment on November 3, 2016. The Crown has not received comments from Semiahmoo.

#### **IV - Summary of Semiahmoo's Key Issues and Concerns Raised**

The Crown has gained its understanding of Semiahmoo's issues and concerns through correspondence with Semiahmoo, and the information shared by Semiahmoo at the April 14, 2016 meeting. In addition, the Crown has considered information regarding the proponent's engagement with Semiahmoo, as described in the proponent's Aboriginal Engagement Report (2016).

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

##### *Funding*

Semiahmoo stated that they could not participate in the NEB review process because it was too expensive.

##### *Emergency Response*

Semiahmoo described their emergency response center and team and stated the importance to their community of having sufficient emergency response capacity. Semiahmoo stated that as a First Nation community, they have taken the initiative to deal with emergency response in a self-sufficient manner because there is currently no agreement in place with Surrey or White Rock. However, Semiahmoo stated that they are working with these municipalities to improve relations.

##### *Access to Traditional territory*

Councillor Charles detailed the difficulties accessing traditional territory experienced by Semiahmoo as a result of the location of their community and the fact that water access to the Salish Sea is only possible through US waters due to the enclosed nature of Boundary Bay.

##### *Marine Traffic*

Semiahmoo expressed concern with increased marine traffic that will result as projects are approved. Semiahmoo is involved in an estimated 12 to 13 consultation processes for projects that involve marine tankers in the Salish Sea. Semiahmoo has conducted a study of currents and flow in the Salish Sea, and the community has stated that in the event of a spill, Semiahmoo will be affected.

### Marine Resource Harvesting

Semiahmoo stated that they are a fishing community. Semiahmoo described a permanent closure of the shellfish fishery on the Canadian side of the Georgia Strait, and expressed interest in having the fishery re-opened. Semiahmoo community members also fish for crab and described the supply of crab as non-existent by the end of the season due to the activities of commercial fishers.

Semiahmoo further stated that their members are no longer able to participate in reef net fishing because the US border encloses their bay, and they are not allowed to reef net fish in US waters. Semiahmoo stated that in the 1960's was the last time they attempted to reef net fish, and their members were arrested for being in US waters.

Semiahmoo stated that the fishery they do have left is vulnerable to adverse effects from the Project and other projects. Semiahmoo stated that they are commissioning their own studies because proponents have their own scope of work and values, and Semiahmoo has not had a say in how the studies are undertaken.

### Environmental Effects

Semiahmoo expressed concern with respect to water, as their well water comes from a deep aquifer and is close to the ocean. If there is a spill, Semiahmoo stated they do not know where they will get their water from. Semiahmoo stated that the potential contamination of water is a higher concern for them than other concerns relating to occurrences in the northeastern portion of Semiahmoo territory (i.e. in the Fraser Valley where the pipeline is proposed to go) as they no longer hunt or gather medicines in the Fraser Valley. Semiahmoo stated that they are very fortunate to have interfamily relations with the Shuswap people of the interior of BC, as that is a place they can go hunting.

### Human Health

Semiahmoo stated that food security is seen as a huge issue for Semiahmoo members, as they no longer eat the traditional foods they should be. Councillor Charles stated that Semiahmoo could be considered a species at risk because their critical habitat has been altered/changed by sources other than themselves, and the food they rely on for sustainability can no longer be accessed.

### Cumulative Effects

Semiahmoo expressed concern that broader cumulative effects are not being considered because proponents view the international boundary as the geographic extent for which an assessment is needed. This is of concern to Semiahmoo as their location is enclosed by the US border, but that the environmental effects of marine vessel traffic or accidents for example, are not contained by political boundaries.

### Aboriginal Rights and Title

Semiahmoo stated that they assert Aboriginal title around the whole of Boundary Bay. Semiahmoo expressed that they want the commercial fishery to be stopped and identified concerns that there are

20 Vietnamese companies with licenses. Semiahmoo are not allowed to fish on Roberts Bank in the US, and can only fish in Canada at Boundary Bay and Mud Bay.

#### Proposals for Accommodation

Semiahmoo had the following requests regarding potential accommodations for impacts on Semiahmoo right and interests:

- Clean up the foreshore;
- Close the commercial fishery in Semiahmoo Bay (Semiahmoo should have priority for access to the crab fishery in the bay);
- Provide assistance with emergency response; and
- Revenue sharing - for example placing a fixed fee on every ship that comes through Semiahmoo traditional territory.

