

## Appendix C.11 – Matsqui First Nation

### I – Background Information

Matsqui First Nation (Matsqui) is an autonomous tribe whose traditional territory encompasses a large area of the Fraser Valley, British Columbia (BC). Matsqui is an ethnically Stó:lō community whose traditional language is Halq'eméylem. Matsqui has an affiliation with the Stó:lō Nation through the Stó:lō Nation Chiefs Council. Matsqui has made it clear that this affiliation exists for service delivery purposes and does not represent a political affiliation.

Matsqui consists of five reserves located west and north of Abbotsford: Matsqui no. 4 (24.3 hectares [ha]), Matsqui Main no. 2 (129.7 ha), Sahhacum no. 1 (20.2 ha), Three Islands no. 3 (246.3 ha), and the shared Pekw'xe:yales (Peckquaylis) (10.3 ha). Its total registered population, as of June 2016, is 265 (100 are living on their reserve, 16 are living on other reserves, and 149 are living off reserve).

Matsqui is a party to the Stó:lō Nation protective *Writ of Summons*, filed in the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the writ. Matsqui signed a revenue sharing agreement with the Province of BC in 2013, identifying its asserted traditional territory in the 2013 Forest Consultation and Revenue Sharing Agreement.<sup>1</sup>

Matsqui Main no. 2 is crossed by the existing pipeline right-of way (RoW). The Project RoW may diverge from the existing pipeline route in close proximity to Matsqui Main no. 2. The final proposed RoW may transect the southwest corner of the reserve at the consent of Matsqui.

Matsqui has a Land Code in place pursuant to the Framework Agreement on First Nation Land Management and the *First Nation Land Management Act*, (S.C. 1999, c. 24). Any disposition of land tenures on Matsqui Lands must be done in accordance with Matsqui's Land Code and the Matsqui Environmental Assessment Law. Matsqui's Environmental Assessment Law requires that an environmental assessment be conducted for any grant or disposition of an interest in First Nation Land and any Project on First Nation Land (s. 5.1). According to the Land Code, any grant or disposition of an interest in Matsqui Land for a term exceeding 49 years, requires approval by majority vote of Eligible Voters who attend a meeting (s. 23.1). As such, the proposed interest on Matsqui Main no. 2 required adherence to Matsqui's Land Code and Environmental Assessment Law.

Trans Mountain sought and received the consent of Matsqui for the construction and operation of the Project on Matsqui Main no. 2 through the process clearly delineated in Matsqui's Land Code. Matsqui provided a letter of support for the Project pursuant to the conditions set out in its own environmental assessment [[A4X3L2](#)].

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<sup>1</sup> [http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/frcsa\\_matsqui.pdf](http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/frcsa_matsqui.pdf)

## II – Preliminary Strength of Claim Assessment

- Approximately 40 kilometres (km) of the proposed pipeline and two pipeline facilities (Sumas Station and Sumas Tank Farm) would be located within Matsqui's asserted traditional territory.
- The existing and proposed RoW travels 170 km through the Stó:lō Nation writ. The proposed new pipeline would be located largely within the existing RoW with some adjustment for habitat and geological considerations.
- The existing RoW and proposed pipeline cross Matsqui Main Reserve no. 2.
- The Crown's preliminary assessment of Matsqui's claim for rights is strong in the portion of the Project south of Mission that overlaps the area considered to be Matsqui historic territory. The Matsqui territory included the southern section of the river bank from Sumas Mountain to Crescent Island; inland, Matsqui had the area between Abbotsford and Aldergrove and south into Nooksack territory. Matsqui had a village on the south shore of the Fraser River village (Matsqui IR 4) as well as one located inland at Clayburn (probably located at Sahhacum IR 1), which some ethnographers considered to be the "main" Matsqui village. The upland territory of the Matsqui, south of the Fraser and north of the boundary with the Nooksack territory, featured a well-established network of land and water routes that enabled travel through a varied landscape of forests, marshes and prairie. A village site located in South Langley, likely in or around the Matsqui Reserve adjacent to the American border, indicates settlement and regular use south of the Fraser River as far as the border. The Matsqui are described as having hunted for game, birds and waterfowl, collected edible and medicinal plants, fished and harvested timber in this general area through the early 1900s.
- The portion of the Project east of that area is assessed as moderate-to-strong as Sumas and Matsqui appear to have a long-standing, strong relationship and may have utilized hunting and resource areas in an agreeable or organized manner. Generally speaking the use of territories by Sto:lo groups was not necessarily exclusive – the vast areas with less significant resources may have been more freely used. However, while Matsqui appear to have had close connections with their neighbours, especially the Nooksack and Sumas, it appears that these groups recognized and respected the boundaries between each other's territories. While sharing took place, it was probably with permission of their neighbour given the potential reprisals for breach of protocol or trespass. The portion of the Project west of this area is assessed as a weak-to-moderate claim as that area was considered outside historic Matsqui territory, and although it is possible Matsqui used that area due to its proximity to Sumas territory, it was probably subject to the permission of the Kwantlen, whose territory it was considered at time of contact.
- The Crown's preliminary assessment of Matsqui's claim for title is strong in the portion of the Project in proximity to Clayburn, where it appears an important village was located. Upland territory featured well established land and water routes that were used regularly to travel around the territory for hunting, fishing and resource gathering. The portion of the Project east of that area is assessed as weak-to-moderate as it was considered Sumas territory, and also

