



Canada Energy  
Regulator

Régie de l'énergie  
du Canada

# Canada Energy Regulator Report

NOVA Gas Transmission Ltd.

GH-002-2019

# Canada Energy Regulator Report

Canada Energy Regulator  
Report

In the Matter of

**NOVA Gas Transmission Ltd.**

Application dated 4 April 2019 for the North Corridor Expansion Project

GH-002-2019  
September 2020

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## Glossary of Terms and Abbreviations

<b>AB</b>	Alberta
<b>Accountable Officer</b>	The accountable officer of NGTL, appointed as Accountable Officer pursuant to section 6.2 of the <i>Canada Energy Regulator Onshore Pipeline Regulations</i> .
<b>Applicant, NGTL or the Company</b>	NOVA Gas Transmission Ltd.
<b>Application</b>	NGTL application for the North Corridor Expansion Project dated 4 April 2019, pursuant to sections 52 and 58 of the <i>National Energy Board Act</i> (NEB Act) and Part IV of the NEB Act
<b>BC</b>	British Columbia
<b>Bear Canyon North Extension</b>	Northwest Mainline Loop No. 2 includes approximately 25 km of NPS 36 pipe
<b>CEAA 2012</b>	<i>Canadian Environmental Assessment Act, 2012</i>
<b>CER</b>	Canada Energy Regulator
<b>CER Act</b>	<i>Canadian Energy Regulator Act</i>
<b>Certificate</b>	The Certificate of Public Convenience and Necessity (Certificate) applied for by NGTL under section 52 of the NEB Act, authorizing the construction and operation of the Section 52 Pipeline and Related Facilities
<b>CO</b>	Carbon Monoxide
<b>commencing construction</b>	The clearing of vegetation, ground-breaking and other forms of Right-of-Way preparation that may have an impact on the environment (activities associated with normal surveying do not constitute commencing construction)
<b>Commenter</b>	A person, company or group who applied to participate in the hearing and was granted standing to provide a letter of comment
<b>Commission</b>	Commission of the Canada Energy Regulator
<b>COSEWIC</b>	Committee on the Status of Endangered Wildlife in Canada
<b>CPCN or Certificate</b>	Certificate of Public Convenience and Necessity
<b>CSA</b>	Canadian Standards Association
<b>CSA Z662</b>	Canadian Standards Association Z662 – Oil and Gas Pipeline Systems

<b>CSA Z662-19</b>	Canadian Standards Association Z662-19, Oil and Gas Pipeline Systems (2019 version)
<b>designated project</b>	A defined term in subsection 2(1) of CEEA 2012; this Project is a designated project pursuant to CEEA 2012 and its Regulations, and is therefore subject to a federal environmental assessment under CEEA 2012
<b>DFO</b>	Fisheries and Oceans Canada
<b>EA</b>	Environmental Assessment
<b>EAS</b>	Environment Alignment Sheets
<b>ECCC</b>	Environment and Climate Change Canada
<b>EPP</b>	Environmental Protection Plan
<b>ESA</b>	Environmental and Socio-Economic Assessment
<b>Filing Manual</b>	The Canada Energy Regulator's Filing Manual
<b>for approval</b>	When a condition requires a filing with the Commission "for approval", NGTL must not commence the indicated action or activity until the Commission issues its written approval of the filing.
<b>GBA+</b>	Gender Based Analysis Plus
<b>GDP</b>	Gross Domestic Product
<b>GHG</b>	Greenhouse Gas
<b>Governor in Council or GIC</b>	The Governor General acting on the advice of the Federal Cabinet
<b>HDD</b>	Horizontal Directional Drill
<b>Hidden Lake North Unit Addition</b>	A compressor station unit addition, includes associated facilities and piping
<b>including</b>	Use of this term, or any variant of it, is not intended to limit the elements to just those listed. Rather, it implies minimum requirements with the potential for augmentation, as appropriate.
<b>Indigenous</b>	Indigenous has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the <i>Constitution Act, 1982</i> : (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

<b>Intervenor</b>	A person, company or group who applied to participate in the hearing and was granted standing to participate as an Intervenor; has rights and obligations in the proceeding as set out in the Hearing Order or other procedural direction.
<b>IR or Information Request</b>	A written question to the Applicant or an Intervenor in relation to its evidence, during the written portion of the hearing pursuant to the deadlines set out, to which a response must be subsequently filed.
<b>KP</b>	Kilometer Post
<b>MPMO</b>	Major Projects Management Office
<b>NEB</b>	National Energy Board
<b>NEB Act</b>	<i>National Energy Board Act</i>
<b>NGTL</b>	NOVA Gas Transmission Ltd.
<b>NGTL System</b>	NGTL's natural gas pipeline system comprised of approximately 24,000 km of pipeline, associated compression, and other facilities located in Alberta and British Columbia; subject to federal jurisdiction and regulation.
<b>North Star Section 2</b>	North Central Corridor Loop that is approximately 24 km of NPS 48 pipe
<b>Notice</b>	The Notice of Hearing issued by the NEB in respect of the Application
<b>NPS</b>	Nominal Pipe Size
<b>NO<sub>2</sub></b>	Nitrogen Dioxide
<b>Offset measures</b>	Habitat-focused measures to be implemented outside of the Project footprint to provide some degree of ecological compensation for the residual effects of the Project on the landscape, after all possible avoidance, mitigation and on-site restoration measures are applied
<b>OPR</b>	<i>Canada Energy Regulator Onshore Pipeline Regulations</i>
<b>Order</b>	Order XG-021-2020 issued pursuant to section 58 of the NEB Act authorizing exemption of certain activities and facilities.
<b>Part IV Order</b>	The Toll Order applied for by NGTL under Part IV of the NEB Act, authorizing the tolling methodology for the Project.
<b>Participant</b>	A person, company or group who has applied to participate in the hearing and who was granted standing to participate. The term participant includes the Applicant, Intervenor and Commenters in the hearing.

<b>Parties</b>	Includes the Applicant and Intervenors; does not include Commenters
<b>PM2.5</b>	particulate matter less than 2.5 micrometres in diameter
<b>post-construction</b>	Activities to take place once construction is complete, following final clean-up through to the completion of reclamation activities; including monitoring to evaluate the success of reclamation activities, compliance with commitments and the stability of the disturbed lands.
<b>PPBoR</b>	Plan, Profile and Book of Reference
<b>Process Advisor</b>	Commission staff assigned to provide assistance to the public, landowners, Indigenous communities, and Participants to help them understand the process, the different roles of the hearing participants, and how to participate in the hearing.
<b>Project</b>	The proposed North Corridor Expansion Project as described in NGTL's 4 April 2019 Application, consisting of the Section 52 Pipeline and Related Facilities, the Section 58 Facilities and Activities, and the request pursuant to Part IV of the NEB Act.
<b>RAP</b>	Restricted Activity Period
<b>Recovery Strategy</b>	Environment and Climate Change Canada Recovery Strategy for the Woodland Caribou ( <i>Rangifer tarandus caribou</i> ), Boreal Population, in Canada
<b>Red Earth Section 3</b>	North Central Corridor Loop that is approximately 32 km of NPS 48 pipe
<b>Report or Canada Energy Regulator Report</b>	Report submitted by the Commission of the Canada Energy Regulator to the Minister (as defined in section 2 of the NEB Act) that sets out the Commission's recommendation as to whether a Certificate should be issued for all or any portion of the pipeline, the reasons for the recommendation, and all the terms and conditions the Commission considers necessary or desirable in the public interest to which any Certificate would be subject, pursuant to section 52 of the NEB Act. This Report also contains the Commission's decisions in respect of NGTL's applications under section 58 of the NEB Act and Part IV of the NEB Act.
<b>Restoration measures</b>	Measures used so that the landscape in is consistent, over the long term, with adjacent ecosystems. Common restoration measures include seeding and/or planting to achieve establishment, survival and growth of target species in the short term, so natural ecosystems are expected to regenerate over the long term
<b>ROW</b>	Right-of-Way

<b>SARA</b>	<i>Species at Risk Act</i>
<b>Section 52 Pipeline and Related Facilities</b>	The proposed construction and operation of approximately 81 km kilometers of new gas pipeline and associated facilities in northwest Alberta.
<b>Section 58 Facilities and Activities</b>	<ul style="list-style-type: none"> <li>• the Hidden Lake North Unit Addition; and</li> <li>• temporary infrastructure required for the Project (i.e., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards and construction camps).</li> </ul>
<b>Section 58 Order</b>	The Exemption Order applied for by NGTL under section 58 of the NEB Act, authorizing the construction and operation of the Section 58 Facilities and Activities.
<b>TK</b>	Traditional Knowledge
<b>TLRU</b>	Traditional Land and Resource Use
<b>TransCanada or TC Energy</b>	Subsidiary owner of NGTL

## List of Units

¢/Mcf/d	Cents per thousand cubic feet per day
Bcf/d	Billion cubic feet per day
CO <sub>2</sub> e	Carbon dioxide equivalent units
ft	feet
GJ/d	Gigajoules per day
ha	hectares
km	Kilometre
kPa	Kilopascal (one thousand pascals)
L	Litre
m	Metre
m <sup>3</sup> /d	Cubic metres per day
mm	Millimetre
Mcf	Thousand cubic feet
MMcf/d	Million cubic feet per day
MPa	Megapascal (one million pascals)
MW	megawatt
PJ/d	Petajoules per day (1 Pj/d = 1,000,000 GJ/d)
TJ/d	Terajoules per day
%	Per cent
10 <sup>3</sup> m <sup>3</sup>	Thousand cubic meters
10 <sup>3</sup> m <sup>3</sup> /d	Thousand cubic meters per day

## **Recital and Appearances**

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**IN THE MATTER OF** the *National Energy Board Act*, R.S.C. 1985, c. N-7, as amended, and the regulations made thereunder;

**IN THE MATTER OF** the *Canadian Environmental Assessment Act, 2012* (S.C. 2012, c. 19, s.52), as amended, and the regulations made thereunder;

**IN THE MATTER OF** an application by NOVA Gas Transmission Ltd., before the Commission of the Canada Energy Regulator for a Certificate of Public Convenience and Necessity and other related approvals pursuant to sections 52 and 58, and Part IV of *the National Energy Board Act*, filed under File No. OF-Fac-Gas-N081-2019-02 02 on 4 April 2019;

**IN THE MATTER OF** the National Energy Board Hearing Order GH-002-2019 dated 26 August 2019;

**HEARD** in Peace River, Alberta on 3 - 6 February 2020;

**BEFORE:**

Trena Grimoldby Presiding Commissioner  
Wilma Jacknife Commissioner  
Stephania Luciuk Commissioner

**Oral Indigenous Knowledge**

**Appearances**

**Participants**

**Witnesses**

	Peerless Trout First Nation	Elder N. Gladue Elder E. Houle Mr. G. Okemow Mr. M. Noskiye Mr. G. Noskiye
Mr. K. S. Jutla	Bigstone Cree Nation	Elder M. Beaver Elder A. Beaver Mr. R. Peters Mr. E. Alook Mr. R. Noskiye
	Dene Tha' First Nation	Elder I. Gallant Elder F. Chonkolay Elder A. Wasp-Colin Elder A. Gallant Elder Y. Anderson Mr. M. Munson Mr. F. Didzena
Mr. A. Lalji	Driftpile Cree Nation	Elder P. Freeman



Mr. D. Overall

Elder T. Campiou  
Mr. K. Giroux

Mr. A. Lalji  
Mr. D. Overall

Louis Bull Tribe

Ms. M. Daniels  
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Mr. R. Hajduk

Peavine Métis Settlement

Ms. L. Smith  
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Mr. A. Lalji  
Mr. D. Overall

Whitefish Lake First Nation  
#459

### **Written Final Argument**

NOVA Gas Transmission Ltd.  
Alberta Department of Energy  
Bigstone Cree Nation  
Cadotte Lake Métis Local #1994  
Canadian Association of Petroleum Products  
ConocoPhillips Canada  
Dene Tha' First Nation  
Driftpile Cree Nation  
Duncan's First Nation  
Environment and Climate Change Canada  
Louis Bull Tribe  
Peerless Trout First Nation  
Whitefish Lake First Nation #459

# 1 Recommendation and Decision

This Canada Energy Regulator (CER) Report (Report) constitutes the Recommendation, decisions and reasons of the Commission of the Canada Energy Regulator (Commission) in respect of NOVA Gas Transmissions Ltd.'s<sup>1</sup> (NGTL) application to construct and operate the North Corridor Expansion Project (Application or Project), considered by the Commission in the GH-002-2019 proceeding.

Chapter 1 and 2 form a summary of the Commission's Recommendation and determinations and are provided for convenience only. The Commission's detailed consideration of the issues is presented through the chapters that follow. If there is a discrepancy between these two summary chapters and the body of the Report, the wording and determinations set out in the chapters that follow 1 and 2 take precedence.

## 1.1 Recommendation to Governor in Council

The Commission's consideration of the Application filed by NGTL and the deliberations that the Commission undertook, as explained in this Report, were done pursuant to the *National Energy Board Act* (NEB Act). The *Canadian Energy Regulator Act* (CER Act) came into force on 28 August 2019, which is referred to as the commencement day, during the GH-002-2019 proceeding. Section 36 of the transitional provisions of the CER Act state that applications pending before the National Energy Board (NEB) immediately before the commencement day are to be taken up before the Commission and continued in accordance with the NEB Act as it read immediately before the commencement day.

In its consideration of any application under Part III of the NEB Act, which includes sections 52 and 58, the Commission must consider whether the applied-for facilities are in the overall Canadian public interest. In doing so, the Commission must exercise its discretion in balancing the interests of a diverse public. In order to issue a Recommendation or decision, the Commission is required to consider and weigh all relevant evidence on the record. This requires that the Commission balance the benefits and the burdens of a project, based upon analysis of the relevant evidence properly before it.

Section 52 of the NEB Act requires that a Recommendation be made to the Minister responsible for the Act (the Minister of Natural Resources) as to whether or not a certificate should be issued for all or any portion of the applied-for pipeline, taking into account whether the pipeline is and will be required by the present and future public convenience and necessity, and the reasons for that Recommendation. Section 52 of the NEB Act also requires that regardless of the Recommendation, it must include all the terms and conditions that are necessary or desirable in the public interest to which the certificate will be subject if the Governor in Council (GIC) were to direct the issuance of the certificate, including terms or conditions relating to when the certificate or portions or provision of it are to come into force.

### 1.1.1 Public Convenience and Necessity

The various factors that the Commission considered in this Project assessment cannot be understood in isolation from one another, or separate from the specific context and circumstances surrounding this Project. In the Commission's view, the benefits of the Project

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1 a wholly owned subsidiary of TC Energy (also referred to as TransCanada or TransCanada Corporation)

are considerable and would be realized throughout the lifecycle of the Project. As discussed further in this Report, Project benefits include:

- increased training and employment opportunities for Indigenous peoples and potential contracts for Indigenous-owned businesses;
- increased access to intra-basin markets for Canadian natural gas;
- increased access to natural gas supplies for consumers;
- contributions to local, regional, provincial and federal economies; and
- socio-economic benefits related to the construction phase of the Project, through both direct, indirect and induced employment, and contract and procurement opportunities for local communities as well as workers from elsewhere in Alberta (AB).

However, the Commission is also of the view that the Project carries risks. Burdens associated with this Project include:

- potential negative effects on health and well-being of Indigenous peoples and Project workers;
- limitations on access for traditional users within the Project area during active construction and potential operations and maintenance activities;
- potential impacts to unidentified traditional land and resource use (TLRU) and cultural sites;
- lasting cultural implications stemming from potential cumulative effects on TLRU;
- potential negative impacts on the ability of Indigenous peoples to pass on intergenerational knowledge;
- likely adverse effects caused by increased disturbance in the Red Earth and Chinchaga caribou ranges; and
- impacts to fisheries resources from the Notikewin River watercourse crossing.

The Commission recognizes that the benefits and burdens of any Project are never distributed evenly across the country. The Commission has remained cognizant that the public interest is both regionally and nationally based, and therefore is inclusive of all Canadians. In light of these circumstances, reasonable people can and will disagree on what the best balance and outcome is for Canadians.

It is the Commission's view that, having regard to all considerations that appear to be directly related and relevant to the Application, the Project is and will be required by the present and future public convenience and necessity. In coming to this Recommendation, the Commission considered the public interest, defined as being inclusive of all Canadians and referring to a balance of economic, environmental and social interests that changes as society's values and preferences evolve over time.

The Commission recommends that a Certificate be issued under section 52 of the NEB Act, for the construction and operation of the Project (Section 52 Pipeline and Related Facilities). The Commission's conclusions on individual matters which fall within the ambit of the Certificate are contained in the chapters that follow.

This Report sets out the reasons for this Recommendation and the terms and conditions to which the Certificate would be subject.

### **1.1.2 Environmental Assessment**

Sections 52(3) and 58(6) of the NEB Act require that if an application relates to a designated project as defined in section 2 of the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), the Report must have an environmental assessment (EA) prepared under CEAA 2012. Further details regarding the CEAA 2012 requirements are provided in Subsection 2.1.7 and Chapter 8 of this Report.

Section 36.1 of the transitional provisions of the CER Act state that section 182.1 of the *Impact Assessment Act* applies to applications pending before the NEB immediately before the commencement day (28 August 2019). Section 182.1 of the *Impact Assessment Act* states that any EA of a designated project by the NEB commenced under CEAA 2012, in respect of which a decision statement has not been issued before the day on which the *Impact Assessment Act* comes into force (28 August 2019), is to be continued under CEAA 2012.

Having undertaken the EA, the Commission concludes that, with the implementation of NGTL's environmental protection procedures and mitigation measures, as well as the Commission's recommended conditions, the Project is not likely to cause significant adverse environmental effects. In reaching this conclusion, the Commission has required, through its recommended conditions, that effects or consequences be minimized, even if they are only anticipated or possible and not certain. The Commission has also recommended a number of conditions on the Project with respect to protecting caribou habitat in the Red Earth and Chinchaga caribou ranges. The Commission is of the view that with the successful implementation of these conditions, the potential residual effects associated with the Project would be mitigated (as explained in Chapter 8).

### **1.1.3 Consultation with Indigenous<sup>2</sup> Peoples**

The Commission has carefully considered all of the relevant evidence and submissions it received. The Commission has considered the views and concerns of Indigenous peoples participating in the hearing process, the concerns heard by NGTL from potentially impacted Indigenous peoples who did not participate in the process and shared in NGTL's engagement logs, and the potential impacts on the rights and interests of Indigenous peoples and proposed measures to avoid or mitigate those impacts.

Having assessed all of the evidence on the record, and taking into account NGTL's engagement commitments, the Commission is of the view that the honour of the Crown has been upheld and that there has been reasonable consultation and accommodation for the purpose of the Commission's recommendation on this Project under section 52 of the NEB Act, and its decision under section 58 of the NEB Act. The Commission is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed through the implementation of the mitigation measures and commitments made by NGTL, and the conditions and accommodations recommended and imposed by the Commission.

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2 "Indigenous" has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*:

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

The Commission understands that the GH-002-2019 hearing process forms part of the overall consultation process with Indigenous peoples with respect to their constitutionally protected rights. In this regard, it is the Commission's understanding that the Government of Canada will rely on the CER's process, to the extent possible, to fulfill any duty to consult related to the Project, as well as any additional consultations being carried out separately by the Government of Canada with respect to the Project.

The GIC has the responsibility of ultimately ensuring that the duty to consult has been fulfilled before a decision is made on the Project. The Commission has considered those aspects of consultation which are relevant to the Project and for which evidence was filed. The Commission understands that the dialogue between Indigenous peoples, NGTL and the Government of Canada is ongoing.

The Commission would like to note that, although the term 'Indigenous' is used throughout this Report as an inclusive term to describe the descendants of the original inhabitants of this country now known as Canada, the Commission acknowledges that First Nation, Métis and Inuit peoples are distinct peoples with unique worldviews and histories. The Commission recognizes the unique context and distinctiveness of the knowledge possessed and provided by all the First Nation and Métis communities that participated in the GH-002-2019 proceeding.

The Commission values the participation, knowledge, and information that Indigenous peoples bring to the hearing process. The Commission notes that the First Nation and Métis communities who participated in the hearing are from Treaty No. 6, Treaty No. 8, the Métis Nation of Alberta, and three Métis Settlements. The Commission thanks all Participants in the GH-002-2019 hearing and, in particular, Bigstone Cree Nation, Dene Tha' First Nation, Driftpile Cree Nation, Louis Bull Tribe, Peavine Métis Settlement, Peerless Trout First Nation and Whitefish Lake First Nation #459 for sharing their knowledge during the oral Indigenous knowledge sessions.

*[...] on behalf of my colleagues, I'd like to thank everyone that has joined us here that has travelled long distances to participate in the proceeding for the entire week that we've been here, and for sharing their knowledge with us.*

*It has been, at times, difficult for sharers to share some of the info that they have with us...this has been an absolute honour for us to be here, to listen. And it's something that we continue to be grateful for, to have had this opportunity as Commissioners. And so thank you to all participants of the sessions this week."*

-- Trena Grimoldby, Presiding Commissioner, Transcript Volume 5 [1979, 1980]

## **1.2 Decisions made by the Commission**

### **1.2.1 Section 58 Facilities and Related Activities**

As explained in Subsections 2.1.3, 2.3.2 and 5.1.3 of this Report, NGTL requested that some activities and facilities associated with the Project be authorized by the Commission through an Order pursuant to section 58 of the NEB Act, and that the section 58 Order exempt those activities from certain further authorizations.

The Commission is of the view that the applied-for activities and facilities would be in the public interest, should the GIC direct the Commission to issue a Certificate of Public Convenience and Necessity (Certificate or CPCN) in respect of the Section 52 Pipeline and Related Facilities. However, the Commission also finds that some of the applied-for exemptions under section 58 of the NEB Act would risk important regulatory omissions if granted for some of the Project's activities and facilities.

Accordingly, the Commission has decided to grant Order XG-021-2020 (Order) pursuant to section 58 of the NEB Act exempting NGTL from paragraphs 31(c) and 31(d), and section 33 of the NEB Act for the components identified in Subsection 2.3.2 and 5.3.1 of the Report, and subject to the attached conditions (provided as Appendix II of this Report). Should the GIC direct the Commission to issue a Certificate in respect of the Section 52 Pipeline and Related Facilities, the Commission will issue the Order concurrently.

### **1.2.2 Part IV Tolling Methodology**

The Commission agrees to allow the use of NGTL's current tolling methodology for the Project as applied for. Further discussion of the Commission's views on NGTL's request pursuant to Part IV of the NEB Act is contained in Subsection 2.1.5 and Chapter 3 of this Report.

### 1.3 Conclusions

When considering the balance between the benefits and the burdens associated with the Project, the Commission is of the view that the Project is in the public interest and is consistent with the requirements of the NEB Act. In assessing NGTL's Application, the Commission has recommended and included conditions in addition to the pipeline integrity, safety and environmental protection legislation and standards to which the Project would be subject.

The Commission carefully considered all commitments made by NGTL at various stages in this proceeding. The Commission deems the commitments to be essential to its decision and has recommended **Condition 13 Commitments Tracking Table** for the Section 52 Pipeline and Related Facilities, and imposes the same condition (**Condition 16**) for the Section 58 Facilities and Activities, which collectively require NGTL to track and fulfil the commitments it made during the proceeding. Throughout the Report, the Commission has highlighted various commitments from NGTL. The Commission expects NGTL to include all commitments in the Commitments Tracking Table. Should the Certificate be issued, NGTL is required to fulfil its commitments and satisfy the Commission's requirements. The Commission will monitor NGTL's compliance with the Commission's requirements throughout the lifecycle of the Project.



T. Grimoldby  
Presiding Commissioner



W. Jacknife  
Commissioner



S. Luciuk  
Commissioner

## 2 Summary

This chapter summarizes the Commission's recommendation and decisions.

The Commission's detailed consideration of the issues is contained in the chapters that follow, including issues that were brought forward by Intervenors throughout the hearing process. Where no views of Participants are described, none were provided on that topic.

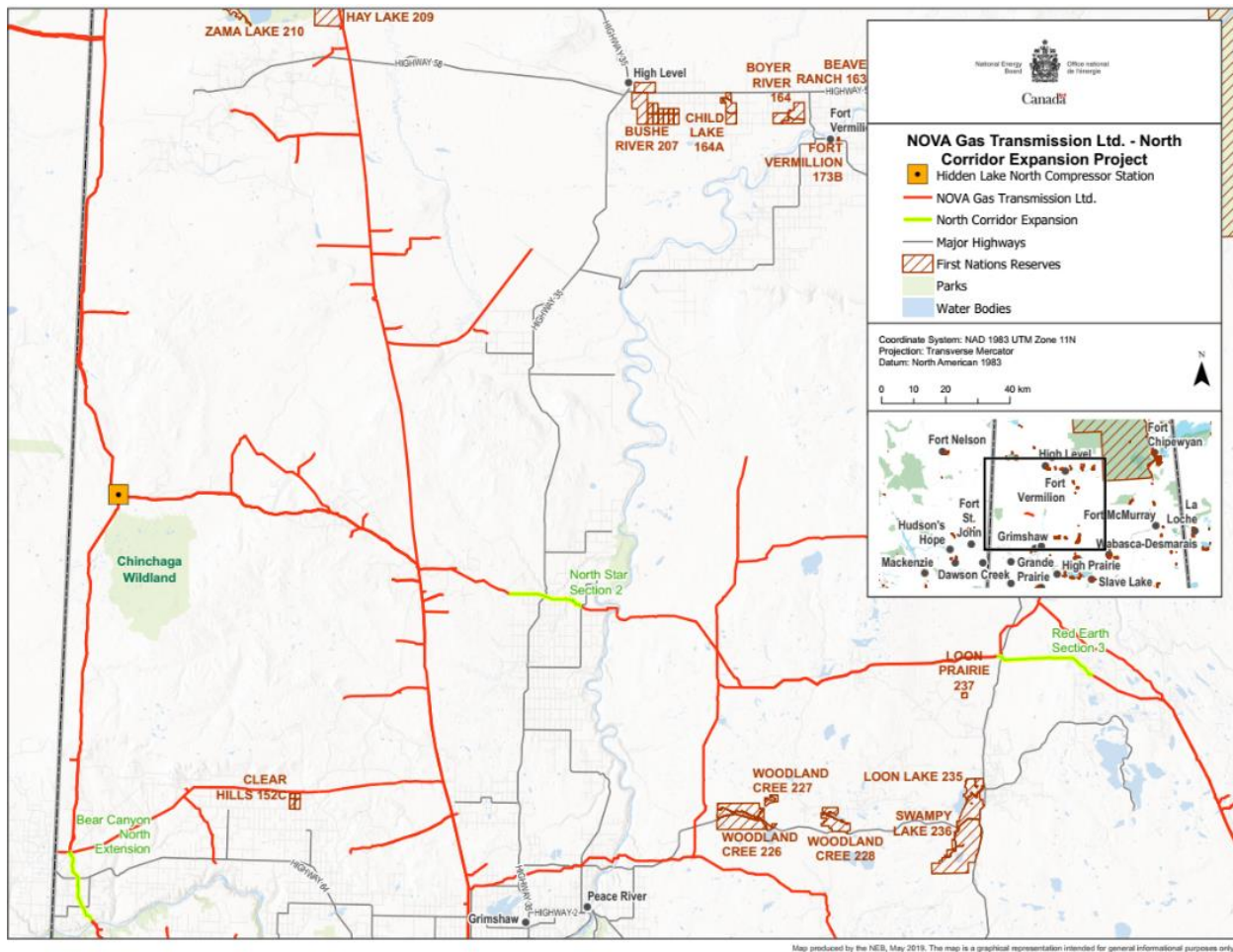
### 2.1 What did NGTL apply for?

On 4 April 2019, NGTL filed an application for the Project. NGTL proposes to construct and operate approximately 81 km of looped pipeline, in three different sections, and associated facilities in northwestern AB. The following sections describe the various components of the Project.

NGTL indicates that the proposed expansion of the NGTL system is to transport gas from the Peace River Project Area to growing intra-basin markets located in the North of Bens Area. A map of the Project's major components is available in Figure 1.



**Figure 1 Map of major Project components<sup>3</sup>**



NGTL requested that a report be issued in a timely manner that would allow for GIC to issue a Certificate no later than January 2021. This would allow NGTL to fulfill any pre-construction conditions required under the Certificate and commence Project construction to meet the commercially required in-service date. The estimated cost of the Project is \$632 million.

### 2.1.1 Project major components

NGTL indicates that the major components of the Project consist of:

- North Central Corridor Loop (North Star Section 2) – approximately 24 km of Nominal Pipe Size (NPS) 48 pipe;
- North Central Corridor Loop (Red Earth Section 3) – approximately 32 km of NPS 48 pipe;

<sup>3</sup> Map produced by the Canada Energy Regulator for use in the GH-002-2019 hearing process as a graphical representation intended for general information purposes only. The Commission disclaims all responsibility for any errors, omissions and inaccuracies. Readers wishing to consult the actual maps should refer to the official record of the GH-002-2019 hearing.

- Northwest Mainline Loop No. 2 (Bear Canyon North Extension) – approximately 25 km of NPS 36 pipe;
- Hidden Lake North Compressor Station Unit Addition (Hidden Lake North Unit Addition), including connectivity piping and related components;
- mainline valve sites and associated piping;
- launcher and receiver facilities for cleaning and In-line Inspection, and a Cathodic Protection system;
- construction-related temporary infrastructure such as access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards and construction camps; and
- miscellaneous works, such as pipeline warning signs and aerial markers.

### **2.1.2 Section 52 Pipeline and Related Facilities**

The Section 52 Pipeline and Related Facilities comprise approximately 81 km of looped pipeline in three sections. A summary of the Project components that comprise the Section 52 Pipeline and Related Facilities is provided in Table 2-1.

Further discussion on NGTL's engineering design, route selection and EA of the applied-for corridor is provided in Chapters 4, 5 and 8, respectively.

**Table 2-1 Section 52 Pipeline and Related Facilities Component Summary**

Pipeline Section	Pipe Diameter (mm)	Pipe Length (km)	MOP (kPa)	Approximate Parallel ROW (km)	Approximate Non-Parallel ROW (km)	Minimum Wall Thickness (mm)
<b>North Central Corridor Area</b>						
North Star Section 2	1,219	24	9,930	23	1	Line pipe: 15.7 Heavy wall pipe: 20.9
Red Earth Section 3	1,219	32	9,930	31	1	Heavy wall pipe: 25.4 (trenchless)
<b>Northwest Mainline Area</b>						
Bear Canyon North Extension	914	25	8,450	22	3	Line pipe: 10.0 Heavy wall pipe: 13.3

**2.1.3 Section 58 Facilities and Activities**

NGTL indicated that to achieve the proposed construction schedule and commercially required in-service date for the Project, it requested that the below activities be exempted from the detailed route process pursuant to section 58 of the NEB Act.

- the Hidden Lake North Unit Addition;
- temporary infrastructure required for the Project (i.e., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards and construction camps); and
- Right-of-Way (ROW) preparation activities (i.e., clearing, grading, and stripping) and commencing trenchless crossing in select areas (in aggregate not exceeding 40 km in length).

NGTL stated that all activities contemplated under section 58 of the NEB Act will not commence until after the Certificate has been issued for the entire Project and after any applicable section 58 NEB Act Order conditions are satisfied.

**2.1.4 Leave to Open and section 17 of the *Canada Energy Regulator Onshore Pipeline Regulations (OPR)***

NGTL also requested exemption:

- from the requirements of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain Leave to Open from the Commission before installing auxiliary systems, utility gas and certain tie-ins for the Project; and
- from the 100 per cent Non-destructive examination requirement in section 17 of the OPR pursuant to subsection 48(2.1) and 48(2.2) of the NEB Act for certain low-pressure piping systems associated with the Project.

Further discussion of the exemption requests is provided in Chapter 4.

### **2.1.5 Part IV of the *National Energy Board Act***

NGTL indicated that the Project is required to increase pipeline capacity to transport gas to growing intra-basin markets, and also to meet delivery requirements in areas where market demand is growing.

NGTL proposed to provide services that utilize the Project under the terms and conditions established in the NGTL Gas Transportation Tariff, as amended from time to time. NGTL proposed to treat the costs for the Project on a rolled-in basis, and to determine the tolls for services in accordance with the NGTL toll design methodology in effect, and as approved, at any given time.

The Commission's views on the economic feasibility and tolling implications for the Project are provided in Chapter 3.

### **2.1.6 Relief Requested by NGTL**

In its Application, NGTL specifically requested the following relief from the Commission in respect of the Project:

- a report recommending the issuance of a Certificate, pursuant to section 52 of the NEB Act, authorizing construction and operation of the Project;
- an exemption from the requirements of paragraph 30(1)(b) and subsection 47(1) of the NEB Act to obtain Leave to Open from the Commission before installing auxiliary systems, utility gas and certain tie-ins for the Project;
- an exemption from the 100 per cent Non-destructive examination requirement in section 17 of the OPR pursuant to subsections 48(2.1) and 48(2.2) of the NEB Act for certain low-pressure piping systems associated with the Project; and
- an order, pursuant to section 58 of the NEB Act, exempting NGTL from the requirements of paragraphs 31(c), 31(d), and section 33 of the NEB Act in relation to:
  - the Project's compressor station unit addition;
  - temporary infrastructure required for construction of the pipeline; and
  - ROW preparation activities (including clearing, grading, and stripping) and commencing trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length).

NGTL stated, for clarity, these activities will only be undertaken after the Certificate has been issued for the entire Project and after any applicable conditions for the section 58 activities are satisfied.

- An order pursuant to Part IV of the NEB Act affirming that:
  - prudently incurred costs required to provide service on the applied-for facilities will be included in the determination of the NGTL System revenue requirement; and
  - the tolls for services on the applied-for facilities will be calculated using the same methodology used to calculate tolls for services on the NGTL System, as determined through the Commission from time to time.

- Such further and other relief as NGTL might request or the Commission might consider appropriate.

### **2.1.7 Canadian Environmental Assessment Act, 2012 and Environmental Assessment**

NGTL's proposed Project involves construction and operation of gas pipeline components that are collectively over 40 km in length. Accordingly, the Project is a "designated project" for the purposes of section 2 of the CEAA 2012 and requires a CEAA 2012 EA for which the Commission is the Responsible Authority. The Commission also considers environmental protection as part of its broader mandate under the NEB Act. The Commission's EA for the Project, following the provisions of CEAA 2012, is set out in Chapter 8 of this Report.

## **2.2 Commission's Conclusions**

This Section outlines the Commission's views and conclusions on individual matters which fall within the scope of the NEB Act. The views and conclusions of the Commission are further described in the individual chapters of this Report. The Commission notes the importance of reading the entire Report and cautions readers against reading individual chapters in isolation.

### **2.2.1 What did the Commission consider?**

Under subsection 52(2) of the NEB Act, the Commission is required to consider all matters that appear to be directly related to the Project and to be relevant. For this Application, the Commission received comment on and identified a List of Issues to guide the hearing process (Appendix IV). Having considered and weighed all of the evidence and the arguments, the Commission has decided that the proposed Project, with the Commissions' imposed and recommended conditions, is in the public interest, for the reasons described throughout this Report.

### **2.2.2 Recommendation to the Governor in Council**

When considering the balance between the benefits and the burdens associated with the Project, as described in Subsection 1.1.1, the Commission is of the view that the Project is in the public interest, is consistent with the requirements of the NEB Act and recommends that a Certificate be issued for the construction and operation of the Section 52 Pipeline and Related Facilities.

Regarding Issues 1 to 4 of the List of Issues (see Appendix IV), as explained in Chapter 3, the Commission finds the assumptions of NGTL's supply and demand outlooks reasonable and adequate to support the Project. The Commission is of the view that the number and characteristics of contracts NGTL has in place are sufficient to support the need for the Project. The Commission also finds that through its parent company, TC Energy, NGTL is sufficiently able to finance the Project. Discussion and conclusions regarding commercial impacts and tolling methodology are provided in Chapter 3. Specific conclusions regarding the Commissions' decisions are summarized below (Subsection 2.3.1).

Regarding Issues 9, 10 and 11, the Commission is satisfied that the general design of the Section 52 Pipeline and Related Facilities is appropriate for their intended use. The Commission is also satisfied that these would be constructed and operated in accordance with all applicable

legislation and standards. Discussion relating to engineering design, operation and emergency response is provided in Chapter 4.

Regarding Issues 5 to 8 and 12, the Commission is of the view that, with the implementation of NGTL's environmental protection procedures and mitigation, as well as the Commission's recommended and imposed conditions, the Project is not likely to cause significant adverse environmental effects. Additionally, this Report includes the Commission's recommended follow-up program to be implemented in respect of the Project. The Commission's EA is set out in Chapter 8, and discussion of other potential socio-economic impacts is provided in Chapters 5 and 9.

Additionally, the Commission is of the view that NGTL's design and implementation of Project specific public and Indigenous peoples engagement activities meet the requirements and expectations set out in the Filing Manual and are appropriate for the scope and scale of the Project, and that all Indigenous peoples potentially affected by the Project were provided with appropriate levels of information and opportunities to make their views about the Project known to NGTL and to the Commission. Public consultation is further discussed in Chapter 6 and consultation with Indigenous peoples is discussed in Chapter 7.

Overall, through the reasons provided in this Report, the Commission recommends that a Certificate be issued for the construction and operation of the Section 52 Pipeline and Related Facilities.

## **2.3 Decisions made by the Commission**

In addition to the recommendation for approval to the GIC related to the Section 52 Pipeline and Related Facilities, the Commission has made decisions with respect to the Section 58 Facilities and Activities and NGTL's proposed tolling methodology of the Project.

### **2.3.1 Decision under Part IV of the *National Energy Board Act***

The Commission approves NGTL's request to calculate the tolls for services on the applied-for facilities using the same methodology used to calculate tolls for services on the NGTL System, as determined by the Commission from time to time. The Commission approves NGTL's request to include prudently incurred costs required to provide service in the determination of the NGTL System revenue requirement. More information related to these decisions is provided in Chapter 3.

### **2.3.2 Decisions pursuant to Section 58 of the *National Energy Board Act***

The Commission has decided that the facilities and activities applied for by NGTL pursuant to section 58 of the NEB Act are in the public interest and will issue Order XG-021-2020, should GIC direct the Commission to issue a Certificate in respect of the Section 52 Pipeline and Related Facilities. However, having considered the evidence placed before it, as well as the fundamental importance of procedural fairness and the legislative scheme behind the CER's mandate, the Commission has decided that the Order will not include all of the exemptions applied for.

Specifically, the applied-for ROW preparation activities (including clearing, grading, and stripping), and the commencement of trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length), are **not** approved by the Commission for exemption. In the view of the Commission, significant work on those activities would potentially

make moot a future detailed route hearing, should one be required, and/or potentially fetter the discretion of a future Panel considering such a detailed route hearing.

Therefore, the Commission denies the requested exemption from the requirements of paragraphs 31(c) and 31(d), and section 33 of the NEB Act, for the ROW preparation activities (including clearing, grading, and stripping), and for the commencement of trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length).

With respect to its decision on the remaining facilities and activities applied for pursuant to section 58, the Commission has included 23 conditions in Order XG-021-2020 that are necessary for the facilities and activities to be in the public interest. Therefore, the Order to be issued would include authorization for the following (collectively referred to as the Section 58 Facilities and Activities):

- the Hidden Lake North Unit Addition; and
- the temporary infrastructure required for the Project (i.e., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards and construction camps).

More information on the Commission's decision with respect to the Section 58 Facilities and Activities is provided in Subsection 5.3.1.

## **2.4 How did the Commission assess the Application?**

### **2.4.1 Project Description, Early Engagement and Participation**

On 21 March 2019, the NEB issued a letter to 26 Indigenous peoples potentially affected by the Project based on information provided by NGTL in its Project Description that was filed on 8 January 2019 in advance of the Application.

Following NGTL's filing of the Application on 4 April 2019, the NEB issued a Notice of Hearing (Notice) dated 31 May 2019, which directed NGTL to serve and publish such Notice.

The Notice established the Application to Participate process by which interested parties could apply to participate in the proceeding. In order to be eligible to participate in the hearing, interested parties had to submit an Application to Participate Form and demonstrate that they were directly affected by the proposed Project or that they had relevant information or expertise.

The Notice indicated that Intervenor or Commenter status would be granted to Indigenous peoples potentially impacted by the Project should they choose to participate. The NEB required potentially impacted Indigenous peoples to register for the hearing by completing an Application to Participate Form within the deadline period.

On 16 August 2019, the NEB issued Ruling No. 1 which determined participation (or standing) and method (or level) of participation for the 20 Application to Participate Forms received, which included the late Application to Participate request of the Canadian Association of Petroleum Producers. All 20 parties were granted participation at the level they requested. The NEB noted that 10 of the Application to Participate Forms received were from Indigenous peoples who were granted Pre-Decided Standing through the Notice. NGTL did not have any comments with respect to the Application to Participate Forms.

On 18 September 2019 and 23 March 2020, the Commission issued Rulings No. 2 and No. 11 which accepted the late Application to Participate Form of Peerless Trout First Nation and Foothills First Nation, respectively.

#### **2.4.2 Participant Funding**

The CER administers a Participant Funding Program , separate and apart from the hearing process, which provides financial assistance to individuals, Indigenous peoples, landowners and non-industry not-for-profit groups to facilitate public participation in project hearings and EAs of designated projects.

For the GH-002-2019 hearing process, all Participant Funding Program applications were filed by Indigenous peoples. Further details regarding the applications and the amounts awarded are provided in Subsection 7.3.3 of this Report. More information on the program in general and the funding awards to all eligible applicants can be found on the CER's website at [www.cer-rec.gc.ca/pfp](http://www.cer-rec.gc.ca/pfp).

#### **2.4.3 Request for comments on the preliminary List of Issues, preliminary Factors and Scope of Factors for the Environmental Assessment and the tentative hearing process**

The Notice included a preliminary List of Issues, preliminary Factors and Scope of Factors for the EA and a tentative hearing process (including potential hearing steps and approximate deadlines). The Notice indicated that the NEB was considering conducting the hearing in writing, save for an opportunity for Indigenous peoples that were Intervenors in the proceeding to share oral Indigenous knowledge. The Notice requested comments from any interested parties on the above be filed with their Application to Participate Form or under separate cover. NGTL was also provided an opportunity to comment on the above, with an additional reply period.

After considering the comments filed and the NGTL reply, on 26 August 2019, the NEB issued Hearing Order GH-002-2019 which finalized the List of Issues and the Factors and Scope of Factors for the EA.

Included in the Hearing Order was a Timetable of Events, which set the various written and oral hearing process steps and provided deadlines for the initial hearing process steps. The NEB noted that the comments filed supported the proposed hearing process issued for comment and indicated that the provided Timetable of Events included hearing process steps that were requested by interested parties such as an opportunity to provide evidence, including the sharing of oral Indigenous knowledge, the ability to comment on proposed conditions and to provide final argument. The NEB noted that the remaining hearing steps would be finalized through future procedural directives. Appendix III provides a summary of all Procedural Directives, Rulings and other important NEB or Commission documents issued for the GH-002-2019 hearing process.

#### **2.4.4 Hearing Process Steps and Procedural Directives**

The GH-002-2019 hearing process included both written and oral components, including the filing of written evidence and the testing of that evidence through written questions (known as Information Requests (IRs)). Hearing steps also included the sharing of oral Indigenous knowledge and an opportunity to provide written final argument. NGTL was granted an opportunity to file reply evidence and reply argument.



In total, 9 Intervenors and NGTL filed written evidence, 8 Intervenors issued IR's to NGTL, 7 Indigenous peoples that were Intervenors in the proceeding participated in the sharing of oral Indigenous knowledge, and 12 Intervenors and NGTL provided final argument.

Each of the hearing process steps was explained in the Hearing Order and/or Procedural Directives. These documents outlined the expectations and requirements for Participants associated with each process step. The CER made a Process Advisor available to help Participants understand the process, their roles in the process and how they could participate effectively in the hearing process. The Process Advisor was also available before and after each oral Indigenous knowledge session. Overall, a total of five Procedural Directives were issued by the NEB or the Commission prior to the close of the record on 11 June 2020.

All filings and transcripts associated with the hearing process are available on the CER website. Note that some written and oral evidence provided in the hearing was deemed confidential and appears on the CER website as redacted<sup>4</sup>. Unredacted versions were available to the Panel.

#### **2.4.4.1 The Sharing of Oral Indigenous Knowledge**

The Commission recognizes that Indigenous peoples share their knowledge and lessons through an oral tradition from generation to generation and that this information cannot always be shared adequately in writing.

As provided in the Notice, as well as requested by some Indigenous peoples in their Application to Participate Forms, an opportunity to share oral Indigenous knowledge was provided during the hearing process. Through Procedural Directive No. 1, the Commission indicated it was planning to hear oral Indigenous knowledge from 3 to 8 February 2020 in Peace River, AB. The Commission required Indigenous peoples that were Intervenors in the proceeding who wished to share oral Indigenous knowledge file a Notice of Intent Form that included dates of availability, session preference, names of presenters, and any other information they wished to provide. Any Indigenous peoples that were Intervenors in the proceeding who could not attend the in-person sessions were offered an opportunity to share oral Indigenous knowledge through remote participation.

The Commission received Notice of Intent Forms from Bigstone Cree Nation, Dene Tha' First Nation, Driftpile Cree Nation, Louis Bull Tribe, Peavine Métis Settlement and Whitefish Lake First Nation #459.

On 19 December 2019, the Commission issued Procedural Directive No. 2 which provided a schedule for the oral Indigenous knowledge sessions and some guidance regarding the process to be used in the sessions, including how the evidence could be tested through a future IR. The Commission noted that all oral Indigenous knowledge sessions were scheduled on a date that Indigenous peoples that were Intervenors in the proceeding indicated they were available.

On 27 January 2020, the Commission issued Procedural Directive No. 3/Ruling No. 5 which accepted the late Notice of Intent Forms of Peerless Trout First Nation and Papaschase Cree Nation and updated the oral Indigenous knowledge session schedule to include both Indigenous peoples. Table 2-2 outlines the Indigenous peoples who shared oral Indigenous knowledge with the Commission.

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4 See Rulings No 4, 6, 8 and 13.

**Table 2-2 Indigenous peoples who shared oral Indigenous knowledge in Peace River, AB**

<b>Indigenous peoples who were intervenors</b>	<b>Date</b>
Peerless Trout First Nation	3 February 2020
Bigstone Cree Nation	4 February 2020
Dene Tha' First Nation	4 February 2020
Driftpile Cree Nation	5 February 2020
Louis Bull Tribe	5 February 2020
Peavine Métis Settlement	6 February 2020

Whitefish Lake First Nation #459 were not able to attend their oral Indigenous knowledge session, scheduled for 6 February 2020. In place, they filed written statements that were supported by affidavit.

The receipt of this oral form of knowledge and information as shared by the Elders and knowledge keepers of Indigenous peoples was valuable for the Commission's consideration of the Application and is represented throughout the Report with various quotes. Further discussion regarding matters related to Indigenous peoples, including information heard during the oral Indigenous knowledge sessions is provided in Chapter 7.

#### **2.4.4.2 Testing of Evidence**

As previously noted, the GH-002-2019 proceeding was conducted in writing, save for the sharing of oral Indigenous knowledge. Intervenor and NGTL were provided opportunity to test the evidence (written and oral) on the record through a series of IRs. Intervenor was provided an opportunity to ask two rounds of IRs to NGTL on NGTL's evidence. Intervenor and NGTL were afforded an opportunity to test Intervenor evidence through one round of IRs. In total, 8 Intervenor issued IRs to NGTL and NGTL issued IRs to 8 Intervenor<sup>5</sup>.

#### **2.4.4.3 Transition to the Canada Energy Regulator**

On 28 August 2019, the CER Act came into force and the NEB transitioned to the CER. Section 36 of the transitional provisions of the CER Act state that applications pending before the NEB would be dealt with by the Commission and continued in accordance with the NEB Act.

In the Notice and cover letter to the Hearing Order, it was communicated to parties that the NEB would be transitioning to the CER on 28 August 2019, and the Commission would continue to consider the application pursuant to the NEB Act.

The NEB acknowledged the uncertainty the transition could have on the hearing process in the cover letter of the Hearing Order. The NEB set deadlines only for the initial hearing steps (i.e., Intervenor IRs to NGTL and sharing of oral Indigenous knowledge). The NEB stated that by setting these deadlines it would allow the hearing process to commence while the NEB transitioned to the CER, and provide certainty to Participants in terms of process steps and to

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<sup>5</sup> The Commission accepted late evidence and granted extensions to deadlines to respond to IRs through Ruling No. 7, 9, 10 and 12.

NGTL in terms of timing of a Report. The NEB invited parties to file motions should they require additional hearing process steps.

#### **2.4.4.4 Final Argument**

NGTL and 12 Intervenor submitted written final argument. NGTL also provided a written reply argument.

### **2.5 What does the Commission do now?**

Should GIC accept the Commissions' recommendation, the CER would issue the required Certificate and Order at the direction of GIC. The CER would hold NGTL accountable for meeting its regulatory requirements in order to keep its pipelines and facilities safe and secure, and to protect people, property and the environment, throughout the lifecycle of the Project.

#### **2.5.1 Detailed Route**

After a project application is assessed and the Commission makes its recommendation regarding the Section 52 Pipeline and Related Facilities, the Project cannot proceed unless and until the GIC approves the Project and directs the Commission to issue the necessary Certificate. If approved, the company would then prepare plans showing the proposed detailed route of the pipeline and notify landowners pursuant to the sections of the legislation dealing with the detailed route process and the Plan, Profile and Book of Reference (PPBoR). Pursuant to transitional provision 34 of the CER Act, should a Certificate be issued, it would be considered to be issued under the CER Act, and the Commission will consider the PPBoR under the CER Act.

A detailed route hearing may be required, subject to subsection 203(1) of the CER Act, if a statement of opposition is filed. Pursuant to subsection 203(2) of the CER Act, if no statements of opposition are filed in respect of a PPBoR, that PPBoR may be approved by the Commission without further process.

During this time period, NGTL would also proceed with the detailed design of the Project and could be required to undertake additional studies, prepare plans or meet other requirements pursuant to Commission conditions on the CPCN or related Commission Order pursuant to section 58. NGTL will be required to comply with the conditions to move forward with its Project, prior to and during construction, and before commencing operations. While CER specialists would review all condition filings, those requiring approval of the Commission prior to construction would require this approval before the Project could proceed.

#### **2.5.2 Conditions**

The Commission sets out conditions that it considers necessary to or desirable in the public interest. The purpose of conditions is to mitigate potential risks and effects associated with a project so that the project can be designed, constructed, operated and ultimately abandoned in a safe manner that protects the public and the environment. For each condition, the Commission has also set out a timing requirement that it considers reasonable to undertake the necessary assessment of the condition submission.

On 22 April 2020, the Commission released for comment potential conditions that it may include in any recommendation or decision it makes with respect to the Project under sections 52 and 58 of the NEB Act. Intervenor and NGTL were requested to file any comments on the proposed

conditions with their final argument. The potential conditions were based on the Commission's initial assessment of the Application and subsequent filings provided by all Parties.

The Commission has considered all comments received from Intervenors and NGTL before finalizing and setting out the terms and conditions it will recommend or impose on the Project. Where appropriate, the Commission has responded to the comments on the potential conditions in the body of the Report.

Overall, the Commission has recommended the inclusion of 34 conditions in order for the Section 52 Pipeline and Related Facilities to be in the public interest, and has imposed 23 conditions in the section 58 Order for the Section 58 Facilities and Activities that would be issued in respect of the Project. Appendix I and II list the conditions attached to the regulatory instruments. The Commission will monitor and enforce compliance with these terms and conditions, and any additional conditions the GIC might attach, throughout the lifecycle of the Project using audits, inspections and other compliance and enforcement tools.

### **2.5.3 Company Commitments**

Throughout its deliberations the Commission carefully considered all commitments made by NGTL in this proceeding. Relevant commitments to specific concerns are discussed in the applicable chapter. Commitments made by NGTL in its Application or in its related submissions during the proceeding also become regulatory requirements, as set out in **Condition 13 Commitments Tracking Table** for the Section 52 Pipeline and Related Facilities and **Condition 16** for the Section 58 Facilities and Activities. Throughout the Report, the Commission has highlighted various commitments from NGTL. The Commission expects NGTL to include all commitments in the Commitments Tracking Table.

### **3 Economic Feasibility**

When making the determination regarding the economic feasibility of the Project, the Commission assessed the need for the proposed facilities and the likelihood of them being used at a reasonable level over their economic lives. Specifically, the Commission considered the supply and markets available to the pipeline, the contracts underpinning the facilities, the rationale for selecting the applied-for facilities compared to alternatives, and the Applicant's ability to finance the Project. The Commission also considered the commercial impacts and proposed tolling of the Project.

#### **3.1 Commercial Need**

NGTL stated that the Project is needed to increase pipeline capacity to transport natural gas from the Peace River Project Area, to growing intra-basin markets in the North of Bens Area. NGTL submitted that customers have signed firm delivery contracts that exceed capacity of the NGTL System beginning in 2022. Incremental firm delivery contracts totalling 394 terajoules per day (TJ/d) have been executed to support the expansion. NGTL stated that the Project is commercially required to ensure natural gas transportation capability to accommodate the incremental delivery contract commitments, as well as its aggregate forecast requirements.

##### ***Views of Participants***

###### Alberta Department of Energy

The Alberta Department of Energy submitted that with the projected growth in intra-basin demand markets in the North of Bens Area, there is a clear need for the Project to provide the additional capacity required to transport natural gas from the Peace River Project Area to demand markets on the NGTL System. The Alberta Department of Energy stated that NGTL and its shippers will benefit from increased throughput on the NGTL System resulting from the incremental demand served by the Project facilities

###### Canadian Association of Petroleum Producers

Canadian Association of Petroleum Producers indicated that its members support the commercial need for the Project.

###### ConocoPhillips Canada

ConocoPhillips Canada stated that as supply and demand between the Western Canada Sedimentary Basin and intra-basin markets continues to grow, additional facilities are necessary to ensure that supply sources are adequately connected and the needs of intra-basin delivery markets are met. ConocoPhillips Canada submitted that shippers have expressed the commercial importance of the Project to future investment decisions and the need for incremental capacity to serve markets across the NGTL System. ConocoPhillips Canada stated that the Project is underpinned by firm transportation contracts entered into by it and other shippers, which currently exceed capacity of the NGTL System beginning in 2022.

#### **3.2 Supply and Markets**

NGTL stated that increasing volumes of natural gas are entering the NGTL System through the northwest area of the Western Canada Sedimentary Basin as a result of increasing production

from the Montney and Deep Basin supply areas. This has resulted in a geographic shift of supply on the NGTL System along with the general decline of supply on the remainder of the system. As a result, natural gas from growing unconventional and tight conventional supply within the Peace River Project Area of the Western Canada Sedimentary Basin needs to be transported to intra-basin delivery locations to meet existing and incremental delivery service contracts. NGTL submitted that the firm service contracts supporting the Project reflect the diversity of markets that are expected to have sufficient demand to absorb supply from the applied-for facilities over the long-term.

The share of natural gas production to be transported by the NGTL System throughout the period is forecasted to be approximately three quarters of total Western Canada Sedimentary Basin production. NGTL forecasted Western Canada Sedimentary Basin production to grow from 448  $10^6$  cubic metres per day ( $m^3/d$ ) (15.8 billion cubic feet per day (Bcf/d)) in 2017/18 to approximately 637  $10^6m^3/d$  (22.5 Bcf/d) by 2029/2030. During the same period, the supply available to the NGTL System is forecasted to increase from 346  $10^6m^3/d$  (12.2 Bcf/d) to 490  $10^6m^3/d$  (17.3 Bcf/d).

NGTL forecasted intra-basin demand served by NGTL to grow from 160  $10^6m^3/d$  (5.6 Bcf/d) in 2017/18 to 203  $10^6m^3/d$  (7.2 Bcf/d) by 2029/2030<sup>6</sup>. NGTL indicated that the oil sands, the electricity generation sector, and other industrial users are responsible for nearly all of the intra-basin demand growth through the forecast period. NGTL submitted that policy-drivers at the federal and provincial level, in combination with low natural gas prices, are influencing growing gas-fired electricity generation.

### ***Views of Participants***

#### **Alberta Department of Energy**

The Alberta Department of Energy submitted that with the projected growth in intra-basin natural gas demand markets in the North of Bens Area, the Project would provide additional capacity to transport natural gas from the Peace River Project Area to demand markets on the NGTL System. It stated that the incremental firm transportation contracts for intra-basin service demonstrate commercial support for the Project.

### **3.3 Transportation**

NGTL executed 394 TJ/d of incremental delivery contracts with terms of eight years that it indicated provide the commercial support for the Project. Receipt services on the NGTL System are contracted independently and separately from the delivery contracts.

NGTL submitted that proposed Project facilities were designed to meet both incremental flow requirements at intra-basin delivery locations in the North of Bens Area while also satisfying design conditions throughout the entire NGTL System. The proposed facilities increase system capability in the North of Bens Area to 93.1  $10^6m^3/d$  (3.5 petajoules per day (PJ/d)), meeting the delivery design flow requirements of 91.3  $10^6m^3/d$  (3.5 PJ/d).

NGTL described its facility planning process and the evaluation of facility alternatives for the proposed Project. NGTL considered three new 30 megawatt compressor stations with 59 km of

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6 The NGTL System serves natural gas demand both within the basin and outside of it. Total NGTL System deliveries expected to grow from 349  $10^6m^3/d$  (12.3 Bcf/d) in 2018 to 490  $10^6m^3/d$  (17.3 Bcf/d) by 2030

NPS 36 pipeline facilities as an alternative to this Project. When identifying facilities and planning system infrastructure, NGTL considered transport efficiency, operational flexibility and system reliability, existing ROW and disturbance, and cost (both cumulative present value cost of service and first year capital).

The cumulative present value cost of service includes annual fuel usage and GHG emissions, operating and maintenance factors, municipal and income taxes, capital costs escalated to the in-service date, annual return on investment and depreciation. The Project facilities were selected as the lowest Cumulative Present Value Cost of Service option.

### **3.4 Ability to Finance**

NGTL submitted that the estimated capital cost of the proposed Project is \$632 million. NGTL stated that TransCanada would fund Project construction through a combination of predictable cash flows generated from operations, new senior debt, as well as subordinated capital in the form of additional preferred shares and hybrid securities, the issuance of common shares and portfolio management. As of 31 December 2018, TransCanada and TransCanada Corporation, now known as TC Energy, had approximately \$446 million of cash on hand and \$10.1 billion of undrawn committed credit facilities. Over the past five years ending in 2018, TransCanada and TransCanada Corporation had generated \$25 billion in cash from operations and raised \$38 billion in the debt and equity capital markets.

NGTL stated it would have the financial resources to ensure it can financially sustain management of all potential risks including liabilities that may arise from an accident or malfunction during the construction or operation of the Project. Since 11 July 2019, the NEB (now CER) has required NGTL to maintain access to at least \$200 million in financial resources to respond to a potential incident, pursuant to the *Pipeline Financial Requirements Regulations*<sup>7</sup>.

NGTL estimated the Abandonment Cost Estimate for the Project to be \$11.4 million, which represents less than 1.0 per cent of the Abandonment Cost Estimate for the entire NGTL System. NGTL stated that there would be a commensurate impact on its Annual Contribution Amount and abandonment surcharge calculations, which would be reflected in periodic updates filed with the CER.

### **3.5 Commercial Impacts and Tolling**

NGTL proposed to roll-in the cost of the Project to the rate base for the NGTL System, and to apply the existing NGTL System toll methodology, which may change from time to time, to the Project. NGTL stated that the Project is an expansion of the NGTL System that is required to meet the incremental demand for intra-basin delivery service. The Project would be fully integrated with the rest of the system and used to provide services under NGTL's existing tariff.

The expected increase to NGTL's annual revenue requirement as a result of the Project is approximately \$69 million in 2023. NGTL estimated that the full-path toll impact is 0.1 to 0.2 cents per thousand cubic feet per day (¢/Mcf/d) between 2022 to 2026.

NGTL submitted that it provides notice of capacity capital projects to the Tolls, Tariffs, Facilities and Procedures Committee on an on-going basis. NGTL further submitted that in March 2019,

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<sup>7</sup> On 14 May 2019, NGTL submitted its Financial Resources Plan for the NGTL System, which was approved by the NEB on 26 August 2019.

NGTL presented a facility notification for the Project to the Tolls, Tariffs, Facilities and Procedures Committee and that no concerns regarding the Project were raised at this meeting. In addition to the Tolls, Tariffs, Facilities and Procedures Committee communications, NGTL notified other commercial third parties about the Project using a variety of communications tools.

In response to CER IR 1.28, NGTL indicated that the toll impact would be 0.5 to 0.6 ¢/Mcf/d if the Project did not result in any supply response. However, NGTL submitted that it is reasonable to include a supply response in estimating Project toll impacts. NGTL's estimated Project toll impacts of 0.1 to 0.2 ¢/Mcf/d were based on indirect receipt revenues derived using forecast throughput associated with the delivery contracts, combined with a system average firm transportation receipt contract utilization rate. NGTL stated that based on past experience, the additional demand on the system will trigger a supply response of receipt contracts. NGTL indicated there are a variety of toll outcomes that can result for any project, depending on the circumstances on the NGTL System over time.

NGTL provided a list of additional planned facilities which are reflected in the forecast rate base amounts. NGTL stated that the NGTL System rate base is anticipated to be approximately \$17.5 billion at the end of 2023, compared to a \$9.3 billion average rate base in 2019. NGTL provided illustrative toll rates showing tolls rising. NGTL indicated that responding to changing market and supply forces requires significant capital investment that increases its rate base. NGTL expects that both newly connected supply and established supply sources will contribute to the continued utilization of the NGTL System, and in doing so, contribute to rates remaining at competitive levels, ultimately supporting the competitiveness of the NGTL System and the Western Canada Sedimentary Basin in supplying diverse markets. Likewise, the increased competitiveness of Western Canada Sedimentary Basin gas has spurred incremental market demand, to which the Project seeks to connect, and which itself will contribute to the long-term utilization of the NGTL System.

### ***Views of Participants***

#### **ConocoPhillips Canada**

ConocoPhillips Canada stated that the Project will benefit both receipt and delivery shippers by easing a clearly identified constraint along a critical flow path, thereby increasing the efficiency of, and access to, the system as a whole. ConocoPhillips Canada stated that it supports NGTL's proposal to apply a rolled-in toll methodology for the Project. ConocoPhillips Canada submitted that it is just, reasonable, and not unjustly discriminatory for all shippers to bear the cost of the Project on a rolled-in basis.

### **3.6 Economic Benefits**

NGTL submitted that the Project construction will result in a \$632 million capital expenditure. During construction, the Project is estimated to directly increase AB's gross domestic product (GDP) by \$197 million. The total economic impact on AB is estimated to be \$425 million in GDP and \$307 million in labour income. NGTL indicated it will support contracts with Indigenous communities during each Project phase through its Aboriginal Contracting and Employment Program. The Project development and construction is estimated to generate tax revenues of approximately \$62.2 million federally, \$34.1 million for the Government of Alberta, and \$13.8 million for other provincial governments. During operations, the Project is estimated to contribute approximately \$2 million per year in property taxes to the County of Northern Lights, Northern Sunrise County, M.D. of Opportunity No. 17, and Clear Hills County, AB.



For additional information on the Project's potential effects on employment and economy, see Chapter 7 and 9.

### **3.7 Views of the Commission**

The Commission finds the supply and demand forecasts submitted in this hearing to be reasonable, and notes the long-term contractual commitments made by shippers to underpin the facilities. The Commission also finds that NGTL and TransCanada have the ability to finance the Project, including the construction, operation and abandonment of the facilities. This finding is reinforced by the fact that NGTL is setting aside funds to meet its future abandonment costs, as required<sup>8</sup>, and has financial resources available to respond to an incident, including the requirement for NGTL to maintain \$200 million in financial resources in accordance with the *Pipeline Financial Requirements Regulations*. Based on these factors, the Commission finds that the applied-for facilities are economically feasible and are likely to be used at a reasonable level over their economic lives.

The Commission also finds that the Project would provide overall economic benefits to Canadians. The sizeable capital expenditure as well as the operations of the facilities would increase GDP in AB and provide increased tax revenues at the municipal, provincial and federal levels. While the Commission has made its findings on a broad Canadian basis, it also acknowledges that several Indigenous peoples raised concerns that they would not see any direct or tangible benefits from the Project. The Commission speaks to those issues in Chapter 7 and 9. The Commission also considered the economic benefits to Canadians in relation to the Project's burdens, which are summarized in Subsection 1.1.1.

With respect to NGTL's proposed tolling treatment of the Project, the Commission considered the degree of integration of the Project facilities to the existing system, as well as the nature of service provided on the Project facilities. The Project is comprised of three pipeline loops and a compressor station unit addition that expand the capacity of the existing NGTL System. The Commission therefore finds the Project to be highly integrated to the existing system. Additionally, the transportation services provided through the facilities are identical to those already offered on the NGTL System. The Commission also notes that no Participant opposed NGTL's proposed tolling treatment. Accordingly, the Commission finds NGTL's proposal to roll in the cost of the Project facilities to the rate base for the NGTL System and to apply the existing NGTL System toll methodology to be reasonable.

