

Appendix C.4 – Squamish Nation

I - Background Information

The Squamish Nation (Squamish) is a Coast Salish First Nation located on the southwestern coast of British Columbia (BC) near Vancouver Island, Gibson's Landing, and the Squamish River watershed. Squamish's traditional territory extends from the Lower Mainland to Howe Sound and the Squamish Valley watershed. Squamish has stated that they rely on their asserted traditional territory to support their way of life and for the meaningful exercise of their Aboriginal rights.

Squamish has 24 reserves and 4,163 registered members, 60% of whom live on reserve. Their main reserves are near the town of Squamish, BC and around the mouths of the Capilano River, Mosquito Creek, and Seymour River and on the north shore of Burrard Inlet in North Vancouver. The ancestral language of the Squamish People is the Squamish language, *Skwxwú7mesh Sníchim*. The language is considered nearly extinct today.

The Squamish filed a protective *Writ of Summons* in the BC Supreme Court on December 10, 2003, asserting Aboriginal title on behalf of the Squamish Indian People to a territory identified in the writ. Squamish also filed a Statement of Intent to negotiate a treaty, which was accepted by the British Columbia Treaty Commission in December 1993. Presently, Squamish is in the third stage of the treaty process, which is the negotiation of a framework agreement.

II - Preliminary Strength of Claim Assessment

- The components of the Project which intersect with Squamish's identified traditional territory include approximately 15 kilometres (km) of the pipeline routing, the Burnaby Terminal and Westridge Marine Terminal (WMT), as well as the marine shipping activities. It is estimated that 35 km of the marine shipping route would pass within the southern portion of Squamish's identified traditional territory.
- The Crown's preliminary assessment of Squamish's claim for Aboriginal rights over the area which spans the terminus located at the Burnaby holding facility to the Fraser River is assessed as ranging from a weak to moderate *prima facie* Aboriginal rights claim. The claim appears strongest (i.e. moderate) at the terminus of the pipeline in Burnaby, and diminishes as the pipeline travels inland and towards the Fraser River¹.
- The Crown's preliminary assessment is that Squamish has a weak *prima facie* claim to Aboriginal title over the portion of the Project that spans the terminus in Burnaby to the Fraser River².
- The Crown's preliminary assessment of Squamish's *prima facie* claim for Aboriginal rights to harvest marine resources within the marine shipping corridor of the Project that spans from the terminus of the pipeline in Burnaby to the portion of the Strait of Georgia that is proximal to the South Arm of the Fraser River is assessed as ranging from moderate to weak. Areas of moderate

¹ Squamish First Nation: Review of Anthropological and Historical Sources (revised December 2010).

² Ibid.

prima facie claims include the portion of the shipping route that is proximal to the western shore of Point Grey and includes areas along the shipping route within the western section of Burrard Inlet, an area that ethnographers consider to fall within the secondary territory for the Squamish and where there is evidence to support historic use of the area for seasonal camping and resource gathering.

- The Crown's preliminary assessment of Squamish's *prima facie* claim for Aboriginal title over the upland areas that roughly parallel the marine shipping corridor of the Project ranges from weak to weak-to-moderate. Squamish's core territory is identified as Howe Sound and the Squamish River watershed. Ethnographers consider Point Atkinson as the boundary of Squamish core territory. Squamish movement into Burrard Inlet east of the Lion's Gate Bridge on a more permanent basis probably occurred in the 1860s, following the opening of the saw mills and associated employment. The stronger claims may occur in western Burrard Inlet, given its relative proximity to areas of known Squamish habitation in 1846 in Howe Sound, and increasing year round use of this area in the mid-1800s.

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

Squamish was an active participant in the National Energy Board (NEB) hearings, contributing significantly to the NEB review of the Project as an intervenor. Squamish submitted written evidence, including a final written argument ([A4X5E7](#)) and oral traditional evidence, including an oral summary argument, with the NEB describing their asserted rights, customary law, and concerns regarding the Project. Squamish provided responses to information requests ([A4R4D7](#)) and has filed multiple rounds of information requests and responses to information requests by other intervenors including the Government of Canada.

Squamish has been, and remains, actively engaged with the Crown with respect to Project review and the consultation process. Squamish has submitted detailed correspondences with the Crown (including Ministers). The Crown exchanged numerous pieces of correspondence with Squamish regarding the Crown's proposed approach to consultation on the Project, and met with Squamish officials on September 11, 2015, November 27, 2015, and on October 18, 2016.

Squamish Chief Ian Campbell met with the Minister of Natural Resources on February 8, 2016, June 7, 2016, and July 5, 2016.

