

## Appendix D.18 – Stz’uminus First Nation

### I - Background Information

Stz’uminus First Nation (Stz’uminus) is located near Ladysmith, British Columbia (BC) on the eastern shore of Vancouver Island. In early 2009, Chief and Council unanimously passed a band council resolution to officially change the name from Chemainus to Stz'uminus in order to reflect its original Hul'qumi'num (pronounced “Hul-ka-MEE-num”) language name which the Stz’uminus historically spoke.

Stz’uminus has four reserve lands: *Chemainus no. 13* (1,138 hectares [ha]), *Oyster Bay no. 12* (97.6 ha), *Say-La-Quas no. 10* (4.6 ha) and *Squaw-Hay-One no. 11* (30.7 ha), for a total of 1,270.9 ha. As of July 2016, Stz’uminus’ registered population totals 1,296 individuals, with 712 living on their reserves, 119 living on other reserves, and 465 living off reserves.

Stz’uminus is party to the Hul’qumi’num Treaty Group Statement of Intent along with Cowichan Tribes, Lake Cowichan First Nation, Halalt First Nation, Penelakut Tribe, and Lyackson First Nation. The Hul'qumi'num Treaty Group is currently in Stage 4 of the BC Treaty process (i.e. Agreement-in-Principle). Stz’uminus is a party to the Hul'qumi'num Nation protective *Writ of Summons*, which was filed in the BC Supreme Court in December, 2003, asserting Aboriginal title to a territory identified in the writ.

Ethnographic sources, which inform the Province’s assessment of strength of claim, often refer to Cowichan people, rather than individual groups. Traditionally, the Cowichan people were organized into politically and economically independent local groups, occupied winter villages, and followed a seasonal round of resource exploitation from early spring to late fall with overlapping or shared use of many resource sites. Please note that the term ‘Cowichan people’ as used in the following *Preliminary Strength of Claim Assessment* includes all six HTG member nations (Cowichan Tribes, Lake Cowichan, Halalt, Stz’uminus, Lyackson and Penelakut).

Cowichan Tribes, Stz’uminus, Penelakut, and Halalt are also part of the Cowichan Nation Alliance focused on resolution of Aboriginal rights, including title, on the south arm of the Fraser River.

### II - Preliminary Strength of Claim Assessment

- The right of way (RoW) transects the asserted traditional territory of the Hul'qumi'num, between the Westridge Terminal and Surrey, and again between Chilliwack and Hope (approximately 72 kilometres [km] of new RoW). The following Project facilities are located within the asserted traditional territory of the Hul’qumi’num: Hope Station, Wahleach Station, Port Kells Station, Burnaby Terminal, and Westridge Marine Terminal (WMT). The marine shipping route would pass through approximately 265 km of Hul'qumi'num Treaty Group’s traditional territory.
- The Crown’s preliminary assessment of Stz’uminus’s Aboriginal rights in areas proximal to the marine shipping corridor of the Project, which transits the Strait of Georgia, is assessed as having a *prima facie* claim of Aboriginal rights ranging from weak to strong as follows. Areas of strong claims are areas within what ethnohistoric sources generally describe as pre-contact

traditional territory of Stz'uminus and where there is information of their historic use as part of their traditional seasonal round, including areas in the Strait of Georgia proximal to, and within the southern reaches of, the southern arm of the Fraser River and portions of the southern Gulf Islands that lie to the west of Galiano Island and above Active Pass. Areas of weak claims include areas proximal to the Strait of Georgia north of Gabriola passage and north and south of the South arm of the Fraser River, the Strait of Georgia south of Active Pass, and areas within Haro and Juan de Fuca Straits, which were not considered within the pre-contact traditional territory of Stz'uminus and/or Cowichan people.<sup>1</sup>

