

Appendix D.17 – Songhees First Nation

I - Background Information

Songhees First Nation (Songhees), also known as the Lekwungen, is located on the southern tip of Vancouver Island near Victoria, British Columbia (BC). Songhees (pronounced “*Song-hees*”) has filed a *Writ of Summons* as part of the Saanich Nation asserting Aboriginal title to a territory identified in the writ. Songhees has four reserves, for a total of 138.1 hectares (ha): Deadman’s Halkett Island no. 2, Chatham Islands no. 4, Discovery Island no. 3, and New Songhees no. 1A. Songhees has a total of registered population of 565. Their traditional language is Lekwungen, a dialect of the North Straits Salish language.

Songhees is part of the Te’mexw Treaty Association (TTA) along with Beecher Bay, Nanoose First Nation, and Malahat First Nation. The TTA signed an agreement-in-principle on April 9, 2015, and are now in Stage 5 – Final Agreement Negotiations with the Province of BC.

II - Preliminary Strength of Claim Assessment

Approximately 37 kilometres (km) of the marine shipping route would pass through the eastern and southern portions of Songhees’s asserted traditional territory.

The Province of BC understands Songhees to be a Douglas Treaty beneficiary. Canada recognizes the Douglas Treaties and understands that Songhees has members who are descendants of one or more signatories to one or more Douglas Treaties. Canada remains committed to working toward a common understanding of the content and scope of the Douglas Treaties with Songhees to implement the treaty through agreements with the Crown, and to explore opportunities to honour and recognize the Douglas Treaties.

Songhees asserts Douglas Treaty rights to carry out fisheries as formerly and hunt on unoccupied lands within its historic traditional territory. No distinction is made between the Esquimalt and Songhees peoples in the ethnographic materials and no separate Esquimalt territory is identified by ethnographers, as both are considered Songhees. Ethnohistoric evidence indicates that Songhees territory extended “from Albert Head to Cordova Bay” on Vancouver Island, and included the American San Juan and Henry Islands at the time of the treaties in 1850¹.

¹ Te’mexw Treaty Association and Esquimalt Nation. Songhees, Beecher Bay, Songhees and Malahat First Nations, Esquimalt Nation: Review of Ethnographic and Historical Sources. Ministry of Justice, Legal Services Branch, Aboriginal Research Division. September 5, 2008. Revised to June 16, 2015; Proposed National Marine Conservation Area Reserve in the Southern Strait of Georgia: Review of Ethnographic and Historical Sources. Prepared by Ministry of Justice, Legal Services Branch, Aboriginal Research Division. December 19, 2012. Revised November 20, 2013.

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 Songhees' Aboriginal Interests, the Crown is of the view that the legal duty to consult Songhees lies at the middle portion of the *Haida* consultation spectrum. Songhees was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office, which affords Songhees opportunities to be consulted at a deeper level.

Songhees did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB.

Songhees has not been active to date in the Crown consultation process, but has received multiple pieces of correspondence from the Major Projects Management Office (MPMO). The MPMO offered Songhees \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Songhees an additional \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Songhees did not sign contribution agreements with the MPMO and did not make use of this funding opportunity.

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

A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from Songhees.

IV - Summary of Songhees's Key Issues and Concerns Raised

As Songhees did not participate in the NEB review process, there is no information on the hearing record about their key issues or concerns. Songhees has also not participated to date in Crown consultation processes. As such, there is no information on hand that documents key Songhees issues and concerns related to the Project.

The Crown is in receipt of an open letter dated June 15, 2016 sent to Prime Minister Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark from a collective of Aboriginal groups, including Songhees. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process.

Songhees's Response to *NEB Recommendation Report*

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

V - Potential Impacts of the Project on Songhees'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 of this Report. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group may be particularly important

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

It is the Crown's understanding that Songhees did not participate in a traditional marine resource use study for the Project. The Crown also understands that Songhees has not identified Project-related issues or concerns during the NEB process or Crown consultation process. As a result, the Crown has limited information on the specific sites and resources used by Songhees for traditional purposes that could be impacted by the Project.

The general direct and indirect effects of the Project on Aboriginal Interests, along with key mitigation measures, are described in Section 4.3 of the main body of this Report. As described in that section, routine Project-related activities are likely to result in low to moderate impacts on the lands, waters and resources that Aboriginal groups use to exercise their hunting, trapping, plant gathering, fishing, and other traditional activities. The Crown understands that there will be temporary interruptions to Songhees's traditional activities, and there could be reduced access to traditional and cultural sites during Project operational activities. The proponent would implement mitigations that would include plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, and scheduling and notification of Project activities via the proponent's marine public outreach program (Section 4.3 of the main body of this Report).

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 Songhees during the NEB and Crown consultation processes.

In consideration of the information available to the Crown from the NEB and Crown consultation processes, Songhees' 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, the Project is expected to result in a negligible-to-minor impact on Songhees' Aboriginal Interests.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a tanker spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. Section 4.3.6 of the main body of this Report sets out the impacts associated with accidental spills from marine shipping vessels. In consideration of this information and analysis, as well as information available to the Crown on Songhees' 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 Songhees' 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.²

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 marine safety regime would only partially address these ongoing burdens and risks. Under the typical conditions 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 the marine-shipping component of the Project on the exercise of Songhees Nation's Aboriginal Interests would be negligible-to-minor.

However, given existing use of the marine shipping corridor within areas proximate to the exercise of Songhees Nation's Aboriginal Interests and the potential severity of the impacts of a marine spill on the exercise of Songhees Nation's Aboriginal Interests, the federal Crown is considering additional measures to further offset the potential impacts of the marine-shipping component of the Project on Songhees Nation. Please see Sections 4 and 5 of the main body of this Report for a discussion of proposed accommodation measures.

² Trans Mountain Final Argument, p. 85 and 207