

Appendix C.15 – Shxw’ōwhámél First Nation

I - Background Information

Shxw’ōwhámél First Nation (Shxw’ōwhámél) is located along the banks of the Fraser River in southwestern British Columbia (BC), approximately 10 kilometers (km) west of Hope, BC.

Shxw’ōwhámél (pronounced “*Sh-wow-HA-mel*”) is part of the Stó:lō ethno-cultural group and is a party to the Stó:lō Nation *Writ of Summons* filed in the BC Supreme Court on December 9, 2003. Shxw’ōwhámél is a party to the Stó:lō First Nation Strategic Engagement Agreement with the Province of BC, signed in 2014, which identifies its asserted traditional territory.¹ Shxw’ōwhámél signed a revenue sharing agreement with the Province of BC in 2016, identifying its asserted traditional territory in the 2016 Forest Consultation and Revenue Sharing Agreement.²

As Stó:lō people, Shxw’ōwhámél have close cultural and spiritual connections with the Fraser River. This central role of the Fraser River is captured by the name Shxw’ōwhámél, which means “where the river widens” and is a direct reference to Shxw’ōwhámél’s traditional village sites that were located along the banks of the Fraser River where it widens after exiting the Fraser Canyon. The Fraser River is also an important year-round food source for Shxw’ōwhámél: members actively hunt, fish for salmon and other species, and gather berries and plants along its shoreline.

Shxw’ōwhámél’s traditional language is the Stó:lō language, Halq’eméylem.

There are 197 registered Shxw’ōwhámél members, of which 80 are living on reserve. Shxw’ōwhámél holds four reserves, two of which are located on the Fraser River just west of Hope (Ohamil No. 1, Wahleach Island No. 2). A third reserve is located further north on the Fraser River to the east of Yale, BC (Kuthlath No. 3). A final reserve is held in common with several other Stó:lō communities near Mission, BC on the north side of the Fraser River (Pekw’xe:yles).

As of spring 2016, the proponent advised they had a commercial agreement with Shxw’ōwhámél to construct the Project across their reserve lands (Ohamil No. 1). The proponent will be seeking Governor in Council authorization for *Indian Act* s.35 tenures if the proponent is granted rights to expropriate to allow for the expansion of the pipeline. The *Indian Act* tenure will require a Band Council Resolution requesting the tenure be issued. Additionally, the form of agreements and fair market compensation will be considered before the approval of the tenure. Shxw’ōwhámél has a Land Code in place; therefore, the proponent will negotiate the tenure under the code.

¹ http://www2.gov.bc.ca/assets/gov/zxxx-to-be-moved/9efbd86da302a0712e6559bdb2c7f9dd/9efbd86da302a0712e6559bdb2c7f9dd/agreements/sea_stolo_nations.pdf

² http://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/consulting-with-first-nations/agreements/shxwowhamel_fcrsa_executed_feb22_2016.pdf

The existing pipeline crosses Shxw'ōwhámél's Ohamil No. 1 reserve.

II - Preliminary Strength of Claim Assessment

- The Project right of way (RoW) is estimated to run through 195 km of Shxw'ōwhámél's asserted traditional territory – also delineated as the Stó:lō Nation writ area. Six facilities (i.e. Hope Station, Wahleach Station, Sumas Station, Sumas Terminal, Border Traps, and Westridge Marine Terminal) would be located within Shxw'ōwhámél's asserted traditional territory. Approximately 14.5 km of the marine shipping route is also within Shxw'ōwhámél's asserted traditional territory.
- The Project RoW would bisect Shxw'ōwhámél's main reserve, Ohamil No. 1, and runs approximately 1.1 km from Wahleach Island reserve.
- Shxw'ōwhámél is understood to be a modern descendant of the group ethnographically identified as the Tait. The Tait are one of several groups classified as Upper Sto:lo. Though similar language and customs appear to have been shared between the Upper Sto:lo groups, the Tait spoke a unique dialect. The Crown's preliminary assessment of the Tait's *prima facie* claim for rights over the area of the Project pipeline ranges from weak to strong. The portion that spans the asserted territory falls within the area ethnographers attributed to the historic Tait territory and would support a strong *prima facie* claim.³
- The Crown's preliminary assessment of the *prima facie* strength of claim for rights within the portion of the shipping route, including the Westridge Marine Terminal that falls within Shxw'ōwhámél's asserted traditional territory is weak. There is no information to indicate that ethnographers associated this area with Shxw'ōwhámél.
- The Crown's preliminary assessment of Tait's *prima facie* claim for title over the area from Agassiz up to Hope is considered moderate to strong, and the claim is strong for the portion of the Project in proximity to Hope. This is supported by the number of historic Tait village sites scattered from Popkum up through to Ruby Creek on towards Hope, including the historic site of *C'Kals*, a large village site where Hope is now located. The stretch northwest of Hope is considered to be moderate, an area likely utilized for resource gathering activities by those who occupied the Tait villages in and near Hope and northwards.⁴ The claim diminishes to a weak *prima facie* claim for title for the remaining portions of the Project falling within the Sto:lo writ boundary as ethnographers did not associate these areas with the Tait.