In exchanges with the Crown, including with the Minister of Natural Resources directly, Squamish has communicated that it is opposed to the Project.

Squamish has filed an application for Judicial Review of the *NEB Recommendation Report* for the Project in the Federal Court of Appeal.

Squamish was awarded \$44,270 including travel for 1 to hearing from the NEB to support participation in the NEB process. The Major Projects Management Office (MPMO) offered Squamish \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Squamish an additional \$14,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Squamish signed contribution agreements with the MPMO in response to both of these offers, for a total of \$26,000 in allocated funding.

On October 19, 2016 EAO offered Squamish \$5,000 in capacity funding to participate in consultation with the Crown.

The Crown provided a first draft of this Consultation and Accommodation Report (the Report) to Squamish for review and comment on August 17, 2016. Squamish provided comments on the draft Report to the Crown on September 19, 2016.

In comments provided to the Crown, Squamish indicated that they believe the draft Report only offers general conclusions and did not provide an adequate assessment of the Project's impacts on Squamish. It was further proposed by Squamish that a protocol between the Crown and Squamish is a practicable step towards the development of a Report which is acceptable to Squamish. 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 3, 2016. The Crown has not received comments from Squamish on the second draft.

Squamish provided a separate Aboriginal group submission to the Crown on November 17, 2016, which included comments on Provincial conditions.

IV - Summary of Key Squamish Issues and Concerns Raised

The Crown has gained its understanding of Squamish's issues and concerns through the NEB hearing process, and through correspondences and meetings with the Crown consultation team. In addition, the Crown has considered information regarding the proponent's engagement with Squamish, as described in the proponent's Aboriginal Engagement Report (July 2016).

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

Review Process and Methodology

Squamish has stated that the NEB process was fundamentally flawed. Squamish identified several concerns related to the NEB and Crown consultation processes, including: (i) Crown's duty to consult; (ii) reliance on the NEB process; (iii) Crown's failure to consult; (iv) inadequate or not yet provided Participant Funding Program (PFP) funding for full participation in the NEB process; (v) quasi-judicial process is not an adequate means to consider Aboriginal rights and interests due to insufficient information to review impacts NEB's ability to draw conclusions on potential Project impacts on Aboriginal Interests; (vi) procedural fairness questioned given the lack of cross-examination opportunities on evidence given and 'inadequate' proponent responses; (vii) no timeline extensions, inadequate time to respond; and (viii) inability to provide Oral Traditional Evidence commentary on new route.

In the Final Argument submitted to the NEB, Squamish indicated that the NEB's quasi-judicial process is adversarial and viewed as contrary to the purpose of consultation and reconciliation. Squamish indicated that their participation in the NEB process was further restricted by short timelines for reviewing large volumes of information, and responses to Squamish's information requests were incomplete and delayed. In addition, Squamish stated that they were not engaged on a "government to government" basis during the NEB process and that the NEB did not recognize Squamish's manner of managing its lands and waters or any of Squamish's cultural values.

In a letter sent to the EAO on May 24, 2016, Squamish identified issues and concerns with the consultation process including the failure of the Province to consult Squamish on the EAO-NEB Environmental Equivalency Agreement for the Project, and Squamish's disagreement with the reliance of the Province on the NEB report as the provincial assessment report.

In a letter to the Crown on September 19, 2016, Squamish raised concerns with the Crown's use of biophysical indicators as a proxy for impacts on Aboriginal rights, expressed a desire for a Squamish specific consultation process, an assessment of the nature and scope of Squamish's rights and title potentially impacted by the Project, studies examining how exactly Squamish's rights and title would be impacted by a variety of spill scenarios, information about the fate and behaviour of diluted bitumen and the risks to Squamish's rights and title, an assessment of alternative marine terminal locations, an assessment of the Westridge Marine Terminal expansion and its impacts on Squamish's rights and title, a comprehensive risk assessment of the Project, and an assessment of the seismic risks to the Project. Squamish stated that unless these requests are fulfilled they do not have enough information to fully understand how the Project will impact their rights and title, and therefore are unable to discuss appropriate accommodation proposals.

In meetings with the federal Crown on September 11, 2015 and November 27, 2015, and in a meeting with the joint Crowns on October 18, 2016, Squamish expressed a desire to engage in a Squamish specific Project review and consultation process. During the 2015 meetings, Squamish suggested that the Project could be reviewed using a similar process to the one Squamish undertook when reviewing the Woodfibre LNG project.