With respect to the Project toll impacts, the Commission agrees that there can be a variety of toll outcomes that can result for any project. To enable effective and efficient reviews, the Commission expects that in the future, NGTL will include a detailed description and discussion of the range of potential project toll impacts when submitting an application. This should include all revenue and cost assumptions that support each scenario. The Commission also expects that similar information will be shared and discussed with the Tolls, Tariffs, Facilities and Procedures Committee.

The Commission notes that tolls are increasing as the NGTL System undergoes numerous expansion projects, and that NGTL anticipates that rates will remain at competitive levels. In this context, the Commission highlights that in finding that the proposed Project toll treatment is reasonable, the Commission is in no way removing the responsibility for long-term risk from NGTL. Rather, fundamental risk remains NGTL's to manage.

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8 National Energy Board, MH-001-2012 Reasons for Decision

## 4 Facilities and Emergency Response Matters

In consideration of the safety and security of proposed facilities, the Commission assessed whether the facilities are appropriately designed for the properties of the product being transported, the range of operating conditions, and the human and natural environment where the facilities would be located. NGTL is responsible for ensuring that the design, specifications, programs, engineering assessments, manuals, procedures, measures, and plans developed and implemented are in accordance with the OPR, which includes by reference the Canadian Standards Association (CSA) Standard CSA Z662 – Oil and Gas Pipeline Systems (CSA Z662). The OPR requires companies regulated by the CER to have a systematic, comprehensive, and proactive risk management approach integrated into its overall management system throughout the lifespan of a pipeline system. This includes design, construction, operation, maintenance, and abandonment. The OPR also reflects the CER's expectation for continual improvement with regard to safety, security, environmental protection, and the promotion of a safety culture.

With respect to emergency management, a company must develop and implement an Emergency Management Program for all aspects of its facilities and operational activities. A company's Emergency Management Program should include the following elements:

- Emergency Management Program development (hazard assessment), which ensures that all persons and parties that may be involved in responding to an emergency are knowledgeable of company facilities, the hazardous products involved, and emergency procedures to be followed in the event of an incident or emergency;
- Emergency Procedures Manual;
- Liaison Program which establishes and maintains liaison with all parties that may be involved in an emergency situation;
- Continuing Education Program for all appropriate agencies, organizations, Indigenous peoples and the public adjacent to its pipeline, to inform them of the location of the facilities, potential emergency situations, and emergency procedures to be followed;
- emergency response training and exercises;
- incident and response evaluation; and
- emergency response equipment.

The CER holds its regulated companies accountable so that Canadians and the environment are protected throughout the lifecycle of each pipeline or project. The lifecycle includes the planning and pre-application phase, the application assessment and public hearing phase, the construction and post-construction phase, the operations and maintenance phase, and the eventual abandonment phase. Using a risk-informed approach, the CER conducts compliance verification activities such as audits, inspections, meetings, and review of condition filings, and other manuals and reports. The Commission notes that the Project would be part of the existing NGTL System which is subject to the CER's comprehensive regulatory oversight.

### 4.1 Project Description

The Project, as applied for, is comprised of approximately 56 km of 1,219 millimetre (mm) (NPS 48) pipeline loops in two sections, 25 km of 914 mm (NPS 36) pipeline loop in one section, and

a compressor unit addition adjacent to an existing NGTL compressor station. One 30 megawatt gas turbine compressor package will be added adjacent to the existing Hidden Lake North Compressor Station. The Maximum Operating Pressure of the Hidden Lake North Unit Addition will be 8,450 kilopascals (kPa).

The Project would include mainline block valves to facilitate operational and isolation activities as well as crossover valves to manage flow on the NGTL System. NGTL also stated that five launchers or receivers would be installed on the pipeline sections for the purposes of cleaning and in-line inspection. One additional receiver to be used as part of the Project was installed as part of another project reviewed and authorized by the NEB.

## **4.2 Design and Construction**

### **4.2.1 Codes and Standards**

NGTL stated that the Project would be designed, constructed and operated in accordance with the requirements of the OPR and CSA Z662-19. If there are any inconsistencies between the OPR and CSA Z662-19, the OPR would govern.

#### ***Views of the Commission***

The Commission is satisfied that the general design of the Project is appropriate for the intended use. The Commission is further satisfied that the Project would be designed, located, constructed and installed in accordance with the OPR and CSA Z662-19.

The Commission recommends **Condition 2 (Section 52 Pipeline and Related Facilities Design, Location, Construction and Operation)** for the Section 52 Pipeline and Related Facilities and imposes **Condition 2 (Section 58 Facilities and Activities Design, Location, Construction and Operation)** for the Section 58 Facilities and Activities requiring NGTL to comply with the specifications, standards, commitments made and other information included its Application or in its related submissions.

### **4.2.2 Material Specifications**

NGTL indicated that the estimated mainline pipe material grade for all pipeline sections is 483 megapascal with varying wall thicknesses and that the final grade(s) would meet or exceed minimum requirements. Material for the Project would be in accordance with CSA Z245.1-18 for steel pipe, CSA Z245.11-17 for steel fittings, CSA Z245.12-17 for steel flanges, and CSA Z245.15-17 for steel valves.

NGTL submitted that all purchased items and contracted services would be obtained from suppliers and contractors which have been pre-qualified by TransCanada's internal supplier management and pre-qualification procedures or have been pre-qualified by a prime contractor to TransCanada.

#### ***Views of the Commission***

The Commission has considered NGTL's filings and is of the view that the selected pipe grades for the Project meet the requirements set out in CSA Z662-19 and that NGTL's Quality Management System, including the purchasing of the pipe for the Project, is appropriate. This includes consideration of the quality assurance of pipe and components

as addressed by NEB Safety Advisories (SA 2016-01A2 and SA 2019-01) and Orders (MO-001-2016, MO-003-2018 and MO-032-2019).

#### **4.2.3 Geotechnical Hazards and Design**

NGTL specified that the geotechnical and hydrotechnical assessments would focus on the stability of significant slopes, scour and erosion potential at watercourse crossings, subsurface conditions for watercourse crossings using trenchless methods and areas of potential stress concentrations.

NGTL submitted a horizontal directional drilling (HDD) feasibility study report for the Loon River crossing. NGTL further committed to sharing the results of the terrain, geotechnical and hydrotechnical studies for the Project and details of any appropriate preliminary mitigation measures with the Commission in Q1 2020. NGTL provided a summary in its Project update dated 31 March 2020.

NGTL stated that mitigation measures for design and construction, where required, may include:

- micro re-routes to avoid unstable slopes;
- detailed geotechnical investigation to understand the nature of instability if it is not possible to avoid the area;
- implementation of slope stabilization measures, including horizontal drains and/or toe buttress, where applicable;
- implementation of erosion protection measures, particularly at toe areas of watercourse crossings;
- diligent effort during construction to avoid reactivating old slides;
- selection of heavy wall pipe to accommodate additional strains potentially induced by slides where they cannot be avoided;
- selection of low-friction backfill, where required and applicable, to minimize the impact of potential hill slides; and
- selection of reduced depth of cover to minimize the impact of potential slides and to facilitate strain relief if necessary.

NGTL further stated that mitigation measures for the operation phase, if required, may include:

- detailed geotechnical investigation and engineering assessment to understand the nature of the slides and their potential impact on pipe integrity;
- monitoring ground movement and/or pipe strains during pipeline operation;
- assessment of pipeline deformation using in-line inspection data;
- implementation of slope stabilization measures, including horizontal drains and/or toe buttress, where applicable;
- strain relief, where necessary; and
- pipe realignment.

NGTL submitted that results of the Phase I Geologic Hazard Assessment indicated two high-hazard landslide areas along the pipeline alignment, located on the east and west valley slopes of the Notikewin River. These areas are being monitored and NGTL determined that mitigation measures are not required with respect to the Phase I Geologic Hazard Assessment.

For the areas of potential muskeg terrain NGTL submitted that it expects standard buoyancy-control measures would be used for the Project. These potential measures include continuous concrete coating, swamp (saddle) weights, river (bolt-on) weights and screw anchors.

### ***Views of the Commission***

The Commission is of the view that NGTL is able to address all geological hazards and designs, organic terrain and muskeg issues, considering that the proposed alignment is in an area where NGTL has designed, constructed and currently operates pipelines. The Commission is satisfied with NGTL's proposed measures applied to the design, construction and operations phases of the Project to mitigate the geological hazards identified along the pipeline route and through the zones of muskeg and other organics.

The Commission is of the view that proper geological hazard management will be required in order to identify the risk level at these locations and the application of proper mitigations and monitoring techniques during the different phases of the Project. The identification, the mitigations and the monitoring of all forms of geological hazards are essential to ensuring pipeline integrity.

Therefore, the Commission recommends **Condition 9 (Geological Hazards)** for the Section 52 Pipeline and Related Facilities, requiring NGTL to file, at least 60 days prior to construction, a Geological Hazard Assessment Report(s). In particular, the Commission is of the view that monitoring techniques for high hazard slope and landslide locations are particularly important for risk monitoring and consideration should be given to include remote continuous slope monitoring methods and similar approaches.

#### **4.2.4 Watercourse and Highway Crossing Methods**

NGTL indicated that the pipeline route would cross six watercourses. NGTL submitted that appropriate watercourse crossing locations and techniques were determined using industry-accepted design and installation practices following the guidance of Fisheries and Oceans Canada's (DFO) *Measures to Avoid Causing Harm to Fish and Fish Habitat*, and Alberta Environment and Parks Water Act Codes of Practice as well as site specific assessments to minimize potential effects on fish and fish habitat.

NGTL stated that they considered site-specific environmental parameters, watercourse characteristics, fisheries values, constructability, social and economic considerations and operational and pipeline integrity aspects when determining the pipeline crossing method.

For the Project, NGTL proposed using isolated crossings, open cut crossings and trenchless crossings. As a primary crossing method, NGTL proposed an HDD crossing at the Loon River. Highway 88 will also be crossed during the same trenchless crossing.

An open cut crossing method is proposed to be used for the Notikewin River crossing and minor water crossings, and will be considered as a crossing method for the Loon River should an alternative crossing method to the HDD be required.

NGTL submitted that depths of scour were estimated using 1 in 100-year flood hydrology. For the Notikewin River, the scour depth was estimated to be 1.9 m below the river thalweg. For the Loon River, the scour depth was estimated to be 1.6 m below the river thalweg.

### ***Views of the Commission***

The Commission is satisfied that the Project would be constructed using accepted industry practices, and would comply with the requirements of the OPR and CSA Z662-19.

The Commission notes that the success of trenchless installations for pipeline construction depend on proper design and planning. Accordingly, the Commission recommends **Condition 18 (Execution Plan and Engineering Drilling Fluid Plans for the Loon River Horizontal Directional Drill)** for the Section 52 Pipeline and Related Facilities, requiring NGTL to file the HDD Execution Plan and Engineered Drilling Fluid Plan for the Loon River crossing at least 30 days prior to the commencement of HDD activities.

The Commission is also of the view that proper hydrotechnical studies will be required in order to successfully design and implement pipeline crossings for watercourses. Therefore, the Commission recommends **Condition 16 (Terrain, Geotechnical and Hydrotechnical Assessments Update)** for the for the Section 52 Pipeline and Related Facilities, requiring NGTL to file, at least 60 days prior to construction hydrotechnical studies which detailed hydrotechnical results for the Loon and Notikewin Rivers, and the resulting crossing methods.

The Commission is also of the view that should NGTL employ an alternative crossing method for the Loon River crossing, such a method would require a thorough assessment which would include feasibility and engineering studies, which have not been provided to the Commission. Accordingly, the Commission recommends **Condition 17 (Loon River Contingency Crossing Attempt)** for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a detailed description of the alternative crossing method, including design drawings, and any feasibility or engineering studies. This shall be filed with the Commission 15 days prior to implementing the alternative crossing method.

#### **4.2.5 Depth of Cover**

NGTL stated that the pipeline would generally have a minimum depth of cover of 0.9 m. Depth of cover would increase in the following circumstances:

- agricultural lands would have a minimum depth of cover of 1.2 m;
- valve site locations would have a minimum depth of cover of 1.1 m;
- road crossings would have a minimum depth of cover of 1.5 m;
- buried utility and foreign pipeline crossings, above or below the pipeline, would have a minimum clearance of 0.3 m; and
- the minimum depth of cover for pipeline crossings of watercourses with defined beds and banks would be 1.8 m. Increased depth of cover might be required at locations where there is a potential for scouring of the watercourse bed. NGTL committed to evaluate the requirement for increased depth of cover as engineering design and construction planning progresses.

### ***Views of the Commission***

The Commission is satisfied with NGTL's proposal to bury the pipeline to a minimum depth of 0.9 m. The Commission notes that the increased burial depth for agricultural lands, road and water crossings exceed the requirements of CSA Z662-19 and accommodates ordinary agricultural practices, road and watercourse crossings.

#### **4.2.6 Construction**

NGTL stated that the joining program and non-destructive evaluation of pipeline welds would comply with the requirements of the OPR and CSA Z662-19. All pipeline welds would undergo Non-destructive examination and, once validated, would be coated.

NGTL requested Leave to Open exemption for auxiliary systems, utility gas and several tie-ins to existing pipelines and facilities in order to preserve construction schedules and minimize outages on operating facilities. NGTL stated that the welds listed for each tie-in could not be pressure tested in the field because they are final tie-in welds. NGTL indicated that the integrity of the welds would be verified by both a visual inspection and Non-destructive examination that includes one or more of radiographic, ultrasonic, magnetic particle, or liquid penetration examination, depending on the size and type of weld. Inspectors would monitor the welding on site, verify that safe practices are implemented and record welding parameters as part of their inspection to ensure that welding is conducted in conformance with the qualified welding procedures. NGTL has committed that the shop tests for the tie-in assemblies would comply with the required time duration and pressure testing requirements of CSA Z662-19.

For the compressor station included in the Project, all welding and Non-destructive examination testing of welds would be conducted in accordance with the requirements of CSA Z662-19 and the OPR. For all high pressure gas piping designed to CSA Z662-19, NGTL would use 100 per cent Non-destructive examination coverage.

For all other piping systems, NGTL would select material and designs joints in accordance with American Society of Mechanical Engineers B31.3-2016: Chemical Plant and Petroleum Refinery Piping, as referenced in Clauses 4.14.2.11, 5.1.1, 7.2.4 and 8.1.7 of CSA Z662-19.

For the following lower-risk auxiliary piping systems: glycol/water heating, lube oil, auxiliary vents and instrument air, NGTL proposed to conduct Non-destructive examination on 15 per cent of production welds per day during construction. NGTL indicated that this would not compromise the safety of the public or company personnel. NGTL indicated that these systems operate at low stress levels and generally have instrumentation that shuts down the system and limits any leaks if a release incident occurs. NGTL confirmed it would hydrostatically pressure test all high-pressure natural gas components of the installed facilities (including the yard piping) in accordance with the requirements of section 8 of CSA Z662-19 before placing them in-service.

NGTL confirmed it would clean the pipeline to remove construction debris as per CSA-Z662-19 which must be done prior to pressure testing. Prior to arrival onsite, pressure testing of pre-fabricated components such as above ground risers, valve assemblies and elbow fittings with associated piping would be completed in accordance with CSA Z662-19. NGTL noted that upon the successful completion of hydrostatic testing, the pipeline would be prepared for commissioning and startup.

### ***Views of the Commission***

The Commission agrees with NGTL's characterization of the auxiliary systems in question as low risk in light of the low pressure used and the substances being transmitted. Therefore, the Commission has decided to grant NGTL an exemption from the 100 per cent Non-destructive examination requirements of section 17 of the OPR for certain low-pressure piping systems associated with the Project.

Additionally, the Commission has decided to grant NGTL an exemption from the requirements of subsections 30(1)(b) and 47(1) of the NEB Act to obtain Leave to Open from the Commission before installing auxiliary systems, utility gas, and tie-ins to existing pipelines and facilities.

In addition, the Commission recommends **Condition 34 (Pipeline Geographic Information System Data)** for the Section 52 Pipeline and Related Facilities, requiring NGTL to provide geographic information system data in the form of ESRI® shapefiles.

To accommodate reasonable and acceptable changes during construction the Commission imposes **Condition 19 (Technical Specification Updates)** for the Section 58 Facilities and Activities. The condition will require NGTL to file any technical specification updates for the components listed in the Section 58 Order concurrently with applicable Leave to Open application(s). Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade or material that do not impact any other information provided in the Application. Any other changes will require advance approval from the Commission. Once filed by NGTL, the Commission will review all final technical specification updates and issue an Amending Order as appropriate.

While the conditions noted above were not included in the previously released list of potential conditions for comment, the Commission notes that these are conditions imposed frequently on projects with similar facilities and activities, including other NGTL projects. The Commission views the above conditions as necessary and in the public interest and imposes them on the section 58 Order and recommends them for the section 52 Certificate.

#### **4.2.6.1 Construction Schedule**

NGTL, in its Application, provided a proposed construction schedule of the activities needed for construction of the Project. NGTL proposed to commence construction of temporary infrastructure required for the Project as well as certain ROW preparation activities (i.e., ROW preparation activities) as early as Q2 2021 before pipeline construction, subject to regulatory approval and compliance with applicable conditions. NGTL submitted that subject to regulatory approval, the main construction of the proposed compressor station unit addition is proposed to begin in Q1 2021 and be completed by Q2 2022. NGTL mentioned that the schedule was required in order to meet project specific requirements, along with anticipating and mitigating risk on adverse weather conditions, scheduling of equipment and managing environmental issues based on weather.

### ***Views of the Commission***

To track construction schedule(s), the Commission recommends **Condition 14 (Construction Schedule)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 14**) for the Section 58 Facilities and Activities, requiring



NGTL to provide detailed construction schedule(s) identifying major construction activities, and any modifications to the schedule as they occur. The Commission would require, as part of the conditions, that NGTL provide a copy of the schedule to all Indigenous peoples who have expressed an interest in receiving a copy.

The Commission recommends **Condition 24 (Construction Progress Reports)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 18**) for the Section 58 Facilities and Activities, requiring NGTL to file monthly construction progress reports for each pipeline section loop. These reports must include information on the activities carried out during the construction and report any environmental, socio-economic, safety and security issues and issues of non-compliance, and the measures undertaken for the resolution of each issue and non-compliance.

The conditions listed above were not issued for comment, but are conditions that are included with most CER Certificate and Order approvals. Given NGTL's history of constructing and operating federally regulated pipelines, the Commission is of the view that NGTL will not be unduly burdened by the requirements of these conditions.

### **4.3 Operations**

#### **4.3.1 Control System and Overpressure Protection**

NGTL submitted that the pressure control and overpressure protection design of the Project would comply with the requirements of the OPR and CSA Z662-19. NGTL also stated that the TransCanada's Gas Control Centre, which operates 24-hours a day and 7-days a week, monitors and controls real-time pipeline pressures through a supervisory control and data acquisition system. NGTL submitted that procedures are in place to ensure regular inspection, assessment and testing at the required intervals which will ensure that all facilities' pressure control and overpressure protection systems are in good operating condition, and set to function at the determined pressure. Additionally, NGTL stated that the overpressure protection system will be automatic and continuously operating without relying on manual intervention.

NGTL submitted that there is no Maximum Operating Pressure discrepancy between the North Central Corridor area project pipelines and existing connecting facilities, and the Bear Canyon North Extension pipeline and the existing connecting facilities, and that therefore, there is no overpressure risk due to Maximum Operating Pressure mismatch for these pipelines and facilities. NGTL submitted that pressure control and overpressure protection systems are set to prevent station pressure from exceeding pipeline Maximum Operating Pressure and overpressure protection limits for the following: the Meikle River Compressor Station pressure source connecting to the North Star Section 2, the Goodfish Compressor Station pressure source connecting to the Red Earth Section 3, and, the Alces River B Compressor Station suction connecting to the downstream end of the Bear Canyon North Extension.

NGTL has submitted that in the event of overpressure, the compressor stations would be protected by the following pressure control and overpressure protection systems:

- the recycle (anti-surge) valve will be connected downstream of the compressor unit discharge valve and upstream of the unit discharge check valve. The recycle valve will increase the flow through the compressor as required to maintain the operating point away from surge by circulating more gas flow and reducing compressor head;

- the equipment as provided by the vendor will monitor actual inlet flow and differential pressure across the compressor through a pressure differential transmitter, and is equipped with algorithms to detect and avoid surge;
- the station pressure control will be maintained by increasing or decreasing the compressor speed. The station suction and discharge pressure will be monitored using pressure transmitters. The station pressure set points are set by TransCanada Gas Control; and
- a self-contained and independent station discharge pressure-relief device will provide the last level of station overpressure protection.

#### ***Views of the Commission***

The Commission is satisfied that NGTL has appropriately considered issues related to potential discrepancies in Maximum Operating Pressure between existing connecting facilities and proposed facilities. Additionally NGTL has stated that the pressure control and overpressure protection systems will meet the requirements of the OPR and CSA-Z662-19. As such the Commission is satisfied that the Project's proposed pressure control and overpressure protection systems are appropriate.

#### **4.3.2 Coating**

NGTL submitted that the primary coating for the external surface of the below ground pipe would be fusion-bonded epoxy. Girth welds coated in the field would be protected with a liquid applied coating. Where pipe is installed using boring, drilling or other methods that could cause abrasion to the coating during installation, abrasion-resistant coating would be used. If large and/or angular backfill material is encountered, NGTL would implement an additional mechanical protection system such as sand padding or rock shield. Below-ground assembly piping would be protected with a suitable liquid applied coating. Above-ground piping would be primed and painted.

#### ***Views of the Commission***

The Commission is satisfied that NGTL has appropriately considered issues related to coating and integrity threats to the pipeline during construction and operation. The Commission finds the coating measures to be appropriate for the Project.

#### **4.3.3 Cathodic Protection**

NGTL submitted that in addition to the pipe coating, an impressed current Cathodic Protection system would be installed which may consist of existing Cathodic Protection systems as well as new Cathodic Protection systems, if required. These would include groundbeds and rectifiers, as determined during detailed design and located at sites where a convenient source of electrical power exists. Sacrificial anodes may also be used at specific locations, which would be identified during detailed design. NGTL stated that Cathodic Protection test leads would be installed along the pipeline and at road, foreign pipeline and utility crossings, where required, for monitoring the effectiveness of the operation of the Cathodic Protection system and to demonstrate compliance to the applicable code requirements.

NGTL also submitted that where the pipeline route crosses or is in close proximity to parallel high voltage alternating current power lines, studies will be conducted to characterize the likely impacts and determine the necessary measures required to mitigate the effects.

#### ***Views of the Commission***

The Commission is satisfied that NGTL's Cathodic Protection measures are appropriate for the Project, and notes NGTL's stated intent to monitor the effectiveness of those measures and ensure compliance to the applicable code requirements.

#### **4.3.4 In-line Inspection**

NGTL has submitted that it would install in-line inspection facilities at the time of construction of the pipeline to allow cleaning and in-line inspection. Five launchers or receivers would be installed on the pipeline sections for the purposes of cleaning and in-line inspection. One additional receiver to be used as part of the Project was installed as part of another project reviewed and authorised by the NEB. The launchers and receivers would be installed at the Meikle River Compressor station, near NCCA90-1 BV, near the Goodfish compressor station, near NCCA90-1 BV and at NW-35-2-BV.

NGTL committed to using a high-resolution commissioning caliper tool during Project pre-commissioning to inspect for construction related defects and indications of dents or ovalities in the pipeline as well as a baseline in-line inspection using magnetic flux leakage tool.

#### ***Views of the Commission***

The Commission understands that during the early stages of operation, an in-line inspection provides important data on the integrity status of the pipeline. Comparing this baseline data with subsequent in-line inspection runs enhances a company's ability to identify potentially threatening changes to the integrity of the pipeline. The Commission is of the view that in-line inspection is a widely used pipeline industry best practice to monitor the condition of a pipeline and is satisfied with NGTL's plans to conduct in-line inspection baseline assessments.

#### **4.3.5 Integrity Management**

NGTL described its initial threat identification process for the Project, stating that potential pipeline integrity threats are initially identified prior to detailed design. Threat categories would be defined by American Society of Mechanical Engineers B31.8S - Managing System Integrity of Gas Pipelines. A qualitative threat assessment would be conducted on the preliminary design and route selection for the Project. Potential issues identified for threat management would then be used to develop recommendations on the design of the Project. Mitigation of integrity concerns would be considered during route selection, detailed design, fabrication, construction, and pre-commissioning of the pipeline. NGTL committed to implementing TransCanada's Integrity Management Plan to monitor and ensure the integrity of the Project. NGTL's risk assessment is used to identify potential integrity threats and initiate inspection and mitigation activities.

In the operations phase of the Project, implementation of the Integrity Management Plan would be used to:

- reduce the potential for adverse environmental effects;
- protect the installed pipelines and facilities;
- maintain reliability; and
- ensure the safety of the public and Project personnel.

In the design and operations phase of the Project, NGTL committed to implementing preventative maintenance programs, including:

- aerial patrols;
- internal inspections;
- Cathodic Protection monitoring; and
- pipeline markers at roads and pipeline watercourse crossings.

### ***Views of the Commission***

The OPR requires companies to develop, implement and maintain an Integrity Management Plan that anticipates, prevents, manages and mitigates conditions that could adversely affect safety or the environment. The Commission is of the view that integrity monitoring is a continuous improvement process and is applied throughout the lifecycle of a project. The Commission is satisfied that potential integrity threats would be identified by NGTL using a qualitative threat assessment based on preliminary and detailed design, and data collected during operations through aerial patrols, in-line inspections, and Cathodic Protection monitoring. Once operations commence, the Project would be incorporated into TransCanada's Integrity Management Plan, and as such the Commission is satisfied that such threats would be mitigated by NGTL.

## **4.4 Emergency Response, Safety and Security**

As part of its public interest mandate and under its approach to lifecycle regulation, the CER requires regulated companies to demonstrate that they are able to safely build and operate their facilities in a manner that protects people and the environment. In the proceeding, Intervenors expressed concern about the potential for ruptures from pipelines and how this might affect the distinct and community-based needs in the event of an emergency. This Section examines NGTL's ability to anticipate, prevent, and respond to emergencies.

### **4.4.1 Emergency Response**

#### ***Views of Participants***

#### Indigenous People's notification and involvement in Emergency Management related matters

Driftpile Cree Nation, Duncan's First Nation, Dene Tha' First Nation, Peerless Trout First Nation and Whitefish Lake First Nation #459 raised concerns over notification of Indigenous peoples during an emergency, the importance of including Indigenous peoples in emergency management related matters such as construction Emergency Response Plans, and education and training in order to ensure emergency response readiness and capacity building.

Beaver First Nation, Cadotte Lake Métis Local #1994, Doig River First Nation, Métis Nation of Alberta - Region 6 and Tallcree First Nation requested information on potential spills during construction (mitigation and prevention), how NGTL responds to incidents and the need to notify each Indigenous community in the event of an incident.

During the Driftpile Cree Nation oral Indigenous knowledge session, Elder Peter Freeman raised concerns with emergency response times of other companies and the importance of notifying Driftpile Cree Nation in order for members to protect its territory's resources:

*"The response time on some of the spills that had occurred in the past had been delayed, for me, a little too long to react and protect our lands and our animals that need to survive in this particular area.*

*So I hope that you do have a plan that will be clearly identifying and clearly, clearly passed on and work with our people in our community, in our territory, as to how we could be of great help and how we could protect our resources that are out there which is being reduced drastically."*

-- Elder Peter Freeman, Driftpile Cree Nation. Volume 4[1109;1119]

#### Environment and Climate Change Canada's (ECCC) recommendations for Environmental Emergencies

ECCC recommended NGTL commit to mitigation strategies, contingency plans and response capabilities commensurate with the Project's environmental risks and that the plans include, but not be limited to, contingency plans based on worst-case and alternative accident scenarios, training and exercise programs, staff certification and continuous improvement programs, community awareness and education initiatives, and, community notification and communications procedures.

#### **Views of NGTL**

NGTL stated that the list of potential effects associated with accidents and malfunctions that may occur during Project construction and operations was principally developed considering feedback obtained through NGTL's consultation programs regarding emergency management issues, past experience by the assessment team, and in accordance with NGTL standards and the Emergency Management Corporate Program Manual, as well as NGTL's established and proven mitigation measures and construction practices and provincial regulatory guidelines.

NGTL stated that the Project will be designed, constructed and operated in a manner that prevents and reduces potential hazards and risks to the safety and security of the public, employees, property, NGTL facilities, and the environment. NGTL stated that through selecting and implementing construction materials and methods that meet or exceed applicable industry standards and regulatory requirements (i.e., legislation, codes, standards, and conditions of approval) and TransCanada's Standards and Specifications, NGTL's projects are designed and constructed in a manner that reduces the risk of accidents and malfunctions from occurring. Similarly, NGTL stated that the risk of an unplanned event occurring during construction and operations is reduced through implementing TransCanada's Corporate Security Policy, and during operations by implementing TransCanada's Damage Prevention and Integrity Management Programs. NGTL stated that in the event of an accident or malfunction, such unplanned events are effectively managed through implementing contingency measures during

construction from the Project-specific Environmental Protection Plans (EPP), as well as through implementing the Project-Specific Emergency Response Plan, and during operations through TransCanada's overarching Emergency Management Corporate Program Manual, emergency shut down, and facility isolation procedures that limit the potential for and volume of a release.

NGTL stated that before construction, the prime contractor for each Project component will be responsible for developing and implementing an Emergency Response Plan to cover potential emergencies at their worksite and while travelling and hauling to and from their worksite during construction. This plan will be communicated during the site-specific safety orientation before accessing the site. NGTL will also consult with regional emergency response agencies to help ensure that an appropriate understanding of roles and cooperation are in place for the Project during construction and that if appropriate, construction Emergency Response Plans are reasonably linked into any response plans maintained by affected response agencies. NGTL stated that its prime contractor(s) is made aware of NGTL policies and the requirements or expectations for alignment by the prime contractor. NGTL stated that it works with the prime contractor(s) to develop and refine plans such as the Site-specific Safety Plan, Project Execution Plan, etc., all to NGTL's satisfaction before the contractor mobilizes to site.

During construction, the prime contractor for each Project component will have overall responsibility for health and safety at their worksite. This includes developing a Site-specific Emergency Response Plan. NGTL stated it would review the prime contractor's security plan and site-specific Emergency Response Plan. These will be reviewed by NGTL before construction starts. NGTL said that applicable content of the Safety Management Plan, Site Specific Safety Plan and Site-specific Emergency Response Plan will be included in site orientations and copies will be made available onsite for the duration of construction. NGTL stated that it would continue monitoring and oversight throughout construction.

NGTL stated that emergency management during Project construction will be governed by the Project-specific Emergency Response Plans, and during operations by TransCanada's overarching Emergency Management Corporate Program Manual and related operating procedures.

NGTL indicated that as part of Project consultation activities, the company provides information concerning Emergency Preparedness and Response to potentially affected stakeholders, emergency responders, landowners and Indigenous peoples. NGTL said it also publishes TransCanada's Emergency Management Corporate Program Manual in accordance with NEB Order AO-001-MO-006-2016. During the operational phase, TransCanada's Emergency Management Team would liaise, collaborate and work with the emergency response agencies (Fire, Police, Emergency Medical Services) in the area through tabletop and field response exercises, and other outreach activities.

NGTL stated when an asset has entered into service, the company engages with directly affected landowners, Aboriginal groups, municipalities, and first responders to provide them with applicable information on TransCanada's Public Awareness and Damage Prevention practices. NGTL said that TransCanada's Public Awareness Program continues providing these stakeholders and communities current, relevant information on pipeline safety and emergency response planning on a regular basis throughout the entire life of all assets. In addition, NGTL provides contact information for regional representatives that are responsible for ensuring that questions and concerns regarding operational topics such as accidents and malfunctions are addressed appropriately.

In the event of an operational emergency TransCanada's Emergency Management Program would be activated. TransCanada employees and contractors receive training for emergency events and if there is an incident, will work closely with landowners and impacted persons or groups, as well as authorities and emergency responders to manage the incident.

#### Indigenous People's involvement in Emergency Management related matters

NGTL stated that it recognizes the importance of timely response to pipeline-related emergency events in order to minimize environmental impacts. Emergency response times are detailed within TC Energy's Emergency Management Corporate Program Manual that will be applicable to the Project. All Project components are subject to a four-phase Response Time Standard developed/applicable to all TC Energy natural gas pipelines. This standard includes:

- immediate remote shutdown of pipelines upon recognition of an emergency;
- the establishment of the Incident Command System in two hours or less, and, safety permitting; and
- NGTL being on-site in three-hours or less.

NGTL stated that TransCanada's emergency response procedures focus on life safety, incident stabilization, property and environment reservation, and stakeholder communication. NGTL stated that established response times reflect the minimum likely mobilization that accounts for unforeseen circumstances. Contingency planning processes and frameworks governing both emergency preparedness and emergency response, however, are adhered to in accordance with the Emergency Management Corporate Program Manual. Response time averages have been and are expected to be shorter than committed time frames for all phases of response.

NGTL stated that with respect to the construction phase of the Project, the risk of minor spills that may occur on site during construction activities (e.g., coolants, lube oils, etc.) are subject to both preventive equipment checks and processes, and the Project's EPPs, which includes a contingency spill plan.

NGTL indicated that it is committed to discussing specific issues with Indigenous peoples and what the communities would like to receive notification about. NGTL submitted that it will work with the communities to determine the appropriate information sharing process (i.e. through ongoing engagement or formal notifications, as appropriate). NGTL also indicated that it has been contributing to community investment initiatives with Indigenous peoples in the Project area and will continue to work with them to identify community initiatives for capacity development, which supports the immediate and/or longer-term training needs and their long term goals.

NGTL emergency response procedures will be included in the Emergency Management Program for the Project. The emergency management plans will include communications protocols, including current contact information for all potentially affected Indigenous peoples. In the event of an emergency, the regionally-based NGTL Aboriginal and Community Liaisons will contact the appropriate individuals via telephone and/or email to notify them of the nature of the emergency.

## Environment and Climate Change Canada's recommendations for Environmental Emergencies

NGTL stated that the emergency preparedness and response processes, procedures and frameworks as detailed in TC Energy's Emergency Management Corporate Program Manual follow ECCC's recommendations.

NGTL stated that TC Energy's Emergency Management Program addresses contingency planning as part of emergency preparedness and during each phase of emergency response. As part of emergency preparedness, NGTL said the Emergency Management Program is subject to TransCanada's Operational Management System, including its Contingency Planning Process, which guides TC Energy personnel on how abnormal conditions (including those occurring in emergency-related activities) will be assessed and evaluated on an anticipatory basis relative to existing controls and hazard barriers, and when and whether contingency plans will be developed to address them. During the emergency response phase, TC Energy's Emergency Management Corporate Program Manual also establishes a contingency planning framework for the development of alternate response strategies or measures to address abnormal conditions that could preclude or obstruct the execution of initial emergency response efforts or subsequently developed Incident Action Plans.

NGTL stated that TransCanada's Emergency Management Corporate Program Manual establishes requirements and guidance relative to ECCC's recommendations. NGTL said this includes the recommendations for training, courses and certifications, continuous improvement of the Emergency Management Program as well as interface with TransCanada's Public Awareness Program to effectively communicate emergency response messaging and objectives to first responders and public actors, and providing emergency management-related information to the public and potentially-affected communities during an emergency event.

In the case of Indigenous peoples, NGTL indicated that it anticipates providing notice of the nature of the emergency event, including its scope, scale and hazards. NGTL stated that the company would also inquire on the immediate or pending level and type of traditional land use in the affected area by community members. If immediate land use is confirmed or expected, NGTL said it would provide information to local first responders and work collaboratively with them and community emergency representatives in efforts to advise individuals or groups of land users about any appropriate actions to take. Upon the request of local first responders, NGTL stated that its personnel will also assist in locating and evacuating affected or potentially-affected individuals or communities.

### ***Views of the Commission***

The CER's regulatory requirements focus on preventing incidents and emergencies, and the CER promotes development of pipeline company safety culture as an important element in meeting this goal. The Commission is satisfied with NGTL's commitments to identify areas of high risk and to implement additional risk mitigation measures where needed.

While the prevention of incidents is the CER's top priority, the CER also believes that being prepared for any situation is a critical part of energy safety. As required in section 18 of the OPR, a CER-regulated company and its contractor(s) are responsible for safety and regulatory compliance and these should be clearly defined at the beginning of a project. A company must instruct contractors in all relevant practices and procedures pertaining to their work prior to commencing construction activities. As required in section 32 of the OPR,



CER-regulated companies must have robust emergency management programs to manage conditions and reduce consequences during an emergency. Should an incident occur, the CER investigates the incident and holds the company accountable for corrective actions and clean-up. The Commission is satisfied with NGTL's commitment to work with the prime contractor(s) in developing and refining plans such as the Site Specific Safety Plan and the construction based Site-specific Emergency Response Plan prior to the commencement of construction. The Commission is also satisfied with NGTL's commitment to monitor and provide oversight throughout construction.

NGTL stated that the coordination of the health and safety programs is achieved through the Project orientation, and collaboration between NGTL and the prime contractors in development of the Site Specific Safety Plan and construction-based site-specific Emergency Response Plan applicable to Project construction. NGTL stated that these documents are provided to company for review, comment, refinement, and acceptance prior to work commencement.

The Commission heard from Indigenous peoples about the importance of consultation, engagement and notification with respect to emergency management. Indigenous peoples also highlighted the importance of capacity building and being able to protect traditional resources in the event of an incident. The Commission also heard from NGTL that the company has supported, and will continue to support, various requests from Indigenous peoples including supporting emergency services for the Paddle Prairie Métis Settlement and Peavine Métis Settlement. In addition, the Commission heard about the need for Emergency Response Plans and documents developed by NGTL to have meaningful input from Indigenous peoples.

The Commission is of the view that consultation, communication, continual improvement in notification and capacity building between NGTL and Indigenous peoples needs to continue. These conversations must be transparent, genuine, ongoing, structured, collaborative and respectful. The Commission is satisfied with NGTL's commitment to ensure Indigenous peoples have the information they need regarding emergency response and response times, including opportunities for capacity building, reviewing appropriate contact information, site-specific Construction Emergency Response Plans, contingency planning, and accidents or malfunctions, as related to the Project as well as receive adequate information on the procedures to follow during emergency incidents that could occur along the pipeline, and have the opportunity to consult and provide input with respect to Emergency Response Plans. The Commission is also satisfied with NGTL's commitment to continue its in-person presentations to interested or potentially-affected landowners, Indigenous peoples and operators about its emergency management program and the hazards associated with its operating assets, including this Project.

While the Commission is satisfied with the measures proposed by NGTL to engage Indigenous peoples on emergency related matters throughout the lifecycle of the Project. The Commission recommends **Condition 10 (Emergency Management Continuing Education Program)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 11**) for the Section 58 Facilities and Activities, in order to ensure that NGTL continues to proactively plan to incorporate Project-specific elements within its continuing education program required by section 35 of the OPR. Among other things, NGTL will be required to proactively consult with potentially affected parties and describe how it will address any requests from potentially affected Indigenous peoples on emergency

management related matters. The Commission also recommends **Condition 15 (Construction Emergency Management Preparedness and Response Planning)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 15**) for the Section 58 Facilities and Activities requiring NGTL to file Emergency Response Plans for the construction phase of the Project and to share them with Indigenous peoples who have expressed an interest in receiving a copy.

The CER has a comprehensive regulatory regime in place that considers ECCC's recommendations for environmental emergencies and is related to pipeline design, safety, incident prevention, development of an emergency management program and an emergency management system as well as emergency preparedness and response. NGTL would be subject to this regime.

#### **4.4.2 Safety**

NGTL stated that during construction, the prime contractor for each Project component would have overall responsibility for health and safety at their worksite. This includes among other things, developing a Site Specific Safety Plan that outlines how the prime contractor would implement, measure and review its Health, Safety and Environment processes onsite, implementing all applicable health and safety laws and regulations, including all applicable orders, directives, codes, guidelines, permits, licenses and municipal bylaws, and developing a site-specific Emergency Response Plan. NGTL would develop a Safety Management Plan that provides details on the roles and responsibilities of the Project/construction management teams and other, relevant safety information associated with the Project.

NGTL submitted that TransCanada's Operational Management System applies to all of TransCanada's assets including the proposed Project. NGTL stated that by implementing TransCanada's Operational Management System in support of a strong safety culture, TransCanada's projects are designed, constructed, operated and decommissioned or abandoned in a manner that provides for the safety and security of the public, TransCanada personnel and physical assets, and the protection of property and the environment.

#### ***Views of the Commission***

The Commission had concerns with regard to how NGTL would manage, and provide oversight to their contractor for the Project and requested additional information through IR 4.2. NGTL's response to the IR provided clarity and information that demonstrated that NGTL can adequately and effectively oversee and supervise contractors on this Project. The Commission is satisfied that the response provided by NGTL would ensure an adequate level of supervision and oversight with their contractors. The Commission recommends **Condition 11 (Programs and Manuals)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 12**) for the Section 58 Facilities and Activities, requiring NGTL to confirm that a Construction Safety Manual(s) pursuant to section 20 of the OPR is in place for the Project. The Commission notes NGTL's commitment to continue to engage with Indigenous peoples with regards to safety during the lifecycle of the Project.

#### **4.4.3 Security**

NGTL submitted that security management, during operation, would be governed by TransCanada's Corporate Security Program Manual, Policy, and TransCanada's Operating

Procedures which adhere to the CSA Z246.1 standard for security management. NGTL also confirmed TransCanada's Corporate Security Program Manual, Policy and TransCanada's Operating Procedures would govern security management during construction and operations.

***Views of the Commission***

The Commission is of the view that NGTL's proposed manuals, policies and procedures are adequate to ensure that the Project is constructed and operated in a secure manner.

## **5 Land Matters**

The Filing Manual sets out the expectations for lands information in support of an application pursuant to sections 52 and 58 of the NEB Act. Applicants are expected to provide a description and rationale for the proposed route, the location of associated facilities, and the permanent and temporary lands required for a project. Applicants are also expected to provide a description of the land rights to be acquired and the land acquisition process, including the status of land acquisition activities.

### **5.1 Project Footprint and Routing**

The Project consists of three pipeline sections, totaling approximately 81 km that would loop the existing NGTL North Central Corridor and Northwest Mainline natural gas pipelines in AB, as well as construction and operations of a compressor station unit addition and associated connectivity piping. The pipeline components of the Project cross through the County of Northern Lights, Northern Sunrise County and Municipal District of District of Opportunity No. 17 and the Clear Hills County. Project details and components are summarized in Chapter 2 of this Report.

NGTL submitted that route selection is one of the primary mitigation options for balancing the Project and biophysical, socio-economic, and cultural resources. Primarily, the proposed pipeline routes were selected to parallel existing ROWs, except where there were constraints from existing industrial dispositions, or constructability constraints. This practice enables NGTL to consider overlapping the existing easement of parallel ROW alignments, which reduces potential effects by minimizing the area of new disturbance. NGTL explained that following an existing adjacent ROW can also limit fragmentation, resulting in considerably less impact than establishing a new ROW.

NGTL stated that the proposed Project route was applied because it reasonably minimizes impacts on the environment, land owners and land users, while also providing the most efficient design for construction and operations.

#### **5.1.1 Pipeline Components**

The Project includes the addition of new pipeline sections that loop the existing North Central Corridor and the existing Northwest Mainline in the Peace River Project Area of the NGTL System. NGTL stated that the proposed route for each looping pipeline section parallels the existing North Central Corridor and Northwest Mainline facilities. NGTL noted that in some cases, locating the proposed route adjacent to these existing pipelines was not always feasible and new non-parallel ROW is required at some locations along the route. NGTL indicated that for this Project, approximately 76 km (95 per cent) of the proposed pipeline route parallels existing NGTL ROW or other existing linear disturbances such as pipelines, roads and electrical power lines.

NGTL stated that the location of connections of each loop section was determined by the locations of the existing mainline facilities, such as mainline block valves. NGTL explained that adding loop sections generally limits the area for routing consideration to the areas on either side of the existing pipelines, as well as constraining the locations where connections to the existing NGTL System can be made.

NGTL stated that its route selection considers and balances several criteria when evaluating the route options, including the following, where practical or feasible:

- minimizing length to reduce the overall environmental and socio-economic footprint;
- ensuring pipeline sections and facilities are economical to construct and operate;
- paralleling existing linear disturbances to:
  - minimize the fragmentation of land parcels by the introduction of infrastructure to areas in which it currently does not exist;
  - maximize the amount of temporary workspace on existing ROWs;
  - minimize the amount of new (non-parallel and non-overlapping) ROW required; and
  - minimize potential effects on environmental resources (e.g., native plant communities and wildlife habitat) and agricultural operations;
- ensuring public safety;
- minimizing the number, and ensuring the construction feasibility, of watercourse, road, rail and utility crossings;
- 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 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 the *Species at Risk Act* (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 Indigenous communities through various engagement activities.

NGTL stated that since filing its Application, Project engineering and construction planning have progressed, resulting in minor route refinements to the Project's proposed pipeline components. NGTL confirmed in its Additional Written Evidence that the route refinements do not result in new landowners being affected, do not change the scope of the Project and remain within the Local Study Area.

#### **5.1.1.1 North Star Section 2**

The North Star Section 2 is approximately 24 km of NPS 48 pipe from 13-36-93-24 W5M to 12-20-93-21 W5M. The North Star Section 2 is located approximately 20 km north of the Town of Manning, AB. The proposed route for the North Star Section 2 would parallel a ROW for 23 km and non-parallel ROW for 1 km.

### **5.1.1.2 Red Earth Section 3**

The Red Earth Section 3 is approximately 32 km of NPS 48 pipe from 8-8-91-5 W5M to 6-33-91-8 W5M. The Red Earth Section 3 is located approximately 45 km north of the Hamlet of Red Earth Creek, AB. The proposed route for the Red Earth Section 3 would parallel a ROW for 31 km and non-parallel ROW for 1 km.

### **5.1.1.3 Bear Canyon North Extension**

The Bear Canyon North Extension is approximately 25 km of NPS 36 pipe from 8-10-83-12 W6M to 9-14-85-13 W6M. The Bear Canyon North Extension is located approximately 50 km southwest of the Hamlet of Worsley, AB. The proposed route for the Bear Canyon North Extension would parallel a ROW for 22 km and non-parallel ROW for 3 km.

## **5.1.2 Hidden Lake North Unit Addition**

In regards to siting NGTL's Hidden Lake North Unit Addition, NGTL stated its primary consideration was proximity to an existing facility site and the following additional environmental and socio-economic criteria were also considered when selecting the preferred location, where feasible:

- preference for level and well-drained locations;
- use of previously cleared areas of vegetation to the extent possible;
- consideration of cumulative noise limits in the absence of sensitive noise receptors (e.g., residents, cabins); and
- consideration for environmentally sensitive, socially or culturally important areas.

The Hidden Lake North Unit Addition consists of a 30 megawatt compressor unit addition and related components at or near the existing Hidden Lake North Compressor Station located at SW 32-96-11 W6M. The Hidden Lake North Unit Addition is located approximately 100 km north of the Hamlet of Worsley, AB.

### ***Views of Participants***

Dene Tha' First Nation, Driftpile Cree Nation, Duncan's First Nation, Louis Bull Tribe, Peerless Trout First Nation and Whitefish Lake First Nation #459, raised concerns about fragmentation of the land. Information regarding impacts of the route on the availability of Crown lands, including TLRU of Crown lands by Indigenous peoples is discussed in Chapter 7.

### ***Views of NGTL***

NGTL stated that it heard the general concerns of Indigenous communities participating in the oral Indigenous knowledge sessions regarding increased fragmentation of land resulting in undue strain and hardship upon community members that need to travel further to find accessible lands that will support traditional uses.

NGTL said it applied the route selection criteria to reasonably avoid or mitigate impacts on TLRU. NGTL explained that the route selection criteria had been developed through the implementation of past projects, and are based on TC Energy's experience in designing,

constructing and operating the NGTL System, and by applying the most current design standards and regulatory requirements. NGTL noted that the proposed pipeline routes had been designed to parallel existing NGTL ROWs or other linear disturbances for approximately 95 per cent of their length. NGTL stated that paralleling existing disturbances allows the Project footprint to be reduced by using temporary workspace on the adjacent disposition and minimizes fragmentation of the landscape and as a result, potential effects of the Project on the environment and on TLRU are minimized.

NGTL submitted that the proposed Project route is the most appropriate route for the Project because it reasonably minimizes impacts on the environment, land owners and land users, while also providing the most efficient design for construction and operations. NGTL further submitted that following construction, reclamation and cleanup will be completed to achieve equivalent land capability, ensuring the ability of the land to support various land uses similar to the uses that existed before construction.

### **5.1.3 Views of the Commission**

After considering the evidence about the route in light of the criteria and selection process used by NGTL, which has been approved by the Commission, and the submissions made by various Parties during the hearing process, the Commission finds the proposed route to be appropriate.

The Commission acknowledges NGTL's efforts to minimize the potential environmental impact of the Project by proposing a route that parallels existing ROWs, and minimizes the taking up of new lands. The Commission notes NGTL's proposed route for the Project deviates from paralleling existing disturbances only in exceptional cases and that approximately 95 per cent of the route follows an existing ROW. The Commission also notes that NGTL took into consideration input from landowners, occupants, land users, Indigenous peoples, and environmental studies in determining the route.

The Commission notes that NGTL's route selection criteria minimizes potential adverse effects, including avoiding sensitive environmental areas and minimizing environmental and social impacts and fragmentation as much as possible. The Commission finds that NGTL's route selection process and the criteria used to determine the route to be reasonable and justified.

The Commission notes that routing decisions involve the consideration of many factors, including environmental, archaeological and engineering factors, as well as engagement with landowners, land users, municipalities and Indigenous peoples. The Commission strongly encourages companies to anticipate and plan for the possibility of future expansion and looping of their projects, and integrate necessary mitigations into the initial design and planning of the route and required lands for the ROW. To the extent possible, and where a future looping expansion is anticipated, the cross section of pipeline ROWs should be laid out in order to accommodate a future looping expansion without the requirement for additional Crown or private lands to be taken up.

## **5.2 Land Requirements**

The pipeline components for the Project require a total cumulative length of approximately 81 km of ROW as well as associated temporary workspace. An estimated 181 hectares (ha) of new permanent ROW will be required for the pipeline components.

NGTL estimated that 86 ha of new temporary workspace and 76 ha of temporary workspace and permanent ROW overlapping existing NGTL dispositions will be required for construction of the pipeline components. The new ROW and temporary workspace are located on both private (freehold) land and provincial Crown land in AB. Approximately 40 per cent of all parcels traversed by the pipeline components are private (freehold) land and approximately 60 per cent are provincial Crown land.

For the majority of the length of the pipeline components, a minimum construction ROW width (including permanent ROW and temporary workspace of approximately 32 m will be utilized to provide for safe and efficient workspace for construction. NGTL noted it would require a permanent ROW of varying widths along the proposed route for operations and maintenance purposes. In areas where pipeline components parallel an existing NGTL ROW, the new construction ROW will, where possible, overlap the existing ROW to reduce the permanent footprint. The construction ROW would be required to be greater than 32 m in some instances in order to accommodate:

- safety;
- material laydown areas and staging areas;
- areas of increased depth of cover;
- crossings (e.g., roads, railroads, pipelines, utilities and watercourses with defined banks);
- pipeline deflection areas;
- surface material depth and stripping procedure;
- timber clearing and storage;
- access;
- slip-bore locations;
- trenchless crossing locations;
- final tie-in weld locations; and
- areas where geotechnical or environmental conditions warrant additional temporary workspace.

Temporary workspace lands will not be required for NGTL's operational needs and will, therefore, be returned to the provincial Crown or the landowner after construction, cleanup and final reclamation.

## **5.2.1 Pipeline Components**

### **5.2.1.1 North Star Section 2**

The North Star Section 2 would require 52 ha of permanent ROW, 38 ha of temporary workspace and 23 ha overlap<sup>9</sup> for a total of approximately 113 ha of total lands required.

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<sup>9</sup> Overlap refers to temporary workspace and permanent ROW overlapping existing NGTL land dispositions.



### **5.2.1.2 Red Earth Section 3**

The Red Earth Section 3 would require 59 ha of permanent ROW, 19 ha of temporary workspace and 45 ha overlap for a total of approximately 123 ha of total lands required.

### **5.2.1.3 Bear Canyon North Extension**

The Bear Canyon North Extension would require 70 ha of permanent ROW, 29 ha of temporary workspace and 10 ha overlap for a total of approximately 109 ha of total lands required.

### **5.2.2 Compression Facility**

The Hidden Lake North Unit Addition would require an expansion of the existing Hidden Lake North Compression Station site. The existing site will be expanded to the southeast on Crown land within NW 29-096-11 W6M and the SW 32-096-11 W6M to accommodate the additional 4 ha of provincial Crown land for the unit addition and 3 ha for the connectivity piping.

### **5.2.3 Valve Sites**

NGTL stated that mainline valves would be installed at intervals as required along the proposed pipeline sections and would be located within the permanent ROW. Additional temporary workspace would be required at these sites during construction. The permanent valve sites would be fenced to ensure the safety and protection of the asset and public, as well as protection of the environment. Access to valve sites will be via the permanent ROW or permanent or temporary access roads during both construction and operations.

### **5.2.4 Launcher and Receiver Lands**

NGTL stated that permanent launcher and receiver site requirements would be assessed for each pipeline component and would be located within a fenced area within the boundaries of the permanent pipeline ROW.

### **5.2.5 Cathodic Protection Land Requirements**

NGTL stated the pipeline components would share the Cathodic Protection system that currently protects the NGTL System. Upgrades to the existing Cathodic Protection system may be needed and would be evaluated as detailed design progresses, including investigation of potential alternating current mitigation where required. NGTL noted that new test stations would be installed at appropriate intervals and locations along the Project to monitor the effectiveness of the applied Cathodic Protection current.

### **5.2.6 Temporary Infrastructure Locations**

NGTL identified that temporary infrastructure such as access roads, travel lanes, stockpile sites, borrow pits/dugouts, slurry sites, contractor yards, and construction campsites, would be required during construction. Stockpile sites, camp sites and contractor yards would be required for construction of the pipeline sections and compressor unit addition. NGTL stated it is investigating potential locations for ancillary sites and would use existing disturbed areas where feasible, to minimize effects on previously undisturbed areas.

### 5.2.6.1 Construction Camps

NGTL stated that temporary construction camps are anticipated to support construction of the Hidden Lake North Unit Addition, and the North Star Section 2. To support the construction of the Red Earth Section 3, NGTL stated that it would use existing camp accommodations, if available, a new temporary camp or a combination of camps.

NGTL stated that when a temporary construction camp is required to provide project workforce accommodations for a construction site, NGTL's preference is to select sites previously used for this purpose (i.e., former camp sites), or to use otherwise previously disturbed areas. In the event that a camp location site cannot be secured or is not feasible, and until any camp is operational, NGTL said that local existing commercial or private accommodations lodging would be utilized to provide Project workforce accommodations.

NGTL stated that temporary infrastructure such as camps or contractor yards are ideally located in close proximity to the ROW but may be further away to capitalize on existing facilities or disturbed areas, or to avoid environmentally or socio-economically sensitive areas. NGTL submitted that contractor yards are selected by NGTL's prime contractor(s), who are engaged prior to construction with sufficient time to complete pre-construction planning.

NGTL stated that in consultation with prime contractors, it will determine the camp locations based on ease of access to the facility or major roads, and avoidance of, to the extent economically and technically feasible:

- areas of native vegetation;
- wildlife habitat;
- archaeological or heritage resources; and
- other environmentally, socially or culturally sensitive areas and preference for previously disturbed sites.

NGTL stated that the Hidden Lake North Unit Addition and connectivity piping would require a temporary construction camp located nearby the existing compressor station within an area previously used as a camp. NGTL stated that it had not finalized the locations for all temporary infrastructure and was investigating locations.

NGTL estimated that, from installation to demobilization of the construction workforce, each camp for pipeline components will operate for approximately eight months (mostly in different time periods) and the compression camp will operate for about 13 months. NGTL anticipates that, given the planned construction phases of the Project, peak loading at Project camps will last less than the duration of camps operations (a few months).

**Table 5-1 Estimated Duration of Project Camps<sup>10</sup>**

<b>Project Component</b>	<b>Anticipated Accommodation Strategy</b>	<b>Estimated Duration of Camps (Installation to demobilization)</b>
North Star Section 2	Project-specific camp near Project Construction Footprint	8 months(Q3 2021 to Q1 2022)
Red Earth Section 3	Existing camp accommodation and/or Project specific camp near Red Earth Creek	8 months (Q4 2021 to Q2 2022)
Hidden Lake North Unit Addition	Project-specific camp near Project Construction Footprint	13 months (Q1 2021 to Q2 2022)

NGTL stated that TC Energy representatives (employees and contractors) adhere to the following policies and procedures to help ensure health, safety and well-being within Project camps, and in nearby communities. These TC Energy policies and procedures include:

- Health, Safety and Environment Commitment Statement;
- Code of Business Ethics;
- Indigenous Relations Policy;
- Contractor Alcohol and Drug Policy;
- Reasonable Workplace Accommodation Policy;
- Equal Employment and Non-Discrimination Policy;
- Supplier Diversity and Local Participation Policy;
- Harassment Free Workplace Policy;
- Contractor Safety Management Program;
- Disability Management Program; and
- Motor Vehicle Operation Program.

NGTL stated that in all projects, it enforces the following company standard practices that play a role in mitigating the potential for any adverse effects from project camps:

- provide all workers orientation and information materials regarding environmental, health, safety expectations and cultural awareness and sensitivity;
- project employees and contractors are required to adhere to a code of conduct that applies both on and off duty;
- ensure all construction camps are developed to industry standards; and
- undertake on-going engagement with local Indigenous and non-Indigenous communities to follow-up on unanticipated issues or concerns, as appropriate.

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<sup>10</sup> Table appears in NGTL's Response to CER 2.2 on PDF page 7 of 66, [C02984-1](#).

NGTL stated that given typical construction work shifts (e.g., two weeks on, one week off) for compression scope and the scheduled construction phases for the pipeline scope, on average Project workers will not stay at camps continuously for long periods of time. Therefore, given the average short stay of workers at camps, the duration of camp operations, and the implementation of the policies, procedures and standards presented above during camp operations, NGTL stated it does not anticipate any potential effect on the construction workforce lodged at the Project camps.

Regarding construction orientation, NGTL stated it uses a continuous improvement process to regularly update and refine its project materials, including the construction orientation, based on its experiences across NGTL projects. NGTL stated that any updates that are made to the construction orientation as a result of NGTL's cultural awareness and sensitivity experiences on other projects will be applied to the Project. NGTL stated that construction orientation would include information regarding Project-specific cultural and environmental sensitivities, including heritage resources and TLRU. NGTL stated it requires that all personnel working on the Project complete the construction orientation as part of the contractual commitments of its Site-specific Safety Plan and the Project's EPPs prior to being allowed on the Project site. The prime contractor would keep a log of all personnel that have received the construction orientation.

NGTL stated that it requires all personnel working on the Project complete the construction orientation as part of the contractual commitments of its Site-specific Safety Plan and the Project's EPPs prior to being allowed on the Project site.

### ***Views of Participants***

During the oral Indigenous knowledge sessions, Driftpile Cree Nation and Peerless Trout First Nation stated they had concerns over identifying areas that should be protected and the need for engagement regarding these locations. In addition, Peerless Trout First Nation and Driftpile Cree Nation expressed concerns with projects that were already planned when they were notified about them and expressed the need to be part of the planning process. Driftpile Cree Nation, upon review of the Project's Environmental and Socio-Economic Assessment (ESA), stated that NGTL should provide a detailed estimate of the area needed for temporary workspace and infrastructure throughout the three pipeline sections and compressor station.

Louis Bull Tribe upon reviewing the Project's ESA, recommended that NGTL should identify the locations of temporary workspaces and undertake environmental survey to ensure proper conservation and reclamation.

Duncan's First Nation, Driftpile Cree Nation, Whitefish Lake First Nation #459, and Peerless Trout First Nation raised concerns about the potential effects of the construction camps.

Duncan's First Nation stated it is concerned about the presence of construction camps within its territory. Duncan's First Nation also stated that the Commission's proposed **Condition 9 (Construction Camp Management Plan)** related to the Section 58 Facilities and Activities, should be amended in order to be more inclusive of the concerns of potentially affected Indigenous communities. Driftpile Cree Nation and Whitefish Lake First Nation #459 both stated they were generally supportive of the proposed condition, but also recommended additional wording.

Driftpile Cree Nation and Whitefish Lake First Nation #459 stated that they appreciated the consideration shown by the CER through the engagement with Driftpile Cree Nation and

Peerless Trout First Nation about **Condition 10 (Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about Temporary Infrastructure Locations)** related to the Section 58 Facilities and Activities. However, Driftpile Cree Nation and Whitefish Lake First Nation #459 stated that given the proximity of Whitefish Lake First Nation #459 to the Project area, the condition should be revised to include Whitefish Lake First Nation #459 where Driftpile Cree Nation was mentioned.

### **Views of NGTL**

NGTL stated it was aware of concerns about temporary workspace raised through engagement as well as during the oral Indigenous knowledge sessions and in written evidence from Indigenous peoples that were Intervenor in the proceeding.

NGTL said that throughout the various phases of the Project, it has acknowledged that while temporary workspace is required to safely and efficiently construct the Project, NGTL would work to reduce the amount of temporary workspace required and would use existing disturbances where feasible. NGTL confirmed that known temporary workspace was considered and was reflected in the ESA, which was identified based on the proposed routes, the compressor station unit addition, and standard NGTL temporary workspace requirements. NGTL stated that it had not finalized the locations for all temporary infrastructure and was currently assessing the locations. NGTL indicated that if additional temporary workspace was determined to be necessary following the Application submission outside of the areas assessed as part of the Project's ESA, NGTL would conduct a desktop study and evaluate the need for additional field surveys to determine if any new potential effects would result from the temporary workspace. NGTL stated that planned mitigation measures would then be evaluated and, if necessary, additional mitigation measures would be implemented. NGTL stated that it would be engaging Indigenous communities on temporary infrastructure and workspace locations for the Project with a view to understanding and addressing any residual concerns.

NGTL stated that in September 2019 and March 2020, it provided updates on the amount of temporary workspace required for each Project component, as well as the amount of overlap the temporary workspace had with the permanent ROW.

In regards to **Condition 9 (Construction Camp Management Plan)** related to the Section 58 Facilities and Activities, NGTL requested edits to the potential condition including that section a) iv. be removed because, "*NGTL seeks to ensure that the cultural awareness component of the orientation is inclusive, while not prioritizing one Aboriginal group's culture over another.*" NGTL argued that due to the number of Indigenous peoples with traditional territory traversed by the Project, and because the orientation is required to be delivered on a regular (e.g., daily) basis to accommodate incoming Project personnel and variable construction schedules, logistically NGTL and its Prime Contractor are best placed to deliver the orientation. NGTL reiterated its commitment to incorporating knowledge and input provided by potentially affected Indigenous peoples through ongoing engagement or the regulatory process into the orientation, as well as providing a copy of the orientation materials to Indigenous peoples upon request, and considering any feedback received in the finalization of the orientation materials.

In regards to **Condition 10 (Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about Temporary Infrastructure Locations)** related to the Section 58 Facilities and Activities, NGTL stated that this condition should be removed. NGTL confirmed that it would be engaging Indigenous communities on temporary infrastructure and workspace for the Project, the details of which would already be included in

**Condition 4 (Report on Engagement with Indigenous Peoples).** NGTL further stated that if the Commission disagrees with NGTL's request to remove **Condition 10**, NGTL requests that it be amended and limited to an update on planning and engagement activities with Driftpile Cree Nation and Peerless Trout First Nation in respect of temporary infrastructure locations only (e.g., equipment and staging areas) as the locations for temporary infrastructure are generally finalized in advance of construction, unlike other types of temporary workspace, and are of a scope and scale that are more likely to interact with the interests of Indigenous communities, unlike small parcels or extensions of temporary workspace along the ROW.

### 5.2.7 Views of the Commission

The Commission finds that the requested ROW and temporary workspace land requirements, as described in the Application, and as amended, allow for the construction and operation of the Project in a safe and efficient manner. The Commission finds that NGTL's anticipated requirements for permanent and temporary land rights are acceptable.

The Commission notes the concerns from Indigenous peoples regarding the location of temporary infrastructure sites including construction camps within their traditional territory. In response to these concerns, the Commission imposes **Condition 9 (Construction Camp Management Plan)** related to the Section 58 Facilities and Activities. **Condition 9** requires NGTL to file a Construction Camp Management Plan that applies to all construction camps for the Project. The condition has been modified to require an outline of the steps that NGTL has taken to facilitate feedback from Indigenous peoples with traditional territory in the vicinity of the temporary infrastructure sites, and a summary of how feedback was considered in the finalization of the training material.

