

**STONEY TRIBAL ADMINISTRATION**  
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January 9, 2020

L. George  
Secretary of the Board  
National Energy Board  
Suite 210, 517 10<sup>th</sup> Avenue SW  
Calgary, AB T2R 0A8

Dear Mr. George:

**RE: Wesley First Nation Intervenor Report for Edson Mainline Project**

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This letter is sent on behalf of the Wesley First Nation, one of the three distinct Nations of Stoney Nakoda Nation (“SNN”). Wesley First Nation Aboriginal and treaty rights recognized by Treaty No.7 and the *Natural Resources Transfer Act, 1930* and affirmed under Section 35 of the *Constitution Act, 1982*.

Please accept our written evidence submission of the NOVA Gas Transmission Ltd. Edson Mainline Expansion Wesley First Nation Intervenor Report in response to the Edson Mainline Project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Dean Cherkas', is written over a light blue horizontal line.

Dean Cherkas, P.Ag.  
Director, Consultation  
Bears paw First Nation  
Stoney Tribal Administration

cc:

Malcolm MacPherson, Clark Wilson LLP



# NOVA Gas Transmission Ltd.      Edson Mainline Expansion Project

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## Wesley First Nation Section 35 Rights Impact Assessment Report

**Prepared For:**

Wesley First Nation.  
Edson Mainline Expansion Project

**Prepared By:**

MNP LLP.  
Calgary, AB



**Cover Photo: Stoney Nakoda Family Camp, Banff National Park, Alberta. MNP LLP/Bill Marsh**

Information collected for the *Wesley First Nation Section 35 Rights Impact Assessment Report* remains the sole property of Stoney Nakoda Nations - Wesley First Nation. The information contained within this document is meant for a single application for the Edson Mainline Expansion ("Edson Mainline" or "the Project") Project only and to provide the Canadian Energy Board and NOVA Gas Transmission Ltd. ("NGTL") with Stoney Nakoda Nations - Wesley First Nation project related adverse effects, issues and concerns. Citation, use, or reproduction of the information contained in this document for any other purpose is permissible only with expressed written consent from Stoney Nakoda Nations - Wesley First Nation.

*For further information, please contact:*

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**Canada**

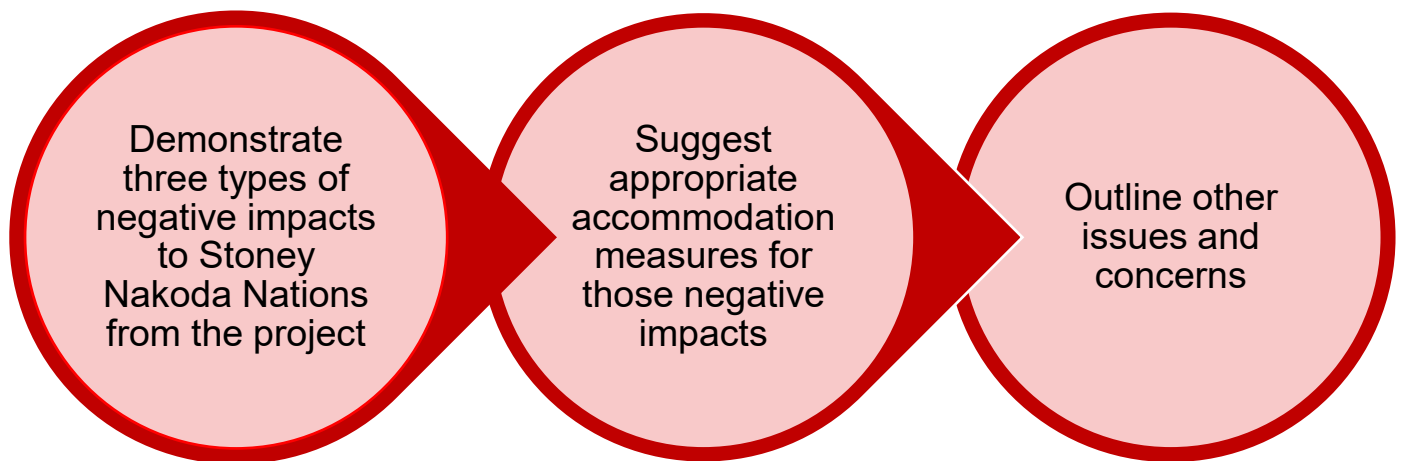


Picture 1: Banff Indian Days Family Camp, Banff National Park. MNP LLP/Bill Marsh

## Key Findings

The *Wesley First Nation Section 35 Rights Impact Assessment Report* prepared for the Nova Gas Transmission Ltd. Edson Mainline Expansion Project was commissioned by Wesley First Nation to identify how the proposed pipeline may adversely impact the rights of Stoney Nakoda Nations. The Stoney Nakoda Nations hold rights under Treaty No. 7, the *National Resources Transfer Act, 1930* and maintain unextinguished Aboriginal Title as recognized and affirmed under Section 35 of the *Constitution Act, 1982*, collectively referred to in this report as Section 35 Rights.

The purpose of the report is to:



## Impacts to Lands

Access to sufficient amount of lands in the Stoney Nakoda Nation traditional territory is essential to the continuation of Stoney Nakoda Nations' Section 35 Rights.

Lands taken up by private property, development dispositions, agriculture, parks and protected areas, and other disturbances displace Stoney Nakoda Nations' Section 35 Rights. Regulatory processes do not consider the threshold for the taking up of lands within an Indigenous nations' traditional territory, this is a flaw that places Indigenous nations at risk for infringement.

Development, such as pipeline right-of-ways negatively affect Stoney Nakoda Nation rights.

The approval of a pipeline project gives a proponent a priority right of access to their pipeline right-of-way. Once approved, the proponent has the authority to exclusively use the right-of-way for their project; the proponent has the authority to prevent individuals from accessing the right-of-way at their discretion, as well as enforcing trespassing laws. This means that legally, members of the Stoney Nakoda Nations cannot access lands under dispositions freely, without fear of being charged, to exercise their Section 35 Rights.

This report shows there will be:

- A reduction of **259.34 ha** of lands currently available for the exercise of Section 35 Rights.
  - This is the equivalent of 500 football fields.
- **259.34 ha** of lands will no longer be available to Stoney as a priority rights holder.
  - This is a higher proportional change than the change resulting from the NOVA Gas Transmission Ltd. 2021 NGTL System Expansion Project.
- **480 ha** of lands are affected by the 2021 NGTL System Expansion Project. For these two projects alone, **739 ha** of lands where the Stoney Nakoda Nations will be required to seek permission from NGTL to access the lands in the dispositions where the Stoney Nakoda Nations currently exercise their Section 35 Rights without restriction.



**This effect to lands remains unmitigated.**

The **perception that there is sufficient land available for the exercise of Stoney Nakoda Nations' Section 35 Rights is unsupported** by the conclusions in this report.

The **project will result in an unacceptable increase of lands made unavailable for the exercise of Stoney Nakoda Nations' Section 35 Rights** in an area already grossly disturbed by other development activities.

## Impacts to Harvesting

Harvesting is key aspect of the Stoney Nakoda Nations' culture and identity. Hunting, fishing, trapping, and gathering are expressions of Section 35 Rights, but also needed for continued ceremonial and cultural activities.

Stoney Nakoda Nations require access to undisturbed lands that align with preferred means. Developments, such as pipeline right-of-ways, disturb the lands and leave scars that interfere with Stoney Nakoda Nations' preferred means for harvesting.

This report shows there will be:

- An increase of **186.51 ha** of lands where Stoney Nakoda Nation can't go, won't go, or prefer not to go to exercise their Section 35 Rights near the project.
  - **This is equivalent to approximately 350 football fields**
- This negative effect results from land disturbances such as clearing, noise, dust, presence of people and traffic, and sign, fences and fear of legal prosecution.



**This effect to harvesting remains unmitigated.**

This report shows **disturbances (such as clearing a pipeline right-of-way) remain over the lifetime** of a disposition or permit.

This report **disproves the assumption that standard environmental mitigation measures will result in equivalent land capabilities** post-approval.

Given the amount of existing development and land disturbances near the project, **any additional development will only exacerbate the negative effects already felt by Stoney Nakoda Nations' members** and further alienate portions of Stoney Nakoda Nations' traditional territory.

This report demonstrates that **the assumption that Stoney Nakoda Nations' members can simply go elsewhere to exercise their Section 35 Rights is false** given to the current levels of damage and development in the project area and within the Stoney Nakoda Nations' traditional territory.

## Impacts to Sacred and Cultural Places

Sacred and cultural places are unique and immovable locations that contribute greatly to community history, culture, identity, and sustenance. If these places are irreparably damaged by disturbance, or become alienated, the Stoney Nakoda Nations' cultural bonds to those important sacred and cultural places will rupture.

Development, such as pipeline right-of-ways, alter the landscape and displace sacred and cultural places; this leaves Stoney Nakoda Nations' without access to their sacred and cultural places and damages the ability to pass on language, history, and cultural practices to younger generations.



The report shows that there will be:

- a **decrease in SNN preferred conditions** of sacred and cultural places near the project;
- a **negative change to biophysical conditions of cultural areas** identified in Stoney Nakoda Nations near the project; and,
- **damage to Stoney Nakoda Nations' qualitative connection** to sacred and cultural places near the project.

**These effects to sacred and cultural places remain unmitigated.**

Construction and operational activities, including proposed NGTL environmental mitigation measures will lead to adverse effects on Stoney Nakoda Nation sacred and cultural places.

Examples include:

- **Signs, fences gates, or flags are unnatural features are not preferred by Stoney Nakoda Nations**, and take away from the Stoney Nakoda Nations' connection to the cultural place.
- **The maintenance of a cleared area on either side of the pipeline during operations leads to an alteration to the biophysical state** of a cultural area and creates conditions not preferred and avoided by members of the Stoney Nakoda Nations for cultural and ceremonial activities.

It is the expectation of the Stoney Nakoda Nations that the information contained in *the Stoney Nakoda Nations - Wesley First Nation Section 35 Rights Assessment Report for the Edson Mainline Expansion Project* will be used by NOVA Gas Transmission Ltd. and the Canadian Energy Regulator to contribute to the identification and accommodation of potential adverse effects to Stoney Nakoda Nations' Section 35 Rights arising from the construction and operation of the project prior to project approval.

# Study Team

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## Abbreviations and Acronyms

<b>ABMI</b>	Alberta Biodiversity Monitoring Institute
<b>AEP</b>	Alberta Environment and Parks
<b>Alberta Consultation Guidelines</b>	Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resources Management, 2016
<b>BMA</b>	Bear Management Area
<b>CER</b>	The Canadian Energy Regulator
<b>CER Act</b>	<i>The Canadian Energy Regulator Act</i> , S.C. 2019, c. 28, s. 10
<b>EA</b>	Environmental Assessment
<b>ESA</b>	Environmental and Socio-Economic Assessment
<b>Edson Mainline</b>	Edson Mainline Expansion Project
<b>EPP</b>	Environmental Protection Plan
<b>FMZ</b>	Fur Management Zone
<b>ha</b>	Hectare
<b>Iyathe Nakoda Makochi</b>	traditional lands/territory
<b>IR</b>	Indian Reserve
<b>km</b>	Kilometer
<b>KWBZ</b>	Wildlife and Diversity Zone
<b>LAA</b>	Local Assessment Area
<b>m</b>	Meter
<b>NEB</b>	National Energy Board
<b>NEB Act</b>	<i>National Energy Board Act</i> , R.S.C., 1985, c. N-7
<b>NGTL</b>	NOVA Gas Transmission Ltd.
<b>NGTL 2021</b>	2021 NGTL System Expansion Project
<b>NRTA</b>	<i>Natural Resource Transfer Agreement</i> , 1930
<b>Participants</b>	Stoney Nakoda Nation members who participated in the 2018 Stoney Nakoda Nations Survey interviews
<b>PDA</b>	Project Development Area
<b>PLAR</b>	<i>Public Lands Administration Regulation</i> , Alta Reg 187/2011
<b>Project Application</b>	Edson Mainline Expansion Project Application
<b>Project EPP</b>	Edson Mainline Expansion Project Environmental Protection Plan

<b>Project ESA</b>	Edson Mainline Expansion Project Environmental and Socio-Economic Assessment
<b>Public Lands Act</b>	<i>Public Lands Act</i> RSA 2000, c P-40
<b>RAA</b>	Regional Assessment Area
<b>Report</b>	<i>Wesley First Nation Section 35 Rights Impact Assessment Report</i>
<b>ROW</b>	Right-of-Way
<b>Section 35 Rights</b>	Aboriginal and treaty rights recognized and affirmed under Section 35 of the <i>Constitution Act</i> , 1982
<b>SNN</b>	Stoney Nakoda Nations
<b>SNN Cultural Areas</b>	Cultural Resource Areas 1, 2, and 3 identified in the Stoney Title Claim Case.
<b>TEK</b>	Traditional Ecological Knowledge
<b>TLE</b>	Treaty Land Entitlement
<b>TFA</b>	Temporary Field Authorizations
<b>The Project</b>	Edson Mainline Expansion Project
<b>TLRU</b>	Traditional Land and Resource Use
<b>VC</b>	Valued Component
<b>Workshop Attendees</b>	Stoney Nakoda Nation members who participated in the 2018 VC Workshop
<b>2018 VC Workshops</b>	Workshop held with members of the Stoney Nakoda Nations to identify general values and concerns for consideration in developing valued components.



Picture 2: Banff Indian Days Family Camp, Banff National Park. MNP LLP/Bill Marsh

# 1. Introduction

## 1.1 Purpose of the Report

Wesley First Nation, one of the three distinct nations of the Stoney Nakoda Nations (“SNN”), hold rights, including: Aboriginal rights and Aboriginal title; Treaty No.7 rights; and *Natural Resources Transfer Agreement, 1930* (“NRTA”) rights as recognized and affirmed by Section 35 of the *Constitution Act, 1982* (collectively referred to as “Section 35 Rights”). Wesley First Nation commissioned the *Wesley First Nation Section 35 Rights Impact Assessment Report* (the “Report”) to identify how the proposed NOVA Gas Transmission Ltd. (“NGTL”) Edson Mainline Expansion Project (“Project” or “Edson Mainline”) may directly and adversely impact Wesley First Nation’s Section 35 Rights.

The purpose of the Report is to:

- provide information about how the Project may directly and adversely impact the ability of SNN members, including Wesley First Nation members, to exercise their Section 35 Rights using SNN-specific valued components (“VC”);
- outline additional issues and concerns of the Stoney Consultation Office; and,
- provide suggestions for appropriate accommodation measures for adverse Project effects to the exercise of SNN, including Wesley First Nation’s, Section 35 Rights.

## 1.2 The Project

NGTL filed the Edson Mainline Expansion Project Application (the “Project Application”) on April 3, 2019 with the Canadian Energy Regulator (“CER”). The Project Application identifies the following Project components:

- Edson Mainline Loop No. 4, Alford Creek Section: 45 km of 1,219 mm (NPS 48) pipeline loop;

- Edson Mainline Loop No. 4, Elk River Section: 40 km of 1,219 mm (NPS 48) pipeline loop;
- associated control valves, mainline valves, a receiver facility to accommodate pipeline cleaning and ILI, and a CP system;
- construction related temporary infrastructure such as stockpile sites, access roads and travel lanes, borrow pits/dugouts, laydown yards, and contractor yards; and,
- miscellaneous works, such as pipeline warning signs and aerial markers (NGTL 2019a; pg 1-1).

### 1.3 Connection of Wesley First Nation to the Project

Components of Edson Mainline are located within SNN Iyarhe Nakoda Makochi, or traditional territory/lands. According to Rev., Dr., Chief John Snow, the oral history and traditions of SNN, including Wesley First Nation, teaches that the prairies, foothills and eastern slopes of the Rocky Mountains have always been home to SNN. Rev., Dr., Chief Snow described SNN Iyarhe Nakoda Makochi as extending from beyond the Brazeau River area in the north, south into Montana, east beyond the Cypress Hills of Saskatchewan, and west well into the British Columbia Interior (Snow 2005).

The Supreme Court of Canada in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69 characterized traditional territory as the “territories, over which a First Nation traditionally hunted, fished, and trapped and continues to do so today” (*Mikisew* at para 48).

The Supreme Court of Canada in *Tsilhqot’in v. British Columbia*, 2014 SCC 44 also recognized that the boundaries and extent of a traditional territories are fluid (*Tsilhqot’in* at para 22). The population of the Indigenous nation, the availability of resources for ceremonial and economic purposes, and relations and agreements with neighbouring Indigenous nations all influenced the extent of the traditional territory (Canada 1996).

All components of Edson Mainline are located on lands subject to the *NRTA*.

In 2003 SNN commenced an action in the Alberta Court of Queen' Bench (File No. 0301-19586). This action against Canada and Alberta is rooted in the history of SNN people and Canada. SNN seek declarations that they have unextinguished Aboriginal title and existing Aboriginal rights, as well as treaty rights. More specifically, SNN seek compensation from Canada and Alberta arising from their breaches of Aboriginal rights and title over SNN lands now located in Alberta.<sup>1</sup> Lands subject to SNN Aboriginal Title are shown on Figure 1.3-1.

Components of Edson Mainline are also subject to Aboriginal Title held by SNN. Specifically, the Project overlaps two cultural areas (“SNN Cultural Areas”) identified by SNN in relation to their Aboriginal Title

SNN has six Indian Reserves (“IR”) including Stoney IR 142-143-144 and 142b, Bighorn IR 144a and Eden Valley IR 216. Components of Edson Mainline are located within the immediate vicinity of these SNN IRs:

- Bighorn IR 144A to Elk River (Nordegg Compressor Station end) by or at approximately 48 km.
- Bighorn IR 144A to Alford Creek by or at approximately 60 km.
- Rabbit Lake IR 142B to Alford Creek (Clearwater Compressor Station end) by or at approximately 77 km

The proximity of Edson Mainline to SNN IRs is shown on Figure 1.3-2.

Proximity of the Project to SNN IR’s is provided in this Report to demonstrate locational details of SNN relative to the Project. The locations of the SNN IRs are one factor used to show connection between the Project and SNN.

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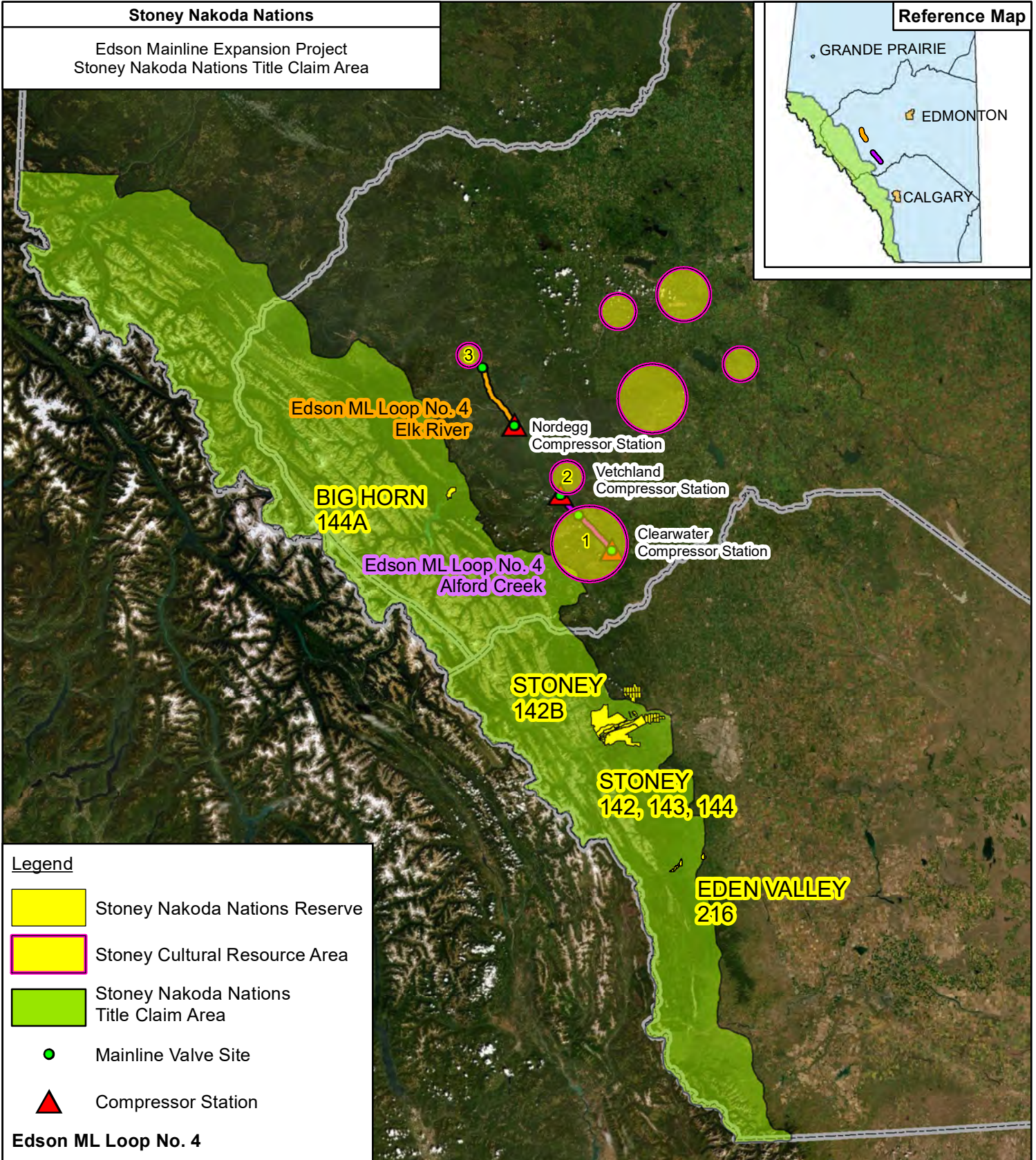
<sup>1</sup> Statements made in this section reflect correspondence by SNN legal, Rae and Company.



**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Stoney Nakoda Nations Title Claim Area

**Reference Map**



**Legend**

- Stoney Nakoda Nations Reserve
- Stoney Cultural Resource Area
- Stoney Nakoda Nations Title Claim Area
- Mainline Valve Site
- Compressor Station

**Edson ML Loop No. 4**

- Elk River
- Alford Creek

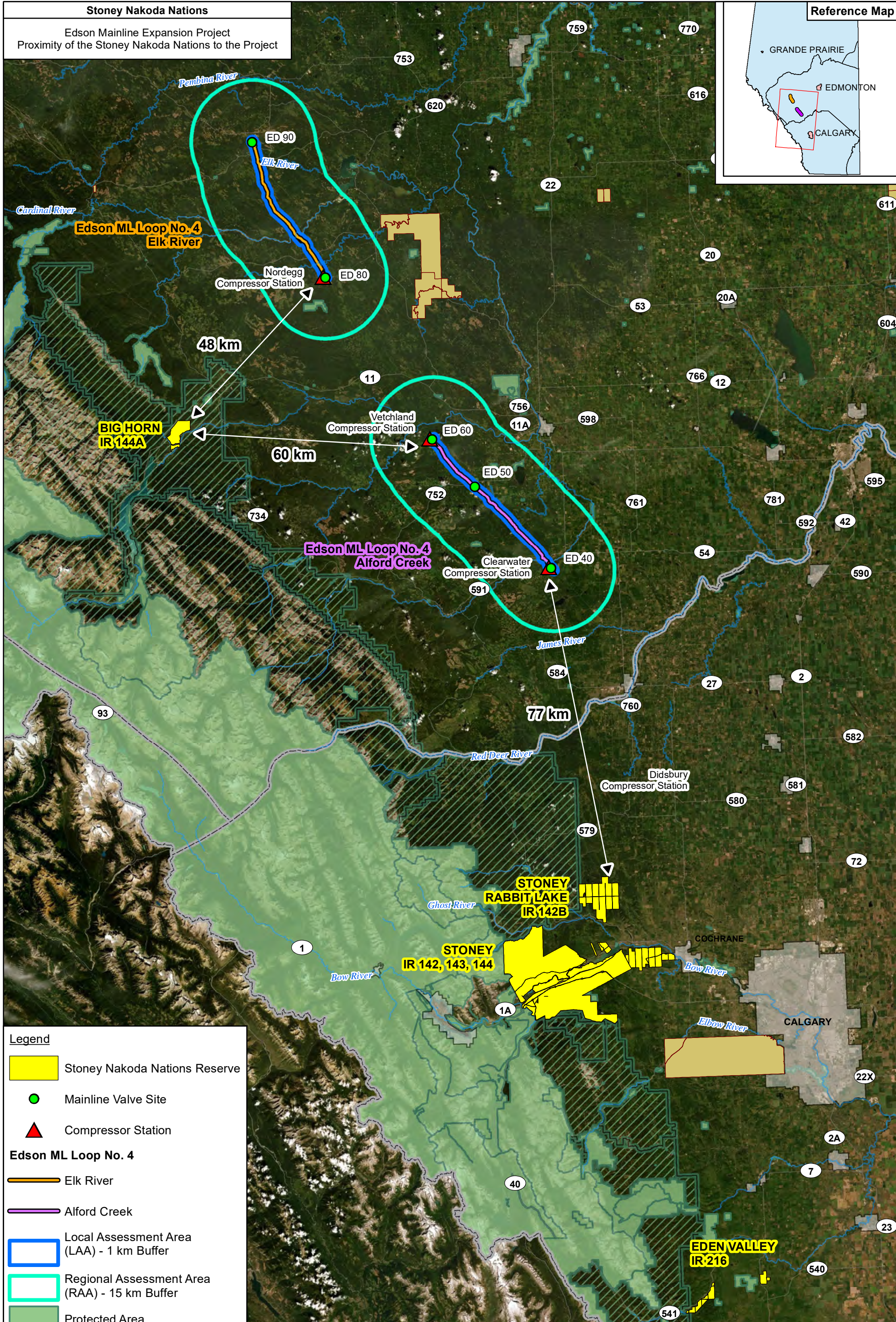
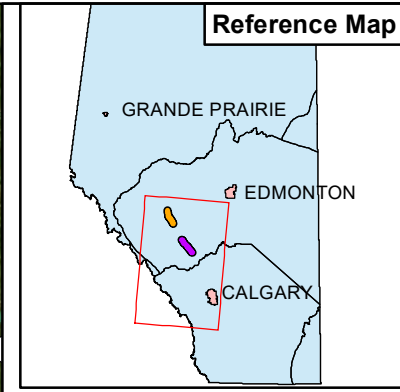
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**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Proximity of the Stoney Nakoda Nations to the Project

**Reference Map**



**Legend**

- Stoney Nakoda Nations Reserve
- Mainline Valve Site
- Compressor Station

**Edson ML Loop No. 4**

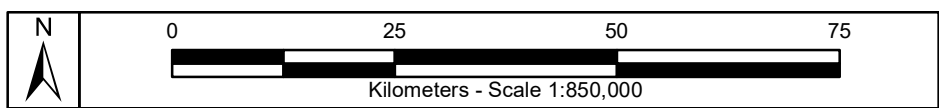
- Elk River
- Alford Creek

**Edson ML Loop No. 4**

- Local Assessment Area (LAA) - 1 km Buffer
- Regional Assessment Area (RAA) - 15 km Buffer
- Protected Area
- PLUZ - Public Land Use Zone

DATA SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDNANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISS TOPO, GIS USER COMMUNITY GOVERNMENT OF CANADA, GOVERNMENT OF ALBERTA, ABMI, TRANSCANADA

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Date: Dec 12, 2019  
Coordinate System: NAD83 11N

Prepared For: Stoney Nakoda Nations

Prepared By: MNP LLP

Figure: 1.3-2

## 1.4 Regulatory Framework for the Project

### 1.4.1 CER Regulatory Process for the Project

The CER and the associated *Canadian Energy Regulator Act, S.C. 2019, c. 28, s. 10* (“*CER Act*”) came into force on August 28, 2019. The CER and *CER Act* replaced the National Energy Board (“NEB”) and associated *National Energy Board Act, R.S.C., 1985, c. N-7* (“*NEB Act*”) respectively. As part of its implementation, all project applications filed prior to August 28, 2019 are to be assessed by the CER under the *NEB Act*. This includes Edson Mainline.

The issues on the List of Issues that are of interest to SNN include:

3. The potential commercial impacts of the Project.
5. The potential environmental and socio-economic effects of the Project, including any cumulative environmental effects that are likely to result from the Project as set out in the NEB’s Filing Manual, as well as those to be considered under the *Canadian Environmental Assessment Act, 2012*.
6. The appropriateness of the general route and land requirements for the Project.
7. Potential impacts of the Project on Indigenous Section 35 Rights and interests.
8. Potential impacts of the Project on owners and users of lands.
10. Contingency planning for leaks, accidents or malfunctions, during construction and operation of the Project.
11. Safety and security during construction and operation of the Project, including emergency response planning and third-party damage prevention.
12. The terms and conditions to be included in any recommendation or approval the Board/CER may make for the Project (CER 2019a; Appendix II).

NGTL filed Project Application with the CER, one of the regulatory authorities for the Project on April 3, 2019. The Project Application seeks a Certificate of Public Convenience and Necessity and related approvals pursuant to sections 52 and 58 of Part III, and Part IV of the *NEB Act*. In addition, NGTL is requesting an exemption from the requirements outlined in sections 30(1)(b) and 47(1) of the *NEB Act* to obtain leave to open prior to installing tie-ins to existing NGTL pipelines and facilities (NGTL 2019a; pg i).

Under the *NEB Act* Section 77 Taking and Using Lands:

no company shall take possession of, use, or occupy lands vested in Her Majesty *without the consent of the Governor in Council* [emphasis added] (*NEB Act* 2017; section 77(1)).

Under Section 77(2):

a company may, with the consent of the Governor in Council and on such terms as the Governor in Council may prescribe, take, and appropriate for the use of its pipeline and works, so much of the lands of Her Majesty lying on the route of the line that have not been granted, conceded, or sold as is necessary for the pipeline, and also so much of the public beach, bed of a lake, river or stream, or the land so vested covered with the waters of a lake river or stream, as is necessary for making, completing and using its pipeline and works (*NEB Act* 2017; section 77(2))

The CER, following the issuance of a notice of a public hearing on the Project on May 31, 2019, filed its Hearing Order on August 26, 2019 in which it has identified the preliminary List of Issues to be considered in the CER public hearing process and the assessment of the Project (NEB 2019a). The List of Issues was amended on October 15, 2019 following feedback from hearing intervenors.

### 1.4.2 Additional Regulatory Permits, Authorizations, and Legislative Considerations Required for the Project

In addition to the *NEB Act*, the Project will also be subject to other federal and provincial legislations. See Table 1.4-1 below for a summary list of additional regulatory permits and authorizations required for the Project, as identified by NGTL in its Project Application.

Additional Regulatory Permits, Authorizations, and Legislative Considerations
Federal
Department of Fisheries and Oceans Canada – <i>Fisheries Act, R.S.C., 1985, c. F-14</i> (NGTL 2019a; pg 1-8)
Environment and Climate Change Canada and Department of Fisheries and Oceans Canada – <i>Species at Risk Act, S.C. 2002, c. 29</i> (NGTL 2019b; pg 1.6)
Environment and Climate Change Canada – <i>Migratory Bird Convention Act S.C. 1994, c. 22.</i> (NGTL 2019b; pg 1.6)
Environment and Climate Change Canada – The Federal Policy on Wetland Conservation (GOC 1991) (NGTL 2019b; pg 1.6)
Provincial
Alberta Environment and Parks (“AEP”) – <i>Public Lands Act RSA 2000, c P-40 (“Public Lands Act”)</i> (NGTL 2019a; pg 1-8)
AEP – <i>Wildlife Land Use Guidelines</i> (NGTL 2019a; pg 1-8)
AEP – <i>Forest and Prairies Act RSA 2000, c F-19</i> (NGTL 2019a; pg 1-8)
AEP – <i>Wildlife Act. RSA 2000, c W-10.</i> (NGTL 2019b; pg 1.7)
Alberta Agriculture and Forestry – <i>Weed Control Act. SA 2008, c W-5.1.</i> (NGTL 2019b; pg 1.7)
AEP – <i>Water Act RSA 2000, c W-3</i> (NGTL 2019a; pg 1-8)
Alberta Culture and Tourism – <i>Historical Resources Act, RSA 2000, c H-9</i> (NGTL 2019a; pg 1-8)

Table 1.4-1: Additional Regulatory Permits and Authorizations Required for the Project

### 1.4.3 Alberta Public Lands Act

Along with the Edson Application to the NEB, NGTL is seeking the disposition of Crown lands from AEP under the *Public Lands Act*. NGTL will also be responsible for following the consultation process in Alberta outlined in the *Government of Alberta’s Guidelines on Consultation with First Nations on Land and Natural Resources Management, 2016* (the “Alberta Consultation Guidelines”) and *Government of Alberta Proponent’s Guide to First Nation Consultation Procedures for Land Dispositions, 2016*.

#### 1.4.4 Government of Alberta Green and White Areas

In 1948 the Government of Alberta identified land-use management based on “Green Area” and “White Area” boundaries which divided Alberta into two zones (Harvie & Mercier 2010) (see Figure 1.4-1). The White Area is primarily privately-owned lands or fee simple lands largely used for agriculture, tourism and recreation, natural resource development, conservation and settlements. The Green Area is comprised of publicly owned lands (i.e. occupied and unoccupied Crown lands) that are primarily used for forestry operations, tourism and recreation, conservation, and natural resource development. The lands within the Green and White Areas are managed differently in accordance to the primary uses and ownership of the lands (Government of Alberta, 2007). For this Report, lands located in the White Area and not under *Public Lands Act* dispositions are assumed to be private.



Figure 1.4-1: Alberta White and Green Areas



Picture 3: Banff Indian Days Family Camp, Banff National Park. MNP LLP/Bill Marsh

## 2. Background

### 2.1 Stoney Nakoda Nations

Comprised of three distinct nations, Chiniki First Nation, Wesley First Nation and Bearspaw First Nation, SNN are one of the northwestern most members of the Siouan language family. Members of SNN are the “people of the mountains” or *ȩyāǰhé Nakoda* (Stoney Nakoda First Nations n.d).