Cultural, Social, and Spiritual Impacts

Squamish stated that the whole of Squamish's traditional territory is of cultural and spiritual importance to Squamish. Water is of particular spiritual and cultural importance to Squamish, and plays a vital role in spiritual stories and cultural practices: "water is sacred, it is life giving, it has a spirit" ([A4X5E7](#)). Squamish is critically concerned about the significant impacts of the Project on their territory, including the people, land, resources, sites and waters throughout that territory, and would like to see it protected. Squamish stated that it does not have the capacity to do an inventory of all the cultural and spiritual places potentially impacted by the Project, or of all the potential impacts of the Project generally. Squamish stated that without such an assessment having been undertaken, the extent of the impacts on Squamish culture and society cannot be fully understood at this time.

Squamish also has concerns that the Project has the potential to interrupt traditional land and resource use activities, particularly in regards to access to and movement through sacred waters (including wetlands and underground aquifers) in their traditional territory, and salmon and seafood harvesting activities. The following areas within Squamish's asserted traditional territory were noted as being of particular concern: Xépxpayay (East Vancouver), Skwachýs region that connects to Temtemíxwtn (waterbody), Howe Sound, Burrard Inlet, Deer Lake, Burnaby Lake, and Buntzen Lake.

Squamish believes that Burnaby and Deer Lake connect to Buntzen Lake, which they believe connects to the spirit realm through underground aquifers. In response to the Crown's Information Request, Squamish clarified: "The issue as expressed encapsulates a concern of Squamish about the interconnectedness of the waterways within Squamish territory from an environmental perspective and a spiritual perspective and the impacts of the Project on those waterways. However, the issue as expressed does not encapsulate the breadth of Squamish's concern about the impacts of the Project on these waterways, particularly of a spill associated with the Project, or on the cultural and spiritual practices and harvesting practices of Squamish generally. Squamish is greatly concerned about the impacts of the Project, including any accidents or malfunctions associated with the Project, on the waterways and marine environment within Squamish territory" ([A71223](#)).

Squamish is also concerned about loss of access to Squamish territory (e.g., ancestral village sites in Howe Sound, burial grounds on Keats Island) and navigable waters from increased shipping from the Project (Burrard Inlet). The ability to move freely over the waters of Squamish's asserted traditional territory is considered by Squamish to be integral to their culture and identity.

Squamish expressed concerns about burial sites not being protected by the Archaeological Branch or by the *Graveyard and Cemetery Act* and that the Project may affect their long house tradition and the interrelated use of land, waters and streams for cultural and spiritual purposes.

Environmental Effects

The Project has the potential to extensively impact the key areas that Squamish relies on for harvesting resources, and further industrialize areas that Squamish has historically relied on to harvest resources, removing any chance of rehabilitation. Squamish identified concerns about the direct and indirect

impacts on fish and fish-bearing waterbodies that will result from the Project, including critical concerns about the impact of increased tanker traffic in the Marine RSA on the practice of Squamish rights, and on the ability of Squamish to access places of importance within their territory such as salmon harvesting areas. Squamish believes that the information made available during the NEB review process was not sufficient to give them satisfaction about the adequacy of the marine shipping safety regime.

Squamish is concerned that the interaction of Project-related marine vessel traffic with land-based activities was not considered. Squamish believes this fails to consider the profound connections between land, sea, and culture of the Squamish people that are potentially affected by the Project.

Cumulative Effects

Squamish is concerned about the contribution of the Project to the cumulative effects of industrial development in Squamish's territory. One of the Squamish's key concerns is about the potential cumulative effects impacts to marine mammals, particularly killer whales.

Squamish is concerned about further industrialization, and the effect that this will have on the ability to revitalize Burrard Inlet and Howe Sound, and regain the meaningful exercise of their Aboriginal rights in certain areas.

Squamish has stated that revitalization efforts and development are not mutually exclusive concepts and that, in order for development to not compromise territory and culture it must be done responsibly in partnership with First Nations.

Impacts on Aboriginal Rights and Title

Squamish identified concerns about impacts on Squamish fishing activity (herring, herring roe, crabs, urchins) in Burrard Inlet and Squamish efforts to rebuild fish stocks and habitat. Squamish has concerns regarding impacts on rebuilding killer whale populations in Howe Sound and the herring stocks on which the whales depend. Squamish has undertaken (or is in the process of undertaking) habitat restoration efforts and revitalization of the spawning grounds in respect of McKay Creek and Mosquito Creek. Squamish also plans to undertake habitat restoration efforts and revitalization of the spawning grounds in respect of Lynn Creek, Seymour River, and Capilano River.