- The Crown's preliminary assessment of Stz'uminus's *prima facie* claim of Aboriginal title to upland areas proximal to the marine shipping corridor of the Project ranges from weak to moderate, with the higher end of the range (i.e. moderate) pertaining to exclusive areas of known Stz'uminus habitation and use. The Crown does not have clarity regarding how Hul'qumi'num Treaty Group members are asserting Aboriginal title in certain areas where there is limited indication that any of the Hul'qumi'num Treaty Group member First Nations could have excluded each other at 1846. For example, upland areas proximal to the marine shipping corridor, including by the southern arm of the Fraser River, the Crown would assess the *prima facie* claim of Aboriginal title of the Stz'uminus as ranging from weak to moderate, with the stronger (i.e. moderate) claims located in proximity to uplands in the vicinity of the large village site of Tl'ektines. The Crown also does not have clarity regarding how Hul'qumi'num Treaty Group members are asserting Aboriginal title in the southern Gulf Islands that lie to the west of Galiano Island and above Active Pass and to the west of Valdes and Gabriola; in these areas, the Crown would assess the *prima facie* claim of Aboriginal title of the Stz'uminus to upland areas as ranging from weak to weak-to-moderate as there is some indication of habitation and resource gathering sites utilized by Cowichan people likely at 1846. The following areas are generally described by ethnohistoric sources as outside the traditional territory of the Cowichan people without evidence of their occupation or use, such that there is no support for a *prima facie* claim of Aboriginal title to upland areas: proximal to the Strait of Georgia north of Gabriola passage and north of the South arm of the Fraser River, the Strait of Georgia south of Active Pass and south of the south arm of the Fraser River, and within Haro and Juan de Fuca Straits.<sup>2</sup>
- In November 2014, Cowichan Tribes, Stz'uminus First Nation, Penelakut Tribe and Halalt First Nation filed an *Amended Notice of Civil Claim* seeking a declaration of Aboriginal title to an area described as the Tl'uqtinus Lands and fishing rights to the South Arm of the Fraser River. The above assessment of the strength of claimed Aboriginal title to the upland area west of and proximate to the Tl'uqtinus/Tl'ektines site was conducted to inform the scope of consultation regarding this project. It is a preliminary assessment only, considering only information reasonably available at the time of consultation and is not based on an exhaustive review of all

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<sup>1</sup>Stz'uminus (Chemainus) First Nation: A Review of Ethnographic, Historical and Archaeological Sources. Prepared by Ministry of Attorney General, Legal Services Branch, Aboriginal Research Division. March 16, 2010; The Hul'qumi'num Treaty Group: Review of Ethnographic, Historical and Archaeological Resources: Cowichan, Lake Cowichan, Halalt, Chemainus, Lyackson, Penelakut and Hwlitsum First Nations. Prepared by Aboriginal Research Division, Legal Services Branch, Ministry of Attorney General. September 8, 2009

<sup>2</sup> Ibid

information and legal issues related to this potential claim, and does not reflect the Crown's opinion of whether the court will ultimately decide in favour of the First Nation in the litigation of this claim.

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

Stz'uminus participated in the National Energy Board (NEB) review process as an intervenor and submitted oral traditional evidence during hearings in Victoria, BC, filed written evidence, and provided oral and written final summary arguments, as well as responded to the Crown's Issues Tracking Table Information Requests by further elaborating on their concerns [\[A71239\]](#).

Stz'uminus was allocated \$36,920 in participant funding, including travel for two to attend the oral traditional evidence hearing, by the NEB. The Major Projects Management Office (MPMO) offered Stz'uminus \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Stz'uminus an additional \$14,000 to support their participation in consultations following the release of the NEB Recommendation Report. Stz'uminus signed a contribution agreement with the MPMO, for a total of \$12,000 in allocated funding.

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

Stz'uminus met with the Crown on April 20, 2016 to discuss the Project and the Crown's approach to consultation.

The Crown provided a first draft of the Crown Consultation and Accommodation Report to Stz'uminus for review and comment on August 17, 2016. The Crown did not receive comments from Stz'uminus on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 03, 2016. The Crown has not received comments from Stz'uminus.