decreasing to weak-to-moderate towards the western portion of its asserted territory as that was considered Kwantlen territory.

### **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 Matsqui's Aboriginal Interests, the Crown is of the view that the legal duty to consult Matsqui lies at the deeper end of the *Haida* consultation spectrum. Matsqui was placed on Schedule B of the Section 11 order issued by the EAO, which affords Matsqui opportunities to be consulted at a deeper level.

Matsqui participated in the National Energy Board (NEB) hearing process as an intervenor and submitted written evidence (including confidential traditional use information), participated in two rounds of information requests to the proponent, responded to the Major Projects Management Office's (MPMO) information request (draft issues tracking table [[A71200](#)]), and corresponded with the NEB regarding section 18 of the *Canadian Environmental Assessment Act* (CEAA) 2012.

Matsqui signed a contribution agreement with the NEB totaling \$75,000 plus travel for two to the hearing. The Major Projects Management Office (MPMO) offered Matsqui \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Matsqui an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Matsqui signed a contribution agreement with the MPMO in the amount of \$26,000. On September 30, 2016 Matsqui was issued \$5,000 in capacity funding by EAO to assist with the consultation process.

On October 2, 2015, the proponent and Matsqui signed a confidential mutual benefits agreement (MBA), which included a Letter of Support for the Project [[A4X3L2](#)].

Matsqui met with the Crown during the Early Engagement Phase on June 13, 2014. Matsqui met with the Crown consultation team following the close of the NEB hearing record on March 1, 2016 and September 26, 2016.

A first draft of this Consultation and Accommodation Report (the Report) was provided to Aboriginal groups for review and comment on August 17, 2016. Matsqui provided comments on the first draft of the Report on September 22, 2016, and on October 25 and 27, 2016. These comments have been considered and addressed in this version of the Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. On November 2, 2016, Matsqui provided the Crown with additional Traditional Land Use information to inform the preliminary Strength of Claims assessment.

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

The Crown has gained its understanding of Matsqui's issues and concerns through Matsqui's involvement in the NEB process, including the responses provided to the Crown on its Information Request (IR) addressed to Matsqui, and through other engagement with the Crown. In addition, the

Crown has considered information regarding the proponent's engagement with Matsqui, as described in the proponent's Aboriginal Engagement Report (July 2016). This section offers a summary of the key issues raised by Matsqui, 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 Matsqui's key Project-related issues and concerns are summarized below:

#### Methodology, Process and Consultation

Despite active participation in the NEB process and extended correspondence with the NEB, Matsqui were frustrated with the lack of recognition of Matsqui's jurisdiction under the *First Nations Land Management Act* and the Framework Agreement on First Nation Land Management. Matsqui noted that a major problem with the NEB hearing process was the burden placed on intervenors to assess the Project, leaving intervenors responsible to submit research and reports to challenge the statements made by the proponent in its application. Matsqui has noted in their evidence and correspondence with the NEB, Canada and the Province of British Columbia, that reviewing large volumes of materials is a significant burden.