In response to the Crown's Information Request, Squamish clarified: "Squamish is concerned about the impacts of the Project on a wide variety of species, and the environment on which they depend. The species listed represent some of the species of concern to Squamish, but do not represent an exhaustive list of the species of concern to Squamish. The issue as expressed further does not capture the level of Squamish restoration efforts and the concerns about the impacts of the Project on those efforts. Impacts to fish and fish habitat within Squamish territory by the Project have consequent impacts on the practice of Squamish rights, cultural and spiritual practices and the health and well-being of Squamish people. The degree of potential impacts to the practice of Squamish's rights and title as a result of the impacts of the Project to fish and fish habitat is not represented in the issues as described. Project impacts on fish and fish habitat cannot be used as a biophysical proxy for impacts on corresponding

rights and title interests that depend on these resources, given the complex and unique relationship that Squamish has with the fish and fish habitat within Squamish territory” ([A71223](#)).

Squamish raised concerns about the interruption of travel through their territory and emphasized the importance of the water ways in and around Burrard Inlet, Southern Howe Sound, and the lower Fraser River as Squamish traditional and current transportation corridors.

Squamish expressed concerns about loss or threat to its marine based economic interests and business properties from the Project, and limitations to other development opportunities on Squamish’s asserted traditional territory.

In a letter sent to the MPMO on September 19, 2016, Squamish indicated that the scope of Squamish’s Aboriginal rights and Interests that stand to be impacted by the Project are not yet known and have not been adequately assessed.

Human Health and Safety

Squamish has stated that the assessment of the Project on human health effects was incomplete and underrepresented, and that the Project would increase risks to human health due to its proximity to densely populated areas. Squamish is particularly concerned about the consumption of contaminated traditional foods within their territory.

Accidents or Malfunctions

Squamish identified concern regarding the impact of an oil spill and spill response with respect to environment, water, fish, wildlife, marine resources including plants and micro-organisms within Squamish traditional territory, including the Burrard Inlet and the Fraser River Estuary. The potential impacts of a diluted bitumen spill on fish and fish habitat is of significant concern to Squamish. Squamish stated that the spill response procedures and protocols were insufficiently defined to safeguard their waters and resources, and that the residual or mitigated impacts of accidents and malfunctions cannot yet be adequately assessed. Squamish expressed concern with the lack of commitment from Trans Mountain to provide suitable drinking water for Squamish in the event of contamination, or the identification where surplus capacity could come from.

Squamish is worried that there are not adequately defined roles and responsibilities in the event of a spill or sufficient resources to respond to, and compensate for loss arising from, a spill. This is based on Squamish’s experience with the proponent’s response to past spills from the existing Trans Mountain pipeline.

Squamish also identified as a concern potential adverse effects due to accidents or malfunctions related to possible seismic activity that may impact Squamish Aboriginal rights. Squamish is concerned about the impact of seismic activity on all aspects of the Project, the event of Project equipment failure due to seismic activity, including failure at the Burnaby Mountain Terminal, the pipeline and the WMT, and any resulting impacts to Squamish, including our rights and title.

Squamish's Response to NEB Recommendation Report

In a letter to the MPMO dated September 19, 2016, Squamish indicated that deficiencies in the NEB process – particularly the inadequacy of participant funding to fully participate in the NEB process, and the notion that a quasi-judicial process is not an adequate means to consider Aboriginal Interests – contributed to the subsequent inadequacy of the *NEB Recommendation Report*. Furthermore, Squamish indicates that concerns that were raised with the NEB have not been addressed in the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Squamish'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 Section 2.4.3 and Section 4.3 of this report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. There are areas that may also be used for traditional harvesting activities (e.g., harvesting, trapping, fishing and gathering), including by individual members of families.

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

The Crown understands that Squamish completed a third-party Traditional Use and Occupancy Study (TUOS), titled *Squamish Traditional Use and Occupancy Study: Final Report*, which was submitted as confidential written evidence to the NEB in May 2015. Redacted versions of the report ([A4L7E3](#), [A4L7E4](#)) and written evidence ([A4X5E7](#)) were filed with the NEB. The TUOS summarizes Squamish's traditional knowledge, values, and potential effects and mitigation as related to the Project. Approximately 501 traditional use and occupancy sites were identified in Southern Howe Sound, Burrard Inlet and Indian Arm, and the lower Fraser River. For confidentiality reasons, specific locations of traditional land and resource use activities and sites were not provided by Squamish in their TUOS. Squamish did not request any site-specific mitigation measures related to Project effects to their Aboriginal Interests.