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 Semiahmoo 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.

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

No specific comments received by the Crown from Semiahmoo First Nation on the *NEB Recommendation Report*.

#### **V - Potential Impacts of the Project on Semiahmoo'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, including areas within the vicinity of marine shipping related to the Project, 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 Semiahmoo's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Semiahmoo'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 Semiahmoo's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Semiahmoo, Semiahmoo'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.

Semiahmoo completed an interim third-party traditional land and marine use (TLMRU) study in 2014 titled *An Interim Report on the Traditional Land and Marine Resource Use (TLMRU) and Practices of the Semiahmoo First Nation for the Proposed Kinder Morgan Trans Mountain Pipeline Expansion Project (TMX) System*. The report included identification of traditional land uses in the segment of the proposed pipeline from Burnaby to Westridge. Traditional land uses identified by Semiahmoo include hunting, gathering plants, information on fishing sites, sacred sites, habitation sites, and gathering areas for community members. Traditional use findings were summarized in Volume 5B of the Project Application, *Volume 8B Technical Report*, and a supplemental technical report ([A3S4K3](#), [A4H1X0](#), [A3S1S0](#)).

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

Historically, Semiahmoo community members hunted elk, black bear, mountain goat, beaver, duck, geese, crane, swan and other migratory birds. Plants used by Semiahmoo community members include fir, bulrush, red cedar, bitter cherry, tule rush, strawberry, Saskatoon wood, camus lily, raspberry, huckleberry, dewberry, gooseberry, and thimbleberry. Specific hunting, trapping or plant gathering sites were not identified by Semiahmoo in their TLMRU study for the Project.

Semiahmoo raised concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including impacts of the Project on Semiahmoo's food security and broader cumulative effects concerns. As described in the NEB Recommendation Report, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants and lichens and vegetation communities of concern, old growth forests, wetlands, and terrestrial wildlife and wildlife habitat (including species at risk), marine mammals, and marine birds. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering (Section 4.3.1 of this Report) and the proponent would implement several mitigation measures to reduce potential effects to species important for Semiahmoo'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 vegetation and wildlife management plans (including a marine mammal protection program). The proponent will also develop plans to implement,

monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups.

Semiahmoo raised concerns with potential Project-related impacts to locations and access to hunting, trapping, and plant gathering activities, including access to traditional foods. Project-related pipeline construction and routine maintenance is expected to cause short-term, temporary disruptions to Semiahmoo's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities.

The Crown understands that with pipeline construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Semiahmoo. Project-related marine shipping is expected to disrupt Semiahmoo's marine vessels and harvesters, and this could disrupt activities or access to hunting, trapping, and plant gathering sites. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with hunting, trapping, and gathering sites (Section 4.3.1 of this Report) and the proponent would implement several mitigation measures to reduce potential effects on Semiahmoo's hunting, trapping, and plant gathering activities. These mitigations include management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs. The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access to Semiahmoo's traditional lands.

The proponent has committed to minimizing the development of access routes, controlling public access along the construction RoW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent 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 Semiahmoo prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined.

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

In terms of potential direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, the Crown understands that

short-term, temporary disruptions to Semiahmoo's hunting, trapping, and plant gathering activities could temporarily alter the behaviour of community members' during construction. A reduction in community members' participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project could have spiritual and cultural impacts on community members. The Crown understands that Semiahmoo may experience interruptions to traditional activities due to Project-related marine shipping activities, and community members could be discouraged from travelling to hunting, trapping, and plant gathering sites that require these members to cross shipping lanes. NEB conditions, if the Project is approved, 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) and the proponent would implement several mitigation measures to reduce potential effects to Semiahmoo's hunting, trapping, and plant gathering activities.

The proponent is committed to utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project, and will communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program.