Matsqui asserted that areas of particular concern – namely, the impact of a catastrophic spill in the Fraser River, the risk associated with liquefaction in the Fraser Valley, emergency response, and the cumulative impact of the Project on Matsqui's territory – were not properly addressed through the NEB hearing process. Matsqui further indicated that the failure of the NEB to require the proponent to conduct a seismic risk analysis during the preparation of the environmental assessment is a major concern.

Matsqui indicated the view that their consent is necessary because of the proximity of the pipeline route to Matsqui Main Reserve no.2 and because the Project travels through their core territory. Matsqui believes that their consent is required regardless of whether the Project crosses Matsqui Main no. 2 or their traditional territory.

In a letter to the MPMO dated September 22, 2016 Matsqui indicated that they believed they had "been understood by the NEB" and therefore were deeply disappointed to review the draft Consultation and Accommodation Report, which Matsqui determined reflected "inaccurate characterizations of [Matsqui's] rights." Matsqui views the NEB process as inadequate because it does not allow for forms of accommodation to be considered (including economic accommodation) that Matsqui has stated the Crown must provide if the Governor-in-Council approves the Project.

#### Cumulative Impacts

Matsqui raised several concerns with how cumulative impacts were assessed at the NEB. Matsqui noted that the cumulative environmental impact of numerous projects (e.g., logging, urban development, farming, and draining) has compromised the ability of Matsqui people to use and regulate the resources of their territory. For example, many trapping areas in the territory are no longer active due to the establishment of regional parks, urban development, and drainage of semi-aquatic trapping areas.

Matsqui also stated that the baseline of the effects assessment should take into account the conditions prevailing before European settlement.

### Economic Impacts

Matsqui is concerned about potential adverse economic impacts of the Project. Were there to be a spill on or near Matsqui reserve lands or the Fraser River it could potentially impact Matsqui due to:

- Jobs/wages lost from disruption of on-reserve industry;
- Lost rent/taxes from disrupted industrial tenants;
- Lost/diminished residential development opportunities;
- Replacement cost of fish for personal consumption; and
- Potential impact to Economic Opportunity fishery.

### Impacts to Aboriginal Rights and Title

Matsqui places considerable emphasis on their claimed status as a sovereign nation. They highlighted that they have the authority to make land use and other decisions on Matsqui reserve lands, pursuant to the *First Nations Land Management Act* and the Framework Agreement on First Nation Land Management.

Matsqui continues to claim Aboriginal title over the entirety of their traditional territory. Matsqui indicated that, should the Project be approved without Matsqui consent, whether or not it crosses Matsqui Main no. 2, it would be viewed as an affront to Matsqui sovereignty.

Similarly, Matsqui believes a marine oil spill could negatively impact their Aboriginal right to fish on the Fraser River.

Matsqui asserts Aboriginal rights and title throughout their traditional territory (including hunting, fishing, harvesting/medicine gathering rights) and is concerned that the Project will have an impact on land, water and resources within their traditional territory.

### Health and Human Safety

Matsqui expressed concerns about the proponent's response to potential oil spills. Specifically, Matsqui is concerned that the proponent's assessment of impact of spills on human health inappropriately considered Matsqui members as urban dwellers and did not distinguish the unique and significantly adverse impacts of a spill on Matsqui. Many Matsqui members live on reserve lands that are not urban areas, and Matsqui consumes significantly more fish directly from the Fraser River than typical urban populations. Matsqui members are therefore more vulnerable to adverse health outcomes from potential pipeline spills.

### Accidents and Malfunctions

One of Matsqui's most pressing concerns has to do with the impact of an oil spill, particularly one that affects the Fraser River on which Matsqui heavily relies as a source of social wellbeing, physical activity,

cultural enrichment, and country food (especially salmon). Should a worst-case major oil spill occur, it is possible that the negative impacts could last for decades. Matsqui is concerned about the impact of a spill on eulachon and sturgeon, two fish species that are currently designated as endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

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

Matsqui raised concerns that the *NEB Recommendation Report* did not adequately address how the Project would adversely impact Aboriginal title. Further, the NEB referred to traditional governance systems that may be affected if the Project impacts traditional activities. The *NEB Recommendation Report* it does not address the ways in which modern self-governance will be impacted by the Project. Matsqui also raised concerns about the NEB conclusions regarding likelihood and significance being problematic. The NEB conclusions on impacts do not properly take into account cumulative effects of the Project.