The Commission notes NGTL's submissions that it would be engaging with Indigenous peoples on temporary infrastructure and workspace for the Project. The Commission notes that during the oral Indigenous knowledge sessions, Driftpile Cree First Nation and Peerless Trout First Nation identified concerns over temporary workspace locations and expressed the need for engagement regarding these locations.

The Commission imposes **Condition 10 (Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about Temporary Infrastructure Locations)** related to the Section 58 Facilities and Activities requiring NGTL to file an update on planning and engagement activities conducted with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation regarding all temporary infrastructure locations (e.g., construction camps, equipment and staging areas) for the Project. The Commission notes that Whitefish Lake First Nation #459 requested to be added to **Condition 10** due to their proximity to the Project area and finds this request acceptable. While the Commission also notes NGTL's request that the condition be removed, the Commission is of the view that the condition is necessary and proportionate to the interests and concerns expressed by Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation. In light of the comments received from Participants, the Commission has modified the condition to no longer refer to all temporary infrastructure and workspace, and to instead, refer to temporary infrastructure locations (e.g., construction camps, equipment and staging areas). The Commission has also modified the condition to require NGTL to file at least 30 days prior to commencing construction to allow more time to develop the report and incorporate more information on engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation prior to the commencement of construction.

### **5.3 Land Rights and Acquisition Process**

The proposed Project components would cross a total of 118 parcels of land, which would include 47 of private (freehold) land and 71 of provincial Crown land. NGTL identified 33 landowners (32 freehold and the Provincial Crown) and 13 occupants that are potentially affected by the Project. NGTL also determined that land users such as trappers, guide/outfitters, snowmobile clubs and grazing tenure holders might also be affected by the Project. NGTL identified 6 Registered Trapping Areas, 52 guide/outfitters and 3 Grazing Lease Holders.

NGTL stated that as it developed the proposed pipeline section routes and location for the compressor station unit addition, Project maps were used to identify all lands potentially affected by the Project. Surface Public Land Standing Report searches were completed to provide information on the Crown lands relating to all disposition holders that have an interest in the lands. Title searches were completed through Alberta Land Titles to obtain information relating to all potentially affected private (freehold) lands, including identification of landowners and registered occupants. NGTL also identified unregistered occupants by gathering information from landowners regarding who customarily occupies their land. NGTL stated this land data was then included in a Project Line List, forming the basis of consultation and land acquisition activities.

NGTL stated that the land acquisition process for the Project would comply with the applicable sections of the NEB Act, including sections 86 and 87. NGTL anticipates that all land rights would be acquired and crossing agreements obtained in advance of the scheduled construction.

NGTL commenced the acquisition of permanent and temporary land rights, including the service of section 87 notices in Q4 2019. NGTL stated that the completion of land rights acquisition is anticipated by Q4 2020. NGTL also stated it commenced the submitting of applications for Crown disposition in Q4 2019 and anticipates the receipt of all required third-party agreements by Q4 2020.

NGTL stated that its objective is to reach voluntary and reasonable agreements with landowners for land rights, including agreement on the compensation payable for such rights. When NGTL and a landowner cannot agree on compensation, an option may be to engage in a CER-led Alternative Dispute Resolution process, either party may also apply to the Minister of Natural Resources to receive the services of a negotiator or to have the matter settled by arbitration as provided for in sections 88 to 103 of the NEB Act.

NGTL noted that section 75 of the NEB Act requires NGTL to do as little damage as possible to landowners' property as a result of its activities, and to make full compensation to landowners for all damages sustained by them in the manner provided for in the NEB Act.

In its last update, NGTL confirmed that all newly identified incremental lands are owned and/or occupied by landowners and/or occupants that have already been previously engaged by NGTL as part of the Project. NGTL further stated that NGTL had re-engaged with landowners or occupants where updated requirements were identified to be relatively more substantive in nature, and no issues or concerns were raised with NGTL during this engagement. NGTL stated that further engagement on all remaining minor incremental land components will unfold as part of the land acquisition process and NGTL will address any issues or concerns that are raised.

### ***Views of the Commission***

The Commission notes that NGTL anticipated to complete freehold land rights acquisition by Q4 2020 and commenced the submitting of applications for Crown disposition in Q4 2019 and anticipated the receipt of all required third-party agreements by Q4 2020. Having considered the evidence on the record, the Commission finds that NGTL's anticipated requirements for land rights, and the process for the acquisition of these land rights are acceptable and is satisfied that the acquisition will meet the requirements of the legislation.

The Commission notes that in the event NGTL and a landowner would not be able to agree on compensation, there is a process for determining compensation under the CER Act. Section 327 provides that either the company or the landowner may bring an application to the CER to determine compensation in accordance with various factors as set out in subsection 327(2).

#### **5.3.1 Section 58 Facilities and Activities**

In its Application, NGTL requested that the Commission issue an order, pursuant to section 58 of the NEB Act, exempting NGTL from the requirements of paragraphs 31(c), 31(d), and section 33 of the NEB Act in relation to: the Project's compressor station unit addition, temporary infrastructure required for construction of the pipeline, and, ROW preparation activities (including clearing, grading, and stripping) and commencing trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length).

Through CER IR 3.3, the Commission requested NGTL explain how the exemption from section 33 of the NEB Act for temporary infrastructure and ROW preparation activities, would not prevent or prejudice landowners' or Indigenous peoples' participation in hearings regarding detailed routes.

NGTL indicated that exemptions were needed as the current construction schedule requires certain preliminary construction activities along the ROW and crossings to commence immediately following issuance of a Certificate, subject to clearing pre-construction conditions. A delay in commencing these activities would increase the risk that Project construction would not be completed in time to meet NGTL's contractual in-service date.

NGTL also noted that as a matter of practice temporary infrastructure is not typically included in PPBoRs. Detailed locations for this infrastructure are often not finalized until construction plans are finalized and in some cases once construction has commenced. NGTL stated that construction of temporary infrastructure must be initiated (and in some cases completed) before NGTL can commence construction of the pipeline components of the Project. As a result, delaying Project construction until the detailed locations for temporary infrastructure are finalized, and associated PPBoRs are filed and approved, would harm NGTL's ability to construct the Project in a timely and efficient manner in accordance with its current construction schedule.

NGTL submitted that no party is prejudiced by NGTL obtaining an exemption from the PPBoR requirement for temporary infrastructure or early ROW preparation because NGTL will be required to obtain the necessary land rights for the activities from the landowner (on private lands) or Alberta Environment and Parks (on Crown land) prior to commencing any construction activities. Prior to obtaining land rights from Alberta Environment and Parks, the Aboriginal Consultation Office will determine if consultation with Aboriginal groups is required, as per the



Provincial process, and if so, ensure that the Aboriginal groups have been adequately consulted.

NGTL further stated that the nature of the activities for which NGTL is seeking section 58 relief are temporary and reversible. In the unlikely event that the PPBoR is modified on other portions of the route, and these modifications require changes to the detailed route on lands where temporary infrastructure or early ROW preparation activities occur, NGTL commits to reclaiming the disturbed lands as soon as practical to ensure any impacts to landowners and Aboriginal groups are reversed.

NGTL indicated that it would accept a condition on the section 58 Order that the Order is not effective until NGTL demonstrates to the Commission's satisfaction that all required land rights (on private lands) or dispositions (on Crown lands) have been obtained for the affected lands. NGTL also noted that the nature of the Project as a looping project provides limited flexibility in detailed routing.

### ***Views of the Commission***

The Commission has decided that the facilities and activities applied for by NGTL pursuant to section 58 of the NEB Act are in the public interest and will issue Order XG-021-2020, should GIC direct the Commission to issue a Certificate in respect of the Section 52 Pipeline and Related Facilities. However, having considered the evidence placed before it, as well as the fundamental importance of procedural fairness and the legislative scheme behind the CER's mandate, the Commission has decided that the Order will not include all of the exemptions applied for.

Specifically, the applied-for ROW preparation activities (including clearing, grading, and stripping), and the commencement of trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length), are **not** approved by the Commission for exemption.

The Commission agrees with NGTL that routing of a looped pipeline is limited in flexibility due to the existing linear disturbance. However, the Commission notes that detailed route hearings also include issues that are not directly related to routing such as method and timing of construction.

The Commission also appreciates NGTL's commitment to restore disturbed areas should changes to the PPBoR be required. However, the Commission notes that while impacts would likely be temporary and reversible, depending on the area impacted, it could take substantial time before areas are restored to similar pre-construction conditions and that could be an unnecessary burden for landowners or Indigenous peoples.

Finally, the Commission is of the view that the granting of this requested exemption could impact any future detailed route hearing process as contemplated by the CER Act.

Therefore, the Commission denies the requested exemption from the requirements of paragraphs 31(c) and 31(d), and section 33 of the NEB Act, for the ROW preparation activities (including clearing, grading, and stripping), and for the commencement of trenchless crossings in select areas along the proposed route (in aggregate not exceeding 40 km in length).

With respect to its decision on the remaining facilities and activities applied for pursuant to section 58, the Commission has included 23 conditions in Order XG-021-2020, that are necessary for the facilities and activities to be in the public interest. Therefore, the Order to be issued would include authorization for the following (collectively defined as the Section 58 Facilities and Activities):

- the Hidden Lake North Unit Addition; and
- the temporary infrastructure required for the Project (i.e., access roads, borrow pits/dugouts, slurry pits, stockpile sites, laydown yards, contractor yards and construction camps).

## 6 Public Engagement

The Filing Manual sets out the expectations for applicants regarding engagement to support a project application. Applicants are expected to undertake an appropriate level of public involvement, commensurate with the setting, nature and magnitude of a project. Public involvement is crucial during each phase in the lifecycle of a project (project design, construction, operation and maintenance, and eventual abandonment) in order to address potential impacts of that project. This Chapter addresses NGTL's public engagement program and Project-specific engagement activities.

Note that NGTL's engagement program and Project-specific engagement activities with Indigenous peoples are fully discussed in Chapter 7 which deals specifically with matters related to Indigenous peoples.

### 6.1 NGTL's Stakeholder Engagement Program

In its Application, NGTL indicated it has undertaken engagement activities with municipalities, provincial and federal government departments, potentially affected stakeholders, landowners and Indigenous communities to provide information and to address questions and concerns that may arise from the proposed Project.

In its Application, NGTL explained that its engagement activities for the Project are guided by TransCanada's stakeholder engagement program. NGTL stated that the overriding principle underpinning the stakeholder engagement program is that stakeholders will be engaged in a fair, honest, open, consistent and timely manner by NGTL representatives, and will have the opportunity to provide input into NGTL's Project planning.

NGTL explained that the purpose and goals of the stakeholder engagement program for this Project are to:

- formally introduce the Project to stakeholders;
- understand and respect stakeholders' capacity to consult;
- actively seek and consider comments on:
  - pipeline routing and facility site selection;
  - potential environmental and socio-economic effects;
  - mitigation, to address potential adverse Project effects; and
  - enhancement measures, where appropriate, to improve potential positive socio-economic effects;
- identify and respond to questions and concerns;
- provide stakeholders with ongoing Project updates, including communication about the proposed Project and the anticipated regulatory schedule and planned application;
- consider stakeholder questions or concerns for incorporation as part of Project planning; and

- facilitate ongoing communications that continue through the construction and operation phases to ensure future stakeholder questions or concerns, if any, are addressed in a timely manner.

In addition to the general stakeholder engagement principles and goals noted above, NGTL stated that the goals specific to landowner engagement are also to:

- identify and address Project-related landowner questions and concerns; and
- support the acquisition of land rights necessary for the construction, operation and maintenance of the Project.

NGTL submitted that the stakeholder engagement program was designed and implemented by NGTL in accordance with the principles of TransCanada's engagement framework, as well as community relations and communications best practices. The program is designed to:

- foster positive relationships with stakeholders;
- provide opportunities for stakeholder input into the Project planning and development process; and
- provide information for stakeholders that reduces uncertainty and increases clarity.

NGTL explained its stakeholder engagement program is undertaken in a phased approach and implemented using open communication and participatory stakeholder involvement practices.

NGTL stated that once the Project is in-service, responsibility for ongoing landowner relations would be transitioned to NGTL operations. Regionally-based NGTL liaisons would continue to build and maintain relationships with landowners and occupants. As construction of the Project nears completion, TransCanada's Public Awareness personnel will work in collaboration with the Project team to integrate these new assets into the Public Awareness Program.

According to NGTL, the Public Awareness Program is intended to increase awareness of pipeline safety and, thereby, protect the public, environment and TransCanada facilities. It targets the potentially affected stakeholders, landowners and Indigenous communities engaged through Project planning and construction phases.

## **6.2 Design of Public Engagement Activities**

NGTL identified 33 landowners (32 Freehold and the Provincial Crown) and 13 occupants that are potentially affected by the Project. NGTL also determined that land users such as trappers, guide/outfitters, snowmobile clubs and grazing tenure holders might also be affected by the Project. NGTL has identified:

- six Registered Trapping Areas;
- 52 guide/outfitters; and
- three Grazing Lease Holders.

More broadly, NGTL also identified the following stakeholders for the Project:

- landowners and occupants whose lands are traversed by the Project;
- adjacent landowners and occupants;
- land users (e.g., guides, outfitters and trappers);
- members of the public;
- municipal leaders and representatives (e.g., regional districts and municipalities);
- elected officials (i.e., provincial and federal);
- government agencies and representatives;
- emergency responders; and
- local business communities.

NGTL noted that since the process of identification is ongoing and continues throughout the evolution of the Project, the stakeholder list is regularly updated. In addition, stakeholders can self-identify by contacting the Project email account or toll-free telephone number.

NGTL indicated that it used a variety of engagement tools and activities as part of its engagement program. This included but was not limited to:

- distribution of general information print materials (e.g., Project letter to stakeholders, Project fact sheet, public media notices, Project maps, open house invitations, open house displays, and PowerPoint presentations);
- Project website, email and telephone number;
- personal contact with stakeholders including face-to-face meetings;
- newspaper and radio advertisements;
- open house engagements;
- Project information distribution by mail or email;
- media releases;
- digital media posts; and
- TransCanada program brochures (e.g., Aboriginal Relations, Stakeholder Engagement) and the NEB brochure *Information for Proposed Pipeline or Power Line Projects that Involve a Hearing*.

NGTL submitted sample copies of its Project materials that were provided to stakeholders through its engagement activities.<sup>11</sup>

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<sup>11</sup> Sample copies of NGTL's Project materials provided to stakeholders through engagement activities were filed as Appendix 12 in its Application ([A98641-9](#), PDF pages 1-26 of 26)

### 6.3 Implementation of Engagement Activities

NGTL stated that initial implementation of the stakeholder engagement program began in Q2 2018. In November 2018, Project notifications were sent to identified stakeholders, including a letter from TransCanada, a fact sheet including a high-level summary of the proposed Project, several TransCanada brochures and the NEB brochure *Information for Proposed Pipeline or Power Line Project that Involve a Hearing*. NGTL stated that it extended open offers to meet with regional and local municipalities to further discuss the Project materials provided.

In its Application, NGTL stated that in December 2018, NGTL reached out to representatives from four municipal districts and counties to provide information on the Project, understand and address their questions and concerns, and set up a time for in-person meetings. NGTL initiated follow-up communications with mayors, Chief Administrative Officers, other elected officials, staff, and emergency responders from the following local governments:

- Clear Hills County;
- County of Northern Lights;
- Northern Sunrise County; and
- Municipal District of Opportunity.

NGTL stated that responses were received from the County of Northern Lights and Northern Sunrise County, and in-person meetings were scheduled in December 2018. NGTL stated that following initial meetings, NGTL made Project presentations to the County of Northern Lights on 22 January 2019, Northern Sunrise County on 20 January 2019, and Clear Hills County on 12 February 2019.

NGTL stated that in keeping with TransCanada's commitment to ongoing engagement, Project representatives also participated in municipal conferences to provide information about the Project, receive feedback and answer any questions. NGTL said these conferences provided Project representatives with an opportunity to connect with existing stakeholders as well as meet newly elected municipal officials and other individuals representing municipalities and organizations that may have an interest in the Project.

NGTL participated in the Rural Municipalities of Alberta Fall Conference in Edmonton, AB on 20 November 2018, where TransCanada hosted a stakeholder reception and had NGTL staff on hand to answer questions about the Project from delegates representing municipalities from across AB. NGTL also participated in the Rural Municipalities of Alberta Spring Conference in Edmonton, AB on 18 March 2019, where a tradeshow booth was hosted and additional information on the Project and TransCanada was provided. NGTL sponsored and planned to participate in the Hines Creek Trade Show in Clear Hills County on 13 April 2019, where various stakeholders from the community, including local government representatives, provincial government representatives, and members of the public, are often in attendance.

NGTL hosted public Project-specific Open House events in February 2019 in Worsley, AB and Manning, AB. NGTL stated that these Open House events provided an opportunity for area residents and stakeholders to ask questions and provide feedback on the Project.

In its Application and additional filings, NGTL described a number of questions and concerns that have been raised by community members, landowners, occupants, local governments, and

other identified stakeholders potentially affected by the Project since engagement began in Q2 2018. These included:

- NGTL's engagement strategy and stakeholder notification;
- NGTL's engagement frequency;
- proposed pipeline routes and facility locations;
- potential positive and negative socio-economic effects on their community;
- impacts on local infrastructure;
- proposed increase in NGTL System capacity and primary markets for increased natural gas volumes;
- workforce accommodations strategies;
- Project and regulatory timelines;
- EA;
- caribou habitat and management;
- local hiring and contracting;
- emergency response and pipeline safety; and
- TransCanada reclamation practices and provincial environmental guidance.

NGTL described in its Application and Additional Written Evidence, how it responded to issues and addressed the concerns raised, and confirmed that it would continue to consult with stakeholders to identify and address questions or concerns going forward. NGTL noted that no additional concerns had been raised from community members, landowners, occupants, local governments, and other identified stakeholders potentially affected by the Project since filing the Project application.

In response to concerns about engagement frequency (i.e., NGTL's general level of activity in western AB and stakeholder resource capacity), NGTL indicated it has provided Project information to regional municipal stakeholders, along with preliminary information on the timing and location of other projects proposed by NGTL with a view to assisting local stakeholders in their planning and identifying any engagement-related resource and staffing needs or constraints they may anticipate. NGTL is committed to aligning and bundling Project engagement where applicable and appropriate.

More broadly, NGTL stated it would continue to engage stakeholders through all Project phases and respond appropriately, including through the regulatory review process, and until completion of Project construction. Once the Project is in-service, the stakeholder, landowner and Indigenous engagement programs for the Project will be transitioned to TransCanada's existing Public Awareness Program and the regional community and Indigenous relations resource for the remaining lifecycle of the asset. Regionally based NGTL liaisons will continue to build and maintain relationships through consistent and ongoing communication with stakeholders.

More information regarding specific concerns may be found in the chapters noted below:

- environmental and socio-economic matters (i.e., EA, acoustic environment, caribou habitat, reclamation) and NGTL's proposed mitigation is found in Chapter 8;
- notification of Indigenous peoples can be found in Chapter 7,
- Project routing may be found in Chapter 5;
- engineering, emergency response and safety may be found in Chapter 4; and
- financial/economic and markets can be found in Chapter 3.

Further information on traditional knowledge studies, engagement with Indigenous peoples, and resource capacity is discussed in Chapter 7 of this Report.

#### **6.4 Views of the Commission**

The Commission considers public involvement to be a fundamental component during each phase in the lifecycle of a project (project design, construction, operation and maintenance, and eventual abandonment) in order to address potential impacts of that project. In assessing the public engagement undertaken by NGTL, the Commission evaluated the design and implementation of engagement activities. The Commission is of the view that NGTL adequately and appropriately identified stakeholders and potentially affected landowners, as well as developed appropriate engagement materials. In addition, the implementation of engagement activities was responsive to the needs, inputs and concerns of potentially affected persons and communities. Therefore, the Commission is of the view that NGTL's design and implementation of engagement activities for the Project was adequate given the scope and scale of the Project.

The Commission notes that NGTL has been consulting on the Project since 2018 and committed to build and maintain relationships through consistent and ongoing communication with stakeholders. The Commission expects NGTL to continue its efforts to engage and maintain effective and timely engagement activities, as appropriate, throughout the lifecycle of the Project.

The Commission acknowledges the commitment from NGTL's regional community liaisons to align and bundle information about any new projects and ongoing communication with local stakeholders, where applicable and appropriate. The Commission finds NGTL's approach acceptable to ensure that stakeholders are provided clear, relevant and timely information regarding the Project.

The Commission expects NGTL to carry through with all of its commitments including those relating to bundling information and ongoing communication with local stakeholders, when it is applicable and appropriate.



## 7 Matters Related to Indigenous Peoples

The Commission has considered all of the evidence and arguments on the record for this proceeding provided by Indigenous<sup>12</sup> peoples and other Parties, including NGTL, about the potential impacts of the Project on the rights and the interests of Indigenous peoples, NGTL's proposed mitigation of the Project's potential effects, requirements in the regulatory framework and the conditions proposed to be imposed and recommended by the Commission in the Certificate and Order that would be issued should the Project be approved.

The Commission interprets its responsibilities in the assessment process in a manner consistent with section 35 of the *Constitution Act, 1982*, which recognizes and affirms the existing Indigenous and Treaty rights of Indigenous peoples. The Commission is of the view that there has been reasonable consultation and accommodation for the purpose of the Commission's recommendation on this Project under section 52 of the NEB Act, and its decision under section 58 of the NEB Act, in keeping with section 35 of the *Constitution Act, 1982*, and the honour of the Crown. The Commission is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed by the implementation of the mitigation measures, accommodations, and commitments made by NGTL, and the conditions recommended and imposed by the Commission. Further discussion of the Commission's role in upholding section 35 of the *Constitution Act, 1982* is set out in Subsection 7.6.8.

This chapter includes summaries of evidence provided directly by Indigenous peoples through their participation in the hearing, as well as summaries of NGTL's engagement with affected Indigenous peoples, which noted the concerns and interests, assessment methods and rationales, and any mitigation or accommodations proposed by Indigenous peoples as recorded by NGTL. While the Commission refers to specific passages on the record throughout this chapter, the Commission considered the entirety of the record in reaching its determination and encourages anyone who wishes to fully understand the context of the information provided by Indigenous peoples should review the entire hearing record.

Further, this chapter of the Report should not be considered in isolation from the Report as a whole. Appendix V provides a summary of the general and specific concerns and issues raised by Indigenous peoples during this proceeding, as well as summaries of the responses to those concerns provided by NGTL and the Commission (including conditions), and applicable requirements provided through regulation and / or legislation.

The Commission would like to note that, although the term "Indigenous" is used throughout this Report as an inclusive term to describe the descendants of the original inhabitants of this nation now known as Canada, the Commission acknowledges that First Nation, Métis and Inuit peoples are distinct peoples with unique worldviews and histories. The Commission recognizes the unique context and distinctiveness of the knowledge possessed and provided by all the First Nation and Métis communities that participated in the GH-002-2019 proceeding.

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<sup>12</sup> "Indigenous" has the meaning assigned by the definition of the term 'Aboriginal peoples of Canada' in subsection 35(2) of the *Constitution Act, 1982*:

(2) In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit, and Métis peoples of Canada.

## **7.1 NGTL Project-Specific Engagement with Indigenous Peoples**

### **7.1.1 Principles, Goals and Design of the Consultation Program**

NGTL stated that TransCanada's policies, principles and practices guide the design and implementation of its Aboriginal Engagement Program for the Project, the goal of which is to provide Project information and seek feedback from Indigenous communities to anticipate, prevent, mitigate and manage conditions that have the potential to affect Indigenous communities. NGTL indicated that it strives to meet this goal by:

- establishing a practical approach for the implementation of Project-specific engagement activities;
- initiating engagement activities as soon as possible in the planning of the Project;
- providing clear, relevant and timely information to potentially affected Indigenous peoples; and
- responding to concerns raised and commitments made during engagement activities.

NGTL indicated that the design of its Aboriginal Engagement Program, is consistent with the CER's guidance on consultation as set out in its Filing Manual, and is intended to foster productive dialogue and exchange of information with potentially affected Indigenous communities interested in the Project. NGTL indicated that this program was designed, developed and adapted according to the scope, nature, location, and potential effects of the Project, and to the identified interests, information needs and concerns of Indigenous communities. NGTL stated that while the underlying principles remain the same, the scope and depth of engagement may vary according to the potential for Project-related effects and the identified interests of each Indigenous community.

NGTL stated that it recognizes that its Aboriginal Engagement Program is complementary to any Crown consultation concerning potential impacts to Indigenous and Treaty rights, and that, in its view, the NEB/CER's process can be relied upon by the Crown.

NGTL stated that its Aboriginal Engagement Program for the Project is carried out according to a four-step process, which includes:

- identifying potentially affected Indigenous communities;
- establishing the engagement approach;
- implementing engagement program activities; and
- responding to questions and concerns.

NGTL stated that it initially identified potentially affected Indigenous communities based on the location of Project components within asserted traditional territories, regional boundaries and / or areas of interest. NGTL also stated that this initial identification involved desktop research, NGTL's own operating experience, including past projects in the region, existing agreements and an established network of contacts with Indigenous communities in the Project area.

NGTL stated that it tailors its approach to gathering information from Indigenous communities to meet a community's specific needs, and where appropriate, provide reasonable resources to support participation in Project engagement activities.

### 7.1.2 Implementation of the Project-Specific Consultation Activities

NGTL stated that engagement with Indigenous communities regarding the Project began on 2 August 2018, when NGTL emailed each potentially affected Indigenous community to note that it was beginning to investigate options for a potential expansion project and provided an overview map of the area being considered. NGTL stated that initial engagement with the Indigenous communities included provision of Project information for their review, follow-up phone calls and emails to discuss any questions and concerns about Project activities, and providing an opportunity for interested Indigenous communities to conduct a Traditional Knowledge (TK) Report for the proposed pipeline looping options.

NGTL indicated that on 8 November 2018, Project notification packages providing notice of NGTL's intent to file a section 52 application with the NEB were sent to the potentially affected Indigenous communities listed below.

- Beaver First Nation
- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Doig River First Nation
- Driftpile First Nation
- Duncan's First Nation
- East Prairie Métis Settlement
- Gift Lake Métis Settlement
- Horse Lake First Nation
- Loon River First Nation
- Métis Nation of Alberta
- Métis Nation of Alberta - Region 5
- Métis Nation of Alberta - Region 6
- Métis Settlement General Council
- Nose Creek Community
- Paddle Prairie Métis Settlement
- Peavine Métis Settlement
- Peerless Trout First Nation
- Sucker Creek First Nation
- Swan River First Nation
- Tallcree First Nation

NGTL indicated that the Project notification packages included a Project introduction letter and Project fact sheet, including a Project overview map, the TransCanada brochure: *Aboriginal Relations*, and, the NEB brochure: *Information for Proposed Pipeline or Power Line Projects that Involve a Hearing*.

NGTL stated that following initial identification and provision of preliminary Project information, Indigenous communities were contacted by NGTL to confirm the receipt of the Project notification package, the level of interest in the Project, and, the primary point of contact for engagement. NGTL stated it also engaged in preliminary discussions with the potentially affected Indigenous communities to understand their specific capacity and resourcing needs. NGTL stated it worked with interested Indigenous communities to develop a Project-specific work plan and budget.

NGTL stated that following the initial notifications and preliminary discussions, it implemented a wide range of activities and communication tools to engage Indigenous communities on the Project, which included regulatory notifications, maps, shapefiles, Google Earth files, fact sheets, and brochures. NGTL also stated that engagement activities on the Project included, but were not limited to:

- presentations, open houses;
- face-to-face meetings;
- email, telephone calls, text messages;
- map reviews;
- site visits;
- sharing of TK, including TK studies;
- review of community-specific TK literature;
- discussions on contracting, employment, education and training opportunities; and
- community investment.

NGTL noted that on 20 March 2019, the Major Projects Management Office (MPMO) provided NGTL with a list of Indigenous communities identified for the Project, which included the following additional communities listed below. NGTL stated it would provide ongoing Project notifications, as appropriate, to the additional Indigenous communities identified by MPMO.

- Kapawe'no First Nation;
- Sawridge First Nation;
- Whitefish Lake First Nation #459; and
- Woodland Cree First Nation.

Louis Bull Tribe and Papaschase First Nation applied to participate in the hearing process as potentially affected Indigenous peoples and were granted Intervenor status in the hearing through Ruling No. 1 on 16 August 2019.

On 9 December 2019, NGTL met with Lubicon Lake Band. NGTL stated the intent of the meeting was to discuss NGTL projects, including the North Corridor Expansion Project. NGTL stated that Lubicon Lake Band had not been engaged on the Project as the Project components were outside of what NGTL understood Lubicon Lake Band's traditional territory to be. NGTL stated that Lubicon Lake Band agreed. NGTL noted it would continue to address questions and concerns from Lubicon Lake Band through its ongoing engagement efforts should any arise.

On 5 March 2020, approximately eight months after the deadline for the Application to Participate process, Foothills First Nation filed a letter with the Commission requesting late participation in the proceeding. Foothills First Nation requested Intervenor status and stated it wished to participate in all future hearing activities. On 23 March 2020, the Commission granted Foothills First Nation Intervenor status, stating that Foothills First Nation would be able to participate in all remaining hearing activities, including final argument and provision of comments on potential conditions. NGTL confirmed that on 25 March 2020, it emailed Foothills

First Nation the initial Project notification package and requested that Foothills First Nation identify which components of the Project may adversely affect Foothills First Nation. NGTL also stated it extended an invitation to Foothills First Nation to discuss the Project.

NGTL indicated that it works collaboratively with Indigenous communities to address Project-related questions or concerns and to provide information on how the input of Indigenous peoples influenced Project design changes, and indicated that questions or concerns identified during engagement activities are recorded and responded to by NGTL.

With respect to consultation throughout the life of the Project, NGTL described its plans for ongoing engagement and indicated it will continue to respond to questions and concerns raised by Indigenous peoples, and engagement activities will continue with the intent to:

- address any Project-related questions or concerns;
- develop progress work plans that provide capacity funding for communities;
- understand interests in employment and contracting opportunities; and
- continue to gather input.

NGTL committed to continuing engagement throughout the life of the Project and incorporating any additional input that it receives outside of the regulatory process into the Project plans, as appropriate.

### **7.1.3 Outcomes of the Project-Specific Consultation Activities**

NGTL stated that since it began engaging with potentially affected Indigenous communities about portions of the Project in August 2018, it has worked closely with each potentially affected Indigenous community to provide information about the Project, make opportunities available for the community to provide information to NGTL about potential issues and concerns, including through TK studies, and develop mutually acceptable solutions and benefits.

NGTL noted that its analysis, discussion and conclusions of the Project's residual effects on TLRU are provided in Subsection 5.14 of the Project ESA, and includes information received from potentially affected Indigenous peoples during the Project's Aboriginal Engagement Program (i.e., TK studies, concerns, and recommendations) as well as a review of publicly available literature. NGTL stated it has considered all information and recommendations provided in the written evidence submitted by the Indigenous peoples that were Intervenor in the proceeding in the context of the ESA and with a view to its incorporation into Project planning, as appropriate.

NGTL stated that its Project engagement activities, as well as the outcomes of those activities, have been and will continue to be tracked with a response provided, as appropriate. Engagement activity information is collected and managed in a database designed to support this work. Information collected includes the following:

- a list of Indigenous communities provided with Project-specific information;
- a description of how and when information was provided;
- dates and locations of activities throughout the engagement process;

- a summary of engagement efforts and outcomes, including information on concerns raised, and responses and measures taken to address the concerns; and
- a description of outstanding concerns and proposed follow-up with Indigenous communities, if required.

Throughout the GH-002-2019 hearing, NGTL filed a number of engagement updates summarizing its activities with specific Indigenous communities undertaken up to and after the filing of its Application. These updates also identified any questions and concerns communicated to NGTL, as well as the actions taken by, or planned to be taken by, NGTL to address those questions and concerns. Table 7-1 below sets out where NGTL’s engagement updates can be found on the record and for which period of time.

**Table 7-1 NGTL’s Engagement Updates**

NGTL Submission	Time Period
Project Application – Section 13	2 August 2018 to 1 March 2019
Additional Written Evidence – Section 7	2 March 2019 to 8 August 2019
Response to DCN IR 2.11	9 August 2019 to 1 November 2019
Response to CER IR 3.4	2 November 2019 to 19 February 2020
Reply Evidence – Section 2	20 February 2020 to 7 April 2020

## 7.2 Government of Canada’s Engagement Process with Indigenous Peoples

The Commission understands that the Government of Canada relies on the Commission’s hearing process to the extent possible to fulfill its duty to consult potentially affected Indigenous peoples for the proposed Project. The assessment process employed by the Commission is robust and inclusive. It makes use of its technical expertise and has broad remedial powers with respect to Project-related matters. A number of judicial decisions have acknowledged the Crown’s ability to rely on opportunities for consultation with Indigenous peoples that are available within existing processes for regulatory or environmental review. This is a means by which the Crown may be satisfied that Indigenous peoples’ concerns have been heard and considered, and where appropriate, accommodated. The Commission notes that the Supreme Court of Canada has acknowledged in two more recent decisions, *Clyde River* and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*<sup>13</sup>, that the NEB, now the CER, has the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures as well as the requisite technical expertise.

Regulatory tribunals, through their legislative mandates, are charged with performing duties and exercising the powers that fall within the executive branch of government. Regulatory tribunals such as the CER must perform those duties and exercise those powers, not only in accordance with their legislative mandates, but also in accordance with section 35 of the *Constitution Act, 1982* and other applicable laws. The NEB Act provides the CER with broad powers and expansive remedial authority to deal with the impacts of federally-regulated pipeline projects.

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<sup>13</sup> *Chippewas of the Thames First Nation v. Enbridge Pipelines Inc.*, 2017 SCC 41.

The CER is the federal statutory body that has the most direct involvement in the assessment of applications to construct and operate pipelines. The CER also has the technical expertise and the regulatory experience to understand a project, the likelihood of impacts and the measures that can be implemented to minimize the impacts. In addition, the CER has the authority to elicit commitments from the proponent, impose conditions on an approval and ensure ongoing regulatory oversight of a project and a proponent's compliance. The CER also has been given the statutory mandate to impose and enforce mitigation measures to reduce negative project impacts and hold a proponent to the commitments made in the Commission's project assessment process.

The framework within which the CER operates and under which decisions under the NEB Act are made, including the requirement that a project assessment process be conducted in a procedurally fair manner, can provide a practical, effective and efficient way within which Indigenous peoples can request and receive meaningful assurances from the proponent or the CER about project-related impacts on their rights and interests. Hearing directly and indirectly about Indigenous peoples' concerns about project-related impacts on their interests allows the Commission to impose measures to mitigate the impacts and balance, as appropriate, any residual effects with the other societal interests at play when assessing a project. As a result, decisions on pipeline projects can be made in a constitutionally appropriate manner consistent with the honour of the Crown. This framework also provides an effective mechanism through which Indigenous peoples' concerns that are beyond the mandate of the CER can be communicated to the GIC for consideration in its decision making. It also provides other government agencies with information that they may choose to use in any decisions that they may need to make, should the Project be approved. It should be understood that the Commission's consideration of what is required in terms of consultation with Indigenous peoples is a fluid process as more information is obtained and assessed in the proceeding. There are several points in a CER proceeding where the existence and extent of the rights and / or interests of Indigenous peoples and the potential impact on them are considered with a view to determining the procedural opportunities that must be provided and the substantive outcomes that are warranted. For example, such factors may be considered when:

- the proponent determines who may be impacted by its proposed project;
- the Commission decides to whom notices are sent;
- the Commission considers the type of process that should be employed;
- the Commission decides who should be allowed to participate in the proceeding and to what extent;
- the Commission assesses the level of consultation expected of the proponent and any others who may have authority to deal with an issue;
- the Commission considers the totality of information required from the proponent regarding potential impacts and proposed mitigation measures;
- the Commission considers the totality of information required from Indigenous participants;
- the Commission recommends what conditions would need to be imposed; and
- the Commission recommends whether the authorization should be issued.

The CER's assessment process is designed to be thorough and accessible to Indigenous peoples so that they may make their concerns known to the Commission and have those concerns addressed. In addition to the engagement that is to occur between a proponent and potentially impacted Indigenous peoples (described in Section 7.1), it should be understood that the CER's hearing process itself (described in Section 7.3), including this Report, is part of the overall consultative process in relation to the Crown's duty to consult.

### **7.3 The Hearing Process and Participation of Indigenous Peoples**

The hearing process was designed to obtain as much relevant evidence as possible on concerns regarding the Project, the potential impacts on the interests of Indigenous peoples, including Indigenous and Treaty rights (as noted in the List of Issues, Appendix IV), and possible mitigation measures to minimize the potential adverse impacts on those rights and interests. The Commission was provided with and considered information about concerns related to the Project, and the measures that would be required to address those concerns, as brought forward through engagement undertaken by NGTL and through the participation of potentially affected Indigenous peoples.

#### **7.3.1 Enhanced Process for Engagement with Indigenous Peoples**

The CER's Enhanced Engagement for Indigenous peoples aims to provide proactive contact with Indigenous peoples that may be affected by a proposed project, and to help them understand the CER's regulatory process and how to participate in that process. The Commission assesses the completeness of the list of potentially affected Indigenous peoples identified in an applicant's project application in collaboration with the Government of Canada. The Commission then sends letters to each potentially impacted Indigenous peoples on the list, informing them of the project as well as the Commission's regulatory role in respect of the project, and offering to provide further information on the Commission's process. Following issuance of these letters, CER staff follow up, respond to questions, and / or conduct information meetings, where requested by the Indigenous peoples.

On 21 March 2019, the NEB sent a letter to each of the following potentially affected Indigenous peoples:

- Beaver First Nation
- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Doig River First Nation
- Driftpile First Nation
- Duncan's First Nation
- East Prairie Métis Settlement
- Gift Lake Métis Settlement
- Horse Lake First Nation
- Kapawe'no First Nation
- Loon River First Nation
- Métis Nation of Alberta
- Métis Nation of Alberta - Region 5
- Métis Nation of Alberta - Region 6
- Métis Settlement General Council
- Nose Creek Community
- Paddle Prairie Métis Settlement
- Peavine Métis Settlement
- Peerless Trout First Nation
- Sawridge First Nation
- Sucker Creek First Nation



- Swan River First Nation
- Tallcree First Nation
- Whitefish Lake First Nation #459
- Woodland Cree First Nation

The letters described the hearing process and Participant Funding Program. The letters also included a summary of the Project, contact information on how to obtain further information, and an offer from NEB/CER staff to attend a community meeting. No Enhanced Engagement for Indigenous peoples meetings were requested.

### **7.3.2 Application to Participate in the Hearing Process**

On 31 May 2019, the NEB issued the Notice which included instructions on how to apply to participate in the hearing process. The Notice required NGTL to provide the Notice to all potentially affected Indigenous peoples identified by NGTL and the MPMO.

The Application to Participate process was open from 10 June 2019 to 5 July 2019, which required interested persons or groups to request participation by filing an Application to Participate Form which demonstrated that they were directly affected by the proposed Project or that they have relevant information or expertise that would assist the Commission in making its decisions in respect of the proposed Project. The Notice also announced the granting of Pre-Decided Standing to Indigenous peoples identified as being potentially impacted by the Project. Potentially impacted Indigenous peoples were required to register via the Application to Participate system by 5 July 2019 to be included on the List of Participants or Parties. Ten Indigenous communities filed an Application to Participate Form by the required deadline and were granted the status requested.

Two Indigenous communities filed their Application to Participate Form after the deadline: Peerless Trout First Nation on 27 August 2019 and Foothills First Nation on 5 Mar 2020. Both were granted the requested status and level in the hearing.

The following Indigenous peoples were granted Intervenor status in the hearing, as requested:

- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Foothills First Nation
- Gift Lake Métis Settlement
- Louis Bull Tribe
- Papaschase Cree Nation
- Peavine Métis Settlement
- Peerless Trout First Nation
- Whitefish Lake First Nation #459

### **7.3.3 Participant Funding Program**

The NEB, and now the CER, provides a Participant Funding Program, which is administered independently of the Commission. The Participant Funding Program provides financial assistance to individuals, Indigenous peoples, landowners, and non-industry not-for-profit groups to facilitate participation in certain project hearings and EAs of designated projects.

On 31 May 2019, it was announced that funding would be available to assist individuals and groups with their participation in the hearing for the Project. The Participant Funding Program

received ten applications and recommended awarding \$400,000 in total to all ten eligible groups (\$40,000 per group). Indigenous peoples who participated in the hearing process accounted for 100 per cent of the funding awarded for the hearing. Table 7-2 sets out the recipients and the amounts awarded (also available on the CER website). Further information regarding eligible costs and associated contribution agreements is available in the Participant Funding Program section of the CER's website<sup>14</sup>.

**Table 7-2 Participant Funding Program Awarded Amounts**

<b>Applicant</b>	<b>Amount Awarded</b>
Bigstone Cree Nation	\$40,000
Cadotte Lake Métis Local #1994	\$40,000
Dene Tha' First Nation	\$40,000
Driftpile Cree Nation	\$40,000
Duncan's First Nation	\$40,000
Gift Lake Métis Settlement	\$40,000
Louis Bull Tribe	\$40,000
Papaschase Cree Nation	\$40,000
Peavine Métis Settlement	\$40,000
Whitefish Lake First Nation #459	\$40,000
<b>Total</b>	<b>\$400,000</b>

### **7.3.4 Opportunities to Participate**

During the hearing, Indigenous peoples who were Intervenor in the proceeding were able to obtain further information about the Project, and to present their views and concerns to the Commission, in a variety of ways. Indigenous peoples who were Intervenor in the proceeding could file written evidence, share oral Indigenous knowledge, ask written IRs of NGTL and other Parties, respond to any written questions asked of them by the Commission, Intervenor and / or NGTL, provide comments on drafts of potential conditions, and to submit final written argument.

#### **7.3.4.1 Oral Indigenous Knowledge Sessions**

The Commission acknowledges that Indigenous peoples have an oral tradition of sharing knowledge and information from generation to generation and that this knowledge and information cannot always be shared adequately in writing. The Commission is of the view that it is valuable to hear oral Indigenous knowledge as it assists the Commission in understanding how the Project may impact Indigenous peoples' rights and interests.

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14 [www.cer-rec.gc.ca/pfp](http://www.cer-rec.gc.ca/pfp)

In the context of the CER's proceedings, oral Indigenous knowledge is provided in evidence as sworn testimony. Before providing oral Indigenous knowledge, presenters are asked to swear or affirm that the information they are presenting is accurate and truthful to the best of their knowledge and belief. Ceremonies or prayers (e.g., smudging) are acceptable methods of affirmation.

In Procedural Directive No. 1, dated 22 October 2019, the Commission extended an invitation to all Indigenous peoples who were Intervenor in the proceeding to share oral Indigenous knowledge in Peace River, AB. Indigenous peoples who were Intervenor in the proceeding who were interested in sharing oral Indigenous knowledge were requested to file a Notice of Intent Form with the Commission by 14 November 2019. The Commission received Notices of Intent from the following six Indigenous peoples:

- Bigstone Cree Nation;
- Dene Tha' First Nation;
- Driftpile Cree Nation;
- Louis Bull Tribe;
- Peavine Métis Settlement; and
- Whitefish Lake First Nation #459.

On 30 December 2019 and 6 January 2020, the Commission received Notice of Intent Forms from Peerless Trout First Nation and Papaschase Cree Nation, respectively, indicating their desire to participate in the oral Indigenous knowledge sessions. In Ruling No. 5, dated 27 January 2020, the Commission ruled that the late requests were reasonable and that granting the requests would not be prejudicial to NGTL or any party. The requests from Peerless Trout First Nation and Papaschase Cree Nation were incorporated into the oral Indigenous knowledge session schedule.

Papaschase Cree Nation and Whitefish Lake First Nation #459 did not provide oral Indigenous knowledge. Whitefish Lake First Nation #459 later submitted two affidavits from members of the community.

For all oral portions of the hearing, an audio broadcast was provided and transcripts of the proceedings were filed on the Record, so that Participants who were not in attendance, and the public, could be aware of what was occurring during the hearing. Where Indigenous peoples requested information be provided confidentially, and the Commission ruled it appropriate, the audio broadcasts stopped, if given advanced notice, and transcripts were redacted. The Commission, also offered remote participation to Indigenous peoples who were Intervenor in the proceeding who could not attend the in-person oral Indigenous knowledge sessions.

During the oral Indigenous knowledge sessions the Commission heard from several communities regarding the importance of the opportunities for sharing oral Indigenous knowledge and participating in the sessions, as well as the ceremonial protocols that were followed.

Members from Driftpile Cree Nation chose to begin their oral Indigenous knowledge session with a prayer and a smudge. An elder described the importance of protocols and the smudge:

*“And we smudge so that we can clear our minds, clear our hearts, and cleanse our spirit so that when we communicate with one another, we clearly understand what it is that we need to understand from each other and how we can move forward in a journey that we must take, going from this day forward. So with the smudge, I’m grateful for all of those that offered to smudge and clear the path for us to carry on, on this day.*

*[...] And thank you for the tobacco and thank for the protocol, because that creates a path for us to move forward, plus it creates a path for me to make my connection too, in terms of our prayers.”*

-- Elder Theresa Campiou, Driftpile Cree Nation, Transcript Volume 4 [1058-1059 and 1062]

During their oral Indigenous knowledge session, members of Dene Tha’ First Nation acknowledged the opportunity to share their knowledge and thanked the Commission. They also noted the importance of having these opportunities. Members explained:

*“And what I want to get to is that when we hear the oral evidence put forward by other members of our group today, what you’re hearing is members of our community that are those most likely -- some of those most likely to be adversely affected by this Project, this proposed project.*

-- Matthew Munson, Dene Tha’ First Nation, Transcript Volume 3 [889]

Members from Peavine Métis Settlement also thanked the Commission for allowing them to share their traditional knowledge and to raise their concerns. They also stated that having the opportunity to have their voices heard at the federal level means a lot to their community.

*“[...] first, I’d like to thank the Panel, Madam Chair, for allowing Peavine Métis Settlement the opportunity to come here today, to speak our traditional knowledge, to raise some concerns that we may have to support this worthwhile project. We are very much appreciative of our opportunity.”*

-- Greg Gauchier, Peavine Métis Settlement, Transcript Volume 5 [1620]

Peerless Trout First Nation members also expressed their appreciation for the opportunity to have their voice heard during their oral Indigenous knowledge session. Members stated:

*“[...] Thank you for giving us this time as a Nation. And this is something big and new to us. It seems like it’s finally something is happening -- that’s the way I look at it -- for our voice to be heard. I don’t think I’ve ever seen or heard anything like this in regards to -- from in this area anyways, for my Nation, speaking on behalf of my Nation. And this is something unique to me. And I hope that you guys continue doing what you guys are doing today in regards to trying to make it work.”*

-- Gilbert Okemow, Peerless Trout First Nation, Transcript Volume 1 [305]

Table 7-3 below summarizes the process steps participated in by each Indigenous peoples that were an Intervenor in the proceeding, including the types and sources of information submitted, during the proceeding.

To the extent that government departments had information to provide to the Commission related to the Project, they had the opportunity to participate in the hearing process and file relevant information. ECCC participated in the hearing process as Intervenor and filed information that relates to some of the concerns raised by Indigenous peoples in this hearing, such as matters relating to caribou, discussed further in Chapter 8.

**Table 7-3 Written and Oral Evidence Submissions by Indigenous peoples that were Intervenor in the proceeding**

Indigenous peoples	Oral Indigenous Knowledge Transcript	IRs made to NGTL	Responses to IRs from NGTL	Written Evidence	Final Argument	Comments on Potential Conditions
Bigstone Cree Nation	<u>C04559-1</u>				<u>C06207</u>	
Cadotte Lake Métis Local #1994		<u>C02576</u>	<u>C05049</u>	<u>C03479</u>	<u>C06189</u>	
Dene Tha' First Nation	<u>C04540-1</u>	<u>C02542</u>		<u>C03459</u>	<u>C01692</u>	<u>C01692</u>
Driftpile Cree Nation	<u>C04569-1</u>	<u>C02562</u>	<u>C05240</u>	<u>C03434</u>	<u>C06197</u>	<u>C06197</u>
Duncan's First Nation		<u>C02578</u>	<u>C05048</u> <u>C05382</u> <u>C05507</u>	<u>C03483</u>	<u>C06195</u>	<u>C06195</u>
Foothills First Nation						
Gift Lake Métis Settlement						
Louis Bull Tribe	<u>C04569-1</u>	<u>C02581</u>	<u>C05267</u>	<u>C03462</u>	<u>C06186</u>	
Papaschase Cree Nation						
Peavine Métis Settlement	<u>C04572-1</u>			<u>C04608</u>		
Peerless Trout First Nation	<u>C04520-1</u>		<u>C05035</u>	<u>C03804</u>	<u>C06191</u>	<u>C06191</u>
Whitefish Lake First Nation #459	<u>C04696-1*</u> <u>C04696-2*</u>		<u>C05246</u>	<u>C03474</u>	<u>C06198</u>	<u>C06198</u>

\* Whitefish Lake First Nation #459 was unable to attend the oral indigenous knowledge session and subsequently filed written affidavits.

## **7.4 Issues and Concerns Raised by Indigenous Peoples**

### **7.4.1 Engagement Matters**

#### **7.4.1.1 NGTL's Engagement with Indigenous Peoples**

Over the course of the hearing process a number of Indigenous peoples raised concerns regarding NGTL's engagement with Indigenous peoples. The meaningfulness of NGTL's engagement, as well as concerns regarding resource capacity, were identified as issues by the following Indigenous peoples:

- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Doig River First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Louis Bull Tribe
- Paddle Prairie Métis Settlement
- Peavine Métis Settlement
- Peerless Trout First Nation
- Whitefish Lake First Nation #459

Cadotte Lake Métis Local #1994 stated that NGTL was relatively helpful to the community and supported its participation in the engagement process in a constructive manner. Cadotte Lake Métis Local #1994 stated that NGTL's support and provision of some capacity funding is recognized and acknowledged by the Cadotte Lake Métis Local #1994 as a constructive measure that helped support the community in being able to review the Project's application, ESA and EPP. NGTL funding also helped the community in undertaking an initial level of community-based interviews regarding community utilization of lands and resources in the Project component areas and in undertaking field reconnaissance of the Project corridor.

Dene Tha' First Nation discussed engagement during its oral Indigenous knowledge session, stating that it wants engagement and the subsequent outcomes to be meaningful. Dene Tha' First Nation also discussed how in the past, outcomes of its engagement with NGTL have not been seen as meaningful, but that there is an opportunity with respect to this Project to make it meaningful by including them in the design and implementation of NGTL's mitigation plans.

*"And these previously approved projects that were designed, as we understood then, to have considered meaningfully our concerns from those most likely to be adversely affected by a project and to have the same concerns being repeated here again today with respect to the same company, with respect to the same type of project in the same area, seems to me to be not that meaningful."*

*And so there's an opportunity, a great opportunity, in my opinion as a technician who's been doing this for many years now, there's a great opportunity to do better. And what doing better looks like is including specifically our Nation and our harvesters in the design of those plans."*

-- Matthew Munson, Dene Tha' First Nation, Transcript Volume 3 [904-905]

During their oral Indigenous knowledge session, members from Dene Tha' First Nation also shared how they could be meaningfully involved:

*"The current state of the mitigation plans and the degree to which Dene Tha' is meaningfully involved in those plans and implementation strategies, given that some of those are still in progress, we understand, but very firm commitments to be meaningfully involved and the capacity to be meaningfully involved would be a tremendous opportunity to have, for a change, in the age of reconciliation, to be actually part of a Project approval condition."*

-- Matthew Munson, Dene Tha' First Nation, Transcript Volume 3 [920]

In its evidence, NGTL indicated that Doig River First Nation requested the formation of a "Doig River First Nation-TransCanada Projects Working Group" with participation from Doig River First Nation and NGTL to create a collaborative working group to ensure adequate and accountable consultation on all matters relating to NGTL projects within Doig River First Nation traditional territory.

Regarding resource capacity concerns, Driftpile Cree Nation recommended that the CER encourage NGTL to make a commitment to provide Driftpile Cree Nation with sufficient time and capacity to review any updated EPPs before finalization and prior to construction activities commencing.

Driftpile Cree Nation and Whitefish Lake First Nation #459 stated that one of their concerns is the fact that NGTL has not supported meaningful engagement with either community. Driftpile Cree Nation and Whitefish Lake First Nation #459 argued that any Project approval be conditional upon, among other matters, NGTL engagement with the communities. During its oral Indigenous knowledge session, Driftpile Cree Nation also emphasized the importance of relationships and the desire to establish a relationship with NGTL.

Duncan's First Nation stated that its engagement with NGTL has been limited to correspondence related to a Protocol Agreement for a TK study and supporting the conduct of that study in order to identify adverse site-specific impacts on Duncan's First Nation's section 35 rights.

Louis Bull Tribe stated it was not consulted on this Project by NGTL nor the Crown during Project planning. Additionally, Louis Bull Tribe indicated that it was not afforded an opportunity to conduct a traditional land use assessment to adequately assess the uses of its members within and adjacent to the Project area.

During its oral Indigenous knowledge session, members of Louis Bull Tribe discussed concerns regarding resource capacity:



*“[...] It’s been a very long, frustrating road trying to seek recognition from the Government of Alberta. And they have forced us to participate in hearings like this. And this has put great demand on our capacity. I have one staff member. So I’ve – I’m receiving consultations from the federal government through Federal Consultation Process, limited consultations from the Aboriginal Consultation Office of the Government of Alberta, but there’s also Crown-led engagement. So we have a very large workload. I also have two other roles that I play at Louis Bull Tribe. I’m the lands manager, as well as the oil and gas rep, and I do support the economic development team. So this has become very challenging for us to find the time and the resources to participate in this, just to assert and have our rights acknowledged.”*

-- Ms. Melanie Daniels, Louis Bull Tribe. Transcript Volume 4[1504-1506]

In its ESA, NGTL noted that Paddle Prairie Métis Settlement put forward a number of recommendations to NGTL regarding engagement and consultation including: funding for a TK study, proponent provision of capacity funding to engage in ongoing consultation over development plans for the Project, support for a third-party technical review of the Project application and EA, and, a commitment from NGTL to partner in Project development planning, constraints mapping, incorporation of TK in Project design, and impact avoidance, mitigation, offset, and compensation discussions.

In their oral Indigenous knowledge session, members from Peavine Métis Settlement discussed the importance of consultation and how its relationship with NGTL has been positive and respectful, and that they hope to continue to strengthen their relationship. They also discussed the desire for a partnership with NGTL.

*“And I believe that consultation for Peavine is going to lead the way and I understand that partnership is the way to go for projects like this, and it’s a good thing.”*

-- Elder Mark Sinclair, Peavine Métis Settlement, Transcript Volume 5 [1694]

Likewise, Peerless Trout First Nation discussed the need for meaningful engagement, collaboration and partnership. Peerless Trout First Nation indicated that it wishes to be involved in a partnership to ensure its territory is protected from further harm, and also noted that meaningful engagement and participation after approvals are imperative to ensure its Treaty rights and interests are respected through all phases of the Project. During its oral Indigenous knowledge session, Peerless Trout First Nation discussed the desire for a productive relationship with NGTL beyond consultation as well as the need to be involved in planning.

*“[...] for myself, yes, I’d rather see working relationships, deeper, not just a consultation, come and knock on my door and never to see that person again. I’d rather see something that is more productive, I would say, in regards to working together, because how can we work together when we’re not together?”*

-- Gilbert Okemow, Peerless Trout First Nation, Transcript Volume 1 [180]

Members of Peerless Trout First Nation indicated their frustration with not being involved or having their voices heard.

*"[...] sometimes people come knock on our doors, "And this is what is done, this is what it's going to be." It's already been planned out, and here we are, left out and we don't really have no voice to speak out and to be heard."*

-- Gilbert Okemow, Peerless Trout First Nation, Transcript Volume 1 [191]

In its written evidence, Peerless Trout First Nation requested that NGTL meet with its leadership and the consultation department to discuss the impacts, mitigation planning, and accommodation that will be provided for the unavoidable impacts to TLRU and associated social and cultural wellbeing. Peerless Trout First Nation stated this includes establishing a formal agreement outlining these accommodations and commitments.

Peerless Trout First Nation stated its view that there are information gaps in the ESA and other issues that challenge Peerless Trout First Nation from conducting a thorough and adequate assessment of impacts to its Treaty 8 rights, including amongst others, insufficient time / capacity to conduct a thorough TLRU study that engages meaningfully with active land users and hunters beyond Peerless Trout First Nation members with trapline interests.

In its written evidence Whitefish Lake First Nation #459 stated that there is a clear need to focus Indigenous consultation and engagement in a manner which meaningfully accounts for their inputs and concerns.

#### **7.4.1.2 Crown Consultation with Indigenous Peoples**

Crown consultation and the Crown's duty to consult were identified as issues by the following Indigenous peoples:

- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Louis Bull Tribe
- Peerless Trout First Nation
- Whitefish Lake First Nation #459

Dene Tha' First Nation and Duncan's First Nation both indicated that the Crown's duty to consult has not been discharged and that, as of the filing of final argument, there has been no consultation with the Crown on the Project. Duncan's First Nation stated that consultation with Indigenous communities is essential to understanding the Project's impacts on Indigenous and Treaty rights.

Additionally, Dene Tha' First Nation stated that in a letter dated 19 June 2019, NRCan advised that Canada would rely on the hearing process under the NEB Act as well as its own consultation process to discharge the duty to consult Dene Tha' First Nation in relation to the Project. Dene Tha' First Nation stated that the Government of Canada did not consult it in

relation to its decision to rely upon this quasi-judicial adversarial process to inform Crown consultation regarding the Project.

During its oral Indigenous knowledge session Dene Tha' First Nation explained its dissatisfaction with typical consultation outcomes and how they have not been meaningful.

*“Many times, consultation outcomes are reduced to getting a copy of an electronic document that is in the vein of an Aboriginal consultation follow up supplemental filing. And I can tell you that that document is not understood, it's not accessible, it's not meaningful to the people in our community and the people you see here. What they see is they go back out and there's another disturbance, there's more people out there, there's more impacts, there's more wolves, there's less caribou.”*

-- Matthew Munson, Dene Tha' First Nation, Transcript Volume 3 [902-903]

Dene Tha' First Nation stated that in order for consultation and outcomes of consultation to be meaningful to the community, that outstanding concerns need to be addressed. Members of the community stated that they have previously commented on other processes by asking information requests and have submitted traditional use studies, but have not seen meaningful outcomes. Dene Tha' First Nation stated that consultation needs to be meaningful and the outcomes need to be also meaningful in the context of protecting Treaty rights and also protecting those values that those Treaty rights solely rely upon.

Dene Tha' First Nation stated that before the Crown authorizes the issuance of a Certificate, it must meaningfully consult and accommodate the community regarding all potential impacts to its Indigenous rights and Treaty interests.

Driftpile Cree Nation discussed its uncertainty of the hearing process during its oral Indigenous knowledge session.

*“And we have a say over what's going to happen now, I'm thinking. I'm not even sure about that, because I don't know what this process -- where this process is going to go and who's going to be, at the end of the day, making the decision on it. I think it's you, and if I can influence you to think about the lives of the Indigenous people as they exist today, and where they need to go, and how they need to get better, and what we need to do in unity for them to get better, because I know our people are suffering.”*

-- Elder Theresa Campiou, Driftpile Cree Nation, Transcript Volume 4 [1202]

In its written evidence Duncan's First Nation stated it would like the opportunity to undertake a comprehensive baseline Treaty rights and cultural use assessment in collaboration with Crown agencies. Duncan's First Nation stated it is of the view that:

*“[...] the time has arrived for the Crown, industry and the DFN and to develop a mutually informed understanding of the crucial connection and relationship between the land, waters, forests, muskegs, animals, fish, birds and plants of this part of the earth, Canada and Alberta and the most important needs, culture, health, wellness and future of the DFN people. To this end, the DFN would welcome the opportunity to undertake a comprehensive baseline Treaty rights and cultural use assessment undertaken in collaboration with Crown agencies via a mutually agreed upon set of research*

*parameters, a jointly developed terms of reference and co-managed research implementation plan.”*

Louis Bull Tribe submitted that the filings and the filing materials set out by the CER are difficult to navigate, and require the review of multiple sections of multiple documents and appendices and figures and tables and information requests and letters to review a particular topic or area of concern (e.g. soils, wildlife, water crossings, etc.). Louis Bull Tribe stated that the review documents and materials are not set-up for an efficient and thorough review of a particular area of concern or discipline. They may meet regulatory requirements for submission, but they do not provide the information in a clear manner, written in plain language. Louis Bull Tribe also stated that a review of the proponent’s materials to provide meaningful input should be assessable to the average Canadian, and it doesn’t believe this has been achieved.

During its oral Indigenous knowledge session, Louis Bull Tribe also discussed its frustration with the Provincial Crown:

*“We are not here today to oppose projects or responsible development. We were not consulted on this project and we are not seeking consultation. We have been forced into these processes to assert our rights in areas so that we can have our concerns, as they relate to impacts to Treaty rights and loss of use recognized by the Government of Alberta.*

*The Government of Alberta refuses to acknowledge Louis Bull Tribe’s Treaty rights and uses outside of a very small area within Treaty 6. It has been our experience over the past decades that Treaty 6 has become so developed and so inundated with various land uses that it’s becoming next to impossible to practise rights in a peaceful and enjoyment way.”*

-- Melanie Daniels, Louis Bull Tribe, Transcript Volume 4 [1494-1495]

In its written evidence Peerless Trout First Nation stated its view that consultation is intended to protect Indigenous and Treaty rights and to preserve the future use of resources for both Indigenous peoples and the broader public, alike. Peerless Trout First Nation also stated that failure to consult and accommodate meaningfully may result in the delay or eventual cancellation of a project.

#### **7.4.2 Social and Cultural Well-Being**

Impacts to social and cultural well-being, which includes potential Project impacts on community life and safety, as well as the threat to Indigenous peoples’ cultural existence and the ability of elders and other knowledge holders to transfer their knowledge, were identified as issues by the following Indigenous peoples:

- Bigstone Cree Nation
- Dene Tha’ First Nation
- Driftpile Cree Nation
- Duncan’s First Nation
- Louis Bull Tribe

- Peavine Métis Settlement
- Peerless Trout First Nation
- Whitefish Lake First Nation #459

This Section pertains specifically to social and cultural well-being issues and concerns raised by Indigenous peoples. For issues related to non-Indigenous peoples, refer to Chapter 8.

Bigstone Cree Nation described the importance of being able to access the land and resources for the practice of their rights, and how the practice of these rights gets taught from generation to generation by being out on the land. Bigstone Cree Nation also stated that its members described cumulative impacts of development, including from pipeline development, as creating real and tangible barriers to their ability to practice their Treaty rights, maintain their culture, and pass on their teachings to future generations. During its oral Indigenous knowledge session, Bigstone Cree Nation described how members look to their elders to learn the practice of their Treaty rights.

Dene Tha' First Nation stated that the cumulative impacts of industrial development in its territory threatens not only the ability of its people to exercise their Treaty rights but also its cultural existence. Dene Tha' First Nation also stated that its people are inextricably connected to and have stewardship obligations in relation to the lands, waters and resources in its territory, and that they transmit their language and culture to the next generation through practices that take place in Dene Tha' First Nation territory. Dene Tha' First Nation stated that industrial development in its territory must be carefully managed to ensure that sufficient ecological values remain to support the meaningful ability of Dene Tha' First Nation people to practice rights upon which their culture and livelihood depend.

