Court File No.

FEDERAL COURT OF APPEAL

BETWEEN:

AITCHELITZ, SKOWKALE, SHXWHÁ:Y VILLAGE, SOOWAHLIE, SQUIALA FIRST NATION, TZEACHTEN, and YAKWEAKWIOOSE

APPLICANTS

AND:

ATTORNEY GENERAL OF CANADA and TRANS MOUNTAIN CORPORATION

RESPONDENTS

AFFIDAVIT OF CHIEF DAVID JIMMIE

I, Chief David Jimmie, President of the Ts'elxwéyeqw Tribe, located at Bldg 8A – 7201 Vedder Road, Chilliwack, British Columbia SWEAR THAT:

1. I am a Stó:lō person, and the elected Chief of Squiala First Nation. I am also President of the Ts'elxwéyeqw Tribe (the "**Tribe**"), which represents the seven Ts'elxwéyeqw (Stó:lō) villages of Aitchelitz, Skowkale, Shxwhá:y Village, Soowahlie, Squiala First Nation, Tzeachten, and Yakweakwioose (the "**Seven Villages**"). Each of the Seven Villages are also *Indian Act* bands within the meaning of that term as used in the *Indian Act*, RSC 1985, c I-5 (the "***Indian Act***"). I am also President of the Stó:lō Nation, which is the political amalgamation of Stó:lō communities focussed on, among other things, service delivery to those communities.

2. I am authorized by the Tribe to swear this affidavit on its behalf.

3. Between about May 2014 and the fall of 2016, I was the project lead for a group of Stó:lō communities referred to as the "Stó:lō Collective",

which represented the Tribe and five other Stó:lō villages/bands (including Skwah and Kwaw-Kwaw-Apilt of the Pilalt Tribe) in the lower Fraser River watershed in responding to the proposed Trans Mountain Expansion Project (the "**Project**"), including before the National Energy Board (the "**NEB**") in its first hearing on the Project (the "**First Hearing**"), as well as in the broader consultation process with the Crown and in consultation and accommodation discussions with the Crown throughout the Phase III consultation that occurred in 2016 (the "**Flawed Phase III**") prior to the first approval of the Project (the "**2016 Approval**") by the Governor in Council (the "**GiC**"). I have continued to lead engagement efforts on behalf of the Tribe with respect to the Crown's efforts to remedy the defects in the Flawed Phase III following the decision of the Federal Court of Appeal (the "**FCA**") in *Tsleil-Waututh Nation v. Canada (Attorney General),* 2018 FCA 153 (the "**FCA Decision**") during the renewed Phase III consultations (the "**Court Directed Phase III**"). The Tribe participated in the Court Directed Phase III on its own behalf and not as part of the larger Stó:lō Collective.

4. For all of the above reasons, I have direct knowledge of the facts and matters deposed to herein, except where stated to be based on information and belief, and as to those facts I verily believe the same to be true.

5. Exhibits to this affidavit were not before the NEB because they were produced in the context of the Crown's broader consultation effort in respect of the Project, other than **Exhibit "A"** which we provide to assist the Court.

The Ts'elxwéyeqw Declaration

6. By declaration of the Chiefs and Councils representing each of the Seven Villages, in or about early January 2013, the Seven Villages appointed the Tribe as the designated representative of the Seven

Villages and entrusted it with the authority to advocate, defend and advance the collective Aboriginal rights and title on behalf of each of the Seven Villages. Now produced to me and marked as **Exhibit "A"** hereto is a true copy of the "Ts'elxwéyeqw Tribe Declaration of Aboriginal Rights and Title" signed by the Chiefs of the respective Seven Villages (the "**Ts'elxwéyeqw Declaration**").

7. Pursuant to the Ts'elxwéyeqw Declaration, the Seven Villages authorized and empowered the Tribe to manage and exercise their sovereign and inherent authority, rights and jurisdiction over the lands, air, waters and resources within their territory consistent with Tribe's visions, aspirations, interests, goals and principles.

8. Accordingly, the Tribe has represented the Seven Villages in consultation with the Crown on the Project since about May 2014. Now produced to me and marked as **Exhibit "B"** hereto is a true copy of an email from Natural Resources Canada ("**NRCan**") to the Tribe dated January 29, 2019, confirming its understanding of the Tribe's authority to represent the Seven Villages in the Court Directed Phase III.

Stó:lō People, Rights and Title

9. One translation of the term Stó:lō is "People of the River", being the Fraser River. Since time immemorial, Stó:lō have lived in, occupied and used their traditional territory known as *S'olh Temexw*, which includes the lower Fraser River watershed in southwestern British Columbia.

10. Stó:lō are Halkomelem-speaking Coast Salish people and are tribally organized. Stó:lō live in many villages, all of which are in the lower Fraser River watershed. Stó:lō are culturally, spiritually, physically, psychologically and economically interconnected with the land and resources of *S'olh Temexw*.

11. The Stó:lō maintain a wide range of political, socio-cultural and economic ties, including occupation, use and management of the land and resources within *S'olh Temexw.* Stó:lō identity and societal health, including an interconnected set of spiritual, mental, physical and emotional relations, are linked to and dependent upon the integrity of the land, air, water and resources constituting *S'olh Temexw* and the Stó:lō cultural landscape. The activities of the Stó:lō within *S'olh Temexw* provide a holistic view of economic, social, political, environmental and spiritual connectivity; one cannot be successful or healthy without the other, for all things have shxweli (spirit) and all things are interconnected.

12. Stó:lō identity is not limited to tangible heritage or a geographically grounded place. It is based in enduring activities, such as fishing, language (Halkomelem), stories, songs and storytelling, protection of cultural practices and the protection from "others" (non- Stó:lō).

13. The Stó:lō continue to inhabit, control and rely on *S'olh Temexw*. The Stó:lō assert Aboriginal title to *S'olh Temexw* and exercise Aboriginal rights throughout *S'olh Temexw*, including fishing, hunting, gathering and trapping.

14. Crucially, the Stó:lō have established Aboriginal fishing rights on the Fraser River, as affirmed by the Supreme Court of Canada in *R. v. Van der Peet*, [1996] 2 SCR 507 and consistently admitted by the Crown in its consultation with the Stó:lō on this Project.

Infringement of Stó:lō Rights and Title

15. Trans Mountain Corporation's ("**TM Canada**") existing pipeline and the Project's proposed new pipeline route cross approximately 195 km of *S'olh Temexw*, including by the base of Sumas Mountain and across a valley that was once Sumas Lake, which was an important feature for certain Stó:lō communities. Seven Project facilities (Hope Station,

Wahleach Station, Sumas Station, Sumas Tank Farm, Port Kells Station, Burnaby Terminal and Westridge Marine Terminal) fall within *S'olh Temexw*.

16. The proposed pipeline right-of-way is immediately adjacent to a number of the Tribe's communities and First Nation Reserves, including crossing Tzeachten IR No. 13.

17. The Project's new pipeline proposes to cross 131 waterbodies within *S'olh Temexw*. Of these, 84 have been defined as bed and bank, 59 are designated as fish bearing and 31 are considered sensitive fish bearing. Over 240 Stó:lō fisherman rely on fish from these waterways for various purposes.

18. The Project will directly affect the established Aboriginal rights and title of the Tribe and represents yet another in a series of linear corridors (including Highway #1, two railroads, the existing TM Canada pipeline, hydro lines, and roads) that have severed the Stó:lō from the Fraser River. The cumulative effects of all of these linear corridors is to leave Stó:lō with very few places where we can access the river that gives us our name.

Judicial Review and Purchase of TMX

19. On November 29, 2016, the GiC issued the 2016 Approval without adopting any of the 89 recommendations (the "**89 Recommendations**") contained in the Integrated Cultural Assessment (the "**ICA**") that the Stó:lō Collective provided to TM Canada as its key technical submission on the Project in March 2014. The ICA was prepared by Ts'elxwéyeqw Tribe Management Limited, Stó:lō Research and Resource Management Centre, and Human Environment Group. The ICA was intended to form the basis for constructive and meaningful consultation with the Crown, and identifies potential impacts within *S'olh Temexw* that

could be caused by the Project, such as impacts on Stó:lō traditional activities, culture, lands, and resources, along with the 89 Recommendations for mitigating the Project's adverse effects on Stó:lō communities.

20. On December 28, 2016, the Tribe filed an application for judicial review of the 2016 Approval in the FCA on behalf of the members of the Tribe and two members of the Pilalt Tribe (collectively, the "**Stó:lō Applicants**").

21. The Stó:lō Applicants were granted leave to judicially review the 2016 Approval on the basis that, among other things, the Crown had failed to adequately discharge its constitutional duty to consult and accommodate the Stó:lō Applicants prior to issuing the 2016 Approval.

22. On May 29, 2018, while awaiting a decision from the FCA, Canada announced its decision to purchase the Project and its existing pipeline infrastructure (collectively, "**TMX**") from Trans Mountain Pipeline ULC. In response, I wrote to the Prime Minister and the Minister of Natural Resources, formerly Jim Carr, on June 8, 2018 on behalf of the Tribe (the "**June PM Letter**") to register our formal objection to Canada's decision to purchase TMX without any notice to, or consultation with, the Tribe. Now produced to me and marked as **Exhibit "C"** hereto is a true copy of the letter from the Tribe to the Prime Minister and Minister Carr dated June 8, 2018 regarding Canada's decision to purchase TMX.

23. On August 17, 2018, the new Minister of Natural Resources, Amarjeet Sohi, responded to my letter, explaining that Canada was purchasing TMX to "secure [the Project's] timely completion" and to "guarantee the resumption of construction work, protecting thousands of jobs in Alberta and British Columbia". Now produced to me and marked as **Exhibit "D"**

hereto is a true copy of the letter from the Minister Sohi to the Tribe dated August 17, 2018.

24. On August 28, 2018, I again wrote the Prime Minister (the "**August PM Letter**") regarding Canada's decision to purchase TMX, reiterating that Canada had an unsatisfied obligation to consult and accommodate Indigenous peoples prior to taking any action to support the Project, financially or otherwise, including signing an acquisition agreement regarding, or closing on the acquisition of, TMX. Nonetheless, I go on to state that, as Crown, proponent, regulator and decision-maker, Canada will be in a unique position to ensure the Project proceeds in a manner that is respectful of the Tribe's concerns and provides fair benefits to its communities. I also outlined specific steps that Canada should take to begin addressing the Tribe's concerns with TMX so that it could be developed with the support of the Tribe, which were:

(a) sharing economic benefits of TMX with the communities that bear the most risk through equity participation and resource revenue sharing;
(b) entering into meaningful discussions aimed at righting the wrongs of the past by providing compensation for past infringements of our Aboriginal rights and title;
(c) providing additional assurances that, if completed, TMX will be built to the highest safety and environmental standards and that our communities will made whole in the event of a spill; and
(d) consulting in good faith with respect to both the potential acquisition of TMX and the implementation of the Project before closing the acquisition transaction.

Now produced to me and marked as **Exhibit "E"** hereto is a true copy of the August PM Letter.

25. On August 30, 2018, the FCA released the FCA Decision finding that the Crown had failed to adequately consult and accommodate the Stó:lō Applicants and other Indigenous applicants during the Flawed Phase III and quashing the 2016 Approval.

26. In the FCA Decision, the FCA ordered the Crown to properly complete the Court Directed Phase III along with necessary accommodations prior to any reconsideration of Project approval by the GiC.

27. The next day, on August 31, 2018, Canada completed its purchase of TMX without responding to the August PM Letter and without consulting the Tribe.

Court Directed Phase III

October 2018 – January 2019

28. Following the FCA Decision, on or about October 2, 2018, I received an email from Tara Folkes from NRCan to schedule a meeting between myself and Minister Sohi on October 5, 2018 when he would be in the Vancouver area (the "**October Meeting**"). Now produced to me and marked as **Exhibit "F"** hereto is a true copy of my email correspondence with Ms. Folkes regarding scheduling the October Meeting.

29. On or about October 5, 2018, Minister Sohi communicated—via nearly identical letters sent to each of the Tribe's member Nations—Canada's intentions to engage in a "specific and focused dialogue" with Indigenous groups on the Project. Now produced to me and marked as **Exhibit "G"** hereto is a true copy of a letter received by one of the Tribe's member Nations, Aitchelitz, from Minister Sohi on October 5, 2018.

30. Also on or about October 5, 2018, I hand-delivered a letter (the **"First October Letter"**) to Minister Sohi at the October Meeting, outlining, among other things, the Tribe's concerns with Canada's Flawed Phase

III and clarifying its expectations for the Court Directed Phase III, which centred on the FCA's findings in the FCA Decision. In the First October Letter, I clearly communicated that the Tribe expected Canada would, among other things, consider in detail the 89 Recommendations and provide an infringement and justification analysis ("**Justification Analysis**") to the Tribe regarding the Stó:lō's proven s. 35 rights to fish. Now produced to me and marked as **Exhibit "H"** hereto is a true copy of the First October Letter regarding the Tribe's expectations for the Court Directed Phase III.

31. At the October Meeting, Minister Sohi listened to the Tribe's position regarding the Court Directed Phase III, as articulated by myself and the Tribe's Operation's Manager, Keri Ardell, but did not meaningfully engage with the Tribe's concerns and expectations.

32. After failing to receive a substantive response from Minister Sohi to the issues set out in the October Letter and raised at the October Meeting, I sent another letter to Minister Sohi, dated October 23, 2018 (the "**Second October Letter**"), reiterating that the Tribe was outlining its concerns in the spirit of collaboration and good faith in the hopes that Canada would develop an approach to Court Directed Phase III that would provide a meaningful opportunity for Indigenous voices to be heard, but that the first step towards meaningful consultation was for Canada to respond to the Tribe's concerns raised in the First October Letter. Now produced to me and marked as **Exhibit "I"** hereto is a true copy of the Second October Letter requesting substantive responses to the First October Letter.

33. I did not receive a response to the First October Letter or Second October Letter and the Crown had no substantive consultation with the Tribe in November 2018.

34. On or about December 10, 2018, I wrote to the Prime Minister (the "**December PM Letter**") to discuss, among other things, the Tribe's issues with the Court Directed Phase III, including: the lack of clarity provided to date by Canada on the Court Directed Phase III process; the lack of an agenda or other information surrounding the upcoming roundtable meeting with Justice Iacobucci on December 11, 2018 (the "**Roundtable**"); Canada's failure to provide a Justification Analysis on the Stó:lō's proven s. 35 rights; and the procedurally unfair NEB reconsideration hearing (the "**Reconsideration Hearing**"), which Canada had stated it would rely on to the extent possible to satisfy its duty to consult with the Tribe. Now produced to me and marked as **Exhibit "J"** hereto is a true copy of the December PM Letter (a copy of which was also sent to various other Ministers).

35. On December 11, 2018, I attended the Roundtable with Justice Iacobucci and a number of other Indigenous representatives and legal counsel. At the Roundtable, Justice Iacobucci circulated a draft of Canada's "Consultation Approach", outlining the anticipated, but non-Tribe specific, process for the Court Directed Phase III. In general, at the Roundtable, Justice Iacobucci did not provide substantive responses to the issues raised by the participants and there was no content specific to the Tribe.

36. Other than the Tribe's unanswered December PM Letter, there was no substantive engagement between the Tribe and Canada in December 2018; nor did Canada respond to the August PM Letter, the First October Letter, the Second October Letter, or the December PM Letter in 2018.

37. On or about December 19, 2018, I responded to an email from Assistant Deputy Minister Jeff Labonté dated November 30, 2019 which attached a funding application (the "**Funding Application**") for participation in the Court Directed Phase III. The email included a deadline of December

21, 2018 to submit the Funding Application (the "**Funding Deadline**"). I responded to Deputy Minister Labonté's email by way of letter dated December 19, 2018, explaining that the Funding Deadline was unreasonable because, among other things:

(a) Canada had still not provided any real clarity on the process for the Tribe-specific Court Directed Phase III, rendering it nearly impossible for the Tribe to prepare an estimate of its likely consultation expenses, such as professional fees, staffing requirements, and travel expenses;

(b) the Tribe represents the interests of seven member Nations and needed more than three weeks to scope out its activities and requirements for the Court Directed Phase III; and

(c) the Tribe was in the midst of participating in the Reconsideration Hearing as part of the Stó:lō Collective and as such lacked sufficient capacity to redirect staff from the expedited and intensive Reconsideration Hearing to the preparation of the Funding Application.

Now produced to me and marked as **Exhibit "K"** hereto is a true copy of the letter from the Tribe to Deputy Minister Labonté dated December 19, 2018.

Court Directed Phase III Actually Begins

38. Canada and the Tribe scheduled their first meeting in the Court Directed Phase III for January 17, 2019 (the "**First Meeting**").

39. Prior to the First Meeting, I sent a letter to Justice Iacobucci on behalf of the Tribe (the "**Iacobucci Letter**") dated January 15, 2019 to help guide the Tribe's upcoming discussions with Canada. In the Iacobucci Letter, I advised Justice Iacobucci of:

(a) the Tribe's desire to be consulted on the development of the Court Directed Phase III process;

(b) the Tribe's concern over the NEB's reliance on what the FCA found to be a flawed and outdated Crown Consultation and Accommodation Report and annexes thereto;

(c) the Tribe's concern over Canada's stated reliance on all of the proponents' (Trans Mountain and TM Canada) past and future consultation activities;

(d) the Tribe's expectation that Canada start with an acknowledgement of the Tribe's rights and communicate how the principles of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by Canada, would be reflected in the Court Directed Phase III;

(e) the Tribe's expectation that Canada provide a Justification Analysis for the Project's inevitable infringements of the Stó:lō's proven s. 35 rights, and frustration surrounding Canada's apparent refusal to provide a Justification Analysis to date;

(f) the Tribe's expectation that Canada meaningfully address the 89 Recommendations; and

(g) Canada's need to address the conflict of interest position it put itself in upon purchasing TMX.

Now produced to me and marked as **Exhibit "L"** hereto is a true copy of the Iacobucci Letter regarding the Tribe's expectations for the Court Directed Phase III.

40. By letter dated January 29, 2019, Deborah Corber, the Tribe's designated Consultation Lead from NRCan for the Court Directed Phase

III, responded to the Iacobucci Letter, while stating that the Tribe would also be hearing from Justice Iacobucci directly. In it, she addressed most of the Tribe's stated issues at a high level, but notably failed to respond to, or even mention, the Tribe's expectation that Canada provide a Justification Analysis. Now produced to me and marked as **Exhibit "M"** hereto is a true copy of a letter from NRCan to the Tribe dated January 29, 2019, responding to the Iacobucci Letter.

41. By another letter dated January 29, 2019, Minister Sohi finally responded to the August PM Letter and First October Letter, not addressing any of the Tribe's concerns or expectations stated therein, but merely stating that the Tribe's designated Consultation Team would discuss the Tribe's specific concerns "when the time comes". Now produced to me and marked as **Exhibit "N"** hereto is a true copy of the letter from Minister Sohi to the Tribe dated January 29, 2019.

42. On or about March 1, 2019, the Tribe finally received a response to the December PM Letter in the form of a letter from Minister Sohi dated February 25, 2019. In his letter, Minister Sohi recounted the meetings held with the Tribe to date and stated that the issues raised on behalf of the Tribe in the December PM Letter had been subsequently raised at the Roundtable and First Meeting, with some responses to certain issues received. Now produced to me and marked as **Exhibit "O"** hereto is a true copy of a letter from Minister Sohi to the Tribe dated February 25, 2019.

43. By letter dated March 14, 2019, I again wrote to the Prime Minister directly on behalf of the Tribe (the "**March PM Letter**"), on the following issues that remained unaddressed despite the Tribe repeatedly raising them with Canada:

(a) Canada's mistaken belief that Court Directed Phase III is bound by the timelines set in the *National Energy Board Act,* R.S.C. 1985, c N-7 (the "***NEB Act***");

(b) the prejudice the Tribe has suffered as a result of Canada's delayed commencement of the Court Directed Phase III;

(c) Canada's continued failure to produce, or even acknowledge the Tribe's request for, an Infringement Analysis; and

(d) Canada's conflict of interest position vis-à-vis the Project as the Crown, proponent, regulator and decision-maker.

Now produced to me and marked as **Exhibit "P"** hereto is a true copy of the March PM Letter.

44. On or about April 1, 2019, I received an email from NRCan attaching a letter with information on Canada's proposed accommodation measures (the "**Generally Proposed Accommodation Measures**") offered to the Tribe as part of the Court Directed Phase III, as well as the Generally Proposed Accommodation Measures as its own attachment. Now produced to me and marked as **Exhibit "Q"** hereto is a true copy of the email from NRCan to the Tribe dated April 1, 2019 with attachments.

45. By letter dated April 10, 2019, Minister Sohi responded to the March PM Letter. In his response, Minister Sohi stated that there was nothing in the FCA Decision that indicated that the statutory timelines in the *NEB Act* did not apply to the Court Directed Phase III, and that Canada therefore did not agree with the Tribe on this issue. He further indicated that, contrary to our assertion that Canada waited until January to commence the Court Directed Phase III, Canada began designing the process and setting up consultation teams as early as September 2018, which represent "steps along a consultation continuum" spanning as far

back as, and inclusive of, the First Hearing. Lastly, Minister Sohi stated that Canada would not be providing a Justification Analysis, and denied that Canada had put itself in a conflict of interest position when it purchased TMX. Now produced to me and marked as **Exhibit "R"** hereto is a true copy of a letter from Minister Sohi to the Tribe dated April 10, 2019 in response to the March PM Letter.

46. By letter dated April 17, 2019 from NRCan to the Tribe, NRCan provided a status update on its views on the Court Directed Phase III (the "**Status Update**"). Specifically, in the Status Update, NRCan reported on, among other things: the meetings that had occurred between Canada and the Tribe to date; the funding provided to the Tribe to participate in the Court Directed Phase III; the draft "Terms of Reference" for the Court Directed Phase III with the Tribe; and the tentatively scheduled "Technical Working Group" workshops (the "**TWG Meetings**"). Now produced to me and marked as **Exhibit "S"** hereto is a true copy of a letter from NRCan to the Tribe dated April 17, 2019 containing an update on the Crown's understanding of the status of the Court Directed Phase III.

47. The Tribe was very disappointed with the tone of the Status Update, which seemed to imply a lack of responsiveness of the Tribe throughout the Court Directed Phase III. For example, NRCan states in the Status Update that it had attempted to convene a series of joint TWG Meetings with the Tribe to "work collaboratively" towards addressing the 89 Recommendations. However, the TWG Meetings were technical workshops the Tribe had proposed as part of the Flawed Phase III which had never occurred. The Tribe remained eager to see this convened, but the Tribe consistently stated that it could not meaningfully participate in TWG Meetings concerning the ICA and the 89 Recommendations until it received responses from both the Crown and TM Canada on the 89 Recommendations, as well as certain technical information from TM

Canada on the Project itself. Rather than trying to cause delay, the Tribe indicated to Canada that the TWG Meetings would be much more efficient and productive if the Tribe knew (and, frankly, if Canada and TM Canada themselves knew) how Canada and TM Canada felt about the 89 Recommendations going into the TWG Meetings. Canada did not provide its analysis of the 89 Recommendations until March 6, 2019, while TM Canada's analysis still remained outstanding at the time of the Status Update and would not be provided until April 30, 2019.

48. It is clear from the Tribe's correspondence that the Tribe viewed the TWG Meetings as critical for the Court Directed Phase III, which was agreed to by NRCan in the First Meeting, and in fact the Tribe had been requested such meetings going back to 2015. Regardless, Canada pushed the Tribe to schedule and attend TWG Meetings prior to the necessary information being provided to the Tribe, and then attempted to use its incessant attempts against the Tribe as an indication of the Tribe's unwillingness to engage in an otherwise "meaningful" process.

49. On or about April 22, 2019, NRCan emailed the Tribe regarding the GiC extending its deadline to render a decision on the Project's re-approval to June 18, 2019. NRCan again mentioned its desire to discuss "moving forward" with TWG meetings. Now produced to me and marked as **Exhibit "T"** hereto is a true copy of the email from NRCan dated April 22, 2019.

50. By email sent on or about April 25, 2019, NRCan wrote to the Tribe to provide the draft annex (the "**Draft Annex**") to the Crown Consultation and Accommodation Report (the "**Draft CCAR**"), which contained information on consultation and accommodation specific to the Tribe. Now produced to me and marked as **Exhibit "U"** hereto is a true copy of the email from NRCan dated April 25, 2019 with the attached Draft Annex.

Court Directed Phase III Ends

51. On or about May 28, 2019, NRCan emailed the Tribe to remind it of the upcoming deadline of May 31, 2019 to provide comments on the Draft CCAR and Draft Annex, as well as the upcoming deadline of June 6, 2019 to provide independent submissions to the GiC on the adequacy of the Court Directed Phase III. Now produced to me and marked as **Exhibit "V"** hereto is a true copy of the email from NRCan to the Tribe dated May 28, 2019.

52. The next day, on or about May 29, NRCan emailed the Tribe again, stating that the Court Directed Phase III was "coming to a close". Despite this clear indication that Canada believed the Court Directed Phase III to be ending, Ms. Corber wanted to address the Tribe's remaining concerns regarding the integration of 400 Stó:lō cultural sites into TM Canada's environmental alignment sheets, and to advise that Canada had decided to increase funding available to the Tribe in light of its outstanding concerns. Specifically related to the Stó:lō cultural sites, Ms. Corber said that the Crown was offering the Tribe $250,000 in funding to "support the Tribe's efforts to advance its interests regarding cultural sites following the GIC decision" on the Project (emphasis added). Now produced to me and marked as **Exhibit "W"** hereto is a true copy of the letter from NRCan to the Tribe dated May 29, 2019.

53. Ian Anderson of TM Canada wrote to the Tribe by letter dated May 31, 2019 acknowledging that certain outstanding matters, including discussions on additional mitigation measures "that may be needed to address identified impacts" may not be completed prior to the GiC rendering a decision on the Project. Mr. Anderson went on to indicate, however, that if the Project were reapproved before these outstanding matters could be addressed, TM Canada would "remain committed" to collaborating with the Tribe following its re-approval. Now produced to

me and marked as **Exhibit "X"** hereto is a true copy of a letter sent to the Tribe by Mr. Anderson dated May 31, 2019.

54. By letter dated June 14, 2019, Canada wrote to the Tribe, enclosing the Tribe's final annex (the "**Final Annex**") and final Crown Consultation and Accommodation Report (the "**Final CCAR**") and informing the Tribe of the GiC's expected decision release on June 18, 2019. Now produced to me and marked as **Exhibit "Y"** hereto is a true copy of a letter from NRCan to the Tribe dated June 14, 2019 with the enclosed Final CCAR and Final Annex.

GiC Approves the Project

55. On June 18, 2019, four days after the Final Annex and Final CCAR were provided to the Tribe and without further consultation, the GiC reapproved the Project.

56. In quashing the Project's approval, the FCA specifically cited Canada's failure to engage with the 89 Recommendations in the FCA Decision as evidence of Canada's insufficient consultation efforts. Accordingly, the Tribe expected meaningful engagement with the 89 Recommendations in the Court Directed Phase III.

57. At the outset of the Court Directed Phase III, Canada expressed to the Tribe its commitment to engage meaningfully with the ICA. However, the 89 Recommendations were not addressed by the Crown until March 6, 2019, and TM Canada did not provide the TM Canada Responses until April 30, 2019, despite the fact that Canada and TM Canada were, at those times, operating under the assumption that the *NEB Act*'s statutory timeline required the GiC to make a decision on the Project by mid-May 2019.

58. As a result of this delay, technical workshops using the Crown and TM Canada's analysis of the 89 Recommendations could not begin until early May 2019, and remained incomplete as of May 31, 2019 when the Court Directed Phase III was concluded by Canada and June 18, 2019 when the GiC approved the Project.

59. Further, economic accommodations were not considered as part of the Court Directed Phase III despite a clear request for such accommodation in the Tribe's August PM Letter, but rather pushed off to a later date when equity participation may be available, again after any approval of the Project had already occured.

SWORN BEFORE ME at the City of Chilliwack in the Province of British Columbia, this 5th day of July, 2019

A Commissioner for Oaths in and for the Province of British Columbia

CHIEF DAVID JIMMIE

Allison Sproule
Articled Student
Miller Titerle Law Corporation
300-638 Smithe St
Vancouver, BC Canada
V6B 1E3

This is Exhibit A referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

Ts'elxwéyeqw Tribe Declaration of Aboriginal Rights and Title

In early January, 2013 the Chiefs and Councils representing seven Ts'elxwéyeqw villages assembled at Stehiyaq, the Tribe's Centre Creek property in the Chilliwack River Valley, to renew their connections with their ancestral lands and to envision a new future for their villages. An outcome of our visioning is this declaration.

The Chiefs and Councils declare that:

- We, the seven villages of Aitchelitz First Nation, Tzeachten First Nation, Yakweakwioose First Nation, Shxwha:y Village, Skowkale First Nation, Squiala First Nation and Soowhalie Indian Band, reaffirm our commitment to stay unified first and foremost as the Ts'elxwéyeqw Tribe.
- We seven Bands recognize ourselves as seven villages of the Ts'elxwéyeqw Tribe.
- We, the Ts'elxwéyeqw Tribe are committed to maintaining our unique, collective identity as a Tribe among Stó:lō Tribes and will continue to uphold the Ts'elxwéyeqw character, values, and teaching that constitute our guiding principles and laws by which we govern ourselves, and our lands, waters and resources.
- We, the Ts'elxwéyeqw Tribe, are part of the larger collective of Halkomelem speaking Stó:lō (People of the River / Tribe of Tribes) within S'ólh Téméxw (Our World, Our Land) to which we are connected by shared family relations and elements of our culture, including sxwoxwiyam and shxwelí
- Since Time Immemorial we, the Ts'elxwéyeqw Tribe, have maintained on-going use, occupation and stewardship of and connection to our ancestral lands (see attached map) within our shared, core traditional territory of S'ólh Téméxw including the Chilliwack River Valley (CRV) and greater watershed connecting to the Fraser River encompassing the Chilliwack Municipality and Columbia Valley, as well as parts of the Fraser Valley and lower Fraser River Canyon.
- By this declaration, we appoint the Ts'elxwéyeqw Tribe as the designated representative of our seven villages and entrust it with the authority to advocate, defend and advance our collective Aboriginal rights and title, including any Treaty Rights, on our behalf. including villages
- We, the Ts'elxwéyeqw Tribe, have inherent rights to control, manage and benefit from the resources within our defined ancestral lands. Specifically, we have the right to compensation and redress regarding our land and resources that have been confiscated, occupied, used, damaged or otherwise alienated from us without our free, prior and informed consent. We hereby authorize and empower the Ts'elxwéyeqw Tribe to manage and exercise our

sovereign and inherent authority, rights and jurisdiction over the lands, air, waters and resources within our ancestral lands consistent with Ts'elxwéyeqw Tribal visions, aspirations, interests, goals and principles.

- We commit to support the Ts'elxwéyeqw Tribe in its mandate to achieve our collective goals of cultural, health, wellbeing, and socio-economic development through sustainable use of land and resources within our ancestral lands without ever compromising the member villages' ability to pursue and attain their own respective goals and aspirations within their designated village reserve area.
- We, the seven Ts'elxwéyeqw Villages , also commit to share information with respect to our positions on land and resource development projects within our ancestral lands and build consensus as necessary for making decisions in the best interests of the Ts'elxwéyeqw Tribe collective, and in consideration of the broader Sto:lo collective.
- We reaffirm that the Ts'elxwéyeqw Tribe is authorized by this declaration to manage our collective Aboriginal Rights and Title within our ancestral lands, and that the Tribe will work collaboratively and in good faith with other Stó:lō villages and their affiliates to identify, address and resolve issues associated with management and exercise of our Aboriginal Rights and Title and Treaty Rights within and beyond the extent of the Tribe's core ancestral lands and throughout S'ólh Téméxw.

We, the undersigned, commit to uphold the above declarations and, where necessary, support the Ts'elxwéyeqw Tribe in its mandate to implement the declarations and exercise authorities granted to it on our behalf to advocate, defend and advance our collective Aboriginal Rights and Title.

TS'ELXWÉYEQW TRIBE MANAGEMENT LTD.

By: _____
Authorized Signatory

Willy Hall, Chief
Print Name and Title

AITCHELITZ FIRST NATION

By: _____
Authorized Signatory

Angie Bailey, Chief
Print Name and Title

SKOWKALE FIRST NATION

By: _____
Authorized Signatory

Willy Hall, Chief
Print Name and Title

SHXWHA:Y VILLAGE

By: _____
Authorized Signatory

Tina Sam, Chief
Print Name and Title

SQUIALA FIRST NATION

By: _____
Authorized Signatory

David Jimmie, Chief
Print Name and Title

SOOWAHLIE FIRST NATION

By: _____
Authorized Signatory

Otis Jasper, Chief
Print Name and Title

TZEACHTEN FIRST NATION

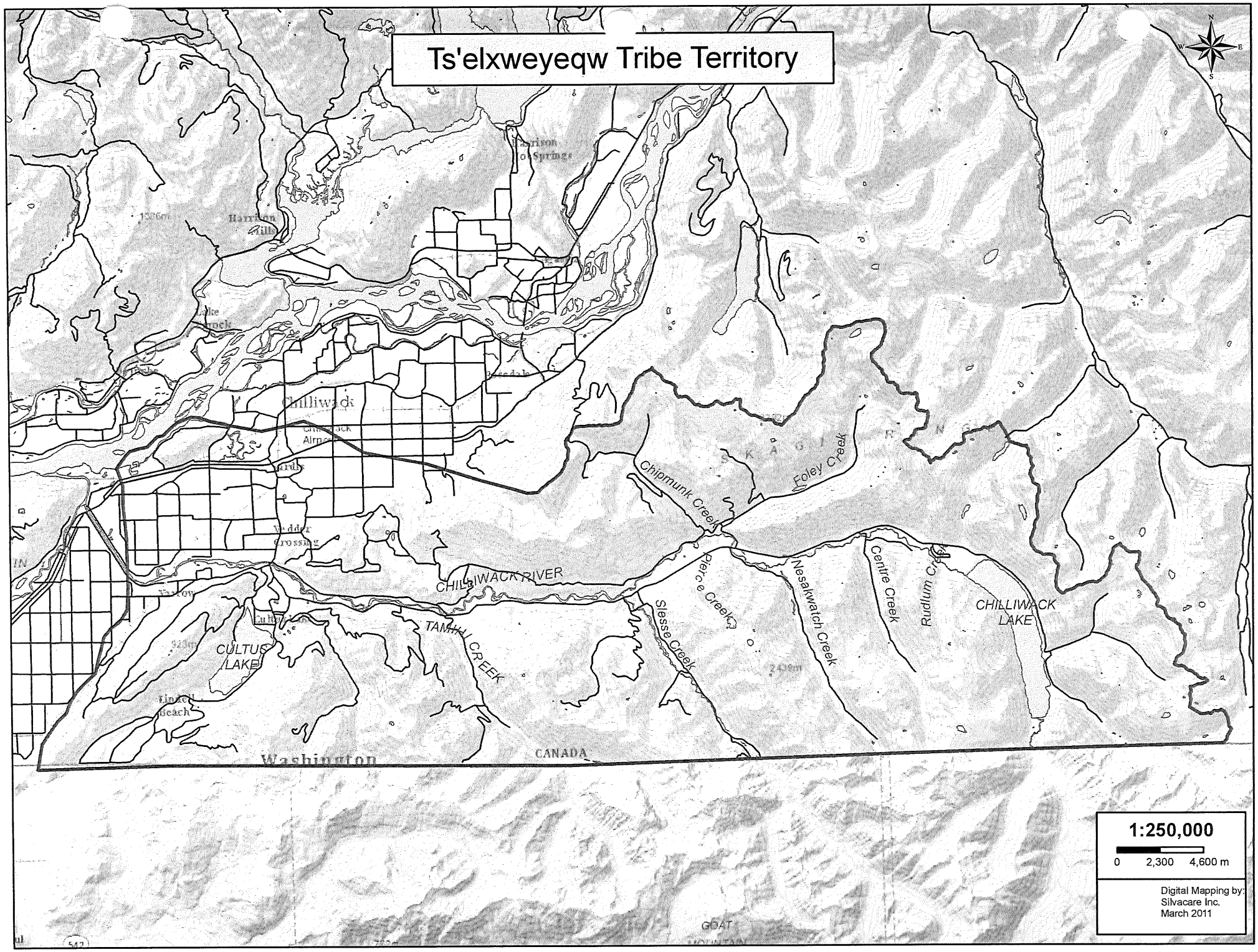
By: _____
Authorized Signatory

Brenda Campbell Chief
Print Name and Title

YAKWEAKWIOOSE FIRST NATION

By: _____
Authorized Signatory

Frank Malloway, Chief
Print Name and Title


Ts'elxweyeqw Tribe Territory
Chilliwack
Chilliwack Airport
Vedder Crossing
Yarrow
Cultus Lake
Lindell Beach
Washington
CANADA
CHILLIWACK RIVER
TAMIHI CREEK
Slesse Creek
Pierce Creek
Nesakwatch Creek
Centre Creek
Rudlum Creek
CHILLIWACK LAKE
Chipmunk Creek
Foley Creek
SKAGIT RANGE
GOAT MOUNTAIN
1:250,000
0 2,300 4,600 m
Digital Mapping by:
Silvacare Inc.
March 2011

Ombrielle Neria

From: Dekker, Corey (NRCAN/RNCAN) <corey.dekker@canada.ca>
Sent: Tuesday, January 29, 2019 9:36 AM
To: David Jimmie; Keri Ardell
Cc: Joelle Walker; Rob@millertiterle.com; Carrie Oloriz; 'Amber Kostuchenko'; Kimberley Lessard; Irwin, Kimberly (NRCAN/RNCAN); Patterson, Lorna (NRCAN/RNCAN); Symington, Phil; Crull, Carrie (NRCAN/RNCAN); Houde, Joelle (CEAA/ACEE)
Subject: Ts'elxwéyeqw Tribe Declaration & Representation in Phase III

Chief Jimmie,

On January 17, 2019 Ts'elxwéyeqw Tribe ("the Tribe") shared documentation that grants the Tribe authority to represent Aitchelitz, Shxwhá:y Village, Skowkale, Squiala, Soowahlie, Tzeachten and Yakweakwioose (the Seven Villages) in advocating for, defending, and advancing your collective Aboriginal rights and title. This included a Tribal Declaration signed in 2013 by the Chiefs of the seven First Nations, and a sworn affidavit, filed in 2016 with the Federal Court of Appeal regarding the Trans Mountain Expansion Project (the Project), that reiterates this authority.

Canada is of the view that these two documents are sufficient to accept the Tribe's authority to represent the Seven Villages in this re-initiated phase III consultation process (the consultation process) for the Project. In the event that additional Indigenous communities seek representation from Ts'elxwéyeqw in the consultation process, documentation of this expanded authority may be required.

I look forward to our ongoing consultations with Ts'elxwéyeqw Tribe.

Thank you,

Corey Dekker
Consultation Director
Trans Mountain Pipeline Expansion Consultation Team
Natural Resources Canada

This is Exhibit B referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

This is Exhibit C referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

Consultation

Jimmie, David

Ts'elxwéyeqw Tribe

Ts'elxwéyeqw

cc

MINISTER'S OFFICE
To: DA
JUN 15 2018
Docket # 176857
File # 1400-1

June 8, 2018

Right Hon. Justine Trudeau, PM
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2
Fax: 613-941-6900

Hon. Jim Carr,
Minister of Natural Resources
House of Commons
Ottawa, ON K1A 0A6
Fax: 613-992-9586

Dear Prime Minister Trudeau and Minister Carr:

Re: Ts'elxwéyeqw Tribe's Objection to Purchase of Trans Mountain Pipeline / TMX and Prime Minister's Visit to Indigenous Advisory & Monitoring Committee / Chilliwack

On behalf of the Ts'elxwéyeqw Tribe ("**Tribe**"), I write to register our formal objection to the federal government's recent decision to purchase the Trans Mountain Pipeline system and expansion project ("**TMX**"). I also write to express the Tribe's dismay over and objection to Prime Minister Trudeau's closed meeting with members of the Indigenous Advisory & Monitoring Committee ("**IAMC**") in Chilliwack, BC on June 5, 2018, and specifically his decision not to meet with our leadership during that same visit on our territory.

As you are no doubt aware, our communities brought a judicial review of the federal government's November 2016 decision to approve the Trans Mountain Pipeline Expansion (TMX) project. The basis of that legal challenge was Canada's failure to accommodate and consult us. That decision is before the Federal Court of Appeal, and a decision is expected this year.

Especially with this important Federal Court of Appeal decision pending, the federal government's decision to purchase Kinder Morgan's Trans Mountain assets, including TMX, is very disturbing. That decision was made without notice or our involvement, and we consider it to be a further violation of Canada's constitutional duties to our Nation. Such a decision, and the federal government's approach to it, certainly is not a step towards reconciliation, which your government has repeatedly promised Indigenous people.

The law in Canada is clear: the Crown has a duty to consult with Indigenous peoples whenever it contemplates a decision that may impact our asserted rights, including title. The duty to consult and accommodate in our case is at the highest possible end of the spectrum, with the Stó:lō Nation holding, among others, an established fishing right along the Fraser River (recognized by the Supreme Court of Canada). A decision to purchase TMX is a critical Crown decision with significant implications. We were not consulted in respect of it, and it is therefore constitutionally invalid.

We also write to express our dismay over the Prime Minister's recent decision to hold a closed meeting with certain Indigenous leaders in our territory, but not to contact or seek a meeting with representatives of the Tribe. In a letter dated June 1, 2018, we advised co-chairs Ms. Sloan and Chief Crey of IAMC that Chief Crey had no authority of any kind to speak for our Tribe and its members, including no such authority in respect of his participation on the IAMC, although he has been appointed to represent our region. He has taken no steps to seek or obtain that authority, and we are not supportive of him acting on our behalf. On June 4, after learning of the meeting scheduled for June 5, we made inquiries to see if regional chiefs could attend. We received no response form NRCan until after the meeting was held, and were advised the meeting

was "closed" to such participants. We disagree with Prime Minister Trudeau's decision to visit our territory on an issue that is clearly important to our members, and not engage with us.

We have spent significant time and resources attempting to inform and educate the Crown on how the TMX project will impact our title, rights and interests. We expect you should be well informed on those topics by this stage, so I will not repeat them again here.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation

cc. Naina Sloan (naina.sloan@canada.ca) and Cathy Chalupa, Natural Resources Canada (cathy.chalupa@canada.ca)
Chief Ernie Crey (ernie.crey@cheamband.com)

Minister
of Natural Resources

Ministre
des Ressources naturelles

Ottawa, Canada K1A 0E4

This is Exhibit D referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

AOUT AUG 17 2018

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation
Building 8A
7201 Vedder Road
Chilliwack, British Columbia V2R 4G5

Dear Chief Jimmie:

Thank you for your letter of June 8, 2018, to my predecessor, the Honourable Jim Carr, on the Trans Mountain Expansion Project (TMX).

Our government is of the view that good projects that contribute to economic growth and sustainable resource development must go ahead. The decision we made on the TMX was founded on facts, science-based evidence, recognizing the rights of Indigenous Peoples, and Canada's national interest. In making our decision, we considered many things, including the reports from the National Energy Board and the ministerial panel for the project, Indigenous input, an assessment of the project's potential greenhouse gas emissions, and the views of Canadians.

On May 29, 2018, my colleague, the Honourable Bill Morneau, Minister of Finance, announced that the Government of Canada had reached a purchase agreement with Kinder Morgan to secure the timely completion of the TMX. The agreement will guarantee the resumption of construction work, protecting thousands of jobs in Alberta and British Columbia. The purchase agreement is expected to close shortly. It is not the Government of Canada's intention to be a long-term owner of the project. We will work to advance it and find a new owner for the TMX when the time is right. The Department of Finance is managing the purchase. I have therefore copied Minister Morneau for his consideration, as the Ts'elxwéyeqw Tribe asked to be consulted on the agreement.

We appreciate your views on the Indigenous Advisory and Monitoring Committee (IAMC) for the project. This committee is an important forum for collaboration between participating Indigenous groups, regulators and federal departments. The Prime Minister's engagement with the IAMC took place at their regularly scheduled business meeting, to which all members were invited.

The members of the committee do not speak on behalf of any one Indigenous community. Instead, each member strives to advance the interests of all Indigenous communities. While all members have a shared interest in making pipelines and marine shipping as safe as possible, in order to protect the environment and Indigenous interests in the land and waters, they have diverse views on the TMX and their participation does not indicate that a community supports or opposes the project. The IAMC does not replace or diminish the Government of Canada's duty to consult Indigenous Peoples directly, or Kinder Morgan's obligation to engage with them. Our government remains attentive to the concerns of Indigenous Peoples, regardless of their level of participation or representation on the committee.

I appreciate your continued engagement on this important topic. I would encourage you to keep an open dialogue with Natural Resources Canada's Indigenous Partnerships Office-West, which provides support to the IAMC. The IAMC is an important venue for Indigenous Peoples to provide advice to the National Energy Board and other federal regulators.

Again, thank you for writing.

Yours sincerely,

A. Sohi

Amarjeet Sohi, M.P., P.C.

c.c.: The Honourable Bill Morneau, P.C., M.P.
Minister of Finance

RECEIVED SEP 1 1 2018

Ts'elxwéyeqw TRIBE

This is Exhibit E referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

August 28, 2018

The Right Honourable Justin Trudeau, Prime Minister of Canada
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Attention: The Right Honourable Justin Trudeau

Dear Mr. Trudeau,

Re: Trans Mountain Expansion Project Consultation and Accommodation Obligations

I am writing on behalf of the Ts'elxwéyeqw Tribe regarding the Trans Mountain Pipeline and expansion project (together, the "TMP"), which, if completed, will be constructed through the heart of our Traditional Territory and, in some cases, across our respective reserves.

On May 29, 2018, your government signed an agreement to acquire the TMP. We also understand that the underlying reason behind the acquisition was to ensure that the expansion of the TMP is completed. In the words of your own Minister, "[the acquisition] allows us to move forward with the investments required to get the expansion completed".

Given this background, the purpose of this letter is not to advocate for or against the merits of the TMP. Rather, it is to remind you that your government had, and still has, an unsatisfied obligation to consult and accommodate Indigenous peoples prior to taking any action to financially support or otherwise support the TMP, including signing the acquisition agreement or closing the acquisition transaction.

Unmet Legal Obligations

The law in Canada is clear that your government has an obligation to consult with Indigenous peoples whenever it *contemplates* a decision that *may* impact our asserted Aboriginal rights and title. There is no question that the TMP will have a significant adverse effect on strong claims of Aboriginal rights and title and that, following your decision, the impacts of the TMP are much more likely to be felt in a real and meaningful way by our communities.

In other words: consultation and accommodation exist to ensure that the Crown appropriately considers Indigenous interests *before* making decisions like the one you made on May 29 to sign the acquisition agreement and the one you now propose to make in closing the acquisition transaction. Needless to say, we are extremely disappointed that no such consideration was given. As we wait to better understand the full impacts of your failure - though they are no doubt significant - each of our communities will continue to assess our respective legal options and, if necessary, may take further steps to challenge your decision in court.

Path Forward

All of this said, we believe that disagreement and legal disputes are the least desirable result and continue to advocate for Canadian and Indigenous governments working together to effect reconciliation through practical means outside of the courtroom. Today, we write in this spirit to highlight steps your government should now be taking to better address Indigenous' interests.

Now that your government has committed to acquiring an ownership interest in the TMP, you are in the unique and delicate position of holding multiple conflicting roles. You are the owner and developer of the TMP. You are the regulator who is tasked with ensuring that the TMP is designed, constructed and operated in accordance with Canadian laws, and responsible for protecting our environment from undue risk. You are the Crown who, because of its unique relationship with Indigenous peoples, has a duty to act honourably in all dealings with us. You are a signatory to UNDRIP who has committed to upholding the principles of free, prior and informed consent. You are the trustee who holds reserve lands in trust for our people – some of which are impacted by the TMP.

Although these different and conflicting roles place your government in a very difficult position in some respects, they also create new opportunities for more meaningful accommodation of Indigenous interests. As the proponent, regulator, Crown, and trustee of our reserve land, there are few limits on your ability to ensure that the TMP is developed in a manner that is respectful of our concerns and provides fair benefits to our communities.

In order to seize on this opportunity and move forward in the spirit of reconciliation and collaboration, it is crucial that Indigenous leaders are meaningfully involved in the dialogue taking place at the national and provincial level. This dialogue must occur in a leadership-to-leadership forum that includes representatives from all impacted Indigenous Nations.

While we are generally supportive of your government's backing of the Indigenous Advisory and Oversight Committee, we caution that this is not the appropriate forum for the type of engagement we are referring to. The Oversight Committee was created for a specific purpose and its structure and representation reflect that purpose, and only that purpose. Conducting broad based engagement through the Oversight Committee – like was done on June 5th when Prime Minister Trudeau met with select Oversight Committee representatives - will only serve to alienate Indigenous Nations that are not effectively represented within that forum. In our view, this includes the Tribe.

Rather, we ask that your government commence in-depth engagement directly with the Indigenous Nations impacted by the TMP by creating forums for meaningful dialogue with Nation leadership. This is the only path towards developing an understanding of the interests of our members in a manner that is respectful of our right to self determination. Heeding this advice will better position your government to meaningfully respond to the concerns of respective Indigenous Nations and avoid further legal and political challenges.

In the case of the Ts'elxwéyeqw Tribe, steps that your government should take to begin addressing our concerns with the TMP include:

1. sharing economic benefits of the TMP with the communities that bear the most risk through equity participation and resource revenue sharing;

2. entering into meaningful discussions aimed at righting the wrongs of the past by providing compensation for past infringements of our Aboriginal rights and title;

3. providing additional assurances that, if completed, the TMP will be built to the highest safety and environmental standards and that our communities will made whole in the event of a spill;

4. consulting in good faith with respect to both the potential acquisition of TMP and the implementation of the Expansion before closing the acquisition transaction.

These steps are presented on a without-prejudice basis, and you should not infer that addressing them will result in our consent or will be sufficient to discharge the Crown's duties. Rather, we include them in this letter to demonstrate the type of potential accommodation initiatives that could begin to satisfy your obligations to our communities and could serve as a model for your ongoing engagement with Indigenous Nations impacted by the TMP.

We are optimistic that together we can help your government satisfy its obligations to Indigenous peoples and chart a new course toward achieving Indigenous consent and look forward to hearing from you.

Yours truly,

Chief David Jimmie, MBA
President, Ts'elxwéyeqw Tribe

CC: The Honourable William Francis Morneau, Minister of Finance,
Department of Finance Canada

This is Exhibit F referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

From: "Folkes, Tiara (NRCAN/RNCAN)" <tiara.folkes@canada.ca>
Date: October 2, 2018 at 5:08:03 PM PDT
To: David Jimmie <davidjimmie@squiala.com>
Subject: Re: IMPORTANT: Meeting Request

Hello Chief,

Sorry to bug you. Have you decide who will be in the meetings and what the agenda will be?

Also can you provide me a location?

Tiara.

Sent from my BlackBerry 10 smartphone on the Bell network.

From: David Jimmie
Sent: Tuesday, October 2, 2018 2:31 PM
To: Folkes, Tiara (NRCAN/RNCAN)
Subject: Re: IMPORTANT: Meeting Request

Hi Tiara,

Thank you for the email and request. I'm currently in a meeting and will have time this afternoon to call if that works for you?

David

Sent from my iPhone

On Oct 2, 2018, at 11:26 AM, Folkes, Tiara (NRCAN/RNCAN) <tiara.folkes@canada.ca> wrote:

> Hello Chief Jimmie,
>
> I called you at 2:15pm EST today regarding Minister Sohi's travel to BC this week and will be in the Vancouver area on Friday.
>
> I would like to see if you are interested in meeting with Minister Amarjeet Sohi.
>
> If you could call me at 819.743.6389 we can discuss.
>
> Thank you,
>
> Tiara Folkes
> Office of the Minister of Natural Resources Canada | Cabinet du Ministre de Ressources Naturelles Canada
> Government of Canada | Gouvernement du Canada
> <image001.jpg>

Minister
of Natural Resources

Ministre
des Ressources naturelles

Ottawa, Canada K1A 0E4

This is Exhibit G referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

OCT 05 2018

Chief Angie Bailey
8161 Aitchelitz Road
Chilliwack, British Columbia V2R 4H4

Dear Chief Bailey:

I am writing to follow up on the August 30, 2018, decision of the Federal Court of Appeal related to the Trans Mountain Expansion Project (the Project).

Most importantly, the Government of Canada has decided that we will not appeal the Federal of Appeal decision. We will instead focus on taking the important steps necessary to act on marine scoping and meeting our constitutional obligation to consult Indigenous Peoples.

Our government is focused on moving forward. The Court found that Canada acted in good faith and selected an appropriate consultation framework. However, the Court also found that more needed to be done in terms of conducting the process within that framework. This government takes its Indigenous consultation obligations seriously and will pursue meaningful two-way dialogue with Indigenous Peoples and work together to identify appropriate accommodation measures to address potential impacts to rights.

We know and value that Indigenous Peoples need to be involved in the consultation process right from the beginning, which is why I am reaching out to you today: to continue the conversation about how we get this right. I am reaching out to all impacted Indigenous groups that were engaged in the Phase III consultation to engage on how we can move forward together. We learned a lot from our consultations the last time and we can build on this to ensure that we focus the upcoming dialogue on outstanding issues.

No relationship is more important to the Government and to Canada than the one with Indigenous Peoples. Working collaboratively with Indigenous Peoples to renew our relationship, based on recognition of rights, respect, cooperation and partnerships, is key to advancing reconciliation with Indigenous Peoples, while working towards creating a better, transparent and environmentally responsible regulatory system for the benefit of all Canadians.

Our government sent the National Energy Board's (NEB) Recommendation Report, including its terms and conditions, back to the NEB for a reconsideration of project-related marine shipping in view of the requirements of the *Canadian Environmental Assessment Act, 2012*, and section 79 of the *Species at Risk Act*, as the court instructed. Under this direction, the NEB will deliver its report back to the Government by the end of February 2019.

Officials in my department have already reached out to Aitchelitz Band and indicated that the Government will rely on the NEB public hearing process to the extent possible to fulfill the legal duty to consult related to the reconsideration of project-related marine shipping.

As we move forward, I am committed to working with Aitchelitz Band on how best to proceed. The only way to take the next step is by taking that next step together. Officials in my department will reach out to Aitchelitz Band again shortly to outline the availability of participant funding, to understand your concerns on the Project to date, and to discuss an approach to engage in a meaningful way.

Should you have any questions before that point, please contact Genevieve Carr, Acting Director General, at nrcan.tmx.rncan@canada.ca.

Yours sincerely,

A. Sohi

Amarjeet Sohi, P.C., M.P.

c.c.: Chief David Jimmie
Stó:lō Collective
c/o Ts'elxwéyeqw Tribe Management Limited

Ts'elxwéyeqw TRIBE

This is Exhibit H referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

October 5, 2018

Hon. Amarjeet Sohi,
Minister of Natural Resources
House of Commons
Ottawa, ON K1A 0A6
Fax: 613-992-1026

Dear Minister Sohi:

Re: Ts'elxwéyeqw Tribe's Position in Respect of Consultation and Accommodation for the Trans Mountain Expansion Project ("TMX")

I write you as the President of the Ts'elxwéyeqw Tribe (the "**Tribe**") to address your government's engagement efforts concerning the TMX.

It is my understanding that, following the Federal Court of Appeal's recent decision in *Tseil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (the "**TWN Decision**") to quash the TMX approval as a result, in part, of your government's failures during Phase III of the consultation process, you intend to recommence Phase III in an effort to fulfill the Crown's constitutional obligations. In support of these efforts, and in the sprit of collaboration and good faith, this letter is intended to:

(a) confirm the Tribe's role as the representative entity for matters relating to the Aboriginal rights and title held collectively by Ts'elxwéyeqw people;
(b) clarify the role of the Stó:lō Collective and other Stó:lō organizations in respect of your government's consultation and accommodation efforts; and
(c) outline the Tribe's concerns with your government's flawed consultation and accommodation in respect of the TMX and help set the path forward to addressing these concerns.

Role of Ts'elxwéyeqw Tribe

As you are aware, Aboriginal rights and title are collectively held rights that exist separate from the *Indian Act*. This can pose challenges in determining how Aboriginal rights holders should be engaged. The BC Court of Appeal acknowledged this in the 2012 in *Tsilhqot'in*, stating:

> "It will, undoubtedly, be necessary for First Nations, governments, and the courts to wrestle with the problem of who properly represents rights holders in particular cases, and how those representatives will engage with governments."

Although these issues may pose challenges in certain contexts, this is not the case for Ts'elxwéyeqw rights holders. The Tribe, which is comprised of seven First Nations, Aitchelitz, Skowkale, Shxwhá:y, Soowahlie, Squiala, Tzeachten, and Yakweakwioose (the "**Ts'elxwéyeqw Villages**"), has been given the clear mandate to represent the members of the Ts'elxwéyeqw Villages in respect of their collectively held Aboriginal rights and title. This mandate has been confirmed by the chief and council representatives of each Ts'elxwéyeqw Village and has been maintained over many years. As such, there should be no uncertainty as to who your government owes its duty to consult and accommodate in respect of Ts'elxwéyeqw rights and title.

Moving forward, I expect that your government will engage directly with the Tribe on all matters relating to consultation and accommodation of Ts'elxwéyeqw people and will treat such obligations as separate and apart from your obligations relating to other Stó:lō peoples.

Role of Other Stó:lō Organizations

Although Ts'elxwéyeqw rights holders are exclusively represented by the Tribe, there are broader Stó:lō organizations that serve Ts'elxwéyeqw people in other respects. For example, the People of the Rivers Referral Office ("**PRRO**") and S'ólh Téméxw Stewardship Alliance ("**STSA**") provide capacity and support to the Tribe and the Ts'elxwéyeqw Villages in relation to certain referrals and Crown engagement. While this role may at times facilitate Crown engagement efforts, it does not include a mandate to represent Ts'elxwéyeqw people in respect of rights and title.

Similarly, various First Nations, including the Ts'elxwéyeqw Villages, chose to work as a Stó:lō Collective to advance their common interests during the National Energy Board's ("**NEB**") review of the TMX and will be continuing to do so for the purpose of the NEB's reconsideration hearing. This approach provides certain advantages and efficiencies for both the Crown and the Indigenous participants in the regulatory process; however, the Stó:lō Collective presently does not have a mandate in respect of consultation concerning Ts'elxwéyeqw rights and title.

Although the Tribe and the Ts'elxwéyeqw Villages may continue to use certain Stó:lō organizations to advance shared interests in an efficient manner, I wish to formally advise you that the Crown should not confuse cooperation between the Tribe and other Stó:lō communities, or the support provided by STSA and PRRO, as being an indication that the Tribe is not the appropriate entity for consultation and accommodation in respect of Ts'elxwéyeqw rights and title. Further, the participation of representatives of the Tribe or the STSA in the Indigenous Advisory and Monitoring Committee does not constitute consultation or accommodation in respect of any potential decision or action of any government or Crown agency concerning Ts'elxwéyeqw rights and title.

If the Tribe chooses to engage directly with the Crown as part of a broader group at some point in the future, your government will be given formal notice of the same. In the meantime, we recommend that you seek to meet and engage directly with other Stó:lō communities in relation to the TMX. The renewed Phase III engagement with the Tribe should not be viewed as amounting to engagement with any broader Stó:lō organization.

Path Forward

The path forward requires your government to remedy the deficiencies in its consultation, in particular with respect to the critical Phase III of consultation.

(a) Meaningful Two-Way Dialogue

In the TWN Decision, the Federal Court of Appeal repeatedly highlighted the ways in which your government's original Phase III efforts lacked a genuine and sustained effort to pursue meaningful two-way dialogue. The Court specifically noted that very few responses were provided by Canada's representatives in the consultation meetings and, when they were provided, they were brief and lacked a sincere desire for continued dialogue.

Moving forward, the Crown should not engage with the Tribe merely to listen, but should be prepared to have a substantive exchange in which the Tribe's concerns can be demonstrably integrated into any future TMX approval. This two-way dialogue demands that your government ensure that its representatives are in a

position to engage interactively and to meaningfully discuss and decide on required accommodation measures.

(b) Process to Assess Proposed Conditions

Another significant factor found by the Court was your government's erroneous belief that your powers did not include imposing new conditions on the TMX approval. As was highlighted in the *Gitxaala* ruling released on June 23, 2016 – prior to the approval of the TMX – your government necessarily has the power to impose conditions on any approval it directs the NEB to issue. Your failure to recognize this power, and act on it, significantly undermined the legitimacy of your past consultation efforts.

Moving forward, the Tribe expects that a re-cast Phase III will include a specific process aimed at transparently assessing new conditions in response to Indigenous concerns, and that this process will ultimately result in your government utilizing its powers to impose such conditions.

(c) Stó:lō Specific Recommendations

As part of its effort to engage the Crown, the Stó:lō Collective prepared an "Integrated Cultural Assessment" ("**ICA**") - a detailed technical submission which contained 89 specific recommendations to mitigate the adverse effects of the TMX. The ICA was intended to form the basis for constructive and meaningful consultation with the Crown. It identifies the potential impacts of the TMX on Stó:lō territory in the lower Fraser River watershed, such as impacts on Stó:lō traditional activities, culture, lands, and resources. In describing certain of the mitigation measures contained in the 89 recommendations from the ICA, the Court in the TWN Decision stated:

> "These measures are specific, brief and generally measured and reasonable. If implemented they would provide more detail to the Board's generic conditions on consultation and require timely notification to the Stó:lō of events that may adversely impact their interests."

Despite having this clear roadmap for addressing these important concerns, your government failed to meaningfully respond to the ICA recommendations or provide an explanation as to why the recommendations were not considered.

The Tribe expects that, as part of further consultation, the ICA recommendations will be considered in detail and that our communities will be provided a detailed analysis of the feasibility of each. Where appropriate, feasible recommendations should be either added as new conditions to the approval or form part of assessing whether existing conditions have been met.

(d) Assessment of Infringement on Proven Right

Missing from your government's original Phase III (or during the previous two phases) was any analysis of the Stó:lō's constitutionally protected right to fish. This is an established and proven right which should have triggered important Crown consideration. Nevertheless, your government completely failed to conduct any analysis on how our protected rights were taken into account throughout your consultation process.

As established rights holders, the Crown's consultation with the Tribe must contain substantive elements. Your government must consider whether its actions would constitute an infringement of our established right, whether the infringement is justified and whether accommodation measures have been imposed on the TMX to specifically address such infringement. This analysis must be communicated to us on a timely basis. The requirement to communicate is essential to the "meaningful and responsive two-way dialogue" that is required. Failure to do so makes consultation inadequate.

(e) Scope of Accommodation

As the impacts of the TMX are wide ranging, so too should the possible accommodation measures that can be utilized to mitigate, or compensate for, these impacts. While environmental and safety protections are of paramount importance to our communities, there are also economic and social impacts that cannot be addressed through mitigation measures alone.

Moving forward, the Tribe expects that a re-envisioned Phase III will include consideration of entirely new accommodation measures that go beyond mitigation but, rather, seek to meaningfully compensate our members for the potential economic and social impacts of the TMX. In other words, we expect that your government will be willing to think outside of the box in attempting to address the concerns of our communities.

Concluding Remarks

The Tribe's positions set out in this letter are provided on a without-prejudice basis and under no circumstance should be interpreted as a complete list of the inadequacies in your government's prior approaches to consultation and accommodation. That said, I have provided them in the spirit of collaboration and good faith in the hopes that you may develop a new Phase III approach that provides a meaningful opportunity for Indigenous voices to be heard and for your government to meet its obligations.

The Tribe and our neighbouring First Nations have spent significant time and resources attempting to inform and educate the Crown on how the TMX will impact our title, rights and interests. I look forward to your government now spending the time and resources necessary to meet its own obligations in this respect.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation

Ts'elxwéyeqw TRIBE

This is Exhibit I referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

October 23, 2018

Hon. Amarjeet Sohi,
Minister of Natural Resources
House of Commons
Ottawa, ON K1A 0A6
Fax: 613-992-1026

Dear Minister Sohi:

Re: Ts'elxwéyeqw Tribe's Position in Respect of Consultation and Accommodation for the Trans Mountain Expansion Project ("TMX")

I write further to my previous letter to you dated October 5, 2018 concerning your government's engagement efforts with the Ts'elxwéyeqw Tribe (the "**Tribe**") in relation to the TMX, and to follow up on our meeting of that same date.

The Tribe appreciates you taking the time to meet with us and discuss Canada's re-engagement; however, to date, I have not received a substantive response to the issues raised in our October 5th letter, or to the questions asked of you in our meeting. In particular, during our meeting you were asked to identify Canada's representative for the purposes of consultation with the Tribe going forward.

Similarly, I was advised by the Office of the Prime Minister by letter dated September 20, 2018, that my correspondence of August 28, 2018 concerning your government's failure to consult on the purchase of the TMX had been provided to you but the Tribe has received no response.

As communicated to you in my letter and during our meeting, the Tribe outlined its concerns in the spirit of collaboration and good faith in the hopes that you may develop a new Phase III approach that provides a meaningful opportunity for Indigenous voices to be heard and for your government to meet its obligations. The first step in our path forward is a response from Canada to the Tribe's concerns which I have previously outlined for you and for you to identify the representative for the purpose of future engagement on the TMX.

I look forward to hearing from you. Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation

Ts'elxwéyeqw TRIBE

This is Exhibit J referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

December 10, 2018

Via Email: Justin.Trudeau@parl.gc.ca

The Right Honourable Justin Trudeau
Office of the Prime Minister
80 Wellington Street
Ottawa, ON K1A 0A2

Dear Prime Minister Trudeau,

Re: Ts'elxwéyeqw Tribe's Position in Respect of Consultation and Accommodation for the Trans Mountain Expansion Project (the "Project")

I write you as the President of the Ts'elxwéyeqw Tribe (the "**Tribe**") to address engagement efforts concerning the Project. The purpose of this letter is to:

a. Clarify the role of the Tribe in relation to engagement and engagement activities; and
b. Outline the Tribe's concerns with the engagement to date in relation to the various engagement activities the Tribe has participated in.

The Tribe has previously raised similar concerns with Minister Sohi by letter and in-person meeting of October 5 and in a follow up letter dated October 22, 2018. The Tribe has not received a substantive response to those concerns.

Role of Ts'elxwéyeqw Tribe

As you are aware, Aboriginal rights and title are collectively held rights that exist separate from the *Indian Act*. The Tribe, which is comprised of seven First Nations, Aitchelitz, Skowkale, Shxwhá:y, Soowahlie, Squiala, Tzeachten, and Yakweakwioose (collectively the "**Ts'elxwéyeqw Villages**"), has been given the clear mandate to represent the members of the Ts'elxwéyeqw Villages in respect of their collectively held Aboriginal rights and title. This mandate has been confirmed by the chief and council representatives of each Ts'elxwéyeqw Village and has been maintained over many years.

Moving forward, I expect that engagement will be directly with the Tribe on all matters relating to consultation and accommodation of Ts'elxwéyeqw people and all such obligations will be treated as separate and apart from obligations relating to other Stó:lō peoples.

Role of Other Stó:lō Organizations

Although Ts'elxwéyeqw rights holders are exclusively represented by the Tribe, there are broader Stó:lō organizations that serve Ts'elxwéyeqw people in other respects. For example, the People of the Rivers Referral Office ("**PRRO**") and S'ólh Téméxw Stewardship Alliance ("**STSA**") provide capacity and support to the Tribe and the Ts'elxwéyeqw Villages in relation to certain referrals and Crown engagement. While this role may at times facilitate engagement efforts, it does not include a mandate to represent Ts'elxwéyeqw people in respect of rights and title.

Although the Tribe and the Ts'elxwéyeqw Villages may continue to use certain Stó:lō organizations to advance shared interests in an efficient manner, I wish to formally advise you that you should not confuse cooperation between the Tribe and other Stó:lō communities, or the support provided by STSA and PRRO, as

being an indication that the Tribe is not the appropriate entity for consultation and accommodation in respect of Ts'elxwéyeqw rights and title.

If the Tribe chooses to engage directly as part of a broader group at some point in the future, the Tribe will provide formal notice of the same. In the meantime, we recommend that you seek to meet and engage directly with other Stó:lō communities in relation to the Project.

Phase III Consultation

(a) Lack of Clarity on Path Forward

As a result of the Federal Court of Appeal's decision in *Tseil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (the "**TWN Decision**"), Canada must recommence Phase III in an effort to fulfill the Crown's constitutional obligations. However, Canada has yet to provide specific details as to how it will remedy the deficiencies in its initial consultation.

In the TWN Decision, the Federal Court of Appeal repeatedly highlighted the ways in which Canada's original Phase III efforts lacked a genuine and sustained effort to pursue meaningful two-way dialogue. The Court specifically noted that very few responses were provided by Canada's representatives in the consultation meetings and, when they were provided, they were brief and lacked a sincere desire for continuing dialogue.

As a result of the Court's reasons, the Tribe expects that Canada will engage with the Tribe not merely to listen, but will be prepared to have a substantive exchange in which the Tribe's concerns can be demonstrably integrated into any future Project approval. This two-way dialogue demands that Canada ensure that its representatives are in a position to engage interactively and to meaningfully discuss and decide on required accommodation measures.

In the spirit of good faith and collaboration, the Tribe has reached out to Canada to clarify the steps forward in the Phase III consultation process and highlighted its expectations for meaningful dialogue. Despite these efforts, there has been no specific path forward outlined by Canada in response. The Tribe has been invited to a "round table" discussion with Justice Iacobucci on December 11th but no agenda has been provided for this meeting, nor any confirmation of participants. Despite my intention to attend this meeting, the Tribe does not consider a "round-table" discussion to be the appropriate means to facilitate direct, interactive and meaningfully dialogue between the Tribe and the Crown which is required for Canada to fulfill its consultation obligations.

(b) Failure to Address the Stó:lō's Established Right to Fish

In the TWN Decision, the Court noted that missing from Canada's original Phase III (or during the previous two phases) was any analysis the of the Stó:lō's constitutionally protected right to fish. This is an established and proven right which should have triggered important Crown consideration. Nevertheless, Canada completely failed to conduct any analysis on how our protected rights were taken into account throughout the consultation process.

As established rights holders, the Crown's consultation with the Tribe must contain substantive elements. Canada must consider whether its actions would constitute an infringement of our established right, whether the infringement is justified and whether accommodation measures have been imposed on the Project to specifically address such infringement. This analysis must be communicated to us on a timely basis. The requirement to communicate is essential to the "meaningful and responsive two-way dialogue" that is required. Failure to do so will render consultation inadequate.

The NEB Reconsideration Hearing

(a) The Reconsideration Hearing is Procedurally Unfair

On September 20, 2018, through an Order in Council, the Governor in Council ("**GIC**") referred aspects of the Recommendation Report on the Project back to the National Energy Board ("**NEB**" or the "**Board**") for reconsideration ("**Reconsideration Hearing**"). The Tribe was an intervenor in the first hearing before the Board to consider the Project (the "**First Hearing**") as part of a larger group of Stó:lō communities known as the Stó:lō Collective. The Tribe has continued to participate in the Reconsideration Hearing as part of the Stó:lō Collective.

Through its participation as part of the Stó:lō Collective, the Tribe has objected to the unrealistic timeline set by the GIC for completion of the Reconsideration Hearing and delivery of the NEB's reconsideration report (the "**Reconsideration Report**"). The Tribe has been an active participant throughout the regulatory approval process for the Project and will continue to do so but has significant concerns that the Reconsideration Hearing will repeat and exacerbate the mistakes of the past identified by the Federal Court of Appeal in the TWN Decision.

The NEB owes intervenors in the Reconsideration Hearing a significant degree of procedural fairness, and must ensure that that the intervenors are provided a meaningful opportunity to present their cases fully and fairly. In the TWN Decision, the NEB's duty of procedural fairness was described as follows:

> [230] The Board, as a public authority that makes administrative decisions that affect the rights, privileges or interests of individuals, owes a duty of procedural fairness to the parties before it. However, the existence of a duty of fairness does not determine what fairness requires in a particular circumstance.
>
> [231] It is said that the concept of procedural fairness is eminently variable, and that its content is to be decided in the context and circumstances of each case. The concept is animated by the desire to ensure fair play. The purpose of the participatory rights contained within the duty of fairness has been described to be:
>
> ... to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker. [(*Baker v. Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, at paragraph 22)].

The GIC's imposition of a time limit of 155 calendar days for the completion of both the Reconsideration Hearing and the NEB's submission of the Reconsideration Report to the GIC pursuant to section 53(5) of the *National Energy Board Act* indicates that it is timing, and not procedural fairness, or the ability to fully canvas and consider the potentially significant adverse impacts of Project-related marine shipping on Aboriginal rights and title, the environment and species at risk, that is the most significant factor driving the Reconsideration Hearing.

On October 31, 2018, Trans Mountain and the Federal authorities filed a substantial volume of materials as their opening statements and direct evidence. Canada alone filed approximately 7000 pages compiled from various Federal departments and agencies- suggesting that Canada had been working on preparing its evidence for the Reconsideration Hearing prior to it or its aggressive timelines being announced to those who will be impacted by the Project approval. At minimum, it is clear that Canada has a far greater capacity to address the issues in the Reconsideration Hearing than the other intervenors. There can be no "fair play" where the timelines have been stacked against the intervenors from the outset. Although the deadline for

delivery of the intervenors opening statements and evidence was ultimately extended following an application by the Squamish Nation (and supported by the Stó:lō Collective), there was still insufficient time to meaningfully respond to the voluminous materials filed.

The timing restrictions also place into sharp focus the difficulties in establishing a procedurally fair, rigorous and transparent process given the conflicting roles that Canada has now placed itself in in relation to the Project. It is the Project proponent with a significant interest in seeing the Project proceed within the earliest possible time frame; the regulator tasked with conducting the Reconsideration Hearing and unilaterally setting the timelines for the hearing schedule; the body who forced the expedited schedule for the Reconsideration Hearing by setting the date by which the Reconsideration Report must be delivered, and who will ultimately determine whether to approve the Project; and the Crown who has a duty to act honorably in all dealings with Indigenous peoples and to meaningfully consult whenever it contemplates a decision that may impact their asserted rights and title which, with respect to the Tribe, the Project undoubtedly does.

(b) The Reconsideration Hearing is Inadequate to Discharge the Crown's Duty to Consult

Canada has advised certain Indigenous communities that it will be relying on the Reconsideration Hearing to the extent possible to fulfil its constitutional duty to consult. In such circumstances, the Board's process serves the additional purpose of contributing to the extent possible to the constitutional imperative not to approve the Project if the duty to consult is not satisfied. It is the Tribe's view that the timeline and structure of the Reconsideration Hearing do not contribute in any meaningful way to the discharge of Canada's duties.

The Supreme Court of Canada has confirmed that the Crown may rely on steps taken by an administrative body to fulfil the duty to consult, in part or in full, so long as the agency possesses the statutory powers to do what the duty to consult requires in the particular circumstances. However, where the Crown intends to rely on a regulatory process to discharge the duty to consult, it should be made clear to the affected Indigenous groups that the Crown is so relying. In addition, if the NEB does not provide adequate consultation and accommodation, the Crown must provide further avenues for meaningful consultation and accommodation in order to fulfill its duty prior to Project approval.

Contrary to this clear direction, in the present circumstances:

a. Canada has not made it clear to all affected Indigenous groups that it intends to rely on the Reconsideration Hearing to discharge its constitutional duty to consult with the Indigenous intervenors;
b. Canada has filed voluminous evidence which cannot be thoroughly reviewed and responded to in the timelines set for the Reconsideration Hearing making any meaningful consultation within the Reconsideration Hearing process impossible;
c. The process, timing and location imposed by the Board for the hearing of Oral Traditional Evidence made the sharing of Oral Traditional Evidence unduly burdensome and limited which impacts on the ability of either Canada or the Board to fully understand the significant adverse impacts the Project could have on the Tribe's rights and title; and
d. Canada has not provided any clear guidance or engaged with the Tribe about any consultation framework to address additional or outstanding concerns of the Tribe following what has already proven to be a flawed and insufficient Reconsideration Hearing process.

Given Canada's stated intention that it will rely on the Reconsideration Hearing to discharge its duty to consult with respect to Project-related marine shipping, the NEB must ensure that its process is consistent with the honour of the Crown. It is the position of the Tribe that the Reconsideration Hearing process as

structured cannot fulfill this purpose as it does not in substance provide for an appropriate level of meaningful consultation.

Indigenous Advisory and Monitoring Committee ("IAMC")

The Tribe wishes to note that, while it has and will continue to participate in the IAMC where opportunities are available, the creation of the IAMC does not constitute accommodation with respect to the Tribe's rights and title. The IAMC has no mandate to speak on behalf of the Tribe and no input from the IAMC to the Crown or Trans Mountains, or from the Tribe to the IAMC, constitutes consultation. The Tribe has previously advised Canada that any monitoring committee must, *at minimum*, be independent, ensure that traditional ecological and other knowledge is incorporated in Project planning at the community level, have decision-making powers, and have the ability to monitor and enforce Trans Mountain's commitments. The IAMC does not meet these minimum requirements.

Provincial Permits for the Project

The Tribe has delegated technical and procedural aspects in relation to the Provincial permitting process for the Project to the STSA's technical working team. However, while the technical work and support provided by the STSA helps support and inform the Tribe's decision-making, the STSA does not have the authority to speak substantively for the Tribe with respect to consultation or accommodation. Ultimately, such authority with respect to the Tribe's Territory rests with the Tribe.

Concluding Remarks

The Tribe's positions set out in this letter are provided on a without-prejudice basis and under no circumstance should be interpreted as a complete list of the inadequacies in the Project approval and consultation process to date. Despite this, the Tribe has participated and intends to continue to participate in this process. I have provided the comments in this letter in the spirit of collaboration and good faith in the hopes that we may develop an approach moving forward that provides a meaningful opportunity for Indigenous voices to be heard and to remedy the mistakes that have occurred to date.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation

cc: The Honourable Minister Amarjeet Sohi, email: Amarjeet.Sohi@parl.gc.ca
The Honourable Premier John Horgan, email: Premier@gov.bc.ca
The Honourable Minister Michelle Mungall, email: EMPR.Minister@gov.bc.ca
Ian Anderson, email: Ian_Anderson@transmountain.com

Ts'elxwéyeqw TRIBE

This is Exhibit K referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

December 19, 2018

Via Email: nrcan.tmx.rncan@canada.ca

Jeff Labonté
Assistant Deputy Minister
Major Projects Management Offices
Natural Resources Canada

Dear Assistant Deputy Minister Labonté,

Re: Application for Participant Funding for Phase III Consultation in relation to the Trans Mountain Expansion Project (the "Project")

I write you as the President of the Ts'elxwéyeqw Tribe (the "**Tribe**") concerning the application for participant funding (the "**Funding Application**") for Phase III of Crown consultation on the Project.

The Tribe is comprised of seven First Nations, Aitchelitz, Skowkale, Shxwhá:y, Soowahlie, Squiala, Tzeachten, and Yakweakwioose (collectively the "**Ts'elxwéyeqw Villages**"). The Tribe has been given the clear mandate to represent the members of the Ts'elxwéyeqw Villages in respect of their collectively held Aboriginal rights and title. This mandate has been confirmed by the chief and council representatives of each Ts'elxwéyeqw Village and has been maintained over many years.

For the purpose of Phase III consultation, engagement will be directly with the Tribe on all matters relating to consultation and accommodation of Ts'elxwéyeqw people and all such obligations will be treated as separate and apart from obligations relating to other Stó:lō peoples. As such the Funding Application will be submitted on behalf of the Tribe. However, please be advised that for the purpose of this letter only concerning the timing of delivery for the Funding Application, I am also writing on behalf of the community of Skwah.

I understand from your email correspondence of November 30, 2018 attaching the Funding Application, that the target date for submission of the Funding Application is December 21, 2018. With respect, in the present circumstances, the expectation that the Funding Application could be thoroughly completed by that date is not reasonable:

a. Canada has not provided any clarity on the process for Phase III consultation thus items such as professional fees, staffing requirements, travel expenses and honouraria for Elders cannot be estimated with the precision necessary to complete the information required in the Funding Application. No Phase III consultation meetings have occurred with the Crown consultation team to date which would provide insight on the process;
b. The three weeks provided between delivery of the Funding Application and its due date are insufficient to scope out Phase III consultation activities on behalf of 7 communities (in particular where there has been so little direction from Canada);
c. The Tribe and Skwah are currently participating in the National Energy Board's reconsideration hearing concerning the Project as part of the Stó:lō Collective. There is a lack of capacity for staff to be redirected toward preparation of the Funding Application in the midst of preparing materials for that hearing;

d. December 21st is in the middle of the Holiday season which creates significant difficulties with scheduling and communications; and
e. The Board of Directors of the Tribe are not scheduled to meet prior to December 21st, therefore the Funding Application cannot receive the necessary internal approval by this date.

Based on the foregoing, neither the Tribe nor Skwah are in a position to deliver their respective Funding Applications at this time. I trust that this will not prejudice our ability to apply for participant funding once we have been advised of Canada's proposed process for Phase III consultation and are able to gather the information required to complete the Funding Application accordingly.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation

cc: Carrie Crull, email: carrie.crull@canada.ca
Genevieve Carr, email: GCarr.TMXDG@canada.ca
Canada Environmental Assessment Agency, email: CEAA.FP-PAF.ACEE@canada.ca

Ts'elxwéyeqw TRIBE

This is Exhibit L referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019

A Commissioner for taking affidavits for British Columbia

January 15, 2019

Via Email: nrcan.tmx.rncan@canada.ca

Justice Frank Iacobucci
c/o Genevieve Carr, Director General,
TMX Consultation Secretariat

Dear Justice Iacobucci,

Re: Trans Mountain Expansion Project (the "Project") Phase III Consultation Expectations

I write you as the President of the Ts'elxwéyeqw Tribe (the "**Tribe**") to reiterate the Tribe's expectations in respect of the upcoming Phase III consultation process for the Project in advance of our meeting scheduled with the Crown consultation team for January 17, 2018. The topics addressed in this letter reflect points that were raised in a roundtable engagement meeting held on December 11, 2018 in Vancouver, B.C., as well as other issues that impact Phase III consultation. I hope that these points will help to guide our upcoming discussions.

1. Consultation on the Process

The first step in developing a consultation process that meets the Crown's legal obligations to Indigenous peoples is to consult Indigenous peoples on what the process should entail. This approach is in keeping with the honour of the Crown and, in my view, is the only way of achieving a process that will meet the appropriate legal standards. Consultation on the process itself includes taking meaningful steps to understand the governance structures that exist across various Indigenous peoples, ensuring that Indigenous culture and values are reflected in the means by which consultation is carried out, taking the time to understand and adhere to any existing Indigenous engagement protocols and processes, and seeking input from Indigenous peoples throughout the development of the consultation process.

An example of the pitfalls of developing a consultation process without Indigenous input can be seen in the unrealistic timeline set by the Governor-in-Council ("**GIC**") for the National Energy Board ("**NEB**") to complete the reconsideration hearing ("**Reconsideration Hearing**") and report following the Federal Court of Appeal ruling in *Tseil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (the "**TWN Decision**"). The Crown has stated that it will rely on the Reconsideration Hearing, to the extent possible, to fulfill its duty to consult and accommodate. However, the 155 day timeline imposed by the GIC for the Reconsideration Hearing and report indicates that timing was the most significant factor driving the process, rather than meaningful consideration of the potentially significant adverse impacts of Project-related marine shipping on Aboriginal rights and title, the environment, and species at risk. This approach is entirely at odds with the legal obligations of the Crown and the interests of Indigenous peoples and undermines the legitimacy of consultation for the Project. Had the Crown instead engaged Indigenous peoples in determining an appropriate timeline for completing the Reconsideration Hearing and report, the resulting process would be closer to meeting the Crown's legal obligations.

In its direct evidence in the Reconsideration Hearing, Canada filed the November 2016 Consultation and Accommodation Report ("**CAR**") that was before the GIC when the Project was approved. Despite the Federal Court of Appeal finding in the TWN Decision that the CAR was a result of a flawed Phase III consultation process, Canada continues to rely on it. It is deeply concerning that the NEB, in preparing its

report on the Reconsideration Hearing, will have before it information concerning strength of claim and Project impacts on Aboriginal rights and title from the Crown's out of date and inaccurate consultation report. While Canada has advised that it will be revising the CAR prior to any further decision on Project approval by the GIC, the NEB will not have the benefit of such revisions – meaning the NEB process (which the Crown has stated forms an important part of its consultation process) will rely on a record that both the court and the Crown have acknowledged is flawed. This sets the entire consultation process in the wrong direction and creates a fundamental flaw that endangers the legitimacy of any Crown decision.

Due to the rushed nature of the Reconsideration Hearing, Canada's reliance on the CAR as evidence in it, and the Crown's previous "closed-mindedness" concerning the NEB process and the NEB's recommendations and findings, it is imperative that prior to embarking on a new Phase III, the Crown confirm that as part of Phase III consultation:

a. it will not be relying on the flawed CAR and will be directing the NEB to refrain from doing the same;
b. it is willing to depart from the findings and recommendations of the NEB in both the NEB's May 2016 report and the report that will be produced following the Reconsideration Hearing;
c. it will dialogue meaningfully about any asserted flaws in the NEB process, its findings and its reports;
d. it can (and where appropriate, will) impose additional terms and conditions or recommend changes to terms and conditions prior to any Project approval; and
e. where indigenous groups have stated their preferred means of mitigation and accommodation (as is the case with the Tribe's Integrated Cultural Assessment, as discussed below), Canada will review and consider these recommendations with the same weight as would be given to any recommendations of any other expert or regulator.

Without these minimum commitments at the outset, Phase III consultation cannot possibly succeed. In my view, the new Phase III process provides an opportunity for the Crown to demonstrate that it is working in good faith to respond to the direction provided in the TWN Decision rather than continuing down a flawed path. With respect to the Tribe, this means taking the time understand our preferred means of engagement and adapting the Phase III process accordingly, making a commitment to approach Phase III with an open-mindedness that the Court in the TWN Decision ruled had not been present, and engaging in meaningful dialogue on concerns that have been outstanding for the Tribe for, in many cases, at least five years.

2. Inappropriate Reliance on the Proponent

In its response to the Tribe's Information Request in the Reconsideration Hearing concerning whether any aspects of the duty to consult had been delegated to the proponent, Natural Resources Canada advised that:

> In addition to the Crown's direct consultation with Indigenous groups and consultation through the NEB, the Crown will also rely on the conduct of all of the proponent's past and future consultation activities, where appropriate, to fulfill its duty to consult.

The Tribe has serious concerns about the Crown's reliance on any of Trans Mountain's past engagement activities. Between 2014 and 2016, the Tribe, as part of the Stó:lō Collective, repeatedly advised the Crown of the issues it had with Trans Mountain's engagement efforts, including: Trans Mountain's failure to honour commitments, its failure to accurately record information, its failure to incorporate traditional ecological knowledge into Project plans, and a pattern of responding to the Stó:lō Collective's requests by claiming that issues will be "discussed" or information would be provided at some point in the future (that point rarely

came). The Crown has never substantively responded to these concerns. Under the circumstances, the Crown cannot rely on Trans Mountain's past conduct to fulfill any part of its duty to consult, because the Proponent routinely mischaracterized its consultative activities in the past and the Crown failed to independently confirm the accuracy of the record despite the Tribe's serious concerns.

3. Consultation Standard – Rights Recognition and FPIC

One of the first steps in developing a new Phase III process is to clearly identify the principles and standards that will guide it. At the forefront of this should be a focus on rights recognition, rather than denial. This is consistent with the messaging from the top levels of the federal government and is absolutely crucial to the new Phase III process meeting the expectations of the Tribe and other Indigenous peoples.

The principle of rights recognition involves giving Indigenous concerns, and the potential accommodation measures aimed at addressing those concerns, the same weight and consideration that would be given if the rights giving rise to consultation had already been proven. There is no question that Aboriginal rights and title exist over the length of the Project, whether yet proven in court or not. The fact that the Crown has not yet taken the steps to acknowledge those rights and define which rights apply to whom should not disadvantage the interests of Indigenous peoples, particularly when Indigenous groups with overlapping claims up and down the length of the Project have shared concerns.

At a minimum, the principle of rights recognition should result in the Crown's strength of claims analysis starting with an assumption that most claims should be classified at the "strong" end of the consultation spectrum. By developing the Phase III process around this principle the Crown will ensure that Indigenous concerns are meaningfully considered and increase the likelihood that the new Phase III process will withstand judicial scrutiny.

The Crown must also communicate, from the beginning, how the principles of the United Nations Declaration on the Rights of Indigenous Peoples that Canada has adopted will be reflected in the consultation process; and in particular, the Crown's view on the standard of free, prior and informed consent (FPIC) that is applicable to the Project.

4. Acknowledging Proven Rights

In addition to providing enhanced weight to asserted Aboriginal rights, the new Phase III process must also create a separate procedure for addressing Aboriginal rights that have already been established. This is particularly relevant to the Tribe since the right for Ts'elxwéyeqw people to fish is an established right that has been acknowledged by Canadian courts (including in the TWN Decision). As you are aware, infringement of established Aboriginal rights requires that the Crown expand the concepts of consultation and accommodation a step further by undertaking an analysis to determine whether the potential infringement is justified.

Despite the Ts'elxwéyeqw people having an established Aboriginal right to fish, and that right clearly being infringed as a result of the Project, the original Phase III process gave no specific consideration to a justification analysis. This must be rectified in the new Phase III process by developing an entirely new justification assessment framework – a process that should include input from the Tribe.

5. Accounting for Past Consultation

One of the key failures of the original Phase III process in respect of the Tribe is that it failed to meaningfully address the 89 recommendations identified in the Tribe's Integrated Cultural Assessment (the "**ICA**") that could potentially mitigate Project impacts. The ICA was compiled by experts (both technical "Western-

science" experts and traditional knowledge experts) and was consistently highlighted by the Tribe as being a critical tool for addressing its concerns, yet the ICA's 89 recommendations were not accounted for in the terms and conditions attached to the Project's approval, and, as found by the Court in the TWN Decision, there is no indication that any of the recommendations were ever specifically considered, let alone grappled with, by the Crown. This is particularly disappointing given the significant resources that the Tribe allocated to this document with the expectation that its significant contribution would be reflected in the process.

Moving forward, the Tribe can not accept a consultation process that starts from ground zero in assessing the impacts of the Project and identifying appropriate mitigation measures. Rather, the Crown must thoroughly review the ICA at the outset of the new Phase III process and ultimately take meaningful steps to address all of the impacts it identifies, and the proposed mitigation measures. We fully expect that, through the course of a consultation process, the Tribe will be provided with a meaningful response stating how each of the 89 recommendations are reflected in Project plans and conditions or, where this is not the case, a full justification why not, together with a description of any proposed alternative accommodation measures. In addition, there must be opportunities to address issues that were outside of the scope of the ICA due to timing constraints and the original Project description being considered by the NEB.

6. The Role of the Tribe

As has been communicated to the Crown consistently throughout the Project's engagement process, the Tribe is comprised of seven First Nations, Aitchelitz, Skowkale, Shxwhá:y, Soowahlie, Squiala, Tzeachten, and Yakweakwioose (collectively the "**Ts'elxwéyeqw Villages**"), and has been given the clear mandate to represent the members of the Ts'elxwéyeqw Villages in respect of their collectively held Aboriginal rights and title. This mandate has been confirmed by the chief and council representatives of each Ts'elxwéyeqw Village and has been maintained over many years.

Despite this, the Ts'elxwéyeqw Villages continue to be approached individually in respect of the Project and the Crown's consultation efforts. This failure to respect Ts'elxwéyeqw traditional governance and our preferred means of engagement signals that the Crown intends to again pursue a divide and conquer strategy rather than heeding the direction of the Federal Court of Appeal in the TWN Decision. This has occurred as recently as December 28, 2018, when you, as the Crown's representative, sent letters on Tory's letterhead to individual Ts'elxwéyeqw Village representatives as opposed to communicating through the Tribe, which has been our clear direction. This is not acceptable.

Meaningful two-way dialogue can only be achieved if the Crown is engaging the appropriate representatives, which must be determined from an Indigenous perspective. In the case of the Ts'elxwéyeqw Villages, there should be no doubt that the Tribe is the appropriate representative for all matters relating to the Ts'elxwéyeqw people's collectively held Aboriginal rights and title. Any effort by the Crown to undermine this preferred engagement process represents a failure at the outset to achieve meaningful two-way dialogue. As such, moving forward it is imperative that the Crown engage the Tribe in respect of all consultation efforts relating to any of the Ts'elxwéyeqw Villages or their members, including the revamped Phase III consultation process.

7. The Role of the Crown and Perception of Bias/Conflicts

While the Tribe has been clear and consistent with the Crown regarding its role in respect of the Project and the new Phase III consultation process, the Crown's role has become less and less clear. Now that the federal government has acquired an ownership interest in the Project, the Crown is in the unique and delicate position of holding multiple conflicting roles. It is the owner and developer of the Project, who will enjoy

significant financial benefits should the Project proceed; the regulator of the Project, who is tasked with ensuring that it is designed, constructed and operated in accordance with Canadian laws; a fiduciary in respect of Indigenous peoples (particularly where the Project crosses reserve lands); the Crown, who holds a unique position *vis a vis* Indigenous people, and has an obligation to act honourably in its dealings with them; a signatory to UNDRIP, who has committed to upholding the principles of free, prior and informed consent; and a trustee in respect of reserve lands, who holds that land - some of which is impacted by the Project - for the benefit of Indigenous peoples.

These different and conflicting roles place the Crown in a very difficult position, particularly with respect to meeting its legal obligations to Indigenous peoples. Our view is that the Crown, particularly given its role of "honourable Crown" and fiduciary/trustee, will be held to the highest standard in navigating these conflicting roles. As such, it is crucial that the Crown address the impacts of these conflicting roles upfront and that all steps possible are taken to mitigate that perception of bias that naturally flows from these conflicting roles. Despite raising our concerns with these conflicting roles a number of times with various representatives of the federal government (including Prime Minister Trudeau and Minister Sohi), in the last several months, and despite the fact that at the December 11 roundtable, you "undertook" to take the issue back and provide a response, the Tribe has yet to receive a substantive response. A meaningful response and dialogue on this issue is fundamental to developing an appropriate Phase III consultation process.

Concluding Remarks

The Tribe's positions set out in this letter are provided on a without-prejudice basis and under no circumstance should be interpreted as a complete list of the steps that must be taken in the new Phase III process to meet the Crown's legal obligations to the Tribe. Rather, these comments are provided in the spirit of collaboration and good faith in the hopes that we may develop an approach moving forward that provides a meaningful opportunity for Indigenous voices to be heard and to remedy the mistakes that have occurred to date.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe
Chief, Squiala First Nation

cc: The Honourable Minister Amarjeet Sohi, email: amarjeet.sohi@parl.gc.ca
Corey Dekker, Consultation Director, NRCan email: corey.dekker@canada.ca

Natural Resources Canada | Ressources naturelles Canada

This is Exhibit M referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019

A Commissioner for taking affidavits for British Columbia

January 29, 2019

Chief David Jimmie
President
Ts'elxwéyeqw Tribe Management Limited
Building 8A, 7201 Vedder Road
Chilliwack, BC V2R 4G5

Dear Chief Jimmie,

Thank you for your letter of January 15, 2019 concerning the re-initiated Phase III consultation process for the Trans Mountain Expansion Project (TMX). Your letter was addressed to the Honourable Justice Frank Iacobucci (c/o Natural Resources Canada), and I understand that he will be responding to you directly. Many of these issues are topics that were discussed at our meeting on January 17, 2019, and our team looks forward to continuing these discussions with you through the re-initiated Phase III consultation process for TMX (the consultation process). The purpose of this letter is to provide a written response to your concerns that reiterates or builds upon what was discussed in our meeting.

Consultation on the Process

You have underscored the importance of developing a consultation process that will meet the needs and expectations of Indigenous communities. Canada is in full agreement that the consultation process should be developed in collaboration with the communities being consulted. The December 2018 roundtables with Justice Iacobucci presented an initial opportunity for Indigenous leaders to provide feedback to Canada regarding expectations for consultation and that feedback has been heard and incorporated into our approach. Canada is committed to addressing the issues raised in the Federal Court of Appeal decision. This means engaging in specific and focused two-way dialogue, being open to revisiting the previous analyses and conclusions drawn by NEB and Canada in relation to this project, and ensuring reasonable accommodations are in place, where appropriate.

At our meeting with you on January 17, 2019 Ts'elxwéyeqw Tribe outlined its expectations and goals for the consultation process, and we agreed that Ts'elxwéyeqw Tribe and Canada would work towards establishing an agreed Terms of Reference to guide the process. On behalf of the entire team, we look forward to working with you on the Terms of Reference over the coming weeks, and to the substantive discussions to follow.

Involvement of Trans Mountain Corporation and the Perception of Conflicts of Interest

You have expressed your concerns regarding at least the potential for conflict of interest as a result of Canada's recent purchase of the project. As we shared with you when we met, while Canada recognizes the uniqueness of this situation, TMC will be held to the same legislative, regulatory and operational

standards to which a similar proponent would be held. Moreover, and independently of any potential conflicts, Canada remains obligated to fulfill its constitutional duty to consult with Indigenous communities whose Aboriginal rights, including title, may be impacted by the proposed project. We take this obligation with the utmost seriousness and are committed to engaging in a meaningful two-way dialogue with the Tribe, as with all Indigenous communities.

You have also raised a concern regarding Canada's reliance on past and future engagement by Trans Mountain Corporation (TMC) in fulfilling its duty to consult. While Canada relies, to the extent possible, on the efforts of the proponent and the regulator to discharge the duty to consult, ultimate responsibility for consultation, which includes upholding the honour of the Crown, remains with the Crown. As you know, this Phase III consultation process is being led by the Minister of Natural Resources on behalf of Canada, and TMC's role is to support the discussions between Ts'elxwéyeqw Tribe and Canada, as well as to assist in meaningfully addressing Ts'elxwéyeqw's concerns, where appropriate.

Rights Recognition and Acknowledging Proven Rights

Your letter emphasizes the need for Canada to recognize Ts'elxwéyeqw Tribe's rights, including its proven right to fish flowing from the Supreme Court of Canada's decision in *R. v. Van der Peet* (1996). It also seeks to clarify how the *United Nations Declaration on the Rights of Indigenous Peoples* will be reflected in the consultation process, particularly as it relates to free, prior, and informed consent. Canada respectfully acknowledges and recognizes Ts'elxwéyeqw's rights, and intends to consult with Ts'elxwéyeqw at the deep end of the consultation spectrum based on the framework described in the Supreme Court of Canada's decision *Haida Nation v. British Columbia (Minister of Forests), [2004*].

The consultation process seeks to fulfill the legal duty to consult, but also to advance reconciliation, and to implement the *Principles respecting the Government of Canada's Relationship with Indigenous Peoples.* This includes Principle 6, which states that "the Government of Canada recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior, and informed consent when Canada proposes to take actions which impact them and their rights, including their lands, territories and resources."

Accounting for Past Consultation

In your letter you refer to the Integrated Cultural Assessment (ICA) report, which included 89 recommendations that the Sto:Lo provided to the National Energy Board and Canada in 2015. As we shared with you at our meeting, the consultation team recognizes the importance of addressing each of the 89 recommendations and is establishing an interdepartmental working group with relevant expertise to assist in that effort. Indeed, we look forward to working on addressing the recommendations in close collaboration with your team. The consultation team also understands that you intend to update the ICA, which was produced several years ago, and that you may have additional recommendations for Canada's consideration. We look forward to receiving and reviewing those with you as well.

The Role of the Tribe

Your letter indicates that Ts'elxwéyeqw Tribe has the mandate to represent Aitchelitz, Shxwhá:y Village, Skowkale, Squiala, Soowahlie, Tzeachten and Yakweakwioose First Nations in respect of your collectively held Aboriginal rights and title. Following our meeting of January 17, Ts'elxwéyeqw shared

the 2013 Tribal Declaration with the consultation team as confirmation of this mandate. Canada respectfully acknowledges that Ts'elxwéyeqw Tribe intends to represent the above seven nations in the consultation process, and has offered up to $462,000 to support the Tribe's participation. The consultation team will follow up directly if any additional documentation is required to support the Tribal Declaration.

Concluding Remarks

Your letter raises several other issues of a particularly legal nature, which we have not addressed directly in this response. As we shared at our first meeting, though, we are happy to have our respective legal counsel engage on these issues at a time to be determined, should you feel that would be worthwhile.

Our consultation team looks forward to continuing these discussions with Ts'elxwéyeqw Tribe through a meaningful and iterative two-way dialogue. While we may, at key intervals, wish to separately or jointly formalize our interactions in written letters, I hope that we will be able to consider and address issues, to the greatest possible extent, through our ongoing in-person meetings.

I understand that Canada's next meeting with Ts'elxwéyeqw Tribe is scheduled for January 31, 2019, at your offices in Chilliwack. While I am not able to attend this meeting in person, I will remain actively involved in ensuring that our discussions with you are meaningful, responsive, transparent and collaborative. In that regard, I have the utmost confidence in the consultation team, led by Corey Dekker, Consultation Director.

I thank you for your letter and for the positive approach you have brought to these discussions, and look forward to working with you as this Phase III consultation process unfolds.

Respectfully,

Deborah Corber, Consultation Lead
TMX Consultation Team
Natural Resources Canada

c.c.: Justice Frank Iacobucci
Corey Dekker, Consultation Director, TMX Consultation Team

Minister
of Natural Resources

Ministre
des Ressources naturelles

Ottawa, Canada K1A 0E4

This is Exhibit N referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

JAN 29 2019

Chief David Jimmie
Ts'elxwéyeqw Tribe Management Limited
Building 8A
7201 Vedder Road
Chilliwack, British Columbia V2R 4G5

Dear Chief Jimmie:

The Prime Minister's Office has forwarded to me a copy of your correspondence of August 28, 2018 and I thank you for our meeting held on October 5, 2018 to discuss the contents of your subsequent letter to me of the same date, shared formally when we met. Your correspondence and our discussion confirmed the Ts'elxwéyeqw Tribe's position regarding Phase III Crown consultations on the Trans Mountain Expansion Project (the Project).

The Government of Canada has taken steps to ensure we meet the direction of the Federal Court of Appeal to consult meaningfully on the Project by engaging in specific and focused dialogue with Indigenous Peoples. This means that we will re-engage with all Indigenous groups potentially impacted by the Project. In addition, we have engaged retired Supreme Court Justice Frank Iacobucci to provide advice and direction on our consultation approach. I am pleased that you were able to attend the Roundtable Meeting with Justice Iacobucci in Vancouver on December 11, 2018, as it was an opportunity for Indigenous voices to be heard in regards to the Government's development of a consultation approach.

We have also built a whole of government consultation team that will be equipped to engage in meaningful, two-way dialogue and where appropriate, discuss potential accommodation for impacts stemming from the Project. The environment and the economy are joint priorities for our Government. We have the responsibility to ensure the stability and growth of the Canadian economy and to get our resources to market, but only if we do so with public trust by addressing environmental and Indigenous Peoples' concerns.

The department's consultation team is initiating discussions with Indigenous communities impacted by the Project. I understand that members of the consultation team have been in touch, and that an introductory meeting has been planned for mid-January to discuss how to best work with the Ts'elxwéyeqw Tribe. The consultation team will be happy to discuss your specific concerns and proposed conditions in regards to the Project when the time comes. I trust you have received details of the participant funding terms and conditions that were sent out November 30, 2018.

I appreciate the time and effort that the Ts'elxwéyeqw Tribe has invested in the past. I thank you for your interest in participating in the Crown's consultation process for the Project and for continuing the conversation on how we can move forward together.

Yours sincerely,

A. Sohi

Amarjeet Sohi, P.C., M.P.

Minister
of Natural Resources

Ministre
des Ressources naturelles

Ottawa, Canada K1A 0E4

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RECEIVED
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Chief David Jimmie
Ts'elxwéyeqw Tribe
7201 Vedder Road, Building 8A
Chilliwack, British Columbia V2R 4G5

This is Exhibit O referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack BC this 5 day of July, 2019.

A Commissioner for taking affidavits for British Columbia

Dear Chief Jimmie:

The Prime Minister's Office has forwarded to me a copy of your correspondence of December 10, 2018, regarding Ts'elxwéyeqw Tribe's position in respect of consultation and accommodation for the Trans Mountain Expansion Project (TMX).

Your letter to the Prime Minister foreshadowed many of the issues that you shared during the Vancouver roundtable meeting with the Honourable Justice Frank Iacobucci on December 11, 2018, and in a January 15, 2019 letter to Justice Iacobucci, as well as in meetings with my officials as part of the re-initiated Crown consultation process for TMX.

I understand that the Crown consultation team has met with Ts'elxwéyeqw Tribe twice so far, as part of this consultation process, and that progress has been made on a number of questions highlighted in your December 10, 2018 correspondence, including: the role of Ts'elxwéyeqw Tribe and of other Stó:lō organizations; clarification of a path forward that aligns with the recent Federal Court of Appeal decision; and clarification of an approach to consultation which recognizes the Stó:lō established right to fish in the Fraser River.

I also understand that Deborah Corber, Consultation Lead for Canada's TMX Crown Consultation Team, has provided written responses to several of the issues raised in your December 10, 2018 letter, in correspondence to you dated January 29, 2019, and that discussions are ongoing with my officials. I trust that any additional or outstanding questions you may have can be pursued through these discussions.

I look forward to receiving updates from my officials on the consultation process we have begun with Ts'elxwéyeqw Tribe, and to our continued collaboration on this and other projects.

Thank you for writing.

Yours sincerely,

A. Sohi

Amarjeet Sohi, P.C., M.P.

Canada

Ts'elxwéyeqw TRIBE

This is Exhibit P referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

March 14, 2018

Via Email:

Dear Right Honourable Justin P. J. Trudeau. Prime Minister of Canada,

Re: Ts'elxwéyeqw Tribe's Position in Respect of Consultation and Accommodation for the Trans Mountain Expansion Project (the "Project")

I write you as the President of the Ts'elxwéyeqw Tribe (the "**Tribe**") to address Canada's engagement efforts concerning the Project. The topics discussed in this letter have been raised repeatedly with Canada and its representatives. I will not list all of the correspondence sent by the Tribe to date on the issues, but the lack of response from the Prime Minister's Office, Minister Sohi, Deputy Minister Tremblay or Frank Iacobucci which substantively addresses the Tribe's concerns is very disappointing and remains a significant roadblock to a meaningful consultation process. Put bluntly, the Tribe does not see how Canada can proceed with a decision regarding the Project within the timelines recently put forward publicly by Minister Sohi.

Statutory Timeline does not Apply

Canada has suggested that the remedial Phase III which was ordered by the Federal Court of Appeal in *Tseil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153 (the "**TWN Decision**") is subject to the statutory timeline set out in section 54 of the *National Energy Board Act* (the "**Act**"), which requires the Governor in Council ("**GIC**") to make a decision on approval of the Project within three months of the release of the National Energy Board ("**NEB**") report following the reconsideration hearing (the "**Reconsideration Hearing**"). The Tribe disagrees that the renewed Phase III consultation is subject to such a timeline.