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 Shxw'ōwhámél's Aboriginal Interests, the Crown is of the view that the legal duty to consult Shxw'ōwhámél lies at the deeper end of the *Haida* consultation spectrum. Shxw'ōwhámél was placed on

³ Cascades Lower Canyon CFA: The Shxw'ōwhámél, Chawathil, Union Bar and Yale First Nations: A Preliminary Review of Ethnographic and Historical Sources; Stó:lō/Yale Territorial Overlaps: A Preliminary Review of Ethnographic and Historical Sources; Sto:lo First Nations: Traditional Territories of the "Upriver" Halkomelem or "Upper Sto:lo" – Review of Ethnographic and Historical Sources (Nov 18, 2013).

⁴ Ibid.

Schedule B of the section 11 order issued by the Environmental Assessment Office (EAO), which afforded Shxw'ówhámel opportunities to be consulted at a deeper level.

Shxw'ówhámel initially participated in the National Energy Board (NEB) review process as a member of the Stó:lō Collective, but sought late intervenor status independently on February 11, 2014. Shxw'ówhámel provided Oral Traditional Evidence, submitted several independently conducted biophysical, geological, and cultural studies as written evidence, and participated in various information request rounds including responding to the Major Projects Management Office's (MPMO) Issues Tracking Table Information Request ([A71246](#)).

Shxw'ówhámel signed a confidential Legacy Agreement on March 21, 2013 with the proponent, followed by a Mutual Benefits Agreement on November 24, 2015. Shxw'ówhámel withdrew from the hearing on December 17, 2015, and subsequently filed a regulatory support letter ([A74836](#)) for the Project on December 18, 2015. Shxw'ówhámel had previously stated that their permission and consent was required for projects on their traditional territory ([A74771](#)).

Shxw'ówhámel has also regularly consulted with the Crown outside of the formal NEB process. Shxw'ówhámel has sent several letters and emails to the Minister of Natural Resources and MPMO officials outlining concerns regarding the Crown's reliance on the NEB process to fulfill the legal duty to consult. Shxw'ówhámel, together with Peters Band, met with the Crown in Vancouver on March 3, 2016.

Shxw'ówhámel signed a contribution agreement with the NEB for \$45,000 in participant funding plus travel for one to attend the oral traditional evidence hearings. The MPMO offered Shxw'ówhámel \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Shxw'ówhámel an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Shxw'ówhámel signed contribution agreements with the MPMO in response to both of these offers, for a total of \$19,000 in allocated funding. Shxw'ówhámel was provided with \$5,000 in capacity funding by EAO on October 27, 2016.

The Crown provided a first draft of the Consultation and Accommodation Report (the Report) to Shxw'ówhámel for review and comment on August 17, 2016. The Crown received comments on the Report from Shxw'ówhámel on September 19, 2016. A second draft of this Report was provided to Aboriginal groups for review and comment on November 2, 2016 and Shxw'ówhámel provided comments on November 15, 2016. Shxw'ówhámel also provided a separate Aboriginal group submission to the Crown on November 18, 2016.

IV - Summary of Key Shxw'ówhámel Issues and Concerns Raised

This section offers a summary of the key issues raised by Shxw'ówhámel, 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 considers these issues and includes the Crown's views and conclusions.

The Crown has gained its understanding of Shxw'ówhámél's Aboriginal Interests and concerns through the community's intervention in the NEB hearing process and through direct engagement and consultation, which includes meeting in Vancouver on March 3, 2016. Shxw'ówhámél has provided a significant volume of information through the NEB hearing process that has been used by the Crown to track key issues and concerns, which was incorporated into an Issues Tracking Table, submitted to Shxw'ówhámél through an Information Request. Shxw'ówhámél responded to the Crown's Issues Tracking Table Information Request by further elaborating their concerns. In addition, the Crown has considered information regarding the proponent's engagement with Shxw'ówhámél, as described in the proponent's Aboriginal Engagement Report (July 2016). The Crown's understanding of Shxw'ówhámél's key Project-related issues and concerns is summarized below.