During its oral Indigenous knowledge session members of Dene Tha' First Nation described how they teach younger generations to live off the land:

*"[...] For 45 years we went on the Chinchaga Forestry Road. We set up camp every fall, sometimes in the summer time. And we have taught our four children to live off the land, to harvest meat, to pick medicinal plants. And now we are teaching our grandchildren to do the same. And it doesn't look very likely, but we are hoping that our children will continue to teach their grandchildren."*

-- Elder Agnes Gallant, Dene Tha' First Nation, Transcript Volume 3 [785]

During its oral Indigenous knowledge session members of Dene Tha' First Nation also shared the importance of language to social and cultural well-being:

*"One of the elders told me that a long time ago. If you are going to understand the land, you've got to understand the language, to be able to understand the land. That's why we teach our kids, through parents, grandparents and school, so they can speak their language, which we can call between maybe 98 or 100 percent in Dene tongue. That's what we try to do with our kids, so they can understand the land."*

-- Elder Fabian Chonkolay, Dene Tha' First Nation, Transcript Volume 3 [799]

In its evidence, NGTL stated that members of Dene Tha' First Nation identified garbage on a lease site near the Hidden Lake North Unit Addition and noted concerns with the garbage at the site. Peavine Métis Settlement also observed construction garbage in the Project area and requested better cleanup of work areas while construction is completed. During its oral Indigenous knowledge session Dene Tha' First Nation members elaborated:

*"[...] if you're going to use the land in a different area, clean the first mess. Like, our land is not beautiful anymore, west of Manning. After the oil and gas activity, there's so much garbage left behind. Metal, plastic, you name it, it's left behind. I wouldn't want someone to come in my house, dirty one room, and then move to the next room. That's what's happening to our land. Like, if you're going to use the land that we've enjoyed for generations, lived off of for generations, clean it up after you use it."*

-- Elder Agnes Gallant, Dene Tha' First Nation, Transcript Volume 3 [851]

During their oral Indigenous knowledge session, members of Driftpile Cree Nation shared the importance of their connection to the land and the teachings associated with that:

*"[...] those teachings, when we talk about that connection to the land, came through wâhkôhtowin. [...] Wâhkôhtowin is that teaching that we're connected, we're all relations with respect to the land, and we realize that there's a spiritual side to that as well -- the land, the water, the air; the trees speak to us as well.*

*And when you hear our elders talking about sitting by the stream, sitting at their camps, sitting outside preparing for ceremony, and being in touch with that embodiment of power, that's wâhkôhtowin.*

*And when you have your elders sitting around a fire telling their stories and connecting to the wâhkôhtowin, teaching their youngsters with respect to their stories, and there's a lot of laughter, there's a lot of love, there's a lot of truth, and to partake and to see that, it's a very, very beautiful thing."*

-- Karl Giroux, Driftpile Cree Nation, Transcript Volume 4 [1216, 1220 and 1235]

Driftpile Cree Nation stated the exercise of Indigenous and Treaty rights is essential to the health of both its members and its culture. During its oral Indigenous knowledge session Driftpile Cree Nation spoke about the strain industrial development is placing on its ability to exercise its Indigenous and Treaty rights, and the challenges it poses to maintaining its identity as a community. Driftpile Cree Nation expressed how it is getting tougher to maintain its culture because its resources are being depleted.

*"[...] colonization has a huge impact on our people, and so in order for our people [...] to become sustainable and self-sufficient, they need to come back to who they are as Indigenous people. And in order for us to do that, we need to have that connection to the land. And in order for us to have that connection to the land, we need to be able to go to where we were. And if where we were has been modified and redesigned and opened, and perhaps even neglected and abused, that's even that much more challenging."*

-- Elder Theresa Campiou, Driftpile Cree Nation, Transcript Volume 4 [1138]

Duncan's First Nation stated that the impact of development within its territory has resulted in diminishing hunting returns and success through time as well as an inability to pass on its culture to future generations. Duncan's First Nation also stated it is concerned about the presence of construction camps within its territory. Duncan's First Nation also stated that the Commission's proposed **Condition 9 (Construction Camp Management Plan)** should be amended in order to be more inclusive of the concerns of potentially affected Indigenous communities. Driftpile Cree Nation and Whitefish Lake First Nation #459 both stated they were generally supportive of the proposed condition, but also recommended additional wording. For further discussion related to construction camps refer to Chapter 5.

Louis Bull Tribe stated the inability to engage in traditional practices has impacts that are of major concern as these practices are important in preserving culture, transmitting skills and knowledge to the youth and future generations, and in maintaining food security for the community.

During its oral Indigenous knowledge session, members of Peavine Métis Settlement spoke about their connection to the land and about respecting the land. They described about how their way of life is tied to the land through trapping, hunting, farming, or harvesting traditional medicines. Members from Peavine Métis Settlement also described the importance of being able to transfer knowledge from elders to youth.

*"I was on a site visit with [an elder and a youth] and the dynamic between the two was awe inspiring, to watch our elder teach our youth the traditional ways, what the sap is used for, what the bark is used for, what grasses, what different animals there were, the different scat, the different tracks, how to find things. And for [the youth] to listen to the elder with no interruption, in actual awe, like I said, it was awe inspiring to watch the knowledge pass on orally, and I guess, in a sense, like, on this physical landscape. It is important to us."*

-- Lynn Smith, Peavine Métis Settlement, Transcript Volume 5 [1666-1668]

During the oral Indigenous knowledge session, Peavine Métis Settlement noted how its Métis worldview is unique, notably with respect to industrial development and the effects on the Métis way of life:

*"So we come today; we're glad to share our Métis point of view. It's a bit unique. Not a bit unique, it is a very unique point of view, worldview. Especially as it pertains to industrial development and the effect it has on the cultural and indeed everyday way of life for the Métis, and not just the Métis, but every Albertan, every Canadian."*

*Indeed, the Métis have historically held a role of mediator, guide, translator, peacemaker, the general go-between groups. That has been our lot in life, which we relish. We love that we are sought out, I guess, to speak to different groups and to understand each group. So it's a role that we've held and we continue to hold. So with this in mind, you may find that the Métis are going to be true to their nature today. We are going to do our best to understand the project we have. We have gone out there. We have several people on our panel today that have actually gone to the site. That's why they're here."*

-- Greg Gauchier, Peavine Métis Settlement, Transcript Volume 5 [1622 and 1629-1630]

Peerless Trout First Nation also discussed concern over Project impacts on members' ability to share Indigenous knowledge and culture with younger generations and stated that the area surrounding the Red Earth study area is one where knowledge is transferred by way of families using the land together and where inter-generational teachings take place.

In its written evidence Peerless Trout First Nation indicated that Project impacts to social and cultural well-being are not limited to the construction phase. It stated that social and cultural well-being for the Indigenous populations surrounding the Project is inherently interconnected with TLRU and human health and will, as an 'element' (value component) interact with the Project during the operations phase as well.

Peerless Trout First Nation noted that a gender-based analysis (GBA+) had not been conducted for social and cultural well-being as it pertains to temporary work camps in the region and that the Project ESA does not contain information on how NGTL will assess and address impacts of the Project on diverse groups of people. Peerless Trout First Nation stated that within the community, women, men and children, in consideration of other identity factors, will be impacted in different ways by the Project. Peerless Trout First Nation stated that to better understand and adequately assess the impacts of the Project on the social and cultural well-being of all its members, NGTL should undertake GBA+ analyses to identify project impacts and then work collaboratively with Peerless Trout First Nation to address the results of the assessment.

Whitefish Lake First Nation #459 described the importance of transferring knowledge and stated that Elder Herman Sutherland regularly leads groups into the wilderness to teach them about traditional medicine in a hands-on way. Elder Herman Sutherland is concerned that there is little land left to exercise his Indigenous and Treaty rights because lands are being taken up and cleared for industrial purposes. In his written affidavit, which was filed in lieu of presenting oral Indigenous knowledge, Elder Herman Sutherland stated that, "*As a teacher, it is important... to pass down the knowledge and wisdom... about traditional knowledge medicines to others.*"

### **7.4.3 Human Health**

Impacts to human health, including physical, mental, and spiritual health, was identified as an issue by the following Indigenous peoples:

- Bigstone Cree Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Louis Bull Tribe
- Métis Nation of Alberta – Region 5
- Paddle Prairie Métis Settlement
- Peerless Trout First Nation

This Section pertains specifically to human health issues and concerns raised by Indigenous peoples. For issues related to non-Indigenous peoples, refer to Chapter 8.

Bigstone Cree Nation argued there's a clear connection between development of resources in and around its territory, and the health of its members. During the oral Indigenous knowledge



session Bigstone Cree Nation members expressed concern that development is leading to poor health outcomes amongst community members. Members of Bigstone Cree Nation also described a loss of solitude on the land, as a result of development, which Bigstone Cree Nation quoted in its final argument:

*“Today, when I go out there, I listen to the loud noise of silence we used to hear when I was sitting with my mom and dad out there on the bush. Now, you’ll hear plants going off and on. It’s no longer the solitude that they had and understood out there on the land.”*

As noted in Subsection 7.4.2, Driftpile Cree Nation stated the exercise of Indigenous and Treaty rights is essential to the health of both its members and its culture. While sharing oral Indigenous knowledge members of Driftpile Cree Nation described the connection of their health to their ability to hunt and consume a wild game diet, and how it has been affected by development. Driftpile Cree Nation also described how attempts to improve the health of the community are hindered by continuing resource development.

*“And if you disturb that land, you’re disturbing our health as it is now, when we’re trying to reincorporate our traditional lifestyles. And it’s a very slow process because many of our people, many of the Indigenous people have been brainwashed to believing that their lives don’t matter. And every life matters.”*

-- Elder Theresa Campiou, Driftpile Cree Nation, Transcript Volume 4 [1165-1166]

During the oral Indigenous knowledge members of Driftpile Cree Nation also described how their sense of identity and sense of belonging is tied to the land and has long been affected by colonization and continues to be affected by the development of their lands.

*“We already have a challenge as Indigenous people of coming back to who we are and bringing our spirit back. And that connection to the land is the ultimate of bringing our spirit back. [...] Because that is how we are as Indigenous people and that’s who we are as Indigenous people. We’re not going to -- I’m not going to shame my people anymore for being who they are. We were shamed through residential school; we were shamed through colonization; we were shamed through the Indian Act to not be who we are as people. And it’s necessary to connect to the lands for my children, especially, my grandchildren, they need to have that connection to the land.”*

-- Elder Theresa Campiou, Driftpile Cree Nation, Transcript Volume 4 [1139 and 1142]

Duncan’s First Nation stated that its members are very concerned with the effects of herbicide on food supply; specifically hunted wildlife species, and that there is an aversion to hunting in known sprayed areas like powerlines.

Louis Bull Tribe described the connection of their health to their ability to hunt and consume their traditional diet, and how it has been affected by development. During their oral Indigenous knowledge session, members of Louis Bull Tribe spoke about their preference to hunt for their food over buying it from a grocery store, stating it is part of their values and way of life, but that there is concern about the quality of meat that’s hunted.

While sharing oral Indigenous knowledge, members of Louis Bull Tribe also described how their ability to get out on the land is therapeutic and good for their mental health, but that development within Treaty 6 has reduced lands available to exercise traditional activities.

*“And how that helped me was to get out on the land and having my mooshum pour his knowledge into me. It was -- I found it therapeutic dealing with that PTSD that I did have, and I guess I still do.*

*But it was therapeutic, you know, to get out on the land like that, and hunt food for my family. And it's just -- you know, it was very helpful to me. It helped me get past, well, my experiences, helped me deal with them.”*

-- Trevor Larocque, Louis Bull Tribe, Transcript Volume 4 [1518-1519]

In its ESA, NGTL noted that Métis Nation of Alberta – Region 5 expressed concerns specific to Red Earth Section 3 regarding chemical sprays typically used to control vegetation growth. Métis Nation of Alberta – Region 5 is concerned about potential effects to water quality and the potential effects to the people who subsist on the animals and plants near where the chemical sprays are used. NGTL also indicated that the Métis Nation of Alberta – Region 5 requested NGTL provide information on the nature and type of chemicals planned for vegetation control use, as well as information regarding effects to aquatics, animals, and human health.

NGTL also noted in its ESA that Paddle Prairie Métis Settlement expressed concerns pertaining to the Hidden Lake North Unit Addition, regarding the potential effects to berries, food plants and medicinal plants, affecting human health as well as food security.

During their oral Indigenous knowledge session members of Peerless Trout First Nation spoke of health related concerns related to living off the land, including the consumption of contaminated water and food, as well as health and safety concerns stemming from airborne chemicals.

*“Our concerns many times were mostly the water. If we don't have good water, we don't have good health [...] and there's chemicals that come off the trees and poplar and everything that goes in the water.”*

-- Elder Emile Houle, Peerless Trout First Nation, Transcript Volume 1 [111]

#### **7.4.4 Heritage Resources**

Impacts to heritage resources was identified as an issue by the following Indigenous peoples:

- Doig River First Nation
- Peavine Métis Settlement
- Peerless Trout First Nation
- Swan River First Nation

This Section pertains specifically to heritage resource issues and concerns raised by Indigenous peoples. For additional information related to Heritage Resources, refer to Chapter 8.

In its evidence, NGTL noted that elders from Doig River First Nation identified potential for archaeological sites on the hillsides next to the Peace River, and four mounds were identified as having archaeological potential during the Bear Canyon North Extension site visit. NGTL also noted that Doig River First Nation requested that archaeological surveys be conducted throughout the Project site with the participation of its members, including both youth and elders.

In its TK Report, Peavine Métis Settlement indicated that by the Notikewin River in North Star Section 2, there were many large battles between Cree and Dene. The name of the river, Notikewin River, means 'battle', and many other rivers in the area were included in the battle region. Community members shared that historically, people would follow watercourses while travelling and, therefore, the banks of the Notikewin and Loon rivers have high archeological potential. Peavine Métis Settlement also indicated that there may have been a dried creek at Kilometer Post (KP) 1.8, but it was located on private land, and it had no access. Peavine Métis Settlement stated there is a high archeological potential at this location due to the history in the area.

NGTL noted in its ESA that Peavine Métis Settlement identified a Ukrainian church in the North Star Section 2 Local Study Area and indicated it could be over 100 years old.

In its written evidence Peerless Trout First Nation stated that many pre-existing pipelines in Canada were built prior to the requirement for archaeological assessments / heritage resource impact assessments and, therefore, there is a lack of data about the sites or potential that may exist directly adjacent to these lines. Peerless Trout First Nation stated that any ground-disturbing activity undertaken during the lifecycle of a project, including routine integrity digs as part of operations, has the potential to disturb archaeological resources. The community also stated it expects NGTL to be compliant with the guidance outlined within the Historic Resources Management branch bulletin entitled *Integrity Dig Historical Resources Act Compliance (2015)*, and requested to be involved in environmental and cultural monitoring during scheduled integrity digs.

In its ESA, NGTL stated that Swan River First Nation expressed concerns specific to the North Star Section 2, regarding the Project's potential effects on cultural resources and requested that the Historic Resource Impact Assessment report and recommendations for the Project be submitted to the community.

For issues related to ceremonial, habitation, plant gathering, burial, spiritual, historical and other cultural sites, refer to Subsection 7.4.7.4.

#### **7.4.5 Employment and Benefits**

Employment and benefits for Indigenous peoples, which includes contracting opportunities, education, training, and community investment as well as economic and other benefits, were identified as issues by the following Indigenous peoples:

- Bigstone Cree Nation
- Dene Tha' First Nation
- Driftpile Cree Nation
- Duncan's First Nation

- Kapawe’no First Nation
- Métis Nation of Alberta – Region 5
- Peavine Métis Settlement
- Peerless Trout First Nation
- Whitefish Lake First Nation #459

This Section pertains specifically to employment and benefit issues and concerns raised by Indigenous peoples. For issues related to non-Indigenous peoples, refer to Chapter 9.

#### **7.4.5.1 Employment and Contracting Opportunities**

In NGTL’s TK Report, it noted that Bigstone Cree Nation has indicated it is involved in business opportunities, such as camp partnerships, that could benefit pipeline companies. NGTL also noted that Bigstone Cree Nation recommended that a percentage of Indigenous peoples be hired for monitoring and construction jobs and that priority be given to locals when hiring staff and contractors.

NGTL also noted in its TK Report that Métis Nation of Alberta – Region 5 expressed concerns that there are not enough local jobs for Métis people on these projects. NGTL also noted that Métis Nation of Alberta – Region 5 had requested inclusion in job and contracting opportunities on the Project and that the office receives early and timely information on the call for bids and prequalification process relating to the contracting services, wildlife and water monitoring, or engineering activities.

Peavine Métis Settlement members identified the harvesting of peat moss, prior to construction, as a potential partnership opportunity for NGTL to work with the community and help build economic growth within their community and communities in the area. Peavine Métis Settlement also recommended that NGTL further discuss the distribution and harvesting of resources such as, timber cleared from the ROW with Peavine Métis Settlement, as wood that is not commercially valuable could be salvaged for firewood or could provide a promising job opportunity for an Indigenous community to make plywood. In its TK Study, Peavine Métis Settlement also noted that it has an affiliated forestry company that could be hired to remove trees from the ROW.

During its oral Indigenous knowledge session members of Peerless Trout First Nation spoke of how they do not want handouts, how they want to work, and how they believe that a partnership with NGTL would help the community financially. They stated they want to be a part of the Project. Peerless Trout First Nation also made a number of requests for outreach, agreements, commitments, and other assurances in its written evidence. Additionally, during the oral Indigenous knowledge session Peerless Trout First Nation communicated its interest in a formalized business procurement agreement regarding the provision of a worker camp at the Peerless Trout Camp.

*“We have a camp that is located in Peerless Lake, an open camp. It’s an 82-man camp that is available when the Project starts. [...] So I am not here to try and put a stop to this. I am here to work with you. I am the manager of the band-owned company for Peerless Trout First Nation. We do have equipment, we do have resources, and we would like to work with TransCanada on this. We do have logging; we are into the*

*logging business, as well. And reaching out to help us, as we employ our people, train our people.”*

-- Marcel Noskiye, Peerless Trout First Nation, Transcript Volume 1 [249 and 258]

Peerless Trout First Nation stated that as of the filing of its final argument, NGTL had not reached out to discuss employment, training and / or procurement opportunities. Peerless Trout First Nation submitted that it is concerned with the lack of discussion on this issue, and that indirect references to TC Energy’s Aboriginal Business Procurement programs in generic brochures and email attachments are not sufficient. Peerless Trout First Nation stated it requires in-person meetings to formalize plans and agreements.

In its written evidence Whitefish Lake First Nation #459 stated that there is limited to no real opportunity for partnerships, employment, contracts or training associated with local and area oil and gas activity. Whitefish Lake First Nation #459 also stated that NGTL should and could seriously consider partnering with all Indigenous communities affected by the Project and stated its view that such arrangements would contribute to enabling Whitefish Lake First Nation #459, as well as the other affected Indigenous communities, to become more self-sustaining.

#### **7.4.5.2 Education, Training and Community Investment**

During its oral Indigenous knowledge session members of Driftpile Cree Nation urged NGTL to invest in its community and to provide opportunities for its members.

*“[...] I would like to put a challenge out there to the company that’s going to be doing this project, that you’d be the first company to open doors, to open up your hearts and find a way to maximize the knowledge that our people have, and maximize the resources so they all can have a chance to go out and earn a dollar, instead of what I see happening now.”*

-- Elder Peter Freeman, Driftpile Cree Nation, Transcript Vol. 4 [1207]

#### **7.4.5.3 Benefits for Indigenous Peoples**

Throughout the hearing process Indigenous peoples who were Intervenor in the hearing process made a variety of different recommendations to ensure that their communities benefit from the Project. Some of these include financial benefits such as compensation, while other non-financial benefits could come in the form of partnerships and decision-making opportunities, as well as housing and energy security.

Bigstone Cree Nation stated members are frustrated about being excluded from decisions that will impact the territory and resources that underpin the exercise of their constitutionally protected rights. Bigstone Cree Nation described its desire to have a meaningful role in the decision making process that is not just limited to participating in hearings, but rather, gives it a voice, and a seat at the table.

As noted above, Dene Tha’ First Nation identified garbage on a lease site near the Hidden Lake North Unit Addition. Dene Tha’ First Nation requested that it be contracted to keep the lease sites clean.

Driftpile Cree Nation and Whitefish Lake First Nation #459 both argued that the Commission must only recommend the Project be approved if there are adequate conditions in place to ensure its impacts are appropriately mitigated and accommodations are established for the communities to share in any economic benefits that might flow from the Project. During its oral Indigenous knowledge session, Driftpile Cree Nation also discussed its desire to develop long-term benefits with NGTL.

Duncan's First Nation stated that if the Project is approved, potentially impacted Indigenous communities should receive economic benefits from the Project. It also argued that NGTL should be required, as a condition of the Project, to co-develop a plan for socio-economic benefits (Socio-Economic Inclusion Plan) with potentially impacted Indigenous communities. Duncan's First Nation stated that such a condition would more fully integrate Indigenous peoples and therefore Indigenous knowledge and experience into the Project while also helping to support the communities on whose territories the Project is located.

Peerless Trout First Nation stated that its evidence highlighted how the Project represented possible opportunities for providing economic benefits to the community, should appropriate accommodation measures such as mutual benefit agreements and commitments be established to ensure that these benefits occur. Peerless Trout First Nation stated that the community is interested in the potential positive effects that the proposed Project represents in terms of socio-economic benefits through business procurement and other economic development mechanisms. Peerless Trout First Nation stated the desired approach to this is one based on meaningful engagement and partnership.

While providing oral Indigenous knowledge, Peerless Trout First Nation discussed the types of benefits they would like to see for the community, which included a partnership as well as yearly compensation for trap line holders. Peerless Trout First Nation also discussed how partnerships should provide and help the community with its needs and noted that it has a major issue with housing, and that funding for housing would greatly benefit the community.

Peerless Trout First Nation stated that, as of the filing of its final argument, it has not been engaged by NGTL regarding any form of Mutual Benefit Agreement that reflects accommodation measures to address the impacts it has and continues to experience from NGTL and its parent company, TransCanada. Peerless Trout First Nation stated it expects to experience socio-economic benefits from the Project, in formalized ways to help make right historical wrongs.

Further, in its written evidence Peerless Trout First Nation described its concerns related to, what it referred to as "*energy insecurity*" or "*energy injustice*". Peerless Trout First Nation stated it is negatively impacted by ongoing development to support energy security for others, in markets outside of its territory without being provided that benefit themselves. Peerless Trout First Nation explained that it is dependent on propane and wood to meet energy needs. It stated that both energy resources are costly, unreliable in the long-term and are insufficient in meeting energy demands. Peerless Trout First Nation stated that the energy insecurity that its members experience is a point of ongoing frustration and is increasingly aggravated by continued energy development projects, such as the Project, within Peerless Trout First Nation territory that provide energy to other energy consumers. Peerless Trout First Nation stated that one of its long-term objectives is to become energy secure and benefit directly from energy projects within its territory.

Peerless Trout First Nation stated that the community does not have access to gas energy so the community is not one of NGTL's markets that will benefit from gas production and distribution. In the absence of this, other benefits need to be generated as a form of accommodation for the adverse impacts the community has and continues to experience as a result of this Project and past projects within the its traditional territory.

#### **7.4.6 Monitoring by Indigenous Peoples**

Monitoring or participation in monitoring by Indigenous peoples was identified as an issue by the following Indigenous peoples:

- Beaver First Nation
- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Doig River First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Gift Lake Métis Settlement
- Horse Lake First Nation
- Louis Bull Tribe
- Métis Nation of Alberta – Region 5
- Peavine Métis Settlement
- Peerless Trout First Nation
- Tallcree First Nation
- Whitefish Lake First Nation #459

In its evidence, NGTL noted that Beaver First Nation requested to be actively engaged with all proposed reclamation activities. NGTL stated that Beaver First Nation also requested that a monitor from its community be onsite pre-, during, and post-construction to ensure potential Project effects to streams and wildlife are minimized.

During its oral Indigenous knowledge session, members of Bigstone Cree Nation explained that they understand that they have a right, and obligation, to steward the land.

The Cadotte Lake Métis Local #1994 indicated its interest and willingness to actively participate in monitoring and follow up programs. The Cadotte Lake Métis Local #1994 stated it has identified interests and values that may be impacted by the Project and it would like to play a meaningful role in determining and monitoring how those interest and values are addressed through the construction, reclamation and follow-up phases of the Project. The Cadotte Lake Métis Local #1994 stated it feels this is suitable given that consultation is deemed to be an ongoing activity that occurs over the different phases of a project's advancement through the development process.

During its oral Indigenous knowledge session, Dene Tha' First Nation indicated that it needs to be directly involved in the planning and the implementation of the plans for this Project. During its oral Indigenous knowledge session Dene Tha' First Nation explained some of the reasoning behind why it asks for Indigenous monitors.

*“The lifetime of the Project and its activities will undoubtedly interfere with Dene Tha' and its exercise of treaty rights. The degree to which those can be mitigated, avoided, reduced, accommodated, through activities and actions that we can do as traditional knowledge holders, as sentient beings that have will and ability and the need to do these things, to protect those values, and to protect our constitutionally-protected treaty rights.”*

-- Matthew Munson, Dene Tha' First Nation, Transcript Volume 3 [921]

In its evidence, NGTL stated that Doig River First Nation has requested that archaeological surveys be conducted throughout the Project site with the participation of its community members, including both youth and elders.

Driftpile Cree Nation recommended that the Commission require NGTL to create a detailed monitoring program that clearly outlines how the effectiveness of mitigation strategies (specific to TLRU) will be assessed throughout construction and operations (e.g., if their communication strategies with Indigenous land users are effective or need to be revised). Driftpile Cree Nation also indicated its interest, and responsibility as stewards of its territories, to be directly involved in environmental protection planning and oversight during Project construction and operations.

Driftpile Cree Nation and Whitefish Lake First Nation #459 both stated that in the event the Commission recommends the Project for approval, it is important that both communities' members have an opportunity to be involved in the construction and operation phases of the Project. They stated this will not only allow them to share in economic opportunities that may flow from the Project, but also ensure that the knowledge of community members would be utilized to protect their interests.

Both Driftpile Cree Nation and Whitefish Lake First Nation #459 acknowledged that NGTL has included a variety of monitoring plans and engagement measures in its Project application, but, they remain concerned that the proposed CER conditions primarily impose reporting requirements on NGTL rather than concrete commitments to Indigenous peoples' involvement.

Driftpile Cree Nation and Whitefish Lake First Nation #459 stated they must be directly involved in the regulation and monitoring of the Project as they hold an inherent right to ensure the protection and stewardship of their territories. They stated this must include involvement in Project planning and environmental and cultural monitoring throughout construction, operations and maintenance. Driftpile Cree Nation and Whitefish Lake First Nation #459 stated they remain committed to working in good faith with the provincial and federal Crown agencies, regulatory bodies and NGTL, as appropriate.

Duncan's First Nation stated it is essential that local First Nations be key players in the stewardship of the Project area. Duncan's First Nation stated it has a deep ethic of stewardship of its lands and waters and that this ethic is predicated on the requirement to use the lands and waters in a respectful, sustainable manner both for the wildlife and plants that live in its territory and for future generations of Duncan's First Nation members and non-Indigenous people. Duncan's First Nation stated that the integration of the community into the stewardship of the



Project area represents an opportunity to harness the ethic of care and responsibility as well as the years of knowledge and experience about the Project area that it holds.

In its TK Report, NGTL noted that Gift Lake Métis Settlement recommended that an environmental monitor be on site for the duration of the Project and recommended a site visit to determine the extent of damages and identify if transplanting needs to occur.

In its evidence, NGTL stated that Horse Lake First Nation requested that environmental monitors be onsite during and post-construction to monitor the effects of the Project on plants, animals, and Horse Lake First Nation's traditional way of life.

Louis Bull Tribe stated that Indigenous environmental monitors with a familiarity of the land should be involved in onsite post-construction monitoring to ensure that mitigation measures were successful in maintaining important environmental features required for the continuation of traditional practices in the area. Louis Bull Tribe also stated that as part of proper consultation and accommodation of Treaty rights, it should have meaningful involvement in monitoring and oversight through the lifecycle of this proposed Project. Louis Bull Tribe stated this includes acknowledgement and incorporation of TK in Project planning phases, as well as providing opportunities for on the ground environmental monitoring and collaborative input into adaptive management strategies.

In its evidence, NGTL indicated that the Métis Nation of Alberta – Region 5 would also like to ensure that any temporary bridge across the Loon River has a monitor from the Métis Nation of Alberta – Region 5 community present as the pipeline is being installed.

Peavine Métis Settlement recommended that a Peavine Métis Settlement community member be hired to monitor all watercourse crossings and that Indigenous monitors be present during construction to ensure the protection of waterways and that Project activities are properly conducted, cleaned up, and reclaimed, that Peavine Métis Settlement be hired to conduct long-term water monitoring to ensure that water quality is being maintained during and after construction, and, that a Peavine Métis Settlement member be present during construction and post-construction activities.

During its oral Indigenous knowledge session Peavine Métis Settlement explained its reasoning for recommending a monitor from its community.

*"In a sense, monitors -- I like analogies, but in a sense, monitors are like the scrutineers at a voting poll. Whereas industry has their own monitors, government has their own monitors, and I feel quite strongly that the Indigenous people should have their own monitors. And through the three, we can work collaboratively."*

-- Greg Gauchier, Peavine Métis Settlement, Transcript Volume 5 [1786]

Peavine Métis Settlement also explained how Indigenous monitors have an invested interest in monitoring because they are stewards of the land.

*"[...] I know it's been mentioned time and time again about monitors, but I can't express enough the importance of having Indigenous environmental monitors, for we have an invested interest. The monitor -- like, the Indigenous monitor would go beyond life of projects. For when the oil is depleted and the pipelines gone, our community, our people are still there using the lands."*

*The Métis, and indeed all Aboriginal peoples have been thrust into the role of environmental stewardship. Whether you agree with it or not, that's our lot in life.*

*So our message is, we must be involved, we must, from cradle to grave, be involved in larger projects like this, important projects. Far be it from us to delay or terminate a project as important as this. That is not our intention at all. Our intention is, yes, it has to happen, it has to go forward, this is our way of life now as well. We live in a modern society. Métis are modern people. But let's, together, make sure that we all play our role.*

*In the end, it's not what is taken from the lands, it's what's given back to the lands. It's how those lands are maintained. It's how we ensure that we have a future."*

-- Greg Gauchier, Peavine Métis Settlement, Transcript Volume 5 [1784 and 1820-1822]

As noted above, Peavine Métis Settlement noted that members observed construction garbage in the Project area. It also noted that a post-construction monitor would help ensure that proper cleanup occurs, and that no debris is missed.

Peerless Trout First Nation stated that there have been insufficient opportunities for Indigenous peoples' involvement and knowledge in lifecycle monitoring to ensure its Treaty rights and interests are respected through all phases of the Project. It also stated that in general, and across all value components, there is no indication of NGTL's interest or intention of including Indigenous environmental and cultural monitors during the Project's EPP planning, construction activities, reclamation activities, or operations and maintenance phases. Peerless Trout First Nation stated that it requires a formal agreement with NGTL that its members will be directly involved in environmental and cultural monitoring during both construction and the operations and maintenance phases and that capacity will be required for training for such involvement.

Peerless Trout First Nation argued that there is a need for Environmental Monitors and Inspectors for the entire lifecycle of the Project. As a portion of the Project (Red Earth Section 3) occurs within its traditional territory and its members have utilized this land for generations, they have familiarity with the land and waters that may be affected by the Project. As such, Peerless Trout First Nation stated that members of First Nation communities, including Peerless Trout First Nation, have inherent knowledge that would provide useful as Environmental Monitors and Inspectors during the life of the Project.

In its written evidence Peerless Trout First Nation recommended that an Indigenous monitoring committee with direct involvement in the Caribou Habitat Restoration and Offset Measures Plan and other environmental and cultural value monitoring plans be established.

In its Application, NGTL stated that NGTL and Tallcree First Nation met and discussed Tallcree First Nation's interest in monitoring during construction.

#### **7.4.7 Traditional Land and Resource Use**

##### **7.4.7.1 NGTL's Assessment Methodology and Mitigation Measures**

The adequacy of NGTL's ESA methodology and its assessment of Project impacts to TLRU sites and activities, as well as the adequacy and effectiveness of NGTL's proposed mitigation

measures to address those impacts were identified as issues by the following Indigenous peoples:

- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Louis Bull Tribe
- Peerless Trout First Nation
- Swan River First Nation
- Whitefish Lake First Nation #459

Cadotte Lake Métis Local #1994 and Duncan's First Nation requested that NGTL and the CER employ a more robust methodology for evaluating the potential impacts of the Project on Indigenous and Treaty rights and, to collect information required to carry out that methodology. Cadotte Lake Métis Local #1994 and Duncan's First Nation also requested that the CER direct NGTL to adapt the methodology co-developed by Canadian Environmental Assessment Agency and the Mikisew Cree First Nation in the Frontier Oil Sands mine EA or a methodology of similar scope and rigour. Dene Tha' First Nation also stated that NGTL should assess impacts on its rights in accordance with the methodology co-developed for the Frontier Oil Sands Mine Project.

Cadotte Lake Métis Local #1994 stated its position is that a reliable assessment of the impacts of the Project on its Indigenous rights cannot be conducted by merely relying on the current assessment of potential effects on the current use of lands and resources for traditional purposes or on discrete biophysical components such as wildlife. Cadotte Lake Métis Local #1994 stated that an assessment of impacts to Indigenous rights includes consideration of experience, culture, governance, knowledge and other factors. Cadotte Lake Métis Local #1994 stated that the ESA restricts the analysis of potential impacts to rights to the consideration of residual effects on traditional harvesting or physical activities associated with traditional use and does not assess effects to other components. Cadotte Lake Métis Local #1994 stated the assessment of other components is possible and also necessary to understanding potential impacts to Indigenous rights.

Dene Tha' First Nation stated that NGTL's assessment of the Project impacts on its rights and interests is deficient. Dene Tha' First Nation stated that in the ESA, NGTL purported to assess residual and cumulative Project impacts on its TLRU but that assessment was perfunctory in nature. Dene Tha' First Nation also stated that the ESA makes no effort to assess Project impacts on its practices in particular but rather purports to assess Project impacts on 20 Indigenous communities who stand to be affected by the Project on a collective basis. Dene Tha' First Nation expressed that "*these are independent peoples with distinct cultures, traditions, values and perspectives, occupying different territories. They are bound to experience the Project's effects differently.*" Dene Tha' First Nation also stated that the ESA includes no discussion of the particular interests, practices or concerns of Dene Tha' First Nation in relation to the Project and as a result, the predictions of Project impacts on its practices contained in the Application are not reliable.

Dene Tha' First Nation stated that while NGTL's Additional TK Report includes a great deal of Project-specific information in relation to Dene Tha' First Nation rights and interests, NGTL did not update or revise its assessment of Project impacts on its TLRU. Additionally, Dene Tha' First Nation stated that NGTL has failed to provide sufficient analysis of the cumulative adverse effects of the Project and that NGTL's failure to provide an appropriate assessment of the Project's cumulative effects on its Indigenous and Treaty rights should preclude the CER from recommending the issuance of a Certificate in relation to the Project.

In its written evidence, Dene Tha' First Nation commented on mitigation and management strategies. Dene Tha' First Nation stated that the effectiveness of any mitigation and management strategies must be measured against an adequate baseline so as to create the space for a clearly defined adaptive co-management process, with Dene Tha' First Nation, where Project impacts to its constitutionally protected Indigenous and Treaty rights, wildlife and wildlife habitat, and environmental support systems, can be monitored, identified, assessed and meaningfully addressed and, as the need may arise, be adapted and adjusted, in order to create and maintain conditions suitable and preferred for the Dene Tha' First Nation, wildlife, and ecosystem values that are the subject of any NGTL management plans.

Driftpile Cree Nation stated that it found that, in general, NGTL does not address the full scope of potential impacts (e.g., operations) on TLRU, and further to this, Driftpile Cree Nation stated it is not clear how NGTL will evaluate if its mitigation of impacts to TLRU are successful or how NGTL will adapt if mitigations are ineffective. Driftpile Cree Nation also stated that NGTL's Regional Study Area is too small and therefore does not allow for impacts at the local scale to be evaluated within the context of larger land use patterns. Further, Driftpile Cree Nation stated that NGTL's Cultural Resource Discovery Contingency Plan lacks meaningful inclusion of Indigenous communities.

Both Driftpile Cree Nation and Whitefish Lake First Nation #459 expressed concern that NGTL has not appropriately considered or assessed cumulative effects, and that NGTL's assertion that there will not be significant adverse effects suggests a lack of understanding and consequent omission of consideration of the impact other development has had on Driftpile Cree Nation and Whitefish Lake First Nation #459's ability to harvest and, in turn, their way of life and community well-being.

Duncan's First Nation stated that since the filing of the Project Application and ESA, that it has provided a comprehensive body of information to NGTL and the Commission. Duncan's First Nation stated that despite the volume of additional evidence on impacts to its rights, there has been no assessment of these impacts or any change made to the ESA as a result of the information provided. Duncan's First Nation also stated that without an assessment of its Indigenous and Treaty rights, there is a real and credible risk that the Project will be approved without an understanding of the full impact of the Project on the community and the exercise of its rights. Duncan's First Nation also argued that NGTL's assessment of TLRU is deficient and was based on limited information, including a very cursory literature review, and outdated approaches.

In its written evidence, Louis Bull Tribe noted a number of concerns with NGTL's assessment and ESA. Some of the issues Louis Bull Tribe noted include inadequate mitigation measures, limited scope of issues, incomplete surveys, and missing baseline data.

Louis Bull Tribe also requested that the Commission consider NGTL's claim that three separate environmental professional consulting firms were unable to refute the reasonableness and

adequacy of NGTL's responses. Louis Bull Tribe stated this claim is unfounded and it believes that the three environmental consultants cannot all be unable to adequately refute the NGTL responses. Louis Bull Tribe stated it also believes that NGTL is not in the position to claim that the evidence filed failed to refute the reasonableness or adequacy of NGTL's responses, and requested that the Commission make that determination through thorough review of the evidence and with ongoing consultation with Louis Bull Tribe.

Louis Bull Tribe stated it is concerned with NGTL's assessment of the ALCES work that was submitted on behalf of Duncan's First Nation. Louis Bull stated that it can find no support in the available materials for the assertion that the work done by ALCES had a "*number of incorrect assumptions regarding availability of lands in the region for TLRU, which resulted in results that are inherently unreliable*". Louis Bull Tribe stated it believes that the Commission should seek a third-party fact-based review of this work.

Louis Bull Tribe stated that its understanding that the submission about impacts on TLRU from Duncan's First Nation was in fact an effort to provide objective numbers to have an informed discussion about those impacts. Louis Bull Tribe stated that in its review of the methods provided there were no apparent errors in the calculations done using the ALCES software or in the underlying data set. Louis Bull Tribe argued that it appears that NGTL was unhappy with the scale of the potential impacts and has chosen to attack that information rather than engage in a meaningful manner.

Peerless Trout First Nation expressed concern that issues and information gaps with the ESA reflect potential risk to the community "*as the full spectrum and nature of impacts resulting from the Project during construction and operations and maintenance are not being fully acknowledged and / or mitigated for*". Peerless Trout First Nation stated that NGTL acknowledges interactions with all aspects of TLRU during construction, but only fishing and plant gathering during the operations phase. Peerless Trout First Nation stated that given the nature of certain operations and maintenance activities (e.g., integrity digs) there is potential for interactions with hunting, trapping, gathering, and trail access as well.

Peerless Trout First Nation stated it is also concerned that there are insufficient mitigation measures to address impacts to wildlife, fish, and plant species and associated habitats. Peerless Trout First Nation stated the focus of NGTL's proposed mitigation measures appear to be engagement and notification-related, and that this strategy does not avoid or mitigate the disturbance from happening. Peerless Trout First Nation stated this type of mitigation may be adequate enough to partially alleviate some of the Project-related impacts on TLRU, however, Project-related impacts will still occur and, since they cannot be fully avoided, compensation measures are required.

In its TK Report, NGTL noted that Swan River First Nation expressed concern that NGTL did not look at the Project route holistically on the landscape and that the community requested that more integration occur between all resource development proponents.

Whitefish Lake First Nation #459 indicated it is concerned that NGTL has not appropriately considered or assessed cumulative effects. Its written evidence concluded that an expansion of the scope, focus and spatial boundaries of any assessment of cumulative effects is necessary for the Regulator and NGTL to appropriately mitigate these concerns.

#### 7.4.7.2 Traditional Knowledge Studies

The incorporation of information provided in Indigenous communities' TK studies into Project planning and mitigation management was identified as an issue by the following Indigenous peoples:

- Bigstone First Nation
- Dene Tha' First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Peerless Trout First Nation
- Whitefish Lake First Nation #459

Bigstone Cree Nation stated that in addition to the direct and cumulative impacts associated with oil and gas development within its traditional lands, members have expressed frustration about being excluded from decisions that will impact the territory and resources that underpin the exercise of their constitutionally protected rights. Bigstone Cree Nation also described a lack of agency over decisions that will have long lasting impacts on the resources upon which it depends, and that there is a feeling that the information and knowledge that it shares is not meaningfully considered in the decision-making process.

In its written evidence, Dene Tha' First Nation discussed how its TK should be incorporated into the Project. For example, Dene Tha' First Nation stated its harvesters know where the caribou are, where they used to be, and what ideal bio-physical environmental conditions would allow passive habitat restoration and active caribou stabilization and recovery measures. Dene Tha' First Nation stated that its vast TK about caribou should be incorporated in a meaningful way that will support recovery of caribou in the face of further habitat loss and impacts from NGTL's proposed Projects.

During its oral Indigenous knowledge session Dene Tha' First Nation members described how they need to be listened to, as they are the ones living off the land.

*"We need to be listened to if we're going to say something regarding our lands. It's not a made-up story. We need it to be protected. We need the regulators to listen to us. Because we're the people that are living off the land."*

-- Elder Fabian Chonkolay, Dene Tha' First Nation, Transcript Volume 3 [810]

Dene Tha' First Nation stated that it had met with NGTL occasionally on the Project but that its concerns in relation to the Project remain unaddressed. In particular, Dene Tha' First Nation stated that NGTL has not made any changes to its approach to mitigating Project impacts on woodland caribou in response to Dene Tha' First Nation's concerns. Additionally, Dene Tha' First Nation stated that it has yet to meaningfully discuss with NGTL or the Crown how the wealth of information contained within the TK Report has or will be used to inform the EA, the Crown's decision-making process, possible Project approval conditions, and any Project-specific plans such as construction, mitigation and/or EPPs. For further discussion related to caribou, refer to Chapter 8.

Driftpile Cree Nation and Whitefish Lake First Nation #459 indicated they are concerned that NGTL did not create community-specific TLRU studies to identify direct and cumulative effects and argued that any Project approval should be conditional upon the completion of these studies prior to construction and the integration of the findings of the studies into the Project planning process.

Duncan's First Nation took issue with statements made by NGTL regarding the scale used in the community's TK Reports. NGTL stated that the scale used to describe the '*Relative Intensity of Rights / Community Land and Resource Use Activity Depicted*' was "subjective" and "inherently difficult to rely on" in determining the community's ability to exercise rights. Duncan's First Nation argued these statements were an "an unjustified diminishment of Duncan's First Nation's traditional Indigenous knowledge" and that NGTL's assertion that the evidence is unreliable "fails to grapple with evidence about the present constraints on Duncan's First Nation's exercise of Treaty rights". Duncan's First Nation stated that the Commission should reject NGTL's suggestion that its evidence, presented verbatim from its elders and land users, is not reliable.

Peerless Trout First Nation stated there is no formal mechanism to ensure it will be involved and that its knowledge will be used throughout the Project's lifecycle. Peerless Trout First Nation stated its meaningful engagement and participation after approvals are imperative to ensure its Treaty rights and interests are respected through all phases of the Project. During its oral Indigenous knowledge session, Peerless Trout First Nation expressed some concerns it had about its TK Study, saying they felt rushed and wanted more time to be spent on the study before continuing.

#### **7.4.7.3 Access to Lands**

This Subsection includes issues and concerns raised by Indigenous peoples related to the reduction or perceived reduction in the availability of Crown lands for conducting TLRU activities, restricted access to traditional use areas for Indigenous peoples, and, increased access for non-Indigenous peoples.

Access to lands was identified as an issue by the following Indigenous peoples:

- Bigstone Cree Nation
- Cadotte Lake Métis Local #1994
- Dene Tha' First Nation
- Doig River First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Louis Bull Tribe
- Métis Nation of Alberta – Region 5
- Paddle Prairie Métis Settlement
- Tallcree First Nation
- Whitefish Lake First Nation #459

Bigstone Cree Nation described the importance of being able to access the land and resources for the practice of their rights, and how the practice of these rights gets taught from generation to generation by being out on the land.

In its evidence, NGTL indicated that Cadotte Lake Métis Local #1994 is concerned about increased access to hunting areas and cumulative effects on hunting due to multiple projects in its traditional territory. Cadotte Lake Métis Local #1994 also stated it is concerned about the number of moose that are being hunted across these areas and the sheer amount of easy access that has been created by oil and gas companies' access roads, powerline ROWs and pipeline corridors.

Dene Tha' First Nation stated that with each new development that takes place, more and more lands are taken up, leaving fewer and fewer areas for Dene Tha' First Nation people to meaningfully exercise their rights. Dene Tha' First Nation indicated during its oral Indigenous knowledge session, that its people's ability to undertake traditional activities in the vicinity of the proposed Project has eroded significantly. For example, members discussed how ploughing the land for planting prohibits access to the area and noted that when the land is ploughed they cannot traverse by snowmobile because it will destroy their equipment. Members further discussed access management and its effects on trappers during their oral Indigenous knowledge session:

*"[...] It shouldn't be ploughed over. Once it's burned, take your trees and leave it, don't plough it and do not make no roll back because that's how we check our traplines and see how damaged it is. But if there is a roll back, there's no way and it's already -- the traditional trail is damaged, there's no way in. There's no way we can check our cabins and our traplines. And it's -- if they log it over, then we're stuck."*

-- Elder Fabian Chonkolay, Dene Tha' First Nation, Transcript Volume 3 [867]

In its evidence, NGTL noted that Doig River First Nation has a strong historical and cultural relationship with caribou and identified caribou as vital to traditional practices and cultural continuity. NGTL also noted that Doig River First Nation TK holders observed that caribou are declining throughout their traditional territory and noted that linear disturbances to forests (such as pipelines) give wolves and other predators an advantage when hunting.

To address this issue, NGTL stated that Doig River First Nation requested that NGTL implement access and sightline control measures, as well as habitat restoration and offsetting measures. NGTL also stated that Doig River First Nation members did a helicopter overflight of the existing Boundary Lake pipeline and observed that access control measures and habitat restoration measures were not effective. NGTL stated that Doig River First Nation requested that NGTL ensure access control measures be more effectively implemented and that more organic revegetation patterns, accompanied with careful selection and planting of understory vegetation and shrubs, be conducted.

During its oral Indigenous knowledge session members of Driftpile Cree Nation discussed how they have to travel further away to harvest their resources from the land. They also spoke of how their land is starting to shrink and their resources are being depleted because of all the development activities which are clearing their harvesting areas.

Duncan's First Nation stated that additional development within its territory not only alters the land, it also alters the community's relationship to the land in a spiritual sense. The community



also indicated it has concerns related to increased human access and ease of movement for predatory wildlife resulting in increased mortality for large game relied upon by Duncan's First Nation. Duncan's First Nation stated it has observed that a project's existing corridors permit excessive human access, intrusion and increased natural predation and hunting and that expanding the width of the corridor also increases hunter access and success, thus decreasing available game for Duncan's First Nation members.

Duncan's First Nation and Louis Bull Tribe requested / recommended to the Commission and the GIC that a Crown Land Offsets Program be established. Duncan's First Nation recommended this happen in collaboration with the Province of Alberta to mitigate the impact of taking up and disturbance of Crown lands on its section 35 Rights. Duncan's First Nation stated there should be shared stewardship responsibilities for this land between Indigenous communities and AB. Duncan's First Nation made a number of additional recommendations regarding the proposed Crown Land Offsets Program.

Regarding a Crown Land Offsets Program, in its oral Indigenous knowledge session, Louis Bull Tribe stated:

*"[...] We are seeking different ways and new solutions to find ways to protect areas to practise rights in this province. We would love to have areas returned to a natural state within Treaty 6, but that battle is a long hard-fought battle."*

-- Melanie Daniels, Louis Bull Tribe, Transcript Volume 4 [1502]

Louis Bull Tribe described in its written evidence how land users, hunters, gatherers and elders have been forced to commute to Treaty 8 to carry out traditional uses as, it is of the view, Treaty 6 has been developed so extensively that there is nowhere to practice rights without encountering human disturbances and humans. In its oral Indigenous knowledge session, Louis Bull Tribe stated:

*"This project is outside of the regular use area. however, we do have folks in Louis Bull that do come up into these regions, we have family members that reside in other First Nations in Treaty 8, and we still have a very viable trade network where we trade for medicines or other items with First Nations and family members that reside within this area. So it's very important to us to stand with the Treaty 8 First Nations to protect what's left in Alberta for our continued and future use, and especially for our future generations."*

-- Melanie Daniels, Louis Bull Tribe, Transcript Volume 4 [1498-1499]

In its TK Report, NGTL noted that Métis Nation of Alberta – Region 5 is concerned that construction of the Project will increase access for non-Indigenous hunters and harvesters and will increase competition for harvested food. NGTL noted that Métis Nation of Alberta – Region 5 intends to utilize the Project area for traditional food and medicine procurement, and requested that access to non-Indigenous harvesters be regulated. Additional support and consultation from NGTL regarding access and utilization of the region for harvesting was also requested.

In its TK Report, NGTL noted that Paddle Prairie Métis Settlement expressed concerns regarding the reduction in availability of intact Crown land and traditional resources and

members having to travel further to seek additional harvesting areas as well as for hunting, trapping, fishing and plant harvesting.

In its evidence, NGTL noted that Tallcree First Nation is concerned about the Project increasing the area of permanently disturbed lands, particularly around Red Earth Section 3, and reducing the total area of land community members have to practice traditional land use and to enjoy the land.

In his affidavit that was filed in lieu of sharing oral Indigenous knowledge, Fabian Grey, of Whitefish Lake First Nation #459, stated that his primary concern is that the lands currently used to hunt and gather will be taken away from the community. In its written evidence, Whitefish Lake First Nation #459 stated that access roads and infrastructure lead to more industrial development and the fragmentation of the landscape. Additionally, it stated that areas once too difficult to travel through become more easily accessible by snowmobile, quads and trucks. Whitefish Lake First Nation #459 stated that this new access has resulted in increased and adverse impacts to wildlife, as well as increased hunting and fishing.

#### **7.4.7.4 Potential Project-Related Effects on Traditional Land and Resource Use Sites and Activities**

Project-related effects on TLRU were identified as issues by nearly every Indigenous peoples.

Many concerns were raised by Indigenous peoples about the Project's potential impacts on their use of lands, waters, and resources for cultural and traditional purposes, including hunting and trapping, fishing, gathering / harvesting, use of trails and travelways, and ceremonial practices. Indigenous peoples also expressed concerns about the Project's potential impacts on TLRU sites, including, but not limited to ceremonial, habitation, plant gathering, burial, spiritual, historical, and other cultural sites.

This Section will discuss the specific issues and concerns by subject matter below.

##### Hunting / Trapping

In its evidence, NGTL noted that Beaver First Nation identified the North Star Section 2 Regional Study Area as a good hunting area, and stated that wildlife continues to be important and it is critical for the community that ample wildlife populations be available for current and future generations for sustenance purposes. NGTL stated that Beaver First Nation expressed concern about potential effects to wildlife patterns and / or movement from ROWs and requested that all game trails be flagged and buffered before construction and that all nesting areas be avoided.

Bigstone Cree Nation members expressed concern about how oil and gas development is impacting animal habitat, which in turn, impacts their ability to hunt and trap. Bigstone Cree Nation indicated during its oral Indigenous knowledge session that its members have seen these impacts on their ability to trap, including changes to seasonal migration patterns.

Cadotte Lake Métis Local #1994 stated it involved community members in "*on-the-ground reconnaissance activities*" and in "*one-on-one biography interviews*". Cadotte Lake Métis Local #1994 stated that one of the key issues cited by participating community members was their concern about the difficulties they now have in locating and successfully hunting moose on the east and west sides of the Peace River extending out into the Chinchaga area.

During the oral Indigenous knowledge session an elder from Dene Tha' First Nation described the state of trapping in the community today and also described a renewed interest in trapping by youth who want to learn to live off the land.

*"[...] there is no money in trapping but there is a resurgence amongst the youth of the desire to go out to the land. And part of that is trapping. And they are wanting to go out into the land to learn, to do what their ancestors did. And it's starting -- within the last few years it started. So there is a lot of interest in trapping for the sake of learning the land more than for the money."*

-- Fred Didzena, Dene Tha' First Nation, Transcript Volume 3 [947-948]

Duncan's First Nation stated that hunting and the ability to hunt large game is vital to the community's central socioeconomic and sociocultural needs in addition to individual, family and community wellness and cohesiveness. Duncan's First Nation indicated that there have been diminishing hunting returns over time and with increasing development within its territory. Additionally, Duncan's First Nation stated community members are having to travel further from the community than they once did and are having to spend longer periods of time hunting to have the opportunity to successfully hunt.

Duncan's First Nation stated that although many species are harvested, moose remains the mainstay of its hunters and community members. Duncan's First Nation stated its members have largely stopped hunting caribou because the caribou herds are not viable to hunt as a result of decreased populations.

During its oral Indigenous knowledge session members from Louis Bull Tribe describe their concerns regarding the health and quality of the wild game available to hunt:

*"This has been my family's way of life and it's been passed on to me, and I'm going to keep it going as well, to teach the younger ones what I have learned. And I just -- I do get concerned about the food we do -- the animals we do hunt, like, the deer. Some of the quality of the meat is a concern for me. In our area, there are a lot of deer that are getting sick and that's a reason I don't hunt too much deer. I hunt the moose and the elk."*

-- Trevor Larocque, Louis Bull Tribe, Transcript Volume 4 [1525-1526]

In its evidence, NGTL noted that Métis Nation of Alberta – Region 6 community members indicated that the Bear Canyon North Extension area used to be a popular hunting site for Métis travelling from Grand Prairie. Species hunted included bear, ducks, geese, and prairie chicken, and the meat is shared amongst community members and family. NGTL also noted that Métis Nation of Alberta – Region 6 indicated that trapping is an important activity to community members, and it was reported that the Project area and all components are ideal furbearer habitat and several furbearer signs were identified during the TK Study on the Bear Canyon North Extension.

In its Application, NGTL noted that Paddle Prairie Métis Settlement members reported hunting ungulates such as moose, deer, and elk, in the Project area. Additionally, Paddle Prairie Métis Settlement members report having trap lines and Registered Fur Management Areas in and around the Project area. In its TK Report, NGTL noted that Paddle Prairie Métis Settlement expressed concerns regarding potential effects to wildlife and wildlife habitat and related effects

on hunting and trapping activities from Project-related construction and operation, including disruption of game movement, fragmentation of wildlife habitat that supports and sustains subsistence harvesting, disruption of fur trading activities, and, disturbance to Registered Fur Management Areas.

Peerless Trout First Nation stated that community members hunt and trap in the Red Earth study area. Peerless Trout First Nation stated it relies on hunting as a central food source, due to the limited quantity and quality of local grocery stores, and it uses parts of harvested animals for medicinal, ceremonial, and other traditional purposes (such as clothing or tools). Peerless Trout First Nation noted caribou is a species of importance to the community, but they are seldom hunted anymore due to their classification as an endangered species.

In its evidence, NGTL noted that Peerless Trout First Nation indicated that moose is the preferred big game species hunted and the entire animal is used by community members for food, clothing, tools, and in trades. Peerless Trout First Nation stated in its evidence that the existing ROW is a known and well-used hunting area for moose and stated the existing ROW will be expanded as a result of this Project to accommodate construction of the new pipeline. Peerless Trout First Nation stated that NGTL has suggested that the expansion of the ROW will result in creation of additional moose habitat but that it has not included mitigation measures to manage predator-prey dynamics along the ROW.

Peerless Trout First Nation stated that trapping is an important source of food and a source of income for its members and that trappers harvest furbearers for a variety of cultural purposes and use parts / glands of harvested animals to support trapping efforts of other furbearers. Peerless Trout First Nation stated the Red Earth 3 Segment is currently scheduled for construction during winter / frozen conditions and that this is of grave concern to the trappers and their families. Peerless Trout First Nation recommended that NGTL should work with individual trap line holders to understand patterns of use / seasonality of trapping activities and be flexible to alter construction schedules to reduce impacts.

Peerless Trout First Nation noted that NGTL has asserted that since one of the community's historic trapper cabins is not directly within the Project's footprint that effects are not anticipated. Peerless Trout First Nation argued that while the cabin itself may physically not be impacted, the trappers will be impacted by way of impacts to wildlife, wildlife habitat, and access as a result of construction activities as well as intermittent operation and maintenance activities.

In its evidence, NGTL noted that Sawridge First Nation indicated that it still practices hunting and trapping for food and traditional purposes. NGTL also noted that Sawridge First Nation identified the Red Earth Section 3 general area as having potential for hunting and trapping, specifically for moose, grouse, rabbit, beaver, and deer.

In its Application, NGTL noted that Swan River First Nation expressed concerns about the removal of mature conifer trees that could impact squirrel activity and habitat, that would thereby affect trapping of large game.

In its evidence, NGTL noted that Tallcree First Nation identified sites and features on North Star Section 2 and Red Earth Section 3 that are valued by the community, because the sites and features provide the basis for their traditional way of life and spaces for hunting and gathering, as well as "*peaceful enjoyment of the land*". NGTL noted that Tallcree First Nation is concerned about disturbance to wildlife and wildlife habitat from construction noise and the potential for this

to decrease the availability of game in the region. NGTL noted that Tallcree First Nation is also concerned about potential contamination of lands from spills affecting the quality of wildlife.

Whitefish Lake First Nation #459 described some of the impacts it has experienced regarding hunting and trapping. In its written evidence, it indicated that the depletion of furbearers and impairment of access to trap lines are examples of impacts to trap line holders. In his affidavit, Fabian Grey described how community members now need to travel further away in order to successfully hunt.

*“Elders would tell me that they would to be able to hunt within half an hour of the WLFN reserve. This is not the case anymore. Now, I and others need to hunt and gather further and further away from the lands in Atikameg. For example, I need to travel up to three hours away from Atikameg to hunt.”*

### Fishing

In its evidence, NGTL noted that Beaver First Nation indicated that fishing is important to Beaver First Nation, and that the community expressed concerns about pipeline crossings of fresh water rivers and streams in the general Project component areas. NGTL stated that Beaver First Nation requested that the degradation of rivers and streams via pipeline crossings be minimized.

Duncan’s First Nation stated that fishing continues to be an important activity undertaken by its members for sustenance, cultural and spiritual purposes, however the level of fishing appears to have declined with the imposition of fish consumption advisories, the decline in fish populations, overall availability and community concerns about the health of fish and fish habitat through the Peace River region.

Louis Bull Tribe noted that many Indigenous communities have received Health Advisories for Fish Consumption from AB, which includes restrictions for fish consumption, especially for women and children, which contributes to concerns regarding food security in the community.

Peerless Trout First Nation stated it relies on lakes, rivers, and tributaries throughout its territory to support fishing activities and provide a reliable water source while spending time out on the land. Peerless Trout First Nation stated that fish are a predominant food source amongst its members given the limited selection and access to grocery stores close to the community. In its written evidence, Peerless Trout First Nation stated it shared evidence with NGTL of important fishing spots and concerns regarding potential impacts to fish and fish habitat and fishing.

Whitefish Lake First Nation #459 stated that it can no longer fish in its Utikuma Lake, just north of Slave Lake which is now almost completely surrounded by wells and pipelines. It also stated that it has stopped fishing in Nipisi Lake due to contamination.

### Gathering / Harvesting

In its evidence, NGTL discussed the traditionally used plants identified by Beaver First Nation in its TK Report. NGTL stated that Beaver First Nation reported that plants identified in their TK Study are used for artworks, food, fuel, medicine, and shelter.

During its oral Indigenous knowledge session Bigstone Cree Nation described how pipeline construction is making it increasingly difficult to find herbs that are traditionally relied on by its members.

Dene Tha' First Nation stated that it continues to be sustained by the wildlife, birds, fish, plants and medicines that it harvests out on the land. In its written evidence Dene Tha' First Nation stated:

*“We prefer our traditional diet over store-bought products, and it is critically important to us to be able to continue to rely on resources in our territory to feed our community into the future. Especially important are those few areas near our communities, including the [...] Project areas, where our members prefer to assemble and harvest for their own families and for the community members who are not able to do so themselves.”*

Dene Tha' First Nation members also described how they continue to rely on traditional medicines and described it as one of the most important things that they use.

Driftpile Cree Nation stated that areas of intact, native upland and wetland vegetation are important for traditional resource use, including the gathering of culturally important plants for consumption, medicines, and spiritual purposes, and as habitat for wildlife. Driftpile Cree Nation expressed concern that a significant area of native vegetation will be permanently disturbed by the Project.

Duncan's First Nation indicated that harvesting berries was and continues to be important to community members for sustenance, as well as for cultural and medicinal purposes. Duncan's First Nation noted that many of its members are of the view that due to the healing and sacred properties of certain plants, that they should not be discussed, identified or mapped within the context of a community study to be shared with an external audience.

*“We also pick many medicines out there from the land. We make teas to help us feel better and to cure certain sicknesses. We should not talk about those or put these things into writing. But it's important that companies and government start knowing about some of the areas, where certain medicines grow and the places they need to grow. We have to honor and take care of those medicines.”*

In its evidence, NGTL stated that Horse Lake First Nation is concerned about the loss of diamond willow fungus for future harvesting. NGTL stated that elders requested that the diamond willow fungus found on all Project component ROWs be harvested by Horse Lake First Nation prior to construction, and funding be provided by NGTL to the community to harvest the diamond willow fungus.

Louis Bull Tribe stated that access to and continued perpetuation of populations of medicinally and culturally important plants are critically important to the Louis Bull Tribe, as traditional plant medicines play a large role in Louis Bull Tribe's traditional practices. Louis Bull Tribe noted that the availability of these plants has declined in its traditional territory, due in part to increased fragmentation of the landscape from linear development projects such as the Project.

Louis Bull Tribe stated that medicinally and culturally important plants are typically not considered during the revegetation process for many of these projects and as a result there is potential for increased loss of medicinally and culturally important plants. Louis Bull Tribe also stated this may be exacerbated by the practice of vegetation control through herbicide spraying

along ROWs, which may have detrimental effects to the health of adjacent ecosystems and the traditional and medical use plants that occur there. Louis Bull Tribe stated it should be consulted on areas that are left to reclaim naturally to determine whether culturally important plant species will successfully regrow.

In its Application, NGTL noted that Métis Nation of Alberta – Region 5 indicated that the ability to harvest foods and medicines that are free from contaminants is of high importance. Members are concerned chemical sprays, typically used to control vegetation growth on ROWs, may be harmful to water quality, the local and regional environment and the people that subsist on the animals and plants. Traditional medicines were identified in the Red Earth Section 3 Local Study Area.

In its Application, NGTL noted that Paddle Prairie Métis Settlement community members reported gathering certain medicines and berries for subsistence purposes in the vicinity of the Hidden Lake North Unit Addition. Traditional use species were also identified during field surveys on North Star Section 2 and Red Earth Section 3. Concerns raised included loss of berries, food plants, and medicinal plants, and potential effects to berries, food plants and medicinal plants including food security and human health.

Peerless Trout First Nation stated its members actively gather plants and berries within and around the Red Earth Section 3 Project Construction Footprint and surrounding study area. Peerless Trout First Nation stated members gather plant and berries for various cultural reasons including for medicinal purposes, for consuming, harvesting wood for firewood, and for making crafts and other products. Peerless Trout First Nation noted it is concerned about potentially having to travel further away to gather plants due to the Project. Peerless Trout First Nation stated it is unclear how NGTL's proposed mitigation, the provision of maps and a schedule, will mitigate the impacts to its right to access harvesting areas and to harvest plants and berries (amongst other species) in the ROW and surrounding area.

In its Application, NGTL noted that Swan River First Nation identified culturally important plants including red willow and rosehip during its TK Study for North Star Section 2. NGTL also noted that Swan River First Nation expressed concerns regarding the removal of medicinal, edible, cultural and traditional plants that are important to the community.

In its evidence, NGTL noted that Tallcree First Nation expressed that although some sites are not currently actively used by community members, the sites are valued because they may be used in the future, as preferred locations for harvesting activities change over time.

In its written evidence, Whitefish Lake First Nation #459 indicated its concern that there will be no traditional medicines left to gather. It also stated that the medicines used by its members are getting harder to find and that they have to go away to find them. Fabian Grey stated that he is conducting a traditional plant mapping study to ensure that there are sufficient plants to gather for current and future generations.

### Trails and Travelways

In its evidence, NGTL noted that Duncan's First Nation elders shared knowledge about a network of trails that joined the "*Peace River to regions west into British Columbia, south to Grande Cache and into the Rocky Mountains, east to Fort Vermillion and Hay River in the Northwest Territories and east to the Red Earth and Slave Lakes*". These trails were important corridors for travel and linked to key harvesting areas. NGTL noted that Duncan's First Nation

indicated that some of the trails can still be found in the Peace River Basin, however, because of the high volume of development and agriculture in the region, many have been “*erased and bisected*”.

Peerless Trout First Nation stated one of its concerns it has identified regarding the Project’s potential effects on its activities is regarding a historic trapper and hunting trail within proximity of the Red Earth Section 3 ROW that it would like to see protected. Peerless Trout First Nation stated the historic trail is used by its members and is within vicinity of its trapping and hunting cabins. Peerless Trout First Nation stated that impacts to this trail need to be further understood and mitigated for and that it wishes to be compensated and accommodated for the fragmentation of the trail as well as assured that the trail will be restored adequately. Peerless Trout First Nation also stated that potential interactions with this trail need to be assessed for construction as well as operations in terms of monitoring of restoration adequacy and needs to be considered during operations as a result of potential impacts from integrity management program (i.e., integrity digs).

#### Traditional Land and Resource Use Sites

Bigstone Cree Nation expressed concern with respect to trapper cabins within the pipeline ROW. During its oral Indigenous knowledge session members of the community discussed how if existing cabins are found on the ROW, they should be dealt with or moved at the company’s expense.