The Crown has considered available information from the NEB process, consultation with Semiahmoo, Semiahmoo'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 EAC issued by the Province. In consideration of this information, the Crown expects impacts of Project construction and operation, and Project-related marine shipping activities on Semiahmoo's hunting, trapping and plant gathering activities would be negligible-to-minor. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

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

### ***Impacts on Freshwater and Marine Fishing and Harvesting***

As described in Semiahmoo's TLMRU study, community members historically used reef nets in the ocean. Fished species identified by Semiahmoo include chum salmon, sockeye salmon, herring, halibut, eulachon, and sturgeon. During the desktop study and literature review conducted for the Project, fish and marine species harvested include: barnacles; butter, cockle, manila, horse and littleneck clams; Dungeness and red rock crab; giant red chiton; green and red sea urchin; mussels; native and Pacific oysters; northern abalone; octopus; prawns; sea cucumber; herring roe; grey whales; killer whales; Steller sea lions; Pacific white-sided dolphins; harbor seals; porpoises; skate; octopus; waterfowl; seaweed; sea lettuce; kelp; red lavers; salmon (sockeye, Chinook, chum, coho, pink); steelhead; anchovies; bullhead; dogfish; sole; halibut; herring; cod (rock and ling); and red snapper.

Semiahmoo identified concerns related to environmental effects of the Project on fishing activities including the cumulative effects of shipping, as well as potential adverse impacts on marine harvesting activities such as fishing and harvesting shellfish and crab. As described in the NEB Recommendation Report, Project-related activities could result in low to moderate magnitude effects on freshwater and marine fish and fish habitat, surface water and marine water quality. Moderate effects to fish and fish habitat in the terrestrial and aquatic environments would be localized to individual watercourse crossings, and effects to marine fish and fish habitat would be limited to a few or many individuals, where any potential serious harm would be compensated by offset measures.

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

In Volume 8B, preliminary traditional fishing areas used for subsistence activities were identified by Semiahmoo. Traditional fishing areas identified in the Marine Regional Study Area (RSA)<sup>2</sup> include Semiahmoo Bay, Boundary Bay, Mud Bay, and the Strait of Georgia. The locations were not specified; therefore it is unknown whether the shipping lanes are crossed to access the sites. During the desktop

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<sup>2</sup> The area extending beyond the LSA boundary (i.e. the zone of influence or area where the element and associated indicators are most likely to be affected by Project-related marine vessel traffic.) where the direct and indirect influence of other activities could overlap with project-specific effects and cause cumulative effects on the environmental or socio-economic indicator.

study and literature review conducted for the Project, 10 fishing and marine resource harvesting sites were identified within the Marine RSA. Shipping lanes are crossed to access seven of the sites: Fulford Harbour, Gulf Islands, Mayne Island, Pender Island, Salt Spring Island, Saturna Island, and Sidney Island.

Semiahmoo identified nine fishing and marine harvesting sites during the TLMRU for the Project, none of which are located within the proposed pipeline corridor. The nearest fishing sites are 2.7 km and 3.1 km southwest of the proposed pipeline corridor on the Serpentine River and Nicomekl River, respectively. Other fishing sites identified are more than 10 km from the proposed pipeline corridor, or the approximate distance from the Project area was not stated.

Semiahmoo raised concerns with potential Project-related impacts to locations and access on freshwater and marine fishing activities, including access to traditional foods. Project-related pipeline construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Semiahmoo's access to freshwater fishing activities. If construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Semiahmoo community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. Project-related marine vessels are expected to cause temporary disruptions to Semiahmoo's marine fishing and harvesting activities. Community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes.

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

In terms of potential direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of Semiahmoo's freshwater and marine fishing and harvesting activities, Project pipeline and facility construction and routine maintenance is expected to cause short-term, temporary disruptions to Semiahmoo'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. Project-related marine vessels are expected to cause

temporary disruptions to Semiahmoo's marine fishing and harvesting activities and community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Semiahmoo community members to take measures to reduce potential disruptions from tankers and allow planning for cultural events to take place that minimizes disturbance from Project-related tankers.

The Crown has considered available information from the NEB process, consultation with Semiahmoo, Semiahmoo'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 EAC issued by the Province. In consideration of this information, the Crown expects impacts of Project construction and operation, and Project-related marine shipping activities on Semiahmoo's freshwater fishing and marine fishing and harvesting activities would be minor. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

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

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

Semiahmoo were traditionally semi-nomadic people, with community members regularly travelling through the Fraser River Estuary to gather food, moving from permanent villages near Semiahmoo and Birch Bays to summer camps at Point Roberts, Cannery Point and Crescent Beach. Historically, Mount Baker was used for traditional and ceremonial practices.