Methodology, Process and Consultation

Shxw'ówhámél has expressed concerns related to the NEB process, including its limited scope. Shxw'ówhámél has stated on several occasions that the NEB, as a quasi-judicial process, is not an appropriate means for the Crown to discharge its legal duty to consult. Furthermore, Shxw'ówhámél asserts that First Nations were not consulted on the structure of the NEB process and drew attention to what they consider a double-standard that exists without cross-examination being permitted of the applicant during the review. Shxw'ówhámél has suggested that this, in part, points to the lack of a relationship between their community and the NEB.

During their meeting with the Crown in March 2016, Shxw'ówhámél claimed there had been a lack of meaningful Crown consultation to-date. Similarly, they have noted on several occasions that their input has not been sought on the development of a "mutually determined consultation process," nor its elements. In reviewing the draft version of this Report, Shxw'ówhámél reiterated the position that consultation has not yet occurred and that the Crown failed to consult Shxw'ówhámél about the framework for the Project's review process. Therefore, Shxw'ówhámél states the environmental assessment completed by the NEB does not fully provide the Crown with the information it requires on the potential adverse impacts on Shxw'ówhámél's Aboriginal Interests.

Shxw'ówhámél has also expressed the view that the NEB's reliance on the proponent's field work for the environmental assessment process is problematic, stating that if there is not an independent process, the process is inherently flawed. Shxw'ówhámél has noted this leaves room for the proponent to be able to tamper with evidence; accordingly, Shxw'ówhámél is concerned that certain information has been deliberately left out of the evidence filed on the Project. Shxw'ówhámél suggested First Nations and governments should conduct independent environmental assessments. Shxw'ówhámél has also stated they have concerns with the level of consultation undertaken by the proponent.

During their meeting with the Crown, Shxw'ówhámél stated that there is a need to reconsider consultation procedure, policy and mandate. Shxw'ówhámél discussed their interest in developing a Nation-to-Nation agreement that supports a separate consultation process outside of the NEB process. Shxw'ówhámél envisions this agreement including measures for: environmental protection; effects of

the existing pipeline (historical and ongoing); participation in environmental monitoring and emergency response planning; and resource revenue sharing.

Shxw'ówhámél has also noted that the amount of funding for participation is inadequate in light of the resources needed to meaningfully participate in the review and consultation processes. They go on to add that the timing of funding decisions further constrains their ability to participate. Shxw'ówhámél has stated that procedures related to participant funding (e.g. application and reporting requirements) are excessive considering the amounts allocated. Shxw'ówhámél has suggested that in order for Aboriginal groups to participate fully in the NEB process, adequate funding for consultations need to be provided in advance of Aboriginal groups incurring costs.

Shxw'ówhámél disagrees with the Crown's potential impacts assessments of the Project on Shxw'ówhámél's Aboriginal Interests. Shxw'ówhámél expressed specific concerns in their letter dated November 15, 2016, including the following:

- Impacts on Hunting, Trapping and Plant Gathering;
- Impacts on Freshwater Fishing;
- Impacts on Other Traditional and Cultural Practices; and
- Impacts on Aboriginal Title.

Cumulative Effects

Shxw'ówhámél expressed concern regarding the contribution of the Project to the pre-existing negative cumulative effects that Shxw'ówhámél has experienced due to prior industrial and commercial development. Submissions to the NEB and MPMO from Shxw'ówhámél indicate their view that the 1858 Gold Rush, the construction of the Canadian National Railway, the Trans-Canada highway, the original Trans Mountain Pipeline in 1953, the wide expanse of Highway # 1, and numerous road, train and pipeline projects have had negative cumulative effects by taking more land than was needed and blocking community members' access to the south side of their reserve. During their meeting with the Crown, Shxw'ówhámél discussed the potential impacts of the existing pipeline aging in-ground and its abandonment, particularly on their water supply.