Presently, members of SNN reside primarily on SNN’s IRs 142-143-144 and 142b; Bighorn IR 144A; and Eden Valley IR 216. As of 2018, the population size of SNN was 5,594. Approximately 1,843 of the SNN population are Wesley First Nation members (Indigenous and Northern Affairs Canada 2019).

SNN are signatories to Treaty No.7, made on September of 1877 at Blackfoot Crossing (see Figure 3). Present at the Treaty No.7 signing was the four Chiefs of SNN (i) Chief Mas-Gwa-Ah-Sid, or Jacob Bearspaw; (ii) Chief Che-ne-ka, or John Chiniquay; (iii) Chief Ki-Chi-Pwot, or Jacob or Jonas Goodstoney; and, Chief Stamix-Osok, or Bull Backfat (Treaty No.7, 1877; see also Dempsey 1987). These Chiefs represented Chiniki First Nation, Bearspaw First Nation, and Wesley First Nation.

As described in *The True Spirit and Original Intent of Treaty No. 7* by Hildebrandt, Carter and First Rider (1996), signatory Indigenous nations understood Treaty No.7 to be a peace treaty; a commitment to end hostilities amongst themselves and towards settlers and a means of preserving their cultures and way of life. Signatory Indigenous nations did not understand Treaty No.7 to involve the surrender of lands.

The understanding of signatory Indigenous nations that Treaty No.7 is a peace treaty and not a surrender of Aboriginal title is further evidenced by Action No. T-340-99, a claim brought against Canada and Alberta by Indigenous signatories of Treaty No.7.<sup>2</sup> The claim pertains to the Plaintiffs (Treaty No.7 signatories) continued understanding of Treaty No. 7, that it was: (a) a treaty of peace, and that signatory Indigenous nations did not agree to cede Aboriginal title or rights to the lands and resources within Treaty No. 7; or, (b) that if signatory Indigenous nations’ rights and Aboriginal title were ceded, a trust was formed where the Crown held the Treaty No. 7 territory and its resources in trust for the Plaintiffs. As the *NRTA* provides for the transfer of lands and resources from Canada to the provinces, the Plaintiffs argue that since the Crown held the Treaty No. 7 territory in trust for them, the Treaty No. 7 territory did not transfer to the Province

<sup>2</sup> Wesley First Nation, Chiniki First Nation, Bearspaw First Nation, Tsuu T’ina First Nation, Siksika First Nation, Peigan First Nation and Kainaiwa First Nation (Blood Tribe).

under the *NRTA* (and therefore the Crown continues to hold the lands and resources in trust for the Plaintiffs) or alternatively, that in transferring its interest in the Treaty No. 7 territory, the Crown breached its fiduciary and trust obligations owed to the Plaintiffs (*Kainaiwa Nation, Peigan Nation, Siksika Nation, Tsuu T'ina Nation, Bearspaw Band, Chiniki Band, Wesley Band vs Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of Alberta* 1999, Statement of Claim; Rae and Company 2019, personal communication).

## 2.2 The Crown's Geographic Limitations on Stoney Nakoda Nations Section 35 Rights

With respect to the Crown's understanding of the geographic limitations for the exercise of Section 35 Rights, Treaty No.7 states:

And Her Majesty the Queen hereby agrees with her said Indians, that they shall have right to pursue their vocations of hunting throughout the Tract surrendered as heretofore described, subject to such regulations as may, from time to time, be made by the Government of the country...(Treaty No.7 1877).

During the historic Numbered Treaty-making process, Crown Treaty Commissioners did not require Indigenous leaders signing on behalf of their Indigenous nations to identify and declare their exclusive use areas or identify the extent of their traditional territories within the boundaries of their treaty prior to signing. Communal use of lands throughout the "tract surrendered" was promised by the Crown for use by all signatory Indigenous nations to "pursue their vocations of hunting" (Treaty No.7 1877). This clause was included in the text of the majority of the historic Numbered Treaties where the treaty area identified was for the use in common by all Indigenous nation signatories to that treaty including Treaty No.7.

In 2003 SNN commenced an action in the Alberta Court of Queen' Bench (File No. 0301-19586). This action against Canada and Alberta is rooted in the history of SNN people and Canada. SNN seek declarations that they have unextinguished Aboriginal title and existing Aboriginal rights, as well as treaty rights. More specifically, SNN seek compensation from Canada and Alberta arising from their breaches of Aboriginal rights and title over SNN lands now located in Alberta.<sup>3</sup> Within the title action filed by SNN, SNN maintains that they continue to have unextinguished Aboriginal title to SNN's Iyarhe Nakoda Makochi. Further, SNN understands that SNN's Section 35 Rights including unextinguished Aboriginal title takes precedence over and are an encumbrance upon any right or claim of the Crown in and to SNN's Iyarhe Nakoda Makochi. Given this, SNN takes the position that authorizations, dispositions, permits, leases, and licenses issued without SNN's consent over SNN's Iyarhe Nakoda Makochi are unlawful.

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<sup>3</sup> Statements made in this section reflect correspondence by SNN legal, Rae and Company.

### 2.2.1 “Saving and Excepting” Lands Taken Up

The Numbered Treaties (including Treaty No.7), in addition to outlining geographic limitations, included wording that specified the Crown’s treaty right to “take up land.”

...acting under the authority of Her Majesty and saving and excepting such Tracts as may be required or taken up from time to time for settlement, mining, trading or other purposes by Her Government of Canada; or by any of Her Majesty's subjects duly authorized therefor by the said Government (Treaty No. 7 1877 [emphasis added]).

Regulatory processes do not consider thresholds for how much land can be taken up. This is an inherent flaw. As noted in *Tsilhqot'in Nation v. British Columbia*, 2007 BCSC 1700, potential for infringement must be a consideration in determining the depth and scope of consultation. Further, infringement resulting from a Crown activity must be proved justified prior to being approved.

The total amount of land to be “taken up” by the Government of the country was not recorded in discussions for the Numbered Treaties; however, there are glimpses into the understandings of the parties to those treaties. The Supreme Court of Canada noted in *Mikisew* that the “language of the Treaty could not be clearer in foreshadowing change” (*Mikisew* at para 31).

This does not occur in current regulatory processes as the spatial scope for infringement is across the traditional territory of a nation. The regulatory processes are restricted to a spatial consideration of a project. Without consideration of lands taken up thresholds, Indigenous nations are at risk for infringement

As early as 1888, the Judicial Committee of the Privy Council identified that the issue of the total amount of unoccupied Crown land that could be taken up by the Crown was an issue unaddressed by treaties. In *Reference re: British North America Act, 1867*, s. 109 (Ont.), [1888] J.C.J. No. 1 (*St. Catharine’s Milling and Lumber Co. v. R.*, 13 SCR 577, 1887 (SCC)):

There may be other questions behind, with respect to the right to determine to what extent, and at what periods, the disputed territory, over which the Indians still exercise their avocations of hunting and fishing, is to be taken up for settlement or other purposes, but none of these questions are raised for decision in the present suit (*St. Catharines Milling* at para 16).

The Supreme Court of Canada outlined in *Grassy Narrows First Nation v. Ontario (Natural Resources)*, [2014] 2 SCR 447, 2014, the extent to which the taking up of land may infringe treaty rights:

Any taking up of land in the Keewatin area for forestry or other purposes must meet the conditions set out by this Court in *Mikisew Cree First Nation v. Canada* (Minister of Canadian Heritage). If the taking up leaves the Ojibway with no meaningful right to hunt, fish or trap in relation to the territories over which they traditionally hunted, fished, and trapped, a potential action for treaty infringement will arise (*Grassy Narrows* at para 52).

While the duty to consult may not be triggered by historical impacts, or a vehicle to address historical grievances (*Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41 [2017] 1 SCR 1099 at para 41), “cumulative effects of an ongoing project, and historical context” may inform the scope of the duty to consult (*West Moberly First Nations v. British Columbia (Chief Inspector of Mines)*, 2011 BCCA 247 at para 117). If there is no understanding of the existing amounts of lands currently taken up, impacts of a proposed project, no matter how small, and related infringement within an Indigenous nation's traditional territory cannot be understood.



Regulatory approval processes do not consider adverse effects to the exercise of rights from a proposed project throughout the entire traditional territory as contemplated by the courts in *Mikisew*. Regulatory approval processes are restricted to considering adverse effects resulting from a project within a defined spatial scope specific to that project (see Section 3.1.2 for spatial scope of Edson). Therefore, the consequences of taking up of land from the approval of a project is not considered in a comprehensive way to ascertain whether a meaningful right to hunt, fish, or trap remains post-approval.

### 2.2.2 National Resources Transfer Agreement, 1930

When the prairie provinces entered confederation, the Dominion government retained jurisdiction over public land and natural resources contrary to Section 92(5) of the *Constitution Act, 1867*. In 1930, the Provinces of Manitoba, Saskatchewan, Alberta, and the Government of Canada reached agreement over the transfer and administration of Crown lands within their respective provincial boundaries. The *NRTA*, known later as the *Constitution Act, 1930*, outlined conditions for the transfer of public or Crown lands to the provinces (Lambrecht 2013). Specifically, paragraph 12 of the *NRTA* outlined the agreement between the Province of Alberta and Canada:

In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that [provincial game] laws shall apply to the Indians ... provided however, that the said Indians shall have the right ... of hunting, trapping and fishing game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which [the] said Indians may have a right of access (*Constitution Act 1930*).

According to the Supreme Court of Canada, there were several changes to the scope and geographic limitations of treaty rights, including Treaty No.7 rights resulting from the passing of the *NRTA*. These changes include:

1. Signatory Indigenous nations to Treaties Nos. 6, 7, and 8 were not limited to exercising their treaty rights just within their respective treaty areas; the *NRTA* “widely extended the geographical area to include the whole of the province rather than being limited to the tract of land surrendered” (*R. v. Badger* [1996] 1 SCR 771 at para 3[b]).
2. The *NRTA* “eliminated the right to hunt for commercial purposes” and restricted the treaty right to harvest “for food” only (*Badger* at para 3[d]).

Many signatory Indigenous nations in the prairie provinces dispute both the interpretation of the Supreme Court of Canada regarding application of the *NRTA*, as well as the *NRTA* itself.

The *NRTA* restated signatory Indigenous nations’ right to exercise treaty rights “on all unoccupied Crown lands,” mirroring language from Treaty No.7. Paragraph 12 of the *NRTA* also introduced the concept that there may be additional lands where Indigenous nations “may have a right” to exercise treaty and *NRTA* rights; that is, on lands, other than unoccupied Crown lands or lands taken up where Indigenous nations “may have a right of access.”

Under the terms of Treaty No. 7, SNN is entitled to certain Treaty Land Entitlements (“TLE”) owed to them by the federal Crown. Treaty No. 7 states:

Reserves shall be assigned them of sufficient area to allow one square mile for each family of five persons, or in that proportion for larger and smaller families (Treaty No. 7 1877).

In 1889, the Crown set aside 69,790 acres as reserve lands for SNN. However, based on SNN’s population and the land quantum provision in Treaty No. 7, SNN asserts that they are entitled to an additional 25,472 acres, the calculation for which is set out in a 2012 claim filed by SNN with the Specific Claims Tribunal. SNN maintains its right to make a TLE claim on any unoccupied Crown land within Treaty No. 7 to fulfill this TLE shortfall.

Where limited lands are available to resolve unfulfilled TLE obligations, there is a heightened obligation on the Crown to consider those TLE interests before making a disposition of Crown land (see *Canada v Long*

Plain First Nation, 2015 FCA 177). If Crown land were to be taken up for the Project, this would further threaten the Crown's ability to fulfill its outstanding TLE obligations. As such, SNN's TLE interests must be considered when assessing the Project

### 2.2.3 Determining Lands Unavailable for the Exercise of Section 35 Rights

Beginning soon after the passage of the *NRTA*, Indigenous peoples across the prairie provinces began facing prosecutions under provincial laws for their attempts at exercising their Section 35 Rights on both occupied Crown and private lands. The Governments of Alberta, Saskatchewan, and Manitoba pursued convictions of Indigenous peoples for hunting on private or occupied Crown land starting in 1935 (see Appendix A for a list of those convictions).

Disputes centered on the interpretations of key concepts, including:

- What constitutes a "taking up" of lands, transferring available lands to inventory of unavailable lands?
- Is there a reliable test to use to identify available vs. unavailable land for the exercise of Section 35 Rights?
- What is the nature of the "visible, incompatible" test?

The Supreme Court of Canada has clarified these concepts, including how to determine if there is a right of access on lands other than unoccupied Crown lands. The Supreme Court of Canada restated in *Cardinal v. Attorney General of Canada* (1974) SCR 695 that the nature of the land use intended by the Crown would determine what was unoccupied and conversely occupied Crown land:

The accused was an Indian charged with carrying fire-arms on a game preserve. It was contended that he was protected by the proviso in the section, in that he was hunting on unoccupied Crown lands or on lands to which he had a right of access. Both arguments were rejected. It was held that "unoccupied" meant "idle" or "not put to use" and that *Crown lands appropriated for a special purpose were not unoccupied within the meaning of s. 12*. It was also held that the only right of access to the lands in question was merely the privilege accorded to all persons to enter the preserve without carrying fire-arms. (*Cardinal* at page 701 [emphasis added])

In 1980 the Supreme Court of Canada in *R v. Mousseau* (1980) 2 SCR 89, clarified that a public road constituted occupied Crown land set aside for a specific purpose and therefore unavailable for treaty hunting.

The Supreme Court of Canada also noted that it is an unworkable proposition to determine the suitability of a public road for the exercise of the right to hunt differentially along the length of that road, as Mr. Mousseau had argued that when cars were not present, a road was suitable for hunting. The Court noted that the road must be treated uniformly:

The right to hunt would vary with the locality and the particular stretch of road, with the time of day, volume of traffic, proximity of habitation and non-hunters, and many other factors. The right to hunt would rest upon the view one might take as to the danger of the hunting. The impracticability of such a test is patent (*Mousseau* at page 99).

Decisions from the Supreme Court of Canada as well as lower court decisions identified that the exercise of Section 35 Rights can also be restricted when safety of people or property are at stake (*Myran v. R.*, [1976] 2 SCR 137, *R. v. Morris and Olsen* 2004 BCCA 121; *R. v. Yapput et al*, 2004, ONCJ 318; *R. v. McKenzie* 2006 SKPC 51). The courts clarified that the treaty right to hunt does not take precedence over the responsibility to ensure safe hunting practices.

In 1988, the Supreme Court of Canada determined in *R v. Horse* (1988) 1 SCR 187 that permission was required to access private land. The Supreme Court of Canada clarified that a private landowner can restrict hunting by Indigenous peoples at their discretion: “[i]n summary then the terms of the treaty are clear and unambiguous: the right to hunt preserved in Treaty No. 6 did not extend to land occupied by private owners” (*Horse* at para 50).

#### 2.2.4 Visible, Incompatible Use

In 1996, the Supreme Court of Canada in *Badger* reiterated language from the earlier *Mousseau* and *Horse* decisions related to access to lands for the exercise of Section 35 Rights and clarified that:

...the Indians have the right to hunt, trap, and fish, game and fish, for food at all seasons of the year on: (a) all unoccupied Crown lands; (b) any occupied Crown lands to which the Indians, or other persons, have right of access, by virtue of statute or common law or otherwise, for the purpose of hunting, trapping or fishing; (c) any occupied private lands to which the Indians have right of access by custom, usage, or consent of the owner or occupier, for the purpose of hunting, trapping, or fishing (*Badger* at para 62).

*Badger* clarified that the treaty right to hunt for food may still be exercised on private lands without permission where there is no “visible, incompatible” use of private lands (*Badger* at para 54). *Badger* indicates that land under a visible use incompatible with the exercise of Section 35 Rights may be evidenced by:

- Cleared muskeg (*Badger* at para 23)
- Fences (*Badger* at para 53)
- Signs (*Badger* at para 63)
- Buildings, whether inhabited or not (*Badger* at para 68)
- Agricultural activity, cultivated, recently or not (*Badger* at para 63)
- Safety regulations (*Badger* at para 86)
- Conservation regulations (*Badger* at para 86)
- Range of a firearm (*Badger* at para 61)

Therefore the “visible, incompatible” nature of occupied Crown land and private land is used by the Crown to determine whether or not Section 35 Rights are accessible to a signatory Indigenous nation on that land from their perspective.

Subsequent to *Badger* there have been several judicial cases that have applied the concept of “visible, incompatible” when ruling on the exercise of Section 35 Rights on private or occupied Crown lands. A recent example of one such case is *R v. Pierone*, 2018 SKCA 30.

The conflicting statements from the courts in cases such as *Badger* and *Pierone* versus cases such as *Mousseau* and *Horse* (discussed in Section 2.2.3) on what is considered available and unavailable lands for the exercise of Section 35 Rights highlights the uncertainty faced by Indigenous peoples while exercising their Section 35 Rights. Indigenous peoples are required to self-police and make assumptions on whether the lands they looking to exercise their Section 35 Rights on are available, or if they are at risk for being charged.

In *Pierone*, the Saskatchewan Court of Appeal overturned a decision by the Queen Bench of Saskatchewan - *R. v. Pierone*, 2017 SKQB 171 which had ruled that Mr. Pierone should have known that the slough he was hunting on was private lands because there were farms in the vicinity.

The Saskatchewan Court of Appeal in *Pierone* overturned the previous Queen Bench of Saskatchewan's decision stating that the slough where Mr. Pierone was hunting could be determined, using *Badger* as a guide, as visibly compatible with Mr. Pierone's treaty right to hunt despite being private lands:

There were no buildings near the slough or the quarter section of land upon which it sat, or in the immediate area. There were no fences. There were no posted signs. The remainder of the quarter section was cultivated land (a stubble field at the time) and had, thereby, been put to a visible, incompatible land use; but the same cannot be said of the slough. It had not been farmed in a couple years, or since Mr. Pierone had moved to the area. On the evidence then, although the slough may have been used, *its use at the time was not incompatible* with the hunt as carried out by Mr. Pierone (*Pierone* at para 43 [emphasis added]).

### 2.2.5 Government of Alberta's Interpretation of Unavailable Lands

In Alberta, the *Public Lands Act*, and the corresponding *Public Lands Administration Regulation*, Alta Reg 187/2011 ("PLAR") provides clarification of what the Government of Alberta interprets as occupied Crown lands under a 'visible, incompatible use' where no right of access would exist for the exercise of Section 35 Rights.

Under the *Public Lands Act*, the Government of Alberta makes a distinction between a) "vacant public land" or unoccupied Crown land; b) "vacant disposition area" which can be understood to be occupied Crown land where development is not likely to occur for 90 days; and c) public lands under "formal disposition" (*Public Lands Act*). As described in *PLAR*, vacant public land and vacant disposition areas are considered the same until development activity occurs on the vacant disposition area. These formal dispositions are granted for a:

- (i) commercial trail riding permit,
- (ii) cultivation permit,
- (iii) easement,
- (iv) farm development lease,
- (v) grazing lease,
- (vi) grazing license,
- (vii) license of occupation,
- (viii) mineral surface lease,
- (ix) miscellaneous lease,
- (x) pipeline agreement,
- (xi) pipeline installation lease,
- (xii) surface material lease,
- (xiii) pipeline agreement,
- (xiv) pipeline installation lease<sup>4</sup> (*PLAR* 2011; pt 1, section 0).

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<sup>4</sup> Listed twice in *PLAR*

Entry to lands under formal disposition requires the consent of the formal disposition holder (Government of Alberta 2012:3). No right of access exists for the exercise of Section 35 Rights for public lands under most formal dispositions without the permission of the owner or occupier as under the *Petty Trespass Act, 2000*, every person who: “without the permission of the owner or occupier of land enters on land when entry is prohibited” is therefore subject to a fine of \$2000 for the first offence and \$5000 for the second offence (*Petty Trespass Act 2000*; section 2).

Any person found committing a trespass to which this Act applies may be apprehended without warrant by any peace officer, or by the owner or occupier of the land on which the trespass is committed, or the servant of, or any person authorized by the owner or occupier of the land, and may be forthwith taken before the nearest judge of the Provincial Court or justice of the peace to be dealt with according to law (*Petty Trespass Act 2000*; section 4).

Grazing leases, grazing licenses, cultivation permits, and farm development leases while not subject to the *Petty Trespass Act, 2000*, are often subject to the *Public Lands Act Recreational Access Regulations* Alta Reg 228/2003 which also requires the permission of the disposition holder for entry. The Government of Ontario and Saskatchewan within the past year have moved to strengthen the application and enforcement of trespass laws.

While unclear in its direction on the concept of “visible, incompatible” use of Crown lands, the *Government of Alberta Sustainable Resources Development Lands Division Standard Operating Procedure, Guide to Applying PLAR in the Context of Aboriginal Peoples’ Rights* (2018) references the following Government of Alberta document, *Hunting by Treaty Indians in Alberta* (2016) which reiterates the concept of “visible, incompatible” use of Crown lands and states that:

In general, if the public has unrestricted access to an area of public land for hunting purposes, an Indian person would have access for hunting for food on that same land. Indians may hunt for food on lands that are not being put to any other use that is visibly incompatible with hunting, as decided on a case-by-case basis. The presence of fences, signs, fields, buildings, domesticated animals or indications of farming or industrial activities all suggest uses that are “visibly incompatible” with hunting. The safety of persons, livestock and domestically raised animals will be of primary importance. For example, unless permission to hunt has first been obtained, Indians may not hunt on:

- Lands being actively used for mining, lumbering or other *industrial purposes*,
- Lands that are fenced, posted or cultivated,
- Lands containing buildings which may be used or occupied,
- Lands where livestock or domestically raised animals may be present (Government of Alberta 2016; pg 1 [emphasis added]).

Once a disposition to use Crown land for commercial purposes is granted, the third-party commercial rights holder, such as an industry proponent, has the “the right to occupy and use the Lands” including the right to conduct works, maintenance, or other activities (AER Disposition No. PIL140697; pg 341), which exclude the lands from public use, including the exercise of Section 35 Rights.

Permission is not sought, nor is it required by the industry proponent from Indigenous nations prior to conducting activities allowed for under the disposition granted to it by the Crown. However permission is required by Indigenous nations from an industry proponent prior to conducting activities on a disposition granted by the Crown.

Additionally, the *Alberta Consultation Guidelines* states that consultation with Indigenous nations is not triggered on occupied Crown lands with existing dispositions issued under the *Public Lands Act*. According to the *Alberta Consultation Guidelines*, consultation may not be triggered where no “new lands or novel impacts to existing lands” are proposed (Government of Alberta 2014; Appendix B1). In other words, the Aboriginal Consultation Office does not trigger consultation on Crown lands that are the subject of existing dispositions.

### 2.2.6 Government of Canada’s Restrictions

According to the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* (2019) at section 3(1) reports that any individual who intends to “engage in an activity that would cause a ground disturbance within a prescribed area must make a locate request” to the pipeline company either directly or through a one-call centre at least three days prior to the activity is to start. What constitutes a ground disturbance is not defined within the *National Energy Board Pipeline Damage Prevention Regulations – Authorizations* but it could be assumed to include Section 35 Rights activities. For example, the construction of a cabin, the building of a fire, or the use of all-terrain vehicles could all result in alteration of the pipeline ROW. This legislated requirement to seek permission from the pipeline company activities that may result in ground disturbances highlights the legal occupation of lands that companies receive once a disposition is granted.

### 2.2.7 Available vs. Unavailable Lands

For the purposes of this Report, lands classified as available or unavailable for the exercise of Section 35 Rights are as follows:

Lands Available for the Exercise of Section 35 Rights	Lands Unavailable for the Exercise of Section 35 Rights
Crown land without Crown authorizations	Crown land with Crown authorizations
Crown land with Crown authorizations where a statute allowing for the exercise of activities related to Section 35 Rights	Land under a visible use incompatible with the exercise of activities related to Section 35 Rights <sup>5</sup>
Private land where permission has been specifically obtained <sup>6</sup>	Private lands <sup>7</sup>

Table 2.2-1: Available vs. Unavailable Lands

### 2.2.8 “No Meaningful Right”

Treaty No.7 outlines the intent of the Crown that once unoccupied Crown, or available, lands were “taken up” by the Crown these lands would no longer be available for the exercise of Section 35 Rights. Many signatory Indigenous nations do not share this interpretation.

A meaningful right to hunt, as clarified for the Ojibway by the Supreme Court of Canada in *Grassy Narrows*, requires access to lands on which the right to hunt can be exercised. The Supreme Court of Canada in *Mikisew* also noted the Crown must turn its mind to the total inventory of lands available to a signatory Indigenous nation:

<sup>5</sup> The Study Team notes lands under a visible use incompatible with the exercise of Section 35 Rights could not be identified for this Report and is not used in the calculation of unavailable lands. The subjective and contextual nature of “visible use incompatible with the exercise of Section 35 Rights” makes it difficult to identify and map.

<sup>6</sup> The Study Team notes private land where permission has been specifically obtained is defined under the category of available lands for this Report; however, private land where permission has been specifically obtained could not be identified for this Report and is not used in the calculation of available lands.

<sup>7</sup> The Study Team notes this Report uses the proxy of White Area for the identification of private lands

In the case of Treaty No. 8, it was contemplated by all parties that “from time to time” portions of the surrendered land would be “taken up” and transferred from the inventory of lands over which the First Nations had Treaty rights to hunt, fish and trap, and placed in the inventory of lands where they did not...

The language of the Treaty could not be clearer in foreshadowing change. Nevertheless, the Crown was and is expected to manage the change honorably (*Mikisew* at para 30 – 31).

Ensuring there are sufficient lands available for the continued meaningful exercise of Section 35 Rights in the area where SNN historically exercised such rights and continues to do so today is an objective of SNN. There must be consideration in a duty to consult process of whether there are sufficient available lands remaining supporting preferred conditions for the continued meaningful exercise of Section 35 Rights.

The Supreme Court of Canada in *Grassy Narrows* reiterated that the taking up of land under Treaty No. 3 may have a limit, in that:

Not every taking up will constitute an infringement of the harvesting rights set out in Treaty 3. This said, if the taking up leaves the Ojibway *with no meaningful right to hunt, fish or trap in relation to the territories over which they traditionally hunted, fished, and trapped*, a potential action for Treaty infringement will arise (*Grassy Narrows* at para 52, [emphasis added]).

Identifying the amount of available lands is critical for the understanding of whether a meaningful right remains for that Indigenous nation. The exercise of Section 35 Rights for Indigenous nations in Canada is location specific; that is, “more significantly for aboriginal people, as for non-aboriginal people, location is important” (*Mikisew* at para 47).

The Supreme Court of Canada in *R. v. Sparrow*, [1990] 1 SCR 1075, 1990 also identified a suitable framework that requires an identification of the community’s (and not individual) preferred means of exercising Section 35 Rights. The B.C. Court of Appeal in *Morris and Olsen* made clear, and as references in *R. v. Morris*, [2006] 2 SCR 915, 2006 SCC 59, preferred means of exercising a Section 35 Right is determined by reference to the community as a whole, and not by reference to individuals within that community.

### 2.2.9 Disturbed Lands

The Alberta Biodiversity Monitoring Institute (“ABMI”) in its *Human Footprint Report* (2017) defines disturbances to lands for human uses such as industrial development, agriculture, recreation, and residence as ‘human footprint’. Human footprint is described by ABMI as the “visible alteration or conversion of native ecosystems” (ABMI 2017; pg 10) and includes all areas that have been altered for human use for **extended periods of time** and land that is periodically altered and reset to “earlier successional conditions by industrial activities” (ABMI 2017; pg 10).

Land disturbances, including disturbances created by industrial development, can create deep scarring on the landscape (Wildlands League 2019). For example, the *Boreal Logging Scars* report by the Wildlands League (2019) notes that disturbance caused by clearing and logging activities that occurred as long as 20-30 years ago are still visible today (Wildlands League 2019; pg 30). Further, Wildlands League reported that logging scars can exceed 20% of the clearcut area (Wildlands League 2019; pg 32). This means that damages caused by disturbance can extend past a defined development area.

Disturbances can result in adverse impacts not only to the biophysical appearance of lands, but also lead to secondary anthropogenic and physical effects to surrounding ecosystems. For example, a study completed by Danneyrolles, V., Dupuis, S., Fortin, G. et al. (2019) reported a link between changes in forest compositions resulting from disturbances to lands with increased temperatures in northern forests. A second example is the impact land disturbances have on biodiversity; ABMI reported that industrial development can affect biodiversity intactness (i.e. species' habitat) resulting in a decrease in species abundance (ABMI 2016; pg 1).

It is generally understood that disturbances of lands have shown to result in negative impacts on wildlife species beyond the disturbance footprint. For example, Environment and Climate Change Canada's *Range Plan Guidance for Woodland Caribou, Boreal Population* (2016) considers all caribou habitat located within a 500m buffer on all permanent and non-permanent anthropogenic disturbances to be disturbed or damaged habitat. In the exercise of Section 35 Rights, Indigenous nation members may frequent specific locales over their lifetime and their tolerance for change in those locales is low. While avoidance behavior related to human disturbance is well understood for many wildlife species; this area has not been widely studied for avoidance behaviours of Indigenous nation members while exercising their Section 35 Rights.

As previously noted, land disturbance is a unique footprint that can persist beyond the original disposition or permit area (e.g., a forestry permit), and therefore, while the legal mechanism of exclusion for the exercise of Section 35 rights has been removed, the qualitative effects like conflicts with preferred means (as described in *Sparrow*), increased avoidance behavior, change in perception and change of "sense of place" or qualitative connection to locale can continue.

### Impacts of Land Disturbance on Section 35 Rights

Land disturbances, and related scarring and secondary anthropogenic and physical effects, result in impacts to Section 35 Rights. Land disturbances:

- impede the exercise of Section 35 Rights including hunting, trapping, fishing, gathering, and cultural activities;
- change access to resources including plants, wildlife, trees, fish, and medicines;
- alter the physical attributes of locales whereby they are no longer preferred for harvesting activities;
- alter immovable cultural places including historical areas, harvesting sites, ceremonial sites, and sacred sites;
- decrease access to areas due to the presence of visible, incompatible characteristics on the lands or the presence of conditions not-preferred for the exercise of Section 35 Rights;
- alter perceptions of an area related to health risks or personal safety;
- increase avoidance behaviors; and,
- change an Indigenous nation's qualitative connection to a cultural place.
- Interrupt the ability to transmit important cultural information about a place, skill, or species to younger generations.



### 2.2.10 Accommodations for Adverse Effects to Section 35 Rights

The Supreme Court of Canada has identified the duty to consult contains two distinct processes: the identification of adverse effects to Section 35 Rights and if appropriate, the accommodation of such rights. Once adverse effects to Section 35 Rights are identified, the determination of appropriate accommodation measures is required. The suite of accommodation measures available to eliminate, reduce or control identified adverse effects may take a variety of forms, such as economic measures meant to financially compensate and measures to offset effects to biophysical components.

The Crown's duty to both consult on and accommodate effects to Section 35 Rights of Indigenous nations is a constitutional imperative (Bankes 2017). Accommodation should result in achieving substantive outcomes and should not only be procedural (Arthur and Pape 2005; Potes 2006; Sossin 2010). The Supreme Court of Canada identified meaningful consultation must identify project related effects to Section 35 Rights and appropriate accommodation to those effects (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 SCR 511, 2004 SCC 73).

**In other words, accommodation of project adverse effects to Section 35 Rights is equally important as identifying the effects themselves.**

According to the Supreme Court of Canada in *Clyde River (Hamlet) v. Petroleum Geo-Services Inc.*, [2017] 1 SCR 1069, 2017 SCC 40:

Bearing this in mind, the consultation that occurred here fell short in several respects. First, the inquiry was misdirected. While the NEB found that the proposed testing was not likely to cause significant adverse environmental effects, and that any effects on traditional resource use could be addressed by mitigation measures, the consultative inquiry is not properly into environmental effects per se. Rather, it inquires into the impact on the right. No consideration was given in the NEB's EA to the source — in a treaty — of the appellants' rights to harvest marine mammals, nor to the impact of the proposed testing on those right (*Clyde River* at para 45).

Similarly, according to the Supreme Court of Canada in *Tsleil-Waututh Nation v. Canada (Attorney General)*, 2018 FCA 153:

Meaningful consultation is not simply a process of exchanging information. Where, as in this case, deep consultation is required, a dialogue must ensue, and the dialogue should lead to a demonstrably serious consideration of accommodation. The Crown must be prepared to make changes to its proposed actions based on information and insight obtained through consultation (*Tsleil-Waututh* at para 564).

However, without a concrete framework for identifying appropriate accommodation measures for impacts to Section 35 Rights it is often the case that projects receive approval without proper consideration and accommodation to Section 35 Rights ever occurring (Mainville 2001). In these situations, Indigenous nations' only platform to protect their Section 35 Rights becomes the courts. If an Indigenous nation chooses to access the courts to advocate for and protect their Section 35 Rights it can lead to costly delays, substantial project modifications and even project cancellation (Potes 2006 and Newman 2014).

### 2.2.11 Compensation for Adverse Effects Under the NEB Act

The NEB provides the following definition of mitigation:

In respect of a project, the elimination, reduction or control of the adverse environmental effects of the project and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means (NEB Filing Manual; Glossary of Terms).

The *NEB Act* contemplates compensation of adverse effects to landowners and users and provides the following key definition:

A company shall, in the exercise of the powers granted by this Act or a Special Act, do as little damage as possible, and shall make full compensation in the manner provided in this Act and in a Special Act, to all persons interested, for all damage sustained by them by reason of the exercise of those powers (*NEB Act 2017*; pg 75).