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) and the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Semiahmoo's traditional and cultural practices. An environmental education program will be developed and implemented to ensure that all personnel working on the Project are informed of the location of known sacred sites and burial sites. The proponent has also committed to reduce potential disturbance to community assets and events by

implementing several measures that include avoiding important community features and assets during RoW 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. No trails or travelways, or sacred areas were identified by Semiahmoo in their TLMRU study for the Project. Semiahmoo identified five gathering places within the Marine RSA during the TLMRU study for the Project, none of which are located in the proposed pipeline corridor. The nearest gathering place is a historic village approximately 12 km southwest of the proposed pipeline corridor at Campbell's River. During the desktop study and literature review conducted for the Project, one summer camp in the Gulf Islands and one sacred area at Saanich Inlet were identified within the Marine RSA. Although the locations are not specified, the shipping lanes are crossed to access both of these sites.

Semiahmoo raised access restrictions to their traditional territory as a concern associated with potential Project impacts relating to other traditional and cultural practices. 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. Semiahmoo's opportunities for certain traditional and cultural activities would be temporarily interrupted, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Semiahmoo's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. Project-related marine shipping activities could potentially disrupt Semiahmoo's traditional activities.

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

Marine mammals are of importance to many Coast Salish Aboriginal groups, and killer whales specially hold strong spiritual and cultural importance for many Aboriginal groups. The NEB concluded that effects on the endangered Southern resident killer whale and Aboriginal cultural use of Southern resident killer whale from Project-related shipping activities would be significant. The Crown is not aware of any specific cultural use of or concerns regarding killer whales raised by Semiahmoo during the NEB and Crown consultation processes.

The Crown has considered available information from the NEB process, consultation with Semiahmoo, Semiahmoo'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 EAC issued by the Province. In consideration of this information, the Crown expects impacts of Project construction

and operation, and Project-related marine shipping activities, on Semiahmoo's other traditional and cultural practices would be negligible-to-minor. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related pipeline and facility construction and operation, and marine shipping activities are likely to have low to moderate magnitude environmental effects on traditional and cultural resources;
- Construction of the pipeline and associated facilities are likely to cause short-term temporary disruptions to Semiahmoo's community members accessing traditional and cultural practice sites within the Project footprint; Project-related marine shipping activities are likely to cause temporary disruptions to activities or access to sites during the period of time Project-related tankers are in transit through Semiahmoo's traditional territory; and
- Concerns identified by Semiahmoo regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

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

Semiahmoo raised concerns related to Aboriginal title, including use and access restrictions to its asserted traditional territory including fisheries, and concerns regarding activities that have the potential to affect Semiahmoo's ability to manage and make decisions in their traditional territory.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial, marine and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. The Crown notes that Semiahmoo executed a Mutual Benefits Agreement with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce or accommodate impacts to Aboriginal title claims if the Project proceeds.

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

### ***Impacts Associated with Accidental Tanker and Pipeline Spills***

Semiahmoo expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including the effects of a potential spill on water quality; and terrestrial and aquatic environments.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with tanker and pipeline spills, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. Section 4.3.6 of the main body of this Report sets out the impacts associated with accidental spills. In consideration of this information and analysis, as well as information available to the Crown on Semiahmoo's Aboriginal Interests and concerns raised during the NEB process and Crown consultation process, an accidental oil spill associated with the Project could result in minor to serious impacts on Semiahmoo's Aboriginal Interests. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill<sup>3</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 and marine safety regimes would only partially address these ongoing burdens and risks.

Under the typical conditions for pipeline construction and operations and for marine vessel use of the area between the Westridge Marine Terminal and the 12 nautical mile limit (J-buoy) through the Salish Sea and Strait of Juan de Fuca, the Crown expects impacts of Project-related activities on the exercise of Semiahmoo's Aboriginal Interests would be up to minor.

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

In addition, the Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Semiahmoo in an attempt to offset potential impacts, should the Project proceed.

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<sup>3</sup> Trans Mountain Final Argument, p. 85 and 207