Economic Impacts

Shxw'ówhámél expressed interest in exploring opportunities for training and employment contracts to develop transferable skills and employment capacity within the community. Shxw'ówhámél stated, however, that any development project on their traditional territory must be of sufficient benefit to community members and future generations to warrant construction, not solely in terms of economic opportunities, but also as it relates to the environment, culture, resources, and other factors. Shxw'ówhámél discussed their economic and subsistence interest in hunting and fishing activities, and harvest of wild mushrooms, boxwood and mosses for commercial sale in relation to the potential impacts arising from the Project. Shxw'ówhámél also noted the potential interference of the Project on future economic development opportunities on their reserve land as a result of impacts to the environment.

Environmental Impacts

Shxw'ōwhámel raised concerns regarding the potential impact of the Project on the Fraser River and its fish, particularly salmonids, which are an important source of income and cultural fulfillment.

Shxw'ōwhámel also drew attention to the impact of the Project on: riparian areas and wetlands; wildlife and their habitat (including red-tailed hawks, eagles, owls, bear, moose, deer, goat, ducks, plants and berries); and the groundwater and drinking water of Hunter, Lorenzetta and Jones Creeks.

Cultural and Social Impacts

Shxw'ōwhámel has repeatedly expressed concern regarding the potential for damage or destruction of culturally important pithouses, ceremonial and other archaeological sites within the proposed pipeline corridor and within 2km of this area. In their response to the MPMO's Information Request, Shxw'ōwhámel claims that these sites are "integrated with the contemporary cultural fabric of the Shxw'ōwhámel people." Shxw'ōwhámel has requested that at all stages of the Project, the proponent should be "conducting [its] work with appropriate oversight from Shxw'ōwhámel, [allowing for their] participation in the development of a plan to protect traditional territory, including sacred sites." In Shxw'ōwhámel's review of the draft Consultation and Accommodation Report they noted the proponent adjusted the proposed RoW alignment to avoid the pithouses and archeological sites identified by Shxw'ōwhámel. Shxw'ōwhámel has stated: "[they] expect that efforts consistent with this proposal will be made to ensure that damage or destruction of culturally important pithouses and archaeological sites does not occur."

Shxw'ōwhámel has also stated that increased development could sever their ties to the land, resulting in a lost ability to transfer traditional knowledge across generations.

Impacts on Aboriginal Rights

Shxw'ōwhámel claims Aboriginal rights and title throughout their territory. Shxw'ōwhámel provided traditional land use data to the proponent, which identified a number of important current traditional locations proximal to the existing and proposed RoW, including: trails and travelways, habitation sites, plant gathering, hunting, fishing, trapping, gathering places, and sacred areas. Shxw'ōwhámel noted on several occasions that the pipeline corridor will cross their traditional territory, two of their reserves, and their primary drinking water aquifer. Shxw'ōwhámel has raised the issue of affected access to traditional fishing sites and travel corridors during construction, leading to a loss of fish harvest.

Marine Impacts

Shxw'ōwhámel expressed concern regarding the impacts of the Project on Aboriginal rights and title, culture, the environment, and the community economy arising from the Westridge Marine Terminal expansion, increased marine traffic and a potential oil spill in Burrard Inlet or elsewhere along the marine shipping route.

Health and Human Safety

Shxw'ōwhámel suggested that construction may cause unsafe conditions due to heavy traffic flow. Moreover, members may be displaced due to air and noise pollution and the influx of outsiders in the

community. Construction may also lead to adverse effects on marine and terrestrial resources (for example the effects on fish sourced for consumption), travel routes, the exercise of Aboriginal rights, and impacts to title lands.

Project Construction Phase

Shxw'ōwhámel drew attention to issues that could occur during construction including: displacement of wildlife, water pollution, disturbance of plants (including medicinal plants), and impact on fish movement. Shxw'ōwhámel also identified concern regarding construction and RoW clearing leading to a loss of critical waterways and travel routes, and potentially destroying important historic pithouses and other archaeological and sacred sites. The impacts to these sites could be sustained throughout all phases of the Project and adversely impact the Shxw'ōwhámel community, culture and well-being.

Shxw'ōwhámel also noted the Project could cause access restrictions to the south side of their reserve.

Accidents and Malfunctions (Marine and Terrestrial)

Shxw'ōwhámel underscored the potentially devastating impacts of a spill on: the waters in their traditional territory, including surface water, groundwater, drinking water supply, and rivers, Kawkawa Lake, and the ecosystems within these waters. They also note the potential adverse effects of the Project on potential socio-economic and commercial interests as well as their ability to hunt, fish (particularly sturgeon), gather, use traditional waterways, and practice cultural ceremonies. Shxw'ōwhámel has drawn particular attention to their groundwater aquifer, which they state is classified as highly vulnerable to a pipeline leak.