In its evidence, NGTL stated that during the TK Study for the Project, Dene Tha’ First Nation identified two campsites, one relative to the Bear Canyon North Extension, and another relative to the Hidden Lake North Unit Addition. It noted that the campsite near the Bear Canyon North Extension is a good location for moose hunting.

During its oral Indigenous knowledge session, an elder from Dene Tha’ First Nation described the frustration they experienced when their seasonal camp sites in the vicinity of the Chinchaga Forestry Road were repeatedly destroyed:

*“[...] every fall we would go out on the Chinchaga Forestry Road with our children, our grandchildren. Sometimes one year we’ll have our tent poles, our tipi poles, our meat racks, all set up for the next year, for the next fall hunt. The next fall, we come back, all that we set up is gone. There’s a new road going somewhere. It’s been ploughed. So we have to go look for another place to set up again. That takes two days out of our hunting. Three times that’s happened to us in the years. The things that we put in storage, like pails, cords of wood for the next fall, is all gone.”*

-- Elder Agnes Gallant, Dene Tha’ First Nation, Transcript Volume 3 [788-789]

In its evidence, NGTL noted that Doig River First Nation identified traditional land use sites throughout the Bear Canyon North Extension, with one elder sharing that his family had camped in the region on and off for 20 years and family members had been born there, as well. NGTL noted that harvesting and kill sites, plant and material harvesting sites, trapping areas, and a hunting trail were identified within Bear Canyon North Extension. Log cabins, temporary habitation sites such as tent camps and teepee sites, and gathering places were also identified in the Bear Canyon North Extension Local Study Area. NGTL noted that Doig River First Nation identified three places of particular importance: Ole Lake, Moose / Boundary Lake, and, a creek that flows into Clear River.



During its oral Indigenous knowledge session, members of Driftpile Cree Nation described how the Project would impact areas of cultural and traditional significance. One of the areas identified included a “*recycle site*”, which is important to the community.

In its evidence, NGTL stated that in a 2012 study, Duncan’s First Nation identified five overnight sites that are intersected by the 5-km buffer of the North Star Section 2, and four overnight sites that are intersected by the Bear Canyon North Extension 5-km buffer, and one cultural site potentially located within the Bear Canyon North Extension Regional Study Area.

Duncan’s First Nation stated the NGTL System traverses and bisects areas of cultural significance and critical cultural importance to the community including the Clear Hills Chinchaga Refuge and the Chinchaga Caribou Range. Duncan’s First Nation stated that the Clear Hills Chinchaga Refuge is a sub-regional area within its territory that is a unique area of acute cultural importance and value to the community. The lands, forests, hills, muskeg and rivers between the Clear Hills and the Chinchaga watershed were historically used and occupied by Duncan’s First Nation. Many community members report that this area continues to support critical community livelihood, cultural, spiritual and sustenance needs and goals of the community.

Duncan’s First Nation stated that the Clear Hills Chinchaga Refuge is one of the best and last remaining areas left to the community with characteristics associated with it that permit its members to exercise their Indigenous and Treaty rights and culture in their preferred manner. Duncan’s First Nation stated that potential effects to the community’s Treaty right to hunt large game and undertake associated cultural practices within the Clear Hills Chinchaga Refuge is of concern. As the Project directly intersects the Clear Hills Chinchaga Refuge, Duncan’s First Nation stated that a very careful, weighed and considered approach to this Project and any further development is required in this area. For further discussion on caribou, see Chapter 8.

In its Application, NGTL noted that Gift Lake Métis Settlement expressed concerns specific to the Red Earth Section 3, regarding the potential effects to a trapper’s cabin incidentally observed off the ROW between KP 28.7 to KP 31.9 and two hunting grounds and a campsite incidentally observed between KP 13.9 to KP 15.6 and KP 28.7 to KP 30.2.

In its written evidence, Louis Bull Tribe noted that aquatic resources have significant value to Indigenous communities. Louis Bull Tribe explained that not only for the importance of this resource in supporting ecological functions and traditional use (e.g., fishing, use of medicinal plants or culturally important plants) but also in terms of the cultural importance of water as a sacred resource.

In its Application, NGTL noted that Métis Nation of Alberta – Region 5 expressed concern about noise and recreational impacts affecting a cabin identified on the Red Earth Section 3 near KP 30.0.

Peavine Métis Settlement members identified three hunting camps located just off the existing ROW in the Red Earth Section 3. It was thought that the hunting camp located at waypoint 2 is still being used after community members observed a tree stand, still intact and in working order. Also, at the third camp identified by Peavine Métis Settlement, members shared they thought the camp might be historical and could also still be in use.

In its evidence, NGTL noted that Peavine Métis Settlement recommended that hunting Camp 2 not be disturbed and requested that the pipeline avoid its location entirely, or that construction

and the new pipeline stay within the ROW. Additionally, Peavine Métis Settlement requested that NGTL narrow the Red Earth Section 3 ROW near Hunting Camp 2 to preserve the historic site.

During its oral Indigenous knowledge session, members of Peerless Trout First Nation discussed impacts they have seen on their ceremonial sites and practices and that they have been told they cannot camp in certain areas.

*“Many times even the forester will come and tell you, the government will come and tell you, you can’t just go camp there. And the oil companies, they’ll be building roads right in where the secret places are. Those are one of the secret places, where you camp, where you stay, go enjoy life, nobody will bother you, but there’s highways, or roads, or cut lines are there, just like the pipelines.”*

-- Elder Emile Houle, Peerless Trout First Nation. Transcript Volume 1 [141]

Peerless Trout First Nation also noted the potential for unmarked gravesites to be encountered during construction, however none are known to the community.

#### **7.4.7.5 Cumulative Effects on Traditional Land and Resource Use**

Potential cumulative effects were identified as issues by nearly every Indigenous peoples.

Bigstone Cree Nation stated its ability to practice its rights is being impacted by cumulative effects and that the cumulative impacts of development, including from pipeline development, are creating real and tangible barriers to their ability to practice their Treaty rights, maintain their culture, and pass on their teachings to future generations. During its oral Indigenous knowledge session, members of Bigstone Cree Nation described how their territory is “*being destroyed*” or “*being poisoned*” and that the level of development is “*destroying a livelihood of First Nations people that have been here a long time.*”

In the one-on-one biography interviews submitted as part of Cadotte Lake Métis Local #1994’s written evidence, community members spoke of the cumulative effects on TLRU, including that it is becoming increasingly difficult to hunt close to home and that they must travel farther distances and spend more time trying to find game.

*“There aren’t too many places left in the north Peace that haven’t been overrun with farming, forestry, petroleum... the areas to the north of Bison and in the Wolverine River water shed and areas west of the Peace in the upper Notikewin, Meikle, Hotchkiss and Chinchaga area still good and are becoming more important to me and I know others... I think we need to sit down with government to talk about how we can go easy in these areas and allow other areas to recover before they allow industry to go in there and hit that plateau area hard.”*

Cadotte Lake Métis Local #1994 stated that it knows that NGTL is a private company that only has duties and responsibilities in relation to how it operates and manages its pipeline corridors, and while there are some measures NGTL could take, Cadotte Lake Métis Local #1994 stated it will take the involvement of other area operators and different levels of government to come up with an integrated strategy and management measures that help offset the impacts introduced by the linear corridors in this region.

Dene Tha' First Nation stated it is particularly troubled by NGTL's conclusion that the Project will not have significant adverse cumulative effects on its practices, a conclusion that it states is at odds with the lived experience of Dene Tha' First Nation people. In its written evidence Dene Tha' First Nation stated that its territory contains thousands of miles of roads, pipelines, seismic lines and other linear corridors, and numerous well sites, processing plants, power plants, cut blocks and other development. Dene Tha' First Nation stated it has been seriously affected by this development, and its ability to use the lands to exercise Treaty rights has been compromised.

Driftpile Cree Nation expressed concern about the continued encroachment and cumulative effects of industrial activity on its traditional territory. During the oral Indigenous evidence session, members of Driftpile Cree Nation emphasized that ongoing industrial development was forcing Driftpile Cree Nation members to travel further in order to exercise their rights.

*"It is getting very difficult for our members to harvest the wild game that we depend on due to the fact that our land is starting to shrink because of major activities. Not just the oil and gas companies, but there's other agencies that are doing just as much damage and clearing our harvesting territory. And we hope that the communication is open from your senior staff to work with our people and to understand our rationale, our concerns as to some of these megaprojects that could do major damage to our way of life."*

-- Elder Peter Freeman, Driftpile Cree Nation, Transcript Volume 4 [1113]

Duncan's First Nation indicated it disagrees with NGTL's conclusion that the Project's contribution to cumulative effects on socio-economic and environmental elements will not be significant. The community members indicated that Project's cumulative effects have the potential to adversely impact its Indigenous and Treaty rights. Duncan's First Nation stated that its members have observed a number of direct, indirect and cumulative impacts on their ability to hunt large game. Duncan's First Nation also described how the Clear Hills Chinchaga Refuge has taken on heightened significance to Duncan's First Nation families given the increasing challenges, impediments, barriers and restrictions to the exercise of rights and practice of culture elsewhere in their territory. Duncan's First Nation stated it is concerned that further development in the Clear Hills Chinchaga Refuge will make this land area unsuitable for the practice of rights and culture.

In its evidence, NGTL stated that Horse Lake First Nation requested that NGTL provide information on their plans for assessing and managing cumulative impacts of industrial development in the area and that cumulative impacts should be assessed using a pre-industrial baseline to assess the past, current condition to assess the present and all potential future industrial development to assess the future.

In its written evidence, Louis Bull Tribe stated the impacts of cumulative effects on its traditional practices is of significant concern. Louis Bull Tribe stated that wild game has become increasingly difficult to find and private ownership of land has created barriers to accessing cultural sites, and that as a result community members have had to travel further from the reserve lands within Treaty 6 to engage in traditional practices in other areas such as Treaty 8. Louis Bull Tribe stated that if development continues to expand without due consideration for cumulative effects, there is considerable concern for the continued erosion of the ability for Indigenous communities to engage in and practice their traditional way of life.

In its evidence, NGTL noted that Métis Nation of Alberta – Region 6 reported that due to past industrial activity in the Project area, vegetation native to the region was not seen during the TK Study, specifically, vegetation on the Bear Canyon North Extension. NGTL also noted that Métis Nation of Alberta – Region 6 believed that vegetation that was identified was thought to be non-native.

Peerless Trout First Nation expressed concerns that NGTL is downplaying the cumulative effects of each of its own multiple projects, in addition to the cumulative effects already being experienced by other oil, gas, forestry, and industrial developments within its traditional territory. Peerless Trout First Nation stated the layers and diversity of industrial activity within its territory has demonstrated cumulative effects not only on the biophysical environment, but on its cultural environment and well-being. Peerless Trout First Nation stated that given that the full extent of exact nature of impacts to combined TLRU and indirect / interrelated effects on social and cultural wellbeing “cannot be fully predicted” by NGTL, it is critical that there be Indigenous environmental and cultural monitoring during construction as well as during scheduled integrity digs during operations and maintenance phase

In its evidence, NGTL noted that Swan River First Nation indicated that the Chinchaga River has been significantly fragmented and disturbed by industrial development such as forestry, utilities and oil and gas development.

Whitefish Lake First Nation #459 stated its members have expressed their concern with continued industrial development within their traditional territory. It noted that Elder Herman Sutherland pursues hunting, trapping and other traditional activities and regularly leads groups into the wilderness to teach them about traditional medicine in a hands-on way. It stated he has observed the impacts of industrial activity, and is concerned that there is little land left to exercise his Indigenous and Treaty rights because lands are being taken up and cleared for industrial purposes. Elder Herman Sutherland stated he has also observed impacts on the broader environment. In his affidavit filed in lieu of sharing oral Indigenous knowledge, he shared:

*“Development has also resulted in clearing of the poplar tree. The pulp from the poplar tree is used for ceremonial purposes and I am concerned that we will not be able to use the medicine from the poplar tree if it continues to be cut down. I have noticed that clearing of the poplar tree has also had an impact on animals who use the poplar tree to sustain themselves such as rabbits, beavers, deer, porcupines and moose. Our diet consists of these animals and if these animals have to travel to find food, we will have no food.”*

Fabian Grey, the Consultation Coordinator for Whitefish Lake First Nation #459, echoed the concerns of Elder Herman Sutherland, in his written affidavit he stated:

*“I worry that future generations will not have any ability to learn or exercise our traditional ways. The taking up of land for industrial and other uses has left little land available to us to practice our Aboriginal and Treaty rights.”*

For issues related to cumulative effects outside of TLRU, refer to Chapter 8.

#### **7.4.8 Section 35(1) of the *Constitution Act, 1982* – Indigenous and Treaty Rights**

Project impacts on Indigenous and Treaty rights was identified as an issue by nearly all Indigenous peoples.

Bigstone Cree Nation stated its members continue to hold the rights guaranteed by Treaty 8, including hunting, trapping, and gathering rights, as well as the right to maintain a distinct way of life and culture. Members actively exercise their Treaty rights and carry out their traditional lifestyle, as their ancestors have for generations, within the Project footprint. Bigstone Cree Nation stated that the impacts of this Project on its rights cannot be considered in isolation. They must be considered within the broader context which Bigstone Cree Nation is practicing its rights. Bigstone Cree Nation explained that this means looking at how cumulative effects have already had an impact on the ability of Bigstone Cree Nation to meaningfully practice its rights.

During its oral Indigenous knowledge session, members of Bigstone Cree Nation gave evidence with respect to their understanding of their Treaty rights, the practice of their rights in and around the Project area, and how the practice of their rights is becoming more and more difficult as a result of ongoing development throughout their traditional lands. Bigstone Cree Nation stated that impacts to its ability to practice its Treaty rights include: destruction of animal habitat and harvesting areas, increased safety concerns associated with being out on the land, contamination of resources, and loss of confidence in resources, loss of solitude on the land, and, increased health concerns. Bigstone Cree Nation stated that in order to ensure that the CER does not perpetuate a further silencing of Indigenous peoples perspectives, the CER must place equal weight on the TK and community evidence presented by the Indigenous communities in this hearing.

In its written evidence Cadotte Lake Métis Local #1994 stated it possesses and actively exercises Indigenous rights throughout the Peace River region and that the Project will introduce an undetermined level of impact to its rights, culture and cultural interests in this area. Cadotte Lake Métis Local #1994 stated it has and continues to undertake cultural practices and engage in traditional livelihood pursuits such as hunting, fishing, trapping, harvesting of food and medicinal plants, establishing and maintaining camps, accessing and travelling across the lands and waters to support their traditional economy and way of life. Cadotte Lake Métis Local #1994 also stated it has and continues to exercise these collective rights on the ground to meet the community's sustenance, livelihood, cultural, spiritual, socio-economic and human health and safety needs and priorities. Cadotte Lake Métis Local #1994 stated it is important to point out that a key feature of the Cadotte Lake Métis Local #1994's way of life is its special relationship with land and the community's ability to sustain itself by harvesting fish and wildlife.

Dene Tha' First Nation stated that the Project is located in a part of its territory used by its members for hunting, fishing, gathering and trapping, as well as other traditional uses, and which provides key habitat for species that its members currently rely on and species that they can no longer rely on, but hope to rely on again in the future, in particular Woodland / Boreal Caribou, whose very survival is threatened by anthropogenic disturbance and habitat loss caused by the impacts of projects, such as the Project, to wildlife, the environment, and the rights of the Dene Tha' First Nation.

During their oral Indigenous knowledge session, Dene Tha' First Nation members explained how they are not against development, they just want to ensure that development is responsible so that future generations can practice traditional activities.

*“We are not against development. We have maintained that. But at the same time, we want to ensure that the land that we are on affords us the rights that we have been given. We are not looking for empty rights. We try and maintain those rights by voluntarily not hunting, in this case caribou, because they're on a decline. And we do that because we want to ensure that our future generations can practise what we practise now and have practised before.”*

-- Fred Didzena, Dene Tha' First Nation, Transcript Volume 3 [836]

Dene Tha' First Nation stated it looks forward to further engagement with NGTL to improve NGTL's understanding of its rights and practices, the Project's impacts on Dene Tha' First Nation, and how those impacts can best be avoided, mitigated and managed.

Dene Tha' First Nation argued that the conditions proposed by the Commission are insufficient to protect its rights. Dene Tha' First Nation stated that the proposed conditions fail to deal with the shortcomings in relation to Project impacts on woodland caribou. They have been prepared without proper consideration on Dene Tha' First Nation's unique perspective and they are not responsive and do not address its concerns with the Project as proposed.

Driftpile Cree Nation stated it holds inherent Indigenous rights in addition to those Treaty rights it acquired as a signatory to Treaty No. 8. Driftpile Cree Nation stated its principle concern remains the continued erosion of a traditional life by industrial development and its decreasing ability to exercise its Indigenous and Treaty rights.

Driftpile Cree Nation and Whitefish Lake First Nation #459 stated that the Project is located within important areas of the traditional territories of both communities, and as such Project-related activities will have significant and adverse direct and cumulative effects on each of them. Throughout the hearing process Driftpile Cree Nation and Whitefish Lake First Nation #459 described their concerns regarding the Project's direct and adverse cumulative environmental and social impacts on their Indigenous and Treaty rights and traditional lands.

Driftpile Cree Nation and Whitefish Lake First Nation #459 both stated that there is recognition that preservation and exercise of Indigenous and Treaty rights must be balanced with economic realities and the prosperity of AB.

Driftpile Cree Nation and Whitefish Lake First Nation #459 are of the view that NGTL has made clear that, notwithstanding its delegated procedural aspects of the consultation process, it has not and will not assess the impact of the Project on the section 35 rights of the Indigenous peoples who were Intervenor in the proceeding. The communities stated, that combined with its dismissal of the consultant reports filed by many of the Indigenous peoples who were Intervenor in the proceeding, this underlines the vital role of the Regulator in ensuring those rights are protected, and the importance of imposing appropriate conditions in the event the Project is recommended for approval.

Duncan's First Nation stated that the Project is being inserted into an already highly impacted landscape where its members increasingly experience significant challenges to their ability to hunt large game, a constitutionally-protected activity that sustains its culture. Duncan's First Nation stated it has and continues to rely on the hunting of large game for a range of sustenance, cultural, socio-economic, socio-cultural and spiritual purposes. Duncan's First Nation stated it also undertakes other rights-based activities such as fishing and the harvesting of plants for food and medicines.

Duncan's First Nation stated its members are entitled to exercise their Indigenous and Treaty rights through their preferred means and in their preferred conditions. Further, Duncan's First Nation stated its members must have land of sufficient quality and quantity to exercise rights and that rights are exercised on a broad basis and are conditional on a broad spectrum of values rather than on a site specific basis.

In its evidence, NGTL noted that the Métis Nation of Alberta – Region 6 TK Report stated that the Project lies within the administrative boundaries and TLRU base of the community and these lands are currently used to exercise their Indigenous rights and are intended for future use. NGTL noted that Métis Nation of Alberta – Region 6 stated the importance of the protection of the environment and the *“ability of [their] people to walk into the bush, the way [they] always have with [their] children and grandchildren, to travel where it suits [them], stopping wherever nature calls [them]...”*

NGTL also noted that Métis Nation of Alberta – Region 6 expressed concerns about hunting and trapping, including concerns that established ungulate and furbearer habitat will be lost to ROW expansion from North Star Section 2 and Bear Canyon North Extension, as well as affecting animal populations, potential income, and the ability of the community to practice their Indigenous rights.

NGTL noted that Métis Nation of Alberta – Region 6 shared that Métis community members attend meetings across AB to discuss the protection of their Indigenous rights and how the northwest needs to be protected for the Métis to continue to be able to harvest.

In its TK Report, NGTL noted that Paddle Prairie Métis Settlement expressed concerns regarding potential effects to TLRU and rights and interests on Crown and private lands, including reduction in availability of intact Crown land and traditional resources, community members having to travel further to seek additional harvesting areas and effects on hunting. Specific wildlife concerns include disruption of game movement and fragmentation of wildlife habitat that supports and sustains subsistence harvesting.

Peerless Trout First Nation stated that the proposed Project will have adverse direct and cumulative impacts on its Indigenous and Treaty rights, including its rights to hunt, fish, and trap. Peerless Trout First Nation stated that there will be Project interactions during pipeline construction and operations that will put the exercise of its Indigenous and Treaty rights and interests at direct and indirect risk. It also stated that implications to its ability to exercise its Treaty 8 rights and interests include the risk to opportunities to share Indigenous knowledge and culture with younger generations. During its oral Indigenous knowledge session, members of Peerless Trout First Nation highlighted that potential Project impacts will affect more than just itself, they will affect the entire Treaty 8.

Peerless Trout First Nation stated that historically (through the Hudson Bay) and currently (through the Alberta Trappers Association), the right to economic activity / trade is of importance in the community. This proposed ROW crosses three member-owner trap lines and will have direct and indirect impacts on members' ability to exercise these rights and the economic, subsistence, and intergenerational cultural activities that occur here. Peerless Trout First Nation noted that NGTL has acknowledged the impacts to trappers as a result of winter construction and has indicated that it will share its schedules with the trappers. Peerless Trout First Nation argued that notification is not adequate and that appropriate accommodation is required for the imminent infringement on its rights to harvest is expected.

Peerless Trout First Nation argued that if the Project is approved, the CER should impose conditions that support Indigenous environmental and cultural protection, oversight, and direct involvement in business procurement. Peerless Trout First Nation also stated that conditions should support the avoidance and mitigation of impacts on Peerless Trout First Nation's rights.

#### **7.4.9 Other Issues and Concerns**

##### **7.4.9.1 Safety Concerns**

Safety concerns were identified as an issue by the following Indigenous peoples:

- Bigstone Cree Nation
- Driftpile Cree Nation
- Duncan's First Nation
- Métis Nation of Alberta – Region 5
- Métis Nation of Alberta – Region 6
- Peavine Métis Settlement
- Peerless Trout First Nation
- Swan River First Nation
- Tallcree First Nation
- Whitefish Lake First Nation #459

Bigstone Cree Nation stated that members are less likely to practice their rights over areas where oil and gas development is taking place. They stated that some members are hesitant to practice in those areas for safety reasons.

During its oral Indigenous knowledge session Driftpile Cree Nation expressed its views on the importance of response time in the event of an incident in its territory, and members voiced concern regarding response times for past incidents that had occurred and the impacts on animals as a result.

Duncan's First Nation stated that conditions relating to emergency management should require the inclusion of Indigenous communities in terms of training and development of capacity, collection of traditional land use data to inform emergency response, and ensuring that proper notification procedures have been implemented.

In its Application, NGTL noted that Métis Nation of Alberta – Region 5 expressed concerns specific to the Red Earth Section 3, regarding spills and equipment leaks and the potential effect to water quality at the Loon River and at the creek and wetland near KP 20.5 as well as potential effects on wildlife and wildlife habitat. The community requested more information on NGTL's emergency response plan for pipeline incidents and EPP.

In its evidence, NGTL noted that Métis Nation of Alberta – Region 6 identified what appeared to be recently dead or "burnt" trees 170 m from the Hidden Lake North Unit Addition Project Construction Footprint. NGTL noted that the community requested that the cause of this be investigated. Additionally, Métis Nation of Alberta – Region 6 requested that a detailed report on



the cause be provided to the community and that during reclamation, care should be taken to make sure regeneration of the forest is established.

Peavine Métis Settlement members identified hazards along the existing ROW near the Red Earth Section 3 footprint, including tree snags, leaning trees, dead trees, boulders and large rocks. In North Star Section 2, Peavine Métis Settlement members noted that boulders and large rocks were placed on the side of the ROW from a previous project. Peavine Métis Settlement is concerned that during winter construction, equipment will not be able to see the hazards and there may be an incident involving equipment damage. Peavine Métis Settlement requested that hazard trees be removed to avoid potential injury and also requested that NGTL hire a Peavine Métis Settlement affiliated company to allow for community employment and engagement.

In its written evidence, Peerless Trout First Nation stated it is very concerned about potential accidents and malfunctions. It stated that Peerless Trout First Nation requires to be involved in emergency response readiness capacity building and to be directly involved in training and monitoring during each phase of the Project. It stated that Peerless Trout First Nation also requires advance in-person training to increase its emergency preparedness capacity.

In its Application, NGTL noted Swan River First Nation expressed concerns specific to the North Star Section 2, regarding the potential effect accidental releases can have on socio-economic resources. NGTL stated that Swan River First Nation requested that NGTL discuss an emergency response plan (specifically for Red Earth Section 3 since it is a very wet area) and a clean-up plan with its consultation department. NGTL also noted that it is very important to Swan River First Nation that its consultation department be contacted immediately in the event of an accidental release.

In its evidence, NGTL noted Tallcree First Nation stated pipeline releases are a major concern for the community, especially around the Lubicon Lake region. NGTL also noted that Tallcree First Nation reported that potential contamination could reduce the community's confidence in the quality and cleanliness of surface and groundwater as well as the quality of plants.

For issues related to Emergency Response, including accidents and malfunctions, refer to Chapters 4 and 8.

#### **7.4.9.2 Project Splitting**

Project splitting was identified as an issue by the following Indigenous peoples:

- Duncan's First Nation
- Peerless Trout First Nation

Duncan's First Nation stated it has noted how NGTL pipelines projects are advanced on an incremental basis, and that it believes it is highly probable that other NGTL projects (e.g., additional looping, spur lines, compression, facilities, etc.) will be advanced along the same North Central Corridor pipeline system.

Peerless Trout First Nation expressed concerns that NGTL is project-splitting its much larger energy system expansion in AB while, downplaying the cumulative effects of each project represents. Peerless Trout First Nation stated this approach by NGTL is further compounded by

the cumulative effects already being experienced by other oil, gas, forestry, and industrial developments within Peerless Trout First Nation's traditional territory. Peerless Trout First Nation argued the Project cannot be assessed in a silo as its impacts add to the ongoing impacts it has been experiencing for decades.

Peerless Trout First Nation stated that by NGTL splitting its large Project into separate 'sub-project' EAs, it manipulates the regulatory and consultation processes. Peerless Trout First Nation also stated NGTL's strategic decision to split its pan-provincial (and most probably inter-provincial) system expansion into multiple sub-projects has contributed to the Proponent's ability to avoid addressing the issue of cumulative effects of its Project and associated projects within this regulatory process.

Peerless Trout First Nation stated it needs assurance from the CER that the implications of this project-splitting are understood and mitigated for by ensuring that cumulative effects are adequately considered, and the associated direct, indirect and induced effects are addressed through the CER's regulatory process.

### **7.4.9.3 Project Abandonment**

Project abandonment was identified as an issue by the following Indigenous peoples:

- Dene Tha' First Nation
- Peavine Métis Settlement
- Whitefish Lake First Nation #459

During its oral Indigenous knowledge session, Dene Tha' First Nation community members raised a concern regarding damage to the land resulting from abandoning the pipeline in-place and questioned why the pipe cannot be taken out of the ground at the end of the Project lifecycle.

*"Another thing I want to talk about is when there is no longer any kind of fuel flowing through the pipelines, it's abandoned underground. [...] What happens after there's no more fuel flowing through the pipes? [...] If a body can be exhumed after years, why cannot the pipes be taken out? Why is it left underground? What kind of damage does that do to the land? I don't know. That's why I'm questioning it."*

-- Elder Agnes Gallant, Dene Tha' First Nation, Transcript Volume 3 [853]

Peavine Métis Settlement indicated its concern about the future abandonment of the pipeline, and about potential long-term environmental effects of the pipe being left in the ground if it will be abandoned in place.

Whitefish Lake First Nation #459 stated that the cumulative effects of unattended abandonment are a continuous concern for the community and expressed its view that there are no legally responsible companies to clean up and rehabilitate orphaned well sites.

## **7.5 NGTL's Reply to Issues and Concerns**

### **7.5.1 Engagement Matters**

#### **7.5.1.1 NGTL's Engagement with Indigenous Peoples**

NGTL stated that each Indigenous community may have different processes or means of gathering and sharing information and that NGTL tailors its approach to gathering information from communities to meet a community's specific needs, and where appropriate provides reasonable resources to support participation in Project engagement activities.

NGTL stated it seeks to work collaboratively with Indigenous communities to address Project-related concerns, and to provide information to communities on how their input influenced Project design changes. NGTL submitted that its engagement activities have been reasonable and appropriate for the scope and nature of the Project.

NGTL stated that it began engagement with potentially affected Indigenous communities about portions of the Project in August 2018, and since that time, it has worked closely with each potentially affected community to provide information about the Project, make opportunities available for the group to provide information to NGTL about potential issues and concerns, including through TK studies, and development of mutually acceptable solutions and benefits.

NGTL stated that summaries of NGTL's engagement to date with potentially affected Indigenous communities have been placed on the record and that these summaries demonstrate that NGTL has made substantial efforts to provide Indigenous peoples with opportunities to participate in the planning of the Project and identify possible concerns.

NGTL stated it has also demonstrated that it has reasonably engaged with all potentially affected Indigenous communities to provide information about the Project and opportunities for the communities to provide input into the Project plans. NGTL stated that information provided by potentially-affected Indigenous peoples through the Aboriginal Engagement Program, including Project-specific TK studies, as well as through the Project regulatory process, including oral Indigenous knowledge sessions, will be considered in Project planning, including the EPPs and Environmental Alignment Sheets (EAS) filed prior to construction. NGTL stated it has considered all input that has been provided to date and has reasonably addressed that input through direct engagement as well as its regulatory filings in this proceeding.

NGTL noted that its level of engagement with each community was informed, in part, on the feedback it received from the community about their level of interest in the Project and the scope of potential Project effects on their rights and interests. NGTL stated that certain Intervenor who are now alleging inadequate engagement previously communicated to NGTL that they had no outstanding concerns about the Project or that the Project was outside their traditional territory. NGTL stated that while it disagrees with the characterization that it has not engaged appropriately with these communities, the reasonableness of its specific engagement activities with these communities must be viewed in that context.

Regarding concerns regarding resource capacity, in its Application, NGTL stated that it has engaged in discussions with potentially affected Indigenous peoples to understand their specific capacity and resourcing needs and has worked with them to develop a Project-specific work plan and budget. NGTL also stated that it is committed to aligning and bundling Project engagement where applicable and appropriate.

In response to allegations from Peerless Trout First Nation regarding NGTL's engagement, NGTL stated that it, in fact, did propose mitigation measures in response to the community's TK Report and met with Peerless Trout First Nation to specifically discuss those mitigation measures. NGTL stated that a further meeting has also been scheduled with the community and is pending (as of the filing of NGTL's reply argument). NGTL also stated that its evidence clearly demonstrates that it has made efforts to engage Peerless Trout First Nation to schedule a meeting to discuss employment and procurement activities.

NGTL also noted that several Indigenous peoples who were Intervenor in the proceeding requested additional engagement requirements through Project conditions and opportunities to comment on NGTL's mitigation plans and engagement summaries before they are finalized. NGTL argued that these parties have already had an opportunity to review and comment on NGTL's mitigation plans and engagement summaries through the hearing. NGTL also stated that to the extent any party has additional comments on any of NGTL's condition filings, they will also be able to submit comments directly to the CER (as parties already have the ability to do for any CER filing) or discuss those concerns directly with NGTL in accordance with NGTL's commitment to continuing engagement with all potentially affected Indigenous communities to discuss any issues or concerns. NGTL submitted that in this context, the Indigenous Intervenor have already been (or will be, as the case may be) provided with reasonable opportunities to review NGTL's plans and raise any concerns directly to the CER or NGTL. NGTL concluded that there is no need to change the Commission's potential conditions.

NGTL has committed to continuing engagement throughout the life of the Project and incorporating any additional input that it receives outside of the regulatory process into the Project plans, as appropriate. NGTL stated that these efforts demonstrate that NGTL's engagement with Indigenous peoples on the Project has been appropriate and that NGTL has reasonably addressed potential impacts on Indigenous interests, TLRU, and by extension, Indigenous and Treaty rights.

#### **7.5.1.2 Crown Consultation with Indigenous Peoples**

NGTL argued that the courts have been clear that the duty to consult:

- belongs to the Crown and not to the proponent, except to the extent the Crown delegates procedural aspects to the proponent;
- does not require a project proponent to offer any particular form of accommodation to Indigenous peoples;
- does not provide any Indigenous peoples with an effective veto over a proposed project; and
- includes a reciprocal onus on Indigenous peoples to carry their end of the consultation, make their concerns known, and to try to reach some mutually satisfactory solution.

NGTL also argued that Courts have also held that the Crown's fiduciary duty to Indigenous peoples must be balanced against the Crown's responsibilities to all Canadians and that decision makers should balance societal and Indigenous interests in making decisions that may affect Indigenous claims.

NGTL further noted that in *Clyde River (Hamlet) v Petroleum Geo-Services Inc.* and *Chippewas of the Thames First Nation v Enbridge Pipelines Inc.*, the Supreme Court of Canada

acknowledged that the NEB had the procedural powers to implement consultation and the remedial powers to impose and enforce accommodation measures. NGTL noted the Supreme Court of Canada also acknowledged that the NEB had the requisite technical expertise to assess the impacts of proposed projects and determine what accommodation measures may be available.

NGTL stated these cases acknowledge the Crown's ability to rely on the NEB (now CER) regulatory assessment process to partially or completely fulfill its duty to consult, but affirm that the ultimate responsibility for ensuring the adequacy of consultation remains with the Crown.

NGTL noted that a recurring theme in the arguments from Indigenous peoples who were Intervenor in the hearing process is the assertion that Crown consultation on the Project is not yet adequate. NGTL stated that in some cases, such arguments reflect misunderstandings about the role of the Commission's hearing process in the broader Crown consultation process. As NGTL explained in its final argument, the Crown may rely on the CER hearing process to fulfill aspects of its duty to consult, but the Crown (i.e., the federal Government) retains the ultimate responsibility for ensuring the adequacy of consultation before the Project is approved.

NGTL stated it would be premature at this time for the Commission to assess the adequacy of Crown consultation because consultation is likely not yet complete.

### **7.5.2 Social and Cultural Well-Being**

In its Application, NGTL noted that Indigenous communities have reported a close relationship between their ability to conduct subsistence activities on the land within their traditional territories and the transmission of knowledge and culture to younger generations. NGTL stated it acknowledges the importance of intergenerational transfer of knowledge for Indigenous peoples, and that this is inherent in the ability to practice TLRU. NGTL stated that since the transmission of culture and knowledge of the land is intimately connected to the ability to practice subsistence activities, the effects of Project activities on the intergenerational transfer of knowledge through subsistence activities were considered in its assessment.

NGTL concluded that given the short-term duration of the effects on subsistence activities and resources the Project is not anticipated to affect the intergenerational transfer of knowledge through subsistence activities.

Regarding potential impacts from construction camps, NGTL noted it has a range of policies and management approaches that will ensure its camps, as with all NGTL worksites, are operated in a safe and secure manner. NGTL also noted that standard practices that intend to reduce the potential for adverse effects on community life related to temporary workers includes on-going engagement with local Indigenous and non-Indigenous communities to follow-up on any unanticipated issues or concerns.

NGTL stated the construction orientation topics include safety, environmental mitigation and cultural awareness, including Indigenous culture, history and traditional land use. NGTL also stated the orientation will also include information regarding Project-specific cultural and environmental sensitivities, including heritage resources and TLRU. NGTL noted that available knowledge and input from Indigenous communities will be considered in the development of the construction orientation.

In response to concerns raised by Peerless Trout First Nation regarding the lack of a GBA+ for social and cultural well-being as it pertains to temporary work camps, NGTL stated that it applied to the NEB, predecessor to the CER, pursuant to section 52 of the NEB Act, and as such, the Application and related filings were prepared by NGTL in accordance with the NEB Act and the requirements of applicable Filing Manual, including its Guide A. NGTL noted these filings preceded the coming-into-force date of the CER Act and the applicability of the CER's Interim Filing Guidance which contemplated GBA+. NGTL stated it is of the view that the applicable filing guidance properly adhered to remains the prevailing Filing Manual under the NEB Act, which does not contain any requirements to conduct GBA+ for the Project. NGTL also stated that in accordance with applicable filing guidance it conducted a comprehensive impact assessment that evaluated the potential socio-economic effects from the Project relative to its scope and scale, existing socio-economic conditions in nearby communities and the implementation of policies and management procedures by NGTL for safety and well-being.

### **7.5.3 Human Health**

In its ESA, NGTL stated that the main groups within the population that could potentially be affected by the Project for human health concerns are construction workers involved in the Project and individuals (Indigenous and non-Indigenous) who live near or rely on resources near the Project Construction Footprint.

NGTL noted that Indigenous communities expressed concerns with respect to the: potential effects to medicinal plants, chemical sprays, typically used to control vegetation growth and the potential effects to water quality, the local and regional environment, and the people who subsist on the animals and plants that populate it, and, potential effects to berries, food plants and medicinal plants, affecting human health.

NGTL stated that in order to commit to restricting the general application of herbicides near traditional land use sites, it requires specific locations of those sites that are located on or adjacent to the Project footprint and that can be clearly delineated and mapped. NGTL also stated that should Indigenous communities identify the locations where spraying and herbicide application are of interest to them then NGTL will notify the community regarding timing and locations of scheduled spraying and herbicide applications for those locations during construction and operation. See Subsection 7.5.7.4 for additional information on NGTL's reply regarding the use of herbicides and potential Project impacts on plants and plant gathering.

In its evidence, NGTL stated that in the event of an accidental release, NGTL will implement the general environmental protection and response measures outlined in the Release Contingency Plan. NGTL also stated that measures to control, contain, recover and clean up the release will be implemented in a timely manner to minimize the potential for adverse environmental and human health effects. See Subsection 7.5.9.1 for additional information on NGTL's reply regarding safety concerns.

For NGTL's reply to human health issues related to non-Indigenous peoples, refer to Chapter 8.

### **7.5.4 Heritage Resources**

In its Application, NGTL stated that the primary mitigation measure in protecting heritage resources is avoidance through routing and siting, and secondarily, site-specific mitigation developed in consultation with appropriate provincial regulatory authorities and approved by these authorities in fulfillment of permit obligations. NGTL stated that the discovery of an

archaeological, historical or paleontological site or features during construction is an unlikely event. Should this unlikely event occur, the Cultural Resource Discovery Contingency Plan will be implemented. NGTL stated that it prohibits the collection of heritage resources by Project personnel.

NGTL stated that the Ukrainian church identified by Peavine Métis Settlement is 2 km from KP 13.8 of Red Earth Section 3 and confirmed the church will be avoided by construction.

NGTL stated that in order to determine any heritage resource requirements for each Project component, NGTL has had *Historical Resource Act* applications prepared and submitted to Alberta Culture and Tourism (now, Alberta Ministry of Culture, Multiculturalism and Status of Women) on 6 March 2019. NGTL is committed to completing any requirements issued by Alberta Culture and Tourism in order to obtain *Heritage Resources Act* clearance for all Project components prior to construction.

For NGTL's reply to heritage resource issues related to non-Indigenous peoples, refer to Chapter 8.

### **7.5.5 Employment and Benefits**

For NGTL's reply to employment and benefit issues related to non-Indigenous peoples, refer to Chapter 9.

#### **7.5.5.1 Employment and Contracting Opportunities**

NGTL stated it is committed to supporting local Indigenous communities by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated the Project will maximize local and Indigenous hiring from within the Community Regional Study Area, as a first priority, and elsewhere in Alberta as a second priority. NGTL also stated that it implements many measures that enhance the opportunity for local and Indigenous communities to participate in the Project, including requirements in contracts with Prime Contractors to hire qualified and competitive, local, Indigenous contractors and employees.

NGTL stated that it outlines Indigenous subcontracting, employment, and training expectations through its sourcing events (e.g., request for proposals) and shares its current contact information and service offerings from local Indigenous communities with the Prime Contractor during this process. NGTL noted the Prime Contractor will have to submit an Aboriginal Participation Plan to NGTL that outlines the processes that it will follow to facilitate productive opportunities for qualified and competitive local Indigenous businesses and people on the Project. NGTL stated it then sets obligations in its Prime contracts to ensure that contractors fulfill the commitments they made in their proposal that were a consideration in their contract award through Aboriginal Participation Plan .

NGTL stated that in addition, it actively monitors Prime Contractor implementation of its subcontracting, employment, and training commitments and that Prime Contractor(s) are required to report regularly on their performance relating to local and Indigenous contracting and employment.

NGTL stated it is committed to the process of collecting information on local and Indigenous businesses and interested individuals, organizing that information, sharing the information with

prime contractor(s) once selected, and sharing the prime contractor(s) information with local communities, businesses and individuals. As such, NGTL is committed to considering and supporting Indigenous contracting during each Project phase. NGTL stated that to support this effort, it has in place an Indigenous Business Engagement team that engages with interested Indigenous communities and businesses to provide information on how they may participate in Project opportunities. NGTL stated the team also works with NGTL's prime contractors to confirm that qualified and competitive Indigenous businesses and individuals are considered for material and services subcontracts in accordance with NGTL's Aboriginal Contracting and Employment Program.

NGTL's stated its Indigenous Relations Business Engagement activities for the Project were established to increase the participation of those Indigenous communities potentially affected by the Project. NGTL stated business engagement activities seek to provide business opportunities arising from Project-related activities to qualified Indigenous contractors and suppliers and are designed to:

- assess local Indigenous community and business capacity and capabilities for contracting and employment opportunities;
- maximize contracting and employment opportunities for Indigenous communities and businesses through the Project's contractors and subcontractors or through direct contracts with the Project;
- where opportunities exist, the Project will work with Indigenous communities and businesses to help enhance capacity, including Project-related training and employment, if applicable;
- monitor and report performance of contractor Indigenous participation plans; and
- implement NGTL's Indigenous Relations Business Engagement program, to provide business and employment opportunities arising from Project-related activities to qualified Indigenous contractors and suppliers.

NGTL stated it seeks to maximize economic opportunities for local communities on all projects. As such, each project varies based on community capacity and project needs. For projects in northern AB, NGTL stated that Indigenous businesses generally represent 8 to 12 per cent of the total construction contract values in past projects. Additionally, Indigenous peoples comprise approximately 8 to 10 per cent of the total construction workforce.

NGTL stated it continues to provide information about Indigenous Relations Business Engagement activities to potentially affected Indigenous communities and businesses, obtain information regarding Indigenous community interest, capacity and capability relating to the Project, and discuss potential economic participation in the Project to build reciprocal business relationships. NGTL stated that where opportunities exist, NGTL will work with the Indigenous communities and businesses to help enhance capacity, including Project-related training and employment, if applicable.

NGTL stated it is willing to meet with any Indigenous community expressing an interest in potential contracting, employment, and training opportunities with NGTL to discuss its contracting process and to develop an understanding of the Indigenous community's capacities.



### **7.5.5.2 Education, Training and Community Investment**

NGTL stated it recognizes the importance of providing opportunities for Indigenous participation in the Project and stated it will provide support and resources to Indigenous communities to increase their ability to participate in Project activities and to support their long-term goals for skills development and training.

NGTL stated that in collaboration with local Indigenous communities, and in alignment with TransCanada's Aboriginal Relations Policy, NGTL has been and will continue working with Indigenous communities to identify opportunities for capacity development. NGTL stated that as part of its ongoing engagement program, it will work with Indigenous communities through their human resource coordinators, economic development and education officers, or other designated responsible representatives, to support the community's immediate and / or long-term training needs.

NGTL noted that by taking a proactive and collaborative approach to developing and identifying community programs to be supported, TC Energy is able to have an open dialogue about needs and expectations. NGTL stated this allows TC Energy to provide funding in support of community-led initiatives identified to it by potentially-affected Indigenous communities, thereby avoiding or mitigating issues or concerns with the programs.

NGTL stated that TC Energy's training and capacity development program is not project-specific, rather it is applied across areas where NGTL works and operates. NGTL stated that TC Energy takes a life-cycle approach to training and education programs and by using a fit-for-purpose approach, it is able to tailor training and education programs to optimize opportunities for each Indigenous community. NGTL indicated that TC Energy's training and education objectives as seeking to achieve the following:

- invest in community-led capacity building initiatives to deliver benefits to Indigenous peoples proximate to TC Energy's projects and existing operations;
- identify platforms of common interest to build enduring and respectful relationships with Indigenous peoples to support regulatory processes and access to land; and
- develop opportunities for dialogue to create reciprocal understanding and strengthen TC Energy's practices.

NGTL stated that training and capacity development programs which TransCanada and NGTL have supported and sponsored in the past include: literacy and numeracy programs, job readiness and life skills programs, administration courses for Band staff, safety tickets, first-aid and CPR training, heavy equipment operators training, EA and monitoring courses, and, pre-trades training. NGTL stated that it also supports individual community members in achieving their education goals through TransCanada's Community Scholarships Program. The program delivers over 500 scholarships to students across North America, including 100 Indigenous Legacy Scholarships specifically for Indigenous students.

NGTL also stated that TC Energy works with Indigenous communities to identify their needs and interests for community legacy initiatives. NGTL noted TC Energy supports community-led initiatives including, but not limited to safety equipment and safety programs, emergency preparedness, Sun Dances, Pow Wows, Métis festivals, breakfast programs, cultural/language preservation, elders programs, habitat conservation, species protection, and more. NGTL also

noted that in 2019, TC Energy invested more than \$3.5 million with over 280 Indigenous partners and students to help build sustainable, healthy and vibrant communities where it operates.

### **7.5.5.3 Benefits for Indigenous Communities**

NGTL noted that some Indigenous peoples who were Intervenor in the hearing process requested that the Commission impose requirements for NGTL to enter into agreements, provide funding or otherwise provide compensation for Project impacts, and initiate regional assessments that go beyond the scope of the Project. NGTL stated the Commission has no legal authority to impose these types of conditions. Further, with respect to Intervenor requests for economic benefits, NGTL stated the record demonstrates that the Project has been designed to create meaningful economic benefits for Indigenous communities by providing contracting and employment opportunities to Indigenous businesses and individuals, with a view to developing a suite of participation measures appropriate for the scope and scale of the Project.

In response to Peerless Trout First Nation's concerns regarding energy security and CER IR 4.8, NGTL explained that ultimately, NGTL offers a variety of avenues to accommodate all types of demand loads, including residential gas distributors and gas co-ops. However, NGTL noted it has not received a formal Application for Service from Peerless Trout First Nation. NGTL stated it can confirm that during an 8 October 2019 meeting with the community on another NGTL project, Peerless Trout First Nation referenced the use of propane to service their community and indicated they would prefer to be connected to natural gas. NGTL stated that at that point, NGTL referred Peerless Trout First Nation to discuss its request with a distribution company or gas co-op in order to determine what community infrastructure would be required. NGTL stated it remains prepared to evaluate and provide estimated costs for the provision of delivery service or a taps connection to Peerless Trout First Nation, as appropriate, once the community has evaluated the necessary downstream distribution facilities to accommodate gas deliveries and an Application for Service is submitted to NGTL.

### **7.5.6 Monitoring by Indigenous Peoples**

NGTL stated that in consideration of the requests made by Indigenous communities throughout engagement on the Project, for participation in the Project through monitoring during construction, NGTL will be developing an Aboriginal Construction Participation Program for the Project. NGTL stated the Aboriginal Construction Participation Program will facilitate the participation of members of potentially-affected Indigenous communities to be on-site, and directly observe pipeline construction activities and the implementation of mitigation measures.

NGTL stated the Aboriginal Construction Participation Program offers employment opportunities, including compensation and on the job training, for individuals from potentially-affected Indigenous communities that express an interest in participating. NGTL also stated the Aboriginal Construction Participation Program aims to grow its participants' skills, exposure and understanding of NGTL's construction activities and environmental protection measures, with a view to advancing interests in environmental stewardship.

NGTL stated that specifics around the Aboriginal Construction Participation Program, including which Project components it will be offered on, and what types of opportunities will be offered will be developed closer to construction and will be informed by NGTL's engagement with Indigenous communities for the Project, results of the biophysical field programs for the Project,

engagement with federal and provincial government agencies, feedback obtained from participants during construction activities on past NGTL projects, and experience gained from other pipeline projects.

NGTL indicated it will continue to engage with potentially-affected Indigenous communities, which can include further discussions to better understand their specific interests relative to the scope and scale of the Project. This engagement will be guided by the considerations of training and education, employment and contracting detailed within NGTL's Aboriginal Engagement Program in the Project application, with a view to developing a suite of participation measure appropriate for the Project.

NGTL noted that Peerless Trout First Nation requested that an Indigenous monitoring committee with direct involvement in the Caribou Habitat Restoration and Offset Measures Plan and other environmental and cultural value monitoring plans be established. NGTL stated it is of the view that an Indigenous monitoring advisory committee is not appropriate for the scope, scale and nature of the Project given that most of the Project parallels existing ROW and utilizes existing disturbance, where possible. NGTL stated the goal of NGTL's Aboriginal Engagement Program for the Project is to provide Project information and seek feedback from Indigenous communities in order to anticipate, prevent, mitigate and manage situations that have the potential to affect Indigenous communities. NGTL strives to meet this goal in part by initiating engagement activities as soon as possible in the planning of the Project. NGTL submitted that this early and proactive engagement, combined with NGTL's extensive experience implementing the environmental mitigation measures, are detailed in the Project EPP and ESA, help to ensure that situations with the potential to affect Indigenous communities have been prevented, mitigated and / or managed by the time a project reaches the operations phase of its lifecycle.

## **7.5.7 Traditional Land and Resource Use**

### **7.5.7.1 NGTL's Assessment Methodology and Mitigation Measures**

NGTL stated the Project ESA conservatively assumed that TLRU sites, areas, and activities have the potential to occur throughout the region, including the Project area, and that traditionally used species identified as being present within the area could be hunted, fished, trapped, or gathered by Indigenous communities, even if information identifying specific activities, species, or sites had not been received from Indigenous communities. NGTL also stated that where specific information was provided by Indigenous communities, NGTL considered this information in the ESA and, where appropriate, for incorporation into Project planning. NGTL stated that as a result, to the extent an Indigenous community provided information or expressed concerns that were unique to their community, that information was considered in the context of the ESA. NGTL stated that this approach ensured that its assessment reasonably and broadly assessed the full scope of potential effects of the Project on all Indigenous communities' TLRU.

NGTL indicated the Project ESA proposes a full suite of mitigation measures to reduce potential Project-related effects on TLRU, including the resources relied upon to exercise TLRU practices. NGTL also stated its view that the ESA methodology complies with the requirements of section 52 of the NEB Act, NEB Filing Manual guidance, and followed standard assessment methods appropriate for the scope and scale of the Project. NGTL is of the view the ESA accurately reflects the potential and residual effects of the Project on Indigenous communities.

NGTL stated its EPPs include both general and project-specific environmental protection measures which have been developed and refined over time based on past project experience, input from stakeholders (e.g., municipalities, regulators), landowners and Indigenous communities during consultation, and reflect current industry best management practices where applicable to Project activities.

NGTL stated that with implementation of its proposed mitigation measures, the ESA concluded that the residual effects on TLRU will not be significant. This conclusion is supported by NGTL's operating experience, as well as the evidence from several Indigenous peoples who were Intervenor in the hearing process that they continue to undertake TLRU activities throughout the Project area, including along other existing NGTL ROWs.

NGTL noted that several of the Indigenous peoples who were Intervenor in the hearing process challenged the adequacy of the TLRU assessment in NGTL's ESA because it did not include community-specific assessments. NGTL stated that nowhere in the CEAA 2012 or the Filing Manual is there a requirement to conduct community-specific assessments, and the preparation of Project-specific as opposed to community-specific assessments for TLRU is consistent with past practice for recently-approved federal pipelines.

NGTL noted that Driftpile Cree Nation and Whitefish Lake First Nation #459 argued that NGTL should be required to support them in completing TLRU studies prior to Project construction. NGTL responded that while NGTL will review and consider any TLRU information provided by Driftpile Cree Nation or Whitefish Lake First Nation #459, it strongly disagrees with their requested requirement. NGTL stated its engagement summaries demonstrate that NGTL has reasonably engaged with all potentially affected Indigenous communities based on their expressed interests in the Project and that all potentially affected communities, including Driftpile Cree Nation and Whitefish Lake First Nation #459, have had reasonable opportunities to provide TLRU information directly to NGTL or to the Commission through the hearing process. NGTL noted the Commission's potential **Condition 7 (Outstanding Traditional Land and Resource Use Investigations)** for both the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities will also ensure that any TLRU received from communities after the close of the hearing is incorporated, as appropriate, into the Project plans prior to construction. NGTL also noted there is no legal requirement for NGTL to fund TLRU studies for all potentially interested Indigenous communities, and requiring such studies prior to construction would effectively give each community a veto over the Project (as they control the timing of any such studies), which is contrary to law.

NGTL noted that some Indigenous peoples who were Intervenor in the hearing process challenged NGTL's ESA methodology on the basis that NGTL's assessment of potential impacts on TLRU was limited to biophysical impacts, and that potential impacts on Indigenous and Treaty rights are broader than impacts on TLRU. NGTL stated it disagrees with the intervenors' characterizations. The ESA's assessment of TLRU considered potential effects on TLRU activities, not simply the environmental resources that those activities rely on. For example, the ESA considered potential effects on plant gathering activities, fishing activities, hunting and trapping activities, and use of trails and travelways, habitation sites, gathering places and sacred sites. These assessments were much broader than simply biophysical impacts.

NGTL argued that its assessment of TLRU followed the requirements of the Filing Manual. To the extent Indigenous communities assert rights that might be affected by the Project and that

are not captured in NGTL's TLRU assessment, the onus is on the communities to explain what those rights are and how those rights might be affected. NGTL stated that beyond broad assertions of rights, no Indigenous peoples who were Intervenor in the hearing process provided evidence demonstrating potential effects from the Project beyond effects on TLRU.

NGTL argued its evidence demonstrates that its assessment of Project effects on TLRU has considered all available information to date. NGTL stated that as new information continues to be made available, NGTL has committed to continue to review and consider that information, and will continue to document and address TK and related concerns identified by Indigenous communities through the Project's ongoing Aboriginal Engagement Program. NGTL also stated that in the unlikely event that previously unidentified cultural, heritage or TLRU sites are discovered during construction, NGTL has proposed a Cultural Resource Discovery Contingency Plan to avoid or minimize potential effects on those sites. NGTL stated these processes provide further assurances that the Project will be constructed in a manner that reasonably avoids or minimizes potential effects on TLRU.

With regards to the recommendation made by several Indigenous peoples who were Intervenor in the hearing process that NGTL should adapt the methodology that was developed for the Proposed Frontier Oil Sands Mine Project, NGTL stated it will not be assessing impacts on Indigenous rights in accordance with the *Methodology for Assessing Potential Impacts on the exercise of Aboriginal and Treaty Rights of the Proposed Frontier Oil Sands Mine Project*. NGTL noted this methodology was co-developed with Mikisew Cree First Nation and Canadian Environmental Assessment Agency for a new oil sands mine in northeastern Alberta. NGTL noted that the Project is markedly distinguishable, consisting of three linear gas pipeline sections and a single compressor station unit addition located in northwestern AB. NGTL argued the varying nature, scale and setting of each project determine not only the relevant regulatory requirements but are also key considerations in the design of proponent-led engagement programs, the identification of project interactions and potential effect pathways. NGTL stated its view that the Project's assessment methodology complies with the requirements of section 52 of the NEB Act, NEB Filing Manual guidance, including Table A-3: Filing Requirements for Socio-Economic Elements, and followed standard assessment methods appropriate for its scope and nature.

#### **7.5.7.2 Traditional Knowledge Studies**

NGTL stated it works with interested Indigenous communities to collect and incorporate TK into Project planning, as appropriate. NGTL stated it understands TK to be knowledge held and contributed to by a group of people through generations of living in close contact with nature. It may consist of traditional ecological knowledge and traditional land use and forms part of a larger body of information which encompasses knowledge about cultural, environmental, economic, political and spiritual inter-relationships, which is typically identified by, and gathered through, engagement with Indigenous communities.

NGTL stated that through the collection of TK with interested communities, NGTL seeks to:

- identify and consider potential adverse effects of the Project on the current use of lands and resources for traditional purposes;
- incorporate TK in Project planning;
- identify concerns about the Project; and

- propose measures to avoid, mitigate or otherwise manage potential adverse Project effects on Indigenous interests.

NGTL stated the objectives of its TK Report are to describe the results of the Project-specific TK studies received, including concerns and recommendations provided by Indigenous communities engaged on the Project by:

- presenting TK, such as the nature and location of trails, habitation sites, medicinal and food source plants, hunting, fishing, trapping, gathering places, and sacred areas, while maintaining the confidentiality of each community's proprietary information; and
- identifying concerns with, and potential effects of, the Project on the current use of lands and resources by each community to contribute to final Project design.

NGTL indicated that it has provided capacity funding to 15 Indigenous communities being engaged on the Project to complete Project-specific TK studies. NGTL stated that the information in the TK Report has been used to inform Project planning, including regulatory permitting, and construction planning for the Project. NGTL also stated that information received from potentially-affected Indigenous communities is considered including route selection and refinement and the development of site-specific mitigation measures to avoid or reduce effects on TLRU sites and activities.

NGTL stated that TK resulting from the Project's Aboriginal Engagement Program, publicly-available literature and completed TK studies has been integrated into the overall ESA. NGTL stated it was also considered in the identification of effects pathways and potential effects for TLRU as well as for relevant biophysical elements (e.g., wildlife, fisheries and vegetation) given the close connection to TLRU (i.e., traditional species harvested and other resources required for TLRU activities). NGTL further stated that the mitigation planned for the Project, as described in the ESA and the EPPs, was developed after considering available TK information and, where appropriate, and has been incorporated into Project planning.

In response to concerns that the ESA was filed before some Indigenous communities were able to provide input, NGTL indicated that it used the best information available at the time, not just Project-specific information provided by Indigenous communities, but also a comprehensive literature review, desktop analysis, publicly available reports, and NGTL's operating experience. NGTL also stated that information gathered during ongoing TK studies and engagement will continue to be considered in Project planning, including the Project-specific EPPs and EAS, as appropriate.

NGTL noted that information within the EPP and EAS helps inform NGTL's orientation materials regarding the local cultural and environmental sensitivities that require mitigation during construction. As such, available knowledge and input provided by Indigenous communities is considered and incorporated into NGTL's orientation materials. NGTL stated it is willing to provide a copy of the orientation materials, upon request from a potentially affected Indigenous community, and any feedback received by NGTL will be considered in the finalization of the orientation.

Additionally, NGTL confirmed that available TK and recommendations gathered through the Project's ongoing Indigenous engagement will be considered in the development of the caribou habitat restoration measures for the Project, as appropriate. NGTL stated that inclusion of TK

and recommendations gained through engagement are intended to ensure measures are implemented in a manner that avoids or minimizes disruption to traditional activities in the restoration areas.

NGTL explained that consideration of information can vary depending on the details and nature of the information provided and includes evaluating whether NGTL's planned mitigation would effectively avoid the identified potential interactions, or whether additional or refined mitigation is warranted. NGTL stated traditional use sites or features which require site-specific mitigation additional to the existing measures in the EPPs will be included in the EPPs and EAS filed prior to construction.

NGTL argued that some of the consultant reports filed by Indigenous peoples who were Intervenor in the hearing process are unreliable and inherently flawed. NGTL stated that while it has considered all information provided to date by Indigenous communities, both on the hearing record and through direct engagement, several of the consultant reports filed by Indigenous peoples who were Intervenor in the hearing process identified potential Project interactions or provide conclusions about Project effects that differ from the conclusions in the ESA. NGTL submitted its reasoning for why the Commission should give little to no weight to such conclusions.

Specifically, with respect to the Field Survey and Cultural Data Summary Report submitted by Cadotte Lake Métis Local #1994, NGTL argued that the report relies upon a methodology that is inherently subjective and not sufficiently specific to be relied upon. NGTL also argued that, in particular, the underlying methodology relies on undefined qualitative characterizations and general statements about pre-existing disturbance levels that do not allow for an informed assessment of potential Project effects.

Regarding the reports filed by Duncan's First Nation, NGTL stated that the TK reports submitted include other NGTL projects that are separate from the Project and that the Commission has previously affirmed should not be combined. NGTL also stated that Duncan's First Nation acknowledged that these reports present potential effects based on subjective judgments of importance, which are inherently difficult to rely on as a measure of potential effects on members' ability to exercise their rights.

NGTL further stated that in addition to the TK reports, the ALCES Report filed by Duncan's First Nation contains fundamental and unexplained inconsistencies with past reports filed with the NEB, as well as with ALCES' subsequent IR responses in this proceeding. NGTL stated the ALCES Report also relies on a number of incorrect assumptions regarding availability of lands in the region for TLRU, which resulted in results that are inherently unreliable.

NGTL noted that Duncan's First Nation claimed in its argument that NGTL misunderstood that report and Duncan's First Nation used its argument as an attempt to rationalize certain ALCES' methods and conclusions. NGTL stated that instead of clarifying misunderstandings, these arguments created further inconsistencies in the ALCES methodology. NGTL argued that, when asked in an IR about the differences between ALCES' findings in this proceeding relative to a recent ALCES Report filed for the 2021 NGTL System Expansion Project, ALCES explained that the difference was due to raster resolution rounding. NGTL also noted that in Duncan's First Nation's argument, it was suggested that the differences are caused by the ordering of how categories of land use restrictions are removed from the land base. NGTL argued that ALCES' conclusions regarding the amount of available land base should not differ based on the order of how certain features were removed from that land base, and noted that because this

explanation was provided for the first time in legal argument, NGTL did not have an opportunity to test that explanation or respond to it with reply evidence.

NGTL further noted that Duncan's First Nation also claimed in its argument that NGTL's critiques of the ALCES Report are either i) trivial, or ii) premised on assumptions about the availability of land that are contradicted by community perspectives and common sense. NGTL stated that in terms of triviality, Duncan's First Nation characterized certain features as "*trivial*" that are, in fact, several times larger than the Project footprint. NGTL also stated that in terms of land availability, Duncan's First Nation did not address in its argument NGTL's observation that lands within 183 m of transportation features are, in fact, available for Duncan's First Nation's land use, and that while existing natural features such as waterbodies and steep slopes may not be areas used by Duncan's First Nation members, they are nonetheless part of the natural landbase prior to any assessment of cumulative effects. NGTL argued that for these reasons, NGTL maintains its position that the ALCES Report is based on flawed assumptions and should be given little, if any, weight by the Commission in assessing the effects of the Project.

Additionally, NGTL argued that Driftpile Cree Nation, Louis Bull Tribe and Peerless Trout First Nation each filed technical review reports from environmental consultants that did not take into account all relevant filings on the hearing record, and that contained recommendations that were specifically addressed in NGTL's regulatory filings. NGTL argued that none of these consultants or Intervenor's filed evidence that refuted the reasonableness or adequacy of NGTL's responses.

NGTL stated it will continue to document TK and address Project-related concerns identified by Indigenous communities during activities associated with the Project's broader Aboriginal Engagement Program.

### **7.5.7.3 Access to Lands**

NGTL stated that Indigenous communities' ability to use the ROW will not be restricted. NGTL noted that a number of Indigenous peoples who were Intervenor's in the hearing process suggested during the proceeding that the presence of the Project ROW will legally restrict their members from accessing those lands during construction and operation. NGTL argued that view is inconsistent with NGTL's evidence that it will not restrict access to the ROW unless there is active construction or maintenance occurring in the area and the proposed activity poses safety risks to the workers or the land users. NGTL stated that legally, persons exercising hunting and fishing rights in AB under the terms of a treaty and Article 12 of the Natural Resources Transfer Agreement may access Crown lands where there is no "*visible, incompatible use*". NGTL stated that pipeline ROWs are not a "*visible, incompatible use*" with TLRU activities and, in fact, the record demonstrates that TLRU activities are often carried out along NGTL ROWs in the area.

NGTL confirmed that with the exception of localized areas during the short period of active construction, the ROW will remain available for traditional use during construction and operation of the Project. NGTL stated it will provide Indigenous communities with the proposed construction schedule and maps prior to the start of construction to avoid potential conflicts between construction crews and traditional users. NGTL stated no new permanent access is required for the Project and that adjacent pipeline ROWs will be used to the extent practical for storage and access, and existing disturbed sites will be used for temporary ancillary facilities where possible. NGTL stated these measures will reduce the severity of potential effects related to changes in access on hunting, fishing, trapping, and recreational activities.



NGTL stated it does not have the ability to enforce access control or restrict or access within the Regional Study Area outside of NGTL dispositions. It stated that no new gates or fences will be constructed for the Project on Crown land where they do not already exist.

NGTL noted it heard the general concerns of Indigenous communities during the oral Indigenous knowledge sessions regarding increased fragmentation of land resulting in undue strain and hardship upon community members to travel further to find accessible lands that will support traditional uses. NGTL also noted that the proposed pipeline routes have been designed to parallel existing NGTL ROWs or other linear disturbances for approximately 95 per cent of their length. Paralleling existing disturbances allows the Project footprint to be reduced by using temporary workspace on the adjacent disposition and minimizes fragmentation of the landscape. As a result, by paralleling existing or proposed disturbances, potential effects of the Project on the environment and on TLRU are minimized.