This definition is further elaborated upon in the NEB Filing Manual which states:

the 'owner' is not restricted to the fee simple owner or to freehold lands. An owner may include any interest in, or possession of land, such as the fee simple owner, Aboriginal title<sup>8</sup>, the administrators of crown and public lands and occupants of land. The interest held may be registered or unregistered (NEB Filing Manual 2017; pg viii).

This definition is used to determine who Section 86-103 of the *NEB Act* is applicable to for a proposed project (*NEB Act 2017*; para 85). Section 86-103 provide details on the process companies must follow to acquire lands using land acquisition agreements and arbitration tribunals should a land acquisition agreement not be reached.

As stated above in Section 1.3, SNN has an ongoing action in the Alberta Courts against the Government of Canada and the Government of Alberta related to SNN's understanding of its unextinguished Aboriginal title. As explored in *Tsilhqot'in* Indigenous nations with Aboriginal title may require the Crown "to reassess prior conduct in light of the new reality in order to faithfully discharge its fiduciary duty to the title-holding group going forward" (at para 92). This means that the Crown may be responsible for cancelling project approvals on lands where there is Aboriginal title if the project was approved without consent and the continuation of the project may impact the Aboriginal title (Adkins, Gary, MacNab and Nettleton 2016; pg 9).

Section 86 of the *NEB Act* indicates that a company may not acquire lands through a lands acquisition agreement unless the agreement includes:

- Compensation by lump sum, annual or periodic payments (*NEB Act 2017*; section 86(2)(a));
- A 5-year review period to assess amount of compensation payable (*NEB Act 2017*; section 86(2)(b));
- Compensation for damages incurred during project operations or abandoning phases (*NEB Act 2017*; section 86(2)(c));
- Indemnification from "all liabilities, damages, claims, suits and actions" as a result of project operations or abandoning phases. Except those resulting from gross negligence or misconduct by the owner (*NEB Act 2017*; section 86(2)(d));
- Restriction to the use of land to the project component specified to be required unless consent is obtained by landowner for addition uses of the land (*NEB Act 2017*; section 86(2)(e)); and,
- Any other matters related to lands acquisition (*NEB Act 2017*; section 86(2)(f)).

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<sup>8</sup> Aboriginal title is a subset of Section 35 Rights.

A version of such agreement drafted by NGTL for land acquisition from a landowner related to the Project can be found in Appendix 10-4 of the Project Application.

Should a land acquisition agreement not be reached between the company and the owner due to a disagreement on compensation matters, an arbitration process can be requested by either party. Compensation matters will be determined by an Arbitration Committee who, where applicable, consider several key factors including:

- The market value of lands (*NEB Act 2017*; section 97(1)(a));
- Loss of use of lands by owner (*NEB Act 2017*; section 97(1)(c));
- Adverse effect on the remaining lands of an owner (*NEB Act 2017*; section 97(1)(d));
- Expected project-related nuisances, inconveniences and noise (*NEB Act 2017*; section 97(1)(e));
- Damage to lands acquired by company (*NEB Act 2017*; section 97(1)(f));
- Project-related loss or damage to livestock, personal property or movable (*NEB Act 2017*; section 97(1)(g));
- Difficulties related to relocation of owner or owner's property. *NEB Act 2017*; section 97(1)(h)).

The legislative process related to land acquisitions outlined in the *NEB Act* could be used to determine appropriate compensation or accommodation for impacts to SNN including matters associated with the exercise of Section 35 Rights often thought as intangible such as impact to culture (Adkins, Gray, MacNab, and Nettleton 2016).

Indigenous nations are not afforded the same opportunity for dispute resolution as provided to other land rights holders under the *NEB Act*. SNN is currently unable to participate in the above legislative process to determine appropriate accommodation from Project impacts to their Section 35 Rights.

The above described legislative process in the *NEB Act* and related resolutions and agreements are required to occur prior to project approval.

That being said, on November 15, 2018 the NEB in Filing A95736 released conditions under which the Manitoba-Minnesota Transmission Project would be approved. The approval included Condition 22: The development and implementation of a Crown Land Offset Measures Plan which outlines how the permanent loss of Crown lands available for traditional use by Indigenous peoples resulting from the Manitoba-Minnesota Transmission Project will be offset or compensated:

Condition 22 is an important precedent that the CER should factor in and implement if the Project is approved.

Manitoba Hydro must file with the Board, 30 days prior to commencing operations, a Crown Land Offset Measures Plan (the Plan) that outlines how permanent loss of Crown lands available for traditional use by Indigenous peoples resulting from the Project will be offset or compensated for. The Plan must include:

- A. A description of site-specific details and maps showing the locations where Crown land is no longer available for traditional use as a result of Project activities at Dorsey Converter Station and the transmission tower locations, as well as any other locations;
- B. A list of the offset or compensation measures that will be implemented to address the permanent loss of Crown lands identified in a) above;
- C. An explanation of the expected effectiveness of each offset measure described in b);
- D. The decision-making criteria for selecting specific offset measures that would be used and under what circumstances;

- E. A schedule indicating when measures will be implemented and the estimated completion date(s); and,
- F. Summary of consultation by Manitoba Hydro with any impacted Indigenous communities and with relevant provincial and federal authorities regarding the Plan (NEB 2018; pg 187).

This requirement demonstrates how the NEB considers adverse project effects to Section 35 Rights. If adverse project effects cannot be avoided, eliminated or fully reduced, they must be accommodated through financial controls.

An *Overview of Aboriginal and Treaty Rights and Compensation for their Breach*, by Justice Robert Mainville (2001) identifies six legal principles for determining economic accommodation to impacts to Section 35 Rights:

- A. Compensation is to be determined in accordance with a methodology that takes into account the principles of fiduciary law;
- B. Relevant factors in determining compensation include the impacts on the affected aboriginal community and the benefits derived by the Crown and third parties from the infringement;
- C. Compensation is to be determined in accordance with federal common law and will thus be governed by rules that apply uniformly throughout Canada;
- D. Compensation is generally the responsibility of the Crown but may, in appropriate circumstances, be assumed by third parties;
- E. Compensation may be provided through structured compensation schemes or through a global monetary award; and,
- F. Compensation is normally to be awarded for the benefit of the affected aboriginal community as a whole (Mainville 2001; pg 128).

However, where residual adverse project effects are so significant that no amount of compensation can offset the loss of Section 35 Rights, the Project must not be approved.



Picture 4: Banff Indian Days Family Camp, Banff National Park, Alberta, MNP LP/Bill Marsh

## 3. Methodology

As stated, the purpose of the Report is to:

- provide information about how the Project may directly and adversely impact the ability of SNN to exercise their Section 35 Rights using SNN-specific VCs;
- outline additional issues and concerns of the Stoney Consultation Office; and,
- provide suggestions for appropriate accommodation measures for adverse Project effects to the exercise of Section 35 Rights.

### 3.1 Study Methodology

In order to fulfill the objectives of this Report, the Study Team followed Environmental Assessment (“EA”) methodology where possible. The conduct of an EA is underpinned by the notion that a rational scientific method provides the basis for their execution and that “in order to be credible, the [EA] process must be based on scientific objectives, modeling and experimentation, quantified impact predictions and hypothesis-testing” (Noble 2010; pg 4).

#### 3.1.1 Review of Project Application

The Study Team reviewed the Project Application and Project Environmental and Socio-Economic Assessment (“ESA”) (“Project ESA”) submitted by NGTL to the CER in April 2019 along with the additional written evidence submitted by NGTL to the CER in September 2019. The review of the Project filings informed the assessments and results presented in the Report.

### 3.1.2 Identification of Project Study Areas

The spatial boundaries defined below and applied by the Study Team are in keeping with the spatial study areas identified in the Project ESA for the Traditional Land and Resource Use (“TLRU”) VC and Wildlife and Wildlife Habitat VC.

Project Study Areas	
Project Development Area (“PDA”)	<ul style="list-style-type: none"> <li>Elk River Section: 40.2 km-long and 75 m-wide corridor totaling 292.3 ha</li> <li>Alford Creek Section: 44.7 km-long and 75 m-wide corridor totaling 337.1 ha</li> </ul>
Local Assessment Area (“LAA”)	<ul style="list-style-type: none"> <li>Elk River Section: 1 km buffer around the PDA (40.2 km-long and 75 m-wide corridor totaling 292.3 ha)</li> <li>Alford Creek Section: 1km buffer around the PDA (44.7 km-long and 75 m-wide corridor totaling 337.1 ha)</li> </ul>
Regional Assessment Area (“RAA”)	<ul style="list-style-type: none"> <li>Elk River Section: 15km buffer around the PDA (40.2 km-long and 75 m-wide corridor totaling 292.3 ha)</li> <li>Alford Creek Section: 15km buffer around the PDA (44.7 km-long and 75 m-wide corridor totaling 337.1 ha)</li> </ul>

Table 3.1-1: Project Study Areas

See Figure XX for further details on the Project study areas

### 3.1.3 Identification of Temporal Phases for Study

The Study Team assumed the location and land requirements for construction and operation phases of the Project were included in shapefiles provided by NGTL on October 4, 2019. For the purposes of this Report, impacts were identified from the combination of construction and operations.

### 3.1.4 Determination of Significance

The Study Team has no control or confidence that suggested accommodation measures outlined in Section 3.4.1 will be applied; therefore a significance determination was not completed as part of this Report.

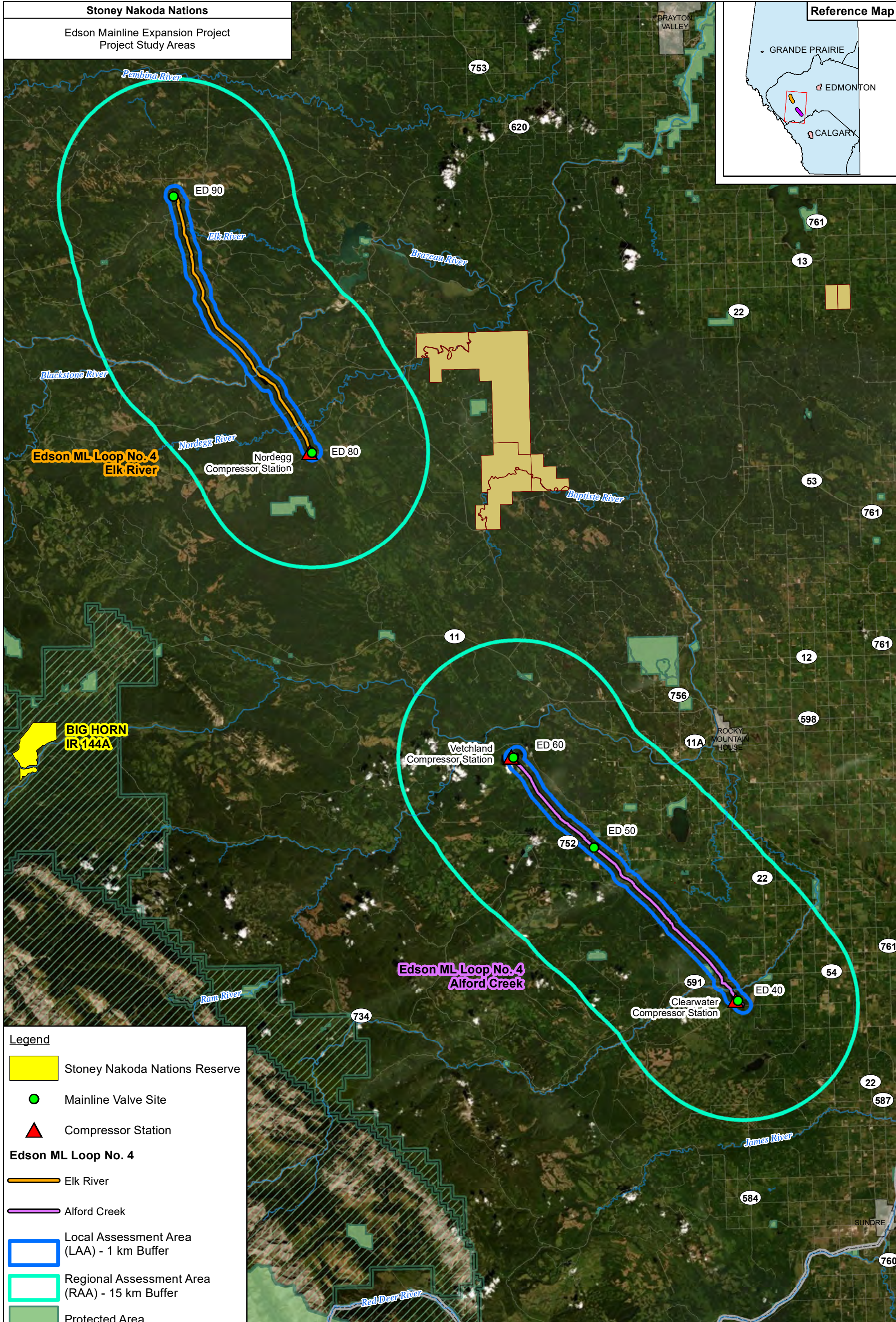
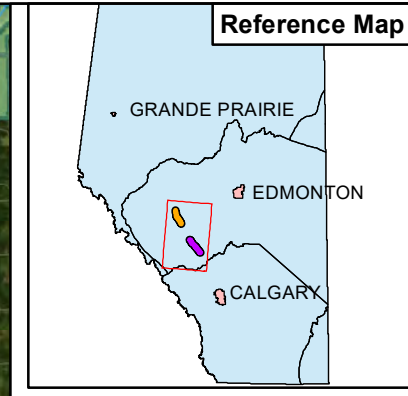
### 3.1.5 Determination of Residual Effects Criteria

The Report assesses Project-related effects relative to the baseline conditions. Assessment of Project effects includes identification of potential effects, the consideration of the Project ESA mitigation measures, and the application of accommodation measures and NGTL’s characterization of residual effects for the NGTL VC of Vegetation and Wetlands.

**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Project Study Areas

**Reference Map**



**Legend**

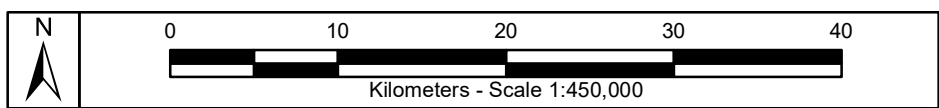
- Stoney Nakoda Nations Reserve
- Mainline Valve Site
- Compressor Station

**Edson ML Loop No. 4**

- Elk River
- Alford Creek
- Local Assessment Area (LAA) - 1 km Buffer
- Regional Assessment Area (RAA) - 15 km Buffer
- Protected Area
- PLUZ - Public Land Use Zone

DATA SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDNANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISS TOPO, GIS USER COMMUNITY GOVERNMENT OF CANADA, GOVERNMENT OF ALBERTA, ABMI, TRANSCANADA

DISCLAIMER: THIS MAP SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR CONSULTATION WITH STONEY NAKODA NATIONS. THIS MAP IS THE EXCLUSIVE PROPERTY OF STONEY NAKODA NATIONS. ANY REPRODUCTION OR DISTRIBUTION WITHOUT WRITTEN APPROVAL IS STRICTLY PROHIBITED. PROJECT DATA LOCATIONS ARE APPROXIMATE.



Date: Dec 12, 2019  
Coordinate System: NAD83 11N

Prepared For: Stoney Nakoda Nations

Prepared By: MNP LLP **MNP**

Figure: 3.1-1

The following residual effects criteria were identified for the purpose of this Report:

Residual Effects Criteria	Descriptor of Criteria
<b>Direction</b>	<ul style="list-style-type: none"> <li>• Positive (net benefit)</li> <li>• Negative (net loss)</li> <li>• Neutral (no change)</li> </ul>
<b>Geographic Extent</b>	<ul style="list-style-type: none"> <li>• PDA</li> <li>• LAA</li> <li>• RAA</li> </ul>
<b>Magnitude</b>	<ul style="list-style-type: none"> <li>• Low – no alteration from current conditions</li> <li>• High – increase in effort necessary to exercise Section 35 Rights and a reduction to the ability to exercise Section 35 Rights in study areas<sup>9</sup></li> </ul>
<b>Duration</b>	<ul style="list-style-type: none"> <li>• Short-Term (&lt;1 Seasonal Round or 1 yr)</li> <li>• Medium-Term (&gt;1 Seasonal Rounds or 1 yr)</li> <li>• Long-Term (20+ years or equivalent to a generation)</li> </ul>
<b>Frequency</b>	<ul style="list-style-type: none"> <li>• Rare (uncommon)</li> <li>• Multiple Regular</li> <li>• Multiple Irregular</li> <li>• Continuous</li> </ul>
<b>Reversibility</b>	<ul style="list-style-type: none"> <li>• Reversible</li> <li>• Permanent (no decommissioning contemplated)</li> </ul>
<b>Likelihood</b>	<ul style="list-style-type: none"> <li>• High</li> <li>• Low</li> </ul>

Table 3.1-2: Residual Effects Criteria

### 3.2 NGTL Selected Valued Components

In the Project ESA, NGTL states that:

The VCs that were selected:

- represent environmental and socio-economic elements, as defined in the NEB Filing Manual, that have the potential to be affected by the Project
- are a part of the heritage of Aboriginal peoples or a part of their current use of lands for traditional purposes
- are of scientific, historical, archaeological importance, or
- have been identified as important issues or concerns by stakeholders or in other effects assessments in the region (NGTL 2019b; pg 4.2).

<sup>9</sup> Due to the amount of effects to Section 35 Rights already felt by SNN members in current conditions, the Study Team determined that any changes to current condition would be high in magnitude.



NGTL in its Project ESA identifies the VC of TLRU to determine impacts to Indigenous nations.

SNN has previously informed<sup>10</sup> NGTL that it does not find TLRU to be sufficient to fulsomely identify and assess project-impacts to SNN Section 35 Rights. As noted in Tobias (2010):

The danger of showing cultural features as disconnected islands or fragments on a map is that corporations and government agencies carry on with business as usual on the portions for which no data are mapped. They regard the mapped features as isolated remnants of heritage instead of parts of living cultural systems. (pg 46-47)

### **3.3 Selection of Stoney Nakoda Nations Valued Components**

#### **3.3.1 Stoney Nakoda Nations Valued Component Workshop**

On July 23 and 25, 2018, VC Workshops (“2018 VC Workshops”) were held in Morley, Alberta, and Bighorn, Alberta with SNN members including SNN elders, community members, and Stoney Consultation Office representatives (“Workshop Attendees”). These 2018 VC Workshops provided input into VCs selected by SNN in previous reviews of other industrial development projects in 2018 and 2019 including:

- *Wesley First Nation Intervenors Report – West Path Delivery Project 2018;*
- *Wesley First Nation Section 35 Rights Impact Assessment Report – 2021 NGTL System Expansion Project 2019 (“NGTL 2021”); and,*
- *Wesley First Nation Section 35 Rights Impact Assessment Report – NGTL McLeod River North Project 2019.*

The 2018 VC Workshops were conducted by members of the Study Team and in a manner intended to facilitate the use of collected information in future regulatory projects.

The 2018 VC Workshops began with a broad overview of NGTL’s systems within SNNs Iyarhe Nakoda Makochi, including the current Edson mainline system upon which this Project is intended to loop and provided Workshop Attendees with a summary on the SNN VC selection process proposed by the Study Team.

The Study Team posed several guiding questions to the Workshop Attendees to capture general concerns or values that may be used to select SNN VCs. The questions posed to the Workshop Attendees included:

- What makes SNN unique?
- How could the Project in your traditional territory change this?
- What are your concerns about the Project related to your Section 35 Rights?

Responses by Workshop Attendees were documented and grouped into themes by the Study Team. Not all issues and concerns raised at the 2018 VC Workshop met the criteria used by the Study Team to select SNN VCs.

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<sup>10</sup> including in SNN’s Written and Oral Final Argument submissions and during the provision of Oral Cross-Examination Opening Statements in the NGTL 2021 CER hearing process

### 3.3.2 Stoney Consultation Office Issues and Concerns Identification

In addition to assessing feedback from the general values and issues and concerns collected from Workshop Attendees, the Study Team additionally gathered input from the Stoney Consultation Office.

### 3.3.3 Selected SNN Valued Components

The Study Team compiled the general values and issues and concerns collected from Workshop Attendees and the Stoney Consultation Office. Once input from Workshop Attendees and the Stoney Consultation Office was compiled, the Study Team assessed the collected information in relation to its VC selection criteria. The value, issue, or concern that met all or most of the VC selection criteria was selected as a SNN VC. Figure 3.3-1 illustrates the SNN VC selection process:

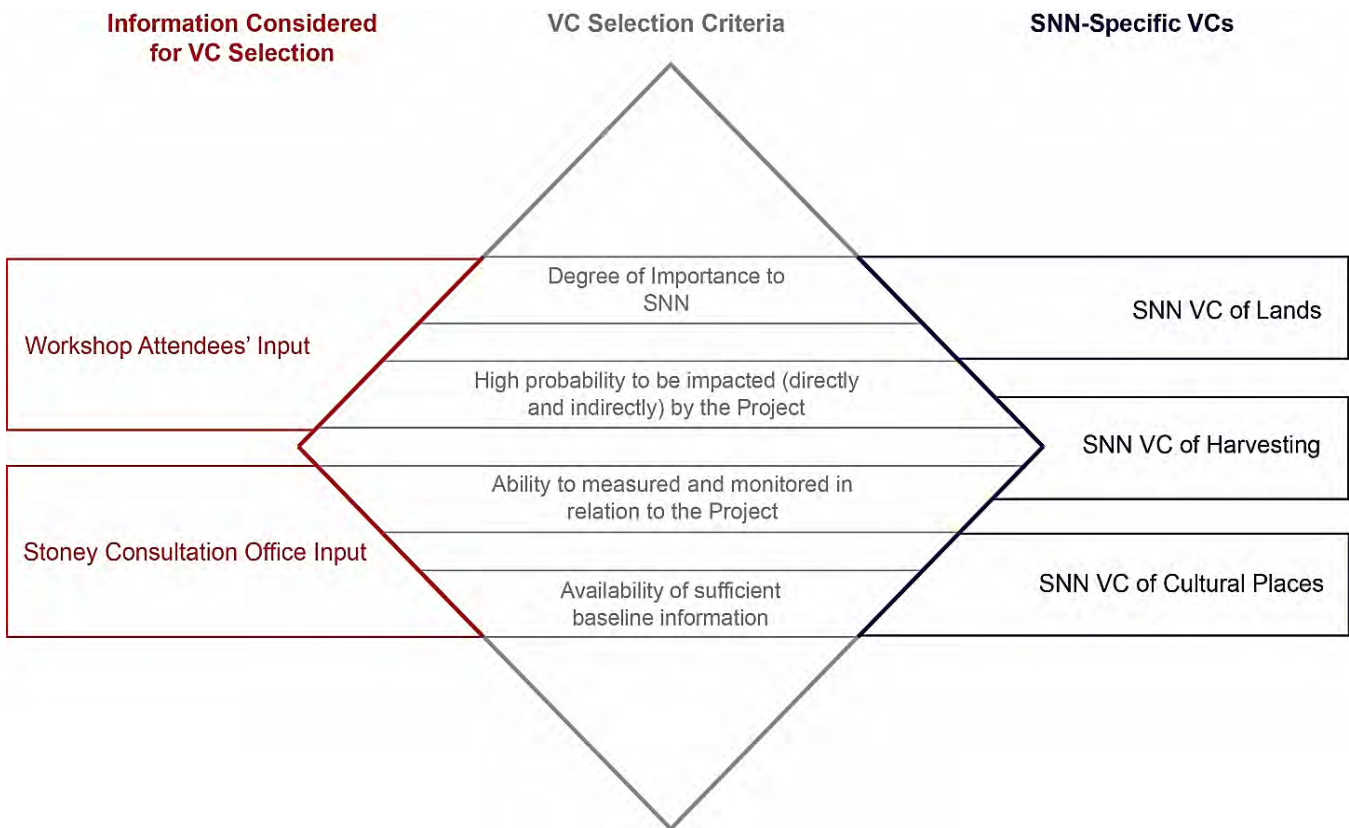


Figure 3.3-1: Stoney Nakoda Nations VC Selection Process

As noted in Figure 3.3-1, three SNN VCs were selected for the purposes of this Report (Lands, Harvesting and Sacred and Cultural Places). The Study Team identified related indicators for each SNN VC as described below:

### 1. SNN VC of Lands

- Indicator: change in legal restriction resulting from the application of a Crown disposition leading to a decrease of available lands for the exercise of Section 35 Rights (hectare (“ha”)).

Rationale - The exercise of Section 35 Rights has geographic limitations and is not legally permitted on all types of land according to the Crown. Therefore, changes in legal restriction for the use of Crown land causing a decrease in available lands for the exercise of Section 35 Rights is an important consideration.

### 2. SNN VC of Harvesting

- Indicator: change in SNN Hunting Avoidance Behaviours.

Rationale - Considering SNN’s preferred means of exercising Section 35 Rights or lands under a visible use incompatible with SNN Section 35 rights is an important criterion set by the Supreme Court of Canada (*Badger*).

For the purposes of this Report, the activity of hunting is used as a representative activity for the exercise of Section 35 Rights related to harvesting. SNN preferred conditions and avoidance behaviours may vary depending on the activity.

The Study Team to assess changes to SNN Hunting Avoidance Behaviours posed questions to 2018 SNN Survey Participants (“Participants”) who identified as hunters related to both physical attributes they avoid and conditions they prefer for the exercise of their Section 35 Rights (hunting).

SNN Avoidance Behaviours are compiled from Participants and reflect the non-preferred conditions or attributes that detract from the meaningful exercise of SNN Section 35 Rights.

SNN Hunting Preferred Conditions are compiled from Participants and reflect preferred conditions required for the meaningful exercise of SNN Section 35 Rights (activity of hunting).

### 3. SNN VC of Sacred and Cultural Places

- Indicator: change to SNN Sacred and Cultural Places Preferred Conditions.
- Indicator: change to biophysical condition of SNN sacred and cultural places.
- Indicator: change to SNN qualitative connection to sacred and cultural places.

Sacred and cultural places are key locales of ecological and cultural value and prominence within SNN. As described by A. Cuerrier, N.J. Turner, T.C. Gomes, A. Garabaldi, and A. Downing (2015), sacred and cultural places “represent far more than just a physical presence of particular species and geographical features” (pg. 442).

For the purpose of this Report, SNN Cultural Resource Areas (“SNN Cultural Areas”) identified in the SNN title case that overlap

## SNN Avoidance Behaviours

SNN Avoidance Behaviours can be understood as aversion to conditions or attributes. For example, a person preferring to choose a quiet place over a noisy place would avoid noisy places. For this Report SNN Avoidance Behaviours are defined as an action or a choice to avoid non-preferred conditions or attributes for harvesting or cultural activities.

## SNN Preferred Conditions

Preferred means can be understood as, if faced with a choice of options, the option that would be preferentially chosen over another available option. For example, a person tending to choose a quiet place over a noisy place prefers a quiet place. For this Report, SNN preferred conditions are defined as preferred species and/or preferred conditions (real or perceived) necessary for meaningful exercise of Section 35 Rights.

with the proposed Project route are used in the assessment of impacts to the SNN VC of Sacred and Cultural Places to assess changed to biophysical conditions of SNN sacred and cultural places.

SNN Sacred and Cultural Places Preferred Conditions are compiled from Participants and reflect preferred conditions required for the meaningful exercise of SNN Section 35 Rights (cultural, ceremonial, and sacred sites and activities).

Given the immovability of a cultural place, alterations to the biophysical conditions of the lands and surrounding area will have direct adverse impacts on the cultural place. Changes to biophysical conditions can cause connections between the place and SNN's culture to be broken, and can prevent the sharing of culture, stories, language, and history tied to the specific cultural place and its natural landscape features and biophysical conditions. To assess biophysical changes to SNN connection to sacred and cultural places, the Study Team reviewed transcripts from the NGTL 2021 Oral Indigenous Knowledge hearing in which SNN members spoke about the SNN Cultural Areas and other sacred and cultural places. The Study Team additionally posed questions to Participants that attend ceremonies and cultural events or visit sacred, cultural, and ceremonial places related to conditions they prefer for the exercise of their Section 35 Rights (cultural, ceremonial, and sacred sites and activities).

Discussions of sacred and cultural places in this Report should not be understood as to negate the importance of SNN's Iyarhe Nakoda Makochi in its entirety, including the sum of the landscapes and ecosystems that exist within SNN's Iyarhe Nakoda Makochi.

### **3.3.4 Data Collection**

#### **3.3.4.1 Previous Data Collection**

Due to time and capacity constraints, the Study Team utilized data previously collected by SNN pertaining to SNN's Section 35 Rights.

Data previously collected by SNN that related to the SNN VC's selected for this Report was used in the Report to support impact assessment work.

Previously collected data was gathered by members of the Study Team between August 1 and September 20, 2018 in interviews with 43 Participants. Data collected provides current details on where SNN members can't go, won't go, or prefer not to go to exercise their Section 35 Rights; this includes data on SNN preferred conditions related to the exercise of their Section 35 Rights and SNN avoidance behaviours from various disturbance and development types related to the exercise of their Section 35 Rights. The Study Team conducted the previous data collection in a manner intended to facilitate its use in future regulatory projects.

#### **3.3.4.2 Participant Selection**

SNN members were selected as Participants using purposive sampling methods. As opposed to random sampling, purposive sampling is a qualitative sampling technique that involves the identification of subpopulations that are of interest and recruits as many of these individuals as possible (Bernard 2006: pg 190).

Purposive sampling methods are not intended to preferentially select individuals who will answer questions in only one way, but rather to select subpopulations with the interests or experience that enables to answer specific questions. (Bernard 2006)

The Study Team in conjunction with the Stoney Consultation Office established the following purposive sampling criteria for the 2018 SNN Survey:

- Member of SNN
- Identifies as at least one of the following:
  - Hunter
  - Trapper
  - Fisher
  - Gatherer
  - Ceremonial participant
  - Camper
- Over the age of 18

SNN members identified as potential participants in the 2018 SNN Survey were invited to take part in the interviews by the Consultation Officers for Chiniki First Nation, Bearspaw First Nation, and Wesley First Nation and the Stoney Consultation Office. Interview methods that use purposive sampling and recruit through personal invitation to known individuals, and chain-referral methods, generate non-random (non-probability) samples. Non-random, purposive sampling, is the preferred method of sampling when a study is labour intensive, requires critical or key information and experiences, and participants are from a hard to find or are part of a hard to identify population (Bernard 2006).

Between August 1 and September 20, 2018, the Study Team administered the interviews using the 2018 SNN Survey at:

Location	Date
Banff National Park, Stoney Indian Days	August 1 and 2, 2018
Kootenay Plains, near Bighorn IR 144A	August 14-16, 2018
Eden Valley Ranch	August 28-30, 2018
SNN IR 142, 143, 144	September 6 and 7, 2018
SNN IR 142, 143, 144	September 12 and 13, 2018
SNN IR 142, 143, 144	September 19 and 20, 2018

Table 3.3-1: 2018 Stoney Nakoda Nations Survey Completion Dates

### 3.3.4.3 2018 SNN Survey Questions

The 2018 SNN Survey was developed for the collection of current data related to SNN Section 35 Rights and SNN VCs. The 2018 SNN Survey, using structured and semi-structured interview techniques, was designed using Survey Monkey®, a web-based survey platform used to collect and analyze data (Bernard 2006). Stoney Consultation Office reviewed and provided comments on the draft 2018 SNN Survey.

The 2018 SNN Survey was administered in-person by members of the Study Team and was designed to be filled out by hand during the interview. Where required, a SNN interpreter was present to provide Stoney-English interpretation.

The Study Team administered the 2018 SNN Survey to 43 Participants. Participants were provided with an honorarium for their time.

In the 2018 SNN Surveys, Participants were asked to identify harvested species and their associated natural laws and protocols. Participants were also asked a series of related questions about their participation in camping, ceremonies, and visiting sacred sites.

Participants were then asked to identify their preferred and avoided conditions for exercising their Section 35 Rights including whether or not they preferred to harvest or participate in cultural and ceremonial

activities in the presence of noise, contamination, the presence or absence of other people, and evidence of industrial activity.

Participants were also asked to identify their avoidance behaviours for hunting, gathering, and ceremonial, cultural and sacred sites by indicating how close to or far from different types of developments (e.g., pipelines, oil and gas facilities, active logging), and lands or leases (e.g., private lands, protected areas) the Participant exercised their Section 35 Rights. For each development and land type Participants were given a choice between the following distances:

- On the development or under 100m
- At least 250m (2-minute walk)
- At least 500m (5-minute walk)
- At least 1km (10-minute walk)
- At least 2 km (20-minute walk)

Safety concerns, enforcement activities, real or perceived surveillance from conservation authorities, and land and lease holders, as well as regulations and limitations on the exercise of Section 35 Rights contributes to avoidance behaviours on a broad range of development and land types. Further, Indigenous harvesters may perceive that licenses or permits are necessary to carry out the exercise of Section 35 Rights, such as hunting where such limits do not exist. In effect, Indigenous harvesters have learned to “self-police” their activities and may be limiting their exposure to land types or conditions where the possibility of a safety concern or confrontation with enforcement exists.

At the end of the 2018 SNN Survey, Participants were shown maps of the Project. Participants were then asked to identify if they exercised their Section 35 Rights including hunting, trapping, fishing, gathering, and ceremonial and cultural activities in the RAA. This land and resource use information was recorded and mapped according to the methodology established in this Report.

#### 3.3.4.4 Informed Consent and Confidentiality

Prior to each interview, Study Team members provided Participants with details regarding the purpose of the interview and reviewed the consent form requesting permission to use the data collected before the interview commenced. The consent form further outlined that the information shared during the 2018 SNN Survey remained the sole property of the Participant and SNN.

The consent form also explained that all Participants are intended to remain anonymous. Prior to data entry, the Study Team assigned each Participant a number code (e.g. 2SN or 9SN) and all quotes or observations taken from Participants were attributed to the assigned number code. Permission was also requested from Participants to allow for voice recordings, used by the Study Team to ensure all valuable information was accurately captured and included in data analysis. See Appendix B for copy of the consent form used by the Study Team.