Matsqui understands that many of the conditions suggested by the NEB involve further reports to be produced by the proponent. Matsqui considers the findings of these reports to be relevant to issues raised and considered through the course of Matsqui's participation in the NEB hearing and through its environmental assessment.

Matsqui's final determination pursuant to its Environmental Assessment Law, will include consideration of the following conditions being fulfilled by the proponent no later than 90 days prior to commencement of construction:

- A seismic risk assessment of Matsqui Traditional Territory;
- Assessment of Trans Mountain Expansion Project logistics plans, worker and population estimates, traffic effects, and other socioeconomic effects of the construction workforce in Matsqui traditional territory, including Traffic Control Plans, Traffic and Access Control Management Program, and related information that will not be available until 90 days before construction; and
- A stand-alone list of actions and commitments to avoid, mitigate, or compensate for identified Project effects. This list should include actions described in the text of the environmental assessment, even if those actions are not contained in mitigation tables or the Socio-Economic Management Plan, and a commitment to comply with conditions and requirements established by the NEB at any time during the pre-construction, construction, or post-construction periods.

### **V – Potential Impacts of the Project on Matsqui's Aboriginal Interests**

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Sections 2.4.3 and 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), including by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Matsqui's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Matsqui'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 Matsqui's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Matsqui, Matsqui's engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant conditions proposed by the Province of any Environmental Assessment Certificate issued.

Matsqui conducted a traditional land and resource use (TLRU) study titled, *For We are the Real Owners of the Land from Time Immemorial as God Created Us Indians in this Territory: Historical Land Use, Territory, and Aboriginal Title of the Matsqui People*. The complete TLRU study was filed as confidential written evidence and a redacted version was submitted to the NEB that removes current traditional use information to ensure confidentiality of the information. In its Supplemental Technical Report [\[A4S717\]](#), the proponent estimated approximate distances and directions from the pipeline corridor based on information in Matsqui's redacted version of the TLRU study. As Matsqui noted in the comments on the draft Report, the TLRU sites identified in the redacted TLRU study are examples only and are not comprehensive.

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

As described in their TLRU, Matsqui community members historically hunted black and grizzly bear, elk, mountain goat, deer, wildcat (lynx), groundhog (marmot), marten, raccoon, squirrel and beavers within their traditional territory and continue to hunt game and birds. Matsqui hunted fowl including geese, ducks, grouse, pheasants, blue heron, robins, jays, crows, partridges and eagles. Knowledge of hunting methods, animal knowledge and accompanying teachings were passed down between generations. Hunting remains a common land use activity for certain Matsqui people. The TLRU records that today, members hunt for deer, elk, moose, geese, grouse, ducks and pheasants in Matsqui territory. Community members commonly trap mink, muskrat, rabbit, fox, raccoon, beaver and river. Community members also grew and harvested cranberries on the Matsqui Prairie and harvested medicinal tea leaves, leaf stems of cow parsnips, huckleberries, wetland wapato, prairie camus roots huckleberries, salmonberries, blackberries, crab apples and skunk cabbage. Western red cedar was collected for many manufactured products, including house posts and planks, canoes, basketry, clothing and textiles. Historically, community members managed berry and grass resources in their traditional territory using controlled burns and continue to manage these resources using the same method.

Matsqui identified concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, including their ability to harvest deer, elk, moose, geese, grouse, ducks, pheasants, traditional medicines, berries, and cedar. As described in the *NEB Recommendation Report*, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants and lichens, vegetation communities of concern, old growth forests, wetlands, and wildlife and wildlife habitat (including at risk-listed species). 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 Matsqui, the proponent would implement several mitigation measures to reduce potential effects to species important for Matsqui'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.