NGTL also noted that almost 80 per cent the North Star Section 2 Project component is proposed to be located on private agricultural land adjacent to existing pipe, and that similarly, the Bear Canyon North Extension is proposed to be sited on approximately 50 per cent private agricultural land adjacent to existing pipe. NGTL argued that this routing significantly reduces potential effects on Crown land use.

NGTL noted that Duncan's First Nation requested that a Crown Land Offsets Program be established to mitigate the impact of taking up and disturbance of Crown lands on Duncan's First Nation's section 35 Rights. NGTL argued that this recommendation is not supported by the evidence and should not be imposed on the Project. NGTL stated the Project will result in minimal new permanent footprint on Crown land and the remainder of the Project footprint will be available for TLRU activities. NGTL stated further, that provincial Crown land disposition decisions rest with the Province of Alberta and stated its view that the Commission has no jurisdiction to order the release of any Crown lands for offsets, or otherwise. NGTL stated as a result, it would be inappropriate and unlawful for the Commission to impose this requirement on the Project.

#### **7.5.7.4 Potential Project-Related Effects on Traditional Land and Resource Use Sites and Activities**

NGTL stated that potentially affected Indigenous communities were engaged and provided opportunities to identify TLRU activities and sites potentially affected by the Project. NGTL stated that this information is used to establish how Indigenous communities use the land, and move on the land and locations of activities or areas of cultural importance such as cultural sites and sacred areas.

NGTL stated that Indigenous communities identified TLRU activities, resources, and features on the Project Construction Footprint of all Project components that are generally consistent with those identified in the original TK Report and assessed in the ESA. NGTL noted these activities, resources and features included culturally important plants and wildlife, trap lines and hunting and fishing sites. NGTL stated that the suite of mitigation measures identified in the Project-specific EPPs are designed to address effects to these TLRU activities, resources, and features, and no new mitigation is required to address these concerns. NGTL also stated that traditional use sites or features which require site-specific mitigation additional to the existing measures in the EPPs will be included in the EPPs and EAS filed prior to construction.

## Hunting / Trapping

In the ESA, NGTL noted that Indigenous communities reported hunting activities within their traditional territories including the TLRU Local Study Area and Regional Study Area. NGTL stated that due to low population numbers, caribou are not currently hunted by Indigenous communities but are considered culturally important and a valued traditional resource for many Indigenous communities. NGTL noted the Hidden Lake North Unit Addition and a portion of the Red Earth Section 3 are located within woodland caribou ranges.

NGTL stated that, as outlined in the Project's EPPs, Project personnel (including contractors and subcontractors) are prohibited from hunting or fishing on the construction footprint, and from harassing, feeding, collection or possessing wildlife species.

NGTL stated that with the exception of localized areas during the short period of active construction, the ROW will remain available for Indigenous harvesting during construction and operation of the Project. NGTL stated it does not have restrictions on safe firearms discharge by Indigenous peoples or members of the general public in areas outside of the controlled construction site or on the ROW during operations, and that NGTL is not aware of instances where Indigenous peoples or other harvesters have been restricted from accessing an NGTL ROW.

NGTL stated it is engaging with the Peerless Trout First Nation registered trap line holders intersected by the Project and will offer a meeting to discuss potential Project-related effects on trapping activities as well as discuss the timing of Project construction activities through the trap line. NGTL stated it will implement its Trapper Compensation Plan that reimburses senior registered trap line holders based on the three elements of Project notification, pre-construction consultation / notification and post-construction fur loss negotiation / compensation. For additional discussion on NGTL's reply to trap line compensation, refer to Chapter 5.

NGTL acknowledged that trapping activities do not occur only within the vicinity of the trap line cabin and that construction activities have the potential to overlap with trapping activities. NGTL also stated that operational activities are infrequent, limited in extent, very short in duration and unlikely to cause recurrent or persistent disturbance for trappers.

NGTL indicated that hunting and trapping sites with the potential to be adversely affected by the Project identified during ongoing engagement with participating Indigenous communities will be evaluated and appropriate mitigation will be implemented. NGTL stated that if necessary, site-specific mitigation measures will be developed for hunting sites for the review of the Indigenous community that identified the site and added to the EPPs as appropriate.

NGTL indicated that mitigation measures are anticipated to reduce the disruption of subsistence hunting resources as well as the alteration of trapping resources, to a low magnitude for most wildlife species.

NGTL stated that with the implementation of the proposed mitigation, the residual effect on disruption of hunting and trapping activities and hunting and trapping resources is short-term in duration and isolated to occasional in frequency as it will occur during construction and operations-phase site-specific maintenance. NGTL stated that the effect is anticipated to be reversible since wildlife will return to the ROW following construction and hunting activities can resume on the ROW following reclamation.

## Fishing

NGTL stated that two named fish-bearing watercourses are crossed by the Project: the Notikewin River (North Star Section 2) and the Loon River (Red Earth Section 3). NGTL stated that mitigation measures are anticipated to reduce the alteration of fishing resources to a low magnitude for subsistence species.

For NGTL's reply concerning fish and fish habit issues, refer to Chapter 8.

## Gathering / Harvesting

NGTL stated the potential effect of disrupting plant gathering activities and plant resources will be mitigated by natural revegetation and reclamation of the Project construction footprint. This will occur following construction, ensuring the ability of the land to support various land uses similar to the uses that existed before construction. NGTL stated that given the short-term duration of effects, the Project is not anticipated to affect the intergenerational transfer of knowledge through subsistence activities. NGTL stated that the ESA also describes that over the long-term, with the Project's end of life and revegetation, the landscape will be restored for plant gathering activities with the overall the effect anticipated to be low in magnitude and not significant.

NGTL has noted that some Indigenous communities have expressed concern regarding its use of herbicides to control weeds along the ROW. NGTL stated that in order to commit to restricting the general application of herbicides near traditional land use sites, it requires specific locations of those sites that are located on or adjacent to the Project footprint and that can be clearly delineated and mapped. NGTL also stated it will consider the information gathered during ongoing engagement in Project planning, including the EPPs and EAS filed prior to construction, and will continue to address questions and concerns from Indigenous communities regarding vegetation management through its ongoing engagement efforts should any arise.

NGTL stated that should potentially affected stakeholders including Indigenous communities identify the locations where spraying and herbicide application are of interest to them then NGTL will notify the community regarding timing and locations of scheduled spraying and herbicide applications for those locations during construction and operation.

NGTL noted that the TLRU assessment in the ESA acknowledges that the Project may result in changes to the distribution and abundance of vegetation available for harvesting due to Project clearing activities. However, the ESA concluded that with the implementation of the proposed mitigation, the residual effect on disruption of plant gathering activities and plant resources is short-term in duration and isolated to occasional in frequency. NGTL stated that since the pipeline will be buried and the ROW reclaimed, no further effects on TLRU are expected during pipeline operation, other than occasional and isolated short-term disturbance during small-scale maintenance activities.

NGTL stated it will ensure its pre-construction orientation for the Project – provided to all Project personnel, contractors and subcontractors – will communicate and emphasize the social and substantive implications of any opportunistic harvesting activities in the Project area, and the impacts such activities may have on local Indigenous communities.

## Trails and Travelways

In its Application NGTL acknowledged that trails and travelways occur throughout the TLRU Local Study Area and Regional Study Area. Trails and travelways are used by Indigenous peoples engaged for the Project to access hunting, plant harvesting, fishing, and gathering sites.

NGTL stated that the mitigation in the ESA, including engagement with potentially affected Indigenous communities, is likely to prevent or alleviate adverse residual effects associated with disruption of use of trails and travelways.

NGTL noted that Peerless Trout First Nation identified concerns regarding four historic hunting and trapping trails in proximity to Red Earth Section 3, which the community advised it would like to see protected. NGTL stated that in its IR to Peerless Trout First Nation, NGTL requested details regarding the specific locations, frequency and timing of use of the hunting and trapping trails with a view to better assessing their potential interaction with the Project. In Peerless Trout First Nation's response to NGTL's IR, the community indicated the specific locations and details of its historic and current use of these trails are sensitive in nature, and therefore it would follow-up directly with NGTL to provide the requested information in a confidential letter. NGTL stated it has followed up with Peerless Trout First Nation, but to date, the community has not provided NGTL with the location of the trails.

## Traditional Land and Resource Use Sites

NGTL stated it has been engaging Indigenous peoples on the Project since August 2018 to proactively identify TLRU sites and to develop appropriate site-specific mitigation measures prior to construction to avoid or reduce effects on TLRU sites and activities.

NGTL noted that in some cases, communities declined to provide specific information to NGTL about TLRU sites, despite requests for such information by NGTL. NGTL noted that several Indigenous peoples who were Intervenor in the hearing process justified withholding information on the basis of an incorrect perception that NGTL limited its TLRU assessment to site-specific considerations. NGTL noted the distinction between "*site specific*" and "*non-site specific*" information arises in the context of mitigation. NGTL stated that for activities such as hunting and gathering in general in the Project area, NGTL's established suite of mitigation measures in the EPP will avoid or minimize potential effects to those activities. However, NGTL stated it also considers implementing additional mitigation in specific, localized areas, if warranted, based on site-specific details or concerns raised by Indigenous communities. For example, if communities provide specific locational information on a site of cultural importance, NGTL can overlay it with the construction footprint and evaluate whether there are ways to avoid or otherwise manage effects on those sites through site-specific mitigation that is not currently set out in the EPP. As a result, NGTL's request for "*site specific*" information is not in any way intended to diminish the importance of non-site specific input provided by Indigenous communities, but rather to ensure that NGTL is taking all reasonable steps to avoid, minimize or otherwise address potential impacts on TLRU.

NGTL stated that if site-specific information is provided it will be reviewed and considered in the context of the ESA and for incorporation into Project planning, including the EPPs and EAS, as appropriate. NGTL also stated that consideration of this information will include evaluating whether NGTL's planned mitigation would effectively avoid the identified potential interactions,

or whether additional or refined mitigation is warranted. Traditional use sites or features which require site-specific mitigation will be included in the EPPs and EAS filed prior to construction.

NGTL explained that the Cultural Resource Discovery Contingency Plan is one measure of a suite of mitigation that will be implemented to avoid or reduce Project effects on TLRU, and that a construction orientation will be delivered to all personnel working on the Project and will include information regarding the potential for encountering unanticipated TLRU sites during construction, and the steps involved in implementing the Cultural Resource Discovery Contingency Plan. Known TLRU sites that require mitigation during construction will be discussed, and descriptions and pictures of potential TLRU sites that could be encountered during construction will be provided as examples.

NGTL noted that knowledge and input provided by Indigenous communities is considered in the development of Project materials, including the construction orientation, and will incorporate examples provided by Indigenous communities of known and potential TLRU sites that could be encountered during construction.

NGTL stated that through participation in and completion of the orientation, it expects its personnel to have a base level understanding and awareness to identify potential TLRU sites during construction and to initiate the implementation of the necessary steps outlined in the Cultural Resource Discovery Contingency Plan, including suspending work immediately and informing the Environmental Inspector(s) or designate(s) of any suspected finds.

NGTL noted it does not have knowledge of the incidents Dene Tha' First Nation described in its oral Indigenous knowledge session of disturbance to community members' cabins, camps and associated supplies; however, NGTL will incorporate this example into the construction orientation, as input provided by Indigenous communities of potential TLRU sites that could be encountered during construction.

NGTL stated that the historical hunting camp identified by Peavine Métis Settlement in its TK Report is located 200 m southwest of KP 13.3 of Red Earth Section 3 and confirmed that the hunting camp will be avoided by construction.

NGTL stated it has engaged the owner of the cabin that was identified by several Indigenous communities during their TK studies, and no Project-specific concerns have been identified to date. NGTL stated it will continue to engage with the owner and any issues or concerns that arise will be addressed prior to construction.

With regard to habitation sites, NGTL stated that the mitigation in the ESA, including engagement with potentially affected Indigenous communities and the timing of construction to avoid peak use periods, is likely to prevent or alleviate adverse residual effects associated with disruption of that habitation sites, gathering places and sacred sites.

With regard to disturbance of gathering places and sacred sites, NGTL stated that the substantial use of pre-disturbed corridors and location of the Hidden Lake North Unit Addition within an existing oil and gas hub limits the potential for the Project to interact with gathering places and sacred sites. NGTL also stated that where interaction occurs siting decisions and the mitigation in the ESA is likely to prevent any residual effects associated with gathering places and sacred sites or reduce them to negligible levels.

### **7.5.7.5 Cumulative Effects on Traditional Land and Resource Use**

NGTL stated that cumulative effects are and have been assessed for all of NGTL's facility applications in accordance with applicable filing requirements using methodology that follows CEAA's Technical Guidance for Assessing Cumulative Effects under the CEAA 2012. NGTL stated that conclusions are detailed in each project application at a level of detail commensurate with their scope and scale. NGTL also stated the assessment includes consideration of the applied-for project's predicted residual effects in combination with the residual effects of past, present and reasonably foreseeable projects and activities. The Project assessment includes and accounts for other proposed NGTL projects.

NGTL stated that existing and reasonably foreseeable developments and activities identified within the TLRU Regional Study Areas have the potential to act in combination with the Project to contribute to overall cumulative effects on subsistence activities and resources. NGTL stated reasonably foreseeable developments may act cumulatively with the Project to alter the land and resource base available for subsistence activities, to alter accessibility to areas used for hunting, fishing, plant gathering, and trapping, to create sensory disturbance for traditional land users through noise and air emissions, or to alter the resources that traditional land users rely on.

NGTL stated its assessment concluded that cumulative effects associated with the Project on the environmental and socio-economic elements assessed in the ESA will be not significant, with the exception of cumulative effects on boreal caribou that are already significant and that NGTL will address through its Caribou Habitat Restoration and Offset Measures Plan.

NGTL stated the cumulative effects are medium in magnitude for the North Star Section 2 and Bear Canyon North Extension where there is less Crown land available for TLRU activities. The cumulative effects are low in magnitude for the Red Earth Section 3 and Hidden Lake North Unit Addition where existing permanent disturbance levels are low and the majority of the TLRU Regional Study Area is Crown land.

NGTL indicated that Project contributions to cumulative effects for all ESA elements, including TLRU [except caribou] were evaluated to be not significant.

For NGTL's reply to issues related to cumulative effects outside of TLRU, refer to Chapter 8.

### **7.5.8 Section 35(1) of the *Constitution Act, 1982* – Indigenous and Treaty Rights**

NGTL noted that throughout the hearing, several Indigenous peoples who were Intervenor in the hearing process challenged the sufficiency of NGTL's Application and ESA on the basis that NGTL did not conduct an analysis of Project impacts on section 35 rights. NGTL stated its view that neither the case law nor the NEB Filing Manual require proponents to conduct the type of analysis suggested by these Intervenor.

NGTL stated it complied with all applicable legal requirements and retained an environmental consultant, Jacobs, who conducted an ESA in accordance with the NEB Filing Manual and accepted best practices for federally-regulated pipelines. NGTL stated the ESA considered potential effects of the Project on Indigenous and Treaty rights through an assessment of effects on TLRU, including indicators such as availability of access to sites and resources as well as impacts on relevant biophysical components. NGTL stated this assessment considered all

publicly available information about Indigenous land and resource use in the Project area, as well as all information provided to NGTL through its Aboriginal Engagement Program.

NGTL submitted that its assessment of Project effects on TLRU, in conjunction with the information provided directly by Indigenous peoples who were Intervenor in this proceeding about impacts on their rights and interests, provides more than sufficient information to allow the Commission to assess how the Project will affect Indigenous and Treaty rights. NGTL argued its evidence demonstrates that the Project will only have short-term, low magnitude and reversible residual effects on TLRU and, by extension, the exercise of Indigenous and Treaty rights.

## **7.5.9 Other Issues and Concerns**

### **7.5.9.1 Safety Concerns**

NGTL stated that as part of its Project consultation activities it provides information concerning Emergency Preparedness and Response to potentially affected stakeholders, emergency responders, landowners and Indigenous communities.

NGTL stated its emergency response procedures will be included in the Emergency Management Plans for the Project. The Emergency Management Plans will include communications protocols, including current contact information for all potentially affected Indigenous communities. NGTL stated that in the event of an emergency, the regionally-based Aboriginal and Community Liaisons will contact the appropriate individuals via telephone and / or email to notify them of the nature of the emergency.

NGTL explained that the information initially communicated, and the frequency of any updates would be commensurate to the scope, scale and nature of the emergency being managed, but would be focused on hazard interaction and safety relative to the specific group or stakeholder. NGTL stated that in the case of Indigenous communities, NGTL anticipates providing notice of the nature of the emergency event, including its scope, scale and hazards. It would also include inquiries on the immediate or pending level and type of traditional land use in the affected area by community members. NGTL stated that if immediate land use is confirmed or expected, NGTL would provide information to local first responders and work collaboratively with them and community emergency representatives in efforts to advise individuals or groups of land users about any appropriate actions to take.

NGTL stated that TC Energy's emergency response procedures focus on life safety, incident stabilization, property and environment preservation, and stakeholder communication. NGTL also stated that while life safety focuses primarily on human life, this objective as well as property and environmental preservation takes wildlife into account in both emergency preparedness and response.

Relative to Driftpile Cree Nation's expressed concerns regarding response times, NGTL notes that the environmental risk profiles and potential receptors (including water bodies, plants and animals) associated with liquids (oil) pipelines as opposed to gas pipelines (the Project) releases, are different. Nevertheless, emergency response times are expressly detailed within TC Energy's Emergency Management Corporate Program Manual that will be applicable to the Project.

For NGTL's reply to issues related to Emergency Response, including accidents and malfunctions, refer to Chapters 4 and 8.

### **7.5.9.2 Project Splitting**

NGTL argued its application history before the NEB has demonstrated that where multiple facility components have common utility, NGTL groups them into a single application. In accordance with the NEB Act (as it has been applicable), NGTL has routinely submitted both section 58 and section 52 applications that have multiple facility components where those components are collectively required to respond to a System Requirement or in-service date.

NGTL stated that while each NGTL project is an addition to the integrated NGTL System, this does not take away from the fact that the Project is designed to respond to a specific System requirement independent of those driving other projects on the system.

NGTL noted that the Project's ESA considered other industrial infrastructure, including past and current NGTL projects, for the purposes of assessing cumulative effects. NGTL stated it believes this level of consideration and assessment based on filing requirements is reasonable, appropriate, and sufficient for the Project.

NGTL noted that Duncan's First Nation's concerns about project splitting are premised on the view that NGTL is currently proposing to increase the capacity of its North Central Corridor system with two new proposed projects that fall within Duncan's First Nation's traditional territory, one being NGTL's North Central Corridor Loop (North Star Section 1) Project – a project that Duncan's First Nation has acknowledged was approved by the NEB in the fall of 2019 and is now under construction.

NGTL also noted that it implemented engagement with Duncan's First Nation on the Project and the North Central Corridor Loop (North Star Section 1) Project separately resulting in separate funding agreements and deliverables.

NGTL stated it strongly disagrees with Peerless Trout First Nation's statements in its written evidence about project splitting. NGTL stated cumulative effects are and have, in fact, been assessed for all of NGTL's facility applications in accordance with applicable filing requirements using methodology that follows CEEA 2012.

Regarding the way in which NGTL applies for its projects, NGTL explained that the context of a pipeline company is different and distinguishable from that of an oil or gas producer. NGTL stated it does not plan development of a resource or make play-based plans like an upstream production company. Rather, NGTL undertakes capital additions to transportation infrastructure for reasons including maintaining or reinforcing existing pipeline infrastructure, responding to overall NGTL System aggregate demands based on forecasts, or in response to a service request from customers (i.e., customer-driven projects). NGTL summarized that all applications previously filed with the NEB (now the CER), are a response to either customer requests or specific NGTL System requirements identified by NGTL. The scope and timing of an NGTL application is based on factors and principles including need and necessity, the requested in-service date, and whether the applied for project has independent utility from other NGTL facilities.

Regarding suggestion that NGTL has manipulated consultation processes, NGTL noted the Commission has held that in addition to cumulative effects, consultation requirements are not generally affected by whether project applications proceed in aggregate or individually. The Commission has held, for instance, that consultation requirements are based on potential impacts to the exercise of Indigenous and Treaty rights, and remain the same whether or not



projects are assessed in aggregate or individually; and, all project applications, regardless of under which section of the NEB Act they are submitted (section 58 or section 52) require consultation if there are potentially impacted parties identified.

### **7.5.9.3 Project Abandonment**

NGTL noted that it is difficult at this time to predict when or how the pipeline will be decommissioned or abandoned at the end of the Project's life. However, it can be anticipated that any of the following three scenarios may occur during pipeline decommissioning or abandonment: pipeline removal, abandonment in-place, or a combination of abandonment in-place and pipeline removal. NGTL stated these methods would have to be considered in light of conditions prevailing at the time of decommissioning or abandonment and would be subject to approval at that time, by the Commission, or its predecessor.

NGTL stated that while it has anticipated that a large proportion of decommissioned or abandoned pipelines would be abandoned in-place, its determination of the most appropriate method of abandonment for any particular pipeline will be made considering the expected land use and is guided by three key principles:

- Safety – ensuring that the method of abandonment would minimize risk to the public.
- Environmental Protection – ensuring that the method of abandonment of the facilities avoids or reduces potential environmental effects.
- Cost Effectiveness – meeting safety and environmental protection objectives in a cost-effective manner.

NGTL stated that based on these principles, one decommissioning or abandonment technique may not be appropriate for all land uses. NGTL also stated the decision to leave pipelines in place or remove pipelines and any associated infrastructure, including facilities and access roads, will be made on a site-specific basis, in consultation with affected and potentially-affected landowners, potentially-affected stakeholders and Indigenous communities in accordance with legislative and regulatory requirements in place at the time of decommissioning or abandonment. NGTL noted this approach is captured in Section A.2.6.1 of the Filing Manual (NEB, 2017), which notes that a separate ESA, specific to decommissioning or abandonment activities and their regulatory requirements, will be conducted when the Project is ready to be decommissioned or abandoned.

## **7.6 Views of the Commission**

The Commission values the participation, knowledge, and information that Indigenous peoples bring to the hearing process. The Commission notes that the First Nation and Métis communities who participated in the hearing are from Treaty No. 6, Treaty No. 8, the Métis Nation of Alberta, and three Métis settlements. The Commission thanks all participants in the GH-002-2019 hearing and, in particular, Bigstone Cree Nation, Dene Tha' First Nation, Driftpile Cree Nation, Louis Bull Tribe, Peavine Métis Settlement, Peerless Trout First Nation and Whitefish Lake First Nation #459 for sharing their oral Indigenous.

### **7.6.1 Engagement Matters**

The Commission notes that engagement efforts undertaken by a proponent with Indigenous peoples are considered within the context of the expectations set out in the Filing Manual. The

requirements contained within the Filing Manual acknowledge that the proponent is often in the best position to respond to the concerns of Indigenous peoples about a project before an application is filed and while a project is still in the earlier stages of development. The Filing Manual provides the CER's minimum expectations, and provides a baseline and consistent framework for proponents to follow. The Commission expects companies to design and implement their engagement activities with regard to the nature, scope and magnitude of a project's potential impacts. Where there is a greater risk of more serious potential impacts on the rights and interests of Indigenous peoples, the Commission has proportionally greater expectations of the companies' engagement with potentially impacted Indigenous peoples. In contrast, where there is a remote possibility of an impact on rights or interests of Indigenous peoples, or where the potential impacts are minor in nature, the proponent's engagement would generally not be expected to be as extensive.

### **7.6.1.1 NGTL's Engagement with Indigenous Peoples**

In assessing the engagement undertaken by NGTL with Indigenous peoples for the Project, the Commission evaluated both the design and implementation of NGTL's engagement activities. The Commission notes NGTL's Aboriginal Engagement Program involved identifying potentially affected Indigenous peoples, establishing an engagement approach, tailored to meet a community's specific needs, implementing engagement activities, and, responding to questions and concerns. The Commission finds the design and implementation of NGTL's engagement activities to this point to have been appropriate. Having assessed all of the evidence on the record and taking into account NGTL's engagement commitments, the Commission is of the view that NGTL has implemented appropriate engagement activities that meet the requirements and expectations set out in the Filing Manual and are appropriate for the size, scope, and scale of the Project.

NGTL began engaging with Indigenous peoples it identified as being potentially impacted by some portions of the Project in August 2018, and by the Project in its entirety in November 2018. NGTL commenced engagement activities with additional Indigenous peoples identified by the MPMO in March 2019 (see Section 7.1). NGTL's evidence demonstrates that it engaged with all of the potentially impacted Indigenous peoples as identified on the Crown's list and a few additional communities identified by NGTL. The Commission notes that there were Indigenous peoples who were Intervenor involved in the hearing process that were not identified by NGTL or the Crown (i.e., Louis Bull Tribe and Papaschase Cree Nation). The Commission acknowledges that these communities were not originally identified as being impacted by the Project or engaged during the early planning stages, but notes they were granted Intervenor status and were able to participate in the hearing and share their concerns. The Commission finds that the hearing process was adequate to allow concerns to be raised, and finds that the concerns raised by these two Intervenor can be adequately addressed, notwithstanding their late entries into the consultative process.

The Commission's hearing process acts as a necessary and important check on the engagement conducted by NGTL by providing Indigenous peoples an additional avenue to explain their concerns about the Project and have those concerns considered by the Commission. The Commission has heard and fully considered the concerns raised by Indigenous peoples, both in their written evidence and oral Indigenous knowledge sessions, about NGTL's engagement (summarized in Subsection 7.4.1), and has assessed that evidence against the evidence submitted by NGTL in reply to these concerns (summarized in Subsection 7.5.1). The Commission notes NGTL's commitment to continue to engage all identified

Indigenous peoples according to their level of interest in the Project and the potential adverse impact of the Project on Indigenous or Treaty rights. The Commission expects NGTL, as it does for all companies, to continue to learn about any concerns that Indigenous peoples may have about a project, and to discuss ways to address those concerns to the extent possible. The Commission also encourages Indigenous peoples with an interest in the Project to continue to engage with NGTL.

The Commission acknowledges the concerns regarding resource capacity and consultation that were raised by Indigenous peoples during the hearing. The Commission notes the commitment from NGTL's regional community liaisons to align and bundle information about any new projects and ongoing communication with local stakeholders, where applicable and appropriate. The Commission also notes NGTL's preliminary discussions with potentially affected Indigenous peoples to understand their specific capacity and resourcing needs and expects NGTL to continue with this communication to address Indigenous people's requests for sufficient time to review Project documents such as EPPs. The Commission finds NGTL's approach is responsive to concerns raised about resource capacity, and creates opportunities for stakeholders to be provided with clear, relevant and timely information. The Commission expects NGTL to carry through with all of its commitments including those relating to bundling information and ongoing communication with Indigenous peoples, where applicable and appropriate.

On 22 April 2020, the Commission issued its potential conditions so that NGTL and Intervenor could provide comments on them. **Condition 4 (Report on Engagement with Indigenous Peoples)**, proposed for both the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities, requires NGTL to file report(s) summarizing NGTL's engagement with all potentially affected Indigenous peoples. The intent of the condition is to allow the Commission to continue receiving updates about potential issues or concerns raised by Indigenous peoples (as it has throughout the hearing process) during construction and to receive information from NGTL about whether and how issues or concerns raised, if any, are addressed. The Commission received comments regarding this proposed condition from NGTL, Dene Tha' First Nation, Driftpile Cree Nation, and Whitefish Lake First Nation #459. In summary, comments received from the Participants were focused on reporting timelines, Crown involvement / assessment of the report(s), and discussion with Indigenous peoples regarding the contents of the report(s), including the imposition of a comment period.

The Commission notes the condition requires NGTL to provide a copy of the report(s) to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission also notes that Indigenous peoples are able to provide comments on any condition filings to the CER or NGTL at any time. Further, the Commission's Report provides a synopsis of NGTL's engagement activities with Indigenous peoples to date and the Commission is of the view that it can inform the GIC's decision on the Project. In consideration of the comments received, the Commission has revised some of the timing aspects, including the reporting period. For the final wording of the condition refer to Appendices I and II.

In order to ensure the Commission remains informed about any ongoing or new issues and in particular those related to monitoring and additional TLRU information, as well as how NGTL has responded to these, the Commission recommends and imposes **Condition 4 (Report on Engagement with Indigenous Peoples)** for the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities, requiring NGTL to file reports on its engagement with Indigenous peoples. The Commission also recommends **Condition 6 (Construction**

**Monitoring Plan for Indigenous Peoples), Condition 7 (Outstanding Traditional Land and Resource Use Investigations), and Condition 28 (Post-Construction Monitoring Plan for Indigenous Peoples)** for the Section 52 Pipeline and Related Facilities and imposes the same conditions (**Condition 6, Condition 7 and Condition 22**) for the Section 58 Facilities and Activities. These conditions require NGTL to include in its condition filings summaries of engagement activities undertaken with Indigenous peoples regarding monitoring opportunities and reports describing any outstanding concerns following receipt of any outstanding TLRU investigations. The Commission finds that with these conditions and NGTL's commitments, NGTL would continue to engage with Indigenous peoples to learn more about their interests and concerns, demonstrate how it has considered and addressed information provided in outstanding TLRU investigations in its EPPs, and, address Project-related issues, to the extent possible, that may arise throughout the lifecycle of the Project.

While the Commission finds NGTL's engagement with Indigenous peoples to have been adequate, the Commission encourages NGTL to continue to improve upon its early engagement efforts with a view to better incorporating and demonstrating a recognition that Indigenous peoples have a special relationship with, and stewardship responsibilities in relation to, the land. The Commission is of the view that early engagement efforts aimed at project planning can better facilitate the identification of monitoring opportunities for Indigenous peoples as well as providing opportunities for the agency and involvement of Indigenous peoples in relation to developments that have the potential to or that will affect their rights and interests.

#### **7.6.1.2 Crown Consultation with Indigenous Peoples**

The Commission is of the view that there has been reasonable consultation and accommodation for the purpose of the Commission's recommendation on this Project under section 52 of the NEB Act, and its decision under section 58 of the NEB Act, in keeping with section 35 of the *Constitution Act, 1982*, and the honour of the Crown. In the context of this Project, the Commission is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed by the implementation of the mitigation measures and commitments made by NGTL, and the conditions and accommodations recommended and imposed by the Commission. Further discussion of the Commission's role in upholding section 35 of the *Constitution Act, 1982* is set out in Subsection 7.6.8.

For further discussion on the Commission's views related to Crown consultation and the Government of Canada's duty to consult, refer to Section 7.2.

#### **7.6.2 Social and Cultural Well-Being**

The Commission has considered the evidence filed with respect to social and cultural well-being, which is summarized in Subsections 7.4.2 and 7.5.2.

The Commission recognizes that NGTL has a range of policies and management approaches that are designed to, and should, ensure that all NGTL worksites, including its construction workforce camps, are operated in a safe and secure manner, and that NGTL's orientation for its construction workforce includes topics such as safety, environmental mitigation and cultural awareness, including Indigenous culture, history, heritage resources, and TLRU. The Commission notes that NGTL considers and incorporates available knowledge and input provided by Indigenous peoples into these orientation materials.

The Commission considered Peerless Trout First Nation's concerns regarding GBA+ matters pertaining to temporary work camps as well as NGTL's evidence that it prepared its filings in accordance with section 52 of the NEB Act and the requirements of the applicable Filing Manual. The Commission notes that at the time of NGTL's Application, the Filing Manual did not contain requirements to conduct GBA+, but did contain requirements to conduct an assessment of potential socio-economic effects of the Project relative to its scope and scale, existing socio-economic conditions, and the implementation of policies and management procedures for safety and well-being. In response to the concerns raised, the Commission has imposed **Condition 9 (Construction Camp Management Plan)** related to the Section 58 Facilities and Activities, which would require NGTL to include a summary of training that will be specifically provided to the construction camp workforce regarding gender-based issues or impacts. As such, the Commission is of the view that NGTL adhered to the appropriate filing guidance under section 52 of the NEB Act for this Project and that the imposed condition, in combination with the NGTL's policies and procedures for employees and contractors, will address any potential gender-based issues and impacts in relation to the temporary construction camps.

The Commission acknowledges that NGTL committed to continue engaging with Indigenous peoples regarding potential issues and concerns. In addition, the Commission recommends **Condition 4 (Report on Engagement with Indigenous Peoples)** for the Section 52 Pipeline and Related Facilities, and imposes the same condition (**Condition 4**) for the Section 58 Facilities and Activities, requiring NGTL to file its reports on its on-going engagement with Indigenous peoples.

Having considered all of the evidence filed on the record, the Commission is of the view that the anticipated construction period for the Project is short-term in duration and that access to the ROW would likely remain unchanged following the construction period (save for temporary interruptions as discussed in Subsection 7.6.7.3 below), and that as such, the potential adverse effects on social and cultural well-being of Indigenous peoples are not likely to be significant, in the context of this Project.

For the Commission's views on issues related monitoring by Indigenous peoples, refer to Subsection 7.6.6.

For the Commission's views on NGTL's assessment of heritage resources refer to Subsection 7.6.4 and Chapter 8.

### **7.6.3 Human Health**

Sub-paragraphs 5(1)(c)(i), and 5(2)(b)(i) of the CEAA 2012 require consideration of the environmental effects that are likely to result from the designated project on human health, including with respect to Indigenous peoples.

Indigenous peoples raised concerns about potential impacts to the general health of their communities, including effects associated with potential contamination of drinking water and traditional foods. The Commission accepts the evidence provided by many Indigenous peoples that they rely on, and have a preference for, eating traditional foods. During oral Indigenous knowledge sessions some Indigenous peoples also discussed concerns related to potential impacts to their mental and spiritual health.

With respect to perceptions of contamination that could have a negative effect on traditional harvesting and food consumption, the Commission has considered both the potential

environmental effects of the Project on biophysical resources relied on by Indigenous peoples for TLRU, as well as the effects of the Project on those uses. The Commission concurs with NGTL's conclusion regarding TLRU, and is of the view that any residual effect is likely to be limited to the period during construction, restricted primarily to the Project footprint, and low in magnitude. Given all of the above, the Commission is of the view that the potential adverse effects of the Project on human health are not likely to be significant.

#### **7.6.4 Heritage Resources**

Sub-paragraphs 5(1)(c)(ii) and (iv), and 5(2) (b)(ii) and (iii) of the CEEA 2012 require consideration of the environmental effects that are likely to result from a designated project on physical and cultural heritage, or any structure, site or thing that is of historical, archaeological and paleontological or architectural significance, including with respect to Indigenous peoples. In its evaluation, the Commission has considered the effects of the Project on heritage resources to include all of the effects described in these sub-paragraphs of section 5 of CEEA 2012. The Commission's approach to its EA is described in Chapter 8.

The Commission recognizes the value of heritage resources preservation to Indigenous peoples, and acknowledges the information and knowledge shared by Indigenous peoples with the Commission and NGTL regarding historical, cultural, and archaeological sites that are of significance and value to them. The Commission acknowledges the concerns raised by Indigenous peoples regarding the potential effects of the Project on physical and cultural heritage resources, as well as the recommendations made to the Commission by a number of Indigenous peoples. These included, among other things, the inclusion of Indigenous peoples during any outstanding archaeological field work, and reporting and monitoring during construction. A summary of concerns raised by Indigenous peoples about heritage resources is provided in Subsection 7.4.4, and NGTL's responses are provided in Subsection 7.5.4.

Most types of industrial and resource-based development activities in AB require formal approval from the Province of Alberta under the *Historical Resource Act* prior to the onset of activities, and this is the case for this Project. Therefore, before construction can begin, NGTL must obtain clearances from Alberta Culture, Multiculturalism and Status of Women with respect to heritage resources. Any clearance issued by the Province of Alberta may identify conditions of approval or mitigation measures that NGTL would be required to meet. The Commission encourages NGTL to include participation of Elders and knowledge keepers in the event of any outstanding archaeological field work and mitigation, including that as may be directed by Alberta Culture, Multiculturalism and Status of Women.

The Commission notes NGTL has a Cultural Resource Discovery Contingency Plan which includes informing any potentially affected Indigenous peoples of any unanticipated cultural resource site discovery, and reviewing planned mitigation strategies with potentially affected Indigenous peoples. Such contingency measures are intended to supplement the requirements of the Province of Alberta and those set out in the Filing Manual for proponents to identify and address potential effects to heritage resources prior to construction.

The Commission is therefore of the view that, with the following:

- measures and commitments made by NGTL to avoid all sites where possible;
- commitment made by NGTL to implement its Cultural Resource Discovery Contingency Plan in the event cultural resource sites are encountered during construction;

- evidence and Indigenous knowledge identifying potential sites of concern provided by Indigenous peoples; and
- regulatory oversight of provincial authorities that issue final clearances for lands involved for the Project,

the potential effects of the Project on physical and cultural heritage resources would be confined to the Project footprint, would be short- to long-term, reversible to permanent, and of low to moderate magnitude. Appendix VI specifies the definitions for criteria used in this evaluation.

To ensure that the Commission and all Parties, including potentially affected Indigenous peoples, are aware of any approvals or conditions imposed by provincial authorities for the Project, the Commission recommends **Condition 8 (Heritage Resource Clearances)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 8**), for the Section 58 Facilities and Activities, requiring NGTL to file confirmation that all heritage resource clearances have been obtained from the relevant provincial ministry prior to commencing construction, including a description of how NGTL will address any conditions / recommendations in these clearances and make any relevant updates to its EPPs. In addition, the Commission notes NGTL's commitment to include its final version of NGTL's Cultural Resource Discovery Contingency Plan in its updated EPPs. Given all of the above, the Commission is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.

#### **7.6.5 Employment and Benefits**

The Commission has considered the evidence filed with respect to employment and benefits. The evidence is summarized in Subsections 7.4.5 and 7.5.5.

The Commission heard Indigenous peoples raise concerns regarding employment and benefit opportunities. The Commission notes that NGTL stated that it continues to work with Indigenous peoples to identify employment opportunities during the pre-construction, construction, and post-construction phases of the Project, and any associated training requirements.

The Commission notes that Peerless Trout First Nation stated it expects socio-economic benefits from the Project in a "*formalized way*" and that Duncan's First Nation suggested imposing a condition requiring NGTL to co-develop a "*Socio-Economic Inclusion Plan*". While that has not been included as a condition for this Project, the Commission encourages NGTL and interested Indigenous peoples to work together towards mutually beneficial agreements. The Commission further encourages NGTL to continue discussions with Indigenous peoples about opportunities that have been identified as beneficial to them (e.g., the interest voiced by Peavine Métis Settlement to harvest peat moss and timber prior to construction).

The Commission heard from a number of Indigenous peoples expressing interest in Project-related training and employment. The Commission notes that NGTL entered into agreements with Indigenous peoples to provide capacity funding to conduct TK studies, which included funding to conduct fieldwork, and, that NGTL committed to continue working with Indigenous peoples to identify opportunities for capacity development to support their training needs. The Commission notes NGTL's Aboriginal Construction Participation Program and its Aboriginal Contracting and Employment Program, both aimed at providing employment opportunities. The Commission also notes that NGTL committed to providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. The Commission

encourages NGTL to provide employment opportunities for Indigenous peoples with traditional territories affected by the Project route.

The Commission notes that NGTL would require its Prime Contractor to submit an Aboriginal Participation Plan to NGTL that outlines the processes that it would follow to facilitate productive opportunities for qualified and competitive Indigenous-owned businesses and individuals on the Project. The Commission further notes that NGTL would ensure that the Aboriginal Participation Plan of its Prime Contractor aligns with NGTL's Aboriginal Contracting and Employment Program. To increase the transparency of NGTL's commitments regarding contracting and employment opportunities, the Commission recommends **Condition 5 (Indigenous Peoples Employment, Contracting and Procurement Plan Update)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 5**) for the Section 58 Facilities and Activities, requiring NGTL to file an update to its Employment, Contracting and Procurement Plan, which would include the submission of its Prime Contractors Aboriginal Participation Plan, and a summary of how this Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.

On 22 April 2020, in relation to the above noted concerns, the Commission circulated potential conditions to NGTL and Intervenors so that they could provide comments. The Commission received comments regarding the draft of the proposed condition noted above, from NGTL and Peerless Trout First Nation. In summary, comments received from Participants were focused on timelines for filing, and the inclusion of written agreements relating to training and other capacity building initiatives for Indigenous peoples. The Commission notes that NGTL has stated it is willing to meet with any Indigenous peoples that expresses an interest in potential contracting, employment, and training opportunities in order to discuss its contracting process and to develop an understanding of the community's capacities. The Commission expects NGTL to report on any such engagement in alignment with its Report on Engagement with Indigenous Peoples conditions (**Condition 4**).

The Commission further recommends **Condition 27 (Training, Employment, Contracting, and Procurement Report)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 21**) for the Section 58 Facilities and Activities, requiring NGTL to file a report once construction is complete, summarizing the training, employment, contracting, and procurement elements or indicators monitored. The Commission notes that NGTL stated Indigenous-owned businesses generally represent 8 to 12 per cent of the total construction contract values in past projects, and that Indigenous people comprise approximately 8 to 10 per cent of the total construction workforce. The Commission is interested in how many Indigenous employment and business opportunities will be created and filled during the reporting period, including the numbers of self-identified Indigenous-owned businesses and individuals employed, if any. As noted in Chapter 9, the Commission is of the view that the Project would benefit local, regional, and provincial economies. The Commission is also of the view that the Project would result in increased employment and economic benefits for Indigenous peoples and contracts for Indigenous-owned businesses.

The Commission received comments regarding the draft of the condition noted above, from NGTL, Driftpile Cree Nation, Duncan's First Nation, Peerless Trout First Nation, and Whitefish Lake First Nation #459. In summary, comments received from Participants were focused on timelines and intended scope of the filing, the inclusion of training needs identified by Indigenous peoples, a requirement for the description and analysis of NGTL's Indigenous peoples hiring targets, and a requirement for NGTL to employ Indigenous peoples and



businesses from potentially affected Indigenous communities. In consideration of the comments received, the Commission has revised some of the timing aspects of the condition. The Commission has also included a requirement for NGTL to provide a summary of any training needs identified by Indigenous peoples and a description of how NGTL has or will support Indigenous peoples in meeting these training needs. The Commission notes that NGTL has stated it will maximize local and Indigenous peoples hiring for the Project, and that NGTL specified it will maximize local and Indigenous peoples hiring from within the Community Regional Study Area, as a first priority, and elsewhere in AB as a second priority. To view the wording of the condition, refer to Appendices I and II.

#### **7.6.6 Monitoring by Indigenous Peoples**

The Commission has considered the evidence filed with respect to monitoring by Indigenous peoples, which is summarized in Subsections 7.4.6 and 7.5.6.

The Commission notes that many Indigenous peoples indicated that their members should be involved in monitoring activities related to Project construction and post-construction. The Commission also notes that NGTL has committed to provide potentially affected Indigenous peoples employment opportunities related to Project construction as part of its Aboriginal Construction Participation Program. The Aboriginal Construction Participation Program includes opportunities for individuals from participating Indigenous communities to monitor construction activities and having participants report back to their Indigenous community to provide Project construction updates. The Commission notes that details of the Aboriginal Construction Participation Program, including training and funding, would be developed closer to construction, pending approval of the Project, and would be informed by results of NGTL's engagement with Indigenous peoples for the Project, results of the biophysical field programs for the Project, engagement with federal and provincial government agencies, feedback obtained from participants during construction activities on past NGTL projects, and experience gained from other pipeline projects.

The Commission also notes that NGTL has committed to respond to any concerns raised by Indigenous peoples post-construction and address potential issues on a case-by-case basis, and that Indigenous peoples would have an opportunity to provide feedback post-construction through ongoing engagement with Regional Liaisons and TC Energy's Public Awareness Program.

Throughout the hearing process, the Commission heard from Indigenous peoples who shared their knowledge about their concepts of and responsibilities for stewardship within their territories and who expressed their related desire to have an essential role in monitoring. The Commission also heard about the desire of Indigenous peoples for meaningful input and a voice in decision-making with respect to Project planning and implementation. The Commission is of the view that the involvement of Indigenous peoples in monitoring is a valuable and meaningful opportunity for the sharing of and incorporation of the knowledge of Indigenous peoples in the planning, pre-construction, construction, post-construction, and operational lifecycle activities of the Project. The Commission is also of the view that the involvement of Indigenous peoples in monitoring would be of value in relation to their Indigenous knowledge in assessing mitigation measure effectiveness as well as other aspects of the implementation of the Project plans. The Commission acknowledges NGTL's Aboriginal Construction Participation Program as a positive mechanism to promote employment opportunities, but does not have sufficient details about the Project-specific Aboriginal Construction Participation Program and post-construction monitoring

activities to know whether these would promote meaningful monitoring opportunities. As such, the Commission recommends **Condition 6 (Construction Monitoring Plan for Indigenous Peoples)** and **Condition 28 (Post-Construction Monitoring Plan for Indigenous Peoples)**, for the Section 52 Pipeline and Related Facilities, and imposes the same conditions (**Conditions 6 and 22**) for the Section 58 Facilities and Activities, requiring NGTL to file its monitoring plans for Indigenous peoples related to both the Project's construction and post-construction.

The Commission received comments regarding the draft of the two proposed conditions noted above, from NGTL, Duncan's First Nation, and Peerless Trout First Nation. In summary, comments received from Participants were focused on timelines for filing, oversight mechanisms, and a requirement for NGTL to employ potentially affected Indigenous peoples for monitoring activities, including provisions for training and ongoing funding. The Commission notes that NGTL's Aboriginal Construction Participation Program will facilitate the participation of members from potentially-affected Indigenous communities to be on-site, and directly observe pipeline construction activities and the implementation of mitigation measures. The Commission also notes that these conditions require NGTL to report on its engagement with Indigenous peoples regarding the development of opportunities for their participation in monitoring activities.

In consideration of the comments received, the Commission has also revised **Condition 29/23 (Post-Construction Environmental Monitoring Reports)**, to include requirements for NGTL to include methodology, criteria, and issues identified in **Conditions 28/22 (Post-Construction Monitoring Plan for Indigenous Peoples)**. **Condition 29/23** has also been revised to include a summary of NGTL's engagement efforts with Indigenous peoples and a description of how this engagement has informed and / or modified NGTL's environmental monitoring program. The Commission is of the view that these revisions will allow for a more transparent link between the Post-Construction Monitoring Plan for Indigenous Peoples and the Post-Construction Environmental Monitoring Reports as the latter will explicitly include the outcomes of the participation of monitors who are Indigenous peoples. For the final wording of the condition refer to Appendices I and II.

The Commission is of the view that these conditions would enhance the involvement of Indigenous peoples to participate more meaningfully in monitoring opportunities. NGTL is welcome to submit the project-specific Aboriginal Construction Participation Program and post-construction monitoring activities to fulfill these conditions. However, the Commission is of the view that NGTL must demonstrate that meaningful monitoring opportunities are built into the Aboriginal Construction Participation Program and post-construction monitoring activities so that Indigenous cultural, TLRU, and environmental interests, are effectively addressed in monitoring activities.

The Commission notes that Peerless Trout First Nation recommended the creation of an Indigenous Monitoring Advisory Committee to provide oversight in the monitoring of the Project and allowing for formal representation and involvement in caribou protection and restoration initiatives, including direct involvement in Caribou Habitat Restoration and Offset Measures Plan and other environmental and cultural value monitoring plans. The Commission also notes that NGTL is of the view that an Indigenous Monitoring Advisory Committee is not appropriate for the scope, scale and nature of the Project given that most of the Project parallels existing ROW and utilizes existing disturbance, where possible. The Commission is not recommending that the Government of Canada create an Indigenous Monitoring Advisory Committee for this Project at

this time. However, the Commission encourages NGTL to offer to engage with Indigenous peoples to gather input on how meaningful monitoring opportunities can be built into NGTL's Aboriginal Construction Participation Program, post-construction monitoring and ongoing engagement. The Commission would expect to see a summary of any such engagement included in the condition filings noted above.

### **7.6.7 Traditional Land and Resource Use**

Sub-paragraphs 5(1)(c)(iii) and (iv), and 5(2) (b)(ii) and (iii) of the CEAA 2012 require consideration of the environmental effects that are likely to result from a designated project on the current use of lands and resources by Indigenous peoples for traditional purposes. In assessing potential impact on the interests of Indigenous peoples, the Commission considered all of the evidence provided. The Commission assessed how NGTL identified and evaluated the potential impacts on the rights and interests of Indigenous peoples, the concerns raised by Indigenous peoples, and the measures NGTL has proposed to minimize or eliminate the Project's potential impacts on the interests of Indigenous peoples. Concerns about impacts on TLRU filed by Indigenous peoples are summarized in Subsection 7.4.7 and NGTL's responses are summarized in Subsection 7.5.7.

#### **7.6.7.1 NGTL's Assessment Methodology and Mitigation Measures**

Some Indigenous peoples who were Intervenors in the proceeding voiced concerns regarding the methodology NGTL used to assess Project impacts on TLRU. The Commission notes that NGTL's approach in assessing potential Project effects on the current use of lands and resources for traditional purposes by Indigenous peoples was based on the Filing Manual and the CEAA 2012 requirements and guidance. When new information (e.g., TK studies, concerns and recommendations) was provided to NGTL after the ESA was completed, through the hearing process or otherwise, NGTL reviewed the information. Its review was to determine whether it identified potential adverse effects that were not assessed in the ESA, if any new mitigation was required, and whether the results changed the conclusions of the ESA. For the Commission's views related to EA methodology, refer to Chapter 8.

The Commission heard concerns that NGTL assessed potential Project impacts on the rights and interests of Indigenous peoples and on TLRU sites and activities on a collective basis and not with respect to individual communities. The Commission recognizes that First Nations and Métis peoples are independent peoples with distinct cultures, traditions, values and perspectives, and that they occupy different territories affected by the Project, and as such may experience the Project-related effects differently. Considering all of the above, the Commission is of the view that NGTL's assessment of, and proposed mitigation measures for, the potential Project impacts on the rights and interests of Indigenous peoples as well as on TLRU sites and activities were reasonable and broad enough to encompass the full scope of potential effects of the Project. The Commission is also of the view that NGTL provided opportunities for Indigenous peoples to raise concerns, and has committed to sufficient and appropriate mitigation measures, as well as best practices, to mitigate the potential adverse effects on TLRU identified.

The Commission is of the view that NGTL has included sufficient baseline information supported by a description of the methodology used and the rationale for that methodology. The Commission is also of the view that NGTL's ESA appropriately analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project as outlined in the Filing Manual. Overall, based on the scope, scale and nature of the Project, the

Commission is of the view that NGTL's approach, including its methodology, for assessing the Project's potential effects on the current use of lands and resources for traditional purposes by potentially affected Indigenous peoples was appropriate.

For the Commission's views on issues related to NGTL's proposed mitigation measures outside of those related to TLRU, refer to Chapter 8.

The Commission has previously expressed that it expects engagement activities to be responsive to the needs, inputs and concerns of potentially affected persons or communities, including those of Indigenous peoples. The Commission encourages all proponents and Indigenous peoples to explore possibilities for enhanced engagement opportunities (e.g., a more collaborative approach during the scoping of environmental and socio-economic assessments might identify more community-appropriate valued components). In this Project it appears that there were varying degrees of success in relation to the enhancement of engagement opportunities between NGTL and Indigenous peoples. The Commission reiterates its expectations for enhanced engagement, noting that the CER has a mandate to advance reconciliation with Indigenous peoples, and for proponents to implement continual improvements that enhance meaningful engagement with Indigenous peoples.

#### **7.6.7.2 Traditional Knowledge Studies**

The Commission considers TK to be a highly valued source of information, and considers and weighs all TK received during the hearing process. The Commission recognizes the diversity and nature of knowledge held by the First Nations and Métis peoples who have participated in this hearing process.

The Commission notes that generally, the majority of evidence submitted on the hearing record is generated by proponents, and oftentimes as a result, project-related Indigenous knowledge is also submitted via proponents. For this reason, the Commission notes it is beneficial for Indigenous peoples to engage directly with proponents and encourages the sharing of Indigenous knowledge with proponents, especially where the Indigenous knowledge is site-specific and could inform project design or mitigation.

The Commission heard about the importance of incorporating TLRU / Indigenous knowledge information into Project design as well as construction and operational activities. The Commission also heard concerns that effective incorporation and consideration of Indigenous knowledge and experiential information into both the Project's design and effects assessment (including mitigation, monitoring, and accommodation planning and implementation) was not carried out by NGTL. The Commission heard that NGTL entered into agreements with potentially impacted Indigenous peoples to conduct their own community-directed TK studies for the Project and that some TK studies are outstanding. NGTL committed to continue to evaluate and assess additional TK information as it is made available by Indigenous communities and to document and address, where feasible, TK information and related concerns identified by Indigenous peoples during activities associated with the Project's broader Aboriginal Engagement Program.

The Commission has considered the arguments summarized in Subsections 7.4.7.2 and 7.5.7.2, with respect to the accuracy and reliability of the consultant reports filed by Cadotte Lake Métis Local #1994, Duncan's First Nation, Driftpile Cree Nation, Louis Bull Tribe, and Peerless Trout First Nation. The Commission does not agree with NGTL that the above noted

reports are unreliable, and has given the reports consideration as containing reliable evidence in the form of evidence from elders and land users.

Having considered all of this information, the Commission recommends **Condition 7 (Outstanding Traditional Land and Resource Use Investigations)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 7**) for the Section 58 Facilities and Activities. These conditions require NGTL to submit a report on any outstanding TLRU investigations for the Project, including a description of how NGTL has revised its EPPs and its lifecycle oversight as a result of the investigations. The Commission is of the view that this condition will increase both accountability and transparency regarding NGTL's ongoing commitments, and will also enhance opportunities for Indigenous peoples to contribute to decision-making with respect to NGTL's engagement with them.

The Commission received comments regarding the proposed condition noted above, from NGTL, Dene Tha' First Nation, Driftpile Cree Nation, Peerless Trout First Nation, and Whitefish Lake First Nation #459. In summary, comments received from Participants were focused on timelines for filing, inclusion of summaries of how TK information was used to inform decisions in the EPP and decision-making throughout the Project lifecycle, inclusion of current-use sites and maps, and additional engagement requirements with Indigenous peoples. The Commission notes that the condition requires NGTL to describe how it has considered and addressed information from the TLRU investigations that were not available during the hearing process as well as a description how NGTL has incorporated any revisions necessitated by the investigations or follow-up activities into the EPP for the Project, or, if appropriate, into NGTL lifecycle oversight. The Commission also notes the condition requires NGTL provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy. The Commission notes that Indigenous peoples are able to provide comments on any condition filings to the CER or NGTL at any time.

### **7.6.7.3 Access to Lands**

The Commission heard concerns about how the Project would impact the ability of Indigenous peoples to access lands to carry out their traditional lifestyle and pursuits, and how it could potentially change traditional travel routes and increase access for non-Indigenous recreational and game hunters.

The Commission also heard evidence and argument from Indigenous peoples who were Intervenor in the proceeding that the barriers to accessing Crown land to exercise section 35 rights are not solely physical. The Commission heard that, even though NGTL submitted that there would be no lasting physical barriers to using the Crown land required for this Project, the spiritual and traditional nature of the land for many would be irredeemably altered as a result of the construction-related disturbance. The Commission heard a number of different definitions and interpretations of the concept of access to land, and acknowledges that access barriers can be both real (e.g., physical access and access management) and perceived (e.g., perceptions of impediments to the exercise of rights).

The Commission notes the recommendation from some Indigenous peoples who were Intervenor in the proceeding about offsets for effects on traditional use, including the recommendation of a plan to offset or compensate for the loss of Crown lands available for traditional uses by Indigenous peoples. The Commission notes that NGTL's Project would result in minimal new permanent footprint on Crown land and that the remainder of the Crown land within the Project footprint would be available for TLRU activities. In light of these points, the

Commission is of the view that the practicality of identifying and securing management oversight of suitable offset lands outweighs the benefit the offsets might bring in this situation and will not include the recommendation as a condition for this Project.

The Commission accepts NGTL's evidence that during construction, access to the ROW for traditional users would not be physically impeded except when there is active construction or other identified safety risks (e.g., open trench or excavations). The Commission also accepts NGTL's evidence that, after construction is completed, access to the ROW would be unchanged (except for temporary interruptions during brief periods of routine maintenance, and for access control management measures, where applicable, to deter an increase in motorized public access along new pipeline ROWs, on new temporary construction access, and into existing linear disturbances that intersect the Project ROW). The Commission notes that no new gates or fences will be constructed for the Project on Crown land where they do not already exist, and that plant harvesting, fishing, hunting, trapping, ceremonial practices, travel, and use of cultural sites would still be possible.

Many of the land use barriers that were discussed in this hearing process appeared to be due to previous or ongoing land uses activities of other industries or governments outside the mandate of the Commission. The Commission's above recommendation is not changed by the source of these existing barriers, but the Commission does wish to acknowledge the challenges it heard.

#### **7.6.7.4 Potential Project-Related Effects on Traditional Resource and Land Use Sites and Activities**

Through the review process, Indigenous peoples had the opportunity to make known to NGTL and the Commission their views and concerns about the Project, including what effects the Project might have on their potential and / or established rights and interests. The evidence of Indigenous peoples identified how the Project might affect their Indigenous and Treaty rights, including those related to hunting, fishing, trapping, the harvesting of plant resources for food and medicines, and the maintenance of cultural and ceremonial practices within their traditional territories. The Commission received knowledge from elders and knowledge keepers and heard their views and concerns about the importance of the land and the water during oral Indigenous knowledge sharing. Written evidence also included concerns in relation to these matters. The Commission acknowledges the concerns raised by Indigenous peoples regarding the potential effects of the Project on TLRU, including the transfer of language, culture and knowledge, as well as the recommendations made to the Commission by a number of Indigenous peoples.

NGTL stated it would limit Project effects to the extent possible, by paralleling the existing ROW as much as possible. Approximately 95 per cent (approximately 76 km) of the proposed pipeline route parallels existing NGTL ROW or other existing linear disturbances. More specific to TLRU matters, as noted earlier, NGTL proposed mitigation measures to reduce the adverse effects of the Project on TLRU.

The Commission heard submissions from Indigenous peoples about the positive role that Indigenous peoples who are monitors could play in being able to prevent potential adverse effects of the Project on the current use of lands and resources for traditional purposes. In relation to this, the Commission recommends, as noted above, **Condition 6 (Construction Monitoring Plan for Indigenous Peoples)** and **Condition 28 (Post-Construction Monitoring Plan for Indigenous Peoples)** for the Section 52 Pipeline and Related Facilities and imposes the same conditions (**Conditions 6 and 22**) for the Section 58 Facilities and Activities, requiring

NGTL to file its monitoring plans for Indigenous peoples related to both the Project's construction and post-construction. See Subsection 7.6.6 for a full discussion.

The Commission heard from NGTL that despite having concerns about potential Project-related effects, several Indigenous peoples have chosen not to share site-specific information with NGTL. The Commission encourages Indigenous peoples to share site-specific information with NGTL so that it may further evaluate ways to avoid or otherwise manage effects on those sites through site-specific mitigation that is not currently set out in the EPPs.

Considering the evidence on the record, including NGTL's proposed mitigation measures to reduce the adverse effects of the Project on TLRU and the Commission's recommended and imposed conditions in the previous paragraph, as well as the recommended **Condition 7 (Outstanding Traditional Land and Resource Use Investigation)** for the Section 52 Pipeline and Related Facilities and the imposes same condition (**Condition 7**) for the Section 58 Facilities and Activities, the Commission finds that effects of the Project on TLRU area are low to moderate in magnitude. Given all of the above, the Commission finds that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples are not likely to be significant. Appendix VI specifies the definitions for criteria used in this evaluation.

#### **7.6.7.5 Cumulative Effects on Traditional Land and Resource Use**

The Commission notes the concerns raised by Indigenous peoples about the impact of cumulative effects on TLRU in the regions affected by the Project, and what impacts this then creates relative to the ability of Indigenous peoples to continue to use the lands and resources for traditional purposes, including impacts on access to traditional foods and medicines, on places to go for solitude, and on the sharing of knowledge. The Commission acknowledges these concerns and recognizes that many may be longstanding unaddressed concerns, but notes that within the scope of this specific application, the Commission can only consider the Project-related cumulative effects.

The Commission recognizes that the cumulative effects of all types of developments in a given area can have lasting implications for those who live and / or hold rights and interests there. To minimize or avoid to the extent possible, specific Project-related cumulative effects on TLRU, the Commission has considered NGTL's mitigation measures to address effects on the biophysical resources that support TLRU activities, NGTL's mitigation measures to address effects on TLRU activities, and the Commission's additional related recommended conditions mentioned in Subsection 7.6.7.4. As a result, the Commission is of the view that the Project would not likely result in significant adverse cumulative effects on TLRU.

For the Commission's views on issues related to cumulative effects outside of TLRU, refer to Chapter 8.

#### **7.6.8 Section 35(1) of the *Constitution Act, 1982* – Indigenous and Treaty Rights**

The Commission has conducted a thorough review of the proposed Project which included scientific evidence as well as TK. The information reviewed by the Commission included a variety of unique points of view, including those of First Nations and Métis peoples, which the Commission recognizes as distinct peoples with unique worldviews. The Commission notes that participation of Indigenous peoples in this process is valued and helps the Crown understand how the Project impacts section 35 Indigenous and Treaty rights.

During the hearing process the Commission heard concerns that the Project could impact the ability of Indigenous peoples to exercise their Indigenous and Treaty rights. In addition, many Indigenous peoples indicated concern regarding NGTL's method of assessing Project impacts to potential and / or established Indigenous and Treaty rights. Submissions made by Indigenous peoples are summarized in Subsection 7.4.8 and NGTL's responses are summarized in Subsection 7.5.8.

The Commission is of the view that NGTL designed and implemented appropriate and effective engagement activities for the Project, and is also of the view that the hearing process enhanced the information flow to potentially impacted Indigenous peoples and provided greater opportunities for meaningful participation of Indigenous peoples. The Commission continues to encourage NGTL and interested Indigenous peoples to work together and further discuss opportunities to ensure any potential impacts are mitigated through mutually agreeable mechanisms.

To the extent that other government departments had information to provide to the Commission, they had the opportunity to participate in the Commission's process and file relevant information on the Commission's record. Government departments that participated in the Commission's proceeding by filing information included ECCC and Alberta Department of Energy. The federal government participants filed expert information on the Commission's hearing record, and those who were Intervenor were available to answer questions asked by the Commission, NGTL, and other Intervenor, including Indigenous peoples. The government Intervenor also had the opportunity to comment and provide information on appropriate mitigation measures.

The Commission has considered the information submitted regarding the nature of potentially impacted rights and interests of Indigenous peoples in the Project area. The Commission has also considered the anticipated impacts of the Project on those rights and interests and the concerns expressed by Indigenous peoples, as discussed in this Chapter and elsewhere in this Report. In light of the nature of the rights and interests and the anticipated impacts, the Commission has evaluated the consultation undertaken with respect to this Project, including the mandated engagement performed by NGTL and the consultation undertaken through the Commission's project assessment process. The Commission has also considered the mitigation measures proposed by NGTL to address the various concerns and potential impacts. The Commission is of the view that there has been adequate consultation and accommodation for the purpose of the Commission's decision on this Project. In the context of this Project, the Commission is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples, after mitigation, are not likely to be significant and can be effectively addressed. The Commission has also determined it is necessary to include conditions in relation to Indigenous peoples' concerns and the potential impacts on the rights and interests of Indigenous peoples.

As a result of the above, and considering all of the findings in this Report, the Commission is of the view that that sufficient information has been submitted to allow the Commission to assess how the Project will affect Indigenous and Treaty rights. The Commission concludes that its recommendation on this Project under section 52 of the NEB Act, and its decision under section 58 of the NEB Act, is consistent with the requirements of section 35 of the *Constitution Act, 1982* and the honour of the Crown.



## **7.6.9 Other Issues and Concerns**

### **7.6.9.1 Safety Concerns**

The Commission has considered the evidence filed with respect to safety concerns summarized in Subsections 7.4.9.1 and 7.5.9.1. For the Commission's views on issues related to emergency response, including accidents and malfunctions, refer to Chapter 4.

The Commission heard safety-related concerns from Indigenous peoples, including those related to company response times, emergency response plans, and potential risks to nearby water bodies, plants and animals. Many of the concerns raised were related to potential effects of oil spills; however, the Project will transport sweet natural gas.

The Commission also heard from some Indigenous peoples who expressed an interest in involvement in emergency response readiness capacity building as well as in training and monitoring during each phase of the Project. The Commission also heard requests for in-person emergency preparedness capacity training. The Commission encourages NGTL to engage with Indigenous peoples regarding their training and capacity needs and to provide opportunities for involvement in training and monitoring.

The Commission acknowledges NGTL's Emergency Management Plans for the Project which include its emergency response procedures, as well as communications protocols relating to Indigenous peoples.

Having considered all of the evidence filed on the record, the Commission is satisfied with NGTL's approach to addressing the safety concerns of Indigenous peoples.

### **7.6.9.2 Project Splitting**

The Commission has considered the evidence filed with respect to project-splitting which is summarized in Subsections 7.4.9.2 and 7.5.9.2.