Shxw'ōwhámel has raised the impacts of a natural disaster, such as landslides, seismic activity or flooding, on the pipeline. Additionally, Shxw'ōwhámel is concerned the proponent has not sufficiently studied the outcomes of a spill in fresh water or sediment-laden waters, and that their *Groundwater Report* does not adequately capture damage in the event of a spill. Shxw'ōwhámel has expressed concern with the proponent's ability to respond to a spill in a timely manner and the amount of time needed to evacuate residents.

Recognition of Economic Rights

Shxw'ōwhámel maintains their right to resource revenue sharing is based on their underlying title to their lands. Shxw'ōwhámel has stated that in the *Tsilhqot'in* decision, "the Supreme Court of Canada recognized that Aboriginal Title holders have the right... 'to enjoy [the land's] economic fruits.'"

Pipeline Integrity

In reviewing the draft version of this Report, Shxw'ōwhámel stated that proponents should assess pipeline integrity throughout a project's lifecycle. Additionally, in the case of Trans Mountain, Shxw'ōwhámel stated the proponent should identify measures for the abandonment of both the existing and new pipeline. Shxw'ōwhámel noted they have not yet been made aware of a detailed decommissioning plan for the pipelines. Shxw'ōwhámel expressed their concerns about the impacts of the decaying pipeline components should it be left in the ground post-operation.

Accommodation Proposals

Shxw'ōwhámel has proposed several accommodations based on outstanding issues, listed as follows:

- The negotiation of an agreement between the Crown and Shxw'ōwhámel for joint decision-making and Project oversight, consistent with the Nation-to-Nation commitment and the United Nations Declaration on the Rights of Indigenous People (UNDRIP), including funding for engagement and negotiations;
- Sufficient funding for consultation provided in advance of Shxw'ōwhámel incurring costs for consultation on the Project moving forward;
- Involvement in abandonment planning for both the existing and new pipeline;
- The recognition of Shxw'ōwhámel's right to resource revenue sharing, based on their underlying title to their lands;
- A requirement that the proponent post an environmental bond or security in a form and amount that is acceptable to Shxw'ōwhámel;
- An appropriate oversight role in the development of a plan to protect Shxw'ōwhámel's traditional territory, including culturally important pithouses and other archeological sites;
- An enhanced role for Shxw'ōwhámel in the review and approval of environmental management and protection plans, emergency response plans, and monitoring (including over wetlands, water quality, fish and fish habitat, wildlife and post construction reclamation) during construction and operations stages, and at abandonment; and
- Compensation in order to offset the impacts of the Project, as well as compensation for the past 60 years, during which the existing pipeline has presented obstacles to land use.

On July 22, 2016, the MPMO replied to correspondence received from Shxw'ōwhámel and Peters Band expressing interest in receiving a draft protocol and budget to showcase the type of Nation-to-Nation agreement Shxw'ōwhámel and Peters Band were seeking. To date, the Crown has not received any further correspondence on the matter, nor did Shxw'ōwhámel (or Peters Band) respond to the Crown's invitation to arrange a second consultation meeting in fall 2016.

Shxw'ōwhámel expressed interest in receiving further information regarding the proposed Indigenous Advisory and Monitoring Committee. Although Shxw'ōwhámel understands that this proposal is still under development, Shxw'ōwhámel would like to provide input and requested updates when available. Shxw'ōwhámel has consistently requested a role beyond merely providing advice, seeking to be actively involved in environmental decision-making on their lands.

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 Shxw'ōwhámel that the Crown has not responded to directly via letter will be otherwise actively considered by decision-makers weighting Project costs and benefits with the impacts on Aboriginal Interests.

Shxw'ówhámél's Response to NEB Recommendation Report

No specific comments were received from Shxw'ówhámél on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Shxw'ówhámél'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), by individual members or families.

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

Shxw'ówhámél completed a traditional land use (TLU) study in 2015 titled, *Traditional Use and Occupancy Study and Cumulative Effects Assessment* ([A4Q1A4](#), [A4Q1A5](#), [A4Q1A6](#)). The report included identification of traditional land uses in the segment of the proposed pipeline from Hope to Burnaby. Further, a *Cultural Heritage Impact Assessment* was prepared by the Stó:lō Research and Resource Management Centre ([A4Q1A3](#)). Traditional land uses identified by Shxw'ówhámél include hunting, gathering plants, information on fishing sites, sacred sites, trapping sites, habitation sites, gathering areas for community members, and trails and travelways. Shxw'ówhámél's TLU information is summarized in the Project Application ([A4S717](#)). Where available, the proponent estimated approximate distances and directions of geographic locations from the proposed pipeline corridor.