Re-doing Phase III from the Previous NEB Decision is Independent of the New NEB Process

First, in the TWN Decision, the Federal Court of Appeal stated:

> Further, Canada must re-do its Phase III consultation. Only after that consultation is completed and any accommodation made can the Project be put before the Governor in Council for approval.[1]

The Court did not suggest that this Phase III must be completed within a statutory timeline. Rather, the Federal Court of Appeal declared that it must be redone prior to any Project approval.

Canada repeated that no decision will be made until meaningful consultation is completed in the final version of the "Government's Consultation Approach" (which was not circulated until late February 2019), in statements made directly to the Tribe by Canada's representatives, and, in response to an Information Request during the Reconsideration Hearing, Natural Resources Canada stated that:

> A recommendation on whether to approve the Project will only be considered by the Governor-in-Council once it is satisfied that: (1) the Crown has adequately fulfilled its duty to consult and that consultations with potentially impacted groups have been offered and/or carried out in a meaningful and responsive manner; and (2) accommodations have been considered, where appropriate, and

[1] TWN Decision at para. 771

responses have been provided to Indigenous communities, governments and Nations. [Emphasis added.]

Canada's assertions that it will fulfill its constitutional obligations prior to making a decision on Project approval are inconsistent with the suggestion that the redo of Phase III must wrap up by May 2019 pursuant to the Act.

Further to this point, the Phase III consultation that is being redone does not relate solely to issues or concerns that were not resolved in the course of the Reconsideration Hearing. As the NEB stated on many occasions, the Reconsideration Hearing was very limited in scope, it was not intended, nor did it, provide a forum for consideration of the outstanding concerns from the first hearing which concluded in 2016. In that respect, the reinitiated Phase III is not tied to the Reconsideration Hearing, nor any timelines that attach to that process.

Canada's Delays Should Not Prejudice the Tribe or the Renewed Process

Further, if Canada was of the view that the renewed Phase III was required to be completed by May 2019, it had the opportunity to engage much earlier than it did. By Order in Council on September 26, 2018, the GIC directed the NEB to embark on the Reconsideration Hearing and to complete it within the unreasonable time frame of 155 days. That 155 day time limit set the date for delivery of the NEB's report following the Reconsideration Hearing, being no later than February 22, 2019. On Canada's theory that a statutory timeline set by section 54 of the Act was applicable, the date by which the GIC is required to make a decision and, therefore, the date by which Phase III consultation must be concluded is approximately May 21, 2019. However, after announcing the Reconsideration Hearing in late September 2018 and setting the timing for its completion, Canada took no steps to meaningfully engage directly with the Tribe to redo Phase III until 2019.

By form letter dated October 5, 2018, Minister Sohi announced that Canada would be embarking on renewed Phase III consultations, and on December 4, 2018, Justice Iacobucci held a "round table" meeting with numerous affected Indigenous groups to discuss the consultation process generally. Neither of these constitutes direct engagement with the Tribe.

The first consultation meeting between Canada and the Tribe did not occur until January 17, 2019- over three and a half months after the GIC had directed the Reconsideration Hearing and Canada announced a renewed Phase III. If Canada was concerned about the applicability of statutory timelines, it should have moved forward with consultation expeditiously and not allowed several months to pass with no engagement.

Applying Statutory Timelines Flies in the Face of the FCA's Direction Regarding the ICA

Finally, if Canada insists that completion of the redo of Phase III must be completed by May 2019, it will have unreasonably limited meaningful engagement in relation to the Tribe's Integrated Cultural Assessment ("**ICA**"), potentially dooming itself to another consultation failure.

One of the key failures of the original Phase III process in respect of the Tribe is that Canada failed to meaningfully address the 89 recommendations in the ICA that could potentially mitigate Project impacts. The ICA was compiled by experts (both technical "Western-science" experts and traditional knowledge experts) and was consistently highlighted by the Tribe as being a critical tool for addressing its concerns, yet the ICA's 89 recommendations were not accounted for in the terms and conditions attached to the Project's approval, and, as found by the Court in the TWN Decision, there is no indication that any of the recommendations were ever specifically considered, let alone grappled with, by the Crown.

During the first consultation meeting on January 17, 2019, the Tribe stressed, and Canada's representatives agreed, that the ICA (which was prepared by the Tribe and provided to Canada in the course of the first NEB hearing in 2014), was a critical part of Phase III consultation. The Crown committed to conducting a thorough review of the ICA, and to summarize the work that had been done to date to address the ICA and the 89 recommendations. Both the Tribe and Canada recognized that a technical working group would be needed to address the ICA. The Tribe expressed that the first step to moving forward was a response from Canada on the 89 recommendations.

At a subsequent meeting on January 31, 2019, Canada advised that it hoped to have Canada's response to the Tribe by February 15, 2019. The Tribe had indicated to Canada that Canada's response was critical in order to coordinate, schedule and plan for the technical working group and to identify the work that would be required to properly grapple with the adverse effects of the Project on the Tribe, and possible mitigation measures. Canada did not provide any response to the ICA until March 6, 2019.

It is important to note that Canada has had the ICA for five years. The Tribe has taken extraordinary steps to ensure capacity and expertise to enable the technical working group to roll up its sleeves and do the work required to meaningfully engage on Project impacts and mitigation but the time that it has taken for Canada to provide responses on the ICA, and the apparently looming statutory deadline, put any meaningful consultation on the ICA and the 89 recommendations in significant peril.

Failure to Justify Infringements

The Stó:lō are one of few Indigenous peoples in this country to have an established (non-treaty) right under s. 35 of the *Constitution*. This established right to fish for food and ceremonial purposes was affirmed by the Supreme Court of Canada in *R. v. Van der Peet* after a long-fought court action.[2]

Canada has acknowledged the Tribe's established right to fish in the Fraser River.[3] Despite this acknowledgement, at no time has Canada provided any analysis of how that constitutionally protected right to fish has been taken into account.

In the TWN Decision, the Court noted that missing from Canada's original Phase III (or during the previous two phases) was any analysis the of Stó:lō's constitutionally protected right to fish. This is an established and proven right which should have triggered important Crown consideration. Nevertheless, Canada completely failed to conduct any analysis on how our protected rights were taken into account throughout the consultation process.

Canada must consider whether its actions would constitute an infringement of our established right, whether the infringement is justified and whether adequate accommodation measures have been imposed on the Project to specifically address such infringement. This analysis is not something the honourable Crown can do in a vacuum – it must be done transparently and with meaningful input from the Tribe. These requirements are essential to the "meaningful and responsive two-way dialogue" that is required, and failure to meet this standard will jeopardize any decision Canada makes with respect to the Project.

Crown's Multiple Roles

Now that the federal government has acquired an ownership interest in the Project, the Crown is in the unique and delicate position of holding multiple conflicting roles. It is the owner and developer of the Project, who

[2] [1996] 2 SCR 507 ("***Van der Peet***").
[3] Joint Consultation and Accommodation Report, Appendix C-19 – Stó:lō Collective, p. 16.

will enjoy significant financial benefits should the Project proceed; the regulator of the Project, who is tasked with ensuring that it is designed, constructed and operated in accordance with Canadian laws; a fiduciary in respect of Indigenous peoples (particularly where the Project crosses reserve lands); the Crown, who holds a unique position *vis a vis* Indigenous people, and has an obligation to act honourably in its dealings with them; a signatory to the *United Nations Declaration on the Rights of Indigenous Peoples*, who has committed to upholding the principles of free, prior and informed consent; and a trustee in respect of reserve lands, who holds that land - some of which is impacted by the Project - for the benefit of Indigenous peoples.

It is difficult in the circumstances to see past the apparent conflict between the Crown's role as fiduciary in respect of Indigenous peoples and, in particular the fiduciary duty it owes to the Tribe arising from the Stó:lō's cognizable Aboriginal interest, being their established fishing rights, and its role as ultimate owner of a Project that *prima facie* infringes that cognizable interest. Further, it is without question that the Crown will benefit if the Project is approved.

This conflict is even more glaring when comments by the federal government, including Prime Minister Trudeau and Finance Minister Morneau that the Project will proceed are considered. The Crown cannot, on the one hand, pledge to ensure that no decision will be made until meaningful consultation has occurred, and on the other hand, assert that Project approval is a foregone conclusion.

The Crown's competing interests cast doubt on the federal government's intentions, and without further action to address the conflict, the consultation cannot be said to be meaningful or that it upholds the honour of the Crown. To conduct the Reconsideration Hearing and to seek to remedy the failed Phase III under the spectre of this conflict of interest and the perception of bias is antithetical to reconciliation.

Concluding Remarks

On March 13, 2019, Minister Sohi stated that Canada was in a "strong position" to complete meaningful consultation within "90 days". As this letter demonstrates, at least with respect to the Tribe, that is not an accurate reflection of the status of this Phase III consultation. In our view, there is still significant work to be done to reach a conclusion that consultation has been meaningful.

While the Tribe has participated and intends to continue to participate in this process, I again implore Canada to look at the substance of the issues the Tribe has raised and the substance of its consultation. As recognized by the Federal Court of Appeal in the TWN Decision, simply setting out an approach to consultation is not enough- Canada must execute on that approach in a way that allows for it to engage, dialogue meaningfully and grapple with the concerns expressed to it in good faith so as to explore possible accommodation of those concerns.

The Tribe's positions set out in this letter should not be interpreted as a complete list of the inadequacies in the Project approval and consultation process to date.

Should you have any questions, please do not hesitate to contact me.

Yours truly,

Chief David Jimmie
President, Ts'elxwéyeqw Tribe

cc: Honorable Bill Morneau, P.C., M.P, Minister of Finance
Honorable Amarjeet Sohi, P.C., M.P., Minister of Natural Resources
Honorable Frank Iacobucci, Federal Representative
Honorable Christine Tremblay, Deputy Minister, Natural Resources Canada
Corey Dekker, Consultation Director, Trans Mountain Pipeline Expansion Consultation Team
Deborah Corber, Consultation Lead, Trans Mountain Pipeline Expansion Consultation Team
Kimberly Irwin, Advisor, Trans Mountain Pipeline Expansion Consultation Team

This is Exhibit Q referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

From: Corber, Deborah (NRCAN/RNCAN) <deborah.corber@canada.ca>
Sent: Monday, April 1, 2019 7:01 PM
To: David Jimmie <David.Jimmie@ttml.ca>
Cc: vivian.ferguson@stolotribalcouncil.ca; manager@skowkalefn.com; recept@skway.com; Chief Angie Bailey <aitchelitzfn@gmail.com>; Keri Ardell <keri.ardell@ttml.ca>; Chief Brenda Wallace <bandmanager@soowahlie.ca>; Georgina Malloway <georgina@tzeachten.ca>
Subject: TMX Proposed Accommodation Measures

Dear Chief Jimmie:

Please find attached a letter with information on proposed accommodation measures offered by the Crown as part of the re-initiated Phase III consultation process for the Trans Mountain Expansion Pipeline project.

In addition, I am attaching a series of information sheets on the proposed accommodation measures.

Thank you,
Deborah Corber

Deborah Corber, LL.M.
Consultation Lead / Responsable de la consultation
Trans Mountain Pipeline Expansion Project /
Projet d'agrandissement du réseau Trans Mountain
Natural Resources Canada / Ressources naturelles Canada
615 Booth Street, Ottawa, Ontario, K1A 0E4
Mobile / Cellulaire: 343-543-7260
Email / Courriel : deborah.corber@canada.ca

Chief David Jimmie
Ts'elxweyeqw Tribe Management Limited
Building 8A, 7201 Vedder Road
Chilliwack, BC V2R 4G5

Dear Chief Jimmie,

I am writing today to provide more information about accommodation measures being offered by the Government in the reinitiated Phase III consultations on the proposed Trans Mountain pipeline expansion project ("the Project"). The potential accommodations set out below are intended to respond to the concerns that we have heard in our consultations with you and many other Indigenous groups about the impacts that the Project could have on Aboriginal rights.

These measures include:

1. **Salish Sea Initiative (SSI),** a joint Indigenous-government governance structure, to be co-developed, with stable funding to support Indigenous capacity to better understand and put in place mechanisms to monitor and address cumulative effects in the Salish Sea.
2. **Co-Developing Community Response,** a measure that could deliver training and equipment and bring Indigenous groups to the table for the planning of emergency response in the marine environment.
3. **Enhanced Maritime Situational Awareness** (EMSA) to develop partnerships with Indigenous groups to pilot the new system and tailor it to user needs to increase domain awareness system in the project area.
4. **Marine Safety Equipment and Training** to provide funding for safety equipment such as Automatic Identification Systems, marine radios, and emergency position-indicating radio beacon and funding for training to improve marine safety on the water.
5. **Quiet Vessel Initiative** to test safe and effective quiet vessel technologies and operational practices that reduce underwater noise at its source as a complement to various other measures currently underway to support the recovery of the Southern Resident Killer Whale (e.g. slowdowns, reductions of containments and increased prey availability, etc.).
6. **Fish Habitat Restoration Fund** that would support collaboration with Indigenous groups to protect and restore aquatic habitats that would be impacted by the project.
7. **Terrestrial Cumulative Effects Initiative** to enable co-development of a cumulative effects framework with a focus on understanding the current state of the environment and monitoring changes in response to development and natural processes, for example to inform and complement projects to restore fish habitat or to conduct watershed analysis.
8. **Terrestrial Studies** program to support improved understanding of Project-related terrestrial impacts, for example on traditional land use, and informing the construction, operations and maintenance phases of the Project.

We have included further summaries of these initiatives in the attachment to this letter.

Some of these measures were raised briefly with you in our recent consultation meeting. We look forward to further discussing these with you along with our responses to your accommodation requests at our next consultation meeting. We may also, where appropriate and helpful, offer briefings and consultation sessions on the proposed measures with experts from other departments, including the Department of Fisheries and Oceans, Canadian Coast Guard, Transport Canada, and Environment and Climate Change Canada. A member of our consultation team will be contacting you to schedule a meeting at the earliest opportunity to discuss these potential accommodations with you. Until then, please feel free to contact Corey Dekker directly at 604-364-8687 or corey.dekker@canada.ca should you have any questions.

Respectfully,

Deborah Corber
Consultation Lead, Trans Mountain Pipeline Expansion Project

cc.
Chief Angie Bailey, Aitchelitz Band
Chief Robert Gladstone, Shxwhá:y Village
Chief Mark Point, Skowkale First Nation
Chief Brenda Wallace, Soowahlie First Nation
Chief Derek Epp, Tzeachten First Nation
Chief Terry Horne, Yakweakwioose First Nation

Co-Developing Community Response

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Through consultations on the expansion of the Trans Mountain Pipeline, Indigenous groups have expressed concern about the risks increased tanker traffic may present to marine activities and the environment. These concerns have included a desire for increased access to information on maritime activity in local waters, access to marine safety equipment, as well as an increased role in marine safety and response
Proposed measure to respond to issue / impact	• The Government of Canada is open to co-developing a role for Indigenous groups in the Project Area in preparedness and response to marine incidents. This could include: knowledge sharing; training and exercises; response planning; personnel; equipment; and, communications technologies and tools.
Desired outcomes	• Indigenous groups along the marine route possess the knowledge, personnel, training and equipment to protect culturally important and sacred sites on their traditional territories and mitigate risks posed by project-related shipping.
Objective in Phase III consultations	• Identify and engage with interested/impacted groups and achieve a preliminary list of terms for future discussions related to co-developing community response.
Next steps	• Development of written agreements with interested parties to provide a framework for future discussions.
Key contacts	Lead department and representative: - David Heap, Canadian Coast Guard David.heap@dfo-mpo.gc.ca

Aquatic Habitat Restoration Fund

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Indigenous groups are concerned about the impacts of Trans Mountain Pipeline expansion on fish, fish habitat and the general states of fisheries resources.
Proposed measure to respond to issue / impact	• The Government of Canada will collaborate with Indigenous groups to develop an Aquatic Habitat Restoration Fund that would provide funding and capacity support for projects related to habitat restoration to address direct and indirect threats posed by the project on aquatic habitats and species. • Existing initiatives such as the Coastal Restoration Fund, Habitats Stewardship Program and Aboriginal Funds for Species at Risk, Salmon Enhancement Program, Canada Nature Fund for Aquatic Species at Risk, BC Salmon Restoration and Innovation Fund and Aboriginal Aquatic Resource and Oceans Management Program will be leveraged to increase capacity and address issues related to the project as appropriate.
Desired outcomes	• Increased capacity within communities to protect and restore aquatic habitats impacted by the project.
Objective in Phase III consultations	• Begin discussions with Indigenous groups on the proposed approach, including defining the geographic scope of the initiative and priority actions.
Next steps	• Consultations with Indigenous groups to refine the proposal and identify priority areas of focus related to aquatic habitat restoration related to the project
Key contacts	Lead department and representative: - Cheryl Webb, Fisheries and Oceans Canada Cheryl.webb@dfo-mpo.gc.ca

Enhanced Maritime Situational Awareness

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Canada has heard that Indigenous groups have concerns with the expansion of the Trans Mountain related to increased tanker traffic that could negatively impact their own marine activities or the environment.
Proposed measure to respond to issue / impact	• The Enhanced Maritime Situational Awareness initiative pilot project is being developed to address Indigenous vessel safety in the water. This web-based system will integrate information such as vessel traffic, hydrography, weather, local knowledge etc. and support local decision-making, enhance marine safety and environmental protection. • The intention of the project is to support local decision-making and enhance marine safety and environmental protection.
Desired outcomes	• That interested groups gain access to better maritime related information by participating in the pilot project. • Feedback gathered from the pilot is used to directly upgrade the system and ensure it meets local community priorities and needs.
Objective in Phase III consultations	• Inform Indigenous groups of the proposed system and provide the opportunity for interested groups to participate in the pilot development phase.
Next steps	• Letter to be sent to invite Indigenous groups to participate. • Funding support will be made available to pilot project hosts. • All users will be given access to training and technical support and be able to inform the system functionality.
Key contacts	Lead department and representative: - Marie-Pierre Parenteau, Transport Canada Marie-Pierre-Parenteau@tc.gc.ca - Stephen Hawley, Transport Canada Stephen.Hawley@tc.gc.ca

Attached: Annex A (Infographic Outlining the Initiative)

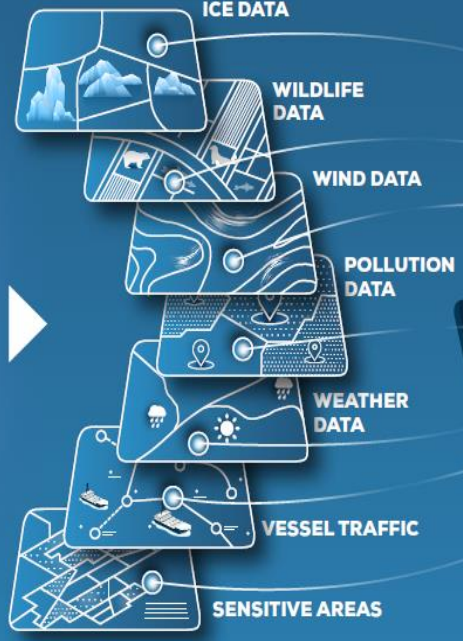
ENHANCED MARITIME SITUATIONAL AWARENESS

Canada
OCEANS PROTECTION PLAN

MARINE SAFETY | ENVIRONMENTAL PROTECTION | MARITIME ACTIVITY | EMERGENCY RESPONSE | LOCAL KNOWLEDGE | SPACE BASED DATA

WHAT WILL THE SYSTEM DO?

Integrate various DATA LAYERS AND TYPES OF INFORMATION into an EASY-TO-USE PLATFORM.



WHO WILL USE THE SYSTEM?

OUR PILOT PROJECT PARTNERS

1. Tuktoyaktuk Hunters and **Trappers Committee**
2. Ekaluktutiak Hunters and **Trappers Organization**
3. **Nunatsiavut Government**
4. **Essipit Innu First Nation Council**
5. **Maritime Aboriginal Peoples Council**
6. Mohawk Council of Kahnawà:ke
7. Council of the Haida Nation
8. Gitga'at First Nation
9. Pacheedaht First Nation *in partnership with* 10. T'Sou-ke First Nation

1 2017-2018

ENGAGEMENT SESSIONS

To understand maritime information needs and gaps across Canada.

2 SPRING 2019

PILOT PROJECTS

Launch of new maritime information system, with partners hosting pilot projects across Canada.

3 UPGRADES BASED ON USER FEEDBACK

ONGOING UPGRADES

Integrating local knowledge and priorities in an agile way that reflects evolving user needs.

Measures for improving marine safety

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Canada has heard that Indigenous groups have concerns with the expansion of the Trans Mountain related to increased tanker traffic related to the expanded TMX could negatively impact their own marine activities.
Proposed measure to respond to issue / impact	• Providing funding for safety equipment such as Automatic Identification Systems, marine radios, and emergency position-indicating radio beacon and funding for training to improve marine safety on the water.
Desired outcomes	• Increased marine safety for Indigenous groups, whose vessels may interact with large vessels along the tanker route and shipping lanes.
Objective in Phase III consultations	• Identifying equipment and training requirements for each community.
Next steps	• Communities are invited to work with the Government of Canada to determine equipment needs and for which types of vessel funding would be eligible, and to determine the type of training and options for delivery.
Key contacts	Lead department and representative: - Luc Brisebois, Transport Canada Luc.Brisebois@tc.gc.ca

Quiet Vessel Initiative (QVI)

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Indigenous groups are concerned that underwater noise from increased tanker traffic will impact the marine environment, particularly the Southern Resident Killer Whale population.
Proposed measure to respond to issue / impact	• The Government of Canada will fund research into testing safe and effective quiet vessel technologies and operational practices. The research will leverage traditional knowledge and will result in practical approaches to reduce underwater noise at its source. • Additional actions underway to protect Southern Resident Killer Whales include but are not limited to legislative and regulatory amendments, conservation agreements with Industry to commit them to actions, voluntary slowdowns to obtain immediate noise reductions, expansion of automatic identification system to smaller vessels to better target noise reduction measures, the development of a policy on Underwater Noise Management Plans for fleet operators, and the development of measures targeting smaller vessels, including whale watching operations.
Desired outcomes	• Improved understanding of how to reduce underwater noise on the Southern Resident Killer Whale Population. • Indigenous groups are directly engaged in a dialogue about possible effective technological solutions to reduce underwater vessel noise on the marine environment.
Objective in Phase III consultations	• Inform Indigenous groups of existing initiatives and proposed measures and seek advice on the best approaches to engage them in the initiatives to support the recovery of the Southern Resident Killer Whale.
Next steps	• Further discussions with Indigenous groups to refine the proposed approach.
Key contacts	Lead department and representative: - Ryan Klomp, Transport Canada Ryan.Klomp@tc.gc.ca - Michelle Sanders, Transport Canada Michelle.Sanders@tc.gc.ca

Salish Sea Initiative (SSI)

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Indigenous groups expressed concern regarding the impacts of the Trans Mountain Expansion project and cumulative effects in the Salish Sea region. On this issue, communities have an interest in playing a formal, leading role in cumulative effects management, including monitoring and responding to potential impacts of the Trans Mountain Expansion Project in the Salish Sea. Potential cumulative effects could include impacts on shorelines, fish habitat, water quality and increased marine noise.
Proposed measure to respond to issue / impact	• The proposed Salish Sea Initiative (SSI) would provide a collaborative governance structure and funding for Indigenous Organizations to develop capacity and fully engage on addressing cumulative effects in the Salish Sea, in collaboration with other stakeholders, through monitoring, management activities and research.
Desired outcomes	• A co-developed governance arrangement that includes Indigenous leadership in the development and implementation of the SSI and Indigenous participation in monitoring, management activities and research to address cumulative effects in the Salish Sea. • Better understanding and management of cumulative effects in a way that is meaningful to Indigenous groups.
Objective in Phase III consultations	• Inform Indigenous groups of existing initiatives and proposed measures. • Begin discussions with Indigenous groups to confirm interest in the proposed measure and refine the proposal based on community feedback, including on the geographic scope of the initiative and potential governance structure.
Next steps	• Further discussions to reach agreement on the proposed approach, geographic scope and principles of the SSI.
Key contacts	Lead department and representative: - Cheryl Webb, Fisheries and Oceans Canada Cheryl.webb@dfo-mpo.gc.ca

Terrestrial Cumulative Effects Initiative

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Indigenous groups are concerned about the existing and future impacts of development, including the expansion of the Trans Mountain pipeline, on the landscape, watersheds and ecosystems and the organisms that inhabit them (in particular fish). • Indigenous groups also believe that cumulative effects are not well understood or adequately addressed through environmental assessment and regulatory processes.
Proposed measure to respond to issue / impact	• The Government of Canada will collaborate with Indigenous groups to co-develop a cumulative effects initiative that focuses on understanding the current state of environmental issues of interest and monitors and shares information on changes over time in response to ongoing development.
Desired outcomes	• Improved understanding of the cumulative effects of concern to Indigenous groups, including the freshwater environment. • Improved understanding of the current state of the valued components of the environment within a region (e.g. baseline studies, watershed analysis, etc.). • Ongoing monitoring and analysis that allows for shared understanding and the early identification of issues.
Objective in Phase III consultations	• Clarify Indigenous concerns, particularly those related to watershed, fish habitat and fish • Explore opportunities to partner with Indigenous groups to understand how cumulative effects are impacting environmental components of value. • Begin a dialogue to develop options for the scope, design and governance of this proposed initiative, building on and integrating existing cumulative effects work.
Next steps	• Create a forum to begin co-developing the approach in Summer 2019. Participant funding is available.
Key contacts	Lead department and representative: - Kathleen Cavallaro, Environment and Climate Change Canada Kathleen.Cavallaro@canada.ca

Terrestrial Studies

Potential Accommodation

Phase III Consultations - Trans Mountain Expansion Project

Description

Issue	• Indigenous groups are concerned about lack of understanding regarding potential land and cumulative impacts.
Proposed measure to respond to issue / impact	• The Government of Canada will support Indigenous-led studies to better understand the potential land and cumulative impacts, which would potentially inform cumulative effects monitoring and/or construction, operations and maintenance phases of the Project, if approved.
Desired outcomes	• Advancing meaningful two-way dialogue • Improved understanding of potential terrestrial impacts • Informing Phase 4 of the engagement, and in particular the construction, operations and maintenance phases of the Project
Objective in Phase III consultations	• Inform Indigenous groups of existing initiatives and proposed measures • Receive applications from Indigenous groups for proposed studies
Next steps	• Provide all applicable information identified in the *Required Information* form (Annex A). • Further discussions with consultation teams to develop proposal ideas.
Key contacts	Lead Department and Representative: - Holly Grenier, Natural Resources Canada holly.grenier@canada.ca - Benjamin Fleischman, Natural Resources Canada benjamin.fleischman@canada.ca

Annex A: Required Information

1. Participant Information

Provide the information of the Participant (Nation, Federation, etc.).	
Name of legal entity applying for funding	
Mailing address	Postal Code
City/Town	Province/Territory
Email	Website address
Telephone Number	Fax Number

2. Contact Person

Provide the name and information of the contact person in the event there are questions about this proposal.	
Primary Contact	
Name of the contact person	
Mailing address (if different than in Section 2 above)	Postal Code
City/Town	Province/Territory
Email	Website address
Telephone Number	Fax Number
Official Language of Correspondence	English □ French □
Do you want to specify a secondary contact?	Yes □ No □
Secondary Contact	
Name of the contact person	
Mailing address (if different than in Section 2 above)	Postal Code
City/Town	Province/Territory

Email	Website address
Telephone Number	Fax Number

3. Participant Information

a) Government Sales Taxes / Harmonized Sales Tax Rebate (GST/HST)

Does the group or organization receive a rebate for GST/HST?

Yes ☐ No ☐

b) What Needs to be Included in a Resolution

You must provide a valid signed resolution (corporate or Band Council) or document authorizing the participant to act on behalf of their organization or group for the purpose of this application and, if successful, a Contribution Agreement. This must be provided at the same time as your application or within two weeks of submitting your application to the Agency.

c) Conflict of Interest

Are there any former public servants who are under the Conflict of Interest and Post-employment Guidelines of the Government of Canada, involved in this proposal, or your proposed Study?
Yes ☐ No ☐

4. Study Outline

You must provide details on the activities that you plan on doing in the performance of your proposed study, as well as the types of information that this study could provide.

What is the rationale for your study?
What are your reasons for conducting this study? For choosing this topic of study?

What is the objective of your study?
What are the goals that you wish to achieve with this study? What questions will it answer?

What will be required to scope your study?
What kinds of information, funds, and time, will be required to determine the exact parameters of your study?

What types of information will you collect in your study?
Types of information might include: oral traditional evidence, maps, scientific reports, etc.

How will you collect this information?
Methods of collection. Eg. Interviews, surveys, meetings, etc.

Who will be involved in your study?
Groups involved. Eg. Elders, neighbour communities, paid consultants, etc.

How long do you expect your study to take?
Broken down by phases as much as possible.

5. Funding Request

You must provide details on your funding request for the activities mentioned above, and expenses involved in scoping this study process. You must also disclose all other government sources of funding that have received, or plan on receiving for activities associated with this study.

If you need more room to fill in expenses, please scan a blank template of this page to be filled in. Please include only one Grand Total per year and only one Grand Total for all three years.

Note: It will be important to keep all invoices and receipts accounting for your approved expenses. You may need to provide these to request payment through invoicing.

Expenses			
Fiscal Year	**Year 1 - 2019**	**Year 2 - 2020**	**Year 3 - 2021**
Expense Type Funding Requested			
(Tax included)			
Explanation			
Total			
Expense Type Funding Requested			
(Tax included)			
Explanation			
Total			
Expense Type Funding Requested			
(Tax included)			
Explanation			
Total			
Grand Total (per year)			
Grand Total (all 3 years)			
Related Government Funds for this Study			
Type		**Amount**	
Type		**Amount**	

6. Supporting Documents

List the supporting documents submitted with this proposal in the following table.	
Type of Supporting Document Method of Submission	
Name of Supporting Document Date of Submission	
Name of Supporting Document Date of Submission	

7. Certification Declaration

I/we hereby certify that the information provided in the attached proposal and all supporting documentation is true, accurate and complete. I/we understand that if any information provided in the proposal is false or misleading, the participant may be denied funding or may be required to reimburse all or part of funding received.

I agree that the information provided in this proposal is accurate to the best of my knowledge.

Given Name Family Name:_____

Title Date (YYYYMMDD):_____

Annex B: Approach to Proposal Review

Note: The Feedback column of the Assessment Tool below will be used as a mechanism to communicate further information required, not as a means of categorizing or prioritizing proposals.

Assessment Tool

Criteria	Guiding Questions	Feedback and Notes
A. Sound Project Plan	• Is there a clear impact, or goal of the project stated? • Are there defined timelines? • Are there clear roles and responsibilities among partners? • Are tasks broken down into a plan? • Are deliverables and outcomes clearly explained? • Is there evidence of risk awareness and measure to mitigate risk?	
B. Alignment with the Initiative Priorities	• Is there a clear link to the ultimate objective of the initiative? • Does the project link to at least one of the initiative priorities? • Does the proposal include description of the impacts/benefits of the project on initiative priorities?	
C. Indigenous Role	• Does the project feature identified Indigenous involvement?	

D. Project Cost and Impact	• Does the budget include a detailed list of project-related costs over the life of the Project? • Are all expected costs included?	
E. Plan for Maintaining Project Impact	• How will the knowledge, skills, impact be consolidated and incorporated into the future? • Is there a plan for maintaining or continuing these activities and skills beyond the initiative? • Has a plan been considered/developed for retaining or embedding the knowledge beyond one person and into the community as a whole?	

Annex C: Funding Initiative Details

Initiative Objective
Through Indigenous-led terrestrial studies, facilitate Indigenous participation in dialogues regarding improved understanding of land and cumulative impacts to potentially inform cumulative effects monitoring and/or construction, operations and maintenance phases of the Project, if approved.

Advanced Payments
Advance payments may be available to successful Indigenous communities who can demonstrate that they are otherwise financially incapable of commencing the study.

Timeline
Funding decisions will be made on an ongoing basis as proposals are received. Funding for the initiative ends on March 31, 2022.

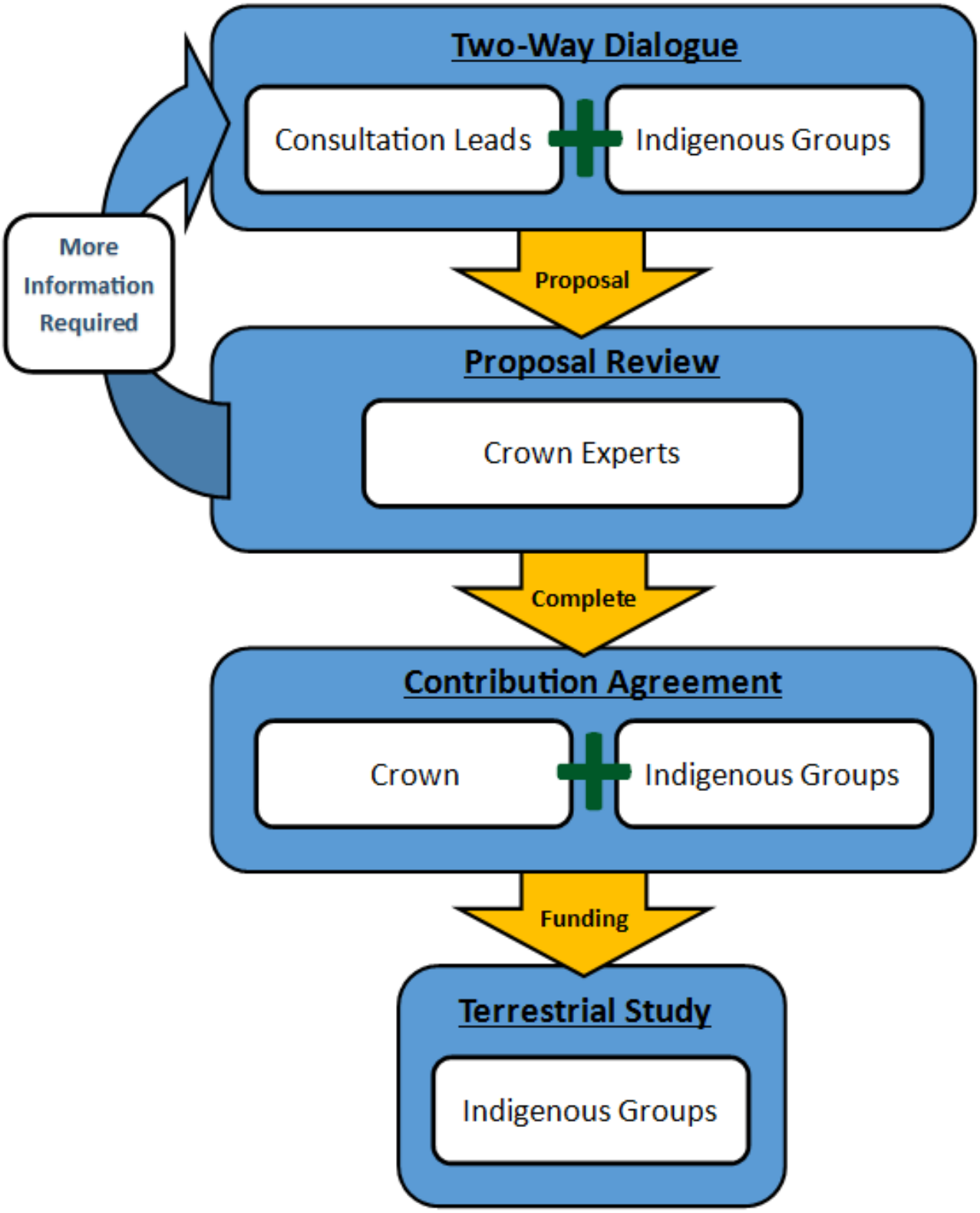
Eligible Activities
Activities directly related and attributable to the participation of Indigenous peoples in dialogues with the Crown related to terrestrial studies to improve understanding of project and broader impacts.
The following are eligible activities:

- Organizing and attending meetings; obtaining professional advice; and studies/reports/input;
- Participate in or leading scientific research activities through provision of traditional knowledge;
- Capacity building to develop a base of scientific knowledge for the benefit of Indigenous communities; and,
- Activities that support the development and support of virtual networks with the aim of exchanging views on terrestrial study activities.
- Other proposed studies will also be considered.

Eligible Expenditures
Eligible expenditures must be directly related to, and necessary for, the eligible activities including:

- Travel expenses, including accommodation, meals and allowances, based on National Joint Council rates;
- Professional fees (including legal fees);
- Salaries and wages;
- Rental of office space/meeting rooms;
- Telecommunication charges;
- Communication materials;
- Honoraria and ceremonial costs;
- Administration costs up to 15% of the eligible expenditures of ultimate recipients for the coordination, management and reporting on activities of ultimate recipients; and,
- GST, PST or HST, net of any tax rebate to which the recipient is entitled.

Annex D: Initiative Process Flow-Chart



This is Exhibit R referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019

A Commissioner for taking affidavits for British Columbia

APR 10 2019

Minister of Natural Resources

Ministre des Ressources naturelles

Ottawa, Canada K1A 0E4

Chief David Jimmie
Ts'elxwéyeqw Tribe
7201 Vedder Road, Building 8-A
Chilliwack, British Columbia V2R 4G5

Dear Chief Jimmie:

The Office of the Prime Minister has forwarded to me a copy of your correspondence of March 14, 2019, regarding Ts'elxwéyeqw Tribe's position with respect to consultation and accommodation for the Trans Mountain Pipeline Expansion Project (the Project). As the Minister responsible for these re-initiated Phase III consultations, I am writing to provide you with a response to the concerns you have raised.

Concerns regarding Timelines for Consultation

As you are aware, on February 22, 2019, the National Energy Board (NEB) submitted a recommendation report to the Governor in Council for the reconsideration of marine shipping related to the Project. Under section 54 of the *National Energy Board Act* (NEB Act), the Governor in Council must make its decision regarding the project within three months of receipt of the NEB report. The NEB Act also provides the Governor in Council with the ability to extend the timeline for decision.

As stated in your letter, you have asserted that the statutory timeline set out in section 54 of the NEB Act should not apply to the re-initiated Phase III consultation process, pointing to the Federal Court of Appeal's (FCA) statement in *Tsleil-Waututh Nation v. Canada* (TWN Decision) that "only after the [redone Phase III consultation] is completed and any accommodation made can the Project be put before the Governor in Council for approval." The FCA also stated, however, that the required dialogue could be "specific and focused" serving "to make the corrected consultation process brief and efficient while ensuring it is meaningful."

Ts'elxwéyeqw Tribe's concerns about the timelines have been shared with me and will be considered by the Government in determining whether to extend the timeline for decision. I have continued to insist that a decision on the Project will only be made once the Governor in Council is satisfied that the Crown has adequately fulfilled its duty to consult. Although the FCA in the TWN Decision was silent on the specific timeframe for the re-initiated Phase III consultations, we find nothing in the judgment to suggest that the statutory timeline does not apply to the Governor in Council. The ultimate question in determining whether the Crown has fulfilled the duty to consult, and where appropriate, accommodate, will be the "meaningfulness" of the consultations themselves rather than the timeframe in which they were conducted.

Your letter suggests that the re-initiated Phase III consultations do "not relate solely to issues or concerns that were not resolved in the course of the Reconsideration Hearing", which, as stated by the NEB, was very limited in scope. On this point, we agree entirely. As outlined in the Government's Consultation Approach, we are seeking through these consultations to identify any outstanding issues regarding project-related impacts on rights and related measures to address those impacts. A case in point is the Crown's efforts to develop meaningful and specific responses to the 89 recommendations set out in Ts'elxweyeqw Tribe's Integrated Cultural Assessment Report. As the Crown consultation team has expressed to you, we remain hopeful that you will participate at the earliest available opportunity in a joint consideration of the Crown's preliminary responses to your recommendations so that, together, we can develop the most meaningful and specific responses thereto.

Concerns regarding the Start of the Crown's Re-Initiated Consultation

Your letter suggests that "Canada took no steps to meaningfully engage directly with the Tribe to re-do Phase III until 2019", and questions why the first face-to-face consultation meeting did not take place until January 2019, given that the re-initiated Phase III consultation process was announced in September 2018.

With respect to the January 17, 2019 meeting, I understand that our respective staff were in touch immediately following the December 11, 2018 roundtable with Justice Iacobucci, and that by email of December 12, 2018, Ts'elxweyeqw Tribe had proposed – and we had agreed – to the January 17, 2019 date as our first formal session of these re-initiated Phase III consultations.

That said, I think it is worth noting the steps taken to prepare for these re-initiated Phase III consultations. During the months of September 2018 to January 2019, the Crown worked intensively to design a re-initiated Phase III process that would fulfill the duty to consult as directed by the FCA in the TWN Decision. During this period, I began to engage with Indigenous leadership – an engagement process that continues to this date – and former Justice Iacobucci and Deputy Minister Tremblay conducted a series of roundtable discussions intended to better understand the views and expectations of Indigenous communities before embarking on the face-to-face consultation discussions themselves. At the same time, my department was building the Crown's consultation teams and putting in place the supports necessary to get the consultation process right – to ensure meaningful and responsive dialogue with communities, to fund their participation in this dialogue, and to coordinate a whole-of-government approach to address outstanding impacts on rights.

We view these re-initiated Phase III consultations as part of a longer consultation narrative spanning several years, and which will extend beyond any Governor in Council decision on the Project. This unfolding narrative includes two National Energy Board reviews, one previous and one current set of Phase III consultations, meetings between Indigenous leadership and Crown representatives, written exchanges between the Crown and Indigenous communities, and of course, direct consultations with community representatives to identify impacts on rights and measures to address those impacts. While these re-initiated Phase III consultations represent a critical part of this narrative, they build upon an existing baseline of information, while seeking to identify gaps in addressing and responding to project-related impacts through a meaningful, two-way dialogue with Indigenous nations. The Governor in Council's deliberations will ultimately be informed by the sum total of all consultation efforts and activities related to the Project, from the date of the original application to the NEB up to the moment the Governor in Council makes a decision on the Project.

Viewed from this perspective, the activities and exchanges that occurred between September 2018 and January 2019 represent steps along a consultation continuum, several steps of which involved the direct participation of Ts'elxwéyeqw Tribe, including your attendance at the Justice Iacobucci roundtable and your October 5, 2018 meeting with me, to discuss your views and concerns in respect of the Project. For these reasons, I believe that Canada was engaging meaningfully with the Tribe even before the meeting with the Crown consultation team on January 17, 2019.

Justification for Infringement of Established Rights

The Crown acknowledges that the Sto:lo have an established right to fish for food, social, and ceremonial purposes. We also acknowledge that, where consultation reveals a duty to accommodate, addressing Indigenous peoples' concerns "may require taking steps to avoid irreparable harm or to minimize the effects of infringement."[1] In our view, this does not mean that the Crown is required to determine whether its actions would constitute an infringement on the Ts'elxwéyeqw Tribe's rights, and if so, whether such infringement would be justified. Rather, the Crown will, in consultations with the Ts'elxwéyeqw Tribe, consider whether the impacts of the Project could include a potential infringement of an established right, and develop accommodation measures to prevent or minimize the risk of any such infringement. We are striving, through these very consultations, and by working together to develop measures to minimize or eliminate the impacts of the Project, to avoid a potential infringement of the Sto:lo's established Aboriginal right, such that a justification analysis would not be required.

[1] *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73, para. 47.

As stated in your letter that considering the justification analysis "is not something the honourable Crown can do in a vacuum – it must be done transparently and with meaningful input from the Tribe." We agree with you on the value of input from the Tribe, which is why we have continued to seek your participation in our Joint Technical Working Group intended to develop meaningful and specific responses to the 89 recommendations you have advanced. As indicated above, the Crown is eager to continue the substantive discussions regarding any impacts to the Sto:lo's established Aboriginal right to fish and any other rights that may be affected by the Project, so that it can ensure the impacts are minimized or eliminated.

Concerns regarding the Crown's Multiple Roles

Your letter expresses the view that Crown ownership of the Project, coupled with the Crown's role as regulator thereof under the NEB Act, conflicts with the Crown's fiduciary responsibilities to Ts'elxweyeqw Tribe.

The Crown recognizes that it has fiduciary responsibilities with respect to Indigenous Peoples and obligations to uphold the Honour of the Crown in all dealings with them. We do not agree, however, that the fact of Crown ownership itself creates a conflict of interest with its fiduciary obligations to Indigenous Peoples. At the end of the day, our core objective is to ensure that the Crown has fulfilled the duty to consult and accommodate where necessary through a meaningful, two-way dialogue with Indigenous communities potentially impacted by the Project, and has sought to identify and address potential impacts on rights through reasonable and appropriate accommodation measures. Furthermore, I can assure you that the Government will not make a decision on the Project unless and until it is satisfied that the Crown has fulfilled its duty to consult and accommodate where necessary.

Concerns regarding Timelines in Relation to the Federal Court of Appeal's Decision Regarding the Integrated Cultural Assessment Report

The Crown shares Ts'elxwéyeqw Tribe's interest in meaningfully addressing the 89 recommendations identified in Sto:lo Collective's Integrated Cultural Assessment Report (ICA Report). To that end, as mentioned in your letter, the Crown shared its preliminary analysis of the 89 recommendations with the Tribe on March 6, 2019. This analysis was informed by input from Natural Resources Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, Indigenous Services Canada, and the National Energy Board. This analysis is intended to be a starting point for future discussions with Ts'elxwéyeqw Tribe regarding these recommendations.

The Crown is eager to convene technical working group meetings to discuss the ICA Report and 89 recommendations, with the aim of achieving consensus on how these recommendations have been or will be addressed. To enable your participation in these meetings, the Crown has offered $712,000 in participant funding to Ts'elxweyeqw Tribe.

I understand that the Crown consultation team has requested Ts'elxwéyeqw Tribe to join us at the table for these important consultation discussions, and we continue to hope that you will do so at the earliest possible opportunity.

Concluding Thoughts

I thank you for sharing your concerns with the Government. I trust that you will receive the responses in this letter in the spirit in which they are intended: to provide a meaningful response to your questions and concerns, and to reiterate the Crown's sincere interest in engaging with Ts'elxwéyeqw Tribe in a meaningful two-way dialogue that will seek to address and respond to the Tribe's concerns regarding the Project. As Minister of Natural Resources, I am committed, pursuant to the many concrete steps that the Government has taken, to building a long-term, nation-to-nation relationship with Ts'elxwéyeqw Tribe that extends beyond this particular consultation process, and advances the principles of reconciliation.

Yours sincerely,

A. Sohi

Amarjeet Sohi, P.C., M.P.

c.c.: Distribution List

Distribution List

The Right Honourable Justin Trudeau, P.C., M.P.
Prime Minister of Canada

The Honourable Bill Morneau, P.C., M.P.
Minister of Finance

The Honourable Justice Frank Iacobucci
Federal Representative

Christyne Tremblay
Deputy Minister, Natural Resources Canada

Corey Dekker
Consultation Director, Natural Resources Canada

Kimberly Irwin
Advisor, Natural Resources Canada

Natural Resources Canada | Ressources naturelles Canada

This is Exhibit S referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

April 17, 2019

Chief David Jimmie
Ts'elxwéyeqw Tribe
7201 Vedder Road, Building 8-A
Chilliwack, British Columbia V2R 4G5

Dear Chief Jimmie,

I am writing to provide an update on the Crown's understanding of the status of the re-initiated Phase III consultation process with Ts'elxwéyeqw Tribe regarding the Trans Mountain Pipeline Expansion Project (the Project). The purpose of this letter is to describe the process to date so that we can determine the best way to move forward in the time remaining.

Commencement of the Re-Initiated Phase III Consultation Process

As you are aware, on August 30, 2018, the Federal Court of Appeal quashed the Governor in Council's decision approving the Project. The Court found that Canada had not fulfilled its duty to consult with Indigenous peoples on the basis that it had not adequately engaged in responsive, considered and meaningful dialogue regarding the concerns of Indigenous groups and explored possible accommodations of those concerns during Phase III of the consultation process. The Court ordered that Canada must re-do its Phase III consultations before the Project can be put before the Governor in Council for approval. The Court indicated that Canada must engage in a "specific and focused" dialogue with Indigenous groups, and that the corrected consultation process should be "brief and efficient while ensuring it is meaningful."[1]

On October 3, 2018, the Honourable Amarjeet Sohi, Minister of Natural Resources, announced that Canada would not appeal the Court's decision. The Minister announced that the former Supreme Court of Canada Justice Frank Iacobucci would oversee the re-initiated Phase III consultation process to ensure that it is meaningful. On October 5, 2018, Minister Sohi reached out to each of the seven Ts'elxwéyeqw villages to inform them of the re-initiated Phase III

[1] *Tsleil-Waututh Nation v. Canada (Attorney General)*, August 30, 2018. Federal Court of Appeal. 2018 FCA 153, paras. 771-772

https://decisions.fca-caf.gc.ca/fca-caf/decisions/en/item/343511/index.do

Canada

consultation process, and indicating that officials from Natural Resources Canada, representing the Crown, would be reaching out to them regarding next steps in this process.

On October 5, 2018, Minister Sohi and other senior government representatives met with Ts'elxwéyeqw Tribe to discuss the Project. At this meeting, Ts'elxwéyeqw Tribe confirmed their intention to represent their seven member communities in the re-initiated Phase III consultation process, tabled a letter to confirm that representation, clarified the role of other Stó:lō organizations, and outlined the Tribe's concerns with previous consultations related to the Project.

On December 11, 2018, representatives of Ts'elxwéyeqw Tribe attended a roundtable discussion in Vancouver with Justice Iacobucci and potentially impacted Indigenous groups to discuss the proposed Crown approach to the re-initiated Phase III consultation process, including the role of Justice Iacobucci as Federal Representative on these consultations.

Status of the Crown's Funding Offer

On November 7, 2018 Christyne Tremblay, Deputy Minister of Natural Resources Canada, sent a letter to each village seeking to initiate a meaningful two-way dialogue for the re-initiated Phase III consultation process. This letter acknowledged that Ts'elxwéyeqw Tribe would be representing the seven villages in consultations with the Crown, and offered $112,000 in initial funding ($462,000 in total funding) to support the Tribe in preparing for and attending introductory meetings.

On November 15, 2018, a representative of the Crown reached out to representatives of Stó:lō Nation to inquire as to whether they intended to administer the funding on behalf of their thirteen communities, as had been done previously. The Operations Manager for Ts'elxwéyeqw Tribe replied to this email confirming that Ts'elxwéyeqw Tribe would be representing its seven member villages. This email exchange also confirmed that "it would be best to send funding correspondence to the communities and to this office for the seven Ts'elxwéyeqw Tribe communities." On November 23, 2018, the Operations Manager further clarified that the seven communities should receive the funding information directly, and that she should be copied on the correspondence.

On November 30, 2018, the Crown reached out to each community to provide information on how to apply for funding to participate in the re-initiated Phase III Crown consultation process. The Crown offered up to $66,000 in participant funding to each community. On December 20, 2018, Ts'elxwéyeqw Tribe sent a letter to the Assistant Deputy Minister of the Major Projects Management Office (part of Natural Resources Canada) re-iterating the Tribe's authority to represent the seven communities in the re-initiated Phase III consultation process, and indicating that a funding application would not be submitted by the target date of submission (December 21, 2018). In the Tribe's view, the re-initiated Phase III consultation process was unclear, the time provided to complete the application (three weeks) was insufficient, and their capacity was limited due to the National Energy Board Reconsideration process and the upcoming holidays.

In meetings and teleconferences with the Crown, Ts'elxwéyeqw Tribe has underscored the importance of providing adequate financial capacity to the Tribe for their participation. This

includes ensuring that the Tribe does not have to use their own funds to participate in the re-initiated Phase III consultation process.

On January 18, 2019, the Crown shared a new participant funding application with Ts'elxwéyeqw Tribe for $462,000 to support Ts'elxwéyeqw Tribe's participation in the re-initiated Phase III consultation process as a collective of seven communities. On January 29, 2019, the Crown confirmed that no additional documentation would be required regarding Ts'elxwéyeqw Tribe's representation authority for the re-initiated Phase III consultation process, nor to receive funding on their behalf.

On March 14, 2019, Ts'elxwéyeqw Tribe shared a draft budget and application for the re-initiated Phase III consultation process. The budget was for $957,000, over double what the Crown had originally offered. At a teleconference on March 18, 2019, the Crown committed to determine whether any additional funding would be available to Ts'elxwéyeqw Tribe for the re-initiated Phase III consultation process.

On March 21, 2019, the Crown confirmed, by email from me to you, that an additional $250,000 had been secured, making the total funding offered as part of the re-initiated Phase III consultation process $712,000. The additional funding was provided in recognition that the Crown is consulting the Tribe at the deeper end of the *Haida* consultation spectrum, which is premised, in part, on the fact that the Stó:lō have an established Aboriginal right to fish in the Fraser River for food, social, and ceremonial purposes. The Crown requested that Ts'elxwéyeqw Tribe submit a revised participant funding application not exceeding this amount. A funding application from the Tribe was received on April 4, 2019, and is in process.

With this substantial funding offer in place, the Crown seeks to move forward in the re-initiated Phase III consultation process, with a focus on addressing the Tribe's substantive issues in relation to the Project.

Terms of Reference for the Re-Initiated Phase III Consultation Process

Ts'elxwéyeqw Tribe first expressed interest in developing a terms of reference for the re-initiated Phase III consultation process at the first formal meeting between the Crown consultation team and Ts'elxwéyeqw Tribe, held on January 17, 2019. Ts'elxwéyeqw Tribe sought to use this terms of reference to clarify roles and responsibilities, depth of consultation, timing, funding, and ensure that consultations would move beyond information sharing to mitigation and accommodation for impacts. Ts'elxwéyeqw Tribe committed to developing a draft terms of reference, and sharing it with the Crown for review and input.

On January 30, 2019, Ts'elxwéyeqw Tribe provided a draft terms of reference for the re-initiated Phase III consultation process. The Crown and Ts'elxwéyeqw Tribe discussed this draft at the second in-person meeting on January 31, 2019. The Crown indicated that based on an initial review, the draft terms of reference appeared to be more in the nature of a binding contract than a process protocol, and could therefore prove challenging for the Crown to conclude in the proposed form. At this meeting, the Crown and Ts'elxwéyeqw Tribe shared their expectations for the re-initiated Phase III consultation process, and the Tribe agreed to revise the terms of

reference further to reflect these discussions on the basis of the mutually agreed upon process discussed at this meeting.

On February 25, 2019, Ts'elxwéyeqw Tribe provided a second draft terms of reference to the Crown. In response, the Crown suggested that Ts'elxwéyeqw Tribe and the Crown have a teleconference to discuss how to finalize the revised draft terms of reference, timelines, and a path forward in the re-initiated Phase III consultation process.

On March 1, 2019, the Crown and Ts'elxwéyeqw Tribe held a teleconference to discuss next steps in the re-initiated Phase III consultation process. On this teleconference, the Crown committed to providing a revised draft terms of reference that the Crown would be prepared to conclude quickly. On March 6, the Crown shared a third draft terms of reference with Ts'elxwéyeqw Tribe for their review and consideration.

On a teleconference held March 18, 2019, Ts'elxwéyeqw Tribe expressed interest in moving past the terms of reference in order to focus on the more substantive issues for discussion. Ts'elxwéyeqw Tribe indicated that they would propose some minor wording changes to the third draft terms of reference within the next few days, after which they would be prepared to sign it.

On March 28, 2019, Ts'elxwéyeqw Tribe provided a fourth draft terms of reference that contained minor revisions to the Crown's third draft. On April 1, 2019, the Crown shared a fifth draft terms of reference that accepted almost all of the changes Ts'elxwéyeqw had proposed, with the exception of the Tribe's proposed clause related to justification for infringement of established rights. In order to bridge their differing points of view, the Crown proposed that the terms of reference might reflect the respective assertions of the Crown and Ts'elxwéyeqw Tribe on the issue of justification, without binding either of them on this issue.

The Crown looks forward to finalizing the terms of reference as soon as possible, so that consultation between the Crown and Ts'elxwéyeqw can shift to discussion on the substantive issues and concerns that have been raised by the Tribe in relation to the Project, and in particular, to the Crown's responses to the 89 recommendations described in the Integrated Cultural Assessment Report (ICA Report).

Technical Working Group for the ICA and 89 Recommendations

The Crown recognizes the importance of meaningfully responding to the 89 recommendations described in ICA Report in order to fulfill its duty to consult with Ts'elxwéyeqw Tribe and other Stó:lō nations that were involved in its development.

At the January 17, 2019 meeting between Ts'elxwéyeqw Tribe and the Crown, the Crown expressed interest in convening a series of joint technical working group meetings to work collaboratively towards addressing these 89 recommendations. The Crown also committed to conducting its own review of the ICA Report and 89 recommendations with a view to preparing preliminary responses thereto.

At the January 31, 2019 meeting between Ts'elxwéyeqw Tribe and the Crown, the Crown indicated that it had put together a team of representatives from federal departments to participate in the technical working group, including representatives from National Energy Board, Indigenous Services Canada, Fisheries and Oceans Canada, and Environment and Climate Change Canada. The Crown indicated that the federal representatives were reviewing the relevant documents, and that the Crown would provide a preliminary draft response to each of the 89 recommendations. The Crown advised that it did not anticipate being able to circulate its table with Ts'elxwéyeqw Tribe until February 15, 2019.

On February 4, 2019, the Crown wrote to Ts'elxwéyeqw Tribe to attempt to schedule a first technical working group meeting on February 20. Ts'elxwéyeqw Tribe responded and indicated that the Tribe would like to view the Crown's responses before scheduling an initial meeting.

On February 14, 2019, the Crown provided a draft agenda for two full-day technical working group meetings that focused on a number of different topics identified in the ICA Report and recommendations. The Crown reiterated their request to schedule these first two technical working group meetings. Ts'elxwéyeqw Tribe indicated that they would review these draft agendas.

In an email sent February 25, 2019, Ts'elxwéyeqw Tribe indicated that once it had received the Crown's comments on the ICA Report and 89 recommendations, the Tribe would assist in scheduling the first technical working group meeting.

At a teleconference on March 1, 2019, the Crown committed to sharing an initial response to the 89 recommendations by March 6, 2019, and did so on that date. Ts'elxwéyeqw Tribe indicated that they would require approximately one month to review the Crown's initial responses before holding technical working group meetings. The Crown also requested any feedback that Ts'elxwéyeqw Tribe might have on the draft agendas for technical working group meetings. Ts'elxwéyeqw Tribe indicated that while they agreed with the agendas in principle, their view would depend on the Crown responses to the 89 recommendations.

On March 18, 2019, the Crown and Ts'elxwéyeqw Tribe held a second teleconference in order to discuss outstanding concerns identified in recent correspondence, and to confirm dates for technical working group meetings. On this call, Ts'elxwéyeqw Tribe indicated that they intended to consult internally regarding when these meetings could take place, and that they were unable to commit to dates at that time.

On March 21, 2019, the Crown emailed Ts'elxwéyeqw to request a brief phone conversation to discuss dates for the technical working group meetings, noting that the designated contact would be on leave the following week. A response to this request was not provided.

On April 1, 2019, the Crown reiterated its eagerness to schedule technical working group meetings, and suggested two full-day technical working group meetings between Monday, April 15, 2019 and Friday, April 26, 2019. The Crown also requested feedback on the agendas that were shared with Ts'elxwéyeqw on February 14, 2019.

Also on April 1, Consultation Lead, Deborah Corber, wrote to Ts'elxwéyeqw Tribe to share information regarding a number of proposed accommodation measures intended to address impacts to rights and interests, and to respond to concerns that have been raised by Indigenous groups throughout the review of TMX (the original NEB hearing and Crown consultation process as well as the NEB Reconsideration hearing and current re-initiated Phase III consultation process). Some of these accommodation measures are relevant to addressing the 89 recommendations identified in the ICA Report.

On April 4, 2019, Ts'elxwéyeqw Tribe responded to the Crown's April 1, 2019 email indicating that the Tribe has requested TMC provide updated alignment sheets and any new responses to the 89 recommendations, and that receipt of these responses from TMC is a prerequisite to holding technical working group meetings with the Crown. Ts'elxwéyeqw Tribe indicated that meetings could be held April 22 or May 6, if TMC is able to submit the updated alignment sheets and responses to the 89 recommendations before then. On April 6, 2019, the Crown re-iterated that the initial response to the 89 recommendations provided on March 6, 2019 was intended to be a draft that could guide collaborative discussions with Ts'elxwéyeqw with the aim of achieving consensus as to how each of the recommendations have been or will be addressed. The Crown agreed to a meeting the week of April 22. As of April 17, 2019, the Crown has not received a response to this email.

While the Crown has provided preliminary responses to the 89 recommendations identified in the ICA Report, the Crown remains eager to convene joint technical working group meetings to seek consensus on how these recommendations have been or will be addressed. The Crown has lined up the necessary technical expertise on the federal side, and offered Ts'elxwéyeqw Tribe substantial funding to enable their participation. The Crown has also repeatedly sought to confirm dates for these technical working group meetings. The Crown is seeking confirmation from Ts'elxwéyeqw Tribe that they remain interested in convening these meetings, and, if so, what dates the Tribe's representatives would be available.

Status of Action Items from Meetings and Teleconferences

The Consultation Team has met with Ts'elxwéyeqw Tribe twice in-person (January 17 and January 30) and twice via teleconference (March 1 and March 18) during the re-initiated Phase III consultation process. The Crown has shared draft records of the in-person meetings with Ts'elxwéyeqw Tribe for review and comment, and intends to share records from the two teleconferences as soon as possible.

During these in-person meetings and teleconferences, a number of action items were identified for follow-up by either the Crown or Ts'elxwéyeqw Tribe. Annex I to this letter contains a list of action items identified, and the Crown's understanding of the status of each action item.

For a list of formal correspondence from Ts'elxwéyeqw Tribe and subsequent Crown responses during the re-initiated Phase III consultation process, please see Annex II.

Concluding Remarks

The Crown appreciates Ts'elxwéyeqw Tribe's involvement in the re-initiated Phase III consultation process to date, as detailed in this letter. The Crown also recognizes the significant concerns that the Tribe has raised to date regarding the statutory timeline for the re-initiated Phase III consultation process. These concerns have been shared with decision makers to inform their decision regarding whether to extend the statutory timeline.

In order to inform the Governor-in-Council's upcoming decision on the project, the Crown is currently drafting a Crown Consultation and Accommodation Report (CCAR) which will include an analysis of the key concerns raised by Ts'elxwéyeqw Tribe and member communities through the two NEB reviews and ongoing Crown consultation, which commenced shortly after the Project proponent submitted its application to the National Energy Board in December 2013. The CCAR will also include an analysis of the projects potential impacts on Ts'elxwéyeqw Tribe's Aboriginal rights and interests, based on the information available and in consideration of the potential accommodation measures to address those impacts. The Crown will be sharing and discussing this analysis with Ts'elxwéyeqw Tribe in the coming weeks.

The Crown looks forward to meeting with Ts'elxwéyeqw Tribe as soon as possible in order to continue a meaningful two-way dialogue regarding impacts to the Tribe's rights and interests that could result from the Project, and to discuss reasonable accommodation measures to address those impacts.

Kind regards,

Corey Dekker
Consultation Director
Natural Resources Canada

Annex I: Action Items from In-Person Meetings and Teleconferences

Action Item	Status of Action Item
January 17, 2019 Meeting	
Crown Action Items	
The Crown will determine whether any additional documentation regarding their representation of the seven member communities is necessary.	***Complete:*** The Crown confirmed that no additional documentation was necessary for the Crown to recognize Ts'elxwéyeqw's authority to represent the seven communities in the re-initiated Phase III consultation process, and for the Tribe to receive funding on behalf of the seven communities.
Crown officials will relay to Justice Iacobucci Ts'elxwéyeqw's understanding that the Justice will be providing a response regarding the real or perceived conflicts of interest associated with the Crown's purchase of the Project.	***Complete:*** The Crown relayed Ts'elxwéyeqw's concerns to Justice Iacobucci and other senior government officials. Justice Iacobucci and Deborah Corber, Consultation Lead responded to these concerns in their letters of January 28, 2019 and January 29, 2019, respectively. The Crown recognizes Ts'elxwéyeqw's view that these responses have not been adequate. Additional responses to this and other legal issues will be addressed in the Crown's response to Ts'elxwéyeqw's March 18, 2019 letter.
The Crown will follow up on Ts'elxwéyeqw's open invitation for the provincial government's involvement in the re-initiated Phase III consultation process.	***Complete:*** The Crown has reached out to representatives of the provincial government regarding their potential involvement in consultations with Ts'elxwéyeqw Tribe. The provincial government has expressed interest in being involved in the technical working group meetings to address the ICA Report and recommendations.
The Crown will continue its detailed review of the Integrated Cultural Assessment (ICA) and 89 recommendations, and engage other federal departments where their expertise would be relevant.	***Complete:*** On March 6, 2019, the Crown submitted an initial analysis of the 89 recommendations, with input from representatives of the National Energy Board, Fisheries and Oceans Canada, Environment and Climate Change Canada, and Indigenous Services Canada.
Ts'elxwéyeqw Tribe Action Items	
Ts'elxwéyeqw will start drafting a terms of reference for the re-initiated Phase III consultation process to be shared with the Crown for their input. The Crown will add information regarding the roles and responsibilities of each government department involved in the re-initiated Phase III consultation process.	***Complete:*** Ts'elxwéyeqw shared a first draft terms of reference on January 30, 2019. Since then, the Crown and Ts'elxwéyeqw have shared additional drafts, and seek to finalize this document as soon as possible.
Ts'elxwéyeqw will provide a list of important dates when consultation meetings should not be scheduled.	***Not Complete:*** Ts'elxwéyeqw has included some, but not all of these dates in their most recent revised draft terms of reference. The Crown requests that these dates be included in the final version of the terms of reference prior to signing.

Action Item	Status of Action Item
Ts'elxwéyeqw will share its Tribal Declaration regarding representation with the Crown.	***Complete:*** Ts'elxwéyeqw shared their Tribal Declaration and an affidavit that affirmed their authority to represent the seven member communities on January 17, 2019.
January 31, 2019 Meeting	
Crown Action Items	
The Crown will follow up internally to seek greater clarity regarding the relationship between TMC and the broader Government of Canada, and the resulting implications for the re-initiated Phase III consultation process, in particular confidential information sharing.	***In Progress:*** The Crown understands that counsel for Ts'elxwéyeqw and Justice Canada have held a teleconference to discuss legal matters related to consultation. If additional information regarding the relationship between TMC and the Crown or rules governing confidentiality are necessary, the Crown is able to schedule further discussions between counsels.
The Crown will facilitate a meeting between Justice Canada and Ts'elxwéyeqw counsel to further discuss legal questions related to Ts'elxwéyeqw's established rights.	***Complete:*** A meeting between Ts'elxwéyeqw's counsel and Department of Justice to discuss legal issues that Ts'elxwéyeqw Tribe has raised took place on March 27, 2019.
The Crown will share the reference material provided to federal departments, its draft recommendations tracking table, and a suggested list of future meeting dates and topic areas prior to the first technical working group meeting	***Complete:*** February 6, 2019: The Crown shared reference material provided to federal departments February 14, 2019: The Crown shared draft meeting agendas, including suggested topic areas March 6, 2019: The Crown shared the analysis/tracking table of the 89 recommendations
The Crown will determine who the appropriate representative to sign the terms of reference would be.	***Complete:*** The Crown has determined that Deborah Corber, Consultation Lead would be the appropriate person to sign the terms of reference.
The Crown will engage the provincial government about participating in the re-initiated Phase III consultation process.	***Complete:*** The Crown has reached out to representatives of the provincial government regarding their potential involvement in consultations with Ts'elxwéyeqw Tribe. The provincial government has expressed interest in being involved in the technical working group meetings to address the ICA Report and recommendations.
Ts'elxwéyeqw Tribe Action Items	
Ts'elxwéyeqw to make minor revisions to the revised draft meeting summary	***Complete:*** Ts'elxwéyeqw shared a revised draft meeting summary on March 1, 2019. The Crown accepted the revisions and shared a final version on March 4, 2019.
Ts'elxwéyeqw to revise the draft TOR to reflect the mutual understanding reached at the meeting regarding process	***Complete:*** Ts'elxwéyeqw provided a second draft terms of reference on February 25, 2019.

Action Item	Status of Action Item
Ts'elxwéyeqw to share the contact information for a representative of the provincial Ministry of Energy, Mines, and Petroleum Resources	***Complete:*** Ts'elxwéyeqw shared contact information for May Mah-Paulson on February 1, 2019.
Ts'elxwéyeqw to determine whether February 20 would be an acceptable date for the first technical working group meeting	***Complete:*** On February 4, 2019, Ts'elxwéyeqw Tribe confirmed that they would like to review the Crown's initial analysis before scheduling a meeting.
Ts'elxwéyeqw to schedule phone call to discuss revised TOR with all parties.	***Complete:*** The draft terms of reference was discussed in detail at the March 1 and March 18 teleconferences.
March 1, 2019 Teleconference	
Crown Action Items	
The consultation team will share a revised draft Terms of Reference by March 6, 2019.	***Complete:*** A third draft terms of reference was shared with Ts'elxwéyeqw on March 6, 2019
The consultation team will share the 89 recommendations table with federal departments' initial responses by March 6, 2019.	***Complete:*** The Crown's initial analysis of the 89 recommendations was shared with Ts'elxwéyeqw on March 6, 2019.
The consultation team will organize a call between Department of Justice counsel and Ts'elxweyeqw counsel to discuss the identified legal issues	***Complete:*** A meeting between Ts'elxwéyeqw's counsel and Department of Justice to discuss legal issues that Ts'elxwéyeqw Tribe has raised took place on March 27, 2019.
The consultation team will organize a follow-up teleconference after Ts'elxweyeqw receives the revised Terms of Reference and initial responses to the 89 recommendations to discuss next steps.	***Complete:*** A follow up teleconference was held on March 18, 2019.
Ts'elxwéyeqw Tribe Action Items	
Ts'elxweyeqw will follow up regarding any additional edits to the January 17, 2019 draft meeting summary.	***Complete:*** Ts'elxwéyeqw shared a revised draft meeting summary on March 1, 2019. The Crown accepted the revisions and shared a final version on March 4, 2019.
March 18, 2019 Teleconference	
Crown **Action Items**	
The Crown will update its contact list based on the information provided by Ts'elxweyeqw to ensure that future correspondence is sent to the correct recipients.	***Complete:*** The Crown has updated its contact information to reflect the information shared on March 27, 2019. The Crown apologizes for any inconvenience or confusion caused by sending correspondence on March 15, 2019 and April 1, 2019 to out-of-date contacts for some Ts'elxweyeqw communities.

Action Item	Status of Action Item
The Crown committed to determining what additional participant funding would be available to Ts'elxwéyeqw for the re-initiated Phase III consultation process.	***Complete:*** On March 21, 2019, the Crown confirmed that $712,000 would be made available to Ts'elxweyeqw to enable their participation in the re-initiated Phase III consultation process.
The Crown will set up a legal discussion between counsels once it reviews the letter to PM outlining Ts'elxweyeqw's legal concerns.	***Complete:*** A meeting between Ts'elxwéyeqw's counsel and Department of Justice to discuss legal issues that Ts'elxwéyeqw Tribe has raised took place on March 27, 2019.
The Crown will seek confirmation that if Ts'elxwéyeqw pursues an agreement with TMC that will not prejudice future economic accommodation measures.	***Complete:*** On March 21, 2019, the Crown confirmed that any future economic benefits or participation would not consider whether or not Indigenous groups had reached agreements with Trans Mountain Corporation.
Ts'elxwéyeqw Tribe Action Items	
Ts'elxwéyeqw will share revisions to the March 6, 2019 draft terms of reference.	***Complete:*** Ts'elxwéyeqw shared a fourth draft terms of reference on March 28, 2019.
Ts'elxwéyeqw will provide the correct contact information for its seven member communities' leadership.	***Complete:*** Ts'elxwéyeqw shared this contact information on March 27, 2019.
Ts'elxwéyeqw will follow up with the Crown regarding scheduling the planned technical working group meetings	***Not Complete:*** Ts'elxwéyeqw has not yet confirmed dates for the planned technical working group meetings.

Annex II: Correspondence during the Re-Initiated Phase III Consultation Process

Letter	Response
October 5, 2018 – Letter from Ts'elxwéyeqw Tribe to the Minister of Natural Resources	January 29, 2019 – Response from the Honourable Amarjeet Sohi, Minister of Natural Resources
December 19, 2018 – Letter from Ts'elxwéyeqw Tribe to Assistant Deputy Minister, Major Project Management Office	December 27, 2018 – Email Response from Corey Dekker, Consultation Director
January 15, 2019 – Letter from Ts'elxwéyeqw Tribe to Justice Frank Iacobucci	January 28, 2019 – Letter response from Justice Frank Iacobucci January 29, 2019 – Letter response from Deborah Corber, Consultation Lead
March 11, 2019 – Letter from Ts'elxwéyeqw Tribe to Deputy Minister, Natural Resources Canada	March 15, 2019 – Letter response from Christyne Tremblay, Deputy Minister of Natural Resources Canada
March 14, 2019 – Letter from Ts'elxwéyeqw Tribe to Prime Minister (shared with the Crown on March 18, 2019).	April 10, 2019 – Letter response from the Honourable Amarjeet Sohi, Minister of Natural Resources

This is Exhibit T referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

From: Corber, Deborah (NRCAN/RNCAN)
To: David Jimmie
Cc: Irwin, Kimberly (NRCAN/RNCAN); Dekker, Corey (NRCAN/RNCAN); "East, Mark"; TMX (NRCAN/RNCAN); Keri Ardell; Rob Miller; Joelle Walker; Corber, Deborah (NRCAN/RNCAN)
Subject: UPDATE
Date: Monday, April 22, 2019 8:17:51 AM

Good morning, Chief Jimmie:

You will have received a letter from Minister Sohi last week informing you, ahead of a public announcement, that the GiC had approved an extension up to June 18th, 2019, for a decision on the Project. In that letter, the Minister also advised that you would be receiving, as a next step, a letter from Deputy Minister Tremblay sharing the draft Crown Consultation and Accommodation Report (CCAR), which will inform the Government's decision on the Project.

I expect the letter from DM Tremblay to be delivered to you this week. However, I wanted to signal to you that receipt of the draft CCAR, including a draft annex relating to Ts'elxweyeqw Tribe, should not be taken to suggest that Canada is no longer prepared to work towards a "joint report" as we have been discussing with you. Rather, the CCAR is a key input to GiC decision making which NRCan is required to submit for each Indigenous group with whom Canada is consulting as part of the re-initiated Phase III consultation process. Should we be able to conclude a joint report with Ts'elxweyeqw Tribe by the end of May, we would expect to include it with the CCAR, as part of our reporting to GiC.

I would very much appreciate the opportunity to discuss the CCAR and our next steps together, including the draft Terms of Reference, moving forward with the proposed technical working group meetings and how we might try to conclude a joint report given current timelines. I am hoping that we can meet in person, which I think would help us to further our discussions in advance of the technical working group meetings. To that end, I am prepared to change my other meetings and travel plans in order to meet with you on either April 24th or 25th at a time of your convenience. I believe we could keep this meeting small, including yourself, Keri, Rob and Joelle, together with me and Kim Irwin. Depending on the day chosen, we might be able to have our legal counsel, Mark East, participate by conference call. (Corey is currently out of town, but will re-join for the working group meetings in the coming weeks.) While I recognize that Ts'elxweyeqw Tribe had proposed a technical working group for April 25, I would like to ensure we are on the same page in terms of our mutual expectations for the remainder of this consultation process before we dive in to this substantive, collaborative work.

I am flying west today, leaving shortly, but will be back online this evening, likely after 7:30 pm your time. Please don't hesitate to contact me at 343-543-7260 then, or alternatively, we can speak on Tuesday morning.

Respectfully,

Deborah

Deborah Corber, LL.M.
Consultation Lead / Responsable de la consultation
Trans Mountain Pipeline Expansion Project /
Projet d'agrandissement du réseau Trans Mountain
Natural Resources Canada / Ressources naturelles Canada
615 Booth Street, Ottawa, Ontario K1A 0E4
Mobile / Cellulaire: 343-543-7260
Email / Courriel: deborah.corber@canada.ca

This is Exhibit U referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

From: TMX (NRCAN/RNCAN) <nrcan.tmx.rncan@canada.ca>
Sent: Thursday, April 25, 2019 8:02 PM
To: David Jimmie <David.Jimmie@ttml.ca>
Cc: Chief Angie Bailey <aitchelitzfn@gmail.com>; kindaka@hotmail.com; mabrampoint@outlook.com; Chief Brenda Wallace <bandmanager@soowahlie.ca>; derek@tzeachten.ca; Chief Terry Horne <terryhorne01@gmail.com>; David Jimmie <davidjimmie@squiala.com>; derekhansom@gmail.com
Subject: Crown Consultation and Accommodation Report

Dear Chief Jimmie,

I am writing today regarding the Crown Consultation and Accommodation Report (CCAR). Attached to this message is your community's draft annex to the CCAR, which reflects our consultations to date, along with a letter containing additional details. This information is provided electronically to ensure prompt delivery. A package is being couriered to you which includes a copy of the attached letter, the draft CCAR (on a USB stick), and your community's draft annex to the CCAR.

Thank you for your partnership and continued investment in the re-initiated Phase III consultation process.

Yours sincerely,

Christyne Tremblay
Deputy Minister
Natural Resources Canada

Natural Resources Canada | Ressources naturelles Canada

Deputy Minister | Sous-ministre

Ottawa, Canada
K1A 0E4

Chief David Jimmie
Ts'elxweyeqw Tribe Management Limited
Building 8A - 7201 Vedder Road
Chilliwack, British Columbia V2R 4G5

Dear Chief Jimmie:

The Government of Canada remains committed to meaningful, responsive, and transparent consultations as we move forward in the right way on the Trans Mountain Expansion Project (the Project). We have benefitted, and continue to benefit from the ongoing exchange of views with Indigenous nations, communities and governments as part of the re-initiated Phase III consultations. Thank you for the time that you and your colleagues have invested in this process.

I am writing today regarding the Crown Consultation and Accommodation Report (CCAR). When final, the CCAR provides a detailed assessment of the Phase III consultations and is a key input into the Government's decision on the Project. Taking the 2016 CCAR as a starting point, and following the guidance of the Federal Court of Appeal, this report will include the consultation and accommodation process, issues raised by communities, as well as the mitigation measures and the accommodations proposed to respond to what the Crown heard. It will also provide the Crown's assessment of impacts on Indigenous interests, taking into account mitigations and, where appropriate, accommodations for communities like yours.

With Phase III well-underway, our focus and priority remains on our good-faith consultations with you and the communities that you represent. I have provided you with the draft CCAR and Ts'elxweyeqw Tribe's draft annex, which reflect our consultations to date, including the Crown's preliminary responses to the 89 recommendations in the Integrated Cultural Assessment Report (shared with you on March 6). Both the CCAR and the annex will be updated to reflect the outcomes of our continued work in the coming weeks, including our joint work on the responses to the 89 recommendations as well as other matters under discussion. Should you find inaccuracies in this material, I invite you to share your comments with Deborah Corber, Consultation Lead at Deborah.corber@canada.ca over the coming five weeks.

A number of Indigenous groups have also expressed an interest in sharing their assessment of the Phase III consultations with the Crown in their own words. With this in mind, I invite you to provide your reflections on the Project and the process through an independent submission to Naina Sloan, Senior Executive Director, Indigenous Reconciliation Secretariat, Natural Resources Canada, naina.sloan@canada.ca. Crown consultations teams are available to provide additional details at your convenience.

Working together, with a focus on our consultation work, presents our best opportunity to ensure that the final CCAR effectively reflects potential impacts to rights and interests, appropriate accommodations, and in the case of Ts'elxweyeqw Tribe, specific responses to the 89 recommendations that you have advanced.

Thank you for your continued engagement in these consultations.

Yours sincerely,

Christyne Tremblay
Deputy Minister
Natural Resources Canada

Enclosures: (2)

c.c.: Distribution List

DISTRIBUTION LIST

Chief Angie Bailey
Aitchelitz Band

Chief Robert Gladstone,
Shxwha:y Village

Chief Mark Point
Skowkale First Nation

Chief Brenda Wallace
Soowahlie First Nation

Chief Derek Epp
Tzeachten First Nation

Chief Terry Horne
Yakweakwioose First Nation

Chief David Jimmie
Squiala First Nation

Derek Hansom
Councillor, Skowkale First Nation

Ts’elxwéyeqw Tribe

Preamble

Canada is committed to advancing reconciliation and renewing the relationship with Indigenous peoples, based on recognition of mutual rights, respect, cooperation and partnership. In the spirit of advancing reconciliation, Canada is committed to understanding the asserted or established Aboriginal and Treaty rights and title, as well as interests, of Indigenous groups. Given the breadth of Canada’s objectives in consulting, Canada has therefore defined “Indigenous Interests” in this report to include asserted or established Aboriginal and Treaty rights and title, as well as interests in order to be inclusive.

1. Introduction

The Federal Court of Appeal (FCA) rendered its decision in *Tsleil-Waututh Nation v. Canada (Attorney General)* quashing the Governor in Council’s (GiC) 2016 decision to approve the Trans Mountain Expansion Project (the Project) in 2018. Canada decided not to appeal the judgment of the FCA. Instead, following the release of the FCA’s judgment, Canada:

1. instructed the National Energy Board (NEB) to reconsider aspects of its recommendation, by, among other things, taking into account the effects of Project-related marine shipping, and
2. re-initiated Phase III consultations with all Indigenous groups potentially impacted by the Project.

Canada’s re-initiated Phase III consultation process was designed to remedy the flaws identified by the FCA in Canada’s previous consultation efforts. Canada’s modified approach to consultations is intended to ensure that Canada and Indigenous groups can:

- engage in a meaningful, two-way dialogue;
- collaborate to better understand Project-related impacts on Indigenous Interests;
- consult in a manner responsive to communities’ individual needs; and
- develop potential accommodation measures to mitigate those impacts.

The Crown established a whole-of-government Crown consultation team. A dedicated Consultation Lead, Consultation Director and a team of experts were identified to work with Ts’elxwéyeqw Tribe. For all Indigenous groups, this generally included having officials from Trans Mountain Corporation (TMC), the proponent, at the table as part of the consultations, as there are concerns, impacts and accommodations that are best addressed by the company and the easiest way to do so was to have everyone in the same room at the same time.

The re-initiated Phase III consultation process with Ts’elxwéyeqw Tribe began on September 20, 2018. The new consultations began with Canada examining its records and the existing 2016 Crown Consultation and Accommodation Report (CCAR) annex for the Stó:lō Collective (which represented the seven communities of Ts’elxwéyeqw Tribe in the original NEB process and in the 2016 Phase III consultation process) in the spirit of building on the exchanges and knowledge gained from existing

information, interactions and processes. Canada provided the Stó:lō Collective annex at the beginning of the consultation knowing that an update to each CCAR annex would be required and offered through the new consultation process and meaningful dialogue to validate and revise information on issues and concerns, to work with Indigenous groups to reflect these changes as well as remedy any missing information and assessments.

The Ts'elxwéyeqw Tribe has been an active participant, attending the Roundtable discussion with the Honourable Frank Iacobucci and several face-to-face meetings and teleconferences with the Crown. To respond to the Integrated Cultural Assessment (ICA) Report that was submitted to the NEB by the Stó:lō Collective in 2014 (for additional details on the ICA, see Section 3),[1] the Crown has sought to convene a series of technical working group meetings that bring together representatives from relevant federal departments and TMC to reach consensus on how the 89 recommendations have been or will be addressed. As a starting point for discussion at these technical working group meetings, the Crown developed a preliminary draft table of Crown responses, which was shared with Ts'elxwéyeqw Tribe for review on March 6, 2019. The Ts'elxwéyeqw Tribe has agreed to collaborate with the Crown in this joint exercise, and on April 17, 2019, Ts'elxwéyeqw Tribe proposed dates for three technical working group meetings.

This Annex now includes a draft table, which represents the Crown's preliminary response to the 89 recommendations set out in the ICA that were first submitted to Ts'elxwéyeqw Tribe on March 6, 2019. This table will be revised based on new accommodation measures, the outcomes of discussions with Ts'elxwéyeqw Tribe, and updates from TMC before finalizing this Annex.

2. Background Information

The Ts'elxwéyeqw Tribe represents the communities of Aitchelitz First Nation, Shxwhá:y Village, Skowkale First Nation, Soowahlie First Nation, Squiala First Nation, Tzeachten First Nation and Yakweakwioose First Nation (collectively the Ts'elxweyeqw communities (Villages) which comprise the Ts'elxweyeqw Tribe). Ts'elxwéyeqw Tribe is one of the tribes of the Stó:lō people, whose asserted traditional territory encompasses a large section of Southwestern British Columbia. The tribe's communities are based in the Chilliwack, Sardis, and Cultus Lake Sardis areas of the Upper Fraser Valley, located within Stó:lō Traditional Territory (*S'olh Téméxw*). In their Memorandum of Fact and Law filed with the Federal Court of Appeal, Ts'elxwéyeqw Villages described themselves as follows:

> *"The Stó:lo are Halkomelem-speaking Coast Salish people who live in many villages in S'olh Temexw. The Stó:lo are culturally, spiritually, physically, psychologically and economically interconnected with S'olh Temexw. All things have shxweli (spirit) and all things are interconnected. Stó:lo identity is based in enduring activities, such as fishing, language (Halkomelem), stories, songs and storytelling and protection of cultural practices. Stó:lo governance over resources occurs at the individual, extended family, village, and tribal*

[1] "Integrated Cultural Assessment for the Proposed Trans Mountain Expansion Project," (March 2014), Prepared by: Ts'elxweyeqw Tribe Management Limited (TTML), Stó:lō Research and Resource Management Centre (SRRMC), and the Human Environment Group (HEG). The ICA is available on the NEB registry at Filing: A61882 (B-241-3 to B-241-6) or https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2487587&objAction=browse&viewType=1

levels. The ability to maintain strong inter-dependent relationships with S'olh Temexw through traditional governance is extremely important to the Stó:lo identity, cultural health, self-determination and nationhood. The Stó:lo have a deeply established connection to and reliance on salmon, sturgeon and other aquatic species, all of which are integral elements of their society, culture, economy, politics, and traditions. Water quality was and remains a core factor of this relationship.[2]"

The Ts'elxwéyeqw Atlas, a publication of Ts'elxwéyeqw Tribe Management Ltd., opens with the following:

> *The Ts'elxwéyeqw are the First People of the Chilliwack River Watershed in Central Fraser Valley of southwestern British Columbia. Our tribal name 'Ts'elxwéyeqw' is commonly known in English as 'Chilliwack.' We are one of the tribes of the Stó:lo…as our livelihood was very much connected to the Fraser River.* [3]

As of March 2019, Ts'elxwéyeqw Tribe's registered population was 1981, with 996 members living on reserve. Each of the communities has both community-held and shared reserve land throughout the Upper Fraser Valley. All communities share the Grass 15 and Pekw'xe:yles reserves, while the Skumalasph 16 reserve is shared by Aitchelitz First Nation, Shxwhá:y Village and Squiala First Nation. Information on each community's registered population, as of March 2019, and community-held reserve land is as follows:

- Aitchelitz First Nation holds one reserve, Aitchelitch 9, and the registered population was 42, with 24 members living on reserve.
- Shxwhá:y Village holds one reserve, Skway 5, and the registered population was 441, with 120 members living on reserve.
- Skowkale First Nation holds two reserves, Skowkale 10 and Skowkale 11, and the registered population was 272, with 194 members living on reserve.
- Soowahlie First Nation holds one reserve, Soowahlie 14, and the registered population was 383, with 195 members living on reserve.
- Squiala First Nation holds two reserves, Squiala 7 and Squiala 8, and the registered population was 223, with 146 members living on reserve.
- Tzeachten First Nation holds the Tzeachten 13 reserve and the registered population was 546, with 279 members living on reserve.
- Yakweakwioose First Nation holds the Yakweakwioose 12 reserve and the registered population was 74, with 38 members living on reserve.

The pipeline right of way is proposed to cross Tzeachten No. 13 (held by Tzeachten). The proposed corridor lies entirely on lands held by 15 Certificate of Possession Holders.

[2] Memorandum of Fact and Law of the Stó:lō Applicants, submitted as part of the Federal Court of Appeal case *Tsleil-Waututh Nation v. Canada (Attorney General)*

[3] Being Ts'elxwéyeqw: First Peoples' Voices and History from Chilliwack-Fraser Valley, British Columbia, Harbour Publishing Ltd., 2017.

As of Spring 2016, the proponent advised the Crown that they had an agreement with all 15 CP holders granting consent for the Trans Mountain pipeline to cross their CP holdings. The proponent will be seeking GiC authorization for *Indian Act* s.35 tenures if the proponent is granted rights to expropriate to allow for the expansion of the pipeline. Tzeachten has a Land Code in place and, therefore, the proponent would be required to negotiate the tenure under the Code.

(Source: Being Ts'elxweyeqw[2])

The Stó:lō Nation, which at the time included the Ts'elxwéyeqw Villages, is party to a protective *Writ of Summons* filed with the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the writ, referred to herein as the "Stó:lō Nation writ area". Most were parties to that Stó:lō Nation protective *Writ of Summons*, with the exception of Shxwhá:y Village. Several members of the Ts'elxwéyeqw Tribe have also signed Stage 5 *Treaty Negotiations Memorandum of Understanding* with the Crown in BC in October 2018.

In March 2014, five of Ts'elxwéyeqw Tribe's communities, and three other Stó:lō communities, signed the "*The Ch-ihl-kway-ukh Tribe Forest Agreement*" with the Province of British Columbia. This Agreement named "Ch-ihl-kway-ukh Tribe" as having has a designated traditional territory in which the tribe has Aboriginal rights and title.

Ts'elxwéyeqw Tribe Limited Partnership (also known as the Ts'elxwéyeqw Tribe Management Limited) was created by the seven Ts'elxwéyeqw bands to manage the Tribe's taditional territory that was not assigned to a reservation and to pursue economic development opportunities on behalf of the tribe and its members. It aims to advance the well-being of the Ts'elxwéyeqw members and establish their Aboriginal rights and title within the Ts'elxwéyeqw traditional territory.

In recognition of how the member communities of the Ts'elxwéyeqw Tribe chose to engage with the Crown for the purposes of these re-initiated Phase III consultations (reflected in section 4 of this Annex), the Crown has assessed the potential adverse impacts of the Project on the Aboriginal Interests of the Ts'elxwéyeqw Tribe as a collective.

3. 2016 NEB Review and Crown Consultation Process

All seven of Ts'elxwéyeqw Tribe's communities participated in the 2013 to 2016 OH-001-2014 NEB Review and Crown Consultation process as part of the larger "Stó:lō Collective[4]." The Stó:lō Collective participated in the OH-001-2014 NEB review of the Project as an intervenor. The Stó:lō Collective submitted a significant amount of information describing Stó:lō rights and concerns regarding the Project. The Stó:lō Collective submitted technical written evidence, correspondence, information requests, and responded to the Crown's Issues Tracking Table Information Request by further elaborating their concerns [A71257].

The Stó:lō Collective chose not to participate in the Oral Traditional Evidence hearings as they objected to the process, which they felt unfairly restricted the kind of information that Indigenous presenters could share, and limited the extent to which community representatives could describe potential impacts on community interests and rights. They also indicated the NEB process conflicted with Stó:lō customs and traditions that support knowledge transfer and honouring Elders. For example, Stó:lō noted that Elders were the only hearing participants subject to oral questioning. As there were numerous concerns with the prescribed oral hearing procedures, the Stó:lō Collective chose to rely on the Stó:lō ICA, which describes potential impacts the Project may have on resources, spirituality, economy, culture and unceded lands within S'ólh Téméxw [A4F7Y9].

Crown officials met with the Stó:lō Collective to discuss the Project during the Early Engagement phase (Phase I) on July 18, 2014. During the Panel hearing stage (Phase II), the Crown Consultation Team met with officials from the Stó:lō Collective's technical team on December 3, 2015 to review their key concerns with the evidentiary record and follow-up on proponent commitments made to date. On April 13, 2016, the Crown consultation team met again with the Stó:lō Collective for an all-day meeting prior to the release of the NEB Recommendation Report.

Stó:lō Collective submitted the ICA Report to the NEB in July 2014. The ICA and its Cultural Heritage Overview Assessment presents the Stó:lō Cultural Model which schematically depicts, according to the Stó:lō Collective's worldview, a suite of Stó:lō values and the inter-connected relations between people, places, and things. The ICA uses this model, and a series of unique impact rating criteria and input from a large number of community members to evaluate potentially linked environmental, social and economic effects that may be associated with building and operating a new oil pipeline through *S'ólh Téméxw*.

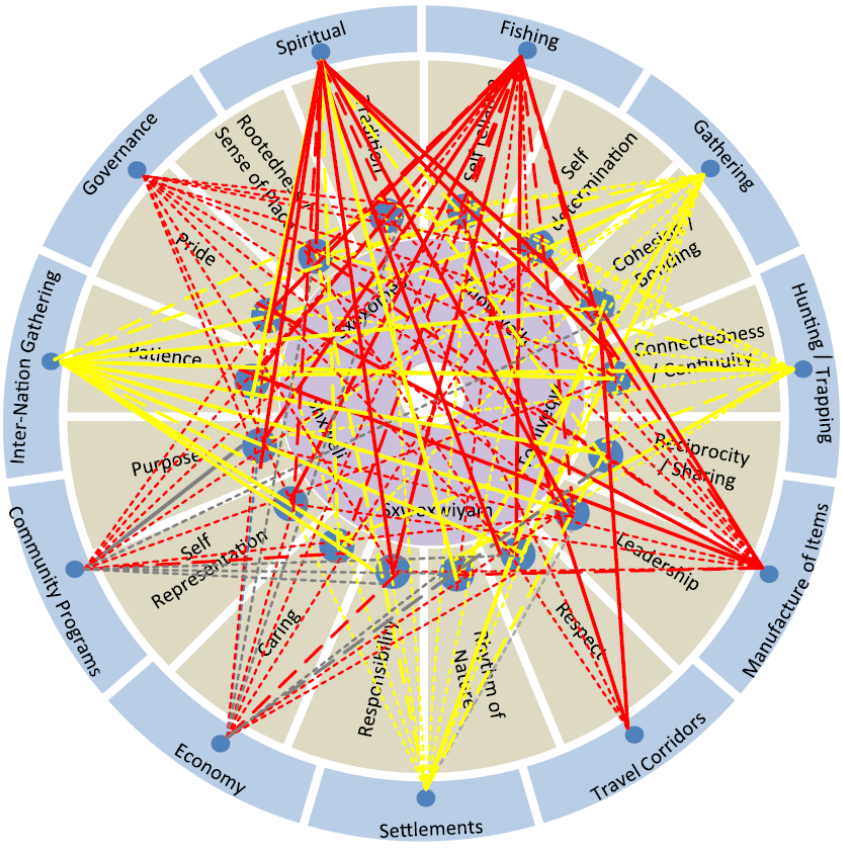
The ICA considers effects to fishing, plant gathering, spiritual activities, manufacture of cultural items, travel corridors, settlements, hunting and trapping, governance, inter-nation gatherings, economic activity, and community programs and services. These activities within *S'ólh Téméxw* provide a holistic view of economic, social, political, environmental, and spiritual connectivity; one cannot be successful or healthy without the other, for all things have Shxwelí (spirit) and all things are interconnected. Their

[4] In the original NEB process and 2016 Phase III consultation process Stó:lō Collective represented the seven Ts'elxwéyeqw Tribe communities, as well as Kwaw-Kwaw-Apilt First Nation, Leq'á:mel First Nation, Skawahlook First Nation, Skwah First Nation, Sq'éwlets (Scowlitz) First Nation, and Sumas First Nation.

longstanding socio-cultural and socio-economic relations, values, and behaviours are factors of their deep connectedness to the ancestors, land, air, water, resources, and cultural places of *S'ólh Téméxw*.

The ICA concludes that the Project "poses significant risk and represents a significant threat to the cultural integrity and survival of core relationships at the heart of Stó:lō worldview, identity, health, and well-being (ICA, Section 16, p. 11)." The ICA also includes a list of 89 recommendations "that, if implemented, would help reduce the overall impact of the [Project] on Stó:lō people within *S'ólh Téméxw* (ICA, Section 17, p. 1)."

Following the release of the NEB Report in May 2016, the Crown consultation team held a meeting on September 23, 2016 with representatives of the Stó:lō Collective. At this meeting, Stó:lō Collective emphasized the potential for adverse effects of the Project on Stó:lō culture and traditions. The Crown understands that a foundation for Stó:lō's approach to assessing the potential adverse impacts from the Project is a view that culture affects the way in which people understand themselves, their relationship to the land, their community, their purpose, and their connection to the spiritual world. The concept of 'cultural integrity' is used throughout the ICA, which notes that cultural activities are shaped by environmental conditions and social circumstances, and that outside forces (such as large scale industrial developments) can change the environment or social structures in a manner that affects how, why, where and when cultural activities occur, thereby impacting cultural integrity. Impacts to the identified activities and core values were depicted using the Stó:lō Cultural Model:



Potential Cumulative Effects of the Project on Stó:lō Cultural Values (Source: ICA, Section 16, p. 6)

The Stó:lō Collective signed a contribution agreement with the NEB for $550,000 ($42,307.00 per First Nation) in participant funding. The Stó:lō Collective was offered an additional $60,000 ($4,615.38 per First Nation) from the Major Projects Management Office (MPMO) for participation in the initial round of Crown consultations following the close of the NEB hearing record. The MPMO also offered the Stó:lō Collective an additional $70,000 ($5,384.61 per First Nation) to support their participation in Phase III consultations following the release of the NEB Recommendation Report. The Stó:lō Collective signed contribution agreements with the MPMO in response to both of these offers, for a total of $129,962.92 in allocated funding. On August 30, 2016 the Stó:lō Collective was issued $20,000 in capacity funding by EAO to participate in consultation with the Crown.

The Crown provided a first draft of the Consultation and Accommodation Report (the Report) on August 17, 2016 and the Stó:lō Collective hand-delivered comments on the draft Report at an in-person meeting with the Crown on September 23, 2016. A second draft of this Report was provided to the Stó:lō Collective on November 3, 2016. The Stó:lō Collective sent letters on October 12, 2016 and October 18, 2016, which reviewed key messages from the September 23, 2016 meeting. The Stó:lō Collective also sent an email on November 7, 2016 with a chart that cross-referenced the 89 Recommendations in the ICA with the proponents commitments and the NEB's recommended conditions.

On November 23, 2016 the Stó:lō Collective submitted a Separate Submission, which was attached to the 2016 CCAR unedited, so that GIC received the Stó:lō Collective's concerns in their own words. On November 28, 2016, the Crown wrote to Stó:lō to provide a final response to Stó:lō's comments on the revised CCAR.

4. 2018/19 NEB Reconsideration Review Process and Crown Consultation Process

2018/19 NEB Reconsideration Review

Ts'elxwéyeqw Tribe was party to the *Tsleil-Waututh Nation v. Canada* application for judicial review in the Federal Court of Appeal as part of the Stó:lō Collective Applicants, a smaller sub-set of the Stó:lō Collective[5]. The FCA made a number of specific findings regarding the Crown's consultation with the Stó:lō Collective Applicants. Those were that:

- the 89 recommendations suggested by Stó:lō in the ICA Report that could have assisted Trans Mountain in avoiding or mitigating adverse effects on their Aboriginal Interests were not given due consideration;
- Stó:lō provided "examples of Traditional Ecological Knowledge which they felt the proponent and the Board ignored in the Project design, environmental assessment and mitigation planning," and that the Government provided "no analysis or response" to those concerns;

[5] Stó:lō Collective Applicants included the seven communities of Ts'elxwéyeqw Tribe as well as Skwah First Nation

- there were deficiencies in the proponent's evidence before the NEB about Stó:lō title, rights, interests and Project impacts, for example, the proponent's evidence indicated that Stó:lō had no traditional plant harvesting areas in the Project area; the ICA indicated otherwise;
- the Project would have a potential permanent impact on sites of critical cultural importance, such as lightning rock, or bathing sites at Bridal Veil Falls, and impacts related to access to and use of natural resources;
- Canada failed to accommodate the Stó:lō Collective's request to be involved in selecting Indigenous monitors working within their territory so that the individuals have sufficient knowledge of the Stó:lō Collective's culture and practices;
- the Crown failed to take into account the Stó:lō's constitutionally protected right to fish when concluding that "during the operational life of the Project fishing and harvesting activities directly affected by the construction and operation of the Westridge Marine Terminal would not occur within the expanded water lease boundaries", while "impacts on navigation" would also exist for the life of the Project and "would occur on a daily basis."

On September 20, 2018, the GiC directed the NEB to conduct a reconsideration of its previous recommendations and terms and conditions taking into account the environmental effects of Project-related marine shipping in view of the requirements of the *CEAA 2012*, and the adverse effects of Project-related marine shipping on species at risk in view of any requirements of section 79 of the *Species at Risk Act*. On February 22, 2019, following a comprehensive 22-week reconsideration process, the NEB released its Reconsideration Report on the Project. The report concluded that the Project was in the national interest and also expressed 7 revised conditions and 16 recommendations related to mitigating potential environmental impacts, impacts on Aboriginal and treaty rights, and marine life and safety.

On September 26, 2018, the NEB sent a letter to all potentially impacted Indigenous groups announcing the process and the opportunity to comment; inviting parties to apply to participate; and, outlining the availability of participant funding.

On September 28, 2018, Natural Resources Canada wrote to the Stó:lō Collective to advise them of the referral to the NEB and committed to follow up in the coming weeks with additional details on the Crown's plans for re-initiating the Phase III consultation process.

Ts'elxwéyeqw Tribe participated in the NEB's MH-051-2018 Reconsideration review process as a member of the Stó:lō Collective[6] that had participated in the NEB's OH-001-2014 proceedings. The Stó:lō Collective was an active participant to the hearing in that it responded to the September 26, 2018 letter from the NEB requesting their initial comments (A94494), commented on several motions, provided written evidence (A96432), asked information requests of federal departments and agencies (A96753), provided oral traditional evidence (Hearing Transcript 7, A96127), and submitted a final argument (A97548).

[6] According to their final argument, Stó:lō Collective represented the seven Ts'elxwéyeqw Tribe communities, Leq'á:mél, Skawahlook, Skwah, Sumas, and Scowlitz.

The Stó:lō Collective was awarded $80,000 in NEB Participant Funding to support its participation in the NEB Reconsideration process.

2018/19 Re-Initiated Phase III Crown Consultation Process

On October 3, 2018, the Government announced the appointment of former Supreme Court of Canada Justice, the Honourable Frank Iacobucci as a Federal Representative to oversee the consultation process, to provide advice on designing the process, and to ensure that Indigenous consultations were in compliance with the Federal Court of Appeal judgment.

On October 5, 2018, the Minister of Natural Resources wrote a separate letter inviting each member of Ts'elxwéyeqw Tribe to discuss its views and concerns regarding the Project.

On October 5, 2018, the Minister of Natural Resources met with the Ts'elxwéyeqw Tribe. At this meeting, Chief Jimmie provided an overview of the Ts'elxwéyeqw Tribe's involvement in the Project since 2013, and discussed the Tribe's expectations for future consultations. At this meeting, Ts'elxwéyeqw Tribe provided a letter with the Minister that outlined their expectations for the consultation process. The letter was again provided to Crown representatives, this time by email, on December 3, 2018. The letter confirmed the Tribe's representation of its seven member communities in matters related to Aboriginal rights and title, clarified the role of other Stó:lō organizations, and outlined the Tribe's concerns regarding previous consultation on the Project.

On November 7, 2018, the Deputy Minister of Natural Resources, Christyne Tremblay, sent a follow-up letter inviting each member of Ts'elxwéyeqw Tribe to participate in the reinitiated Phase III consultation process and to apply for participant funding. Deputy Minister Tremblay's letter also enclosed the Stó:lō Collective's Annex of the 2016 Crown Consultation and Accommodation Report (CCAR), as a starting point for the reinitiated discussions. The Crown acknowledged that Ts'elxwéyeqw Tribe would be representing the seven villages in consultations with the Crown, and offered $112,000 in initial funding ($462,000 in total funding) to support the Tribe in preparing for and attending introductory meetings.

On November 20, 2018, members of Ts'elxwéyeqw Tribe were invited to attend a Roundtable discussion with the Honourable Frank Iacobucci, and funding was made available from Natural Resources Canada to support travel costs for two individuals to attend this discussion.

On November 30, 2018, the Crown wrote to each of the seven Ts'elxwéyeqw Tribe communities to provide information on how to apply for funding to participate in the re-initiated Phase III Crown consultation process. The Crown offered up to $66,000 in participant funding to each community.
On December 11, 2018, Ts'elxwéyeqw Tribe attended the roundtable with the Honourable Frank Iacobucci. Ts'elxwéyeqw Tribe was represented by their President, David Jimmie, who is also Chief of Squiala First Nation, and legal counsel. Representatives from the member community of Shxwhά:y Village also attended. Participants had the opportunity to provide perspectives on the Crown's approach to re-initiating Phase III consultations.

On December 20, 2018, Ts'elxwéyeqw Tribe sent a letter to the Assistant Deputy Minister of the Major Projects Management Office (part of Natural Resources Canada) re-iterating the Tribe's authority to represent the seven communities in the re-initiated Phase III consultation process, and indicating that a funding application would not be submitted by the target date of submission (December 21, 2018). In the Tribe's view, the re-initiated Phase III consultation process was unclear, the time provided to complete the application (three weeks) was insufficient, and their capacity was limited due to the NEB Reconsideration process and the upcoming holidays. The Crown responded on December 27, 2018, and indicated that Ts'elxwéyeqw Tribe could submit their funding application after the deadline, and to confirm an upcoming meeting to discuss the Tribe's concerns and expectations for the consultation process.

On January 15, 2019, Ts'elxwéyeqw Tribe sent a letter to the Honourable Frank Iacobucci that laid out the Tribe's expectations for the re-initiated Phase III consultation process. The letter expressed concerns about, among other things, the Crown's reliance on Ts'elxwéyeqw Tribe's engagement with TMC to satisfy the duty to consult. The letter shared Ts'elxwéyeqw Tribe's view that the Crown must recognize Ts'elxwéyeqw Tribe's established Aboriginal right to fish, and conduct a justification analysis for any infringement of that right with input from the Tribe. The letter also stressed the importance of addressing the ICA Report and the 89 recommendations contained therein, and raised concerns about potential conflicts of interest that could arise as a result of the federal government's purchase of the Project. The Honourable Frank Iacobucci responded to this letter on January 28, 2019. Deborah Corber, the Consultation Team lead, provided a detailed response to Ts'elxwéyeqw Tribe's letter on January 29, 2019.