The Crown understands that Squamish has a desire to keep its traditional use information confidential but hopes to discuss mechanisms through which information regarding any traditional use of the Project area can be shared with the Crown to inform the Crown's assessment of Project impacts on its Aboriginal Interests.

Impacts on Hunting, Trapping and Plant Gathering

Although the TUOS for the Project was filed confidentially with the NEB, the Crown acknowledges that the Project has the potential to impact Squamish's Aboriginal rights to hunt, trap and gather plants. As described in the redacted TUOS, harvesting resources within Squamish territory is a key expression and component of Squamish people's cultural identity and their heritage, and is part of what makes one Squamish. As summarized in the written evidence, Squamish community members continue to practice seasonal rounds travelling throughout their traditional territory. Hunted species include duck, pheasant, grouse, deer, elk, seals and sea lions. Community members also collect seagull eggs, and gather cultural and medicinal plants, clay, berries, broadleaf maple and cedar.

Squamish identified many concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, in particular, significant impacts of the Project on Squamish territory, including the people, land, resources, sites and waters throughout that territory, and the desire to see it protected. Concerns regarding use of chemical dispersants and negative impacts on the environment, and the contribution of the Project to the cumulative effects to its territory were also raised. As described in the *NEB Recommendation Report*, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants, lichens and vegetation communities of concern, old growth forests, wetlands, and terrestrial wildlife and wildlife habitat (including species at risk-listed species), marine mammals, and marine birds.

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering activities (Section 4.3.1 of this Report) and the proponent would implement several mitigation measures to reduce potential effects to species important for Squamish'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 to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP) and the vegetation and wildlife management plans (including a marine mammal protection program). The NEB imposed Condition 81 that requires the proponent to develop a WMT-specific EPP, including mitigation and monitoring plans, to be finalized in consultation with Fisheries and Oceans Canada (DFO) and potentially affected Aboriginal groups. The proponent is also required to conduct a post-construction monitoring program for marine mammals from the expansion of the WMT and post-construction monitoring reports. The proponent has committed to various mitigation measures to reduce effects of construction and operation of the WMT on marine birds and has committed to compile information regarding marine bird mortality and collision events

and to include that information in post-construction monitoring reports. For the marine shipping component of the Project, the proponent will also develop plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups.

Squamish raised concerns with potential Project-related impacts to specific locations and access to hunting, trapping, and plant gathering activities, including concerns related to the Project's potential impacts on their ability to practice seasonal rounds in their traditional territory. Project-related pipeline construction and routine maintenance is expected to cause short-term, temporary disruptions to Squamish's access to hunting, trapping and plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities.

The Crown understands that with pipeline construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Squamish. For traditional activities directly affected by the construction and operation of the WMT, these activities are not likely to occur within the expanded water lease boundaries during the operational life of the Project. Project-related marine shipping is expected to disrupt Squamish's marine vessels and harvesters, and this could disrupt activities or access to hunting, trapping, and plant gathering sites. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential access-related impacts associated with hunting, trapping, and gathering sites (Section 4.3.1 and 4.33 of this Report) and the proponent would implement several mitigation measures to reduce potential effects on Squamish's hunting, trapping, and plant gathering activities. These mitigations include management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs.

The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access to Squamish's traditional lands. The proponent has committed to minimizing the development of access routes, controlling public access along the construction ROW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent has also committed to work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control will be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Squamish prior to construction, the sites will be assessed, and appropriate mitigation measures will be implemented. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Squamish community members to take measures to reduce potential disruptions from tankers and allow planning for hunting, trapping and plant gathering activities to take place that minimizes disturbance from Project-related tankers. Reduced harvests, while not expected to occur from temporary access restrictions, could impact Squamish cultural activities and sharing of marine food with the community. The proponent committed to working with Squamish to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Squamish expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including impacts to human health from the use of chemical dispersants and contribution of the Project to existing cumulative effects. Short-term, temporary disruptions to Squamish's hunting, trapping, and plant gathering activities from Project-related construction and routine maintenance activities could temporarily alter the behaviour of community members' during construction. 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.

The Crown understands that Squamish may experience noise disturbances and interruptions to traditional activities due to the WMT and Project-related marine shipping activities, and community members could be discouraged from travelling to hunting, trapping, and plant gathering sites that require these members to cross shipping lanes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report) and the proponent would implement several mitigation measures to reduce potential effects to Squamish'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. 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 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. The proponent will also communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program.