#### 3.3.4.5 Data Entry

The Study Team completed 43 2018 SNN Surveys<sup>11</sup>. Of the 43 2018 SNN Surveys that were completed, all 43 were included in the sample. 2018 SNN Surveys could be excluded if:

- The 2018 SNN Survey was incomplete, or the Participant did not enter any data other than basic demographic information.
- The Study Team did not feel the information was reliable or the Participant was unable to answer the preponderance of questions.

None of the 2018 SNN Surveys were excluded based on these criteria.

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<sup>11</sup> Of the 43 Interviews, 16 Participants were members of Bearspaw First Nation, 10 Participants were members of Chiniki First Nation and 17 Participants were members of Wesley First Nation.

2018 SNN Survey answers were entered manually into an online version of the 2018 SNN Survey using data streaming and question logic built into the Survey Monkey® platform. Following this entry, the Study Team transcribed selected qualitative information contained within the interviews using interview recordings.

#### 3.3.4.6 Oral Indigenous Evidence

In addition to the data previously collected from SNN members through the 2018 SNN Survey, the Study Team additionally utilized information provided by SNN Elders and community members in a previous Oral Indigenous Evidence hearing with the CER for NGTL 2021.

NGTL 2021 is an NGTL proposed project currently being reviewed by the CER that has project components located in the same areas as Edson Mainline. SNN Elders and community members during the provision of their Oral Indigenous Evidence shared information, experiences, and knowledge related to NGTL 2021 that overlapped with Edson Mainline's PDA, LAA, and RAA. Where appropriate, the Study Team included information shared by SNN Elders and community members during the provision of their Oral Indigenous Evidence for NGTL 2021 in this Report.

### 3.3.5 Data Analysis

#### 3.3.5.1 Lands Unavailable for the Exercise of Section 35 Rights

Crown lands under a third-party or Crown disposition are considered to be lands under Crown authorizations. These lands along with private lands held by fee simple land holders<sup>12</sup> have been moved from the inventory of lands where Indigenous nations have an unrestricted right of access to exercise their Section 35 Rights (i.e. unoccupied Crown land) to the inventory of lands where they can no longer exercise these rights without permission or where their right of access is now diminished in priority compared to other rights holders.

Crown authorizations include all public land that is the subject of a legislative instrument under the *Public Lands Act* that conveys an estate or interest sufficient to enable the holder of the disposition to exclude persons from entering on public land, including:

- Orders (Orders-in-Council; Ministerial Orders; Directors Orders);
- Notifications and Sell-back Agreements;
- Reservations and Notations (Dispositions and Holdings);
- Leases, licenses, permits, agreements, authorizations and approvals (collectively known as dispositions).

Crown authorizations also refers to lands in Alberta that are within the legislative competence of the Alberta Legislature under any other enactment that may lead to a restriction on the exercise of Section 35 Rights, including the designation of public roads, road allowances, conservation and protected areas.

The application of the *Public Lands Act* conveys an interest or priority access to a third-party disposition holder, in this case NGTL, and can restrict or limit SNN access to the PDA during construction and operations.

For the purpose of this Report, private lands and Crown authorizations includes lands under private ownership, provincial and federal Crown lands, IRs, railways, national parks, and military bases, and other lands under Crown control.

These lands are considered unavailable for the exercise of Section 35 Rights. Crown lands not under Crown authorizations is considered available.

For the purposes of this Report, the activity of will be used as representative harvesting activities for the exercise of SNN Section 35 Rights. Restrictions for hunting are identified as a prohibited activity for many provincially mandated parks and protected areas including provincial recreation areas, natural areas, and

<sup>12</sup> As represented by the Government of Alberta White Area for this Report.

provincial parks. Protected areas intersecting the RSA that restrict activities related to the exercise of Section 35 Rights include:

Project Component	Protected Area	Activities Allowed and Prohibited				
		Hunting	Fishing	Gathering	Ceremony	Camping
Elk River	Aurora Natural Area	✓	x	x	x	x
Alford Creek	Cow Lake Natural Area	✓	✓	x	x	x
Alford Creek	Chedderville Natural Area	✓	✓	x	x	x
Alford Creek	Clearwater Ricinus Natural Area	✓	x	x	x	x
Alford Creek	Chambers Creek Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Chambers Creek Group Camp Provincial Recreation Area	x	✓	x	x	✓
Elk River	Elk River Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Horburg Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Michell Lake Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Phyllis Lake Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Prairie Creek Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Prairie Creek Group Camp Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Strachan Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Swan Lake Provincial Recreation Area	x	✓	x	x	✓
Alford Creek	Tay River Provincial Recreation Area	x	✓	x	x	✓

Table 3.3-2: Protected Areas Intersecting the Project Regional Assessment Area



### 3.3.6 Creation of the Maps- Private Lands and Crown Authorizations

A calculation was conducted in ArcGIS 10.6 to approximate how much of the total area in the PDA, LAA and RAA is unavailable for the exercise of Section 35 Rights. Table 6 outlines the different developments and land designation types that can be found in the RAA and how they may limit the exercise of SNN Section 35 Rights. Table 3.3-3 also lists the datasets that were publicly available and/or accessible for this Report. Analysis of the land available for the PDA, LAA and RAA during construction were created using this data. For each of the areas of concern, calculations were conducted to determine how much of the total land area is unavailable land under Crown authorizations<sup>13</sup> or private ownership<sup>14</sup>. To achieve this, the Crown authorizations and White Area datasets were merged into one shapefile, dissolved (to prevent double counting of overlapping features) and clipped to the PDA, LAA and RAA. The resulting area of unavailable lands was compared to the total land area to ascertain the percentage of unavailable land.

The data derived from AltaLIS Ltd.'s DIDs layer is current as of November 22, 2019. For land based activities, the total area of the PDA, LAA, and RAA does not include waterbodies.

Development or Land Designation Type	Section 35 Rights Restricted by Development/Land Designation	Dataset	Data Source
Primary Roads or Highways	All rights	National Road Network, ABMI 2017 Roads	Natural Resources Canada, Government of Canada, Alberta Biodiversity Monitoring Institute
Secondary Roads (paved and unpaved)	All rights	National Road Network, ABMI 2017 Road	Natural Resources Canada, Government of Canada, Alberta Biodiversity Monitoring Institute
Lease Roads	All rights	Digital Integrated Dispositions	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta
Airstrips	All rights	Digital Integrated Dispositions	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta
Pipeline Right-of-Way (below ground)	All rights	Digital Integrated Dispositions, ABMI 2014 Pipelines	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute
Pipeline Facilities (including compressors/meter stations and risers)	All rights	Digital Integrated Dispositions	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta
Power Lines	All rights	ABMI 2017 Transmission Lines	Alberta Biodiversity Monitoring Institute
Seismic Lines	All rights	ABMI 2017 Seismic Lines	Alberta Biodiversity Monitoring Institute
Padsites	All rights	Digital Integrated Dispositions, ABMI 2017 Well Sites Active	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute

<sup>13</sup> For the construction phase, this includes temporary field authorizations for TWS, camps, and laydown yards.

<sup>14</sup> The Study Team notes because of the difficulty and expense involved in locating and digitizing private lands, the White Area was used a proxy to identify private lands.

Development or Land Designation Type	Section 35 Rights Restricted by Development/Land Designation	Dataset	Data Source
Conventional Oil and Gas Facilities	All rights	Access Polygons, ABMI 2017 Industrial Sites	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute
Tailings Pile/Pond/Dump	All rights	Access Polygon, ABMI 2017 Mine Sites	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute
Sand and Gravel Quarry	All rights	Access Polygons, Digital Integrated Dispositions, ABMI 2017 Mine Sites	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute
Pulp Mill	All rights	Access Polygons, Digital Integrated Dispositions, ABMI 2017 Industrial Sites	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute
Electricity Generation Site	All rights	Access Polygons, Digital Integrated Dispositions	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta
Borrow Pit	All rights	ABMI 2017 Borrow Pits, Sumps, Dugouts and Lagoons	Alberta Biodiversity Monitoring Institute
Structures and Dwellings	All rights	ABMI 2017 Urban and Rural Residential	Alberta Biodiversity Monitoring Institute
Private Land – Cropland and Pasture	All rights	Digital Integrated Dispositions, ABMI 2017 Cultivation, White Area	AltaLIS Ltd., Alberta Data Partnerships Ltd., Government of Alberta, Alberta Biodiversity Monitoring Institute

Table 3.3-3: Datasets in the Regional Assessment Area Representing Crown Authorizations

### 3.3.7 Creation of the Maps – Avoidance Buffers

In addition to identifying unavailable lands, another assessment was conducted to spatially represent and approximate the area that extends beyond the unavailable lands where Participants report avoiding in the exercise of their Section 35 Rights.

Avoidance buffers presented in this Report are site-specific details of SNN avoidance behaviours related to the Project components and other developments, disturbances, and land designation types located in the PDA, LAA, and RAA.

#### 3.3.7.1 Identification of Disturbed Lands

Lands damaged by disturbance are different from lands taken up by a disposition or lease. The Study Team used geospatial data sets compiled by ABMI that detail the existing human footprint in the PDA, LAA, and RAA. The Study Team used the data sets compiled by ABMI to accurately map and reduce overestimation of avoidance behaviours of SNN related to the Project components and other land disturbances located in the PDA, LAA, and RAA. As noted in Section 2.2.8, land damages such as scarring and secondary anthropogenic and physical effects related to disturbances, result in impacts to Section 35 Rights. These

effects can extend beyond the physical area of the disturbed area’s boundary, and the qualitative effects like increased avoidance behavior, change in perception and change of “sense of place” or qualitative connection to locale can continue.

3.3.7.2 Creation of Avoidance Buffers

Participants were asked during the 2018 SNN Survey how far from certain developments or land designation types they felt comfortable exercising their Section 35 Rights. SNN avoidance behaviour buffer for each development or land type was identified by calculating the average distance, or mean, of the distances selected by the Participants for that development, disturbance, or land type. The Table below outlines the methodology used to determine the mean and SNN avoidance behaviour buffers using the responses provided by Participants when asked how far/close they like to hunt from a pipeline ROW under construction.

<b>Avoidance Zone Calculation:</b>								
<b>Q: How far/close do you like to hunt from a pipeline right-of-way under construction?</b>								
<b>Development Type</b>	<b>On the development or under a 1-minute walk (0m)</b>	<b>At least a 2-minute walk (~250m)</b>	<b>At least a 5-minute walk (~.5km)</b>	<b>At least a 10-minute walk (~1km)</b>	<b>At least a 20-minute walk (~2km)</b>	<b>N/A</b>	<b>Subtotal (sum of m)</b>	<b>Mean (Subtotal/# of respondents<sup>15</sup>)</b>
<b>Pipeline right-of-way under construction</b>	1 respondent x 0m	0 respondents x 250	1 respondent x 500m	4 respondents x 1000m	24 respondents x 2000m	0 respondents x 0m	52500 m	52500/30 = 1750m

Table 3.3-4: Avoidance Behaviour Buffer Calculation

Based on the above information, the average or mean distance Participants preferred to avoid a pipeline right-of-way (“ROW”) under construction is 1,750 m when hunting.

Section 35 Rights are collective rights held by a nation on behalf of its members. As demonstrated in Table 3.3-4 there is variability in how members may prefer to exercise their Section 35 Rights and what development or land designation types they may choose to avoid and by how much; it cannot be assumed that because one Section 35 Rights holder would hunt right on a pipeline ROW during construction that all Section 35 Rights holders would hunt on a pipeline ROW during construction. Similarly, it cannot be concluded that because one Section 35 Rights holder avoids a pipeline ROW under construction by at least 2 km that all Section 35 Rights holders would avoid a pipeline ROW under construction by at least 2 km. The mean of the distances selected by Participants was calculated by the Study Team because it is representative of the variability of Participant’s avoidance behaviours. The mean suggests that SNN members avoid pipeline ROW under construction and operation.

While Participants were asked how far they prefer stay from a wide range of lands and development types (i.e. pipeline facilities, structures, pad sites) only those development types or land disturbance features for which shapefiles could be obtained in the RAA and LAA are shown in the maps; therefore, these calculations likely underrepresent the amount of land that is unavailable or avoided by Participants.

To spatially represent and approximate the amount of lands and disturbances that Participants indicated were avoided for the exercise of Section 35 Rights, appropriately sized buffers were created in ArcMap 10.7 defined by development type and land disturbance for the activity of hunting (See Section 5). A calculation was conducted for each buffer set to illustrate how much land, in addition to the land already under Crown authorizations, is avoided by SNN.

<sup>15</sup> Number of respondents is 30

### 3.3.8 Verification

A draft Report was provided to Stoney Consultation Office for review and comments, and verification meeting was held with members of SNN to review the results and gather community feedback. These actions were done to ensure the information contained within the draft Report was accurate and respected any confidentiality concerns. Comments and observations from the Stoney Consultation Office and SNN members on the Report were included in this Report where appropriate as determined by the Study Team. The Report was provided for submission to the CER on January 9, 2020.

## 3.4 Accommodation

### 3.4.1 NGTL Mitigation Measures

NGTL Route Selection	NGTL Project Activities
<p>NGTL identified Project-effects to their selected VCs. A fulsome list of measures meant to eliminate, reduce or control identified adverse effects are described in the Project Application and Project ESA. For example, NGTL identified all lands required for the Project and routed the Project to be adjacent to existing ROW's 72.6 km (86%) of the Project route except where deviations cannot be avoided (NGTL 2019a; pg 7-2). NGTL used the following criteria to select and refine the routing of the Project:</p> <ul style="list-style-type: none"> <li>• minimizing length to reduce overall environmental and socio-economic footprint;</li> <li>• ensuring pipeline sections and facilities are economical to construct and operate;</li> <li>• paralleling existing linear disturbances to:             <ul style="list-style-type: none"> <li>○ minimize the fragmentation of land parcels by introduction of infrastructure to areas in which it currently does not exist</li> <li>○ maximize the amount of TWS on existing ROWs</li> <li>○ minimize the amount of new (non-parallel and non-overlapping) ROW required minimize potential effects on environmental resources (e.g., native plant communities and wildlife habitat) and agricultural operations;</li> </ul> </li> <li>• ensuring public safety;</li> <li>• minimizing the number, and ensuring the construction feasibility, of watercourse, road, rail and utility crossings;</li> <li>• considering and avoiding sensitive environmental features (e.g., wetlands, riparian areas, and watercourse crossings) and sites with known occurrences of provincially or federally listed wildlife and plant species (habitat features for species of management</li> </ul>	<p>Additionally, NGTL in the Project Environmental Protection Plan ("EPP") ("Project EPP"), summarizes mitigation measures to be applied to the Project throughout its lifecycle including:</p> <ul style="list-style-type: none"> <li>• Post signage to discourage unauthorized public access onto the construction footprint during construction;</li> <li>• The Contractor is to ensure all tanks intended for water storage or transportation (i.e., water trucks, hydrovac equipment, frac tanks, etc.) are clean prior to use. Upon request by the Company, the Contractor must provide documented proof of cleanliness);</li> <li>• All fuel tanks, hazardous materials and chemicals shall be stored within appropriate secondary containment per requirements outlined in the Chemical and Waste Management Plan;</li> <li>• Do not allow fuel, oil, or hazardous material storage within 100m of a watercourse or waterbody except where secondary containment is provided;</li> <li>• Water pumping from the construction footprint shall be released onto stable surfaces in a manner that does not cause erosion of soils, or sedimentation of the watercourse;</li> <li>• Leave gaps in windrows, at obvious drainages, on side-hill terrain and wherever seepage occurs to reduce interference with natural drainage patterns;</li> <li>• Leave gaps in windrows (e.g., topsoil/strippings, grade spoil, rollback, snow) and strung pipe at obvious drainages and wildlife trails, and to allow for livestock and vehicle/machinery passage across the construction footprint. Locations where wildlife gaps are appropriate will be determined in the field by the Environmental Inspector(s) or designate(s). These gaps should align;</li> <li>• If wildlife or livestock are discovered in the trench, or in association with any other activity or facility, report to the Environmental Inspector(s) or designate(s)</li> </ul>

concern, provincially listed species at risk, species and habitats for species listed under the Committee on the Status of Endangered Wildlife in Canada [COSEWIC] or SARA);

- avoiding terrain subject to geotechnical issues such as areas of unstable slopes, problem soils, or known seismic activity;
- avoiding lands of designated status, such as parks, protected areas, cemeteries and historic, archaeological or heritage sites;
- avoiding concentrated areas of rural residences and urban developments; and,
- considering input received from potentially affected landowners, stakeholders and Aboriginal groups through various engagement activities (NGTL 2019a; pg 7-1 – 7-2).

The Study Team assumes in its analysis of SNN of Lands, Harvesting, and Sacred and Cultural Places that NGTL has applied the above criteria to the maximum degree feasible in selecting the project route.

who will contact the responsible regulatory agencies, as required. In the case of livestock, the land agent assigned to the Project will contact the landowner;

- Do not harass or feed wildlife or livestock. Do not permit construction personnel to have dogs on the construction footprint. Firearms are not permitted in Project vehicles or on the construction footprint, or at associated Project facilities. In addition, prohibit the recreational use of all-terrain vehicles (ATVs) or snowmobiles by construction personnel on the construction footprint. Report any incidents with wildlife to the Environmental Inspector or designate(s) immediately;
- If previously unidentified listed or sensitive wildlife species or their site-specific habitat (e.g., dens, nests) are identified during Project construction, report to the Environmental Inspector(s) or designate(s) and implement the Wildlife Species of Concern Discovery Contingency Plan;
- Clearly mark identified rare plant locations prior to the start of Project construction;
- Monitor topsoil/strippings piles for weed growth during the course of construction and implement corrective measures (e.g., spraying, mowing, handpulling) to avoid infestation when warranted;
- Use of herbicides on the construction footprint is prohibited unless otherwise approved by the Company;
- Prohibit the general application of herbicide near rare plants or rare ecological communities. Spot spraying, wicking, mowing, or hand-picking are acceptable measures for weed control in these areas;
- Minimize the removal of vegetation in wetlands to the extent possible;
- Conduct ground level cutting/mowing/mulching of wetland vegetation instead of grubbing. The method of removal of wetland vegetation is subject to approval by the Company;
- The Contractor will use berms, cross ditches, sediment fencing and/or other appropriate measures to prevent erosion and siltation into adjacent wetland areas, unless otherwise directed by the Company. Refer to the Soil Erosion Contingency Plan for additional measures;
- If historical or paleontological features (e.g., arrow heads, modified bone, pottery fragments, fossils) not previously identified are found on the construction footprint during construction, implement the measures outlined in the Cultural Resource Discovery Contingency Plan;



Picture 5: Stock Photo: MNP LLP

- The Contractor will collect all construction debris and other waste materials and dispose at an approved facility and in accordance with the Chemical and Waste Management Plan and the Release Contingency Plan unless otherwise authorized by the Environmental Inspector(s) or designate(s);
- In the event contaminated soils are encountered during construction, implement the Contaminated Soils Contingency Plan and the TransCanada Waste and Hazardous Materials Management Manual;
- In the event of a release of any size, the Contractor shall immediately report the release to the Environmental Inspector(s) or designate(s);
- Reduce idling of equipment, where possible;
- Where practical and applicable, use multi-passenger vehicles for the transport of crews to and from job sites;
- Where traffic as a result of the Project has the potential to create a hazardous or irritating level of dust to nearby residents, dust control on existing access roads will be achieved through the application of water or calcium chloride (or equivalent). Only water will be used for dust control on the construction footprint;
- Ensure that noise abatement equipment on machinery is in good working order. Take reasonable measures to control construction related noise near residential areas; and,
- Properly brace all fences cut for construction and equip with temporary gates. Temporary gates will be a minimum of three-wire. Keep gates closed, except during passage of vehicles (NGTL 2019c; pg 21-27).

The Study Team assumes in the analysis of SNN VCs of Lands, Harvesting, and Sacred and Cultural Places that all mitigation measures identified by NGTL will be applied to the maximum degree feasible in implementing the Project EPP. Within this assumption, mitigation measures in the Project EPP will not result in reductions of identified adverse effects to SNN VCs of Lands, Harvesting, and Sacred and Cultural Places. NGTL has not identified specific mitigation measures that relate to SNN Section 35 Rights.

**NGTL's route selection criteria was determined, and the route was largely selected prior to commencement of meaningful consultation with SNN. In addition, the Project activities and mitigation measures identified in the EPP were not developed to be directly responsive to Project-effects on SNN's VCs.** Given this, it should be a requirement of the CER and the Crown that accommodation measures be developed in coordination between SNN and NGTL to directly and proportionately address identified negative effects to SNN and SNN's Section 35 Rights resulting from the Project. See Appendix C for suggested accommodation measures identified by the Study Team for impacts identified to the SNN VCs of Land, Harvesting, and Sacred and Cultural Places.

### 3.4.2 Accommodation Measures

The Study Team identified Project effects to the SNN VCs of Lands, Harvesting, and Sacred and Cultural Places using indicators specific to each SNN VC. Refer to Section 3.3.1 for an overview of SNN VCs and associated indicators.

The Study Team, in keeping with the NEB Filing Manual definition of mitigation measures, defined accommodation measures for the Report as measures to eliminate, reduce or control identified effects to selected SNN VCs (NEB Filing Manual 2017).

In order to be effective, accommodation measures have to be directly responsive and proportional to the identified effect. Residual effects remain for those effects that cannot be eliminated or controlled through the application of mitigation measures. As stated, the Study Team used similar methodology as outlined by NGTL in the Project ESA (NGTL 2019b; section 4).

Residual effects are predicted to occur when a change resulting from the Project alters current conditions. Accommodation can be used to eliminate, reduce or control the potential adverse effects.

Where accommodation measures reduce but do not eliminate or control the effect, a residual effect is predicted to occur. For all adverse effects that will be avoided, residual effects are not predicted, and no further assessment is required. For any adverse effects that remain after the application of feasible accommodation, a residual effect is identified and assessed (NGTL 2019b: pg 4.12).

The Study Team defines “eliminate” as avoiding or completely removing the identified effect. The Study Team defines “reduce” as making the identified effect smaller in size or scope, but the effect is not eliminated. The Study Team defines “control” as managing or offsetting an identified effect not eliminated or reduced, but the effect is not eliminated.

The selection of an accommodation measure to eliminate the residual effect would not require additional selection of reduction or control measures; selection of reduction measures would require additional measures to control as a way to offset residual effects as illustrated in Figure 3.4-1.

The Study Team has developed a table of suggested accommodation measures to eliminate, reduce or control each identified adverse Project effects to the SNN VCs of Land, Harvesting, and Sacred and Cultural Places. See Appendix C.

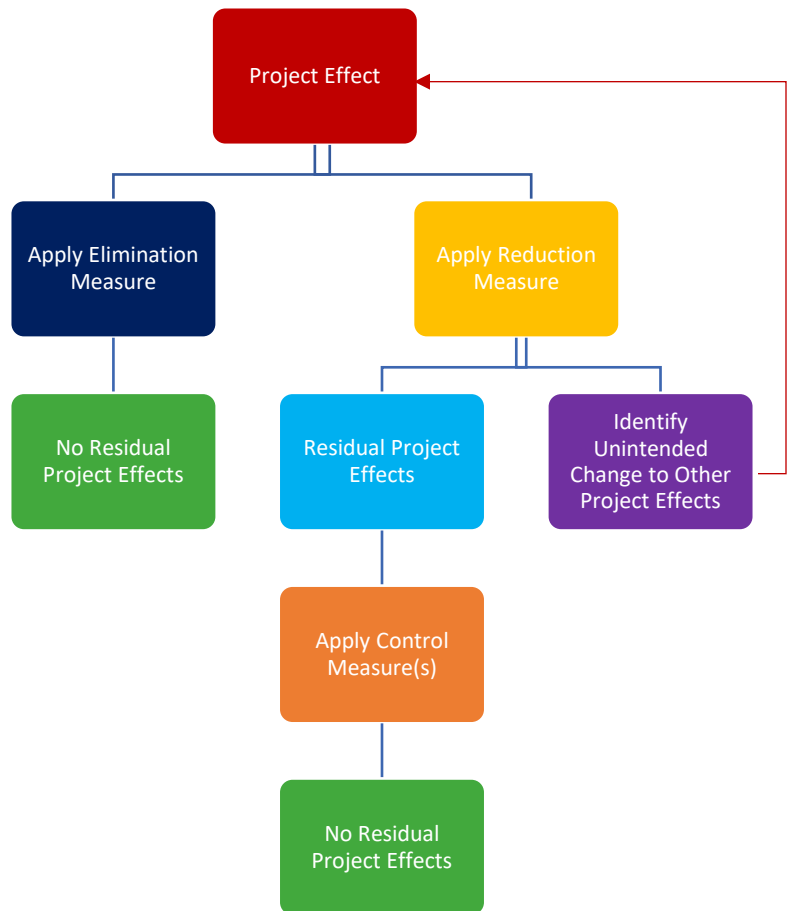


Figure 3.4-1: Options in the Selection of Accommodation Measures

## 3.5 Limitations of this Study

### 3.5.1 Sample Size

Time and budget constraints limited the Report in two key areas. 1) the Study Team was unable to conduct additional interviews for this Report due to hearing timelines, time of year, and capacity constraints; and 2) the 2018 SNN Survey used to inform this Report was limited to 43 Participants due to timelines and capacity constraints.

The Study Team notes that while the data contained in this Report is an accurate reflection of the concerns and the exercise of Section 35 Rights of the Participants in this Report, the Report should not be considered a representative sample of the entire SNN population.

### 3.5.3 Limitations of Identifying Project Effects

Section 35 Rights are limited by specific geographic locations. The Study Team used the assumption the terms of Treaty No.7 and the *NRTA*, identify that SNN members have the right to exercise their Section 35 Rights on all available lands within the Province of Alberta. The Project effects identified in this Report are restricted to an examination of SNN members' right to exercise their Section 35 Rights on all available lands within the PDA, LAA, and RAA.

### 3.5.5 Identification of Project Effects

The Study Team notes that this Report is not an exhaustive identification of effects resulting from the Project to SNN Section 35 Rights. For the purposes of this Report:

- the activity of hunting will be used as representative harvesting activities for the exercise of SNN Section 35 Rights for the VC of Harvesting.
- the SNN Cultural Areas in the PDA and LAA were to represent change in biophysical conditions of immovable sacred and cultural places in the VC of Sacred and Cultural Places.

The Study Team additionally notes that some human footprint layers from the ABMI data sets were not discussed in interviews with Participants. As a result, some human footprint layers are not included in the Study Teams analysis in this Report.

### 3.5.2 Data Limitations for Crown Datasets

The spatial data used to represent private lands and Crown authorizations was accessed on November 2, 2019. Data used in this Report is limited to information that is available through AltaLIS Ltd., Alberta Data Partnerships Ltd., GeoGratis, Statistics Canada, and Alberta counties/municipal districts. Lands subject to temporary authorizations such as geophysical activity, laydown yards, logging, and/or temporary construction spaces are generally not included in the publicly available data. Other land types for which shape files are not publicly available include active logging sites, former cut blocks, gates, and signage.

Because there is limited publicly available information on private lands, Alberta's White Area was used as a proxy for private and fee simple lands.

### 3.5.4 Reliance on Project Application

The Study Team did not have independent access to information related to biophysical effects resulting from the Project including changes to land, habitat, species composition, or other physical changes than was otherwise described in the Project Application.

### 3.5.6 Spatial Identification of Effects

Due to limiting factors including data availability, time, and budget constraints the Study Team conducted a conservative analysis and assumed the maximum potential effect from construction to apply to the Project lifecycle. The Study Team notes that, as per section 2.1.9, damages resulting from disturbance and development extend into, and beyond the lifecycle of a project. NGTL itself recognizes this in their ESA; NGTL reported list pipeline ROWs as an existing disturbance type in the Project study areas (NGTL 2019b; pg 6.9).

NGTL's application for exemptions with the CER limits the ability for the Study Team to now the exact sizes of the dispositions required for the Project and exact location of pipeline is not identified because they have asked for exemption

The Study Team notes that the SNN Cultural Areas were digitized using a 1:1,000,000 scale map provided to the Study Team by SNN. This introduces a margin of error.





Picture 6: SNN Hunting Camp, Eden Valley AB. MNP LLP/Bill Marsh

## 4. Stoney Nakoda Nations Valued Component of Lands

The following indicator was selected to characterise change or negative effects for the SNN VC of Lands:

- change in legal restriction resulting from the application of a Crown disposition leading to a decrease of available lands for the exercise of Section 35 Rights in hectares (ha).

### 4.1 Current Conditions

#### 4.1.1 NGTL Lands Current Conditions

The Project is located on both private and Crown land. The Elk River Section and Alford Creek Section, according to NGTL, are located in the Lower and Upper Foothills Natural Subregions of Alberta (NGTL 2019b; pg 6.9).

##### 4.1.1.1 Elk River Section Current Conditions

The Elk River Section is proposed to be located entirely on provincial Crown land (NGTL 2019b; pg i).

NGTL identified that there are current disturbances in the Elk River Section; NGTL's findings on the amount of current disturbance include: Existing disturbances in the Elk River Section cover

- 387.3 ha (35.9%) of current disturbance in the LAA; and,
- 44.2 ha (15.1%) of current disturbance in the PDA.<sup>16</sup>

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<sup>16</sup> The Study Team notes that the Report yielded differing results in amount of lands currently disturbed in the Project study areas. NGTL appears to identify disturbance based on disposition and permit areas. See Table 5.1-3 for the Reports identification of disturbances.

NGTL identifies maintained ROWs and cutblocks as the most common types of current disturbance (NGTL 2019b; pg 6.9). NGTL reported conducting a Geographic Land Information Management Planning System search during which they identified numerous dispositions in the LAA related to industrial activity including “pipeline agreements (PLA and DPL), pipeline installation leases (PIL and DPI), mineral surface leases (MSL), temporary field authorizations (TFA), licenses of occupation (“LOC”), and other dispositions” (NGTL 2019b; pg 10.17).

**NGTL’s identification of pipeline ROWs as current disturbances counters the conclusions made in the Project Application and Project ESA that pipeline ROWs result in no or negligible impacts following construction activities and revegetation.**

NGTL reported that the Elk River Section would overlap with Wildlife Management Unit 328 and 339 and Fish Management Zone (“FMZ”) 4. (NGTL 2019b; pg 10.18) The closest current protected area reported by NGTL is the Aurora Natural Area, which is approximately 6 km from the PDA (NGTL 2019b; pg 10.19).

NGTL identified that the proposed new Bighorn Wildland Provincial Park would be located approximately 50 km west of the Elk River Section PDA, and the proposed West Country Public Land Use Zone in Bighorn County would overlap approximately 17.7 km of the Elk River Section ROW (NGTL 2019b; 10.19). These were not listed as current conditions because these areas are still in the proposal stage. Any new protected areas will further limit SNN ability to exercise their Section 35 Rights

#### 4.1.1.2 Alford Creek Section Current Conditions

Approximately 94% of the Alford Creek Section is proposed to be located on provincial Crown land. Approximately 6% of the Alford Creek Section is proposed to be on private land (NGTL 2019b; pg ii).

NGTL identified that there are current disturbances in the Alford Creek Section; NGTL’s findings on the amount of current disturbance include: Existing disturbances in the Elk River Section cover

- 474.7 ha (38.4%) of current disturbance in the LAA; and,
- 88.4 ha (26.2%) of current disturbance in the PDA.<sup>17</sup>

NGTL identifies maintained ROWs and cut blocks as the most common types. NGTL reported conducting a Geographic Land Information Management Planning System search during which they identified numerous dispositions in the LAA related to industrial activities. NGTL states that “oil and gas companies hold over 200 dispositions within the LAA, including: pipeline installation lease dispositions (PIL and DPI); pipeline agreement dispositions (DPL and PLA); license of occupation dispositions (LOC and DLO) related to oil and gas activity; MSL dispositions; and a ML.” (NGTL 2019b; pg 10.23).

**As noted above, NGTL’s identification of pipeline ROWs as current disturbances counters the conclusions made in the Project Application and Project ESA that pipeline ROWs result in no or negligible impacts following construction activities and revegetation.**

NGTL reported that the Alford Creek Section would overlap with Forest Management Units R10 and R01 and Wildlife Management Units 318, 324, and 326 (NGTL 2019b; pg 10.24). The nearest current provincial park or protected area to the PDA is the Phyllis Lake Provincial Recreation Area, which is approximately 150m west of the PDA.

NGTL identified the proposed Bighorn Wildland Provincial Park would be located approximately 70 km west of the Alford Creek Section PDA and the proposed West Country Public Land Use Zone in Bighorn County is within the LAA of the Alford Creek Section (NGTL 2019b; pg 10.25). These were not listed as current conditions because they areas are still in the proposal stage. Any new protected areas will further limit SNN ability to exercise their Section 35 Rights.

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<sup>17</sup> The Study Team notes that the Report yielded differing results in amount of lands currently disturbed in the Project study areas. NGTL appears to identify disturbance based on disposition and permit areas. See Table 5.1-3 for the Reports identification of disturbances.

**4.1.2 Stoney Nakoda Nations Lands Current Conditions**

4.1.2.1 Legal Restrictions Current Conditions According to Study Team Analysis

The Study Team analyzed publicly available data on Crown authorizations and private land holdings to determine the amount of land currently unavailable for the exercise of Section 35 Rights prior to Project approval in the PDA, LAA, and RAA. Results are shown in Table 4.1-1.