### **IV - Summary of Stz'uminus' Key Issues and Concerns Raised**

The Crown has gained its understanding of Stz'uminus' issues and concerns through the community's involvement in the NEB process, including submissions made through the NEB hearings process, the responses Stz'uminus provided to the Crown on MPMO's Information Request, and through other engagement with the Crown.

The Crown's understanding of Stz'uminus' key Project-related issues and concerns are summarized below. This is a summary of the key issues raised by Stz'uminus, 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.

#### Methodology, Process, and Consultations

- Stz'uminus stated that the Crown is relying too much on the NEB process to address their consultation duty, and that there is also insufficient funding and time to explain impacts on Aboriginal rights under s. 35; and
- Stz'uminus stated that the proponent did not provide full answers to questions that they were asked during the information request rounds of the NEB hearing, and consequently the NEB received incomplete information because they did not compel the proponent to provide more detail.

#### Impacts on Culture

- Stz'uminus has concerns about impacts on cultural heritage and traditional sites, since they still use the Tl'uq'tinus lands and the Fraser River's ecosystem and Stz'uminus still relies on marine and freshwater resources for dietary sustenance.

#### Impacts on Aboriginal Rights

- Stz'uminus worries TERMPOL (Technical Review Process of Marine Terminal Systems and Transshipments Sites) may not have considered potential effects of increased shipping on traditional harvesting and other Aboriginal rights; and
- Stz'uminus has concerns over their rights including title, governance and commercial interests to resource use within Ladysmith Harbour, into the Salish Sea and Fraser River.

#### Accidents and Malfunctions

- Stz'uminus has concerns about increased marine shipping and risks of spills, and how this could impact access and quality of medicines from the Salish Sea and to the continued area around Deer Point as well as the Cassidy Airport area at Haslam Creek;
- Stz'uminus is concerned about the adequacy of contingency planning for spills, accidents or malfunctions during construction and operation of the Project, particularly the potential effects of clean-up activities;
- Stz'uminus wants better communication between Aboriginal groups in preparedness, response and Incident Command Structure (ICS), strategy for pilots and carrier captains, as well as for local harvesting and cultural activities; and
- Stz'uminus is concerned about combined capabilities of performing escort and rescue towing in the Juan de Fuca Strait with only three tugs.

### Impacts from Increased Marine Shipping

- Stz'uminus expressed concern about the environmental impacts of tanker traffic on both resources and structures;
- Stz'uminus raised concerns over potential impacts to killer whale populations; and
- Stz'uminus identified a desire to establish an independent, long-term monitoring program to determine potential effects of increased vessel traffic on traditional resources.

### Economic Impacts

- Stz'uminus identified concerns regarding the impacts of the Project on economic interests and opportunities, mostly related to the fishing industry, including bartering with other Aboriginal groups.

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

### ***Stz'uminus's Response to NEB Recommendation Report***

No specific comments were received on the NEB Recommendation Report.

### **V - Potential Impacts of the Project on Stz'uminus's Aboriginal Interests**

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Sections 2.4.3 and Section 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group 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 Stz'uminus' Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Stz'uminus' 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 Stz'uminus' Aboriginal Interests considers information available to the Crown from the NEB process,

consultation with Stz'uminus, Stz'uminus' engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate (EAC) issued by the Province.

Stz'uminus conducted a third-party traditional marine and resource use (TMRU) study for the Project in 2013 titled, *Stz'uminus First Nation Traditional Marine Use Study* ([A4Q0E8](#) redacted version), which was filed confidentially with the NEB. In its Supplemental Technical Report ([A4A0W1](#)), the proponent estimated approximate distances and directions from the marine shipping lanes based on information from Stz'uminus' report. Additional TMRU information for Stz'uminus was presented in Volume 8B ([A3S4K3](#)) of the Project application.