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

- Project-related pipeline, facility, and WMT construction and operation, and marine shipping activities are likely to have low to moderate magnitude environmental effects on terrestrial, aquatic, and marine species harvested by Squamish;
- Construction of WMT, the pipeline and associated facilities are likely to cause short-term temporary disruptions to Squamish's community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint;

- Project-related marine shipping activities are likely to cause temporary disruptions to activities or access to sites during the period of time Project-related tankers are in transit through Squamish's traditional territory;
- Concerns identified by Squamish regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Fishing and Marine Harvesting

Although the TUOS for the Project was filed confidentially to the NEB, the Crown acknowledges that the Project has the potential to impact Squamish's Aboriginal rights to fish. As described in the TUOS and written evidence, Squamish traditionally harvested marine and aquatic resources for sustenance, ceremonial and commercial purposes, including trade. Presently, salmonid species are critical to Squamish people as a staple food and economic resource, and are an important component of identity and spiritual connection to the environment. The rivers and streams entering into Burrard Inlet have also served as important harvesting, transport, and cultural locations for Squamish, including, but not limited to, Lynn Creek, Mackay Creek, Mosquito Creek, Mahon Creek, Sister Creek, Seymour River and the Capilano River.

Squamish identified many concerns related to environmental effects of the Project on fishing activities, including impacts on fish and fish-bearing waterbodies, marine mammals and species at risk, in particular impacts on herring, herring roe, crabs, and urchins in Burrard Inlet. Squamish also expressed concern of the effects of dredging around the WMT for fish and fish habitat, and potential impacts on efforts to rebuild stocks, habitat restoration efforts, and revitalization of the spawning grounds. Concerns related to the use of chemical dispersants and the contribution of the Project to cumulative effects in Squamish territory were also raised.

As described in the *NEB Recommendation Report*, Project-related activities could result in low to moderate magnitude effects on freshwater and marine fish and fish habitat, surface water and marine water quality. Moderate effects to fish and fish habitat in the terrestrial and aquatic environments would be localized to individual watercourse crossings, and effects to marine fish and fish habitat would be limited to a few or many individuals, where any potential serious harm would be compensated by offset measures. NEB conditions would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 and 4.3.3 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to freshwater fish and fish habitat, marine fish and fish habitat, and riparian habitats (NEB Conditions 71, 75, 92, 151, and 154).

With regards to specific concerns raised by Squamish, the proponent would implement several mitigation measures to reduce potential effects to species important for Squamish'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. Further, the proponent has completed a preliminary offsetting plan for impacts on fish and fish habitat associated with construction and operation of the WMT. For Project-related marine shipping activities, the proponent will require all tankers to process and empty their bilges prior to arrival and lock the discharge valve of the bilge water while in Canadian waters.

Squamish identified Burrard Inlet and the rivers and streams entering into Burrard Inlet as important harvesting, transport, and cultural locations for Squamish, including, but not limited to, Lynn Creek, Mackay Creek, Mosquito Creek, Mahon Creek, Sister Creek, Seymour River and the Capilano River.

Squamish raised concerns with potential Project-related impacts to specific locations and access to freshwater fishing and marine fishing and harvesting activities, including the interconnectedness of the waterways, for example Burnaby and Deer Lake connection to Buntzen Lake to the east within Squamish territory, and disruptions to traditional activities, particularly in regards to salmon harvesting activities. Project-related pipeline construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Squamish's access to freshwater fishing activities. If construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Squamish community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation.

The Crown understands that fishing and harvesting activities directly affected by the construction and operation of the WMT are not likely to occur within the expanded water lease boundaries during the operational life of the Project. Impacts on navigation, specifically in eastern Burrard Inlet, would exist for the lifetime of the Project, and would occur daily. Project-related marine vessels are expected to cause temporary disruptions to Squamish's marine fishing and harvesting activities. Community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes. Disruptions to Squamish's marine fishing and harvesting activities are likely to be temporary when accessing fishing sites in the Burrard Inlet that require crossing shipping lanes, as community members would be able to continue their movements shortly after the tanker passes.

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

outreach program (NEB Condition 131). This communication would allow Squamish community members to take measures to reduce potential disruptions from tankers and allow planning for marine fishing and harvesting activities to take place that minimizes disturbance from Project-related tankers.