The Crown Consultation Team met with representatives of the Ts'elxwéyeqw Tribe on January 17, 2019. In this meeting, the Crown and the Ts'elxwéyeqw Tribe's representatives discussed expectations and opportunities for the re-initiated Phase III consultations. Matters discussed included the importance of the ICA Report, the Federal government's purchase of the Project, the NEB reconsideration process, concerns about the past relationship between the Proponent and the Stó:lō Collective, and issues related to the TMX Indigenous Advisory and Monitoring Committee (IAMC). The key outcomes of the meeting were:

- Ts'elxwéyeqw Tribe provided documents showing their authority to represent their seven member communities in the re-initiated Phase III consultation process.
- Ts'elxwéyeqw Tribe and the Crown agreed to collaboratively draft terms of reference (TOR) for the re-initiated Phase III consultation process. Ts'elxwéyeqw Tribe agreed to prepare a first draft for the Crown's review and input.
- The Crown agreed to convene a working group of relevant federal representatives to conduct a review of the ICA and the 89 recommendations contained therein. The Crown also expressed interest in convening a series of joint technical working group meetings with the Ts'elxwéyeqw Tribe to work collaboratively towards addressing these 89 recommendations.
- The Crown agreed to follow up internally regarding Ts'elxwéyeqw' Tribe's concerns about the government's purchase of the Project, and how the Crown intends to manage real or perceived conflicts of interest associated with this purchase.

On January 18, 2019, the Crown shared a new participant funding application with Ts'elxwéyeqw Tribe for $462,000 to support Ts'elxwéyeqw Tribe's participation in the re-initiated Phase III consultation process as a collective of seven communities.

On January 29, 2019, the Crown confirmed that no additional documentation would be required regarding Ts'elxwéyeqw Tribe's representation authority for the re-initiated Phase III consultation process, nor to receive funding on their behalf.

On January 30, 2019, Ts'elxwéyeqw Tribe provided draft TOR for the re-initiated Phase III consultation process.

The Consultation Team met with representatives of the Ts'elxwéyeqw Tribe on January 31, 2019. At this meeting, Ts'elxwéyeqw Tribe representatives and the Crown Consultation Team continued to discuss their expectations regarding the consultation process, including status of action items from the previous meeting, the draft terms of reference (TOR) developed by Ts'elxwéyeqw Tribe, Ts'elxwéyeqw' Tribe's understanding of their Aboriginal right to fish in the Fraser River, and the path forward to address the ICA Report and its 89 recommendations. Ts'elxwéyeqw Tribe and the Crown agreed to consult in order to collaboratively identify impacts to rights, starting with those identified in the ICA report, and to develop accommodation measures. The Crown indicated that it had put together a team of representatives from federal departments to participate in the technical working group, including representatives from the NEB, Indigenous Services Canada, Fisheries and Oceans Canada, and Environment and Climate Change Canada. The Crown advised that the federal representatives were reviewing the relevant documents, and that it would provide a preliminary draft response to each of the 89 recommendations.

The key outcomes of the meeting were:

- The Crown and Ts'elxwéyeqw Tribe agreed to convene a series of technical working group meetings to collaboratively address the 89 recommendations in the ICA Report. The Crown agreed to provide its draft responses to the 89 recommendations to Ts'elxwéyeqw Tribe, which were prepared following an initial review by relevant federal departments, and to share draft agendas in advance of meetings for Ts'elxwéyeqw Tribe's review; and
- The Crown agreed to convene a meeting between Ts'elxwéyeqw Tribe's counsel and the Department of Justice to discuss Ts'elxwéyeqw Tribe's views that a justification analysis is required for any infringement of their established Aboriginal right to fish, and other legal issues related to the re-initiated Phase III consultation process.
- The Crown agreed to follow up internally regarding real or perceived conflicts of interest associated with the federal government's purchase of the Project, including implications for confidentiality and information sharing.

The Crown also indicated at this meeting that, based on an initial review, the draft TOR prepared by Ts'elxwéyeqw Tribe appeared to be more in the nature of a binding contract than a process protocol, and could therefore prove challenging for the Crown to conclude in the proposed form. The Tribe agreed to revise the terms of reference further to reflect these discussions on the basis of the mutually agreed upon process discussed at this meeting.

On February 14, 2019, the Crown provided a draft agenda for two full-day technical working group meetings that focused on a number of different topics identified in the ICA Report and recommendations. The Crown reiterated their request to schedule these first two technical working group meetings. Ts'elxwéyeqw Tribe indicated that they would review these draft agendas.

On February 19, 2019 Deputy Minister Tremblay wrote to the Ts'elxwéyeqw Tribe to share the Crown's updated approach to the re-initiated Phase III consultations, which was the result of advice given by the Honourable Frank Iacobucci based on input received at the roundtables and in early correspondence and meetings with the Crown.

In an email sent February 25, 2019, Ts'elxwéyeqw Tribe indicated that once it had received the Crown's comments on the ICA Report and 89 recommendations, the Tribe would assist in scheduling the first technical working group meeting. The Tribe provided a second draft TOR to the Crown. In response, the Crown suggested that Ts'elxwéyeqw Tribe and the Crown have a teleconference to discuss how to finalize the revised draft TOR, timelines, and a path forward in the re-initiated Phase III consultation process.

On March 1, 2019, the Crown and Ts'elxwéyeqw Tribe held a teleconference to discuss next steps in the re-initiated Phase III consultation process. On this teleconference, the Crown committed to providing a revised draft TOR that the Crown would be prepared to conclude quickly. Ts'elxwéyeqw Tribe reiterated their view that the statutory timeline for the Phase III consultation process is insufficient, and that the statutory timeline should not apply. The Crown also committed to sharing an initial response to the 89 recommendations by March 6, 2019, and did so on that date. Ts'elxwéyeqw Tribe indicated that they would require approximately one month to review the Crown's initial responses before holding technical working group meetings. The Crown also requested any feedback that Ts'elxwéyeqw Tribe might have on the draft agendas for technical working group meetings. Ts'elxwéyeqw Tribe indicated that while they agreed with the agendas in principle, their view would depend on the Crown responses to the 89 recommendations.

On March 6, 2019 the Crown shared a third draft terms of reference with Ts'elxwéyeqw Tribe for their review and consideration.

On March 14, 2019, Ts'elxwéyeqw Tribe sent a letter to the Prime Minister that reiterated their concerns about the timelines for consultations, the need for a justification analysis for any infringement of their Aboriginal right to fish for food, social, and ceremonial purposes, and their concerns regarding potential conflicts of interest due to the federal government's purchase of the Project. The Crown agreed to convene a teleconference between Ts'elxwéyeqw' Tribe's legal counsel and the Department of Justice to discuss this and other legal issues that Ts'elxwéyeqw Tribe has raised. The Crown convened this teleconference on March 27, 2019. The conversation was conducted on a 'without prejudice' basis. The Crown responded to this letter on April 10, 2019 (described below).

On March 14, 2019, the Ts’elxwéyeqw Tribe also shared a draft budget and application for the re-initiated Phase III consultation process. The budget was for $957,000, over double what the Crown had originally offered.

On March 15, 2019, the Minister of Finance sent a letter to Ts’elxwéyeqw Tribe to announce that, in the event that GIC decides to approve the Project, the Minister of Finance will lead a process to explore possibilities for Indigenous economic participation in the Project.

On March 18, 2019, Ts’elxwéyeqw Tribe and the Consultation Team convened a further teleconference. On the call, Ts’elxwéyeqw Tribe expressed an interest in moving past the TOR in order to focus on the more substantive issues for discussion. Ts’elxwéyeqw Tribe indicated that they would propose some minor wording changes to the third draft TOR within the next few days, after which they would be prepared to sign it. The Crown committed, in response to the Ts’elxwéyeqw Tribe’s March 14, 2019 budget proposal, to determine whether any additional funding would be available to Ts’elxwéyeqw Tribe for the re-initiated Phase III consultation process. On this call, Ts'elxwéyeqw Tribe indicated that they intended to consult internally regarding when these meetings could take place, and that they were unable to commit to dates at that time.

On March 21, 2019, the Crown confirmed, by email to the Ts’elxwéyeqw Tribe that an additional $250,000 had been secured, making the total funding offered as part of the re-initiated Phase III consultation process $712,000. The additional funding was provided in recognition that the Crown is consulting with the Tribe at the deeper end of the *Haida* consultation spectrum, which is premised, in part, on the consideration that the Stó:lō have an established Aboriginal right to fish in the Fraser River for food, social, and ceremonial purposes. The Crown requested that Ts’elxwéyeqw Tribe submit a revised participant funding application not exceeding this amount. A funding application from the Tribe was received on April 4, 2019, and is in process.

On March 28, 2019, Ts’elxwéyeqw Tribe provided a fourth draft TOR that contained minor revisions to the Crown’s third draft.

On April 1, 2019, the Crown shared a fifth draft TOR that accepted almost all of the changes Ts’elxwéyeqw Tribe had proposed, with the exception of the Tribe’s proposed clause related to justification for infringement of established rights. In order to bridge their differing points of view, the Crown proposed that the terms of reference might reflect the respective assertions of the Crown and Ts’elxwéyeqw Tribe on the issue of justification, without binding either of them on this issue.

On April 1, 2019, the Crown reiterated by email its interest in scheduling technical working group meetings, and suggested two full-day technical working group meetings between Monday, April 15, 2019 and Friday, April 26, 2019. The Crown also requested feedback on the agendas that were shared with Ts'elxwéyeqw on February 14, 2019.

Also on April 1, Consultation Lead, Deborah Corber, wrote to Ts'elxwéyeqw Tribe to share information regarding a number of proposed accommodation measures intended to address impacts to rights and interests, and to respond to concerns that have been raised by Indigenous groups throughout the

review of TMX (the original NEB hearing and Crown consultation process as well as the NEB Reconsideration hearing and current re-initiated Phase III consultation process). These measures include:

1. Salish Sea Initiative (SSI), a joint Indigenous-government governance structure, to be co-developed, with funding to support Indigenous capacity to better understand and put in place mechanisms to monitor and address cumulative effects in the Salish Sea.
2. Co-Developing Community Response, a measure that could deliver training and equipment and bring Indigenous groups to the table for the planning of emergency response in the marine environment.
3. Enhanced Maritime Situational Awareness (EMSA) to develop partnerships with Indigenous groups to pilot the new system and tailor it to user needs to increase domain awareness system in the Project area.
4. Marine Safety Equipment and Training to provide funding for safety equipment such as Automatic Identification Systems, marine radios, and emergency position-indicating radio beacon and funding for training to improve marine safety on the water.
5. Quiet Vessel Initiative to test safe and effective quiet vessel technologies and operational practices that reduce underwater noise at its source as a complement to various other measures currently underway to support the recovery of the Southern Resident Killer Whale (e.g. slowdowns, reductions of containments and increased prey availability, etc.).
6. Fish Habitat Restoration Fund that would support collaboration with Indigenous groups to protect and restore aquatic habitats that would be impacted by the Project.
7. Terrestrial Cumulative Effects Initiative to enable co-development of a cumulative effects framework with a focus on understanding the current state of the environment and monitoring changes in response to development and natural processes, for example to inform and complement Projects to restore fish habitat or to conduct watershed analysis.
8. Terrestrial Studies program to support improved understanding of Project-related terrestrial impacts, for example on traditional land use, and informing the construction, operations and maintenance phases of the Project.

Some of these accommodation measures are relevant to addressing some of the 89 recommendations identified in the ICA Report. The Crown expects to discuss these measures with Ts'elxwéyeqw Tribe further in the coming weeks.

On April 4, 2019, Ts'elxwéyeqw Tribe responded to the Crown's April 1, 2019 email indicating that the Tribe has asked TMC to provide updated alignment sheets that incorporate information regarding the location of Ts'elxwéyeqw Tribe's cultural sites and mitigation that will be applied at those sites, and any new responses to the 89 recommendations, and that receipt of these responses from TMC is a prerequisite to holding technical working group meetings with the Crown. Ts'elxwéyeqw Tribe indicated that meetings could be held April 22 or May 6, if TMC is able to submit the updated alignment sheets and responses to the 89 recommendations before then.

On April 6, 2019, the Crown re-iterated that the initial response to the 89 recommendations provided on March 6, 2019 was intended to be a draft that could guide collaborative discussions with Ts'elxwéyeqw

with the aim of achieving consensus as to how each of the recommendations have been or will be addressed. The Crown agreed to a meeting the week of April 22.

On April 10, 2019, the Minister of Natural Resources sent a letter to the Ts'elxwéyeqw Tribe responding to concerns they had raised about the timelines for consultation, and their view that the statutory timeline established under the *National Energy Board Act* should not apply to the re-initiated Phase III consultations. In response to these concerns, and a similar concerned expressed by a number of other Indigenous groups, the GiC announced on April 18, 2019 that it was extending the deadline for it to make a decision on whether or not to approve the Project to June 15, 2019.

The Minister of Natural Resources also provided a written response to the Ts'elxwéyeqw Tribe's assertion in its March 14, 2019 letter that the Tribe has established Aboriginal rights to fish for food, social, and ceremonial purposes, as affirmed in the Supreme Court of Canada in *R. v. Van der Peet*, and that the Crown must consider whether its actions would constitute an infringement of this established right, and whether the infringement is justified. The Minister's letter said:

> The Crown acknowledges that the Stó:lō have an established right to fish for food, social, and ceremonial purposes. We also acknowledge that, where consultation reveals a duty to accommodate, addressing Indigenous peoples' concerns "may require taking steps to avoid irreparable harm or to minimize the effects of infringement."[7] In our view, this does not mean that the Crown is required to determine whether its actions would constitute an infringement of the Ts'elxwéyeqw Tribe's rights, and if so, whether such infringement would be justified. Rather, the Crown will, in consultations with the Ts'elxwéyeqw Tribe, consider whether the impacts of the Project could include a potential infringement of an established right, and develop accommodation measures to prevent or minimize the risk of any such infringement. We are striving, through these very consultations, and by working together to develop measures to minimize or eliminate the impacts of the Project, to avoid a potential infringement of the Stó:lō's established Aboriginal right, such that a justification analysis would not be required.

On April 17, 2019, Ts'elxwéyeqw Tribe shared a sixth draft TOR with the Crown. It also suggested three full-day technical meetings/workshops on April 25, 2019, May 2, 2019, and May 6, 2019.

Concerns regarding the federal government's purchase of the Project

In correspondence and in meetings with the Crown, Ts'elxwéyeqw has also expressed concern regarding the federal government's purchase of the Project, and the multiple roles that the Crown plays as owner and regulator of the Project, and a fiduciary with respect to Indigenous peoples. Ts'elxwéyeqw has raised concern that this will create a real or perceived conflict of interest. The Crown has responded to this issue in meetings and in multiple response letters to Ts'elxwéyeqw, including the Honourable Frank Iacobucci' s January 28, 2019 letter, Deborah Corber's January 29, 2019 letter, and the Honourable

[7] Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, para. 47.

Minister Sohi's April 10, 2019 letter. In these letters, the Crown has reiterated its view that the fact of Crown ownership of the Project does not creates a conflict of interest with its fiduciary obligations to Indigenous peoples. The Crown's core objective in the re-initiated Phase III consultation process is to fulfill the duty to consult and accommodate where necessary through a meaningful two-way dialogue with Ts'elxwéyeqw, and has sought to identify and address impacts on rights through reasonable accommodation measures.

Concerns about consultation timelines

In correspondence and in meetings with the Crown, Ts'elxwéyeqw Tribe has also repeatedly expressed concern regarding the timelines for consultation. In Ts'elxwéyeqw Tribe's view, the statutory timeline established under the *National Energy Board Act* should not apply, as the re-initiated Phase III consultations are independent of the Reconsideration process. Ts'elxwéyeqw also questioned why the Crown had waited until January 2019 to engage in one-on-one, face-to-face meetings with Ts'elxwéyeqw.

The Minister of Natural Resources responded to Ts'elxwéyeqw's concerns regarding timelines in his April 10, 2019 letter. Since the Government re-initiated Phase III consultations with Indigenous groups, it has maintained that the GiC would only make a decision on the Project once it is satisfied that it has met its duty to consult. With advice from Federal Representative the Honourable Frank Iacobucci, the Governor in Council has extended the deadline to make a decision on the Project from May 22, 2019 to June 18, 2019. This extension will allow for further engagement between the Crown consultation teams and Indigenous groups to find solutions to concerns raised and ensure meaningful, two-way dialogue.

5. Preliminary Strength of Claim and Depth of Consultation Assessment

The historic Chilliwack tribe, today associated with the Ts'elxwéyeqw Tribe, represents the communities of Aitchelitz First Nation, Shxwhá:y Village, Skowkale First Nation, Soowahlie First Nation, Squiala First Nation, Tzeachten First Nation and Yakweakwioose First Nation. The Ts'elxwéyeqw Tribe are one of several groups classified as Stó:lō. The Crown's preliminary assessment of the Ts'elxwéyeqw Tribe's claim for rights over the section of the Project, east from an area near present day Vedder Canal to the east side of the City of Chilliwack, ranges from a moderate to a strong *prima facie* claim for rights.

The Crown's preliminary assessment of the Ts'elxwéyeqw Tribe's title claim over the section of the Project, east from an area near Vedder Canal to the east side of the City of Chilliwack, ranges from a moderate to a strong prima facie claim for title. It is understood that by 1846, the Ts'elxwéyeqw Tribe had migrated from the Chilliwack River Valley to Vedder Crossing, which resulted in Ts'elxwéyeqw settling into villages in that area.

Sto:lo Collective, which includes the Ts'elxwéyeqw Tribe, assert marine fishing and harvesting rights to areas that are potentially impacted by the Project. The Crown has insufficient information on the nature, extent or scope of these asserted marine fishing and harvesting rights to undertake a preliminary assessment of these rights.

Given the nature and location of the Project, the potential impacts of the Project on Ts'elxwéyeqw Tribe's Indigenous Interests, including consideration of the established rights of the Stó:lō to fish in the Fraser River for food, social and ceremonial purposes, the Crown is of the view that the legal duty to consult Ts'elxwéyeqw Tribe lies at the deeper end of the *Haida* consultation spectrum.

The consultation process for the Project is not a rights determination process. The Crown's preliminary assessment is based on the understanding that the Tribe has both asserted and established (non-treaty) Aboriginal rights. For the purpose of the reinitiated Phase III consultations only, Canada recognizes that Ts'elxwéyeqw Tribe possesses an established Aboriginal right to fish on the Fraser River for food, social and ceremonial purposes, as described by the Supreme Court of Canada in *R. v. Van der Peet* (the specific nature, scope and geographic location of that right being yet undetermined). In recognition of that, the Crown will continue to consult at the deep end of the spectrum with a view to avoiding or minimizing impacts to those established or asserted rights.

The current direction from the courts is that decision-makers are not required to make determinations of whether proposed conduct will infringe section 35 rights, and whether that infringement is justified. However, whether there is a potential for infringement is something that the Crown should consider in the consultation process. Through consultation and accommodation, adverse impacts on rights which could potentially be serious enough to constitute an infringement can be minimized. The re-initiated Phase III consultation and dialogue focuses on understanding the nature of the rights, finding accommodation measures which avoid or minimize the adverse impacts, and therefore avoid infringement of those rights.

In recognition, the Crown will continue to consult at the deep end of the spectrum with a view to avoiding or minimizing impacts to those established rights. The Crown is committed to consultation with Ts'elxwéyeqw Tribe at a deeper level, in order to ensure adequate meaningful consultation and accommodation on the outstanding issues, impacts and concerns with Ts'elxwéyeqw Tribe.

6. 2016 Potential Impacts on Indigenous Interests, Accommodation Measures and Crown Analysis

The 2016 Annex for members of Stó:lō Collective was sent to respective members of Ts'elxwéyeqw Tribe in a letter dated November 2, 2018 from Deputy Minister Tremblay. The 2016 Annex captured the Crown's understanding of each member of the Stó:lō Collective's concerns on the Project's impacts on their Aboriginal or treaty rights, or other interests, from the previous consultation process.

The Crown acknowledges that members of Ts'elxwéyeqw Tribe had a number of outstanding concerns in 2016. These concerns were conveyed to the Crown as members of the Stó:lō Collective through Stó:lō Collective submissions during the NEB process, and through letters sent to and meetings with the Crown following release of the NEB report in May 2016.

In a 2015 letter to the proponent and the NEB (A4G6G0), Stó:lō Collective raised concerns with the proponent's Supplemental Traditional Land and Resource Use Technical Report (A3Z4Z2), objecting to the proponent's decision to independently reduce the number of traditional land use (TLU) sites

affected by the Project. The Stó:lō Collective objected to the proponent suggesting some of these sites were "unimportant" and notes that the proponent later explained that they reduced the number of TLU sites for confidentiality purposes.

In November 2016, Stó:lō Collective raised concerns regarding the Crown's characterizations of impacts to Stó:lō people in the 2016 Consultation and Accommodation Report. The letter pointed to evidence in the ICA that has found the Project will have significant and long-term negative impacts on Stó:lō. In particular, Stó:lō Collective concluded that there would be significant post-mitigation effects to fishing and spiritual activities.

7. 2018/19 Potential Impacts on Indigenous Interests and Accommodation Measures, and Crown Analysis

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Indigenous Interests is provided in Chapter 4. The Crown recognizes that areas within the asserted traditional territory of each Indigenous group or Tribe 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 Ts'elxwéyeqw Tribe's Indigenous Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Ts'elxwéyeqw ability to practice Indigenous Interests. Where information was available, the Crown considered the following:

(a) Biophysical effects to values linked to Indigenous Interests (e.g., fish) that were assessed by the NEB;
(b) Impacts on specific sites or areas identified as important to traditional use; and
(c) Impacts on social, cultural, spiritual, and experiential aspects of exercising Indigenous Interests.

Additional factors considered in the assessment of impacts on Indigenous Interests are described in Chapter 4 of this Report. The Crown's conclusion on the seriousness of Project impacts on Ts'elxwéyeqw Tribe's Indigenous Interests considers information available to the Crown, including information provided by Stó:lō Collective, who have represented the interests of Ts'elxwéyeqw Tribe and other Stó:lō communities throughout the NEB's reviews of the Project. The Crown also considered consultation with the Stó:lō Collective, the Stó:lō Collective's engagement with the proponent, proponent commitments, recommended NEB conditions, the additional Crown accommodation measures which are contemplated as part of the re-initiated Phase III consultation, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province.

Information regarding Ts'elxwéyeqw Tribe's traditional land and resource uses along the proposed pipeline corridor is based on the ICA Report (A3Z4Z2, A3Z4Z3, A3Z4Z4, A3Z4Z5, A4C7K2), which was

prepared by Ts'elxwéyeqw Tribe Management Limited (TTML), Stó:lō Research and Resource Management Centre, and Human Environment Group on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities. In its Supplemental Traditional Land and Resource Use Technical Report (A3Z4Z2), the proponent estimated approximate distances and directions from the proposed pipeline corridor based on some of the information provided in the Sto:lo Collective's Cultural Heritage Overview Assessment (CHOA) and Ground Truthing of Indigenous Trails report, which are appendices to the ICA Report.

ICA and 89 Recommendations

The Crown notes that the ICA Report includes 89 recommendations that, "if implemented, would help reduce the overall impact of the [Project] on Stó:lō people within S'ólh Téméxw[8]." The Crown has prepared an initial written analysis of the 89 recommendations, which is appended to this annex as Appendix A. These responses were provided to the Ts'elxwéyeqw Tribe on March 6, 2019. The responses consider whether existing proponent commitments, NEB conditions and regulations, or other federal initiatives have addressed the 89 recommendations, or whether additional accommodation measures may be required.

The Crown also notes that the proponent is conducting a review of each of the cultural and heritage sites identified in the ICA Report, including the Cultural Heritage Overview Assessment (CHOA), and is providing an update to their 2015 response to the 89 Recommendations. This updated information is intended as a basis for continuing to work with Stó:lō communities to identify and address gaps in mitigation measures, and to provide meaningful responses to the 89 recommendations. Furthermore, many of the NEB's conditions would explicitly require the proponent to report on how traditional land use and traditional ecological knowledge was taken in to account in fulfilling the terms of those conditions.

I. Potential Impacts on Hunting, Trapping, and Plant Gathering Rights (Species hunted, trapped and gathered and impacts expressed)

Ts'elxwéyeqw Tribe has not submitted community-specific information to the Crown regarding Ts'elxwéyeqw's hunting, trapping, and plant gathering activities, outside of their involvement with Stó:lō Collective. Therefore, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities.

According to the Stó:lō Collective's written evidence to the NEB and in the ICA, community members continue to rely heavily on wild game, berries and plants, medicines and materials. Presently, a wide variety of wildlife and plants are harvested and gathered for food, medicine, building materials, and ceremonial use by the Stó:lō Collective's community members. Hunting and trapping, in particular deer hunting using both traditional and modern practices, continue to be important cultural activities to the Stó:lō Collective's community members. Trapping, although rarely practiced, remains highly valued by Stó:lō people. Hunted species include elk, moose, deer, grizzly bear, black bear, coyote, grouse, bobcat,

[8] Integrated Cultural Assessment Report, Section 17, page 1.

and cougar. Plant gathering activities include gathering cedar roots, buds, bark, and wood, harvesting and processing berries, and gathering medicinal plants. Commonly targeted habitats for gathering activities include cedar forests, wetlands and nutrient rich forests. Medicinal plant gathering areas are noted for the spiritual importance to Stó:lō culture. A traditional food diet of wild game, fish, wild greens, berries and fruit continues to be very important to the health of Stó:lō people.

The Stó:lō Collective identified 98 specific hunting sites within its traditional territory. Additionally, the Stó:lō Collective identified five site-specific areas significant for plant species gathered by community members, including Cheam Mountain, Cheam wetlands, Sumas Mountain, Chilliwack Mountain, and Skagit Mountain. Stó:lō community members identified three traditional hunting areas (Sumas Mountain, Mount Cheam and forested areas between Cheam and east of Hope), of which three contemporary hunting sites are located within 100 m of the proposed pipeline corridor, and 95 contemporary hunting sites are located within 2 km of the proposed pipeline corridor. Three trapping sites were identified, of which two (Sumas Slough and Bowman's Island) are currently used; however, the proximity to the proposed pipeline corridor was not provided.

Stó:lō people also gather plants that are located within forested, marshlike/swampy, and both alpine and lowland areas in and around their own reserves. Several plant gathering sites were identified and mapped within the proposed pipeline corridor (between km 960-964, between km 1015 – 1016, between km 1019 – 1024, between km 1027 – 1031, near km marker 1039, near km marker 1098). Multiple water-crossings also support traditionally used plants, however these are too numerous to map in a document like the CHOA (Appendix B and C of the ICA). A full inventory of traditional plant gathering areas potentially affected by the Project can only be determined through field surveys. The area of the Fraser Valley downstream of the Fraser Canyon and the confluence of the Pitt and Fraser rivers were traditionally used for plant gathering, specifically bog cranberries and wapato.

The Stó:lō Collective identified a number of concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities. Concerns expressed related to impacts on plants and plant gathering activities were:

- loss of berries, traditional medicines, and harvesting opportunities;
- loss of plants and medicinal resources relied on by Stó:lō Collective members;
- spread of invasive species and use of chemical vegetation management;
- impacts on a wide variety of wildlife species;
- increased erosion and run-off, sediment control;
- lost opportunities and/or ability to gather traditional plants (i.e., cedar bark, roots, buds, wood, berries, and medicines);
- contamination of gathering sites;
- potential adverse effects for traditional plants collected in a variety of wetland types, which may not be considered as important under the listing of *BC Wetlands of Concern* but are still considered significant to the Stó:lō Collective;
- effects on Indigenous harvesting practices and subsistence living and medicinal purposes; and
- lack of communication surrounding emergency response procedures and remedial action has created anxiety related to wildlife health and personal safety.

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Concerns expressed related to hunting, trapping and wildlife were:

- reduced ability to hunt or trap, and/or provide wild meat to family, Siyá:m, Big House-based activities, and cultural events;
- potential environmental and cumulative environmental effects to protected areas, wildlife and wildlife habitat, vegetation, species at risk, and wetlands;
- potential for construction activities to limit use of game trails, restricting wildlife movement; and
- increased lines-of-sight affecting predator-prey dynamics due to clearing activities.
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The Stó:lō Collective also expressed concerns about impacts to social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, such as:

- a sense of spiritual and cultural alienation on the land;
- impacts to human health from the use of pesticides to control invasive and other plant species, particularly impacts to community members that harvest country foods;
- loss of opportunities and/ or ability to gather traditional plants (i.e., cedar bark, roots, buds, wood, berries, and medicines) and contamination of gathering sites;
- lack of communication surrounding emergency response procedures and remedial action has created anxiety related to wildlife health and personal safety;
- sensory disturbance to birds and disturbance of bird habitat during construction; and
- the possibility of a major rupture and the effect that would have on the lower Fraser River watershed and the water-based culture of the community.
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The Crown acknowledges the potential impacts on the hunting, trapping and gathering rights of the Stó:lō Collective as identified above. Set out below are ways in which the NEB, the proponent (Trans Mountain Corporation), and the Crown propose to address, mitigate and accommodate these impacts.

NEB Conditions

As set out in Chapter 4, the NEB has put in place four overarching conditions (#1, 2, 3, 4) that the proponent must meet across the lifecycle of the Project, including compliance with all 156 NEB conditions unless otherwise directed, and with the commitments the proponent has made regarding environmental protection and engineering and safety. These overarching conditions are relevant for all potential impacts on Indigenous groups' interests, including rights, outlined throughout this chapter. Several NEB conditions directly contribute to avoiding or mitigating potential impacts on Indigenous groups' hunting, trapping and gathering practices, including:

- Conditions for soil, vegetation and wetlands protection prior to construction (#40, 41, 42, 45, 46, 47, 71, 76, 92) and during operation (#151, 154, 155, 156, 157). For example, NEB condition #40 requires the proponent to file a Rare Ecological Community and Rare Plant Population Management Plan five months prior to commencing construction. The Plan will include avoidance and mitigation measures to be implemented during construction and operations

regarding rare plant and lichen species that have been identified through available and application Indigenous traditional land use and traditional ecological knowledge.

- Conditions for wildlife and wildlife habitat protection prior to construction (#36, 37, 38, 44, 47, 56, 71, 92), prior to operation (#128) and during operation (#37,128,149,150,151,154) would directly contribute to avoiding or mitigating potential impacts on plant species of importance to the Ts'elxwéyeqw Tribe.

- Other conditions (#96, 97, 98, 148) indirectly support objectives to avoid and mitigate potential impacts on Indigenous groups' interests, including hunting, trapping and gathering. For example, condition 98 requires the proponent to file a Plan for Indigenous Group Participation in Construction Monitoring two months prior to construction that describes Indigenous groups' participation in monitoring activities for the protection of traditional land and resource use.

These conditions, in addition to those regarding pipeline spills and emergency response, would substantially address the impacts of the Project on hunting, trapping and gathering rights expressed by the Stó:lō Collective on behalf of the Ts'elxwéyeqw Tribe.

If the Project is approved, the following NEB conditions would directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites: #40, 41, 42, 43, 45, 47, 71, 72, 76, 151, 154, 155, 156, and 157. Similarly, the following NEB conditions may either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities: #62, 80, 95, 96, 97, 98, 141, and 146.

The Commitments of the Proponent

The proponent will seek to limit the potential impact of the Project on the Ts'elxwéyeqw Tribe's hunting, trapping and gathering rights by conducting environmental and socio-economic studies that will avoid, mitigate, or offset potential adverse Project impacts on Indigenous groups' ability to hunt and harvest traditional country foods. For example, TMC will implement its Traffic Access and Control Plan to reduce the impact of construction equipment and vehicles on wildlife and wildlife habitat. TMC will minimize the potential of Project-related cumulative effects by aligning the pipeline corridor to follow existing linear features, such as the existing pipeline corridor or other pre-existing facilities and clearings, to the extent possible. The deviation of the expansion Project from the existing corridor in Stó:lō Collective's traditional territory was purposeful, to avoid routing through Stó:lō Collective's reserve.

The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic during and following construction. The proponent remains committed to minimizing disturbance to access to the Ts'elxwéyeqw Tribe'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 the Ts'elxwéyeqw Tribe prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with the Ts'elxwéyeqw Tribe to develop strategies to most effectively communicate the construction schedule and work areas to community members.

The proponent would implement several mitigation measures to reduce potential effects to species important for the Ts'elxwéyeqw Tribe's hunting, trapping, and plant gathering activities. The proponent remains committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction of wildlife to the work site, minimize sensory disturbance and protect site-specific habitat features are outlined in the Project Environmental Protection Plan and the Wildlife Management Plans.

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 Indigenous 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 Indigenous groups regarding the integration of traditional knowledge related to the location and construction of the Project.

Crown Analysis

Canada acknowledges the potential impacts on the hunting, trapping and gathering rights of the Ts'elxwéyeqw Tribe as identified above. The NEB found that adverse effects would be limited to areas directly disturbed areas within the Project footprint, sometimes extending off-footprint into the Local Study Area (LSA).

If the Project is approved, the NEB conditions described above would either directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites.

As described in the *NEB Reconsideration 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. If the Project is approved, the NEB conditions would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to the Ts'elxwéyeqw Tribe'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 this short-term disruption could temporarily alter the behaviour of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members.

The Crown understands that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for the Ts'elxwéyeqw Tribe. For traditional activities directly affected by the construction and operation of the WMT, traditional activities would not occur within the expanded water lease boundaries in Burrard Inlet during the operational life of the Project. To the extent that access to Ts'elxwéyeqw Tribe's hunting, trapping, and plant gathering sites requires marine transportation, Project-related marine shipping could temporarily impede such access.

Accommodation Measures

Through the re-initiated Phase III consultation process, the Crown heard from many Stó:lō communities about concern regarding the cumulative effects of development in *S'ólh Téméxw*, and the impact that is having on the exercise of s. 35 rights – including hunting, trapping, and plant gathering. In response to this concern, the Crown has proposed that a terrestrial Cumulative Effects (CEI) Initiative be co-developed between Indigenous groups potentially impacted by the Project, and the Government of Canada (see Chapter 4). The goal for the initiative will be to develop a cumulative effects framework with a focus on understanding the current state of the environment and monitoring changes in response to development and natural processes, for example to inform and complement projects to restore fish habitat or to conduct watershed analysis. Through this initiative, the Crown is taking additional steps to address broader concerns regarding the cumulative effects of development on the exercise of Ts'elxwéyeqw Tribe's asserted s. 35 rights to hunt, trap, and plant gather, and therefore views this as an additional accommodation measure.

Conclusion

In 2016, the Crown stated that in consideration of the information available to the Crown from the NEB process; consultation with the Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe; Stó:lō Collective and Ts'elxwéyeqw Tribe's engagement with the proponent; the proponent's proposed mitigation measures and the NEB conditions and recommendations; additional Crown Accommodation measures (e.g. Terrestrial Cumulative Effects Initiative); as well as relevant proposed conditions of the Environmental Assessment Certificate issued by the Province; and Project construction and routine maintenance during operation, are expected to result in a minor impact on the Stó:lō Collective's hunting, trapping and plant gathering activities.

In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related pipeline and facility construction and operation, and marine shipping activities are likely to have minor to moderate magnitude environmental effects on terrestrial, aquatic, and marine species harvested by Ts'elxwéyeqw Tribe;
- Construction of the pipeline and associated facilities are likely to cause short-term temporary disruptions to Ts'elxwéyeqw Tribe's members accessing traditional hunting, trapping and plant gathering sites within the Project footprint; and
- Construction of the WMT and associated facilities in Burrard Inlet, and Project-related marine shipping activities, may cause temporary disruptions to access to sites during the construction phase, or in the period of time Project-related tankers are in transit through Burrard Inlet.

During the re-initiated Phase III consultations, the Crown has identified mitigation and, where appropriate, proposed accommodation measures to lessen the impacts of the Project on the Ts'elxwéyeqw Tribe.

II. Potential Impacts on Freshwater and Marine Fishing and Marine Harvesting Rights

Ts'elxwéyeqw Tribe has not submitted community-specific information to the Crown regarding Ts'elxwéyeqw Tribe's fishing or marine harvesting activities. Therefore, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities to assess impacts to Ts'elxwéyeqw Tribe's Indigenous Interests.

Stó:lō, as people of the river, have a deeply established connection to fishing, which are core to Stó:lō cultural activities and tradition, subsistence and economic purposes. This connection is considered essential to psychological, physical, and spiritual health. Historically, community members caught and processed fish using setting nets, torch lighting, dip netting, drift netting, and wind drying. Presently, fishing excursions continue to provide meaningful opportunities to teach traditional methods, share knowledge and learn the stories about the waterways.

Most fishing occurs along the Fraser River, particularly at the Fraser Canyon where salmon are abundant and conditions for meat preparation are ideal. The Stó:lō also assert that they have traditionally accessed the mouth of the Fraser River for harvesting marine mammals, shellfish and molluscs. Various species of fish continue to be harvested by Stó:lō community members, including: black crappie, brown bullhead, bull trout, prickly sculpin, sculpin, slimy sculpin, coastal cutthroat trout, chinook salmon, chum salmon, chiselmouth, coho, salmon, carp, cutthroat, dace, dolly varden, eulachon, green sturgeon, lamprey, Nooksack dace, peamouth chub, pink salmon, rainbow trout, redside shiner, sturgeon, sockeye salmon, steelhead, sum steelhead, Salish sucker, sucker, whitefish, and white sturgeon.

In the ICA, Stó:lō Collective community members identified waterways crossed by the Project that are associated with historic and contemporary fishing activities, including 11 segments associated with drift netting, three major areas associated with beach seining, and 140 known sites associated with setting nets. Twenty-four recorded fishing sites, including Silverhope Creek, Chawuthen Creek, Hunter Creek, Wahleach (Jones) Creek, Anderson Creek, Street Creek, Stewart Slough, Sumas Lake Canal, and 16 unnamed channels were identified. The locations of the fishing sites in relation to the Project were not provided.

The Stó:lō Collective identified many concerns related to environmental effects of the Project on fishing activities, in particular, they identified risks related to:

- the Stó:lō Collective's freshwater resources important to salmon in the Fraser River;
- the loss of traditional resources;
- potential loss of wetland habitat;
- cumulative environmental effects involving fish and fish habitat, species at risk, marine environment, water, hydrology, and wetlands;
- water quality and effects to water quality and waterbodies during construction of the Project;
- increased access to the land by members of the public due to Project-related activities;
- level of input into fisheries management;
- damage to traditional waterways (fish habitat, water quality, water flows, fish health) during Project water crossings;
- access modifications (i.e., new access, traffic);
- loss of traditional fishing sites; and
- decreased quality/integrity of fishing sites.

The Stó:lō Collective expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including a sense of spiritual and cultural alienation, the loss of traditional resources, including spiritually and culturally important sites, and increased barriers to accessing traditional resources and practices.

The Crown acknowledges the potential impacts on the freshwater and marine fishing and harvesting rights of the Stó:lō Collective as identified above. Set out below are ways in which the NEB, the proponent (Trans Mountain Corporation), and the Crown propose to address, mitigate and accommodate these impacts.

NEB Conditions

As described in the *NEB Reconsideration Report*, Project-related construction and operation could result in low to moderate magnitude effects on freshwater 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, including TMC's commitments to adopting the 1:200 year flood event standard, as required by the Province of British Columbia, to determine the necessary depth of cover at all watercourses, using heavy-walled pipe at all major and most minor watercourse crossings, and obtaining real time flow measurements immediately prior to commencing any mid-sized and large open-cut crossing using the isolation method. If flow volumes exceed threshold limits for the isolation method, TMC would reschedule or implement contingency methodology.

There are ten NEB conditions (#43, 47, 71, 75, 92, 108, 109, 110, 151, 154) that will explicitly help avoid or mitigate potential impacts on Indigenous groups' freshwater fishing through a focus on fish and fish

habitat. For example, condition #109 requires the proponent to receive the *Fisheries Act* authorizations, as needed, for instream activities, which protects against the impacts of construction to fish and fish habitat.

Eight of the conditions outlined above also contribute to watercourse and water quality protection (#43, 47, 71, 75, 108, 110, 151, 154), which also result in indirect protections to freshwater fishing. For example, condition #75 focuses both on fish and fish habitat and watercourse and water quality by requiring the proponent to construct all watercourse crossings located in Nooksack dace or Salish sucker critical habitat using specific crossing methods as defined by Fisheries and Oceans Canada Recovery Strategies for the species.

Several additional conditions indirectly contribute to the objectives to avoid and mitigate impacts on Indigenous groups' freshwater fishing, including conditions exclusively related to water quality protection (#35, 39, 87, 113, 130) and/or watercourses (#48, 65, 67, 72, 74, 87, 94, 113). NEB condition 65 is a further offset measure, requiring TMC to file updated flood frequency estimates for notable watercourse crossings.

In addition, the Stó:lō Collective asserts marine fishing and harvesting rights, and certain anadromous fish species, including salmon and steelhead, upon which the Stó:lō Collective relies migrate from ocean to river. Several NEB conditions would either directly or indirectly avoid or reduce some of the impacts and concerns raised by Indigenous groups, including by the Stó:lō Collective, in respect of potential impacts on marine fishing and harvesting:

- three conditions for protection of fish and fish habitat (#92, 109, 151); and
- 27 conditions in total directly relate to the Westridge Marine Terminal, several of which are applicable at several stages across the Project's lifecycle and commit to emergency preparedness and response. This includes conditions for pre-construction (#8, 21, 30, 33, 34, 35, 52, 53, 80, 81, 82, 83, 84, 97, 101), prior to operation (#30, 109, 118, 119, 123, 126, 127, 129, 130, 136, 138); during operation (#109, 141); and prior to commencing hydrostatic testing of any Project component (#113).

In addition to the conditions described above, several conditions are generally applicable to protecting marine fishing or harvesting activities in the vicinity of the Project. This includes:

- Conditions #117 and #124, which require the proponent to report on and implement improvements to its Emergency Response Program, respectively. This includes a requirement to provide the NEB with updates on changes to emergency response plans for the Edmonton, Sumas and Burnaby Terminals and the WMT; site-specific geographic response plans and strategies; and tactical plans for high consequence areas.

Six conditions for Project-related marine shipping (#91, 133, 134, 144). Conditions #133 and #144 require the proponent to confirm that it has integrated several marine spill and response commitments into its oil transportation practices, such as tug escorts for tankers, before the first tanker is loaded at WMT and each year after commencing operations, respectively.

Project construction and routine maintenance activities are expected to result at most in short-term, temporary disruptions to the Ts'elxwéyeqw Tribe's fishing rights. The Crown appreciates that if construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for the Ts'elxwéyeqw Tribe's community members. However, disruptions to access would largely be short-term and confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions discussed above would either directly or indirectly avoid or reduce potential impacts on specific locations and access to fishing sites important for the Ts'elxwéyeqw Tribe. The Crown appreciates that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity during the time of construction.

With respect to the Stó:lō Collective, asserted marine fishing and harvesting rights to the Burrard Inlet and other marine areas, the NEB has recommended that the GIC should, in conjunction with the Pacific Pilotage Authority and Transport Canada, continue engagement and awareness activities targeting coastal Indigenous communities with respect to safety of navigation and prevention of collisions with larger vessels (NEB Recommendation 12). This communication would allow Ts'elxwéyeqw Tribe 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.

The Commitments of the Proponent

The proponent would implement several mitigation measures to reduce potential effects to species important for the Ts'elxwéyeqw Tribe's fishing activities. The proponent has committed to time water-course 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 Indigenous groups, including Ts'elxwéyeqw Tribe , to identify the most appropriate means of offsetting serious harm to 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, with respect to marine fishing and harvesting activities, the proponent has completed a preliminary offsetting plan for impacts on fish and fish habitat associated with construction and operation of the Westridge Marine Terminal. Key mitigation measures for marine shipping activities include the proponent's commitment (390) to 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.

With regards to specific concerns raised by the Stó:lō Collective, the proponent would implement several mitigation measures to reduce potential effects on freshwater and marine fishing and harvesting sites, such as 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 Ts'elxwéyeqw Tribe traditional lands, as described in the Access Management Plan. The proponent committed to

working with Stó:lō communities – including Ts'elxwéyeqw Tribe – to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Crown Analysis

The Crown acknowledges the potential impacts on the freshwater and marine fishing and harvesting rights of the Ts'elxwéyeqw Tribe as identified above. Canada acknowledges that proponent commitments, NEB conditions and the existing pipeline safety regime would not eliminate the potential adverse impacts of the Project on Indigenous Interests specific to freshwater and marine fishing and harvesting. However, NEB conditions, if the Project is approved, would either directly or indirectly avoid or mitigate potential impacts on specific locations and access to freshwater and marine fishing and harvesting sites important for Stó:lō members, including Ts'elxwéyeqw fishers.

As described in the *NEB Reconsideration 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 would be localized to individual watercourse crossings, and effects to marine fish and fish habitat would be limited to a few individuals, 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.

The Crown understands that if construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Ts'elxwéyeqw Tribe community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation.

For marine fishing and harvesting activities directly affected by the construction and operation of the WMT, traditional activities would not 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. To the extent that Stó:lō Collective, including Ts'elxwéyeqw Tribe, engage in marine fishing and harvesting activities in Burrard Inlet, Project-related marine vessels may cause temporary disruptions to such activities Stó:lō Collective's. Disruptions to the Stó:lō Collective'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.

To the extent that Stó:lō Collective, including Ts'elxwéyeqw Tribe, exercise Aboriginal rights to engage in cultural ceremonies and other traditional activities in Burrard Inlet, community members may experience noise disturbances and interruptions to such activities along the shoreline, and loss or damage to visual quality of the Burrard Inlet during the construction and operation of the WMT. Project-related marine vessels are expected to cause temporary disruptions to the Ts'elxwéyeqw Tribe's marine fishing and harvesting 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 traditional activity.

If the Project is approved, the NEB conditions would either directly or indirectly reduce the potential effects on social, cultural, spiritual or experiential effects associated with fishing activities.

Accommodation Measures

Through the re-initiated Phase III consultation process, the Crown heard from many Indigenous groups, including Ts'elxwéyeqw Tribe, about concern regarding fish and fish habitat. In response to this concern, the Crown has proposed the creation of a Fish Habitat Restoration Fund to support collaboration with Indigenous communities to protect and restore aquatic habitats that could be impacted by the Project (see Chapter 4).

The Crown has also proposed a number of marine initiatives that seek to address Indigenous groups' concerns regarding impacts in the marine environment. These include the Salish Sea Initiative, an initiative that would be co-developed with Indigenous groups, and would provide stable funding to support Indigenous capacity to better understand and put in place mechanisms to monitor and address cumulative effects in the Salish Sea (see Chapter 4).

Conclusion

In 2016, the Crown stated that in consideration of the information available to the Crown from the NEB process, consultation with the Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe, the Stó:lō Collective and Ts'elxwéyeqw Tribe's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on the Ts'elxwéyeqw Tribe's freshwater fishing activities. Moreover, the Crown assesses any Project impacts to the Ts'elxwéyeqw Tribe's asserted marine fishing and harvesting rights to be minor to moderate.

In reaching this conclusion, the Crown has considered several factors that are discussed above, including Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing and marine fishing and harvesting activities, and observes that:

- Project-related pipeline and associated facilities, and their construction and operation, are likely to have minor to moderate magnitude environmental effects on freshwater harvested by Ts'elxwéyeqw Tribe;
- Construction of the pipeline and associated facilities are likely to cause short-term temporary disruptions to Ts'elxwéyeqw Tribe and other Stó:lō community members accessing traditional freshwater fishing sites within the Project footprint; and
- WMT construction and operation, and Project-related marine shipping activities, may cause temporary disruptions to activities or access to sites while Project-related tankers are in transit through Burrard Inlet.

During the re-initiated Phase III consultations, the Crown has identified mitigation and, where appropriate, proposed accommodation measures to lessen the impacts of the Project on the Ts'elxwéyeqw Tribe.

III. Potential Impacts on the Exercise of Other Traditional and Cultural Uses

The Ts'elxwéyeqw Tribe has not submitted community-specific information to the Crown regarding the traditional and cultural practices. Therefore, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities to assess impacts to Ts'elxwéyeqw Tribe Indigenous Interests.

Trails and travelways, in particular the Fraser River and tributary systems, have supported traditional harvesting, socio-economic connections and factored into Stó:lō identity and cultural values. Presently, traditional travel continues to be used by community members to participate in spiritual and ceremonial activities (e.g., accessing spiritually significant sites such as bathing and fasting), gather plants, hunt, and fish, and for the Stó:lō seasonal round of activities. Historically, the Stó:lō people are known to have built large, permanent settlement sites. There is a close connection between the Fraser River (and tributary systems) and Stó:lō settlement sites because of the Stó:lō people's reliance on salmon from the Fraser River and the accessibility to different regions. The largest and most populated settlements are often located at the confluence of major waterways. Historically, inter-nation gatherings were created by kinship and friendship to support trading goods such as fish, berries, wild meat, sweaters, blankets, and baskets. Presently, Stó:lō people continue to attend different types of gatherings in different parts of the asserted traditional territory to celebrate cultural traditions and give strength to other First Nation initiatives aimed at environmental protection, Aboriginal rights and title, governance, and social activism.

The Stó:lō Collective have identified at least 721 sites of cultural significance of which 17 are located within the pipeline corridor (potentially more due to undisclosed sites). The Stó:lō Collective's community members identified 14 trails and travelways that cross the proposed pipeline corridor. During the ICA, 151 previously recorded archaeological and historic sites (habitation and/or settlements) were identified within 1 km of the proposed pipeline corridor, of which 38 are located within 50 m of the corridor. The ICA also describes camps, winter villages and settlement sites on and off reserve as identified by Stó:lō community members. Two habitation sites were located within 50 m of the pipeline corridor. It should be noted that the Archaeological Impact Assessment (AIA) for the Project is not yet complete.

Additionally identified in the ICA were six Stó:lō gathering sites: Squiala, Shxwhá:y, Skowkale, Yakweakwioose, Cheam, and Sumas bighouses close to the Project. The locations of gathering places in relation to the Project were described in the ICA. The ICA identifies approximately 550 cultural heritage sites used for spiritual activities within 2 km of the proposed pipeline corridor. Stó:lō community members identified 73 sacred areas within 100 m of the proposed pipeline corridor: six burial sites, 11 Sxwo:yxwey places, 18 puberty places, 11 smilha/syuwel places, 10 historic bathing sites and 17 current bathing sites. Site-specific locations of the sacred areas were buffered to protect their specific locations on the maps presented in the ICA (Appendix C). As summarized in Volume 5D of the Project application

to the NEB, sacred areas are located at Cultus Lake, Mount Cheam (Cheam Peak), Echo Island (Harrison Lake), Echo Island (Harrison Lake), Mount Slesse (Slesse Mountain), Mount McGuire, and Mount Hope and Lady Franklin Rock, located between 3.3 km and 23.5 km from the proposed pipeline corridor. Semá:th Lake (Sumas Lake) is an important historical site crossed by the proposed pipeline corridor. Coqualeetza is an important historical and cultural site for the Stó:lō people approximately 1.6 km northwest of the proposed pipeline corridor.

The Stó:lō Collective raised a number of concerns with the location of the Project in relation to specific locations and access points regarding other cultural and traditional practices and sites including a Project staging area at Lightning Rock. Lightning Rock is one of many spiritual sites that Stó:lō Collective believe must be preserved both from a physical and cultural perspective. NEB Condition 77 (Archaeological and cultural heritage assessment – Lightning Rock) would require the proponent to file a report with the NEB on archaeological and cultural heritage field investigations undertaken to assess the potential impacts of Project construction and operations on the Lightning Rock site at Sumas, along with associated mitigation measures beyond those already included in the EPP. However, given that this is a sacred site with burial mounds, Stó:lō Collective have noted that any Project routing through this area is inappropriate given the need to preserve the cultural integrity of the site and the surrounding area. For the Stó:lō Collective, the site surrounding Lightning Rock should be a 'no go' area for the Project. The Stó:lō Collective also noted the locations of various other culturally important sites including bathing sites within the 150 metre (m) RoW alignment at Bridal Veil Falls near Chilliwack, and an ancient pitt house within the RoW, none one of which appear on the proponent's detailed alignment sheets, and for which no NEB conditions have been recommended.

The Stó:lō Collective voiced concern to the Crown on numerous occasions that the proponent has overlooked culturally significant sites of importance to the Stó:lō people, and that without a detailed understanding by the proponent of the locations and valued intangible properties associated with these sites, the Project could significantly affect areas of significant current and traditional use to Stó:lō Collective members. The Stó:lō Collective remains concerned that the proponent hasn't fulfilled commitments it made in regard to protecting all cultural sites of importance to the Collective. While these commitments were made in meeting records with the Collective, failure to add these commitments to the proponent's engagement logs means that the commitments are not captured by NEB Condition 2. The Crown notes that TMC is in the process of updating their alignment sheets to incorporate information regarding Stó:lō cultural sites, and mitigation measures to protect those sites, in consultation with Ts'elxwéyeqw Tribe. The Crown expects that the proponent will fulfill any commitments it has made to Indigenous groups, and requests that Ts'elxwéyeqw provide additional information regarding commitments that have not been fulfilled, so that the Crown can follow up with TMC directly.

The Stó:lō Collective also expressed concern that there could be increased access to the land by members of the public due to Project-related activities.

The Stó:lō Collective 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 socio-economic concerns, such as human occupancy and resource use, impacts to heritage resources, and cultural well-

being, health, and infrastructure and services. Additional concerns include that Project activities will deter First Nation members from attending gatherings, that the presence of the construction workforce will inflate cost of accommodation and travel, and that the Project may be a divisive or negative influence on inter-nation relations. Stó:lō Collective have expressed frustration with the way in which their traditional use and knowledge information was considered by the proponent and the NEB. Owing to a lack of specificity in the NEB's conditions and their experience with the proponent's implementation of commitments made to-date, Stó:lō Collective are not confident that the recommended NEB conditions will be able to adequately protect culturally important sites and ensure the integration of traditional use information into detailed Project planning.

Finally, the Stó:lō Collective raised concerns that cumulative effects have eroded some aspects of Stó:lō culture over time and are vulnerable to additional incremental impacts; and, the Project poses significant risks, and represents a significant threat to the cultural integrity and survival of core relationships at the heart of the Stó:lō worldview, identity, health and well-being.
The Crown acknowledges the potential impacts on other traditional and cultural land uses of the Stó:lō Collective as identified above. Set out below are ways in which the NEB, the proponent (Trans Mountain Corporation), and the Crown propose to address, mitigate and accommodate these impacts.

NEB Conditions

The NEB process has established conditions that would avoid or minimize any Project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. During the NEB review process, the NEB considered potentially impacted culturally sensitive sites and practices that Indigenous groups identified while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Indigenous Interests. If the Project is approved, the following NEB conditions may either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources:

- 7 – Environmental and socio-economic assessment – route re-alignments;
- 13 – Socio-economic effects monitoring plan;
- 47 – Access management plan(s);
- 59 – Worker accommodation strategy;
- 60 – Environmental and socio-economic assessment;
- 77 – Archaeological and cultural heritage assessment – Lightening Rock;
- 96 – Reports on engagement with Indigenous groups – construction;
- 97 – Traditional land use (TLU) and traditional marine resource use (TMRU) investigation report;
- 100 – Heritage resources;
- 102 – Landowner and tenant complaint process/system; and
- 145 – Community Benefits Program progress reports.

The Crown acknowledges the concerns raised by the Stó:lō Collective regarding the Project's potential impacts on Lightning Rock. The Crown understands that the Proponent has modified their construction plans to remove the staging area noted by the Stó:lō Collective. Construction plans in the area around Lightning Rock are now contained to the existing right of way. The Proponent has

indicated that it is committed to restricting its footprint as much as possible in the area of Lightning Rock, and is working with the Stó:lō Collective to avoid or, if it cannot be avoided, mitigate as much as possible, any impacts to Lightning Rock.

TMC has attempted to work with Stó:lō representatives through the People of the River Referral Office (PRRO) to conduct further assessments at the site in order to define the site's boundaries more clearly and to identify and address any potential impacts the Project may have, however, to date, the PRRO has declined to meet . NEB Condition #77 would require the proponent to complete an archaeological and cultural heritage assessment of Lightning Rock at least three months prior to commencing pipeline construction. The report must include consultation with Stó:lō Collective, and provide an assessment plan that involves Stó:lō Collective in designing and undertaking surveys.

With respect to concerns about impacts on travel corridors, NEB condition #73 would require the proponent to develop a traffic control plan for public roadways that includes information regarding the timing and location of key construction activities, anticipated traffic volumes and flows, and an assessment of potential impacts associated with construction-related traffic, and mitigation measures. TMC would be required to provide a summary of its consultations with potentially affected Indigenous groups, including how any recommendations were incorporated in to the plan.

The NEB has established conditions that would avoid or minimize any Project-related impacts on access to or use of culturally sensitive areas, including any identified historical trails, and on the practice of cultural activities in general. Condition #47 would require the proponent to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. The Access Management Plan would include requirements for the proponent to incorporate Indigenous traditional land use and traditional ecological knowledge into the design of its access management plan.

The Commitments of the Proponent

Prior to the Ts'elxwéyeqw Tribe's decision to suspend engagement with the Proponent in August 2018, the Proponent worked with PRRO to develop accommodations to address issues raised in the ICA and 89 recommendations.

In the context of discussions around BC government permitting with Ts'elxwéyeqw Tribe, the proponent Mountain worked with PRRO to develop an agreement, including capacity funding, to conduct an assessment of the ICA cultural and heritage sites and mitigation measures. The proponent attended a Stó:lō workshop on culture and heritage on February 14 and 21, 2018. PRRO provided examples of some key culture and heritage sites affected by the Project and the group discussed the process going forward for determining the full suite of sites of concern and developing specific mitigation measures. A Stó:lō workshop on fisheries and water crossings was held on February 13, 2018. PRRO and the proponent reviewed the current watercourse crossing plans and mitigation measures and PRRO provided some key interests that need to be addressed. A follow-up meeting was scheduled for one week later, wherein PRRO would speak with their knowledge holders and come prepared to speak about new mitigation measures being sought. The second date was postponed by PRRO and a follow-up meeting has not occurred.

The proponent has been unable to continue this consultation work since the suspension of engagement in August 2018. However, during the Phase III Crown consultations, TMC has re-engaged on this issue by supporting the Crown in its development of appropriate accommodation strategies to address the ICA recommendations.

The proponent remains committed to responding to the Ts'elxwéyeqw Tribe's concerns about the potential impact of the Project on its cultural and heritage sites, whether in the context of developing a formal relationship with Ts'elxwéyeqw Tribe or through discussions with the Crown.

The proponent would also implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for the Ts'elxwéyeqw Tribe's traditional and cultural practices. Specifically, the Proponent has committed to developing and implementing an environmental education program 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 Indigenous governments.

With regards to specific concerns raised by the Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for the Stó:lō Collective's traditional and cultural practices. For example, with respect to Lightning Rock, TMC has adjusted the Project footprint at the proposed staging area so activities are proposed to take place on the existing easement. A field assessment is required in advance of Project construction to confirm the site boundary, and TMC is committed to working with the Stó:lō Collective during this field work and, if a conflict is confirmed, TMC will aim to avoid the site through further localized reduction in temporary workspace, and work with Stó:lō on any necessary mitigation.

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Crown Analysis

During the NEB review process, the NEB considered potentially impacted culturally sensitive sites and practices that Indigenous groups identified while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Indigenous Interests. The NEB process has established conditions that would avoid or minimize any Project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. Project-related activities are not generally expected to result in significant adverse effects on the ability of the Ts'elxwéyeqw Tribe use land, waters or resources for traditional purposes. If the Project is approved, the NEB conditions described above may either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources.

Accommodation Measures

As set out above, the Crown has proposed that a terrestrial Cumulative Effects (CEI) Initiative be co-development between Indigenous groups potentially impacted by the Project, and the Government of Canada.

Following the November 2016 approval of the Project, the Crown co-developed the Project Indigenous Advisory and Monitoring Committee (IAMC) with potentially impacted Indigenous groups. This is a forum where Indigenous groups, Government, and federal regulators are working together in the implementation and oversight of the Project. The IAMC's Indigenous Monitoring program has created a

program whereby IAMC Indigenous Monitors will accompany NEB and DFO Inspection Officers when undertaking compliance verification activities on the Trans Mountain system. The IAMC is an example of how the Crown is working differently with Indigenous groups on the Project, in a way that respects s. 35 rights and title.

Flowing from the consultations that are ongoing as part of the re-initiated Phase III consultation process, the Crown is interested in exploring with Ts'elxwéyeqw Tribe the creation of a federal Cumulative Effects Initiative (CEI), should the Project be approved. The CEI would be co-developed with Indigenous groups, federal departments, and provincial ministries. The CEI would involve the creation of a new body to gather and share traditional and western scientific knowledge on key ecological issues, and to monitor changes in order to develop an understanding of ongoing cumulative effects, including the contribution of this Project.

Conclusion

In the 2016 Annex for the Stó:lō Collective, the Crown stated that in consideration of the information available to the Crown from the NEB process, consultation with the Stó:lō Collective, the Stó:lō Collective's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province, Project construction and routine maintenance during operation are expected to result in a minor-to-moderate impact on the ability of the Ts'elxwéyeqw Tribe use land, waters or resources for traditional purposes.

In reaching this conclusion, the Crown has considered several factors that are discussed above, including Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices, and observes that:

- Project-related construction and operation of the pipeline and associated facilities are likely to have low to moderate environmental effects on traditional and cultural resources;
- Construction of the pipeline and associated facilities are likely to cause short-term temporary disruptions to the Stó:lō Collective's community members accessing traditional and cultural practice sites within the Project footprint; and
- Construction and operation of the WMT, and the transit of Project-related marine shipping activities, may cause minor and temporary disruptions to activities or access to sites in Burrard Inlet.

During the re-initiated Phase III consultations, the Crown has identified mitigation and, where appropriate, proposed accommodation measures to lessen the impacts of the Project on the Ts'elxwéyeqw Tribe.

IV. Potential Impacts on Aboriginal Title

Concerns related to Aboriginal title raised by the Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt the Stó:lō Collective's use of its asserted traditional territory, including reduced ability to fish, hunt, trap, or gather plants, a major rupture on the lower Fraser River watershed, decreased quality/integrity of fishing sites, and proposed Project activities that may deter community members from attending gatherings;
- Impacts on historic settlements and camps: 151 previously recorded archaeological and historic sites (habitation and/or settlements) were identified within 1 km of the proposed pipeline corridor, of which 38 are located within 50 m of the corridor. The ICA also describes camps, winter villages and settlement sites on and off reserve as identified by Stó:lō community members. Two habitation sites were located within 50 m of the pipeline corridor;
- Activities that affect the Stó:lō Collective's ability to manage and make decisions over the Project area, including the loss of land by means of industrial developments, loss of fishing sites, and the potential lack of control over traditional territory in the event of a spill if Stó:lō leaders are not involved in emergency response planning; and
- Project-related activities that affect the Stó:lō Collective's economic development aspirations for its asserted traditional territory, including challenges that Stó:lō companies may face associated with the Project, and potential adverse effects on existing economic activities.

The Crown acknowledges the potential impacts on Aboriginal title of the Stó:lō Collective as identified above. Set out below are ways in which the NEB, the proponent (Trans Mountain Corporation) and the Crown propose to address, mitigate and accommodate these impacts.

NEB Conditions

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with the degree of disturbance of the Project. NEB conditions related to the protection of environmental resources (included but not limited to fish and fish habitat, wetlands, water quality, wildlife and wildlife habitat, and marine mammals) referenced in Chapter 4 would reduce disturbance associated with Project-related activities in the marine, terrestrial, and aquatic environments. The proponent has also undertaken many commitments in an attempt to reduce potential impacts of Project-related activities to environmental resources (Appendix G).

An example of requirements placed on the proponent regarding Indigenous involvement in environmental monitoring is condition 78 (Facilities Environmental Protection Plan). This would require the proponent to file with the NEB for approval, at least 3 months prior to commencing construction, an updated Project specific Facilities Environmental Protection Plan for the construction of the pipeline. The Plan will include Aboriginal Monitors with the purpose of working with the Environmental Inspectors to provide Traditional Knowledge to the construction program to ensure protection of the environment. This will include reclamation plans and plans for monitoring water quality, wildlife, and fish. There is also a requirement for the proponent to involve Aboriginal Monitors in the development of the Pipeline Environmental Protection Plan, as per condition 72.

The Commitments of the Proponent

On November 29, 2016, Ts'elxwéyeqw Tribe and the proponent, along with Kwaw-Kwaa-Apilt First Nation and Skwah First Nation, executed an MBA, which required ratification by the seven Bands of Ts'elxwéyeqw Tribe and two First Nations.

Between January and May 2017, the parties engaged in regular discussions about the progress of the ratification vote. On March 28, 2017, Ts'elxwéyeqw Tribe and the two First Nations communicated to the proponent that the ratification date was April 22, 2017. Ts'elxwéyeqw Tribe and the two First Nations ultimately did not ratify the MBA. However, according to the terms of the MBA, they may ratify it at any time.

On January 17, 2019, the Proponent and Ts'elxwéyeqw Tribe discussed the possibility of a separate relationship agreement. The Proponent remains open to establishing a formal agreement relationship with the Ts'elxwéyeqw Tribe and addressing issues related to Ts'elxwéyeqw Tribe's management and use of its territories.

Crown Analysis

The Crown notes that portions of the Project, including the Project segment running east from an area near Vedder Canal to the east side of Chilliwack, would be located within areas assessed as having moderate to strong *prima facie* claim for title for Ts'elxwéyeqw Tribe.

The Crown has actively consulted with the Stó:lō Collective on behalf of the Ts'elxwéyeqw Tribe throughout the NEB processes and 2016 Crown consultation process, and with Ts'elxwéyeqw Tribe throughout the re-initiated consultation process, at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. The Crown is consulting with Ts'elxwéyeqw Tribe at their request, in recognition that Ts'elxwéyeqw Tribe is shifting towards "a more communal approach to governance that leads to a greater presence as a territory and as a community[9]."

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Chapter 4 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial and aquatic environments, ongoing engagement with Indigenous groups that has the potential to reduce impacts on the ability of Indigenous groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Indigenous groups with direct and/or indirect economic benefits if the Project is approved.

[9] ICA Report, Appendix A (Information Supporting Linkages between Values and Activities), p. 207.

The Crown acknowledges the potential impacts on potential or asserted claims to title over lands and resources and asserted governance rights of the Ts'elxwéyeqw Tribe as identified above. Set out below are ways in which the proponent (Trans Mountain Corporation), the NEB, and the Crown propose to address, mitigate and accommodate these impacts.

The NEB concluded that Indigenous groups would sustain modest burdens to their ability to use the lands, waters and resources for traditional purposes, and that the level of risk of a Project-related spill was low. Canada acknowledges that proponent commitments, recommended NEB conditions and the existing pipeline and marine safety regime would only partially address the potential impacts of the Project on cultural integrity, heritage and the sense of belonging that most Indigenous groups have to the land as understood from an Indigenous perspective. Proponent compliance with NEB conditions would avoid or minimize some Project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. The proponent would be required to manage access to culturally sensitive sites pursuant to conditions imposed by the NEB, and the proponent's commitment to implement an access management plan.

Canada support NEB conditions and BC EAO requirements, which would support potentially affected Indigenous groups' 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 Indigenous Interests, as well as the involvement of Indigenous groups in emergency response planning activities.

Accommodation Measures

Following the November 2016 approval of the Project, the Crown co-developed the IAMC with potentially impacted Indigenous groups (see Chapter 4 for a description of the IAMC). The IAMC provides a collaborative, inclusive and meaningful Indigenous involvement in the review and monitoring of environmental, safety and socioeconomic issues related to the Project, the existing pipeline and the related marine shipping. The IAMC includes thirteen Indigenous representatives, selected from the potentially impacted communities along the pipeline corridor and marine shipping lanes, and six senior representatives from federal government departments and regulators who are involved in the Project. These thirteen regularly engage with communities with a view to developing shared understandings and common approaches to problem-solving. Participation in the IAMC does not mean that an Indigenous group supports the Project, as participation is without prejudice. One of the flagship programs of the IAMC is the Indigenous Monitoring program, which facilitates the inclusion of Indigenous Monitors into federal compliance verification activities. Both the NEB and DFO have committed to partner with IAMC Indigenous Monitors on Project inspections.

Ts'elxwéyeqw expressed concern regarding the representativeness, accountability, and transparency of the IAMC. While Ts'elxwéyeqw indicated that they understood some of the intent of the initiative, oversight and monitoring without regulatory authority is not useful. Ts'elxwéyeqw is also of the view that the IAMC needs to be more reflective of all Indigenous groups involved, including Ts'elxwéyeqw Tribe. Ts'elxwéyeqw Tribe is encourage to participate in the IAMC initiative, as they could lend an important voice to the collaborative dialogue that is ongoing through the committee. One of the

Ts'elxwéyeqw Villages (Shxwhá:y Village) submitted an application to the IAMC's community capacity program and has been allocated $32,800 to conduct a feasibility study for monitoring, occupational health and safety training, and data collection. In April 2019, Shxwhá:y Village also become an Alternate Member on the IAMC. The IAMC community capacity program has a rolling application process, which the Tribe or other Ts'elxwéyeqw Villages could avail themselves of at any time.

Conclusion

In the 2016 Annex for the Stó:lō Collective, the Crown stated that in consideration of the information available to the Crown from the NEB process, consultation with the Stó:lō Collective, the Stó:lō Collective's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any Environmental Assessment Certificate issued by the Province and given that the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Chapter 4, it is the Crown's opinion, the Project is expected to have moderate impacts on the Stó:lō Collective' asserted Aboriginal title to the proposed Project area.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Chapter 4, it is the Crown's opinion that the Project is expected to have minor- to-moderate impacts on the Ts'elxwéyeqw Tribe's asserted Aboriginal title to the Project area. To the extent that the Project has any such impacts, the Crown's view is that any such impacts are appropriately accommodated by the measures described in the Report and this annex. As well, discussions with the Ts'elxwéyeqw Tribe on potential impacts on Aboriginal title to the Project area are continuing.

V. Potential Impacts Associated with Accidental Pipeline, Terminal, and Tanker Spills

Ts'elxwéyeqw Tribe has not submitted community-specific information regarding impacts that could result from accidents and malfunctions, including a pipeline, terminal, or tanker spill. Therefore, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities to assess impacts to Ts'elxwéyeqw Tribe's Indigenous Interests.
The Stó:lō Collective expressed several concerns with direct and indirect effects of Project-related spills on their Indigenous Interests. As outlined within the Stó:lō Collective's ICA, the Stó:lō Collective is of the view that the Project poses significant risk and represents a significant threat to the cultural integrity and survival of core relationships at the heart of Stó:lō worldview, identity, health, and well-being. The possibility of a major rupture of the proposed pipeline and significant contamination of the lower Fraser River Watershed would not be entirely negated. As a result, construction of the Project as currently planned and assessed in this Project would significantly jeopardize the survival of the unique Indigenous lifeway of the Stó:lō Collective, and unjustifiably infringe upon the Stó:lō Collective's Indigenous Interests.

The Stó:lō Collective raised concerns about natural hazards, such as flooding, debris flows, mudslides and rock slides in the Fraser Valley, and concern regarding the ability of the pipeline to withstand such impacts.

Additionally, the Stó:lō Collective highlights that the significance criteria relating to a pipeline rupture that Stó:lō has created is different from that of the proponent; the Stó:lō Collective hope this will be considered by Crown and the GIC.

NEB Conditions

The NEB concluded that there is a very low probability of a Project spill (i.e., from pipeline, tank terminals, pump stations, or WMT) that may result in a significant effect (high consequence) and that the level of risk is acceptable.

The proposed pipeline would be required to meet specific Canadian Standards Association (CSA) standards. CSA Z662 is the national standard that provides guidance on the design, operation and maintenance of Canada's oil and gas pipeline systems and associated facilities. The standard is incorporated in related federal and provincial legislation.

A number of conditions **in the NEB Reconsideration Report focus on safety** prior to and during the construction phase as well as during the operational phase of the pipeline. Conditions 8, 9, 17, 18, 19, 30, 50, 101, 111, 112, 115, 116, 129, 143, and 152 aim to address the safe design, operation, maintenance and testing of the pipeline and its adjacent facilities. For example, conditions 17 and 18 focus on the location of valves to restrict outflow limits if a spill were to occur. Less or no spilled oil would likely result in limited impacts on traditional Indigenous rights.

A number of conditions **focus on the planning, reporting requirements and ongoing monitoring** necessary to ensure that there is a minimal risk of a spill. Conditions 13, 15, 16, 22, 51, 64, 66, 67, 68, 69, 70, 94, 117, 129, and 151 aim to address the planning and reporting necessary to prevent a land-based spill through management plans, and ongoing monitoring and reporting. For example, conditions 66 to 70 focus on the risks of potential geohazards on infrastructure. With focused reporting and assessments, there is a decreased likelihood of a pipeline spill. Similarly, Condition #147 would require the proponent to conduct a natural hazard assessment within one year of commencing operations, and integrate that assessment in to the Natural Hazard Management Program.

A number of conditions **focus on training programs/opportunities and engagements** to ensure the preparedness of employees as well as communities in case of an emergency. Conditions 12, 58, 96, 98, 107, 145 and 146 aim to address the need for monitoring, training and continued engagement of individuals and communities in emergency preparedness. For example, conditions 145 and 146 focus on reporting on engagement activities and benefits to communities on a variety of topics including local emergency management enhancements. With increased awareness and training, there is a greater chance of creating opportunities for communities to benefit from spill prevention initiatives.

A number of conditions **focus on proposed safety measures to quickly address containment** in the event of a pipeline **spill on land**. Conditions 23, 24, 25 aim to address containment in the event of the accidental release of hydrocarbons. For example, condition 23 focuses on mitigating damage or harm

caused to the Edmonton terminal facility, personnel or the public. A safer operating space will be ensured through such mitigation measures in place.

Further conditions **focus on emergency management planning and training** to ensure personnel and communities are equipped to react accordingly should an emergency occur. Conditions 89, 90, 117, 118, 119, 120, 123, 124, 125, 126, 127, 138 and 153 aim to address emergency management planning initiatives and programs as well as reporting on them. For example, condition 153 focuses on having full-scale emergency response exercises during operations. This will ensure a safer operating environment thanks to emergency preparedness planning and reporting.

One condition **focuses on liability and compensation** in case of damages and/or harm caused during the operations phase. Condition 121 aims to address costs that may arise from, among other things: potential accidents, malfunctions, and failures during the Project operations phase, including all spills originating from the pipeline and the terminals. This attempts to create a clearer compensation regime for those who deem they have been hurt of incurred damages

In addition, each NEB regulated company must have an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency. The company's management system and processes must also be evident in its emergency management program. An emergency management program must include:

- the identification and analysis of potential hazards;
- the evaluation and management of risks associated with all hazards;
- an up-to-date emergency procedures manual that is filed with the NEB;
- liaising with agencies that may be involved in an emergency situation;
- taking all reasonable steps to inform all persons who may be associated with an emergency response activity on the pipeline of the practices and procedures to be followed;
- having a continuing education program for the police, fire departments, medical facilities, other appropriate organizations and agencies and the public residing adjacent to the pipeline to inform them of the location of the pipeline, potential emergency situations and the safety procedures to be followed in case of an emergency;
- procedures for the safe control or shutdown of the pipeline system in the event of an emergency;
- sufficient response equipment;
- training to instruct employees on the emergency procedures and emergency equipment; and
- a verifiable capability to respond to an emergency demonstrated through emergency response exercises.

If an incident does occur, the NEB would verify that there is adequate and appropriate clean-up and full remediation of any environmental effects resulting from the incident. The company must conduct, to the Board’s satisfaction, a complete clean-up and remediation of any adverse environmental effects.

In addition to complying with the above noted conditions the proponent would also need to notify the province of spills and for any instances of contamination, and would be required to comply with the Contaminated Sites Regulation, Hazardous Waste Regulation and Spill Reporting Regulation

under the *Environmental Management Act*. The province of BC is also in the process of updating the Provincial Spill Response.

The Commitments of the Proponent

Trans Mountain has the following mitigation measures in place:

- Utilize Best Management Practices for spill prevention outlined in the Pipeline EPP including in areas where higher vulnerability wells and aquifers are identified.
- Ensure that during construction no fuel, lubricating fluids, hydraulic fluids, methanol, antifreeze, herbicides, biocides, or other chemicals are dumped on the ground or into waterbodies. In the event of a spill, implement the Spill Contingency Plan (see Appendix B) [Section 7.0 of proponent's application].
- Re-establish or replace a potable water supply as required should a registered or known water well located within 30 m of the construction right-of-way be damaged (i.e. diminishment in quantity and/or quality) during pipeline installation (Section 7.0 of Volume 5A of Proponent's application).

Should a spill or other emergency occur, TMC has comprehensive response plans in place to minimize environmental damage. The specific measures used would depend on the nature of the spill or emergency, however, TMC regularly runs practice exercises to ensure that emergency crews will be able to quickly and effectively respond to any situation. TMC will also prepare for an emergency by staging oil spill containment and recovery equipment in Edmonton, Jasper, Blue River, Kamloops, Hope, and Burnaby.

Should a spill occur, its impact would be reduced through the proponent's: (1) sophisticated leak detection systems; (2) a control centre that is continually supervised and capable of shutting the pipeline down immediately; and (3) valves strategically placed near waterways and other sensitive areas enabling the pipeline to be shut down quickly in specific sensitive areas.
TMC conducted a quantitative geo-hazard frequency assessment that considered hazards such as rock slides, seismic activity, and avalanches. The assessment also considered other natural hazards such as tsunamis and acid rock drainage. TMC identified potential geo-hazards along the pipeline route, assessed their risk of occurrence, and identified mitigation measures to prevent effects to the pipeline.

TMC has committed to implementing a Natural Hazard Management Program that would manage the likelihood of pipeline exposure and impact from geo-hazards. It would including developing and maintaining an inventory of hydro-technical and geo-technical sites, and to implement a schedule of site inspections, detailed investigations, maintenance and mitigation.

The Spill Liability Regime

In the event of a spill, Canada's spill liability regime would help to cover the cost of clean-up and compensation.

The *Pipeline Safety Act* came into force on June 19, 2016, strengthening safety systems based on prevention, preparedness and response, liability and compensation. The Act enshrined the "polluter pays" principle into law, introducing absolute liability so that pipeline companies will be liable for costs and damages irrespective of fault or negligence at no less than $1 billion for companies operating major oil pipelines (transporting at least 250,000 barrels per day). If the pipeline operator is found at fault, there is no limit to liability. Furthermore, the *Act* introduced financial requirements so that pipeline companies are prepared to cover the liability and respond to a potential incident. It strengthened measures to prevent damage to pipelines and provided the NEB with the authority to order reimbursement of clean-up costs incurred by municipalities, provinces and Indigenous communities. Lastly, the *Act* enables the NEB to take control of incident response if a company is unable or unwilling (i.e., in exceptional circumstances). For land-based spills, the proponent is the responsible party in charge of 100 per cent of the clean-up costs. TMC is required by the NEB to demonstrate that it has financial resources in excess of $1 billion dollars to cover the contingency.

Indigenous Services Canada's' Emergency Management Assistance Program is the Government of Canada's primary mechanism for supporting emergency management on-reserve. INAC assumes responsibility for 100 per cent of eligible emergency response and recovery activities carried out exclusively for on-reserve First Nations except when the emergency responsibilities fall within the mandate of another department, agency or the private sector.

Crown Analysis

Canada recognizes the concerns raised by Indigenous communities related to spill prevention and emergency management planning presented by the Project. The Crown believes that these concerns are addressed through TMC's commitments and NEB conditions requiring the proponent to build an Emergency Management program. As the lead federal regulatory agency for pipeline safety, the NEB also has an Emergency Management Plan to prepare for and react to any pipeline spills that may occur.

The Crown understands that Ts'elxwéyeqw Tribe found that a spill in Stó:lō territory could have significant, irreparable effects on the activities and values described in the ICA. The Crown shares the view that a large-scale, unmitigated spill could have serious impacts on Stó:lō Indigenous Interests. However, the Crown is of the view that given the emergency management system in place to prevent, respond to, remediate, and compensate for an oil spill, the likelihood of a major spill carrying significant impacts spill is low. In its draft responses to the 89 recommendations, the Crown has responded to Stó:lō Collective's recommendations that could mitigate the impact of a spill within Stó:lō territory, and seeks to discuss the adequacy of these responses with Ts'elxwéyeqw Tribe.

In the Crown's view, applicable provincial and federal laws (including the *Pipeline Safety Act* and the BC Spill Response regime), the Project plans and NEB conditions effectively minimize the likelihood of a spill and require sufficient measures to minimize the size of a spill, respond to or clean up a spill I the event that one does occur and provide compensation. This includes the proponent's commitments as well as the NEB conditions.

Further, Canada has committed $64.7 million over five years, from 2017-2021, to support the Indigenous Advisory Monitoring Committee (IAMC) for the Project. The Emergency Management (EM) Working Group has been established to further the Committee's priority of greater Indigenous inclusion in emergency management prevention, preparedness and response. The EM Working Group has developed a work plan with two areas of focus relevant to both terrestrial and marine environments: analysis of gaps in proponent plans and development of options or advice to improve plans; and analysis of gaps in community capacity to prepare and respond to emergencies, including options to provide capacity support. To date, IAMC members and Indigenous monitors have participated in five EM exercises, and one environmental inspection of a spill. The Indigenous Monitoring Pilot & the IAMC has provided input to Trans Mountain Corporation (TMC), the NEB, the Canadian Coast Guard and Western Canada Marine Response Corporation with respect to spill exercises.

Additionally, the IAMC is working with Indigenous groups, TMC and NEB representatives to develop four pilot Projects aimed at increasing Indigenous inclusion in emergency management.

Conclusion

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline spill, and the degree of impact on Indigenous Interests. In consideration of the Project plans, NEB conditions, and requirements for emergency response plans, as well as information available to the Crown on the Ts'elxwéyeqw Tribe's Indigenous Interests and concerns raised by the Ts'elxwéyeqw Tribe during the two NEB processes, detailed route hearing, and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on the Ts'elxwéyeqw Tribe's Indigenous Interests (depending on location and amount).

The NEB has assessed that the likelihood of a major spill carrying significant impacts spill is low. The risk and severity of spills would be further reduced by TMC commitments as described above.

The Crown and TMC are committed to discuss further with Ts'elxwéyeqw Tribe the best solutions to mitigate and accommodate for the risk of spills.

8. Conclusion

In 2016, the Crown stated that the Project could adversely impact the ability of Indigenous groups to use lands, waters and resources for traditional purposes. The Crown acknowledged 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 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 expected impacts of the Project on the exercise of the Stó:lō Collective's Aboriginal Interests would be up to minor-to-moderate.
The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support the Stó:lō Collective'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 Indigenous Interests, as well as the involvement of Stó:lō Collective in emergency response planning activities.

During the re-initiated Phase III Consultations, the Crown has identified mitigation and, where appropriate, proposed accommodation measures to lessen the impacts of the Project on the rights of the Ts'elxwéyeqw Tribe, as discussed in Chapter 4 of the main body of this Report and section 7 of this annex.

The Crown looks forward to updating this assessment with the Ts'elxwéyeqw Tribe, and is committed to completing these consultations in a timely manner.

Crown Analysis of ICA Recommendations

Preface

- This document has been developed by the Natural Resources Canada Crown consultation team, with focused input from other federal department representatives, as part of the re-initiated Phase III consultation process. It was developed for the purposes of initiating discussions to determine whether the 89 recommendations identified in Stó:lō Collective's 2014 Integrated Cultural Assessment Report (ICA Report) have been appropriately addressed.
- The *Crown Analysis* column and *Recommendation Addressed* columns have been populated based on information and perspective that has been provided to date, and is intended to be a starting point for discussion with Ts'elxwéyeqw Tribe. The input from federal department representatives is based on their preliminary review, and does not represent the official views of each department.
- In addition to the Crown analyses that are included in the table, the Crown includes the following as a global comment that applies to all recommendations:
    - "As part of ongoing engagement through Phase III consultation, and beyond, the Crown is keen to discuss the Tribe's views on all of the measures identified in relation to the 89 Recommendations, as well as any other concerns or recommendations that the Tribe has for action which could be taken which would eliminate or reduce impacts on the Tribe's s. 35 rights."
- The National Energy Board (NEB) provides the following, by way of context to the Crown's analysis of the ICA's 89 Recommendations:
    - "The NEB is Canada's energy regulator, who oversees and helps to ensure safety, security, and protection of the public and the environment for the full life cycle of a project – from approval to construction to operation to abandonment. The NEB is committed to working with communities, sharing the goal of ensuring energy infrastructure is safe, and harm to the public and the environment is prevented. The NEB wants to hear from the Tribe about any concerns it has regarding matters under the NEB's mandate, and commits that any matter brought to its attention will be responded to in a meaningful way."
- The Crown also notes that Trans Mountain Corporation (TMC) is participating in the Phase III consultation process, and has indicated that it has additional background and context to provide relating to its commitment to Ts'elxwéyeqw Tribe. This background and context will be provided on an ongoing basis, through Phase III consultations, and beyond.
- The Crown understands that the Integrated Cultural Assessment Report and Recommendations was developed in 2014 by Stó:lō Collective, representing eleven Stó:lō communities. In order to remain consistent with the ICA Report, the responses provided refer to Stó:lō or Stó:lō Collective. However, the Crown understands Ts'elxwéyeqw's interest to move forward in the re-initiated Phase III consultation process as a Tribe representing seven Stó:lō communities, and recognizes that any measures identified may need to be adapted to reflect the Tribe's unique concerns or interests.
- In order to assist in focusing Ts'elxwéyeqw's review of the Crown Analysis document, the Crown has identified the following categories as areas where additional information or discussion is needed to ensure the recommendation is addressed: mitigation and monitoring of the terrestrial and riparian environment, training and oversight for emergency preparedness and response, mitigation measures for effects to cultural sites, and funding for cultural programs.
- Throughout the document, the Crown refers to the National Energy Board's conditions, which are requirements that Trans Mountain Corporation (TMC) must undertake in order to be allowed to construct, operate and abandon the project. The Crown also refers to

commitments TMC made throughout the original NEB process. In fulfillment of Condition #6, TMC must file a tracking table of these commitments that describes their status on a monthly basis.

- The conditions can be found at the following link: https://apps.neb-one.gc.ca/REGDOCS/File/Download/3083938
- The most recent commitments tracking table can be found at the following link: https://apps.neb-one.gc.ca/REGDOCS/Item/View/3751305

Analysis

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
1	Other	Implementation	If the NEB recommends approval of the TMEP, Stó:lō people would require all of the mitigations listed here to be included in the Certificate of Public Convenience and Necessity (CPCN) issued by the NEB for the TMEP.		See individual responses below.	6.5 (management system)	2 (Compliance with Commitments) 6 (Commitments Tracking Table)	Natural Resources Canada (Crown Consultation Coordinator) The Natural Resources Canada consultation team, representing the Crown, seek to achieve consensus on new or existing mitigation or accommodation measures that address each recommendation, either through a commitment by TMC, condition on the certificate, or other Crown action. Please see the Crown's individual responses below.	May be addressed - More info/discussion required
2	Oversight and Reporting	Implementation	At least 90 days prior to commencing construction, TMEP will provide a detailed report to Stó:lō representatives describing: a. The results of detailed routing and design studies including how cultural resources were identified, documented and protected in the field and who conducted this work b. How TMEP has considered and addressed all issues identified in the ICA c. Descriptions of mitigations that will be implemented to address potential Project effects	896	Trans Mountain is committed to hosting a series of workshops, as agreed upon by Trans Mountain and Stó:lō representatives for communities represented by the Stó:lō Collective. The Workshops will be designed to facilitate open conversation between members of communities represented by Stó:lō Collective, subject-matter experts and Trans Mountain representatives regarding many of the recommendations included within this document and the potential impacts of		7 *Environmental and socio-economic assessment - route re-alignments) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups)	Natural Resources Canada The Crown recognizes Stó:lō's interest in reviewing these documents prior to construction to ensure that TMC has taken Stó:lō concerns and interests in to account, and has taken adequate steps to protect environmental and cultural resources. The NEB has developed conditions that should address this recommendation.	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
			d. Descriptions of outstanding issues or concerns and the steps that TMEP will take to address them		the Project on Aboriginal rights, title and interests and their traditional and cultural use of the land and marine environment.			Condition #72 requires TMC to file with the NEB for approval, at least three months prior to commencing construction, an updated project-specific Pipeline Environmental Protection Plan. The Environmental Protection Plan must be a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments, for the construction of the pipeline. It must include updated alignment sheets, environmental policies and procedures, contingency plans, and a description of how applicable Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan. The Crown understands that TMC will share any reports that have the potential to have impacts on Indigenous rights with the relevant Indigenous groups for review and comment before they are finalized and sent to the NEB. Final reports will then be sent to the relevant Indigenous Groups and NEB simultaneously. Condition #96 requires TMC to report, at least two months prior to commencing construction, a report on the engagement activities it has undertaken with each potentially affected Aboriginal group, including a summary of any issues or	

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								concerns raised, and measures taken to respond to issues or concerns. TMC must provide this report to each Aboriginal group that was involved in engagement activities. The Crown understands that TMC has incorporated Stó:lō cultural resources identified in the Integrated Cultural Assessment in to their alignment sheets, where possible. The existing routing was approved by the NEB, who took in to account a wide range of environmental and socio-economic considerations, and conducted an examination of alternative route options. For any proposed route realignments, such as the route in proximity to Tzeachten Indian Reserve #13, Condition #7 would require TMC to conduct an additional environmental and socio-economic assessment that includes updated environmental alignment sheets, the results of any pre-construction surveys within the areas, and associated mitigation measures.	
3	Oversight and Reporting	Implementation	At least 90 days prior to the start of construction, TMEP will provide copies of Construction Environmental Management Plans and Alignment sheets to Stó:lō representatives	1612	As part of the workshop series described in the response to Recommendation 2, Trans Mountain will offer a focused workshop to review the draft Environmental Protection Plan (EPP) and Environmental Alignment Sheets (EAS). Trans Mountain will submit up to date		72 (Pipeline Environmental Protection Plan)	Natural Resources Canada The Crown recognizes Stó:lō's interest in reviewing the environmental management plan to ensure that TMC has taken adequate steps to protect environmental and cultural resources.	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
					versions of the EPP and EAS to Stó:lō representatives.			Condition #72 requires TMC to file with the NEB for approval, at least three months prior to commencing construction, an updated project-specific Pipeline Environmental Protection Plan. The Environmental Protection Plan must be a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments for the construction of the pipeline. It must include updated alignment sheets, environmental policies and procedures, contingency plans, and a description of how applicable Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan. The Crown understands that TMC will share any reports that have the potential to have impacts on Indigenous rights with the relevant Indigenous groups for review and comment before they are finalized and sent to the NEB. Final reports will then be sent to the relevant Indigenous Groups and NEB simultaneously. The Crown understands that TMC, as part of Commitment #1612, has committed to holding a focused workshop to review the draft Environmental Protection Plan and alignment sheets, and to submit up-to-date versions of	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								these documents to Stó:lō representatives. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	
4	Training and capacity building	Implementation	A number of the mitigation measures recommend that TMEP submit a plan or program details to Stó:lō representatives for their review and approval (or disapproval and/or amendment) . The demand on time and resources for Stó:lō representatives to complete all of these reviews and approvals would be substantial, and therefore the following general mitigations is recommended: a. TMEP provide capacity support to Stó:lō representatives for the review and approval (or disapproval and/or amendment) of plans and programs. The exact nature of the capacity support will be finalized in discussions with Stó:lō representatives, but it could include support for Stó:lō staff/administration tasked with tracking progress of Canada's review of the TMEP for the 12 months leading up to the start of construction of the TMEP. If concerns are identified by Stó:lō representatives, Trans Mountain representatives will meet with Stó:lō representatives to discuss opportunities for changes.	1613	In partnership with Stó:lō representatives, Trans Mountain commits to developing a mutually agreeable process for continued engagement.			Natural Resources Canada The Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement, and expects that this will include capacity to review regulatory filings. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	Addressed
5	Oversight and Reporting	Fisheries	Stó:lō Fishing representatives will participate in the development and review of Fisheries Management Plans and water course crossing EPPs before construction and mitigation plans are finalized.		See response to recommendation #2		43 (Watercourse crossing inventory) 71 (Riparian Habitat Management Plan) 72 (Pipeline Environmental	Fisheries and Oceans Canada (DFO) DFO is supportive of the participation of Stó:lō representatives in the development and review of Trans Mountain's Fisheries Management Plan(s) and	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
							Protection Plan) 96 (Reports on Engagement with Aboriginal Groups) 108 (Contingency watercourse crossings)	watercourse crossing EPPs. As the proposed TMX pipeline is subject to the December 2013 NEB-DFO MOU for cooperation and administration of the *Fisheries Act* and the *Species at Risk Act* related to regulating energy infrastructure in Canada, the NEB is responsible for reviewing works, undertakings or activities associated with pipeline watercourse crossings. The NEB assessed the potential impacts of the project to fish and fish habitat, including aquatic species at risk in a manner that considers the intent and requirements of the *Fisheries Act* and the *Species at Risk Act* (SARA). If a project could result in serious harm to fish, then the NEB will inform DFO that a *Fisheries Act* authorization under paragraph 35(2)(b) is likely to be required. Similarly, if the NEB determines that an impact to a SARA-listed aquatic species or its critical habitat may occur, then the NEB will inform DFO that permits under the SARA may be required. DFO will review and issue an authorization or permit when appropriate, prior to project construction. As part of DFO's regulatory review process, and prior to the issuance of any authorizations or permits, DFO will review any Fisheries Management Plans or EPPs submitted by Trans Mountain as part of their application package.	

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								DFO will also consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights. Natural Resources Canada In addition to consultation that would be undertaken by DFO in the circumstances described above, the Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement, and that this will include review of Fisheries Management Plans and watercourse crossing EPPs. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	
6	Oversight and Reporting	Fisheries	Stó:lō representatives will provide input on proposed locations for Hydrostatic test water withdrawal and release.	1614	Stó:lō representatives will be provided an opportunity to provide input on proposed locations for hydrostatic test water withdrawal and release.		96 (Reports on Engagement with Aboriginal Groups) 113 (Hydrostatic Testing Plan)	Fisheries and Oceans Canada Fisheries and Oceans Canada (DFO) does not anticipate involvement in Hydrostatic Testing Plans, unless associated works, undertakings or activities are referred to DFO by the NEB or Trans Mountain for regulatory review under the *Fisheries Act* or *Species at Risk Act*. Natural Resources Canada The Crown recognizes Stó:lō's concerns regarding hydrostatic testing, and the potential effects	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								to water quality and fish health from water withdrawal and release. NEB Condition #113 requires TMC to develop a hydrostatic testing plan, including the locations of all water withdrawal and discharge sites. The condition requires TMC to provide a description of how TMC has taken available and applicable Aboriginal traditional land use and traditional ecological knowledge in to consideration in developing the plan, including demonstration that those Aboriginal persons and groups that provided Aboriginal traditional land use information and traditional ecological knowledge had the opportunity to review and comment on the information. As part of Commitment #1614, TMC has made a commitment that Stó:lō representatives will be provided an opportunity to provide input on proposed locations for hydrostatic test water withdrawal and release. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	
7	Oversight and Reporting	Safety and Emergency Response	TMEP will consult with Stó:lō representatives to develop the Emergency Response Plans in the study area.	1615	As part of the workshop series described in the response to Recommendation 2 Trans Mountain will offer a focused workshop to review	32-35 (emergency management)	89 (Emergency Response Plans for construction)	Fisheries and Oceans Canada DFO is supportive of the engagement of Stó:lō representatives by Trans	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
					Emergency Response Management planning.		90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 96 (Reports on Engagement with Aboriginal Groups) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program) 119 (Emergency Preparedness and Response Exercise and Training Program) 124 (Implementing Improvements to Trans Mountain's Emergency Management Program)	Mountain in the development of Emergency Response Plans. DFO is currently supporting the Lower Fraser Fisheries Alliance in their project to collect, store, and organize Aboriginal Traditional Knowledge for use in Emergency Response Plans. <u>Natural Resources Canada</u> The Crown recognizes Stó:lō's concerns regarding the potential for an oil spill within its traditional territory, and the potential negative effects to their socio-economic conditions, culture, health, and well-being that could result if it is not immediately responded to. There are a number of conditions that would require TMC to involve Stó:lō representatives in the development of TMC's emergency management program, which includes emergency response planning. For example, Condition #89 would require TMC to file an emergency response plan for construction with the NEB that includes spill contingency measures. Condition #90 would require TMC to produce a consultation plan to review its emergency response plans with potentially affected Aboriginal groups. It would also require TMC to describe how commitments made during consultations will be tracked and incorporated in to the emergency	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								management program. In addition to the NEB conditions, TMC must also adhere to the *Onshore Pipeline Regulations*, which require TMC to implement and maintain an emergency management program that anticipates, prevents, manages, and mitigates conditions during an emergency that could adversely affect property, the environment, or the safety of workers or the public. Finally, the Crown understands that TMC, as part of Commitment #1615, has committed to holding a focused workshop to review emergency response management planning. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	
8	Oversight and Reporting	Fisheries	Stó:lō representatives will consult with community members to determine appropriate restoration plans for water crossings including bank armouring, seed mixes or replanting requirements.		No response provided.		43 (Watercourse crossing inventory) 71 (Riparian Habitat Management Plan) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups)	<u>Natural Resources Canada</u> The Crown encourages Stó:lō representatives to conduct internal consultations with community members regarding the project, and would be interested in discussing how the Crown can help to facilitate, if it would be helpful. The Crown notes that Condition #71 would require TMC to develop a riparian habitat management plan that would	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
							108 (Contingency watercourse crossings)	apply to all defined watercourses crossed by the Project. The plan would need to include a description of how Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan, and a summary of consultations with potentially affected Aboriginal groups. Under Condition #154, TMC would also be required to develop a Riparian Habitat Reclamation Evaluation Report and Offset Plan after the fifth complete growing season, following final clean up. This reclamation evaluation report and offset plan would require a description of consultation undertaken with potentially affected Aboriginal groups on the plan, including how the results of consultation were taken in to account.	
9	Oversight and Reporting	Fisheries	Stó:lō fishing representatives must be notified if isolation methods will not work and TMEP is considering another crossing method.	1616	As part of the workshop series described in the response to Recommendation 2 Trans Mountain will include the subjects of aquatics and water crossings.		43 (Watercourse crossing inventory) 71 (Riparian Habitat Management Plan) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups) 108 (Contingency watercourse crossings)	<u>Fisheries and Oceans Canada</u> DFO is supportive of the engagement of Stó:lō fishing representatives by Trans Mountain in the planning of construction activities at watercourse crossings. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's concerns regarding effects to fish habitat from watercourse crossings, and concerns regarding the use of open cut crossings, given potential effects to bank stability and water quality.	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								The Crown notes that Condition #43 would require TMC to develop a watercourse crossing inventory at least five months prior to commencing watercourse crossing construction activities. The inventory would describe the primary and contingency crossing methods, information on fish habitat, and any measures to mitigate any effects, such as least-risk timing windows. The inventory would need to include a description of how Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan, and a summary of consultations with potentially affected Aboriginal groups. Under Condition #108, in the event that a contingency watercourse crossing is used instead of TMC's proposed primary method, and where any of Fisheries and Oceans Canada's applicable "Measures to Avoid Causing Harm to Fish and Fish Habitat" cannot be implemented, TMC must develop a report that outlines the method that will be employed, a description of habitat, any expected effects, mitigation, and reclamation. Both the watercourse crossing inventory and any report on contingency watercourse	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								crossings will be filed with the NEB. Furthermore, the Crown understands that TMC, as part of Commitment #1616, has committed to holding a workshop series that includes the subjects of aquatics and water crossings. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	
10	Oversight and Reporting	Fisheries	Stó:lō representatives must be notified as soon as a spill or leak, of any size, is detected.	1617, 1618, 1619	Trans Mountain will discuss additional emergency response management (ERM) elements with Stó:lō representatives.	32-35 (emergency management)	90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 96 (Reports on Engagement with Aboriginal Groups) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program) 119 (Emergency Preparedness and Response Exercise and Training Program)	<u>Fisheries and Oceans Canada</u> Spills or leaks into aquatic environments would likely be considered a deposition of a deleterious substance into fish-bearing water. Environment and Climate Change Canada (ECCC) administers and enforces the pollution prevention provisions of the *Fisheries Act* in accordance with the Order Designating the Minister of the Environment as the Minister Responsible for the Administration and Enforcement of Subsections 36(3) to (6) of the *Fisheries Act.* <u>Environment and Climate Change Canada</u> ECCC will examine its internal processes in relation to the recommendation. <u>Natural Resources Canada</u> The Crown recognizes the critical importance of immediate	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								response in the event of a spill, and Stó:lō's interest in being notified as soon as possible. The Crown notes that TMC Commitment #1617 would require TMC to discuss additional emergency response management elements with Stó:lō representatives. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition, under the NEB's *Onshore Pipeline Regulations*, and pursuant to the NEB Guidelines on Reporting Incidents, a situation as described in this recommendation must be reported immediately. See: https://www.neb-one.gc.ca/bts/ctrg/gnnb/rprtnggdlns/index-eng.html As part of TMC's Emergency Response Plan, Section 2.13.2, Indigenous communities whose traditional territories are impacted by an incident will be notified as soon as possible. See: https://www.transmountain.com/emergency-response-plans	
11	Oversight and Reporting	Fisheries	During water quality monitoring program, anything that fails to meet or exceed established guidelines will be reported to a	1620	Where water quality monitoring fails to meet the parameters of established guidelines and is not in compliance		72 (Pipeline Environmental Protection Plan)	<u>Fisheries and Oceans Canada</u> The deposition of sediment or other deleterious substances into	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
			Stó:lō Fisheries Representative within 12 hours.		with regulatory requirements, Trans Mountain will report the incident to Stó:lō representatives within the requested timeframe.		96 (Reports on Engagement with Aboriginal Groups) 113 (Hydrostatic Testing Plan) 130 (Groundwater Monitoring Program)	fish-bearing water that may affect water quality would be within the purview of ECCC. ECCC administers and enforces the pollution prevention provisions of the *Fisheries Act* in accordance with the Order Designating the Minister of the Environment as the Minister Responsible for the Administration and Enforcement of Subsections 36(3) to (6) of the *Fisheries Act*. <u>Environment and Climate Change Canada</u> ECCC is interested in participating in discussions related to the recommendation. <u>Natural Resources Canada</u> The Crown recognizes the importance of water quality to Stó:lō, and concerns regarding potential changes to water quality that could result from project activities. The Crown understands that TMC, as part of Commitment #1620, has committed to report incidents to Stó:lō representatives within the requested timeframe where water quality monitoring fails to meet the parameters of established guidelines and is not in compliance with regulatory requirements. Under recommended Condition #2, TMC must implement all of the commitments it made in its Project application or through the	

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								original and reconsideration NEB hearings. In addition to TMC's commitment, the NEB conditions would require TMC to report on its engagement with Aboriginal groups in relation to the groundwater monitoring program (Condition #130) and the hydrostatic testing plan (Condition #113), both of which would require water quality monitoring.	
12	Additional Studies	Fisheries	Stó:lō fishing representatives will participate in the development and review of additional research carried out as part of the TMEP within the lower Fraser Watershed. Further studies need to address information gaps including, for example: behavior of bitumen in fresh water and estuarine environments, seasonal variation of fish populations (spawning, fry movement), point source contamination inventory, water quality sampling feeding grounds, hydrological connectivity, and movement of fish populations as a result of changes in water quality (i.e. turbidity, dissolved oxygen, pH levels especially during seasonal variations).	1621	Trans Mountain remains committed to ongoing engagement with Stó:lō representatives to discuss the inclusion of existing Stó:lō knowledge into the updated EPPs for the Project.			<u>Fisheries and Oceans Canada</u> DFO is supportive of Trans Mountain's commitment to conduct ongoing engagement of Stó:lō fishing representatives in relation to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's interest in conducting additional studies within the Fraser River watershed, given the critical importance of the watershed to Stó:lō culture, livelihood, and well-being. While a number of studies were conducted in relation to the Fraser River through the NEB process, the Crown recognizes that Stó:lō has identified information gaps. To address this recommendation as part of the Phase III consultations, the Crown is prepared to commit to fund additional studies to be undertaken following issuance of	Addressed

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								a Certificate of Public Convenience and Necessity (CPCN), either through new or existing funding programs. This research could assist in a better understanding of the cumulative effects of development within Stó:lō traditional territory, including the contributions of this project. As part of ongoing dialogue in Phase III, the Crown requests that Stó:lō representatives provide further details on the studies they would like to undertake, including a high level description of their scope, duration, intended outcome, and estimated costs.	
13	Monitoring	Fisheries	Stó:lō representatives will monitor all water course crossings during construction. Pursuant to the Pipeline Environmental Pipeline Protection Plan (TMEP Facilities Application, Volume 6B, Table 7.2.3-2 continuous monitoring of turbidity and sediment release will occur: a. at all flowing open cut crossings b. at all isolated and partially isolated watercourse crossings c. HDD crossings and mud releases	1622	Trans Mountain's procurement team and Chief Environmental Inspector will discuss the requirements and existing capacity re: qualified monitoring personnel and services with the Stó:lō representatives.	39 (surveillance and monitoring)	43 (Watercourse crossing inventory) 71 (Riparian Habitat Management Plan) 72 (Pipeline Environmental Protection Plan) 108 (Contingency watercourse crossings) 98 (Plan for Aboriginal Construction Monitoring)	<u>Fisheries and Oceans Canada</u> In the event that DFO issues a *Fisheries Act* authorization for works, undertakings or activities at watercourse crossings, then DFO will conduct site inspections as appropriate to those crossings. DFO is committed to conducting joint monitoring with Indigenous monitors acting on behalf of the Indigenous Advisory and Monitoring Committee (IAMC). If Stó:lō representatives are engaged as monitors working on behalf of the IAMC, then DFO would conduct joint monitoring site visits with these representatives to watercourse crossings where *Fisheries Act* authorizations have been issued. <u>Natural Resources Canada</u> The Crown understands that	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								TMC's plan for satisfying Condition #98 includes a commitment to involve the Stó:lō Collective as monitors, and that this commitment will need to evolve to include Ts'elxwéyeqw Tribe in light of the Tribe's decision to move forward in their engagement on the project outside of the Stó:lō Collective. TMC`s latest filing relating to Condition #98 from June 16 2017 is available on the NEB website: https://apps.neb-one.gc.ca/REGDOCS/Item/View/3298142	
14	Training and capacity building	Fisheries	Stó:lō representatives will receive training on all aspects of the Pipeline EPP Water withdrawal and Discharge Procedures Management Plan	1622	Please refer to the response to Recommendation 13.		12 (Training and Education Monitoring Program) 58 (Training and Education Monitoring Reports) 98 (Aboriginal Construction Monitoring)	Natural Resources Canada The Crown understands that TMC, as part of Commitment #1622, will discuss the requirements and existing capacity regarding qualified monitoring personnel and services with Stó:lō representatives. Under recommended Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. The Crown understands that TMC's plan for satisfying Condition #98 includes a commitment to involve the Stó:lō Collective as monitors, and that this commitment will need to evolve to include Ts'elxwéyeqw Tribe in light of the Tribe`s	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								decision to move forward in their engagement on TMX outside of the Stó:lō Collective.	
15	Monitoring	Fisheries	Stó:lō representatives will monitor all withdrawal and release of hydrostatic test waters	896, 1613	Please refer to the response to Recommendation 2.		98 (Aboriginal Construction Monitoring) 113 (Hydrostatic Testing Plan)	Natural Resources Canada The Crown recognizes Stó:lō's concerns regarding hydrostatic testing, and the potential effects to water quality and fish health from water withdrawal and release. The Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement. As part of Commitment #1614, TMC has indicated that Stó:lō representatives will be provided an opportunity to provide input on proposed locations for hydrostatic test water withdrawal and release. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. The Crown notes, as identified in the response to Recommendation #14, the requirement under Condition #98 for Aboriginal construction monitoring and the expectation that TMC's plan will evolve to include Ts'elxwéyeqw Tribe. Furthermore, NEB Condition #113 requires TMC to develop a	Addressed

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								hydrostatic testing plan, including the locations of all water withdrawal and discharge sites. The condition requires TMC to provide a description of how TMC has taken available and applicable Aboriginal traditional land use and traditional ecological knowledge in to consideration in developing the plan, including demonstration that those Aboriginal persons and groups that provided Aboriginal traditional land use information and traditional ecological knowledge had the opportunity to review and comment on the information.	
16	Monitoring	Fisheries	Stó:lō representatives will monitor all site restoration work at each water crossing following construction for a period of up to five years. Post construction monitoring will determine if additional seeding or replanting of riparian vegetation is necessary. Post construction monitoring will also identify locations with altered drainage patterns require remedial actions.	896	Please refer to the response to Recommendation 2.		43 (Watercourse crossing inventory) 71 (Riparian Habitat Management Plan) 98 (Aboriginal Construction Monitoring) 151 (post-construction monitoring reports)	<u>Fisheries and Oceans Canada</u> DFO is supportive of Trans Mountain's commitment to conduct ongoing engagement with Stó:lō fishing representatives in relation to this recommendation. Should DFO issue a *Fisheries Act* authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.). <u>Natural Resources Canada</u> The Crown understands that	Addressed

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								TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement. The Crown also notes, as identified above, the requirement under Condition #98 for Aboriginal construction monitoring and the expectation that TMC's plan will evolve to include Ts'elxwéyeqw Tribe. With respect to post-construction monitoring and remediation, Condition #151 would require TMC to report on post-construction environmental monitoring, including any corrective actions taken to address unforeseen issues. TMC must also report on consultations with potentially affected Aboriginal groups in relation to this report. Post-construction environmental monitoring reports would address issues related to watercourse crossings, riparian vegetation, wetlands, and fish and fish habitat, among others. In addition, Condition #71 (Riparian Habitat Management Plan) would require TMC to report on watercourse reclamation strategies for the range of defined watercourses crossed by the project, including a description of generalized vegetation planting plans. TMC would be required to report on how Aboriginal traditional land use and traditional ecological	

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								knowledge were taken in to consideration in developing the plan, and how recommendations from Aboriginal groups were taken in to account.	
17	Oversight and Reporting	Fisheries	Stó:lō fishing representatives will be provided access to information, monitoring results and findings from any additional studies carried out for the TMEP related to fish, fish habitat, water quality, or any other related topic such as the behavior of dilbit in freshwater and marine ecosystems.	1615	Please refer to recommendation 7.			Fisheries and Oceans Canada DFO is supportive of Trans Mountain's commitment to engage Stó:lō fishing representatives in relation to this recommendation. TMC is responsible for conducting any supporting studies and therefore DFO defers to Trans Mountain to respond regarding its plans to engage Stó:lō fishing representatives in any supporting research/studies. Natural Resources Canada The Crown understands that TMC, as part of Commitment #1615, has committed to offer a focused workshop to review Emergency Response Management planning. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. To further address this recommendation, as part of the Phase III consultations, the Crown is prepared to commit to fund additional studies that would be undertaken following issuance of a CPCN, either through existing or new funding programs. This research could	Addressed

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								assist in a better understanding of the cumulative effects of development within Stó:lō traditional territory, including the contributions of this project. As part of ongoing dialogue in Phase III, the Crown requests further details on the studies that Stó:lō would like to undertake, including a high level description of their scope, duration, intended outcome, and estimated costs.	
18	Training and capacity building	Safety and Emergency Response	At least 1 year prior to commencing operations, Stó:lō organizations and individuals (for example, Stó:lō Nation Fish Management Board, SRRMC, Seven Generations, TTML community members/volunteers/local search and rescue/police department/fire department and volunteer fire departments) will receive training on all aspects of TMEP Spill Contingency Plans.	1617, 1618, 1619	Please refer to the response to Recommendation 10.	32(1) (emergency management)	90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)	Natural Resources Canada The Crown recognizes Stó:lō's concerns regarding a potential spill within their traditional territory, and the importance of efficient, timely, and collaborative spill response. The Crown understands that under Commitment #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō representatives. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition to TMC's commitment, NEB Condition #90 would require TMC to report on consultation on improvements to its Emergency Management Program prior to commencing construction, and	Addressed

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								describe how commitments made during consultations would be incorporated in to the program and response plans.	
19	Training and capacity building	Safety and Emergency Response	TMEP will fund annual training for Stó:lō organizations and individuals to: a. respond to all hydrocarbon spill scenarios in various seasons; including spills in mountainous regions during winter conditions, into ice covered watercourses and into watercourses under varying flow conditions b. Emergency response exercises will include full-scale exercises, desk-top work, functional exercises and drills c. At a minimum, there must be a full range of exercises as they relate to spill containment, clean up, massive rupture – containment and clean up, emergency responding, and any and all other exercises pertinent to emergence response. d. Updates or amendments to TMEP emergency response plans	1617, 1618, 1619	Please refer to the response to Recommendation 10.	32(1) (emergency management)	90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)	Natural Resources Canada The Crown understands that under Commitment #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō representatives. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition, as part of ongoing dialogue in Phase III consultations, the Crown looks forward to exploring whether additional federal funding is required to support this training.	Addressed
20	Mitigation	Safety and Emergency Response	Emergency Response Preparedness staging areas will be at the following sites: a. Wahleach Pump Station b. Chilliwack/Vedder crossing	1617, 1618, 1619	Please refer to the response to Recommendation 10.	32(1) (emergency management)	12 (Training and Education Monitoring Program) 58 (Training and Education Monitoring Reports) 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)	Natural Resources Canada The Crown recognizes the importance of emergency response preparedness, and Stó:lō's interest in providing input to emergency response planning. The Crown understands that under Commitment #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō	Addressed

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							117 (Reporting on Improvements to Trans Mountain's Emergency Management Program) 119 (Emergency Preparedness and Response Exercise and Training Program)	representatives. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition to TMC's commitment, NEB Condition #90 would require TMC to report on consultation on improvements to its Emergency Management Program prior to commencing construction, and describe how commitments made during consultations would be incorporated in to the program and response plans. As part of ongoing dialogue in Phase III consultations, the Crown looks forward to exploring this topic of the Emergency Response Preparedness staging areas, with a goal to finding a satisfactory outcome for all involved.	
21	Funding for Stó:lō programs	Fisheries	TMEP will fund fish habitat restoration and enhancement projects as determined by Stó:lō representatives, such as fish managers and scientists, biologist, and other technically qualified environmental scientists.	1616	Please refer to the response to Recommendation 9.		43 (Watercourse crossing inventory) 71 (Riparian Habitat Management Plan) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups) 108 (Contingency	<u>Fisheries and Oceans Canada</u> Should DFO issue a *Fisheries Act* authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.).	Addressed

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							watercourse crossings)	Natural Resources Canada The Crown notes that there are a number of conditions that would require TMC to conduct reclamation of fish habitat. For example, Condition #71 would require TMC to develop a Riparian Habitat Management Plan that describes mitigation measures and watercourse reclamation strategies and goals. As part of this plan, TMC must report on how Aboriginal traditional land use and traditional ecological knowledge has been taken in to consideration. The Crown also notes that under Commitment #1616 TMC has committed to including the subjects of aquatics and watercourse crossings in their planned workshop series. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition, the Crown looks forward to ongoing engagement with on concerns related to habitat and habitat restoration. The Crown, led by DFO, is currently considering options for developing a process for resolving issues and concerns relating to habitat restoration that would be established for Indigenous groups impacted by the project. The Crown looks forward to exploring this further	

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								as part of ongoing Phase III consultations.	
22	Funding for Stó:lō programs	Fisheries	TMEP will fund improvements to access and infrastructure in support of fishing as determined by Stó:lō representatives	1623	Trans Mountain welcomes the opportunity to discuss funding for improvements to access and infrastructure in support of fishing as determined by Stó:lō representatives.		145 (Community Benefits Program progress reports)	Fisheries and Oceans Canada DFO defers to Trans Mountain to respond to this recommendation, as the request from Stó:lō is directed to Trans Mountain. DFO currently administers grants and contribution programs that Stó:lō member nations can choose to participate in (e.g., the Coastal Restoration Fund and Canada Nature Fund for Aquatic Species) to help restore or enhance fish habitat. Natural Resources Canada The Crown acknowledges the Stó:lō Collective's request for improvements to access and infrastructure in support of fishing in order to offset potential impact to fisheries. Under Commitment #1623, TMC has committed to discussing funding for these improvements and infrastructure. The Crown also notes DFO's response regarding additional funding available through that department. As part of ongoing Phase III consultations, and beyond, the Crown looks forward to working with Stó:lō to connect them with existing federal funding programs that could be accessed to address this recommendation, or determine whether funding could be provided through a new program.	Addressed

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23	Additional Studies	Forestry, Wetland, Vegetation	Stó:lō agree with the recommendations made in the TMEP Facilities Application related to the need for additional studies to confirm the effects assessment conclusions and gather site specific information for the implementation of mitigation from the Project-specific EPPs. These studies must be completed for all areas not assessed during the EIA. A number of studies recommended by the TMEP Facilities Application will be carried out by Stó:lō personnel within S'ólh Téméxw prior to final project design. These include: a. Detailed wetland surveys of Cheam Wetland, Hope Slough, Wahleach Slough, Aitchelitz/Luckakuck/Chilliwack Creek Wetlands, and the Vedder Canal b. In the Hope to Burnaby segment 49 locations were identified for additional wetland survey in 2014 (Table 6.1-1) Supplemental field surveys planned for 2014. Stó:lō will review survey plans and participate in these surveys. c. Centerline survey of native vegetation areas within the ICA study area to ground-truth predictions made in this ICA and identify project areas that may require special management (i.e. restricted clearing, slash treatments, access controls etc.)	1624	Trans Mountain will discuss funding for additional vegetation studies with the Stó:lō representatives.		40 (Rare Ecological Community and Rare Plant Population Management Plan) 41 (Wetland Survey and Mitigation Plan) 72 (Pipeline Environmental Protection Plan) 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation*. Site-specific information for wetlands and other areas potentially affected by the project could inform implementation of effective mitigation measures. Condition #40 (Rare Ecological Community and Rare Plant Population Management Plan) and #41 (Wetland Survey and Mitigation Plan) applies to all wetlands potentially affected by the Project. The condition includes components of the 23 a) and b) Stó:lō recommendation. For example, supplementing survey results to demonstrate the overall adequacy of wetland surveys and/or providing a rationale were surveys were not completed. The condition also requires TMC to describe how Indigenous knowledge was considered in implementation of	Addressed

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								the condition as well as opportunities for Indigenous groups to review and comment on TMC's plan. With respect to Stó:lō's 23 c) recommendation, Condition #155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan) includes consideration of available Indigenous knowledge in developing the Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan and providing opportunities to review and comment on the plan. ECCC notes that the Province of British Columbia may also be interested in discussing the recommendation. It is recommended that Stó:lō work with TMC and Province. ECCC would also be interested in being involved in these discussions, as they related to the departments mandate and areas of expertise. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's interest in conducting additional field surveys on wetlands and vegetation within their traditional territory, given the importance of wetlands and vegetation to traditional use activities, such as hunting, gathering, and fishing. While studies were conducted on vegetation and wetlands through	

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								the NEB process, the Crown recognizes that the ICA report identified information gaps. Some of these gaps may be addressed through NEB conditions, as mentioned by ECCC. For example, the wetland survey and mitigation plan (Condition #41) requires supplementary surveys of wetlands directly or indirectly affected by the project. The Crown notes that through Commitment #1624, TMC has committed to discuss funding for additional vegetation studies with Stó:lō representatives. In addition, as part of the Phase III consultations, the Crown is prepared to commit to fund additional studies that would be undertaken following issuance of a CPCN, either through existing or new funding programs. This research could assist in a better understanding of the cumulative effects of development within Stó:lō traditional territory, including the contributions of this project. As part of ongoing dialogue in Phase III, the Crown requests further details on the studies that Stó:lō representatives would like to undertake, including a high level description of their scope, duration, intended outcome, and estimated costs, for discussion.	