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

As summarized in the TMRU study, Stz'uminus community members hunt along shorelines and waterways in coastal areas of Vancouver Island. Members hunt for duck, murre, grebe, goose, deer, mink, and otter, among other species. Stz'uminus gathered various plant species throughout their traditional territory including, but not limited to, berries, seaweed, medicinal plants, potato, and herbs. Community members use these plants for numerous purposes such as food, medicine, and materials.

Stz'uminus identified a total of 50 hunting and plant gathering sites in their TMRU study, of which 16 hunting sites and 24 plant gathering sites are within the Marine Regional Study Area (RSA).<sup>3</sup> Stz'uminus community members would have to cross the marine shipping lanes to access two hunting sites for duck, murre, and grebe in the Strait of Georgia and two seaweed gathering sites in Richmond/Vancouver and Steveston. In Volume 8B, an additional five hunting sites were identified, all of which are located within the Marine RSA; however shipping lanes are not crossed to access these sites.

The general direct and indirect effects of the Project on hunting, trapping, and gathering, along with key mitigation measures, are described in Section 4.3.1 of the main body of this Report.

As described in the NEB Recommendation Report, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants and lichens and vegetation communities of concern, old growth forests, wetlands, and terrestrial wildlife and wildlife habitat (including species at risk), marine mammals, and marine birds.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Stz'uminus'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

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<sup>3</sup> The area extending beyond the LSA boundary (i.e. the zone of influence or area where the element and associated indicators are most likely to be affected by Project-related marine vessel traffic.) where the direct and indirect influence of other activities could overlap with Project-specific effects and cause cumulative effects on the environmental or socio-economic indicator.

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.

Conditions in the NEB Recommendation Report, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with hunting, trapping, and plant gathering sites (Section 4.3.1 of this Report). 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. The proponent would implement a range of mitigation measures that would reduce potential effects associated with Stz'uminus' hunting, trapping, and plant gathering activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, scheduling and notification of Project activities (via the proponent's marine public outreach program), and a marine mammal protection program.

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 in providing traditional knowledge related to the location and construction of the Project.

NEB Condition 81 would require the proponent to develop a WMT-specific EPP, including mitigation and monitoring plans, to be finalized in consultation with Fisheries and Oceans Canada and potentially affected Aboriginal groups. The proponent would also be required to conduct a post-construction monitoring program for marine mammals from the expansion of the WMT. The proponent has committed to various mitigation measures to reduce effects of construction and operation of the WMT on marine birds, further the proponent has committed to compile information regarding mortality and collision events and to include that information in post-construction monitoring reports.

In consideration of the information available to the Crown from the NEB process, consultation with Stz'uminus, Stz'uminus' engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any EAC issued by the Province, Project construction and routine maintenance during operation as well as project-related marine shipping are expected to result in a negligible-to-minor impact on Stz'uminus' hunting, trapping and plant gathering activities.

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

As described in the TMRU study, Stz'uminus fish for a variety of species including sockeye salmon, halibut, Pacific cod, lingcod, sturgeon, crab and rockfish, among others. Community members also harvest clams, butter and horse clams, geoduck, and oysters, among other species. Stz'uminus identified 75 fishing sites in their TMRU, of which 74 are within the Marine RSA. Community members would have to cross marine shipping lanes to access eight fishing sites, including those in Holland Creek, Sydney to Steveston Cannery to Campbell River, Roberts and Sturgeon Bank, and five sites in the Strait of Georgia.

In addition to providing traditional use information, Stz'uminus raised specific concerns with potential Project impacts relating to their freshwater fishing and marine fishing and harvesting activities, including the environmental and economic impacts associated with increased tanker traffic on fish and marine mammals as well as the potential impacts of Project-related marine shipping on Stz'uminus' traditional harvesting and other Aboriginal rights.

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. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.1 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. 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.

Project-related marine vessels are expected to cause temporary disruptions to Stz'uminus' 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 Stz'uminus community members to take measures to reduce potential disruptions from tankers and allow planning for fishing activities to take place that minimizes disturbance from Project-related tankers. Reduced harvests, while not expected to occur from temporary access restrictions, could impact Stz'uminus' cultural activities and sharing of marine food with the community.