Upon analysis:

Lands Available for Hunting Prior to Project Approval		Hectares of Lands
<p><b>Project Development Area</b></p> <p>Total Area: 393.23 ha                      Total Waterbodies: 1.45 ha                      Total Land: 391.78 ha</p>	Lands Available Prior to Project Approval	259.34 ha
<p><b>Local Assessment Area</b></p> <p>Total Area: 18,455.22 ha                      Total Waterbodies: 162.76 ha                      Total Land: 18,292.46 ha</p>	Lands Available Prior to Project Approval	13,779.89 ha
<p><b>Regional Assessment Area</b></p> <p>Total Area: 396,574.94 ha                      Total Waterbodies: 6,021.57 ha                      Total Land: 390,553.37 ha</p>	Lands Available Prior to Project Approval	288,055.37 ha

Table 4.1-1: Available Lands Prior to Project Approval

4.1.2.2 Legal Restrictions Current Conditions According to Stoney Nakoda Nations

Participants reported on the damage and hurt felt by SNN from the continuous decrease in the amount of land available for hunting and other land and resource use activities in SNN’s Iyarhe Nakoda Makochi. SNN’s Iyarhe Nakoda Makochi has already been largely damaged by development and disturbance. **Given the current conditions of lands in SNN’s Iyarhe Nakoda Makochi, any taking up of lands, no matter how small, is deeply felt by SNN members.**

Participants 1SN, 33SN and 34SN described the lands in the past as free, fresh, and clean, and reported that the lands are now destroyed and inaccessible due to industrial development including pipelines, logging, and facility sites and roads.

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*Well, right now -- like, in those days we could camp out any place and there's certain areas, like certain people like my grandfathers, they picked certain areas and we used to camp out there. And but now there's restricted areas. You can't go in there. There's gates and there are padlocks and their -- and I got chased away here about -- I believe about six years ago where we used to camp. We went out there, but there was a forestry ranger, and they told me that's a restricted area now, and it's all recreation area now, so we can't camp in there, or even the water, we can't get any water from there too (SNN 2019a; Vol 6 para 2716).*

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*Yeah. Like, on these pipelines that we're talking about, it's still, I guess, the Elders before me were saying that in certain areas that there's herbs and plants that we use for cultural medicine, you know, but they all just don't grow in one area. There's certain kind of plants that we have to get maybe about three-four-hour drive from here and there's some plants that we can get maybe about half an hour drive away from here. But that's -- on these pipelines, well, like as I was saying that there's no -- there's restrictions in there. We can't go in there. There's no trespassing in there. If we get in there, what do they do? They charge us for trespassing (SNN 2019a; Vol 6 para 2721).*

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Participants discussed how the decrease in available lands for the exercise of SNN Section 35 Rights has damaged harvesting activities including hunting, fishing and gathering. Participant 3SN reported that development and clearing activities has had hurt harvesting and SNN's livelihood.

Cumulative effects on SNN's Iyarhe Nakoda Makochi were identified as a serious concern by Participants. Participant 27SN reported that with every new development project, SNN loses more hunting areas and territories. Participants 4SN, 40SN and 25SN reported being frustrated with how restricted they feel with the increase of development, noting that there are now fences, signs and surveillance equipment keeping them off lands they used to access.

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*"It's not like the good old days where we could just go out there and hunt and gather and just enjoy nature." 40SN [WFN]*

---

Participants reported that the decrease in available lands for the exercise of Section 35 Rights has damaged ceremony, cultural events, and sacred sites. Participants noted that ceremonies, cultural events, and sacred sites were extremely important to maintaining SNN culture and identity. Participants 1SN and 4SN discussed the importance of passing on culture and cultural practices to younger generations. Participants 9SN, 11SN, 14SN, and 34SN expressed their concern with the lack of available lands and how this has impacted sharing knowledge and culture with younger generations.

Participants additionally expressed concern with the loss of traditional family territories and camps resulting from development on Crown lands. SNN members hold traditional family territories and camps throughout SNN's Iyarhe Nakoda Makochi. These territories and camps are accessed by family groups for the exercise of Section 35 Rights. Current levels of development on the lands have alienated family territories and camps. Participants 2SN, 3SN, 24SN, and 26SN reported that they were no longer able to access traditional family territories and camps because of development.

Family territories and camps, according to Participants, are also important locations because it is where knowledge including stories, skills, and cultural practices are passed on to younger generations. Participants 2SN, 8SN, 13SN, and 16SN expressed their concern and sadness with losing the ability to access family territories and camps, because of the adverse effect it may have on SNN culture and the ability for elders and knowledge keepers to pass down traditions and SNN culture to future generations.

---

*"if you look at our traditional territories where we traditionally camped and gathered and hunt. That's developed. And I say developed in a way that there's a lot of gas plants, there's a lot of roads, everyone can access all those roads now and it really affected our hunting and gathering lifestyle" 3SN [WFN]*

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## 4.2 Results

### 4.2.1 Change in Legal Restriction

#### 4.2.1.1 Available Lands Post-Project Approval

The Study Team analyzed publicly available data on Crown authorizations and private land holdings to determine the amount of land currently available for the exercise of Section 35 Rights post-Project approval in the PDA, LAA and RAA. Results are shown in Table 4.2-1.

Change in Available Lands		Hectares of Land
<b>Project Development Area</b> Total Area: 393.23 ha Total Waterbodies: 1.45 ha Total Land: 391.78 ha	Lands Available Prior to Project Approval	259.34 ha
	Lands Available Post-Project Approval	0.00 ha
	<b>Change in Lands Available in the PDA</b>	<b>▼ 259.34 ha</b>
<b>Local Assessment Area</b> Total Area: 18,455.22 ha Total Waterbodies: 162.76 ha Total Land: 18,292.46 ha	Lands Available Prior to Project Approval	13,779.89 ha
	Lands Available Post-Project Approval	13,520.55 ha
	<b>Change in Lands Available in LAA</b>	<b>▼ 259.34 ha</b>
<b>Regional Assessment Area</b> Total Area: 396,574.94 ha Total Waterbodies: 6,021.57 ha Total Land: 390,553.37 ha	Lands Available Prior to Project Approval	288,055.37 ha
	Lands Available Post-Project Approval	287,796.03 ha
	<b>Change in Lands Available in RAA</b>	<b>▼ 259.34 ha</b>

Table 4.2-1: Change in Legal Restriction Prior and Post-Project Approval

The change to the SNN VC of Lands resulting from the Project:

- There will be a decrease 259.34 ha of lands available in the PDA prior to Project approval converted to unavailable lands in the PDA post-Project approval;

It is critical to understand that **the change in lands available post-Project approval will lead to a decrease in lands available for the exercise of SNN Section 35 Rights in an area where there are already minimal lands available for the exercise of SNN Section 35 Rights.**

The change in lands available for Edson Mainline is a higher proportional change in lands available than the change in lands available in NGTL 2021 identified in the Stoney Nakoda Nations - Wesley First Nation Section 35 Rights Assessment Report for the 2021 NGTL System Expansion Project.

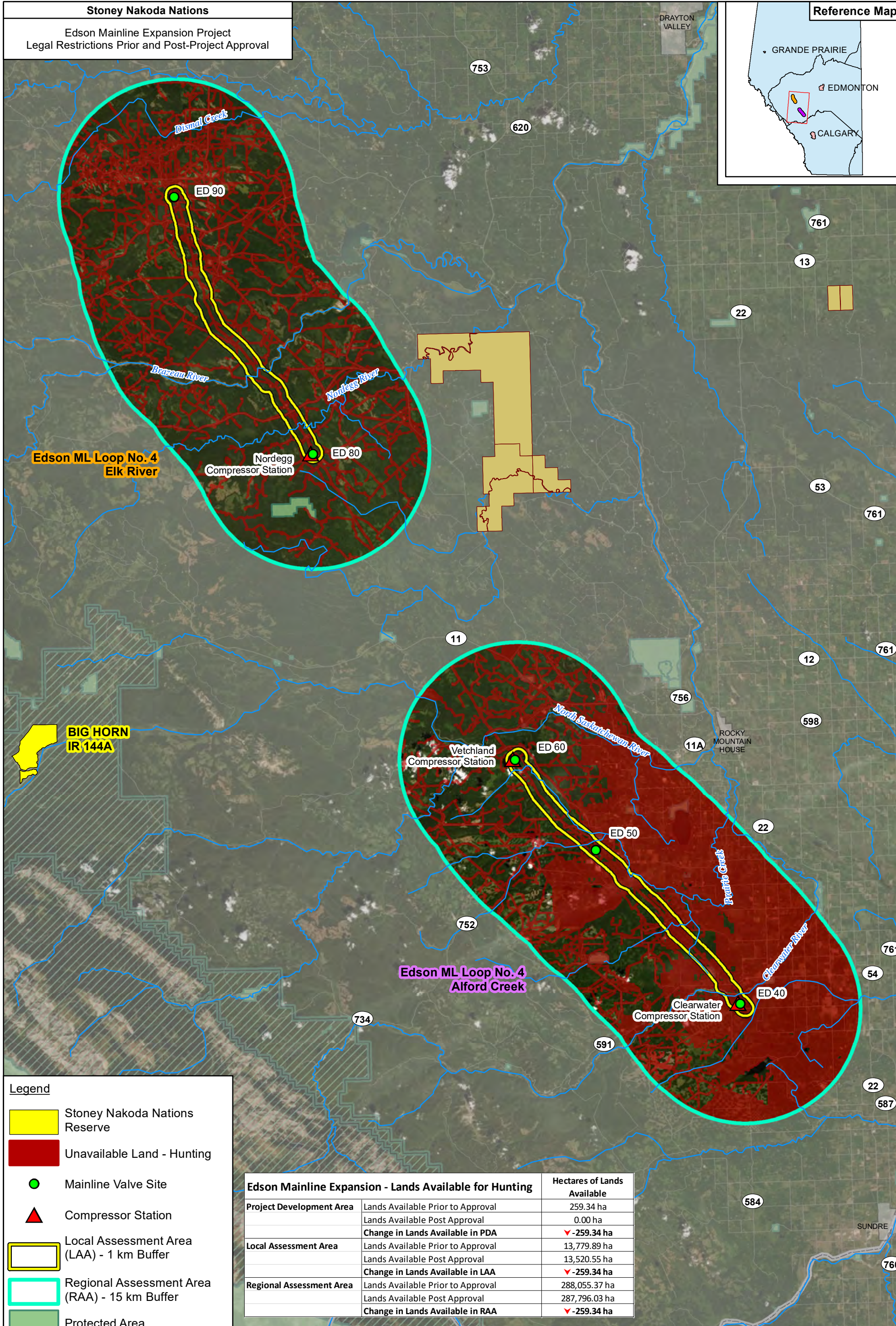
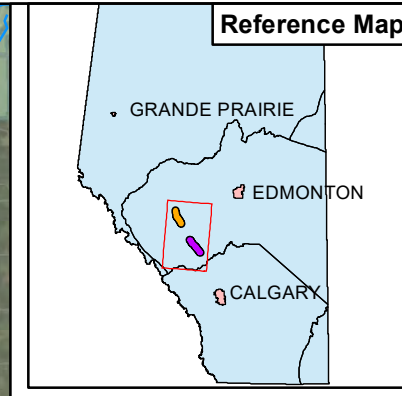
- The change in lands available to unavailable post-project approval for NGTL 2021 is 19.6%
- The change in lands available to unavailable post-Project approval for Edson Mainline is 66%

As noted in Section 2.2.1, regulatory processes do not consider thresholds of lands taken up within a nations traditional territory. Results of this Report highlight why this is a flaw in regulatory processes. SNN's Iyarhe Nakoda Makochi is being taken up to such a degree that SNN is at risk for infringement.

**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Legal Restrictions Prior and Post-Project Approval

**Reference Map**



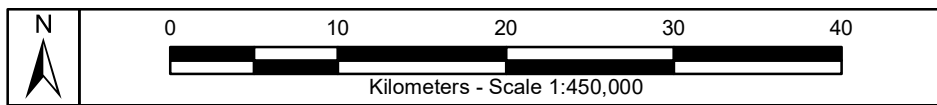
**Legend**

- Stoney Nakoda Nations Reserve
- Unavailable Land - Hunting
- Mainline Valve Site
- Compressor Station
- Local Assessment Area (LAA) - 1 km Buffer
- Regional Assessment Area (RAA) - 15 km Buffer
- Protected Area
- PLUZ - Public Land Use Zone

Edson Mainline Expansion - Lands Available for Hunting		Hectares of Lands Available
Project Development Area	Lands Available Prior to Approval	259.34 ha
	Lands Available Post Approval	0.00 ha
	<b>Change in Lands Available in PDA</b>	<b>▼ -259.34 ha</b>
Local Assessment Area	Lands Available Prior to Approval	13,779.89 ha
	Lands Available Post Approval	13,520.55 ha
	<b>Change in Lands Available in LAA</b>	<b>▼ -259.34 ha</b>
Regional Assessment Area	Lands Available Prior to Approval	288,055.37 ha
	Lands Available Post Approval	287,796.03 ha
	<b>Change in Lands Available in RAA</b>	<b>▼ -259.34 ha</b>

DATA SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDNANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISS TOPO, GIS USER COMMUNITY GOVERNMENT OF CANADA, GOVERNMENT OF ALBERTA, ABMI, TRANSCANADA

DISCLAIMER: THIS MAP SHOULD NOT BE CONSIDERED A SUBSTITUTE FOR CONSULTATION WITH STONEY NAKODA NATIONS. THIS MAP IS THE EXCLUSIVE PROPERTY OF STONEY NAKODA NATIONS. ANY REPRODUCTION OR DISTRIBUTION WITHOUT WRITTEN APPROVAL IS STRICTLY PROHIBITED. PROJECT DATA LOCATIONS ARE APPROXIMATE.



Date: Dec 12, 2019  
Coordinate System: NAD83 11N

Prepared For: Stoney Nakoda Nations

Prepared By: MNP LLP

Figure: 4.2-1

#### 4.2.2 Suggested Accommodation Measures for Stoney Nakoda Nations Identified Impacts to Lands

A Project-effect to the SNN VC of Lands will be the change of 259.34 ha of available lands to unavailable lands in the PDA post-Project approval.

259.34 ha is equivalent to approximately 482 football fields.

NGTL's route selection criteria was determined, and the route was largely selected prior to consultation with SNN.

In addition, the Project activities and mitigation measures identified in the EPP were not developed to be directly responsive to Project-effects on SNN's VCs including the SNN VC of Lands.

Reclamation of linear developments does not mitigate the legal conversion of unoccupied Crown lands to occupied Crown lands and all applicable legislation including the *Petty Trespass Act*, and *Public Lands Act* and *PLAR* that would apply to individuals found on lands without permission from the disposition holder.

**Even if NGTL applies the criteria outlined in Section 3.4.1 (pipeline route selection, Project activities, and mitigation measures) to the maximum degree feasible, there will be negative Project-effects on the SNN VC of Lands.**

The route selection and mitigation measures identified by NGTL will not result in reduction in negative and adverse effects to change in legal restrictions caused by the Project. For example, regarding the effect on the change in legal restriction, minimizing ROW length to reduce overall environmental and socio-economic footprint may exacerbate impacts to the VC of Lands by locating the route on unoccupied Crown lands. Furthermore, NGTL has not identified specific accommodation measures that relate to SNN Section 35 Rights.

Following the methodology criteria outlined in Section 2.2.9, the Study Team suggests accommodation measures to eliminate, reduce or control the adverse effects of a change in legal for the exercise of SNN Section 35 Rights resulting from the Project. For a list of suggested accommodation measures see Appendix C.

#### 4.2.3 Characterization of Residual Effects

The assumption of the Study Team is that application of the suggested accommodation measures outlined in Appendix C will eliminate the identified effects of the changes in legal restriction for the exercise of SNN Section 35 Rights. However, the Study Team has no control or confidence that any of these accommodation measures will be successfully applied, therefore residual effects will remain.

After NGTL identified mitigation measures are applied, residual effects to the SNN VC of Lands indicator will remain.

A characterization of the residual effects to the SNN VC of Land is as follows:

Project Study Area	Mitigation Measure	Residual Effects Characterization					
		Direction	Geographic Extent	Magnitude	Duration	Frequency	Reversibility
Changes in Amount of Land Available for the exercise of Section 35 Rights.							
PDA	Pending	Negative	PDA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
LAA	Pending	Negative	PDA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
RAA	Pending	Negative	PDA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)

Table 4.2-2: Characterization of Residual Effects for Stoney Nakoda Nations VC of Lands

#### 4.2.4 Likelihood

Likelihood is a measurement of whether or not the effect is likely to occur. The Study Team notes that it has no control or ability to require the application of suggested accommodation measures outlined in Appendix D. The Study Team predicts there is a high likelihood that the Project effect to the indicator will occur.

#### 4.2.5 Prediction of Confidence

Prediction of confidence refers to the degree of certainty of the residual effect prediction. The assessment process details with predictions of future circumstances. Therefore, predictions can vary in their level of certainty which can be influenced by availability of data, resiliency of SNN, degree of understanding of the Project, and Project interactions and factors beyond the control of the Study Team.

The confidence rating by the Study Team for the degree of certainty for changes to the SNN VC of Lands (change in legal restrictions) is high.





Picture 7: SNN Hunting Camp, Eden Valley AB. MNP LLP/Bill Marsh

## 5. Stoney Nakoda Nations Valued Component of Harvesting

Considering SNN preferred means of exercising Section 35 Rights is an important criterion set by the Supreme Court of Canada (*Sparrow*). Therefore, the Study Team identified one indicator to characterise change to the SNN VC of Harvesting<sup>18</sup>:

- Change in SNN Hunting Avoidance Behaviours.

### 5.1 Current Conditions

#### 5.1.1 NGTL Current Conditions

##### 5.1.1.1 The Elk River Section Current Conditions

NGTL states in the Project ESA that the Elk River Section currently contains 194.8 ha (18.1%) and 66.6 ha (22.8%) of wetlands in the LAA and PDA respectively. Wetlands are important ecosystem features, as wetlands act as critical habitats for wildlife and facilitate biodiversity (Ducks Unlimited n.d.). Many species of value to SNN, such as moose and ducks rely on wetlands for survival. Participants experiences of existing conditions confirms this. Participants reported that reduction of wetlands resulting from development has had an impact on the quantity of harvested resources found in SNN's Iyarhe Nakoda Makochi.

Additionally, NGTL reports that the Lower Foothills region of Alberta has the most diverse forests (forest type and tree species) in the province (NGTL 2019b; pg 6.9). The Elk River Section PDA and LAA contains an area of old seral stage forests (NGTL 2019b; pg 6.33). Similar to wetlands, diverse and old growth forests are critical habitat for wildlife (Government of British Columbia 1998), including species of value to

<sup>18</sup> As noted in Section 3.2.3 for the purposes of this Report, the activity of hunting will be used as a representative activity for the exercise of Section 35 Rights in order to assess effects to the SNN VC of Harvesting.

SNN including deer, moose, and grizzly bears. Participants experiences of existing conditions confirms this. Participants reported their concerns with clearing activities and the reduction of forested areas related to development; Participants noted that clearing impacts wildlife and reduces quantity of wildlife found in those areas.

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*Yeah, there's a lot of changes. We notice that the animals, they seem like they're moving. After all that clear cut they made out in the wilderness there, there's lot of clear cuts out there, so there's animals. Some of these animals that's where they survive in these woods here (NEB 2019b; Vol 6 para 2850).*

---

NGTL reports that the Elk River Section Contains various tree, and understory vegetation species including:

- |                         |                          |                        |
|-------------------------|--------------------------|------------------------|
| 1) Aspen;               | 15) Sarsaparilla;        | 29) Reed canary grass; |
| 2) Balsam poplar;       | 16) Dewberry;            | 30) Smooth brome;      |
| 3) Paper birch;         | 17) Fireweed;            | 31) Dandelion;         |
| 4) Lodgepole pine;      | 18) Bunchberry;          | 32) Orchard grass;     |
| 5) Black spruce;        | 19) Raspberry;           | 33) Diamond willow;    |
| 6) White spruce;        | 20) Mayflower;           | 34) Red willow;        |
| 7) Balsam fir;          | 21) Bluejoint;           | 35) Kinnikinnick;      |
| 8) Tamarack;            | 22) Labrador tea;        | 36) Gooseberry;        |
| 9) Bearberry;           | 23) Bog cranberry;       | 37) Yarrow;            |
| 10) Common juniper;     | 24) Blueberry;           | 38) Sage; and,         |
| 11) Hairy wild rye;     | 25) Feathermosses;       | 39) Moss (NGTL 2019b;  |
| 12) Green alder;        | 26) Timothy;             | NGTL 2019b; section    |
| 13) Low-bush cranberry; | 27) Cicer milkvetch;     | 6.2.2.1)               |
| 14) Wild rose;          | 28) Bird's-foot trefoil; |                        |

Many of these vegetation species are of value to SNN and are harvested for consumption, ceremonies, medicines, crafts, and other cultural purposes. Any clearing or disturbance of vegetation harvested by SNN would be an impact to SNN's Section 35 Right of harvesting. Participants experiences of existing conditions confirms this. Participants reported that once vegetation was disturbed by development, it would not grow back the same and would no longer be good to use.

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*Pardon me, forgive me a cruel chuckle. Our culture does not allow -- doesn't accept replanting. So you just go and find it what -- we just pray, we light a smudge, we go by that, it's an instinct. Whereas God gave you this, you know, like carbohydrates to build a sugar in your body? You'll find it, you can't replant it. If you replant it you disrupt that design. That's -- so we can't. So we're -- if this pipeline kind of chops up the vintage, what are we going to do? We can't go to the park, because there's rules there. (NEB 2019b; Vol 6 para 2912).*

---

The Elk River Section PDA and LAA, according to NGTL, currently contains numerous Key Wildlife and Diversity Zones ("KWBZ"). NGTL notes that KWBZs "often encompass riparian areas that provide important winter ungulate (e.g., deer, elk) habitat and areas of high potential for biodiversity" (NGTL 2019b; pg 7.11). Additionally, the northern section of the Elk River PDA and LAA currently contain a Secondary Recovery Zone for grizzly bears within the Yellowhead Bear Management Area ("BMA") (NGTL 2019b; pg 7.13).

Grizzly bears are important animals to SNN and SNN's culture. It was reported by Participants that grizzly bears must be protected, and their habitat must be conserved. Any loss of grizzly bears is a deep loss to SNN (see Section 7.1 for further details).

5.1.1.2 The Alford Creek Current Conditions

NGTL states that in the Alford Creek Section, wetlands account for approximately 55.8 ha (4.5%) and 13.8 ha (4.1%) in the LAA and PDA respectfully. As noted above, wetlands are critical habitats for many species of value to SNN; a decrease in wetlands results in a decrease in quantity of many wildlife species and their habitat. Participants experiences of existing conditions confirms this.

Additionally, NGTL reports that the Alford Creek Section PDA and LAA currently contains two areas of old seral stage forest; the first area is a coniferous forest containing lodgepole pine, white spruce, and balsam fir trees and the second area is a mixedwood forest containing lodgepole pine, aspen, and white spruce (NGTL 2019b; pg 6.36). As noted above, diverse forests provide habitat for many species of value to SNN; a decrease in forests results in a decrease in quantity of many wildlife species and their habitat. Participants experiences of existing conditions confirms this.

NGTL reports that the Elk River Section Contains various tree, and understory vegetation species including:

- |                                     |                         |  |
|-------------------------------------|-------------------------|--|
| 1) White spruce                     | 13) Green alder;        | 26) Cicer milkvetch;                               |
| 2) Lodgepole pine                   | 14) Low-bush cranberry; | 27) Bird's-foot trefoil;                           |
| 3) Aspen                            | 15) Wild rose;          | 28) Reed canary grass;                             |
| 4) Balsam fir                       | 16) Dewberry;           | 29) Smooth brome;                                  |
| 5) Black spruce                     | 17) Fireweed;           | 30) Dandelion;                                     |
| 6) Tamarack                         | 18) Bunchberry;         | 31) Orchard grass;                                 |
| 7) Shrubs, forbs, and<br>graminoid; | 19) Raspberry;          | 32) Tall bilberry/arnica;<br>and,                  |
| 8) Bluejoint grass;                 | 20) Mayflower;          | 33) Mayflower (NGTL<br>2019b; section<br>6.2.2.2). |
| 9) Sarsaparilla;                    | 21) Labrador tea;       |  |
| 10) Bearberry;                      | 22) Bog cranberry;      |  |
| 11) Common juniper;                 | 23) Blueberry;          |  |
| 12) Hairy wild rye;                 | 24) Feathermosses;      |  |
|                                     | 25) Timothy;            |  |

As noted above, many of these vegetation species are of value to SNN and are harvested for consumption, ceremonies, medicines, crafts, and other cultural purposes. Any clearing or disturbance of vegetation harvested by SNN would be an impact to SNN's Section 35 Right of harvesting. Participants experiences of existing conditions confirms this.

The Alford Creek Section PDA and LAA, according to NGTL, currently contains several KWBZs. Additionally, northern portion of the PDA currently contains a Secondary Recovery Zone for the Clearwater Grizzly Bear BMA identified in the draft Alberta Grizzly Bear Recovery Plan, and the remaining porting of the PDA currently contains the grizzly bear support zone identified for the Clearwater Grizzly Bear BMA (NGTL 2019b; 7.38). As noted above, grizzly bears are incredibly important animals to SNN and SNN's culture. Any loss of grizzly bears is a deep loss to SNN culture.

### 5.1.2 Stoney Nakoda Nations Harvesting Current Conditions

For the purposes of this Report, the activity of hunting is used as representative activities for the exercise of Section 35 Rights related to harvesting.

To assess changes to SNN Hunting Avoidance Behaviours the Study Team posed questions to Participants who identified as hunters related to both physical attributes they avoid and conditions they prefer for the exercise of their Section 35 Rights (hunting).

All 43 Participants were asked the question “Are you a hunter?” If the Participant answered “Yes” or “Yes in the past” the Participant was then asked a series of hunting-related questions. If the Participant answered “no” the hunting related questions were skipped.

Of the 43 Participants, 31 Participants indicated that they are or were a hunter.

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*“Yes, the pipe people say, the oil people say that it’s not harming the environment, but it is. If you walked around those sites, the leaves, the greens that grow around there, the grasses, they’re not growing properly. And you can see that there’s condensed and corrosion around some areas, right. So why would I go and harvest there? I’m thinking that it’s not healthy.” 40SN [WFN]*

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Participants who identified as hunters were asked questions related to their experiences, knowledge, and observations connected to hunting.

---

*All along this proposed pipeline we’ve harvested and there was history, a recall, you cannot survive on a lean meat diet. My brother, late brother told me Hudson’s Bay Company perished somewhere up north, north easterly, staying on a lean meat rabbit diet. You get ill, so you need the protein that’s fat. You know, some call it cholesterol, but it’s very low in a big game animal*

*The way it is with all these pipelines, clear cuts, this choice game is very hard to locate as it is. Put another pipeline there, we’ll lose considerable amount. In fact, it’s an impact to our choice of hunting (NEB 2019b; Vol 6 para 2091-2092).*

---

Participants discussed the importance of hunting as a central part of SNN culture. Participant 25SN talked about teaching their grandkids to hunt and the importance of passing down knowledge and teaching younger generations how to respect the land and the animals. Participants 2SN, 8SN, 37SN and 43SN reported that in order to pass down knowledge and cultural teachings and stories to younger generations, it is essential to be out on the land and to access traditional sites.

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*“That’s why there’s hardly any animals around, because of the pipelines and logging – they’re chasing the game away and destroying, they’re destroying what they eat.” 15SN [WFN]*

---

Participants expressed concern with the decrease in quality and quantity of animals. Participants 4SN, 20SN, 24SN, 32SN, 41SN reported that the animals appear to be sick, noting a change in the colour of the meat or that they have recently started seeing white lumps in game meat. Participants 1SN, 6SN, 30SN and 37SN noted that they have seen a decrease in the certain of animal species including moose, deer, and elk present in SNN’s Iyarhe Nakoda Makochi, making it more difficult to hunt.

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*Yeah, there's a lot of changes. We notice that the animals, they seem like they're moving. After all that clear cut they made out in the wilderness there, there's lot of clear cuts out there, so there's animals. Some of these animals that's where they survive in these woods here. After they all got cleaned out, they have to move because of these predators; they have to take off from them. So that's why they're kind of moving. It seems like they're moving out in the prairies now. (NEB 2019b; Vol 6 para 2850).*

---

Additionally, Participants spoke about the importance of animals, fish, plants, berries, trees, and rocks and minerals and their cultural value to SNN. During the Workshops, Workshop Attendees noted that not all community members participate in all harvesting activities (hunting, fishing, trapping, and gathering) but that did not mean that they did not use harvested species or benefit from harvesting activities. Harvesting is important for food security, for health, for cultural activities, and for the continuation of Section 35 Rights.

For example, one individual or group may physically hunt the animal, but it is shared with other community members who will then dry or cook the meat for food or to use in ceremonies, tan the hides, or use in medicines. Similarly, for berries, plants, tree or tree products, and minerals, an individual with given knowledge on how to gather according to SNN natural laws or protocols may do the actual gathering, but it is used or consumed by other community members for medicine or healing, for food, for use in ceremonies, or for various crafts.

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*But like I mention, it kind of gets difficult because to make a drum we need -- we still need those animals to be around. Because when a hunter makes a kill, they still need that hide to -- and the fur, just to make the crafts that -- which is delivered and used for our cultural purposes too. So it all combines into one. The animal is our food chain and we need to kind of just respect it and hope that they come back and continue to -- or bring better health to the Stoney People. (NEB 2019b; Vol 6 para 3071)*

---

#### 5.1.2.1 Stoney Nakoda Nations Hunting Preferred Conditions

Participants who identified as being hunters were asked about their preferences while hunting. Responses indicate that Participants prefer hunting locations that are quiet, without the presence of development, including industrial development, industrial or construction workers, or any associated noises or smells. Participants also indicated they prefer to hunt in locations where there is no evidence of contamination, cultivated fields, vehicles or recreational users. A full list of preferences reported by Participants are listed below in Table 5.1-1.

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*"Nowadays when they do ones like this one – pipelines – when they come to a river, once they destroy that river it's no good. And the animals, they drink that river, and that's how they get sick." 15SN [WFN]*

---

Do you like to hunt in a location if there are/it is ___?	Yes	No
Quiet	30	1
Development	0	31
Other Hunters	2	29
Recreational Users	1	30
Industrial/Construction Workers	0	31
Vehicles	2	29
All-Terrain Vehicles	2	29
Cultivated Fields	9	22
Livestock or Domestic Animals	7	24
Fences, Gates, Texas Gates	9	22
Signs	0	31
Dust	3	28
Industrial Development Smell	0	31
Industrial Development Noise	1	30
Industrial Development in Sight	1	30
A Recent Vegetation Spraying	0	31
Evidence of Contamination	0	30
A Recent Forest Fire	11	20

Table 5.1-1: Stoney Nakoda Nations Hunting Preferred Conditions

5.1.2.2 Stoney Nakoda Nations Hunting Avoidance Behaviours

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*You know, and we don't really want to walk along these pipelines, proposed pipelines because the vintage is spoiled for picking huckleberries and blueberries. Invasive species start to come in and turn and choke, along with the insects and starts feeding on -- we call them fruit flies. It kills the berries. And this is what we've noticed already anyway (NEB 2019b; Vol 6 para 2097).*

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Participants were asked about how near/far from a predetermined list of physical attributes, land disturbances, or development types they would hunt or gather using a provided list of distance options. The answers were captured on the 2018 SNN Survey, voice recordings, and summary notes.

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*And back in the '80s, like I mentioned, and in the early 90's, there was a lot of trees. But now you can see that there's a lot of open areas. You can see just big patches of - it looks like field now. And that's not really a good sight to see when you go back down, until you just kind of look up at the mountains and you just kind of know that that cannot be moved and that's something that we still respect today. And, yeah. (NEB 2019b; Vol 6 para 3023).*

---

Avoidance behaviours can result from the absence of preferred conditions; Participants spoke about requirements for harvesting activities, including the absence of industrial development (including sights, smells, and noises); the absence of dust or contamination; the absence of other people (including recreational users, construction workers, and other non-SNN harvesters); and, the absence of mechanical and chemically cleared areas. Development and land disturbances do not align with the preferred conditions, or required means, of SNN members and as a result are avoided for the exercise of Section 35 Rights.

Avoidance behaviours can also be triggered by concerns related to safety, or legal repercussions. For example, some Participants reported being concerned that their Section 35 Rights activities may lead to accidents or malfunctions of the industrial equipment or facilities or may injure a construction worker or recreational user in the vicinity. Other Participants spoke about their concerns with being harassed or charged for exercising their Section 35 Rights on dispositions or private lands and provide examples in the past where they faced harassment or charges while hunting or fishing. These concerns result in Participants self-policing the exercise of their Section 35 Rights around development and land disturbances.

The mean of Participants answers was calculated to arrive at the avoidance buffers for SNN Hunting Avoidance Behaviours for each physical attribute, land disturbance, or development type. The SNN Hunting Avoidance Behaviours for each development or land disturbance type is presented below (see Section 3.3.7 for methodology):

Development Types	Hunting (meters)
Primary road or highway (e.g. HWY 63; 16 HWY)	1458.33 (resp = 30)
Secondary road (paved and unpaved) (e.g. Range Roads; Winter Roads)	1091.67 (resp = 30)
Lease road	758.33 (resp = 30)
Pipeline right-of-way under construction	1750.00 (resp = 30)
Pipeline right-of-way under operation	658.33 (resp = 30)
Pipeline water crossing during construction	1916.67 (resp = 30)
Pipeline water crossing during operation	1066.67 (resp = 30)
Pipeline Facilities (compressor/meter stations) during construction	1933.33 (resp = 30)
Pipeline Facilities (compressor/meter stations) during operation	1800.00 (resp = 30)
Power lines	900.00 (resp = 30)
Seismic lines	375.00 (resp = 30)
Active padsites (including fracking)	1933.33 (resp = 30)
Reclaimed/capped padsites	1166.67 (resp = 30)
Oil and gas facilities (processing plant, gas plant)	1933.33 (resp = 30)
Coal mines (mine site, tailings pond, processing facilities)	1637.93 (resp = 29)
Borrow pit (excavation made to provide soil materials for construction)	1189.66 (resp = 29)
Sand and gravel quarry	1706.90 (resp = 29)
Active logging site	1517.24 (resp = 29)
Cutblock ( $\leq$ 10years of age)	550.00 (resp = 30)

Development Types	Hunting (meters)
Pulp Mill	1827.59 (resp = 29)
Electricity generation site	1827.59 (resp = 29)
Structures and Dwellings	1791.67 (resp = 30)
Private land (including grazing leases and agriculture)	1308.33 (resp = 30)
Provincial Parks and Protected Areas	1396.55 (resp = 29)
National Parks	1362.07 (resp = 29)
Other Indian Reserves	1301.72 (resp = 29)
Town or village	1866.67 (resp = 30)
Campgrounds	1708.33 (resp = 30)

Table 5.1-2: Stoney Nakoda Nations Hunting Avoidance Behaviour Buffers

Not all of the above development types exist in the RAA. For the purposes of this Report, only development types that intersected the RAA were used in this Report.