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24	Oversight and Reporting	Forestry, Wetland, Vegetation	The results of these studies [identified in commitment 23] will be reported to Stó:lō leadership and incorporated into Project planning, including the EPPs and the Environmental Alignment Sheets	896	Please refer to the response to Recommendation 2.		40 (Rare Ecological Community and Rare Plant Population Management Plan) 41 (Wetland Survey and Mitigation Plan) 72 (Pipeline Environmental Protection Plan) 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)	<u>Environment and Climate Change Canada</u> Reporting results and incorporating results into plans including the EPP and alignment sheets has been required as part of the NEB conditions. Condition #72 requires the EPP to be comprehensive and include all environmental protection procedures, mitigation measures and monitoring commitments. The EPP must incorporate updates to alignment sheets and also requires TMC to provide opportunities for Indigenous groups to review and comment on the plan. It is recommended that Stó:lō work with TMC to identify preferred communication methods to support these reviews and comment periods. Should concerns be identified, it is recommended TMC and the NEB be notified. <u>Natural Resources Canada</u> The Crown is supportive of Stó:lō representatives engaging in additional studies as needed to better understand effects to their traditional use activities. As mentioned by ECCC, TMC will be required to incorporate Aboriginal traditional land use and traditional ecological knowledge in to its Pipeline Environmental Protection Plan,	Addressed

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								which will include TMC's alignment sheets. As noted in response to Recommendation #23, the Crown is prepared as part of the Phase III consultations to commit to fund additional studies that would be undertaken following issuance of a CPCN, and is seeking to meaningfully engage on the scope of work for those studies. Any studies undertaken via this commitment would be led by Stó:lō representatives through funding provided via a grants and contributions program, therefore no impediment would exist to providing the results to leadership.	
25	Additional Studies	Forestry, Wetland, Vegetation	The Wetland Evaluation Technical Report (TMEP Facility Application, Volume 5C) indicated that through a review of the stormwater requirements for the Sumas Terminal, it was determined that there will likely be an incremental increase in volume of stormwater discharge. Stormwater at the Sumas Terminal is discharged into a wet area to be a potential shrubby swamp associated with an ephemeral drainage. This area will be further evaluated in 2014. Stó:lō representatives will participate in this study.	896	Please refer to the response to Recommendation 2.		41 (Wetland Survey and Mitigation Plan)	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the Migratory Birds Convention Act (MBCA), Species at Risk Act (SARA), as well as on its lead role in providing guidance on implementation of the Federal Policy on Wetland Conservation. Condition #41 (Wetland Survey and Mitigation Plan) requires TMC to describe how Indigenous knowledge was considered as part of the plan and to provide	Addressed

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								opportunities for review and comment on the plan. It is recommended that Stó:lō and TMC work to identify opportunities for participate in the development of plans including opportunities to participate in studies. The Province of British Columbia may also be interested in discussing the recommendation. It is recommended that Stó:lō work with TMC and the province to explores opportunities for participation in studies. ECCC would also be interested in being involved in these discussions, as they related to the departments mandate and areas of expertise. <u>Natural Resources Canada</u> The Crown notes that under Commitment #896, TMC has committed to working in partnership with the Stó:lō Collective to develop a series of workshops to discuss questions and address concerns, which TMC must implement through the NEB recommended Condition #2. NEB Condition #41 would require TMC to develop a Wetland Survey and Mitigation Plan that would describe supplementary survey results and a demonstration of the overall adequacy of wetland surveys. As part of this plan, TMC must provide a description of how Aboriginal traditional land use	

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								and traditional ecological knowledge was taken in to consideration in developing the plan, and provide a summary of consultation with Aboriginal groups, including how any recommendations were incorporated. Furthermore, as noted above, the Crown is prepared as part of the Phase III consultations to commit to fund additional Stó:lō-led studies that would be undertaken following issuance of a CPCN, either through existing or new funding programs. As part of ongoing dialogue in Phase III, the Crown requests further details on the studies Stó:lō would like to undertake, including a high level description of their scope, duration, intended outcome, and estimated costs, for discussion.	
26	Monitoring	Forestry, Wetland, Vegetation	The Wetland Evaluation Technical Report (TMEP Facility Application, Volume 5C, Table 5.2-2) states: "Aboriginal Monitors will be onsite through the construction of commissioning of the of the Project will work with environmental inspector to provide traditional knowledge to the construction program to ensure protection of the environment; to discuss upcoming traditional and western science elements with the environmental inspector to insure protection and monitoring; and to monitor mitigation success in protecting the environment." While it is agreed that Stó:lō representatives will be on-site during construction , Stó:lō will determine how knowledge is shared with environmental	1622	Please refer to the response to Recommendations 13 and 14.		98 (Plan for Aboriginal group participation in construction monitoring) 41 (Wetland Survey and Mitigation Plan)	<u>Environment and Climate Change Canada</u> Many of the NEB conditions require TMC to describe how Indigenous knowledge has been incorporated into project plans, and include opportunities for Indigenous groups to review and comment on these plans. Condition #41 (Wetland Survey and Mitigation Plan) requires TMC to describe how Indigenous knowledge was considered as part of the plan and to provide opportunities for review and comment on the plan. It is	Addressed

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			inspectors. To date the approach Kinder Morgan and their consultants have taken to consider and integrate traditional knowledge has been unacceptable and inappropriate					recommended that Stó:lō and TMC work to identify opportunities for participate in the development of plans including opportunities to participate in studies. Condition #98 (Plan for Aboriginal group participation in construction monitoring) requires TMC to submit a plan prior to construction describing participation by Aboriginal groups in monitoring activities during construction for the protection of traditional land and resource use. The condition requires the scope, methodology, and justification for monitoring activities to be undertaken by TMC and each participating Aboriginal group identified including those elements of construction and geographic locations that will involve Aboriginal Monitors. It is recommended that Stó:lō work with TMC to determine the preferred method for sharing and protecting Indigenous knowledge. <u>Natural Resources Canada</u> The Crown notes that the Stó:lō representatives and TMC will need to establish a bilateral protocol for how information is shared between the Aboriginal construction monitors and TMC's environmental field team. The Crown is open to sharing examples from federal government departments on how	

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								sensitive Indigenous traditional knowledge can be shared in a way that respects the confidentiality of the information, while ensuring that it is factored into planning and decision-making.	
27	Additional Studies	Forestry, Wetland, Vegetation	Should the TMEP be approved, Stó:lō representatives will undertake a centerline survey of native vegetation areas within the ICA study area to identify special management areas where Project clearing will be avoided. These areas will be marked prior to construction in the field and recorded on construction environmental alignment sheets in addition to the clearing/mowing restrictions associated with watercourse/wetland/lake boundary sensitive environmental features and buffer areas.	1624	Please refer to the response to Recommendation 23.		40, 155 (Rare Ecological Community and Rare Plant Plan) 41 (Wetland Survey and Mitigation Plan) 98 (Plan for Aboriginal group participation in construction monitoring)	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation*. Condition #98 (Plan for Aboriginal group participation in construction monitoring) requires TMC to submit a plan prior to construction describing participation by Aboriginal groups in monitoring activities during construction for the protection of traditional land and resource use. The condition requires the scope, methodology, and justification for monitoring activities to be undertaken by TMC and each participating Aboriginal group identified including those elements of construction and geographic locations that will involve Aboriginal Monitors.	Addressed

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								TMC is required and has committed to work with interested Indigenous groups to satisfy conditions (e.g. #40, #155 and #41) and to ensure available Indigenous traditional land use and traditional ecological knowledge has been considered in developing environmental plans. Many of these conditions also require TMC to provide interested Indigenous groups with an opportunity to review and comment. Prior to construction, it is recommended that TMC and Stó:lō discuss survey methods and measures that could be applied to avoid, mitigate, monitor, correct and offset impacts to traditional land and resource uses, as required by condition #98. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's interest in conducting additional field surveys on native vegetation within their traditional territory in order to identify special management areas to avoid. The Crown notes that	

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								through Commitment #1624, TMC has committed to discuss funding for additional vegetation studies with the Stó:lō representatives. Furthermore, as noted above, the Crown is prepared as part of the Phase III consultations to commit to fund additional studies that would be undertaken following issuance of a CPCN, either through existing or new funding programs. As part of ongoing dialogue in Phase III, the Crown requests further details on the studies that Stó:lō representatives would like to undertake, including a high level description of their scope, duration, intended outcome, and estimated costs, for discussion.	
28	Mitigation	Forestry, Wetland, Vegetation	Further avoidances include: a. Reduce RW clearing width within [old growth management areas] (OGMAs) b. Confine all pre-clearing/mowing and general clearing activities within the staked/flagged construction right-of-way boundaries. c. Restrict root grubbing to the trench line, if feasible, to minimize surface disturbance and encourage re-sprouting/natural regeneration of deciduous trees and shrubs. d. Conduct native seed collection for use in revegetation efforts at the site e. Consider employing appropriate salvage, propagation and transplant techniques for culturally significant species.	896	Please refer to the response to Recommendation 2.		76 (Old Growth Management Areas Mitigation and Replacement Plan) 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)	<u>Environment and Climate Change Canada</u> ECCC notes that as part of the Caribou Habitat Restoration Plan (Condition #37) and other conditions, TMC is required to describe measures to avoidance, mitigation, and offset impacts. Prior to construction, it is recommended that TMC and Stó:lō discuss survey methods and measure to avoid, mitigate, monitor, correct and offset traditional land and resource uses, as required by Condition #98. It is recommended TMC work	Partially addressed

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								with Stó:lō and provide opportunities to participate in the development of these plans including opportunity to participate in the surveys. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> Under commitment #896, TMC has committed to hosting a series of workshops, as agreed upon by TMC and Stó:lō representatives for communities represented by the Stó:lō Collective. The workshops will be designed to facilitate open conversation between members of communities represented by Stó:lō Collective, subject-matter experts and Trans Mountain representatives regarding the potential impacts of the Project on Aboriginal rights, title and interests and their traditional and cultural use of the land. Through ongoing dialogue as part of Phase III consultations, and beyond, the Crown looks forward to engaging on whether its issues and concerns relating to impacts on s. 35 rights have been addressed. The Crown looks forward to upcoming meetings	

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								where this can be explored further.	
29	Additional Studies	Forestry, Wetland, Vegetation	Prior to clearing any OGMAs Stó:lō will be given the opportunity to survey the area and determine if any cedar should be salvaged.	1625	If clearing in Old Growth Management Areas (OGMAs) within the S'ólh Téméxw becomes an approved construction requirement, Trans Mountain will discuss Stó:lō's desire to salvage cedar with the OGMA regulator and the terms for commercial harvest will be negotiated.		76 (Old Growth Management Areas Mitigation and Replacement Plan)	<u>Environment and Climate Change Canada</u> TMC has committed to engage with Stó:lō on the request for salvaged cedar. Condition #76 requires TMC to implement avoidance and mitigation measures, provide details on post-construction monitoring including corrective actions, etc. The condition includes a requirement to provide summaries of consultations with Indigenous groups including justification for how this consultation informed the Old Growth Management Areas Mitigation and Replacement Plan. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown recognizes that cedar is an important resource and ceremonial material for Stó:lō people, and that access to cedar harvesting areas is important to Stó:lō culture.	Addressed

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								Under Commitment #1625, if clearing in Old Growth Management Areas (OGMAs) within the S'ólh Téméxw becomes an approved construction requirement, TMC will discuss Stó:lō's desire to salvage cedar with the OGMA regulator and the terms for commercial harvest will be negotiated.	
30	Funding for Stó:lō programs	Forestry, Wetland, Vegetation	Habitat restoration and enhancement projects as determined by Stó:lō representatives.	896	Please refer to the response to Recommendation 2.		44 (Widlife Species at Risk Mitigation and Habitat Restoration Plans) 92 (Updates under the Species at Risk Act) 71 (Riparian Habitat Management Plan) 92 (Updates under the Species at Risk Act) 96 (Reports on Engagement with Aboriginal Groups) 154-157 (riparian habitat, rare ecological community and rare plant populations, wetlands, and grasslands plans)	<u>Fisheries and Oceans Canada</u> DFO currently administers grants and contribution programs that Stó:lō member nations can choose to parcipate in (e.g., the Coastal Restoration Fund and Canada Nature Fund for Aquatic Species) to help restore or enhance fish habitat. <u>Environment and Climate Change Canada</u> DFO currently administers grants and contribution programs that Stó:lō member nations can choose to partcipate in (e.g., the Coastal Restoration Fund) to help restore or enhance fish habitat. Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the Migratory Birds Convention Act (MBCA), Species at Risk Act (SARA), as well as on	Addressed

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								its lead role in providing guidance on implementation of the Federal Policy on Wetland Conservation. Condition #92 (Updates under the Species at Risk Act) requires TMC to describe how available and applicable Indigenous traditional land use and traditional ecological knowledge has been considered, including demonstration that those Indigenous persons and groups that provided Indigenous traditional land use information and traditional ecological knowledge, had the opportunity to review and comment on the information. Condition #71 (Riparian Habitat Management Plan) and Condition #154 (Riparian Habitat Reclamation Evaluation Report and Offset Plan) require TMC to description of how Trans Mountain has taken available and applicable Indigenous traditional land use and traditional ecological knowledge into consideration and to provide a summary of consultations. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be	

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								interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's interest in participating in habitat restoration and enhancement activities within their traditional territory. NEB conditions have been identified that would require TMC to produce plans to reclaim, mitigate, and offset effects to wildlife species at risk, riparian habitat, rare ecological community and rare plant populations, wetlands, and grasslands (see Conditions #44, 154-157). These conditions require TMC to provide a description of how applicable Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing each report/plan. As noted above, the Crown is prepared as part of the Phase III consultations to commit to fund additional studies that would be undertaken following issuance of a CPCN, either through existing or new funding programs. In addition, as noted above, the Crown seeks to engage with Stó:lō representatives on the developing of a new DFO-led process to address habitat restoration projects that would be developed specifically for	

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								Indigenous groups potentially impacted by the project.	
31	Funding for Stó:lō programs	Forestry, Wetland, Vegetation	Improvements to access and infrastructure in support of gathering as determined by Stó:lō representatives.	1626	Trans Mountain will provide updated maps to Stó:lō representatives to illustrate existing and new accesses required to support pipeline construction.		40 (Rare Ecological Community and Rare Plant Population Management Plan) 41 (Wetland Survey and Mitigation Plan) 47 (Access Management Plans) 72 (Pipeline Environmental Protection Plan) 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)	<u>Environment and Climate Change Canada</u> Condition #47 requires TMC to have an Access Management Plan (s) and this plan must description of how TMC has taken available and applicable Indigenous traditional land use and traditional ecological knowledge studies into consideration. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges Ts'exlweyeqw's request for improvements to access and infrastructure in support of gathering in order to offset potential impact to opportunities for traditional plant gathering by clearing native vegetation areas, changing vegetation community composition, limiting access, or as a result of contamination. NEB Condition #47 requires TMC	May be addressed - More info/discussion required

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								to justify any area subject to access control, including during the construction and operational phases of the Project. To limit the impact on Aboriginal groups, the Access Management Plan includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of its access management plan. There are also a number of conditions that require TMC to manage, mitigate, and/or offset effects to vegetation that could result from the project. The Crown would like to discuss the types of access improvements and infrastructure that are envisioned, and better understand how they would address project-related impacts.	
32	Mitigation	Forestry, Wetland, Vegetation	Clearing of Himalayan blackberry during construction in locations determined by Stó:lō representatives.	896	Please refer to the response to Recommendation 2.		45 (Weed and vegetation management plan)	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation.*	May be addressed - More info/discussion required

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								Condition #45 requires TMC to describe and justification how TMC incorporated the results of its consultations, including any recommendations into its weed and vegetation management plan. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō Collective's concerns regarding effects to native vegetation species, and their concerns regarding the spread of invasive species like Himalayan blackberry. Condition #45 requires TMC to develop a weed and vegetation management plan in consultation with potentially affected Aboriginal groups that describes how weeds would be managed, including a decision-making framework that is relevant to specific habitat uses, land uses, and management plans. The Crown would like to discuss	

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								any concerns regarding a potential increase in invasive weed species that could result from the project.	
33	Funding for Stó:lō programs	Forestry, Wetland, Vegetation	TMEP to fund the development and operation of businesses and or greenhouses that can be used to propagate native plants.	1627	Trans Mountain welcomes the opportunity to discuss the development and operation of businesses and or greenhouses that can be used to propagate native plants.		145 (Community Benefits Program progress reports)	<u>Environment and Climate Change Canada</u> Funding of businesses and greenhouses is not traditionally part of an eligible expense as part of a departmental funding program. ECCC would be interested in discussing this request further to determine if funding opportunities are available. <u>Natural Resources Canada</u> The Crown notes that TMC has responded to this recommendation through TMC Commitment #1624, in which TMC welcomes the opportunity to discuss the development and operation of businesses or greenhouses that can be used to propagate native plants. TMC must implement this commitment through NEB Condition #2. The Crown notes that NEB Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. In addition, there are NEB conditions that address training and education in relation to the project.	Addressed

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								Through ongoing dialogue as part of Phase III consultations, and beyond, the Crown looks forward to engaging on whether issues and concerns relating to impacts on s. 35 rights have been addressed. This recommendation does not appear directly linked to s. 35 rights, however the Crown looks forward to upcoming meetings where this can be explored further.	
34	Funding for Stó:lō programs	Forestry, Wetland, Vegetation	TMEP to facilitate new land designations to protect future Stó:lō harvesting activities as determined by Stó:lō representatives.		Trans Mountain is not able to facilitate new land designations to protect future Stó:lō harvesting activities as determined by Stó:lō representatives.			<u>Environment and Climate Change Canada</u> Land designations for traditional purposes are not within the department's authority. The Province of British Columbia may have an interest in this recommendation. <u>Natural Resources Canada</u> The Crown notes that this recommendation points to an outcome that appears to be outside the scope of this project review and Crown consultation process. As part of ongoing Phase III Crown consultation, and beyond, the Crown seeks to better understand the underlying interest within this recommendation, including how this recommendation relates to potential impacts on its s. 35 rights resulting from the project.	Not addressed
35	Additional Studies	Forestry, Wetland, Vegetation	Should the TMEP be approved, Stó:lō representatives will participate in the pre-construction weed survey to identify weed	128	Trans Mountain will discuss the opportunity for Stó:lō participation in pre-construction weed surveys.		45 (Weed and vegetation management plan)	<u>Environment and Climate Change Canada</u> Environment and Climate	May be addressed - More

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			problem areas and make recommendations to control weeds at this site and/or limit their spread during construction.					Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation*. Condition #45 requires TMC to describe and justification how TMC incorporated the results of its consultations, including any recommendations into its weed and vegetation management plan. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges NEB Condition #45, that requires TMC to produce a weed and vegetation management plan. The management plan must include a summary of TMC's consultations with Aboriginal	info/discussion required

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								groups in relation to the plan, and how the results of its consultation, including any recommendations from those consulted, were incorporated in to the plan. The Crown notes TMC has committed to discuss the opportunity for Stó:lō participation in pre-construction weed surveys as part of Commitment 128. In addition, as part of ongoing Phase III consultation, the Crown looks forward to discussing how this recommendation should be addressed.	
36	Mitigation	Forestry, Wetland, Vegetation	Stó:lō prefer that no herbicides are used in S'ólh Téméxw. However, if herbicides are used for problem vegetation management along the construction right-of-way, TMEP will restrict the application of herbicide within 30 m of known traditional plant populations. Spot spraying, wicking, mowing or hand-picking are acceptable weed control measures in proximity to traditional harvesting areas should be discussed with Stó:lō prior to any applications in S'ólh Téméxw.	896, 224	Please refer to the response to Recommendation 2.		45 (Weed and vegetation management plan)	<u>Environment and Climate Change Canada</u> Health Canada has the mandate to protect human health, safety and the environment by minimizing risks associated with pesticides and herbicides. Condition #45 requires TMC to describe the potential adverse effects related to treatment measures and a description and justification for how TMC incorporated the results of its consultation, including any recommendations from those consulted. It is recommended that Stó:lō raise this concern and the application recommendations with TMC, including the request to limit the application of herbicides in areas in close	May be addressed - More info/discussion required

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								proximity to known traditional plant populations. <u>Natural Resources Canada</u> Under Commitment #224, TMC will continue to engage Stó:lō representatives through all phases of the Project, and to discuss the opportunity for Stó:lō participation and input into the planned monitoring scheduled. Condition #45 would require TMC to produce a weed and vegetation management plan. The management plan must include a summary of its consultations with Aboriginal groups in relation to the plan, and how the results of its consultation, including any recommendations from those consulted, were incorporated in to the plan. In addition, as part of ongoing Phase III consultation, the Crown looks forward to discussing the status of this recommendation and TMC's commitment.	
37	Oversight and Reporting	Forestry, Wetland, Vegetation	Prior to any herbicide application, TMEP will send notices to all Stó:lō Representatives informing them what treatment is required, where treatments will be, when treatments will occur and any other pertinent information. Notices will be send 30 days in advance of any herbicide treatment.	1629	Trans Mountain will provide advance notification of planned herbicide application to the Stó:lō representatives.		45 (Weed and vegetation management plan)	<u>Environment and Climate Change Canada</u> Health Canada has the mandate to protect human health, safety and the environment by minimizing risks associated with pesticides and herbicides. Condition #45 requires TMC to describe the potential adverse effects related to treatment	Addressed

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								measures and a description and justification for how TMC incorporated the results of its consultation, including any recommendations from those consulted. It is recommended that Stó:lō raise this concern with TMC to determine opportunity for early notification prior to any herbicide use. <u>Natural Resources Canada</u> The Crown understands that TMC, as part of Commitment #1629, has committed to providing advance notification regarding planned herbicide application to Stó:lō representatives. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.	
38	Monitoring	Forestry, Wetland, Vegetation	Stó:lō representatives will monitor the effectiveness of re-vegetation efforts at intervals over a 5 year period (e.g., years 1, 3 and 5 following completion of reclamation).	224	Trans Mountain will continue to engage Stó:lō representatives through all phases of the Project. Vegetation monitoring is part of the Post Construction Environmental Monitoring (PCEM) program and vegetation re-establishment will be compared to a similar reference plant community located adjacent to, or within, the vicinity of the construction right-of-way and pre-construction conditions. Discuss the opportunity for Stó:lō participation and input into the planned monitoring scheduled .		151 (Post-Construction Environmental Monitoring Reports) 154, 155, 156, 157 (riparian habitat/wetland/grassland reclamation evaluation report and offset plan)	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal*	May be addressed - More info/discussion required

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								Policy on Wetland Conservation. ECCC notes the TMC commitment, and TMC will be required to engage with Stó:lō representatives through all phases of the Project. TMC will need to develop a plan to incorporate Indigenous monitors in supporting environmental compliance, and that the company will need to provide opportunities for Indigenous monitors to work onsite through the construction to decommissioning of the Project. TMC will also need to incorporate traditional knowledge in environmental management plans to ensure protection of the environment, traditional sites and resources, and to monitor mitigation success. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> Under Commitment #224, TMC will continue to engage Stó:lō representatives through all phases of the Project, and to	

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								discuss the opportunity for Stó:lō participation and input into the planned monitoring scheduled. With respect to post-construction monitoring and remediation, Condition #151 would require TMC to report on post-construction environmental monitoring, including any corrective action taken. In addition, Conditions #154-157 would require TMC to report on the mitigation, reclamation, and/or offsetting planned for different environments that could be affected by the project. As part of post-construction monitoring and the reclamation plans, TMC must report on consultations with potentially affected Aboriginal groups. However, the Crown appreciates Stó:lō's interest in active participation in monitoring activities. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment.	
39	Monitoring	Forestry, Wetland, Vegetation	Vegetation post-construction monitoring (PCM) will identify any areas where remedial measures should be implemented to assist with the recovery of vegetation resources.	224	Please refer to the response to Recommendation 38.		96 (Reports on Engagement with Aboriginal Groups) 151 (Post-Construction	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species	May be addressed - More info/discussion required

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							Environmental Monitoring Reports) 154, 155, 156, 157 (riparian habitat/wetland/grassland reclamation evaluation report and offset plan)	at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation.* ECCC notes the TMC commitment to and will be required to engage with Stó:lō representatives through all phases of the Project. TMC will need to develop a plan to incorporate Indigenous monitors in supporting environmental compliance, and that the company will need to provide opportunities for Indigenous monitors to work onsite through the construction to decommissioning of the Project. TMC will also need to incorporate traditional knowledge in environmental management plans to ensure protection of the environment, traditional sites and resources, and to monitor mitigation success. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this	

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								recommendation. <u>Natural Resources Canada</u> Under Commitment #224, TMC will continue to engage Stó:lō representatives through all phases of the Project, and to discuss the opportunity for Stó:lō participation and input into the planned monitoring scheduled. With respect to post-construction monitoring and remediation, Condition #151 would require TMC to report on post-construction environmental monitoring, including any corrective action taken. In addition, Conditions #154-157 would require TMC to report on the mitigation, reclamation, and/or offsetting planned for different environments that could be affected by the project. As part of post-construction monitoring and the reclamation plans, TMC must report on consultations with potentially affected Aboriginal groups. However, the Crown appreciates Stó:lō's interest in active participation in monitoring activities. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment.	

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40	Monitoring	Forestry, Wetland, Vegetation	Stó:lō representatives will monitor OGMs [old growth] to see if actual construction footprints vary from planned construction activities	1622	Please refer to the response to Recommendation 13.		76 (Old Growth Management Areas Mitigation and Replacement Plan) 98 (Plan for Aboriginal group participation in construction monitoring)	<u>Environment and Climate Change Canada</u> Environment and Climate Change Canada has a role in providing advice and recommendations related to migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation.* Condition #76 requires TMC to implement avoidance and mitigation measures, provide details on post-construction monitoring including corrective actions, etc. The condition includes a requirement to provide summaries of consultations with Indigenous groups including justification for how these consultation informed the Old Growth Management Areas Mitigation and Replacement Plan. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation.	May be addressed - More info/discussion required

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								Natural Resources Canada The Crown understands that TMC`s plan for satisfying Condition #98 includes a commitment to involve the Stó:lō Collective as monitors, and that this commitment will need to evolve to include Ts'elxwéyeqw Tribe in light of the Tribe`s decision to move forward in their engagement on the project outside of the Stó:lō Collective. TMC`s latest filing relating to Condition #98 from June 16 2017 is available on the NEB website: https://apps.neb-one.gc.ca/REGDOCS/Item/View/3298142 The Crown notes that under Condition #76, TMC would be required to implement an old growth management area mitigation and replacement plan that prioritized avoidance of these areas above mitigation or offsetting. TMC would be required to provide a summary of consultations with Aboriginal groups as part of this plan, including how any recommendations were incorporated.	
41	Monitoring	Forestry, Wetland, Vegetation	Stó:lō representatives will monitor the topsoil and other soil piles for weed growth frequently during the growing season and will make recommendations related to proactive measures to control weed growth.	1622	Please refer to the response to Recommendation 13.		45 (weed and vegetation management plan) 98 (Plan for Aboriginal group	Environment and Climate Change Canada Environment and Climate Change Canada has a role in providing advice and recommendations related to	Addressed

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							participation in construction monitoring) 151 (Post-construction environmental monitoring reports)	migratory birds, wildlife (species at risk), and wetlands based on departmental responsibilities under the *Migratory Birds Convention Act* (MBCA), *Species at Risk Act* (SARA), as well as on its lead role in providing guidance on implementation of the *Federal Policy on Wetland Conservation.* Conditions #45, #98 and #151 all require TMC to consultation with Indigenous groups with respect to environmental, weed and vegetation management plans. Condition #45 requires TMC to have an updated Weed and Vegetation Management Plan for the Project and for this plan to be informed by consultations with potentially affected Indigenous groups. Condition #98 requires TMC to identify opportunities for Indigenous groups to participation in monitoring activities and Condition #151 requires TMC to provide a summary of its consultations with potentially affected Aboriginal groups as part of post-constructed environmental monitoring reports. It is recommended that Stó:lō and TMC engage in discussions related to this recommendation. The Province of British Columbia may also be interested in discussing the recommendation. When linked to an area within	

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								ECCC mandate as describe above, ECCC would be interested in participating in discussions related to this recommendation. <u>Natural Resources Canada</u> The Crown acknowledges NEB Condition #45, that requires TMC to produce a weed and vegetation management plan. The management plan must include a summary of its consultations with Aboriginal groups in relation to the plan, and how the results of its consultation, including any recommendations from those consulted, were incorporated in to the plan. The Crown understands that TMC's plan for satisfying Condition #98 includes a commitment to involve the Stó:lō Collective as monitors, and that this commitment will need to evolve to include Ts'elxwéyeqw Tribe in light of the Tribe`s decision to move forward in their engagement on TMX outside of the Stó:lō Collective.  TMC`s latest filing relating to Condition #98 from June 16 2017 is available on the NEB website: https://apps.neb-one.gc.ca/REGDOCS/Item/View/3298142	

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42	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Change the proposed TMEP alignment to avoid impacts to a number of cultural landscape features.	896	Please refer to the response to Recommendation 2.		7 (Environmental and socio-economic assessment - route re-alignments) 104 (Updated engineering alignment sheets and drawings)	Natural Resources Canada The Crown understands that the Integrated Cultural Assessment and Cultural Heritage Overview Assessment identified potentially impacted culturally sensitive sites to be taken into consideration by NEB while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Aboriginal interests. The existing routing was approved by the NEB, taking a wide range of environmental and socio-economic considerations into account, as well as an examination of alternative route options. The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. The Access Management Plan would include requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of its access management plan. As part of ongoing Phase III	May be addressed - More info/discussion required

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								consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment.	
43	Mitigation	Safety and Emergency Response	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Remediate the landscape within S'ólh Téméxw, immediately in the response to a spill/leak.	1631	In the event of a spill in S'ólh Téméxw, Stó:lō representation will be invited to participate in Unified Command as part of the Incident Command Structure (ICS).		12 (Training and Education Monitoring Program) 58 (Training and Education Monitoring Reports) 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program) 119 (Emergency Preparedness and Response Exercise and Training Program)	<u>Natural Resources Canada</u> The NEB conditions require TMC to develop an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency. The company's management system and processes must also be evident in its emergency management program. An emergency management program must include: • the identification and analysis of potential hazards; • the evaluation and management of risks associated with all hazards • an up-to-date emergency procedures manual that is filed with the NEB • liaising with agencies that may be involved in an emergency situation • taking all reasonable steps to inform all persons who may be associated with an emergency response activity on the pipeline of the practices and procedures to be followed • having a continuing education program for the police, fire departments, medical facilities, other appropriate organizations	Addressed

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								and agencies and the public residing adjacent to the pipeline to inform them of the location of the pipeline, potential emergency situations and the safety procedures to be followed in case of an emergency • procedures for the safe control or shutdown of the pipeline system in the event of an emergency • sufficient response equipment • training to instruct employees on the emergency procedures and emergency equipment • a verifiable capability to respond to an emergency demonstrated through emergency response exercises. If an incident does occur, the NEB will verify that there is adequate and appropriate clean-up and full remediation of any environmental effects resulting from the incident. The company must conduct, to NEB's satisfaction, a complete clean-up and remediation of any adverse environmental effects. Under commitment #1631, Stó:lō representation would be invited to participate in the Unified Command as part of the Incident Command Structure. Details regarding the ICS are available here: https://www.transmountain.com/incident-command-system	

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44	Mitigation	Socio-Cultural	MEP will undertake the following mitigations in collaboration with Stó:lō representatives: Minimize visual, auditory, and other sensory impacts, particularly along access routes and proximity to cultural/spiritual use areas and sites.	1633	Trans Mountain is open to discussing a Stó:lō-specific construction communication plan or a community liaison.		74 (HDD Noise Management Plan) 80 (Noise Management Plan for Construction at Terminals and Pump Stations) 96 (Reports on Engagement with Aboriginal Groups) 102 (landowner and tenant complaint process/system) 141 (post-construction noise surveys)	Indigenous Services Canada This is primarily a concern during construction. TMC and their contractor to engage with Stó:lō representatives prior to construction and collectively develop a plan to minimize impact on cultural sites and access roads. Natural Resources Canada The Crown acknowledges Stó:lō's concerns regarding sensory effects from the project in areas of traditional use. TMC has committed to mitigating noise and other forms of sensory disturbance to communities by adhering to the BC Oil and Gas Commission's *Noise Control Best Practices Guideline,* ensuring that all construction equipment is well-maintained, and by implementing a 1-hr idling time-limit for vehicles and equipment in above-freezing conditions. TMC also intends to reduce visual and light disturbances through vegetation buffers and lighting control systems. The Crown notes that there are a number of conditions that would require TMC to monitor and manage noise levels during construction and operations. Condition #102 would require TMC to implement a landowner and tenant complaint process/system that could be utilized by Stó:lō members to	Addressed

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								ensure any noise-related issues are addressed by TMC.	
45	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Recognize place names (project maps, signs, fencing)	1634	Trans Mountain will recognize places names (such as on Project maps, signs and fencing) during the construction of the Project.			Natural Resources Canada The Crown recognizes the importance of place names in maintaining the integrity of sacred places within Stó:lō territory. The Crown notes that under Commitment #1634, TMC has committed to recognizing place names. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment.	May be addressed - More info/discussion required
46	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Adhere to seasonal or time constraints for scheduling construction near spiritual sites	896	Please refer to the response to Recommendation 2.		47 (Access Management Plan) 62 (Construction schedule) 74 (HDD Noise Management Plan) 80 (Noise Management Plan for Construction at Terminals and Pump Stations) 96 (Reports on Engagement with Aboriginal Groups) 102 (landowner and tenant complaint process/system)	Natural Resources Canada The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan. In addition to access management, there are a number	May be addressed - More info/discussion required

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							141 (post-construction noise surveys)	of conditions that would require TMC to monitor and manage noise levels during construction and operations to reduce sensory disturbance. Furthermore, Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction. As part of ongoing Phase III consultation, the Crown looks forward to hearing from the Stó:lō representatives and TMC as to the status of this recommendation.	
47	Oversight and Reporting	Implementation	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Notify Stó:lō representatives key project milestones	896, 1613	Please refer to the response to Recommendation 2.		62 (Construction schedule)	Natural Resources Canada The Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement, and that this will include mechanisms for ongoing communications and notifications. The Crown notes that Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to	May be addressed - More info/discussion required

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								the status of this recommendation and commitment.	
48	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Place protective fencing around specific areas that can potentially be damaged	896	Please refer to the response to Recommendation 2.		47 (Access Management Plan) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups)	Natural Resources Canada The Crown understands that the Integrated Cultural Assessment and Cultural Heritage Overview Assessment identified potentially impacted culturally sensitive sites to be taken into consideration by NEB while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Aboriginal interests. The NEB has established conditions which would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. The Access Management Plan would include requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of its access management plan. The Crown also notes TMC has committed to respond to this recommendation at Commitment 896, which it is mandated to	Addressed

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								implement through NEB recommended Condition #2.	
49	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Put up signage to ensure that specific areas will not be entered by public or by construction crews.	1635	Trans Mountain will develop and implement an environmental education program to ensure that all personnel working on the construction of the Project are informed of the location of known Traditional Land Use (TLU) sites.		47 (Access Management Plan) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups)	Natural Resources Canada The Crown understands that the Integrated Cultural Assessment and Cultural Heritage Overview Assessment identified potentially impacted culturally sensitive sites to be taken into consideration by NEB while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Aboriginal interests. The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan. The Crown also notes TMC has committed to develop and implement an environmental education program to ensure that all personnel working on the construction of the Project are	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								informed of the location of known Traditional Land Use sites (Commitment #1635). TMC is mandated to implement through NEB recommended Condition #2.	
50	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Establish barriers to prohibit increased public and crew access to cultural areas, while maintaining Stó:lō access.	896, 1635	Please refer to the response to Recommendation 48 and 49.		48 (Access Management Plan) 72 (Pipeline Environmental Protection Plan) 96 (Reports on Engagement with Aboriginal Groups)	Natural Resources Canada The Crown understands that the Integrated Cultural Assessment and Cultural Heritage Overview Assessment identified potentially impacted culturally sensitive sites to be taken into consideration by NEB while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Aboriginal interests. The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan. The Crown also notes TMC has committed to develop and implement an environmental	Addressed

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								education program to ensure that all personnel working on the construction of the Project are informed of the location of known Traditional Land Use sites (Commitment #1635). TMC is mandated to implement through NEB recommended Condition #2.	
51	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Refer to fishing section regarding for further recommendations regarding water, water quality, and protection of activities directly linked to the spirituality of Stó:lō community members and spiritual practitioners.		Response not provided			<u>Fisheries and Oceans Canada</u> DFO defers to Trans Mountain to respond to this recommendation, as the request from Stó:lō is directed to Trans Mountain. Should DFO issue a Fisheries Act authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.). Through consultations, DFO may include conditions within potential *Fisheries Act* authorization(s) that may address Stó:lō representatives concerns regarding fish and fish habitat that may be linked to the spirituality of Stó:lō community members and spiritual practitioners. <u>Natural Resources Canada</u> The Crown refers here to the relevant responses to fisheries recommendations.	May be addressed - More info/discussion required

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								As part of ongoing Phase III consultation, the Crown looks forward to discussing the status of this recommendation.	
52	Mitigation	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Implement mitigation measures to effectively avoid or minimize impacts on the economic processes (production, distribution, consumption, and reproduction) tied to activities supporting spiritual practices, e.g. fishing, hunting, gathering, manufacturing of cultural items etc.	1622	Please refer to the response to Recommendation 13.			<u>Fisheries and Oceans Canada</u> DFO defers to Trans Mountain to respond to this recommendation, as the request from Stó:lō is directed to Trans Mountain. Should DFO issue a Fisheries Act authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.). Through consultations, DFO may include conditions within potential *Fisheries Act* authorization(s) that may address Stó:lō representatives concerns regarding fish and fish habitat that may be linked to the spirituality of Stó:lō community members and spiritual practitioners. <u>Natural Resources Canada</u> The Crown refers to the relevant responses that address the mitigation of effects to cultural and spiritual sites and practices, as well as those recommendations related to	May be addressed - More info/discussion required

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								fishing, hunting, gathering, and manufacturing of cultural items. The Crown would like to further discuss specific mitigations for impacts on economic processes that are tied to activities supporting spiritual practices. As part of ongoing Phase III consultation, the Crown looks forward to discussing the status of this recommendation.	
53	Training and capacity building	Environment - general	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Establish infrastructure and capacity for Stó:lō to implement on-going processes of air and water quality monitoring.	272	Trans Mountain welcomes the opportunity to discuss the establishment of infrastructure and capacity for Stó:lō to implement on-going processes of air and water quality monitoring.		98 (Plan for Aboriginal group participation in construction monitoring) 52 (Air emissions management plan for Westridge Marine Terminal) 113 (Hydrostatic Testing Plan) 130 (Groundwater Monitoring Plan)	<u>Natural Resources Canada</u> The Crown notes TMC has committed to discussing the establishment of infrastructure and capacity for Stó:lō to implement ongoing processes of air and water quality monitoring. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment. In addition, the Crown is interested in exploring with Stó:lō representatives the creation of a federal Cumulative Effects Initiative (CEI) following issuance of a CPCN. The CEI would be co-developed with Indigenous groups, federal departments, and provincial ministries. The CEI would involve the creation of a new body to gather and share traditional and western scientific knowledge on key ecological issues, and to monitor changes in	May be addressed - More info/discussion required

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								order to develop an understanding of ongoing cumulative effects, including the contribution of this project.	
54	Training and capacity building	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Establish infrastructure and capacity for Stó:lō heritage resource management technical involvement as construction monitors, to ensure protection of sites, and to ensure Stó:lō practices are maintained (as described below)	332	Trans Mountain welcomes the opportunity to discuss infrastructure and capacity for Stó:lō heritage resource management technical involvement as construction monitors, to ensure protection of sites, and to ensure Stó:lō practices are maintained.	B8	98 (Plan for Aboriginal group participation in construction monitoring) 100 (Heritage Resources)	Natural Resources Canada Under commitment #332, TMC has committed to discuss infrastructure and capacity for Stó:lō heritage resource management technical involvement as construction monitors, to ensure protection of sites, and to ensure Stó:lō practices are maintained. Condition #98 (Plan for Aboriginal group participation in construction monitoring) requires TMC to submit a plan prior to construction describing participation by Aboriginal groups in monitoring activities during construction for the protection of traditional land and resource use. The condition requires the scope, methodology, and justification for monitoring activities to be undertaken by TMC and each participating Aboriginal group identified including those elements of construction and geographic locations that will involve Aboriginal Monitors. TMC`s latest filing relating to Condition #98 from June 16 2017 is available on the NEB website: https://apps.neb-one.gc.ca/REGDOCS/Item/View/3298142	Addressed

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55	Funding for Stó:lō programs	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Integration of and support for Stó:lō spiritual work as may be required throughout the construction and operation processes (e.g. ground breaking ceremonies, purification ceremonies, offerings to ancestors etc.)	896	Please refer to the response to Recommendation 2.		145 (Community Benefits Program Progress Reports)	Natural Resources Canada As part of Commitment #896, TMC has committed to working in partnership with Stó:lō to develop a series of workshops to discuss questions and address concerns, including issues mitigating or offsetting effects to cultural and spiritual practices. The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. As part of ongoing Phase III consultation, the Crown looks forward to discussing the status of this recommendation and commitment.	May be addressed - More info/discussion required
56	Training and capacity building	Socio-Cultural	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Establish infrastructure and capacity for Stó:lō to implement security related to monitoring access of spiritual and cultural sites, posting and maintaining signage, and preventing vandalism to sites, landmarks, and signage.	3589	Trans Mountain will have security in place to reduce the risk of vandalism in and around work sites. Trans Mountain welcomes the opportunity to learn about Stó:lō member security companies with this capacity. It is currently planned that the Contractors selected to complete the work will be hiring or otherwise providing subcontractors to secure the work-site during and after hours, including office complexes, equipment, etc.	47.1 (safety management)	12 (Training and Education Monitoring Plan) 63 (Security Management Programs)	Natural Resources Canada The Crown notes TMC has committed to have security in place to reduce the risk of vandalism in and around work sites. TMC welcomes the opportunity to learn about Stó:lō member security companies with this capacity. Under the Onshore Pipeline Regulations, TMC must develop, implement and maintain a security management program that anticipates, prevents, manages and mitigates	May be addressed - More info/discussion required

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								conditions that could adversely affect people, property or the environment. The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment.	
57	Training and capacity building	Safety and Emergency Response	TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Implement Stó:lō training for emergency response in case spills in accordance with 17.2.4 [recc. 18, 19, 20]	1615	Please refer to the response to Recommendation 7.		12 (Training and Education Monitoring Program) 58 (Training and Education Monitoring Reports)	<u>Natural Resources Canada</u> The Crown understands that under Commitment #1615, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency	May be addressed - More info/discussion required

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							90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program) 119 (Emergency Preparedness and Response Exercise and Training Program)	Response presentation for Stó:lō representatives.. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition to TMC's commitment, the NEB conditions would require TMC to report on consultation on improvements to its Emergency Management Program prior to commencing construction, and describe how commitments made during consultations would be incorporated in to the program and response plans. In addition, as part of ongoing dialogue in Phase III consultations, the Crown looks forward to further exploring the topic of emergency preparedness and response.	
58	Funding for Stó:lō programs	Socio-Cultural	TMEP will fund cultural programs listed in Section 15 [of the ICA]; for example: a. Salish Weaving & Sewing classes - Weekly sessions throughout the year b. Cedar Bark Gathering - Seasonal session in the spring c. Traditional Herbs & Tea Gathering - seasonal session typically in the fall d. Cedar Weaving - twice a year in the spring and the fall	1639	Trans Mountain welcomes the opportunity to discuss funding for cultural programs and events		145 (Community Benefits Program Progress Reports)	Natural Resources Canada Under Commitment #1639, TMC has committed to discussing funding for cultural programs and events. The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. As part of ongoing Phase III consultations, and beyond, the Crown is keen to work with Stó:lō	May be addressed - More info/discussion required

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								representatives to connect them with existing federal funding programs that could be accessed to address this recommendation, and - where no existing federal funding program exists or is available - to identifying whether funding could be provided through a new program.	
59	Funding for Stó:lō programs	Socio-Cultural	TMEP will fund cultural events listed in Section 13 [of the ICA]: for example: a. Cultus Lake Water Sports and War Canoes Races b. Seabird Island Annual Festival	1639	Trans Mountain welcomes the opportunity to discuss funding for cultural programs and events		145 (Community Benefits Program Progress Reports)	Natural Resources Canada Under Commitment #1639, TMC has committed to discussing funding for cultural programs and events. The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. As part of ongoing Phase III consultations, and beyond, the Crown is keen to work with Stó:lō representatives to connect them with existing federal funding programs that could be accessed to address this recommendation, and - where no existing federal funding program exists or is available - to identifying whether funding could be provided through a new program.	May be addressed - More info/discussion required
60	Oversight and Reporting	Traffic Management	The TMEP will file with the Stó:lō and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction an Access Management Plan for S'ólh Téméxw, the plan will include:	1640	Trans Mountain will engage with Stó:lō representatives prior to commencing construction to discuss any potential issues in regard to the Traffic and Access Control Management Plan (TACMP):		47 (Access Management Plans) 73 (Traffic Control Plans for Public Roadways)	Natural Resources Canada Condition #73 would require TMC to develop a traffic control plan for public roadways that includes information regarding the timing and location of key construction	Addressed

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			a. Maps of routes which are going to be used for transportation of workers and materials. b. Details of the strategy for providing bussing or some other form of worker transport management for construction workers, between the accommodation locations and the construction site. c. Traffic supervision plans during construction to identify any access routes that have higher than predicted traffic and/or delays and the adaptive management plan that TMEP will use to adjust access routes. d. Traffic safety education program for TMEP employees and contractors about acceptable driving behaviour in S'ólh Téméxw e. Schedules for the trucking of heavy loads to avoid peak traffic times and heavily-used intersections. f. Management plan to prohibit no-construction parking/staging areas along key access routes to Big houses, boat launches, trailheads near bathing sites.		a) Routes will be included for construction access. b) Bussing or other worker transport management for construction workers - To be determined upon completion of the detailed engineering and construction, to be part of the proposed TACMP. c) Traffic supervision plans during construction to identify any access routes that have higher than predicted traffic and/or delays - Refer to b. d) Acceptable driving behaviour in S'ólh Téméxw - Minimum standards will be part of the TACMP for personnel driving Project related vehicles which will be a part of the TACMP or the Health and Safety Management Plan for the Project. The Health and Safety Management Plan will be filed with the NEB as per Draft Condition 38, 90 Days prior to the start of construction. e) Schedules for the trucking of heavy loads to avoid peak traffic times and heavily-used intersections. - Refer to b. f) The TACMP (or sub-plans as developed by the Contractor selected for construction) will prohibit no-construction parking/staging areas along key access routes to Big houses, boat launches, trailheads near bathing sites.			activities, anticipated traffic volumes and flows, and an assessment of potential impacts associated with construction-related traffic, and mitigation measures. TMC would be required to provide a summary of its consultations with potentially affected Aboriginal groups, including how any recommendations were incorporated in to the plan. The Crown notes that under Commitment #1640, TMC has committed to engage with Stó:lō representatives prior to commencing construction to discuss any issues in regard to the Traffic and Access Control Management Plan. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō representatives and TMC as to the status of this recommendation and commitment.	

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61	Oversight and Reporting	Socio-Cultural	The TMEP will submit to Stó:lō and NEB for approval (or disapproval and/or amendment) the Worker Accommodation Strategy (TMEP Facility Application. Volume 6B, Application C, Section 8.4.4). The Worker Accommodation Strategy will include: a. A Plan for meeting with Stó:lō representatives and holding community meetings at least 6 months prior to arrival of construction teams in S'ólh Téméxw to inform Stó:lō people about construction activities, construction/work schedule, work force estimates, construction code of conduct, complaint procedure, potential safety issues, dates of future meetings, contact details of community liaison staff and construction hub locations. b. A plan to schedule construction activities so that there are no construction crews in Stó:lō communities that are holding key cultural events, as described in the Inter-nation Gatherings Section. c. A plan to ensure the temporary workers are not using rental housing in the study area and for monitoring short-term rental rates in the three hub communities and strategies to ensure any higher rental costs are not born by Stó:lō people.		Consultation regarding the Worker Accommodation Strategy. Trans Mountain will submit to the NEB a Worker Accommodation Strategy as discussed in Volume 6B, Appendix C, Section 8.4.4 and discussed in the August 2014 response. Worker accommodation plans are not yet finalized; they continue to be developed during the detailed design and construction planning phase. Based on construction starting in May 2016, Trans Mountain anticipates the Worker Accommodation Strategy will be filed in November 2015. The Worker Accommodation Strategy will address all of the requirements of NEB Draft Condition 12 (Filing ID A3V8Z8), including the location of any temporary camps, the anticipated number of workers that will be housed, and will include a summary of how the plan addresses accommodation-related concerns or requests raised in consultation with municipal and provincial authorities. Trans Mountain can provide guidance on worker accommodation but will not be able to limit worker rental of local accommodations.		59 (Worker Accommodation Strategy) 62 (Construction schedule) 102 (Landowner and Tenant Complain Process/System)	Natural Resources Canada Condition #59 would require TMC to provide the NEB with information regarding the locations of temporary worker camps, the number of workers, and any policies, mitigation, or operational plans that will be implemented at least three months prior to commencing construction. Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction. The Crown notes that TMC is likely to have more current information about how issues related to worker accommodations are being managed, and looks forward to upcoming technical working group meetings where information can be shared, with a view to addressing the recommendation.	May be addressed - More info/discussion required
62	Monitoring	Forestry, Wetland, Vegetation	TMEP will fund Stó:lō representatives to carry out a pre-construction centerline survey of native vegetation areas within the ICA study area to identify project areas that may require special management for wildlife (i.e. gaps in overburden piles to facilitate wildlife passage, restricted clearing, alternate slash treatments for small mammal habitat, access controls etc.)	1642	Trans Mountain will discuss additional surveys or commitments with employment or procurement with Sto:lo representatives.		40 (Rare Ecological Community and Rare Plant Population Management Plan) 42 (grasslands survey and mitigation plan) 44 (Wildlife Species at Risk Mitigation	Natural Resources Canada The Crown acknowledges the importance of the terrestrial environment, including native vegetation, in providing habitat for wildlife. There are a number of NEB conditions that focus on monitoring and addressing effects to terrestrial environments. Under Commitment #1642, TMC	May be addressed - More info/discussion required

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							and Habitat Restoration Plans) 96 (Reports on Engagement with Aboriginal Groups) 98 (Plan for Aboriginal group participation in construction monitoring) 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan) 71 (Riparian Habitat Management Plan) 151 (Post construction environmental monitoring reports)	has committed to discuss additional surveys or commitments related to employment or procurement with Stó:lō representatives. TMC must implement this commitment through Condition #2. The Crown understands that TMC`s plan for satisfying Condition #98 includes a commitment to involve the Stó:lō Collective as monitors, and that this commitment will need to evolve to include Ts'elxwéyeqw Tribe in light of the Tribe`s decision to move forward in their engagement on TMX outside of the Stó:lō Collective. Also, as noted above, the Crown is prepared as part of the Phase III consultations to commit to fund additional studies that would be undertaken following issuance of a CPCN, either through existing or new funding programs. As part of ongoing dialogue in Phase III, the Crown requests that Stó:lō representatives provide further details on the studies they would like to undertake, including a high level description of their scope, duration, intended outcome, and estimated costs, for discussion.	
63	Mitigation	Implementation	TMEP will implement the mitigation measures reference throughout the ICA, this would help address many of the concerns Stó:lō has about TMEP and would illustrate that TMEP understands and recognizes the importance of Stó:lō having a voice in developments taking place in S'ólh Téméxw.		Please see responses to each specific Recommendation within this table.			<u>Natural Resources Canada</u> The Crown concurs with the goal of implementing a mitigation and Accommodations program that will help address many of the concerns Stó:lō has about the project, and will recognizes the	

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								importance of Stó:lō having a voice in developments taking place in S'ólh Téméxw.	
64	Mitigation	Socio-Cultural	TMEP will collaborate with Stó:lō representatives on how to engage in a process of dialogue that recognizes and respects Stó:lō governance structures. This would include: a. Respect for Stó:lō snoweyelh and policy included, for example, in the Stó:lō Heritage Policy and S'ólh Téméxw Use Plan; b. Recognize and respect Stó:lō worldview and potential impacts by addressing cumulative impacts and negative outstanding, historical effects and infringements of existing pipeline and right-of-way; c. Recognize, respect and participate in traditional decision making protocols and practices; d. Capacity support for the re-establishment of these protocols and practices within Stó:lō communities	896, 1613	Please refer to the response to Recommendations 2 and 4.			Natural Resources Canada Under Commitment #896, TMC has committed to hosting a series of workshops, as agreed upon by TMC and Stó:lō representatives, for communities represented by the Stó:lō Collective. TMC will structure the workshops to facilitate open conversation between members of communities represented by Stó:lō Collective, subject-matter experts and Trans Mountain representatives regarding many of the recommendations included within this document and the potential impacts of the Project on Aboriginal rights, title and interests and their traditional and cultural use of the land and marine environment. In partnership with Stó:lō representatives, Trans Mountain has also committed to developing a mutually agreeable process for continued engagement. Under Condition #2, TMC must implement these commitments. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō and TMC as to the status of this recommendation and commitment. The Crown is also interested in engaging with Stó:lō representatives in a way that respects traditional governance,	May be addressed - More info/discussion required

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								and looks forward to ongoing meaningful two-way dialogue as part of Phase III consultations, and beyond.	
65	Mitigation	Socio-Cultural	As part of the Work Accommodation Strategy (TMP Application. Vol. 6B, App C, Section 8.4.4) listed in the TMEP Application, the TMEP will: a. Work with Stó:lō representatives to identify the dates of key cultural and spiritual internation gatherings, and schedule construction activities around those dates. (For example, the Project will plan the construction schedule so that construction workers are not using hotels in the Chilliwack area during the days that the Cultus Lake Water Sports and War Canoe Races are held. This would reduce the pressure on hotels during this inter-nation gathering.) b. The TMEP construction schedule will be finalized 6 months prior to commencing construction and shared with Stó:lō representatives at that time. This would allow Stó:lō representatives enough time to share this information with their people prior to the internation gatherings.	1643	Trans Mountain is committed to working with Stó:lō representatives to minimize scheduling conflicts and requests that key dates are provided to Trans Mountain six months prior to construction for the inclusion in final construction planning.		62 (Construction schedule) 96 (Reports on Engagement with Aboriginal Groups)	Natural Resources Canada The Crown notes that Condition #62 requires TMC to file with the NEB, at least 3 months prior to commencing construction, a construction schedule identifying the major construction activities expected and, on a monthly basis, on the first working day of each calendar month from the commencement of construction until after commencing operations, updated detailed construction schedules. These schedules will be publicly available on the NEB's website. Under Commitment #1643, TMC is committed to working with Stó:lō representatives to minimize scheduling conflicts and requests that key dates are provided to TMC six months prior to construction for the inclusion in final construction planning. TMC has further committed to provide these schedules, alignment sheets, and other reference material 90 days prior to the start of construction. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō and TMC as to the status of this recommendation and commitment.	Addressed

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66	Mitigation	Traffic Management	As part of the Access Control Management Plan (TMEP Facility Application. Volume 6B, Section 8.4.4, Appendix C) listed in the TMEP Application, the TMEP will: a. Provide bussing or some other form of worker transport management for construction workers, between the accommodation locations and the construction site. b. Schedule the trucking of heavy loads to avoid peak traffic times and heavily-used intersections c. Prohibit construction parking/staging areas along key access routes to Bighouses, boat launches, trailheads near bathing sites. Refer to Sections 9.0: Travel Corridors and Section 7.0: Spiritual Areas for more specific recommendations related to these features	91	Trans Mountain is committed to the Traffic Mitigation Measures as part of the Socio-Economic Mitigation and Enhancement measures outlined in the TMEP Facility Application (Volume 6B, Section 8.4.3, Appendix C). Trans Mountain will continue engagement with Stó:lō on this recommendation, but this recommendation requires Stó:lō representatives to identify necessary, supporting information 4 months prior to construction.		47 (Access Management Plans) 73 (Traffic Control Plans for Public Roadways)	Natural Resources Canada Condition #73 would require TMC to develop a traffic control plan for public roadways that includes information regarding the timing and location of key construction activities, anticipated traffic volumes and flows, and an assessment of potential impacts associated with construction-related traffic, and mitigation measures. TMC would be required to provide a summary of its consultations with potentially affected Aboriginal groups, including how any recommendations were incorporated in to the plan. The Crown notes that under Commitment #91, TMC has committed to engage with Stó:lō representatives prior to commencing construction to discuss any issues in regard to the Traffic and Access Control Management Plan. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō and TMC as to the status of this recommendation and commitment.	Addressed
67	Employment and procurement	Economic and Community Development	Three key mitigations that are referenced further below are based on a commitment by TMEP to: a. Have approximately 20% to 30% of their workforce in Hope, Chilliwack and Abbotsford be Stó:lō members; for both construction and	3580	Trans Mountain is committed to maximizing Aboriginal procurement opportunities with the Project. Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss opportunities related to procurement.		11 (Aboriginal, local, and regional skills and business capacity inventory) 12 (Training and Education	Natural Resources Canada The Crown recognizes that employment and training opportunities associated with the Project are key benefits for Indigenous individuals, communities and businesses.	Not addressed

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			operation phases or equivalent value in community investment or training. Note: this is 20% to 30% of the overall workforce in the three hubs, not 20% to 30% of the 10% local hires that TMEP indicated. b. Offer equity ownership option in the TMEP to Stó:lō First Nations, based on the value of the Project within S'ólh Téméxw, or the equivalent value in other financial opportunities. c. Of the contracting and procurement opportunities for businesses in S'ólh Téméxw, approximately 20% to 30% of the total contracted amount would go to Stó:lō companies for both construction and operation or equivalent value in community investment or training.				Monitoring Plan) 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)	Under Commitment #3580, TMC has committed to continue its engagement with Aboriginal, local and regional communities to develop training, employment and procurement opportunities for the Project. In order to provide information to the NEB, local communities, and Indigenous groups about the final development and implementation of such initiatives, Condition #12 would require TMC to develop a training and education monitoring plan, and to report on Aboriginal, local and regional training and education measures and opportunities for the Project (Condition #58). In addition, Condition #107 requires TMC to file a report on Aboriginal, local and regional employment and business opportunities for the Project throughout the construction period. The Crown understands that while TMC has committed to maximizing Indigenous procurement and employment opportunities, that some of the aspects of this recommendation are beyond TMC's ability to ensure or provide (e.g. quotas in terms of Stó:lō employment and procurement, or equity in the project). As part of ongoing Phase III consultation, the Crown looks forward to engaging with Stó:lō in	

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								a meaningful dialogue on these issues, with the goal of - if not meeting them fully - addressing, where possible, the underlying interests that inform the recommendation.	
68	Employment and procurement	Economic and Community Development	In addition to the TransMountain Training Policy for Aboriginal People and the Aboriginal Procurement Policy, the TMEP must file with the Stó:lō and NEB, for approval (or disapproval and/or amendment) , at least 12 months prior to commencing construction, an Aboriginal skills and business capacity inventory in S'ólh Téméxw for the Project. The inventory will include: a. A summary of Stó:lō's worker skills and business capacity, including a definition of what qualifies as a Stó:lō business; b. An analysis of the ability of Stó:lō companies and workers to meet TMEP employment and business opportunities for the Project, both during construction and operation; c. A description of identified or potential skills and business capacity gaps between Stó:lō companies and workers capacity and the skills and services needed by TMEP. d. TMEP will describe specific measures to address the gap, through support or increase skills or capacity development (including details of timing of training programs, funding provided by TMEP, locations, etc.); and e. Plans for communicating with Stó:lō workers and companies regarding skills and business capacity, any identified gaps, and any proposed measures to support or increase skills or capacity. f. TMEP will file with Stó:lō representatives and NEB, at least 6 months prior to commencing construction, any updates on the	1645	Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss opportunities related to procurement.		11 (Aboriginal, local, and regional skills and business capacity inventory) 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)	Natural Resources Canada Condition #11 would require the TMC to submit an Aboriginal, local, and regional skills and business capacity inventory at least six months prior to commencing construction. It would include a summary of Aboriginal, local, and regional skills and business capacity, an analysis of the Aboriginal, local and regional capacity for employment and business opportunities for the Project, a description of identified or potential skills and business capacity gaps, any proposed measures to address them or to support or increase skills or capacity, and communications plans for this information. In addition, Condition #11 would require TMC to file ongoing reports on Aboriginal, local, and regional employment and business opportunity monitoring reports, which would include summaries of consultation with Aboriginal groups regarding any issues or concerns related employment and business opportunities, and how TMC has addressed and responded to them.	Addressed

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			above mitigations.					The Crown notes that under Commitment #1645, TMC has committed to continued engagement with Stó:lō representatives to discuss opportunities related to procurement, which TMC must implement through the NEB recommended Condition #2.	
69	Employment and procurement	Economic and Community Development	TMEP will file with Stó:lō and NEB, for approval (or disapproval and/or amendment) , at least 3 months prior to commencing construction, a plan for monitoring Aboriginal, local, and regional employment for the Project. The plan will include: a. a description of, and rationale for selecting, the elements or indicators that will be monitored to track Aboriginal employment, including those specific to tracking progress toward meeting commitment of 20% to 30% per cent Aboriginal employment for the three hubs in S'ólh Téméxw (Hope, Chilliwack and Abbotsford); b. a description of, and rationale for selecting, the elements or indicators that will be monitored to track Stó:lō contracting and procurement for the Project, including those specific to tracking progress toward meeting commitment of 20% to 30% per cent procurement for Stó:lō businesses, or the three hubs in S'ólh Téméxw (Hope, Chilliwack and Abbotsford) c. the monitoring methods and schedule, including information and data sources for the elements or indicators being monitored; and d. plans for consulting and reporting on Aboriginal employment and contracting and procurement with Stó:lō.	1646	Trans Mountain will discuss the opportunity to develop community-specific approaches to consult on, and share information related to, the outcomes of the Aboriginal, local and regional employment and business opportunities monitoring. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes.		11 (Aboriginal, local, and regional skills and business capacity inventory) 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)	Natural Resources Canada Condition #11 would require the TMC to submit an Aboriginal, local, and regional skills and business capacity inventory at least six months prior to commencing construction. It would include a summary of Aboriginal, local, and regional skills and business capacity, an analysis of the Aboriginal, local and regional capacity for employment and business opportunities for the Project, a description of identified or potential skills and business capacity gaps, any proposed measures to address them or to support or increase skills or capacity, and communications plans for this information. In addition, Condition #11 would require TMC to file ongoing reports on Aboriginal, local, and regional employment and business opportunity monitoring reports, which would include summaries of consultation with Aboriginal groups regarding any issues or concerns related employment and business	Partially addressed

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								opportunities, and how TMC has addressed and responded to them. The Crown notes that under Commitment #1646, TMC has committed to discuss the opportunity to develop community-specific approaches to consult on, and share information related to, the outcomes of the Aboriginal, local and regional employment and business opportunities monitoring. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes. The Crown understands that while TMC has committed to maximizing Indigenous procurement and employment opportunities, that quotas in terms of Stó:lō employment and procurement may be beyond TMC's ability to provide.	
70	Employment and procurement	Economic and Community Development	TMEP will file with Stó:lō and NEB, within 3 months after commencing construction, and every 12 months thereafter through construction and during the operation of the Project, monitoring reports for Aboriginal employment and procurement for the Project within S'ólh Téméxw. The reports must include: a. a summary of the elements or indicators monitored; b. a summary and analysis of Aboriginal employment and procurement during the	3570	In addition to an agreement between Stó:lō and Trans Mountain to create a Project-specific economic development strategy, Trans Mountain will engage directly with Stó:lō representatives during each Aboriginal, local and regional business opportunities monitoring cycle. Trans Mountain will develop a summary of business opportunities (based on the monitoring indicators) specific to the Stó:lō communities. Trans Mountain		11 (Aboriginal, local, and regional skills and business capacity inventory) 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)	<u>Natural Resources Canada</u> Condition #11 would require the TMC to submit an Aboriginal, local, and regional skills and business capacity inventory at least six months prior to commencing construction. The inventory would include a summary of Aboriginal, local, and regional skills and business capacity, an analysis of the Aboriginal, local and regional	Partially addressed

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			reporting period, including: c. progress made toward meeting TMEP commitment of 20% to 30% Stó:lō employment and 20% to 30% of procurement contracts for the three hubs in S'ólh Téméxw; d. an explanation of why the targets for Stó:lō employment and procurement, if they are not met, e. the proposed measures to address identified or potential gaps or barriers in meeting the targets; and f. a summary of TMEP consultation with Stó:lō regarding employment and contracting for the reporting period. This summary must include any issues or concerns raised and how TMEP has addressed or responded to them.		will discuss each Stó:lō-specific Aboriginal, local and regional business opportunity monitoring outcome with Stó:lō representatives, as part of the mutually agreed upon engagement strategy, and identify any new opportunities to further enhance business opportunities for Stó:lō members.			capacity for employment and business opportunities for the Project, a description of identified or potential skills and business capacity gaps, any proposed measures to address them or to support or increase skills or capacity, and communications plans for this information. In addition, Condition #11 would require TMC to file ongoing reports on Aboriginal, local, and regional employment and business opportunity monitoring reports, which would include summaries of consultation with Aboriginal groups regarding any issues or concerns related employment and business opportunities, and how TMC has addressed and responded to them. The Crown notes that under Commitment #3570, TMC has committed to engage directly with Stó:lō representatives during each Aboriginal, local and regional business opportunities monitoring cycle. TMC will develop a summary of business opportunities (based on the monitoring indicators) specific to the Stó:lō communities. TMC will also discuss each Stó:lō-specific Aboriginal, local and regional business opportunity monitoring outcome with Stó:lō representatives, as part of the mutually agreed upon engagement strategy, and identify any new opportunities to	

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								further enhance business opportunities for Stó:lō members. The Crown understands that while TMC has committed to maximizing Indigenous procurement and employment opportunities, that quotas in terms of Stó:lō employment and procurement may be beyond TMC's ability to provide.	
71	Oversight and Reporting	Economic and Community Development	TMEP must file with the Stó:lō and NEB, within 6 months after commencing construction a plan on how the TMEP will work with Stó:lō businesses to ensure their existing business activities are not negatively impacted by the construction or operation of the TMEP. This will include: a. Details on TMEP contracting for services S'ólh Téméxw b. In collaboration with Stó:lō representatives , an analysis of any changes in service contracting costs for Stó:lō businesses and the influence that TMEP has on these changes. c. TMEP strategies for mitigating any effect they have. d. The plan will be updated every 6 months during construction and every 12 months thereafter through operations.	356	During the construction phase, Trans Mountain will discuss any unanticipated adverse effects on Stó:lō businesses related to the construction of the Project during the mutually agreed to on-going engagement between Stó:lō and Trans Mountain. Additional mitigation will be developed, as required, if and as such adverse effects are identified.		13 (Socio-Economic Effects Monitoring Plan) 96 (Reports on Engagement with Aboriginal Groups)	Natural Resources Canada The Crown notes that TMC has responded to this recommendation through Commitment #356. TMC has committed to discuss any unanticipated adverse effects on Stó:lō businesses related to the construction of the Project during the mutually agreed to on-going engagement between Stó:lō and TMC. Additional mitigation will be developed, as required, if and as such adverse effects are identified. TMC must implement through the NEB recommended Condition #2. In addition, Condition #13 would require TMC to develop a socio-economic effects monitoring plan in consultation with potentially affected Aboriginal groups. The socio-economic effects monitoring plan could monitor any effects on Stó:lō businesses.	Addressed
72	Oversight and Reporting	Safety and Emergency Response	TMEP will file with the Stó:lō and NEB, within 3 months after commencing construction, and every 12 months thereafter through operations, a report, in collaboration with		Please see responses to each specific Recommendation within this table.		13 (Socio-Economic Effects Monitoring Plan)	Indigenous Services Canada TMC to provide reports to Stó:lō during the construction period and ongoing operations of the	May be addressed - More

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			Stó:lō representatives, reports on Stó:lō economic activities such as forestry, fisheries, agriculture and tourism. The report will highlight: a. Updates on the TMEP and BC's budget for environmental emergency programs (annual spill prevention, compliance and management budgets). Explaining how TMEP is funding gaps between government spill response abilities under B.C.'s Environmental Emergency Program b. In collaboration with Stó:lō representatives , an analysis of any changes in service contracting costs for Stó:lō businesses and the influence that TMEP has on these changes. c. TMEP strategies for mitigating any effect they have. d. The plan will be updated every 6 months during construction and every 12 months thereafter through operations.					pipeline. a. Emergency Management BC budget breakdown between various sectors, Wildfires, flooding, landslides, droughts, hazardous materials, etc. will require detailed discussions between various stakeholders to address potential budgetary shortfalls in hazardous materials sectors. Stakeholders participating in these discussions should be Stó:lō, TMC, NEB, EMBC, ISC, Fisheries, MOE, and others. b, c, d - TMC to discuss these items with Stó:lō representatives and provide details on options <u>Natural Resources Canada</u> The Crown understands that Stó:lō is concerned that the project could limit existing economic activities being pursued (including agriculture, fishing, forestry, cultural tourism, service companies). The Crown notes that Condition #13 would require TMC to develop a socio-economic effects monitoring plan in consultation with potentially affected Aboriginal groups. The socio-economic effects monitoring plan could monitor any effects on Stó:lō businesses. As part of ongoing Phase III consultation, the Crown looks forward to hearing from Stó:lō	info/discussion required

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								representatives to better understand this recommendation.	
73	Oversight and Reporting	Safety and Emergency Response	Details on how TMEP will ensure that Stó:lō economic activities will be compensated should the Project be deemed responsible for any lost production, damage to equipment or remediation work required as a result of TMEP activities, a leak or a spill.	3832	Should businesses experience lost revenue as a direct result of the construction or operations of the Trans Mountain Expansion Project, Trans Mountain would intend to employ 'actual loss' compensation for any reductions in revenue caused by the construction and operation of the pipeline.		121 (Financial Assurances Plan - Operations Phase)	Indigenous Services Canada TMC and Stó:lō representatives should identify Stó:lō economic activities currently underway that may be impacted by the expansion project and begin planning mitigation strategies/response in the event there is negative impact on these activities. Natural Resources Canada The Crown recognizes that an oil spill within Stó:lō traditional territory could negatively affect economic activities, including agriculture, fishing, forestry, tours, and other businesses. The Pipeline Safety Act, which first came in to effect in June 2016, addresses companies' responsibilities in relation to a spill. Key aspects of this legislation include: • Introducing absolute liability for all NEB-regulated pipelines, meaning that companies will be liable for costs and damages irrespective of fault — $1 billion for companies operating major oil pipelines — the only absolute liability that exists among our peer jurisdictions (U.S., the UK and Australia). Companies continue to have unlimited liability when at fault or negligent. • Providing the NEB authority to	Addressed

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								order reimbursement of any clean-up costs incurred by governments, communities or individuals. • Providing the NEB authority and resources to take control of incident response if a company is unable or unwilling to do so (i.e., in exceptional circumstances); and • Requiring companies operating pipelines to hold a minimum level of financial resources, set at $1 billion for companies operating major oil pipelines. Condition #121 would require TMC to file a Financial Assurances Plan with NEB six months prior to applying for leave to open Line 2. The plan must include details of the financial resources and secured sources of funds that will be necessary to pay, without limitation, all actual loss or damage, costs and expenses, including cleanup and remediation, and loss of non-use value relating to non-use of a public resource associated with an unintended or uncontrolled release from the Project during the operations phase. The Financial Assurances Plan includes a requirement for third party liability insurance structured on a multi-year basis, recognizing potential loss of income by persons sustaining damage caused by Trans Mountain, over a reasonable number of years after the event. TMC's Financial	

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								Assurances Plan must provide total coverage of 1.1 billion dollars to cover these costs. This includes unfettered access to at least $100 million to cover costs, including compensation to third parties for losses and damages in the near term, while insurance claims are being processed.	
74	Mitigation	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: A Complaints Registration Plan. This will establish a process by which Stó:lō people can raise complaints or concerns related to TMEP activities or workers. This process will deal with all complaints, such as, concerns about behaviour of TMEP construction workers, while on or off duty. Ensure this process includes protocols for timely follow-up by Trans Mountain and/or its Contractors and transparent issue resolution, and communicate this process to Stó:lō communities.	1650	As noted in section 8.4.11 of the Socio-Economic Management Plan in Appendix C of Volume 6B (Filing ID A3S2S3),Trans Mountain is committed to establishing a process by which community members can raise complaints or concerns related to Project activities or workers. Trans Mountain will ensure this process includes protocols for timely follow-up by Trans Mountain and/or its Contractors and transparent issue resolution. Trans Mountain will communicate this process to communities.		13 (Socio-Economic Effects Monitoring Plan) 96 (Reports on Engagement with Aboriginal Groups) 102 (Landowner and tenant complaint process/system)	Natural Resources Canada The Crown recognizes Stó:lō's interest in having a responsive system to convey concerns or complaints to TMC in order to reduce negative impacts on their communities. Condition #102 requires TMC to confirm that it has created, and will maintain, a process/system that tracks Project-related landowner and tenant complaints or concerns and how TMC has addressed them. There are also a number of conditions that would require TMC to develop a public and Aboriginal communication and complaint response process as part of management plans related to air and noise emissions. Under Commitment #1650, TMC has also committed to establishing a process by which community members can raise complaints or concerns related to Project activities or workers.	Addressed
75	Mitigation	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:	1652, 1653	As discussed in the response to NEB IR No. 1.17d1 (Filing ID A3W9H8), Trans Mountain will develop policies and/or guidance in the following areas, related to limiting adverse interactions		13 (Socio-Economic Effects Monitoring Plan) 59 (Worker	Natural Resources Canada The Crown understands that TMC intends to develop a Project-specific policy pertaining to substance abuse in order to	Addressed

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			An alcohol and substance abuse policy. This policy will be specific to S'ólh Téméxw and would ensure all necessary measures are taken so the construction workforce is drug and alcohol free. The alcohol and substance abuse policy will apply to workers while they are in S'ólh Téméxw, where they are on or off duty. It is imperative there is security and enforcement of policies related to substance and alcohol use and personal conduct by the workforce while in S'ólh Téméxw.		between Project workers and local communities: • the use of local recreational, social, and retail facilities and services, including outdoor recreation areas, in smaller construction hub communities; • the use of local and regional medical and social services. • the use of firearms, hunting, or fishing by Project workers. • after-hours worker conduct. • damage to property. • conduct in parks and protected areas. • respectful behaviour/harassment.		Accommodation Strategy) 64 (Construction Safety Manuals)	maintain a safe and productive work environment for all workers and the public, and to minimize pressure on regional medical, social and police services related to alcohol and drug related incidents. TMC has stated that they will adhere to a policy of no tolerance of use or being under the influence of illicit drugs or alcohol during work hours. The policy will also outline guidance and expectations for workers related to medication which may impair their ability to competently carry out job requirements. Under Commitment #1652, 1653, and #1654, TMC has also committed to implement a Code of Conduct for workers, and to develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and operation of the Project. In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by Trans Mountain, Condition #13 would require TMC to file with the Board a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects	

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								might occur. TMC would also be required to provide a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated.	
76	Mitigation	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: Plans to provide substance and alcohol abuse prevention programs and counselling to non-local workers.	1654	Contractors will be required to adhere to Safety Management Programs and workers will be required to adhere to the employee Code of Conduct which will address substance and alcohol abuse.		14 (Socio-Economic Effects Monitoring Plan) 59 (Worker Accommodation Strategy) 64 (Construction Safety Manuals)	Natural Resources Canada The Crown understands that TMC intends to develop a Project-specific policy pertaining to substance abuse in order to maintain a safe and productive work environment for all workers and the public, and to minimize pressure on regional medical, social and police services related to alcohol and drug related incidents. TMC has stated that they will adhere to a policy of no tolerance of use or being under the influence of illicit drugs or alcohol during work hours. The policy will also outline guidance and expectations for workers related to medication which may impair their ability to competently carry out job requirements. With respect to the provision of substance abuse programs and counselling, TMC has stated that it is not able to require that all contractors provide employee assistance programs. However, TMC has committed to implement a Code of Conduct for workers, and to develop and implement an issues tracking process to monitor and respond to Project-	Addressed

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								related socio-economic issues and opportunities that emerge during construction and operation of the Project. In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by TMC, Condition #13 would require TMC to file a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects might occur. TMC would also be required to provide a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated.	
77	Mitigation	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: Details of a community relations orientation program, that would increase awareness about S'ólh Téméxw and cultural sensitivities for TMEP employees and contractors.	896	Please refer to the response to Recommendation 2.		59 (Worker Accommodation Strategy) 72 (Pipeline Environmental Protection Plan)	Indigenous Services Canada ISC encourages FN administration and their consultants to coordinate community meetings prior to construction activity for major community infrastructure projects. This is an avenue to alert the community members of the upcoming construction and also to announce potential employment opportunities which will be coordinated through the FN's Human Resources department. Recommend TMC and its contractors coordinate similar processes with input from	Addressed

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								Stó:lō representatives. <u>Natural Resources Canada</u> TMC has committed to implement a Code of Conduct for workers, including community awareness training in work orientation sessions. This orientation program would ensure that TMC staff and Contractors and visitors working at or visiting sites will be informed of environmental, socio-economic and community relation requirements and sensitivities regarding the Project prior to arrival on the pipeline construction right-of-way, ancillary sites or associated component sites. TMC has committed to engage with Stó:lō representatives to identify unique cultural and community sensitivities that should be considered in the orientation program for project teams conducting work within Stó:lō traditional territory. In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by Trans Mountain, Condition #13 would require TMC to develop a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								might occur. TMC would also be required to provided a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated. Through ongoing dialogue as part of Phase III consultations, and beyond, the Crown is keen to engage with Stó:lō representatives on whether its issues and concerns relating to impacts on s. 35 rights have been addressed. This recommendation does not appear directly linked to s. 35 rights, however the Crown looks forward to upcoming meetings where this can be explored further.	
78	Mitigation	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: A Code of Conduct for employees and contractors that provides guidance and policies on appropriate and inappropriate worker behaviour and community interactions.	896, 1652, 1653, 1658	Please refer to the response to Recommendations 2 and 75.		59 (Worker Accommodation Strategy)	Natural Resources Canada TMC has committed to implement a Code of Conduct for workers, including community awareness training in work orientation sessions. TMC has also committed to develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and operation of the Project. Furthermore, TMC has committed to develop and present Environmental Orientation to ensure that TMC staff, contractors and visitors working at or visiting sites will be	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								informed of environmental, socio-economic and community relation requirements and sensitivities regarding the Project prior to arrival on the pipeline construction right-of-way, ancillary sites or associated component sites. In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by Trans Mountain, Condition #13 would require TMC to develop a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects might occur. TMC would also be required to provide a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated. Through ongoing dialogue as part of Phase III consultations, and beyond, the Crown is keen to engage on whether issues and concerns relating to impacts on s. 35 rights have been addressed. This recommendation does not appear directly linked to s. 35 rights, however the Crown looks forward to upcoming meetings	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								where this can be explored further.	
79	Mitigation	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: A disease awareness and prevention strategy, which includes: a. Health screening for all personnel, b. Health awareness training for workers including contagious disease and sexually transmitted infections. c. A personal health program for workers including check-ups and immunizations, if required	530, 379	Trans Mountain is committed to ongoing discussion with the Stó:lō Collective about emerging health issues related to the Project.		13 (Socio-economic effects monitoring plan) 59 (Worker Accommodation Strategy)	Natural Resources Canada The Crown acknowledges Stó:lō's concerns regarding the potential for an increase in temporary workers having direct and indirect effects on local communities, including the potential for increases in social problems or community health. TMC has committed to implement a number of measures identified in their socio-economic management plan to address the spread of contagious diseases, including providing access to health services at construction camps, and reporting outbreaks of notifiable infectious diseases in camps to local health authorities. Under commitment #530, TMC has committed to ongoing discussion about emerging health issues related to the project. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. Through ongoing dialogue as part of Phase III consultations, and beyond, the Crown is keen to engage on whether issues and concerns relating to impacts on s. 35 rights have been addressed. This recommendation does not appear directly linked to s. 35 rights, however the Crown looks	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								forward to upcoming meetings where this can be explored further.	
80	Oversight and Reporting	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: Plan and schedule to meet with Stó:lō Nation Health and social services along with communities to discuss the timing of the TMEP, duration of the stay in S'ólh Téméxw, expected number of people coming into S'ólh Téméxw and onsite health care plans. These meetings will need to occur 6 months prior to construction.	383, 379	Trans Mountain has committed to communicating with local health authorities, including the First Nations Health Authority, on the timing of the Project, duration of stay in the local community, expected number of people coming into the area and onsite health care plans.		13 (Socio-economic effects monitoring plan) 59 (Worker Accommodation Strategy) 62 (Construction Schedule)	Natural Resources Canada The Crown understands that TMC has committed to communicate with local health authorities, including the First Nations Health Authority, emergency medical service authorities, social service authorities on the timing of the Project, duration of stay in the local community, expected number of people coming into the area and onsite health care plans. Condition #59 would require TMC to provide the NEB with information regarding the locations of temporary worker camps, the number of workers, and any policies, mitigation, or operational plans that will be implemented at least three months prior to commencing construction. This information would be made publicly available. Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction. Under Commitment #530, TMC has committed to ongoing discussion about emerging health issues related to the project. Under Condition #2 TMC must	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. Through ongoing dialogue as part of Phase III consultations, and beyond, the Crown is keen to engage on whether issues and concerns relating to impacts on s. 35 rights have been addressed. This recommendation does not appear directly linked to s. 35 rights, however the Crown looks forward to upcoming meetings where this can be explored further.	
81	Oversight and Reporting	Community health and well being	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: A plan to continue communication with Stó:lō people as the TMEP progresses [see recommendation #80]. Report outbreaks of notifiable infectious disease in camps to health authorities, as well as, Stó:lō Nation Health and Stó:lō communities.		No action required. As described in the Socio-Economic Monitoring Plan (SEMP) (Volume 6B, Appendix C; Filing ID A3S2S3), Trans Mountain will develop and implement a communication plan for sharing information about key Project construction milestones and information with the general public in affected areas; as well as continue communication and engagement with stakeholders as the Project progresses. Trans Mountain will also develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and reclamation. As discussed in the response to NEB IR No. 1.17d6, as suggested in NEB Draft Condition 11 as outlined in the NEB's Letter – Draft Conditions and Regulatory Oversight (April 16, 2014), this will be called a		13 (Socio-economic effects monitoring plan) 59 (Worker Accommodation Strategy)	<u>Indigenous Services Canada</u> Major construction projects regularly have project review meetings on a weekly/biweekly, monthly basis. The project manager highlights activities completed, activities upcoming, expenditures, job site safety, unforeseen items, delays, change orders, and may also include infectious disease outbreaks. Recommend Stó:lō representatives invited to attend these meetings and distribute information to community members as required. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's concerns regarding the potential for an increase in temporary workers having direct and indirect effects on local communities, and concerns	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
					Socio-Economic Effects Monitoring Program. As part of its ongoing consultation program, Trans Mountain will consult with key stakeholders (e.g., governments, local/regional service providers, Aboriginal communities, municipalities) regarding the socio-economic effects monitoring framework, indicators to be monitored, methods of reporting, and the level of local/regional interest in participating in socio-economic effects monitoring. The monitoring framework and process will then be finalized and shared publically. It is anticipated that the socio-economic effects monitoring framework with include indicators related to community/worker interaction and community health. Any disease outbreak would be reported to regional health authorities as stated in the Socio-Economic Monitoring Plan (Volume 6B, Appendix C, Section 8.4.5 Worker Health; Filing ID A3S2S3). Health authorities have communications strategies in place for reporting disease outbreaks to communities who may be at risk.			regarding the potential for increases in social problems or community health. TMC has committed to implement a number of measures identified in their socio-economic management plan to address the spread of contagious diseases, including providing access to health services at construction camps, and reporting outbreaks of notifiable infectious diseases in camps to local and regional health authorities. These health authorities would communicate relevant health information to communities that may be at risk. The Crown views the responses provided by TMC to this recommendation as sufficient, but looks forward to ongoing dialogue to seek Stó:lō's views as to whether this is a sufficient response. The Crown's intent in these consultations, as noted above, is to engage on whether its issues and concerns relating to impacts on s. 35 rights have been addressed. This recommendation does not appear directly linked to s. 35 rights, however the Crown looks forward to upcoming meetings where this can be explored further.	
82	Oversight and Reporting	Traffic Management	In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following: A Traffic and Access Control Management	896, 91	Please refer to the response to Recommendation 2.		47 (Access Management Plans) 73 (Traffic Control Plans for Public Roadways)	Natural Resources Canada Condition #73 would require TMC to develop a traffic control plan for public roadways that includes information regarding the timing and location of key construction activities, anticipated traffic	Addressed

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			Plan. Collaborate with Stó:lō representatives and contractors, 6 months prior to construction, regarding the Traffic and Access Control Management Plan and Traffic Control Plans for S'ólh Téméxw. For example, to ensure the heavy truck routes and access routes do no conflict with contractors', such as Ts'elxwéyeqw Tribe Management Limited and K & L Contracting, anticipated work schedules and travel routes. Continue to communicate with Stó:lō representatives as the TMEP progresses, on traffic changes and schedules, so they can inform Stó:lō people. (This will allow for Stó:lō people to plan ahead on their travel arrangements)					volumes and flows, and an assessment of potential impacts associated with construction-related traffic, and mitigation measures. TMC would be required to provide a summary of its consultations with potentially affected Aboriginal groups, including how any recommendations were incorporated in to the plan. The Crown notes that under Commitment #91, TMC has committed to engage with Stó:lō representatives prior to commencing construction to discuss any issues in regard to the Traffic and Access Control Management Plan. As part of ongoing Phase III consultation, the Crown looks forward to hearing from the Stó:lō representatives and TMC as to the status of this recommendation and commitment.	
83	Funding for Stó:lō programs	Community health and well being	As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction: TMEP agreement via the British Columbia First Nations Policing Policy, to fund (for 5-years) one new First Nation Police position, in addition to the 7 existing officers in the First Nations Community Police Section.	1656	Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss funding opportunities related to policing.			<u>Indigenous Services Canada</u> First Nations Policing Program is funded through a tripartite agreement between the Federal Government, Province of BC, and First Nations Community. The agreement is fulfilled by the RCMP. Federal Government and BC are represented through Public Safety Canada and BC Ministry of Public Safety and Solicitor General. The discussions should include TMC, Stó:lō representatives, Public	Addressed

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								safety Canada, BC Public Safety, and the RCMP. <u>Natural Resources Canada</u> The Crown acknowledges Stó:lō's concerns regarding a potential increase in the demand for protection and emergency services, which could effect the quality of service delivery for local communities if not appropriately addressed. TMC has committed to liaise with local and regional social services, police and local governments, to identify and address issues related to the potential negative effects of the Project on housing, utilities, and the delivery of social services in local communities during construction within the Project area. Under Commitment #1656, TMC has committed to continued engagement with Stó:lō representatives to discuss funding opportunities related to policing. As part of ongoing Phase III Crown consultation, and beyond, the Crown is keen to understand the underlying interest within this recommendation, including how the Stó:lō views this recommendation as relating to potential impacts on its s. 35 rights resulting from the TMX project and whether existing federal government programs could be accessed to address the recommendation.	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
84	Training and capacity building	Safety and Emergency Response	As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction: A report summarizing the completed orientation/training for Stó:lō people and communities, on the TMEP's Emergency Response Plan (including site specific Emergency Response Plan), for S'ólh Téméxw. There should be a minimum of two Stó:lō people from each First Nations and no limitation on how many Stó:lō people can attend the orientation/training.	1617, 1618, 1619	Please refer to the response to Recommendation 10.		12 (Training and Education Monitoring Program) 58 (Training and Education Monitoring Reports) 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program) 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program) 119 (Emergency Preparedness and Response Exercise and Training Program)	Natural Resources Canada The Crown understands that under Commitment #1615 and #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō representatives. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. In addition to TMC's commitment, Condition #90 would require TMC to report on consultation on improvements to its Emergency Management Program prior to commencing construction, and describe how commitments made during consultations with Aboriginal groups would be incorporated in to the program and response plans.	Addressed
85	Training and capacity building	Safety and Emergency Response	As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction: A report summarizing the completed orientation sessions with local protective services providers so that they are aware of the types of materials, chemicals, and equipment that will be used during construction and operation of TMEP	1657, 1615, 1619	Trans Mountain is committed to engagement regarding Community Awareness and Emergency Response (CAER). Additional reporting requests can be discussed.		12 (Training and Education Monitoring Program) 58 (Training and Education Monitoring Reports) 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)	Natural Resources Canada The Crown understands that under Commitment #1615 and #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō representatives. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								original and reconsideration NEB hearings. TMC has also committed to discussing additional reporting requirements in relation to the project. In addition to TMC's commitment, Condition #90 would require TMC to report on consultation on improvements to its Emergency Management Program prior to commencing construction, and describe how commitments made during consultations with Aboriginal groups would be incorporated in to the program and response plans.	
86	Oversight and Reporting	Community health and well being	As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction: A copy of the work environment guidelines and their enforcement mechanism, related to protection of public health issues listed in the ICA.	1658, 1947	Trans Mountain will include the worker Code of Conduct, which will contain a number of areas related to the protection of public health issues in the Worker Accommodate strategy, to be filed with the NEB for approval, at least 6 months prior to construction. Trans Mountain will develop a Code of Conduct for employees and Contractors that provides guidance and policies on appropriate and inappropriate worker behaviour and community interactions.		13 (Socio-economic effects monitoring plan) 59 (Worker Accommodation Strategy)	Natural Resources Canada The Crown acknowledges Stó:lō's concerns regarding effects to public health that could result from an increase in non-local workers within Stó:lō traditional territory. Under Commitment #1658 and #1947, TMC has committed to implement a Code of Conduct for workers that would include policies to address use of local medical and social services, after-hours conduct, substance abuse, and other public health-related issues. TMC has also committed to develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and operation of the Project. Under	Addressed

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings. Furthermore, TMC has committed to develop an orientation program to ensure that TMC staff, contractors and visitors working at or visiting sites will be informed of environmental, socio-economic and community relation requirements and sensitivities regarding the Project prior to arrival on the pipeline construction right-of-way, ancillary sites or associated component sites. Condition #59 would require TMC to develop a worker accommodation strategy that would include a description of how potential environmental and socio-economic impacts of worker accommodations have been assessed and mitigated. Furthermore, in order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by TMC, Condition #13 would require TMC to develop a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the	

Number	Type	Topic Area	Recommendation	TMC Commitment #	TMC Response/Commitment Summary	Onshore Pipeline Regulations	Relevant NEB Conditions	Crown Analysis	Recommendation addressed?
								timeframes for which effects might occur. TMC would also be required to provide a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated.	
87	Oversight and Reporting	Safety and Emergency Response	As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction: The on-site health and safety plan, which outlines how TMEP will provide appropriate levels of security and emergency medical technicians at worksites. This will reduce the diversion of protection and emergency services from Stó:lō people.	1659	Trans Mountain can commit to engagement with the Stó:lō Collective prior to commencing construction to discuss any potential issues in regard to the Construction Safety Manuals.		63 (Security Management Programs) 64 (Construction Safety Manuals)	Natural Resources Canada Under Condition #63 and #64, TMC would be required to file their security management program, health and safety management plan, and construction safety manuals for the project with the NEB prior to commencing construction. Under the Onshore Pipeline Regulations, TMC must develop, implement and maintain a security management program that anticipates, prevents, manages and mitigates conditions that could adversely affect people, property or the environment. Under Commitment #1659, TMC has committed to engagement with Stó:lō representatives in relation to the construction safety manuals.	Addressed
88	Oversight and Reporting	Implementation	As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction: Maps and schedules of the proposed	1660	90 days prior to the start of construction, Trans Mountain will provide copies of: 1. Schedule of construction activities within S'ólh Téméxw 2. Environmental Alignment Sheets; and, 3. Plan, Profile and Book		62 (Construction schedule)	Natural Resources Canada The Crown notes that Condition #62 requires TMC to file with the NEB, at least 3 months prior to commencing construction, a construction schedule identifying the major construction activities	May be addressed - More info/discussion required

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			construction activities that were provided to Stó:lō communities.		or Reference that defines the construction footprint.			expected and, on a monthly basis, on the first working day of each calendar month from the commencement of construction until after commencing operations, updated detailed construction schedules. These schedules will be made publicly available on the NEB's website. TMC has also committed to provide these schedules, alignment sheets, and other reference material 90 days prior to the start of construction. The Crown would like to confirm with TMC how they will share this material with affected Indigenous groups (via email, a shared drive, in hard copy, etc.). The Crown would like to discuss with TMC and Stó:lō representatives whether providing this information six months in advance is imperative, or if ~3 months in advance would be acceptable.	
89	Funding for Stó:lō programs	Economic and Community Development	The TMEP will work with a Stó:lō representative to establish a scholarship program for Stó:lō students.	1661	Trans Mountain welcomes the opportunity to discuss the establishment of a scholarship program for Stó:lō students.		11 (Aboriginal, local, and regional skills and business capacity inventory) 12 (Training and Education Monitoring Program) 145 (Community Benefits Program Progress Reports)	Natural Resources Canada The Crown acknowledges Stó:lō Collective's interest in establishing a scholarship program for students in order to offset potential effects to education, including potential direct effects to Watson school yard. The Crown notes that Condition #145 requires TMC to report on initiatives and activities	Addressed

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								undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. In addition, there are NEB conditions that address training and education in relation to the project. The Crown notes also that as part of ongoing Phase III Crown consultation, and beyond, the Crown is keen to understand the underlying interest within this recommendation, including how Stó:lō views this recommendation as relating to potential impacts on its s. 35 rights resulting from the project, and whether existing federal government programs could be accessed to address the recommendation.	

From:	Corber, Deborah (NRCAN/RNCAN)
To:	David Jimmie
Cc:	Keri.Ardell@ttml.ca; Ombrielle.neria@ttml.ca; Dekker, Corey (NRCAN/RNCAN); Amber Kostuchenko; Rob Miller; Joelle Walker; TMX (NRCAN/RNCAN); Corber, Deborah (NRCAN/RNCAN); Irwin, Kimberly (NRCAN/RNCAN)
Subject:	Update regarding the reinitiated Phase III consultation process for TMX
Date:	Tuesday, May 28, 2019 8:53:27 PM

Dear Chief Jimmie,

I am writing you today to update you on the deadline for comments on the CCAR report. As indicated in Deputy Minister Tremblay's letter to you of April 24, which included your community's draft Annex to the 2019 Crown Consultation and Accommodation Report (CCAR), the Crown had asked for any comments on your draft Annex by May 29, 2019. In response to requests for additional time, the Crown will accept comments on the draft Annexes up to **May 31, 2019**. As well, the deadline for the Independent Submissions to accompany the Crown Consultation and Accommodation Report has been extended to **June 6, 2019**. Comments or independent Submissions received after these dates will not be included in the information provided to Governor in Council that will inform their decision on the Project. However, should the Project be approved, any input received past these dates will inform ongoing engagement with Ts'elxweyeqw Tribe into Phase IV.