Matsqui identified hunting, plant gathering and trapping sites in their TLRU study. A duck hunting site on Sumas Prairie and a plant gathering site on Matsqui Prairie are within the proposed pipeline corridor. Other hunting and plant gathering sites were identified in the TLRU study although the locations of these sites were kept confidential. Matsqui's TLRU recorded 30 trapping areas in Matsqui territory, of which many are no longer active due to regional parks, urban development and drainage of semi-aquatic trapping areas. Trap lines are primarily along the creeks in Matsqui territory from Fort Langley to the Matsqui reserve lands, and south through to Aldergrove [IR 4]. Specific use areas included Matsqui Islands [IR 3], Queen's Island, Burgess Creek, Mount Lehman, Sumas River, and Bradner. Matsqui continues to harvest plants throughout their traditional territory including Matsqui Prairie. In addition to hunting in Matsqui territory, Matsqui members also hunt in Stó:lō territory. When Matsqui hunt in the traditional Stó:lō territory, the use of these territories is facilitated by cultural protocols similar to those of the past.

Matsqui raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Matsqui's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown understands that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Matsqui. 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 Matsqui, the proponent would implement several mitigation measures to reduce potential effects on TLRU sites important for Matsqui's hunting, trapping, and plant gathering activities, such as management plans that include access management, scheduling and notification of

Project activities, and environmental monitoring programs that monitor access control measures. The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic during and following construction in order to minimize disturbance to access to Matsqui's 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 Matsqui prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Matsqui to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Matsqui raised concerns regarding the 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 Matsqui cultural expression, health, and social well-being. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Matsqui's hunting, trapping, and plant gathering activities. The Crown understands that this short-term disruption could temporarily alter the behaviour of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). 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 Matsqui, Matsqui'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-to-moderate impact on Matsqui'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 Matsqui;
- Project-related pipeline and facility construction and routine maintenance activities within Matsqui's traditional territory are temporary and thus, likely to cause minor disruptions to Matsqui'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 Matsqui regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

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

As summarized in their TLRU, Matsqui community members historically fished for salmon (coho, sockeye, spring, pink, chum) from Crescent Island to Sumas Mountain. Currently, community members fish in streams located throughout the Matsqui Prairie and fish for salmon and sturgeon along the Fraser River. Matsqui filed other evidence with the NEB that identified the Matsqui Fishing Area, an area in and along the Fraser River from the mouth of Stave River to the Mission Railway Bridge, as the main fishing area that contains numerous fishing sites. The proposed pipeline corridor crosses the Fraser River, although not in Matsqui's traditional territory.

Matsqui identified many concerns related to environmental effects of the Project on fishing activities, including the risks of a spill adversely impacting Matsqui's ability to fish for salmon and other species. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish and fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Matsqui, the proponent would implement several mitigation measures to reduce potential effects to species important for Matsqui'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, 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.

Matsqui identified fishing sites in their TLRU study, three of which are within the proposed pipeline corridor. These sites include the Sumas watershed, streams throughout Matsqui Prairie, and the Fraser River.

Matsqui raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including streams throughout the Matsqui Prairie, and along the Fraser River from the mouth of the Stave River to the Mission Railway Bridge. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Matsqui's access to fishing activities. The Crown understands that if construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Matsqui community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on

specific locations and access to fishing sites important for Matsqui (Section 4.3.2 of this Report). With regards to specific concerns raised by Matsqui, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Matsqui's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Matsqui's traditional lands, as described in the Access Management Plan. The proponent committed to working with Matsqui to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Matsqui expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, as Matsqui heavily relies on the Fraser River as a source of social wellbeing, physical activity, cultural enrichment, and country food (especially salmon). As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Matsqui'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. NEB conditions, if the Project is approved, 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 Matsqui, Matsqui's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on Matsqui'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 Matsqui;
- Project-related pipeline and facility construction and routine maintenance activities within Matsqui's traditional territory are temporary and thus, likely to cause minor disruptions to Matsqui'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 Matsqui regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

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

As summarized in their TLRU, other traditional and cultural practices identified by Matsqui include trails/travelways, habitation sites, gathering places, and sacred areas. Historically, the Fraser River and its tributaries were major travelways for Matsqui. Community members also historically used trails and travelways throughout the Matsqui Prairie and continue to use trails/travelways in their traditional territory today. Matsqui identified historic and current use of habitation sites throughout their traditional territory including historic villages and settlements on Matsqui Island, the mouth of Matsqui

Creek, high plateau near Fishtrap Creek Park, and Bradner and Ross Roads near the Canada/United States border, among others. Community members continue their participation in a variety of regional, social, economic and political gatherings including potlatches, winter dance ceremonies, and masked dances. Ceremonies connect Matsqui with other Aboriginal groups from the lower Fraser region, Washington, and Coast Salish communities.