Further, the Study Team using the ABMI datasets of human footprint in Alberta, identified the amount of disturbed lands in the Project study areas prior to Project Approval. As noted in Section 2.2.8 disturbed lands can differ from the disposition or permit area of a development and can have impacts on the exercise of Section 35 Rights, including inducing avoidance behaviours, and reducing preferred conditions of SNN members.

Table 5-1.3 identifies the sum of lands currently disturbed in the Project PDA, LAA, and RAA:

Lands Disturbed Prior to Project Approval		Hectares of Lands
<b>Project Development Area</b> Total Area: 393.23 ha Total Waterbodies: 1.45 ha Total Land: 391.78 ha	Amount of Disturbed Land Prior to Project Approval	109.55 ha
<b>Local Assessment Area</b> Total Area: 18,455.22 ha Total Waterbodies: 162.76 ha Total Land: 18,292.46 ha	Amount of Disturbed Land Prior to Project Approval	5,329.47 ha
<b>Regional Assessment Area</b> Total Area: 396,574.94 ha Total Waterbodies: 6,021.57 ha Total Land: 390,553.37 ha	Amount of Disturbed Land Prior to Project Approval	139,089.45 ha

Table 5.1-3: Lands Disturbed Prior to Project Approval



As shown in Table 5.1-3 and in Figure 5.1-1, the lands where the Project is proposed has already been largely disturbed by other development. This makes the remaining lands that are currently undisturbed all the more valuable to SNN and their ability to continue to exercise their Section 35 Rights. **Any further damages to lands, no matter how small, will be deeply felt by SNN members and their ability to exercise their Section 35 Rights (activity of hunting) will be negatively impacted.**

The Study Team then identified the current amount of lands avoided by SNN for the exercise of Section 35 Rights (activity of hunting). The amount of land that currently avoided by SNN for hunting in the Project study areas are:

SNN Hunting Avoidance Behaviours Prior to Project Approval		Hectares of Lands
<b>Project Development Area</b> Total Area: 393.23 ha Total Waterbodies: 1.45 ha Total Land: 391.78 ha	SNN Hunting Avoidance Behaviours Prior to Project Approval	391.36 ha
<b>Local Assessment Area</b> Total Area: 18,455.22 ha Total Waterbodies: 162.76 ha Total Land: 18,292.46 ha	SNN Hunting Avoidance Behaviours Prior to Project Approval	18,172.08 ha
<b>Regional Assessment Area</b> Total Area: 396,574.94 ha Total Waterbodies: 6,021.57 ha Total Land: 390,553.37 ha	SNN Hunting Avoidance Behaviours Prior to Project approval	389,043.42 ha

Table 5.1-4: Stoney Nakoda Nations Hunting Avoidance Behaviours Prior to Project Approval

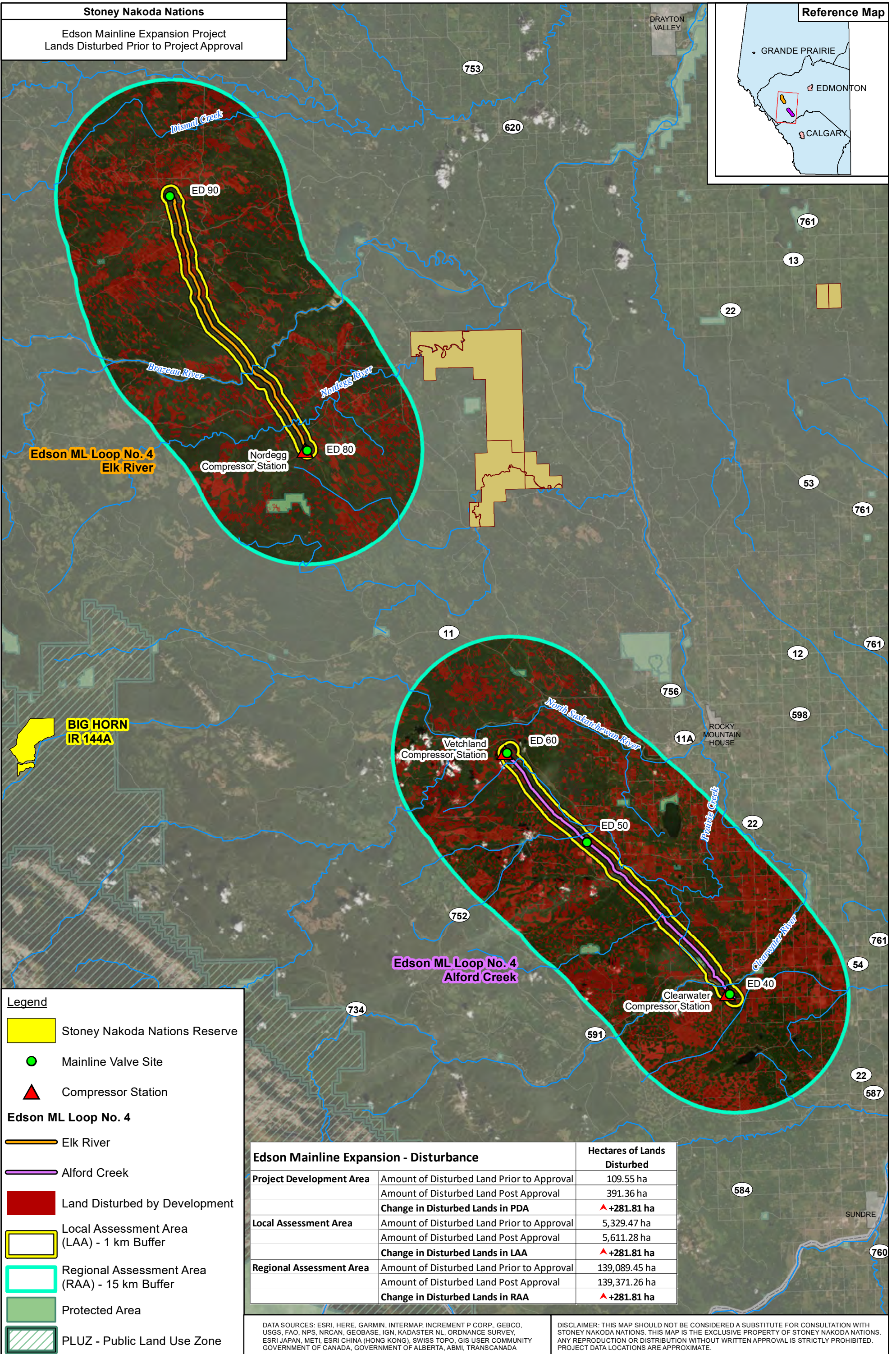
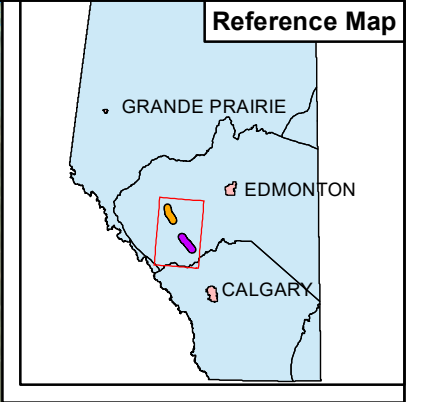
Participants already avoid or prefer to avoid a large amount of disturbed land for the exercise of the Section 35 Rights (activity of hunting) in the LAA and RAA due to the amount infrastructure and industrial development. This illustrates that there are already minimal lands available to SNN members to exercise their Section 35 Rights (activity of hunting) in a preferred manner.

Lands already disturbed within the PDA, including lands disturbed by other NGTL project ROWs, demonstrates that lands do not return to equivalent land capabilities following the implementation of standard environmental mitigation measures.

**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Lands Disturbed Prior to Project Approval

**Reference Map**



**Legend**

- Stoney Nakoda Nations Reserve
- Mainline Valve Site
- Compressor Station

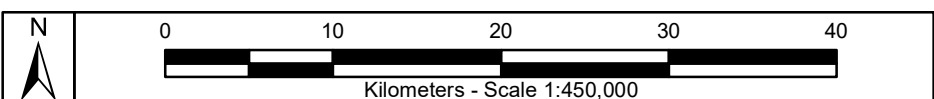
**Edson ML Loop No. 4**

- Elk River
- Alford Creek
- Land Disturbed by Development
- Local Assessment Area (LAA) - 1 km Buffer
- Regional Assessment Area (RAA) - 15 km Buffer
- Protected Area
- PLUZ - Public Land Use Zone

Edson Mainline Expansion - Disturbance		Hectares of Lands Disturbed
<b>Project Development Area</b>	Amount of Disturbed Land Prior to Approval	109.55 ha
	Amount of Disturbed Land Post Approval	391.36 ha
	<b>Change in Disturbed Lands in PDA</b>	<b>▲ +281.81 ha</b>
<b>Local Assessment Area</b>	Amount of Disturbed Land Prior to Approval	5,329.47 ha
	Amount of Disturbed Land Post Approval	5,611.28 ha
	<b>Change in Disturbed Lands in LAA</b>	<b>▲ +281.81 ha</b>
<b>Regional Assessment Area</b>	Amount of Disturbed Land Prior to Approval	139,089.45 ha
	Amount of Disturbed Land Post Approval	139,371.26 ha
	<b>Change in Disturbed Lands in RAA</b>	<b>▲ +281.81 ha</b>

DATA SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISS TOPO, GIS USER COMMUNITY GOVERNMENT OF CANADA, GOVERNMENT OF ALBERTA, ABMI, TRANSCANADA

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Date: Dec 12, 2019  
Coordinate System: NAD83 11N

Prepared For: Stoney Nakoda Nations

Prepared By: MNP LLP

Figure: 5.1-1

## 5.2 Results

### 5.2.1 Post-Project Approval

#### 5.2.1.1 Change in Stoney Nakoda Nations Hunting Avoidance Behaviours

---

*So, you know, hunting is very important to us. They feed us, these animals. So if you disturb them, they'll move on. Guess who's getting impacted by it? Me or my children, or my grandchildren. Yes. (CER 2019b; Vol 6 para 2628).*

---

Residual effects identified by NGTL in the Project ESA conflict with SNN Hunting Preferred Conditions. These residual effects include:

- Alteration of old seral stage forest species (NGTL 2019b; pg 6.75 – 6.79);
- Cleared and stripped areas (Ibid);
- Effects on vegetation communities (Ibid);
- Alteration of forests and wetlands; (NGTL 2019b; pg 11.72 – 11.82);
- Selective felling of trees off the PDA that NGTL determines to pose a risk to construction activities and personnel (Ibid);
- Reduced availability of resources (Ibid);
- Sensory disturbances (e.g., air quality, noise, and traffic) (Ibid);
- localized shifts in wildlife distribution and impediments to wildlife movement;
- Presence of open trench (Ibid);
- Presence of spoil and topsoil piles (Ibid);
- Presence of strung pipe (Ibid);
- Presence of windrow gaps (Ibid);
- Graded areas (Ibid); and,
- Construction-related noise and air emissions(Ibid).

In addition, NGTL in the Project EPP, details certain Project activities during construction and operation of the Project that conflict with SNN Hunting Preferred Conditions, general activities identified include:

- The use of signs, fences, gates or flags (NGTL 2019c; pg 21 - 27);
- The use of heavy equipment and vehicles (Ibid);
- Increased personnel and traffic (Ibid);
- Clearing, grading, trenching, pipe stringing/welding/ lowering, backfill, cleanup and reclamation activities (Ibid);
- Maintenance of a 5m cleared area on either side of pipeline during operation (Ibid); and,
- The use of mechanical and chemical clearing approaches (Ibid).

Figure 5.2-1 below provides details on how SNN Hunting Preferred Conditions interact with specific Project activities identified by NGTL in the Project EPP.

## SNN Hunting Preferred Conditions

• 97% of Participants prefer hunting in quiet locations.	4, 5, 6, 15, 16, 19, 20, 22, 25, 26
• 100% of Participants prefer hunting in locations where there is no development.	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 15, 19, 20, 22, 24, 25, 26, 27
• 100% of Participants prefer hunting in locations where there are no industrial/construction workers.	3, 4, 5, 6, 7, 9, 11, 15, 16, 19, 20, 22, 23, 24, 25, 26, 27
• 94% of Participants prefer hunting in locations where there are no vehicles.	2, 4, 5, 6, 9, 15, 16, 17, 18, 26
• 94% of Participants prefer hunting in locations where there are no All-Terrain Vehicles.	2, 4, 6, 17, 26
• 71% of Participants prefer hunting in locations where there are no fences, gates, texas gates.	2, 3, 18, 21, 27
• 100% of Participants prefer hunting in locations where there are no signs.	1, 2, 3, 4, 5, 7, 8, 10, 11, 15, 16, 19, 20, 22, 23, 24, 25, 26
• 90% of Participants prefer hunting in locations where there is no dust.	4, 9, 15, 16, 17, 19, 20, 22, 25, 26
• 65% of Participants prefer hunting in locations where there is no evidence of a recent forest fire.	22, 23, 28
• 100% of Participants prefer hunting in locations where there is no industrial development smell.	5, 6, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 25, 26
• 97% of Participants prefer hunting in locations where there is no industrial development noise.	4, 5, 6, 11, 15, 16, 17, 19, 20, 22, 25, 26
• 97% of Participants prefer hunting in locations where there is no industrial development in sight.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 18, 19, 20, 22, 24, 25, 26, 27, 28
• 100% of Participants prefer hunting in locations where there is recent spraying.	3, 5, 11, 12, 13, 14, 17, 19
• 100% of Participants prefer hunting in locations where there is evidence of contamination.	3, 5, 11, 12, 13, 14, 15, 17, 22, 24, 28
• 100% of Participants prefer hunting in locations where there are no livestock or domestic animals.	5, 9
• 94% of Participants prefer hunting in locations where there are no other hunters.	5
• 97% of Participants prefer hunting in locations where there are no recreational users.	5

## Project Activities Identified by NGTL

1. Post signage to discourage unauthorized public access onto the construction footprint during construction (NGTL 2019b; p 11.24)
2. Clearly delineate areas that have access restrictions. Restrict access to construction personnel only. (NGTL 2019b; p 11.24)
3. Following clearing, re-mark all sensitive resources as necessary and supplement markings with signage.(NGTL 2019b; p 11.25)
4. Sensory effects may occur during pipeline inspection and maintenance activities (NGTL 2019b; p 11.25)
5. NGTL maintains a minimum cleared ROW width of 5 m on each side of the pipeline during operations. (NGTL 2019b; p 7.70)
6. Reduce idling of equipment, <i>where possible</i> . (NGTL 2019b; p 9.5) [emphasis added]
7. Mark and locate all foreign lines and cables using ONE Call services before the start of construction. (NGTL 2019b; p 10.20)
8. Post signs at watercourses immediately following clearing (include name, number and kilometer post (KP)). Signs will be posted 100 m from the watercourse or at the top of the valley slope, whichever is greater, to alert the Contractor of the upcoming watercourse. (NGTL 2019b; p 10.21)
9. Leave gaps in windrows (e.g., topsoil/strippings, grade spoil, rollback, snow and strung pipe at obvious drainages and wildlife trails, and to allow for livestock and vehicle/machinery passage across the construction footprint Locations where wildlife gaps are appropriate will be determined in the field by the Environmental Inspector(s) or designate(s). These gaps should align. (NGTL 2019c; pg 22)
10. Clearly mark identified rare plant locations prior to the start of Project construction. (NGTL 2019c; pg 23)
11. Monitor topsoil/strippings piles for weed growth during the course of construction and implement corrective measures (e.g., spraying, mowing, hand pulling) to avoid infestation when warranted. (NGTL 2019c; pg 23)
12. Prohibit the general application of herbicide near rare plants or rare ecological communities. Spot spraying, wicking, mowing, or hand-picking are acceptable measures for weed control in these areas. (NGTL 2019c; pg 24)
13. Use of herbicides on the construction footprint is prohibited <i>unless otherwise approved by the Company</i> . (NGTL 2019c; pg 24) [emphasis added]
14. Prohibit the use of herbicides within 30m of an open body of water, <i>unless</i> the herbicide application is conducted by ground application equipment, or otherwise approved by the responsible regulatory agency (NGTL 2019c; pg 24) [emphasis added]
15. Conduct ground level cutting/mowing/mulching of wetland vegetation instead of grubbing. The method of removal of wetland vegetation is subject to approval by the Company.(NGTL 2019c; pg 24)
16. Where practical and applicable, use multi-passenger vehicles for the transport of crews to and from job sites. (NGTL 2019c; pg 27)
17. Where traffic as a result of the Project has the potential to create a hazardous or irritating level of dust to nearby residents, dust control on existing access roads will be achieved through the application of water or calcium chloride (or equivalent). Only water will be used for dust control on the construction footprint. (NGTL 2019c; pg 27)
18. Properly brace all fences cut for construction and equip with temporary gates. Temporary gates will be a minimum of three-wire. Keep gates closed, <b>except during passage of vehicles</b> . (NGTL 2019c; pg 27)
19. Clear timber, stumps, brush and other vegetation within the marked construction footprint boundaries. Clearing methods will take into account land use and landowner/leaseholder requirements. (NGTL 2019c; pg 28)
20. Remove trees that are a safety hazard during construction activity off of the construction footprint, following consultation with the Environmental Inspector(s) or designate(s). (NGTL 2019c; pg 28)
21. Avoid disturbance to environmentally sensitive features during clearing as identified by the appropriate signage and/or fencing. (NGTL 2019c; pg 28)
22. Dispose of all timber material not salvaged for merchantability or required for access control and/or erosion control through <i>burning</i> or mulching, unless otherwise directed by the Environmental Inspector(s) or designate(s) and Construction Manager. (NGTL 2019c; pg 29) [emphasis added]
23. Implement techniques to limit smoke production including limiting pile size, minimizing moisture content and maintaining loose burning piles with minimal soil. (NGTL 2019c; pg 30)
24. Install warning signs along the banks both upstream and downstream of the crossing to caution users of a navigational hazard, where appropriate. (NGTL 2019c; pg 34)
25. Fell trees away from watercourses where feasible. Immediately remove trees, debris or soil inadvertently deposited below the high watermark of a watercourse. (NGTL 2019c; pg 35)
26. Construct or install temporary vehicle access across waterbodies, shorelines, and riverbanks in a manner that protects the banks from erosion, maintains the flows in the waterway, and is completed in accordance with applicable guidelines, environmental protection measures, approval conditions or legislation, including applicable DFO Measures to Avoid Causing Harm to Fish and Fish Habitat (DFO 2013).(NGTL 2019c; pg 36)
27. All fences will be replaced and will match the number of wires in the connecting fence. (NGTL 2019c; pg 52)
28. Confirm burn piles are properly extinguished. Conduct infrared scanning of burn pile locations to locate hot spots. (NGTL 2019c; pg 53)

A decrease in SNN Hunting Preferred Conditions will result in an increase in SNN Hunting Avoidance Behaviours.

---

*That will be a good one. You know, with the contracting such as clearing, the pipeline boundaries or pipeline lines, and forestry lumber companies, they're really taking our - it gives us a big impact with our hunting. The reason I'm saying that is that I'm talking about health within our Stoney Nation.*

*Before any construction or clearing has been done within those areas, the big game, what they fed on, has been destroyed. And I would say it's never been the same. We tried. It doesn't matter who tried to replant within those areas, it will be not the same because of using chemical fertilizer. And this is affecting the creeks too, which is affecting the beavers, the fishes, and all of those because us Stoney people, we do a lot of trapping within that area (response to a question on how development impacts SNN's Iyarhe Nakoda Makochi) (NEB 2019b; Vol 6 para 2947).*

---

The Study Team determined that avoidance behaviours were linked more strongly to the area of disturbance rather than the area of a disposition or permit. Individuals while out exercising their Section 35 Rights will visually identify disturbance and alter their behaviours according to the disturbance.

The Study Team used the data sets compiled by ABMI to accurately map and reduce overestimation of avoidance behaviours of SNN related to the Project components and other land disturbances located in the PDA, LAA, and RAA.

The Study Team identified disturbance currently present in the Project Areas and combined that with the proposed Project disposition to determine changes in SNN Hunting Avoidance Behaviours.

Post-approval, lands avoided by SNN for the exercise of Section 35 Rights (activity of hunting) in the LAA and RAA will increase. An increase in lands avoided by SNN members for the exercise of Section 35 Rights leads to a decrease in the presence of preferred conditions in SNN's Iyarhe Nakoda Makochi. Any decrease in lands containing SNN Hunting Preferred Conditions is a deep impact to SNN, who's Iyarhe Nakoda Makochi are already largely taken up and damaged by development and disturbance.

Results highlight the need for thoughtful land use planning and regulatory processes. Given the amount of development and land disturbances within the Project study areas and the reduction in lands that support the exercise of SNN's Section 35 Rights, any additional development will only exacerbate the effects already felt by SNN members (described in Section 5.1.2 above) and further alienate portions of SNN's Iyarhe Nakoda Makochi.

Further, the levels of development in the Project study areas both prior to and post-Project approval disproves the assumption that SNN members can simply go elsewhere to exercise their Section 35 Rights. If development continues to be approved without considerations to lands taken up thresholds, SNN will be left with no meaningful Section 35 Rights.

Results are shown in Table 5.2-1.

The amount of land avoided by SNN for hunting post-Project approval in the LAA and RAA is:

Change in SNN Hunting Avoidance Behaviours		Hectares of Lands
<b>Project Development Area</b> Total Area: 393.23 ha Total Waterbodies: 1.45 ha Total Land: 391.78 ha	Hunting Avoidance Prior to Project Approval	391.36 ha
	Hunting Avoidance Post-Project approval	391.36 ha
	<b>Change in Lands Avoided in the PDA</b>	<b>No Change</b>
<b>Local Assessment Area</b> Total Area: 18,455.22 ha Total Waterbodies: 162.76 ha Total Land: 18,292.46 ha	Hunting Avoidance Prior to Project Approval	18,172.08 ha
	Hunting Avoidance Post-Project approval	18,273.36 ha
	<b>Change in Lands Avoided in LAA</b>	<b>▲ 101.28 ha</b>
<b>Regional Assessment Area</b> Total Area: 396,574.94 ha Total Waterbodies: 6,021.57 ha Total Land: 390,553.37 ha	Hunting Avoidance Prior to Project Approval	389,043.42 ha
	Hunting Avoidance Post-Project approval	389,229.93 ha
	<b>Change in Lands Avoided in RAA</b>	<b>▲ 186.51 ha</b>

Table 5.2-1: Change in Stoney Nakoda Nations Hunting Avoidance Behaviours Post-Project Approval

The change to the SNN VC of Harvesting, SNN Hunting Avoidance Behaviours resulting from the Project are:

- An increase of 101.28 ha in the total amount of lands inducing SNN Hunting Avoidance Behaviours post-approval in the LAA.
- An increase of 186.51 ha in the total amount of lands inducing SNN Hunting Avoidance Behaviours in the RAA.

101.28 ha is equivalent to approximately 189 football fields.

186.51 ha is equivalent to approximately 349 football fields.

If approved, the Project will increase the amount of land SNN members avoid for the exercise of Section 35 Rights (activity of hunting) in both the LAA and RAA.

**The limited amount of available lands prior to Project approval will be even further reduced if the Project is approved.**

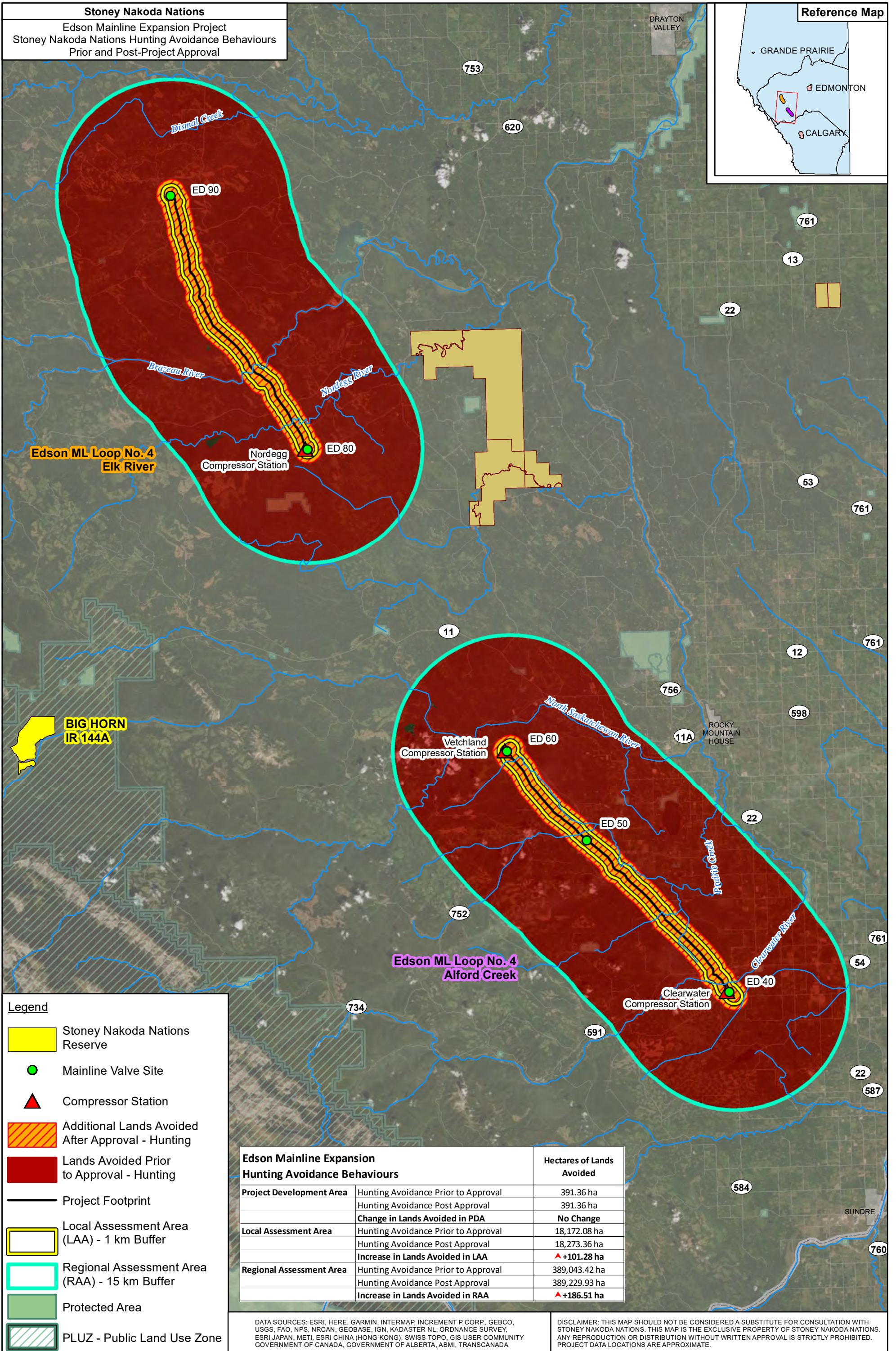
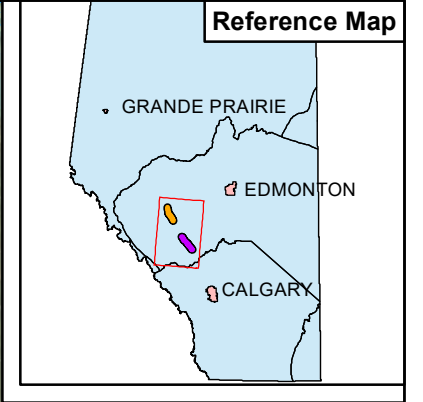
With the limited available and undisturbed lands surrounding the Project, SNN can no longer simply go elsewhere to exercise their Section 35 Rights (activity of hunting).

The results presented in this Report do not comment on the suitability of the Crown lands for hunting that remain available in the LAA and RAA after the Project is approved. Meaning, that while Crown lands may be available in the LAA and RAA, whether or not SNN members can physically access those Crown lands for the exercise of Section 35 Rights has not been determined. Additional assessment would be required to determine land suitability for hunting activities related to the exercise of SNN Section 35 Rights

**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Stoney Nakoda Nations Hunting Avoidance Behaviours  
Prior and Post-Project Approval

**Reference Map**



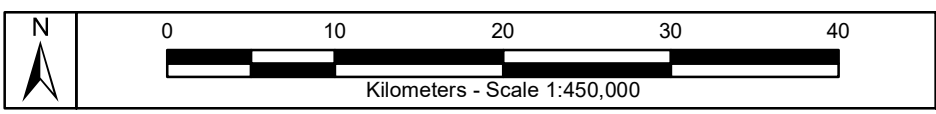
**Legend**

- Stoney Nakoda Nations Reserve
- Mainline Valve Site
- Compressor Station
- Additional Lands Avoided After Approval - Hunting
- Lands Avoided Prior to Approval - Hunting
- Project Footprint
- Local Assessment Area (LAA) - 1 km Buffer
- Regional Assessment Area (RAA) - 15 km Buffer
- Protected Area
- PLUZ - Public Land Use Zone

Edson Mainline Expansion Hunting Avoidance Behaviours		Hectares of Lands Avoided
Project Development Area	Hunting Avoidance Prior to Approval	391.36 ha
	Hunting Avoidance Post Approval	391.36 ha
	<b>Change in Lands Avoided in PDA</b>	<b>No Change</b>
Local Assessment Area	Hunting Avoidance Prior to Approval	18,172.08 ha
	Hunting Avoidance Post Approval	18,273.36 ha
	<b>Increase in Lands Avoided in LAA</b>	<b>▲+101.28 ha</b>
Regional Assessment Area	Hunting Avoidance Prior to Approval	389,043.42 ha
	Hunting Avoidance Post Approval	389,229.93 ha
	<b>Increase in Lands Avoided in RAA</b>	<b>▲+186.51 ha</b>

DATA SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDNANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISS TOPO, GIS USER COMMUNITY GOVERNMENT OF CANADA, GOVERNMENT OF ALBERTA, ABMI, TRANSCANADA

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Date: Dec 12, 2019  
Coordinate System: NAD83 11N

Prepared For: Stoney Nakoda Nations

Prepared By: MNP LLP **MNP**

Figure: 5.2-2

### 5.2.2 NGTL Mitigation Measures

Refer to Section 3.41 for NGTL Mitigation Measures.

### 5.2.3 Suggested Accommodation Measures for Stoney Nakoda Nations Valued Component of Harvesting

For the SNN VC of Harvesting there will be an increase of 101.28 ha of lands inducing SNN Hunting Avoidance Behaviours in the LAA post-Project approval; and, 186.51 ha of lands inducing SNN Hunting Avoidance Behaviours in the RAA post-Project approval.

NGTL's route selection criteria was determined, and the route was largely selected prior to consultation with SNN. In addition, the Project activities and mitigation measures identified in the EPP were not developed to be directly responsive to Project-effects on SNN's VCs including the SNN VC of Harvesting.

**Even if NGTL applies the criteria outlined in Section 3.4.1 (pipeline route selection, Project activities, and mitigation measures) to the maximum degree feasible, there will be Project-effects on the SNN VC of Harvesting.**

As indicated in Table 5.2-1, the **Project study areas are already so damaged by disturbance** that there are very little lands not already inducing SNN Hunting Avoidance Behaviours; this makes the remaining lands in the Project study areas all the more valuable to SNN.

Moreover, the route selection and mitigation measures identified by NGTL it may even increase SNN Hunting Avoidance Behaviours caused by the Project. For example, paralleling the ROW to existing ROWs in order to reduce habitat fragmentation will result in a great area of disturbance and larger avoidance buffers for SNN members exercising their Section 35 Rights (activity of hunting) in one area of SNN's Iyarhe Nakoda Makochi, resulting in alienation from culturally important harvesting areas.

Furthermore, NGTL has not identified accommodation measures that relate to SNN Section 35 Rights or specifically address the change in lands inducing SNN Hunting Avoidance Behaviours.

Following the methodology criteria outlined in Section 3.4, the Study Team suggested accommodation measures to eliminate, reduce or control the adverse effects of an increase in SNN Hunting Avoidance Behaviours for the exercise of Section 35 Rights resulting from the Project. For a list of suggested mitigation and accommodation measures see Appendix C.



### 5.2.4 Characterization of Residual Effects

The assumption of the Study Team is that application of the suggested accommodation measures outlined in Appendix C will eliminate the identified effects of the changes in SNN Hunting Avoidance Behaviours for the exercise of Section 35 Rights. However, the Study Team has no control or confidence that any of these accommodation measures will be successfully applied, therefore residual effects will remain.

After NGTL identified mitigation measures are applied, residual effects to the SNN VC of Harvesting indicator will remain.

A characterization of the of the residual effects to the SNN VC of Harvesting is as follows:

Project Study Area	Mitigation Measure	Residual Effects Characterization					
		Direction	Geographic Extent	Magnitude	Duration	Frequency	Reversibility
Changes in SNN Hunting Avoidance Behaviours							
PDA	Pending	Negative	PDA	Low	High-Term	Continuous	Permanent (no decommissioning contemplated)
LAA	Pending	Negative	LAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
RAA	Pending	Negative	RAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)

Table 5.2-2: Characterization of Residual Effects for Stoney Nakoda Nations VC of Harvesting

### 5.2.5 Likelihood

Likelihood is a measurement of whether or not the effect is likely to occur. The Study Team notes that it has no control or ability to require the application of suggested accommodation measures outlined in Appendix C. The Study Team predicts there is a high likelihood that the Project effect to the indicator will occur.