Please note that your Independent Submission should be sent to (and please copy our consultation team): Naina Sloan, Senior Executive Director, Indigenous Reconciliation Secretariat, Natural Resources Canada (Naina.Sloan@canada.ca)

If you have any questions or concerns regarding the above information, please don't hesitate to get in touch with me by email or by phone at 343-543-7260.

Respectfully,

Deborah Corber, LL.M.
Consultation Lead / Responsable de la consultation
Trans Mountain Pipeline Expansion Project /
Projet d'agrandissement du réseau Trans Mountain
Natural Resources Canada / Ressources naturelles Canada
615 Booth Street, Ottawa, Ontario K1A 0E4
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This is Exhibit V referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

This is Exhibit W referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

From: Corber, Deborah (NRCAN/RNCAN)
To: David Jimmie
Cc: Keri.Ardell@ttml.ca; Ombrielle.neria@ttml.ca; Dekker, Corey (NRCAN/RNCAN); Amber Kostuchenko; Rob Miller; Joelle Walker; TMX (NRCAN/RNCAN); Corber, Deborah (NRCAN/RNCAN); Irwin, Kimberly (NRCAN/RNCAN); Phil Symington
Subject: CONCERNS REGARDING IMPACTS TO CULTURAL HERITAGE
Date: Wednesday, May 29, 2019 10:57:41 AM

Dear Chief Jimmie,

As you know, the re-initiated Phase III Crown consultation process is coming to a close, as the Governor-in-Council (GIC) has given itself until June 18, 2019 to make a decision concerning the Trans Mountain Expansion Project (TMX). Work is ongoing between Ts'elxwéyeqw Tribe and the Crown to document the efforts to date to engage in a meaningful two-way dialogue on the Integrated Cultural Assessment Report (ICA Report) and the 89 Recommendations, and our commitment is to ensure that we accurately capture the discussion and the commitments made as part of that dialogue, into the Crown Consultation and Accommodation Report (CCAR).

I write to you today to focus on one specific matter that has been part of recent dialogue with Ts'elxwéyeqw Tribe, namely: the integration of Stó:lo cultural sites, including those identified in the ICA Report, and other cultural site information into Trans Mountain Corporation's (TMC's) environmental alignment sheets, and the related issue – posed to the Crown consultation team at the May 23, 2019 technical workshop – concerning the Crown's understanding of what mechanisms would be in place to protect Stó:lo cultural sites, if the GIC were to approve the project.

I am also writing to advise you that, in response to concerns raised through consultation regarding the protection of Stó:lo cultural sites, and as described more fully, below, the Crown is offering Ts'elxwéyeqw Tribe $250,000 in capacity/study funding to support the Tribe's efforts to advance its interests regarding cultural sites following the GIC decision on the project, should the GIC decide to approve the project.

TMC's Environmental Alignment Sheets

One of the points of discussion between Ts'elxwéyeqw and TMC, which the Crown has become aware of through the re-initiated Phase III consultation process, is the Tribe's request for TMC to update their environmental alignment sheets to include Stó:lo cultural sites, including those identified in the CHOA, and additional cultural site information provided to TMC in April 2019. I understand that from the Tribe's perspective, this request of TMC had been outstanding for some time. In May 2019, in advance of and as part of the technical workshops we held through the re-initiated Phase III process, TMC provided the Tribe with its updated environmental alignment sheets, which incorporated over 400 identified Stó:lo

cultural sites. At the third technical workshop on May 23, 2019 TMC, the Tribe, and the Crown reviewed the alignment sheets, focusing on a few specific examples and engaging in a dialogue about the cultural and spiritual importance of those sites to the Tribe and the larger Stó:lo people, and TMC's plans to mitigate potential adverse impacts at those sites.

Given the large number of sites, the desire on the part of the Tribe's technical staff to discuss each one in detail, and to work towards achieving consensus on the mitigation measures implemented at each site, one of the concerns that has been raised by the Tribe is that there is insufficient time for all of this work to be completed in advance of the GIC decision on the project. The Tribe has stated that in its view, in order for the GIC to make an informed public interest decision, all of the detailed routing and project planning decisions that feed into the development of environmental alignment sheets, must be completed.

We have considered this issue internally. While we share the concern that all reasonable efforts should be taken to ensure that appropriate mitigations are in place to protect Stó:lo cultural sites, we do not believe that the detailed work involving all 400+ sites must be completed in order for GIC to make an informed decision. The regulatory system in place regarding inter-provincial pipelines such as TMX involves many decision points, by Canada and by the National Energy Board (NEB). The decision that is currently before the GIC involves a proposed 150m corridor, which has been studied by the NEB through its public hearing process. If the GIC were to approve the project, separate processes are in place to deal with determining the detailed route within that 150m corridor, namely: the NEB's Detailed Route Approvals Process. More information about the detailed routing process can be found on their website, here:

https://www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/trnsmntnxpnsndtldrtfq-eng.html

Mechanisms in Place Regarding Cultural Heritage Protection

In addition to the detailed routing process, in which the Tribe can elect to participate, there are a number of other mechanisms that would be in place if the project were to be approved by the GIC on June 18, 2019. These include proposed NEB conditions (e.g. 72, 77, 98, 100), BC EAO Conditions (e.g. 12, 13, 27), Provincial Permitting processes under the *Heritage Conservation Act*, and ongoing engagement with TMC regarding a number of commitments the proponent has made, including:

- A commitment to hire an environmental monitor, as chosen by Ts'elxwéyeqw Tribe, to be on the Environmental Inspection Team;
- A commitment to ensure that Stó:lo sites are included in the final alignment sheets that are used by TMC staff and contractors during construction;

- A commitment to update the Resource Specific Mitigation Tables to ensure that mitigation measures are specific to different types of cultural sites;
- A commitment for Stó:lo representatives to deliver cultural awareness training to TMC staff and contractors;
- A commitment to use the cultural site boundaries identified by Stó:lo technical staff rather than those of the provincial government when considering appropriate mitigation; and
- A commitment to meet with Stó:lo to discuss windows for construction that respect Stó:lo cultural practices and events.

I understand that a full list of commitments made by TMC through the re-initiated Phase III consultation process will be shared with you in the coming days.

One of the central concerns raised by Ts'elxweyeqw Tribe through the re-initiated Phase III process relates to the Tribe's capacity to participate in the various mechanisms in place to address impacts on s. 35 rights. These processes require that the Tribe devote significant time and resources in order to ensure that its rights and interests are appropriately represented through various processes, including in consultation activities associated with TMC's compliance with NEB and BC EAO conditions. In response to this concern, I can confirm for you today that, should the GIC approve the Project, the Government of Canada will provide Ts'elxweyeqw Tribe an additional $250,000 in capacity/study funding to support the Tribe's participation in the mechanisms noted above. This funding would be administered by Natural Resources Canada through the Terrestrial Studies Initiative, which is a new accommodation measure that has been created as a result of the re-initiated Phase III process.

This offer of funding is specific to the protection of cultural sites, and does not preclude the Tribe from submitting funding proposals to undertake additional studies. In the Crown's analysis of the 89 recommendations, it has been noted that several of them involve additional studies and surveys and the Crown has indicated it is open to reviewing proposals for funding to support that work.

As mentioned above, in light of the discussion and concern expressed at the May 23, 2019 technical workshop, and the specific questions that were posed to the Crown consultation team regarding the timeline for GIC decision, ongoing work to integrate Stó:lo cultural sites into TMC's environmental alignment sheets, and concern that the mechanisms that would be in place to deal with cultural heritage protection would take place in Phase IV and do not include capacity funding, I have written you today to address this specific issue. We look forward to working through any remaining issues in the coming weeks as we conclude this process and finalize the CCAR Annex.

If you would like to discuss this funding commitment, or have any questions or concerns

regarding the re-initiated Phase III consultation process, please don't hesitate to get in touch with me or with Corey Dekker (Consultation Director).

Respectfully,

Deborah Corber, LL.M.
Consultation Lead / Responsable de la consultation
Trans Mountain Pipeline Expansion Project /
Projet d'agrandissement du réseau Trans Mountain
Natural Resources Canada / Ressources naturelles Canada
615 Booth Street, Ottawa, Ontario K1A 0E4
Mobile / Cellulaire: 343-543-7260
Email / Courriel: deborah.corber@canada.ca

TRANSMOUNTAIN

This is Exhibit X referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

May 31, 2019

Ts'elxwéyeqw Tribe
Bldg 8A – 7201 Vedder Rd.
Chilliwack, BC V2R 4G5

Attention: Chief David Jimmie, President

Dear Chief Jimmie:

I have been in discussions with my staff regarding the status of the federal Phase III consultation process with Ts'elxwéyeqw Tribe. I understand that one of the issues being discussed is respecting the Tribe's request for Trans Mountain to incorporate approximately 400 additional cultural sites into our environmental alignment sheets and for us to engage in a detailed discussion on each site; with the objective of working toward consensus on mitigation measures to be implemented at each site.

Prior to and throughout the Phase III consultation process, Trans Mountain has offered to engage both directly with Ts'elxwéyeqw Tribe, and/or through the People of the River Referral Office (PRRO) on behalf of the Ts'elxwéyeqw Tribe, to review project construction and environmental protection plans and to engage in discussion on additional mitigative measures that may be needed to address identified impacts. My understanding is that while this process is underway, there is a concern about the ability of the parties to complete this process prior to a decision on the Trans Mountain Expansion Project (the "Project") by the Government of Canada.

I would like to confirm that if the Project is approved, Trans Mountain Pipeline L.P. ("Trans Mountain") remains committed, prior to and through the course of construction, to continue this collaborative work with Ts'elxwéyeqw Tribe. Trans Mountain will continue to work with Ts'elxwéyeqw Tribe in a meaningful and timely fashion to review each of these sites with the objective of understanding how the Project may impact Ts'elxwéyeqw Tribe's interests and will take reasonable steps to implement additional mitigation measures that may be required. As you may also be aware, Trans Mountain has contingency plans in place to address any previously un-identified features or 'chance finds' that may be discovered during construction, in keeping with appropriate protocols.

We understand that conducting this collaborative work in a timely fashion is a significant undertaking for Ts'elxwéyeqw Tribe. We will do everything we can to provide information as required and in the formats required to assist this process. Please note that Trans Mountain will also consider the provision of additional capacity funding that may reasonably be required to complete this important engagement process.

We look forward to continuing our engagement on the project with Ts'elxwéyeqw Tribe. I would be happy to meet and further discuss this commitment or other Project issues with you at your convenience.

Yours truly,

Ian Anderson
President & CEO
Trans Mountain Pipeline L.P.

cc Phil Symington, Senior Advisor, Indigenous Relations, Trans Mountain
Mitch Taylor, Consultation Lead, NRCan

This is Exhibit Y referred to in the Affidavit of Chief David Jimmie sworn before me at Chilliwack, BC this 5th day of July, 2019.

A Commissioner for taking affidavits for British Columbia

Natural Resources Canada | Ressources naturelles Canada

Deputy Minister | Sous-ministre

Ottawa, Canada
K1A 0E4

JUN 14 2019

Chief David Jimmie
Ts'elxwéyeqw Tribe Management Limited
Building 8A, 7201 Vedder Road
Chilliwack, British Columbia V2R 4G5

Re: Trans Mountain Pipeline Expansion Project – Conclusion of Re-initiated Phase III Consultations

Dear Chief Jimmie:

I am writing today, on behalf of the Minister of Natural Resources, the Honourable Amarjeet Sohi, to mark an important milestone in our ongoing work together. The Government of Canada is committed to strong and enduring relationships with Indigenous communities. With the conclusion of the re-initiated Phase III consultations on the Trans Mountain Expansion Project (the Project), we remain committed to strengthening these relationships and to continued dialogue going forward. Over 400 meetings with communities have taken place to discuss the Project, including possible accommodation measures to mitigate the impacts. Thank you for your leadership, your thoughtful comments on the Project, the National Energy Board (NEB) conditions and the Government's proposed accommodations.

Accompanying this letter, you will find the Crown Consultation and Accommodation Report (CCAR) as well as your community's annex to this report. Both documents capture our exchanges, two-way dialogue, and collaboration to find meaningful accommodations to the issues and concerns that Indigenous groups, like yours, raised during the consultations. I would also note that nearly half of the communities consulted accepted my offer to make an independent submission to the Crown, providing an assessment of this process in their own words.

I am also including the final report outlining the Crown's analysis of the Integrated Cultural Assessment (ICA), which included 89 recommendations to the proponent and Canada. The re-initiated Phase III consultation process with Ts'elxweyeqw Tribe has focused on the ICA findings and recommendations, and our final report sets out the Crown's analysis of the status of each recommendation. This work was done collaboratively through dialogue, correspondence, and technical workshops with key federal departments, Trans Mountain Corporation, and Ts'elxweyeqw Tribe; this represents a tangible example of how the re-initiated Phase III consultation process was different from the original Phase III process.

During the consultations, we also discussed modifications to the 156 conditions proposed by the NEB should the Project be approved. With our commitment to transparency, and in response to views expressed by several Indigenous groups, along with the Indigenous Caucus of the Indigenous Advisory and Monitoring Committee (IAMC), I am sharing amendments we are proposing, to the Governor in Council, to six NEB conditions.

The objectives would be to enhance the NEB's ability to track and enforce the proponent's commitments made during the NEB reconsideration, re-initiated Phase III consultations, and beyond; to improve transparency regarding the incorporation of Indigenous engagement in several of the proponent's filings throughout the lifecycle of the Project; and to explicitly provide for mitigation measures to reduce or eliminate, to the extent possible, Project effects on sites that are sacred or of cultural importance to Indigenous Peoples. Taken together, I believe that these amendments will further mitigate potential impacts on Indigenous interests.

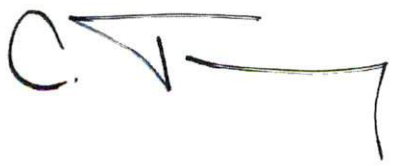
The CCAR, annexes, independent submissions, and proposed amendments to the NEB conditions have been submitted to the Governor in Council to inform its decision on the Project, which is expected by June 18, 2019.

Many Indigenous groups raised concerns with regard to the terms of reference and scope of mandate of the IAMC. This summer, the IAMC will be undergoing a review and update of its terms of reference, which will provide an opportunity for you to engage.

Looking ahead, our focus and priority remain on our relationship, the important work that we have done together, and opportunities for the future. In the event that the Project is approved, I look forward to continuing the work needed to implement the commitments of the Government and remain confident that we have many more milestones to reach together. If you would like to discuss further or have questions regarding any of the above, please reach out to Deborah Corber.

Thank you for your continued partnership.

Yours sincerely,



Christyne Tremblay
Deputy Minister
Natural Resources Canada

Enclosures: (2)

c.c.: Distribution List

DISTRIBUTION LIST

Chief Angie Bailey
Aitchelitz Band

Chief Robert Gladstone
Shxwha:y Village

Chief Mark Point
Skowkale First Nation

Chief Brenda Wallace
Soowahlie First Nation

Chief Derek Epp
Tzeachten First Nation

Chief Terry Horne
Yakweakwioose First Nation

Chief David Jimmie
Squiala First Nation

Derek Hansom
Councillor, Skowkale First Nation

TMX Crown Consultation and Accommodation Report 2019
Annex C.18 – Ts'elxwéyeqw Tribe

Preamble

Canada is committed to advancing reconciliation and renewing the relationship with Indigenous peoples, based on recognition of mutual rights, respect, cooperation and partnership. In the spirit of advancing reconciliation, Canada is committed to understanding the asserted or established Aboriginal and Treaty rights and title, as well as interests, of Indigenous groups. Given the breadth of Canada's objectives in consulting, Canada has therefore defined "Indigenous Interests" in this report to include asserted or established Aboriginal and Treaty rights and title, as well as interests in order to be inclusive.

1. Introduction

The Federal Court of Appeal (FCA) rendered its decision in *Tsleil-Waututh Nation v. Canada (Attorney General)* quashing the Governor in Council's (GiC) 2016 decision to approve the Trans Mountain Expansion Project (the Project) in 2018. Canada decided not to appeal the judgment of the FCA. Instead, following the release of the FCA's decision, Canada:

1. instructed the National Energy Board (NEB) to reconsider aspects of its recommendation, by, among other things, taking into account the effects of Project-related marine shipping, and
2. re-initiated Phase III consultations with all Indigenous groups potentially impacted by the Project.

Canada's re-initiated Phase III consultation process was designed to remedy the flaws identified by the FCA in Canada's previous consultation efforts. Canada's modified approach to consultations is intended to ensure that Canada and Indigenous groups can:

- engage in a meaningful, two-way dialogue;
- collaborate to better understand Project-related impacts on Indigenous Interests;
- consult in a manner responsive to communities' individual needs; and
- develop potential accommodation measures to mitigate those impacts.

The Crown established a whole-of-government Crown consultation team. A dedicated Consultation Lead, Consultation Director and a team of experts were identified to work with Ts'elxwéyeqw Tribe. For all Indigenous groups, this generally included having officials from Trans Mountain Corporation (TMC), the proponent, at the table as part of the consultations, as there are concerns, impacts and accommodations that are best addressed by the company and the easiest way to do so was to have everyone in the same room at the same time.

The re-initiated Phase III consultation process with Ts'elxwéyeqw Tribe began on September 20, 2018. The re-initiated consultations began with Canada examining its records and the existing 2016 Crown Consultation and Accommodation Report (CCAR) annex for the Stó:lō Collective (which represented the

seven communities of Ts'elxwéyeqw Tribe in the original NEB process and in the 2016 Phase III consultation process) in the spirit of building on the exchanges and knowledge gained from existing information, interactions and processes. Canada provided the Stó:lō Collective annex at the beginning of the consultation knowing that an update to each CCAR annex would be required and offered through the re-initiated consultation process and meaningful dialogue to validate and revise information on issues and concerns, to work with Indigenous groups to reflect these changes as well as remedy any missing information and assessments.

The Ts'elxwéyeqw Tribe has been an active participant, attending the Roundtable discussion with the Honourable Frank Iacobucci and several face-to-face meetings, as well as participating in teleconferences and exchanging written correspondence with the Crown. To respond to the Integrated Cultural Assessment (ICA) Report that was submitted to the NEB by the Stó:lō Collective in 2014 (for additional details on the ICA, see Section 3),[1] the Crown has worked with Ts'elxwéyeqw to convene a series of four technical working group meetings that bring together representatives from relevant federal departments and the proponent to discuss how the 89 recommendations have been or will be addressed. As a starting point for discussion at these technical working group meetings, the Crown developed a preliminary draft Crown analysis of the ICA recommendations, which was shared with Ts'elxwéyeqw Tribe for review on March 6, 2019. A final version of this document, which incorporates new responses from the proponent, Ts'elxwéyeqw's responses to the draft Crown analysis, and information from the technical workshops, is appended as *Appendix 2*.

2. Background Information

The Ts'elxwéyeqw Tribe represents the communities of Aitchelitz First Nation, Shxwhá:y Village, Skowkale First Nation, Soowahlie First Nation, Squiala First Nation, Tzeachten First Nation and Yakweakwioose First Nation (the Ts'elxwéyeqw Villages). Ts'elxwéyeqw Tribe is one of the tribes of the Stó:lō people, whose asserted traditional territory encompasses a large section of Southwestern British Columbia. The tribe's communities are based in the Chilliwack, Sardis, and Cultus Lake Sardis areas of the Upper Fraser Valley, located within Stó:lō Traditional Territory (*S'olh Téméxw*). In their Memorandum of Fact and Law filed with the FCA, Ts'elxwéyeqw Villages described themselves as follows:

> *"The Stó:lo are Halkomelem-speaking Coast Salish people who live in many villages in S'olh Temexw. The Stó:lo are culturally, spiritually, physically, psychologically and economically interconnected with S'olh Temexw. All things have shxweli (spirit) and all things are interconnected. Stó:lo identity is based in enduring activities, such as fishing, language (Halkomelem), stories, songs and storytelling and protection of cultural practices. Stó:lo*

[1] "Integrated Cultural Assessment for the Proposed Trans Mountain Expansion Project," (March 2014), Prepared by: Ts'elxweyeqw Tribe Management Limited (TTML), Stó:lō Research and Resource Management Centre (SRRMC), and the Human Environment Group (HEG). The ICA is available on the NEB registry at Filing: A61882 (B-241-3 to B- 241-6) or https://docs.neb-one.gc.ca/ll-eng/llisapi.dll?func=ll&objId=2487587&objAction=browse&viewType=1

> *governance over resources occurs at the individual, extended family, village, and tribal levels. The ability to maintain strong inter-dependent relationships with S'olh Temexw through traditional governance is extremely important to the Stó:lo identity, cultural health, self-determination and nationhood. The Stó:lo have a deeply established connection to and reliance on salmon, sturgeon and other aquatic species, all of which are integral elements of their society, culture, economy, politics, and traditions. Water quality was and remains a core factor of this relationship.[2]"*

The Ts'elxwéyeqw Atlas, a publication of Ts'elxwéyeqw Tribe Management Ltd., opens with the following:

> *The Ts'elxwéyeqw are the First People of the Chilliwack River Watershed in Central Fraser Valley of southwestern British Columbia. Our tribal name 'Ts'elxwéyeqw' is commonly known in English as 'Chilliwack.' We are one of the tribes of the Stó:lo…as our livelihood was very much connected to the Fraser River.[3]*

As of March 2019, Ts'elxwéyeqw Tribe's registered population was 1981, with 996 members living on reserve. Each of the communities has both community-held and shared reserve land throughout the Upper Fraser Valley. All communities share the Grass 15 and Pekw'xe:yles reserves, while the Skumalasph 16 reserve is shared by Aitchelitz First Nation, Shxwhá:y Village and Squiala First Nation. Information on each community's registered population, as of March 2019, and community-held reserve land is as follows:

- Aitchelitz First Nation holds one reserve, Aitchelitch 9, and the registered population was 42, with 24 members living on reserve.
- Shxwhá:y Village holds one reserve, Skway 5, and the registered population was 441, with 120 members living on reserve.
- Skowkale First Nation holds two reserves, Skowkale 10 and Skowkale 11, and the registered population was 272, with 194 members living on reserve.
- Soowahlie First Nation holds one reserve, Soowahlie 14, and the registered population was 383, with 195 members living on reserve.
- Squiala First Nation holds two reserves, Squiala 7 and Squiala 8, and the registered population was 223, with 146 members living on reserve.
- Tzeachten First Nation holds the Tzeachten 13 reserve and the registered population was 546, with 279 members living on reserve.
- Yakweakwioose First Nation holds the Yakweakwioose 12 reserve and the registered population was 74, with 38 members living on reserve.

[2] Memorandum of Fact and Law of the Stó:lō Applicants, submitted as part of the FCA case *Tsleil-Waututh Nation v. Canada (Attorney General)*

[3] Being Ts'elxwéyeqw: First Peoples' Voices and History from Chilliwack-Fraser Valley, British Columbia, Harbour Publishing Ltd., 2017.

The pipeline right of way is proposed to cross Tzeachten No. 13 (held by Tzeachten). The proposed corridor lies entirely on lands held by 15 Certificate of Possession Holders.

As of Spring 2016, the proponent advised the Crown that they had an agreement with all 15 CP holders granting consent for the Trans Mountain pipeline to cross their CP holdings. The proponent will be seeking GiC authorization for *Indian Act* s.35 tenures if the proponent is granted rights to expropriate to allow for the expansion of the pipeline. Tzeachten has a Land Code in place and, therefore, the proponent would be required to negotiate the tenure under the Code.

(Source: Being Ts'elxweyeqw[2])

The Stó:lō Nation, which at the time included the seven Ts'elxwéyeqw Villages, is party to a protective *Writ of Summons* filed with the BC Supreme Court on December 9, 2003, asserting Aboriginal title to a territory identified in the writ, referred to herein as the "Stó:lō Nation writ area". Several members of the Ts'elxwéyeqw Tribe have also signed Stage 5 *Treaty Negotiations Memorandum of Understanding* with the Crown in British Columbia in October 2018.

In March 2014, five of Ts'elxwéyeqw Tribe's communities, and three other Stó:lō communities, signed the "*The Ch-ihl-kway-ukh Tribe Forest Agreement*" with the Province of British Columbia. This Agreement named "Ch-ihl-kway-ukh Tribe" as having has a designated traditional territory in which the tribe has Aboriginal rights and title.

Ts'elxwéyeqw Tribe Limited Partnership (also known as the Ts'elxwéyeqw Tribe Management Limited) was created by the seven Ts'elxwéyeqw bands to manage the Tribe's traditional territory that was not assigned to a reservation and to pursue economic development opportunities on behalf of the tribe and its members. It aims to advance the well-being of the Ts'elxwéyeqw members and establish their Aboriginal rights and title within the Ts'elxwéyeqw traditional territory.

In recognition of how the member communities of the Ts'elxwéyeqw Tribe chose to engage with the

Crown for the purposes of these re-initiated Phase III consultations (reflected in section 4 of this Annex), the Crown has assessed the potential adverse impacts of the Project on the Aboriginal Interests of the Ts'elxwéyeqw Tribe as a collective.

3. 2016 NEB Review and Crown Consultation Process

The seven Ts'elxwéyeqw Villages participated in the 2013 to 2016 OH-001-2014 NEB Review and Crown Consultation process as part of the larger "Stó:lō Collective[4]." The Stó:lō Collective participated in the OH-001-2014 NEB review of the Project as an intervenor. The Stó:lō Collective submitted a significant amount of information describing Stó:lō rights and concerns regarding the Project. The Stó:lō Collective submitted technical written evidence, correspondence, information requests, and responded to the Crown's Issues Tracking Table Information Request by further elaborating on their concerns [A71257].

The Stó:lō Collective chose not to participate in the Oral Traditional Evidence hearings as they objected to the process, which they felt unfairly restricted the kind of information that Indigenous presenters could share, and limited the extent to which community representatives could describe potential impacts on community interests and rights. They also indicated the NEB process conflicted with Stó:lō customs and traditions that support knowledge transfer and honouring Elders. For example, Stó:lō noted that Elders were the only hearing participants subject to oral questioning. As there were numerous concerns with the prescribed oral hearing procedures, the Stó:lō Collective chose to rely on the Stó:lō ICA, which describes potential impacts the Project may have on resources, spirituality, economy, culture and unceded lands within S'ólh Téméxw [A4F7Y9].

Crown officials met with the Stó:lō Collective to discuss the Project during the Early Engagement phase (Phase I) on July 18, 2014. During the Panel hearing stage (Phase II), the Crown Consultation Team met with officials from the Stó:lō Collective's technical team on December 3, 2015 to review their key concerns with the evidentiary record and follow-up on proponent commitments made to date. On April 13, 2016, the Crown consultation team met again with the Stó:lō Collective for an all-day meeting prior to the release of the NEB Recommendation Report.

Stó:lō Collective submitted the ICA Report to the NEB in July 2014. The ICA presents the Stó:lō Cultural Model which schematically depicts, according to the Stó:lō Collective's worldview, a suite of Stó:lō values and the inter-connected relations between people, places, and things. The ICA uses this model, and a series of unique impact rating criteria and input from a large number of community members to evaluate potentially linked environmental, social and economic effects that may be associated with building and operating a new oil pipeline through *S'ólh Téméxw*.

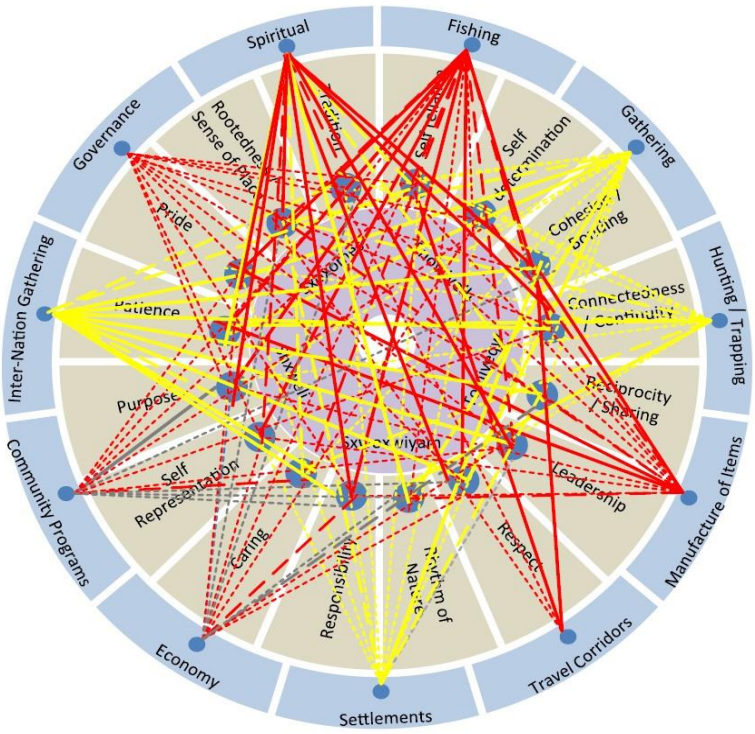
The ICA considers effects to fishing, plant gathering, spiritual activities, manufacture of cultural items, travel corridors, settlements, hunting and trapping, governance, inter-nation gatherings, economic activity, and community programs and services. These activities within *S'ólh Téméxw* provide a holistic

[4] In the original NEB process and 2016 Phase III consultation process Stó:lō Collective represented the seven Ts'elxwéyeqw Tribe communities, as well as Kwaw-Kwaw-Apilt First Nation, Leq'á:mel First Nation, Skawahlook First Nation, Skwah First Nation, Sq'éwlets (Scowlitz) First Nation, and Sumas First Nation.

view of economic, social, political, environmental, and spiritual connectivity; one cannot be successful or healthy without the other, for all things have Shxwelí (spirit) and all things are interconnected. Their longstanding socio-cultural and socio-economic relations, values, and behaviours are factors of their deep connectedness to the ancestors, land, air, water, resources, and cultural places of *S'ólh Téméxw*. The Cultural Heritage Overview Assessment (CHOA), an appendix to the ICA, provided spatial information regarding sites of cultural and spiritual importance to Stó:lō.

The ICA concludes that the Project "poses significant risk and represents a significant threat to the cultural integrity and survival of core relationships at the heart of Stó:lō worldview, identity, health, and well-being (ICA, Section 16, p. 11)." The ICA also includes a list of 89 recommendations "that, if implemented, would help reduce the overall impact of the [Project] on Stó:lō people within *S'ólh Téméxw* (ICA, Section 17, p. 1)."

Following the release of the NEB Report in May 2016, the Crown consultation team held a meeting on September 23, 2016 with representatives of the Stó:lō Collective. At this meeting, Stó:lō Collective emphasized the potential for adverse effects of the Project on Stó:lō culture and traditions. The Crown understands that a foundation for Stó:lō's approach to assessing the potential adverse impacts from the Project is a view that culture affects the way in which people understand themselves, their relationship to the land, their community, their purpose, and their connection to the spiritual world. The concept of 'cultural integrity' is used throughout the ICA, which notes that cultural activities are shaped by environmental conditions and social circumstances, and that outside forces (such as large scale industrial developments) can change the environment or social structures in a manner that affects how, why, where and when cultural activities occur, thereby impacting cultural integrity. Impacts to the identified activities and core values were depicted using the Stó:lō Cultural Model:



Potential Cumulative Effects of the Project on Stó:lō Cultural Values (Source: ICA, Section 16, p. 6)

The Stó:lō Collective signed a contribution agreement with the NEB for $550,000 ($42,307.00 per First Nation) in participant funding. The Stó:lō Collective was offered an additional $60,000 ($4,615.38 per First Nation) from the Major Projects Management Office (MPMO) for participation in the initial round of Crown consultations following the close of the NEB hearing record. The MPMO also offered the Stó:lō Collective an additional $70,000 ($5,384.61 per First Nation) to support their participation in Phase III consultations following the release of the NEB Recommendation Report. The Stó:lō Collective signed contribution agreements with the MPMO in response to both of these offers, for a total of $129,962.92 in allocated funding. On August 30, 2016 the Stó:lō Collective was issued $20,000 in capacity funding by BC Environmental Assessment Office (EAO) to participate in consultation with the Crown.

The Crown provided a first draft of the Consultation and Accommodation Report (the Report) on August 17, 2016 and the Stó:lō Collective hand-delivered comments on the draft Report at an in-person meeting with the Crown on September 23, 2016. A second draft of this Report was provided to the Stó:lō Collective on November 3, 2016. The Stó:lō Collective sent letters on October 12, 2016 and October 18, 2016, which reviewed key messages from the September 23, 2016 meeting. The Stó:lō Collective also sent an email on November 7, 2016 with a chart that cross-referenced the 89 Recommendations in the ICA with the proponents commitments and the NEB's recommended conditions.

On November 23, 2016 the Stó:lō Collective submitted a Separate Submission, which was attached to the 2016 CCAR unedited, so that GIC received the Stó:lō Collective's concerns in their own words. On November 28, 2016, the Crown wrote to Stó:lō to provide a final response to Stó:lō's comments on the revised CCAR.

Federal Court of Appeal Decision

Ts'elxwéyeqw Tribe was party to the *Tsleil-Waututh Nation v. Canada* application for judicial review in the FCA as part of the Stó:lō Collective Applicants, a smaller sub-set of the Stó:lō Collective[5]. The FCA made a number of specific findings regarding the Crown's consultation with the Stó:lō Collective Applicants. Table 1 outlines the FCA's findings, and the Crown's approach to addressing those findings through the re-initiated Phase III consultation process.

Table 1: Crown's Approach to Addressing the FCA's Findings

Federal Court of Appeal Finding	**Crown's Approach to Addressing Finding**
The 89 recommendations suggested by Stó:lō in the ICA Report that could have assisted Trans Mountain in avoiding or mitigating adverse effects on their Aboriginal Interests	The Crown and the proponent have provided comprehensive responses to each of the 89 recommendations contained in the ICA Report. These responses take into consideration existing

[5] Stó:lō Collective Applicants included the seven communities of Ts'elxwéyeqw Tribe as well as Skwah First Nation

were not given due consideration.	NEB conditions, existing and new commitments made by the proponent, existing and new federal initiatives and accommodation measures in determining whether the recommendation, in the Crown's view, has been addressed. Based on consultation with Ts'elxwéyeqw Tribe and written feedback on the Crown's draft responses, the Crown updated its responses to include new commitments, accommodation measures, and an offer of capacity funding. See *Appendix 2* for the full report.
Stó:lō provided "examples of Traditional Ecological Knowledge which they felt the proponent and the Board ignored in the Project design, environmental assessment and mitigation planning," and that the Government provided "no analysis or response" to those concerns; Stó:lō is of the view that the Project would have a potential permanent impact on sites of critical cultural importance, such as Lightning Rock, or bathing sites at Bridal Veil Falls, and impacts related to access to and use of natural resources; There were deficiencies in the proponent's evidence before the NEB about Stó:lō title, rights, interests and Project impacts, for example, the proponent's evidence indicated that Stó:lō had no traditional plant harvesting areas in the Project area; the ICA indicated otherwise; None of the information contained in their ICA influenced the design of the Project or was included in the Project alignment sheets.	During the re-initiated Phase III consultation process, the proponent has incorporated traditional knowledge, including the location of Stó:lō cultural and traditional use sites identified in the ICA, in to its environmental alignment sheets, and provided accompanying Resource Specific Mitigation Tables. The proponent has also provided updated responses to each of the 89 recommendations. The proponent has committed to work with Ts'elxwéyeqw Tribe on an ongoing basis to ensure appropriate mitigation measures are in place at each of these sites. Canada has offered the Tribe $250,000 in capacity funding to enable their participation in this ongoing work. The proponent has also made additional commitments to incorporate traditional knowledge into project plans, such as: the proponent will utilize Ts'elxwéyeqw /Stó:lō traditional and technical knowledge and data in their watercourse crossing inventories and plans, where provided; and the proponent will incorporate information regarding the cultural site boundaries identified by Stó:lō when considering appropriate mitigation.
Canada failed to accommodate the Stó:lō Collective's request to be involved in selecting	In order to fulfill Condition #98, the proponent has committed to hire a monitor chosen by

Indigenous monitors working within their territory so that the individuals have sufficient knowledge of the Stó:lō Collective's culture and practices;	Ts'elxwéyeqw Tribe, and meeting the proponent's contractor qualification specifications, who will conduct 'on the ground' monitoring as part of the Environmental Inspection Team. For additional information, see the Crown's response to ICA recommendation #13 (*Appendix 2*).
Stó:lō was not confident that the proponent would follow through on commitments to include Indigenous people or traditional knowledge in the development of the Project without conditions that required engagement with engage Stó:lō communities in a meaningful way. Stó:lō Collective was looking for stronger conditions, more community-specific commitments and more accountability placed on Trans Mountain so that conditions proposed by Stó:lō became regulatory requirements. Notwithstanding apparently widespread concern about the Board's generic use of the phrase "potentially affected Aboriginal groups" and the need for locally-selected Indigenous monitors, and despite Canada's ability to add new conditions that would impose the desired specificity, Canada failed to meaningfully consider such accommodation.	In response to feedback from many Indigenous groups, and in addition to proposed accommodations, the consultation teams are proposing to Ministers amendments to several NEB conditions to consider should the Project be approved (*Appendix 1*). The goal in proposing amendments to the conditions is to clarify and address, in a consistent fashion, responses to the concerns underlying the requests from individual Indigenous groups. The proposed changes are intended to ensure that the proponent commitments made during the re-initiated Phase III consultations, and beyond, are captured by NEB regulatory framework; to enhance the NEB's ability to track and enforce the proponent's commitments, (particularly to Indigenous groups) including an increase in the frequency of updating the proponents commitment tracking table and public reporting against it; to improve the transparency regarding the incorporation of Indigenous consultation in several of the proponent's filings throughout the lifecycle of the Project.
Missing from Canada's consultation analysis is any mention of the Stó:lō's constitutionally protected right to fish, and how that constitutionally protected right was taken into account by Canada.	While consultation is not a rights determination process, for the purpose of the re-initiated Phase III consultations, Canada recognizes that Stó:lō, including Ts'elxwéyeqw Tribe, possesses an established Aboriginal right to fish on the Fraser River for food, social and ceremonial purposes, as described by the Supreme Court of Canada in *R. v. Van der Peet* (the specific nature, scope and geographic location of that right being yet undetermined).

	In recognition of that, the Crown has consulted with Stó:lō communities at the deep end of the spectrum with a view to avoiding or minimizing impacts to those established or asserted rights.

4. 2018/19 NEB Reconsideration Review Process and Crown Consultation Process

2018/19 NEB Reconsideration Review

On September 20, 2018, the GiC directed the NEB to conduct a reconsideration of its previous recommendations and terms and conditions taking into account the environmental effects of Project-related marine shipping in view of the requirements of the *CEAA 2012*, and the adverse effects of Project-related marine shipping on species at risk in view of any requirements of section 79 of the *Species at Risk Act*. On February 22, 2019, following a comprehensive 22-week reconsideration process, the NEB released its Reconsideration Report on the Project. The report concluded that the Project was in the national interest and also expressed 7 revised conditions and 16 recommendations related to mitigating potential environmental impacts, impacts on Aboriginal and treaty rights, and marine life and safety.

On September 26, 2018, the NEB sent a letter to all potentially impacted Indigenous groups announcing the process and the opportunity to comment; inviting parties to apply to participate; and, outlining the availability of participant funding.

On September 28, 2018, Natural Resources Canada wrote to the Stó:lō Collective to advise them of the referral to the NEB and committed to follow up in the coming weeks with additional details on the Crown's plans for re-initiating the Phase III consultation process.

Ts'elxwéyeqw Tribe participated in the NEB's MH-051-2018 Reconsideration review process as a member of the Stó:lō Collective[6] that had participated in the NEB's OH-001-2014 proceedings. The Stó:lō Collective was an active participant to the hearing in that it responded to the September 26, 2018 letter from the NEB requesting their initial comments (A94494), commented on several motions, provided written evidence (A96432), asked information requests of federal departments and agencies (A96753), provided oral traditional evidence (Hearing Transcript 7, A96127), and submitted a final argument (A97548).

The Stó:lō Collective was awarded $80,000 in NEB Participant Funding to support its participation in the NEB Reconsideration process.

[6] According to their final argument, Stó:lō Collective represented the seven Ts'elxwéyeqw Tribe communities, Leq'á:mél, Skawahlook, Skwah, Sumas, and Sq'ewlets.

2018/19 Re-Initiated Phase III Crown Consultation Process

On October 3, 2018, the Government announced the appointment of former Supreme Court of Canada Justice, the Honourable Frank Iacobucci as a Federal Representative to oversee the consultation process, to provide advice on designing the process, and to ensure that Indigenous consultations were in compliance with the FCA judgment.

On October 5, 2018, the Minister of Natural Resources wrote a separate letter inviting each member of Ts'elxwéyeqw Tribe to discuss its views and concerns regarding the Project.

On October 5, 2018, the Minister of Natural Resources met with the Ts'elxwéyeqw Tribe. At this meeting, Chief Jimmie provided an overview of the Ts'elxwéyeqw Tribe's involvement in the Project since 2013, and discussed the Tribe's expectations for future consultations. At this meeting, Ts'elxwéyeqw Tribe provided a letter with the Minister that outlined their expectations for the consultation process. The letter was again provided to Crown representatives, this time by email, on December 3, 2018. The letter confirmed the Tribe's representation of its seven member communities in matters related to Aboriginal rights and title, clarified the role of other Stó:lō organizations, and outlined the Tribe's concerns regarding previous consultation on the Project.

On November 7, 2018, the Deputy Minister of Natural Resources, Christyne Tremblay, sent a follow-up letter inviting each member of Ts'elxwéyeqw Tribe to participate in the re-initiated Phase III consultation process and to apply for participant funding. Deputy Minister Tremblay's letter also enclosed the Stó:lō Collective's Annex of the 2016 CCAR, as a starting point for the re-initiated discussions. The Crown acknowledged that Ts'elxwéyeqw Tribe would be representing the seven Ts'elxwéyeqw villages in consultations with the Crown, and offered $112,000 in initial funding ($462,000 in total funding) to support the Tribe in preparing for and attending introductory meetings.

On November 20, 2018, members of Ts'elxwéyeqw Tribe were invited to attend a Roundtable discussion with the Honourable Frank Iacobucci, and funding was made available from Natural Resources Canada to support travel costs for two individuals to attend this discussion.

On November 30, 2018, the Crown wrote to each of the seven Ts'elxwéyeqw villages to provide information on how to apply for funding to participate in the re-initiated Phase III Crown consultation process. The Crown offered up to $66,000 in participant funding to each community. On December 11, 2018, Ts'elxwéyeqw Tribe attended the roundtable with the Honourable Frank Iacobucci. Ts'elxwéyeqw Tribe was represented by their President, David Jimmie, who is also Chief of Squiala First Nation, and legal counsel. Representatives from the member community of Shxwhά:y Village also attended. Participants had the opportunity to provide their perspectives on the Crown's approach to re-initiating Phase III consultations.

On December 20, 2018, Ts'elxwéyeqw Tribe sent a letter to the Assistant Deputy Minister of the Major Projects Management Office (part of Natural Resources Canada) re-iterating the Tribe's authority to represent the seven communities in the re-initiated Phase III consultation process, and indicating that a funding application would not be submitted by the target date of submission (December 21, 2018). In

the Tribe's view, the re-initiated Phase III consultation process was unclear, the time provided to complete the application (three weeks) was insufficient, and their capacity was limited due to the NEB Reconsideration process and the upcoming holidays. The Crown responded on December 27, 2018, and indicated that Ts'elxwéyeqw Tribe could submit their funding application after the deadline, and sought to confirm an upcoming meeting to discuss the Tribe's concerns and expectations for the consultation process.

On January 15, 2019, Ts'elxwéyeqw Tribe sent a letter to the Honourable Frank Iacobucci that laid out the Tribe's expectations for the re-initiated Phase III consultation process. The letter expressed concerns about, among other things, the Crown's reliance on Ts'elxwéyeqw Tribe's engagement with the proponent to satisfy the duty to consult. The letter shared Ts'elxwéyeqw Tribe's view that the Crown must recognize Ts'elxwéyeqw Tribe's established Aboriginal right to fish, and conduct a justification analysis for any infringement of that right with input from the Tribe. The letter also stressed the importance of addressing the ICA Report and the 89 recommendations contained therein, and raised concerns about potential conflicts of interest that could arise as a result of the federal government's purchase of the Project. The Honourable Frank Iacobucci responded to this letter on January 28, 2019. Deborah Corber, the Consultation Team lead, provided a detailed response to Ts'elxwéyeqw Tribe's letter on January 29, 2019.

The Crown Consultation Team met with representatives of the Ts'elxwéyeqw Tribe on January 17, 2019. In this meeting, the Crown and the Ts'elxwéyeqw Tribe's representatives discussed expectations and opportunities for the re-initiated Phase III consultations. Matters discussed included the importance of the ICA Report, the federal government's purchase of the Project, the NEB Reconsideration process, concerns about the past relationship between the proponent and the Stó:lō Collective, and issues related to the Trans Mountain Indigenous Advisory and Monitoring Committee (IAMC). The key outcomes of the meeting were:

- Ts'elxwéyeqw Tribe provided documents showing their authority to represent their seven member communities in the re-initiated Phase III consultation process.
- Ts'elxwéyeqw Tribe and the Crown agreed to collaboratively draft terms of reference (TOR) for the re-initiated Phase III consultation process. Ts'elxwéyeqw Tribe agreed to prepare a first draft for the Crown's review and input.
- The Crown agreed to convene a working group of relevant federal representatives to conduct a review of the ICA and the 89 recommendations contained therein. The Crown also expressed interest in convening a series of joint technical working group meetings with the Ts'elxwéyeqw Tribe to work collaboratively towards addressing these 89 recommendations.
- The Crown agreed to follow up internally regarding Ts'elxwéyeqw' Tribe's concerns about the government's purchase of the Project, and how the Crown intends to manage real or perceived conflicts of interest associated with this purchase.
- On January 18, 2019, the Crown shared a new consolidated participant funding application with Ts'elxwéyeqw Tribe for $462,000 to support Ts'elxwéyeqw Tribe's participation in the re-initiated Phase III consultation process as a collective.

On January 29, 2019, the Crown confirmed that no additional documentation would be required

regarding Ts’elxwéyeqw Tribe’s representation authority for the re-initiated Phase III consultation process, nor to receive funding on their behalf.

On January 30, 2019, Ts’elxwéyeqw Tribe provided a first draft TOR for the re-initiated Phase III consultation process.

The Consultation Team met with representatives of the Ts’elxwéyeqw Tribe on January 31, 2019. At this meeting, Ts’elxwéyeqw Tribe representatives and the Crown Consultation Team continued to discuss their expectations regarding the consultation process, including status of action items from the previous meeting, the draft terms of reference (TOR) developed by Ts'elxwéyeqw Tribe, Ts'elxwéyeqw Tribe’s views regarding their Aboriginal right to fish in the Fraser River, and the path forward to address the ICA Report and its 89 recommendations. Ts'elxwéyeqw Tribe and the Crown agreed to consult in order to collaboratively identify impacts to rights, including those identified in the ICA report, and to work together to determine appropriate accommodation measures. The Crown indicated that it had put together a team of representatives from federal departments to participate in the technical working group, including representatives from the NEB, Indigenous Services Canada, Fisheries and Oceans Canada, and Environment and Climate Change Canada. The Crown advised that the federal representatives were reviewing the relevant documents, and that it would provide a preliminary draft response to each of the 89 recommendations.

The key outcomes of the meeting were:

- The Crown and Ts’elxwéyeqw Tribe agreed to convene a series of technical working group meetings to collaboratively address the 89 recommendations in the ICA Report. The Crown agreed to provide its draft responses to the 89 recommendations to Ts’elxwéyeqw Tribe, which were prepared following an initial review by relevant federal departments, and to share draft agendas in advance of meetings for Ts’elxwéyeqw Tribe’s review.
- The Crown agreed to convene a meeting between Ts’elxwéyeqw Tribe’s counsel and the Department of Justice to discuss Ts’elxwéyeqw Tribe’s views that a justification analysis is required for any infringement of their established Aboriginal right to fish, and other legal issues related to the re-initiated Phase III consultation process.
- The Crown agreed to follow up internally regarding real or perceived conflicts of interest associated with the federal government’s purchase of the Project, including implications for confidentiality and information sharing.

The Crown also indicated at this meeting that, based on an initial review, the draft TOR prepared by Ts’elxwéyeqw Tribe appeared to be more in the nature of a binding contract than a process protocol, and could therefore prove challenging for the Crown to conclude in the proposed form. The Tribe agreed to revise the terms of reference further to reflect these discussions on the basis of the mutually agreed upon process discussed at this meeting.

On February 14, 2019, the Crown provided a draft agenda for two full-day technical working group meetings that focused on a number of different topics identified in the ICA Report and recommendations. The Crown reiterated their request to schedule these first two technical working

group meetings. Ts’elxwéyeqw Tribe indicated that they would review these draft agendas.

On February 19, 2019, Deputy Minister Tremblay wrote to the Ts’elxwéyeqw Tribe to share the Crown’s updated approach to the re-initiated Phase III consultations, which was the result of advice given by the Honourable Frank Iacobucci based on input received at the roundtables and in early correspondence and meetings with the Crown.

In an email sent February 25, 2019, Ts’elxwéyeqw Tribe provided a second draft TOR to the Crown, and indicated that once it had received the Crown’s comments on the ICA Report and 89 recommendations, the Tribe would assist in scheduling the first technical working group meeting. In response, the Crown suggested that Ts’elxwéyeqw Tribe and the Crown have a teleconference to discuss how to finalize the revised draft TOR, timelines, and a path forward in the re-initiated Phase III consultation process.

On March 1, 2019, the Crown and Ts’elxwéyeqw Tribe held a teleconference to discuss next steps in the re-initiated Phase III consultation process. On this teleconference, the Crown committed to providing a revised draft TOR that the Crown would be prepared to conclude quickly. Ts'elxwéyeqw Tribe reiterated their view that the statutory timeline for the Phase III consultation process is insufficient, and that the statutory timeline pursuant to the *National Energy Board Act* should not apply. The Crown also committed to sharing an initial response to the 89 recommendations by March 6, 2019, and did so on that date. Ts’elxwéyeqw Tribe indicated that they would require approximately one month to review the Crown’s initial responses before holding technical working group meetings. The Crown also requested any feedback that Ts’elxwéyeqw Tribe might have on the draft agendas for technical working group meetings. Ts’elxwéyeqw Tribe indicated that while they agreed with the agendas in principle, their view would depend on the Crown responses to the 89 recommendations.

On March 6, 2019, the Crown shared a third draft terms of reference with Ts’elxwéyeqw Tribe for their review and consideration.

On March 14, 2019, Ts'elxwéyeqw Tribe sent a letter to the Prime Minister that reiterated their concerns about the timelines for consultations, the need for a justification analysis for any infringement of their Aboriginal right to fish for food, social, and ceremonial purposes, and their concerns regarding potential conflicts of interest due to the federal government’s purchase of the Project. In response to a request from Ts'elxwéyeqw counsel, the Crown agreed to convene a teleconference between Ts’elxwéyeqw Tribe’s legal counsel and the Department of Justice to discuss this and other legal issues that Ts’elxwéyeqw Tribe has raised. The Crown convened this teleconference on March 27, 2019. The conversation was conducted on a ‘without prejudice’ basis. The Crown responded to this letter on April 10, 2019 (described below).

On March 14, 2019, the Ts’elxwéyeqw Tribe also shared a draft budget and application for the re-initiated Phase III consultation process. The budget was for $957,000, over double what the Crown had originally offered.

On March 15, 2019, the Minister of Finance sent a letter to Ts’elxwéyeqw Tribe to announce that, in the event that GIC decides to approve the Project, the Minister of Finance will lead a process to explore

possibilities for Indigenous economic participation in the Project.

On March 18, 2019, Ts'elxwéyeqw Tribe and the Consultation Team convened a further teleconference. On the call, Ts'elxwéyeqw Tribe expressed an interest in moving past the TOR in order to focus on the more substantive issues for discussion. Ts'elxwéyeqw Tribe indicated that they would propose some minor wording changes to the third draft TOR within the next few days, after which they would be prepared to sign it. The Crown committed, in response to the Ts'elxwéyeqw Tribe's March 14, 2019 budget proposal, to determine whether any additional funding would be available to Ts'elxwéyeqw Tribe for the re-initiated Phase III consultation process. On this call, Ts'elxwéyeqw Tribe indicated that they intended to consult internally regarding when these meetings could take place, and that they were unable to commit to dates at that time.

On March 21, 2019, the Crown confirmed, by email to the Ts'elxwéyeqw Tribe that an additional $250,000 had been secured, making the total funding offered as part of the re-initiated Phase III consultation process $712,000. The additional funding was provided in recognition that the Crown is consulting with the Tribe at the deeper end of the *Haida* consultation spectrum, which is premised, in part, on the consideration that the Stó:lō have an established Aboriginal right to fish in the Fraser River for food, social, and ceremonial purposes. The Crown requested that Ts'elxwéyeqw Tribe submit a revised participant funding application not exceeding this amount. A funding application from the Tribe was received on April 4, 2019. A contribution agreement for this funding was signed on June 4, 2019.

On March 28, 2019, Ts'elxwéyeqw Tribe provided a fourth draft TOR that contained minor revisions to the Crown's third draft.

On April 1, 2019, the Crown shared a fifth draft TOR that accepted almost all of the changes Ts'elxwéyeqw Tribe had proposed, with the exception of the Tribe's proposed clause related to justification for infringement of established rights. In order to bridge their differing points of view, the Crown proposed that the terms of reference might reflect the respective assertions of the Crown and Ts'elxwéyeqw Tribe on the issue of justification, without binding either of them on this issue.

On April 1, 2019, the Crown reiterated by email its interest in scheduling technical working group meetings, and suggested two full-day technical working group meetings between Monday, April 15, 2019 and Friday, April 26, 2019. The Crown also requested feedback on the agendas that were shared with Ts'elxwéyeqw on February 14, 2019.

Also on April 1, 2019, Consultation Lead, Deborah Corber, wrote to Ts'elxwéyeqw Tribe to share information regarding a number of proposed accommodation measures intended to address impacts to rights and interests, and to respond to concerns that have been raised by Indigenous groups throughout the review of the Project (the original NEB hearing and Crown consultation process as well as the NEB Reconsideration hearing and current re-initiated Phase III consultation process). These measures include:

1. Salish Sea Initiative (SSI), a joint Indigenous-government governance structure, to be co-developed, with funding to support Indigenous capacity to better understand and put in place

mechanisms to monitor and address cumulative effects in the Salish Sea.

2. Co-Developing Community Response (CDCR), a measure that could deliver training and equipment and bring Indigenous groups to the table for the planning of emergency response in the marine environment.
3. Enhanced Maritime Situational Awareness (EMSA) to develop partnerships with Indigenous groups to pilot the new system and tailor it to user needs to increase domain awareness system in the Project area.
4. Marine Safety Equipment and Training (MSET) to provide funding for safety equipment such as Automatic Identification Systems, marine radios, and emergency position-indicating radio beacon and funding for training to improve marine safety on the water.
5. Quiet Vessel Initiative (QVI) to test safe and effective quiet vessel technologies and operational practices that reduce underwater noise at its source as a complement to various other measures currently underway to support the recovery of the Southern Resident Killer Whale (e.g. slowdowns, reductions of containments and increased prey availability, etc.).
6. Aquatic Habitat Restoration Fund (AHRF) that would support collaboration with Indigenous groups to protect and restore aquatic habitats that would be impacted by the Project.
7. Terrestrial Cumulative Effects Initiative (TCEI) to enable co-development of a cumulative effects framework with a focus on understanding the current state of the environment and monitoring changes in response to development and natural processes, for example to inform and complement Projects to restore fish habitat or to conduct watershed analysis.
8. Terrestrial Studies Initiative (TSI) to support improved understanding of Project-related terrestrial impacts, for example on traditional land use, and informing the construction, operations and maintenance phases of the Project.

Some of these accommodation measures are relevant to addressing the 89 recommendations identified in the ICA Report, as described in *Appendix 2*.

On April 4, 2019, Ts'elxwéyeqw Tribe responded to the Crown's April 1, 2019 email indicating that the Tribe has asked the proponent to provide updated alignment sheets that incorporate information regarding the location of Ts'elxwéyeqw Tribe's cultural sites and mitigation that will be applied at those sites, and any new responses to the 89 recommendations, and that receipt of these responses from the proponent is a prerequisite to holding the planned technical working group meetings with the Crown. Ts'elxwéyeqw Tribe indicated that meetings could be held April 22 or May 6, if the proponent could submit the updated alignment sheets and responses to the 89 recommendations before then.

On April 6, 2019, the Crown re-iterated that the initial response to the 89 recommendations provided on March 6, 2019 was intended to be a draft that could guide collaborative discussions with Ts'elxwéyeqw with the aim of achieving consensus as to how each of the recommendations have been or will be addressed.

On April 10, 2019, the Minister of Natural Resources sent a letter to the Ts'elxwéyeqw Tribe responding to concerns they had raised about the timelines for consultation, and their view that the statutory timeline established under the *National Energy Board Act* should not apply to the re-initiated Phase III consultations.

The Minister of Natural Resources also provided a written response to the Ts'elxwéyeqw Tribe's assertion in its March 14, 2019 letter that the Tribe has established Aboriginal rights to fish for food, social, and ceremonial purposes, as affirmed in the Supreme Court of Canada in *R. v. Van der Peet*, and that the Crown must consider whether its actions would constitute an infringement of this established right, and whether the infringement is justified. The Minister's letter said:

The Crown acknowledges that the Stó:lō have an established right to fish for food, social, and ceremonial purposes. The Crown also acknowledged that, where consultation reveals a duty to accommodate, addressing Indigenous peoples' concerns "may require taking steps to avoid irreparable harm or to minimize the effects of infringement."[7] In the Crown's view, this does not mean that the Crown is required to determine whether its actions would constitute an infringement of the Ts'elxwéyeqw Tribe's rights, and if so, whether such infringement would be justified. Rather, the Crown will, in consultations with the Ts'elxwéyeqw Tribe, consider whether the impacts of the Project could include a potential infringement of an established right, and develop accommodation measures to prevent or minimize the risk of any such infringement. The Crown strives, through consultation, and by working together to develop measures to minimize or eliminate the impacts of the Project, to avoid a potential infringement of the Stó:lō's established Aboriginal right, such that a justification analysis would not be required.

Since the Government re-initiated Phase III consultations with Indigenous groups it has maintained that the GiC would only make a decision on the Project once it was satisfied that it had met its duty to consult. With advice from Federal Representative Justice Iacobucci, the GiC extended the timeline, so that a decision on Trans Mountain pipeline Project could be made by June 18, 2019. This extension allowed for further engagement between the Crown consultation teams and Indigenous groups to find solutions to concerns raised and ensure meaningful, two-way dialogue. On April 17, 2019, the Minister of Natural Resources wrote to all potentially impacted Indigenous groups, including Ts'elxwéyeqw to inform them of this important development.

On April 17, 2019, the Crown consultation team sent a letter to Ts'elxwéyeqw with regard to the current status of Crown consultations and participant funding. The letter provided an overview of the consultation process to date, and reiterated the Crown's interest in additional meetings with Ts'elxwéyeqw.

Also on April 17, 2019, Ts'elxwéyeqw Tribe shared a sixth draft TOR with the Crown. It also suggested three full-day technical meetings/workshops. Following additional correspondence regarding scheduling, two full day and one half day workshops were scheduled for May 6, May 16, and May 23, 2019. Following the May 6, 2019 workshop, a fourth full day workshop was scheduled for May 31, 2019.

On April 23, 2019, the Crown wrote to Ts'elxwéyeqw to request a smaller, focused meeting to discuss finalization of the draft terms of reference and expectations for the joint report on the 89 recommendations that had been discussed. Ts'elxwéyeqw responded the same day and indicated that

[7] Haida Nation v. British Columbia (Minister of Forests), 2004 SCC 73, para. 47

they were unavailable on the proposed dates, and raised concern regarding the timing of receipt for the proponent's updated alignment sheets that incorporate Stó:lō's cultural sites. On April 24, the Crown proposed alternative dates for a teleconference to discuss the same issues. Ts'elxwéyeqw indicated they were not available, and reiterated their concerns regarding capacity and timelines for consultation. The Crown responded acknowledging Ts'elxwéyeqw's concerns, and indicating that Crown representatives are available for a discussion at the Tribe's convenience. On May 2, Ts'elxwéyeqw responded by email, indicating that they did not view this procedural meeting as necessary. Ts'elxwéyeqw requested the Crown's updated version of the terms of reference; expressed disappointment with what they viewed as a lack of iterative exchange of information prior to the workshops; reiterated timeline concerns, including the timing of the upcoming workshops; and shared the view that a joint report should be submitted by both Ts'elxwéyeqw and the Crown prior to a GiC decision on the Project. On the same day, the Crown responded, sharing the view that the proposed meeting would serve to advance consultation, and committing to share a revised draft terms of reference with Ts'elxwéyeqw.

On April 25, 2019, the Crown sent a letter to Ts'elxwéyeqw attaching the community's draft annex to the CCAR, which reflected the consultations up to that point. This information was provided electronically to ensure prompt delivery, and a package was also couriered to Ts'elxwéyeqw with the draft CCAR on a USB stick and the draft annex to the CCAR. The Crown asked for comments on the draft annex, as well as an independent submission should Ts'elxwéyeqw choose to provide one, by May 29, 2019.

On April 26, 2019, Ts'elxwéyeqw provided agendas and a presentation for the upcoming workshops, and requested that the Crown combine the input of the Crown, and the forthcoming input of the proponent and Ts'elxwéyeqw in to a single document. On April 30, 2019, the proponent provided updated responses to the 89 recommendations.

In a separate email exchange between Ts'elxwéyeqw and the proponent between April 25 and May 6, 2019, the proponent submitted updated environmental alignment sheets and resource specific mitigation tables to Ts'elxwéyeqw for their review in preparation for the upcoming workshops. Ts'elxwéyeqw raised concern that the Resource Specific Mitigation Tables (RSMT) were not specific to Stó:lō's sites, and did not incorporate the mitigation described in the ICA. The proponent indicated that this work had begun as part of the provincial permitting process, but that key spatial baseline data that was not available to that would allow them to link mitigation measures to individual sites. Ts'elxwéyeqw indicated that the proponent had sufficient information to incorporate their mitigation measures, and indicated it was not appropriate to point to work done as part of a separate process. The proponent replied that they saw consultation as an ongoing process, and shared their interest in working together regarding mitigation measures.

On May 3, 2019, the Crown shared a revised draft terms of reference with Ts'elxwéyeqw, and requested a discussion regarding the proposed joint report and its relationship to the CCAR annex.

On May 3, 2019, Ts'elxwéyeqw shared their responses to the Crown's draft analysis of the ICA recommendations. Ts'elxwéyeqw also provided general comments regarding the Crown's draft analysis, including the authorship of the document; the Tribe's view that the analysis must be examined from a

rights recognition framework; and concerns that the Crown had overly relied on future actions or discussions; and concerns that the alignment sheets had not been updated with their cultural sites. The Crown sought to address these comments in the final version of the document. On May 5, 2019, the Crown provided the requested table that combined Ts'elxwéyeqw, the proponent, and the Crown's input.

On May 6, May 16, May 23, and May 31, Ts'elxwéyeqw, the proponent, and the Crown (including representatives of multiple federal departments) held three full-day and one half-day workshops to discuss the ICA and 89 recommendations. All workshops were chaired by Ts'elxwéyeqw, who also set the agenda for each of them. At all workshops, Ts'elxwéyeqw raised the following issues and concerns:

- Ts'elxwéyeqw expressed concern regarding the timelines for consultation and the timing of the technical workshops, and the proponent's work to incorporate their information in to alignment sheets;
- Ts'elxwéyeqw shared the critical importance of protecting cultural sites identified within their traditional territory;
- Ts'elxwéyeqw stressed the importance of ensuring that the information provided by Ts'elxwéyeqw, including the information contained in the ICA and CHOA, is incorporated in to the proponent's alignment sheets and RSMTs;
- Ts'elxwéyeqw expressed concern regarding the Crown's draft (March 6, 2019) responses to the ICA recommendations, including the Crown's reliance on commitments and discussions with the proponent, and the need for new conditions to address the recommendations;
- Ts'elxwéyeqw indicated that they have not been adequately consulted on plans or reports the proponent has already submitted to the NEB, and that they don't have capacity to review every submission to ensure adequate consultation has taken place;
- Ts'elxwéyeqw indicated that the onus should not be on Ts'elxwéyeqw to determine whether consultation has been adequate in relation to NEB conditions;
- Ts'elxwéyeqw stressed the importance of having Ts'elxwéyeqw approved monitors in their traditional territory during construction.

The May 6, 2019 workshop focused on general issues related to the ICA and recommendations, as well as fisheries and emergency management. This meeting was attended by representatives of Ts'elxwéyeqw Tribe, the proponent, Natural Resources Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, and the NEB. At this meeting, the proponent committed to provide Ts'elxwéyeqw with further updated alignment sheets and Resource Specific Mitigation Tables once outstanding data issues had been addressed by their respective technical staff, and a document summarizing how information contained in the ICA had been incorporated in to their management plans and alignment sheets. The proponent and Ts'elxwéyeqw agreed to hold a follow up workshop to conduct a detailed review of the watercourse crossings inventory in comparison to the watercourse crossing information provided in the ICA (held on May 31, 2019). The Crown provided an overview of the Terrestrial Studies Initiative as a way to address some of the recommendations, and Ts'elxwéyeqw requested additional information regarding how those studies would be taken in to account by the Crown, NEB and the proponent, if they were conducted. At this meeting, the NEB agreed to follow up internally regarding Ts'elxwéyeqw's request for dedicated consultation staff.

On May 7, 2019, the Crown emailed Ts'elxwéyeqw requesting a one hour teleconference to discuss Ts'elxwéyeqw's expectations and a path forward for the proposed joint report, and to debrief and go over action items from the May 6 meeting. On May 9, the Crown provided a draft table of contents for a joint report for Ts'elxwéyeqw's review and consideration. On the same day, Ts'elxwéyeqw responded, indicating they were not in a position to discuss the draft table of contents, as it would require additional internal discussion and input. On May 10, 2019, the Crown and Ts'elxwéyeqw had a teleconference that focused on reiterating their concerns and reaching mutual agreement on action items, as described above. On the call, Ts'elxwéyeqw also discussed the importance of conducting pre-construction vegetation surveys, as described in the ICA recommendations. The Crown re-iterated that funding for studies and/or surveys is available through the Terrestrial Studies Initiative, and encouraged Ts'elxwéyeqw to submit an application as soon as possible.

The May 16, 2019 workshop focused on socio-economic issues related to the ICA and recommendations. This half day workshop was attended by representatives of Ts'elxwéyeqw Tribe, including Chief David Jimmie and legal counsel, the proponent, Natural Resources Canada, and the NEB. At this meeting, Ts'elxwéyeqw shared the view that economic accommodation should be an important component of this consultation process to satisfy the duty to consult. Attendees discussed Ts'elxwéyeqw's concerns regarding the lack of consultation on plans and reports submitted to the NEB, and Ts'elxwéyeqw indicated that the onus should not be on Ts'elxwéyeqw to file a formal complaint with the NEB to ensure consultation has been adequate. At this meeting, the proponent committed to working towards an engagement agreement with Ts'elxwéyeqw, and offered to host a series of roundtables with Ts'elxwéyeqw prior to and during construction to resolve outstanding socio-economic and other concerns. The Crown provided an overview of the Terrestrial Cumulative Effects Initiative accommodation measure, and agreed to provide more information about it at the next meeting. At this workshop, Ts'elxwéyeqw requested that the Crown convert the Crown's analysis table in to a narrative form. This revised draft document was provided to Ts'elxwéyeqw on May 22, 2019.

On May 19, 2019, the proponent submitted a number of additional documents that demonstrate how the information contained within the ICA and CHOA was incorporated into overall Project environmental plans, including:

- A new document showing the 89 Recommendations along with a description of how the proponent has considered and taken steps toward accommodating the recommendations;
- A document listing all the cultural heritage sites along the pipeline corridor with existing mitigation measures;
- An updated Resource Specific Mitigation Table showing all Stó:lō cultural heritage sites along the Project corridor as identified by TTML; and
- A document showing how TTML's information regarding watercourse crossings was incorporated into Trans Mountain's watercourse crossing inventory.

The May 23, 2019 workshop was intended to focus on cultural heritage and vegetation, but only cultural heritage was discussed in detail. Representatives from Ts'elxwéyeqw, the proponent, Natural Resources Canada, Environment and Climate Change Canada, and the NEB were in attendance. The proponent

brought with them updated alignment sheets that incorporated Stó:lō cultural sites, as well as updated Resource Specific Mitigation Tables. At the workshop, several case study cultural sites were discussed, including transformation sites, bathing sites, and pit house sites. Attendees discussed their cultural importance, and the mitigation currently in place to reduce effects to these sites. At this meeting, the proponent made a number of commitments to protect Stó:lō cultural sites, including:

- A commitment to hire an environmental monitor, as chosen by Ts'elxwéyeqw Tribe, and meeting the proponent's contractor qualification specifications, to be on the Environmental Inspection Team;
- A commitment to ensure that Stó:lō sites are included in the final alignment sheets that are used by the proponent's staff and contractors during construction;
- A commitment to update the Resource Specific Mitigation Tables to ensure that mitigation measures are specific to different types of cultural sites;
- A commitment for Stó:lō representatives to deliver cultural awareness training to the proponent's staff and contractors;
- A commitment to incorporate information regarding the cultural site boundaries identified by Stó:lō when considering appropriate mitigation; and
- A commitment to meet with Stó:lō to discuss windows for construction that respect Stó:lō cultural practices and events.

While there wasn't time available for discussion, representatives from Environment and Climate Change Canada shared a summary document regarding the Terrestrial Cumulative Effects Initiative, and encouraged Ts'elxwéyeqw to get involved in the development of this program.

On May 28, 2019, the Crown sent an email to Ts'elxwéyeqw informing them of an extension to the deadline to submit comments on the draft annex and independent submission. The deadline to submit comments on the draft annex to the CCAR was extended to May 31, 2019, and the deadline to provide an independent submission was extended to June 6, 2019. Ts'elxwéyeqw provided the Crown with an independent submission on May 31, 2019.

On May 29, 2019, the Crown sent an email to Ts'elxwéyeqw informing them that in response to concerns raised regarding the protection of Stó:lō cultural sites, the Crown would be offering Ts'elxwéyeqw Tribe $250,000 in capacity/study funding to support the Tribe's efforts to advance its interests regarding cultural sites following the GIC decision on the Project, should the GIC decide to approve the Project. In the May 29 email, the Crown also shared its perspective that the detailed project planning work that the Tribe was engaged in with the proponent concerning the identification of specific mitigation measures at over 400 cultural sites did not need to be completed in order for the GIC to make an informed decision on June 18, 2019. It was noted that the decision before GIC on June 18 was in relation to the 150m corridor proposed by the proponent, and that if the Project was approved there were post-GIC processes and mechanisms in place regarding detailed routing and the protection of cultural heritage. The offer of $250,000 in capacity/study funding would support the Tribe's participation in those processes and mechanisms.

On May 31, 2019, the final technical workshop was held on the topic of watercourse crossings.

Representatives from Ts'elxwéyeqw, the proponent, Natural Resources Canada, and the NEB were in attendance. The proponent brought with them technical experts, including staff who would be on the ground overseeing construction, to discuss Ts'elxwéyeqw's concerns regarding how specific watercourses would be crossed by the Project. Ts'elxwéyeqw shared information that it had collected about a number of specific waterbodies, and the proponent agreed to integrate information provided into its project plans. A number of specific commitments were made by the proponent, including:

- The proponent will utilize Ts'elxwéyeqw/Stó:lō traditional and technical knowledge and data in their water crossings (WC) tables and plans.
- For waterbodies classified as non-fish-bearing (non-FB) but with hydrological connectivity to FB waters, these will be treated as potentially FB by the proponent.
- The proponent will look for opportunities enhance WC sites, if feasible, for habitat restoration.
- The proponent will work with Ts'elxwéyeqw to identify gaps in their data and portal.
- The proponent will include Ts'elxwéyeqw in their emergency management and response planning, which could include training for Ts'elxwéyeqw members recruited for involvement in response efforts.

Also on May 31, 2019, Ts'elxwéyeqw sent an email to the Crown consultation team with comments on the draft CCAR annex, as an independent submission. Ts'elxwéyeqw stated that it objected to the use of the annex by Canada in its entirety, stating that the draft CCAR annex is "a misleading narrative of a Phase III consultation process that is nowhere near complete." The Tribe was concerned that there had not yet been adequate time to discuss accommodation measures, and objected to the deadline for comments being set as May 31, 2019. The Tribe raised concern that the draft CCAR annex was sent out prior to the technical workshops taking place, which would mean that the first time that the Tribe could review Canada's analysis of the outcomes of those workshops would be in the final report – at which point there would not be an opportunity to comment. The Tribe requested that Canada reconsider the timing of the CCAR. Ts'elxwéyeqw also raised concern that a joint report with the Crown regarding the ICA and 89 recommendations had not been completed.

On June 4, 2019, the Crown responded to the concerns raised in Ts'elxwéyeqw's May 31, 2019 email, and shared the Crown's view that the information to be provided to GIC would ensure that GiC has a complete picture of the re-initiated Phase III consultations and would be in a position to assess the adequacy of the consultation process with the Tribe. This information would include: (a) a revised annex that describes consultation up to May 31, 2019, (b) the Tribe's May 31 email, (c) any other Independent Submission that the Tribe might provide by June 6, 2019, and (d) the Crown's analysis of the ICA's 89 recommendations, which incorporates the Tribe's comments on the March 6, 2019 draft, new commitments from the proponent, and the outcomes of the technical workshops. The Crown's final analysis of the ICA recommendations and a full list of the proponent's new commitments made as part of the re-initiated Phase III consultation process can be found in *Appendix 2*.

On June 6, 2019, the Crown received another Independent Submission from Ts'elxwéyeqw Tribe to be included in the information provided to GIC.

5. Preliminary Strength of Claim and Depth of Consultation Assessment

The historic Chilliwack tribe, today associated with the Ts'elxwéyeqw Tribe, represents the communities of Aitchelitz First Nation, Shxwhá:y Village, Skowkale First Nation, Soowahlie First Nation, Squiala First Nation, Tzeachten First Nation and Yakweakwioose First Nation. The Ts'elxwéyeqw Tribe are one of several groups classified as Stó:lō. The Crown's preliminary assessment of the Ts'elxwéyeqw Tribe's claim for rights over the section of the Project, east from an area near present day Vedder Canal to the east side of the City of Chilliwack, ranges from a moderate to a strong *prima facie* claim for rights.

In the 2003 Writ of Summons, Stó:lō communities, including Ts'elxwéyeqw, have asserted marine fishing and harvesting rights to areas that are potentially impacted by the Project. However, based on the information provided during the re-initiated Phase III consultation process, the Crown has insufficient information to assess the nature, extent or scope of these asserted marine fishing and harvesting rights.

The consultation process for the Project is not a rights determination process. The Crown's preliminary assessment is based on the understanding that the Tribe has both asserted and established (non-treaty) Aboriginal rights. For the purpose of the re-initiated Phase III consultations only, Canada recognizes that Ts'elxwéyeqw Tribe possesses an established Aboriginal right to fish on the Fraser River for food, social and ceremonial purposes, as described by the Supreme Court of Canada in *R. v. Van der Peet* (the specific nature, scope and geographic location of that right being yet undetermined). In recognition of that, the Crown will continue to consult at the deep end of the spectrum with a view to avoiding or minimizing impacts to those established or asserted rights.

The Crown's preliminary assessment of the Ts'elxwéyeqw Tribe's title claim over the section of the Project, east from an area near Vedder Canal to the east side of the City of Chilliwack, ranges from a moderate to a strong prima facie claim for title. It is understood that by 1846, the Ts'elxwéyeqw Tribe had migrated from the Chilliwack River Valley to Vedder Crossing, which resulted in Ts'elxwéyeqw settling into villages in that area.

Given the nature and location of the Project, the potential impacts of the Project on Ts'elxwéyeqw Tribe's Indigenous Interests, including consideration of the established rights of the Stó:lō to fish in the Fraser River for food, social and ceremonial purposes, the Crown is of the view that the legal duty to consult Ts'elxwéyeqw Tribe lies at the deeper end of the *Haida* consultation spectrum.

The current direction from the courts is that decision-makers are not required to make determinations of whether proposed conduct will infringe section 35 rights, and whether that infringement is justified. However, whether there is a potential for infringement is something that the Crown should consider in the consultation process. Through consultation and accommodation, adverse impacts on rights which could potentially be serious enough to constitute an infringement can be minimized. The re-initiated Phase III consultation and dialogue focuses on understanding the nature of the rights, finding accommodation measures which avoid or minimize the adverse impacts, and therefore avoid

infringement of those rights.

In recognition, the Crown will continue to consult at the deep end of the spectrum with a view to avoiding or minimizing impacts to those established rights. The Crown is committed to consultation with Ts'elxwéyeqw Tribe at a deeper level, in order to ensure adequate meaningful consultation and accommodation on the outstanding issues, impacts and concerns with Ts'elxwéyeqw Tribe.

6. 2016 Potential Impacts on Indigenous Interests, Accommodation Measures and Crown Analysis

The 2016 Annex for members of Stó:lō Collective was sent to respective members of Ts'elxwéyeqw Tribe in a letter dated November 2, 2018 from Deputy Minister Tremblay. The 2016 Annex captured the Crown's understanding of each member of the Stó:lō Collective's concerns on the Project's impacts on their Aboriginal or treaty rights, or other interests, from the previous consultation process.

The Crown acknowledges that members of Ts'elxwéyeqw Tribe had a number of outstanding concerns in 2016. These concerns were conveyed to the Crown as members of the Stó:lō Collective through Stó:lō Collective submissions during the NEB process, and through letters sent to and meetings with the Crown following release of the NEB report in May 2016.

In a 2015 letter to the proponent and the NEB (A4G6G0), Stó:lō Collective raised concerns with the proponent's Supplemental Traditional Land and Resource Use Technical Report (A3Z4Z2), objecting to the proponent's decision to independently reduce the number of traditional land use (TLU) sites affected by the Project. The Stó:lō Collective objected to the proponent suggesting some of these sites were "unimportant" and notes that the proponent later explained that they reduced the number of TLU sites for confidentiality purposes.

In November 2016, Stó:lō Collective raised concerns regarding the Crown's characterizations of impacts to Stó:lō people in the 2016 Consultation and Accommodation Report. The letter pointed to evidence in the ICA that has found the Project will have significant and long-term negative impacts on Stó:lō. In particular, Stó:lō Collective concluded that there would be significant post-mitigation effects to fishing and spiritual activities.

7. 2018/19 Potential Impacts on Indigenous Interests and Accommodation Measures, and Crown Analysis

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Indigenous Interests is provided in Chapter 4. The Crown recognizes that areas within the asserted traditional territory of each Indigenous group or Tribe 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 Ts'elxwéyeqw Tribe's Indigenous Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Ts'elxwéyeqw ability to practice Indigenous Interests.
Where information was available, the Crown considered the following:

(a) Biophysical effects to values linked to Indigenous Interests (e.g., fish) that were assessed by the NEB;
(b) Impacts on specific sites or areas identified as important to traditional use;and
(c) Impacts on social, cultural, spiritual, and experiential aspects of exercising Indigenous Interests.

Additional factors considered in the assessment of impacts on Indigenous Interests are described in Chapter 4 of this Report. The Crown's conclusion on the seriousness of Project impacts on Ts'elxwéyeqw Tribe's Indigenous Interests considers information available to the Crown, including information provided by Ts'elxwéyeqw Tribe through the re-initiated Phase III consultation process, and information provided by Stó:lō Collective, who have represented the interests of Ts'elxwéyeqw Tribe and other Stó:lō communities throughout the NEB's reviews of the Project. The Crown also considered consultation with the Stó:lō Collective, the Stó:lō Collective's engagement with the proponent, proponent commitments, recommended NEB conditions, the additional Crown accommodation measures which are contemplated as part of the re-initiated Phase III consultation, as well as relevant proposed conditions of any Environmental Assessment Certificate issued by the Province.

Information regarding Ts'elxwéyeqw Tribe's traditional land and resource uses along the proposed pipeline corridor is based on the ICA Report (A3Z4Z2, A3Z4Z3, A3Z4Z4, A3Z4Z5, A4C7K2), which was prepared by Ts'elxwéyeqw Tribe Management Limited (TTML), Stó:lō Research and Resource Management Centre, and Human Environment Group on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities, as well as direct engagement with the Tribe through the consultation process. In its Supplemental Traditional Land and Resource Use Technical Report (A3Z4Z2), the proponent estimated approximate distances and directions from the proposed pipeline corridor based on some of the information provided in the Sto:lo Collective's Cultural Heritage Overview Assessment (CHOA) and Ground Truthing of Indigenous Trails report, which are appendices to the ICA Report.

ICA and 89 Recommendations

The Crown notes that the ICA Report includes 89 recommendations that, "if implemented, would help reduce the overall impact of the [Project] on Stó:lō people within S'ólh Téméxw (ICA Report, Section 7, p.1)." The Crown prepared an initial written analysis of the 89 recommendations, which was shared with Ts'elxwéyeqw Tribe on March 6, 2019. A final version of this document is appended to this annex as *Appendix 2*. The responses consider whether new and existing proponent commitments, NEB conditions and regulations, existing federal initiatives, or new accommodation measures have addressed the 89 recommendations.

The Crown also notes that the proponent has incorporated each of the cultural and heritage sites identified by Ts'elxwéyeqw, including those identified in the ICA Report and the CHOA, and has provided an update to their 2015 response to the 89 Recommendations. This updated information is intended as

a basis for continuing to work with Stó:lō communities to address any potential gaps in mitigation measures at these sites. As mentioned above, the Crown has offered $250,000 to Ts'elxwéyeqw to enable additional capacity to continue this collaborative work with the proponent in the event of a positive GIC decision.

I. Potential Impacts on Hunting, Trapping, and Plant Gathering Rights (Species hunted, trapped and gathered and impacts expressed)

In assessing impacts to Ts'elxwéyeqw's hunting, trapping, and gathering rights, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities, as well as direct engagement with the Tribe during the re-initiated Phase III consultation process.

According to the Stó:lō Collective's written evidence submitted to the NEB and in the ICA, community members continue to rely heavily on wild game, berries and plants, medicines and materials. Presently, a wide variety of wildlife and plants are harvested and gathered for food, medicine, building materials, and ceremonial use by the Stó:lō Collective's community members. Hunting and trapping, in particular deer hunting using both traditional and modern practices, continue to be important cultural activities to the Stó:lō Collective's community members. Trapping, although rarely practiced, remains highly valued by Stó:lō people. Hunted species include elk, moose, deer, grizzly bear, black bear, coyote, grouse, bobcat, and cougar. Plant gathering activities include gathering cedar roots, buds, bark, and wood, harvesting and processing berries, and gathering medicinal plants. Commonly targeted habitats for gathering activities include cedar forests, wetlands and nutrient rich forests. Medicinal plant gathering areas are noted for the spiritual importance to Stó:lō culture. A traditional food diet of wild game, fish, wild greens, berries and fruit continues to be very important to the health of Stó:lō people.

The Stó:lō Collective identified 98 specific hunting sites within its traditional territory. Additionally, the Stó:lō Collective identified five site-specific areas significant for plant species gathered by community members, including Cheam Mountain, Cheam wetlands, Sumas Mountain, Chilliwack Mountain, and Skagit Mountain. Stó:lō community members identified three traditional hunting areas (Sumas Mountain, Mount Cheam and forested areas between Cheam and east of Hope), of which three contemporary hunting sites are located within 100 m of the proposed pipeline corridor, and 95 contemporary hunting sites are located within 2 km of the proposed pipeline corridor. Three trapping sites were identified, of which two (Sumas Slough and Bowman's Island) are currently used; however, the proximity to the proposed pipeline corridor was not provided.

Stó:lō people also gather plants that are located within forested, marshlike/swampy, and both alpine and lowland areas in and around their own reserves. Several plant gathering sites were identified and mapped within the proposed pipeline corridor (between km 960-964, between km 1015 – 1016, between km 1019 – 1024, between km 1027 – 1031, near km marker 1039, near km marker 1098).

Multiple water-crossings also support traditionally used plants, however these are too numerous to map in a document like the CHOA (Appendix B and C of the ICA). A full inventory of traditional plant gathering areas potentially affected by the Project can only be determined through field surveys. The

area of the Fraser Valley downstream of the Fraser Canyon and the confluence of the Pitt and Fraser rivers were traditionally used for plant gathering, specifically bog cranberries and wapato.

The Stó:lō Collective identified a number of concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities. Concerns expressed related to impacts on plants and plant gathering activities were:

- loss of berries, traditional medicines, and harvesting opportunities;
- loss of plants and medicinal resources relied on by Stó:lō Collective members;
- spread of invasive species and use of chemical vegetation management;
- impacts on a wide variety of wildlife species;
- increased erosion and run-off, sediment control;
- lost opportunities and/or ability to gather traditional plants (i.e., cedar bark, roots, buds, wood, berries, and medicines);
- contamination of gathering sites;
- potential adverse effects for traditional plants collected in a variety of wetland types, which may not be considered as important under the listing of *BC Wetlands of Concern* but are still considered significant to the Stó:lō Collective;
- effects on Indigenous harvesting practices and subsistence living and medicinal purposes; and
- lack of communication surrounding emergency response procedures and remedial action has created anxiety related to wildlife health and personal safety.

Concerns expressed related to hunting, trapping and wildlife were:

- reduced ability to hunt or trap, and/or provide wild meat to family, Siyá:m, Big House-based activities, and cultural events;
- potential environmental and cumulative environmental effects to protected areas, wildlife and wildlife habitat, vegetation, species at risk, and wetlands;
- potential for construction activities to limit use of game trails, restricting wildlife movement; and
- increased lines-of-sight affecting predator-prey dynamics due to clearing activities.

The Stó:lō Collective also expressed concerns about impacts to social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, such as:

- a sense of spiritual and cultural alienation on the land;
- impacts to human health from the use of pesticides to control invasive and other plant species, particularly impacts to community members that harvest country foods;
- loss of opportunities and/ or ability to gather traditional plants (i.e., cedar bark, roots, buds, wood, berries, and medicines) and contamination of gathering sites;
- lack of communication surrounding emergency response procedures and remedial action has created anxiety related to wildlife health and personal safety;
- sensory disturbance to birds and disturbance of bird habitat during construction; and
- the possibility of a major rupture and the effect that would have on the lower Fraser River

watershed and the water-based culture of the community.

In meetings and workshops with the Crown, Ts'elxwéyeqw representatives described the importance of traditional plant gathering, including gathering of medicinal plants. Ts'elxwéyeqw indicated that some of the sites that have been identified in the ICA and CHOA as overlapping with the pipeline RoW are plant gathering sites that must be protected. Ts'elxwéyeqw further indicated that additional surveys should be conducted to ensure that the identified traditional use areas are adequately protected.

Crown Analysis

Canada acknowledges the potential impacts on the hunting, trapping and gathering rights of Ts'elxwéyeqw Tribe as identified above. Canada acknowledges that proponent commitments, NEB conditions and the existing pipeline and marine safety regimes would not entirely eliminate the potential adverse impacts of the Project on Indigenous Interests specific to hunting, trapping, and plant gathering activities.

The NEB found that adverse effects would be limited to directly disturbed areas within the Project footprint, sometimes extending off-footprint into the Local Study Area (LSA). The Project's adverse effects vary in duration and frequency with short-term effects including woodland caribou mortality risk, some weeds/invasive species, and medium-term effects for soil and soil productivity, rare plants, lichens, vegetation, and wetlands (with reclamation). Other medium to long-term effects are predicted to occur for mature trees and grasslands, and terrestrial wildlife, including woodland caribou and grizzly bear. The Project's adverse effects to species relied upon for hunting, trapping and plant gathering activities were found by the NEB to range from reversible to permanent.

The proponent and NEB conclude that the Project's contributions to the total cumulative effects for most valued components are relatively minor, inconsequential or insignificant. In Canada's view, the construction and operation of the pipeline, WMT and associated facilities represent a low to moderate magnitude change in the established baseline environment. The majority of effects – primarily in the biophysical context – are reversible within the Project lifecycle with a small number of effects being more permanent over decades/generations related to removal of riparian habitat and mature vegetation for the RoW and facilities maintenance.

Set out below are ways in which the proponent, the regulator (NEB) and the Crown propose to address, mitigate and accommodate the impacts of the Project on hunting, trapping and gathering rights.

NEB Conditions

As set out in Chapter 4, the NEB has put in place four overarching conditions (#1, 2, 3, 4) that the proponent must meet across the lifecycle of the Project, including compliance with all 156 NEB conditions unless otherwise directed, and with the commitments the proponent has made regarding environmental protection and engineering and safety. These overarching conditions are relevant for all potential impacts on Indigenous groups' interests, including rights, outlined throughout this chapter.

Several NEB conditions directly contribute to avoiding or mitigating potential impacts on Indigenous groups' hunting, trapping and gathering practices, including:

- Conditions for soil, vegetation and wetlands protection prior to construction (#40, 41, 42, 45, 46, 47, 71, 76, 92) and during operation (#151, 154, 155, 156, 157). For example, NEB condition #40 requires the proponent to file a Rare Ecological Community and Rare Plant Population Management Plan five months prior to commencing construction. The Plan will include avoidance and mitigation measures to be implemented during construction and operations regarding rare plant and lichen species that have been identified through available and applicable Indigenous traditional land use and traditional ecological knowledge.
- Conditions for wildlife and wildlife habitat protection prior to construction (#36, 37, 38, 44, 47, 56, 71, 92), prior to operation (#128) and during operation (#37, 128, 149, 150, 151, 154) would directly contribute to avoiding or mitigating potential impacts on plant species of importance to the Ts'elxwéyeqw Tribe.
- Other conditions (#96, 97, 98, 146) indirectly support objectives to avoid and mitigate potential impacts on Indigenous groups' interests, including hunting, trapping and gathering. For example, condition 98 requires the proponent to file a Plan for Indigenous Group Participation in Construction Monitoring two months prior to construction that describes Indigenous groups' participation in monitoring activities for the protection of traditional land and resource use.

If the Project is approved, the following NEB conditions would directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites: #40, 41, 42, 43, 45, 47, 71, 72, 76, 151, 154, 155, 156, and 157. Similarly, the following NEB conditions may either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities: #62, 80, 95, 96, 97, 98, 141, and 146.

These conditions, in addition to those regarding pipeline spills and emergency response, would substantially address the impacts of the Project on hunting, trapping and gathering rights expressed by Ts'elxwéyeqw Tribe, and by the Stó:lō Collective on behalf of Ts'elxwéyeqw.

The Commitments of the Proponent

The proponent will seek to limit the potential impact of the Project on the Ts'elxwéyeqw Tribe's hunting, trapping and gathering rights by conducting environmental and socio-economic studies that will avoid, mitigate, or offset potential adverse Project impacts on Indigenous groups' ability to hunt and harvest traditional country foods. For example, the proponent will implement its Traffic Access and Control Plan to reduce the impact of construction equipment and vehicles on wildlife and wildlife habitat. The proponent will minimize the potential of Project-related cumulative effects by aligning the pipeline corridor to follow existing linear features, such as the existing pipeline corridor or other pre-existing facilities and clearings, to the extent possible. The deviation of the expansion Project from the existing corridor in Stó:lō traditional territory was purposeful, to avoid routing through Stó:lō Collective's reserve (Grass 15).

The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic during and following construction. The proponent remains committed to minimizing disturbance to access to the Ts'elxwéyeqw Tribe'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 the Ts'elxwéyeqw Tribe prior to construction, the sites will be assessed, and appropriate mitigation measures will be determined. The proponent committed to working with the Ts'elxwéyeqw Tribe to develop strategies to most effectively communicate the construction schedule and work areas to community members.

The proponent would implement several mitigation measures to reduce potential effects to species important for the Ts'elxwéyeqw Tribe's hunting, trapping, and plant gathering activities. The proponent remains committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and resource specific mitigation tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction of wildlife to the work site, minimize sensory disturbance and protect site-specific habitat features are outlined in the Project Environmental Protection Plan and the Wildlife Management Plans.

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 Indigenous 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 Indigenous groups regarding the integration of traditional knowledge related to the location and construction of the Project.

For a full list of commitments that the proponent has made in order to mitigate impacts to Ts'elxwéyeqw Tribe's Aboriginal rights, please see *Appendix 2*.

Accommodation Measures

Taking into consideration the above factors, and those described in *Appendix 2*, as well as the general accommodation measures described in Chapter 4 of the CCAR in respect of hunting, trapping, and plant-gathering rights, Canada recognizes the outstanding concerns expressed by Ts'elxwéyeqw, and by the Stó:lō Collective on behalf of Ts'elxwéyeqw, and the cumulative effects on their interests. Through the initiatives described below, the Crown is taking additional steps to address broader concerns regarding

the cumulative effects of development on the exercise of Ts'elxwéyeqw's asserted s. 35 rights to hunt, trap, and plant gather.

Terrestrial Cumulative Effects Initiative

The cumulative effects of development and the potential contribution of the Project to these effects has been raised by Indigenous groups throughout the consultation process. Accordingly, Canada has proposed a Terrestrial Cumulative Effects Initiative (TCEI) to support Indigenous communities and regions in developing the internal capacity necessary to participate in collaborative actions to monitor and study cumulative effects on land and to inform adaptive management and environmental protection.

Should the Project be approved, the TCEI would be developed using a regional approach that would recognize ecosystems and geography, and respect the particular environmental concerns, perspectives, rights, responsibilities of the many Indigenous communities in the region. The four major regions of the Initiative will be: Island/Lower Mainland, Fraser Valley, Thompson Valley, and Boreal/Parkland Region of Alberta. Canada will fund projects to enable Indigenous groups to identify valued ecosystem components through local workshops.

In addition, Canada will fund projects to enable Indigenous groups to identify valued ecosystem components through local workshops. Canada will also fund projects that enable Indigenous groups to build capacity and undertake Indigenous-led field studies to monitor cumulative effects. Indigenous groups can apply for funding individually up to $250K or as part of a collective up to $800K. Finally, technical and advisory support will be made available by Canada to support Indigenous-led cumulative effects studies and to develop tools, such as for monitoring and sampling.

Terrestrial Studies Initiative

Acquisition and sharing of knowledge about traditional land use can support an ongoing collaborative relationship among Indigenous groups, the Crown and the proponent and inform Project implementation and operation. Canada has implemented the Terrestrial Studies Initiative (TSI), which has begun taking action to support Indigenous-led studies to gain a better understanding of the potential land-based impacts of the Project. This could include updating existing Traditional Land Use (TLU) studies to update key data points that will likely have changed over time, revisiting the scope of previous studies to ensure they cover the full range of cultural uses of the land and additional funding beyond that provided for other land-based topics concerning communities. Indigenous groups can apply for funding individually up to $250,000 per study or as part of a Collective, provided the appropriate documentation is provided.

Ts'elxwéyeqw and Canada have discussed the funding available through this initiative on multiple occasions, since several ICA recommendations relate to conducting additional studies or surveys. The Crown recognizes Ts'elxwéyeqw's concerns that studies funded under this initiative would not be taken in to account by the proponent in development of project plans and alignment sheets, or considered by NEB in their enforcement of conditions. The NEB has indicated that it would consider studies submitted

to them if it is in relation to a proponent's compliance with a particular condition. Deliverables produced under the TSI can inform the NEB Condition #97. This condition requires the proponent to file a report with the NEB two months prior to construction, which describes all pre-construction Traditional Land Use (TLU) and Traditional Marie Resource Use (TMRU) investigations, summarize the mitigation measures that they will implement, and summarize any outstanding TLU/TMRU investigations that will not be completed prior to construction. Funding of up to $900,000 is available for collectives such as Ts'elxwéyeqw through this initiative.

In addition to the accommodation measures described above, the concerns expressed by the Stó:lō Collective relating to hunting, trapping, and plant gathering rights are also addressed in the document entitled "Crown Analysis of ICA Recommendations", which is attached as *Appendix 2*.

Conclusion

In 2016, the Crown stated that the Project could adversely impact hunting, trapping, and gathering rights. The Crown acknowledged that proponent commitments, NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks.
In consideration of the 2019 NEB Reconsideration Report, new information from the re-initiated Phase III consultations and proponent commitments, should the Project be approved the Crown expects impacts of the Project on the exercise of Ts'elxwéyeqw's Indigenous Interests related to hunting, trapping, and gathering rights would be minor.

Through these consultations, the Crown has endeavoured to identify mitigation and accommodation measures, described above, to lessen the potential impact of the Project.

II. Potential Impacts on Freshwater and Marine Fishing and Marine Harvesting Rights

In assessing impacts to Ts'elxwéyeqw's fishing and marine harvesting activities, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities during the NEB processes, as well as direct engagement with the Tribe during the re-initiated Phase III consultation process to assess impacts to Ts'elxwéyeqw Tribe's Indigenous Interests.

Stó:lō, as people of the river, have a deeply established connection to fishing, which are core to Stó:lō cultural activities and tradition, subsistence and economic purposes. This connection is considered essential to psychological, physical, and spiritual health. Historically, community members caught and processed fish using setting nets, torch lighting, dip netting, drift netting, and wind drying. Presently, fishing excursions continue to provide meaningful opportunities to teach traditional methods, share knowledge and learn the stories about the waterways.

Most fishing occurs along the Fraser River, particularly at the Fraser Canyon where salmon are abundant and conditions for meat preparation are ideal. Various species of fish continue to be harvested by Stó:lō community members, including: black crappie, brown bullhead, bull trout, prickly sculpin, sculpin, slimy sculpin, coastal cutthroat trout, chinook salmon, chum salmon, chiselmouth, coho, salmon, carp, cutthroat, dace, dolly varden, eulachon, green sturgeon, lamprey, Nooksack dace, peamouth chub, pink

salmon, rainbow trout, redside shiner, sturgeon, sockeye salmon, steelhead, sum steelhead, Salish sucker, sucker, whitefish, and white sturgeon.

The Stó:lō also assert that they have traditionally accessed the mouth of the Fraser River for harvesting marine mammals, shellfish and molluscs.

In the ICA, Stó:lō Collective community members identified waterways crossed by the Project that are associated with historic and contemporary fishing activities, including 11 segments associated with drift netting, three major areas associated with beach seining, and 140 known sites associated with setting nets. Twenty-four recorded fishing sites, including Silverhope Creek, Chawuthen Creek, Hunter Creek, Wahleach (Jones) Creek, Anderson Creek, Street Creek, Stewart Slough, Sumas Lake Canal, and 16 unnamed channels were identified. The locations of the fishing sites in relation to the Project were not provided.

The Stó:lō Collective identified many concerns related to environmental effects of the Project on fishing activities, in particular, they identified risks related to:

- the Stó:lō Collective's freshwater resources important to salmon in the Fraser River;
- the loss of traditional resources;
- potential loss of wetland habitat;
- cumulative environmental effects involving fish and fish habitat, species at risk, marine environment, water, hydrology, and wetlands;
- water quality and effects to water quality and waterbodies during construction of the Project;
- increased access to the land by members of the public due to Project-related activities;
- level of input into fisheries management;
- damage to traditional waterways (fish habitat, water quality, water flows, fish health) during Project water crossings;
- access modifications (i.e., new access, traffic);
- loss of traditional fishing sites; and
- decreased quality/integrity of fishing sites.

The Stó:lō Collective expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including a sense of spiritual and cultural alienation, the loss of traditional resources, including spiritually and culturally important sites, and increased barriers to accessing traditional resources and practices.

During the NEB Reconsideration hearing, Stó:lō Collective indicated that "Stó:lo interconnectedness indicates that the inevitable effects of Project-related marine shipping, and possible spills resulting therefrom, on the environment, salmon, the southern resident killer whales, and other Coast Salish communities, will impact the Stó:lo Collective as well[8]."

[8] Argument in Chief, Stó:lō Collective. NEB Submission Ref #A97548 (January 2019)

In consultation meetings with the Crown and the proponent, Ts'elxwéyeqw stressed the critical importance of fishing on the Fraser River and its tributaries to the Tribe's culture, livelihoods, and well-being. Ts'elxwéyeqw expressed concern that they had not been adequately consulted in the development of the watercourse crossing inventory, and that some of the watercourses identified in the ICA have not been included in the watercourse crossing inventory, such as groundwater creeks or seasonal watercourses, or that the proponent may have erroneously identified watercourses as non-fish bearing. In response to this concern, Ts'elxwéyeqw, the proponent, and the Crown scheduled a follow up workshop that focused on ensuring that the watercourses identified in the ICA have been incorporated in to the watercourse crossing inventory.

Crown Analysis

The Crown acknowledges the potential impacts on the fishing rights of Ts'elxwéyeqw as identified above. Canada acknowledges that proponent commitments, NEB conditions and the existing pipeline safety regime would not eliminate the potential adverse impacts of the Project on Indigenous Interests specific to freshwater fishing.

The NEB found that adverse effects would be limited to directly disturbed areas in the Project footprint, sometimes extending into the LSA. The Project's adverse effects on surface water and freshwater fish and habitat due to watercourse crossings were determined by the NEB to be short-term and reversible. The proponent and NEB concluded that the Project's contributions to the total cumulative effects for most valued components are relatively minor, inconsequential or insignificant.

In Canada's view, the construction and operation of the pipeline and associated facilities represent a low to negligible magnitude change in the established baseline environment related to fish and fish habitat. The majority of effects – primarily in the biophysical context – are reversible within the Project lifecycle. Adverse effects on traditional freshwater fishing practices are viewed by Canada as short-term in duration and frequency during the Project construction.

Canada notes that many Indigenous groups maintain that the cumulative effects of development activities have severely impacted their ability to exercise their Aboriginal and treaty rights to fish. Indigenous fishing activities continue to be adversely affected by development and the effects of climate change. Project-related impacts on access to fishing, or use of culturally sensitive sites and practices associated with fishing activities are viewed as additive to the current baseline which reflects cumulative effects of past development activities.

Set out below are ways in which the proponent, the regulator (NEB) and the Crown propose to address, mitigate and accommodate the potential impacts of the Project on Indigenous Interests specific to freshwater fishing.

NEB Conditions

There are ten NEB conditions (#43, 47, 71, 75, 92, 108, 109, 110, 151, 154) that will explicitly help avoid or mitigate potential impacts on Indigenous groups' freshwater fishing through a focus on fish and fish

habitat. For example, condition #109 requires the proponent to receive the *Fisheries Act* authorizations, as needed, for instream activities, which protects against the impacts of construction to fish and fish habitat.

Eight of the conditions outlined above also contribute to watercourse and water quality protection (#43, 47, 71, 75, 108, 110, 151, 154), which also result in indirect protections to freshwater fishing. For example, condition #75 focuses both on fish and fish habitat and watercourse and water quality by requiring the proponent to construct all watercourse crossings located in Nooksack dace or Salish sucker critical habitat using specific crossing methods as defined by Fisheries and Oceans Canada Recovery Strategies for the species.

Several additional conditions indirectly contribute to the objectives to avoid and mitigate impacts on Indigenous groups' freshwater fishing, including conditions exclusively related to water quality protection (#35, 39, 87, 113, 130) and/or watercourses (#48, 65, 67, 72, 74, 87, 94, 113). NEB condition 65 is a further offset measure, requiring the proponent to file updated flood frequency estimates for notable watercourse crossings.

In addition, the Stó:lō Collective asserts marine fishing and harvesting rights, and certain anadromous fish species, including salmon and steelhead, upon which the Stó:lō Collective relies migrate from ocean to river. Several NEB conditions would either directly or indirectly avoid or reduce some of the impacts and concerns raised by Indigenous groups, including by the Stó:lō Collective, in respect of potential impacts on marine fishing and harvesting:

- three conditions for protection of fish and fish habitat (#92, 109, 151); and
- 27 conditions in total directly relate to the Westridge Marine Terminal, several of which are applicable at several stages across the Project's lifecycle and commit to emergency preparedness and response. This includes conditions for pre-construction (#8, 21, 30, 33, 34, 35, 52, 53, 80, 81, 82, 83, 84, 97, 101), prior to operation (#30, 109, 118, 119, 123, 126, 127, 129, 130, 136, 138); during operation (#109, 141); and prior to commencing hydrostatic testing of any Project component (#113).

In addition to the conditions described above, several conditions are generally applicable to protecting marine fishing or harvesting activities in the vicinity of the Project. This includes:

- Conditions #117 and #124, which require the proponent to report on and implement improvements to its Emergency Response Program, respectively. This includes a requirement to provide the NEB with updates on changes to emergency response plans for the Edmonton, Sumas and Burnaby Terminals and the WMT; site-specific geographic response plans and strategies; and tactical plans for high consequence areas.

Six conditions for Project-related marine shipping (#91, 133, 134, 144). Conditions #133 and #144 require the proponent to confirm that it has integrated several marine spill and response commitments into its oil transportation practices, such as tug escorts for tankers, before the first tanker is loaded at WMT and each year after commencing operations, respectively.

The Commitments of the Proponent

The proponent would implement several mitigation measures to reduce potential effects to species important for the Ts'elxwéyeqw Tribe's fishing activities. The proponent has committed to time water-course 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 Indigenous groups, including Ts'elxwéyeqw Tribe , to identify the most appropriate means of offsetting serious harm to 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.

With regards to specific concerns raised by the Stó:lō Collective, the proponent would implement several mitigation measures to reduce potential effects on freshwater and marine fishing and harvesting sites, such as 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 Ts'elxwéyeqw Tribe traditional lands, as described in the Access Management Plan. The proponent committed to working with Stó:lō communities – including Ts'elxwéyeqw Tribe – to develop strategies to most effectively communicate the construction schedule and work areas to community members.

During the re-initiated Phase III consultation process, the proponent also made a number of commitments to Ts'elxwéyeqw, including:

- The proponent will utilize Ts'elxwéyeqw/Stó:lō traditional and technical knowledge and data in their watercourse crossing inventories and plans;
- For waterbodies classified as non-fish-bearing but with hydrological connectivity to fish bearing waters, these will be treated as potentially fish bearing by the proponent; and
- In the event that a contingency open cut crossing method is required (i.e., without flow isolation), Trans Mountain will provide notice to Stó:lō.

As described previously, the Project construction and routine maintenance is expected to cause short term, temporary disruptions to Ts'elxwéyeqw'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 or their potential restoration activities.

Accommodation Measures

Aquatic Habitat Restoration Fund

The Government is establishing an Aquatic Habitat Restoration Fund (AHRF) designed to increase capacity within Indigenous communities to protect and restore aquatic habitats that may be impacted by the Project or by the cumulative effects of development. The objective of this accommodation measure, is to have Indigenous communities and the Government of Canada co-develop projects for

habitat restoration in the Salish Sea, the Fraser river watershed and the inland freshwater area along the length of the Project.

To address environmental protection concerns related to cumulative effects, the AHRF will support projects to restore fish habitats in ecological areas that will have the greatest impact on the overall stock. AHRF supports projects such as studies, restoration projects, coastal/riparian engineering projects, and monitoring and reporting. More precisely, these projects will help stabilize eroding shoreline using breakwaters, improve spawning habitat by adding sediment such as gravel, and improve fish feeding areas by planting aquatic plants. Finally, each project can include capacity-building activities to ensure tangible and long-term positive outcomes in Indigenous communities. For example, training courses on Geographic Information Systems will be offered to enable participation in a project and follow up.