Shxw'ówhámél has not provided information to the Crown indicating traditional uses in the marine environment in the vicinity of the Westridge Marine Terminal or the portion of the marine shipping route that overlaps with Shxw'ówhámél's asserted traditional territory, or otherwise identified any potential impacts on its Aboriginal Interests arising from these components of the Project. As a result, the Crown has focused its assessment of impacts on impacts on Shxw'ówhámél's Aboriginal Interests arising from the pipeline.

Impacts on Hunting, Trapping and Plant Gathering

As laid out in their TLU information, Shxw'ówhámel believes that hunting preserves community, cultural identity, ancestry, family, health and spiritual well-being in addition to supporting a traditional lifestyle. Shxw'ówhámel community members hunt deer, ducks, elk, grouse, black bear, goose, mountain goat and rabbit in the proposed pipeline corridor. Trapped species includes beaver, fox, squirrel, marten, mink and weasel. Elders encourage community members to pursue traditional plant gathering activities (e.g., harvesting of medicinal plants and different types of wood, mushrooms, and mosses) not only for economic and sustenance purposes, but also to maintain community bonding and well-being. Harvested plants include salmon berries, thimble berries, Saskatoon berries, trailing black berries, goose berries, sweet blue huckleberries, blueberries, swamp potato, wild potato, bracken fern, hazelnuts, wild crab apples, Yéla, devil's club, cascade, dandelions, licorice root, cascara bark, cedar, birch bark, boxwood, spruce root, acorn, wild rhubarb, blackcaps, briars, mushrooms, frog leaf, mosses, and Barbie bark. The buds, boughs and wood of cedar are also harvested throughout the year and used for ceremonial purposes.

Shxw'ówhámel identified concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities. These concerns include the cumulative and immediate impacts of construction, operations, and a potential spill on wetlands and riparian areas, wildlife and their habitat, hunting and trapping activities, harvesting of plants and fungi in Shxw'ówhámel's asserted traditional territory. Shxw'ówhámel has also raised concerns with the environmental effects of the existing Trans Mountain pipeline aging in situ. 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 wildlife and wildlife habitat (including species at risk) listed species. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering (Section 4.3.1 of this Report). With regards to specific concerns raised by Shxw'ówhámel, the proponent would implement several mitigation measures to reduce potential effects to species important for Shxw'ówhámel'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 and the Wildlife Management Plans.

During the TLU, Shxw'ówhámel identified 21 hunting sites within 500 meters (m) of the proposed pipeline corridor. Only one site-specific hunting site (black bear) was identified in the proposed pipeline corridor due to substantial clustering and overlapping of sites on TLU maps, and lack of qualitative descriptions. Four trapping sites located within 500 m of the proposed pipeline corridor were identified by Shxw'ówhámel during the TLU, of which only two site-specific locations are provided due to substantial clustering and overlapping of sites on TLU maps, and lack of qualitative descriptions. One trapping site is located within the proposed pipeline corridor, and one trapping site is located

approximately 1.2 km northwest of the proposed pipeline corridor. During the TLU, Shxw'ówhámél identified 170 plant gathering sites within 500 m of the proposed pipeline corridor, of which 43 plant gathering sites are located within the proposed pipeline corridor. Due to substantial clustering and overlapping of sites on TLU maps, and lack of qualitative descriptions, only three site-specific locations of plant gathering sites could be determined. One site at Coquihalla Summit is located within the proposed pipeline corridor, and two sites at Cheam Mountain and Skagit Mountain region are approximately 3 km and 7.8 km, respectively, from the proposed pipeline corridor.