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 Matsqui, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Matsqui's traditional and cultural practices. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW finalization, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

Other traditional and cultural practices sites identified by Matsqui in their TLRU include 12 habitation sites and two sacred areas. Matsqui also identified a network of historic trails and travelways linking the Fraser River through Matsqui Prairie and gathering places throughout the lower Fraser River watershed downriver of Sawmill Creek. Within the proposed pipeline corridor, Matsqui identified one trail/travelway and four habitation sites including Matsqui Main Reserve no. 2, settlements along Sumas Lake and the Fraser River, as well as winter homes/settlements along Matsqui Creek/McLennan Creek. Matsqui identified an additional three habitation sites within 2 km of the proposed pipeline corridor. No gathering places or sacred areas were identified within the proposed pipeline corridor. In their TLRU, Matsqui identified several transformer sites on Sumas Mountain that are important to the Matsqui. Matsqui noted that near the east/west middle of the mountain, close to its northern end, is a small lake known as either Lost Lake or Chadsey Lake. According to oral traditions, this lake is the home of Thunderbirds who have a house on a rock in the water. To the south, closer to the Sumas Kilgard community, are caves and a stone known as Thunderbird Caves and Thunderbird Rock. Other trails/travelways, habitation sites, gathering places, and sacred areas were identified in the TLRU study although geographic locations were not provided for confidentiality purposes.

Project-related activities are expected to cause short-term disruptions that temporarily affect the ability of Aboriginal groups to access land, waters or resources for traditional purposes. The Crown understands that Matsqui'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 Matsqui'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 in providing traditional knowledge related to the location and construction of the Project.

Matsqui 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 social wellbeing and cultural enrichment. As described previously, the Crown understands that Project-related activities may result in temporary interruptions to Matsqui'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 Matsqui, Matsqui's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor impact on Matsqui'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 Matsqui's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Matsqui's traditional territory are temporary and thus, likely to cause minor disruptions to Matsqui 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 regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

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

Matsqui has authority over Matsqui reserve lands pursuant to the Framework Agreement on First Nation Land Management and the *First Nation Land Management Act*, (S.C. 1999, c. 24). Because of that authority, a proponent proposing a project on Matsqui reserve lands must complete an environmental assessment as a condition of gaining Matsqui's permission to use its reserve lands.

Matsqui is concerned that using land for pipeline activities adversely impacts Matsqui's claimed right to make and benefit from land use decisions. Matsqui believes that because of its strength of claim and the seriousness of the Project's impact, a decision to approve the Project without Matsqui's consent on its reserve lands and within its core traditional territory, would be an unjustified infringement of its title.

Matsqui raised other specific concerns related to the impacts of the Project on its Aboriginal title claims, including throughout the NEB and Crown consultation process:

- Impacts could impede or disrupt Matsqui's use of its asserted traditional territory;

- The reliance on country foods is critically important to Matsqui members' economic well-being; and
- Impact of an oil spill, particularly one that affects the Fraser River on which Matsqui heavily relies as a source of material wealth.

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. The Crown notes that Matsqui 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 Matsqui's asserted Aboriginal title to the proposed Project area.

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

Matsqui expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including the effects of a spill on Matsqui's ability to exercise their Aboriginal rights, harvest country foods, and to preserve the environment and culturally significant sites. They are also deeply concerned that a spill in the Fraser River could have a catastrophic impact on their ability to fish for salmon and other species on which Matsqui rely for their physical, spiritual, emotional, and cultural well-being.

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. A discussion of the potential impacts of an accidental 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 Matsqui's Aboriginal Interests and concerns raised by Matsqui during the NEB review and Crown consultation processes, a pipeline spill associated with the Project could result in minor to serious impacts on Matsqui'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>2</sup>

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

## **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 Matsqui's Aboriginal Interests would be up to minor-to-moderate.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Matsqui'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 Matsqui 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 Matsqui, 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 Matsqui in an attempt to offset potential impacts, should the Project proceed.