In addition to habitat restoration, AHRF will also provide funding for studies on terrestrial cumulative effects of fish habitats along the Fraser River and other areas to support these interconnected systems. Should the Project be approved, the AHRF will support aquatic habitat restoration in the Salish Sea, the Fraser river watershed and the inland freshwater area along the length of the Project. Ts'elxwéyeqw will be invited to participate in engagement sessions to help clarify priorities and the program's approach.

The Crown has also proposed a number of marine initiatives that seek to address Indigenous groups' concerns regarding impacts in the marine environment, including the Salish Sea Initiative, a proposed long-term investment strategy to develop and support the capacity of Indigenous groups along the Salish Sea for integrated monitoring and evaluation of the cumulative effects of human activities on Salish Sea ecosystems. Additional information regarding these programs is provided in Chapter 4 of the CCAR.

In addition to the accommodation measures described above, the specific concerns expressed by Ts'elxwéyeqw Tribe relating to fishing activities are also addressed in the document entitled "Crown Analysis of ICA Recommendations", which is attached as *Appendix 2*.

Conclusion

In 2016, the Crown stated that the Project could adversely impact freshwater fishing rights. The Crown acknowledged that proponent commitments, NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks.

In consideration of the 2019 NEB Reconsideration Report, new information from the re-initiated Phase III consultations and proponent commitments, should the Project be approved, the Crown expects impacts of the Project on the exercise of Ts'elxwéyeqw's Indigenous Interests related to freshwater fishing rights would be minor to moderate.

Through these consultations, the Crown has endeavoured to identify mitigation and accommodation measures, described above, to lessen the potential impact of the Project.

III. Potential Impacts on the Exercise of Other Traditional and Cultural Uses

In assessing impacts to Ts'elxwéyeqw's other traditional and cultural practices, the Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities, as well as direct engagement with the Tribe during the re-initiated Phase III consultation process.

During the original NEB process, the Stó:lō Collective identified at least 721 sites of cultural significance several of which are located within the pipeline corridor (potentially more due to undisclosed sites). During the ICA, 151 previously recorded archaeological and historic sites (habitation and/or settlements) were identified within 1 km of the proposed pipeline corridor, of which 38 are located within 50 m of the corridor. The ICA also describes camps, winter villages and settlement sites on and off reserve as identified by Stó:lō community members. Two habitation sites were located within 50 m of the pipeline corridor. It should be noted that the Archaeological Impact Assessment (AIA) for the Project is not yet complete.

The Stó:lō Collective's community members identified 14 trails and travelways that cross the proposed pipeline corridor. Trails and travelways, in particular the Fraser River and tributary systems, have supported traditional harvesting, socio-economic connections and factored into Stó:lō identity and cultural values. Presently, traditional travel continues to be used by community members to participate in spiritual and ceremonial activities (e.g., accessing spiritually significant sites such as bathing and fasting), gather plants, hunt, and fish, and for the Stó:lō seasonal round of activities. Historically, the Stó:lō people are known to have built large, permanent settlement sites. There is a close connection between the Fraser River (and tributary systems) and Stó:lō settlement sites because of the Stó:lō people's reliance on salmon from the Fraser River and the accessibility to different regions. The largest and most populated settlements are often located at the confluence of major waterways. Historically, inter-nation gatherings were created by kinship and friendship to support trading goods such as fish, berries, wild meat, sweaters, blankets, and baskets. Presently, Stó:lō people continue to attend different types of gatherings in different parts of the asserted traditional territory to celebrate cultural traditions and give strength to other First Nation initiatives aimed at environmental protection, Aboriginal rights and title, governance, and social activism.

Additionally identified in the ICA were six Stó:lō gathering sites: Squiala, Shxwhá:y, Skowkale, Yakweakwioose, Cheam, and Sumas bighouses close to the Project. The locations of gathering places in relation to the Project were described in the ICA. The ICA identifies approximately 550 cultural heritage sites used for spiritual activities within 2 km of the proposed pipeline corridor. Stó:lō community members identified 73 sacred areas within 100 m of the proposed pipeline corridor: six burial sites, 11 Sxwo:yxwey places, 18 puberty places, 11 smilha/syuwel places, 10 historic bathing sites and 17 current bathing sites. Site-specific locations of the sacred areas were buffered to protect their specific locations on the maps presented in the ICA (Appendix C). As summarized in Volume 5D of the Project application to the NEB, sacred areas are located at Cultus Lake, Mount Cheam (Cheam Peak), Echo Island (Harrison Lake), Echo Island (Harrison Lake), Mount Slesse (Slesse Mountain), Mount McGuire, and Mount Hope and Lady Franklin Rock, located between 3.3 km and 23.5 km from the proposed pipeline corridor.

Semá:th Lake (Sumas Lake) is an important historical site crossed by the proposed pipeline corridor. Coqualeetza is an important historical and cultural site for the Stó:lō people approximately 1.6 km northwest of the proposed pipeline corridor.

The Stó:lō Collective also noted the locations of various other culturally important sites including bathing sites within the 150 metre (m) RoW alignment at Bridal Veil Falls near Chilliwack, and an ancient pit house within the RoW, none one of which appear on the proponent's detailed alignment sheets, and for which no NEB conditions have been recommended.

The Stó:lō Collective raised a number of concerns with the location of the Project in relation to specific locations and access points regarding other cultural and traditional practices and sites including a Project staging area at Lightning Rock. Lightning Rock is one of many spiritual sites that Stó:lō Collective believe must be preserved both from a physical and cultural perspective. NEB Condition 77 (Archaeological and cultural heritage assessment – Lightning Rock) would require the proponent to file a report with the NEB on archaeological and cultural heritage field investigations undertaken to assess the potential impacts of Project construction and operations on the Lightning Rock site at Sumas, along with associated mitigation measures beyond those already included in the EPP. However, given that this is a sacred site with burial mounds, Stó:lō Collective have noted that any Project routing through this area is inappropriate given the need to preserve the cultural integrity of the site and the surrounding area. For the Stó:lō Collective, the site surrounding Lightning Rock should be a 'no go' area for the Project.

The Stó:lō Collective voiced concern to the Crown on numerous occasions that the proponent has overlooked culturally significant sites of importance to the Stó:lō people, and that without a detailed understanding by the proponent of the locations and valued intangible properties associated with these sites, the Project could significantly affect areas of significant current and traditional use to Stó:lō Collective members. The Stó:lō Collective remains concerned that the proponent hasn't fulfilled commitments it made in regard to protecting all cultural sites of importance to the Collective. While these commitments were made in meeting records with the Collective, failure to add these commitments to the proponent's engagement logs means that the commitments are not captured by NEB Condition 2. The Crown notes that the proponent is in the process of updating their alignment sheets to incorporate information regarding Stó:lō cultural sites, and mitigation measures to protect those sites, in consultation with Ts'elxwéyeqw Tribe. The Crown expects that the proponent will fulfill any commitments it has made to Indigenous groups, and requests that Ts'elxwéyeqw provide additional information regarding commitments that have not been fulfilled, so that the Crown can follow up with the proponent directly.

The Stó:lō Collective also expressed concern that there could be increased access to the land by members of the public due to Project-related activities.

The Stó:lō Collective 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 socio-economic concerns, such as human occupancy and resource use, impacts to heritage resources, and cultural well-being, health, and infrastructure and services. Additional concerns include that Project

activities will deter First Nation members from attending gatherings, that the presence of the construction workforce will inflate cost of accommodation and travel, and that the Project may be a divisive or negative influence on inter-nation relations. Stó:lō Collective have expressed frustration with the way in which their traditional use and knowledge information was considered by the proponent and the NEB. Owing to a lack of specificity in the NEB's conditions and their experience with the proponent's implementation of commitments made to-date, Stó:lō Collective are not confident that the recommended NEB conditions will be able to adequately protect culturally important sites and ensure the integration of traditional use information into detailed Project planning.

Finally, the Stó:lō Collective raised concerns that cumulative effects have eroded some aspects of Stó:lō culture over time and are vulnerable to additional incremental impacts; and, the Project poses significant risks, and represents a significant threat to the cultural integrity and survival of core relationships at the heart of the Stó:lō worldview, identity, health and well-being.

During the re-initiated Phase III consultation process, Ts'elxwéyeqw raised serious concern that their cultural sites had not been incorporated into Project alignment sheets, and were not adequately protected by the existing mitigation measures. Ts'elxwéyeqw has indicated that impacts to the cultural sites that have been identified represent a significant impact to Stó:lō culture, and that the only acceptable mitigation measure, in at least some cases, would be complete avoidance via rerouting the existing right of way. Ts'elxwéyeqw has requested that the proponent work with their technical staff to identify site-specific mitigation measures and that Ts'elxwéyeqw play an active role in construction monitoring and oversight to ensure that these sites are adequately protected. These issues are addressed below.

Crown Analysis

The Crown acknowledges the potential impacts on the exercise of other traditional and cultural uses of Ts'elxwéyeqw Tribe as identified above. Set out below are ways in which the proponent, the regulator (NEB) and the Crown propose to address, mitigate and accommodate these impacts.

The Crown understands that Ts'elxwéyeqw Tribe's opportunities for certain traditional and cultural activities will be temporarily interrupted during construction and routine operation, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Ts'elxwéyeqw Tribe's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities.

As described in Chapter 4 of the report, Project-related activities are not likely to result in significant adverse effects on the ability of Indigenous groups to use land, waters or resources for traditional purposes, and Project-related activities are expected to cause short-term disruptions that temporarily affect the ability of Indigenous groups to access land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with the degree of disturbance of the Project. NEB conditions related to the protection of environmental resources (included but not limited to fish and fish habitat, wetlands, water quality, wildlife and wildlife habitat, and marine mammals) referenced in Chapter 4 would reduce

disturbance associated with Project-related activities in the marine, terrestrial, and aquatic environments. The proponent has also undertaken many commitments in an attempt to reduce potential impacts of Project-related activities to environmental resources (*Appendix G of the 2016 CCAR).*

During the re-initiated Phase III consultation process, Ts'elxwéyeqw Tribe and the Crown discussed the Tribe's concerns regarding protection of their cultural sites in detail. The Crown understands the critical importance of these sites to Stó:lō culture, heritage, and well-being, including Ts'elxwéyeqw's view that, in some cases, avoidance is the only acceptable mitigation measure.

The Crown notes that the proponent has made a number of new commitments during the re-initiated Phase III consultation process, as described above and in *Appendix 2*. The proponent has committed to continue collaborative work with the Tribe in relation to review of each cultural site, and to take reasonable steps to implement additional mitigation measures that may be required.

NEB Conditions

The NEB process has established conditions that would avoid or minimize any Project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. During the NEB review process, the NEB considered potentially impacted culturally sensitive sites and practices that Indigenous groups identified while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Indigenous Interests. If the Project is approved, the following NEB conditions may either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources:

- 7 – Environmental and socio-economic assessment – route re-alignments;
- 13 – Socio-economic effects monitoring plan;
- 47 – Access management plan(s);
- 59 – Worker accommodation strategy;
- 60 – Environmental and socio-economic assessment;
- 73 – Traffic Control Plans for Public Roadways;
- 77 – Archaeological and cultural heritage assessment – Lightning Rock;
- 96 – Reports on engagement with Indigenous groups – construction;
- 97 – Traditional land use (TLU) and traditional marine resource use (TMRU) investigation report;
- 100 – Heritage resources;
- 102 – Landowner and tenant complaint process/system; and
- 145 – Community Benefits Program progress reports.

NEB Condition #77 would require the proponent to complete an archaeological and cultural heritage assessment of Lightning Rock at least three months prior to commencing pipeline construction. The report must include consultation with Stó:lō Collective, and provide an assessment plan that involves Stó:lō Collective in designing and undertaking surveys.

With respect to concerns about impacts on travel corridors, NEB condition #73 requires the proponent to develop a traffic control plan for public roadways that includes information regarding the timing and location of key construction activities, anticipated traffic volumes and flows, and an assessment of potential impacts associated with construction-related traffic, and mitigation measures. The proponent would be required to provide a summary of its consultations with potentially affected Indigenous groups, including how any recommendations were incorporated in to the plan.

Condition #47 would require the proponent to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. The Access Management Plan would include requirements for the proponent to incorporate Indigenous traditional land use and traditional ecological knowledge into the design of its access management plan.

During the re-initiated Phase III consultation process, Ts'elxwéyeqw Tribe and the Crown discussed the Tribe's concerns regarding protection of their cultural sites in detail. The Crown understands the critical importance of these sites to Stó:lō culture, heritage, and well-being, including Ts'elxwéyeqw's view that, in some cases, avoidance is the only acceptable mitigation measure.

Based on the concerns raised by Ts'elxwéyeqw and other Indigenous groups, the consultation team is proposing amendments to Condition #100 (Heritage Resources) to ensure that, in the event of a positive GiC decision, the proponent takes the necessary steps to preserve and protect cultural and sacred sites during Project construction (see below, at p. 46). The amended Condition #100 would require the proponent to, in a filing to the NEB, describe the applicable mitigation measures that would be implemented at each sacred and cultural site identified during the NEB or Phase III consultation process, and to provide confirmation that the Project's Environmental Protection Plan (Condition #72) is updated to reflect these mitigation measures.

The Commitments of the Proponent

Prior to the Ts'elxwéyeqw Tribe's decision to suspend engagement with the proponent in August 2018, the proponent worked with the People of the River Referrals Office (PRRO) to develop accommodations to address issues raised in the ICA and 89 recommendations.

In the context of discussions around BC government permitting with Ts'elxwéyeqw Tribe, the proponent worked with PRRO to develop an agreement, including capacity funding, to conduct an assessment of the ICA cultural and heritage sites and mitigation measures. The proponent attended a Stó:lō workshop on culture and heritage on February 14 and 21, 2018. PRRO provided examples of some key culture and heritage sites affected by the Project and the group discussed the process going forward for determining the full suite of sites of concern and developing specific mitigation measures. A Stó:lō workshop on fisheries and water crossings was held on February 13, 2018. PRRO and the proponent reviewed the current watercourse crossing plans and mitigation measures and PRRO provided some key interests that need to be addressed. A follow-up meeting was scheduled for one week later, wherein PRRO would speak with their knowledge holders and come prepared to speak about new mitigation measures being sought. The second date was postponed by PRRO and a follow-up meeting has not occurred. The proponent has been unable to continue this consultation work since the suspension of

engagement in August 2018. However, during the Phase III Crown consultations, the proponent has re-engaged on this issue by supporting the Crown in its development of appropriate accommodation strategies to address the ICA recommendations.

The Crown understands that the proponent has modified their construction plans to remove the staging area noted by the Stó:lō Collective. Construction plans in the area around Lightning Rock are now contained to the existing right of way. The proponent has indicated that it is committed to restricting its footprint as much as possible in the area of Lightning Rock, and is working with the Stó:lō Collective to avoid or, if it cannot be avoided, mitigate as much as possible, any impacts to Lightning Rock.

The Crown understands that the proponent is seeking to work with Stó:lō representatives through the PRRO to conduct further assessments at the site in order to define the site's boundaries more clearly and to identify and address any potential impacts the Project may have

As mentioned above, the proponent has made a number of new commitments through the re-initiated Phase III consultation process that would reduce impacts to cultural sites and activities. These include:

- A commitment to hire an environmental monitor, as chosen by Ts'elxwéyeqw Tribe, and meeting the proponent's contractor qualification specifications, to be on the Environmental Inspection Team;
- A commitment to ensure that Stó:lō sites are included in the final alignment sheets that are used by the proponent's staff and contractors during construction;
- A commitment to update the Resource Specific Mitigation Tables to ensure that mitigation measures are specific to different types of cultural sites;
- A commitment for Stó:lō representatives to deliver cultural awareness training to the proponent's staff and contractors;
- A commitment to incorporate information regarding the cultural site boundaries identified by Stó:lō when considering appropriate mitigation; and
- A commitment to meet with Stó:lō to discuss windows for construction that respect Stó:lō cultural practices and events.

The proponent remains committed to responding to the Ts'elxwéyeqw Tribe's concerns about the potential impact of the Project on its cultural and heritage sites, whether in the context of developing a formal relationship with Ts'elxwéyeqw Tribe or through discussions with the Crown.

The proponent would also implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for the Ts'elxwéyeqw Tribe's traditional and cultural practices. Specifically, the proponent has 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 Indigenous governments.

With respect to Lightning Rock, the proponent has adjusted the Project footprint at the proposed staging area so activities are proposed to take place on the existing easement. A field assessment is required in advance of Project construction to confirm the site boundary, and the proponent is committed to working with the Stó:lō Collective during this field work and, if a conflict is confirmed, the proponent will aim to avoid the site through further localized reduction in temporary workspace, and work with Stó:lō on any necessary mitigation.

For a full list of new commitments made by the proponent regarding protection of cultural sites, and their responses to the 89 recommendations, see *Appendix 2*.

Accommodation Measures

Canada acknowledges that proponent commitments, recommended NEB conditions, and the existing pipeline and marine safety regime would only partially address the potential impacts of the Project on cultural integrity, heritage, and sense of belonging that many Indigenous peoples have to the land as understood from an Indigenous perspective.

Accordingly, to provide further accommodation to address these impacts, to follow on the guidance of the FCA, and to move forward in a spirit of reconciliation, Canada has put forward in the Phase III consultations a TCEI and a TSI program for consultation and co-development with Indigenous groups, including Ts'elxwéyeqw Tribe. These accommodation measures are described above.

Conclusion

In 2016, the Crown stated that the Project could adversely impact cultural and traditional activities. The Crown acknowledged that proponent commitments, NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks.

In consideration of the 2019 NEB Reconsideration Report, new information from the re-initiated Phase III consultations and proponent commitments, should the Project be approved the Crown expects impacts of the Project on the exercise of Ts'elxwéyeqw's Indigenous Interests related to the exercise of other traditional and cultural uses would be moderate.

Over the course of consultation, the Crown has had an opportunity to learn more about Stó:lō rights, better understand how the Project may have adverse impacts on the exercise of these rights within Stó:lō territory, and to carefully consider the nature and extent of mitigation and accommodation measures to reduce adverse impacts. Due to the additional information concerning Stó:lō cultural and spiritual sites provided to the proponent during the re-initiated Phase III consultations within and proximate to the Project RoW, the Crown determined a change in assessment of potential impacts to the exercise of traditional and cultural practices – from minor-to-moderate, to moderate – was required.

Through these consultations, the Crown has endeavoured to identify mitigation and accommodation measures, described above, to lessen the potential impact of the Project.

IV. Potential Impacts on Aboriginal Title

Concerns related to Aboriginal title raised by the Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt the Stó:lō Collective's use of its asserted traditional territory, including reduced ability to fish, hunt, trap, or gather plants, a major rupture on the lower Fraser River watershed, decreased quality/integrity of fishing sites, and proposed Project activities that may deter community members from attending gatherings;
- Impacts on historic settlements and camps: 151 previously recorded archaeological and historic sites (habitation and/or settlements) were identified within 1 km of the proposed pipeline corridor, of which 38 are located within 50 m of the corridor. The ICA also describes camps, winter villages and settlement sites on and off reserve as identified by Stó:lō community members. Two habitation sites were located within 50 m of the pipeline corridor;
- Activities that affect the Stó:lō Collective's ability to manage and make decisions over the Project area, including the loss of land by means of industrial developments, loss of fishing sites, and the potential lack of control over traditional territory in the event of a spill if Stó:lō leaders are not involved in emergency response planning; and
- Project-related activities that affect the Stó:lō Collective's economic development aspirations for its asserted traditional territory, including challenges that Stó:lō companies may face associated with the Project, and potential adverse effects on existing economic activities.

Crown Analysis

The Crown acknowledges the potential impacts on Aboriginal title of the Stó:lō Collective as identified above. Set out below are ways in which the NEB, the proponent and the Crown propose to address, mitigate and accommodate these impacts.

The NEB concluded that traditional land and resource users may be unable to use, or be deterred from using, certain areas at times during construction and periods of site-specific maintenance. Furthermore, the ability of Indigenous groups to use the lands, waters and resources for traditional purposes would be temporarily impacted by construction and routine maintenance activities, and that some opportunities for certain activities such as harvesting or accessing sites or areas of the TLRU will be temporarily interrupted. These impacts would be short term, as they would be limited to brief periods during construction and routine maintenance, and that these effects will be largely confined to the Project footprint for the pipeline, associated facilities and the on-shore portion of the WMT site. The NEB finds that these effects would be reversible in the short to long term, and low in magnitude.

The Crown has actively consulted with the Stó:lō Collective on behalf of the Ts'elxwéyeqw Tribe throughout the NEB processes and 2016 Crown consultation process, and with Ts'elxwéyeqw Tribe throughout the re-initiated consultation process, at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. The Crown is consulting with Ts'elxwéyeqw

Tribe at their request, in recognition that Ts'elxwéyeqw Tribe is shifting towards "a more communal approach to governance that leads to a greater presence as a territory and as a community[9]."

NEB Conditions

During the consultation process, Indigenous groups raised questions with Consultation Teams about potential amendments to the NEB conditions. The FCA has commented that the GiC can consider amendments to NEB conditions required of the Project proponent in response to Indigenous concerns about impacts on section 35 rights not addressed by the conditions imposed by the NEB, current federal laws and policies or other accommodations proposed by the Government of Canada. Throughout the NEB review and Crown consultations processes, Ts'elxwéyeqw Tribe and the Stó:lō Collective proposed several modifications or additions to NEB conditions to better address their concerns.

In response to feedback from many Indigenous groups, including Ts'elxwéyeqw Tribe and the Stó:lō Collective, and in addition to proposed accommodations, the consultation teams are proposing to Ministers amendments to several NEB conditions to consider should the Project be approved (*Appendix 1*). The goal in proposing amendments to the conditions is to clarify and address, in a consistent fashion, responses to the concerns underlying the requests from individual Indigenous groups.

The proposed changes are intended to enhance the NEB's ability to track and enforce the proponent's commitments made during the NEB reconsideration, re-initiated Phase III consultations, and beyond, and to ensure they are captured by the NEB regulatory framework, including updating the proponent's commitment tracking table to specifically include commitments made to Indigenous groups; to improve the transparency regarding the incorporation of Indigenous engagement in several of the proponent's filings throughout the lifecycle of the Project (e.g. monitoring and emergency management); and to explicitly provide for mitigation measures to reduce or eliminate, to the extent possible, Project effects on sites that are sacred or of cultural importance to Indigenous peoples.

NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with the degree of disturbance of the Project. NEB conditions related to the protection of environmental resources (included but not limited to fish and fish habitat, wetlands, water quality, wildlife and wildlife habitat, and marine mammals) referenced in Chapter 4 would reduce disturbance associated with Project-related activities in the marine, terrestrial, and aquatic environments. The proponent has also undertaken many commitments in an attempt to reduce potential impacts of Project-related activities to environmental resources (*Appendix G of the 2016 CCAR*).

The conditions on the proponent cover a wide range of matters, including emergency preparedness and response, protection of the environment, consultation with affected Indigenous communities, socio-economic matters, pipeline safety and integrity, commercial support for the Project prior to construction, and financial responsibility on the part of Trans Mountain. In addition, the proposed changes to NEB conditions referenced above would include an amendment to condition 6. If adopted,

[9] ICA Report, Appendix A (Information Supporting Linkages between Values and Activities), p. 207

the revised condition 6 would capture all of the commitments made by the proponent during the re-initiated Phase III consultation process (including during the workshops convened to develop responses to the ICA and 89 recommendations) and make them enforceable, thereby providing further protection to Ts'elxwéyeqw Tribe.

The Commitments of the Proponent

The proponent has committed to several mitigations that would reduce access restrictions for Indigenous groups using areas impacted by routine Project activities. The proponent has committed to minimize the development of access routes, control public access along the construction RoW, select 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 working 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.

On November 29, 2016, Ts'elxwéyeqw Tribe and the proponent, along with Kwaw-Kwaw-Apilt First Nation and Skwah First Nation, executed a Mutual Benefit Agreement (MBA), which required ratification by the seven Bands of Ts'elxwéyeqw Tribe and two First Nations.

Between January and May 2017, the parties engaged in regular discussions about the progress of the ratification vote. On March 28, 2017, Ts'elxwéyeqw Tribe and the two First Nations communicated to the proponent that the ratification date was April 22, 2017. Ts'elxwéyeqw Tribe and the two First Nations ultimately did not ratify the MBA. However, according to the terms of the MBA, they may ratify it at any time.

On January 17, 2019, the proponent and Ts'elxwéyeqw Tribe discussed the possibility of a separate relationship agreement.

Accommodation Measures

Indigenous Advisory and Monitoring Committee (IAMC)

Following the November 2016 approval of the Project, the Crown co-developed the IAMC with potentially impacted Indigenous groups (see Chapter 4 for a description of the IAMC). The IAMC provides a collaborative, inclusive and meaningful Indigenous involvement in the review and monitoring of environmental, safety and socioeconomic issues related to the Project, the existing pipeline and the related marine shipping. The IAMC includes thirteen Indigenous representatives, selected from the potentially impacted communities along the pipeline corridor and marine shipping lanes, and six senior representatives from federal government departments and regulators who are involved in the Project. These thirteen regularly engage with communities with a view to developing shared understandings and common approaches to problem-solving. Participation in the IAMC does not mean that an Indigenous group supports the Project, as participation is without prejudice. One of the flagship programs of the IAMC is the Indigenous Monitoring program, which facilitates the inclusion of Indigenous Monitors into

federal compliance verification activities. Both the NEB and DFO have committed to partner with IAMC Indigenous Monitors on Project inspections.

Ts'elxwéyeqw expressed concern regarding the representativeness, accountability, and transparency of the IAMC. While Ts'elxwéyeqw indicated that they understood some of the intent of the initiative, oversight and monitoring without regulatory authority is not useful. Ts'elxwéyeqw is also of the view that the IAMC needs to be more reflective of all Indigenous groups involved, including Ts'elxwéyeqw Tribe. Ts'elxwéyeqw Tribe is encouraged to participate in the IAMC initiative, as they could lend an important voice to the collaborative dialogue that is ongoing through the committee. One of the Ts'elxwéyeqw Villages (Shxwhá:y Village) submitted an application to the IAMC's community capacity program and has been allocated $32,800 to conduct a feasibility study for monitoring, occupational health and safety training, and data collection. In April 2019, Shxwhá:y Village also become an Alternate Member on the IAMC. The IAMC community capacity program has a rolling application process, which the Tribe or other Ts'elxwéyeqw Villages could avail themselves of at any time.

Conclusion

In 2016, the Crown stated that the Project could adversely impact potential or asserted claims to title over lands and resources and asserted governance rights. The Crown acknowledged that proponent commitments, NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks.

In consideration of the 2019 NEB Reconsideration Report, new information from the re-initiated Phase III consultations and proponent commitments, should the Project be approved the Crown expects impacts of the Project on the exercise of Ts'elxwéyeqw's Indigenous Interests related to the potential or asserted claims to title over lands and resources and asserted governance rights would be moderate.

Over the course of consultation, the Crown has had an opportunity to learn more about Stó:lō rights, better understand how the Project may have adverse impacts on the exercise of these rights within Stó:lō territory, and to carefully consider the nature and extent of mitigation and accommodation measures to reduce adverse impacts. Due to the additional information concerning Stó:lō cultural and spiritual sites provided to the proponent during the re-initiated Phase III consultations within and proximate to the Project RoW, Crown determined a change in the assessment of potential impact to Aboriginal title was required.

V. Potential Impacts Associated with Accidental Pipeline, Terminal, and Tanker Spills

Issue

The Crown has relied on the evidence submitted by Stó:lō Collective on behalf of Ts'elxwéyeqw Tribe and other Stó:lō communities, as well as consultation with Ts'elxwéyeqw Tribe, to assess impacts to Ts'elxwéyeqw Tribe's Indigenous Interests associated with spills.

The Stó:lō Collective expressed several concerns with direct and indirect effects of Project-related spills

on their Indigenous Interests. As outlined within the Stó:lō Collective's ICA, the Stó:lō Collective is of the view that the Project poses significant risk and represents a significant threat to the cultural integrity and survival of core relationships at the heart of Stó:lō worldview, identity, health, and well- being. The possibility of a major rupture of the proposed pipeline and significant contamination of the lower Fraser River Watershed would not be entirely negated. As a result, construction of the Project as currently planned and assessed in this Project would significantly jeopardize the survival of the unique Indigenous lifeway of the Stó:lō Collective, and unjustifiably infringe upon the Stó:lō Collective's Indigenous Interests.

The Stó:lo Collective also expressed concern that there remains limited understanding of the fate of diluted bitumen ("dilbit") as it relates to the foreshore, brackish, and fresh-water estuaries along the Fraser River, as well as its effects on the unique system of the Fraser River, such as its wandering gravel bed, meandering river, and the ancient streams therein that are tributaries. Amassing this knowledge requires new studies, which would take time and resources, both of which are not available to the Stó:lo Collective in the present circumstances.

The Stó:lō Collective raised concerns about natural hazards, such as flooding, debris flows, mudslides and rock slides in the Fraser Valley, and concern regarding the ability of the pipeline to withstand such impacts.

Additionally, the Stó:lō Collective highlights that the significance criteria relating to a pipeline rupture that Stó:lō has created is different from that of the proponent; the Stó:lō Collective hope this will be considered by Crown and the GIC.

Crown Response

The NEB concluded that there is a very low probability of a Project spill (i.e., from pipeline, tank terminals, pump stations, or WMT) that may result in a significant effect (high consequence) and that the level of risk is acceptable.

Canada recognizes the concerns raised by Indigenous communities related to spill prevention and emergency management planning presented by the Project. The Crown understands that Ts'elxwéyeqw Tribe found that a spill in Stó:lō territory could have significant, irreparable effects on the activities and values described in the ICA. The Crown shares the view that a large-scale, unmitigated spill could have serious impacts on Stó:lō Indigenous Interests.

In its draft responses to the 89 recommendations, the Crown has responded to Stó:lō Collective's recommendations that could mitigate the impact of a spill within Stó:lō territory.

The Crown believes that these concerns are addressed through Trans Mountain's commitments and NEB conditions requiring the proponent to build an Emergency Management program. As the lead federal regulatory agency for pipeline safety, the NEB also has an Emergency Management Plan to prepare for and react to any pipeline spills that may occur.

In the Crown's view, and as addressed in Chapter 4 applicable provincial and federal laws (including the *Pipeline Safety Act* and the BC Spill Response regime), the Project plans and NEB conditions effectively minimize the likelihood of a spill and require sufficient measures to minimize the size of a spill, respond to or clean up a spill I the event that one does occur and provide compensation. This includes the proponent's commitments as well as the NEB conditions noted below.

NEB Conditions

A number of conditions **in the NEB Reconsideration Report focus on safety** prior to and during the construction phase as well as during the operational phase of the pipeline. Conditions 8, 9, 17, 18, 19, 30, 50, 101, 111, 112, 115, 116, 129, 143, and 152 aim to address the safe design, operation, maintenance and testing of the pipeline and its adjacent facilities. For example, conditions 17 and 18 focus on the location of valves to restrict outflow limits if a spill were to occur. Less or no spilled oil would likely result in limited impacts on traditional Indigenous rights.

A number of conditions **focus on the planning, reporting requirements and ongoing monitoring** necessary to ensure that there is a minimal risk of a spill. Conditions 13, 15, 16, 22, 51, 64, 66, 67, 68, 69, 70, 94, 117, 129, and 151 aim to address the planning and reporting necessary to prevent a land-based spill through management plans, and ongoing monitoring and reporting. For example, conditions 66 to 70 focus on the risks of potential geohazards on infrastructure. With focused reporting and assessments, there is a decreased likelihood of a pipeline spill. Similarly, Condition #147 would require the proponent to conduct a natural hazard assessment within one year of commencing operations, and integrate that assessment in to the Natural Hazard Management Program.

A number of conditions **focus on training programs/opportunities and engagements** to ensure the preparedness of employees as well as communities in case of an emergency. Conditions 12, 58, 96, 98, 107, 145 and 146 aim to address the need for monitoring, training and continued engagement of individuals and communities in emergency preparedness. For example, conditions 145 and 146 focus on reporting on engagement activities and benefits to communities on a variety of topics including local emergency management enhancements. With increased awareness and training, there is a greater chance of creating opportunities for communities to benefit from spill prevention initiatives.

A number of conditions **focus on proposed safety measures to quickly address containment** in the event of a pipeline **spill on land**. Conditions 23, 24, 25 aim to address containment in the event of the accidental release of hydrocarbons. For example, condition 23 focuses on mitigating damage or harm caused to the Edmonton terminal facility, personnel or the public. A safer operating space will be ensured through such mitigation measures in place.

Further conditions **focus on emergency management planning and training** to ensure personnel and communities are equipped to react accordingly should an emergency occur. Conditions 89, 90, 117, 118, 119, 120, 123, 124, 125, 126, 127, 138 and 153 aim to address emergency management planning initiatives and programs as well as reporting on them. For example, condition 153 focuses on having full-scale emergency response exercises during operations. This will ensure a safer operating environment thanks to emergency preparedness planning and reporting.

One condition **focuses on liability and compensation** in case of damages and/or harm caused during the operations phase. Condition 121 aims to address costs that may arise from, among other things: potential accidents, malfunctions, and failures during the Project operations phase, including all spills originating from the pipeline and the terminals. This attempts to create a clearer compensation regime for those who deem they have been hurt of incurred damages

In addition, each NEB regulated company must have an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency. The company's management system and processes must also be evident in its emergency management program. An emergency management program must include:

- the identification and analysis of potential hazards;
- the evaluation and management of risks associated with all hazards;
- an up-to-date emergency procedures manual that is filed with the NEB;
- liaising with agencies that may be involved in an emergency situation;
- taking all reasonable steps to inform all persons who may be associated with an emergency response activity on the pipeline of the practices and procedures to be followed;
- having a continuing education program for the police, fire departments, medical facilities, other appropriate organizations and agencies and the public residing adjacent to the pipeline to inform them of the location of the pipeline, potential emergency situations and the safety procedures to be followed in case of an emergency;
- procedures for the safe control or shutdown of the pipeline system in the event of an emergency;
- sufficient response equipment;
- training to instruct employees on the emergency procedures and emergency equipment; and
- a verifiable capability to respond to an emergency demonstrated through emergency response exercises.

If an incident does occur, the NEB would verify that there is adequate and appropriate clean-up and full remediation of any environmental effects resulting from the incident. The company must conduct, to the Board's satisfaction, a complete clean-up and remediation of any adverse environmental effects.

In addition to complying with the above noted conditions the proponent would also need to notify the province of spills and for any instances of contamination, and would be required to comply with the Contaminated Sites Regulation, Hazardous Waste Regulation and Spill Reporting Regulation under the *Environmental Management Act*. The province of BC is also in the process of updating the Provincial Spill Response.

The Spill Liability Regime

In the event of a spill, Canada's spill liability regime, which includes the *Pipeline Safety Act and the Marine Liability Act* would help to cover the cost of clean-up and compensation. For example, any spill along the pipeline route before the product is loaded in the tanker would be covered by *Pipeline Safety*

Act, which establishes the absolute liability limit for companies that have the capacity to transport at least 250,000 bpd (such as the proponent) at no less than one billion dollars, regardless of whether there is proof of fault or negligence. If the pipeline operator is found at fault, there is no limit to liability. Similarly, spills associated with marine shipping are governed by the *Marine Liability Act*.

The *Pipeline Safety Act* came into force on June 19, 2016, strengthening safety systems based on prevention, preparedness and response, liability and compensation. The *Act* enshrined the "polluter pays" principle into law, introducing absolute liability so that pipeline companies will be liable for costs and damages irrespective of fault or negligence at no less than $1 billion for companies operating major oil pipelines (transporting at least 250,000 barrels per day). If the pipeline operator is found at fault, there is no limit to liability. Furthermore, the *Act* introduced financial requirements so that pipeline companies are prepared to cover the liability and respond to a potential incident. It strengthened measures to prevent damage to pipelines and provided the NEB with the authority to order reimbursement of clean-up costs incurred by municipalities, provinces and Indigenous communities. Lastly, the *Act* enables the NEB to take control of incident response if a company is unable or unwilling (i.e., in exceptional circumstances). For land-based spills, the proponent is the responsible party in charge of 100% of the clean-up costs.

The Commitments of the Proponent

In addition to complying with the above noted conditions the proponent would also need to notify the province of spills and for any instances of contamination, and would be required to comply with the Contaminated Sites Regulation, Hazardous Waste Regulation and Spill Reporting Regulation under the *Environmental Management Act*. The province of BC is also in the process of updating the Provincial Spill Response.

Indigenous Advisory and Monitoring Committee (IAMC)

Canada has committed $64.7 million over five years from 2017 to 2021 to support the IAMC for the Project. The Emergency Management Working Group has been established to further the Committee's priority of greater Indigenous inclusion in emergency management prevention, preparedness, and response. The Emergency Management Working Group has developed a work plan with two areas of focus relevant to both terrestrial and marine environments: (1) analysis of gaps in proponent plans and development of options or advice to improve plans; and (2) analysis of gaps in community capacity to prepare and respond to emergencies, including options to provide capacity support. To date, IAMC members and Indigenous monitors have participated in five emergency management exercises and one environmental inspection of a spill. The Indigenous Monitoring Pilot and the IAMC have provided input to the proponent, the NEB, the Canadian Coast Guard, and the Western Canada Marine Response Corporation with respect to spill exercises.

Additionally, the IAMC is working with Indigenous groups, the proponent, and NEB representatives to develop four pilot projects aimed at increasing Indigenous inclusion in emergency management. The first pilot seeks to increase Indigenous participation in the Incident Command System (ICS). The second pilot project aims to improve all-hazards emergency preparedness plans, including for hazardous spill

response, which is not included in many BC-based Indigenous community plans. This pilot is designed to increase emergency management capacity at the community and regional level by building relationships between Indigenous communities, regulators, and federal authorities. The remaining two pilot projects are in earlier stages of development but are likely to include a focus on IAMC-convened technical workshops on emergency preparedness and emergency response for Indigenous communities in BC. Workshop topics may include, but not be limited to, spill prevention and spill response, occupational health and safety and emergency response, and reclamation and remediation.

Additionally, the IAMC is working with Indigenous groups, the proponent and NEB representatives to develop four pilot Projects aimed at increasing Indigenous inclusion in emergency management.

Conclusion

In 2016, the Crown stated that the Project could adversely impact other Indigenous Interests as a result of a pipeline spill. The Crown acknowledged that proponent commitments, NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks.

In consideration of the 2019 NEB Reconsideration Report, new information from the re-initiated Phase III consultations and proponent commitments, should the Project be approved the Crown expects impacts of the Project on the exercise of Ts'elxwéyeqw's Indigenous Interests related to a pipeline spill would be minor to serious.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a pipeline, terminal, or tanker spill. The Crown also acknowledges the high degree of uncertainty involved in assessing the specific consequences of a spill on Indigenous Interests. In consideration of the above information and analysis, the Project plans, information available to the Crown on the Stó:lō Collective's Indigenous Interests, and concerns raised by the Stó:lō Collective during the NEB process and Crown consultation process, an oil spill associated with the Project could result in minor to serious impacts on the Stó:lō Collective's Indigenous Interests. In making this general conclusion, the Crown acknowledges that Indigenous peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.

VI. Other Issues and Concerns Raised

Concerns regarding capacity and timelines

In correspondence and in meetings with the Crown, Ts'elxwéyeqw has repeatedly expressed concern regarding the timelines for consultation, and their view that the statutory timeline established under the *National Energy Board Act* should not apply, as the re-initiated Phase III consultations are independent of the Reconsideration process. Ts'elxwéyeqw also questioned why the Crown had waited until January 2019 to engage in one-on-one, face-to-face meetings with Ts'elxwéyeqw.

The Minister of Natural Resources responded to Ts'elxwéyeqw's concerns regarding timelines in his April 10, 2019 letter. Since the Government re-initiated Phase III consultations with Indigenous groups,

it has maintained that the GiC would only make a decision on the Project once it is satisfied that it has met its duty to consult. With advice from Federal Representative the Honourable Frank Iacobucci, the GiC has extended the deadline to make a decision on the Project from May 22, 2019 to June 18, 2019. This extension will allow for further engagement between the Crown consultation teams and Indigenous groups to find solutions to concerns raised and ensure meaningful, two-way dialogue.

In response to Ts'elxwéyeqw's concerns regarding capacity, the Crown provided an additional $250,000 in participant funding, in addition to the $462,000 originally offered, in order to better enable Ts'elxwéyeqw's participation in the re-initiated Phase III consultation process, including the planned technical workshops. To support Ts'elxwéyeqw in its ongoing work with the proponent regarding the protection of cultural sites that will extend beyond the re-initiated Phase III consultation process, the Crown has also offered an additional $250,000 in funding to the Tribe.

Concerns regarding the federal government's purchase of the Project

In correspondence and in meetings with the Crown, Ts'elxwéyeqw has also expressed concern regarding the federal government's purchase of the Project, and the multiple roles that the Crown plays as owner and regulator of the Project, and a fiduciary with respect to Indigenous peoples. Ts'elxwéyeqw has raised concern that this will create a real or perceived conflict of interest.

The Crown has responded to this issue in meetings and in multiple response letters to Ts'elxwéyeqw, including the Honourable Frank Iacobucci' s January 28, 2019 letter, Deborah Corber's January 29, 2019 letter, and the Honourable Minister Sohi's April 10, 2019 letter. In these letters, the Crown reiterated its view that the fact of Crown ownership of the Project does not create a conflict of interest with its fiduciary obligations to Indigenous peoples. The Crown's core objective in the re-initiated Phase III consultation process has been to fulfill the duty to consult and accommodate where necessary through a meaningful two-way dialogue with Ts'elxwéyeqw, and has sought to identify and address impacts on rights through reasonable accommodation measures.

Economic accommodation

Ts'elxwéyeqw has stressed the importance of economic accommodation in mitigating potential impacts to Aboriginal rights and title.

In considering potential Project impacts on the economic component of claimed Aboriginal title, the Crown has considered that the NEB has noted that the Project presents an economic opportunity for Indigenous communities and concluded that the ability of Indigenous groups to use lands, waters, and resources would be temporarily interrupted during construction and during routine maintenance along the pipeline corridor. The 18-m easement that remains over the operating life of the Project would limit the economic uses of the area to certain type of activities that do not conflict with the underground pipeline.

Mitigation measures associated with the ability of Indigenous groups to derive direct and/or indirect economic benefits, if the Project is approved, include NEB conditions for:

- Indigenous, local, and regional skills and business capacity inventory (NEB condition 11);
- training and education monitoring plans and reports (NEB conditions 12 and 58);
- plan for Indigenous group participation in construction monitoring (NEB condition 98);
- Aboriginal, local, and regional employment and business opportunity monitoring reports (NEB condition 107);
- procurement opportunities for Indigenous groups (commitments 14, 440, 442, 447, 451);
- employment and business opportunities for Indigenous groups (commitment 952, 445); and
- hiring of Indigenous monitors (commitment 113), among others.

On March 15, 2019, the Minister of Finance sent a letter to Ts'elxwéyeqw expressing a commitment to explore the possibilities for economic participation in the Project with impacted communities should the Project be approved. Economic participation, whether through equity, revenue sharing or other options could provide additional resources with which to strengthen the Tribe's exercise of governance over its traditional territories and asserted Aboriginal title lands.

Concerns regarding the proponent's consultation on fulfillment of NEB conditions

In meetings with the Crown, Ts'elxwéyeqw expressed concern regarding the adequacy of consultation on reports and other filings to the NEB made by the proponent in fulfillment of NEB conditions. Ts'elxwéyeqw requested that the NEB take a more proactive approach to ensuring that consultation on fulfillment of NEB conditions has been adequate.

Representatives of the NEB, who were in attendance at the four technical workshops held in May 2019, responded to this concern at meetings by providing an overview of the existing compliance and enforcement regime currently in place for NEB conditions. NEB also provided additional written information regarding compliance and enforcement, which is included in the Crown Analysis of the ICA Recommendations (*Appendix 2*).

Based on Ts'elxwéyeqw's concerns, the NEB has also agreed to meet with them upon request to discuss their specific concerns regarding compliance and enforcement of NEB conditions, including any concerns regarding consultation.

8. Conclusion

In 2016, the Crown stated that the Project could adversely impact the ability of Indigenous groups to use lands, waters and resources for traditional purposes. The Crown acknowledged that proponent commitments, NEB conditions and the existing pipeline safety regime would only partially address these ongoing burdens and risks.

Should the Project be approved, and proponent commitments, NEB conditions, and BC EAO conditions be implemented, the Crown expects impacts of the Project on the exercise of Ts'elxwéyeqw Tribe's Indigenous Interests would be moderate. This determination has been developed in consideration of up-to-date information, including from the NEB Reconsideration Report and from the re-initiated Phase

III consultation sessions with Ts'elxwéyeqw. It is premised on the typical conditions for construction and operations of the pipeline.

With this backdrop, and seeking to address the shortcomings identified by the FCA Decision of August 2018, the Crown entered into the re-initiated Phase III consultations with an intent to identify and propose measures, where appropriate and reasonable, to lessen the potential adverse impacts of the Project on Ts'elxwéyeqw not fully addressed by the NEB conditions or the proponent's commitments. Some measures are intended to be co-developed with Indigenous groups, while others can be tailored to respond to the specific potential impacts on rights identified by Ts'elxwéyeqw. The measures are discussed further in Chapter 4 of the main body of this Report, and section 7 of this annex.

The Crown commits to an ongoing relationship with Ts'elxwéyeqw. Should the Project be approved, the Crown also commits to moving forward and working towards a coordinated implementation of the accommodation measures.

TMX Crown Consultation and Accommodation Report 2019
Appendix 1 to Annex

Proposed Amendments to the National Energy Board Conditions for the Trans Mountain Pipeline Expansion Project

Note: Proposed amendments to National Energy Board conditions are *italicized and underlined*.

Condition 6: Commitments tracking table

Without limiting Conditions 2, 3 and 4, Trans Mountain must implement the commitments contained within its commitments tracking table. *The proponent shall periodically update the commitments tracking table as per b), by adding to the table all commitments made by the Proponent in respect of the Project subsequent to the close of the MH-052-2018 proceeding, and must:*

a) *file with the NEB and post on its website, at least thirty (30) days prior to commencing construction, an updated commitments tracking table. The commitments tracking table must contain:*
   - *i) all commitments Trans Mountain made to Indigenous groups in its Project application or to which it otherwise committed on the record of the OH-001-2014 proceeding, as well as the MH-052-2018 proceeding, during phase III and IV consultations, and during ongoing consultations and engagements;*
   - *ii) a plan for addressing all commitments made to Indigenous groups, the plan must include:*
     1) *a description of the approach for addressing each commitment made to Indigenous groups*
     2) *the accountable lead for implementing each commitment; and,*
     3) *the estimated timeline associated with the fulfillment of each commitment; and*
     4) *the criteria used to determine when commitments have been fulfilled/satisfied.*

b) file with the NEB, at the following times, an updated commitments tracking table, including the status of each commitment:
   - i) within 3 months after the [certificate/order] date;
   - ii) at least 30 days prior to commencing construction;
   - iii) monthly, from the commencement of construction until the first month after commencing operations; and
   - iv) quarterly thereafter until:
     1) all commitments on the table are satisfied (superseded, complete or otherwise closed), at which time Trans Mountain must file confirmation, signed by an officer of the company, that the commitments on the table have been satisfied; or
     2) 6 years after commencing operations, at which time Trans Mountain must file with the NEB a summary of any outstanding commitments and a plan and implementation timeline for addressing these commitments; whichever comes earlier;

c) post on its company website the same information required by a) *and b),* using the same indicated timeframes; and

d) maintain at each of its construction offices:
   - i) the relevant environmental portion of the commitments tracking table listing all of Trans Mountain's regulatory commitments, including those from the Project application and subsequent filings, and environmental conditions or site-specific mitigation or

monitoring measures from permits, authorizations, and approvals for the Project issued by federal, provincial, or other permitting authorities;

ii) copies of any permits, authorizations, and approvals referenced in i); and

iii) copies of any subsequent variances to permits, authorizations, and approvals referenced in i).

Condition 91: Plan for marine spill prevention and response commitments

Trans Mountain must file with the NEB, within 6 months from the issuance date of the Certificate, a plan describing how it will ensure that it will meet the requirements of Condition 133 regarding marine spill prevention and response. The plan must be prepared in consultation with Transport Canada, the Canadian Coast Guard, the Pacific Pilotage Authority, Vancouver Fraser Port Authority, British Columbia Coast Pilots, Western Canada Marine Response Corporation, Fisheries and Oceans Canada, ~~*and*~~ the Province of British Columbia, *and potentially affected Indigenous groups*, and must identify any issues or concerns raised and how Trans Mountain has addressed or responded to them.

Trans Mountain must provide a summary of its consultations for this purpose, including a description and justification for how Trans Mountain has incorporated the results of its consultation into the strategy.

Trans Mountain must provide the plan to the above-mentioned parties at the same time as it is filed with the NEB.

Condition 98: Plan for Indigenous group participation in construction monitoring

Trans Mountain must file with the NEB, at least 2 months prior to commencing construction, a plan describing participation by Indigenous groups in monitoring activities during construction for the protection of traditional land and resource use for the pipelines, terminals and pump stations, and traditional marine resource use at the Westridge Marine Terminal. The plan must include:

a) a summary of engagement activities undertaken with Indigenous groups to determine opportunities for their participation in monitoring activities;
b) *a description and justification for how Trans Mountain has incorporated the results of its engagements, including any recommendations, into the plan;*
c) a list of potentially affected Indigenous groups, if any, that have reached agreement with Trans Mountain to participate in monitoring activities;
d) the scope, methodology, and justification for monitoring activities to be undertaken by Trans Mountain and each participating Indigenous group identified in b), including those elements of construction and geographic locations that will involve Indigenous Monitors;
e) a description of how Trans Mountain will use the information gathered through the participation of Indigenous Monitors; and
f) a description of how Trans Mountain will provide the information gathered through the participation of Indigenous Monitors to *potentially affected Indigenous groups, subject to appropriate protections for confidential information*.

Trans Mountain must provide a copy of the report to ~~*each*~~ *all* potentially affected group*s* ~~*identified in b) above*~~ at the same time that it is filed with the NEB.

Condition 100: Heritage Resources *and Sacred and Cultural Sites*

Trans Mountain must file with the NEB *at least thirty days* prior to commencing construction of individual Project components as described in Condition 10(a):

a) confirmation, signed by an officer of the company, that it has obtained all of the required archaeological and heritage resource permits and clearances from the Alberta Department of Culture and the British Columbia Ministry of Forests, Lands and Natural Resource Operations;

b) confirmation that it has consulted with the British Columbia Ministry of Forests, Lands and Natural Resource Operations, and that the Ministry has reviewed and approved the mitigation measures for disturbance to impacted palaeontological sites within British Columbia;

c) a description of how Trans Mountain will meet any conditions and respond to any comments and recommendations contained in the permits and clearances referred to in a) or obtained through the consultation referred to in b);

d) *a list of sacred and cultural sites identified in the OH-001-2014 proceeding, MH-05-2018 Reconsideration proceeding, or Phase III Crown consultations and not already captured under condition 97;*

e) *a summary of any mitigation measures that Trans Mountain will implement to reduce or eliminate, to the extent possible, Project effects on sites listed in d), or a rationale for why mitigation was not required;*

f) *confirmation that Trans Mountain will update the relevant Environmental Projection Plan(s), to include any relevant information from the conditions or recommendations referred to in c) or the mitigations referred to in e).*

Condition 124: Implementing improvements to Trans Mountain's Emergency Management Program

Trans Mountain must file with the NEB, at least 6 months prior to commencing operations, a detailed summary of its review of its Emergency Response Plans (as noted in Conditions 125 and 126) and equipment (including its availability), as referenced in Volume 7, Section 4.8.2 of its Project application (Filing A3S4V5). This filing must include a description of changes made to Trans Mountain's Emergency Management Program, as required under the National Energy Board Onshore Pipeline Regulations, including changes to:

a) the Pipeline Emergency Response Plan;
b) Emergency Response Plans for the Edmonton, Sumas, and Burnaby Terminals, as well as the Westridge Marine Terminal; and
c) site-specific plans and documents related to a) and b), such as Geographic Response Plans, Geographical Response Strategies, control point mapping, tactical plans for submerged and sunken oil and tactical plans for high consequence areas.

The summary must demonstrate Trans Mountain's ability to prepare for, respond to, recover from, and mitigate the potential effects of emergencies of any type and in any geographic region or season and must include the following:

i) a discussion of how the updated plans conform to the requirements contained within the National Energy Board Onshore Pipeline Regulations;
ii) a discussion of how the plans consider, and would allow coordination with relevant federal, provincial, municipal and Indigenous community emergency response plans;
iii) a discussion of how the results of research initiatives, such as the Scientific Advisory Committee work noted in Trans Mountain's response to NEB Information Request No. 1.63 (Filing A3W9H8) and other research noted during the OH-001-2014 proceeding, have been considered and incorporated into Trans Mountain's emergency response planning;
iv) a description of the models used in response planning, including oil trajectory, fate and behavior, and air dispersion models; and
v) confirmation that an independent third party has reviewed and assessed the Emergency Response Plans and that Trans Mountain has considered and incorporated the comments generated by the review and assessment into the plans.
vi) a summary of its consultations with Appropriate Government Authorities, first responders, potentially affected Indigenous groups, and affected landowners/tenants (Condition 90 and Condition 117). In its summary, Trans Mountain must provide a description and justification for how Trans Mountain has incorporated the results of its consultation including any recommendations from those consulted into Trans Mountain's Emergency Management Program, including its Emergency Response Plans.

Condition 151: Post-construction environmental monitoring reports

Trans Mountain must file with the NEB, on or before 31 January following the first, third, and fifth complete growing seasons after completing final clean-up, a post-construction environmental monitoring report for the Project that must include:

a) a description of the valued components or issues that were assessed or monitored;
b) measurable goals for each valued component or issue;
c) monitoring methods for each valued component or issue, results of the monitoring, and a comparison to the defined measurable goals;
d) corrective actions taken, their observed success, and their current status;
e) identification on a map or diagram of the locations where corrective actions were taken;
f) any further corrective actions planned and a schedule for monitoring and reporting;
g) a summary of its consultations with appropriate government authorities and any potentially affected Indigenous groups and affected landowners/tenants;
h) <u>In its summary, Trans Mountain must provide a description and justification for how Trans Mountain has incorporated the results of its consultation into the strategy.</u>

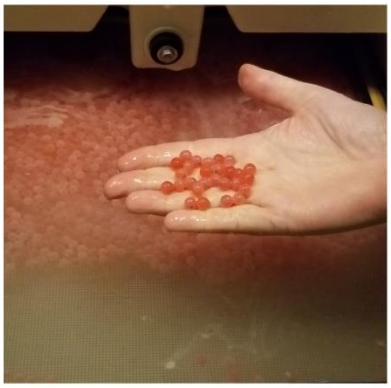
In the post-construction environmental monitoring report filed after the fifth full growing season after completing clean-up, Trans Mountain must include:

i. an assessment of the effectiveness of mitigative and corrective actions and how learnings have been or will be applied to Trans Mountain's Environmental Protection Program;
ii. a detailed description of all valued components or issues for which the measurable goals have not been achieved during the duration of the post-construction monitoring program; and
iii. an evaluation of the need for any further corrective actions, measurable goals, assessments, or monitoring of valued components or issues, including a schedule for those.

All filed post-construction environmental monitoring reports must address issues related, but not limited, to: soils; weeds; watercourse crossings; riparian vegetation; wetlands; rare plants, lichens and ecological communities; municipal tree replacement; wildlife and wildlife habitat; fish and fish habitat; marine fish and fish habitat; marine mammals; marine birds; and species at risk.

Crown Analysis of the Stó:lo Integrated Cultural Assessment Report and Recommendations - Ts'elxwéyeqw Tribe

June 7, 2019



Background

Description of Integrated Cultural Assessment

The Integrated Cultural Assessment (ICA)[1] was a key technical submission of Stó:lo Collective during the original National Energy Board (NEB) review process for the Trans Mountain Expansion Project (the Project). It was prepared by Ts'elxwéyeqw Tribe Management Limited, Stó:lo Research and Resource Management Centre, and the Human Environment Group, and adopted by the member communities of Stó:lo Collective.

The ICA identifies potential impacts within Stó:lo traditional territory, *S'olh Temexw,* that could be caused by the Project, such as impacts on Stó:lo traditional activities, culture, lands, and resources. The ICA considered eleven traditional activities, many of which represent the exercise of Stó:lo Aboriginal rights, to determine if these activities would be impacted by the Project.

The ICA also identifies Stó:lo cultural and traditional use sites that could be impacted by the Project, and included key traditional knowledge such as the locations of waterways within S'olh Temexw that may be crossed by the Project.

In response to these and related concerns, the ICA included 89 recommendations that, if implemented, would help to reduce the overall impact of the Project on Stó:lo people within *S'olh Temexw*.

The ICA concluded that the Project poses a significant risk and represents a significant threat to the cultural integrity and survival of core relationships at the heart of Stó:lo worldview, identity and well-being. In particular, the ICA concluded that two of the identified activities, fishing and spiritual activities, would bear significant post-mitigation impacts.

Federal Court of Appeal Decision

Eight of the member communities of Stó:lo Collective participated in the Federal Court of Appeal (FCA) case *Tsleil-Waututh Nation v. Canada (Attorney General)*[2]*.* In the FCA decision, the Court devoted significant attention to the ICA and its 89 Recommendations. The FCA determined that some of the 89 recommendations were "specific, brief, generally measured and reasonable" and "[i]f implemented… would provide more detail to the Board's generic conditions [par. 684].

The FCA could not find evidence that the NEB adopted any of the 89 recommendations [par. 686] and was critical of Canada's approach, writing: "there is no discussion or indication that Canada seriously considered implementing any of the 89 recommended actions, and no

[1] Integrated Cultural Assessment for the Proposed Trans Mountain Expansion Project, filed with the NEB on July 21, 2014 at regulatory filing A61882 (B241-3 to B241-6). Available online: https://apps.neb-one.gc.ca/REGDOCS/Item/View/2487587

[2] Tsleil-Waututh Nation v. Canada (Attorney General). Availabline online: https://decisia.lexum.com/fca-caf/decisions/en/item/343511/index.do?r=AAAAAQAMMjAxOCBmY2EgMTUzAQ#_The_experience_of_

explanation as to why Canada did not consider implementing any Stó:lō specific recommendation as an accommodation or mitigation measure." [par 712].

Addressing the ICA and 89 Recommendations through the Re-Initiated Phase III Consultation Process

This document represents the Crown's consideration and analysis of the 89 recommendations contained in the ICA. A preliminary draft version of this document was shared with Ts'elxwéyeqw Tribe on March 6, 2019. This first draft, which included input from Natural Resources Canada, Fisheries and Oceans Canada, Environment and Climate Change Canada, Indigenous Services Canada, and the National Energy Board, was developed to establish a basis for joint consideration, with the Tribe, TMC and other federal government departments, of the Crown's proposed responses to the 89 recommendations.

The final version of this document was informed by the re-initiated Phase III consultation process, including one half day and three full day technical workshops with Ts'elxwéyeqw Tribe, TMC, and federal representatives that took place between May 6 and May 31, 2019. It includes existing and new commitments on the part of TMC and the Crown that address each of the 89 recommendations, or provide justification for why certain recommendations are partially addressed or not addressed.

The Crown notes that while Ts'elxwéyeqw Tribe has reviewed the Crown's draft responses to the 89 recommendations, and these have been the subject of consultation through the technical workshops, the Tribe has not had the opportunity to review this final version of the document. The Crown also understands that work is ongoing between TMC and Ts'elxwéyeqw Tribe, particularly in relation to ensuring that Stó:lō cultural sites are adequately protected (see recommendation #2).

Ts'elxwéyeqw Tribe's review and response to the draft responses, provided to the Crown on May 3, 2019, are included in this document for reference. The Crown has endeavored to respond to Ts'elxwéyeqw Tribe's comments in its final responses.

This document was finalized on June 7, 2019, and incorporates information provided up to May 31, 2019.

Report Structure

For each of the 89 recommendations, the following information is provided:

- The ICA recommendation, including its number, topic area, and content
- TMC's response to each recommendation, including existing tracked commitments that TMC has previously made. TMC provided responses to the 89 recommendations in August 2014, March 2015[3], April 2019, and May 2019.

[3] Trans Mountain Corporation, Appendix to Letter to Stó:lō Collective, March 31, 2015, Available on NEB REGDOCS: https://apps.neb-one.gc.ca/REGDOCS/File/Download/2812248

- NEB Conditions that may address the recommendation or underlying interest in part or in full
- Ts'elxwéyeqw Tribe's response to the Crown's March 6, 2019 draft version of this document
- The Crown's response, which includes an analysis of all available information to assess whether or not the recommendation has been addressed, taking in to account:
    - NEB Conditions[4]
    - TMC's existing and new commitments[5]
    - British Columbia's Environmental Assessment Office (B.C. EAO) Conditions[6]
    - Existing and new federal initiatives and accommodation measures

There are also three annexes to the document:

- Annex I provides a description of the new accommodation measures that have been proposed by the Crown to address impacts to Aboriginal rights
- Annex II is a list of new commitments that TMC has made in relation to the 89 recommendations through the re-initiated Phase III consultation process
- Annex III contains information provided by the National Energy Board regarding compliance and enforcement of NEB conditions, including TMC's commitments that are enforceable under NEB Condition #2.

Ts'elxwéyeqw Tribe's General Views

Ts'elxwéyeqw Tribe provided the following general comments on May 3, 2019 in response to the Crown's March 6, 2019 preliminary draft responses:

> *This response is on behalf of the Ts'elxwéyeqw (and not the Stó:lō Collective who generated the ICA) – the Ts'elxwéyeqw were included in the Collective. There is a need for a greater perspective and more discussion about the loss of connectivity to the land and to the ancestors as a result of such disturbance, which is part of the right to practice the culture. Beyond s. 35 rights is the human right of guaranteed education and cultural connectivity, health, and safety, which are tied to the land. Within the Integrated Cultural Assessment there were a number of recommendations beyond the "89 Recommendations" (that all consultation has been based). There is critical Traditional Knowledge that was shared throughout the ICA that relates to other mitigation recommendations. This is an arbitrary limiting of scope, discussion, and review on the part of Canada and Trans Mountain.*

[4] The NEB conditions can be found at the following link: https://apps.neb-one.gc.ca/REGDOCS/File/Download/3083938

[5] The most recent commitments tracking table (May 2019) can be found at the following link: https://apps.neb-one.gc.ca/REGDOCS/File/Download/3777584
Please note that it does not yet contain the new commitments made through the re-initiated Phase III consultation process.

[6] The B.C. EAO Conditions can be found at the following link: https://projects.eao.gov.bc.ca/api/document/5892318fb637cc02bea16484/fetch

Recommendation #1

Topic Area: Implementation, General

If the NEB recommends approval of the TMEP, then Stó:lō people would require all of the mitigations listed here to be included in the Certificate of Public Convenience and Necessity (CPCN) issued by the NEB for the TMEP.

TMC Response (Last Update: May 19, 2019):

See individual responses below.

Relevant NEB Conditions:

- 1 (Condition Compliance)
- 2 (Compliance with Commitments)
- 6 (Commitments Tracking Table)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

In addition to meeting the requirements set out under Condition 2 and 6, the Ts'elxwéyeqw Tribe is expecting new and amended conditions and other Crown accommodations made through the Phase III consultation and Phase IV (Permitting) consultations to be implemented - as an example, revised EPPs and revised construction alignment sheets which include spatialized Stó:lō interests that correlate with the ICA and CHOA as described in the TOR and reporting requirements.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada (Crown Consultation Coordinator)

This recommendation focuses solely on conditions on the CPCN, however there is a broad suite of tools that the Crown can rely on to address recommendations. Natural Resources Canada's consultation team, representing the Crown, has sought to achieve consensus on new or existing mitigation or accommodation measures that address each recommendation from the ICA, either through a commitment by TMC, condition on the certificate, BC EAO condition, or other Crown action.

The Crown understands that TMC has committed to develop alignment sheets that include spatialized Stó:lō interests, including described in the ICA and CHOA, and has committed to work with Ts'elxwéyeqw technical staff to develop site-specific measures to manage the effects of the Project as required.

For additional information regarding compliance and enforcement of NEB conditions, please see Annex III.

Recommendation #2

Topic Area: Implementation, Oversight and Reporting
At least 90 days prior to commencing construction, TMEP will provide a detailed report to Stó:lō representatives describing:

a) *The results of detailed routing and design studies including how cultural resources were identified, documented and protected in the field and who conducted this work*
b) *How TMEP has considered and addressed all issues identified in the ICA*
c) *Descriptions of mitigations that will be implemented to address potential Project effects*
d) *Descriptions of outstanding issues or concerns and the steps that TMEP will take to address them*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to hosting a series of workshops, as agreed upon by Trans Mountain and Stó:lō representatives for communities represented by the Stó:lō Collective. The Workshops will be designed to facilitate open conversation between members of communities represented by Stó:lō Collective, subject-matter experts and Trans Mountain representatives regarding many of the recommendations included within this document and the potential impacts of the Project on Aboriginal rights, title and interests and their traditional and cultural use of the land and marine environment.

April 2019 Update:

Meetings between Trans Mountain and People of the River Referrals Office (PRRO) were held in Q1 and early Q2, 2018 to discuss cultural resources and sites identified in the ICA, and work towards mitigation measures to address issues and concerns relative to these resources and sites. A confidential PRRO Management Measures Table for Alignment Sheets (PRRO MMT) was prepared in inform these discussions. The purpose of the PRRO MMT is to integrate site-specific locations identified in the CHOA, the ICA and other evidence and identify potential interactions with the Project. At the request of the PRRO additional data, including archaeological sites from the AIA, watercourse crossing information and the permit and recommendation/ condition interactions were added to the PRRO MMT. Through discussions regarding the PRRO MMT, the PRRO and Trans Mountain have generated a common understanding of how each site interacts with the Project right-of-way.

Standard measures outlined in the Pipeline EPP and NEB and BCEAO Condition plans for the Project will be used to manage the effects of the Project on the resources and sites that have been identified. Trans Mountain will continue to work with the PRRO and Stó:lō to develop site-specific measures to manage the effects of the Project as required.

May 2019 Update:

Trans Mountain is committed to address these steps through a series of workshops. Meetings between Trans Mountain and PRRO were held in Q1 and early Q2, 2018 to discuss cultural resources and sites identified in the ICA, and work towards mitigation measures to address

issues and concerns relative to these resources and sites. An outcome of the workshop was the mutual development of the PRRO Management Measures Table (April 4, 2018) that outlined locations identified in the CHOA (and ICA), and cross referenced it with NEB Conditions, BC EAO Conditions, Commitments, and BC Permitting. Data gaps included repeated request by TMC to connect the mapped information in the CHOA, with the contextual information provided in series of tables in the CHOA, via “SHED ID” numbers.

In April 2019, TTML stated that the PRRO Management Measure Table was of no further use for TTML, TMC noted that the PRRO Management Measure Table is a useful tool for incorporating TTMLs interests and agreed to mitigation measures into the environmental plans and alignment sheets. TTML committed to provide a new set of data outputs from Stó:lō Connect, noting that the data would be considered public and used to inform/update Environmental Alignment Sheets for Spreads 5a, 5b, 6 and 7. TTML provided data outputs from Stó:lō Connect, but did not provide metadata that linked the Stó:lō Connect data to the ICA or CHOA. In late April 2018 TMC requested additional data (SHED Id’s and Site Type) to understand the information provided by TTML (via Stó:lō Connect), and to link it, where possible to the CHOA and ICA. Site Type and SHED ID’s are needed to connect the Stó:lō Connect data to the CHOA, and requests further information. The parties are currently proceeding to address these data issues.

Through ongoing dialogue and communication with Stó:lō Trans Mountain is working to incorporate Stó:lō information into the environmental alignment sheets and into overall project planning. Trans Mountain will continue to work with the PRRO and Stó:lō to develop site-specific measures to manage the effects of the Project as required. Trans Mountain will provide Environmental Management Plans and Alignment sheets that contain Stó:lō information once they are complete.

Relevant TMC Commitment #s: 896

Relevant NEB Conditions:

- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC and the Crown linked to commitment #1613 does not address this recommendation from the ICA. This recommendation relates to capacity support for Ts’elxwéyeqw Tribe to effectively participate in the TMX project.

The Ts’elxwéyeqw Tribe expects that TMC would be developing TOR, accompanied with appropriate funding, for ongoing engagement, including maintaining previous agreements with Kinder Morgan/TMC setting out such processes, for example the consultation TOR between

TMC, the STSA, and relevant BC ministries/agencies including the Oil and Gas Commission. An agreement may be entered between relevant agencies and the Tribe via the STSA.

Crown Response (Last Update: June 1, 2019)

The Crown recognizes Stó:lō's interest in reviewing these documents prior to construction to ensure that TMC has taken Stó:lō concerns and interests in to account, and has taken adequate steps to protect environmental and cultural resources. The NEB has developed conditions that should address this recommendation.

On May 19, 2019, TMC provided Ts'elxwéyeqw Tribe with a series of documents that described how the information contained in the ICA was incorporated in to project plans and alignment sheets.

At the workshops held on May 6, May 16, May 23, and May 31, TMC and Ts'elxwéyeqw committed to a path forward to ensure that the information contained in the ICA, including the cultural and ecological features identified, were incorporated in to the Project alignment sheets. At the workshops held in May 2019, TMC made a number of commitments, including:

- A commitment to hire an environmental monitor, as chosen by Ts'elxwéyeqw Tribe, and meeting TMC's contractor qualification specifications, to be on the Environmental Inspection Team;
- A commitment to ensure that Stó:lō sites are included in the final alignment sheets that are used by TMC staff and contractors during construction;
- A commitment to update the Resource Specific Mitigation Tables to ensure that mitigation measures are specific to different types of cultural sites;
- A commitment for Stó:lō representatives to deliver cultural awareness training to TMC staff and contractors;
- A commitment to incorporate information regarding the cultural site boundaries identified by Stó:lō when considering appropriate mitigation; and
- A commitment to meet with Stó:lō to discuss windows for construction that respect Stó:lō cultural practices and events.

For a full list of new commitments made by TMC during the re-initiated Phase III consultation process, please see Annex II.

There are also NEB conditions in place that require TMC to submit the information described in this recommendation. Condition #72 requires TMC to file with the NEB for approval, at least three months prior to commencing construction, an updated project-specific Pipeline Environmental Protection Plan. The Environmental Protection Plan must be a comprehensive compilation of all environmental protection procedures, mitigation measures, and monitoring commitments, for the construction of the pipeline. It must include updated alignment sheets, environmental policies and procedures, contingency plans, and a description of how applicable Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan. TMC submitted the most recent version of this plan on March 29, 2018.

In addition, Condition #96 requires TMC to report, at least two months prior to commencing construction, a report on the engagement activities it has undertaken with each potentially affected Aboriginal group, including a summary of any issues or concerns raised, and measures taken to respond to issues or concerns. TMC must provide this report to each Aboriginal group that was involved in engagement activities.

The Crown concurs with Ts'elxwéyeqw that the Tribe should have the opportunity to review the Report on Engagement with Aboriginal Groups in draft prior to its submission to the NEB. The most recent version of this report was submitted in December 2018, which describes in engagement with Indigenous groups between January 1, 2018 and June 30, 2018.

The Crown understands that TMC has committed to share any reports that have the potential to have impacts on Indigenous rights with the relevant Indigenous groups for review and comment before they are finalized and sent to the NEB. Final versions of reports are then sent to the relevant Indigenous Groups and NEB simultaneously.

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. The Crown has requested that TMC update their commitment tracker to include this commitment (Commitment Tracking Table). Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

See also the Crown's response to Recommendation #4 regarding capacity funding to support the Tribe's efforts to advance its interests regarding cultural sites following the GIC decision on the Project, should GIC decide to approve the Project.

Recommendation Addressed

Recommendation #3

Topic Area: Implementation, General
At least 90 days prior to the start of construction, TMEP will provide copies of Construction Environmental Management Plans and Alignment sheets to Stó:lō representatives

TMC Response (Last Update: May 19, 2019):

As part of the workshop series described in the response to Recommendation 2, Trans Mountain will offer a focused workshop to review the draft Environmental Protection Plan (EPP) and Environmental Alignment Sheets (EAS). Trans Mountain will submit up to date versions of the EPP and EAS to Stó:lō representatives.

April 2019 Update:

On April, 10, 2019 Trans Mountain provided the most recent copy of the document "List of TMEP Environmental Plans" Rev. dated August 16, 2018. This document outlines all of the most recent filings of Environmental Management Plans and active links to their filings with the NEB.

Trans Mountain will continue to provide updates to the Environmental Management Plans and Environmental Alignment Sheets as they occur.

May 2019 Update:

See [response to recommendation #] 2 above.

Relevant TMC Commitment #s: 1612

Relevant NEB Conditions:

- 72 (Pipeline Environmental Protection Plan)
- 78 (Facilities Environmental Protection Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response to ICA Recommendation 2 related to commitment #896 (workshops) and Condition #72 (Pipeline Environmental Protection Plan) and #1612 (up-dated Environmental Alignment Sheets)

See Ts'elxwéyeqw Tribe response to ICA Recommendation 1 related Condition 2.

Crown Response (Last Update: June 1, 2019)

The Crown recognizes Stó:lō's interest in reviewing environmental management plans and alignment sheets to ensure that TMC has taken adequate steps to protect environmental and cultural resources.

Please see the Crown's response to Recommendation #2.

Recommendation Addressed

Recommendation #4

Topic Area: Implementation, Training and Capacity Building
A number of the mitigation measures recommend that TMEP submit a plan or program details to Stó:lō representatives for their review and approval (or disapproval and/or amendment) . The demand on time and resources for Stó:lō representatives to complete all of these reviews and approvals would be substantial, and therefore the following general mitigations is recommended:

a) *TMEP provide capacity support to Stó:lō representatives for the review and approval (or disapproval and/or amendment) of plans and programs. The exact nature of the capacity support will be finalized in discussions with Stó:lō representatives, but it could include support for Stó:lō staff/administration tasked with tracking progress of Canada's review of the TMEP for the 12 months leading up to the start of construction of the TMEP. If concerns are identified by Stó:lō representatives, Trans Mountain representatives will meet with Stó:lō representatives to discuss opportunities for changes.*

TMC Response (Last Update: May 19, 2019):

In partnership with Stó:lō representatives, Trans Mountain commits to developing a mutually agreeable process for continued engagement.

April 2019 Update:

In 2017, Trans Mountain, PRRO and the province entered into a consultation agreement respecting the review and approval process for BC permits. Trans Mountain and PRRO also agreed on capacity funding agreement to support the consultation agreement.

Trans Mountain remains open to developing a mutually agreeable process for continued meaningful engagement moving forward.

Relevant TMC Commitment #s: 1613

May 2019 Update:

Trans Mountain provided capacity funding to the PRRO under the permit consultation Terms of Reference to support a review of the existing environmental plans and alignment sheets and engagement through a series of workshops on interests impacted by the project along with discussions on additional mitigation measure that may be required.

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC and the Crown linked to commitment #1613 does not address this recommendation from the ICA. This recommendation relates to capacity support for Ts'elxwéyeqw Tribe to effectively participate in the TMX project.

The Ts'elxwéyeqw Tribe expects that TMC would be developing TOR, accompanied with appropriate funding, for ongoing engagement, including maintaining previous agreements with Kinder Morgan/TMC setting out such processes, for example the consultation TOR between TMC, the STSA, and relevant BC ministries/agencies including the Oil and Gas Commission. An agreement may be entered between relevant agencies and the Tribe via the STSA.

Crown Response (Last Update: June 1, 2019)

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement that could include provisions regarding capacity funding. The Crown has requested that TMC update their commitment tracker to include this commitment.

Furthermore, the Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement, and expects that this will include capacity to review regulatory filings.

Through meetings and workshops with Ts'elxwéyeqw Tribe, the Crown has heard concerns regarding capacity funding for ongoing work related to the Project, including work related to the protection of Stó:lō cultural sites. As a result, on May 29, 2019, the Crown offered Ts'elxwéyeqw Tribe $250,000 in capacity funding to support the Tribe's efforts to advance its interests regarding cultural sites following the GIC decision on the project, should the GIC decide to approve the project.

Recommendation Addressed

Recommendation #5

Topic Area: Fisheries, Oversight and Reporting
Stó:lō Fishing representatives will participate in the development and review of Fisheries Management Plans and water course crossing EPPs before construction and mitigation plans are finalized.

TMC Response (Last Update: May 19, 2019):

See response to recommendation #2

May 2019 Update:

Information contained within the 2014 ICA, specifically the table of watercourse crossings (Table 5-4) and Section 17.2 Fisheries was cross-referenced against Trans Mountain's Watercourse Crossing Inventory included in its initial application to the NEB at the end of 2013. In addition to information contained within the ICA, supplemental fish and fish habitat investigations were also carried out in 2015 and 2016. Together, updates were made to the watercourse crossing inventory, including the addition of a number of non-classified drainages and historical fish presence. The record of documented fish inventory or proposed least-risk instream windows was also amended to included information contained within the ICA (e.g., Chawuthen Creek – least risk instream window proposed accounts for historical presence of Pink Salmon). A preferred primary crossing method of trenchless has been proposed at watercourses with high sensitivity and spiritual value (e.g., Chilliwack/Vedder River), but was not possible for geotechnical reasons at the Coquihalla River crossing in Hope.

Relevant NEB Conditions:

- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)
- 108 (Contingency watercourse crossings)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC to ICA recommendation #2 and Crown responses related to condition 43, 71, 72, 96, or 108 do not address this recommendation from the ICA.

See Ts'elxwéyeqw Tribe response to ICA Recommendation 2 related to commitment #896 (workshops) and Condition #72 (Pipeline Environmental Protection Plan).

TMC has already developed its Riparian Habitat Management Plan (2017). The Plan only notes the following as information provided by the Stó:lō Collective: "Stó:lō community members indicated that the removal of riparian and wetland vegetation may affect their TLU within their traditional territories. No sites indicated." This is not a satisfactory response to this recommendation.

Trans Mountain has already produced the Fisheries Management Plans and watercourse crossing inventories and EPPs (c. 2016); these documents do not include information provided by Ts'elxwéyeqw Tribe in 2014. recommendations for specific watercourse crossings were included in the ICA; There were other crossings noted that were not incorporated in TMC's inventory. DFO's support for the idea of Ts'elxwéyeqw Tribe's participation did not ensure TMC followed through on this commitment.

DFO provided an authorization under the Fisheries Act for Westridge Marine Terminal back in 2017; the Ts'elxwéyeqw Tribe did not have an opportunity to participate in the consultation on this authorization – funding was not provided; which represents a significant barrier.

Given the changes in the Fisheries Act, there is a lot of discomfort and mistrust in how fish, fish habitat, and mitigation will occur. This is especially true in relation to the serious harm protocol. Ts'elxwéyeqw Tribe needs a commitment that water and fisheries documents reflect Ts'elxwéyeqw Tribe's knowledge. See Ts'elxwéyeqw Tribe response to ICA Recommendation 4.

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada (DFO)

DFO is supportive of the participation of Stó:lō representatives in the development and review of Trans Mountain's Fisheries Management Plan(s) and watercourse crossing EPPs. As the proposed TMX pipeline is subject to the December 2013 NEB-DFO MOU for cooperation and administration of the *Fisheries Act* and the *Species at Risk Act* related to regulating energy infrastructure in Canada, the NEB is responsible for reviewing works, undertakings or activities associated with pipeline watercourse crossings. The NEB assessed the potential impacts of the project to fish and fish habitat, including aquatic species at risk in a manner that considers the intent and requirements of the *Fisheries Act* and the *Species at Risk Act* (SARA).

If a project could result in serious harm to fish, then the NEB will inform DFO that a *Fisheries Act* authorization under paragraph 35(2)(b) is likely to be required. Similarly, if the NEB determines that an impact to a SARA-listed aquatic species or its critical habitat may occur, then the NEB will inform DFO that permits under the SARA may be required. DFO will review and issue an authorization or permit when appropriate, prior to project construction. As part of DFO's regulatory review process, and prior to the issuance of any authorizations or permits, DFO will review any Fisheries Management Plans or EPPs submitted by Trans Mountain as part of their application package. DFO will also consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights.

DFO is not currently able to provide capacity funding for regulatory consultations (e.g., authorizations and/or permits under the *Fisheries Act* and the *Species at Risk Act*). However, capacity funding was made available to Ts'elxwéyeqw Tribe members by the National Energy Board and the Natural Resources Canada Major Projects Management Office to support the review of Trans Mountain's Facilities Application, participation in the environmental assessment (EA) process, and consultation related to the project. Additional funding was available through the provincial Environmental Assessment Office during the 2016 EA process. As the scale and scope of the works, undertakings and activities associated with the expansion project have not substantially changed since the EA, DFO expects that information provided to, and reviewed by, Ts'elxwéyeqw Tribe members during the original EA and subsequent Reconsideration process will be directly relevant to any potential applications for authorization or permits on which DFO would need to consult. If works, undertakings or activities described in an authorization application have the potential to result in serious harm to fish and are likely to affect asserted or established rights of Ts'elxwéyeqw Tribe, DFO is committed to travelling to Ts'elxwéyeqw Tribe's preferred meeting locations to engage in technical discussions on any outstanding concerns.

Natural Resources Canada

In addition to consultation that would be undertaken by DFO in the circumstances described above, the Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement, and that this will include review of Fisheries Management Plans and watercourse crossing EPPs.

Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

On May 19, 2019, TMC provided Ts'elxwéyeqw Tribe with a series of documents that described how the information contained in the ICA was incorporated in to project plans and alignment sheets. TMC has indicated that the information contained in the ICA related to watercourse crossings has been incorporated in to the watercourse crossing inventory.

On May 31, 2019, TMC and Ts'elxwéyeqw held a watercourse-specific workshop to compare the watercourse crossing information contained in the watercourse crossing inventory with those identified in the ICA. At the workshop, TMC committed to utilize Ts'elxwéyeqw/Stó:lō traditional and technical knowledge and data, where provided, in their watercourse crossing inventories and plans. New commitments to Ts'elxwéyeqw regarding watercourse crossings, which are captured at Annex II of this document .At the workshops held on May 6, May 16, May 23, 2019, and May 31, 2019 TMC and Ts'elxwéyeqw committed to a path forward to ensure that the information contained in the ICA, including watercourse crossings and drainage features identified, were incorporated in to the Project alignment sheets and plans. Please see the Crown's response to Recommendation #2.

Recommendation Addressed

Recommendation #6

Topic Area: Fisheries, Oversight and Reporting
Stó:lō representatives will provide input on proposed locations for Hydrostatic test water withdrawal and release.

TMC Response (Last Update: May 19, 2019):

Stó:lō representatives will be provided an opportunity to provide input on proposed locations for hydrostatic test water withdrawal and release.

April/May 2019 Update:

Detailed Engineering and Design for the pipeline are essentially complete. Contractors, who have been retained to construct the pipeline, have defined their hydrostatic water use requirements. Condition 113 (Hydrostatic Test Plan) requires Trans Mountain to summarize its water withdrawal and release plans for each pipeline spread. When these plans have been compiled, Trans Mountain will share its proposed locations with Stó:lō for their review and comment.

Estimated Timeframe – Q2, 2019

Relevant TMC Commitment #s: 1614

Relevant NEB Conditions:

- 96 (Reports on Engagement with Aboriginal Groups)
- 113 (Hydrostatic Testing Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

TMC has already submitted provincial permits for hydrostatic testing at particular locations within S'olh Temexw. TMC failed to meet their own commitment as Stó:lō representatives were not provided with an opportunity to provide input; therefore, this is a failure to comply with NEB condition #2 and TMC commitment # 1614.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes Stó:lō's concerns regarding hydrostatic testing, and the potential effects to water quality and fish health from water withdrawal and release.

NEB Condition #113 requires TMC to develop a hydrostatic testing plan, including the locations of all water withdrawal and discharge sites. The condition requires TMC to provide a description

of how TMC has taken available and applicable Aboriginal traditional land use and traditional ecological knowledge in to consideration in developing the plan, including demonstration that those Aboriginal persons and groups that provided Aboriginal traditional land use information and traditional ecological knowledge had the opportunity to review and comment on the information. TMC has indicated they will submit their draft testing plans to Ts'elxwéyeqw for review and comment in Summer 2019 (Q2 2019).

As part of Commitment #1614, TMC has made a commitment that Stó:lō representatives will be provided an opportunity to provide input on proposed locations for hydrostatic test water withdrawal and release. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

Recommendation Addressed

Recommendation #7

Topic Area: Safety and Emergency Response, Oversight and Reporting
TMEP will consult with Stó:lō representatives to develop the Emergency Response Plans in the study area.

TMC Response (Last Update: May 19, 2019):

As part of the workshop series described in the response to Recommendation 2 Trans Mountain will offer a focused workshop to review Emergency Response Management planning.

April/May 2019 Update:

Trans Mountain has conducted numerous consultation and engagement activities such as:

- Emergency management workshops (EM3) in 2016, EM4 workshops in 2018. However, the EM 4 workshop in the Sumas district was postponed due to Project delays. EM4 workshops will be rescheduled for 2019-Q4;
- One on One meetings with Indigenous communities;
- Invitation to the Westridge Marine Terminal emergency response exercise and exercise response deployments; and
- Consultation on Geographic Response Plans (GRP), invitation to participate to Control Point field Assessments.

Trans Mountain welcomes the opportunity to meet and engage with Stó:lō representatives in the development of enhanced Emergency Response Plans (ERPs) including the Geographic Response Plans, exercises, and Control Point assessments.
Relevant TMC Commitment #s:1615

Relevant NEB Conditions:

- 89 (Emergency Response Plans for construction)
- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 96 (Reports on Engagement with Aboriginal Groups)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 124 (Implementing Improvements to Trans Mountain's Emergency Management Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe response to ICA recommendation 2 and 1615 (workshops) and Condition 96 (Aboriginal Engagement Report)

See Ts’elxwéyeqw Tribe response to ICA recommendation 1 related to Condition 2 (compliance with commitments)

TMC has already developed Geographic Response Plans but even with these documents, there are still information gaps.

DFO projects with LFFA do not off-set the need for Ts’elxwéyeqw Tribe to have input into Emergency Response Plans. LFFA does not have a mandate to produce emergency response plans for its member First Nations. Ts’elxwéyeqw Tribe has not heard of the Emergency Response Planning Project DFO referred to in their response.

The Onshore Pipeline Regulations cover public and environmental values but are not inclusive of Stó:lō specific values.

Ts’elxwéyeqw Tribe have not entered into any Agreements that set out how consultation related to Conditions 89, 90, 117, 119 or 124 will occur. See Ts’elxwéyeqw Tribe response to ICA recommendation 1 and 4.

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

DFO is supportive of the engagement of Stó:lō representatives by Trans Mountain in the development of Emergency Response Plans. DFO is currently supporting the Lower Fraser Fisheries Alliance in the Lower Fraser Aboriginal Knowledge project to collect, store, and organize Aboriginal Traditional Knowledge for potential use in emergency response, among other applications (described at the following website: https://www.lffa.ca/initiatives/lower-fraser-aboriginal-knowledge). Three Ts’elxwéyeqw communities, Shxwhá:y Village, Skowkale, and Tzeachten, have participated in this project as of 2018.

Natural Resources Canada

The Crown recognizes Stó:lō’s concerns regarding the potential for an oil spill within its traditional territory, and the potential negative effects to their socio-economic conditions, culture, health, and well-being that could result if it is not immediately responded to.

There are a number of conditions that would require TMC to involve Stó:lō representatives in the development of TMC's emergency management program, which includes emergency response planning. For example, Condition #89 would require TMC to file an emergency response plan for construction with the NEB that includes spill contingency measures. Condition #90 would require TMC to produce a consultation plan to review its emergency response plans with potentially affected Aboriginal groups. Condition #117 requires TMC to describe how commitments made during consultations will be tracked and incorporated in to the emergency management program.

At the May 6, 2019 workshop between Ts’elxwéyeqw, the Crown, and TMC, emergency management representatives from TMC presented information regarding the Geographic

Response Plans, and offered to discuss these plans with Ts'elxwéyeqw further in more detail. TMC has also committed to work with Stó:lō communities to incorporate their local and cultural heritage knowledge into their Geographic Response Plans, which are a key component of enhancements made to Trans Mountain's Emergency Management Program.

At the May 31, 2019 workshop, TMC committed to include Ts'elxwéyeqw in their emergency management and response planning, which could include training for Ts'elxwéyeqw members recruited for involvement in response efforts.
The Crown has requested that TMC update their commitment tracker to include these commitments (Commitments Tracking Table).

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement, which could include provisions related to consultation on emergency management and response. The Crown has requested that TMC update their commitment tracker to include this commitment. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

In addition to the NEB conditions, TMC must also adhere to the Onshore Pipeline Regulations, which require TMC to implement and maintain an emergency management program that anticipates, prevents, manages, and mitigates conditions during an emergency that could adversely affect property, the environment, or the safety of workers or the public.

Finally, the Crown understands that TMC, as part of Commitment #1615, has committed to holding a focused workshop to review emergency response management planning.

Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

Recommendation Addressed

Recommendation #8

Topic Area: Fisheries, Oversight and Reporting
Stó:lō representatives will consult with community members to determine appropriate restoration plans for water crossings including bank armouring, seed mixes or replanting requirements

TMC Response (Last Update: May 19, 2019):

May 2019 Update:

See Appendix J-5 of NEB Condition 43, Watercourse Crossing Inventory (Filing ID A824A09).

Relevant NEB Conditions:

- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)
- 108 (Contingency watercourse crossings)
- 151 (Post Construction Environmental Monitoring Reports)
- 154 (Riparian Habitat Reclamation Evaluation Report and Offset Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response to ICA recommendation 5 related to NEB condition 43, 71, 72, 96, 108 and 154.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown encourages Stó:lō representatives to conduct internal consultations with community members regarding the project.

The Crown notes that Condition #71 required TMC to develop a riparian habitat management plan that would apply to all defined watercourses crossed by the Project. The plan would need to include a description of how Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan, and a summary of consultations with potentially affected Aboriginal groups. TMC submitted this plan in March 2018 [A90936-3]. Appendix C summarizes how input from Indigenous groups was considered in the development of this plan.

Under Condition #154, TMC would also be required to develop a Riparian Habitat Reclamation Evaluation Report and Offset Plan after the fifth complete growing season, following final clean up. This reclamation evaluation report and offset plan would require a description of consultation undertaken with potentially affected Aboriginal groups on the plan, including how the results of consultation were taken in to account. This plan would be filed during the Operations phase, should the Project proceed.

Furthermore, TMC has committed that Stó:lō representatives will be afforded the opportunity to participate in post-construction monitoring programs at watercourse crossings within Stó:lō Traditional Territory. The Crown has requested that TMC update their commitment tracker to include this commitment (Commitments Tracking Table).

As discussed at the May 6, 2019 workshop, in order to address concerns regarding Indigenous groups' concerns regarding impacts to fish, fish habitat, and fisheries resources, the Government of Canada has proposed to collaborate with Indigenous groups to develop an Aquatic Habitat Restoration Fund (AHRF) that would support projects to restore fish habitats in ecological areas that will have the greatest impact on the overall stock. AHRF supports projects such as studies, restoration projects, coastal/riparian engineering projects, and monitoring and reporting. Each project can include capacity-building activities to ensure tangible and long-term positive outcomes in Indigenous communities. In addition to habitat restoration, AHRF will also provide funding for studies on terrestrial cumulative effects of fish habitats along the Fraser River and other areas to support these interconnected systems.

Additional information regarding accommodation measures can be found in Annex I.

Recommendation Addressed

Recommendation #9

Topic Area: Fisheries, Oversight and Reporting
Stó:lō fishing representatives must be notified if isolation methods will not work and TMEP is considering another crossing method.

TMC Response (Last Update: May 19, 2019):

As part of the workshop series described in the response to Recommendation 2 Trans Mountain will include the subjects of aquatics and water crossings.

April/May 2019 Update:

In the event that a contingency open cut crossing method is required (i.e., without flow isolation), Trans Mountain will provide notice to Stó:lō and welcomes the opportunity to work with Stó:lō to establish the necessary communication channel to receive the notification
Relevant TMC Commitment #s: 1616

Relevant NEB Conditions:

- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)
- 108 (Contingency watercourse crossings)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe response to ICA recommendation 2 and 1615 (workshops) and Condition 96 (Aboriginal Engagement Report)

See Ts’elxwéyeqw Tribe response to ICA recommendation 5 related to NEB condition 43, 71, 72, 96, and 108.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō’s concerns regarding effects to fish habitat from watercourse crossings, and concerns regarding the use of open cut crossings, given potential effects to bank stability and water quality.

The Crown notes that Condition #43 required TMC to develop a watercourse crossing inventory

at least five months prior to commencing watercourse crossing construction activities. The inventory describes the primary and contingency crossing methods, information on fish habitat, and any measures to mitigate any effects, such as least-risk timing windows. The inventory includes a description of how Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing the plan, and a summary of consultations with potentially affected Aboriginal groups.

Under Condition #108, in the event that a contingency watercourse crossing is used instead of TMC's proposed primary method, and where any of Fisheries and Oceans Canada's applicable "Measures to Avoid Causing Harm to Fish and Fish Habitat" cannot be implemented, TMC must develop a report that outlines the method that will be employed, a description of habitat, any expected effects, mitigation, and reclamation.

Furthermore, the Crown understands that TMC has committed to provide notice to Stó:lō in the event of a contingency open cut crossing method. The Crown has requested that TMC update their commitment tracker to include this commitment. The Crown encourages Ts'elxwéyeqw to identify a contact person to receive this notification.

At the workshop held on May 31, TMC committed to utilize Ts'elxwéyeqw/Stó:lō traditional and technical knowledge and data, where provided, in their watercourse crossing inventories and plans.
Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings, as well as the re-initiated Phase III consultation process.

Recommendation Addressed

Recommendation #10

Topic Area: Safety and Emergency Response, Oversight and Reporting
Stó:lō representatives must be notified as soon as a spill or leak, of any size, is detected.

TMC Response (Last Update: May 19, 2019):

Trans Mountain will discuss additional emergency response management (ERM) elements with Stó:lō representatives.

April/May 2019 Update:

Notifications to Indigenous communities are included and an integral part of the Trans Mountain Emergency Response Plans.

Trans Mountain maintains a database of Indigenous community contacts and will contact affected communities as soon as possible with priority to those that are geographically closest to the incident.

Notification of the Indigenous Communities, including those whose traditional territories may be affected, occurs through the Indigenous Relations Coordinator as part of the incident Liaison Office.

Indigenous communities affected by an incident will be invited to be a member of Unified Command and take part into the Incident Command System structure through the Liaison office and Environmental Unit.

Relevant TMC Commitment #s: 1617, 1618, 1619

Relevant NEB Conditions:

- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 96 (Reports on Engagement with Aboriginal Groups)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 124 (Implementing Improvements to Trans Mountain’s Emergency Managemetn Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC and the Crown linked to commitment #1617, 1618, 1619 and Condition #90, 96, 117, &119 do not fully address this recommendation from the ICA. This

recommendation relates to immediate notification to Stó:lō representatives as soon as any leak or any size is detected.

A discussion with TMC is not a commitment to establish notification procedures specific to Ts'elxwéyeqw Tribe.

A spill will have a direct impact on the Ts'elxwéyeqw Tribe's established right to fish. Ts'elxwéyeqw Tribe requires additional information from ECCC on its "examination" of internal processes.

Will ECCC be consulting with the Ts'elxwéyeqw Tribe and other First Nations on this "examination?" The Ts'elxwéyeqw Tribe requires clarification on the timelines and responsibilities regarding spill response.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes the critical importance of immediate response in the event of a spill, and Stó:lō's interest in being notified as soon as possible.

Under the NEB's *Onshore Pipeline Regulations*, and pursuant to the NEB Guidelines on Reporting Incidents, a situation as described in this recommendation must be reported immediately.

See: https://www.neb-one.gc.ca/bts/ctrg/gnnb/rprtnggdlns/index-eng.html

As part of TMC's Emergency Response Plan, Section 2.13.2, Indigenous communities whose traditional territories are impacted by an incident will be notified as soon as possible.

At the May 6, 2019 workshop, TMC's emergency management representatives requested that Ts'elxwéyeqw provide TMC with an appropriate contact or contacts who would be notified in the event of a spill. The Crown has requested that TMC update their commitment tracker to include a commitment to notify the provided contacts for Ts'elxwéyeqw in the event of a spill as soon as possible following the incident. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings, as well as the re-initiated Phase III consultation process.

See: https://www.neb-one.gc.ca/bts/ctrg/gnnb/rprtnggdlns/index-eng.html

Recommendation Addressed

Recommendation #11

Topic Area: Fisheries, Oversight and Reporting
During water quality monitoring program, anything that fails to meet or exceed established guidelines will be reported to a Stó:lō Fisheries Representative within 12 hours.

TMC Response (Last Update: May 19, 2019):

Where water quality monitoring fails to meet the parameters of established guidelines and is not in compliance with regulatory requirements, after confirmation with the regulator, Trans Mountain will report the incident to Stó:lō representatives within the requested timeframe.

April 2019 Update:

Trans Mountain remains open to developing a mutually agreeable process for continued meaningful engagement including the establishment of the necessary communication channels for receipt on notifications.

May 2019 Update:

As per the response to Recommendation #9, it is recommended that Stó:lō establish the necessary communication channel to receive the notification. Notifications will be completed after confirmation that established guidelines have not been met.

Relevant TMC Commitment #s: 1620

Relevant NEB Conditions:

- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)
- 113 (Hydrostatic Testing Plan)
- 130 (Groundwater Monitoring Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not yet addressed.

It is necessary that a communications plan be set in place that could ensure there is notification to Ts’elxwéyeqw Tribe within the 12 hours of any water quality that fails to meet or exceed established guidelines.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes the importance of water quality to Stó:lō, and concerns regarding potential changes to water quality that could result from project activities.

The Crown understands that TMC, as part of Commitment #1620, has committed to report incidents to Stó:lō representatives within the requested timeframe where water quality monitoring fails to meet the parameters of established guidelines and is not in compliance with regulatory requirements. Under recommended Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific agreement for engagement. The Crown has requested that TMC update their commitment tracker to include this commitment. This agreement could include a communications plan, including details regarding how notifications related to any changes to water quality could take place.

Recommendation Addressed

Recommendation #12

Topic Area: Fisheries, Additional Studies
Stó:lō fishing representatives will participate in the development and review of additional research carried out as part of the TMEP within the lower Fraser Watershed. Further studies need to address information gaps including, for example: behavior of bitumen in fresh water and estuarine environments, seasonal variation of fish populations (spawning, fry movement), point source contamination inventory, water quality sampling feeding grounds, hydrological connectivity, and movement of fish populations as a result of changes in water quality (i.e. turbidity, dissolved oxygen, pH levels especially during seasonal variations).

TMC Response (Last Update: May 19, 2019):

Trans Mountain remains committed to ongoing engagement with Stó:lō representatives to discuss the inclusion of existing Stó:lō knowledge into the updated EPPs for the Project.

April 2019 Update:

Subsequent to the information contained within the initial NEB Application, Trans Mountain completed supplemental fish and fish habitat investigations at numerous watercourses along the entire Project length. This information was submitted to support NEB Condition 43, and was made available to Stó:lō for review, prior to its filing with the NEB on 31-March, 2017.
Trans Mountain looks forward to discussing Stó:lō's interests in additional studies as a part of our commitment to ongoing meaningful engagement.

May 2019 Update:

Stó:lō representatives have participated in all fish and fish habitat investigations within Stó:lō Traditional Territory completed by Trans Mountain. Subsequent to the information contained within the initial NEB Application, Trans Mountain completed supplemental fish and fish habitat investigations at numerous watercourses along the entire Project length. This information was submitted to support NEB Condition 43, and was made available to Stó:lō for review, prior to its filing with the NEB on 31-March, 2017. See Appendix B and D of NEB Condition 43, Watercourse Crossing Inventory (Filing ID A82366).
Relevant TMC Commitment #s:1621

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC and the Crown linked to commitment #1621 do not address this recommendation from the ICA.

The purpose of this recommendation is to address gaps in critical knowledge about the Lower Fraser watershed to better inform route alignment, EPPs, emergency and spill response, and other aspects of environmental effects management.

If NRCan is prepared to fund additional studies, what onus will be on TMC to incorporate this additional information and adjust plans, documents, etc.? Are there/will there be regulations or conditions which will require TMC to incorporate new knowledge?

Will funding support to carry out additional studies be linked to CPCN Conditions?

Will TMC be contributing funding for these studies or will Ts'elxwéyeqw Tribe be required to develop funding proposals to access funding through federal programs, for example the programs proposed as potential accommodation measures in the April 2019 letter from NRCan to Ts'elxwéyeqw Tribe?

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's interest in conducting additional studies within the Fraser River watershed, given the critical importance of the watershed to Stó:lō culture, livelihood, and well-being. While a number of studies were conducted in relation to the Fraser River through the NEB process, the Crown recognizes that Stó:lō has identified information gaps.

Funding for studies related to fish and fish habitat is available through AHRF, described in the Crown's response to recommendation #8.

Funding for studies is also available through the Terrestrial Studies Initiative (TSI). The TSI supports Indigenous-led studies to gain a better understanding of the potential land-based impacts of the Project. This could include updating existing Traditional Land Use studies to update key data points that will likely have changed over time, revisiting the scope of previous studies to ensure they cover the full range of cultural uses of the land and additional funding beyond that provided for other topics concerning Ts'elxwéyeqw. Studies are eligible for up to $250,000 in one-time funding per community as per program terms and conditions. Collective studies are possible, with the maximum amount of funding for a single collective project is $900,000. As Ts'elxwéyeqw Tribe represents seven communities, the Tribe would be eligible for the maximum amount. Funding through TSI will be available over three years, ending on March 31, 2022.

In order to access TSI funding, Ts'elxwéyeqw can submit a proposal to Natural Resources Canada that includes information regarding the scope, outcome, and estimated costs of proposed studies. An application for the TSI was sent to Ts'elxwéyeqw Tribe on April 1, 2019, and the Crown is available to work with Ts'elxwéyeqw to develop study proposals. This funding is not linked to the GIC decision, and will be available whether or not a CPCN is issued for the project.

Deliverables produced under the TSI can inform the NEB Condition #97. This condition requires TMC to file a report with the NEB two months prior to construction, which describes all pre-construction Traditional Land Use (TLU) and Traditional Marie Resource Use (TMRU) investigations, summarize the mitigation measures that they will implement, and summarize any outstanding TLU/TMRU investigations that will not be completed prior to construction. TMC is required to provide a copy of the report to each potentially affected group at the same time that it is filed with the NEB. If Ts'elxwéyeqw would like TLU/TMRU studies to be considered under Condition #97, they should ensure that TMC is made aware of the study, the timeline of completion and provided them with the final study once it is complete. If Ts'elxwéyeqw is not ready to propose a TLU study before the two-month deadline for Condition 97, they may still choose to input the findings of their study into Condition 96. This condition requires TMC to file a report with the NEB two months prior to construction, and every six months throughout construction, describing engagement activities with Indigenous groups, as well as measures taken to address or respond to concerns raised in those engagements.

Similarly, B.C. EAO Condition #10c would require the proponent to demonstrate how any new information obtained through consultation with Aboriginal Groups, including through TLU or TMRU investigations has been considered and incorporated into the Holder's activities, plans or programs with the objective of avoiding or minimizing Project effects on Aboriginal Groups as part of Aboriginal Consultation Reports.

Additional information regarding Crown Accommodation Measures can be found in Annex I.

Recommendation Addressed

Recommendation #13

Topic Area: Fisheries, Monitoring
Stó:lō representatives will monitor all water course crossings during construction. Pursuant to the Pipeline Environmental Pipeline Protection Plan (TMEP Facilities Application, Volume 6B, Table 7.2.3-2 continuous monitoring of turbidity and sediment release will occur:

a) at all flowing open cut crossings
b) at all isolated and partially isolated watercourse crossings
c) HDD crossings and mud releases

TMC Response (Last Update: May 19, 2019):

The Sto:lo Aboriginal monitor will have the opportunity to monitor construction at all water crossings as part of the environmental inspection team.

April/May 2019 Update:

Trans Mountain remains committed to retaining Indigenous Monitors as part of the Environmental Inspection team during construction. The Environmental Inspection team, including Indigenous Monitors, will hold working sessions prior to construction as previously described to review and discuss the EPP, EAS and other key aspects/tools related to monitoring and inspection of environmental mitigation measures.

Trans Mountain remains committed to meeting with Stó:lō to discuss interest and capacity to participate as Indigenous Monitors within the Environmental Inspection team, and/or discuss candidates qualified for Environmental Inspector or Resource Specialist positions.

Trans Mountain has reached out the Stó:lō several times regarding the Indigenous Monitor opportunity, most recently providing background information and offering further discussion during the February 2018 workshop with the Stó:lō.

Trans Mountain welcomes the opportunity to discuss the Indigenous Monitor opportunity further with the Stó:lō at their earliest convenience, including mutually-agreeable processes for sharing information.
(Timeframe: immediate)

Relevant TMC Commitment #s: 1622

Relevant NEB Conditions:

- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 108 (Contingency watercourse crossings)
- 98 (Plan for Aboriginal Construction Monitoring)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC and the Crown linked to commitment #1622 and Conditions #43, 71, 72, 108, 98 do not address this recommendation from the ICA.

ICA Recommendation 13 relates to direct participation in monitoring at water crossings within Ts'elxwéyeqw Tribe's Territory during construction.

See Ts'elxwéyeqw response to ICA Recommendation 5 related to NEB condition 43, 71, 72 and 108

TMC's Aboriginal Monitoring program does not replace the Ts'elxwéyeqw Tribe's requirement to have independent monitors.

The IAMC does not represent the Ts'elxwéyeqw Tribe for reasons that have already been communicated to the Crown and IAMC. Further, the Ts'elxwéyeqw Tribe is unclear how the IAMC's monitoring program will operate.

Would DFO commit to conducting joint monitoring with representatives appointed by the Ts'elxwéyeqw Tribe?

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

In the event that DFO issues a *Fisheries Act* authorization for works, undertakings or activities at watercourse crossings, then DFO will conduct site inspections as appropriate to those crossings. DFO is committed to conducting joint monitoring with Indigenous monitors acting on behalf of the Indigenous Advisory and Monitoring Committee (IAMC). The line-wide IAMC monitoring program is currently under development; additional information will be available through the IAMC or regional representatives following the original expression of interest processing the coming months as the program is further developed.

If Stó:lō representatives are engaged as monitors working on behalf of the IAMC, then DFO would conduct joint monitoring site visits with these representatives to watercourse crossings where *Fisheries Act* authorizations have been issued. At this time, DFO is not able to commit to joint monitoring with specific Indigenous groups outside of the IAMC monitoring program. Specifically, DFO prefers to work through the IAMC to avoid duplication of compliance monitoring efforts. Duplication of joint-monitoring would reduce DFO's capacity to conduct compliance monitoring activities at other sites and on other projects.