The Commission heard the concerns raised by some Indigenous peoples who were Intervenors in the hearing that NGTL is project-splitting its system expansion in AB and about the impacts that project-splitting would have on regulatory and consultation processes as well as cumulative effects assessments of each individual project.

The Commission notes NGTL's argument that all applications previously filed with the NEB (and now the Commission), are a response to either customer requests or specific system requirements identified by NGTL. The scope and timing of an NGTL application is based on factors and principles including need and necessity, the requested in-service date, and whether the applied for project has independent utility from other NGTL facilities.

The Commission notes that on 25 June 2019, the NEB issued a letter<sup>15</sup> to Duncan's First Nation in response to concerns raised by the community in the North Central Corridor North Star Section 1 Project application regarding NGTL's intention to advance North Central Corridor North Star Section 1 separately from other adjacent projects connected to the North Central Corridor pipeline system, including the current applied-for Project. The Commission notes that the NEB determined that it was not persuaded that there was sufficient evidence of project

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15 [C00216-1](#), NEB, Letter to Duncan's First Nation.

integration to support a decision to combine the assessment of the two projects. The Commission further notes that the NCC Loop was approved on 15 October 2019 with Order XG-028-2019.<sup>16</sup>

The Commission notes that, while individual pipeline segments may have a degree of physical and / or financial segregation in pipeline systems, incremental additions and changes to the system may be made as discrete applications for staged approvals. The Commission has not historically viewed evidence of proximity and size of project facilities alone as sufficient evidence to require an integrated assessment. The Commission acknowledges that the Project is designed to respond to a specific system requirements independent of other projects on the system. Regarding cumulative effects, the Commission notes the Project ESA considered other industrial infrastructure, including past and current NGTL projects. The Commission also notes that consultation is required by proponents for all project applications, and the consultation requirements are the same regardless of whether or not projects are assessed in aggregate or individually.

Having considered all of the evidence filed on the record, the Commission is satisfied that NGTL's method for applying for the Project is reasonable and appropriate and based on the requirements set out in the Filing Manual.

### **7.6.9.3 Project Abandonment**

The Commission has considered the evidence filed with respect to Project abandonment which is summarized in Subsections 7.4.9.3 and 7.5.9.3.

The Commission notes that the methods for decommissioning or abandonment of a pipeline at the end of its lifecycle would have to be considered in light of conditions prevailing at that time, and that any decommissioning or abandonment activities would be subject to approval, by the Commission, or its successor. The Commission further notes that the requirements for decommissioning and / or abandoning a pipeline are set out in the Filing Manual and involve separate regulatory requirements from the current Project application, including a separate ESA and consultation activities.

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<sup>16</sup> [C02258](#), CER, Letter Decision and Order XG-028-2019 to NGTL, Application for North Central Corridor Loop (North Star Section 1)

## 8 Environmental and Socio-Economic Matters

As the Project is over 40 km in length, it is designated under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). Accordingly, the Commission is required to conduct an environmental assessment (EA) and prepare an EA report. The Commission also considers environmental protection as part of its broader mandate. When making its recommendations, the Commission is responsible for assessing the environmental and socio-economic effects of the Project. This Chapter represents the Commission's EA.

### 8.1 The *Canadian Environmental Assessment Act, 2012* Context

The NEB posted a Notice of Commencement on the Canadian Environmental Assessment Registry Internet Site on 27 May 2019 and its reference number is 80176. The NEB invited interested parties to comment on the preliminary Factors and Scope of Factors for the EA through its Notice of Hearing. The finalised Factors and Scope of Factors were included in Hearing Order GH-002-2019, dated 26 August 2019. On 5 September 2019, the Commission posted on the Canadian Environmental Assessment Registry Internet Site a description of the factors to be taken into account in the EA and the scope of those factors as required by subsections 19(1) and 19(2) of the CEAA 2012. The environmental effects considered include those listed in subsection 5(1) of the CEAA 2012 as well as other effects pursuant to subsection 5(2) and set out in the CER's Filing Manual. CEAA 2012 requires the Commission to provide opportunities for public participation and provide participant funding, both of which are described in Chapter 2 and Chapter 7.

### 8.2 The Commission's Environmental Assessment Methodology

In assessing the environmental and socio-economic effects of the Project, the Commission used an issue-based approach as set out in the Filing Manual.

This assessment begins with: a description of the Project (Section 8.3), followed by a description of the environmental and socio-economic elements within that setting (Section 8.4), and then a summary of those environmental and socio-economic concerns raised by the public (Section 8.5).

Based on these, the Commission identified Project-related environment interactions expected to occur (Table 8-11 in Section 8.6). For those valued components for which Project-related environment interactions are not expected, or the interaction would result in positive or neutral effects, further examination was deemed unnecessary.

The Commission then assessed the potential adverse environmental and socio-economic effects, as well as the adequacy of NGTL's proposed environmental protection strategies and mitigation measures (Section 8.6). Subsection 8.6.3 discusses the extent to which standard mitigation is relied on to mitigate potential adverse effects. In Subsection 8.6.4, the Commission provides detailed analysis for issues raised by the Participants which could potentially have an environmental consequence, and therefore require additional assessment. For each issue considered in detail, views of the Commission are provided and the Commission assesses whether further mitigation is recommended by way of condition on any potential project authorization, in order to ensure any potential environmental and socio-economic effects would not be significant.

Where there are any residual effects remaining after proposed mitigation, cumulative effects are considered in Section 8.7. Follow-up under the CEAA 2012 is then discussed (Section 8.8). The Commission's conclusion on significance is provided in Section 8.9.

### ***Views of Participants***

Indigenous peoples who were Intervenor in the proceeding voiced concerns regarding NGTL's methodology used to assess the potential impacts of the Project on Indigenous and Treaty rights, including TLRU, and around cumulative effects methodology. Subsection 7.4.7 provides details around the issues raised by Indigenous peoples, and Subsection 7.5.7 provides the views of NGTL.

### ***Views of the Commission***

The Commission is of the view that NGTL's ESA appropriately analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project, in a manner consistent with the CER's Filing Manual and CEAA 2012 requirements and guidance documents. The Commission acknowledges that in some cases, the effects of a project on certain environmental elements can be predicted and appropriate mitigation proposed, regardless of the level and detail of baseline information provided. In this case, the Commission is of the view that NGTL has included sufficient baseline information that is supported by a description of the methodology used and the rationale for that methodology.

The Commission acknowledges the variety of concerns raised by Indigenous peoples regarding potential Project effects on the current use of lands and resources for traditional purposes by Indigenous peoples. As noted in Subsection 7.6.7.1, when new information (e.g., traditional knowledge studies, concerns and recommendations) was provided to NGTL after the ESA was completed, through the hearing process or otherwise, NGTL reviewed the information. Its review was to determine whether it identified potential adverse effects that were not assessed in the ESA, if any new mitigation was required, and whether the results changed the conclusions of the ESA. Overall, the Commission is of the view that NGTL's approach, including its methodology, for assessing the Project's potential effects on the current use of lands and resources for traditional purposes by potentially affected Indigenous peoples was appropriate.

Additional views of the Commission regarding the EA methodology are provided in Subsection 7.6.7.1. The views of the Commission regarding cumulative effects are noted in Subsection 8.7.1.

## **8.3 Project Details**

Chapters 2 and 4 of the Report provide a general description of the Project. In addition, Table 8-1 provides further details regarding Project components and the associated activities relevant to the EA.

**Table 8-1 Project Components and/or Activities**

<b>Project Components and/or Activities</b>
<p>Construction Phase – Timeframe:</p> <p>Temporary Infrastructure: Q3 of 2021</p> <p>Compressor Station Unit Addition: Q1 of 2021 to Q1 2022</p> <p>Pipeline Construction: Q3 of 2021 to Q1 of 2022</p> <p>ROW Clean-up Activities and restoration measures within the Project Construction Footprint: winter following construction of the Project</p> <p>Habitat Restoration Activities: summer following final clean-up</p>
<p>Pipeline Route:</p> <p>Approximately 76 km (94 per cent) of the pipeline route parallels the existing NGTL ROW or other existing linear disturbances (pipelines, roads, power lines). An estimated 181 ha of new permanent ROW and an estimated 86 ha of temporary workspace will be required for construction.</p> <p>North Star Section 2:</p> <ul style="list-style-type: none"> <li>• Approximate total length – 24 km; contiguous with existing linear disturbances – 23 km</li> </ul> <p>Red Earth Section 3:</p> <ul style="list-style-type: none"> <li>• Approximate total length – 32 km; contiguous with existing linear disturbances – 31 km</li> </ul> <p>Bear Canyon North Extension:</p> <ul style="list-style-type: none"> <li>• Approximate total length – 25 km; contiguous with existing linear disturbances – 22 km</li> </ul> <p>Hidden Lake North Unit Addition and associated pipeline component:</p> <ul style="list-style-type: none"> <li>• Additional footprint required – approximately 7.5 ha</li> <li>• Approximately 1 km of 914-mm outside diameter (NPS 36 of connectivity piping</li> </ul>
<p>ROW preparation and related infrastructure installation:</p> <ul style="list-style-type: none"> <li>• Clearing, grubbing, grading on the ROW and all temporary and permanent infrastructure</li> <li>• Minimum construction ROW width of 32 m plus temporary workspace for the pipeline sections</li> <li>• Temporary access roads if necessary; no new permanent access</li> <li>• Construction and operation of temporary construction camps</li> <li>• Pipeline stringing, welding, coating, trenching, installation and backfill</li> </ul> <p>Construction of compressor station unit addition and associated pipeline components Watercourse crossings:</p> <ul style="list-style-type: none"> <li>• Trenchless crossing (i.e., HDD) at Loon River with an isolated open cut crossing as a contingency</li> <li>• Open-cut crossing at Notikewin River</li> <li>• Isolated open cut crossing method if water present, open cut if dry or frozen to bottom at seven additional locations</li> <li>• Water withdrawal and hydrostatic testing</li> </ul>

<ul style="list-style-type: none"> <li>• ROW clean up, reclamation and site restoration</li> </ul>
<p>Operation Phase – Timeframe: Service life of the Project (estimated in-service date anticipated Q1 2022)</p> <ul style="list-style-type: none"> <li>• ROW inspection and maintenance including vegetation control, erosion control, line integrity flyovers and third-party activity near lines</li> <li>• Facility maintenance</li> </ul>
<p>Abandonment Phase – Timeframe: At the end of the service life of the Project</p> <ul style="list-style-type: none"> <li>• To abandon the facility, an application to the CER would be required pursuant to the CER Act, at which time the environmental effects would be assessed</li> </ul>

## 8.4 Environmental Setting

This Section provides a description of the environmental setting for the Project. Since the information provided is from NGTL’s Application, and specifically from its ESA, the Commission has used the same spatial extent descriptors as used by NGTL. They include Project Construction Footprint, Local Study Area and Regional Study Area.

### Project Construction Footprint

The Project Construction Footprint is defined as the area directly disturbed by construction activities including associated physical works and activities, such as the permanent ROW and temporary workspace, and is a minimum of 32 m in width.

### Local Study Area

The Local Study Area varies with the environmental and socio-economic element being considered. It includes the Project Construction Footprint and extends beyond it to incorporate the areas within the element is most likely to be affected by the Project.

### Regional Study Area

The Regional Study Area varies with the environment and socio-economic element being considered. It includes the Project Construction Footprint and the Local Study Area, and the area beyond the Local Study Area boundaries where the predicted likely residual effects from the Project may act in combination with those of existing and reasonably foreseeable developments and activities to cause cumulative effects.

The spatial boundaries of the Local Study Area and Regional Study Area for specific environmental and socio-economic elements are described in Table 8-2. For Green House Gas (GHG) emissions, the spatial boundary extends beyond the Regional Study Area and has global implications.

**Table 8-2 Study Area Descriptors for Specific Biophysical and Socio-economic Elements**

Element	Spatial Boundary of Local Study Area	Spatial Boundary of Regional Study Area
Physical and Meteorological Environment Soil and Soil Productivity	A 100 m buffer extending from the Project Construction Footprint	Not defined as potential effects and cumulative effects interactions are not anticipated to extend beyond the Local Study Area
Aquatics (Water Quality and Quantity) (Fish and Fish Habitat)	Notikewin River: 100 m upstream and 1.6 km downstream of the Project Construction Footprint at the crossing location.  Loon River: 100m upstream and 1.0 km downstream of the Project Construction Footprint at the crossing location  All other watercourses: 100 m upstream at each crossing location to a minimum of 300 m downstream  All drainages: 100 m upstream at each crossing location to a minimum of 100m downstream	A 10 km buffer extending from the Project Construction Footprint
Air Quality	Not defined as the effects from air emissions are regional in nature due to the transport and dispersion of pollutants away from the source	Pipeline: A 2.5 km buffer extending from the Project Construction Footprint  Compressor Station: A 20 km by 20 km area centered on the Hidden Lake North Unit Addition
Acoustic Environment	A 1.5 km buffer extending from the Project Construction Footprint	A 1.5 km buffer extending from the Project Construction Footprint
Wetlands	A 100 m buffer extending from the Project Construction Footprint	A 10 km buffer extending from the Project Construction Footprint
Vegetation	A 100 m buffer extending from the Project Construction Footprint	A 1.0 km buffer extending from the Project Construction Footprint

Element	Spatial Boundary of Local Study Area	Spatial Boundary of Regional Study Area
Wildlife and Wildlife Habitat	A 1.0 km buffer extending from the Project Construction Footprint	A 15 km buffer extending from the Project Construction Footprint The Caribou specific Regional Study Area includes the Red Earth Caribou Range and the Chinchaga Caribou Range
Human Occupancy and Resource Use Human Health Navigation and Navigation Safety	A 1.5 km buffer extending from the Project Construction Footprint	A 15 km buffer extending from the Project Construction Footprint
Traditional Land and Resource Use	A 1.5 km buffer extending from the Project Construction Footprint	A 15 km buffer extending from the Project Construction Footprint for the North Star Section 2 and Bear Canyon North Extension A 15km buffer extending from the Project Construction Footprint plus Caribou Regional Study Areas for the Red Earth Section 3 and Hidden Lake North Unit Addition
Social and Cultural Well-Being Infrastructure and Services Employment and Economy	Settled Communities traversed by the Project Construction Footprint	Boundaries of regions including municipal districts, counties and regional municipalities traversed by the Project Construction Footprint For select economic effects, the spatial boundary will be 'Beyond Regional Study Area'
Accidents and Malfunctions Changes to the Project Caused by the Environment	The acceptable biological or socio-economic element Local Study Area	The acceptable biological or socio-economic element Project Construction Footprint



### 8.4.1 Location

The Project facilities and components are all located within northern AB and are adjacent to the NGTL's North Central Corridor and Northwest Mainline natural gas pipelines as follows (See Figure 2-1 in Chapter 2 for a map of major Project component locations):

- North Star Section 2 is located approximately 20 km north of the Town of Manning, AB.
- Red Earth Section 3 is located approximately 45 km north of the Hamlet of Red Earth Creek, AB.
- Bear Canyon North Extension is located approximately 50 km southwest of the Hamlet of Worsley, AB.
- Hidden Lake North Unit Addition is located approximately 100 km north of the Hamlet of Worsley, AB.
- Temporary Construction Camps are anticipated at Hidden Lake North Unit Addition, North Star Section 2 and potentially at Red Earth Section 3.
- The locations of the Project facilities and components and information on the Natural Subregions are described in Table 8-3.

**Table 8-3 Project Locations and Natural Sub regions**

Project Component	Location	Natural Sub region(s)
North Star Section 2	County of Northern Lights	Dry Mixedwood
Red Earth Section 3	Northern Sunrise County and the Municipal District of Opportunity No. 17	Central Mixedwood and Lower Boreal Highlands
Bear Canyon North Extension	Clear Hills County	Dry Mixedwood and Lower Boreal Highlands
Hidden Lake North Unit Addition	Clear Hills County	Lower Boreal Highlands

### 8.4.2 Land Use, Human Occupancy and Resource Use

- There are several potential permanent residences or habitation sites within 1.5 km of the North Star Section 2, Red Earth Section 3 and the Bear Canyon North Extension. There are 12 potential habitation sites (e.g., residence and farming operations) identified within 1.5 km of the North Star Section 2 with the nearest located approximately 260 m. There are two habitation sites identified in the Red Earth Section 3, a trapper's cabin approximately 100 m northeast of KP 30.2 near the Loon River crossing, and the other, a potential habitation site located approximately 1 km northeast of KP 6.3. There are 13 habitation sites (e.g., residences or farming operations) identified within the 1.5 km of the Bear Canyon North Extension with the nearest located 150 m.

- Approximately 40 per cent (32 km) of all parcels traversed by the proposed pipeline components are private (freehold) land and approximately 60 per cent (49 km) are provincial Crown land. The estimated hectares of permanent new ROW required for the construction of the proposed pipeline components is 181 ha, and an estimated 86 ha of temporary workspace. NGTL indicated that an estimated 78 ha of temporary workspace and permanent ROW overlapping existing land rights associated with existing NGTL facilities would be required for construction of the pipeline components.
- The proposed Project is located in both the White and Green Areas of AB. North Star Section 2 is in the White Area which is mostly privately owned and managed by landowners to support agricultural (cultivated) operations. Red Earth Section 3 and the Hidden Lake North Unit Addition are in the Green Area which is mostly forested and is managed by the Province for a number of different land uses including forestry, conservation, environmental resources, recreation, and industrial development (e.g., oil and gas, forestry and agriculture) and some grazing activities. The Bear Canyon North Extension traverses both the White and the Green Areas for approximately 61 per cent and 39 per cent, respectively.
- No provincial parks, protected areas, or ecological reserves are intersected by any of the Project components.
- No permanent residences or habitation sites are within a 1.5 km distance of the Hidden Lake North Unit Addition as identified in the Noise Impact Assessment of the ESA.
- A summary of land cover classes encountered by the project components within the Project Construction Footprint is described in Table 8-4.

**Table 8-4 Summary of Land Cover Classes encountered within the Project Construction Footprint**

<b>Project Component</b>	<b>Location</b>	<b>Area of Alberta (%)</b>	<b>Dominant Land Use (ha)</b>
North Star Section 2	County of Northern Lights	White (100)	Agriculture (cultivated, hay and tame pasture) (77.8 ha); native vegetation (forested, shrubland and wetlands) (18.4 ha) and anthropogenic disturbances (3.8 ha)
Red Earth Section 3	Northern Sunrise County and the Municipal District of Opportunity No. 17	Green (100)	Native vegetation (forested, shrubland and wetland) (45.2 ha) and anthropogenic disturbances (65.7 ha).
Bear Canyon North Extension	Clear Hills County	White (61) Green (39)	Agriculture (cultivated, hay and tame pasture) (47.3 ha); native vegetation (forested, shrubland and wetlands); (40.7 ha) and anthropogenic disturbances (12.5 ha).
Hidden Lake North Unit Addition	Clear Hills County	Green (100)	Native vegetation (forested, shrubland and wetlands) (6.1 ha) and anthropogenic disturbances (4.8 ha)

#### **8.4.3 Indigenous Peoples**

- The Project components are located within Treaty 8 boundaries, as well as within the lands of Métis Nation of Alberta, Regions 5 and 6. A complete description of the potential impacts of the Project on Indigenous peoples and their interests is provided in Chapter 7 of this Report.

#### **8.4.4 Physical Environment**

- The Project crosses generally level to moderately sloping terrain. Terrain instability has the potential to occur along moderately and steeply inclined valleys such as at watercourse crossings and approach slopes.
- Permafrost may be present in areas of organic or poorly-drained soils that are present for approximately 2.6 km of the Red Earth Section 3 Project Construction Footprint and in limited locations of poorly drained areas at the Hidden Lake North Unit Addition.

#### **8.4.5 Soil and Soil Productivity**

- Soils within the Project Construction Footprint are described in Table 8-5.

**Table 8-5 Soils in the Project Construction Footprint by Pipeline Section**

Project Section	Surficial Geology
North Star Section 2	Fine to very fine-textured glaciolacustrine and lacustro-till deposits with some minor areas of organic soils overlying fine-textured glaciolacustrine deposits in depressional and level slope positions.
Red Earth Section 3	Morainal (till) and glaciolacustrine deposits and organic soils overlying till or glaciolacustrine deposits in depressional and level slope positions.
Bear Canyon North Extension	Fine to very fine-textured glaciolacustrine deposits and till deposits with organic soils in depressional and level slope positions.
Hidden Lake North Unit Addition	Till deposits with lenses of glaciolacustrine and/or glaciofluvial parent material, as well as organic soils overlying parent materials in depressional and level slope positions.

Soil Contamination

- A search of the Abacus Datagraphics Ltd. 2.0 database (December 2018) of reported spills and complaints for all sections within 1.0 km of the pipeline trench line and the compressor unit addition Project Construction Footprint was performed.
- In the Red Earth Section 3, 32 spills were reported and cleaned up. Products included crude oil, salt/produced water, gas production (raw), process water and frac oil.
- In the Bear Canyon North Extension, 20 spills were reported. Products included crude oil, salt/produced water, gas production (raw), emulsifiers, condensates and lubricants. One spill (2.0 m<sup>3</sup> of salt/produced water) is outstanding without a close out date. The remaining 19 spills have been cleaned up.
- In the Hidden Lake North Unit Addition, two spills were reported and cleaned up. Products included condensate and gas production.
- There have been no spills or complaints reported in the North Star Section 2.

**8.4.6 Vegetation, including Species at Risk**

- The Vegetation Local Study Area falls within three natural subregions: the Central Mixedwood, Dry Mixedwood, and Lower Boreal Highlands.
- No vegetation species at risk listed under Schedule 1 of the SARA, COSEWIC or Schedule 6 of the Wildlife Regulation under the *Alberta Wildlife Act* were observed during field surveys (2019) within the Project Construction Footprint.
- There are no records of rare ecological communities, listed under the Alberta Conservation Information Management System, occurring within 5 km of the Project Construction Footprint.
- There are six records of rare plant species listed under the Alberta Conservation Information Management System (three lichens, two liverworts and one moss) within 5 km of the Bear Canyon North Extension.

- Liverwort and lichen species listed under the Alberta Conservation Information Management System were observed during the field surveys (2019) in all Project sections.
- Nine species of invasive plants were identified in the Vegetation Local Study Area for Red Earth Section 3, Bear Canyon North Extension and Hidden Lake North Unit Addition (spotted knapweed, white cockle, common tansy, scentless chamomile, toadflax, perennial sow-thistle, Canada thistle, creeping thistle and ox-eye daisy).
- Field surveys (2019) identified two noxious weed species in North Star Section 2 and Bear Canyon North Extension (Canada thistle, perennial sow-thistle) and one noxious weed species (scentless chamomile) in the Hidden Lake North Unit Addition.
- No signs of mountain pine beetle infestation were observed during the vegetation overflight survey (2018) of the proposed pipeline route.
- Forest stands with the potential to be mature and late-successional were identified during the desktop review and visited during the ground surveys. Within the Bear Canyon North Extension, approximately 1.6 ha of potential late-successional forest was noted.

#### **8.4.7 Water Quality and Quantity**

##### Surface Water

- Within the Peace River basin, the pipeline sections cross the Notikewin River, Loon River, Bear Canyon Creek, Hunt Creek and three small unnamed tributaries to the Meikle River, Loon River and Hunt Creek. Upstream of the project, Stowe Creek, Soldar Creek and the Hotchkiss River flow into the Notikewan River. The Hidden Lake North Unit Addition is located within the Hay River basin and does not cross any watercourses.
- Portions of the Peace River basin (North Star Section 2 and Bear Canyon North Extension) have been identified by Alberta Agriculture and Forestry as potential areas where agriculture land use (livestock production, crop production, agrochemical use) could affect surface water quality.
- Field surveys identified six watercourse crossings and three fish-bearing drainages that are proposed to be crossed by the Project as shown per pipeline component in Table 8-6.

**Table 8-6 Watercourses and Fish-bearing Drainages to be crossed by the Project**

Pipeline Component	Watercourse Crossings	Number of Drainages Crossed	Watershed
North Star Section 2	Unnamed tributary to Meikle River Notikewin River	0	Peace River
Red Earth Section 3	Loon River unnamed tributary Loon River Hunt Creek	3	Peace River
Bear Canyon North Extension	Bear Canyon Creek	0	Peace River

Ground Water

- Two springs occur in the Aquatic Local Study Area (North Star Section 2, Red Earth Section 3).
- There are 83 registered groundwater wells within the Aquatics Regional Study Area with the main uses being industrial, domestic, investigation, injection and municipal.

**8.4.8 Fish and Fish Habitat including Species at Risk**

- There are 29 fish species (coldwater and coolwater), including 9 sportfish species that may be present in the Aquatics Regional Study Area (e.g., Arctic grayling, northern pike, walleye, longnose sucker, burbot and mountain whitefish).
- No fish species listed by the SARA or COSEWIC are known to occur in the Aquatics Regional Study Area.
- Bull trout, provincially listed as threatened under the *Alberta Wildlife Act* and listed as special concern by COSWEIC, has been documented in the Peace River basin, but not in any of the watercourses crossed by the proposed pipeline route or within the Aquatics Regional Study Area.
- Arctic grayling, provincially listed as species of special concern under the *Alberta Wildlife Act*, has been documented in the Peace River Basin within the Aquatics Regional Study Area.
- Open water aquatic field surveys (2018) identified six fish-bearing watercourses, three fish-bearing drainages and nine nonfish-bearing drainages.
- The Notikewin River and the Loon River provide valuable instream habitat for a multitude of fish species with diverse types of habitat (pools, riffles, flats, and runs). Bear Canyon Creek, Hunt Creek and smaller watercourses and fish-bearing drainages provide suitable habitat for small-bodied fish species (e.g., brook stickleback and finescale dace).

#### 8.4.9 Wetlands

- The Project does not cross any designated wetland conservation areas and no records of rare ecological communities, listed under the Alberta Conservation Information Management System exist within the Wetlands Regional Study Area.
- Approximately 1.6 ha of a wooded coniferous bog is encountered by the Hidden Lake North Unit Addition and the connectivity piping.
- Wetland field surveys (2019) were conducted along the Project Construction Footprint for all Project components which documented 2 additional wetlands in the North Star Section 2, 5 additional artificial ponds in the Red Earth Section 3, 11 additional wetlands in the Bear Canyon North Extension and 5 additional wetlands in the Hidden Lake North Unit Addition.
- A summary of the wetland types documented along each of the Project components prior to the 2019 field surveys is provided in Table 8-7.

**Table 8-7 Wetlands Types Encountered by the Project**

Project Component	Approximate Length Crossed (km)	Dominant Wetland type(s) within Local Study Area	Approximate Wetland Area within Project Construction Footprint (ha)
North Star Section 2	1.31	18 (swamps, bogs, marshes)	3.23
Red Earth Section 3	19.42	42 (swamps, fens, bogs, shallow open water, marshes)	56.27
Bear Canyon North Extension	7.86	21 (swamps, shallow open water, marshes)	25.12
Hidden Lake North Unit Addition	1.58	one wooded coniferous bog	1.58

#### 8.4.10 Wildlife and Wildlife Habitat including Species at Risk

- The Project Construction Footprint for all Project components contain a range of agricultural lands with treed shelterbelts and remnant tree stands. Representative species of forested habitat include white spruce, pine, trembling aspen, balsam poplar with a dense shrub understory (buffalo berry, alder). Representative non-forested habitat includes tall grasses and sedges. All Project sections except Red Earth Section 3 contain large standing dead trees, present within areas of mixedwood forest.
- There are approximately 13 Environmentally Significant Areas intersected by the Project Construction Footprint. These areas have been identified by Alberta Environment and Parks as being important for the long-term maintenance of biological diversity, physical landscape features or natural processes in AB.
- Each pipeline section crosses through provincially and federally designated wildlife sensitivity zones. These areas are listed in Table 8-8.

**Table 8-8 Designated Wildlife Sensitivity Zones to be crossed by the Project**

<b>Project Component</b>	<b>Designated Wildlife Sensitivity Zone</b>	<b>Recommended Timing Restriction</b>
North Star Section 2	Federal Migratory Bird Nesting Zone – B6	6 May to 8 August
	Key Wildlife Biodiversity Zone	15 January to 30 April
	Grizzly Bear Support Zone	N/A
	Environmentally Significant Area	N/A
Red Earth Section 3	Federal Migratory Bird Nesting Zone – B5 and B6	2 May to 10 August 6 May to 8 August
	Red Earth Caribou Range	15 February to 15 July
	Ten Environmentally Significant Areas	N/A
Bear Canyon North Extension	Federal Migratory Bird Nesting Zone – B5	2 May to 10 August
	Key Wildlife Biodiversity Zone	15 January to 30 April
	Grizzly Bear Support Zone	N/A
	Environmentally Significant Area	N/A
Hidden Lake North Unit Addition	Migratory Bird Nesting Zone – B5	2 May to 10 August
	Chinchaga Caribou Range	15 January to 30 April
	Grizzly Bear Secondary Zone	N/A
	Environmentally Significant Area	N/A

- Sixteen species listed on Schedule 1 of the SARA or COSEWIC have potential to interact with the Project. These include common nighthawk (special concern – COSEWIC, threatened - SARA), olive-sided flycatcher (special concern – COSEWIC, threatened - SARA), Canada warbler (threatened), rusty blackbird (special concern), evening grosbeak (special concern), barn swallow (threatened), yellow rail (special concern), horned grebe (special concern), short-eared owl (special concern), brown myotis (endangered), northern myotis (endangered), woodland caribou, boreal population (threatened), wolverine (special concern), wood bison (special concern – COSEWIC, threatened - SARA), grizzly bear, western population (special concern), and western toad (special concern).



- The Project interacts with boreal caribou ranges for which the ECCC *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal Population, in Canada* (Recovery Strategy) applies. Critical habitat for boreal caribou has been identified within the Chinchaga and Red Earth caribou ranges and the Red Earth Section 3 is located within the Red Earth caribou range for 14.9 km. The Hidden Lake North Unit Addition is also located within the Chinchaga caribou range. Additional information on caribou and caribou habitat is provided below and in Section 8.6.
- The Wildlife and Wildlife Habitat Local Study Area for all sections (except Hidden Lake North Unit Addition) has potential to contain suitable roosting habitat features for bats. Critical habitat has been partially identified for little brown and northern bat hibernacula but the habitat is not located near any of the Project components.
- The Wildlife and Wildlife Habitat Local Study Area provides suitable black bear denning habitat, ungulate (deer, moose) habitat, furbearer (fisher, marten, wolverine) habitat and bird (Canada warbler, olive sided flycatcher, rusty blackbird) habitat in various pipeline sections (except Hidden Lake North Unit Addition).
- The Hidden Lake North Unit Addition may contain suitable habitat for wood bison and existing structures and new structures constructed for the Project have the potential to support nesting barn swallows.
- The Provincial Fisheries and Wildlife Management Information System database reported observations of six species at risk (grizzly bear, wood bison, woodland caribou - boreal population, olive-sided flycatcher, peregrine falcon, western toad) and nine species of special conservation status (Canada Lynx, alder flycatcher, barred owl, cape May warbler, common yellowthroat, least flycatcher, sharp-tailed grouse, sora, trumpeter swan) within 1 km of the Project components.
- No suitable denning habitat for grizzly bear is present in the Wildlife and Wildlife Habitat Local Study Area for the Project.
- Suitable habitat for western toad in the Project Construction Footprint is limited to small areas of forested/shrubby habitat and open water ponds/wetlands in agricultural areas (i.e., White Area) crossed by the North Star Section 2 and the Bear Canyon North Extension.

### 2018 Field Surveys

- Wildlife surveys were completed along representative habitat types for all Project components.
- Mammal species or their signs observed included deer, moose, black bear, grey wolf, coyote, red squirrel, snowshoe hare, muskrat and woodland caribou (Red Earth Section 3).
- Amphibian species observed included wood frog, boreal chorus frog and western toad (Bear Canyon North Extension and Red Earth Section 3).
- During the songbird survey (conducted outside the breeding season; auditory or visual observations): 20 bird species were observed along the North Star Section 2, 19 bird species were observed along both the Red Earth Section 3, and 15 bird species along the Bear Canyon North Extension. Five bird species were observed at Hidden Lake North Unit Addition.

2019 Field Surveys

- Supplemental surveys at select locations along and adjacent to the Project Construction Footprint were completed including: wetland and vegetation ground surveys, auditory and non-acoustic amphibian surveys, breeding bird surveys, common nighthawk and short-eared owl surveys, yellow rail surveys, and ground searches for wildlife habitat features.
- The wildlife species detected during the 2019 surveys are listed in Table 8-9 below.

**Table 8-9 Wildlife Species detected during 2019 Wildlife Surveys**

<b>Wildlife Species</b>	<b>North Star Section 2</b>	<b>Red Earth Section 3</b>	<b>Bear Canyon North Extension</b>	<b>Hidden Lake North Unit Addition</b>
Deer spp.	Y	Y		
White-tailed Deer	Y		Y	
Moose	Y	Y	Y	
Bear spp.	Y			
Black Bear		Y		
Canada Lynx		Y		
Red Squirrel	Y		Y	
Bat spp.	Y		Y	
Beaver		Y	Y	
Muskrat		Y		
Boreal chorus frog	Y	Y	Y	Y
Wood frog	Y	Y	Y	Y
<b>Species at Risk</b>				
Woodland Caribou		Y (tracks only)		
Wood Bison				Y
Western Toad		Y	Y	
Canada warbler	Y	Y		
Horned grebe	Y			
Olive-sided flycatcher	Y	Y	Y	
Common nighthawk		Y	Y	

Wildlife Species	North Star Section 2	Red Earth Section 3	Bear Canyon North Extension	Hidden Lake North Unit Addition
Rusty blackbird			Y	
Barn swallow		Y		Y

- Breeding bird surveys detected 61 bird species in the North Star Section 2, 69 bird species in the Red Earth Section 3, 69 bird species in the Bear Canyon North Extension and 24 bird species in the Hidden Lake North Unit Addition. Birds observed included passerine species, woodpecker species, waterbird species, game bird species and raptor species.
- Field surveys were conducted for yellow rail and short eared owl; no species were detected.
- Two unoccupied stick nests were observed within the Project Construction Footprint for North Star Section 2 and Bear Canyon North Extension.

#### 8.4.11 Atmospheric Environment

- Operation of vehicles and equipment that use fossil fuels and the auxiliary equipment (e.g., power generators) emit Criteria Air Contaminants such as nitrogen dioxide (NO<sub>2</sub>), carbon monoxide (CO) and particulate matter less than 2.5 micrometres in diameter (PM<sub>2.5</sub>).
- The construction and operation of the Hidden Lake North Unit Addition involves the addition of a 30 megawatt compressor and two boilers. Ambient concentrations of Criteria Air Contaminants are expected to increase from the operation of the Hidden Lake North Unit Addition, however, the results of the air dispersion modelling completed for the Project indicated that the maximum predicted Criteria Air Contaminants for the Project are predicted to be below ambient air quality objectives as set out by Alberta Environment and Parks. In addition any Criteria Air Contaminants and dust emissions resulting from Project-related construction activities will be short-lived.
- Sources of GHG emissions during the Project's construction will be from land clearing and open burning activities as well as from fuel combustion related to vehicle and equipment operation. The predicted emissions from construction are 26,420 tonnes of carbon dioxide equivalent (CO<sub>2</sub>e).
- The sources of GHG emissions during operation will primarily be from natural gas combustion of the compressor turbine and boiler, with minor contributions from back up boiler and vented gas emissions at the Hidden Lake North Unit Addition. The operations emissions are predicted to be 132,449 tonnes CO<sub>2</sub>e per year.

#### 8.4.12 Acoustic Environment

- The Acoustic Environment Local Study Area for the Hidden Lake North Unit Addition uses a 1.5 km boundary from the property fence line to determine the presence of dwelling receptors (residences) that may be affected by the Hidden Lake North Unit Addition. No residences (dwelling receptors) are within 1.5 km distance of the Hidden

Lake North Unit Addition. Other existing oil and gas facilities were located within the Acoustic Environment Local Study Area of the Hidden Lake North Unit Addition (i.e., NGTL's Hidden Lake Compressor Station, ATCO's Hamburg 855S Substation, CNRL's 10-29 Compressor Station, and CNRL's Hamburg 12-29 Gas Plant).

#### **8.4.13 Heritage Resources**

- Cultural, historic, archaeological and paleontological resources are collectively known as heritage resources and can include pre-contact and post-contact features.

##### North Star Section 2

- Areas displaying moderate archaeological potential are located along the Project Construction Footprint in areas associated with elevated microtopography near the Notikewin River and a relict channel connecting the Notikewin River to the Meikle River. No previously recorded archaeological sites are intersected by the North Star Section 2 Project Construction Footprint. Areas of high palaeontological potential are associated with the Notikewin River and Meikle River valley crest.

##### Red Earth Section 3

- The Project Construction Footprint exhibits generally low potential for undiscovered archaeological resources. The potential for archaeological resources at the location of the Loon River crossing is considered low due to previous disturbance in this area by highway and pipeline construction. The Project Construction Footprint exhibits generally low potential for undiscovered palaeontological resources, due to the lack of effects to bedrock with thick glacial sediments (100 m to 120 m in depth).

##### Bear Canyon North Extension

- The Project Construction Footprint exhibits areas displaying moderate archaeological potential in areas associated with elevated microtopography surrounding watercourses and saturated areas. There is low potential for remaining archaeological resources. Areas of high palaeontological potential area associated with exposed bedrock in the Peace River valley region and areas with shallow surficial sediments.

##### Hidden Lake North Unit Addition

- The Project Construction Footprint exhibits generally low potential for undiscovered archaeological resources due to previous disturbances. The Project Construction Footprint exhibits generally low potential for undiscovered palaeontological resources due to lack of potential to affect bedrock deposits.

#### **8.4.14 Traditional Land and Resource Use**

- As defined in the Filing Manual, traditional territory is an area where Indigenous peoples have claimed or asserted the right to use the land for traditional purposes such as

hunting, fishing, trapping, gathering or spiritual activities. One or more Indigenous peoples may claim the same lands as their traditional territory.

- A total of 29 Indigenous communities were identified as being potentially affected or having an interest in the Project.
- Approximately 60 per cent of the Project is located on Crown land.
- Indigenous peoples engage in traditional land and resource activities and practices on Crown land throughout the region, including the Project Local Study Area and Regional Study Area. These activities and practices include plant/medicinal harvesting, hunting, trapping, fishing, use of trails and travelways, camping, and cultural sites. A complete description of the potential impacts of the Project on Indigenous peoples interests including TLRUis provided in Chapter 7 of this Report.

#### **8.4.15 Navigation and Navigation Safety**

- There are no watercourses crossed by the proposed Project that are listed as a scheduled waterway in the *Navigation Protection Act*. However, the Notikewin River, crossed by the North Star Section 2, and the Loon River, crossed by the Red Earth Section 3, are considered navigable at the proposed crossing locations of the Project.
- The Loon River would be crossed using a trenchless method (i.e., HDD) and the Notikewin River would be crossed using a trenched method.

#### **8.4.16 Human Health**

- The main groups within the population that could potentially be affected by the Project for human health concerns are construction workers involved in the Project; and individuals who live near or rely on services and activities near the Project Construction Footprint. Refer to Subsection 8.4.2 and Subsection 8.4.3 for a description of the permanent residences, habitation sites and Indigenous peoples that are in close proximity to the Project.

### **8.5 Environmental Issues of Concern to the Public and Indigenous Peoples**

The Commission received a number of submissions from Participants that raised particular concerns related to environmental issues. Table 8-10 below summarizes the topics of concern.

**Table 8-10 Environmental Issues Raised by Participants**

Participant	Environmental Issue(s) Raised
Environment and Climate Change Canada	<ul style="list-style-type: none"> <li>• Species at Risk - Caribou</li> <li>• Cumulative Effects</li> <li>• Environmental Emergencies</li> <li>• Air and GHG emissions</li> </ul>
Bigstone Cree Nation	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation</li> <li>• Cumulative Effects</li> <li>• Human Health</li> <li>• Access to Lands</li> <li>• Indigenous Peoples Monitoring</li> <li>• Safety Concerns</li> </ul>
Cadotte Lake Métis Local #1994	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Caribou and SARA Species</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation and Wetlands</li> <li>• Cumulative Effects</li> <li>• Acoustic Environment</li> <li>• Access to Lands</li> <li>• Indigenous Peoples Monitoring</li> </ul>

<p>Dene Tha' First Nation</p>	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Chinchaga Caribou Range</li> <li>• Vegetation</li> <li>• Acoustic Environment</li> <li>• Social and Cultural Well-Being</li> <li>• Garbage</li> <li>• Cumulative Effects</li> <li>• Proposed Mitigation Measures</li> <li>• Access to Lands</li> <li>• Indigenous Peoples Monitoring</li> </ul>
<p>Driftpile Cree Nation</p>	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Scope of Assessment Area</li> <li>• Indigenous and Treat Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation and Wetlands</li> <li>• Cumulative Effects</li> <li>• Proposed Mitigation Measures</li> <li>• Human Health</li> <li>• Social and Cultural Well-Being</li> <li>• Indigenous Peoples Monitoring</li> <li>• Safety Concerns</li> </ul>

<p>Duncan's First Nation</p>	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Chinchaga Caribou Range</li> <li>• Clear Hill Chinchaga Refuge</li> <li>• Vegetation</li> <li>• Access to Lands</li> <li>• Social and Cultural Well-Being</li> <li>• Cumulative Effects</li> </ul>
<p>Louis Bull Tribe</p>	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation and Wetlands</li> <li>• Soil</li> <li>• Permafrost</li> <li>• Access to Lands</li> <li>• Cumulative Effects</li> <li>• Human Health</li> <li>• Social and Cultural Well-Being</li> <li>• Indigenous Peoples Monitoring</li> </ul>



<p>Peavine Métis Settlement</p>	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Traditional Land and Resource Use</li> <li>• Heritage Resources</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation</li> <li>• Soil</li> <li>• Garbage</li> <li>• Indigenous Monitoring</li> <li>• Cumulative Effects</li> <li>• Safety Concerns</li> </ul>
<p>Peerless Trout First Nation</p>	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Heritage Resources</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation</li> <li>• Acoustic Environment</li> <li>• Indigenous Peoples Monitoring</li> <li>• Cumulative Effects</li> <li>• Proposed Mitigation Measures</li> <li>• Human Health</li> <li>• Social and Cultural Well-Being</li> <li>• Safety Concerns</li> </ul>

Whitefish Lake First Nation #459	<ul style="list-style-type: none"> <li>• Engagement</li> <li>• Assessment Methodology</li> <li>• Scope of Assessment Area</li> <li>• Indigenous and Treaty Rights</li> <li>• Traditional Land and Resource Use</li> <li>• Water and Water Quality</li> <li>• Fish and Fish Habitat</li> <li>• Wildlife and Wildlife Habitat</li> <li>• Vegetation</li> <li>• Access to Lands</li> <li>• Cumulative Effects</li> <li>• Social and Cultural Well-Being</li> <li>• Human Occupancy and Resource Use</li> <li>• Infrastructure and Services</li> <li>• Indigenous Peoples Monitoring</li> </ul>
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## **8.6 Environmental Effects Analysis**

### **8.6.1 Interactions and Potential Adverse Environmental Effects**

Table 8-11 identifies the expected interactions between the Project and the environment, and the potential adverse environmental effects resulting from those interactions.

### **8.6.2 Mitigation of Potential Adverse Environmental Effects**

In its Application, NGTL has identified routine design and standard mitigation and certain best practices to mitigate most of the potential adverse environmental effects identified in Table 8-11. Details on all of NGTL's proposed mitigation are set out in its Application, supporting documentation, and related submissions including the EPPs, EAS, and amended Preliminary Caribou Habitat Restoration and Offset Measures Plan.

Where there are outstanding issues regarding key environmental elements, or where NGTL's proposed mitigation may not be sufficient and additional mitigation may be necessary, a detailed analysis is presented in Subsection 8.6.4.

The Commission recognizes that many adverse environmental effects are resolved through standard mitigation. Standard mitigation refers to a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully and is now considered sufficiently common or routine that it is integrated into the company's management systems and meets the expectations of the Commission.

**Table 8-11 Project-Environment Interactions**

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
<b>Bio-Physical</b>	Physical Environment	Construction activities (especially grading, trenching, backfilling)	Changes to terrain stability causing slope failure, erosion, or slumping Alteration of topography (change in drainage patterns and landscape contours)	Subsection 8.6.3
	Soil and Soil Productivity	Construction activities (clearing, grubbing, grading, trenching and backfilling) Operations and maintenance activities (excavations for integrity digs) Operation of compressor station unit addition	Trench instability Decreased soil productivity due to loss of topsoil or mixing of topsoil and strippings Decreased soil productivity due to loss of soils through wind or water erosion Decreased soil productivity due to soil compacting or rutting Soil contamination from spot spills or exposure of already contaminated soils	Subsection 8.6.3
	Vegetation	Clearing of vegetation, grubbing, grading, soil salvage, clean-up and trenching Potential introduction or spread of non-native invasive plant species or noxious weeds from equipment movement during construction and/or operation activities Vegetation control activities during operations activities	Alteration of species composition of native vegetation, including loss of abundance and species diversity Potential introduction or spread of weeds, non-native species or forest pests Loss or alteration of rare vegetation populations, or rare ecological communities Loss or alteration of traditional use plant species	Subsection 8.6.3

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
	Water Quality and Quantity	<p>Construction activities (clearing, topsoil salvage, grubbing, grading, trenching, drilling, and backfilling, cleanup and reclamation)</p> <p>Construction of isolated, trenched and trenchless pipeline watercourse crossings</p> <p>Water withdrawal and release of hydrostatic test water during construction</p>	<p>Alteration of natural surface water flow rates and/or patterns</p> <p>Disruption of stream flow</p> <p>Reduction in surface water quality from increased sedimentation and release of hydrostatic test water</p> <p>Reduction in groundwater quantity or quality due to dewatering of the pipeline trench</p> <p>Erosion of river banks and slopes from water pumping during construction</p>	Sections 8.6 and 8.7
	Aquatic Species and Habitat	<p>Construction activities (clearing, grubbing, grading, trenching drilling, and backfilling, cleanup and reclamation)</p> <p>Construction of isolated, trenched and trenchless pipeline watercourse crossings</p> <p>Hydrostatic testing</p> <p>Inadvertent release of mud at Loon River HDD crossing</p> <p>Bank and riparian restoration or maintenance activities</p>	<p>Change in habitat quality and/or quantity</p> <p>Alteration or loss of riparian vegetation</p> <p>Increase in sediment load and sediment deposition in and downstream of the ROW</p> <p>Fish mortality or injury and blockage of fish movements</p> <p>Change in abundance and distribution of fish populations</p> <p>Inter-basin transfer of invasive aquatic organisms</p>	Sections 8.6 and 8.7
	Wetlands	Construction activities (clearing, grubbing, grading, trenching and backfilling, watercourse crossings, hydrostatic testing, cleanup and reclamation)	<p>Loss of wetland function due to Hidden Lake North Unit Addition</p> <p>Alteration of wetland habitat, hydrological and biogeochemical function</p> <p>Loss or alteration of traditional use plant species</p>	Subsections 8.6.3

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
	Wildlife and Wildlife Habitat	<p>Construction activities (clearing, grubbing, grading, trenching and backfilling hydrostatic testing and restoration)</p> <p>Operation of equipment and vehicles during construction and operations (e.g., vegetation control)</p>	<p>Loss or alteration of wildlife habitat, including direct disturbance of habitat and reduced habitat effectiveness</p> <p>Changes to wildlife movement patterns</p> <p>Increased wildlife mortality risk</p>	Subsection 8.6.3
	Species at Risk or Species of Special Status and related habitat	<p>No direct interaction with fish or vegetation Species at Risk.</p> <p>Project interactions with wildlife Species at Risk habitat primarily through clearing of potential habitat and access on ROW through the life of the Project</p>	<p>Reduction in potential habitat availability for species at risk</p> <p>Refer to potential effects as described under Wildlife and Wildlife habitat for wildlife species at risk</p>	Subsection 8.6.3
	<p>Atmospheric Environment</p> <p>GHG Emissions</p>	<p>Emissions during construction from vehicle and equipment use and biomass burning; and during operations from monitoring and surveillance traffic</p> <p>Operation of proposed compressor station unit addition</p>	<p>Increase in dust and air emissions during construction</p> <p>Increase in air and fugitive emissions during operation of pipeline and compressor station</p> <p>Increase in GHGs during operations</p>	Sections 8.6 and 8.7

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
	Acoustic Environment	<p>Operation of equipment and vehicles during construction and operation activities</p> <p>Trenchless watercourse crossings during pipeline construction (i.e., Loon River)</p> <p>Operation of compressor station unit addition</p> <p>Pipeline inspection and maintenance during operation</p>	<p>Sensory disturbance to wildlife</p> <p>Increase in comprehensive sound levels during construction and site-specific maintenance</p> <p>Increase in comprehensive sound levels during operation of compressor station unit addition</p>	Subsection 8.6.3
<b>Socio-Economic</b>	Human Occupancy and Resource Use	<p>Construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up) and operation activities</p> <p>Construction-related sensory disturbance (e.g., noise, dust, and visual presence of construction activities)</p> <p>Operation of compressor station unit addition</p> <p>Pipeline inspection and maintenance during operations</p>	<p>Disruption of hunting, fishing, trapping, guide outfitting, and recreational activities</p> <p>Disruption of agricultural activities</p> <p>Loss of forestry resources and reduction of land base for timber harvest</p> <p>Disruption to Indigenous peoples as noted below</p> <p>Disruption of recreational users</p> <p>Alteration of view sheds</p>	Subsection 8.6.3

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
	Heritage Resources	Construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up)	Disturbance of previously unidentified heritage resources during construction or operations	Chapter 7 for cultural, historic and archaeological resources Subsection 8.6.3 for palaeontological resources
	Current Traditional Land and Resource Use	Construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up) Changes in access during construction along existing roads Operations and maintenance activities (e.g., integrity digs, clearing, mowing and mulching)	Disturbance of use of trails and travelways Disturbance of use of habitation sites Disturbance of plant gathering activities and resources Disturbance of hunting activities and resources Disturbance of fishing activities and resources Disturbance of trapping activities and resources Disturbance of gathering places and sacred sites	Chapter 7
	Navigation and Navigation Safety	Construction activities at the Notikewan and Loon Rivers (i.e., clearing, grading, trenching, drilling, backfilling, hydrostatic testing and final reclamation) Open cut crossing at Notikewan River HDD of Loon River	Short term, temporary change in access to, and disruption to navigation along the Notikewan River Change in movement through or access to navigable watercourses Potential harm to users on navigable watercourses Disruption of watercourse users on navigable watercourses during construction Decrease in access to navigable waters from waterway users, including Indigenous peoples	Subsection 8.6.3

	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
	Social and Cultural Well-being	Construction activities and influx of temporary construction workforce	Change in community life by temporary workers Change in the social and cultural well-being of Indigenous peoples by temporary workers	Subsection 8.6.3 Chapter 7
	Human Health	Project construction activities (clearing, stripping, topsoil salvage, grading, trenching, watercourse crossings, backfilling, clean-up) have the potential to create air emissions, dust, noise and change water quality Operation of compressor station unit addition Pipeline inspection and maintenance activities	Change in health of local land/resource users related to changes in environmental media Change in health of Indigenous peoples	Subsection 8.6.3 Chapter 7
<b>Other</b>	Accidents/Malfunctions	Product release through a pipeline break or leak Spill of hazardous material (e.g., hydraulic fluid, antifreeze, gasoline, motor oil) Fire during construction or operation of pipeline Release of drilling mud during HDD Vehicle accidents during construction and operation Damage to foreign utilities during construction and operation	Loss or alteration of soil productivity, surface and groundwater quality, vegetation, wetlands, aquatic species, wildlife habitat, species at risk, air quality Injury or mortality to humans and wildlife Restrictions on land and resource use Increased demand for emergency services and temporary workers Potential effects to human health	Section 8.6 and Chapter 4



	<b>Environmental Element</b>	<b>Description of Interaction (or Why No Interaction is Expected)</b>	<b>Potential Adverse Environmental Effect</b>	<b>Mitigation Discussed in</b>
	Effects of the Environment on the Project	Terrain instability Seismic activity Flooding Forest fires Severe weather	Exposure of pipeline, loss of depth of cover as a result of slope instabilities, flooding, or erosion at watercourses Damage to infrastructure Impeded access to pipeline area during construction or operations	Subsection 8.6.3

### 8.6.3 Standard Mitigation

NGTL proposed mitigation measures to avoid or minimize potential adverse environmental effects on the terrain and topography, soils, water quality and quantity, vegetation, wetlands, wildlife and wildlife habitat, species at risk including species of special concern, Key Wildlife Biodiversity Zones, atmospheric and acoustic environments, as well as navigation and navigation safety and TLRU. These mitigation measures are included in NGTL's Application, EPPs, EAS and associated filings.

NGTL indicated that the proposed pipeline construction schedule period of Q1 2021 to Q1 2022, with clean-up and reclamation taking place in the winter following construction of the Project, would enable construction to occur primarily during the winter season. This schedule will reduce overall environmental impacts such as rutting and soil compaction, and will also avoid species-specific sensitive and restricted activity periods (RAP) as well as meet the in-stream timing restrictions (16 April to 15 July) associated with watercourse crossings.

Construction of the Hidden Lake North Unit Addition will result in activity throughout the year, requiring an overlap with the full caribou RAP in the Chinchaga caribou range. NGTL notes that the Hidden Lake North Unit Addition is located in an area of active and congested existing industrial activity and is directly adjacent to the existing Chinchaga Forestry Road, which limits habitat effectiveness in proximity to these existing features. NGTL also indicated that by routing the Project to parallel existing ROWs for 95 per cent of the route, impacts on the environment, land owners and land users will be minimized. By following the existing easement limits, the amount of temporary workspace required is minimized as the ROWs can be overlapped which reduces the total area of new disturbance, limits fragmentation, and results in less impact than establishing a new ROW.

NGTL has included management and contingency plans in its EPPs that would be implemented as required. Management Plans were provided for the following: chemicals and waste, traffic control, hydro-vac slurry handling, trenchless watercourse crossings, breeding bird and nests, access, and bear-human conflict. The contingency plans include accidental spill release, adverse weather, floods and excessive flow, wet soils, fire suppression, soil handling, soil erosion, contaminated soils, drilling mud release, plant species and ecological communities of concern discovery, wildlife species of concern discovery, and cultural resource discovery.

NGTL has committed to implement various mitigation measures and construction practices to avoid or reduce potential effects on socio-economic elements, including the acoustic environment, human occupancy and resource use, heritage resources, navigation and navigation safety, social and cultural well-being and human health.

For the acoustic environment, NGTL stated that noise from construction activities would be managed through noise management protocols and that construction would occur during the day with the exception of the Loon River trenchless crossing (i.e., HDD) activities, which may be conducted over a 24-hour span.

NGTL indicated that the Hidden Lake North Unit Addition would be designed so that noise levels during operation meet the noise level requirements of Alberta Energy Regulator Directive 038.

For heritage resources, NGTL stated that in the unlikely event that an archaeological, historical or palaeontological site is discovered during construction, the Cultural Resource Discovery Contingency Plan would be implemented. For navigation and navigation safety, NGTL stated

that mitigation measures are included in the EPPs related to navigation and navigation safety, including the installation of warning signs along the banks both upstream and downstream of the crossing to caution users of a navigational hazard, which would be implemented in the event of unfrozen conditions or to ensure the safety of any users of the frozen river as a travel route (e.g., snowmobile users).

In regards to the Notikewin River, NGTL stated it would ensure that safe passage around the trenched crossing of the Notikewin River is effectively facilitated and that site-specific mitigation addressing signage and safe passage requirements would be added to Table 1 of the North Star Section 2 EPP prior to construction.

For social and cultural well-being, NGTL stated that it would notify potentially affected landowners, lessees, and nearby residents of the intended Project schedule before the start of construction to avoid or reduce impacts to their operations or activities. NGTL stated that it would restrict all construction activities to the approved construction footprint and all construction traffic would adhere to safety and road closure regulations. NGTL stated it would implement the Traffic Control Management Plan and adhere to TransCanada's Alcohol and Drug Policy. NGTL further stated that Project employees and contractors would be required to adhere to a Code of Conduct that applies while on and off duty and construction camps would also follow codes of conduct established by NGTL. For human health, NGTL indicated that changes in air quality, water quality and noise levels that have the potential to affect human health are not expected to occur due to the mitigation of the pathways and interactions to a human health effect from environmental media.

Heritage resource issues and concerns raised by Indigenous peoples are discussed in Subsections 7.4.4, 7.5.4 and 7.6.4.

Human health issues and concerns raised by Indigenous peoples are discussed in Subsections 7.4.3, 7.5.3 and 7.6.3.

Social and cultural well-being issues and concerns raised by Indigenous peoples are discussed in Subsections 7.4.2, 7.5.2 and 7.6.2.

NGTL has indicated it will have qualified Environmental Inspectors onsite during construction to verify all activities are in compliance with regulatory commitments and mitigation measures as outlined in the EPPs, and to develop environmental orientation and training for Project personnel. NGTL indicated that it would continue engagement with potentially affected Indigenous peoples and provide information regarding updates to the EPPs. Any information brought forward through ongoing engagement will be reviewed in the context of the ESA and considered in Project planning as appropriate, including the EPPs and EAS filed prior to construction.

NGTL stated that its post-construction monitoring for soils, vegetation and wetlands will monitor the success of restoration of wildlife habitat. Additionally, NGTL stated that it conducted field work in 2018 and 2019 that will be used to inform if wetland habitat function is restored, revegetation success and prevention of weed introductions or spreads. NGTL also provided details of its post-construction monitoring methods, objectives and assessment for landscape, vegetation, soils, watercourses and wetlands parameters. NGTL indicated that the issues, the mitigation and/or remedial actions taken, any new environmental issues and the remedial

actions identified, as well as any regulatory and landowner consultation conducted, would be documented in the post-construction monitoring reports for the Project.

## Air Quality

### **Views of Participants**

ECCC requested NGTL to quantify and clarify the sources of venting emissions, and to indicate whether or not the sources are covered by ECCC's *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)*. ECCC also requested a copy of TransCanada's Fugitive Emissions Management Program.

### **Views of NGTL**

NGTL indicated that it primarily mitigates potential effects on air quality through equipment selection, construction practices (e.g., reduced idling of equipment and minimizing size and duration of burn piles) and through adherence to applicable guidelines.

NGTL stated that the results of the air dispersion modelling indicated that the maximum predicted NO<sub>2</sub>, CO, and PM<sub>2.5</sub> Project concentrations, including contributions from the existing and planned Project sources at Hidden Lake North Compressor Station, were lower than their corresponding ambient air quality objectives for all applicable averaging periods. NGTL submitted that the predicted residual effect is not significant.

NGTL indicated that it will follow ECCC's *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)* to address methane reduction. NGTL stated that it is continuing to implement fugitive emissions management processes such as the ongoing annual leak detection and repair program focused on equipment such as the seals on valves.

For additional details on GHG emissions, see Subsection 8.7.2.

## Soils

### **Views of Participants**

Louis Bull Tribe identified concerns around the classification of soils, including wetlands, forested soils, and permafrost locations. Louis Bull Tribe stated that wetlands and forested soils are of ecological and cultural importance to them, and that best management practices to ensure adequate conservation and reclamation of these areas require the completion of soil surveys with accurate mapping.

For example, Louis Bull Tribe recommended that NGTL identify the locations of temporary workspace and undertake field-based soil surveys of non-surveyed pipeline areas and temporary workspace, and noted that temporary workspace was not identified on any of the alignment sheets. Driftpile Cree Nation indicated that the CER should require NGTL to provide a detailed estimate of the area needed for temporary workspace and infrastructure throughout the three pipeline sections and compressor station.

Temporary workspace is also discussed in Subsection 5.2.6.1 of this Report.

## **Views of NGTL**

NGTL stated that a desktop review of soil information for Green Area pipeline projects is industry standard practice and has previously been accepted and approved by the NEB, and provincial regulators. The proposed mitigation outlined in the ESA and EPPs has been developed based on best management practices, industry standard practice and regulatory guidelines, with consideration of municipal and regional development plan objectives and post-construction monitoring of previous pipeline projects in comparable environments. NGTL also indicated that affected lands would be assessed prior to and during construction by a qualified Environmental Inspector, and that soil handling practices would be adjusted as required to effectively apply mitigation measures in the EPPs.

NGTL stated that it has not finalized the locations for all temporary infrastructure, but that it would work to reduce the amount of temporary workspace required, and would use existing disturbances where feasible. Temporary workspace would be sited to avoid sensitive environmental and socio-economic features or areas to the extent practical. NGTL acknowledged that it would evaluate the need for additional field studies should any areas be identified outside of the areas assessed as part of the Project's ESA.

## Vegetation and Wetlands

### **Views of Participants**

Louis Bull Tribe stated that medicinally and culturally important plants are critically important to them and that their availability has decreased in its territory due in part to increased fragmentation of the landscape from linear development projects. They indicated that medicinally and culturally important plants are not typically considered during the revegetation process for many of these projects and as a result there is potential for increased loss of these plants. Similarly, Duncan's First Nation, Driftpile Cree Nation, Whitefish Lake First Nation #459, and Peerless Trout First Nation identified concerns with the absence of plant species during the restoration of the Project. They also indicated that the medicinal plants and the berries that are important to them do not always grow back.

An interviewee for Duncan's First Nation stated "*I see the regrowth happening in cutblocks. You see the difference in cutblocks that were harvested one, two, three or more decades ago. The trees are re-growing but I don't see the berries and plants that are important to animals and to us. Maybe over a hundred years or so, you might see this occur.*"

Louis Bull Tribe, Duncan's First Nation and Peerless Trout First Nation expressed concerns regarding airborne contaminants and the use of herbicides for vegetation control that contaminate the surrounding vegetation.

Louis Bull Tribe identified wetlands as having ecological and cultural importance to them. Louis Bull Tribe identified a loss of wetlands in Treaty 6 lands which increases the need to maintain wetlands in Treaty 8 for the perpetuation of traditional practices associated with those features. Louis Bull Tribe stated that the lack of accurate delineation of wetlands is of concern as some of the mitigation NGTL relied on is to not use temporary workspace located within wetland boundaries.

Driftpile Cree Nation and Duncan's First Nation were concerned about the Project impacts on wetlands and the successful restoration of wetland function.

## **Views of NGTL**

NGTL indicated that based on results from post-construction monitoring of similar NGTL pipeline projects, its standard mitigation and best practices were effective in reducing residual effects on vegetation, and that natural recovery is an acceptable reclamation technique. The standard mitigation and best practices include limiting ground disturbance in wetlands/peatlands and upland forests that are flat and level, best practices for rare vegetation/community and standard weed control measures.

NGTL stated that minimal ground disturbance construction practices (i.e., no salvage or grubbing outside of trench line in wetlands, and level, upland forests) would limit the alteration of native vegetation and facilitate natural regeneration. NGTL noted that areas prone to erosion would be seeded with an appropriate native seed mix or cover crop. NGTL further stated that following construction, the natural revegetation and reclamation of the Project Construction Footprint would minimize the potential effect on plant resources. NGTL noted that this should ensure the ability of the land to support land uses similar to those that existed before construction.

NGTL said that wetland and vegetation monitoring is included as part of its post-construction monitoring methodology. NGTL indicated that where reclamation monitoring activities determine that natural recovery is not achieving the desired results, NGTL would use adaptive management (e.g., active revegetation) and continue monitoring the site until measures are considered to be effective and the issues resolved.

NGTL stated that the use of herbicides must comply with the Project EPPs, and is prohibited on the construction footprint unless otherwise approved by NGTL. The Project EPPs indicated that the use of herbicides is prohibited near rare plants and rare ecological communities; however spot spraying, wicking, mowing or hand-picking would be acceptable weed control measures in these areas. Herbicide use is also prohibited within 30 m of an open body of water unless the application is conducted by ground application equipment, or otherwise approved by the responsible regulatory agency. During operations, herbicides may be used on an as-needed basis along the pipeline ROW, pending the type of vegetation to be controlled, site conditions or other restrictions.

NGTL stated that in order to commit to restricting the general application of herbicides near traditional land use sites, it requires specific locations of those sites that are located on or adjacent to the Project footprint and that can be clearly delineated and mapped. NGTL further stated that should potentially affected Indigenous communities identify the locations where spraying and herbicide application are of interest to them then NGTL will notify the community regarding timing and locations of scheduled spraying and herbicide applications for those locations during construction and operation.

NGTL identified that its pre-construction practices include ground-truthing and staking potential wetlands by qualified Environmental Inspector(s) or designate(s).

The new Hidden Lake North Unit Addition is proposed in a location adjacent to the existing station and would result in a permanent loss of wetland function. NGTL stated this location would make use of ancillary features including the existing permanent access to the site, utilities connections and allows for an extension of the existing fence line to incorporate the unit addition. The selected adjacent location would have the least effect on the surrounding

wetlands. The proposed location is situated mostly upland as opposed to areas to the north and west of the existing facility that are characterized by nearly continuous wetlands.