Squamish expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing and harvesting activities, including loss of traditional resources, interconnectedness of the waterways, ability to practice traditional activities, impacts on the practice of Squamish rights, cultural and spiritual activities, and the health and well-being of Squamish people. As described previously, the Project pipeline and facility construction and routine maintenance is expected to cause short-term, temporary disruptions to Squamish'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. Through the construction and operation of the WMT, the Crown understands that Squamish may experience noise disturbances and interruptions to cultural ceremonies along the shoreline, and loss or damage to visual quality of the Burrard Inlet. Project-related marine vessels are expected to cause temporary disruptions to Squamish's marine fishing and harvesting activities. The Crown understands that community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Squamish community members to take measures to reduce potential disruptions from tankers and allow planning for cultural events to take place that minimizes disturbance from Project-related tankers.

The Crown has considered available information from the NEB process, consultation with Squamish, Squamish 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. In consideration of this information, the Crown expects impacts of Project construction and operation, and Project-related marine shipping activities on Squamish's freshwater fishing and marine fishing and harvesting activities would be up to minor. The Crown expects negligible-to-minor impacts as a result of the pipeline, and these effects would primarily occur during construction. The Crown expects minor impacts as a result of WMT and Project-related vessels, and these effects would occur during construction and operations. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related pipeline, facility, and WMT construction and operation, and marine shipping activities are likely to have low to moderate magnitude environmental effects on freshwater and marine species harvested by Squamish;
- Construction of WMT, the pipeline and associated facilities are likely to cause short-term temporary disruptions to Squamish's community members accessing traditional freshwater fishing and marine fishing and harvesting sites within the Project footprint;

- Project-related marine shipping activities are likely to cause temporary disruptions to activities or access to sites during the period of time Project-related tankers are in transit through Squamish’s traditional territory; and
- Concerns identified by Squamish regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing and marine fishing and harvesting activities.

Impacts on Other Traditional and Cultural Practices

Although the TUOS for the Project was filed confidentially to the NEB, the Crown acknowledges that the Project has the potential to impact Squamish’s traditional and cultural practices. As described in the redacted TUOS, Squamish oral history and the archaeological record document longstanding patterns of trade between Squamish villages and with other Aboriginal peoples. Prior to the arrival of Europeans, trading took place via water and overland trails. Trade expanded to include new markets with the arrival of Europeans. Travel between Squamish and other Coast Salish communities was, and remains, significant to the maintenance of family ties.

Archaeological sites are important to present day Squamish community members, as they are considered time capsules that contain centuries of Squamish history, and are important “markers” of Squamish TUOS activities both past and present. Stories associated with sacred places and practices are still passed on within Squamish families and communities today. The rivers and creeks within Squamish territory have been, and continue to be, important sites for spiritual training and bathing. The longhouse is considered the hub of Squamish culture, religion, beliefs, and practices.

Squamish identified many concerns related to environmental effects of the Project on other traditional and cultural practices, including protection of burial and other sites of cultural and spiritual sites of importance, impacts on fish and fish habitat affecting cultural and spiritual practices, use of chemical dispersants, and the contribution of the Project to the cumulative effects to its territory. Squamish also expressed concern that burial sites are not being protected by the BC Archaeology Branch or under the *Graveyard and Cemetery Act*.

As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources (Section 4.3.4 of this Report) and the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Squamish’s traditional and cultural practices. An environmental education program will be developed and implemented to ensure that all personnel working on the Project are informed of the location of known sacred sites and burial sites. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW finalization, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

There are two longhouses located on Squamish traditional territory, at the Capilano and Seymour reserves. As summarized in the written evidence, numerous ancestral seasonal villages are located in the Burrard Inlet region, located close to important harvesting sites. The locations reflect the Squamish seasonal round, which was used to efficiently access the resources in traditional territory throughout the year. Most villages remained, at least partly, occupied throughout the year; however many people moved between winter villages on the Squamish and Cheakamus Rivers to sites on Howe Sound, Burrard Inlet, and the Fraser River.

Squamish raised concerns with potential Project-related impacts to specific locations and access to other cultural and traditional practices, including impacts of increased marine traffic on the traditional use of waterways for canoeing, and increased vessel traffic affecting the ability of Squamish to access places of importance within their territory. Squamish expressed that the whole of Squamish traditional territory is of cultural and spiritual importance to Squamish, cultural and spiritual sites are not confined to the areas along the North shore and Howe Sound. Project-related pipeline and facilities 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 Squamish's opportunities for certain traditional and cultural activities will be temporarily interrupted, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Squamish's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. The Crown understands that there will be temporary interruptions to Squamish's traditional and cultural practices, and there could be reduced access to traditional and cultural sites during Project operational activities. The expansion of WMT could impose restraints on Squamish's ability to use the water and surrounding lands for traditional activities, given the acoustic and visual disturbance of WMT construction. Particularly, the Crown recognizes the location of Squamish's traditional territory with emphasis that its main reserve is located directly across the inlet from WMT. However, the Crown notes that effects of construction on cultural activities would be temporary until completion of the WMT.