Natural Resources Canada

The Crown understands that TMC's plan for satisfying Condition #98 (Plan for Aboriginal Construction Monitoring) includes a commitment to hire a representative (or representatives) chosen by Ts'elxwéyeqw Tribe, and meeting TMC's contractor qualification specifications, as an Indigenous construction monitor. The Crown has requested that TMC update their commitment tracker to include this commitment.

At the May 23, 2019 workshop, TMC indicated that Aboriginal monitors would work 'on the ground' alongside the Lead Environmental Inspector, who would have the ability to stop localized work in consultation with the Construction Manager if there was an imminent non-compliance or significant adverse environmental impact about to occur..

B.C. EAO Condition #12 would, in addition to meeting all of the requirements set out in NEB Condition #98, include a plan to provide training to Aboriginal monitors and a commitment to report out on the results of the program to individual terrestrial Aboriginal Groups (which includes Ts'elxwéyeqw communities) and EAO within one year after the commencement of Operations. The report must describe the participation of each Aboriginal group in monitoring, describe training that was offered to the Aboriginal monitors, how information provided by Aboriginal monitors was considered and applied, and opportunities for terrestrial Aboriginal groups to participate in any post-Construction monitoring programs.

While the Crown recognizes Ts'elxwéyeqw's concerns regarding the IAMC, its Indigenous monitoring sub-committee is working to ensure Indigenous knowledge, values, and perspectives are included in monitoring, regulation, compliance verification and performance of the Project. The IAMC's Interim Report contains information regarding the sub-committee's Indigenous Monitoring Pilot Program: https://iamc-tmx.com/uploads/2019/02/Interim-Report-November-2018_.pdf

TMC`s latest filing relating to Condition #98 from June 16 2017 is available on the NEB website: https://apps.neb-one.gc.ca/REGDOCS/Item/View/3298142

Recommendation Addressed

Recommendation #14

Topic Area: Fisheries, Training and Capacity Building
Stó:lō representatives will receive training on all aspects of the Pipeline EPP Water withdrawal and Discharge Procedures Management Plan

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 13.

Relevant TMC Commitment #s:1622

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Program)
- 58 (Training and Education Monitoring Reports)
- 98 (Aboriginal Construction Monitoring)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

To date, TMC has not approached the Ts'elxwéyeqw Tribe to offer this training.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that TMC's plan for satisfying Condition #98 includes a commitment to hire a representative chosen by Ts'elxwéyeqw Tribe, and meeting TMC's contractor qualification specifications, as an Aboriginal construction monitor. The Crown has requested that TMC update their commitment tracker to include this commitment. See the Crown's response to recommendation #13.

The Crown understands that TMC, as part of Commitment #1622, will discuss the requirements and existing capacity regarding qualified monitoring personnel and services with Stó:lō representatives. Under recommended Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

Recommendation Addressed

Recommendation #15

Topic Area: Fisheries, Monitoring
Stó:lō representatives will monitor all withdrawal and release of hydrostatic test waters

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April/May 2019 Update:

Please refer to the response to Recommendation 13.

Relevant TMC Commitment #s: 896, 1613

Relevant NEB Conditions:

- 98 (Aboriginal Construction Monitoring)
- 113 (Hydrostatic Testing Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

TMC has not received Provincial permits for hydrostatic testing, nor constructed the pipeline. See response to ICA Recommendation # 6 re hydrostatic testing.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes Stó:lō's concerns regarding hydrostatic testing, and the potential effects to water quality and fish health from water withdrawal and release.

As part of Commitment #1614, TMC has indicated that Stó:lō representatives will be provided an opportunity to provide input on proposed locations for hydrostatic test water withdrawal and release. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

Please see the Crown's response to recommendation #6 regarding hydrostatic testing and #13 regarding Aboriginal construction monitors.

Recommendation Addressed

Recommendation #16

Topic Area: Monitoring, Fisheries
Stó:lō representatives will monitor all site restoration work at each water crossing following construction for a period of up to five years. Post construction monitoring will determine if additional seeding or replanting of riparian vegetation is necessary. Post construction monitoring will also identify locations with altered drainage patterns require remedial actions.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Please refer to the response to Recommendation 13.

May 2019 Update:

Post-construction environmental monitoring (PCEM) is required by Trans Mountain under NEB Condition 151. As a part of this condition, Trans Mountain will summarize its consultation with potentially affected Indigenous groups, including Stó:lō.

Stó:lō representatives will also be afforded the opportunity to participate in post-construction monitoring programs at watercourse crossings within Stó:lō Traditional Territory.

Relevant TMC Commitment #s:896

Relevant NEB Conditions:

- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)
- 98 (Aboriginal Construction Monitoring)
- 151 (post-construction monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe’s response to ICA Recommendation 2, 6 and 13.

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

DFO is supportive of Trans Mountain's commitment to conduct ongoing engagement with Stó:lō fishing representatives in relation to this recommendation. Should DFO issue a *Fisheries Act* authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.).

In the event that DFO issues a Fisheries Act authorization for works, undertakings or activities at watercourse crossings, then DFO will conduct site inspections as appropriate to those crossings. DFO is committed to conducting joint monitoring with Indigenous monitors acting on behalf of the Indigenous Advisory and Monitoring Committee (IAMC). The line-wide IAMC monitoring program is currently under development; additional information will be available through the IAMC or regional representatives in the coming months as the monitoring program is further developed.

If Stó:lō representatives are engaged as monitors working on behalf of the IAMC, then DFO would conduct joint monitoring site visits with these representatives to watercourse crossings where Fisheries Act authorizations have been issued. At this time, DFO is not able to commit to joint monitoring with specific Indigenous groups outside of the IAMC monitoring program. Specifically, DFO prefers to work through the IAMC to avoid duplication of compliance monitoring efforts. Duplication of joint-monitoring would reduce DFO's capacity to conduct compliance monitoring activities at other sites and on other projects.

Natural Resources Canada

The Crown notes that TMC has committed that Stó:lō representatives will also be afforded the opportunity to participate in post-construction monitoring programs at watercourse crossings within Stó:lō Traditional Territory. The Crown has requested that TMC add this commitment to their commitments tracker.

Condition #151 would require TMC to report on post-construction environmental monitoring, including any corrective actions taken to address unforeseen issues. TMC must also report on consultations with potentially affected Aboriginal groups in relation to this report. Post-construction environmental monitoring reports would address issues related to watercourse crossings, riparian vegetation, wetlands, and fish and fish habitat, among others.

In addition, Condition #71 (Riparian Habitat Management Plan) requires TMC to report on watercourse reclamation strategies for the range of defined watercourses crossed by the project, including a description of generalized vegetation planting plans. TMC is required to report on how Aboriginal traditional land use and traditional ecological knowledge were taken in to consideration in developing the plan, and how recommendations from Aboriginal groups were taken in to account. This plan was submitted to the NEB in March 2018 (A90936).

See also the Crown’s response to recommendation #8, including information regarding funding for Indigenous-led aquatic restoration through the AHRF.

Recommendation Addressed

Recommendation #17

Topic Area: Fisheries, Oversight and Reporting
Stó:lō fishing representatives will be provided access to information, monitoring results and findings from any additional studies carried out for the TMEP related to fish, fish habitat, water quality, or any other related topic such as the behavior of dilbit in freshwater and marine ecosystems.

TMC Response (Last Update: May 19, 2019):

Please refer to recommendation 7.

April 2019 Update:

See response to Recommendation # 12 above. Reports presenting the results of water quality monitoring during construction will also be made available to Stó:lō upon request.

May 2019 Update:

See response to Recommendation # 12 above. Reports presenting the results of water quality monitoring during construction will also be made available to Stó:lō at their request. As per the response to Recommendation #9, it is recommended that Stó:lō establish the necessary communication channel to receive the notification.

Relevant TMC Commitment #s:1615

Relevant NEB Conditions:

- 124 (Improvements to the Emergency Management Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe’s response to ICA Recommendation 7, and ICA recommendation 5.

See Ts’elxwéyeqw Tribe’s response to ICA Recommendation 1 (compliance with commitments). The purpose of this recommendation is to ensure information related to the project and the heath of fish and aquatic ecosystems is being shared with Ts’elxwéyeqw Tribe.

If NRCan is prepared to fund additional studies, what onus will be on TMC to incorporate this additional information and adjust plans, documents, etc.? Are there/will there be regulations or conditions which will require TMC to incorporate new knowledge?

Will funding support to carry out additional studies be linked to CPCN Conditions?

Will TMC be contributing funding for these studies or will Ts'elxwéyeqw Tribe be required to develop funding proposals to access funding through federal programs, for example the programs proposed as potential accommodation measures in the April 2019 letter from NRCan to Ts'elxwéyeqw Tribe or the IAMC?

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

DFO is supportive of Trans Mountain's commitment to engage Stó:lō fishing representatives in relation to this recommendation. TMC is responsible for conducting any supporting studies and therefore DFO defers to Trans Mountain to respond regarding its plans to engage Stó:lō fishing representatives in any supporting research/studies.

Natural Resources Canada

Any studies or information submitted to the NEB by TMC in fulfillment of NEB conditions is made publicly available on the NEB website. Furthermore, TMC has indicated that Ts'elxwéyeqw Tribe representatives have participated in all fish and fish habitat investigations within Ts'elxwéyeqw Tribe Traditional Territory completed by Trans Mountain.

With respect to research regarding the fate and behaviour of bitumen, B.C. EAO Condition #35 requires TMC to, in consultation with relevant provincial and federal authorities and Indigenous groups, provide a report prior to operations regarding the current and future research programs that TMC is jointly leading, supporting, or otherwise involved in regarding the behaviour and recovery of heavy oils spilled in freshwater and marine aquatic environments, including research programs having the objective of providing spill responders with improved information on how to effectively respond to spills.

At the May 16 and May 23, 2019 workshops, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement that could include protocols for communications and notifications. The Crown has requested that TMC update their commitment tracker to include this commitment (Commitments Tracking Table).

Please see also the Crown's response to recommendation #8 and #12 with respect to funding available for Indigenous-led studies.

Recommendation Addressed

Recommendation #18

Topic Area: Safety and Emergency Response, Training and Capacity Building
At least 1 year prior to commencing operations, Stó:lō organizations and individuals (for example, Stó:lō Nation Fish Management Board, SRRMC, Seven Generations, TTML community members/volunteers/ local search and rescue/police department/fire department and volunteer fire departments) will receive training on all aspects of TMEP Spill Contingency Plans.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 10.

April 2019 Update:

Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss training opportunities in regard to the Trans Mountain Emergency Response Plans. Prior to the pipeline commencing operation, Trans Mountain will commit to providing an overview of all parts of its Emergency Response Plans to interested Stó:lō personnel including but not limited to Stó:lō Nation Fish Management Board, SRRMC, Seven Generations, TTML community members/volunteers/local search and rescue/police department/fire department and volunteer fire departments prior to operation of the pipeline.

Trans Mountain welcomes the opportunity to discuss the implementation of emergency response management (ERM) training, specific to Stó:lō representatives or members of the Stó:lō Collective.

A one day Community Awareness and Emergency Response (CAER) presentation will be provided by Trans Mountain (approximately 6 hours). If Stó:lō representatives are interested in additional training in regard to emergency response, options can be discussed.

As part of the EM Program, Trans Mountain invites Indigenous communities to observe or participate in emergency response exercises within their territory.

May 2019 Update:

Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss training opportunities in regard to the Trans Mountain Emergency Response Plans. Prior to the pipeline commencing operation, Trans Mountain will commit to providing an overview of all parts of its Emergency Response Plans to interested Stó:lō personnel including but not limited to Stó:lō Nation Fish Management Board, SRRMC, Seven Generations, TTML community members/volunteers/local search and rescue/police department/fire department and volunteer fire departments prior to operation of the pipeline.

Trans Mountain welcomes the opportunity to discuss the implementation of emergency response management (ERM) training, specific to Stó:lō representatives or members of the Stó:lō Collective.

A one-day Community Awareness and Emergency Response (CAER) presentation will be provided by Trans Mountain (approximately 6 hours). If Stó:lō representatives are interested in additional training in regard to emergency response, options can be discussed.

As part of the EM Program, Trans Mountain invites Indigenous communities to observe or participate in emergency response exercises within their territory.

Relevant TMC Commitment #s:1617, 1618, 1619

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Plan)
- 58 (Training and Education Monitoring Reports)
- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 120 (Notification and reporting on emergency response exercises)
- 136 (Pre-operations full-scale emergency response exercises)
- 153 (Full-scale emergency response exercises during operations)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe responses to ICA Recommendation 1 (compliance with commitments), 2 (workshops) and 10 (notification to Stó:lō representatives as soon as any leak or any size is detected).

To date, TMC has not approached the Ts'elxwéyeqw Tribe to offer training on aspects of TMEP Spill Contingency Plans.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes Stó:lō's concerns regarding a potential spill within their traditional territory, and the importance of efficient, timely, and collaborative spill response.

The Crown understands that under Commitment #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō representatives. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

TMC has also committed that this Community Awareness and Emergency Response workshop would be available to interested Stó:lō personnel, including but not limited to Stó:lō Nation Fish Management Board, SRRMC, Seven Generations, TTML community members/volunteers/local search and rescue/police department/fire department and volunteer fire departments prior to operation of the pipeline.

At the May 6, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, emergency management representatives from TMC presented information regarding the Geographic Response Plans, and offered to discuss these plans with Ts'elxwéyeqw representatives further in more detail.

At the May 31, 2019 workshop, TMC committed to include Ts'elxwéyeqw in their emergency management and response planning, which could include training for Ts'elxwéyeqw members recruited for involvement in response efforts. The Crown has requested that TMC update their commitment tracker to include these commitments (Commitments Tracking Table).

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement, which could include provisions related to consultation on emergency management and response. The Crown has requested that TMC update their commitment tracker to include this commitment. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

In addition to TMC's commitments, NEB Condition #90 would require TMC to report on consultation on improvements to its Emergency Management Program prior to commencing construction, and describe how commitments made during consultations would be incorporated in to the program and response plans.

Recommendation Addressed

Recommendation #19

Topic Area: Safety and Emergency Response, Training and Capacity Building
TMEP will fund annual training for Stó:lō organizations and individuals to:

a) *respond to all hydrocarbon spill scenarios in various seasons; including spills in mountainous regions during winter conditions, into ice covered watercourses and into watercourses under varying flow conditions*
b) *Emergency response exercises will include full-scale exercises, desk-top work, functional exercises and drills*
c) *At a minimum, there must be a full range of exercises as they relate to spill containment, clean up, massive rupture – containment and clean up, emergency responding, and any and all other exercises pertinent to emergence response.*
d) *Updates or amendments to TMEP emergency response plans*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 10 and 14.

April 2019 Update:

Organizations and individuals to attend scheduled emergency response exercises within S'ólh Téméxw, including worst-case exercises, table top drills and equipment deployments. These exercises are a great opportunity to see how the Trans Mountain Emergency Response plan would be implemented in the event of a real emergency.

Trans Mountain will cover travel expenses to attend workshops, and emergency response exercises for representatives from Indigenous Groups, to a maximum of two (2) persons per community.

Trans Mountain will invite Stó:lō organizations and individuals to attend scheduled emergency response exercises located within S'ólh Téméxw including worst-case exercises, table top drills and equipment deployments.

Trans Mountain Emergency Response Plans are revised and updated annually as per the NEB Onshore Pipeline Regulations, section 32.

May 2019 Update:

Trans Mountain will undertake the following activities to assist the Stó:lō in being prepared to participate in the response to a pipeline spill:

- Trans Mountain will invite Stó:lō organizations and individuals to attend scheduled emergency response exercises within S'ólh Téméxw, including worst-case exercises, table top drills and equipment deployments. These exercises provide an opportunity to see how the Trans Mountain Emergency Response plans would be implemented in the event of a real emergency.

- Trans Mountain will work with Stó:lō communities to incorporate their local and cultural heritage knowledge into their Geographic Response Plans, which are a key component of enhancements made to Trans Mountain's Emergency Management Program. These plans are revised and updated annually as per the NEB Onshore Pipeline Regulations, section 32. GRPs enable a timely and more effective response to mitigate potential impacts to the environment by providing pre-identified control points, response tactics and other geographically specific information. GRP development is an extensive, multi-step, ongoing process in which local and traditional knowledge from potentially affected Indigenous groups is sought out through various engagement opportunities, including face to face meetings, workshops and field visits. This approach enables direct and focused collection of information related to spill response strategies and tactics, which differ to those typically gathered in Traditional Land Use studies.
- Trans Mountain will cover travel expenses to attend workshops, and emergency response exercises for representatives from Indigenous Groups, to a maximum of two (2) persons per community

Trans Mountain looks forward to working with Stó:lō organizations and individuals to continue to maximize the amount of local input and knowledge that is incorporated into the GRPs and contributes to updates to emergency response plans.

Relevant TMC Commitment #s:1617, 1618, 1619

Relevant NEB Conditions:

- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 119 (Emergency Preparedness and Response Exercise and Training Program)
- 120 (Notification and Reporting on Emergency Response Exercises)
- 153 (Full-scale emergency response exercises during operations)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe's responses to ICA Recommendation 1 (compliance with commitments), 2 (workshops) and 10 (notification to Stó:lō representatives as soon as any leak or any size is detected).

The Crown has not approached the Ts'elxwéyeqw Tribe to offer training on aspects of TMEP Spill Contingency Plans.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see Crown response to Recommendation #18.

The Crown understands that under Commitment #1619, TMC has committed to offer a focused workshop to review Emergency Response Management planning, including a 1-day Community Awareness and Emergency Response presentation for Stó:lō representatives. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

In TMC's May responses and at the May 6, 2019 workshop, Trans Mountain committed to invite Stó:lō organizations and individuals to attend scheduled emergency response exercises located within S'ólh Téméxw including worst-case exercises, table top drills and equipment deployments. TMC committed to cover travel expenses to attend workshops and emergency response exercises for representatives from Indigenous Groups, to a maximum of two persons per community.

At the May 31, 2019 workshop, TMC committed to include Ts'elxwéyeqw in their emergency management and response planning, which could include training for Ts'elxwéyeqw members recruited for involvement in response efforts. The Crown has requested that TMC update their commitment tracker to include these commitments (Commitments Tracking Table).

The Crown has requested that TMC update their commitment tracker to include these commitments (Commitments Tracking Table).

Recommendation Addressed

Recommendation #20

Topic Area: Safety and Emergency Response, Mitigation
Emergency Response Preparedness staging areas will be at the following sites:

a) *Wahleach Pump Station*
b) *Chilliwack/Vedder crossing*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 10.

April 2019 Update:

Trans Mountain has developed Geographic Response Plans and established Control Points within the area of the Wahleach Pump Station and the Vedder River Crossing in Chilliwack.

Control Points and Staging Areas were selected on accessibility, size of equipment, and implementation tactics. Trans Mountain has consulted on the GRP and Control Points and has invited Indigenous Communities to participate to the CP field assessment.

Trans Mountain welcomes the opportunity to work with the Stó:lō to review GRPs and assess potential Control Points within Stó:lō territory

GRPs can be found on Trans Mountain web site. And can be accessed through Trans Mountain interactive page: https://grp.transmountain.com

May 2019 Update:

Trans Mountain has developed Geographic Response Plans (GRPs) and established Control Points within the area of the Wahleach Pump Station and the Vedder River Crossing in Chilliwack. Control Points and Staging Areas were selected on accessibility, size of equipment, and implementation tactics.

Trans Mountain has consulted on the GRP and Control Points and has invited Indigenous Communities to participate to the CP field assessment. Trans Mountain welcomes the opportunity to work with the Stó:lō to review GRPs and assess potential Control Points within Stó:lō territory.

GRPs can be found on Trans Mountain web site, and can be accessed through the Trans Mountain interactive page: https://grp.transmountain.com

Relevant TMC Commitment #s:1617, 1618, 1619

Relevant NEB Conditions:

- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 119 (Emergency Preparedness and Response Exercise and Training Program)
- 125 (Emergency Response Plans for the Pipeline and for the Edmonton, Sumas Burnaby Terminals)
- 153 (Full-scale emergency response exercises during operations)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The responses from TMC and the Crown do not address this recommendation from the ICA.

See Ts'elxwéyeqw Tribe responses to ICA Recommendation 1 (compliance with commitments), 2 (workshops) and 10 (notification to Stó:lō representatives as soon as any leak or any size is detected).

This recommendation specifically requests Emergency Response Preparedness staging areas at two specific crossings.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes the importance of emergency response preparedness, and Stó:lō's interest in providing input to emergency response planning.

The Crown understands that TMC has established Control Points within the area of the Wahleach Pump Station and the Vedder River Crossing. Control Points are pre-identified locations where responders can set up equipment to intercept, contain, and recover spilled product.

At the May 6, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, emergency management representatives from TMC presented information regarding the Geographic Response Plans, and offered to discuss these plans with Ts'elxwéyeqw further in more detail, and to work with Stó:lō communities to incorporate local and cultural heritage knowledge into Geographic Response Plans, as part of enhancements made to Trans Mountain's Emergency Management Program.

The Crown has requested that TMC update their commitment tracker to include this commitment (Commitments Tracking Table).

Recommendation Addressed

Recommendation #21

Topic Area: Fisheries, Funding for Stó:lō programs
TMEP will fund fish habitat restoration and enhancement projects as determined by Stó:lō representatives, such as fish managers and scientists, biologist, and other technically qualified environmental scientists.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 9.

April/May 2019 Update:

Following an evaluation by the NEB and Fisheries and Oceans Canada, it was determined that Authorization under the Fisheries Act will be required for the crossing of the Coquihalla River in Hope. An application has been prepared but not yet submitted, and includes a proposed offsetting project to create off-channel spawning and rearing habitat for salmon. Should additional offsetting be required, Trans Mountain will review potential opportunities with Stó:lō.
Relevant TMC Commitment #s:1616

Relevant NEB Conditions:

- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)
- 108 (Contingency watercourse crossings)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

This ICA recommendation is about TMC funding work restore fish habitat as an offset to help mitigate project impacts to fish habitat.

Neither the Crown nor TMC have committed to fund fisheries habitat restoration projects requested by Ts’elxwéyeqw Tribe.

See Ts’elxwéyeqw Tribe responses to ICA Recommendation 2, workshops), 5 (water course crossings), 8 (habitat restoration at water crossings) and 12 (additional studies and Crown accommodation Measures).

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

Should DFO issue a *Fisheries Act* authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.).

DFO currently administers grants and contribution programs that Stó:lō member nations may be able to participate in (e.g., the Coastal Restoration Fund, Canada Nature Fund for Aquatic Species, and the BC Salmon Restoration and Innovation Fund) to help restore or enhance fish habitat.

Further, if the project is approved, DFO will be leading the implementation of the proposed Aquatic Habitat Restoration Fund. This program will provide funding and increase capacity for Indigenous-led projects to maintain and restore healthy fish and fish habitat along the pipeline corridor.

Natural Resources Canada

The Crown notes that there are a number of conditions that would require TMC to report on plans for reclamation of fish habitat. For example, Condition #71 requires TMC to develop a Riparian Habitat Management Plan that describes mitigation measures and watercourse reclamation strategies and goals. As part of this plan, TMC reported on how Aboriginal traditional land use and traditional ecological knowledge has been taken in to consideration.

In order to address remaining concerns regarding Indigenous groups' concerns regarding impacts to fish, fish habitat, and fisheries resources, the Government of Canada has proposed to collaborate with Indigenous groups to develop an Aquatic Habitat Restoration Fund that would provide funding and capacity support for projects related to habitat restoration to address direct and indirect threats posed by the project on aquatic habitats and species. The desired outcome of this fund would be to increase capacity within Indigenous communities to protect and restore aquatic habitats being impacted by the Project. The Crown encourages Ts'elxwéyeqw to participate in the co-development of this initiative.

Additional information regarding Crown Accommodation Measures can be found in Annex I.

Recommendation Addressed

Recommendation #22

Topic Area: Fisheries, Funding for Stó:lō programs
TMEP will fund improvements to access and infrastructure in support of fishing as determined by Stó:lō representatives

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss funding for improvements to access and infrastructure in support of fishing as determined by Stó:lō representatives.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss in detail the funding of improvements to access and infrastructure in support of fishing as determined by Stó:lō representatives. Trans mountain remains committed to discussions moving forward on an agreement that may included this funding. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s:1623

Relevant NEB Conditions:

- 145 (Community Benefits Program progress reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

A discussion is not a commitment to implement this recommendation.

If DFO and NRCan are prepared to fund access and infrastructure projects, what onus will be on TMC to adjust plans, documents to accommodate these areas?

Will funding support to carry out habitat restoration work be linked to conditions of the project CPCN??

Will TMC be contributing funding for these studies or will Ts'elxwéyeqw Tribe be required to develop funding proposals to completely fund restoration work through federal programs?

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

DFO defers to Trans Mountain to respond to this recommendation, as the request from Stó:lō is directed to Trans Mountain. DFO currently administers grants and contribution programs that Stó:lō member nations may be able to participate in (e.g., the Coastal Restoration Fund, Canada Nature Fund for Aquatic Species, and the BC Salmon Restoration and Innovation Fund) to help restore or enhance fish habitat. Further, if the project is approved, DFO will be leading the implementation of the proposed Aquatic Habitat Restoration Fund. This program will provide funding and increase capacity for Indigenous-led projects to maintain and restore healthy fish and fish habitat along the pipeline corridor.

Natural Resources Canada

The Crown acknowledges the request for improvements to access and infrastructure in support of fishing in order to offset potential impacts to fisheries. Under Commitment #1623, TMC has committed to discussing funding for these improvements and infrastructure.

Please see the Crown's response to recommendation #21 regarding the Aquatic Habitat Restoration Fund. Funding for this initiative is linked to a positive GIC decision, and it will only be available if a CPCN is issued for the project. However, other existing funding initiatives are not tied to the issuance of a CPCN, including those initiatives identified by DFO above.

TMC may also be willing to contribute funding to access and infrastructure in support of fishing. Funding of this nature would be dealt with through a private agreement with TMC.

Recommendation Addressed

Recommendation #23

Topic Area: Forestry, Wetland, Vegetation, Additional Studies
Stó:lō agree with the recommendations made in the TMEP Facilities Application related to the need for additional studies to confirm the effects assessment conclusions and gather site specific information for the implementation of mitigation from the Project-specific EPPs. These studies must be completed for all areas not assessed during the EIA. A number of studies recommended by the TMEP Facilities Application will be carried out by Stó:lō personnel within S'ólh Téméxw prior to final project design. These include:

a) Detailed wetland surveys of Cheam Wetland, Hope Slough, Wahleach Slough, Aitchelitz/Luckakuck/Chilliwack Creek Wetlands, and the Vedder Canal
b) In the Hope to Burnaby segment 49 locations were identified for additional wetland survey in 2014 (Table 6.1-1) Supplemental field surveys planned for 2014. Stó:lō will review survey plans and participate in these surveys.
c) Centerline survey of native vegetation areas within the ICA study area to ground-truth predictions made in this ICA and identify project areas that may require special management (i.e. restricted clearing, slash treatments, access controls etc.)

TMC Response (Last Update: May 19, 2019):

April 2019 Update:

See the response to Recommendation # 12.

This information was submitted to the NEB, on 31-March, 2017 to support Condition 43. The specific watercourses referenced by Stó:lō have been investigated and the results contained within Condition 43, specifically, Appendix B (Watercourse Crossing Inventory; Filing ID A83366) and the supporting Fish-Bearing and Non fish-bearing Atlases (Appendix H and I; Filing ID A82400 and A82400, respectively).

Any outstanding pre-construction rare plant and rare ecological community population assessment and/or mitigation surveys will be planned for the appropriate growing season prior to construction within the noted area of concern. Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory.

May 2019 Update:

The Integrated Cultural Assessment (ICA) noted the Aitchelitz Creek Wetlands and Vedder River Wetlands. The report noted that a wetland is formed with Aitchelitz Creek and this is associated with Chiliwack Creek at approximately RK 1094.0. This location was reviewed, and no wetlands were identified to be associated with the Chilliwack Creek where it is crossed by the proposed pipeline corridor at RK 1094.0, although it is acknowledged that wetlands are associated with this watercourse system outside of the Project footprint. The report also noted Vedder River Wetlands are associated with the Chilliwack/Vedder River crossing near RK 1102.3. Wetlands (emergent marshes with open water components) were identified to be

associated with the river crossing at this location. The Cheam Wetlands Regional Park is not crossed by the proposed pipeline corridor.

A draft Resource-Specific Mitigation Table has been prepared outlining Site Specific Stó:lō Interests. Following Stó:lō's review of this table, additional information and relevant mitigation for native vegetation areas, Plant Harvesting Sites and Himalayan Blackberry will be incorporated into relevant Project documents as applicable.

Updated information on watercourses was submitted to the NEB, on 31-March-2017 to support Condition 43. The specific watercourses referenced by Stó:lō have been investigated and the results contained within Condition 43, specifically, Appendix B (Watercourse Crossing Inventory; Filing ID A83366) and the supporting Fish-Bearing and Non-fish-bearing Atlases (Appendix H and I; Filing ID A82400 and A82400, respectively). Updated information on wetlands crossed by the Project was provided in the Wetland Survey and Mitigation Plan, submitted as per NEB Condition 41 (Filling ID A90909).

Any outstanding pre-construction rare plant and rare ecological community population assessment and/or mitigation surveys will be planned for the appropriate growing season prior to construction within the noted area of concern. Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory.

Trans Mountain would like to discuss with Stó:lō their interest in participating in a pre-construction cultural survey in key areas of Crown land within Stó:lō traditional territory to conduct cultural activities prior to right-of-way clearing such as: medicinal plant harvesting, documenting culturally important plants or vegetation and conducting ceremonies.

Relevant TMC Commitment #s:1624

Relevant NEB Conditions:

- 40 (Rare Ecological Community and Rare Plant Population Management Plan)
- 41 (Wetland Survey and Mitigation Plan)
- 45 (Weed and Vegetation Management Plan)
- 47 (Access Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 1624 does not address this ICA recommendation. A discussion is not a commitment to carry out the specific surveys requested in ICA recommendation 23.

These Plans (40, 41, 72, 155) were submitted by TMC on June 22, 2017. The Ts'elxwéyeqw Tribe has not participated in wetland, or vegetation surveys at Cheam Wetland, Hope Slough, Wahleach Slough,

Aitchelitz/Luckakuck/Chilliwack Creek Wetlands, or the Vedder Canal. Until these surveys are completed, conditions that require TMC to consider available Indigenous knowledge (such as #41, 155) cannot be met.

See Ts'elxwéyeqw Tribe response to ICA recommendation 12 related to additional studies.

The ICA provides a starting point for the discussion on cumulative effects.

Ts'elxwéyeqw Tribe is interested in working with the Crown on issues related to cumulative effects, but this type of future discussion is not a commitment to address this recommendation from the ICA.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's interest in conducting additional field surveys on wetlands and vegetation within their traditional territory, given the importance of wetlands and vegetation to traditional use activities, such as hunting, gathering, and fishing. While studies were conducted on vegetation and wetlands through the NEB process, the Crown recognizes that the ICA report identified information gaps. Some of these gaps may be addressed through NEB conditions, as mentioned by ECCC. For example, the wetland survey and mitigation plan (Condition #41) required that TMC supplementary surveys of wetlands directly or indirectly affected by the project. This plan was submitted in 2017 (A85437).

The Crown notes that TMC has committed that any outstanding pre-construction rare plant and rare ecological community population assessment and/or mitigation surveys will be planned for the appropriate growing season prior to construction within the noted area of concern, and that Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory. The Crown has requested that TMC add this commitment to their commitment tracker (Commitments Tracking Table).

In order to assist in addressing this recommendation as part of the Phase III consultations, the Crown is prepared to commit to fund additional studies or surveys through the TSI (see the Crown's response to recommendation #12 and Annex I for additional information). As discussed at the May 6, 2019 workshop, the TSI will support Indigenous-led studies and/or surveys to better understand the potential land and cumulative impacts, which would inform cumulative effects monitoring and/or construction, operations, and maintenance phases of the Project, if approved.

With respect to Ts'elxwéyeqw's concerns regarding cumulative effects, the Crown is prepared to provide funding for a Terrestrial Cumulative Effects Initiative (TCEI) to support Indigenous

communities and regions in developing the internal capacity necessary to participate in the proposed measures and programming to address cumulative effects and environmental protection, which have been concerns raised throughout the consultation process. The TCEI is intended to respond to concerns regarding cumulative effects of development on the land, including the Project's further contribution to these effects. Canada will work to establish a co-developed governance structure with funding for Indigenous participation.

TCEI will also support Indigenous capacity building and fund projects that enable Indigenous groups to build capacity to monitor cumulative effects. Finally, technical and advisory support will be made available by Canada to support Indigenous-led cumulative effects studies and to develop tools, such as for monitoring and sampling.

See the Crown's response to Recommendation #2 regarding ongoing work See also the response to Recommendation #12 regarding the TSI.

Recommendation Addressed

Recommendation #24

Topic Area: Forestry, Wetlands, and Vegetation, Oversight and Reporting
The results of these studies [identified in commitment 23] will be reported to Stó:lō leadership and incorporated into Project planning, including the EPPs and the Environmental Alignment Sheets

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

See the response to Recommendation #23, above.

Trans Mountain filed Condition 41 Wetland Survey and Mitigation Plan (Filing ID A90909) in March 2018. The results of 2015 and 2017 wetland field programs and recommendations were included in the Wetland Survey and Mitigation Plan. Additional surveys were conducted in August 2017. Wetland mitigation measures to be implemented are identified in the updated Project-specific Pipeline EPP (Filing ID A90966), Facilities EPP (Filing ID A86546, A86536) and Temporary Construction Lands and Infrastructure EPP (Filing ID A88721) and incorporated into Environmental Alignment Sheets (A90393).

Trans Mountain filed Condition 40 Rare Ecological Community and Rare Plant Population Management Plan (Filing ID A90904) in March 2018. The results of 2014, 2015 and 2017 field programs are included in the Plan. Additional surveys were conducted in August 2018. Site-specific mitigation measures are presented in Appendix E of the Plan and also in the Vegetation Resource-Specific Mitigation Tables (Filing ID A90966) and illustrated on the Environmental Alignment Sheets (Filing ID A90393.

May 2019 Update:

See the response to Recommendation #23, above

Wetland mitigation measures to be implemented are identified in the updated Project-specific Pipeline EPP (Filing ID A90966), Facilities EPP (Filing ID A86546, A86536) and Temporary Construction Lands and Infrastructure EPP (Filing ID A88721) and incorporated into Environmental Alignment Sheets (A90393). Issues and concerns related to wetlands raised during Aboriginal engagement from between early 2012 to August 2017 are summarized in Table F-5 of the Wetland Survey and Mitigation Plan (Filing ID A90909) and table E-4 of the updated Project-specific Pipeline EPP (Filing ID A90966) and Table G-3 of the Temporary Construction Lands and Infrastructure EPP (Filing ID A88721).

Relevant TMC Commitment #s:896

Relevant NEB Conditions:

- 40 (Rare Ecological Community and Rare Plant Population Management Plan)
- 41 (Wetland Survey and Mitigation Plan)
- 72 (Pipeline Environmental Protection Plan)
- 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response to ICA Recommendation 2 (updating alignment sheets), 5 related to NEB condition 72 (PEPP) and 23 (wetland and vegetation surveys).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

See the Crown's response to Recommendation #2 regarding incorporation of Stó:lō information in to the environmental alignment sheets and plans and Recommendation #23 regarding additional field surveys.

Recommendation Addressed

Recommendation #25

Topic Area: Forestry, Wetlands, and Vegetation, Additional Studies
The Wetland Evaluation Technical Report (TMEP Facility Application, Volume 5C) indicated that through a review of the stormwater requirements for the Sumas Terminal, it was determined that there will likely be an incremental increase in volume of stormwater discharge. Stormwater at the Sumas Terminal is discharged into a wet area to be a potential shrubby swamp associated with an ephemeral drainage. This area will be further evaluated in 2014. Stó:lō representatives will participate in this study.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Refer to response to Recommendation 2 (Plan to communicate results of Wetlands survey to Stó:lō Representatives at technical session.

The slope swamp that will receive storm water discharge from the Sumas Terminal was surveyed during supplemental surveys conducted in November 2013. Sumas Terminal will be designed, constructed and operated to meet the applicable standards and codes for stormwater pollution prevention and management.

May 2019 Update:

The shrubby swamp that will receive storm water discharge from the Sumas Terminal was surveyed during supplemental surveys conducted in November 2013. Sumas Terminal will be designed, constructed and operated to meet the applicable standards and codes.

A draft Resource-Specific Mitigation Table has been prepared outlining Site Specific Stó:lö Interests at Sumas mountain. Following Stó:lö's review of this table, additional information and relevant mitigation will be incorporated into relevant Project documents as applicable.

Relevant TMC Commitment #s:896

Relevant NEB Conditions:

- 41 (Wetland Survey and Mitigation Plan)
- 43 (Watercourse crossing inventory)
- 71 (Riparian Habitat Management Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe response 23 (wetland and vegetation surveys).

This recommendation relates to direct participation in assessment work near the Sumas terminal.

Ts’elxwéyeqw Tribe has not participated in any work at Sumas terminal or in the swamp & ephemeral drainage area.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that the wetland in question was surveyed in November 2013 by TMC.

See the Crown’s response to Recommendation #2 regarding incorporation of Stó:lō information in to the environmental alignment sheets and plans and Recommendation #23 regarding additional field surveys.

Recommendation Partially Addressed

Recommendation #26

Topic Area: Forestry, Wetlands, and Vegetation, Monitoring
The Wetland Evaluation Technical Report (TMEP Facility Application, Volume 5C, Table 5.2-2) states: "Aboriginal Monitors will be onsite through the construction of commissioning of the of the Project will work with environmental inspector to provide traditional knowledge to the construction program to ensure protection of the environment; to discuss upcoming traditional and western science elements with the environmental inspector to insure protection and monitoring; and to monitor mitigation success in protecting the environment." While it is agreed that Stó:lō representatives will be on-site during construction , Stó:lō will determine how knowledge is shared with environmental inspectors. To date the approach Kinder Morgan and their consultants have taken to consider and integrate traditional knowledge has been unacceptable and inappropriate.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendations 13 and 14.

May 2019 Update:

Trans Mountain looks forward to the participation of qualified Stó:lō members in the Indigenous Monitoring program recently developed by Trans Mountain. In the NEB Condition 98 Plan for Aboriginal Group Participation in Construction Monitoring submitted in June 2017 (Filing ID A84466-2, Section 4.5.1), it was noted that Trans Mountain understands the importance of protecting information from traditional knowledge holders. Indigenous Monitors will use their discretion to decide what type of information to share so that Trans Mountain knows enough about sensitive sites, so they can be dealt with during pipeline construction.

Relevant TMC Commitment #s:1622

Relevant NEB Conditions:

- 98 (Plan for Aboriginal group participation in construction monitoring)
- 41 (Wetland Survey and Mitigation Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response 23 (wetland and vegetation surveys).

This recommendation is about appropriate sharing and protection of traditional knowledge, and who should be sharing that knowledge with environmental inspectors, during planning, and monitoring.

TMC's Aboriginal Monitoring program does not replace the Ts'elxwéyeqw Tribe's requirement to have independent monitors.

See Ts'elxwéyeqw Tribe's responses to ICA Recommendation 2 (sharing cultural information).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. The Crown has requested that TMC update their commitment tracker to include this commitment. The Crown views this agreement as the appropriate avenue for TMC and the Tribe to reach a mutual understanding regarding information sharing and confidentiality.

The Crown notes that the Stó:lō representatives and TMC will need to establish a bilateral protocol for how information is shared between the Aboriginal construction monitors and TMC's environmental field team. At the May 23, 2019 workshop, TMC and Ts'elxwéyeqw reached a mutual understanding regarding the importance of a dynamic flow of information back and forth between Ts'elxwéyeqw's monitor, their leadership, and TMC.

Recommendation Partially Addressed

Recommendation #27

Topic Area: Forestry, Wetlands, Vegetation
Should the TMEP be approved, Stó:lō representatives will undertake a centerline survey of native vegetation areas within the ICA study area to identify special management areas where Project clearing will be avoided. These areas will be marked prior to construction in the field and recorded on construction environmental alignment sheets in addition to the clearing/mowing restrictions associated with watercourse/wetland/lake boundary sensitive environmental features and buffer areas.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 23.

April 2019 Update:

While information was received from Stó:lō, in the context of the ICA and the CHOA, the combined (general) nature of the data does not allow specific native vegetation to be added to Environmental Alignment Sheets. As previously noted, site specific information would be required by Trans Mountain well in advance of construction to allow for documentation on the alignment sheets.

Vegetation-related mitigation has been advanced further and circulated for engagement since 2015 through various Condition plans, including NEB Condition 45 Weed and Vegetation Management Plan; NEB Condition 71 Riparian Habitat Management Plan; NEB Condition 40 Rare Ecological Community and Rare Plant Population Management Plan; and also the Reclamation Management Plan within Condition 72 and 78 EPPs.

Trans Mountain continues to engage with Stó:lō to incorporate site specific information from the ICA into overall project plans as a part of the ongoing engagement.

May 2019 Update:

While information was received from Stó:lō, in the context of the ICA and the CHOA, the combined (general) nature of the data does not allow specific native vegetation to be added to Environmental Alignment Sheets. As previously noted, site specific information would be required by Trans Mountain well in advance of construction to allow for documentation on the alignment sheets.

Vegetation-related mitigation has been advanced further and circulated for engagement since 2015 through various Condition plans, including NEB Condition 45 Weed and Vegetation Management Plan; NEB Condition 71 Riparian Habitat Management Plan; NEB Condition 40 Rare Ecological Community and Rare Plant Population Management Plan; and also, the Reclamation Management Plan within Condition 72 and 78 EPPs.

A draft Resource-Specific Mitigation Table has been prepared outlining Site Specific Stó:lō Interests. Following Stó:lō review of this table, additional information, relevant mitigations for native species or other vegetation sites within the ICA study area will be incorporated into relevant Project documents as applicable.

Trans Mountain would like to discuss with Stó:lō their interest in participating in a pre-construction cultural survey in key areas of Crown land within Stó:lō traditional territory to conduct cultural activities prior to right-of-way clearing such as: medicinal plant harvesting, documenting culturally important plants or vegetation and conducting ceremonies.

Relevant TMC Commitment #s:1624

Relevant NEB Conditions:

- 40 (Rare Ecological Community and Rare Plant Plan)
- 41 (Wetland Survey and Mitigation Plan)
- 45 (Weed and Vegetation Management)
- 98 (Plan for Aboriginal group participation in construction monitoring)
- 155 (Rare Ecological community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe's response ICA Recommendation 23 (wetland and vegetation surveys).

It is important to note that the need for centerline native vegetation studies, wetland studies, and additional studies identified in the ICA were recommended in 2014, reiterated in workshops between 2015 – 2018, and reiterated directly to TMC in 2017 until present. While TMC Consultants state they would "love" to have the information, they have not worked with Ts'elxwéyeqw Tribe in a responsible or appropriate manner to organize such surveys.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's interest in conducting additional field surveys on native vegetation within their traditional territory in order to identify special management areas to avoid. The Crown notes that through Commitment #1624, TMC has committed to discuss funding for additional vegetation studies with the Stó:lō representatives.

The Resource Specific Mitigation Tables shared by TMC on May 19, 2019 describe the mitigation measures that will be in place for plant harvesting sites, and include:

- Work with Aboriginal Monitors to evaluate the potential for narrowing down the pipeline construction footprint or to determine what other site-specific mitigation measures can be implemented at known plant gathering places;
- Confine all clearing/mowing within the staked/flagged boundaries. Clear vegetation from only those areas essential for construction. Adhere to clearing/mowing restrictions associated with riparian buffer areas, and in areas where sensitive environmental features have been identified as outlined on the EAS.

See also the Crown's response Recommendation #23 regarding additional field surveys.

Recommendation Addressed

Recommendation #28

Topic Area: Forestry, Wetlands, and Vegetation, Mitigation
Further avoidances include:

a) Reduce RW clearing width within [old growth management areas] (OGMAs)
b) Confine all pre-clearing/mowing and general clearing activities within the staked/flagged construction right-of-way boundaries.
c) Restrict root grubbing to the trench line, if feasible, to minimize surface disturbance and encourage re-sprouting/natural regeneration of deciduous trees and shrubs.
d) Conduct native seed collection for use in revegetation efforts at the site
e) Consider employing appropriate salvage, propagation and transplant techniques for culturally significant species.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Trans Mountain filed Condition 76 OGMA Mitigation and Replacement Plan on June 27, 2017 (Filing ID A84120). Trans Mountain conducted multiple Project Footprint revisions to optimize the width of disturbance during construction in conjunction with environmental screening to identify and avoid or minimize OGMA impacts, as practical. As required by NEB Condition 76, any relevant information presented in the OGMA Mitigation and Replacement Plan has been updated in the Environmental Protection Plans (EPPs) applicable to work segments that encounter OGMAs.

Vegetation-related mitigation has been advanced further and circulated for engagement since 2015 through various Condition plans, including NEB Condition 45 Weed and Vegetation Management Plan; NEB Condition 71 Riparian Habitat Management Plan; NEB Condition 40 Rare Ecological Community and Rare Plant Population Management Plan; and also the Reclamation Management Plan within Condition 72 and 78 EPPs.

May 2019 Update:

The Project area within the S'ólh Téméxw crosses three legal and one non-legal OGMAs. Trans Mountain has conducted multiple Project Footprint revisions to optimize the width of disturbance during construction, and OGMA impacts, to the extent feasible. As required by NEB Condition 76, any relevant information presented in the OGMA Mitigation and Replacement Plan has been updated in the Environmental Protection Plans (EPPs) applicable work segments that encounter OGMAs.

Please see also the Crown's response to Recommendation #2.

Mitigation measures, including avoidances, agreed to between Trans Mountain and TTML will be included in the Resource-Specific Mitigation Tables and the environmental alignment sheets.

Relevant TMC Commitment #s:896

Relevant NEB Conditions:

- 72 (Environmental Protection Plan)
- 76 (Old Growth Management Areas Mitigation and Replacement Plan)
- 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe's responses to ICA 2 (workshops)

Commitment 896 does not address this ICA recommendation. A work shop is not a commitment to implement the mitigations requested in ICA recommendation 28.

These Plans (76 & 155) were submitted by TMC on June 22, 2017. Ts'elxwéyeqw Tribe has not participated in OGMA surveys for the TMX or had any discussions with TMC about salvaging old growth cedar (ICA recommendation # 29). Until these surveys are completed, conditions that require TMC to consider available indigenous knowledge (such as #76, 155) cannot be met.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Under Condition #76, TMC was required to develop an Old Growth Management Areas Mitigation and Replacement Plan that includes avoidance and mitigation measures, post-construction monitoring, and replacement or other offset measures for residual effects. As mentioned, this plan was submitted by TMC in June 2017. Section 6 of this plan includes the following mitigation measures:

- Revise the Project footprint to optimize the width of disturbance
- Ensure clearing activities do not exceed the flagged OGMA boundaries to minimize damage to old growth trees.
- Replace and/or compensate for Project incursions in OGMAs

Under Condition #155, TMC was required to develop a Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan, submitted in March 2018. Mitigation measures identified in this plan include:

- Where avoidance and disturbance reduction are not feasible, alternative reclamation techniques, such as seed collection or transplantation of individual plants or populations, will be implemented.
- For rare ecological communities or plant species, conduct native seed collection for use in revegetation efforts at the site if feasible.

Additional mitigation measures to reduce impacts to vegetation have been identified in TMC's Resource Specific Management Table, submitted on May 19, 2019.

Recommendation Addressed

Recommendation #29

Topic Area: Forestry, Wetlands, and Vegetation
Prior to clearing any OGMAs Stó:lō will be given the opportunity to survey the area and determine if any cedar should be salvaged.

TMC Response (Last Update: May 19, 2019):

If clearing in Old Growth Management Areas (OGMAs) within the S'ólh Téméxw becomes an approved construction requirement, Trans Mountain will discuss Stó:lō's desire to salvage cedar with the OGMA regulator and the terms for commercial harvest will be negotiated.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss in detail the potential salvage of cedar from OGMAs prior to clearing, therefore no plan has been created. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s:1625

Relevant NEB Conditions:

- 72 (Environmental Protection Plan)
- 76 (Old Growth Management Areas Mitigation and Replacement Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe responses to ICA 28 (OGMAs)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes that cedar is an important resource and ceremonial material for Stó:lō people, and that access to cedar harvesting areas is important to Stó:lō culture.

Condition #76 requires TMC to submit an Old Growth Management Areas Mitigation and Replacement Plan that includes avoidance and mitigation measures, post-construction monitoring, as well as replacement and offsetting measures. Condition #72 also required TMC to develop a timber salvage plan, submitted in March 2018.

Under Commitment #1625, if clearing in Old Growth Management Areas (OGMAs) within the S'ólh Téméxw becomes an approved construction requirement, TMC will discuss Stó:lō's desire

to salvage cedar with the OGMA regulator and the terms for commercial harvest will be negotiated. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

See also the Crown's response to Recommendation #28.

Recommendation Addressed

Recommendation #30

Topic Area: Forestry, Wetlands, and Vegetation, Funding for Funding for Stó:lō programs
Habitat restoration and enhancement projects as determined by Stó:lō representatives.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April/May 2019 Update:

NEB Conditions 154, 155, and 156 require Trans Mountain to file a Riparian Habitat Reclamation Evaluation Report and Offset Plan, a Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan and a Wetland Reclamation Evaluation Report and Offset Plan after the fifth complete growing season after completing final clean-up. Trans Mountain will take Aboriginal traditional land use and traditional ecological knowledge into consideration in developing the report.

Relevant TMC Commitment #s: 896

Relevant NEB Conditions:

- 44 (Widlife Species at Risk Mitigation and Habitat Restoration Plans)
- 71 (Riparian Habitat Management Plan)
- 92 (Updates under the Species at Risk Act)
- 96 (Reports on Engagement with Aboriginal Groups)
- 154-157 (riparian habitat, rare ecological community and rare plant populations, wetlands, and grasslands plans)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe responses to ICA 2 (workshops)
Commitment 896 does not address this ICA recommendation. A work shop is not a commitment to off-set project impacts by supporting habit restoration and enhancement projects.

These Plans (44, 92, 71, 92, 155-157) were submitted by TMC on June 22, 2017. These documents do not include information provided by Ts’elxwéyeqw Tribe in 2014.

See Ts’elxwéyeqw Tribe responses to ICA 12 (funding new work through other federal programs)

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

DFO currently administers grants and contribution programs that Stó:lō member nations may be able to participate in (e.g., the Coastal Restoration Fund and Canada Nature Fund for Aquatic Species) to help restore or enhance fish habitat.

Further, if the project is approved, DFO will be leading the implementation of the proposed Aquatic Habitat Restoration Fund. This program will provide funding and increase capacity for Indigenous-led projects to maintain and restore healthy fish and fish habitat along the pipeline corridor.

Natural Resources Canada

The Crown acknowledges Stó:lō's interest in participating in habitat restoration and enhancement activities within their traditional territory. NEB conditions have been identified that require TMC to produce plans to reclaim, mitigate, and offset effects to wildlife species at risk, riparian habitat, rare ecological community and rare plant populations, wetlands, and grasslands (see Conditions #44, 154-157). These conditions required TMC to provide a description of consultation undertaken with Indigenous groups, and how applicable Aboriginal traditional land use and traditional ecological knowledge was taken in to consideration in developing each report/plan.

The Crown recognizes the interest from Indigenous groups in directly participating in habitat enhancement and restoration activities. The proposed TCEI and AHRF (described in the Crown's response to Recommendation #8 and #23, as well as Annex I) would both enable and provide capacity for Indigenous-led habitat restoration and enhancement. The Crown encourages Ts'elxwéyeqw to get involved in the co-development of these initiatives, and to recommend inclusion of terrestrial habitat restoration and enhancement projects.

For additional information regarding this initiative, please see Annex I.

Recommendation Addressed

Recommendation #31

Topic Area: Forestry, Wetlands, and Vegetation, Funding for Funding for Stó:lō programs
Improvements to access and infrastructure in support of gathering as determined by Stó:lō representatives.

TMC Response (Last Update: May 19, 2019):

Trans Mountain will provide updated maps to Stó:lō representatives to illustrate existing and new accesses required to support pipeline construction

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss in detail the improvements to access and infrastructure in support of gathering as determined by Stó:lō representatives and therefore none have been created. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning. See #22. [dovetails with the Access and Traffic Management Plans, see also the Coquihalla Summit Recreation Area Reclamation Plan].

Relevant TMC Commitment #s:1626

Relevant NEB Conditions:

- 40 (Rare Ecological Community and Rare Plant Population Management Plan)
- 41 (Wetland Survey and Mitigation Plan)
- 47 (Access Management Plans)
- 72 (Pipeline Environmental Protection Plan)
- 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 896 does not address this ICA recommendation. A work shop is not a commitment to off-set project impacts by supporting habit restoration and enhancement projects.

These Plans (40, 41, 47, 72, 155) were submitted by TM on June 22, 2017. These documents do not include information provided by Ts’elxwéyeqw Tribe in 2014.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Ts'exlweyeqw's request for improvements to access and infrastructure in support of gathering in order to offset potential impact to opportunities for traditional plant gathering by clearing native vegetation areas, changing vegetation community composition, limiting access, or as a result of contamination.

NEB Condition #47 requires TMC to justify any area subject to access control, including during the construction and operational phases of the Project. To limit the impact on Aboriginal groups, the Access Management Plan includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of its access management plan. This plan, filed with the NEB in 2017 (A82635), contains responses to concerns raised by Stó:lō Collective related to access issues (see Table A-5). There are also a number of conditions that require TMC to manage, mitigate, and/or offset effects to vegetation that could result from the project.

Under B.C. EAO Condition #22c, in addition to fulfilling the requirements set out in NEB Condition #47, TMC must identify measures to avoid or mitigate the disruption caused by construction or operations to the exercise of the rights of access of provincially authorized trappers and guide outfitters, and of members of Aboriginal Groups carrying out traditional use activities.

TMC may also be willing to contribute funding to access and infrastructure in support of gathering. Funding of this nature would be dealt with through a private agreement with TMC.

Recommendation Addressed

Recommendation #32

Topic Area: Forestry, Wetlands, and Vegetation, Mitigation
Clearing of Himalayan blackberry during construction in locations determined by Stó:lō representatives.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

TMEP will use Integrated Vegetation Management Plan (IVMP) practices by incorporating non-chemical, cultural (i.e., seeding) and chemical techniques for invasive plant management for all components associated with the TMEP. The IVMP describes an adaptive management process that uses several vegetation control methods in a cost effective and responsible manner. TMEP Environment objectives are to reduce the use of herbicides, promote healthy ecosystems, provide measurable results and facilitate better management of invasive plants.

May 2019 Update:

A draft Resource-Specific Mitigation Table has been prepared outlining Site Specific Stó:lō Interests. Following Stó:lō review of this table, additional information and relevant mitigations for invasive species, prohibited weeds or high density weed within the ICA study area will be incorporated into relevant Project documents as applicable.

For this invasive species, Trans Mountain will review and incorporate additional clearing of Himalaya blackberry in locations as determined by Stó:lō representatives as part of Trans Mountain weed and vegetation management.

Relevant TMC Commitment #s:896

Relevant NEB Conditions:

- 45 (Weed and vegetation management plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe responses to ICA recommendation 2 (workshops)
Commitment 896 does not address ICA recommendation 32. A workshop is not a commitment to clear invasive species like the Himalayan Blackberry in key areas.

The weed and vegetation management plan were submitted by TM on June 22, 2017. This document did not include information provided by Ts’elxwéyeqw Tribe in 2014.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō Collective's concerns regarding effects to native vegetation species, and their concerns regarding the spread of invasive species like Himalayan blackberry.

Condition #45 requires TMC to develop a weed and vegetation management plan in consultation with potentially affected Aboriginal groups that describes how weeds would be managed, including a decision-making framework that is relevant to specific habitat uses, land uses, and management plans. This plan was submitted to the NEB in June 2017.

In addition to the requirements under NEB Condition #45, B.C. EAO Condition #17 would require the proponent to describe: the actions taken to consult with Aboriginal Groups whose asserted or established traditional territory or treaty lands may be affected by the Holder's vegetation control activities regarding options for vegetation control before the Holder uses herbicides in such areas; describe the measures to mitigate impacts to traditional use plants; and identify the means by which TMC will provide opportunities for terrestrial Aboriginal groups that have plant gathering areas identified through Project traditional land use studies, to access these areas in order to harvest, salvage or translocate any traditional use plants that would be cleared, prior to the commencement of clearing.

In their May 2019 response to the 89 recommendations, TMC committed to review and incorporate additional clearing of Himalaya blackberry within the construction footprint as determined by the Stó:lō environmental Indigenous monitor as part of Trans Mountain weed and vegetation management. The Crown has requested that TMC add this commitment to the commitment tracker.

TMC's Resource Specific Mitigation Tables identify the following mitigation measure:

- Control techniques for areas the Stó:lō would like cleared of Himalayan blackberry will be determined in consultation, but may include cutting stems and removing root wads during construction clearing and grading activities and hand pulling seedlings and small plants or digging out roots or spot herbicide treatments of larger plants and small patches that return to the Project footprint after construction. Himalayan blackberry is not a preferred plant in riparian areas because the invasive plant does not provide the habitat structure or function of the natural riparian plant community. In riparian areas, Trans Mountain's reclamation goal would be to replant a riparian plant community. Trans Mountain will work with Stó:lō representatives to achieve identified objectives.

Recommendation Addressed

Recommendation #33

Topic Area: Forestry, Wetlands, Vegetation, Funding for Stó:lō programs
TMEP to fund the development and operation of businesses and or greenhouses that can be used to propagate native plants.

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss the development and operation of businesses and or greenhouses that can be used to propagate native plants.

May 2019 Update:

See #28d. [Are there plans to use TTML businesses/greenhouses?] TMEP requires available greenhouses ready to grow in summer 2019. *Relevant TMC Commitment #s:1627*

Relevant NEB Conditions:

- 145 (Community Benefits Program progress reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

[No additional information was provided]

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown notes that TMC has responded to this recommendation through TMC Commitment #1624, in which TMC welcomes the opportunity to discuss the development and operation of businesses or greenhouses that can be used to propagate native plants. TMC must implement this commitment through NEB Condition #2.

The Crown notes that this recommendation does not appear to be directly linked to accommodating an impact to a Section 35 right from the Project, and is therefore of the view that this recommendation would be best addressed through a private agreement with TMC.

The Crown notes that NEB Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. In addition, there are NEB conditions that address training and education in relation to the project.

Recommendation Addressed

Recommendation #34

Topic Area: Forestry, Wetlands, and Vegetation, Funding for Stó:lō programs
TMEP to facilitate new land designations to protect future Stó:lō harvesting activities as determined by Stó:lō representatives.

TMC Response (Last Update: May 19, 2019):

Trans Mountain is not able to facilitate new land designations to protect future Stó:lō harvesting activities as determined by Stó:lō representatives.

May 2019 Update:

Not TMC scope

Relevant TMC Commitment #s: NA

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Question

If the Crown has the ability to enable the taking up of lands for Crown Corporation activities and operations, then why don't they have the ability to assign land designations or protective notations on important cultural sites, harvesting areas or travel corridors? Understanding that there is a cost-sharing measure that includes British Columbia, it is necessary to forward plan the protection of cultural site for the future developments that may contribute to the cumulative effects on s. 35 rights, the human right to practice spirituality, and the right for children to be borne into their culture, as a result of this project.

Ts'elxwéyeqw Tribe believes this type of offset should be considered as an accommodation measure.

TMC can facilitate this process by providing capacity (contributing funding, data, mapping etc.) and other support that ensures meaningful participation by Ts'elxwéyeqw Tribe in processes that inform decisions around land use designations in the Fraser Valley. For example, the proposed Terrestrial Cumulative Effects Initiative, Terrestrial Studies Initiative.

Crown Response (Last Update: June 1, 2019):

Natural Resources Canada

The Crown notes that this recommendation points to an outcome that appears to be outside the scope of this project review and Crown consultation process. More information would need to be provided in order for the Crown to better understand this recommendation, and to determine whether and how it could be addressed.

Recommendation not addressed.

Recommendation #35

Topic Area: Forestry, Wetlands, and Vegetation, Additional Studies
Should the TMEP be approved, Stó:lō representatives will participate in the pre-construction weed survey to identify weed problem areas and make recommendations to control weeds at this site and/or limit their spread during construction.

TMC Response (Last Update: May 19, 2019):

Trans Mountain will discuss the opportunity for Stó:lō participation in pre-construction weed surveys.

April 2019 Update:

Any outstanding pre-construction weed assessments and/or mitigation surveys will be planned for the appropriate growing season prior to construction within the noted area of concern. Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory.

May 2019 Update:

See # 23c, #24, #32.

A draft Resource-Specific Mitigation Table has been prepared outlining Site Specific Stó:lō Interests. Following Stó:lō review of this table, additional information and relevant mitigations for invasive species, prohibited weeds or high density weed within the ICA study area will be incorporated into relevant Project documents as applicable.

Relevant TMC Commitment #s:128

Relevant NEB Conditions:

- 45 (Weed and vegetation management plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 128 does not address this ICA recommendation. A discussion is not a commitment to have Ts'elxwéyeqw Tribe carry out weed surveys prior to construction.

See Ts'elxwéyeqw Tribe responses to ICA Recommendation 2 (workshops) and 32 (Weed and Vegetation plan)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges NEB Condition #45, that requires TMC to produce a weed and vegetation management plan. The management plan was required include a summary of TMC's consultations with Aboriginal groups in relation to the plan, and how the results of its consultation, including any recommendations from those consulted, were incorporated in to the plan. The management plan, submitted in June 2017, describes TMC's plans to consult with Indigenous groups during construction and operations to ensure vegetation management activities are conducted in a manner that reduces the risk to the environment and human health.

In addition to the requirements under NEB Condition #45, B.C. EAO Condition #17 would require the proponent to describe: the actions taken to consult with Aboriginal Groups whose asserted or established traditional territory or treaty lands may be affected by the Holder's vegetation control activities regarding options for vegetation control before the Holder uses herbicides in such areas; describe the measures to mitigate impacts to traditional use plants; and identify the means by which TMC will provide opportunities for terrestrial Aboriginal groups that have plant gathering areas identified through Project traditional land use studies, to access these areas in order to harvest, salvage or translocate any traditional use plants that would be cleared, prior to the commencement of clearing.

The Resource Specific Mitigation Tables, submitted by TMC on May 19, 2019, includes measures to reduce impacts to plant harvesting sites, including a commitment to consult with Stó:lō representatives regarding weed control methods in areas with known traditional plant populations.

The Crown notes that TMC has committed that any outstanding pre-construction rare plant and rare ecological community population assessment and/or mitigation surveys will be planned for the appropriate growing season prior to construction within the noted area of concern, and that Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory. The Crown has requested that TMC add this commitment to their commitment tracker (Commitments Tracking Table).

The Crown further notes TMC has committed to discuss the opportunity for Stó:lō participation in pre-construction weed surveys as part of Commitment 128. TMC must implement this commitment through NEB Condition #2.

See also the Crown's response to recommendation #2, #23, and #32.

Recommendation Addressed

Recommendation #36

Topic Area: Forestry, Wetlands, and Vegetation
Stó:lō prefer that no herbicides are used in S'ólh Téméxw. However, if herbicides are used for problem vegetation management along the construction right-of-way, TMEP will restrict the application of herbicide within 30 m of known traditional plant populations. Spot spraying, wicking, mowing or hand-picking are acceptable weed control measures in proximity to traditional harvesting areas should be discussed with Stó:lō prior to any applications in S'ólh Téméxw.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

TMEP Environment will use Integrated Vegetation Management Plan (IVMP) practices by incorporating non-chemical, cultural (i.e., seeding) and chemical techniques for invasive plant management for all components associated with the TMEP. The IVMP describes an adaptive management process that uses several vegetation control methods in a cost effective and responsible manner. TMEP Environment objectives are to reduce the use of herbicides, promote healthy ecosystems, provide measurable results and facilitate better management of invasive plants.

May 2019 Update:

See #28e. Trans mountain received submissions on Reclamation Plans from Stó:lō Representatives during April 2012 – August 2016 consultation periods. Currently, the CHOA and ICA mention plant harvesting areas and culturally important species, but the Stó:lō Connect data (April 15, 2019) does not contain sufficient detail to identify Stó:lō plant harvesting areas.

A meeting scheduled for May 23, 2019 seeks to confirm plant harvesting areas, and where possible specific species of interest. Existing publicly available TLU site information has already been incorporated into the Reclamation Plans for Spreads 5a, 5b, 6 and 7 as mentioned above. As part of TMPL/TMEP Integrated Vegetation Management Plan, Trans Mountain will send notices to all Stó:lō Representatives informing them what treatment is required, where treatments will be, when treatments will occur and any other pertinent information. Notices will be sent 30 days in advance of any herbicide treatment.

Relevant TMC Commitment #s:896, 224

Relevant NEB Conditions:

- 45 (Weed and vegetation management plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe responses to ICA Recommendation 2 (workshops) and 32 (Weed and Vegetation plan)

This is closely tied to the centre line surveys and understanding the different perspectives on "weeds" versus indigenous plants used for medicine, spirituality, or for food. i.e. the dandelion, thistle, and so forth. TMC cannot know where herbicide use may cause direct impacts to the health and well-being of members.

Additionally, TMC made a commitment to not use herbicides in the areas recommended by Stó:lō through the weed survey but has not yet organized such a survey.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

See the Crown response to Recommendation #35.

The Crown notes that TMC has committed to send notices to all Stó:lō Representatives informing them what [herbicide or chemical] treatment is required, where treatments will be, when treatments will occur and any other pertinent information. Notices will be sent 30 days in advance of any herbicide treatment. The Crown has requested that TMC add this commitment to their commitment tracker (Commitments Tracker).

The Crown notes that the Weed and Vegetation Management Plan, submitted in June 2017, lists the following strategies to mitigate impacts to traditional use plants:

- non-chemical methods of vegetation management shall be considered where treatment objectives can be achieved;
- where possible, areas containing food plants for human consumption (including berries and medicinal plants) shall be identified and documented; and
- where possible, herbicide treatments shall be conducted at times to minimize impacts on food plants.

Recommendation Addressed

Recommendation #37

Topic Area: Forestry, Wetlands, and Vegetation, Oversight and Reporting
Prior to any herbicide application, TMEP will send notices to all Stó:lō Representatives informing them what treatment is required, where treatments will be, when treatments will occur and any other pertinent information. Notices will be send 30 days in advance of any herbicide treatment.

TMC Response (Last Update: May 19, 2019):

Trans Mountain will provide advance notification of planned herbicide application to the Stó:lō representatives.

April 2019 Update:

Notification of individuals, communities and organizations in the time and manner as agreed to during the public consultation process, will be completed by TMEP. TMEP will maintain a record of all public notifications (by individuals, communities and organizations) for each identified treatment area.

Prior to treatment, clear signage will be posted in locations by so that they are clearly visible and legible from each approach maintained for use by the public, employees, or contractors to access the treatment area or at any locations where due diligence would appear to require additional signage.

May 2019 Update:

As part of TMPL/TMEP Integrated Vegetation Management Plan, Trans Mountain will send notices to all Stó:lō Representatives informing them what treatment is required, where treatments will be, when treatments will occur and any other pertinent information. Notices will be sent 30 days in advance of any herbicide treatment.

Relevant TMC Commitment #s:1629

Relevant NEB Conditions:

- 45 (Weed and vegetation management plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Ts’elxwéyeqw Tribe would like to ensure TMC are connected with appropriate Ts’elxwéyeqw Tribe Representatives and that both parties agree to notification protocols and procedures.

See Ts’elxwéyeqw Tribe’s response to ICA Recommendation 32 (Weed and Vegetation plan)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that TMC, as part of Commitment #1629, has committed to providing advance notification regarding planned herbicide application to Stó:lō representatives. In May 2019, TMC committed to providing that notice 30 days in advance of herbicide treatment. The Crown has requested that TMC update their tracker to include this commitment.

The Crown recognizes the interest in developing a communication plan for the construction phase. At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific agreement similar to the one that was developed with Stó:lō regarding the review and approval process for BC permits. This agreement could include a plan for effective communication between the Tribe and TMC during construction. The Crown has requested that TMC update their commitment tracker to include this commitment.

Please see also the Crown's response to Recommendation #35 and #36.

Recommendation Addressed

Recommendation #38

Topic Area: Forestry, Wetlands, and Vegetation, Monitoring
Stó:lō representatives will monitor the effectiveness of re-vegetation efforts at intervals over a 5 year period (e.g., years 1, 3 and 5 following completion of reclamation).

TMC Response (Last Update: May 19, 2019):

Trans Mountain will continue to engage Stó:lō representatives through all phases of the Project. Vegetation monitoring is part of the Post Construction Environmental Monitoring (PCEM) program and vegetation re-establishment will be compared to a similar reference plant community located adjacent to, or within, the vicinity of the construction right-of-way and pre-construction conditions.

April 2019 Update:

Please see response to Recommendation 13.

May 2019 Update:

See #16.

Post-construction environmental monitoring (PCEM) is required by Trans Mountain under NEB Condition 151. As a part of this condition, Trans Mountain will summarize its consultation with potentially affected Indigenous groups, including Stó:lō.
Relevant TMC Commitment #s:224

Relevant NEB Conditions:

- 151 (Post-Construction Environmental Monitoring Reports)
- 154, 155, 156, 157 (riparian habitat/wetland/grassland reclamation evaluation report and offset plan.

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 224 does not fully address this ICA recommendation. “Continued engagement” and “discussions” are not commitments to have Ts’elxwéyeqw Tribe carry out post-construction monitoring.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Under Commitment #224, TMC will continue to engage Stó:lō representatives through all phases of the Project, and to discuss the opportunity for Stó:lō participation and input into the planned monitoring scheduled. Under Condition #2, TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

With respect to post-construction monitoring and remediation, Condition #151 would require TMC to report on post-construction environmental monitoring, including any corrective action taken. In addition, Conditions #154-157 would require TMC to report on the mitigation, reclamation, and/or offsetting planned for different environments that could be affected by the project. As part of post-construction monitoring and the reclamation plans, TMC must report on consultations with potentially affected Aboriginal groups. However, the Crown appreciates Stó:lō's interest goes beyond consultation and seeks active participation in monitoring activities.

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement, which could include provisions for Ts'elxwéyeqw's direct involvement in post-construction monitoring and restoration. The Crown has requested that TMC update their commitment tracker to include this commitment.

Recommendation Addressed

Recommendation #39

Topic Area: Forestry, Wetlands, and Vegetation, Monitoring
Vegetation post-construction monitoring (PCM) will identify any areas where remedial measures should be implemented to assist with the recovery of vegetation resources.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 38.

April 2019 Update:

Trans Mountain's Post Construction Environmental Monitoring Reports (NEB Condition 151) will be filed on or before 31 January following the first, third, and fifth complete growing season after completing final clean-up.

May 2019 Update:

Post-construction environmental monitoring (PCEM) is required by Trans Mountain under NEB Condition 151. As a part of this condition, Trans Mountain will summarize its consultation with potentially affected Indigenous groups, including Stó:lō.

In areas where PCEM identifies a requirement, further remedial measures will be initiated to assist in reclaiming site and vegetation function. *Relevant TMC Commitment #s:224*

Relevant NEB Conditions:

- 96 (Reports on Engagement with Aboriginal Groups)
- 151 (Post-Construction Environmental Monitoring Reports)
- 154, 155, 156, 157 (riparian habitat/wetland/grassland reclamation evaluation report and offset plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response to ICA Recommendation 38 (post-construction monitoring)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #38.

Recommendation Addressed

Recommendation #40

Topic Area: Forestry, Wetlands, and Vegetation, Monitoring
Stó:lō representatives will monitor OGMs [old growth] to see if actual construction footprints vary from planned construction activities.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 13.

May 2019 Update:

See #13, #28a, #28e., #29.

In order to reduce incursions, the following measures are recommended to ensure no clearing activities trespass into OGMAs beyond the planned Project Footprint.

1. Controlled copies of the Pipeline EPP and associated environmental documents are required to be reviewed by key construction and Contractor personnel prior to construction and will be available to all key Contractor staff members during construction.
2. Stake or flag all boundaries of the pipeline construction footprint including temporary access roads and shoo-flies. Use painted short stakes or lathe where livestock are present.
3. OGMA boundaries will be surveyed in the field with unique flagging tape that is highlighted in the Environmental Plans. Infringement in this boundary should be considered as a trespass.
4. Trans Mountain will identify OGMAs in close proximity to the Project Footprint that require careful consideration during construction (i.e., OGMAs not currently impacted but within potential mapping error and/or immediate proximity to the planned ROW).

A post-construction review of OGMAs will be conducted to assess the concordance between planned and actual post-construction activities.

Post-construction environmental monitoring (PCEM) is required by Trans Mountain under NEB Condition 151. As a part of this condition, Trans Mountain will summarize its consultation with potentially affected Indigenous groups, including Stó:lō.

Relevant TMC Commitment #s:1622

Relevant NEB Conditions:

- 76 (Old Growth Management Areas Mitigation and Replacement Plan)
- 98 (Plan for Aboriginal group participation in construction monitoring)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

See Ts'elxwéyeqw Tribe response to ICA Recommendation 38 (post-construction monitoring) and Recommendation 28 and 29 (OGMAs).

RE: commitment 1622, TM has not set up agreements to involved Ts'elxwéyeqw Tribe's existing qualified monitoring personnel to do post-construction surveys.

Re: Condition #76 a summary of consultations with Indigenous groups does not do anything to satisfy the need for Ts'elxwéyeqw Tribe monitors to be on the ground.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that TMC's plan for satisfying Condition #98 includes a commitment to hire a representative chosen by Ts'elxwéyeqw Tribe, and meeting TMC's contractor qualification specifications, as an Aboriginal construction monitor. The Crown has requested that TMC update their commitment tracker to include this commitment.

The Crown notes that under Condition #76, TMC has submitted an old growth management area mitigation and replacement plan that prioritized avoidance of these areas above mitigation or offsetting (see NEB filing #A84120). TMC is required to provide a summary of consultations with Aboriginal groups as part of this plan, including how any recommendations were incorporated.

In the Resource Specific Mitigation Tables submitted by TMC in May 2019, TMC indicates that OGMA boundaries will be surveyed in the field with unique flagging tape that is highlighted in the Old Growth Management Areas Mitigation and Replacement Plan, and that infringement in this boundary should be considered as a trespass. TMC would also ensure clearing activities do not exceed the flagged OGMA boundaries to minimize damage to old growth trees. The Environmental Inspection Team, which would include a Ts'elxwéyeqw monitor 'on the ground' during construction, would be responsible for ensuring these measures are followed by employees and contractors.

Please see also the Crown's response to Recommendation #28, #29, and #38.

Recommendation Addressed

Recommendation #41

Topic Area: Forestry, Wetlands, and Vegetation, Monitoring
Stó:lō representatives will monitor the topsoil and other soil piles for weed growth frequently during the growing season and will make recommendations related to proactive measures to control weed growth.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 13.

April 2019 Update:

Trans Mountain remains open to developing a mutually agreeable process for continued meaningful engagement moving forward, including engagement on post construction monitoring

May 2019 Update:

See #13, #28a, #28e., #29, #38, #39.

Relevant TMC Commitment #s: 1622

Relevant NEB Conditions:

- 45 (weed and vegetation management plan)
- 98 (Plan for Aboriginal group participation in construction monitoring)
- 151 (Post-construction environmental monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

RE: commitment 1622, TMC has not set up agreements to involved Ts'elxwéyeqw Tribe's existing qualified monitoring personnel to do weed surveys.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response regarding Recommendation #13 and #40 with respect to TMC's commitment to hire a representative chosen by Ts'elxwéyeqw Tribe, and meeting TMC's contractor qualification specifications, as an Aboriginal construction monitor, and the weed and vegetation management plan that has been developed in compliance with NEB Condition #45.

Recommendation Addressed

Recommendation #42

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Change the proposed TMEP alignment to avoid impacts to a number of cultural landscape features.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

The TMEP alignment has been guided by a series of routing principles. The input received from Indigenous groups and stakeholders along with additional landowner, environmental, socio-economic, engineering, geotechnical, and other inputs have contributed to the optimization of the pipeline route. This has resulted in refinement to a pipeline construction footprint consisting of the proposed easement and extra work space for construction while ensuring pipeline safety and security. The Project has participated in Detailed Route Hearings with the NEB based on the filed Plan, Profile and Book of Reference (PPBoR) which shows the detailed information on the route.

It has not been possible or feasible for TMEP to change the alignment to avoid a number of cultural landscape features noted by Stó:lō (e.g., Sumas Mountain), Trans Mountain remains committed to further engagement with SRRMC and Stó:lō representatives to discuss mitigation measures for cultural sites of importance within the right-of-way. Since 2015, Trans Mountain has continued to collaborate with Stó:lō to further assess the site information presented in the Cultural Heritage Overview Assessment. (CHOA). In 2017/2018 Trans Mountain worked together with Stó:lō to further examine and identify sites that may interact with the right-of-way. This included a series of meetings as the information was explored. CHOA information was also considered and incorporated in the development of Trans Mountain plans where pertinent, including NEB Condition reports, EAO Condition reports and permit applications.

Trans Mountain welcomes the opportunity to continue to engage with Stó:lō to discuss mitigation options for cultural sites within the construction right-of-way.
Results will supplement mitigations. TMEP summaries of mitigations will be prepared in Spring 2019, supplemented by CEEP or CREP items relevant to mitigations

May 2019 Update:

“Cultural landscape features” (Sxwōxwiyám) identified by the Stó:lō that are understood to intersect with the Project footprint include Lightning Rock, Sumas Mountain, Hope Mountain, Sumas River, Vedder River, Coquihalla River, and Fraser River. The revision of Lightning Rock while still crossing the Sxwōxwiyám reduces the footprint through that area. While it has not been possible or feasible for TMEP to change the alignment to avoid such cultural landscape features, Trans Mountain remains committed to further engagement with SRRMC and Stó:lō

representatives to discuss mitigation measures for these and other cultural sites of importance within the right-of-way. The TMEP alignment has been guided by a series of routing principles and ongoing refinements. The input received from Indigenous groups and stakeholders along with additional landowner, environmental, socio-economic, engineering, geotechnical, and other inputs have contributed to the optimization of the pipeline route. This has resulted in refinement to a pipeline construction footprint consisting of the proposed easement and extra work space for construction while ensuring pipeline safety and security. The Project has participated in Detailed Route Hearings with the NEB based on the filed. Plan, Profile and Book of Reference (PPBoR) which shows the detailed information on the route.

Since 2015, Trans Mountain has continued to collaborate with Stó:lō to further assess the site information presented in the Cultural Heritage Overview Assessment. (CHOA). In 2017/2018 Trans Mountain worked together with Stó:lō to further examine and identify sites that may interact with the right-of-way. This included a series of meetings as the information was explored. Trans Mountain welcomes the opportunity to continue to engage with Stó:lō to discuss mitigation options for cultural sites within the construction right-of-way. Results will supplement mitigations. TMEP summaries of mitigations will be prepared in Spring 2019, supplemented by CEEP or CREP items relevant to mitigations.

Relevant TMC Commitment #s:896

Relevant NEB Conditions:

- 7 (Environmental and socio-economic assessment - route re-alignments)
- 104 (Updated engineering alignment sheets and drawings)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Note that the final Archaeological Impact Assessment reports have not been produced nor reviewed by any Stó:lō representatives.

The existing route does not avoid Stó:lō culturally sensitive sites. The sites were not accounted for on TMC's alignment sheets/ mitigation tables; no details for these sites therefore there is no data that the NEB could have considered in its decision. Specific sites, including Lightning rock (condition # 77) are unaddressed by NEB conditions.

There are no details associated with any suggested mitigations including avoidance or minimization of impacts for any of the Stó:lō sites. The Stó:lō Heritage Policy sets out avoidance as the preferred option for all Stó:lō sites, including what are considered to be archaeological sites; there are no details/plans regarding avoidance proposed by TMC. Further, the archaeological sites listed on the RSMT as "Heritage Resources in BC (Table 2.0-2)" do not include the references to the Stó:lō Heritage Investigation Permit (SHIP) which establishes a contractual agreement to implement the Stó:lō Heritage Policy which includes avoidance as the preferred mitigation measure for all Stó:lō sites.

Re: Condition #47 – there are no plans in place that would account for compliance with this condition regarding access and incorporation of traditional land use and ecological knowledge.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that the ICA and CHOA identified potentially impacted culturally sensitive sites to be taken into consideration by NEB while assessing the environmental and socio-economic effects of the Project, and effects of the Project on Aboriginal interests, and that additional cultural sites have since been identified by Ts'elxwéyeqw Tribe, and incorporated in to environmental alignment sheets. Please see the Crown's response to Recommendation #2 regarding incorporation of ICA and CHOA information in to project alignment sheets and resource specific mitigation tables and the collaborative development of site-specific mitigation measures, as well as the Crown's response to Recommendation #4 regarding capacity funding that has been offered to complete this work.

In the May 23, 2019 workshop, TMC committed to work with Ts'elxwéyeqw to collaboratively identify site-specific mitigation measures in order to protect cultural sites. However, the Crown heard from Ts'elxwéyeqw Tribe that for some of the identified cultural sites, avoidance is the only acceptable accommodation measure.

In addition to the proponent's commitments described in Recommendation #2, some of the current measures in place to protect cultural sites are identified below.

- NEB Conditions: The NEB has established conditions that would either directly or indirectly avoid or reduce some of the impacts on other traditional and cultural practices. These include: Condition #24 (Access Management Plan), #72 (Pipeline Environmental Protection Plan), #77 (Archaeological and Cultural Heritage Assessment – Lightning Rock), #98 (Plan for Indigenous group participation in construction monitoring) and #100 (Heritage Resources).
- NEB Regulatory Process for Detailed Routing: If a Certificate of Public Convenience and Necessity is issued, that certificate includes the 150 meter physical corridor in which the pipeline can be built. Once this corridor is established, TMC must engage in a detailed route approval process that provides Indigenous groups and stakeholders the opportunity to express opposition to the proposed detailed routing.
- NEB Regulatory Process for Amendments to the Corridor: Subsection 21(2) of the National Energy Board Act allows the NEB to vary certificates, including changes to the approved corridor, with approval of Governor in Council. The process for considering a variance application depends on the nature and extent of the proposed route amendment, but may include hearings to allow for interested parties and Indigenous groups to voice concerns and issues.
- Provincial Regulatory Regime: Archaeological sites in B.C. are protected under the *Heritage Conservation Act*, and sites may not be altered or changed in any manner without a permit. Some of the sites Stó:lō has identified would require a permit under this provincial act. Under Condition #100, TMC would be required to update its

Environmental Protection Plans to incorporate any relevant information from these permits.

- Provincial Conditions: British Columbia's Environmental Assessment Office has established conditions that would be relevant to the protection of Stó:lō cultural sites, including Condition #12 (Involvement of Aboriginal Groups in Construction and Post-Construction Monitoring), #13 (Aboriginal Cultural Awareness and Recognition), and #27 (Archaeological – Heritage Resources).

The Crown has noted that the decision before GIC through Phase III consultations is whether to approve a 150m corridor within which the pipeline will be routed. Decisions regarding detailed routing and the protection of cultural sites are addressed through the mechanisms noted here. To assist Ts'elxwéyeqw to advance its interests and concerns through these mechanism, the Crown has also offered $250,000 in capacity/study funding, if the project is approved. For these reasons, the Crown views this recommendation as addressed.

Recommendation Addressed

Recommendation #43

Topic Area: Safety and Emergency Response, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Remediate the landscape within S'ólh Téméxw, immediately in the response to a spill/leak.

TMC Response (Last Update: May 19, 2019):

In the event of a spill in S'ólh Téméxw, Stó:lō representation will be invited to participate in Unified Command as part of the Incident Command Structure (ICS).

April/May 2019 Update:

In the event of a spill in S'ólh Téméxw, Stó:lō representatives will be invited to be a member of the Unified Command and take part into the Incident Command System structure through the Liaison Office and Environmental Unit.

In the event of a spill or leak, Trans Mountain's practice is to first minimize any potential damages to the extent practical through rapid and initial emergency response and by providing mitigation to mitigate any potential impacts. Should residual impacts remain, Trans Mountain would be responsible for additional monitoring and remediation of impacts directly related to and caused by the spill.

In the event of a spill in S'ólh Téméxw, Stó:lō representatives will be invited to be participate in the monitoring team.

May 2019 Update:

Relevant TMC Commitment #s:1631

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Program)
- 58 (Training and Education Monitoring Reports)
- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 119 (Emergency Preparedness and Response Exercise and Training Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The NEB conditions require TMC to develop an emergency management program that anticipates, prevents, manages and mitigates conditions during an emergency. The company's management system and processes must also be evident in its emergency management program.

An emergency management program must include:

- the identification and analysis of potential hazards;
- the evaluation and management of risks associated with all hazards;
- an up-to-date emergency procedures manual that is filed with the NEB;
- liaising with agencies that may be involved in an emergency situation;
- taking all reasonable steps to inform all persons who may be associated with an emergency response activity on the pipeline of the practices and procedures to be followed;
- having a continuing education program for the police, fire departments, medical facilities, other appropriate organizations and agencies and the public residing adjacent to the pipeline to inform them of the location of the pipeline, potential emergency situations and the safety procedures to be followed in case of an emergency;
- procedures for the safe control or shutdown of the pipeline system in the event of an emergency;
- sufficient response equipment;
- training to instruct employees on the emergency procedures and emergency equipment; and
- a verifiable capability to respond to an emergency demonstrated through emergency response exercises.

If an incident does occur, the NEB will verify that there is adequate and appropriate clean-up and full remediation of any environmental effects resulting from the incident. The company must conduct, to NEB's satisfaction, a complete clean-up and remediation of any adverse environmental effects. Under commitment #1631, Stó:lō representation would be invited to participate in the Unified Command as part of the Incident Command Structure. Details regarding the ICS are available here: https://www.transmountain.com/incident-command-system

Recommendation Addressed

Recommendation #44

Topic Area: Socio-Cultural, Mitigation
MEP will undertake the following mitigations in collaboration with Stó:lō representatives: Minimize visual, auditory, and other sensory impacts, particularly along access routes and proximity to cultural/spiritual use areas and sites.

TMC Response (Last Update: May 19, 2019):

Trans Mountain is open to discussing a Stó:lō-specific construction communication plan or a community liaison.

April 2019 Update:

Trans Mountain will work with Stó:lō representatives to develop a Round Table with representation from the Stó:lō community, Trans Mountain, and its General Construction Contractors. The Round Table will meet as agreed to during pre-construction surveys and during construction to exchange information such as construction scheduling and to identify and address project related socio-economic issues that may arise in the community.

May 2019 Update:

The draft Stó:lō RSMT attempts to address sensory disturbance by pointing to relevant sections of the EPP and Access and Traffic Management Plans, and further discussions will be needed in order to better inform Trans Mountain. Trans Mountain seeks to gain mutual understanding of strategies to effectively communicate the construction schedule and work areas to Stó:lō members and looks forward to further dialogue. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 1633

Relevant NEB Conditions:

- 74 (HDD Noise Management Plan)
- 80 (Noise Management Plan for Construction at Terminals and Pump Stations)
- 96 (Reports on Engagement with Aboriginal Groups)
- 102 (landowner and tenant complaint process/system)
- 141 (post-construction noise surveys)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

A Stó:lō- specific construction communication plan has not been developed to date; which is essential to be completed prior to any activity on the land (including the movement/storage of equipment and materials as is happening now), and there no indication of such plans on

alignment sheets / mitigation tables. Details will be needed on a site-specific basis and included in mitigation tables. What is identified as equipment maintenance and idling times are insufficient to address potential impacts.

The requirement under Condition #102 only applies to landowners and tenants; as rights and title holders, Stó:lō / will require a different method of communicating issues of concern and jointly working with TMC on solutions.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's concerns regarding sensory effects from the project in areas of traditional use. TMC has committed to mitigating noise and other forms of sensory disturbance to communities by adhering to the BC Oil and Gas Commission's *Noise Control Best Practices Guideline,* ensuring that all construction equipment is well-maintained, and by implementing a 1-hr idling time-limit for vehicles and equipment in above-freezing conditions. TMC also intends to reduce visual and light disturbances through vegetation buffers and lighting control systems.

The Crown notes that there are a number of conditions that would require TMC to monitor and manage noise levels throughout construction and operations. Furthermore, Condition #102 would require TMC to implement a landowner and tenant complaint process/system that could be utilized by Stó:lō members to ensure any noise-related issues are addressed by TMC.

The Crown recognizes the interest in developing a Tribe-specific communication plan for the construction phase. At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. This agreement could include a plan for effective communication between the Tribe and TMC during construction. The Crown has requested that TMC update their commitment tracker to include this commitment.

As discussed at the May 16, 2019 workshop, TMC is planning to hold Indigenous Engagement Roundtables in partial fulfillment of Condition #13 and #96. These roundtables would commence prior to construction, and provide the opportunity for Stó:lō communities to discuss construction scheduling and accommodation strategies to minimize impacts to Stó:lō people, including those resulting from sensory disturbance.

See also the Crown's response to Recommendation #2 with respect to incorporation of Stó:lō sites and site-specific mitigation in to alignment sheets and mitigation tables.

Recommendation Addressed

Recommendation #45

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Recognize place names (project maps, signs, fencing)

TMC Response (Last Update: May 19, 2019):

Trans Mountain will recognize places names (such as on Project maps, signs and fencing) during the construction of the Project.

May 2019 Update:

See #2. The draft Stó:lō RSMT attempts recognize place names.

Relevant TMC Commitment #s: 1634

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Currently Stó:lō sites (identified either by number or name) do not appear on the alignment construction sheets (a "project map"). A place names plan has not been developed or presented to the Tribe.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes the importance of place names in maintaining the integrity of sacred places within Stó:lō territory. The Crown notes that under Commitment #1634, TMC has committed to recognizing place names. In order to remain in compliance with Condition #2, TMC must implement this commitment.

This commitment is also reflected in TMC's Resource Specific Mitigation Tables, submitted on May 19, 2019. It states that TMC will recognize places names (such as on Project maps, signs and fencing) during the construction of the Project.

B.C. EAO Condition #13 requires proponents to consult with Aboriginal Groups to identify opportunities for cultural awareness and recognition. TMC must offer opportunities to Aboriginal Groups that include holding ceremonies, installing signage, executing cultural protocols,

recognizing cultural heritage, and providing cultural awareness training to Project personnel. If specific opportunities for cultural awareness and recognition are requested by an Aboriginal Group, TMC must determine the scope and content of the cultural awareness and recognition opportunity and associated activities, in consultation with the Aboriginal Group and must support or conduct such activities, or must provide a rationale to the Aboriginal Group explaining why a specific request or activity is not practicable.

Please see the Crown's response to recommendation #2 and #13.

Recommendation Addressed

Recommendation #46

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:
Adhere to seasonal or time constraints for scheduling construction near spiritual sites

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

May 2019 Update:

See #2. the draft Stó:lō RSMT attempts provide mitigation options on sacred sites. Additional discussions are needed to understand seasonality. This is a topic to resolve at the May 23rd, 2019 technical meeting.

Relevant TMC Commitment #s: 896

Relevant NEB Conditions:

- 47 (Access Management Plan)
- 62 (Construction schedule)
- 74 (HDD Noise Management Plan)
- 80 (Noise Management Plan for Construction at Terminals and Pump Stations)
- 96 (Reports on Engagement with Aboriginal Groups)
- 102 (landowner and tenant complaint process/system)
- 141 (post-construction noise surveys)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Stó:lō sites do not currently appear on the construction alignment sheet so it is not possible that the construction timing includes scheduling construction work around sites required for spiritual activity.

TMC will be required to meet with, and respond to, Ts’elxwéyeqw Tribe and other Stó:lō cultural experts to determine “no go” windows.

There is no related information to sites in mitigation tables.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to recommendation #2 with respect to incorporating Stó:lō sites in to Project alignment sheets.

The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan.

Under B.C. EAO Condition #22c, in addition to fulfilling the requirements set out in NEB Condition #47, TMC must identify measures to avoid or mitigate the disruption caused by construction or operations to the exercise of the rights of access of provincially authorized trappers and guide outfitters, and of members of Aboriginal Groups carrying out traditional use activities.

In addition to access management, there are a number of conditions that would require TMC to monitor and manage noise levels during construction and operations to reduce sensory disturbance. Furthermore, Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction.

At the May 23, 2019 workshop, TMC committed to meet with Ts'elxwéyeqw to discuss and respond to Ts'elxwéyeqw's proposed 'no go' windows for construction as part of the planned Indigenous roundtables. The Crown has requested that TMC update their commitment tracker to include this commitment.

Recommendation Addressed

Recommendation #47

Topic Area: Socio-Cultural, Oversight and Reporting
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:

- *Notify Stó:lō representatives of key project milestones*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Pursuant to NEB condition 62, Trans Mountain files an updated construction schedule identifying the major construction activities on a monthly basis. Pursuant to NEB Condition 106, Trans Mountain also files monthly construction progress reports with the NEB.

May 2019 Update:

Trans Mountain has collaboratively worked with TTML, PRRO, SRRMC, and other Stó:lō affiliations to better understand the communications protocols with all Stó:lō entities. Given this understanding, project updates are provided on a regular basis and as requested. In addition, opportunities to review regulatory conditions (i.e. NEB condition 96) are provided on a routine basis.

Relevant TMC Commitment #s: 896, 1613

Relevant NEB Conditions:

- 62 (Construction schedule)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed/on-going.

While there is an agreement related to Provincial permitting in place between Trans Mountain and the S'ólh Téméxw Stewardship Alliance (STSA), of which the Ts'elxwéyeqw Tribe is a member, this agreement only relates to provincial permitting. A communication plan regarding any possible construction has not yet been agreed upon.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that TMC, as part of Commitment #1613, has committed to developing a mutually agreeable process for continued engagement, and that this will include mechanisms

for ongoing communications and notifications.

The Crown notes that Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction.

In the Resource Specific Mitigation Table submitted to Ts'elxwéyeqw on May 19, 2019, TMC has also committed to provide Aboriginal groups with the anticipated construction schedule and pipeline route a minimum of 4 weeks prior to the commencement of construction in the vicinity of their respective communities.

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific agreement for engagement with TMC. The Crown has requested that TMC update their commitment tracker to include this commitment.

Recommendation Addressed

Recommendation #48

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:

- *Place protective fencing around specific areas that can potentially be damaged*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Please see response to Recommendations 2, 13, and 44.

May 2019 Update:

See #2. the draft Stó:lō RSMT attempts to address flagging/fencing (via Note 1). Also-pragmatically, signs at the start and end of special areas, and t-post and yellow poly rope work the best to fence off special areas.

Relevant TMC Commitment #s: 896

Relevant NEB Conditions:

- 47 (Access Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The Stó:lō sites which were provided to TMC as part of the CHOA do not currently appear on the construction alignment sheets /mitigation tables thus the issue of protective fencing remains outstanding. The 2017 Access Management Plan does speak to Stó:lō site-specific concerns directly but notes that TMC “continues to engage” Aboriginal groups.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown’s response to Recommendation #2 regarding inclusion of Stó:lō sites in the alignment sheets, and Recommendation #13 regarding Aboriginal monitors.

The Crown notes that Resource Specific Mitigation Tables submitted on May 19, 2019 identify a number of mitigation measures related to the establishment of barriers to prevent access to sensitive areas.

In addition to TMC's commitments, the NEB has established conditions which would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. Condition #47 would require TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. The Access Management Plan would include requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of its access management plan (NEB Filing #A82635).

Under B.C. EAO Condition #22c, in addition to fulfilling the requirements set out in NEB Condition #47, TMC must identify measures to avoid or mitigate the disruption caused by construction or operations to the exercise of the rights of access of provincially authorized trappers and guide outfitters, and of members of Aboriginal Groups carrying out traditional use activities.

Recommendation Addressed

Recommendation #49

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:

- *Put up signage to ensure that specific areas will not be entered by public or by construction crews.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain will develop and implement an environmental education program to ensure that all personnel working on the construction of the Project are informed of the location of known Traditional Land Use (TLU) sites.

April 2019 Update:

Please see response to recommendation 2 and 13.

May 2019 Update:

See #2. the draft Stó:lō RSMT attempts to address signage (via Note 1). Also, the EPP and Access and Traffic Management Plans address access and signage.

Relevant TMC Commitment #s: 1635

Relevant NEB Conditions:

- 47 (Access Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See response to ICA recommendation #48 above.

The Stó:lō sites which were provided to TMC as part of the CHOA do not currently appear on the construction alignment sheets /mitigation tables.

Further, TMC's "environmental education program" will also need to incorporate other "non-environmental" sites of Stó:lō interest; no draft plans have been presented for review. Ts'elxwéyeqw Tribe would like to know more about this proposed education program; any portion of the program that involves education of non-Stó:lō personnel should be led by a Stó:lō representative that Ts'elxwéyeqw Tribe has given approval for.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #2 regarding inclusion of Stó:lō sites in the alignment sheets, and Recommendation #13 regarding Aboriginal monitors.

The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 requires TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan.

The resource specific mitigation tables include the following mitigation measures to protect Stó:lō interests:

- Post signs in the vicinity of environmental features to alert construction personnel of their presence. Recommended setback distances are resource-specific, and should be determined in consultation with an Environmental Inspector and/or Resource Specialist, if required. Use site identification numbers to ensure confidentiality and protection of resources, where warranted.

The Crown also notes TMC has committed to develop and implement an environmental education program to ensure that all personnel working on the construction of the Project are informed of the location of known Traditional Land Use sites (Commitment #1635). TMC is mandated to implement through NEB recommended Condition #2.

At the May 23, 2019 workshop, TMC committed to have Stó:lō representatives deliver cultural awareness training to TMC staff and contractors regarding S'ólh Téméxw and cultural sensitivities. The Crown has requested that TMC update their commitments tracker to include this commitment.

Recommendation Addressed

Recommendation #50

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Establish barriers to prohibit increased public and crew access to cultural areas, while maintaining Stó:lō access.

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 48 and 49.

May 2019 Update:

See #2. the draft Stó:lō RSMT attempts to address flagging/fencing (via Note 1). Also-pragmatically, signs at the start and end of special areas, and t-post and yellow poly rope work the best to fence off special areas.

Relevant TMC Commitment #s: 896, 1635

Relevant NEB Conditions:

- 48 (Access Management Plan)
- 72 (Pipeline Environmental Protection Plan)
- 96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See response to ICA recommendation #48 and #49 above.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #48 and #49.

Recommendation Addressed

Recommendation #51

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Refer to fishing section regarding for further recommendations regarding water, water quality, and protection of activities directly linked to the spirituality of Stó:lō community members and spiritual practitioners.

TMC Response (Last Update: May 19, 2019):

Response not provided

Relevant TMC Commitment #s: NA

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Will DFO provide adequate funding for consultation with Ts'elxwéyeqw Tribe and other Stó:lō Nations on watercourse crossings which require an authorization under the *Fisheries Act*? Will Ts'elxwéyeqw Tribe and other Stó:lō First Nations have the opportunity to draft their own conditions, and will DFO incorporate these conditions when issuing any authorizations to TMC?

Crown Response (Last Update: June 1, 2019)

Fisheries and Oceans Canada

DFO defers to Trans Mountain to respond to this recommendation, as the request from Stó:lō is directed to Trans Mountain. Should DFO issue a Fisheries Act authorization at watercourse crossings within Stó:lō traditional territory, then DFO will consult with Stó:lō nations regarding any applications for Authorization that have the potential to affect asserted or established Aboriginal or Treaty rights, including proposed mitigation and offsetting measures (e.g., habitat restoration and enhancement, riparian replanting, etc.). Through consultations, DFO may include conditions within potential *Fisheries Act* authorization(s) that may address Stó:lō representatives concerns regarding fish and fish habitat that may be linked to the spirituality of Stó:lō community members and spiritual practitioners. Through these consultation Indigenous communities will have the opportunity to provide comment on draft conditions and propose their own conditions for consideration by DFO for inclusion within a potential authorization.

DFO is not currently able to provide capacity funding for regulatory consultations (e.g., authorizations under the Fisheries Act). However, capacity funding was made available to

Ts’elxwéyeqw Tribe members by the National Energy Board and the Natural Resources Canada Major Projects Management Office to support the review of Trans Mountain’s Facilities Application, participation in the environmental assessment (EA) process, and consultation related to the project. Additional funding was available through the provincial Environmental Assessment Office during the 2016 EA process. As the scale and scope of the works, undertakings and activities associated with the expansion project have not substantially changed since the EA, DFO expects that information provided to, and reviewed by, Ts’elxwéyeqw during the original EA and subsequent Reconsideration process will be directly relevant to any potential authorizations applications on which DFO would need to consult. If works, undertakings or activities described in an authorization application have the potential to result in serious harm to fish and are likely to affect asserted or established rights of Ts’elxwéyeqw Tribe, DFO is committed to travelling to Ts’elxwéyeqw Tribe’s preferred meeting locations to engage in technical discussions on any outstanding concerns.

Natural Resources Canada

The Crown refers here to the relevant responses to fisheries recommendations.

Recommendation Partially Addressed

Recommendation #52

Topic Area: Socio-Cultural, Mitigation
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:

- *Implement mitigation measures to effectively avoid or minimize impacts on the economic processes (production, distribution, consumption, and reproduction) tied to activities supporting spiritual practices, e.g. fishing, hunting, gathering, manufacturing of cultural items etc.*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 13.

May 2019 Update:

Mitigation methods within the Environmental Protection Plan (EPP) (Volume 6B, Filing ID A3S2S3) have been developed to ensure aboriginal communities concerns for spiritual practices (e.g. fishing, hunting, gathering, manufacturing of cultural items). are recognized and protected. The EPP provides protection measures, some examples include: Section 4, Notification of Interested Parties; Section 7, General Pipeline Construction Measures; Section 8, Pipeline Specific Construction Mitigation Measures; Appendix B, Heritage Resources Discovery Contingency Plans; and Appendix C, Traffic and Access Control Management Plan. Trans Mountain is open to discussing the details of the EPP with Stó:lō Representatives prior to finalization of the plan.

Please see the response to Recommendations 13 and 14 regarding Aboriginal Monitors as members of the Project Environmental Inspection Team who will be responsible for ensuring protection measures are communicated, implemented and documented.

Relevant TMC Commitment #s: 1622

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See response to ICA Recommendation #51, above. Also, as noted by NR Can, there are other ICA recommendations that address the mitigation of effects to cultural and spiritual sites/practices – the responses to those recommendations should also be considered when accessing the status of this ICA recommendation. To be clear, there is no necessary equivalence of mitigation to sites related to cultural and spiritual sites and practices which can be transferred to mitigations required for impacts on economic processes.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown refers to the relevant responses that address the mitigation of effects to cultural and spiritual sites and practices, as well as those recommendations related to fishing, hunting, gathering, and manufacturing of cultural items.

Recommendation Addressed

Recommendation #53

Topic Area: Environment (General), Training and Capacity Building
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:

- *Establish infrastructure and capacity for Stó:lō to implement on-going processes of air and water quality monitoring.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss the establishment of infrastructure and capacity for Stó:lō to implement on-going processes of air and water quality monitoring.

April 2019 Update:

To address water quality monitoring during construction, please see the response to Recommendation 13. Trans Mountain remains open to developing a mutually agreeable process for continued meaningful engagement moving forward.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss in detail the establishment of infrastructure and capacity for Stó:lō to implement on-going processes of air and water quality monitoring and therefore none have been created. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 272

Relevant NEB Conditions:

- 98 (Plan for Aboriginal group participation in construction monitoring)
- 52 (Air emissions management plan for Westridge Marine Terminal)
- 113 (Hydrostatic Testing Plan)
- 130 (Groundwater Monitoring Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not yet addressed.

A commitment to “discuss” is not a commitment to actually establish infrastructure and capacity. The Ts’elxwéyeqw Tribe /Stó:lō require additional infrastructure and capacity for on-going air and water quality monitoring; to date, this has not been discussed with TMC. The Ts’elxwéyeqw Tribe would also like to know more about the proposed Federal Cumulative Effects Initiative.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown notes TMC has committed to discussing the establishment of infrastructure and capacity for Stó:lō to implement ongoing processes of air and water quality monitoring. TMC is mandated to implement this commitment through NEB Condition #2.

At the May 16, 2019 workshop, the Crown and Ts'elxwéyeqw Tribe discussed the TCEI (see the Crown's response to Recommendation #23 and Annex I for more information). The Crown noted that funding for Stó:lō to implement air and water quality monitoring is consistent with the goals of the TCEI, and committed to relay this information to Environment and Climate Change Canada, who would lead the TCEI. If the Project is approved, Ts'elxwéyeqw would be invited to participate in a co-development process on the TCEI.

Recommendation Addressed

Recommendation #54

Topic Area: Socio-Cultural, Training and Capacity Building
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives:

- *Establish infrastructure and capacity for Stó:lō heritage resource management technical involvement as construction monitors, to ensure protection of sites, and to ensure Stó:lō practices are maintained (as described below)*

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss infrastructure and capacity for Stó:lō heritage resource management technical involvement as construction monitors, to ensure protection of sites, and to ensure Stó:lō practices are maintained.

April 2019 Update:

Please see response to Recommendation 13.

May 2019 Update:

See #13 on the Aboriginal monitoring program, and #46, #47, #48 #49 referencing the draft Stó:lō RSMT (signage/fencing) and # 53 with respect to construction monitors.

To date, Trans Mountain has not had the opportunity to discuss in detail the establishment of infrastructure and capacity for Stó:lō a, resource management technical involvement and therefore none have been created. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 332

Relevant NEB Conditions:

- 98 (Plan for Aboriginal group participation in construction monitoring)
- 100 (Heritage Resources)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

A commitment to “discuss” is not a commitment to actually establish infrastructure and capacity. TMC’s condition #98 report from 2017 confirms that the Stó:lō Collective’s interest in participating in their monitoring program has not yet been confirmed. While this document is from 2017, that statement continues to be true with regard to the participation of the Ts’elxwéyeqw Tribe.

The Stó:lō sites which were provided to TMC as part of the CHOA do not currently appear on the construction alignment sheets /mitigation tables, therefore there are no instructions which can be provided to monitors.

Additionally, TMC's Aboriginal monitors are not the same as monitoring performed directly by the Tribe.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #13 regarding Aboriginal construction monitors.

While the Crown recognizes Ts'elxwéyeqw's concerns regarding the IAMC, its Indigenous monitoring sub-committee is working to ensure Indigenous knowledge, values, and perspectives are included in monitoring, regulation, compliance verification and performance of the Project. These monitors operate independently of TMC. The IAMC's Interim Report contains information regarding the sub-committee's Indigenous Monitoring Pilot Program: https://iamc-tmx.com/uploads/2019/02/Interim-Report-November-2018_.pdf

Please see also the Crown's response to Recommendation #2 regarding incorporation of Stó:lō sites in to alignment sheets.

Recommendation Addressed

Recommendation #55

Topic Area: Socio-Cultural, Funding for Stó:lō programs
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Integration of and support for Stó:lō spiritual work as may be required throughout the construction and operation processes (e.g. ground breaking ceremonies, purification ceremonies, offerings to ancestors etc.)

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Please see response to Recommendation 44.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss the integration of Stó:lō spiritual activities and ceremonies and cultural programs into construction scheduling. Trans Mountain requests that Stó:lō representatives share details on the timing and protocols of spiritual work in order to engage in these discussions (breaking ceremonies, purification ceremonies, offerings to ancestors etc.). It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into construction planning.