### 5.2.6 Prediction of Confidence

Prediction of confidence refers to the degree of certainty of the residual effect prediction. The assessment process details with predictions of future circumstances. Therefore, predictions can vary in their level of certainty which can be influenced by availability of data, resiliency of SNN, degree of understanding of the Project, and Project interactions and factors beyond the control of the Study Team.

The confidence rating by the Study Team for the degree of certainty for changes to the SNN VC of Harvesting (increase in SNN Hunting Avoidance Behaviours) is high.



Picture 8: Kootenay Plains; MNP LLP

## 6. Stoney Nakoda Nations Valued Component of Sacred and Cultural Places

Sacred and cultural places are unique and immovable locations that contribute greatly to community history, culture, identity, and sustenance. If these places are disturbed, or become alienated, cultural bonds to those important sacred and cultural places will rupture (Cuerrier et al, 2015). The United Nations Convention on Biological Diversity and the United Nations Declaration on the Rights of Indigenous Peoples both recognize the legitimacy of immovable sacred and cultural places and their importance and role within cultures of Indigenous nations (UNCBD n.d., and UNDRIP 2008).

Workshop Attendees, Participants, and the Stoney Consultation Office all spoke about important sacred and cultural places and their concerns with these places being damaged or alienated by development. Therefore, the Study Team identified three indicators to characterise change to the SNN VC of Sacred and Cultural Places:

- Change to SNN Sacred and Cultural Places Preferred Conditions.
- Change to biophysical conditions of SNN sacred and cultural places.
- Change to SNN qualitative connection to sacred and cultural places.

### 6.1 Current Conditions

#### 6.1.1 NGTL Current Conditions

NGTL in the Project Application ESA did not identify specific SNN sacred and cultural places, nor did it assess the SNN Cultural Areas identified in SNN's title claim case.

NGTL, for the Elk River Section, identified "four previously recorded precontact period sites within the 500 m buffer of the PDA, classified as precontact artifact scatters (n=2; FfPx-2, FfPx-9) or campsites (n=2; FfPx-6, FfPx-8). These sites were recorded during previous HRIAs for forestry or transmission line projects in the area (Pollock 1983, Meyer 2005, Roe 2013, 2015)." (NGTL 2019b; pg 12.4).

NGTL, for the Alford Creek Section, identified two sites “within the 500 m buffer, designated as FaPs-1 and FaPs-2. Both of these sites are small, precontact period campsites containing small assemblages of lithic artifacts and firebroken rock, recorded during a 1982 HRIA for the Edson Mainline Loop (Pollock and Walde 1982).” (NGTL 2019b; pg 12.5).

### 6.1.2 Stoney Nakoda Nations Sacred and Cultural Places Current Conditions

All 43 Participants were asked the question “Do you attend ceremonies, cultural events or visit sacred sites?” If the Participant answered “Yes” or “Yes in the past” the Participant was then asked a series of ceremony, cultural event or sacred site-related questions. If the Participant answered “no” the ceremony, cultural event or sacred site related questions were skipped.

Of the 43 Participants, 39 Participants indicated that they currently or previously attended ceremonies, cultural events or visited sacred sites.

#### 6.1.2.1 Stoney Nakoda Nations Cultural Areas

As noted in Section 1.3, SNN has an ongoing title claim case that details SNN Aboriginal Title lands. Included in this case are several cultural areas, two (SNN Cultural Areas 1, 2 and 3) of which are located within the proposed PDA, LAA and RAA of the Project components. See Figure 6.1-1 for locations of SNN Cultural Areas.

SNN Cultural Area 1, is identified as the Sundre Cultural Resource Area in SNN's title claim case. SNN Cultural Area 1 is located in the RAA of the Elk River section of the proposed Project.

SNN Cultural Area 1 is described by the Stoney Consultation Office as an immovable place that has great significance to SNN, its culture and its history.<sup>19</sup>

SNN Cultural Areas are examples of important cultural places identified by SNN. These SNN Cultural Areas cannot be moved, and they cannot be altered without resulting in deep impacts to SNN's culture, identity, language, and ability to transmit knowledge to younger generations.

SNN Cultural Area 2 is identified as the Tay River Cultural Resource Area in the SNN title claim case, and SNN Cultural Areas 3 is identified as the Wesley Cultural Resource Area. SNN Cultural Areas 2 and 3 are located in the LAA and PDA of the Alford Creek section respectively.

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<sup>19</sup> Based on correspondence provided by the Stoney Consultation Office

An SNN member provided the following overview of the SNN Cultural Areas 2 and 3 during the provision of Oral Indigenous Knowledge in the CER hearing process on NGTL 2021:

---

*With regards to this map, there are two areas that cover Area 2 and Area 3 that are highlighted yellow. These areas are identified as part of the Stoney Aboriginal Title Claim that was started in 2003. In 2014, as part of the Title Claim, a map was produced.*

*As a result, two cultural areas from the Aboriginal Title Claim are identified within the footprint of the NGTL 2021 Project. These areas are a combination of camping, gravesites and gathering areas. The importance of protecting these areas is crucial to the Stoney Nakoda Nations. This is why these sites were listed in the 2003 Claim (NEB 2019b; Vol 6 para 2580 – 2581).*

---

Another SNN member further described the SNN Cultural Areas 2 and 3 during the provision of Oral Indigenous Knowledge in the CER hearing process on NGTL 2021, and provided the following details on the SNN Cultural Area and its significance to SNN:

---

*As you see on number -- number 2, my people or the Stoney people, we call it Go Go Mnē, Swan Lake. We do cultural gathering in that area and also ceremonies. We do our hunting, we exercise our Treaty rights, because this is where our ancestors -- from beginning of time this is where they exercised their way of life and today we still carry that on to generation to generation. So we still utilize that area, so we pick -- we go pick medicines. And there's also burial sites within that area (NEB 2019b; Vol 6 para 2600).*

---

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*And Point Number 3, that area we call it Withagā Waptan, meaning Willow Creek. This is another gathering place. We have so many gathering places within our traditional territory. So this area provides different type of plants and medicine versus number 2.*

*So number 3, we go pick berries, huckleberries, blueberries, raspberries. That's what it provides for us, that number 3. And also, there's a moose lick right -- or mineral licks along that from between number 2 to all the way to Highway 16. So this has been there for us as Stoney people that we use that was part of the Creator provided for our people to survive on earth (NEB 2019b; Vol 6 para 2601 – 2602).*

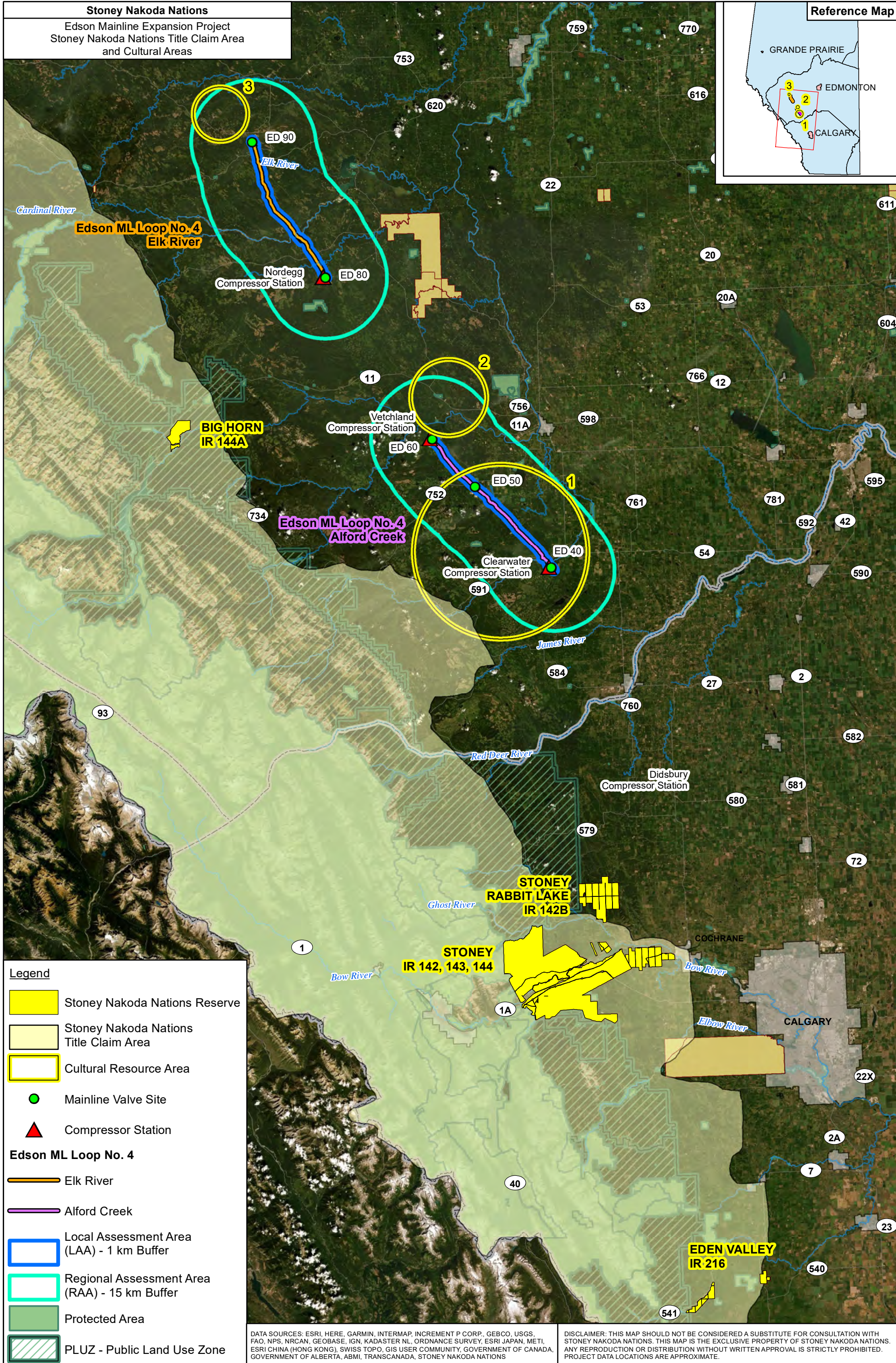
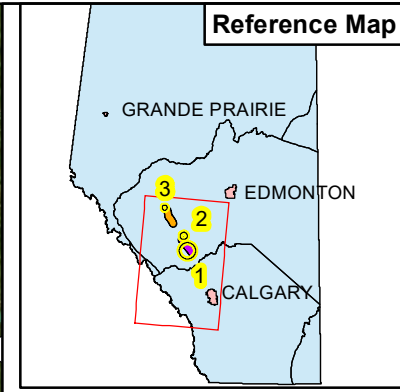
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As reported in Section 5.1.2, the lands within the Project study areas are already damaged by disturbance and development. This means that current conditions of SNN Cultural Areas are not representative of the historical and natural state. Given this, any further biophysical alterations will only add to impacts felt by SNN and SNN culture and identity as they relate to the SNN Cultural Areas

**Stoney Nakoda Nations**

Edson Mainline Expansion Project  
Stoney Nakoda Nations Title Claim Area  
and Cultural Areas

**Reference Map**

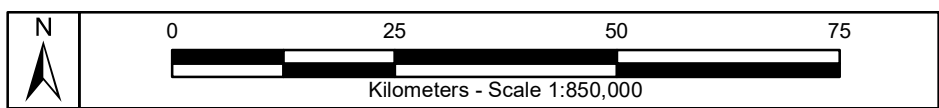


**Legend**

- Stoney Nakoda Nations Reserve
- Stoney Nakoda Nations Title Claim Area
- Cultural Resource Area
- Mainline Valve Site
- Compressor Station
- Edson ML Loop No. 4**
- Elk River
- Alford Creek
- Local Assessment Area (LAA) - 1 km Buffer
- Regional Assessment Area (RAA) - 15 km Buffer
- Protected Area
- PLUZ - Public Land Use Zone

DATA SOURCES: ESRI, HERE, GARMIN, INTERMAP, INCREMENT P CORP., GEBCO, USGS, FAO, NPS, NRCAN, GEOBASE, IGN, KADASTER NL, ORDINANCE SURVEY, ESRI JAPAN, METI, ESRI CHINA (HONG KONG), SWISS TOPO, GIS USER COMMUNITY, GOVERNMENT OF CANADA, GOVERNMENT OF ALBERTA, ABMI, TRANSCANADA, STONEY NAKODA NATIONS

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Prepared For: Stoney Nakoda Nations

Prepared By: MNP LLP **MNP**

Figure: 6.1-1

6.1.2.2 Stoney Nakoda Nations Sacred and Cultural Places Preferred Conditions

The Participants who indicated they attend ceremonies, cultural events, or visit ceremonial, cultural, or sacred sites were asked about their preferences while doing so. Responses indicated that Participants prefer locations that do not have any development, including cultivated fields, industrial development and associated smells, noises, livestock, industrial or construction worker or fences and signs. A full list of preferences reported by Participants are listed in Table 6.1-1.

Would be you bothered if your ceremonial site, cultural site, or sacred site was/had ___?	Yes	No
Quiet	4	29
Development	29	4
Other Hunters	27	6
Recreational Users	27	6
Industrial/Construction Workers	30	3
Vehicles	30	3
All-Terrain Vehicles	30	3
Cultivated Fields	27	4
Livestock or Domestic Animals	27	6
Fences, Gates, Texas Gates	21	12
Signs	27	6
Dust	29	4
Industrial Development Smell	29	4
Industrial Development Noise	30	3
Industrial Development in Sight	29	4
A Recent Vegetation Spraying	29	4
Evidence of Contamination	30	3
A Recent Forest Fire	29	4

Table 6.1-1: Stoney Nakoda Nations Sacred and Cultural Places Preferred Conditions

6.1.2.3 SNN Qualitative Connection to Sacred and Cultural Places Prior to Project Approval

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*That's my home, meaning, when I say home, I'm not talking about my house. I'm talking about that area. I have that special connection. And I have to continue to connect with nature. So I'm living two worlds -- western living and my culture. And that's a challenge. Yes. (NEB 2019b; Vol 6 para 2644).*

---

In the 2018 SNN Survey, Participants were asked about the importance of sacred and cultural places. Participants reported the importance of being out on the lands for cultural purposes and noted that this is not easily done anymore. Participants 4SN, 13SN 35SN, and 39SN explained that cultural, ceremonial and sacred sites should not be located near development. Participant 36SN noted that the sacred sites and ceremonial sites are largely disturbed, and they cannot be accessed as they were in the past. Participants 33SN, 30SN, and 37SN reported that there is a lot of fences and barriers to access sacred, cultural, and ceremonial sites.

---

*"Because they've disturbed the land and things within that area won't be the same" 20SN related to why they would stay away from pipeline ROW after construction [WFN]*

---

Further, Participants noted that sacred and cultural places were extremely important to maintaining SNN culture and identity. Participants 9SN, 11SN, 14SN, and 34SN expressed their concern with the current lack of access to sacred and cultural places and its adverse effect to sharing knowledge and culture with younger generations.

---

*Some places we can't even recognize because it's all be destroyed" 11SN [WFN]*

---

Participants reported that there is a need to be connected to the land in order to transmit culture to younger generations. Participants noted that SNN stories are often connected to a particular place and that in order to share skills and knowledge it is important to be able to access sacred and cultural places including sacred sites, ceremonial sites, cultural areas, traditional harvesting areas, family territories, campsites

---

*"It's that connection to the land – connection to your ancestors. That spiritual connection to everything around you within that area. The land provides for you, you gather, you build a life there." 3SN [WFN]*

---

## 6.2 Results

### 6.2.1 Post-Project Approval

#### 6.2.1.1 Change in Stoney Nakoda Nations Sacred and Cultural Places Preferred Conditions

Residual effects identified by NGTL in the Project ESA conflict with SNN Sacred and Cultural Places Preferred Conditions. These residual effects include:

- Alteration of old seral stage forest species (NGTL 2019b; pg 6.75 – 6.79);
- Cleared and stripped areas (Ibid);
- Effects on vegetation communities (Ibid);
- Alteration of forests and wetlands(NGTL 2019b; pg 11.72 – 11.82);
- Reduced availability of resources (Ibid);
- Sensory disturbances (e.g., air quality, noise, and traffic) (Ibid);
- localized shifts in wildlife distribution and impediments to wildlife movement (Ibid);
- Presence of open trench (Ibid);
- Presence of spoil and topsoil piles (Ibid);
- Presence of strung pipe (Ibid);
- Presence of windrow gaps (Ibid);
- Graded areas (Ibid); and,
- Construction-related noise and air emissions (Ibid).

In addition, NGTL in the Project EPP, details certain Project activities during construction and operation of the Project that conflict with SNN Sacred and Cultural Places Preferred Conditions, activities identified include:

- The use of signs, fences, gates or flags (NGTL 2019c; pg 21 - 27);
- The use of heavy equipment and vehicles (Ibid);
- Increased personnel and traffic (Ibid);
- Clearing, grading, trenching, pipe stringing/welding/ lowering, backfill, cleanup and reclamation activities (Ibid);
- Maintenance of a 5m cleared area on either side of pipeline during operation (Ibid); and,
- The use of mechanical and chemical clearing approaches (Ibid).

Figure 6.2-1 provides details on specific Project activities identified by NGTL in the Project EPP interact with SNN Sacred and Cultural Places Preferred Conditions.

The results of this Report do not comment on the current suitability of the lands containing sacred and cultural places that remain available in the RAA post-Project approval. Further study would be required to determine land suitability for ceremony, cultural events, and sacred sites related to the exercise of SNN Section 35 Rights.

As indicated in Section 5.1.2 the **Project study areas are already so damaged by disturbance**; this makes the remaining lands containing SNN Sacred and Cultural Preferred Conditions in the Project study areas all the more valuable to SNN.



## SNN Cultural Places Preferred Conditions

• 88% of Participants prefer cultural sites to be quiet locations.	4, 5, 6, 15, 16, 19, 20, 22, 25, 26
• 88% of Participants prefer cultural sites to have no development.	1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 15, 19, 20, 22, 24, 25, 26, 27
• 91% of Participants prefer cultural sites to have no industrial/construction workers present.	3, 4, 5, 6, 7, 9, 11, 15, 16, 19, 20, 22, 23, 24, 25, 26, 27
• 91% of Participants prefer cultural sites to have no vehicles present.	2, 4, 5, 6, 9, 15, 16, 17, 18, 26
• 91% of Participants prefer cultural sites to have no All-Terrain Vehicles present.	2, 4, 6, 17, 26
• 66% of Participants prefer cultural sites to have no fences, gates, texas gates.	2, 3, 18, 21, 27
• 82% of Participants prefer cultural sites to have no signs.	1, 2, 3, 4, 5, 7, 8, 10, 11, 15, 16, 19, 20, 22, 23, 24, 25, 26
• 88% of Participants prefer cultural sites to have no dust.	4, 9, 15, 16, 17, 19, 20, 22, 25, 26
• 88% of Participants prefer cultural sites to have no evidence of a recent forest fire.	22, 23, 28
• 88% of Participants prefer cultural sites to have no industrial development smell.	5, 6, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 25, 26
• 91% of Participants prefer cultural sites to have no industrial development noise.	4, 5, 6, 11, 15, 16, 17, 19, 20, 22, 25, 26
• 88% of Participants prefer cultural sites to have no industrial development in sight.	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 16, 18, 19, 20, 22, 24, 25, 26, 27, 28
• 88% of Participants prefer cultural sites to have no recent spraying.	3, 5, 11, 12, 13, 14, 17, 19
• 91% of Participants prefer cultural sites to have no evidence of contamination.	3, 5, 11, 12, 13, 14, 15, 17, 22, 24, 28
• 82% of Participants prefer cultural sites to have no livestock or domestic animals present.	5, 9
• 82% of Participants prefer cultural sites to have no other hunters present.	5
• 82% of Participants prefer cultural sites to have no recreational users present.	5

## Project Activities Identified by NGTL

1. Post signage to discourage unauthorized public access onto the construction footprint during construction (NGTL 2019b; p 11.24)
2. Clearly delineate areas that have access restrictions. Restrict access to construction personnel only. (NGTL 2019b; p 11.24)
3. Following clearing, re-mark all sensitive resources as necessary and supplement markings with signage.(NGTL 2019b; p 11.25)
4. Sensory effects may occur during pipeline inspection and maintenance activities (NGTL 2019b; p 11.25)
5. NGTL maintains a minimum cleared ROW width of 5 m on each side of the pipeline during operations. (NGTL 2019b; p 7.70)
6. Reduce idling of equipment, <i>where possible</i> . (NGTL 2019b; p 9.5) [emphasis added]
7. Mark and locate all foreign lines and cables using ONE Call services before the start of construction. (NGTL 2019b; p 10.20)
8. Post signs at watercourses immediately following clearing (include name, number and kilometer post (KP)). Signs will be posted 100 m from the watercourse or at the top of the valley slope, whichever is greater, to alert the Contractor of the upcoming watercourse. (NGTL 2019b; p 10.21)
9. Leave gaps in windrows (e.g., topsoil/strippings, grade spoil, rollback, snow and strung pipe at obvious drainages and wildlife trails, and to allow for livestock and vehicle/machinery passage across the construction footprint Locations where wildlife gaps are appropriate will be determined in the field by the Environmental Inspector(s) or designate(s). These gaps should align. (NGTL 2019c; pg 22)
10. Clearly mark identified rare plant locations prior to the start of Project construction. (NGTL 2019c; pg 23)
11. Monitor topsoil/strippings piles for weed growth during the course of construction and implement corrective measures (e.g., spraying, mowing, hand pulling) to avoid infestation when warranted. (NGTL 2019c; pg 23)
12. Prohibit the general application of herbicide near rare plants or rare ecological communities. Spot spraying, wicking, mowing, or hand-picking are acceptable measures for weed control in these areas. (NGTL 2019c; pg 24)
13. Use of herbicides on the construction footprint is prohibited <i>unless otherwise approved by the Company</i> . (NGTL 2019c; pg 24) [emphasis added]
14. Prohibit the use of herbicides within 30m of an open body of water, <i>unless</i> the herbicide application is conducted by ground application equipment, or otherwise approved by the responsible regulatory agency (NGTL 2019c; pg 24) [emphasis added]
15. Conduct ground level cutting/mowing/mulching of wetland vegetation instead of grubbing. The method of removal of wetland vegetation is subject to approval by the Company.(NGTL 2019c; pg 24)
16. Where practical and applicable, use multi-passenger vehicles for the transport of crews to and from job sites. (NGTL 2019c; pg 27)
17. Where traffic as a result of the Project has the potential to create a hazardous or irritating level of dust to nearby residents, dust control on existing access roads will be achieved through the application of water or calcium chloride (or equivalent). Only water will be used for dust control on the construction footprint. (NGTL 2019c; pg 27)
18. Properly brace all fences cut for construction and equip with temporary gates. Temporary gates will be a minimum of three-wire. Keep gates closed, except during passage of vehicles. (NGTL 2019c; pg 27)
19. Clear timber, stumps, brush and other vegetation within the marked construction footprint boundaries. Clearing methods will take into account land use and landowner/leaseholder requirements. (NGTL 2019c; pg 28)
20. Remove trees that are a safety hazard during construction activity off of the construction footprint, following consultation with the Environmental Inspector(s) or designate(s). (NGTL 2019c; pg 28)
21. Avoid disturbance to environmentally sensitive features during clearing as identified by the appropriate signage and/or fencing. (NGTL 2019c; pg 28)
22. Dispose of all timber material not salvaged for merchantability or required for access control and/or erosion control through <i>burning</i> or mulching, unless otherwise directed by the Environmental Inspector(s) or designate(s) and Construction Manager. (NGTL 2019c; pg 29) [emphasis added]
23. Implement techniques to limit smoke production including limiting pile size, minimizing moisture content and maintaining loose burning piles with minimal soil. (NGTL 2019c; pg 30)
24. Install warning signs along the banks both upstream and downstream of the crossing to caution users of a navigational hazard, where appropriate. (NGTL 2019c; pg 34)
25. Fell trees away from watercourses where feasible. Immediately remove trees, debris or soil inadvertently deposited below the high watermark of a watercourse. (NGTL 2019c; pg 35)
26. Construct or install temporary vehicle access across waterbodies, shorelines, and riverbanks in a manner that protects the banks from erosion, maintains the flows in the waterway, and is completed in accordance with applicable guidelines, environmental protection measures, approval conditions or legislation, including applicable DFO Measures to Avoid Causing Harm to Fish and Fish Habitat (DFO 2013).(NGTL 2019c; pg 36)
27. All fences will be replaced and will match the number of wires in the connecting fence. (NGTL 2019c; pg 52)
28. Confirm burn piles are properly extinguished. Conduct infrared scanning of burn pile locations to locate hot spots. (NGTL 2019c; pg 53)

### 6.2.1.2 Change in Biophysical Condition of Stoney Nakoda Nations' Cultural Areas Post-Project Approval

As noted in Section 2.2.8, industrial development, including pipelines, disturbs and damages the lands on and around which the development is located. Biophysical disturbances were identified by the Study Team in its review of the Project ESA and Project EPP.

Residual effects identified by NGTL in the Project ESA will result in biophysical changes to SNN Cultural Areas within the PDA, LAA, and RAA of the Project. These residual effects include:

- Cleared and stripped areas (NGTL 2019b; pg 6.75 – 6.79);
- Effects on vegetation communities (Ibid);
- Alteration of forests and wetlands (NGTL 2019b; pg 11.72 – 11.82);
- Reduced availability of resources (Ibid);
- Sensory disturbances (e.g., air quality, noise, and traffic) (Ibid);
- localized shifts in wildlife distribution and impediments to wildlife movement (Ibid);
- Presence of open trench (Ibid);
- Presence of spoil and topsoil piles (Ibid);
- Presence of strung pipe (Ibid);
- Presence of windrow gaps (Ibid); and,
- Graded areas (Ibid).

In addition, NGTL in the Project EPP, details certain Project activities during construction and operation of the Project that will result in biophysical alterations to SNN Cultural Areas in the PDA, LAA, and RAA of the Project including:

- Presence of signs, fences, and gates (NGTL 2019c; pg 21 - 27);
- Clearing, grading, trenching, pipe stringing/welding/ lowering, backfill, cleanup and reclamation activities (Ibid);
- Maintenance of a 5m cleared area on either side of pipeline during operation (Ibid); and,
- The use of mechanical and chemical clearing approaches (Ibid).

The Project will alter the landscape and biophysical conditions of the SNN Cultural Areas thereby displacing SNN Cultural Areas; this damages SNN's ability to pass on language, history, and cultural practices to younger generations.

### 6.2.1.3 Change in Stoney Nakoda Nations Qualitative Connection to Sacred and Cultural Places Post-Project Approval

In the SNN 2018 Survey, Participants were asked whether they thought a pipeline project in the vicinity of Edson Mainline would interfere or conflict with particular aspects of SNN culture. Of the 38 Participants who were answered these questions:

- 31 Participants (81.6%) answered “yes” when asked if they thought the project would interfere or conflict with sharing knowledge/teaching youth.
- 32 Participants (84.2%) answered “yes” when asked whether they thought the project would interfere or conflict with SNN stories about ceremonial or sacred sites.
- 27 Participants (71%) answered “yes” when asked whether they thought the project would interfere or conflict with sharing or teaching Stoney language to youth.
- 34 Participants (89.5%) responded “yes” when asked whether they thought the project would interfere or conflict with SNN stories about important species (animals, fish, plants, berries, trees etc.).

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*“If they are unable to access the lands, they’ll tell the stories as much as they can, but it will eventually die out. Because they are unable to access the land, show the kids.”*  
37SN [WFN]

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The exercise of SNN’s Section 35 Rights, particularly activities related to ceremonies, cultural events, and sacred sites are often inseparable from a particular location or ecosystem (SNN 2015). As noted in Section 2.2.8, damages to lands resulting from disturbance can often extend well beyond the lifecycle of a Project; this results in a permanent and often irreparable damage to sacred and cultural places.

There is a relationship between the qualitative connection of SNN to the cultural place and the physical status of the cultural places with the ability for SNN members to maintain culture and transmit culture to younger generations. Participants reported on the importance on being on the land in order to share knowledge, history and skills related to SNN culture.

It was reported by Participants, Workshop Attendees, and the SNN Consultation Office, that **ceremonial, cultural, or sacred places are immovable; once the site is disturbed or destroyed it is culturally lost.**

Participants, Workshop Attendees and the Stoney Consultation Office noted there is often an assumption that SNN members can go elsewhere to exercise their Section 35 Rights, including cultural activities. Given the inextricable nature of sacred and cultural places, SNN cannot go elsewhere if the sacred or cultural place is damaged or alienated.

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*So these are a very important part of our lives. In other words, they’re our pharmacy and also our grocery store, I guess, or meat. They provide us food. Without these lakes or the plants or the animals that habitat in this area, even the birds or the feathered beings, they are all connected together. So if you disturb one, now you’re dealing with climate change and that’s very important to us, especially my great-great grandchildren. I want them to practise what I practise today (SNN 2019a; Vol 6 para 2607).*

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### 6.2.2 NGTL Mitigation Measures

Refer to Section 3.41 for NGTL Mitigation Measures.

### 6.2.3 Suggested Accommodation Measures for Stoney Nakoda Nations Valued Component of Sacred and Cultural Places

Project effects to the SNN VC of Sacred and Cultural Places include: the change SNN Sacred and Cultural Places Preferred Conditions to cultural areas in the PDA and LAA; the change of biophysical conditions of SNN Cultural Areas in the PDA and LAA; and, the change to SNN’s qualitative connection to sacred and cultural places in the PDA, LAA, and RAA.

NGTL’s route selection criteria was determined, and the route was largely selected prior to consultation with SNN. In addition, the Project activities and mitigation measures identified in the EPP were not developed to be directly responsive to Project-effects on SNN’s VCs including the SNN VC of Sacred and Cultural Places.

**Even if NGTL applies the criteria outlined in Section 3.4.1 (pipeline route selection, Project activities, and mitigation measures) to the maximum degree feasible, there will be Project-effects on the SNN VC of Sacred and Cultural Places.**

Moreover, the route selection and mitigation measures identified by NGTL will likely increase Project-effects on the SNN VC of Sacred and Cultural Places.

NGTL's applied actions and criteria will:

- Decrease SNN Sacred and Cultural Places Preferred Conditions to sacred and cultural places in the PDA and LAA. For example, minimizing length to reduce overall environmental and socio-economic footprint may exacerbate effects to the VC of Harvesting by locating the route on lands currently containing sacred and cultural places that contain SNN Sacred and Cultural Places Preferred Conditions by SNN.
- Change the biophysical conditions of the SNN Cultural Areas in the PDA and LAA. For example, during operation, NGTL reported that it maintains cleared areas of 5m minimum on either side of the pipeline, including portions that would overlap the SNN Cultural Areas in the PDA; this is a biophysical change that will occur over the lifetime of the Project.
- Disrupt the qualitative connection of SNN members to sacred and cultural places in the PDA and LAA. For example, if SNN members cannot access a cultural place due either to legal access prohibitions or land disturbances that do not align with SNN preferred conditions, SNN members will lose their connection to that cultural place and will have difficulty transmitting culture to younger generations.

Furthermore, NGTL has not identified accommodation measures that relate to SNN Section 35 Rights or specifically address the change of SNN Sacred and Cultural Places Preferred Conditions to cultural areas in the PDA and LAA; the change of biophysical conditions of SNN Cultural Areas in the PDA and LAA; and, the change to SNN's qualitative connection to sacred and cultural places in the PDA, LAA, and RAA.

Following the methodology criteria outlined in Section 3.4, the Study Team suggested accommodation measures to eliminate, reduce or control the adverse effects of change to SNN Sacred and Cultural Places Preferred Conditions in the PDA and LAA; the change of biophysical conditions of SNN Cultural Areas in the PDA and LAA; and, the change to SNN's qualitative connection to sacred and cultural places in the PDA, LAA, and RAA resulting from the Project. For a list of suggested mitigation and accommodation measures see Appendix C.

#### **6.2.4 Characterization of Residual Effects**

The assumption of the Study Team is that application of the suggested accommodation measures outlined in Appendix C will eliminate the identified effects of the changes in:

- SNN Sacred and Cultural Places Preferred Conditions;
- Biophysical conditions of SNN Cultural Areas; and,
- SNN's qualitative connection to sacred and cultural places for the exercise of Section 35 Rights.

However, the Study Team has no control or confidence that any of these accommodation measures will be successfully applied, therefore residual effects will remain.

After NGTL identified mitigation measures are applied, residual effects to the SNN VC of Sacred and Cultural Places indicators will remain.

A characterization of the of the residual effects to the SNN VC of Sacred and Cultural Places is as follows:

Project Study Area	Mitigation Measure	Residual Effects Characterization					
		Direction	Geographic Extent	Magnitude	Duration	Frequency	Reversibility
<b>Changes in SNN Sacred and Cultural Places Preferred Conditions</b>							
PDA	Pending	Negative	PDA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
LAA	Pending	Negative	LAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
RAA	Pending	Negative	RAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
<b>Changes in Biophysical Condition of SNN Cultural Areas</b>							
PDA	Pending	Negative	PDA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
LAA	Pending	Negative	LAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
RAA	Pending	Negative	RAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
<b>Changes in Qualitative Connection to SNN Cultural Areas</b>							
PDA	Pending	Negative	PDA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
LAA	Pending	Negative	LAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)
RAA	Pending	Negative	RAA	High	High-Term	Continuous	Permanent (no decommissioning contemplated)

Table 6.2-1: Characterization of Residual Effects for Stoney Nakoda Nations VC of Sacred and Cultural Places

### **6.2.5 Likelihood**

Likelihood is a measurement of whether or not the effect is likely to occur. The Study Team notes that it has no control or ability to require the application of suggested accommodation measures outlined in Appendix C. The Study Team predicts there is a high likelihood that the Project effect to the indicator will occur.