As outlined in Section 4.3.4 of this Report, the NEB concluded that Project construction and operation would result in temporary impacts on Squamish's use of water and water-based resources for traditional purposes. Project-related marine shipping activities could potentially disrupt traditional activities, travelways and cultural tourism (e.g. when tours can enter the water given the passing of tankers up the inlet). Conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). The proponent will be required to manage access to culturally sensitive sites along with an access management plan, and that the proponent has committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project. The Crown notes that tankers will remain within existing shipping lanes and the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131).

Squamish 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 traditional use of waterways for canoeing, the interconnectedness of the waterways within Squamish territory from a spiritual perspective, and social impacts of the Project. Temporary interruptions may occur to Squamish's cultural and spiritual practices, which could alter their participation in these activities during Project construction and operation activities, as well as during the transit of marine vessels associated with the Project.

The Crown has considered available information from the NEB process, consultation with Squamish, Squamish 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. In consideration of this information, the Crown expects impacts of Project construction and operation, and Project-related marine shipping activities, on Squamish's other traditional and cultural practices would range from negligible-to-minor to minor. The Crown expects negligible-to-minor impacts as a result of the pipeline, and these effects would primarily occur during construction. The Crown expects minor impacts as a result of the WMT and Project-related vessels, and these effects would occur during construction and operations. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

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

Impacts on Aboriginal Title

The Crown notes that portions of the Project would be located within areas of Squamish's traditional territory assessed as having moderate *prima facie* claim to Aboriginal title, in western Burrard Inlet, given its relative proximity to areas of known Squamish habitation in 1846 in Howe Sound, and increasing year round use of this area in the mid-1800s.

The Crown has actively consulted with Squamish 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 Squamish throughout the NEB and Crown consultation process include:

- Significant impacts of the Project on Squamish territory, including the people, land, resources, sites and waters throughout the territory, and Squamish would like to see it protected;
- Protection of Squamish traditional territory and the ability to self-govern, including the regulation of the activities within that territory, is integral to the practice of Squamish Aboriginal rights;
- Loss or threat to its marine-based economic interests and business properties from the Project, and limitations to other development opportunities on Squamish's asserted traditional territory;
- Squamish marine dependent businesses and properties may be severely impacted in the event of a spill from the Project;
- Concerns about the NEB process, the development of that process, and the resulting inability of that process to meaningfully or adequately assess Project impacts on Squamish Aboriginal Interests, or develop appropriate measures to avoid, mitigate, or accommodate impacts on the same;
- Squamish has not had the capacity to do an inventory of all the potential cultural and spiritual places potentially impacted by the Project (or of all the potential impacts of the Project generally); and
- Impacts of seismic activity on the Project, in particular any resulting impacts on Squamish Aboriginal Interests.

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 Aboriginal title. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial, marine and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. It is noted that Squamish has not executed a Mutual Benefits Agreement with the proponent.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion that the Project is expected to have minor impacts on Squamish's asserted Aboriginal title to the Project area.

Impacts Associated with Accidental Pipeline, Terminal or Tanker Spills

Squamish expressed concerns related to direct and indirect effects of Project-related spills from both marine vessels and pipeline facilities on their Aboriginal Interests, including impact of an oil spill and spill response with respect to environment, water, fish, wildlife, marine resources including plants and micro-organisms within Squamish traditional territory. Specific concerns include impacts on the waterways and marine environment within Squamish territory, fish and fish-bearing waterbodies, and cultural, spiritual,

and harvesting practices. Squamish stated that the impacts remain unknown and that they have not received sufficient information to appropriately assess the impact of a spill.

The Crown understands Squamish's concerns regarding spills, and the potential for a spill to impact Squamish'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 Squamish has for its territory.

A discussion of the potential impacts of accidental spills 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 about Squamish's Aboriginal Interests and concerns raised by Squamish during the NEB process and Crown consultation process, a spill associated with the Project could result in minor to serious impacts on Squamish's Aboriginal Interests. The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline, terminal, or tanker spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. 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 spill³.

VI - Conclusion

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline and marine safety regimes would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations of the pipeline and WMT, as well as for Project-related marine shipping activities between the WMT and the 12 nautical mile limit (J-buoy) through the Salish Sea and Strait of Juan de Fuca, the Crown expects impacts of the Project on the exercise of Squamish's Aboriginal Interests would be up to minor.

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

³ Trans Mountain Final Argument, p. 85 and 207