Shxw'ówhámél raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including restricted access resulting from cumulative development and effects on riparian areas and wetlands, groundwater, and drinking water of Hunter, Lorenzetta, and Jones Creeks. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Shxw'ówhámél's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint. The Crown understands that with construction and reclamation activities, disruptions to access may result in reduced harvesting opportunities for Shxw'ówhámél. 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 Shxw'ówhámél, the proponent would implement several mitigation measures to reduce potential effects on traditional use sites important for Shxw'ówhámél'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 Shxw'ówhámél'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 Shxw'ówhámél prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with Shxw'ówhámél to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Shxw'ówhámél expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including severing their ties to the land and a lost ability to transfer traditional knowledge across generations due to cumulative and immediate impacts of construction, operations, and a potential spill. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Shxw'ówhámél'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, NEB conditions would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report). With regards to specific concerns raised by Shxw'ówhámel, the proponent would implement several mitigation measures to reduce potential effects on Shxw'ówhámel's hunting, trapping, and plant gathering activities. The proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups regarding the integration of traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Shxw'ówhámel, Shxw'ówhámel'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 Shxw'ówhámel'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 Shxw'ówhámel;
- Project-related pipeline and facility construction and routine maintenance activities within Shxw'ówhámel's traditional territory are temporary and thus, likely to cause minor disruptions to Shxw'ówhámel'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 Shxw'ówhámel regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

According to their TLU information, Shxw'ówhámel have always held residence near the Fraser River and its tributaries, using the Fraser River for subsistence, trade and cultural purposes. Salmon is the most abundant fish species in the Fraser River, and is considered highly important both culturally and

spiritually. Fished species include, but are not limited to, eulachon, grayling, salmon, sturgeon, and trout.

Shxw'ōwhámel identified many concerns related to environmental effects of the Project on fishing activities, in particular increased cumulative and immediate effects of disturbances that the new pipeline could have on water and important fish species, such as salmon and sturgeon. 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 Shxw'ōwhámel, the proponent would implement several mitigation measures to reduce potential effects to species important for Shxw'ōwhámel'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.

During the TLU, Shxw'ōwhámel identified 124 fishing sites located within 500 m of the proposed pipeline corridor, of which eight fishing sites are located within the proposed pipeline corridor. Due to substantial clustering and overlapping of sites on TLU maps, and lack of qualitative descriptions, site-specific locations of these eight fishing sites could not be determined.

Shxw'ōwhámel raised concerns with the Project's potential impacts relating to specific locations and access to fishing and harvesting activities, including affected access to traditional fishing sites and travel corridors during construction, leading to a loss of fish harvest. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Shxw'ōwhámel'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 Shxw'ōwhámel's community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. If the Project is approved, NEB conditions would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for Shxw'ōwhámel (Section 4.3.2 of this Report). With regards to specific concerns raised by Shxw'ōwhámel, the proponent would implement several mitigation measures to reduce potential effects on fishing sites important for Shxw'ōwhámel's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Shxw'ōwhámel's traditional lands, as described in the Access Management Plan. The proponent committed to working with Shxw'ōwhámel to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Shxw'ówhámél expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of their fishing activities, including impacts on Aboriginal rights, culture, language and traditions, and the transfer of these practices and knowledge across generations. As described previously, Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Shxw'ówhámél's fishing activities. The Crown understands that this temporary interruption could mean that community members alter their fishing activities during construction of the Project, which could affect their participation in the traditional activity. If the Project is approved, NEB conditions would either directly or indirectly reduce the potential 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 Shxw'ówhámél, Shxw'ówhámél'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 Shxw'ówhámél'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 Shxw'ówhámél;
- Project-related pipeline and facility construction and routine maintenance activities within Shxw'ówhámél's traditional territory are temporary and thus, likely to cause minor disruptions to Shxw'ówhámél'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 Shxw'ówhámél regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

As described in their TLU information, many historic trails, once used by Shxw'ówhámél ancestors, are now part of the currently used trail systems. Community members have reported that travelways give reprieve from the noise and congestion of highway traffic, act as a passage to traditional activities such as bathing, fasting, fishing, hunting, trapping, plant harvesting, and maintain communal connectivity. Gathering for potlatches, naming ceremonies, wakes and other Big House ceremonies are an integral part of Shxw'ówhámél life and culture. Sacred areas are places used by Shxw'ówhámél community members to practice spiritual and sacred activities such as praying, fasting, bathing and singing. Community members rely on the availability of natural resources such as cedar buds, roots, boughs, cedar poles and bark, fur and feathers at these sacred areas.