### **6.2.6 Prediction of Confidence**

Prediction of confidence refers to the degree of certainty of the residual effect prediction. The assessment process details with predictions of future circumstances. Therefore, predictions can vary in their level of certainty which can be influenced by availability of data, resiliency of SNN, degree of understanding of the Project and Project interactions and factors beyond the control of the Study Team.

The confidence rating by the Study Team for the degree of certainty for changes to the SNN VC of Cultural Places (including the change in SNN Sacred and Cultural Places Preferred Conditions, change in biophysical conditions of SNN Cultural Areas, and change qualitative connection to SNN Cultural Areas) is high.



Picture 9: SNN Hunting Camp, Eden Valley AB. MNP LLP/Bill Marsh

## **7. Stoney Consultation Office Issues and Concerns**

### **7.1 Grizzly Bears**

Grizzly bears are of significant cultural value to SNN. This was communicated to the Study Team by the Stoney Consultation Office, Workshop Attendees, and Participants. Given their cultural significance, the Stoney Consultation Office identified their concerns with the Projects proposed route interacting with sensitive grizzly bear habitat. Increased disturbance and habitat damage in an already heavily developed area, may further impact grizzly bear populations. The Stoney Consultation Office noted that impacts to grizzly bears would result in an impact to SNN's culture and identity.

The Stoney Consultation Office reported that the Project should be routed around sensitive grizzly bear habitat. Impacts to threatened and at-risk species should be avoided, both for the preservation of grizzly bears and the continuation of SNN culture. Unfortunately, SNN was not consulted by NGTL prior to the Project routes being selected; as a result, the Project route does not take into account SNN's concerns related to grizzly bears and the further disturbance of grizzly bear habitat.

## 7.2 Bull Trout

The Elk River Section, according to the Project ESA, does not overlap with any waterbodies that are currently listed under the *Navigation Protection Act*, but the PDA does overlap with several waterbodies including Nordegg River, Nordegg River Oxbow, Brazeau River, and Elk River along with 12 unnamed tributaries (NGTL 2019b; pg 10.18). The Alford Creek Section, according to the Project ESA, does not overlap with any waterbodies that are currently listed under the *Navigation Protection Act*, however, NGTL reported that “two watercourses crossed by the PDA are rated as possibly or likely to be navigable based on field assessments completed by Stantec in 2018” (NGTL 2019b; pg 10.25). The PDA would also overlap with the Eastern Slopes Fish Management Zone and several waterbodies including Clearwater River, Clearwater River side channel, Alford Creek, Matts Creek, Swan Creek, Vetch Creek, Prairie Creek, Cold Creek, and North Prairie Creek (NGTL 2019b; pg 10.25). Several of these waterbodies have been identified as supporting bull trout and bull trout habitat. Bull trout are listed as a ‘threatened with extinction’ under SARA (Alberta Wilderness 2019).

SNN members have traditionally harvested bull trout. Bull trout were spoke of often by Participants in the 2018 SNN Survey interviews as a culturally important species for SNN. Participants additionally noted that bull trout were a threatened species, and as a result nation member are self-policing their harvesting of bull trout in efforts to preserve the remaining population. This was echoed by the Stoney Consultation Office who reported concerns with the Projects proposed route interacting with waterbodies that support bull trout and bull trout habitat.

The Stoney Consultation Office reported that the Project should be routed around sensitive bull trout habitat and waterbodies that support bull trout populations. Impacts to threatened and at-risk species should be avoided, both for the preservation of bull trout and the continuation of SNN culture. Unfortunately, SNN was not consulted by NGTL prior to the Project routes being selected; as a result, the Project route does not take into account SNN’s concerns related to bull trout and the further disturbance of bull trout habitat and waterbodies that support bull trout populations.

## 7.3 Harvesting

According to the *Traditional Practices of the Stoney Nakoda Nations* (SNN 2009) report, and as noted by the Stoney Consultation Office, SNN has a spiritual and cultural connection with harvested resources. The Stoney Consultation Office identified that this spiritual and cultural connection is interrupted by development activities, particularly pipeline development, on the land.

The Stoney Consultation Office reported to the Study Team their concerns with adverse Project effects to species harvested by SNN members. Representatives of the Stoney Consultation Office noted that there is less wild game available in areas were SNN members can exercise their Section 35 Rights. In addition, it was reported by the Stoney Consultation Office that harvesting sites are frequently damaged by development and recreational users, leaving them unavailable for SNN members to exercising their Section 35 Rights.

## 7.4 Accidents and Safety

The Stoney Consultation Office identified a concern with the lack of a formal plan to respond to any accidents and safety risks that may impact SNN. Safety and emergency preparedness and response is of interest to the Stoney Consultation Office due to the proximity of the Project components to the SNN IRs. Further, the Stoney Consultation Office noted SNN’s community conditions are distinct from the main public, including the remoteness of Bighorn IR 144a. The Bighorn IR 144a relies on one road in and out, with the nearest services over an hour drive away. The Stoney Consultation Office reported that these characteristics makes SNN particularly vulnerable during any accidents or emergencies and necessitates an SNN-specific emergency response plan. Not taking into these factors into account may pose unnecessary risks to SNN members’ safety, health, and well-being.



The Stoney Consultation Office reported on previous experiences with accidents and the adverse effects to SNN members and the environment. The Stoney Consultation Manager recalled an accident in 2010 where a gas line leaked, and the natural gas blew onto the SNN IR 142, 143, 144. The accident negatively impacted the environment and the health of individuals and the response was not to the satisfaction of SNN. Moreover, the accident also led to an increase in distrust of development projects.

The Stoney Consultation Office addition describe concerns related to risks posed by the pipeline projects on SNN members exercising their Section 35 Rights. Often SNN members will travel far distances into the backcountry to access harvesting areas or sacred and cultural places; in the event of an accident or malfunction along a pipeline SNN members exercising their Section 35 Rights in the vicinity could be particularly vulnerable to health and safety risks resulting from the accident or malfunction. One Stoney Consultation Officer noted their concern with accidents or malfunctions' impacting SNN harvesters during the provision of Oral Indigenous Evidence for NGTL 2021:

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*And hunters sometimes go out alone. What happens if they don't come back? (SNN 2019a; Vol 6 para 3040).*

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## 7.5 Ceremonial, Cultural, and Sacred Sites

The Stoney Consultation Manager noted, based on experience, that companies and government agencies tend to view ceremonial, cultural and sacred sites as transferrable and can be easily moved to alternate locations once the historical ceremonial, cultural, or sacred site has been displaced by development. This differs from the views of SNN; the Stoney Consultation Office reported that SNN ceremonies, cultural events and sacred sites are linked to a specific location and specific physical attributes. Once ceremonial, cultural or sacred sites are disturbed the ceremony, stories, history, cultural activity etc. associated with that site often cannot be replicated in a new location.

## 7.6 Meaningful Consultation and Accommodation

According to the Stoney Consultation Office, the interconnected nature between the environment and SNN Section 35 Rights, culture and well-being should be more effectively explored by NGTL in the Project Application.

The Stoney Consultation Office would like to see an increase in consultation and accommodation efforts by industry proponents like NGTL to better include the Traditional Ecological Knowledge ("TEK") and expert information of SNN. As noted in the *Cultural Assessment for the Enhancing Grizzly Bear Management programs through the Inclusion of Cultural Monitoring and Traditional Ecological Knowledge* (Stoney Consultation Team and Stoney Tribal Administration 2016):

As traditional inhabitants with unique ties to the landscape, the Stoney Nakoda hold knowledge that can improve the understanding of key conservation concerns from a culture viewpoint... (SNN 2016; pg 9).

SNN TEK and expert information could be a key resource for companies like NGTL in ensuring mitigation and remediation work is completed accurately and in such a way that is not only a benefit to the environment, but also to the continued exercise of SNN Section 35 Rights. The Stoney Consultation Office would like to more serious consideration for the SNN TEK, expert information, and the land and resource use experiences.

Further, related to meaningful consultation, the Stoney Consultation Office reported their concerns with NGTL's refusal to-date to provide sufficient capacity for SNN to conduct a thorough Section 35 Rights Impact Assessment on the Project or complete other consultation-related activities. The Stoney Consultation Office reported in a letter dated August 27, 2019 from SNN to the CER, SNN stated that it "has presented NGTL, on several occasions, with proposed capacity budgets but have been met with refusal<sup>20</sup>" (SNN 2019; pg 1). The August 27, 2019 letter from SNN to the CER then goes on to note that NGTL's refusal to provide necessary capacity places "SNN at an extreme disadvantage and places the sole responsibility for identification of impacts with NGTL – who do not have the necessary information or expertise to do so without SNN input" (SNN 2019; pg 2). The Stoney Consultation Office notes that they do not have the internal capacity or resources to carry out the required work that is imposed on SNN by NGTL for this Project without external support and the provision of capacity funding.

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<sup>20</sup> Referring to letters submitted by SNN to NGTL in December 2018 and March 2019.



Picture 10: MNP LLP File Photo

## 8. Conclusions

The following section summarizes the results including identified Project effects to SNN VCs of Lands, Harvesting, and Sacred and Cultural Places, and Stoney Consultation Office issues and concerns presented in the Report and provides suggestions for appropriate accommodation measures to eliminate, reduce and control the identified effects to SNN Section 35 Rights resulting from the Project.

***SNN and Stoney Consultation Office maintain that it is NGTL and the CER's responsibility to ensure that Project effects identified in this Report are acknowledged, and all further Project effects to SNN are identified and properly accommodated.***

### 8.1 Project Effects on Stoney Nakoda Nations' Section 35 Rights

Section 35 Rights are location specific according to Canada's understanding of the terms of Treaty No.7 and the *NRTA*. SNN members have the right to exercise their Section 35 Rights on all unoccupied Crown lands or lands where they have a right of access.

If Edson Mainline is approved it will have adverse effects on the three selected SNN VCs of Land, Harvesting, and Sacred and Cultural Places.

**The perception that there is sufficient land available for the exercise of SNN's Section 35 Rights is unsupported by the conclusions in this Report.** The results reported in the Report highlight the need for thoughtful land use planning and regulatory processes.

The Report provides details on the amount of current lands disturbances (anthropogenic disturbances) within the Project study areas. Results presented in this Report show that disturbances remain over the lifetime of a disposition or permit, disproving the assumption that standard environmental mitigation measures will result in equivalent land capabilities post-construction. This is echoed in the Project ESA, in which NGTL identified pipeline ROW currently present in the Project study areas as a common and existing disturbance type (NGTL 2019b; pg 6.9).

The amount of current land disturbances within the PDA is 109.55 ha. Any reduction in lands that support the exercise of Section 35 Rights will only exacerbate the effects already felt by SNN members and further alienate portions of SNN's Iyarhe Nakoda Makochi.

### **8.1.1 Stoney Nakoda Nations Valued Component of Lands**

There will be negative Project-effects to the VC of Lands.

There will be a conversion of available lands (unoccupied Crown lands) where SNN Section 35 Rights can be exercised to unavailable lands (occupied Crown lands with no right of access) for the exercise of SNN Section 35 Rights:

- A reduction of 259.34 ha (approximately 482 football fields) of lands currently available in the PDA for the exercise of Section 35 Rights.

This means 259.34 ha of lands would no longer be freely accessible by SNN members for the exercise of Section 35 Rights.

The assumption of the Study Team is that application of the suggested accommodation measures outlined in Appendix C will eliminate, reduce, or control the identified effects of the changes in legal restriction for the exercise of SNN Section 35 Rights. However, the Study Team has no control or confidence that any of these accommodation measures will be successfully applied, therefore residual effects will remain and Project-impacts to SNN VC of Lands will occur.

NGTL's identified mitigation measures are not directly or proportionately responsive to impacts identified to the SNN VC of Lands.

Condition 22 of the Manitoba-Minnesota Transmission Line Project approval is an important precedence for the type of approval condition that will adequately and directly accommodate impacts to the taking up of lands.

The reduction identified for this project is a higher proportional change in lands available than the change in lands available in NGTL 2021.

- 19.6% of the lands required for NGTL 2021 is currently available for the exercise of Section 35 Rights and will be unavailable post-project approval
- 66% of the lands required for the Edson Mainline Expansion Project is currently available for the exercise of Section 35 Rights and will be unavailable post-project approval

This means that for these two NGTL projects alone, 739 ha of lands will require SNN to seek permission from NGTL to access the lands in the dispositions where the SNN members currently exercise their Section 35 Rights without restriction.

### **8.1.2 Stoney Nakoda Nations Valued Component of Harvesting**

There will be negative Project-effects to the VC of Harvesting.

- An increase of 101.28 ha in the total amount of lands inducing SNN Hunting Avoidance Behaviours post-approval in the LAA.
- An increase of 186.51 ha in the total amount of lands inducing SNN Hunting Avoidance Behaviours in the RAA.

The assumption of the Study Team is that application of the suggested accommodation measures outlined in Appendix C will eliminate, reduce, or control the identified effects of the changes in SNN Hunting Avoidance Behaviours for the exercise of Section 35 Rights. However, the Study Team has no control or confidence that any of these accommodation measures will be successfully applied therefore residual effects will remain and Project-impacts to SNN VC of Harvesting will occur.

NGTL's identified mitigation measures are not directly or proportionately responsive to impacts identified to the SNN VC of Harvesting.

### 8.1.3 Stoney Nakoda Nations Valued Component of Sacred and Cultural Places

There will be negative Project-effects to the VC of Sacred and Cultural Places.

- A decrease in SNN Sacred and Cultural Places Preferred Conditions in the PDA and LAA.
- Damages to the biophysical conditions of SNN Cultural Areas in the PDA and LAA.
- A decrease in SNN's qualitative connection to sacred and cultural places in the PDA and LAA.

The assumption of the Study Team is that application of the suggested accommodation measures outlined in Appendix C will eliminate, reduce, or control the identified effects of the changes in:

- SNN Sacred and Cultural Places Preferred Conditions;
- Biophysical conditions of SNN Cultural Areas; and,
- SNN's qualitative connection to sacred and cultural places for the exercise of Section 35 Rights.

However, the Study Team has no control or confidence that any of these accommodation measures will be successfully applied, therefore residual effects will remain and Project-impacts to SNN VC of Sacred and Cultural Places will occur.

NGTL's identified mitigation measures are not directly or proportionately responsive to impacts identified to the SNN VC of Sacred and Cultural Places. After NGTL identified mitigation measures are applied, residual effects to the SNN VC of Sacred and Cultural Places indicators will remain.

## 8.2 Stoney Nakoda Nations Consultation Office Issues and Concerns

In addition to the identified potential Project effects, the Stoney Consultation Office have additional concerns that remain outstanding including:

Issue and Concern	Details
<b>Grizzly Bears</b>	<ul style="list-style-type: none"> <li>• Project-effects to a threatened species (grizzly bears) that is of deep cultural value to SNN</li> <li>• Interference with SNN Section 35 Rights and the continuation of SNN culture related to effects to quality and quantity of grizzly bears and their habitat.</li> </ul>
<b>Bull Trout</b>	<ul style="list-style-type: none"> <li>• Project-effects to a threatened species (bull trout) that is of deep cultural value to SNN.</li> <li>• Interference with SNN Section 35 Rights and the continuation of SNN culture related to effects to quality and quantity of bull trout and their habitat.</li> </ul>
<b>Harvesting</b>	<ul style="list-style-type: none"> <li>• Project-effects to quality and quantity of species harvested.</li> <li>• Interference with SNN Section 35 Rights and culture related to effects to quality and quantity of species harvested.</li> </ul>
<b>Accidents and Safety</b>	<ul style="list-style-type: none"> <li>• Fear of potential malfunctions and accidents.</li> </ul>

Issue and Concern	Details
	<ul style="list-style-type: none"> <li>• Desire to have a formal response plan reflective of SNN's unique characteristics and needs, and inclusive of SNN and SNN language requirements.</li> </ul>
<b>Ceremonial, Cultural, and Sacred Sites</b>	<ul style="list-style-type: none"> <li>• Project-effects to ceremonial, cultural and sacred sites without appropriate accommodation to those impacts.</li> </ul>
<b>Meaningful Consultation and Accommodation</b>	<ul style="list-style-type: none"> <li>• Need for better opportunities for SNN to provide TEK and expert information in Project Design, EA, Mitigation and Remediation of Project.</li> <li>• Desire to have responsive and proportional accommodation measures applied to identified impacts.</li> <li>• Requirement for the provision of reasonable capacity to meaningfully participate in consultation and related activities for the Project</li> </ul>

Table 8.2-1: Stoney Consultation Office Issues and Concerns

### 8.3 Accommodation of Project Effects to Stoney Nakoda Nations Section 35 Rights

Eliminate, reduce, and control measures are standard mitigation strategies applied according to the NEB Filing Manual, 2017:

In respect of a project, the elimination, reduction or control of the adverse environmental effects of the project and includes restitution for any damage to the environment caused by such effects through replacement, restoration, compensation or any other means (NEB Filing Manual 2017; pg viii).

In order to be adequate, accommodation measures have to be directly responsive and proportional to the identified adverse effect. For those effects that cannot be eliminated through the application of elimination accommodation measures, residual effects remain.

There are agreement, compensation, and arbitration processes in-place outlined in Section 86-103 of the *NEB Act* available to landowners and land users including lease holders that could be applied to compensate for, or arbitrate discussions related to the taking up of unoccupied Crown lands.

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**It is the expectation of SNN that the information contained in this Report will be used by NGTL and the CER to contribute to the identification and accommodation of potential adverse effects to SNN Section 35 Rights arising from the construction and operation of the Project.**

## Reference List

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## GIS Data Sources

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## Appendix A

### Convictions for Exercising Section 35 Rights

Provincial Crown authorities pursued violations for illegal hunting that resulted in mostly successful convictions against Indigenous peoples, including:

- Hunting in a provincial forest reserve (*R. V. Strongquill* 1953 206 SKCA)
- Hunting in a road corridor wildlife sanctuary (*R. V. Gauchier*, 2013 ABQB 30; *R. V. Legrande*, 2011 ABPC 379)
- Hunting on leased Crown land set aside for grazing purposes (*R. V. Ahenakew*, 2000 SKQB 425; *R. V. Janier* 1995 10826 SKPC; *R. V. Martin*, 2008 ABQB 29)
- Hunting on leased Crown land set aside for military purposes (*R. V. Catarat*, 2001 SKCA 50)
- Hunting on leased Crown land set aside for mining purposes (*R. V. Bretton*, 1999 ABCA 285)
- Hunting on land set aside for game preserves (*R. V. Wolverine and Bernard*, 1989 4478 SKCA)
- Private lands under “visible, incompatible” conditions (*R. V. Quinney*, 2003 ABPC 47; *R. V. Peace*, 1999 12941 SKQB; *R. V. Corbiere*, 1996 8154 ONSC; *R. V. Bear*, 2004 SKPC 137; *R. V. Prairie Chicken*, 2010 ABPC 176; *R. V. Lachance*, 1997 11551 SKPC; *R v Pierone*, 2018 SKCA 30);
- Hunting on public roads (*R. V. Yapput, et al*, 2004 ONCJ 318)

Several key principles have resulted from the outcome of these convictions. First, restricted vs. prohibited provisions for conduct of activity may determine whether land is occupied or unoccupied by the Crown (restricted but not prohibited access results in a determination of unoccupied Crown land). And second, the lack of safe hunting conditions may render land incompatible with hunting, and therefore no right of access for Indigenous peoples in the exercise of the Section 35 Rights will exist.

## Appendix B





## Stoney Nakoda Nations Land Use Survey August 2018

### CONSENT

**[Interviewer] You are being invited to participate in a study about Stoney Nakoda First Nation Land Use for use in the Trans Canada NGTL 2021 Expansion Project and Grand Prairie Main Line Loop 2 McLeod River North Project. Approximately 45 Nation members will be invited to participate in this study. For one interview session you will be provided with a \$\_\_\_\_ honorarium.**

**The Stoney Nakoda Nations (SNN) Land Use Survey (the "Survey") is designed to collect information from members on their ability to exercise treaty rights.**

**I'm (Interviewer) going to read you the consent form and when I'm finished you can let me know if you agree.**

**[Participant Consent Form] I, the interviewee, agree to participate in the SNN Land Use Survey. I understand that the purpose of this project is to provide SNN with baseline information that will support the regulatory and legal needs of the Nation.**

**I agree that the information gained from this survey can be utilized by SNN to support its studies. I further understand that this information can be utilized to support SNN research, regulatory interventions, court actions, negotiations and legal work, projects and initiatives. All information collected is the sole property of the SNN, and will not be used for any purpose without Nation consent.**

**All participants will remain anonymous. The Survey Team will assign your Survey a number and all information you provide will remain anonymous. Any quotes that appear in final reports will be attributed to your number.**

**Only four questions require answers (Question #1 , Question #2, Question #5 and Questions #6); these are necessary to advance the Survey. While we ask you to please try to answer all of the questions, should you feel uncomfortable with a particular question, you may skip that question.**

## Appendix C

SNN VC of Lands			
Identified Adverse Effect <sup>21</sup> and Direct Effects of Project	Accommodation		
	Measures to Eliminate Adverse Effect	Measures to Reduce Adverse Effect	Measures to Control Remaining Adverse Effect
<p><b>1. Adverse effect of the Project on the ability of SNN to exercise their Section 35 Rights due to increased legal restriction.</b></p> <p>See Section 4 of the Report.</p>	<ol style="list-style-type: none"> <li>No Project approval.</li> <li>Locate the Project on existing unavailable land/occupied Crown land to ensure no increased legal conversion of the PDA.</li> <li>Ensure SNN members priority rights to exercise their Section 35 Rights on the land under the disposition sought for the Project, which are exempt from the enforcement of any offences under the <i>Petty Trespass Act</i> and <i>Public Lands Act</i>.</li> </ol>	<ol style="list-style-type: none"> <li>Reduce the amount of land subject to the increased legal restriction. e.g. by 50%<sup>22, 23</sup></li> <li>Minimize the type of legal restriction on the PDA. For example:</li> <li>Impose or amend the approval terms and conditions issued in conjunction with granting the Crown Land Reservation, easement or disposition sought for the Project under the <i>Public Lands Act</i>, to the effect that SNN Section 35 Rights are not subject to a legal restriction during construction and/or operation.</li> <li>Draft additional conditions where SNN members are exempt from the enforcement of offences under the <i>Petty Trespass Act</i> and <i>Public Lands Act</i>.</li> </ol> <p>Once reduction measures are applied, the residual effects that remain outstanding would require measures to control.</p>	<ol style="list-style-type: none"> <li>Control the remaining effect of the reduction in the amount of land by creating or making available equivalent amount of available land so that there is “No Net Loss” of lands available for the exercise of SNN Section 35 Rights and way of life. For example: <ul style="list-style-type: none"> <li>Unoccupied Crown land.</li> <li>Occupied Crown land with allowed activity.</li> </ul> </li> <li>Apply land offset measures similar to Condition 22 of the Manitoba-Minnesota Transmission Line Project approval.</li> </ol> <p>Compensate<sup>24</sup> for the remaining effects (increased legal restriction on the PDA) similar to criteria set out in Section 97<sup>25</sup> (1)(c); (d); (h); (i) of the <i>NEB Act</i>.</p>

Table C.0-1: Suggested Accommodation – Stoney Nakoda Nations VC of Lands

<sup>21</sup> Pursuant to definitions in Section 2 and 5 of *CEAA, 2012* “environmental effects” includes effects to the environment including humans.

<sup>22</sup> Notwithstanding the assumption that NGTL will apply all the mitigation measures that were identified in the EPP, the reduction of the adverse effects to SNN Section 35 Rights will be subject to further negotiations between SNN and NGTL. For example, if the amount of land subject to legal restriction is reduced, there are residual effects on the remaining 50% of the land subject to legal restriction that will require further control measures. The same representation applies to all ten identified adverse effects.

<sup>23</sup> The Study Team notes that the PDA is proposed to be 42 m (narrowed from 75 m) in the Little Smoky Caribou Range. The Study Team assumes that this PDA is appropriate for safe pipeline construction and could be feasible for the entire Project.

<sup>24</sup> Rates of appropriate compensation are unidentified at this time.

<sup>25</sup> Section 97 does not explicitly state criteria for compensation of adverse effects to constitutionally-protected Section 35 Rights.

SNN VC of Harvesting			
Identified Adverse Effect <sup>26</sup> and Direct Effects of Project	Accommodation		
	Measures to Eliminate Adverse Effect	Measures to Reduce Adverse Effect	Measures to Control Remaining Adverse Effect
<p><b>2. Adverse effect of the Project on SNN Hunting Avoidance Behaviours.</b></p> <p>See Section 5 of the Report.</p>	<ol style="list-style-type: none"> <li>1. No Project approval.</li> <li>2. Locate the Project on existing unavailable land/occupied Crown land (where PDA and avoidance behaviour zone would not impact current harvesting activities).</li> <li>3. Construct and operate the Project as non-visible.</li> <li>4. Construct, Operation and Maintain the Project to eliminate the changes brought to the physical and aesthetical attributes of the Land avoided by SNN for the exercise of Section 35 Rights. For example:                             <ul style="list-style-type: none"> <li>• no vegetation or soil removal (i.e., no clearing)</li> <li>• no vegetation management or tree control including mechanical clearing and the application of chemicals</li> <li>• no signs, fences or gates.</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Reduce the alteration of harvesting activities. Would have to be confirmed through follow up and monitoring activities. e.g., 50% reduction in alteration of SNN harvesting activities. Would have to be confirmed through follow up survey and monitoring.</li> <li>2. Reduce the displacement of wildlife or harvested species.</li> <li>3. Reduce the adverse effects on the negative perceptions of the Project. e.g., 50% reduction of the negative perceptions due to construction, operation and maintenance activities. For example:                             <ul style="list-style-type: none"> <li>• monitoring and follow up to verify prediction of Project effects.</li> <li>• public relations campaign.</li> <li>• conduct long term studies in partnership with SNN on the effects of the use of chemicals to soil, water, vegetation and animals.</li> </ul> <p>Once reduction measures are applied, the residual effects that remain outstanding would require measures to control.</p> </li> </ol>	<ol style="list-style-type: none"> <li>1. Control the remaining adverse effects resulting in alteration of SNN harvesting activities in Project area. For example:                             <ul style="list-style-type: none"> <li>• if 50% is reduced, the remaining 50% is to be compensated for.</li> </ul> <p>Compensate for the remaining effects similar to criteria set out in Section 97 (1) (d); (g); (h); (i) of the <i>NEB Act</i>.</p> </li> </ol>

Table C.0-2: Suggested Accommodation – Stoney Nakoda Nations VC of Harvesting

<sup>26</sup> Pursuant to definitions in Section 2 and 5 of *CEAA, 2012* “environmental effects” includes effects to the environment including humans.

SNN VC of Sacred and Cultural Places			
Identified Adverse Effect <sup>27</sup> and Direct Effects of Project	Accommodation		
	Measures to Eliminate Adverse Effect	Measures to Reduce Adverse Effect	Measures to Control Remaining Adverse Effect
<p><b>3. Adverse effect of the Project on SNN Sacred and Cultural Places Preferred Conditions.</b></p> <p>See Section 6 of the Report.</p>	<ol style="list-style-type: none"> <li>1. No Project approval.</li> <li>2. Construct and operate the Project as non-visible.</li> <li>3. Construct, Operation and Maintain the Project to eliminate the changes brought to the physical and aesthetical attributes of the Land containing SNN Sacred and Cultural Places Preferred Conditions. For example:                             <ul style="list-style-type: none"> <li>• no vegetation or soil removal (i.e., no clearing)</li> <li>• no vegetation management or tree control including mechanical clearing and the application of chemicals</li> <li>• no signs, fences or gates.</li> </ul> </li> </ol>	<ol style="list-style-type: none"> <li>1. Reduce the alteration of SNN cultural activities. e.g., 50% reduction in alteration of SNN sacred and cultural places. Would have to be confirmed through follow up survey and monitoring.</li> <li>2. Reduce the displacement of ceremonial, cultural and sacred sites.</li> <li>3. Reduce the adverse effects on the negative perceptions of the Project. e.g., 50% reduction of the negative perceptions due to construction, operation and maintenance activities. For example:                             <ul style="list-style-type: none"> <li>• monitoring and follow up to verify prediction of Project effects.</li> <li>• public relations campaign.</li> <li>• conduct long term studies in partnership with SNN on the effects of the use of chemicals to soil, water, vegetation and animals.</li> <li>• conduct consultation activities with SNN to determine how to minimize Project activities' interference with SNN Sacred and Cultural Places Preferred Conditions.</li> </ul> <p>Once reduction measures are applied, the residual effects that remain outstanding would require measures to control.</p> </li> </ol>	<ol style="list-style-type: none"> <li>1. Control the remaining adverse effects resulting in negative perceptions of the Project or changes to lands containing SNN Sacred and Cultural Places Preferred Conditions. For example:                             <ul style="list-style-type: none"> <li>• if 50% is reduced, the remaining 50% is to be compensated for.</li> </ul> <p>Compensate for the remaining effects similar to criteria set out in Section 97 (1) (h); (i) of the <i>NEB Act</i>.</p> </li> </ol>

<sup>27</sup> Pursuant to definitions in Section 2 and 5 of *CEAA, 2012* "environmental effects" includes effects to the environment including humans.

SNN VC of Sacred and Cultural Places			
Identified Adverse Effect <sup>28</sup> and Direct Effects of Project	Accommodation		
	Measures to Eliminate Adverse Effect	Measures to Reduce Adverse Effect	Measures to Control Remaining Adverse Effect
<p><b>4. Adverse effect of the Project on qualitative connection to sacred and cultural places.</b></p> <p>See Section 6 of the Report.</p>	<ol style="list-style-type: none"> <li>1. No Project approval.</li> <li>2. Locate the Project on existing unavailable land/occupied Crown land (where PDA and land disturbances would not impact current sacred and cultural places and activities).</li> <li>3. Construct and operate the Project as non-visible.</li> </ol>	<ol style="list-style-type: none"> <li>1. Reduce the displacement of ceremonial and cultural activities, family territories and camps, cultural and ceremonial places, and sacred sites. Would have to be confirmed through follow up survey and monitoring.</li> <li>2. Provide capacity for cultural and language camps.</li> <li>3. Develop and deliver cultural awareness training for NGTL staff related to SNN culture. To promote preservation of ceremonial, cultural and sacred places.</li> <li>4. Reduce the alteration of SNN cultural activities. e.g., 50% reduction in alteration of SNN cultural activities. Would have to be confirmed through follow up survey and monitoring.</li> <li>5. Reduce the adverse effects on the negative perceptions of the Project. e.g., 50% reduction of the negative perceptions due to construction, operation and maintenance activities. For example:                             <ul style="list-style-type: none"> <li>• monitoring and follow up to verify prediction of Project effects.</li> <li>• public relations campaign.</li> </ul>                             Once reduction measures are applied, the residual effects that remain outstanding would require measures to control.                         </li> </ol>	<ol style="list-style-type: none"> <li>1. Control the remaining adverse effects resulting in change to qualitative connection of SNN members to sacred and cultural places in Project RAA. For example:                             <ul style="list-style-type: none"> <li>• if 50% is reduced, the remaining 50% is to be compensated for.</li> </ul>                             Compensate for the remaining effects similar to criteria set out in Section 97 (1) (d); (g); (h); (i) of the <i>NEB Act</i>.                         </li> </ol>

<sup>28</sup> Pursuant to definitions in Section 2 and 5 of *CEAA, 2012* “environmental effects” includes effects to the environment including humans.

SNN VC of Sacred and Cultural Places			
Identified Adverse Effect <sup>29</sup> and Direct Effects of Project	Accommodation		
	Measures to Eliminate Adverse Effect	Measures to Reduce Adverse Effect	Measures to Control Remaining Adverse Effect
<p><b>5. Adverse effect of the Project on biophysical condition of SNN Cultural Areas.</b></p> <p>See Section 6 of the Report.</p>	<ol style="list-style-type: none"> <li>1. No Project approval.</li> <li>2. Locate the Project around the SNN Cultural Areas (where PDA would not impact the SNN Cultural Areas in the PDA and LAA).</li> <li>3. Construct, Operation and Maintain the Project to eliminate the changes brought to the physical and aesthetical attributes of the Land containing SNN Cultural Areas. For example:                             <ul style="list-style-type: none"> <li>• no vegetation or soil removal (i.e., no clearing)</li> <li>• no vegetation management or tree control including mechanical clearing and the application of chemicals</li> <li>• no signs, fences or gates.</li> </ul> </li> <li>4. Construct and operate the Project as non-visible.</li> </ol>	<ol style="list-style-type: none"> <li>1. Develop and deliver cultural awareness training for NGTL staff related to SNN culture. To promote preservation of ceremonial, cultural and sacred sites.</li> <li>2. Reduce the alteration of SNN cultural activities. e.g., 50% reduction in alteration of SNN cultural activities. Would have to be confirmed through follow up survey and monitoring.</li> <li>3. Reduce the displacement of ceremonial, cultural and sacred sites.</li> </ol>	<ol style="list-style-type: none"> <li>1. Control the remaining adverse effects resulting in biophysical alteration of SNN sacred and cultural places in Project RAA. For example:                             <ul style="list-style-type: none"> <li>• if 50% is reduced, the remaining 50% is to be compensated for.</li> </ul> <p>Compensate for the remaining effects similar to criteria set out in Section 97 (1) (d); (g); (h); (i) of the <i>NEB Act</i>.</p> </li> </ol>

Table C.0-3: Suggested Accommodation – Stoney Nakoda Nations VC of Sacred and Cultural Places

<sup>29</sup> Pursuant to definitions in Section 2 and 5 of CEAA, 2012 “environmental effects” includes effects to the environment including humans.



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