Relevant TMC Commitment #s: 896

Relevant NEB Conditions:

- 145 (Community Benefits Program Progress Reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

There are no details provided and no plans for meeting this recommendation. While this may relate to specific mitigation which may be discussed at the workshops, there may be additional requirements to meet this recommendation that are more general in nature and therefore may not be part of the more focused workshops. Further the workshops will include cultural experts who may or may not also be spiritual leaders. Additional/specific meetings to discuss necessary spiritual work will be required.

Regarding Condition #145 – what is the basis of determining what exceeds regulatory requirements, and how is that determined in relation to the standards recognized and set out in UNDRIP?

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown views this recommendation as best addressed through a private agreement with TMC, and that TMC has committed to work with Stó:lō representatives to identify spiritual work proposed at the Project site.

The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. Benefits that exceed regulatory requirements are those that would not be required by law under federal regulations.

B.C. EAO Condition #13 requires proponents to consult with Aboriginal Groups to identify opportunities for cultural awareness and recognition. TMC must offer opportunities to Aboriginal Groups that include holding ceremonies, installing signage, executing cultural protocols, recognizing cultural heritage, and providing cultural awareness training to Project personnel. If specific opportunities for cultural awareness and recognition are requested by an Aboriginal Group, TMC must determine the scope and content of the cultural awareness and recognition opportunity and associated activities, in consultation with the Aboriginal Group and must support or conduct such activities, or must provide a rationale to the Aboriginal Group explaining why a specific request or activity is not practicable.

Recommendation Addressed

Recommendation #56

Topic Area: Socio-Cultural, Training and Capacity Building
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Establish infrastructure and capacity for Stó:lō to implement security related to monitoring access of spiritual and cultural sites, posting and maintaining signage, and preventing vandalism to sites, landmarks, and signage.

TMC Response (Last Update: May 19, 2019):

Trans Mountain will have security in place to reduce the risk of vandalism in and around work sites. Trans Mountain welcomes the opportunity to learn about Stó:lō member security companies with this capacity. It is currently planned that the Contractors selected to complete the work will be hiring or otherwise providing subcontractors to secure the work-site during and after hours, including office complexes, equipment, etc.

April 2019 Update:

Please also see response to Recommendation 44

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss the establishment of infrastructure and capacity for Stó:lō and therefore none have been created. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 3589

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Plan)
- 63 (Security Management Programs)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

More information is required regarding TMC's security planning, and what specific capacity has been included for monitoring of access to spiritual and cultural sites.

The *Onshore Pipeline Regulations* cover public and environmental values but are not inclusive of Stó:lō specific values.

See also comments to ICA recommendation #54.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #13, as well as Recommendation #48-50 regarding controlling access to cultural sites.

The Crown notes TMC has committed to have security in place to reduce the risk of vandalism in and around work sites. TMC has stated that they welcome the opportunity to learn about Stó:lō member security companies with this capacity.

Under the *Onshore Pipeline Regulations*, TMC must develop, implement and maintain a security management program that anticipates, prevents, manages and mitigates conditions that could adversely affect people, property or the environment.

The NEB has established conditions that would avoid or minimize any project-related impacts on access to or use of culturally sensitive areas or places and on the practice of cultural activities in general. For example, Condition #47 requires TMC to manage access to culturally sensitive sites, including implementation of access control measures for construction and operations. This condition includes requirements for TMC to incorporate Aboriginal Traditional Land Use and Traditional Ecological Knowledge into the design of the access management plan.

Recommendation Addressed

Recommendation #57

Topic Area: Safety and Emergency Response, Training and Capacity Building
TMEP will undertake the following mitigations in collaboration with Stó:lō representatives: Implement Stó:lō training for emergency response in case spills in accordance with 17.2.4 [recc. 18, 19, 20]

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 7.

April 2019 Update:

See responses to recommendations numbers 18, 19.

May 2019 Update:

Relevant TMC Commitment #s: 1615

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Program)
- 58 (Training and Education Monitoring Reports)
- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

TMC has already developed Geographic Response Plans, but there are still information gaps. The Community Awareness and Emergency Response presentation has not yet occurred.

Regarding the NEB conditions, a commitment to reporting on consultation is not a commitment to implement Stó:lō training.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #7, 18, and 19.

Recommendation #58

Topic Area: Socio-Cultural, Funding for Stó:lō programs
TMEP will fund cultural programs listed in Section 15 [of the ICA]; for example:

a) *Salish Weaving & Sewing classes - Weekly sessions throughout the year*
b) *Cedar Bark Gathering - Seasonal session in the spring*
c) *Traditional Herbs & Tea Gathering - seasonal session typically in the fall*
d) *Cedar Weaving - twice a year in the spring and the fall*

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss funding for cultural programs and events

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss the cultural programs listed in Section 15 with S'ólh Téméxw. Trans Mountain welcomes the opportunity to discuss funding for cultural programs and events. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 1639

Relevant NEB Conditions:

- 145 (Community Benefits Program Progress Reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

If funding of programs constitutes offsets of impacts, a commitment to discuss funding is not a commitment to fund the actual programs.

To date, the discussion of funding these types of programs has not yet been discussed between TMC and Ts'elxwéyeqw Tribe. Ts'elxwéyeqw Tribe needs Trans Mountain to agree to a budget and a fee schedule, including scholarship funding.

Crown Response (Last Update: June 1, 2019)

The Crown recognizes Ts'elxwéyeqw's view that funding social and cultural programs would offset potential social and cultural impacts that may result from the Project. The Crown concurs with Ts'elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC. Under Commitment #1639, TMC has committed to discussing funding for cultural programs and events.

The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements.

Recommendation Partially Addressed

Recommendation #59

Topic Area: Socio-Cultural, Funding for Stó:lō programs
TMEP will fund cultural events listed in Section 13 [of the ICA]: for example:

a) Cultus Lake Water Sports and War Canoes Races
b) Seabird Island Annual Festival

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss funding for cultural programs and events

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss the cultural programs listed in Section 15 with S'ólh Téméxw. Trans Mountain welcomes the opportunity to discuss funding for cultural programs and events. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 1639

Relevant NEB Conditions:

- 145 (Community Benefits Program Progress Reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See response to ICA recommendations #58.

Crown Response (Last Update: June 1, 2019)

The Crown recognizes Ts'elxwéyeqw's view that funding social and cultural programs would offset potential social and cultural impacts that may result from the Project. The Crown concurs with Ts'elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC. Under Commitment #1639, TMC has committed to discussing funding for cultural programs and events.

The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements.

Recommendation Partially Addressed

Recommendation #60

Topic Area: Traffic Management, Oversight and Reporting
The TMEP will file with the Stó:lō and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction an Access Management Plan for S'ólh Téméxw, the plan will include:

a) *Maps of routes which are going to be used for transportation of workers and materials.*
b) *Details of the strategy for providing bussing or some other form of worker transport management for construction workers, between the accommodation locations and the construction site.*
c) *Traffic supervision plans during construction to identify any access routes that have higher than predicted traffic and/or delays and the adaptive management plan that TMEP will use to adjust access routes.*
d) *Traffic safety education program for TMEP employees and contractors about acceptable driving behaviour in S'ólh Téméxw*
e) *Schedules for the trucking of heavy loads to avoid peak traffic times and heavily-used intersections.*
f) *Management plan to prohibit no-construction parking/staging areas along key access routes to Big houses, boat launches, trailheads near bathing sites.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain will engage with Stó:lō representatives prior to commencing construction to discuss any potential issues in regard to the Traffic and Access Control Management Plan (TACMP):

a) Routes will be included for construction access.
b) Bussing or other worker transport management for construction workers - To be determined upon completion of the detailed engineering and construction, to be part of the proposed TACMP.
c) Traffic supervision plans during construction to identify any access routes that have higher than predicted traffic and/or delays - Refer to b.
d) Acceptable driving behaviour in S'ólh Téméxw - Minimum standards will be part of the TACMP for personnel driving Project related vehicles which will be a part of the TACMP or the Health and Safety Management Plan for the Project. The Health and Safety Management Plan will be filed with the NEB as per Draft Condition 38, 90 Days prior to the start of construction.
e) Schedules for the trucking of heavy loads to avoid peak traffic times and heavily-used intersections. - Refer to b.
f) The TACMP (or sub-plans as developed by the Contractor selected for construction) will prohibit no-construction parking/staging areas along key access routes to Big houses, boat launches, trailheads near bathing sites.

April 2019 Update:

Please see response to Recommendation 2.

May 2019 Update:

Access Management Plan interrelates with the Draft Stó:lō RSMT mitigation measures (#7 in attached RMST document).

Relevant TMC Commitment #s: 1640

Relevant NEB Conditions:

- 47 (Access Management Plans)
- 73 (Traffic Control Plans for Public Roadways)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

The Access management plan (Rev 3) was submitted by TMC March 2018. This document did not include information provided by Ts'elxwéyeqw Tribe in 2014.

Ts'elxwéyeqw Tribe have not had discussions with TMC regarding Commitment 1640 (Traffic and Access Control Management Plan (TACMP))

See Ts'elxwéyeqw Tribe response to recommendation 2 (workshops and updating alignment sheets)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Condition #73 requires TMC to develop a traffic control plan for public roadways that includes information regarding the timing and location of key construction activities, anticipated traffic volumes and flows, and an assessment of potential impacts associated with construction-related traffic, and mitigation measures. TMC was required to provide a summary of its consultations with potentially affected Aboriginal groups, including how any recommendations were incorporated in to the plan. This plan was submitted in July 2017.

The Access Management Plan (A90912), submitted in March 2018, references concerns and issues raised by Stó:lō, Collective, in relation to access management, as well as responses to those issues.

The Crown notes that under Commitment #1640, TMC has committed to engage with Stó:lō representatives prior to commencing construction to discuss any issues in regard to the Traffic and Access Control Management Plan. TMC is mandated to implement through NEB recommended Condition #2.

As discussed at the May 16, 2019 workshop, TMC is planning to hold Indigenous Engagement Roundtables. These roundtables would commence prior to construction, and provide the opportunity for Stó:lō communities to discuss construction scheduling and accommodation strategies to minimize impacts to Stó:lō people, including those resulting from increased traffic during construction.

Recommendation Addressed

Recommendation #61

Topic Area: Socio-Cultural, Oversight and Reporting
The TMEP will submit to Stó:lō and NEB for approval (or disapproval and/or amendment) the Worker Accommodation Strategy (TMEP Facility Application. Volume 6B, Application C, Section 8.4.4). The Worker Accommodation Strategy will include:

a) *A Plan for meeting with Stó:lō representatives and holding community meetings at least 6 months prior to arrival of construction teams in S'ólh Téméxw to inform Stó:lō people about construction activities, construction/work schedule, work force estimates, construction code of conduct, complaint procedure, potential safety issues, dates of future meetings, contact details of community liaison staff and construction hub locations.*
b) *A plan to schedule construction activities so that there are no construction crews in Stó:lō communities that are holding key cultural events, as described in the Inter-nation Gatherings Section.*
c) *A plan to ensure the temporary workers are not using rental housing in the study area and for monitoring short-term rental rates in the three hub communities and strategies to ensure any higher rental costs are not born by Stó:lō people.*

TMC Response (Last Update: May 19, 2019):

Consultation regarding the Worker Accommodation Strategy. Trans Mountain will submit to the NEB a Worker Accommodation Strategy as discussed in Volume 6B, Appendix C, Section 8.4.4 and discussed in the August 2014 response. Worker accommodation plans are not yet finalized; they continue to be developed during the detailed design and construction planning phase. Based on construction starting in May 2016, Trans Mountain anticipates the Worker Accommodation Strategy will be filed in November 2015. The Worker Accommodation Strategy will address all of the requirements of NEB Draft Condition 12 (Filing ID A3V8Z8), including the location of any temporary camps, the anticipated number of workers that will be housed, and will include a summary of how the plan addresses accommodation-related concerns or requests raised in consultation with municipal and provincial authorities. Trans Mountain can provide guidance on worker accommodation but will not be able to limit worker rental of local accommodations.

April 2019 Update:

The Worker Accommodation Strategy, pursuant to NEB Condition 59 and EAO Condition 23, was developed in consultation with Indigenous groups, appropriate government authorities and regulators during the 2016-2018 period. Stó:lō was included on various circulations of draft and updated versions of the Worker Accommodation Strategy as it was developed.

The most recent Worker Accommodation Strategy is reflected in the January 2018 filing with the EAO: https://projects.eao.gov.bc.ca/api/document/5a9eeaa58a909400249d99b9/fetch. This includes as an Appendix A the accepted NEB Condition 59 compliance filing, and also includes a summary of consultation activity and feedback related to the Strategy.

May 2019 Update:

The Worker Accommodation Strategy, pursuant to NEB Condition 59 and EAO Condition 23, was developed in consultation with Indigenous groups, appropriate government authorities and regulators during the 2016-2018 period. Stó:lō was included on various circulations of draft and updated versions of the Worker Accommodation Strategy as it was developed. The most recent Worker Accommodation Strategy is reflected in the January 2018 filing with the EAO: https://projects.eao.gov.bc.ca/api/document/5a9eeaa58a909400249d99b9/fetch. This includes as an Appendix A the accepted NEB Condition 59 compliance filing, and also includes a summary of consultation activity and feedback related to the Strategy.

In consideration of interests identified by Stó:lō and other Indigenous groups and stakeholders, worker accommodation was a monitoring topic area specified in the Trans Mountain Socio-Economic Effects Monitoring Plan (SEEMP) (NEB Condition 13, Filing ID A84618-3). Monitoring indicators pertinent to worker accommodation are also outlined in the EAO Condition 23 Worker Accommodation Strategy (see Appendix E). Rental vacancy rates and costs where data is available have been included as a context indicator in the SEEMP. It was also noted in the Worker Accommodation Strategy that In non-camp communities, and in camp communities with additional non-local workers, Contractors will conduct additional investigations with local chambers of commerce, hoteliers and RV park managers to identify interested suppliers and capacity. Contractors will prepare guidance and specifications for workers with respect to which accommodation venues may be utilized. Contractors will also work with municipal authorities regarding unique accommodation arrangements during anticipated community events,

As outlined in June 2017 in the compliance filing for NEB Condition 96 (A84533) and referenced in NEB Condition 13 SEEMP), Trans Mountain will be organizing Indigenous Engagement Roundtables during construction to understand and respond to construction-related questions and issues, including socio-economic effects related to workforce hosting. Trans Mountain welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives, which can initiate preconstruction as a mechanism to share information about planned construction activities, construction/work schedule, work force estimates, construction code of conduct, complaint procedure, potential safety issues. Roundtable planning is still in progress

Relevant TMC Commitment #s: NA

Relevant NEB Conditions:

- 13 (Socio-Economic Effects Monitoring Plan)
- 59 (Worker Accommodation Strategy)
- 62 (Construction schedule)
- 102 (Landowner and Tenant Complain Process/System)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Conditions, 59, 62 and 102 that require TM to provide information to the NEB do not address the ICA Recommendation.

Ts'elxwéyeqw Tribe's recommendation is to meet with TM to provide input on schedules and the accommodation strategies before they are finalized to avoid conflict with cultural activities and minimize impacts to Stó:lō people.

See Ts'elxwéyeqw Tribe response to ICA recommendation 2 (Workshops).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

As discussed at the May 16, 2019 workshop, TMC is planning to hold Indigenous Engagement Roundtables in partial fulfillment of Condition #13 and #96. These roundtables would commence prior to construction, and provide an ongoing opportunity for Stó:lō communities to discuss construction scheduling and accommodation strategies to minimize impacts to Stó:lō people. The Crown has requested that TMC add this commitment to their commitment tracker.

Condition #59 requires TMC to provide the NEB with information regarding the locations of temporary worker camps, the number of workers, and any policies, mitigation, or operational plans that will be implemented at least three months prior to commencing construction. Condition #62 requires TMC to file the construction schedule with the NEB that identifies major construction activities, at least there months prior to commencing construction.

In addition to the requirements under NEB Condition #59, B.C. EAO Condition #23 would require the proponent to include a description of how the potential environmental are socio-economic impacts of construction camps on potentially impacted terrestrial Aboriginal groups has been assessed, and a description of relevant mitigation measures.

Under B.C. EAO Condition #24, TMC must implement and enforce an employee and contractor code of conduct during construction and operations.

Please see also the Crown's response to Recommendation #46 regarding communication of construction schedules.

With respect to monitoring rental housing costs, the socio-economic effects monitoring plan (A84618) includes rental vacancy rates and costs as a context indicator to be monitored, where data is available.

Recommendation Addressed

Recommendation #62

Topic Area: Forestry, Wetlands, and Vegetation, Additional Studies
TMEP will fund Stó:lō representatives to carry out a pre-construction centerline survey of native vegetation areas within the ICA study area to identify project areas that may require special management for wildlife (i.e. gaps in overburden piles to facilitate wildlife passage, restricted clearing, alternate slash treatments for small mammal habitat, access controls etc.)

TMC Response (Last Update: May 19, 2019):

Trans Mountain will discuss additional surveys or commitments with employment or procurement with Stó:lō representatives.

April 2019 Update:

Any outstanding pre-construction assessments and/or mitigation surveys will be planned for the appropriate season prior to construction within the noted area of concern. Should additional surveys or assessments be required, Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory.

May 2019 Update:

See #23c and #27

Relevant TMC Commitment #s: 1642

Relevant NEB Conditions:

- 40 (Rare Ecological Community and Rare Plant Population Management Plan)
- 42 (grasslands survey and mitigation plan)
- 44 (Wildlife Species at Risk Mitigation and Habitat Restoration Plans)
- 96 (Reports on Engagement with Aboriginal Groups)
- 98 (Plan for Aboriginal group participation in construction monitoring)
- 155 (Rare Ecological Community and Rare Plant Population Mitigation Evaluation Report and Offset Plan)
- 71 (Riparian Habitat Management Plan)
- 151 (Post construction environmental monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 1642 to have a discussion is not a commitment to carry out the specific surveys requested in ICA recommendation 62.

These Plans (40, 42, 44 71, 155) were submitted by TMC in March 2018. These plans did not include the information provided by Ts'elxwéyeqw Tribe in 2014

See Ts'elxwéyeqw Tribe response to ICA recommendation 1 (compliance with commitments), 2 (comment on the Aboriginal Engagement Reports) and 12 (additional studies).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges the importance of the terrestrial environment, including native vegetation, in providing habitat for wildlife. There are a number of NEB conditions that focus on monitoring and addressing effects to terrestrial environments.

Please see the Crown's response to Recommendation #23 and #27.

Recommendation Addressed

Recommendation #63

Topic Area: Implementation, Mitigation
TMEP will implement the mitigation measures reference throughout the ICA, this would help address many of the concerns Stó:lō has about TMEP and would illustrate that TMEP understands and recognizes the importance of Stó:lō having a voice in developments taking place in S'ólh Téméxw.

TMC Response (Last Update: May 19, 2019):

Please see responses to each specific Recommendation within this table.

Relevant TMC Commitment #s: NA

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw response to ICA recommendation 1 (compliance with commitments), 2 (comment on the Aboriginal Engagement Reports), 4 (implementation of ICA recommendations).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown concurs with the goal of implementing new and existing mitigation and accommodations, where possible, that will help address many of the concerns Stó:lō has about the project, and will recognizes the importance of Stó:lō having a voice in developments taking place in S'ólh Téméxw.

Recommendation #64

Topic Area: Socio-Cultural
TMEP will collaborate with Stó:lō representatives on how to engage in a process of dialogue that recognizes and respects Stó:lō governance structures. This would include:

a) *Respect for Stó:lō snoweyelh and policy included, for example, in the Stó:lō Heritage Policy and S'ólh Téméxw Use Plan;*
b) *Recognize and respect Stó:lō worldview and potential impacts by addressing cumulative impacts and negative outstanding, historical effects and infringements of existing pipeline and right-of-way;*
c) *Recognize, respect and participate in traditional decision making protocols and practices;*
d) *Capacity support for the re-establishment of these protocols and practices within Stó:lō communities*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendations 2 and 4.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss the process for dialogue that recognized and respects Stó:lō governance structures with S'ólh Téméxw and therefore has not created an engagement plan. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning and communications.

Relevant TMC Commitment #s: 896, 1613

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 896 and 1613 and condition 2 do not address this ICA recommendation.

See Ts'elxwéyeqw Tribe response to ICA recommendation 1 (compliance with commitments), 2 (comment on workshops and the Aboriginal Engagement Reports), 4 (implementation of ICA recommendations)

Ts'elxwéyeqw Tribe would like a commitment that the Agreements referred to in ICA recommendation 4 will recognize the governance structures, policies and protocols listed in ICA recommendation 64.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes the importance of respecting Stó:lō governance structures during ongoing engagement. At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. This agreement could include how TMC can recognize and respect Stó:lō governance structures. The Crown has requested that TMC update their commitment tracker to include this commitment.

In partnership with Stó:lō representatives, Trans Mountain has committed to developing a mutually agreeable process for continued engagement. Under Condition #2, TMC must implement these commitments.

B.C. EAO Condition #13 requires proponents to consult with Aboriginal Groups to identify opportunities for cultural awareness and recognition. TMC must offer opportunities to Aboriginal Groups that include holding ceremonies, installing signage, executing cultural protocols, recognizing cultural heritage, and providing cultural awareness training to Project personnel. If specific opportunities for cultural awareness and recognition are requested by an Aboriginal Group, TMC must determine the scope and content of the cultural awareness and recognition opportunity and associated activities, in consultation with the Aboriginal Group and must support or conduct such activities, or must provide a rationale to the Aboriginal Group explaining why a specific request or activity is not practicable.

Recommendation Addressed

Recommendation #65

Topic Area: Socio-Cultural, Mitigation
As part of the Work Accommodation Strategy (TMP Application. Vol. 6B, App C, Section 8.4.4) listed in the TMEP Application, the TMEP will:

a) *Work with Stó:lō representatives to identify the dates of key cultural and spiritual inter-nation gatherings, and schedule construction activities around those dates. (For example, the Project will plan the construction schedule so that construction workers are not using hotels in the Chilliwack area during the days that the Cultus Lake Water Sports and War Canoe Races are held. This would reduce the pressure on hotels during this inter-nation gathering.)*
b) *The TMEP construction schedule will be finalized 6 months prior to commencing construction and shared with Stó:lō representatives at that time. This would allow Stó:lō representatives enough time to share this information with their people prior to the inter-nation gatherings.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to working with Stó:lō representatives to minimize scheduling conflicts and requests that key dates are provided to Trans Mountain six months prior to construction for the inclusion in final construction planning.

April 2019 Update:

It is now Condition 62 that requires Trans Mountain to file with the NEB, at least 3 months prior to commencing construction, a Construction schedule identifying the major construction activities expected and, on a monthly basis, on the first working day of each calendar month from the commencement of construction until after commencing operations, updated detailed construction schedules.

Trans Mountain remains committed to engaging with Stó:lō representatives to minimize scheduling conflicts, and respectfully requests that key dates are provided to Trans Mountain 3 months prior to the start of construction for consideration in construction planning.

As outlined in June 2017 in the compliance filing for NEB Condition 96 (A84533), Trans Mountain will be organizing Indigenous Engagement Roundtables during construction to Understand and respond to construction-related questions and issues, including socio-economic effects. Trans Mountain welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives.

May 2019 Update:

As outlined in June 2017 in the compliance filing for NEB Condition 96 (A84533) and referenced in NEB Condition 13 SEEMP), Trans Mountain will be organizing Indigenous Engagement Roundtables during construction to understand and respond to construction-related questions and issues, including socio-economic effects related to workforce hosting. Trans Mountain

welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives, which can initiate preconstruction as a mechanism to share information about planned construction activities, construction/work schedule, work force estimates, construction code of conduct, complaint procedure, potential safety issues. Roundtable planning is still in progress.

Trans Mountain remains committed to engaging with Stó:lō representatives to minimize scheduling conflicts, and respectfully requests that key dates are provided to Trans Mountain 3 months prior to the start of construction for consideration in construction planning.

Relevant TMC Commitment #s: 1643

Relevant NEB Conditions:

- 62 (Construction schedule)
- 96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe’s response to ICA recommendation 61 (worker accommodation strategy and construction scheduling)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown’s response to recommendation #61.

At the May 16, 2019 workshop between Ts’elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts’elxwéyeqw to develop a Tribe-specific agreement for ongoing engagement. The Crown has requested that TMC update their commitment tracker to include this commitment.

Under Commitment #1643, TMC is committed to working with Stó:lō representatives to minimize scheduling conflicts and requests that key dates are provided to TMC three months prior to construction for the inclusion in final construction planning. TMC has further committed to provide these schedules, alignment sheets, and other reference material 90 days (three months) prior to the start of construction.

The Crown notes that Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least three months prior to commencing construction.

Recommendation Addressed

Recommendation #66

Topic Area: Traffic Management, Mitigation
As part of the Access Control Management Plan (TMEP Facility Application. Volume 6B, Section 8.4.4, Appendix C) listed in the TMEP Application, the TMEP will:

a) *Provide bussing or some other form of worker transport management for construction workers, between the accommodation locations and the construction site.*
b) *Schedule the trucking of heavy loads to avoid peak traffic times and heavily-used intersections*
c) *Prohibit construction parking/staging areas along key access routes to Bighouses, boat launches, trailheads near bathing sites. Refer to Sections 9.0: Travel Corridors and Section 7.0: Spiritual Areas for more specific recommendations related to these features*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to the Traffic Mitigation Measures as part of the Socio-Economic Mitigation and Enhancement measures outlined in the TMEP Facility Application (Volume 6B, Section 8.4.3, Appendix C). Trans Mountain will continue engagement with Stó:lō on this recommendation, but this recommendation requires Stó:lō representatives to identify necessary, supporting information 4 months prior to construction.

April/May 2019 Update:

Trans Mountain prepared a detailed Traffic Access and Control Management Plan (TACMP) (A84149-2) pursuant to NEB Condition 73. The TACMP outlines minimum requirements for Contractor Traffic Management Plans for each contract//location. The TACMP discusses: use of shuttles, buses, or carpooling; oversize vehicles; and provides traffic assessments of key construction locations (see Section 7.13 for traffic assessment of key construction locations for Spread 5B & 6 in the Hope, Chilliwack, Abbotsford areas).

Trans Mountain remains committed to engaging with Stó:lō and respectfully requests that supporting information is provided to Trans Mountain 3 months prior to the start of construction for consideration in construction planning.

Please also refer to the response to Recommendation 65 regarding the opportunity to establish an Indigenous Engagement Roundtable during construction.
(Timeframe = immediate)

Relevant TMC Commitment #s: 91

Relevant NEB Conditions:

- 47 (Access Management Plans)
- 73 (Traffic Control Plans for Public Roadways)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Tribe response to ICA recommendation 60 (access and traffic management).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown’s response to recommendation #60.

Recommendation Addressed

Recommendation #67

Topic Area: Economic and Community Development, Employment and Procurement
Three key mitigations that are referenced further below are based on a commitment by TMEP to:

a) *Have approximately 20% to 30% of their workforce in Hope, Chilliwack and Abbotsford be Stó:lō members; for both construction and operation phases or equivalent value in community investment or training. Note: this is 20% to 30% of the overall workforce in the three hubs, not 20% to 30% of the 10% local hires that TMEP indicated.*
b) *Offer equity ownership option in the TMEP to Stó:lō First Nations, based on the value of the Project within S'ólh Téméxw, or the equivalent value in other financial opportunities.*
c) *Of the contracting and procurement opportunities for businesses in S'ólh Téméxw, approximately 20% to 30% of the total contracted amount would go to Stó:lō companies for both construction and operation or equivalent value in community investment or training.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to maximizing Aboriginal procurement opportunities with the Project. Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss opportunities related to procurement.

May 2019 Update:

Trans Mountain is committed to maximizing Indigenous employment and procurement opportunities with the Project, however Trans Mountain has not committed to 20-30% Stó:lō employment and procurement for the three construction hubs in S'ólh Téméxw (i.e., Hope, Chilliwack, Abbotsford).

Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss opportunities related to employment and procurement. Please refer to the responses provided to Recommendations 68, 69 and 70.

Equity ownership is not an option.

Relevant TMC Commitment #s: 3580

Relevant NEB Conditions:

- 11 (Aboriginal, local, and regional skills and business capacity inventory)
- 12 (Training and Education Monitoring Plan)
- 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

This is something that needs to be addressed between TMC and the Tribe.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes that employment and training opportunities associated with the Project are key benefits for Indigenous individuals, communities and businesses.

The Crown concurs with Ts'elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC.

Under Commitment #3580, TMC has committed to continue its engagement with Aboriginal, local and regional communities to develop training, employment and procurement opportunities for the Project.

In order to provide information to the NEB, local communities, and Indigenous groups about the final development and implementation of such initiatives, Condition #12 would require TMC to develop a training and education monitoring plan, and to report on Aboriginal, local and regional training and education measures and opportunities for the Project (Condition #58). In addition, Condition #107 requires TMC to file a report on Aboriginal, local and regional employment and business opportunities for the Project throughout the construction period.

B.C. EAO Condition #10f requires the proponent to describe the actions TMC has taken or will take to provide training, employment, business, and contracting opportunities to Aboriginal Groups as part of the required Aboriginal Consultation Reports.

The Crown understands that while TMC has committed to maximizing Indigenous procurement and employment opportunities, that some of the aspects of this recommendation are beyond TMC's ability to ensure or provide (e.g. quotas in terms of Stó:lō employment and procurement, or equity in the project).

The Crown understands Ts'elxwéyeqw's interest in financial opportunities in relation to the Project. In the event of GIC approval of the Project, and as set out in the Minister of Finance's letter to Ts'elxwéyeqw Tribe of March 15, 2019, the Minister of Finance intends to engage in a principled and collaborative discussion with potentially impacted Indigenous communities, including the Tribe, regarding the potential for economic participation in the Project. Finance Canada has proposed the following principles for economic participation:

- Potentially impacted Indigenous communities could have an opportunity for meaningful economic participation in the Project;
- Participation of Indigenous groups could help the economic development of their communities in keeping with the spirit of reconciliation;

- The Government of Canada invested in the TMC and the Project to benefit all Canadians; and
- The Project would be built and operated on a commercial basis.

Recommendation Partially Addressed

Recommendation #68

Topic Area: Employment and Procurement, Economic and Community Development
In addition to the TransMountain Training Policy for Aboriginal People and the Aboriginal Procurement Policy, the TMEP must file with the Stó:lō and NEB, for approval (or disapproval and/or amendment) , at least 12 months prior to commencing construction, an Aboriginal skills and business capacity inventory in S'ólh Téméxw for the Project. The inventory will include:

a) *A summary of Stó:lō's worker skills and business capacity, including a definition of what qualifies as a Stó:lō business;*
b) *An analysis of the ability of Stó:lō companies and workers to meet TMEP employment and business opportunities for the Project, both during construction and operation;*
c) *A description of identified or potential skills and business capacity gaps between Stó:lō companies and workers capacity and the skills and services needed by TMEP;*
d) *TMEP will describe specific measures to address the gap, through support or increase skills or capacity development (including details of timing of training programs, funding provided by TMEP, locations, etc.);*
e) *Plans for communicating with Stó:lō workers and companies regarding skills and business capacity, any identified gaps, and any proposed measures to support or increase skills or capacity; and*
f) *TMEP will file with Stó:lō representatives and NEB, at least 6 months prior to commencing construction, any updates on the above mitigations.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss opportunities related to procurement.

April 2019 Update:

Trans Mountain developed an Aboriginal, local and regional skills and business capacity inventory (the capacity inventory), filed February 2017. Trans Mountain worked with Stó:lō representatives to gather community-level information on Aboriginal labour force.

Data for the Project-wide capacity inventory will continue to be collected through the construction planning and construction phase. An update to the capacity inventory was filed with the NEB May 2017and can be shared with Stó:lō representatives at their request.

Trans Mountain remains committed to work directly and collaboratively with Stó:lō representatives to develop a Project-specific economic development strategy.

May 2019 Update:

Trans Mountain has worked with Stó:lō representatives to gather community-level information on Indigenous labour force (as outlined in the letter shared by Trans Mountain on February 12, 2015) and business capacity for Stó:lō communities (as outlined in the letter shared by Trans Mountain on February 5, 2015).

Trans Mountain developed an Indigenous, Local and Regional Skills and Business Capacity Inventory (the capacity inventory), filed February 2017, with an update filed May 2017, and includes items a-f. Trans Mountain worked with Indigenous groups, including Stó:lō representatives to gather community-level information on Indigenous labour force.

Trans Mountain will continue to update and collect capacity data through the construction planning and construction phase and welcomes Stó:lō representatives participation in this activity. Trans Mountain General Construction Contractors, under Trans Mountain's management, will also work with Indigenous groups, including Stó:lō to collect and understand capacity and interests to support employment and training of Stó:lō members. The Indigenous, Local and Regional Skills and Business Capacity Inventory filed with the NEB is available to the public, however Trans Mountain can share reports with Stó:lō representatives at their request and be available to review the data.

Trans Mountain would like to continue working collaboratively with Stó:lō representatives to provide information on implementation of Project-specific economic development strategies that include:

- utilization of data obtained through the capacity inventory collection process
- continued discussion of Stó:lō skill and business capacity gaps in context of the needs of the Project;
- follow up on Stó:lō-specific training and/or capacity development initiatives in response to any identified capacity gaps related to Project needs and transferrable skills; and
- discuss and develop plans for communicating with Stó:lō workers and companies about the results of the Stó:lō specific capacity inventory and identified training and/or capacity development measures.

Trans Mountain remains committed to work directly and collaboratively with Stó:lō representatives to share information and reports. Trans Mountain welcomes the opportunity to meet with Stó:lō representatives to provide details and information on NEB filings of *Indigenous, Local, and Regional Skills and Business Capacity Inventory.*

Relevant TMC Commitment #s: 1645

Relevant NEB Conditions:

- 11 (Aboriginal, local, and regional skills and business capacity inventory)
- 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response to ICA recommendation 67. This is something that needs to be addressed between TMC and the Tribe.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown concurs with Ts'elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC.

Condition #11 would require the TMC to submit an Aboriginal, local, and regional skills and business capacity inventory at least six months prior to commencing construction. It would include a summary of Aboriginal, local, and regional skills and business capacity, an analysis of the Aboriginal, local and regional capacity for employment and business opportunities for the Project, a description of identified or potential skills and business capacity gaps, any proposed measures to address them or to support or increase skills or capacity, and communications plans for this information.

In addition, Condition #11 would require TMC to file ongoing reports on Aboriginal, local, and regional employment and business opportunity monitoring reports, which would include summaries of consultation with Aboriginal groups regarding any issues or concerns related employment and business opportunities, and how TMC has addressed and responded to them.

B.C. EAO Condition #10f requires the proponent to describe the actions TMC has taken or will take to provide training, employment, business, and contracting opportunities to Aboriginal Groups as part of the required Aboriginal Consultation Reports.

The Crown notes that under Commitment #1645, TMC has committed to continued engagement with Stó:lō representatives to discuss opportunities related to procurement, which TMC must implement through the NEB recommended Condition #2.

Recommendation Addressed

Recommendation #69

Topic Area: Employment and Procurement, Economic and Community Development
TMEP will file with Stó:lō and NEB, for approval (or disapproval and/or amendment) , at least 3 months prior to commencing construction, a plan for monitoring Aboriginal, local, and regional employment for the Project. The plan will include:

a) *a description of, and rationale for selecting, the elements or indicators that will be monitored to track Aboriginal employment, including those specific to tracking progress toward meeting commitment of 20% to 30% per cent Aboriginal employment for the three hubs in S'ólh Téméxw (Hope, Chilliwack and Abbotsford);*
b) *a description of, and rationale for selecting, the elements or indicators that will be monitored to track Stó:lō contracting and procurement for the Project, including those specific to tracking progress toward meeting commitment of 20% to 30% per cent procurement for Stó:lō businesses, or the three hubs in S'ólh Téméxw (Hope, Chilliwack and Abbotsford)*
c) *the monitoring methods and schedule, including information and data sources for the elements or indicators being monitored; and*
d) *plans for consulting and reporting on Aboriginal employment and contracting and procurement with Stó:lō.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain will discuss the opportunity to develop community-specific approaches to consult on, and share information related to, the outcomes of the Aboriginal, local and regional employment and business opportunities monitoring. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes.

April 2019 Update:

Trans Mountain filed NEB c11 report February 2017, with an update to the report filed May 2017 outlining the process and framework for monitoring Indigenous, local, and regional employment and business opportunities, including indicators and reporting schedule.

Trans Mountain filed NEB c107 report December 2017 and every six months thereafter reporting indicators monitored. All reports are available to Stó:lō- representatives.

Trans Mountain will discuss the opportunity to develop community-specific approaches to consult on, and share information related to, the outcomes of the Aboriginal, local and regional employment and business opportunities monitoring. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes.

May 2019 Update:

Trans Mountain developed an Indigenous, Local, and Regional Employment and Business Monitoring Report for the TMEP plan to monitor and report on Indigenous local and regional employment and business opportunities during the construction phase of the Project. Trans Mountain filed the plan with the NEB in December 2017 and has since filed every six months thereafter. The initial Indigenous, Local, and Regional Employment and Business Monitoring Report for the TMEP outlined the process and framework for monitoring Indigenous, local and regional employment and business opportunities, including indicators to be monitored, rationale for those indicators, methods for data collection, and the schedule for reporting of monitoring results.

Trans Mountain welcomes the opportunity to discuss community-specific approaches to consult on, and share information related to, the outcomes of the Indigenous, local and regional employment and business opportunities monitoring reports. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes. This will be in addition to the information provided in the Indigenous, Local, and Regional Employment and Business Monitoring Report for the TMEP filed with the NEB.

All reports are available to Stó:lō- representatives, however Trans Mountain welcomes the opportunity to meet with Stó:lō representatives to review the reports and answer questions regarding all elements of the plan.

Relevant TMC Commitment #s: 1646

Relevant NEB Conditions:

- 11 (Aboriginal, local, and regional skills and business capacity inventory)
- 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Response to ICA recommendation 67, 68. Further discussion is required between TMC and the Tribe.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown concurs with Ts’elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC.

Condition #11 would require the TMC to submit an Aboriginal, local, and regional skills and business capacity inventory at least six months prior to commencing construction. It would include a summary of Aboriginal, local, and regional skills and business capacity, an analysis of the Aboriginal, local and regional capacity for employment and business opportunities for the Project, a description of identified or potential skills and business capacity gaps, any proposed measures to address them or to support or increase skills or capacity, and communications plans for this information.

In addition, Condition #11 would require TMC to file ongoing reports on Aboriginal, local, and regional employment and business opportunity monitoring reports, which would include summaries of consultation with Aboriginal groups regarding any issues or concerns related employment and business opportunities, and how TMC has addressed and responded to them.

B.C. EAO Condition #10f requires the proponent to describe the actions TMC has taken or will take to provide training, employment, business, and contracting opportunities to Aboriginal Groups as part of the required Aboriginal Consultation Reports.

The Crown notes that under Commitment #1646, TMC has committed to discuss the opportunity to develop community-specific approaches to consult on, and share information related to, the outcomes of the Aboriginal, local and regional employment and business opportunities monitoring. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes.

The Crown understands that while TMC has committed to maximizing Indigenous procurement and employment opportunities, that quotas in terms of Stó:lō employment and procurement may be beyond TMC's ability to provide.

Recommendation Partially Addressed

Recommendation #70

Topic Area: Economic and Community Development, Employment and Procurement
TMEP will file with Stó:lō and NEB, within 3 months after commencing construction, and every 12 months thereafter through construction and during the operation of the Project, monitoring reports for Aboriginal employment and procurement for the Project within S'ólh Téméxw. The reports must include:

a) *a summary of the elements or indicators monitored;*
b) *a summary and analysis of Aboriginal employment and procurement during the reporting period, including:*
    i. *progress made toward meeting TMEP commitment of 20% to 30% Stó:lō employment and 20% to 30% of procurement contracts for the three hubs in S'ólh Téméxw;*
    ii. *an explanation of why the targets for Stó:lō employment and procurement, if they are not met;*
    iii. *the proposed measures to address identified or potential gaps or barriers in meeting the targets; and*
c) *a summary of TMEP consultation with Stó:lō regarding employment and contracting for the reporting period. This summary must include any issues or concerns raised and how TMEP has addressed or responded to them.*

TMC Response (Last Update: May 19, 2019):

In addition to an agreement between Stó:lō and Trans Mountain to create a Project-specific economic development strategy, Trans Mountain will engage directly with Stó:lō representatives during each Aboriginal, local and regional business opportunities monitoring cycle. Trans Mountain will develop a summary of business opportunities (based on the monitoring indicators) specific to the Stó:lō communities. Trans Mountain will discuss each Stó:lō-specific Aboriginal, local and regional business opportunity monitoring outcome with Stó:lō representatives, as part of the mutually agreed upon engagement strategy, and identify any new opportunities to further enhance business opportunities for Stó:lō members.

May 2019 Update:

Trans Mountain has not committed to 20-30% Stó:lō employment and procurement for the three construction hubs in S'ólh Téméxw (i.e., Hope, Chilliwack, Abbotsford); however, Trans Mountain is committed to maximizing employment and training opportunities for Stó:lō members.

As noted in the response to Recommendation 70, the initial Indigenous, Local, and Regional Employment and Business Monitoring Report for the TMEP outlines the process and framework for monitoring Indigenous, local and regional employment and business opportunities, including indicators to be monitored, rationale for those indicators, methods for data collection, schedule for reporting of monitoring results, and summary of consultation with Indigenous groups.

B.C. EAO Condition #10f requires the proponent to describe the actions TMC has taken or will take to provide training, employment, business, and contracting opportunities to Aboriginal Groups as part of the required Aboriginal Consultation Reports.

In addition to an agreement between Stó:lō and Trans Mountain to discuss and develop a Project-specific economic development strategy, Trans Mountain will engage directly with Stó:lō representatives during each Indigenous, local and regional employment and business opportunities monitoring cycle. Trans Mountain has developed a summary of employment and business opportunities specific to construction activities that include the Stó:lō communities. Trans Mountain will discuss each Stó:lō-specific Indigenous, local and regional employment and business opportunity monitoring outcome with Stó:lō representatives, as part of the mutually agreed upon engagement strategy, and identify any new opportunities to further enhance employment or business opportunities for Stó:lō members or businesses.

Trans Mountain provides a summary of consultation with Indigenous groups, including Stó:lō, regarding employment and contracting for the reporting period. This summary includes issues or concerns raised and how TMEP has addressed or responded to them. This summary can be found in the Indigenous, Local, and Regional Employment and Business Monitoring Report for the TMEP. Trans Mountain welcomes the opportunity to discuss the summary with Stó:lō representatives, including issues or concerns raised and how TMEP will respond to them.

Relevant TMC Commitment #s: 3570

Relevant NEB Conditions:

- 11 (Aboriginal, local, and regional skills and business capacity inventory)
- 107 (Aboriginal, local, and regional employment and business opportunity monitoring reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts’elxwéyeqw Response to ICA recommendation 67, 68.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown concurs with Ts’elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC.

Please see also the Crown’s response to Recommendation #67, #68, and #69.

The Crown notes that under Commitment #3570, TMC has committed to engage directly with Stó:lō representatives during each Aboriginal, local and regional business opportunities

monitoring cycle. TMC will develop a summary of business opportunities (based on the monitoring indicators) specific to the Stó:lō communities. TMC will also discuss each Stó:lō-specific Aboriginal, local and regional business opportunity monitoring outcome with Stó:lō representatives, as part of the mutually agreed upon engagement strategy, and identify any new opportunities to further enhance business opportunities for Stó:lō members.

The Crown understands that while TMC has committed to maximizing Indigenous procurement and employment opportunities, that quotas in terms of Stó:lō employment and procurement may be beyond TMC's ability to provide.

Recommendation Addressed

Recommendation #71

Topic Area: Economic and Community Development, Oversight and Reporting
TMEP must file with the Stó:lō and NEB, within 6 months after commencing construction a plan on how the TMEP will work with Stó:lō businesses to ensure their existing business activities are not negatively impacted by the construction or operation of the TMEP. This will include:

a) *Details on TMEP contracting for services S'ólh Téméxw*
b) *In collaboration with Stó:lō representatives , an analysis of any changes in service contracting costs for Stó:lō businesses and the influence that TMEP has on these changes.*
c) *TMEP strategies for mitigating any effect they have.*
d) *The plan will be updated every 6 months during construction and every 12 months thereafter through operations.*

TMC Response (Last Update: May 19, 2019):

During the construction phase, Trans Mountain will discuss any unanticipated adverse effects on Stó:lō businesses related to the construction of the Project during the mutually agreed to on-going engagement between Stó:lō and Trans Mountain. Additional mitigation will be developed, as required, if and as such adverse effects are identified.

April 2019 Update:

Please refer to the updated response to Recommendation 65 regarding the opportunity to develop an Indigenous Engagement Roundtable during construction, as a mechanism understand and respond to construction-related questions and issues, including socio-economic effects.

Trans Mountain welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives.
(Timeframe = immediate)

May 2019 Update:

In consideration of interests identified by Stó:lō and other Indigenous groups and stakeholders related to construction, the Trans Mountain Socio-Economic Effects Monitoring Plan (SEEMP) (NEB Condition 13, Filing ID A84618-3) specifically included access limitations, road closures and business impacts as categories / themes that would be identified with respect to Indicator #11 in Table 3 (evaluating number and types of calls/complaints received through TMEP feedback line, by Indigenous versus non-Indigenous, by location, by topic).

As outlined in June 2017 in the compliance filing for NEB Condition 96 (A84533) and referenced in NEB Condition 13 SEEMP), Trans Mountain will be organizing Indigenous Engagement Roundtables during construction to understand and respond to construction-related questions and issues, including socio-economic effects. Trans Mountain welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives.

Relevant TMC Commitment #s: 356

Relevant NEB Conditions:

- 13 (Socio-Economic Effects Monitoring Plan)
- 96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

TMC Commitment 356 to discuss unanticipated adverse effects on Stó:lō businesses is not a commitment to collaborate with Ts'elxwéyeqw Tribe to analyze and report on impacts to Stó:lō businesses and other social impacts.

See Ts'elxwéyeqw Tribe response to ICA recommendation 4 (implementation).

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown notes that TMC has responded to this recommendation through Commitment #356. TMC has committed to discuss any unanticipated adverse effects on Stó:lō businesses related to the construction of the Project during the mutually agreed to on-going engagement between Stó:lō and TMC. Additional mitigation will be developed, as required, if and as such adverse effects are identified. TMC must implement through the NEB recommended Condition #2.

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. The Crown has requested that TMC update their commitment tracker to include this commitment.

Recommendation Partially Addressed

Recommendation #72

Topic Area: Safety and Emergency Response, Oversight and Reporting
TMEP will file with the Stó:lō and NEB, within 3 months after commencing construction, and every 12 months thereafter through operations, a report, in collaboration with Stó:lō representatives, reports on Stó:lō economic activities such as forestry, fisheries, agriculture and tourism. The report will highlight updates on the TMEP and BC's budget for environmental emergency programs (annual spill prevention, compliance and management budgets). Explaining how TMEP is funding gaps between government spill response abilities under B.C.'s Environmental Emergency Program.

TMC Response (Last Update: May 19, 2019):

Please see responses to each specific Recommendation within this table.

April 2019 Update:

Trans Mountain welcomes the opportunity to discuss the implementation of Emergency Response Management (ERM) training, specific to Stó:lō representatives or members of the Stó:lō Collective

May 2019 Update:

Trans Mountain does not intend to provide or file additional reports on Stó:lō economic activities such as forestry, fisheries, agriculture and tourism, as this is unrelated to the Project. Potential effects and mitigation measures related to forestry, agriculture, and outdoor recreation are discussed in Section 7.2.4 (Human Occupancy and Resource Use) of Volume 5B (Filing ID A3S1S7). Potential effects and mitigation measures related to business and livelihood disruption are discussed in Section 7.2.7 (Employment and Economy) of Volume 5B (Filing ID A3S1S7). Potential effects and mitigation related to fish and fish habitat are discussed in Section 7.2.7 (Fish and Fish Habitat) of Volume 5A (Filing ID A3S1Q9).

Trans Mountain welcomes the opportunity to discuss the implementation of Emergency Response Management (ERM) training, specific to Stó:lō representatives or members of the Stó:lō Collective

Trans Mountain cannot comment on the BC budget.

Relevant TMC Commitment #s: NA

Relevant NEB Conditions:

- 13 (Socio-Economic Effects Monitoring Plan)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The NEB noted that the Project presents an economic opportunity for Indigenous communities, but also concluded that the ability of Indigenous groups to use lands, waters, and resources would be temporarily interrupted during construction and during routine maintenance. Construction and operation of the Project have the potential to limit economic aspirations for the area. The 18-m easement that remains over the operating life of the Project would limit the economic uses of the area to certain type of activities that do not conflict with the underground pipeline.

The Crown notes that TMC has responded to this recommendation through Commitment #356. TMC has committed to discuss any unanticipated adverse effects on Stó:lō businesses related to the construction of the Project during the mutually agreed to on-going engagement between Stó:lō and TMC. Additional mitigation will be developed, as required, if and as such adverse effects are identified. TMC must implement through the NEB recommended Condition #2.

At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. The Crown has requested that TMC update their commitment tracker to include this commitment.

Please see also the Crown's response to Recommendation #73 regarding the spill liability regime.

Recommendation Partially Addressed

Recommendation #73

Topic Area: Safety and Emergency Response, Oversight and Reporting
Details on how TMEP will ensure that Stó:lō economic activities will be compensated should the Project be deemed responsible for any lost production, damage to equipment or remediation work required as a result of TMEP activities, a leak or a spill.

TMC Response (Last Update: May 19, 2019):

Should businesses experience lost revenue as a direct result of the construction or operations of the Trans Mountain Expansion Project, Trans Mountain would intend to employ 'actual loss' compensation for any reductions in revenue caused by the construction and operation of the pipeline.

May 2019 Update:

In the low likelihood event of an emergency and demonstrated damage as a result of an incident caused by Trans Mountain's facilities or operations, Trans Mountain will work with affected individuals and landowners to provide compensation as quickly and efficiently as possible.

Trans Mountain's corporate responsibility and regulatory obligation is to first minimize any potential impacts or damages to the extent practical by using and adapting responsive construction and operations practices; and second, providing mitigation to reverse or treat any remaining impacts. A comprehensive assessment of potential impacts is documented in the Environmental and Socio-Economic Assessment included in Volume 5A (Filing IDs A3S1Q9, A3S1R0, A3S1R1 and A3S1R2), Volume 5B (Filing IDs A3S1S7, A3S1S8, A3S1S9 and A3S1T0). Pipeline and Facility specific Environmental Protection Plans (EPPs) were provided in Volume 6B (Filing IDs A3S2S3 and A3S2S4) and Volume 6C (Filing IDs A3S2S6 and A3S2S7), respectively. These EPPs contain recommended mitigation measures and contingency plans for anticipated impacts that could be experienced during construction.

The construction practices and mitigation measures documented have been developed through extensive experience with previous pipeline Projects and have proven to be successful in avoiding and mitigating potential impacts. Through the use of these measures, Trans Mountain believes that potential impacts will be managed, and compensation will not be required for temporary construction issues or during normal operations.

Should businesses experience lost revenue as a direct result of the construction or operations of the Trans Mountain Expansion Project, Trans Mountain would intend to employ 'actual loss' compensation for any reductions in revenue caused by the construction and operation of the pipeline. In order to determine 'actual loss', Trans Mountain would utilize the services of a finance or accounting professional with expertise in business management. Working with the business, the accountant would assess any net financial impact including lost revenues and associated costs. The accountant would compare revenues and expenses from prior years, examine any other relevant factor which might affect business, and obtain comparative usage

and financial information from other similar businesses within the region. Using this information, Trans Mountain, working in conjunction with the business, would determine whether any material reduction in net revenues had occurred. Any compensation for lost revenues would be based upon this assessment.

Relevant TMC Commitment #s: 3832

Relevant NEB Conditions:

- 121 (Financial Assurances Plan - Operations Phase)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes that an oil spill within Stó:lō traditional territory could negatively affect economic activities, including agriculture, fishing, forestry, tours, and other businesses.

The *Pipeline Safety Act*, which first came in to effect in June 2016, addresses companies' responsibilities in relation to a spill. Key aspects of this legislation include:

- Introducing absolute liability for all NEB-regulated pipelines, meaning that companies will be liable for costs and damages irrespective of fault — $1 billion for companies operating major oil pipelines — the only absolute liability that exists among our peer jurisdictions (U.S., the UK and Australia). Companies continue to have unlimited liability when at fault or negligent.
- Providing the NEB authority to order reimbursement of any clean-up costs incurred by governments, communities or individuals.
- Providing the NEB authority and resources to take control of incident response if a company is unable or unwilling to do so (i.e., in exceptional circumstances); and
- Requiring companies operating pipelines to hold a minimum level of financial resources, set at $1 billion for companies operating major oil pipelines.

Condition #121 would require TMC to file a Financial Assurances Plan with NEB six months prior to applying for leave to open Line 2. The plan must include details of the financial resources and secured sources of funds that will be necessary to pay, without limitation, all actual loss or damage, costs and expenses, including cleanup and remediation, and loss of non-use value relating to non-use of a public resource associated with an unintended or uncontrolled release from the Project during the operations phase. The Financial Assurances Plan includes a requirement for third party liability insurance structured on a multi-year basis, recognizing potential loss of income by persons sustaining damage caused by Trans Mountain, over a reasonable number of years after the event. TMC's Financial Assurances Plan must provide total coverage of 1.1 billion dollars to cover these costs. This includes unfettered access

to at least $100 million to cover costs, including compensation to third parties for losses and damages in the near term, while insurance claims are being processed.

Recommendation Addressed

Recommendation #74

Topic Area: Community Health and Well Being
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *A Complaints Registration Plan. This will establish a process by which Stó:lō people can raise complaints or concerns related to TMEP activities or workers. This process will deal with all complaints, such as, concerns about behaviour of TMEP construction workers, while on or off duty. Ensure this process includes protocols for timely follow-up by Trans Mountain and/or its Contractors and transparent issue resolution, and communicate this process to Stó:lō communities.*

TMC Response (Last Update: May 19, 2019):

As noted in section 8.4.11 of the Socio-Economic Management Plan in Appendix C of Volume 6B (Filing ID A3S2S3),Trans Mountain is committed to establishing a process by which community members can raise complaints or concerns related to Project activities or workers. Trans Mountain will ensure this process includes protocols for timely follow-up by Trans Mountain and/or its Contractors and transparent issue resolution. Trans Mountain will communicate this process to communities.

April 2019 Update:

Trans Mountain has developed a Project Complaints Process to align with industry best practice, meet NEB condition requirements, and fulfill commitments made to Intervenors and communities through the regulatory proceedings. The Project Complaints Process is described in Section 9.0 of the Fugitive Emissions Management Plan for Westridge Marine Terminal (A84416-3).

Feedback received through the complaints line will also inform the Socio-Economic Effects Monitoring Plan (SEEMP) outlined in NEB Condition 13 (Filing ID A84618-3).

May 2019 Update:

Trans Mountain has developed a Project Complaints Process to align with industry best practice, meet NEB condition requirements, and fulfill commitments made to Intervenors and communities through the regulatory proceedings. The Project Complaints Process is described in Section 9.0 of the Fugitive Emissions Management Plan for Westridge Marine Terminal (A84416-3).

Feedback received through the complaints line will also inform the Socio-Economic Effects Monitoring Plan (SEEMP) outlined in NEB Condition 13 (Filing ID A84618-3).
Relevant TMC Commitment #s: 1650

Relevant NEB Conditions:

- 13 (Socio-Economic Effects Monitoring Plan)
- 96 (Reports on Engagement with Aboriginal Groups)
- 102 (Landowner and tenant complaint process/system)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown recognizes Stó:lō's interest in having a responsive system to convey concerns or complaints to TMC in order to reduce negative impacts on their communities. Condition #102 requires TMC to confirm that it has created, and will maintain, a process/system that tracks Project-related landowner and tenant complaints or concerns and how TMC has addressed them.

According to the proponent's description of the Complaints Process, it would address questions and concerns from indigenous groups in a timely manner with specific sensitivity to the cultural uniqueness and cultural practices of the Indigenous group bringing forward the complaint. TMC would refer complaints from an Indigenous group to the Aboriginal Engagement Team's designated representative for that specific Aboriginal group to coordinate with the Contractor or Project subject expert and ensure appropriate and culturally sensitive follow up and responses

There are also a number of conditions that would require TMC to develop a public and Aboriginal communication and complaint response process as part of the required management plans related to air and noise emissions.

As discussed at the May 16, 2019 workshop, TMC is planning to hold Indigenous Engagement Roundtables in partial fulfillment of Condition #13 and #96. These roundtables would also provide the opportunity for Stó:lō communities to discuss concerns or complaints directly with TMC during the construction phase.

Recommendation Addressed

Recommendation #75

Topic Area: Community Health and Well Being, Mitigation
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *An alcohol and substance abuse policy. This policy will be specific to S'ólh Téméxw and would ensure all necessary measures are taken so the construction workforce is drug and alcohol free. The alcohol and substance abuse policy will apply to workers while they are in S'ólh Téméxw, where they are on or off duty. It is imperative there is security and enforcement of policies related to substance and alcohol use and personal conduct by the workforce while in S'ólh Téméxw.*

TMC Response (Last Update: May 19, 2019):

As discussed in the response to NEB IR No. 1.17d1 (Filing ID A3W9H8), Trans Mountain will develop policies and/or guidance in the following areas, related to limiting adverse interactions between Project workers and local communities:

- the use of local recreational, social, and retail facilities and services, including outdoor recreation areas, in smaller construction hub communities;
- the use of local and regional medical and social services;
- the use of firearms, hunting, or fishing by Project workers;
- after-hours worker conduct;
- damage to property;
- conduct in parks and protected areas; and
- respectful behaviour/harassment.

April 2019 Update:

Trans Mountain has established a drug and alcohol policy as outlined in its Owner's requirements for Contractors and which informs the TMEP Worker Code of Conduct. Trans Mountain is committed to maintaining a safe drug and alcohol free work environment.

Trans Mountain's Worker Code of Conduct was shared with Indigenous groups and stakeholders during engagement on the NEB Condition 59 and BC EAO Condition 23 Worker Accommodation Strategy. The most recent TMEP Worker Code of Conduct was filed with the BC EAO here: https://projects.eao.gov.bc.ca/api/document/5a2842200715440019ed0e6f/fetch Trans Mountain Alcohol & Drug policy to be provided and the contractor to be advised to adhere to the policy.

May 2019 Update:

Trans Mountain has developed a Project-specific policy pertaining to alcohol and substance abuse. Trans Mountain has zero tolerance for use of, or being under the influence of, illicit drugs or alcohol during work hours. The requirements around drug and alcohol use are noted in the TMEP Worker Code of Conduct, as contained in the Worker Accommodation Strategy Filing ID

A85812-3, PDF page 75) with a slightly revised version filed with the EAO dated September 2017 (https://projects.eao.gov.bc.ca/api/document/5a2842200715440019ed0e6f/fetch/TMEP_Code_of_Conduct_Sept_2017.pdf). The Drug and Alcohol Use Policy is outlined in detail in the NEB Condition 64a Health and Safety Management Plan (Filing ID A83607-2, PDF page 217). Requirements are further specified to Contractors in the Owners Policies and Procedures, and include aspects related to pre-access testing, reasonable cause testing, post-incident testing and treatment and assistance. Owner's requirements also specify the policy in relation to alcohol use in camps, noting that the unauthorized possession, distribution, offering or sale, consumption of alcohol, alcoholic beverages and alcoholic beverage containers while residing in camp, or utilizing camp facilities is strictly prohibited, and are grounds for loss of camp privileges, in accordance with the Camp Security Requirement. Alcohol is allowed in designated areas of appropriately licenced camps.

The Worker Code of Conduct notes that Trans Mountain expects all Project workers to conduct themselves in an appropriate manner at all times, including during their off hours. It is important that the people living in the vicinity of the Project are treated with respect and consideration during the Project construction timeframe. Workers residing in camps must abide by camp policies, and those residing in commercial residences are guests of the community.

The Worker Code of Conduct requires that Contractor's establish a process by which they will ensure all workers are aware of and understand the Code of Conduct and of consequences for not following the Worker Code of Conduct. Contractors' Worker Codes of Conduct should include guidance, as part of the Contractor's overarching disciplinary policy, on how discipline will be determined and implemented for all conduct categories.

Contractors will be required to submit their Alcohol and Drug policy that includes pre-access test and post incident test in compliance with TMC Alcohol and Drug policy. Contractors will also be required to submit necessary Alcohol & Drug tests statistical information through their weekly/monthly reports.

Relevant TMC Commitment #s: 1652, 1653

Relevant NEB Conditions:

- 13 (Socio-Economic Effects Monitoring Plan)
- 59 (Worker Accommodation Strategy)
- 64 (Construction Safety Manuals)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

According to TMC, all workers (e.g., contractors and employees) will be required to adhere to Trans Mountains Drug and Alcohol Policy, which is reflected in the Project Worker Code of Conduct in the Worker Accommodation Strategy (NEB Condition 59).

Under B.C. EAO Condition #24, TMC must implement and enforce an employee and contractor code of conduct during construction and operations.

TMC has stated that they will adhere to a policy of no tolerance of use or being under the influence of illicit drugs or alcohol during work hours. The policy will also outline guidance and expectations for workers related to medication which may impair their ability to competently carry out job requirements.

In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by TMC, Condition #13 requires TMC to file a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects might occur.

Recommendation Addressed

Recommendation #76

Topic Area: Community Health and Well Being, Mitigation
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *Plans to provide substance and alcohol abuse prevention programs and counselling to non-local workers.*

TMC Response (Last Update: May 19, 2019):

Contractors will be required to adhere to Safety Management Programs and workers will be required to adhere to the employee Code of Conduct which will address substance and alcohol abuse.

May 2019 Update:

Trans Mountain's Owner's Requirements Policies and Procedures require that the Contractors must either have an Employee Assistance Program or have access to one which is readily available to Contractor as it pertains to substance addiction, which contemplates, at a minimum, addiction assessment, treatment, counseling, rehabilitation and a defined return-to-work process.

Relevant TMC Commitment #s: 1654

Relevant NEB Conditions:

- 14 (Socio-Economic Effects Monitoring Plan)
- 59 (Worker Accommodation Strategy)
- 64 (Construction Safety Manuals)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

If such a plan exists, Ts'elxwéyeqw Tribe is unaware of it.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #75.

According to their May 2019 responses to the 89 recommendations, TMC has stated that Trans Mountain's Owner's Requirements Policies and Procedures require that the Contractors must

either have an Employee Assistance Program or have access to one which is readily available to Contractor as it pertains to substance addiction, which contemplates, at a minimum, addiction assessment, treatment, counseling, rehabilitation and a defined return-to-work process.

Recommendation Addressed

Recommendation #77

Topic Area: Community Health and Well-Being, Mitigation
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *Details of a community relations orientation program, that would increase awareness about S'ólh Téméxw and cultural sensitivities for TMEP employees and contractors.*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Please see updated response to Recommendation 2, 13 and 44. Trans Mountain would welcome Stó:lō cultural awareness presentations to staff and contractors engaged in these processes.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss the community relations orientation program with S'ólh Téméxw and therefore has not created a community relations orientation program. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 896

Relevant NEB Conditions:

- 59 (Worker Accommodation Strategy)
- 72 (Pipeline Environmental Protection Plan)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Commitment 896 to hold workshops is not a commitment to hire Ts'elxwéyeqw Tribe representatives that could participate in an orientation program designed to increase awareness about S'ólh Téméxw and cultural sensitivities for TMEP employees and contractors.

See Ts'elxwéyeqw Tribe Response to ICA recommendation 2 (workshops)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

TMC has committed to implement a Code of Conduct for workers, including community awareness training in work orientation sessions. This orientation program would ensure that TMC staff and Contractors and visitors working at or visiting sites will be informed of environmental, socio-economic and community relation requirements and sensitivities regarding the Project prior to arrival on the pipeline construction right-of-way, ancillary sites or associated component sites.

In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by Trans Mountain, Condition #13 requires TMC to develop a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects might occur. TMC would also be required to provided a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated.

The Crown understands that Ts'elxwéyeqw Tribe is interested in having TMC hire Ts'elxwéyeqw representatives that could participate in an orientation program designed to increase awareness about S'ólh Téméxw and cultural sensitivities for TMEP employees and contractors. At the May 23, 2019 workshop, TMC made a commitment that Stó:lō representatives would be provided the opportunity to deliver cultural awareness training to TMC staff and contractors.

B.C. EAO Condition #13 requires proponents to consult with Aboriginal Groups to identify opportunities for cultural awareness and recognition. TMC must offer opportunities to Aboriginal Groups that include holding ceremonies, installing signage, executing cultural protocols, recognizing cultural heritage, and providing cultural awareness training to Project personnel. If specific opportunities for cultural awareness and recognition are requested by an Aboriginal Group, TMC must determine the scope and content of the cultural awareness and recognition opportunity and associated activities, in consultation with the Aboriginal Group and must support or conduct such activities, or must provide a rationale to the Aboriginal Group explaining why a specific request or activity is not practicable.

Recommendation Addressed

Recommendation #78

Topic Area: Community Health and Well Being, Mitigation
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *A Code of Conduct for employees and contractors that provides guidance and policies on appropriate and inappropriate worker behaviour and community interactions.*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendations 2 and 75.

May 2019 Update:

Trans Mountain has developed a TMEP Worker Code of Conduct, as contained in the Worker Accommodation Strategy Filing ID A85812-3, PDF page 75) with a slightly revised version filed with the EAO dated September 2017 (https://projects.eao.gov.bc.ca/api/document/5a2842200715440019ed0e6f/fetch/TMEP_Code_of_Conduct_Sept_2017.pdf).

Relevant TMC Commitment #s: 896, 1652, 1653, 1658

Relevant NEB Conditions:

- 59 (Worker Accommodation Strategy)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe response to ICA recommendation 2 (workshops) and 77 (participation in an orientation program for workers)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

TMC has developed a Code of Conduct for workers (A85812-3), including community awareness training in work orientation sessions. This is reflected in the Worker Accommodation Strategy (NEB Condition #59). TMC has also committed to develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and operation of the Project, as required under NEB Condition #13.

Furthermore, TMC has committed to develop and present Environmental Orientation to ensure that TMC staff, contractors and visitors working at or visiting sites will be informed of environmental, socio-economic and community relation requirements and sensitivities regarding the Project prior to arrival on the pipeline construction right-of-way, ancillary sites or associated component sites.

At the May 23, 2019 workshop with Ts'elxwéyeqw Tribe, TMC committed that Stó:lō representatives will be provided the opportunity to deliver cultural awareness training to TMC staff and contractors within their traditional territory as part of the orientation program.

In order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by Trans Mountain, Condition #13 requires TMC to develop a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects might occur. TMC was required to provide a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated.

Furthemore, the IAMC is examining impacts of work camps on Indigenous communities, particularly on Indigenous women and girls, and developing strategies aimed at reducing negative impacts. As a first step, the Socio-economic Subcommittee is engaging with community and other partners and will produce a study that will review camp and community documentation; regulatory practices from other jurisdictions; and an analysis of the issues raised by communities that may not be addressed in TMC's policies or plans. The study will assemble resources to identify areas for further work, and also review potential indicators for monitoring the impacts of work camps.

Recommendation Addressed

Recommendation #79

Topic Area: Community Health and Well Being, Mitigation
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *A disease awareness and prevention strategy, which includes:*
    a) *Health screening for all personnel;*
    b) *Health awareness training for workers including contagious disease and sexually transmitted infections;*
    c) *A personal health program for workers including check-ups and immunizations, if required.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to ongoing discussion with the Stó:lō Collective about emerging health issues related to the Project.

Relevant TMC Commitment #s: 530, 379

Relevant NEB Conditions:

- 13 (Socio-economic effects monitoring plan)
- 59 (Worker Accommodation Strategy)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

If such a plan exists, Ts'elxwéyeqw Tribe is unaware of it.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's concerns regarding the potential for an increase in temporary workers having direct and indirect effects on local communities, including the potential for increases in social problems or community health. TMC has committed to implement a number of measures identified in their socio-economic management plan to address the spread of contagious diseases, including providing access to health services at construction camps, and reporting outbreaks of notifiable infectious diseases in camps to local health authorities.

According to TMC's Worker Accommodation Strategy (Condition #59), camp operators would be required to develop an appropriately-scaled Health and Medical Services Plan for construction camps, outlining requirements for medical personnel onsite; medical emergency

response protocols (for different scenarios such as a medical emergency, toxic exposure, etc.); communications in a medical emergency; communicable disease control protocols (including isolation, transport, notification, etc.); health promotion programming; and incident investigation.

In addition to the requirements under NEB Condition #59, B.C. EAO Condition #23 would require the proponent to include a plan for provision of medical and health services for employees and contractors using the construction camps.

Furthermore, the Socio-Economic Effects Monitoring Plan, filed in accordance with NEB Condition #13, has worker health as a key monitoring area, in order to determine whether the presence of temporary workers is contributing to infectious disease outcomes in communities.

Under commitment #530, TMC has committed to ongoing discussion about emerging health issues related to the project. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

Recommendation Addressed

Recommendation #80

Topic Area: Community Health and Well Being, Oversight and Reporting
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *Plan and schedule to meet with Stó:lō Nation Health and social services along with communities to discuss the timing of the TMEP, duration of the stay in S'ólh Téméxw, expected number of people coming into S'ólh Téméxw and onsite health care plans. These meetings will need to occur 6 months prior to construction.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain has committed to communicating with local health authorities, including the First Nations Health Authority, on the timing of the Project, duration of stay in the local community, expected number of people coming into the area and onsite health care plans.

May 2019 Update:

Trans Mountain will plan and schedule to meet with Stó:lō Nation Health and social services communities to discuss the timing of the TMEP, duration of the stay in S'ólh Téméxw, expected number of people coming into S'ólh Téméxw and onsite health care plans. This may be addressed in the Roundtable process to be initiated in advance of construction. As outlined in June 2017 in the compliance filing for NEB Condition 96 (A84533) and referenced in NEB Condition 13 SEEMP), Trans Mountain will be organizing Indigenous Engagement Roundtables during construction to share information and understand and respond to construction-related questions and issues, including socio-economic effects related to workforce hosting. Trans Mountain welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives, which can initiate preconstruction and continue in mutually-agreeable timeframe during construction. Roundtable planning is still in progress

Regarding meeting with communities, community stakeholder communications will continue to be a key priority for Trans Mountain as the Project progresses. Trans Mountain will develop a Construction Communications and Notifications Plan for Project communities. Trans Mountain will work with communities to establish processes that respect communities' communication preferences and unique needs, in light of the multiplicity of community sizes and interests along the corridor.

As noted in the BC EAO Worker Accommodation Strategy (see Section 6.0 on PDF page 20 (https://projects.eao.gov.bc.ca/api/document/5a9eeaa58a909400249d99b9/fetch), Trans Mountain will ensure camp operators develop an appropriately-scaled Health and Medical Services Plan (HMSP) for construction camps, **in consultation with local health authorities** pertinent to each camp location. Each camp HMSP will address a range of issues that include:

- requirements for medical personnel onsite;
- medical emergency response protocols (for different scenarios such as a medical emergency, automotive incident or other casualty, toxic exposure, etc.);

- communications in a medical emergency;
- communicable disease control protocols (including isolation, transport, notification, etc.);
- health promotion programming;
- incident investigation; and
- the methods by which the camp operator will work in collaboration with health authorities.

Relevant TMC Commitment #s: 383, 379

Relevant NEB Conditions:

- 13 (Socio-economic effects monitoring plan)
- 59 (Worker Accommodation Strategy)
- 62 (Construction Schedule)
- 96 (96 (Reports on Engagement with Aboriginal Groups)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown understands that TMC has committed to communicate with local health authorities, including the First Nations Health Authority, emergency medical service authorities, social service authorities on the timing of the Project, duration of stay in the local community, expected number of people coming into the area and onsite health care plans. The Crown will request that TMC update their commitment tracker to include this commitment.

As discussed at the May 16, 2019 workshop, TMC is planning to hold Indigenous Engagement Roundtables prior to and during construction. These roundtables would provide Stó:lō community members with the opportunity to discuss health and socio-economic issues related to the Project.

Condition #59 would requires TMC to provide the NEB with information regarding the locations of temporary worker camps, the number of workers, and any policies, mitigation, or operational plans that will be implemented at least three months prior to commencing construction. While this plan has been filed, it may need to be updated and re-filed prior to construction. All NEB filings are made publicly available on the NEB website. Condition #62 would require TMC to file the construction schedule with the NEB that identifies major construction activities, at least three months prior to commencing construction.

Under Commitment #530, TMC has committed to ongoing discussion about emerging health issues related to the project. Under Condition #2 TMC must implement all of the commitments it

made in its Project application or through the original and reconsideration NEB hearings.

Recommendation Addressed

Recommendation #81

Topic Area: Community Health and Well Being, Oversight and Reporting
In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *A plan to continue communication with Stó:lō people as the TMEP progresses [see recommendation #80]. Report outbreaks of notifiable infectious disease in camps to health authorities, as well as, Stó:lō Nation Health and Stó:lō communities.*

TMC Response (Last Update: May 19, 2019):

No action required. As described in the Socio-Economic Monitoring Plan (SEMP) (Volume 6B, Appendix C; Filing ID A3S2S3), Trans Mountain will develop and implement a communication plan for sharing information about key Project construction milestones and information with the general public in affected areas; as well as continue communication and engagement with stakeholders as the Project progresses. Trans Mountain will also develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and reclamation. As discussed in the response to NEB IR No. 1.17d6, as suggested in NEB Draft Condition 11 as outlined in the NEB's Letter – Draft Conditions and Regulatory Oversight (April 16, 2014), this will be called a Socio-Economic Effects Monitoring Program.

As part of its ongoing consultation program, Trans Mountain will consult with key stakeholders (e.g., governments, local/regional service providers, Aboriginal communities, municipalities) regarding the socio-economic effects monitoring framework, indicators to be monitored, methods of reporting, and the level of local/regional interest in participating in socio-economic effects monitoring. The monitoring framework and process will then be finalized and shared publically. It is anticipated that the socio-economic effects monitoring framework with include indicators related to community/worker interaction and community health. Any disease outbreak would be reported to regional health authorities as stated in the Socio-Economic Monitoring Plan (Volume 6B, Appendix C, Section 8.4.5 Worker Health; Filing ID A3S2S3). Health authorities have communications strategies in place for reporting disease outbreaks to communities who may be at risk.

May 2019 Update:

As noted in the Condition 13 Socio-Economic Effects Monitoring Plan (SEEMP) (Filing ID A84618-3, PDF page 22), a regular socio-economic monitoring indicator has been included regarding disease outbreaks in camps (see indicator #14 - *Number of people affected by a notifiable disease in a work camp;* noting that notifiable diseases are infectious respiratory, gastrointestinal or sexually transmitted diseases where occurrences are required to be reported to health authorities in order to limit their transmission in the community).

Also included in Condition 13 SEEMP (see Section 4.3, PDF page 29), Trans Mountain will prepare regional Socio-Economic Monitoring Reports every three months (i.e., quarterly) during

construction. Trans Mountain will publish each Socio-Economic Monitoring Report on the TMEP website. Trans Mountain will send notification to Appropriate Government Authorities (i.e., local and regional governments, service providers) and Indigenous groups with a web link to the pertinent regional Socio-Economic Effects Monitoring report.

As outlined in June 2017 in the compliance filing for NEB Condition 96 (A84533) and referenced in NEB Condition 13 SEEMP), Trans Mountain will be organizing Indigenous Engagement Roundtables during construction to share information and understand and respond to construction-related questions and issues, including socio-economic effects related to workforce hosting. Trans Mountain welcomes the opportunity to discuss establishing a construction phase Roundtable with Stó:lō representatives, which can initiate preconstruction and continue in mutually-agreeable timeframe during construction. Roundtable planning is still in progress

Relevant TMC Commitment #s: NA

Relevant NEB Conditions:

- 13 (Socio-economic effects monitoring plan)
- 59 (Worker Accommodation Strategy)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's concerns regarding the potential for an increase in temporary workers having direct and indirect effects on local communities, and concerns regarding the potential for increases in social problems or community health. TMC has committed to implement a number of measures identified in their socio-economic management plan [A84618-3] to address the spread of contagious diseases, including providing access to health services at construction camps, and reporting outbreaks of notifiable infectious diseases in camps to local and regional health authorities. These health authorities would communicate relevant health information to communities that may be at risk.

The Crown recognizes the interest in developing a communication plan for the construction phase. At the May 16, 2019 workshop between Ts'elxwéyeqw, the Crown, and TMC, TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement. This agreement could include a plan for effective communication between the Tribe and TMC during construction. The Crown has requested that TMC update their commitment tracker to include this commitment.

See also the Crown’s response to Recommendation #80.

Recommendation Addressed

Recommendation #82

Topic Area: Traffic Management, Oversight and Reporting

In addition to hiring more Stó:lō workers, the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction the following:

- *A Traffic and Access Control Management Plan. Collaborate with Stó:lō representatives and contractors, 6 months prior to construction, regarding the Traffic and Access Control Management Plan and Traffic Control Plans for S'ólh Téméxw. For example, to ensure the heavy truck routes and access routes do no conflict with contractors', such as Ts'elxwéyeqw Tribe Management Limited and K & L Contracting, anticipated work schedules and travel routes. Continue to communicate with Stó:lō representatives as the TMEP progresses, on traffic changes and schedules, so they can inform Stó:lō people. (This will allow for Stó:lō people to plan ahead on their travel arrangements).*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 2.

April 2019 Update:

Please see revised response to Recommendation #2.

May 2019 Update:

To date, Trans Mountain has not had the opportunity to discuss with Stó:lō representatives the Traffic and Access Management Plan and Traffic control Plans for S'ólh Téméxw and therefore has been unable to collaborate and address traffic and access control management issues. It is very important to Trans Mountain that these conversations happen as soon as possible in order to incorporate into Project planning.

Relevant TMC Commitment #s: 91, 896

Relevant NEB Conditions:

- 47 (Access Management Plans)
- 73 (Traffic Control Plans for Public Roadways)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

See Ts'elxwéyeqw Tribe's response to ICA recommendation 60 (Access Management Plans and Traffic Control Plans)

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #60.

Recommendation Addressed

Recommendation #83

Topic Area: Community health and well being, Funding for Stó:lō programs
As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction:

- *TMEP agreement via the British Columbia First Nations Policing Policy, to fund (for 5-years) one new First Nation Police position, in addition to the 7 existing officers in the First Nations Community Police Section.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to continued engagement with Stó:lō representatives to discuss funding opportunities related to policing.

May 2019 Update:

Ts'elxwéyeqw indicated that this has been appropriately addressed. (2019-03-06) – Crown Analysis of ICA Recommendations).

Relevant TMC Commitment #s: 1656

Relevant NEB Conditions:

- NA

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Addressed.

Crown Response (Last Update: June 1, 2019)

Indigenous Services Canada

First Nations Policing Program is funded through a tripartite agreement between the Federal Government, Province of BC, and First Nations Community. The agreement is fulfilled by the RCMP. Federal Government and BC are represented through Public Safety Canada and BC Ministry of Public Safety and Solicitor General. The discussions should include TMC, Stó:lō representatives, Public safety Canada, BC Public Safety, and the RCMP.

Natural Resources Canada

The Crown acknowledges Stó:lō's concerns regarding a potential increase in the demand for protection and emergency services, which could effect the quality of service delivery for local communities if not appropriately addressed. TMC has committed to liaise with local and regional

social services, police and local governments, to identify and address issues related to the potential negative effects of the Project on housing, utilities, and the delivery of social services in local communities during construction within the Project area. Under Commitment #1656, TMC has committed to continued engagement with Stó:lō representatives to discuss funding opportunities related to policing.

The Crown notes that Ts'elxwéyeqw considers this recommendation to be addressed.

Recommendation Addressed

Recommendation #84

Topic Area: Safety and Emergency Response, Training and Capacity Building
As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction:

- *A report summarizing the completed orientation/training for Stó:lō people and communities, on the TMEP's Emergency Response Plan (including site specific Emergency Response Plan), for S'ólh Téméxw. There should be a minimum of two Stó:lō people from each First Nations and no limitation on how many Stó:lō people can attend the orientation/training.*

TMC Response (Last Update: May 19, 2019):

Please refer to the response to Recommendation 10.

April 2019 Update:

Trans Mountain does not intend to provide or file additional reports summarizing the completed orientation/training for Stó:lō people and communities, on the TMEP's Emergency Response Plan (including site specific Emergency Response Plan), for S'ólh Téméxw.

Trans Mountain will invite Stó:lō organizations and individuals to attend scheduled emergency response exercises within S'ólh Téméxw, including worst-case exercises, table top drills and equipment deployments.

These exercises are a great opportunity to see how the Trans Mountain Emergency Response plan would be implemented in the event of a real emergency.

May 2019 Update:

Trans Mountain does not intend to provide or file additional reports summarizing the completed orientation/training for Stó:lō people and communities, on the TMEP's Emergency Response Plan (including site specific Emergency Response Plan), for S'ólh Téméxw.

Trans Mountain will invite Stó:lō organizations and individuals to attend scheduled emergency response exercises within S'ólh Téméxw, including worst-case exercises, table top drills and equipment deployments.

These exercises are a great opportunity to see how the Trans Mountain Emergency Response plan would be implemented in the event of a real emergency.

Relevant TMC Commitment #s: 1617, 1618, 1619

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Program)
- 58 (Training and Education Monitoring Reports)
- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)
- 117 (Reporting on Improvements to Trans Mountain's Emergency Management Program)
- 119 (Emergency Preparedness and Response Exercise and Training Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

A workshop is not a commitment to develop site specific ERPs and train Ts'elxwéyeqw Tribe people to implement protection and emergency measures. A conflict resolution process would be required to deal with occasions when Ts'elxwéyeqw Tribe does not approve the report.

See Ts'elxwéyeqw Tribe response to ICA recommendation 2 (workshops) and 4 (ERPs)

While individual member Nations of the Tribe may have been involved, there has been no involvement of the Tribe as an entity.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #7, #18, and #19.

Recommendation Addressed

Recommendation #85

Topic Area: Safety and Emergency Response, Training and Capacity Building
As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction:

- *A report summarizing the completed orientation sessions with local protective services providers so that they are aware of the types of materials, chemicals, and equipment that will be used during construction and operation of TMEP*

TMC Response (Last Update: May 19, 2019):

Trans Mountain is committed to engagement regarding Community Awareness and Emergency Response (CAER). Additional reporting requests can be discussed.

April/May 2019 Update:

Trans Mountain is committed to engagement and conducting Community awareness and Emergency Response (CAER) training. Additional reporting requests can be discussed.

Trans Mountain does not intend to provide or file additional reports summarizing the completed orientation sessions with local protective services providers.

Relevant TMC Commitment #s: 1615, 1619, 1657

Relevant NEB Conditions:

- 12 (Training and Education Monitoring Program)
- 58 (Training and Education Monitoring Reports)
- 90 (Consultation on Improvements to Trans Mountain's Emergency Management Program)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

ICA recommendation 85 suggests that TM generate a summary report for Ts’elxwéyeqw Tribe that is informed by workshops (1615, 1619), information shared through the ICA (2014) and consultations. This report could be filed with documents files to meet NEB condition 90.

See Ts’elxwéyeqw Tribe response to ICA recommendation 84.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Please see the Crown's response to Recommendation #7, #18, and #19.

Recommendation Partially Addressed

Recommendation #86

Topic Area: Community Health and Well Being, Oversight and Reporting
As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction:

- *A copy of the work environment guidelines and their enforcement mechanism, related to protection of public health issues listed in the ICA.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain will include the worker Code of Conduct, which will contain a number of areas related to the protection of public health issues in the Worker Accommodate strategy, to be filed with the NEB for approval, at least 6 months prior to construction.

Trans Mountain will develop a Code of Conduct for employees and Contractors that provides guidance and policies on appropriate and inappropriate worker behaviour and community interactions.

May 2019 Update:

See Recommendation #80

Relevant TMC Commitment #s: 1658, 1947

Relevant NEB Conditions:

- 13 (Socio-economic effects monitoring plan)
- 59 (Worker Accommodation Strategy)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō's concerns regarding effects to public health that could result from an increase in non-local workers within Stó:lō traditional territory.

Under Commitment #1658 and #1947, TMC has committed to implement a Code of Conduct for workers that would include policies to address use of local medical and social services, after-hours conduct, substance abuse, and other public health-related issues. TMC has also

committed to develop and implement an issues tracking process to monitor and respond to Project-related socio-economic issues and opportunities that emerge during construction and operation of the Project. Under Condition #2 TMC must implement all of the commitments it made in its Project application or through the original and reconsideration NEB hearings.

Furthermore, TMC has committed to develop an orientation program to ensure that TMC staff, contractors and visitors working at or visiting sites will be informed of environmental, socio-economic and community relation requirements and sensitivities regarding the Project prior to arrival on the pipeline construction right-of-way, ancillary sites or associated component sites.

Condition #59 would require TMC to develop a worker accommodation strategy that would include a description of how potential environmental and socio-economic impacts of worker accommodations have been assessed and mitigated.

Furthermore, in order to ensure that the potential negative socio-economic effects of Project construction can be effectively addressed by TMC, Condition #13 would require TMC to develop a plan for monitoring the potential adverse socio-economic effects resulting from construction activities. This would ensure that measures to reduce or eliminate adverse effects are effectively implemented within the timeframes for which effects might occur. TMC would also be required to provide a summary of its consultation with potentially affected Aboriginal groups in the development of this plan, including how their input was incorporated.

Please see also the Crown's responses to Recommendations regarding employee and contractor conduct, including #74-78.

The Crown notes that Ts'elxwéyeqw considers this recommendation to be addressed.

Recommendation Addressed

Recommendation #87

Topic Area: Community Health and Well Being, Oversight and Reporting
As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction:

- *The on-site health and safety plan, which outlines how TMEP will provide appropriate levels of security and emergency medical technicians at worksites. This will reduce the diversion of protection and emergency services from Stó:lō people.*

TMC Response (Last Update: May 19, 2019):

Trans Mountain can commit to engagement with the Stó:lō Collective prior to commencing construction to discuss any potential issues in regard to the Construction Safety Manuals.

May 2019 Update:

See Recommendation #80

Relevant TMC Commitment #s: 1659

Relevant NEB Conditions:

- 59 (Worker Accommodation Strategy)
- 63 (Security Management Programs)
  64 (Construction Safety Manuals)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

If such a plan exists, Ts’elxwéyeqw Tribe is unaware of it.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

Under Condition #63 and #64, TMC is must confirm development of a security management program, which was done in May 2017 and file construction safety manuals for the project with the NEB prior to commencing construction. The security management program has not been submitted to the NEB.

According to TMC’s Worker Accommodation Strategy (Condition #59), camp operators would be required to develop an appropriately-scaled Health and Medical Services Plan for construction camps, outlining requirements for medical personnel onsite; medical emergency response protocols (for different scenarios such as a medical emergency, toxic exposure, etc.);

communications in a medical emergency; communicable disease control protocols (including isolation, transport, notification, etc.); health promotion programming; and incident investigation.

In addition to the requirements under NEB Condition #59, B.C. EAO Condition #23 would require the proponent to include a plan for provision of medical and health services for employees and contractors using the construction camps.

Under the Onshore Pipeline Regulations, TMC must develop, implement and maintain a security management program that anticipates, prevents, manages and mitigates conditions that could adversely affect people, property or the environment.

Under Commitment #1659, TMC has committed to engagement with Stó:lō representatives in relation to the construction safety manuals.

Recommendation Addressed

Recommendation #88

Topic Area: Implementation, Oversight and Reporting
As part of the protection and emergency mitigation measures the TMEP will file with the Stó:lō representatives and NEB, for approval (or disapproval and/or amendment) , at least 6 months prior to commencing construction:

Maps and schedules of the proposed construction activities that were provided to Stó:lō communities.

TMC Response (Last Update: May 19, 2019):

30 days prior to the start of construction within the designated Spread, Trans Mountain will provide copies of: 1. Schedule of construction activities within S'ólh Téméxw 2. Environmental Alignment Sheets; and, 3. Plan, Profile and Book or Reference that defines the construction footprint.

May 2019 Update:

Ts'elxwéyeqw indicated that this has been appropriately addressed. (2019-03-06 – Crown Analysis of ICA Recommendations).

Relevant TMC Commitment #s: 1660

Relevant NEB Conditions:

- 62 (Construction schedule)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Addressed.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown notes that Condition #62 requires TMC to file with the NEB, at least 3 months prior to commencing construction, a construction schedule identifying the major construction activities expected and, on a monthly basis, on the first working day of each calendar month from the commencement of construction until after commencing operations, updated detailed construction schedules. These schedules will be made publicly available on the NEB's website.

TMC has also committed to provide these schedules, alignment sheets, and other reference material 90 days prior to the start of construction. The Crown would like to confirm with TMC

how they will share this material with affected Indigenous groups (via email, a shared drive, in hard copy, etc.).

The Crown notes that Ts’elxwéyeqw Tribe concurs with the Crown that this recommendation has been addressed.

Recommendation Addressed

Recommendation #89

Topic Area: Economic and Community Development, Funding for Stó:lō programs
The TMEP will work with a Stó:lō representative to establish a scholarship program for Stó:lō students.

TMC Response (Last Update: May 19, 2019):

Trans Mountain welcomes the opportunity to discuss the establishment of a scholarship program for Stó:lō students.

May 2019 Update:

Ts'elxwéyeqw indicated that this can be addressed through a private agreement with TMC (2019-03-06 – Crown Analysis of ICA Recommendations). Trans Mountain welcomes the opportunity to discuss scholarship program funding for Stó:lō students.

Relevant TMC Commitment #s: 1661

Relevant NEB Conditions:

- 145 (Community Benefits Program Progress Reports)

Ts'elxwéyeqw Response (Last Update: May 3, 2019)

Not addressed.

Offsetting potential effects to Watson School yard is not a Ts'elxwéyeqw specific scholarship program. This can be addressed through a private agreement with TMC.

Crown Response (Last Update: June 1, 2019)

Natural Resources Canada

The Crown acknowledges Stó:lō Collective's interest in establishing a scholarship program for students in order to offset potential effects to education, including potential direct effects to Watson school yard.

The Crown notes that Condition #145 requires TMC to report on initiatives and activities undertaken as benefits that are in addition to compensation for access and potential impacts to community lands, and/or that exceed regulatory requirements. In addition, there are NEB conditions that address training and education in relation to the project.

The Crown recognizes Ts'elxwéyeqw's view that funding social and cultural programs would offset potential social and cultural impacts that may result from the Project. The Crown concurs

with Ts’elxwéyeqw that this recommendation would be best addressed through a private agreement with TMC.

Recommendation Addressed

Annex I: Additional Information Regarding Accommodation Measures

Aquatic Habitat Restoration Fund
Potential Accommodation

Issue	Indigenous groups are concerned about the impacts of Trans Mountain Pipeline expansion on fish, fish habitat and the general states of fisheries resources.
Proposed Measure to Respond to Issue/Impact	The Government of Canada will collaborate with Indigenous groups to develop an Aquatic Habitat Restoration Fund that would provide funding and capacity support for projects related to habitat restoration to address direct and indirect threats posed by the project on aquatic habitats and species. Existing initiatives such as the Coastal Restoration Fund, Habitats Stewardship Program and Aboriginal Funds for Species at Risk, Salmon Enhancement Program, Canada Nature Fund for Aquatic Species at Risk, BC Salmon Restoration and Innovation Fund and Aboriginal Aquatic Resource and Oceans Management Program will be leveraged to increase capacity and address issues related to the project as appropriate.
Desired Outcomes	Increased capacity within communities to protect and restore aquatic habitats impacted by the project.
Objective in Phase III Consultations	Begin discussions with Indigenous groups on the proposed approach, including defining the geographic scope of the initiative and priority actions.
Next Steps	Consultations with Indigenous groups to refine the proposal and identify priority areas of focus related to aquatic habitat restoration related to the project
Key Contacts	Lead department and representative: - Cheryl Webb, Fisheries and Oceans Canada Cheryl.webb@dfo-mpo.gc.ca

Terrestrial Cumulative Effects Initiative
Potential Accommodation

Issue	Indigenous groups are concerned about the existing and future impacts of development, including the expansion of the Trans Mountain pipeline, on the landscape, watersheds and ecosystems and the organisms that inhabit them (in particular fish). Indigenous groups also believe that cumulative effects are not well understood or adequately addressed through environmental assessment and regulatory processes.
Proposed Measure to Respond to Issue/Impact	The Government of Canada will collaborate with Indigenous groups to co-develop a cumulative effects initiative that focuses on understanding the current state of environmental issues of interest and monitors and shares information on changes over time in response to ongoing development.
Desired Outcomes	Improved understanding of the cumulative effects of concern to Indigenous groups, including the freshwater environment. • Improved understanding of the current state of the valued components of the environment within a region (e.g. baseline studies, watershed analysis, etc.). • Ongoing monitoring and analysis that allows for shared understanding and the early identification of issues.
Objective in Phase III Consultations	• Clarify Indigenous concerns, particularly those related to watershed, fish habitat and fish • Explore opportunities to partner with Indigenous groups to understand how cumulative effects are impacting environmental components of value. • Begin a dialogue to develop options for the scope, design and governance of this proposed initiative, building on and integrating existing cumulative effects work.
Next Steps	Create a forum to begin co-developing the approach in Summer 2019. Participant funding is available.
Key Contacts	Lead department and representative: - Kathleen Cavallaro, Environment and Climate Change Canada Kathleen.Cavallaro@canada.ca

Terrestrial Studies

Potential Accommodation
Phase III Consultations - Trans Mountain Expansion Project

Issue	Indigenous groups are concerned about lack of understanding regarding potential land and cumulative impacts.
Proposed Measure to Respond to Issue/Impact	The Government of Canada will support Indigenous-led studies to better understand the potential land and cumulative impacts, which would potentially inform cumulative effects monitoring and/or construction, operations and maintenance phases of the Project, if approved.
Desired Outcomes	• Advancing meaningful two-way dialogue • Improved understanding of potential terrestrial impacts • Informing Phase 4 of the engagement, and in particular the construction, operations and maintenance phases of the Project
Objective in Phase III Consultations	• Inform Indigenous groups of existing initiatives and proposed measures • Receive applications from Indigenous groups for proposed studies
Next Steps	• Provide all applicable information identified in the *Required Information* form (Annex A). • Further discussions with consultation teams to develop proposal ideas.
Key Contacts	Lead Department and Representative: - Holly Grenier, Natural Resources Canada holly.grenier@canada.ca - Benjamin Fleischman, Natural Resources Canada benjamin.fleischman@canada.ca

NB: For the Terrestrial Studies Initiative Application, please see correspondence from the Crown sent on April 1, 2019.

Annex II: TMC's New Commitments

This document contains a list of the new commitments TMC has made to Ts'elxwéyeqw Tribe during the re-initiated Phase III consultation process, both in meetings and in submissions to the Tribe. This list does not include existing commitments that TMC has made to Ts'elxwéyeqw Tribe or Stó:lō, nor general commitments that have been made which are not specific Ts'elxwéyeqw Tribe or Stó:lō.

TMC has agreed to update their commitments tracker to include these new commitments.

Commitment	Relevant ICA Recommendations	Date/Location of Commitment
General		
TMC committed to work with Ts'elxwéyeqw to develop a Tribe-specific engagement agreement.	#2, #64	May 16, 2019 workshop, May 23, 2019 workshop
Monitoring		
A commitment to hire an environmental monitor, in alignment with condition 98 as chosen by Ts'elxwéyeqw Tribe, and meeting TMEP's contractor qualification specifications, to be on the Environmental Inspection Team.	#13, #14, #15, #26, #40, #41, #53, #54	May 6, 2019 workshop May 23, 2019 workshop
Ts'elxwéyeqw Tribe representatives will also be afforded the opportunity to participate in post-construction monitoring programs at watercourse crossings within Stó:lō Traditional Territory.	#16, #38, #39, #41	May 2019 Response to ICA Recommendations
Protection of Cultural Sites		
TMC will continue to work with [Stó:lō technical staff] to develop site-specific measures to manage the effects of the Project as required.	#2, #3	May 23, 2019 workshop April 2019 Response to ICA Recommendations
A commitment to ensure that information provided by Stó:lō is included in the final alignment sheets that are used by TMC staff and contractors during construction.	#2, #3	May 23, 2019 workshop
A commitment to update the Resource Specific Mitigation Tables to include mitigation measures are specific to different types Stó:lō of cultural	#2, #3, #45-50	May 23, 2019 workshop

sites.		
A commitment for Stó:lō representatives to deliver cultural awareness training to TMC staff and contractors.	#77	May 23, 2019 workshop
A commitment to use the most up-to-date collected information (Stó:lō, TMEP, and/or provincial government) at the time of evaluation for archaeological site boundaries when evaluating appropriate mitigation for archaeological sites. A commitment to incorporate community-based information provided to TMEP at the time of evaluation for cultural site boundaries when evaluating appropriate mitigation for cultural sites.	#2, #3, #45-50	May 23, 2019 workshop
TMC will provide the most current Environmental Management Plans and Alignment sheets that contain Stó:lō information once they are complete.	#2	May 2019 Response to ICA Recommendations
Cultural Activities and Events, Sensory Disturbance		
As part of the Roundtable activites, a commitment to meet with Stó:lō to discuss windows for construction that respect Stó:lō cultural practices and events.	#43, #44, #46	May 23, 2019 workshop
Trans Mountain will work with Stó:lō representatives to develop a Round Table with representation from the Stó:lō community, Trans Mountain, and its General Construction Contractors. The Round Table will meet as agreed to during pre-construction surveys and during construction to exchange information such as construction scheduling and to identify and address project related socio-economic issues that may arise in the community.	#44, #61, #65, #71, #81	April 2019 Response to ICA Recommendations May 16 workshop
Fisheries / Watercourse Crossings		
In the event that a contingency open cut crossing method is required (i.e., without flow isolation), Trans Mountain will provide notice to Stó:lō and welcomes the opportunity to work with Stó:lō to establish the necessary communication channel to receive the notification.	#9	April and May 2019 Response to ICA Recommendations

Notifications [to identified Stó:lō representatives] will be completed after confirmation with the regulator that established [water quality] guidelines have not been met.	#11, #17	May 2019 Response to ICA Recommendations
TMC will utilize Stó:lō traditional and technical knowledge and data in their watercourse crossing inventories and plans, where provided.	#5, #9	May 31, 2019 Workshop
For waterbodies classified as non-fish-bearing but with hydrological connectivity to fish bearing waters, these will be treated as potentially fish bearing by TMC.	#5	May 31, 2019 Workshop
TMC will look for opportunities enhance watercourse crossing sites, if feasible, for habitat restoration.	#8	May 31, 2019 Workshop
TMC will work with Ts'elxwéyeqw to identify gaps in their respective data and develop an appropriate portal to share this information.		May 31, 2019 Workshop
Emergency Management		
Prior to the pipeline commencing operation, Trans Mountain will commit to providing an overview of all parts of its Emergency Response Plans to interested Stó:lō personnel including but not limited to Stó:lō Nation Fish Management Board, SRRMC, Seven Generations, TTML community members/volunteers/local search and rescue/police department/fire department and volunteer fire departments prior to operation of the pipeline. A one-day Community Awareness and Emergency Response (CAER) presentation will be provided by Trans Mountain (approximately 6 hours).	#18, #57, #84	April and May 2019 Response to ICA Recommendations May 6 workshop
Trans Mountain will invite Stó:lō organizations and individuals to attend scheduled emergency response exercises located within S'ólh Téméxw including worst-case exercises, table top drills and equipment deployments. Trans Mountain will cover travel expenses to attend workshops, and emergency response exercises for representatives from Indigenous Groups, to a maximum of two (2) persons per community.	#18, #19, #57, #84	April and May 2019 Response to ICA Recommendations May 6 workshop

Trans Mountain will work with Stó:lō communities to incorporate their local and cultural heritage knowledge into their Geographic Response Plans, which are a key component of enhancements made to Trans Mountain's Emergency Management Program.	#7, #19	May 2019 Response to ICA Recommendations May 6 workshop
In the event of a spill in S'ólh Téméxw, Stó:lō representatives will be invited to participate in the monitoring team [in addition to the Incident Command Structure].	#43	April and May 2019 Response to ICA Recommendations
TMC will include Ts'elxwéyeqw in their emergency management and response planning, which could include training for Ts'elxwéyeqw members recruited for response efforts.	#7, #18, #19, #57, #84	May 31, 2019 Workshop
Vegetation		
Any outstanding pre-construction rare plant and rare ecological community population assessment and/or mitigation surveys will be planned for the appropriate growing season prior to construction within the noted area of concern. Stó:lō representatives will be contacted prior to conducting any of these surveys on Stó:lō traditional territory.	#23, #35, #62	April and May 2019 Response to ICA Recommendations
For this invasive species, Trans Mountain will review and incorporate additional clearing of Himalayan blackberry within the construction footprint as determined by Stó:lō environmental Indigenous Monitor as part of Trans Mountain weed and vegetation management.	#32	May 2019 Response to ICA Recommendations
As part of TMPL/TMEP Integrated Vegetation Management Plan, Trans Mountain will send notices to all Stó:lō Representatives informing them what [herbicide or chemical] treatment is required, where treatments will be, when treatments will occur and any other pertinent information. Notices will be sent 30 days in advance of any herbicide treatment.	#36, #37	May 2019 Response to ICA Recommendations
Socio-Economic Issues		
Trans Mountain will discuss the opportunity to develop community-specific approaches to	#67, #68, #69, #70	April and May 2019 Response to

consult on, and share information related to, the outcomes of the Aboriginal, local and regional employment and business opportunities monitoring. On the basis of this engagement, Trans Mountain will prepare and submit to the Stó:lō a plan for reporting Stó:lō-specific employment and business opportunity monitoring outcomes.		ICA Recommendations
In addition to an agreement between Stó:lō and Trans Mountain to discuss and develop a Project-specific economic development strategy, Trans Mountain will engage directly with Stó:lō representatives during each Indigenous, local and regional employment and business opportunities monitoring cycle.	#67, #68, #69, #70	May 2019 Response to ICA Recommendations
Trans Mountain will plan and schedule to meet with Stó:lō Nation Health and social services communities to discuss the timing of the TMEP, duration of the stay in S'ólh Téméxw, expected number of people coming into S'ólh Téméxw and onsite health care plans. This may be addressed in the Roundtable process to be initiated in advance of construction.	#80	May 2019 Response to ICA Recommendations May 16, 2019 workshop

Annex III: NEB Compliance and Enforcement for Conditions

Overarching Conditions

NEB Report Conditions #1, 2, 3 and 6, are overarching conditions that are often applicable to the recommendations listed in the ICA because they relate to general compliance with conditions and other commitments made, including those related to environmental protection. The conditions are summarized as follows:

1. Trans Mountain must comply with all of the [certificate/order] conditions, unless the NEB otherwise directs.
2. Without limiting Conditions 3, 4 and 6, Trans Mountain must implement all of the commitments it made in its Project application or to which it otherwise committed on the record of the OH-001-2014 proceeding, as well as the MH-052-2018 proceeding.
3. Trans Mountain must implement or cause to be implemented, at a minimum, all of the policies, practices, programs, mitigation measures, recommendations, and procedures for the protection of the environment included or referred to in its Project application or to which it otherwise committed on the record of the OH-001-2014 proceeding.
6. Trans Mountain must implement the commitments contained in its commitment tracking table, and must update and post the table on its website at prescribed intervals.

National Energy Board Onshore Pipeline Regulations

The National Energy Board Onshore Pipeline Regulations (OPR) are made under the *National Energy Board Act* (NEB Act). Companies are responsible for meeting the requirements of the OPR to manage safety, security and environmental protection throughout the entire lifecycle of their facilities, from design, through to construction, operation and abandonment.

The conditions on an authorization are supported by the NEB Act and OPR. For example, Section 6 of the OPR is a general duty clause that sets out a pipeline company's duty to conduct its activities in a manner that ensures the safety and security of people and the pipeline and protection of the environment. The company must do this in the course of performing any of its activities authorized under the OPR and any certificate, permit or other approval issued by the NEB. A company implements its management system, as required in sections 6.1 to 6.6 of the OPR, in furtherance of these obligations. Guidance to the OPR is provided on the NEB website at the following link http://www.neb-one.gc.ca/bts/ctrg/gnnb/nshrppln/gdncntnshrpplnrgltn-eng.html.

NEB Process for Verifying Compliance on Condition Filings

The NEB Operations Program Manager is responsible for coordinating the review of company filings related to condition compliance, and ensuring a record is kept, which details the compliance status for each condition. The status of each condition for the Trans Mountain Expansion project is available on the NEB website at: http://www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/cndtnstl-eng.html . A Technical Specialist will be assigned to assess a particular filing, or suite of filings to verify that the requirements of the condition have been fulfilled. It is the company's responsibility to demonstrate that it has satisfied each condition. If the Technical Specialist is not satisfied with the filing, the Specialist

may recommend to the Board that an information request be sent to the company to gather additional evidence to demonstrate that the condition has been complied with. If the condition is for approval, construction activities may not commence until the NEB is satisfied with the adequacy of the condition filing.

Indigenous peoples and the public may bring forward concerns regarding condition filings, make requests, or lodge complaints regarding company compliance by writing a letter to the Secretary of the Board, noting the project name and file # if possible. The following information should be included in the letter: (1) a summary of the regulatory requirement to be met (i.e. the condition number); (2) the details of the compliant; (3) the response to date by the company with regards to the complaint; and (4) a recommendation for resolution.

The Board will follow up with the individual or group who sent the letter, with the company, and then will determine how to respond to the concern or request. Information regarding compliance and enforcement is available on the NEB website at the Safety and Environment Oversight page at http://www.neb-one.gc.ca/bts/pblctn/prfrmncsmmr/2017-18/sftndnvrnmntl-eng.html

NEB Process for Verifying and Enforcing Compliance for Conditions during Construction
During construction through to the pipeline receiving approval to flow the product, the Operations Project Manager (OPM) will conduct construction oversight. The OPM will do this, by monitoring company compliance to conditions, and ensuring a record is kept of the compliance status for each condition. Conditions status for the Trans Mountain Expansion project is available to the public on the NEB website at http://www.neb-one.gc.ca/pplctnflng/mjrpp/trnsmntnxpnsn/cndtnstl-eng.html .

Inspection Officers from each of the *National Energy Board Onshore Pipeline Regulations* Program areas will continue to verify compliance to regulatory requirements (e.g. conditions, relevant regulations, etc) and they will have sufficient expertise, knowledge and training to competently carry out the inspection. The Program areas that the NEB focuses inspections and audits on are Safety Management, Environmental Protection, Emergency Management, Damage Prevention, Security, and Integrity Management of the Pipeline. Indigenous Monitors will often attend inspections alongside Inspection Officers, and provide expertise including in the areas of Traditional Knowledge and Traditional Land Use. All inspection reports and enforcement actions that are generated will be available to the public on the NEB website.

Additional information regarding compliance and enforcement is available at: http://www.neb-one.gc.ca/sftnvrnmnt/cmplnc/index-eng.html.