During the TLU, Shxw'ówhámél identified 45 travel routes, 43 habitation sites, 17 gathering places, and 73 sacred areas within 500 m of the proposed pipeline corridor, of which 23 trails and travelways, one habitation site (cabin), three gathering places, and 14 sacred areas are located within the proposed pipeline corridor. Site specific locations could not be determined for many of the sites due to substantial

clustering and overlapping of sites on TLU maps, and lack of qualitative descriptions. One trail system through the Chilliwack River watershed and Bridal Falls region is within the proposed pipeline corridor, and the trail systems in and around the Fraser River are located approximate 100 m from the proposed pipeline corridor. The trail systems in the Cheam Mountain and Sumas Lake region are 3 km and 5 km, respectively, from the proposed pipeline corridor. The 43 habitation sites within 500 m of the proposed pipeline corridor are primarily overnight tent sites where community members gather to hunt, fish, and trap, and harvest plants and other materials for traditional purposes. Important sacred areas include the burial sites at Ohamil No. 1, and Kawkawa Lake, located approximately 200 m north of the proposed pipeline corridor.

Shxw'ōwhámel identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including damage or destruction to culturally important pithouses, and other ceremonial and archaeological sites within the proposed pipeline corridor. Shxw'ōwhámel also raised concerns about the impacts of a potential spill on the waters off their traditional territory and their ability to practice cultural ceremonies. 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 Shxw'ōwhámel, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Shxw'ōwhámel'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 finalisation, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

Shxw'ōwhámel raised concerns with the Project's potential impacts on access to traditional fishing sites and travel corridors during construction, leading to a loss of fish harvest. 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 Shxw'ōwhámel'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 Shxw'ōwhámel's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific sites and access to physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown notes the proponent's commitment to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

Shxw'ówhámel 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: the risk that increased development could have on the land, resulting in a reduced ability to transfer traditional knowledge across generations; and the potential impacts of the Project on salmonids, which are an important source of cultural fulfillment. As described previously, the Crown understands that Project-related activities may result in temporary interruptions to Shxw'ówhámel'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 Shxw'ówhámel, Shxw'ówhámel'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 Shxw'ówhámel'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 Shxw'ówhámel's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Shxw'ówhámel's traditional territory are temporary and thus, likely to cause minor disruptions to Shxw'ówhámel's community members accessing traditional and cultural practice sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Shxw'ówhámel regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

The Crown has actively consulted with Shxw'ówhámel throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Shxw'ówhámel throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Shxw'ówhámel's use of its asserted traditional territory, including access restrictions to the south side of Shxw'ówhámel's reserve and potential impacts in the event of a spill;
- Recognition of Shxw'ówhámel's right to resource revenue sharing, based on their underlying title to their lands; and
- Project-related activities that affect Shxw'ówhámel's economic development aspirations for its asserted 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 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 Shxw'ówhámél 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 Shxw'ówhámél's asserted Aboriginal title to the proposed Project area.

Impacts Associated with Accidental Pipeline Spills

Shxw'ówhámél expressed concerns regarding the direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the effects of a potential spill on:

- Waters in their traditional territory, including surface water, groundwater, drinking water supply, and rivers, Kawkawa Lake, and the ecosystems within these waters where Shxw'ówhámél members exercise Aboriginal rights;
- Members' ability to harvest cultural keystone species, including salmonids, sturgeon, and culturally significant wildlife and plants;
- Fish, wildlife, and vegetation;
- Members' access to resources and use of traditional travelways;
- Members' ability to practice cultural traditions and transfer traditional knowledge; and
- Potential socio-economic and cultural interests.

Arising from concerns about pipeline spills, Shxw'ówhámél has stated proponents should assess pipeline integrity throughout a project's lifecycle. Additionally, in the case of Trans Mountain, Shxw'ówhámél has stated the proponent should identify measures for the abandonment of both the existing and new pipeline.

The Crown also understands Shxw'ówhámél's concerns regarding spills, and the potential for a spill to impact Shxw'ówhámél's use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Shxw'ówhámél has for its territory. A discussion of the potential impacts of a pipeline spill on Aboriginal Interests is provided in Section 4.3.6 of this Report.

In consideration of this information and analysis, as well as information available to the Crown on Shxw'ówhámél's Aboriginal Interests and concerns raised by Shxw'ówhámél during the NEB process and

Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Shxw'ówhámél's Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.⁵

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 Shxw'ówhámél First Nation'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 Shxw'ówhámél First Nation'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 Shxw'ówhámél First Nation 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 Shxw'ówhámél 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 Shxw'ówhámél First Nation in an attempt to offset potential impacts, should the Project proceed.

⁵ Trans Mountain Final Argument, p. 85 and 207