The conditions in the NEB Recommendation Report, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with marine fishing and harvesting sites (Section 4.3.1 of this Report). The proponent would implement a range of mitigation measures that

would reduce potential effects associated with Stz'uminus' marine fishing and harvesting activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, and scheduling and notification of Project activities (via the proponent's marine public outreach program).

In consideration of the information available to the Crown from the NEB process, consultation with Stz'uminus, Stz'uminus' engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued by the Province, Project construction and routine maintenance during operation and Project-related marine shipping are expected to result in minor impacts on Stz'uminus' marine fishing and harvesting activities.

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

As described in the TMRU study, community members moved from region to region on a seasonal basis while other members stayed in various permanent villages including villages located at the mouth of the Fraser River. Potlatches and dance ceremonies were held in winter villages in late November/early December. Community members would disperse throughout their traditional territory in the spring to fish, hunt, and gather materials, plants, and seafood. Stz'uminus also identified several sacred areas in their TMRU including burial sites, ceremonial bathing areas, recreational places, and look-out points.

Stz'uminus identified 96 other traditional and cultural practices sites in their TMRU study including 5 trails/travelways, 33 gathering places (including habitation sites) and 38 sacred areas located within the Marine RSA. The following sites would require Stz'uminus community members to cross marine shipping lanes: two trails/travelways in the Strait of Georgia and Steveston; three gathering places in Annacis Island, Canoe passage, and Steveston (habitation site), and; one sacred site in the Strait of Georgia.

In addition to providing traditional use information, Stz'uminus raised concerns regarding potential Project impacts on their other traditional and cultural activities, including potential effects on their cultural heritage and traditional sites as well as potential effects on killer whales in the Salish Sea. The NEB Recommendation Report concluded that the increase in marine vessel traffic associated with the Project is likely to result in significant adverse effects on the traditional Aboriginal use associated with the Southern resident killer whale. The Crown understands that the Southern resident killer whale population is in decline, and that additional adverse environmental effects from project-related marine shipping would be considered significant.

The general direct and indirect effects of the Project on traditional and cultural practices, along with key mitigation measures, are described in Section 4.3.4 of the main body of this Report. 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 Crown understands that there will be temporary interruptions to Stz'uminus' traditional and cultural practices, and there could be reduced access to traditional and cultural sites during Project operational

activities. It is noted that the proponent has committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Stz'uminus, Stz'uminus' engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued by the Province, Project construction and routine maintenance during operation as well as project-related marine shipping are expected to result in moderate impacts on Stz'uminus' other traditional and cultural practices.

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

Stz'uminus raised concerns with the potential Project impacts relating to their Aboriginal title claim, including:

- Impacts of the Project on Stz'uminus' economic interests and opportunities (including those related to the fishing industry); and
- Impacts of the Project on Stz'uminus' governance and commercial interests to resource use within Ladysmith Harbour, into the Salish Sea and Fraser River.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial, marine and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. The Crown notes that Stz'uminus does not have 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 negligible-to-minor impacts on Stz'uminus' asserted Aboriginal title to the proposed Project area.

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

Stz'uminus expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including the effects of a potential spill on fish and wildlife (as a result of the acute and chronic toxic effects of spilled oil).

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. Section 4.3.6 of the main body of this Report sets out the impacts associated with accidental spills. In consideration of this information

and analysis, as well as information available to the Crown on Stz'uminus' Aboriginal Interests and concerns raised during the NEB process and Crown consultation process, an accidental oil spill associated with the Project could result in minor to serious impacts on Stz'uminus' Aboriginal Interests. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.<sup>4</sup>

## **VI - Conclusion**

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline and marine safety regimes would only partially address these ongoing burdens and risks.

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

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

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<sup>4</sup> Trans Mountain Final Argument, p. 85 and 207