NGTL committed to engage with Alberta Environment and Parks on the permanent loss of 1.6 ha of wetland function within the Hidden Lake North Unit Addition, and would be undertaking wetland replacement in lieu of fees (offsets) in compliance with the Alberta Wetland Policy and AB *Water Act*. NGTL would apply for any necessary approvals under the *Water Act* or notifications under the associated Codes of Practice for construction in wetlands.

## Water Quality

### **Views of Participants**

Peerless Trout First Nation and Louis Bull Tribe indicated that trenchless methods (e.g., HDD) best maintain water quality and quantity, and should be used by NGTL when possible.

Several Indigenous peoples who were Intervenor in the proceeding discussed the potential for impacts on water quality, such as increased sedimentation, during construction activities.

Driftpile Cree Nation has identified concerns about NGTL's water quality monitoring program, including the selection of locations of water quality monitoring sites and water quality monitoring parameters.

A number of Indigenous peoples who were Intervenor in the proceeding also indicated a desire for NGTL to provide contracting and employment opportunities to Indigenous peoples for the purposes of water quality monitoring during and after construction.

Concerns about water contamination were presented by Peerless Trout First Nation when providing oral Indigenous knowledge.

*"If we do some stuff, work in the land, we -- it all goes to the water and the water is our life."*

-- Elder Emile Houle, Peerless Trout First Nation, Transcript Volume 1 [44]

Driftpile Cree Nation and Peavine Métis Settlement raised concerns about beaver dam removal and the impacts on water quality.

Peerless Trout First Nation raised concerns about impacts to water quality and quantity due to hydrostatic testing.

### **Views of NGTL**

NGTL stated that it selects crossing locations and techniques, including contingency crossings, using industry-accepted design and installation practices. NGTL conducts site-specific watercourse crossing assessments to determine appropriate crossing methodologies that avoid or reduce the impact of construction activities on watercourses.

NGTL stated that during construction, the Environmental Inspector(s) or designate(s) would monitor watercourse crossing activities to help ensure adherence to all applicable mitigation measures in the EPPs. NGTL also stated that its water quality monitoring plan, including the selection of locations of water quality monitoring sites, would adhere to applicable regulatory

guidance, such as the *Code of Practice for Pipelines and Communication Lines*. The EPPs also describe mitigation measures, including the Drilling Mud Release Contingency Plan, that would be implemented in the event of sediment or deleterious substance releases during the construction of the trenchless crossings.

In regards to concerns around providing contracting and employment opportunities to Indigenous peoples, see NGTL's reply on employment and benefits, as well as monitoring by Indigenous peoples provided in Subsections 7.5.5 and 7.5.6 of this Report.

NGTL indicated that its Project-specific EPPs outline the environmental protection measures that NGTL would employ to avoid or reduce potential adverse effects of the Project on water quality.

NGTL stated that beaver dam removal is an instream construction activity and, as such, water quality monitoring for sediment events and/or dissolved oxygen would occur where required by the applicable regulatory approvals or as identified by a Qualified Aquatic Environment Specialist. The EPPs outline mitigation measures for beaver dams or lodges encountered by the Project.

NGTL stated that water withdrawal activities would be undertaken as per the Alberta *Code of Practice for the Temporary Diversion of Water for Hydrostatic Testing of Pipelines* and as per conditions of the Temporary Diversion License issued by Alberta Environment and Parks for the Project. Section 8.7 of the EPPs outline mitigation measures for minimizing effects of water withdrawal on source waterbodies.

#### Wildlife and Wildlife Habitat

##### ***Views of Participants***

Several Indigenous peoples who were Intervenors in the proceeding raised concerns around the importance of moose, and the potential effects of the Project on moose given their resource management and cultural importance. For example, Peerless Trout First Nation stated that NGTL has suggested that the expansion of the ROW will result in creation of additional moose habitat but that it has not included mitigation measures to manage predator-prey dynamics along the ROW. Peerless Trout First Nation recommended that NGTL mitigate the impacts of higher predator pressure following construction by establishing diverse vegetation communities, using intact tree limbs across the right of way, and using stem bending and tree felling at strategic locations to slow predator movement and reduce sight lines. Moose are also discussed in Subsection 7.4.7.4.

Driftpile Cree Nation said that NGTL did not provide any discussion regarding Project impacts on wood bison, nor potential mitigation measures that might be necessary. Driftpile Cree Nation recommended that NGTL discuss project effects on wood bison and develop site-specific mitigation measures since the compressor station unit addition falls within the Alberta Bison Protection Area. Driftpile Cree Nation wanted an opportunity to review updated EPPs before their finalization and prior to construction.

Peerless Trout First Nation also recommended additional measures to mitigate the impact of the Project on furbearers including training on wildlife awareness, establishing and enforcing speed limits and preconstruction den sweeps.



Indigenous peoples who were Intervenor in the proceeding provided recommendations for further wildlife data collection and monitoring. Louis Bull Tribe recommended that NGTL complement data collected through ground surveys for wildlife habitat with Indigenous knowledge.

Driftpile Cree Nation provided several recommendations related to collecting wildlife baseline data and using quantitative monitoring of wildlife habitat use to ensure mitigation measures are effective from a wildlife perspective. They also recommended using systematic, quantitative methods to monitor wildlife mitigation measure effectiveness and evaluate wildlife impact prediction accuracy.

Peavine Métis Settlement requested that construction crews be trained to identify wildlife trees, the raptor nest on North Star Section 2 should be assessed, and that NGTL and construction crews should be aware of wolf pups in February and March. Peavine Métis Settlement further recommended that wildlife monitors study the area for amphibians prior to construction.

Peerless Trout First Nation sought detail from NGTL on its mitigation measures to prevent the incidental take of migratory birds and their active nesting sites.

ECCC indicated that its general advice on adverse Project effects is guided by information found in recovery documents, and section 73(3) of SARA, to ensure all reasonable alternatives that would reduce the impact on the listed species have been considered and that the best solution has been adopted, all feasible measures would be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals, and, the activity would not jeopardize survival or recovery of a species.

In addition, ECCC provided that the Project's effects should not be discounted for habitat impacts that are adjacent to existing disturbances and that onsite restoration areas should not be removed from residual adverse effects calculation.

With the exception of woodland caribou, ECCC stated it did not provide specific advice on any other species at risk identified for the Project because they are primarily the management responsibility of the Province of Alberta. In addition, ECCC's evidence regarding woodland caribou is addressed in Section 8.7.

### ***Views of NGTL***

With regards to moose, NGTL stated that an assessment of residual Project effects and cumulative effects was completed for moose and their habitat, and that moose were included as a focal species given they have resource management (e.g., hunting, trapping) and cultural importance, which was confirmed in oral Indigenous knowledge testimony. NGTL committed to consult with Alberta Environmental and Parks in the event Project activities occur or extend into the Key Wildlife Biodiversity Zone timing restriction in the North Star Section 2.

NGTL stated that the ESA includes an assessment of the potential effects on wood bison, but that this species was not included in its assessment of residual effects based on exclusion criteria. NGTL noted that the standard mitigation measures included in the Project EPP are applicable to wood bison, and updates to the EPP are not warranted based on evidence of wood bison (i.e., scat) identified during the 2019 wildlife surveys.

NGTL stated that mitigation measures for furbearers are included in its standard mitigation measures as described in the EPP, and it addresses concerns raised by Peavine Métis Settlement.

With regards to Peavine Métis Settlement's concerns, NGTL committed to report any previously unidentified listed or sensitive wildlife species or their site-specific habitat (e.g. nests) to the Environmental Inspector(s) and to implement the Wildlife Species of Concern Discovery Contingency Plan. NGTL also stated that construction is scheduled to occur outside of the Primary Migratory Bird Nest Period and that it will deliver an environmental orientation that will include identification processes for environmentally sensitive features, and awareness of wildlife near the Project, such as bears and wolves.

NGTL committed to marking all sensitive resources on EAS and on other documents prior to the start of construction activities and to have Environmental Inspectors confirm the accuracy of all environmentally sensitive resource locations. NGTL stated that findings of unidentified listed or sensitive wildlife species or their site-specific habitat are identified during construction, the findings will be reported to the Environmental Inspector and the appropriate contingency plan will be implemented.

NGTL stated that it is aiming to minimize its construction footprint and use natural regeneration as its preferred method of reclamation. NGTL also intends to limit its periodic vegetation maintenance to a 10 m wide area over the pipeline. NGTL stated that it will implement access management measures across the ROW to inhibit human and predator access and to promote the establishment and development of vegetation communities. NGTL stated that some access control measures proposed are better suited to narrower seismic lines than to pipeline ROWs.

NGTL stated that the Project is scheduled to be cleared outside of the migratory bird nesting window to avoid potential impacts to nesting birds. However in the event that activities occur during the nesting period a Wildlife Resource Specialist will compile a list of relevant setback distances to inform site-specific mitigation.

### ***Views of the Commission***

The Commission finds that the proposed standard mitigation, restoration and monitoring measures are appropriate and would effectively reduce the potential adverse environmental effects on the valued environmental and socio-economic components. The Commission recognizes that many adverse environmental components are resolved through standard mitigation. The Commission views the standard mitigation as a specification or practice that has been developed by industry, or prescribed by a government authority, that has been previously employed successfully and is now considered sufficiently common or routine such that it is integrated into a company's management system.

The Commission has considered the submissions by the Participants on various topics, and the views of the Commission on each of these topics are detailed below. Additional details on these topics can be found in Chapter 7 of this Report.

### **Air Quality**

With respect to air emissions from the construction and operation of the Project, the Commission acknowledges that NGTL has committed to common industry practices to minimize air emissions and direct GHGs during Project construction and operations. The

Commission notes that the results of the air dispersion modelling indicated that the maximum predicted NO<sub>2</sub>, CO, and PM<sub>2.5</sub> Project concentrations, including contributions from the existing and planned Project sources at the Hidden Lake North Unit Addition, were lower than their corresponding ambient air quality objectives for all applicable averaging periods. The Commission recognizes that NGTL would continue to implement fugitive emissions management processes such as the ongoing annual leak detection and repair program.

For views of the Commission on GHG emissions, see Subsection 8.7.2.

### Soils

The Commission finds NGTL's proposed mitigation measures acceptable. The Commission notes the concerns raised by Louis Bull Tribe around the classification of soils, including wetlands, forested soils, and permafrost locations. The Commission agrees with NGTL that the proposed mitigation measures outlined in the ESA and EPP are based on best management practices and industry practices. The Commission acknowledges that NGTL has not finalized the locations for all temporary infrastructure, however it expects NGTL to continue its efforts to reduce the amount of temporary workspace required, avoid sensitive environmental and socio-economic features and use existing disturbances where feasible. The Commission has imposed **Condition 10 (Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about Temporary Infrastructure Locations)** for the Section 58 Facilities and Activities, which requires NGTL to engage with Louis Bull Tribe, among other Indigenous peoples, with respect to planning and engagement activities relating to the locations of temporary workspace. Subsection 5.2.7 of this Report provides additional views of the Commission on this topic.

### Vegetation and Wetlands

The Commission notes NGTL's commitment to provide affected Indigenous peoples with the Project schedule and maps prior to construction. The Commission agrees this would help to reduce or avoid potential conflicts between construction personnel and traditional users. The Commission expects that NGTL would provide this information to Indigenous peoples in a timely manner to allow for traditional plants to be harvested in the areas prior to construction.

The Commission notes that where Indigenous peoples have identified specific locations of concern for herbicide spraying to NGTL, it has committed to notifying them regarding timing and locations of scheduled spraying and herbicide applications for those locations during construction and operation.

With respect to the permanent loss of 1.6 ha of wetland function at the proposed Hidden Lake North Unit Addition, the Commission is of the view that the commitment to undertake wetland replacement in lieu of fees (offsets) in compliance with the Alberta Wetland Policy and AB *Water Act* would satisfy the goal of no net loss of wetland function under the Federal Policy on Wetland Conservation.

## Water Quality

The Commission acknowledges the concerns raised by Indigenous peoples with respect to water quality. The Commission recognizes the importance of clean water to Indigenous peoples and the environment.

The Commission is of the view that NGTL has provided adequate mitigation measures to address the concerns raised by the Participants. With respect to concerns over increased sedimentation from construction activities, NGTL has proposed a variety of mitigation and restoration measures that are aimed at reducing sedimentation and erosion from construction, including the use of isolation methods when water is present (with the exception of the Notikewin River crossing) or open cut methods if the watercourse is dry or frozen at the time of construction and restoring any disturbed areas to similar pre-construction conditions. In the Commission's view these measures will greatly reduce the potential for environmental impact from sedimentation.

With respect to hydrostatic testing, the Commission shares the concerns raised by Peerless Trout First Nation, and recommends **Condition 23 (Hydrostatic Testing Plan)** for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a hydrostatic testing plan for the Project at least 30 days prior to pressure testing. This condition will verify that proper procedures for the protection of the environment would be used during hydrostatic testing. The Commission notes that water withdrawal and discharge for hydrostatic testing will require permitting from the provincial government, which will include conditions which NGTL will be required to adhere to.

The Commission's views on employment and benefits, as well as monitoring by Indigenous peoples are provided in Subsections 7.6.5 and 7.6.6 of this Report.

## Wildlife and Wildlife Habitat

The Commission is of the view that NGTL has committed to appropriate standard and site-specific mitigation for effects on wildlife and birds. Having reviewed the submissions by Intervenor and NGTL, the Commission understands that many efforts have been made by NGTL to identify, assess and provide mitigation for specific wildlife and their habitat, including species at risk, across the Project.

In regards to the issues raised around the potential effects of the Project on moose, the Commission acknowledges that the Project crosses two Key Wildlife Biodiversity Zones, which are considered important winter habitat for ungulates. The Commission notes that where the Project activities might extend a timing restriction, NGTL will consult with Alberta Environment and Parks to determine appropriate mitigation measures. The Commission also notes NGTL's commitment to parallel existing disturbances, implement access control measures, reduce disturbance within the forested habitat, riparian areas and wetlands, and to implement minimal disturbance during construction (e.g., limited grubbing and grading). The Commission is of the view that these measures would reduce the effects of loss and alteration of moose habitat while also mitigating the Project's impacts to moose from increased human access and predation or hunting.

The Commission agrees with NGTL's rationale that the standard mitigation measures included in the Project EPP are applicable to wood bison, and updates to the EPP are not

warranted based on evidence of wood bison (i.e., scat) identified during the 2019 wildlife surveys.

The Commission has considered the comments made by Peerless Trout First Nation regarding furbearers. The Commission notes that the EPPs include mitigation measures for furbearers. With regards to Peavine Métis Settlement's concerns around training construction crews to identify wildlife trees, the Commission notes NGTL's commitment to report any previously unidentified listed or sensitive wildlife species or their site-specific habitat (e.g., nests) to the Environmental Inspector(s) and to implement the Wildlife Species of Concern Discovery Contingency Plan. The Commission also notes NGTL's commitment to deliver an environmental orientation to Environmental Inspector(s) that will include identification processes for environmentally sensitive features, and awareness of wildlife near the Project, such as bears and wolves.

The Commission believes that, with the commitments made throughout the process and the measures proposed in the EPPs, appropriate mitigation is in place for the Project. Please refer to Subsection 8.7.3 for the Commission's views on caribou.

### Environmental Protection Plan

NGTL filed a draft EPP with their Application. Results from the supplemental field 2019 spring/summer surveys were also filed during the GH-002-2019 proceeding. Participants, including Indigenous peoples, had the opportunity to provide comments on these documents. The Commission notes NGTL's commitment to ongoing engagement with Indigenous peoples and commitment to incorporate any additional mitigation resulting from that engagement into the updated EPPs and EAS for the Project.

Dene Tha' First Nation submitted that construction should not commence until NGTL has received approval of its updated EPPs, and that the Commission should meaningfully consult with Dene Tha' First Nation, including discussions on how NGTL's EPPs complies with federal guidance and requirements around caribou mitigation. In addition, Driftpile Cree Nation and Whitefish Lake First Nation #459 recommended an additional condition on the scope of the EPPs. They indicated that the EPPs should include the evaluation of efficacy of wildlife restoration by comparing wildlife presence prior to construction and after restoration activities, similarity of ROW and off-ROW sites in terms of species richness and diversity, and, establishing concrete targets that define the success of wetland restoration. The Commission acknowledges the comments from Dene Tha' First Nation and Driftpile Cree Nation in response to the Commission's potential conditions related to EPPs, and has amended the conditions. The Commission recommends **Condition 12 (Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 13**) for the Section 58 Facilities and Activities, requiring NGTL to file updated Project-specific EPPs for approval. The Commission also requires NGTL to provide a copy of updated Project-specific EPPs to all Indigenous peoples who have expressed an interest in receiving a copy.

The Commission expects that the EPPs would set out all environmental protection procedures and mitigation measures that employees, contractors, regulators and on-site NGTL personnel would be responsible for. These procedures and mitigation measures must be clear and unambiguous to minimize errors of interpretation. The EPPs must be

comprehensive and cover general and specific mitigation related to all environmental elements. Updated EASs are also to be included with the EPPs.

The Commission is of the view that any potential Project-related environmental impacts can be effectively addressed through the mitigation measures in NGTL's updated project-specific EPPs.

#### Commitments Tracking Table

To track commitments made during in the application and during the hearing process, the Commission recommends **Condition 13 (Commitments Tracking Table)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 16**) for the Section 58 Facilities and Activities, requiring NGTL to provide detailed commitment table(s) identifying the undertakings and the current status, and any modifications to the commitments as they occur. The Commission has considered the comments provided by Dene Tha' First Nation and is of the view that the Commitment Tracking Table is meant to be a summary document and to ensure that the status of the commitments can be transparently communicated to the public. The Commission notes that at any time Dene Tha' First Nation can review the filings and provide comments to the CER or NGTL on the adequacy of the filing.

#### Post Construction Environmental Monitoring Reports

The Commission notes NGTL's commitment to begin post-construction monitoring after final clean-up. The Commission is of the view that a robust post-construction monitoring program is a fundamental tool to ensure that potential adverse effects have been effectively mitigated. To be satisfied that post-construction environmental monitoring is thorough and effective, the Commission recommends **Condition 29 (Post-Construction Environmental Monitoring Reports)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 23**) for the Section 58 Facilities and Activities. The Commission acknowledges the comments provided by Driftpile Cree Nation and Whitefish Lake First Nation #459 to include wording that would require NGTL to demonstrate how the consultation outcomes informed or modified its post-construction monitoring. The Commission is of the view that the comments provided by these Indigenous peoples could potentially lead to improved adaptive management measures and/or techniques, and therefore recommends **Condition 28 (Post-Construction Monitoring Plan for Indigenous Peoples)** for the Section 52 Pipeline and Related Facilities and imposes the same condition (**Condition 22**) for the Section 58 Facilities and Activities. The Commission also requires NGTL to provide a copy of Post-Construction Environmental Monitoring Reports to all Indigenous peoples who have expressed an interest in receiving a copy.

### **8.6.4 Detailed Analysis of Key Environmental Issues**

This Subsection provides a more detailed analysis of issues raised by the Participants which could potentially have an environmental consequence, and therefore requires additional assessment. The definitions for criteria used in evaluating the significance of residual effects are provided in Appendix VI. Cumulative effects are considered in Section 8.7.

#### **8.6.4.1 Watercourse Crossings**

NGTL indicated that trenched crossing methods (e.g., isolated or open cut) are planned for all watercourse crossings and drainages along the proposed pipeline routes, with the exception of the Loon River.

NGTL noted that an isolated trenched method is planned if water is present at the time of construction, while an open cut trenched method is planned if the watercourse is dry or frozen to the bottom at the time of construction. NGTL explained that proposed watercourse crossing methods have taken into consideration the sensitivity and fisheries values of the watercourses and the drainages, including habitat characteristics, fish species present, construction schedule (e.g., duration and season) and technical feasibility of each crossing.

NGTL proposed a variety of mitigation measures aimed at avoiding or reducing potential residual effects that align with various regulatory guidance.

NGTL indicated that through the implementation of mitigation measures that certain residual effects (i.e., blockage of fish movement, transfer of aquatic organisms) on fish and fish habitat could be effectively avoided or reduced to negligible levels. NGTL stated that in some cases residual effects on fish and fish habitat could remain after the implementation of mitigation measures, including:

- localized alteration or loss of riparian habitat;
- temporary alteration of instream habitat;
- temporary increased risk of fish mortality or injury; and
- combined residual effects of the Project on fish and fish habitat.

NGTL concluded that all residual effects on fish and fish habitat would be not significant and reversible. However, NGTL did note that the residual effects would range in duration from short to extended-term, low to medium in magnitude and isolated to continuous in frequency, depending on the residual effect evaluated.

#### Loon River

NGTL has proposed that the Loon River be crossed using a trenchless method and indicated that the results of the feasibility study determined that a trenchless crossing is feasible. The proposed contingency crossing of the Loon River is an isolated open cut method.

NGTL submitted that a potential effect from the proposed trenchless crossing would be a release of drilling mud, considered an accident and malfunction, which would increase suspended sediments and sediment deposition at a distance approaching the Regional Study Area or beyond.

NGTL stated that monitoring (i.e., drilling mud pressure and return monitoring, instream turbidity monitoring) will allow frac-outs to be detected early, so corrective measures can be implemented or, if necessary, drilling activities can be temporarily suspended to limit the duration and volume of drilling mud released, thereby reducing the potential for a drilling mud release to affect water quality.

## Notikewin River

NGTL has proposed that the Notikewin River be crossed using an open wet cut. NGTL determined that a trenchless crossing was not feasible due to the required length and depth of the drill path as a result of the necessary placement of entry and exit points above the valley break. Additionally, an isolated open cut crossing was attempted previously in 2008 and there were challenges obtaining full isolation. Based on NGTL's experience with this crossing and through consultation with Alberta Environment and Parks, an open-cut trenched crossing outside of the RAP and prior to freeze up was determined to be the most effective and lowest construction risk crossing method.

NGTL submitted that there may be increased sedimentation during the crossing of the Notikewin River and noted that spawning and overwintering habitat was present downstream of the crossing location, and although these habitats are within the predicted zone of influence, no permanent alteration of habitat is anticipated by the deposition of suspended sediment. NGTL anticipated that any temporary alteration to habitat is expected to be reversed by the redistribution of sediment following the annual spring freshet. NGTL indicated that with the successful implementation of mitigations measures, including the scheduling of construction for the proposed crossing outside of the RAP and reducing stream flow through the proposed worksite by employing a partial flow bypass system, potential harm to fish and fish habitat could be minimized or avoided.

NGTL noted that further consultation with regulatory bodies, such as the Alberta Environment and Parks, is ongoing and could result in additional mitigation. NGTL stated that should an authorization be warranted, it would apply for a subsection 35(2) authorization from Fisheries and Oceans Canada (DFO) to comply with the requirements of the *Fisheries Act*.

NGTL noted that in 2008 it submitted an application to DFO that included a report to assess if an isolated open cut of the Notikewin River watercourse crossing would require authorization under the *Fisheries Act*, as well as other watercourse crossings, for the Project. In 2008, DFO provided a Letter of Advice that stated that NGTL did not require an authorization under subsection 35(1) of the *Fisheries Act* for the proposed trenched crossing method.

## Assessment Methods

### ***Views of Participants***

Louis Bull Tribe and Peerless Trout raised concerns over the methods used by NGTL to evaluate fish species presence and fish habitat requirements at the various watercourse crossings, suggesting that they may not accurately depict the species present or habitat requirements at the crossing locations. Louis Bull Tribe recommended that input from Indigenous stakeholders on composition of fish species and abundance within the specific watercourses be obtained by NGTL to complement the western science.

Peerless Trout First Nation also raised concerns about NGTL's statement that there is no applicable RAP related to drainages in the Red Earth 3 Section.

Louis Bull Tribe and Peerless Trout First Nation both raised concerns that NGTL's assessment may not reflect the amendments to the *Fisheries Act* and that a reassessment may be needed. However, Louis Bull Tribe acknowledged in its written evidence that for most of the crossings



mentioned, a low risk of harmful alteration, disruption and destruction of fish and fish habitat is expected if proper mitigation measures are in place and the watercourses are dry or frozen.

### ***Views of NGTL***

NGTL indicated that it has been engaging with Indigenous peoples on the Project since 2018, including opportunities to provide input of fish species and abundance within watercourses associated with the Project and will continue to address questions and concerns through its ongoing engagement efforts should any rise.

NGTL also reaffirmed that no RAP is provided for the three fish-bearing drainages as per the *Code of Practice for Pipelines and Telecommunication Lines Crossing a Water Body* as they lack defined bed and banks. Additionally, construction of Red Earth Section 3 is anticipated to begin in Q4 2021, under frozen conditions, which would avoid impacts to spawning fish as no spawning is anticipated during the winter at these locations.

NGTL stated it is confident that the fish-bearing watercourse and drainage crossings provided are exhaustive. A Qualified Aquatic Environment Specialist surveyed the entire Red Earth Section 3 route and sampled all locations that provided fish habitat, including drainages without defined bed and banks within wetlands. NGTL stated that no additional review for potential fish habitat in wetlands is required.

NGTL stated it is aware of the changes to of the *Fisheries Act* and that the new Fish and Fish Habitat Protection Provisions and regulations that came into force on August 28, 2019 and is of the view that the assessment of serious harm considers the harmful alteration, disruption or destruction of fish habitat. As such, the existing assessment aligns with the new *Fisheries Act* and NGTL anticipates it will support a review under the amended *Fisheries Act*.

### **Watercourse Crossing Methods and Indigenous Peoples Monitoring**

#### ***Views of Participants***

Louis Bull Tribe recommended:

- That trenchless water crossing practices be implemented that minimize sedimentation and disturbance to wetlands, watercourses and riparian areas in compliance of the new *Fisheries Act*.
- For all of the watercourse crossings, trenched and trenchless, an onsite Qualified Aquatic Environment Specialist will be present along with Environmental monitors from the Louis Bull Tribe to ensure that sediment and drilling fluid is properly mitigated and contained.
- Where trenchless water crossings absolutely cannot be accommodated, environmental monitors from the Louis Bull Tribe will be granted opportunities to visit the site post-construction to ensure mitigation measures were successful.

Peerless Trout First Nation also recommended opportunities for members to participate in environmental monitoring.

## **Views of NGTL**

NGTL indicated it had evaluated all crossings on a case-by-case basis to ensure the crossing method chosen minimized potential effects. NGTL submitted that a variety of measures, including technical, environmental, stakeholder and economic consideration, and site-specific conditions are considered in determining the appropriate crossing method and that certain challenges are presented with respect to trenchless crossing methods (e.g., subsurface conditions, more workspace). NGTL stated that in most cases a conventional trenched crossing is the preferred crossing method because it involves the least footprint, duration of installation and cost. NGTL stated it has a proven suite of mitigation measures and industry best practices to address conventional construction across typical watercourses.

NGTL indicated that Environmental Inspectors or designate(s) assigned will be present during construction and that the main responsibility is to ensure that all environmental commitments, undertakings and approval conditions are met and that work is completed in compliance with applicable environmental legislation and company policies, procedures and specifications. NGTL indicated that it is committed to supporting Indigenous peoples by providing contracting and employment opportunities, and is willing to meet with Indigenous peoples to learn more about capacity and qualifications of its members.

### Notikewin River

#### **Views of Participants**

Louis Bull Tribe and Peerless Trout First Nation raised concerns over the proposed open wet cut of the Notikewin River. Louis Bull Tribe submitted that the proposed open cut of the Notikewin River has a high potential to introduce sediment into the watercourse resulting in the loss of important spawning gravels and boulder cover and can result in the death of fish through entrapment and the introduction of deleterious substance from heavy equipment. Louis Bull Tribe stated that the Notikewin River crossing has a high risk of causing harmful alteration, disruption and destruction under the *Fisheries Act* and recommended that a trenchless (i.e., HDD) be implemented, with frac out monitors and mitigation measures on site throughout the duration of the drill to identify and contain drilling fluid release prior to it entering the watercourse.

Peerless Trout First Nation stated that the Notikewin River provides high quality fish habitat and species diversity and that the most conservative crossing method should be employed and should consider all other isolated crossing methods (e.g., aqua dams).

#### **Views of NGTL**

NGTL provided its rationale for why the selected crossing method was chosen (open cut, prior to the onset of winter conditions when flow rates are reduced), as noted previously in the Report. NGTL also indicated that a full isolation was not possible due to constraints related to watercourse substrate (particularly troublesome for isolations using aqua dams), flow at the time of construction, and the need for a sag pipe bend to accommodate a steep slope on the east bank. NGTL stated that an open cut done expeditiously while using mitigative construction techniques will minimize the impact on the Notikewin River.

## Loon River

### ***Views of Participants***

Louis Bull Tribe and Peerless Trout First Nation made the same recommendations with respect to the Loon River as they did for the Notikewin River. Peerless Trout First Nation also indicated that a frac out from drilling activities could severely impact the high quality fish habitat in the Loon River and recommended that the Drilling Mud Release Contingency Plan be enacted immediately in such a scenario and that Peerless Trout First Nation monitors should be present during the Loon River crossing.

### ***Views of NGTL***

NGTL reaffirmed that it has a Drilling Mud Release Contingency Plan to be implemented in the event of a sediment or deleterious substance release during construction of the trenchless crossing.

## Access

### ***Views of Participants***

Peerless Trout First Nation stated that NGTL should default to the use of clear-span bridges to ensure fish passage is maintained in watercourses and fish-bearing drainages. Where the use of clear-span bridges is not feasible, corrugated metal pipe should be used, with sufficient roughness and installed at an appropriate grade (<3 per cent) to allow for fish passage.

### ***Views of NGTL***

NGTL stated that clear-span bridges/snowfill/ice bridge is proposed at all watercourse crossings which avoid instream work and do not impede fish passage. No culverts are proposed.

## Fish Salvage

### ***Views of Participants***

Peerless Trout First Nation raised concerns over the potential for fish mortality during a fish salvage in cold temperatures and indicated that NGTL should provide clear and tested mitigation measures.

### ***Views of NGTL***

NGTL stated that the mitigation measures proposed include NGTL's established and proven mitigation measures and construction practices and are expected to avoid or reduce risk of fish mortality or injury. NGTL indicated it would comply with any provincial standards for fish handling as per permit conditions, which would be conducted by an Aquatic Resource Specialist.

## Riparian Habitat

### ***Views of Participants***

Peerless Trout First Nation indicated that the proposed 10 m riparian buffer was too narrow to protect the watercourse and the fish habitat found within. Peerless Trout First Nation stated that a 50 m riparian buffer must be maintained on both sides of defined watercourses and a 30 m buffer around poorly defined or intermittent/ephemeral watercourse crossings. No work or activity should take place within the ROW buffer other than to complete the crossing itself.

### ***Views of NGTL***

NGTL disagreed with Peerless Trout First Nation, and stated that, as per the EPP, it would maintain a riparian buffer of a minimum of 10 m at watercourse crossings. NGTL also stated that, at the direction of an Environmental Inspector, this buffer may be increased as per site-specific riparian characteristics.

### ***Views of the Commission***

The Commission is of the view that NGTL has, in general, proposed watercourse crossing methods, including mitigation measures that, if implemented as proposed, will ensure that the proposed watercourse crossings are safely constructed with minimal risk to the environment. The Commission does have concerns regarding the Notikewin River, which are discussed in more detail below.

The Commission notes that residual effects to fish and fish habitat (i.e., localized alteration or loss of riparian habitat, temporary alteration of instream habitat, temporary increased risk of fish mortality or injury, and combined residual effects) would result from the proposed watercourse crossings. The Commission has provided its evaluation of significance of these residual effects below. The Commission has concluded that the residual effects would not be significant.

The Commission acknowledges the concerns raised by Peerless Trout First Nation and Louis Bull Tribe around effectiveness of mitigation such as fish salvage in cold temperatures, limiting impacts to riparian buffers and potential blockage of fish passage. However, the Commission is satisfied with NGTL's response to these concerns. The Commission notes that NGTL has provided reasonable mitigation measures that will reduce impacts to riparian buffers, avoid issues of fish passage and limit mortality of fish during winter fish salvages to a negligible level. In addition, NGTL will have Aquatic Resource Specialists and Environmental Inspectors or designate alternatives on site during construction to ensure environmental protection measures are implemented correctly.

The Commission is mindful of the concerns raised by Peerless Trout First Nation and Louis Bull Tribe with respect to the Notikewin River crossing. However, given the rationale provided by NGTL, the Commission is of the view that there are no reasonable alternative methods to the open wet cut proposed. The Commission acknowledges that residual effects on aquatic resources (e.g., temporary alteration of instream habitat) will occur from the Notikewin River open wet cut, but that NGTL's proposal to work outside the RAP will limit the extent of these effects. Therefore, the Commission finds the proposed open wet cut of the Notikewin River acceptable. While the open wet cut seems the most reasonable crossing method, it does not preclude the need for a *Fisheries Act* authorization. The

Commission recognizes that in 2008 DFO indicated that an isolated trenched crossing of the Notikewin River would not require authorization under the *Fisheries Act*. The Commission notes, however, that NGTL is currently proposing an open wet cut of the Notikewin River for the Project, which is not the same as an isolated crossing.

Pursuant to the Memorandum of Understanding between the CER and DFO, the CER reviews Project activities and refers to DFO any works that would likely result in harmful alteration, disruption or destruction to fish or fish habitat, and therefore require authorization under paragraph 35(2)(b) of the *Fisheries Act*. With respect to the Notikewin River, the CER issued a letter to DFO, pursuant to the Memorandum of Understanding, requesting DFO confirm the open wet cut of the Notikewin River will require an authorization under the *Fisheries Act*. The Commission notes that should DFO confirm an authorization would be required, DFO would undertake further consultation with impacted Indigenous peoples and NGTL would be required to offset any residual impacts to aquatic resources.

The Commission also recommends **Condition 22 (Authorizations under paragraph 35(2)(b) of the Fisheries Act)** for the Section 52 Pipeline and Related Facilities, requiring NGTL to provide a copy or copies of any *Fisheries Act* authorization(s) required for the construction of the Project.

With respect to the Loon River, NGTL has proposed a trenchless crossing, which the Commission generally views as the least environmentally impactful crossing method. The Commission agrees with Louis Bull Tribe and Peerless Trout First Nation that potential accidents and malfunctions (e.g., frac outs) could result in impacts to the environment. However, the Commission is satisfied that NGTL’s proposed Drilling Mud Release Contingency Plan would limit the extent of damage should a frac out occur.

For the Commissions views on inclusion of Indigenous peoples in construction monitoring, please see Chapter 7.

With respect to contingency crossings, the Commission has revised the contingency crossing condition that was issued for comment. **Condition 21 (Contingency Watercourse Crossing Method for the Loon River)** recommended for the Section 52 Pipeline and Related Facilities is now specific to the Loon River and includes a requirement to engage with potentially affected Indigenous peoples should the contingency crossing need to be implemented. The CER would use the information provided in the condition to exercise its responsibilities under the Memorandum of Understanding with DFO.

Evaluation of Significance of Residual Effects	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Short-term to medium-term	Reversible	Local Study Area to Regional Study Area	Low to Moderate
	Adverse Effect Not likely to be significant			

#### **8.6.4.2 Red Earth and Chinchaga Caribou Ranges**

NGTL noted that the Red Earth caribou range is located in proximity to a number of other areas of caribou habitat such that the range is important to caribou habitat connectivity north and northwest. Most of this range has been identified as important based on the distribution of current biophysical habitat, current patterns of use, and connectivity within and among ranges. NGTL indicated that industrial activities such as forestry, oil sands, and petroleum and natural gas development have contributed to disturbance while wildfire is also a major contributor. NGTL reported that the overall level of habitat disturbance in 2017 was 72 per cent. NGTL indicated that approximately 14.8 km of pipeline for the Red Earth Section 3 would be located within the Red Earth caribou range.

NGTL stated that the Chinchaga caribou range is located in west-central AB and extends into northeastern British Columbia (BC). The majority of the range within the province is important for caribou, based on the distribution of current biophysical habitat, current patterns of use, and connectivity within and among ranges. NGTL reported that in 2017, the habitat disturbance was at 80 per cent. NGTL indicated that the Hidden Lake North Unit Addition would be located within the Chinchaga caribou range.

NGTL noted the Government of Alberta has in place a RAP from 15 February to 15 July where activities should be avoided within caribou ranges. NGTL indicated that potential effects on woodland caribou from the Project if construction were to occur during this RAP could include an increase in sensory disturbance from construction activities, resulting in reduced habitat effectiveness and, potentially, temporary displacement of caribou from habitat near the Project.

NGTL noted that frozen conditions are necessary for construction in the Red Earth caribou range, owing to extensive wetlands in the region. Construction would commence in the fourth quarter (Q4) of 2021, with expected completion in Q1 2022. NGTL noted that it will employ an early in/early out approach to avoid the RAP and reduce disturbance to caribou within the Red Earth caribou range. NGTL indicated that this will include initiating activities as early as ground conditions allow in the winter and working expeditiously to limit late winter activities. NGTL indicated that in the event that work is required within the RAP, it would expedite construction through addition of resources and equipment to limit the duration and intensity of sensory disturbance. NGTL indicated it would consult with Alberta Environment and Parks should construction activities for Red Earth Section 3 extend longer than anticipated into the RAP to confirm a course of action and implementation of mitigation.

For the Chinchaga caribou range NGTL noted that the Hidden Lake North Unit Addition would require approximately 12 months for construction, resulting in activity in the caribou range throughout the year and requiring an overlap with the full caribou RAP in that range. NGTL indicated it would initiate construction of the Hidden Lake North Unit Addition in the Chinchaga caribou range prior to the onset of the RAP. NGTL noted that the commencement of construction is planned for Q1 2021 with an anticipated completion of Q1 2022. NGTL also noted that the Hidden Lake North Unit Addition is located in an area of active and congested existing industrial activity and is directly adjacent to the existing Chinchaga Forestry Road, which limits habitat effectiveness in proximity to these existing features.

NGTL indicated that it has been engaging with Alberta Environment and Parks with regards to Project scheduling, overlaps with the caribou RAP, and measures to minimize effects for both the Red Earth and Chinchaga caribou ranges. NGTL submitted that Alberta Environment and Parks recognizes that the location of the Hidden Lake North Unit Addition is within an area of

active and ongoing industrial use, including proximity to the Chinchaga Forestry Road providing year-round existing access to the area. NGTL also submitted that the Alberta Environment and Parks acknowledged the overlap with the RAP and did not request any additional mitigation measures.

NGTL is of the view that with the mitigation outlined in the ESA and the EPPs, residual effects to caribou habitat effectiveness as a result of sensory disturbance during construction were predicted to be low magnitude and reversible and not significant.

NGTL has also provided a preliminary Caribou Habitat Restoration and Offset Measures Plan for mitigation in the Red Earth and Chinchaga caribou ranges.

### ***Views of the Commission***

The Commission is of the view that Project interactions and effects on caribou and caribou habitat would largely be temporary sensory disturbance effects related to construction activities and long term alterations to habitat. The following covers the more immediate, sensory, temporal disturbance while the longer term effects are addressed in Section 8.7.

The Commission acknowledges that NGTL committed to avoid working in the Red Earth caribou range within the RAP (15 February through 15 July) to the extent possible. The Commission also acknowledges NGTL's commitment to consult with Alberta Environment and Parks should construction activities for Red Earth Section 3 extend longer than anticipated and into the RAP.

The Commission notes NGTL's submission that construction within the Chinchaga caribou range is unavoidable. The Commission is of the view that certain activities should be scheduled to minimize sensory disturbance during sensitive periods for caribou, such as later winter, calving and post-calving. The Commission expects NGTL to continue its consultations with Alberta Environment and Parks when planning construction schedules within the Chinchaga caribou range to identify those sensitive periods and avoid conducting construction activities with the most sensory disturbance potential during those sensitive periods. The Commission is of the view that, given the existing industrial activity at the location of the Hidden Lake North Unit Addition in the Chinchaga caribou range, the proposed mitigation and the commitment from NGTL to commence construction prior to the RAP, project effects to caribou and caribou habitat within the Chinchaga caribou range will be minimized.

The Commission, however, is of the view that sensory disturbance from the Project to caribou within the Red Earth caribou range would be further minimized by restricting construction activities taking place within the 15 February to 15 July RAP. The Commission recommends **Condition 25 (Working within the Red Earth Caribou Range Restricted Activity Period)** for the Section 52 Pipeline and Related Facilities, should it be required that NGTL work within the RAP in the Red Earth caribou range. While **Condition 25** was not specifically included in the previously released lists of potential conditions, the Commission is of the view that if construction activities are to occur within the RAP, additional information is required in order to minimize impacts to caribou, especially when they may be most vulnerable. The Commission is of the view that the condition is appropriate and would require NGTL to file a summary of consultation with government officials and interested Indigenous peoples regarding the requirement to work within the RAP, a description of work activities remaining and a comparison of the alternatives

considered to working within the RAP, a construction schedule for the remainder of the work within the RAP, and a report outlining the results of a recent caribou survey identifying the presence and level of use of the area surrounding the proposed work activities as well as documentation from a senior official at Alberta Environment and Parks approving the work.

Evaluation of Significance of Residual Effects	Temporal Extent	Reversibility	Geographical Extent	Magnitude
	Short-term to medium-term	Reversible	Local Study Area	Moderate
	Adverse Effect Not likely to be significant			

## 8.7 Cumulative Effects Assessment

CEAA 2012 requires that each EA of a designated project take into account any cumulative environmental effects that are likely to result from the designated project in combination with the environmental effects of other physical activities that have been or will be carried out. The practice of project EA calls for examining potential environmental effects of the project on valued components and considering mitigation measures. A cumulative environmental effects assessment allows for the consideration of additional mitigation measures to mitigate any potential project contributions to cumulative environmental effects. Where elimination, reduction or control of a project's environmental effects is not possible, offsets for any damage to the environment caused by the residual environmental effect should be considered.

Participants to the hearing raised a number of issues around cumulative effects. Much of the focus was around the extent of past and ongoing developments and activities, as well as how this relates to the specific issues of traditional use. A discussion of the cumulative effects on traditional use is provided in Subsection 7.4.7, 7.5.7 and 7.6.7. Subsection 8.7.1 provides a discussion of cumulative interactions and assessment concerning residual effects. Further assessment of cumulative impacts from GHG's is provided in Section 8.7.2 and on caribou and the Chinchaga and Red Earth caribou ranges in Subsection 8.7.3.

### 8.7.1 Residual Effects

Potential residual effects of the Project on biophysical elements are associated primarily with: physical environment (landform), soil and soil productivity, GHG emissions, fish and fish habitat, vegetation, wildlife and wildlife habitat and species at risk habitat.

Existing, proposed and reasonably foreseeable projects and activities that have the potential for spatial and temporal interaction of effects, and therefore potential for interaction of cumulative effects include: forestry, transportation infrastructure, agriculture, fishing and hunting, coal mining, quarrying and oil and gas extraction.

NGTL provided a detailed activity inclusion list that included both existing and foreseeable future developments that have the potential for spatial and temporal interaction of effects, and therefore potential for cumulative effects. This list included a reservoir, agriculture, forestry,



energy generation and transmission, mines and mineral resource projects, oil and gas developments, rural and urban development, and transportation and infrastructure.

### ***Views of Participants***

Whitefish Lake First Nation #459 filed a cumulative effects report which criticized NGTL's assessment of cumulative effects for confining itself to the immediate Project footprint and a relatively limited surrounding area. Accordingly, this meant there were few, if any, prescriptions for the mitigation and/or management of regional cumulative effects.

Driftpile Cree Nation and Whitefish Lake First Nation #459 stated that, if approved, the CER's conditions must include steps to avoid any adverse impacts of the Project, and establish mechanisms to avoid and mitigate any adverse impact of the Project by providing the Nations with the means and resources to engage in continued monitoring and emergency response for the lifetime of the Project.

Louis Bull Tribe noted its concerns with incremental additions of small projects contributing to overall sedimentation and impacts to the long-term survival of fish populations. Louis Bull Tribe stated that in addition to consultation in respect of Project specific impacts, both the Crown and NGTL should consult with them with respect to the cumulative impacts that are arising from, and may be contributed to, by the Project. Louis Bull Tribe also stated that through true collaboration, it can ensure that their interest and rights are given due consideration and thus, ensure that a high standard of environmental protection and oversight is attained.

Peerless Trout First Nation noted concerns about the water and impacts to rivers, swamps, streams and watersheds. Peerless Trout First Nation stated that it needs assurance from the CER that the implications of project splitting are understood and mitigated for by ensuring that cumulative effects are adequately considered, and the associated direct, indirect and induced effects are addressed through the CER's regulatory process.

During their oral Indigenous knowledge session, Dene Tha' First Nation indicated the importance of considering the cumulative impacts and residual effects of previous projects and the additional and incremental effects of this Project. Dene Tha' First Nation stated there is an opportunity for them to be included in the design of plans for identification assessment, mitigation, avoidance and accommodation of Project impacts cumulatively with those from other projects, with other NGTL projects.

### ***Views of NGTL***

In response to the concerns raised by Indigenous peoples with respect to NGTL's assessment of cumulative effects, NGTL submitted the Commission should give substantial weight to NGTL's effects assessment conclusions given that they reflect NGTL's extensive operating experience, uses accepted and defensible methodologies, incorporates the detailed and field-proven mitigation measures provided in the EPP, and will be verified through NGTL's proposed post-construction monitoring.

### ***Views of the Commission***

The extent to which an applicant must consider the effects associated with other existing and future physical facilities and activities and the associated depth of analysis will depend upon the relative contribution of the applied for project to the predicted cumulative effects.

In this case the Commission notes the nature of the Project and the environmental context: the construction and operation of a pipeline and compressor station, in an area of substantial existing developments.

Although there are possible cumulative effects for a number of biophysical and socioeconomic elements, the Commission is of the view that most of these cumulative interactions and effects would be limited in spatial extent, short-term during construction, reversible and minor in nature, and would be mitigated by NGTL's environmental protection and mitigation measures and by the Commission's additional related conditions. Therefore, the Commission concludes that for most of these elements the Project would not likely result in significant adverse cumulative effects.

The Commission does wish to discuss two specific subjects in the context of cumulative effects. First, further assessment of cumulative impacts related to GHGs are discussed in Subsection 8.7.2.

Secondly, and as the Commission has noted previously in several of its recent reports for other NGTL projects in caribou ranges, the key long-term cumulative environmental impact is the ongoing loss, alteration, access to and fragmentation of the natural landscape in the region. While the changing land use has a number of incremental cascading effects, the Commission notes that impacts on caribou and caribou habitat may be used as an overall indicator of the adverse changes on the landscape. Given the status of woodland caribou as threatened under SARA, the presence of critical habitat in the Project area, the species' sensitivity to disturbance and the cumulative habitat disturbance of the area, caribou and caribou habitat are discussed separately in Subsection 8.7.3.

The Commission acknowledges the concerns raised by Indigenous peoples and continues to encourage all interested stakeholders, including NGTL and other governing bodies, to ensure more integrated and holistic approaches towards addressing cumulative effects.

## **8.7.2 Greenhouse Gas Emissions**

### ***Views of Participants***

ECCC requested NGTL to quantify and clarify the sources of venting emissions, and to indicate whether or not the sources are covered by the ECCC's *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)*. ECCC also requested for a copy of TransCanada's Fugitive Emissions Management Program.

### ***Views of NGTL***

NGTL noted that the sources of GHG emissions during operation will primarily be from natural gas combustion of the compressor turbine and boiler, with minor contributions from the back up boiler and vented gas emissions at the Hidden Lake North Unit Addition. NGTL estimated the associated construction emissions to be 26,420 tonnes of CO<sub>2</sub>e, and the operations emissions to be 132,449 tonnes of CO<sub>2</sub>e per year. NGTL provided a comparison of Project operational emissions to provincial and federal GHG inventory totals. Operation-related annual GHG emissions were estimated to result in 0.05 per cent and 0.02 per cent increases relative to AB and Canada's total GHG emissions.

NGTL stated that the amount of GHG emissions will be reduced through various measures such as, detailed engineering and design (i.e., equipment selection for the Hidden Lake North Unit Addition), implementation of a Leak Detection and Repair program during operations and by utilizing multi-passenger vehicles for the transport of crews to and from job sites to the extent practical.

As noted in Subsection 8.6.3, NGTL noted that it will follow the ECCC's *Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)* to address methane reduction. NGTL also stated that it is continuing to implement fugitive emissions management processes such as the ongoing annual leak detection and repair program focused on equipment such as the seals on valves.

### ***Views of the Commission***

The Commission recognizes the inherent cumulative nature of GHG emissions in the global atmosphere. The Commission notes that although the construction and operation of the Project will result in GHG emissions, the Project contribution of these emissions is small relative to provincial and national GHG totals. The Commission is satisfied with NGTL's proposed mitigation measures, and is of the view that the contribution of Project's GHG emissions will not result in a material change to national or provincial GHG totals. The Commission recognizes that as part of the NGTL's existing management process, methane as an identified GHG is monitored and reported annually to the federal government using Leak Detection and Repair Surveys during operations.

The Commission notes that NGTL filed a synopsis of the updated Fugitive Emissions Management Program for its Canada Gas Operations with the Commission after the close of the record. The Commission, in its Ruling No. 14, noted that it will not place the document on the record, and the contents of the document have not been considered in the assessment of the Project. The Commission has reached the conclusion above based upon the record in the GH-002-2019 hearing, which – as stated in Ruling No. 14 - was sufficiently detailed for the assessment needed.

### **8.7.3 Chinchaga and Red Earth Caribou Ranges**

The ECCC *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal Population, in Canada* (Recovery Strategy) identifies that for a caribou herd to be considered a self-sustaining population, a minimum of 65 per cent undisturbed habitat within the caribou range is required. The amount of disturbed habitat within the Chinchaga and Red Earth caribou ranges vary from 76 and 62 per cent (24 and 38 per cent undisturbed) as reported in the Recovery Strategy, to 80 and 72 per cent disturbed (20 and 28 per cent undisturbed) in ECCC's *Report on the Progress of Recovery Strategy Implementation for the Woodland Caribou (Rangifer tarandus caribou), Boreal population in Canada for the Period 2012-2017*.<sup>17</sup> These reports identify that the Chinchaga herd is not self-sustaining and the Red Earth herd is unlikely to be self-sustaining.

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<sup>17</sup> Environment and Climate Change Canada. 2017. Report on the Progress of Recovery Strategy Implementation for the Woodland Caribou (*Rangifer tarandus caribou*), Boreal population in Canada for the Period 2012-2017. Species at Risk Act Recovery Strategy Series. Environment and Climate Change Canada, Ottawa. ix + 94 pp.

### 8.7.3.1 Restoration and Offsets

NGTL submitted a Preliminary Caribou Habitat Restoration and Offset Measures Plan with its Application which quantifies the effects of the Project and outlines the approach to restoration and offsets in order to reduce the predicted residual Project effects and minimize the Project's contribution to cumulative effects on caribou and caribou habitat. NGTL noted that the ROW width required to construct the proposed pipelines is generally 32 m with additional temporary workspace of variable widths to accommodate safe pipeline construction activities. During operations, a width of up to 10 m over the centreline of the pipeline may be subject to periodic vegetation management. NGTL identified the Project Construction Footprint area within the Red Earth caribou range as 52.34 ha of which 29.55 ha overlap with existing permanent disturbances mainly related to the existing NGTL North Central Corridor ROW. NGTL also identified the Project Construction Footprint within the Chinchaga caribou range as 10.85 ha of which 4.76 ha overlaps existing permanent anthropogenic disturbances.

NGTL stated that given that the Project overlaps areas of existing disturbance, only areas of new clearing were carried forward in the calculations of Project direct disturbance. NGTL noted that the proposed trenchless crossing of the Loon River will avoid an additional 2.69 ha of clearing. NGTL also stated that the portions of the Red Earth Section 3 footprint that overlap existing NGTL ROWs and seismic lines would be restored upon completion of construction. NGTL stated that based on the proposed Project layout and existing disturbances, the Project construction would result in approximately 20.09 ha of incremental direct disturbance in the Red Earth caribou range and 6.10 ha of incremental direct disturbances in the Chinchaga caribou range. NGTL stated that there would be no incremental indirect disturbance in either of the ranges.

NGTL indicated that it would implement as much onsite restoration as possible to mitigate the overall Project effects on habitat. NGTL indicated that the restoration measures would be selected through the use of Habitat Restoration Decision Frameworks and would be based on suitability, specific site conditions and availability of appropriate materials. The remaining Project effects would be offset. NGTL indicated it would apply its offset decision framework to provide guidance on selection of offset locations and implementation of appropriate offset measures. NGTL stated that it is investigating options to implement restoration on its existing ROWs in the Chinchaga and Red Earth caribou ranges to offset residual Project effects on caribou habitat. NGTL noted that the initial offset value will include the application of risk multipliers specific to the habitat and habitat restoration measures to account for uncertainty in implementation and time lag. The final offset value will be calculated after the actual construction footprint has been determined and once restoration activities, offset locations and offset measures have been identified and will also include the application of risk multipliers similar to the initial offset value.

NGTL committed to submit a Caribou Habitat Restoration and Offset Implementation Report to the CER after the first complete growing season subsequent to implementation of caribou habitat restoration and first season offset measures. NGTL also committed to develop a Caribou Habitat Restoration and Offset Measures Monitoring Program for the Project to detail what restoration and offset measures were implemented and also to monitor effectiveness of those habitat restoration and offset measures.

NGTL indicated that the monitoring program will include details on monitoring and adaptive management as well as details pertaining to the design of the monitoring periods for the habitat

measures implemented, the number and location of monitoring and control sites, evaluation criteria and definition of quantifiable performance indicators.

NGTL also indicated that the Caribou Habitat Restoration and Offset Measures Monitoring Program will be informed by lessons learned from recent projects, ongoing monitoring programs, regulatory policy changes and ongoing consultation. The Caribou Habitat Restoration and Offset Measures Monitoring Program will also provide a protocol for identifying and managing issues that require supplemental or remedial action to achieve restoration and offset goals.

### ***Views of Participants***

#### **Cadotte Lake Métis Local #1994**

Cadotte Lake Métis Local #1994 noted its concern that the Project's additional footprint and undetermined level of incremental impact will exacerbate impacts to caribou habitat and Cadotte Lake Metis' ability to harvest caribou over the near, intermediate and long term. Cadotte Lake Métis Local #1994 stated that governments of Canada and AB must put in place a caribou recovery plan and binding measures that will see caribou within the Red Earth and Chinchaga ranges stabilize and recover. Cadotte Lake Métis Local #1994 stated that the proponent should adopt the authority and recommendation of ECCC which proposes a blanket 4:1 offset ratio for all caribou habitat disturbed by this Project. Cadotte Lake Métis Local #1994 is also of the view that if NGTL fails to follow ECCC the CER should find that the Project's effects cannot be justified and the Project not found to be in the Public Interest nor in the Cadotte Lake Métis' interest.

#### **Dene Tha' First Nation**

Dene Tha' First Nation noted that the Project's effects on woodland caribou are a matter of serious concern to it as the ecological health of the Chinchaga caribou range and the population it supports is dire, even by regional standards. Dene Tha' First Nation noted that the Chinchaga caribou range is already subject to significant adverse cumulative effects such that any additional adverse effects on woodland caribou in the Chinchaga range would be significant. Dene Tha' First Nation is of the view that it is critically important that NGTL commit to an effective mitigation plan noting that if mitigation and habitat offsetting are not carefully and conservatively implemented, the Project would add residual adverse effects on Chinchaga caribou through direct and indirect habitat loss and disturbance.

Dene Tha' First Nation is of the view that NGTL failed to follow the mitigation hierarchy and that NGTL proposed to address the impact of habitat loss within the Chinchaga caribou range through offsetting. Dene Tha' First Nation noted its concern that this approach relies entirely on offsetting without adequate consideration of whether other mitigation approaches could be adopted.

Dene Tha' First Nation noted that a key aspect of its concerns relative to using the offset measures outlined by NGTL in the Caribou Habitat Restoration and Offset Measures Plan for the Project before maximizing the application of other methods in the mitigation hierarchy, is that habitat restoration often takes years to become functionally available habitat for caribou. Dene Tha' First Nation also noted that any additional disturbance in critical caribou habitat, which, in the case of Chinchaga range, is 80 – 97 per cent disturbed, decreases the likelihood of

caribou recovery. Dene Tha' First Nation are of the view that offsetting is the last option in the mitigation hierarchy and that where offsetting is used, the time lag in effectiveness of new habitat in offsetting immediate and ongoing impacts of habitat must be considered as representing an adverse effect. Dene Tha' First Nation is also of the view that where avoidance and mitigation do not fully remove impacts, offsetting for any infrastructure causing direct or indirect habitat loss can be applied.

Dene Tha' First Nation stated that the Chinchaga caribou range is a poor candidate for offsetting because it is already significantly impacted by cumulative impacts due to existing conditions of inadequate undisturbed range and a small population that is at great risk of extinction. Dene Tha' First Nation stated that as a result, no additional residual adverse impacts to caribou habitat should be allowed. Dene Tha' First Nation are of the view that offsetting should be designed to account for all negative project impacts and should ensure that there is no lag time between the positive impacts of offsetting and the negative impacts of the project occurring.

Dene Tha' First Nation noted concerns with errors in habitat offset calculations. Dene Tha' First Nation indicated that the 500 m buffer distance around infrastructure may not be a conservative approach for calculating habitat loss and disturbance in the particular circumstances of the Project. Dene Tha' First Nation are of the view that the most conservative way to calculate direct and indirect habitat loss for the Project proposed within the Chinchaga range would be to apply a 70 m buffer around seismic lines and maintained trails, a 250 m buffer around existing roads, and, in the absence of location information on caribou avoidance of the Project Construction Footprint, a 1,000 m buffer.

Dene Tha' First Nation noted its concerns that NGTL failed to account for changes to neighboring disturbance and that the application of discounts and modifiers incorrectly assumes that all existing disturbance will remain for the lifespan of the Project. Dene Tha' First Nation are of the view that the magnitude of the indirect disturbance due to the Project alone and the effects of the Project on cumulative disturbances must all be considered in order to accurately measure the success of the goal of no net loss to caribou habitat. Dene Tha' First Nation is also of the view that NGTL should demonstrate how offset multipliers were derived in a scientifically defensible way, and how NGTL will ensure that offsetting will accomplish a no net loss outcome.

Dene Tha' First Nation are of the view that the circumstances of the Chinchaga caribou range today demand a very conservative approach and that information about the trajectory and size of the Chinchaga population warrant requirements that may deviate from those previously accepted by the NEB (now CER) and in the circumstances, NGTL should not be permitted to provide habitat offsetting at a ratio below 4:1.

Dene Tha' First Nation are of the view that the draft conditions proposed by the Commission do not address the inadequacies raised by the Dene Tha' First Nation. Dene Tha' First Nation recommended that NGTL be required to adjust habitat offsetting based on the application of more realistic indirect disturbance buffer areas around existing infrastructure and more conservative estimates around the proposed compressor station unit addition. Dene Tha' First Nation also recommended that NGTL be required to demonstrate how the habitat offsetting plan will ensure that the Project will result in no net loss of caribou habitat due to time lags and modify calculations used for habitat offsetting based on temporal changes in surrounding Project operations relative to the length of time that the Project will function. Dene Tha' First

Nation further recommended that NGTL commit to the use of a minimum habitat offsetting ratio at 4:1 as endorsed by ECCC.

#### Driftpile Cree Nation

Driftpile Cree Nation noted that while NGTL intends to restore caribou habitat and has developed a Caribou Habitat Restoration and Offset Measures Plan to begin the process of managing impacts to caribou, a great deal of uncertainty remains. Driftpile Cree Nation indicated that the most effective mitigation measures for caribou are those that maintain caribou habitat and reduce the need for habitat restoration. It was unclear to Driftpile Cree Nation how NGTL's proposed caribou management differs from past caribou protection plans and standard best management practices implemented in AB. Driftpile Cree Nation recommended that NGTL be required to describe how their proposed Caribou Habitat Restoration and Offset Measures Plan differs from typical caribou protection plans and standard best management practices and to demonstrate that the proposed mitigation measures have been effective at minimizing impacts to caribou. Driftpile Cree Nation also recommended that NGTL be required to provide proposed future caribou monitoring and management plans, including the Caribou Habitat Restoration and Offset Implementation Report and the Caribou Habitat Restoration and Offset Measures Monitoring Program and any other applicable plans, to Driftpile Cree Nation for review once they are available.

#### Peerless Trout First Nation

Peerless Trout First Nation indicated its desire to be involved in environmental and cultural monitoring for construction and operations including the design and implementation of Caribou Habitat Restoration and Offset Measures Plan. Peerless Trout First Nation indicated that there is no indication from NGTL of involvement of Indigenous peoples in mitigations beyond general reference to ongoing engagement.

#### Environment and Climate Change Canada

ECCC submitted that given the pre-existing cumulative effects on habitat and individuals in both caribou ranges and the absence of a spatially explicit provincial range plan consistent with the federal recovery strategy, all remaining existing habitat in the Red Earth and Chinchaga ranges (i.e., all habitat outside permanent alterations) is considered critical habitat necessary for caribou survival and recovery. ECCC submitted that due to the extent of existing anthropogenic disturbance in the Red Earth and Chinchaga caribou ranges, existing cumulative effects on the survival and recovery of these local populations of boreal caribou are adverse, high in magnitude, and high in geographic extent. ECCC recommended that any additional habitat loss in each range should be avoided. In the event that the Project is approved, additional habitat loss should be fully mitigated using offsets.

ECCC noted that the Recovery Strategy defines permanent alterations as existing features found within a range, such as industrial and urban developments, permanent infrastructure, and graded or paved roads that do not currently possess or have the potential to possess the biophysical attributes of critical habitat for boreal caribou. ECCC also noted that it considers only the portions of the new pipeline ROW that are overlapping with existing ROWs (which must be maintained with vegetation management and cannot be left to return to the original habitat) would be considered within the permanent alteration. ECCC further noted that the portions of the new pipeline ROW that are situated outside the permanent alteration footprint, as described above and within the 500 m buffer, can potentially result in additional existing habitat loss (i.e.,

critical habitat) because the new pipeline 500 m buffer would extend beyond the existing pipeline 500 m buffer.

ECCC noted its concerns with discounting or reducing Project effects where the project footprint parallels existing disturbances. ECCC stated that project effects should not be discounted for habitat impacts that are adjacent to existing disturbances and that onsite restoration areas should not be removed from residual adverse effects calculation. ECCC noted that in calculating the initial offset value, NGTL applied an inherent effect adjustment that discounted or reduced Project effects by 80 per cent (or 0.2) where the Project footprint parallels existing ROW. These approaches would underestimate the residual adverse effects of the project on critical habitat and the amount of offsetting required.

ECCC submitted that NGTL be required to provide a revised Caribou Habitat Restoration and Offset Measures Plan which specifies that the habitat to be restored on the ROW will not be excluded from the residual adverse effects calculations and that no inherent effect multipliers be used to discount habitat that is adjacent to existing disturbances.

ECCC recommended that identified risks and uncertainties such as time lags, success and quality of restoration and offsets and the precautionary principle, be considered when implementing habitat restoration measures and that mitigation measures be, at least in part, implemented and where possible functional prior to or at the time Project construction is undertaken.

ECCC noted that the Caribou Habitat Restoration and Offset Measures Plan will include a description of how the final offset values are to be calculated after the actual construction footprint has been determined and once restoration activities, offset locations and offset measures have been identified. ECCC also noted that the offset calculation, depends upon NGTL's calculation of the initial offset value and will also apply risk multipliers in order to account for uncertainty in implementation success and time-lag. ECCC recommended that, because restoration and offsetting activities are limited by their success in implementation, effectiveness and time-lags, a minimum 4:1 (habitat restored: habitat lost) offset ratio be implemented to account for inherent uncertainties and time-lags in reclamation. ECCC noted that the application of the 4:1 habitat offset ratio should be considered a minimum and that offset ratios may be much higher depending upon the confidence in the Proponent's ability to mitigate project effects in a timely manner.

ECCC submitted that a minimum 4:1 ratio would not remove any incentive to avoid new cut as the Government of Alberta has a longstanding policy of requiring linear features to parallel existing disturbances, to minimize disturbance footprint on the environment. While it was not aware of any studies that explicitly reference a minimum 4:1 offset ratio for boreal caribou habitat ECCC was aware of several new scientific reports which support the implementation of greater than 1:1 offset ratios for the protection of boreal caribou habitat. ECCC noted it has consistently recommended a minimum 4:1 offset ratio for various other pipeline projects. ECCC also noted that the British Columbia Boreal Caribou Recovery Implementation Plan also recommends a 4:1 habitat offset for petroleum and natural gas development.

ECCC submitted that access control measures are expected to be effective immediately but recommended they be implemented across the full width of any and all other ROW dispositions. Only in this way should they be counted as restoration or offsets.



ECCC also recommended that habitat restoration (offsets) be located within the Red Earth and Chinchaga caribou ranges and in areas of the ranges that could provide the greatest benefits to the herds in order to diminish risk to the survival or recovery of the affected local population.

ECCC recommended that the Caribou Habitat Restoration and Offset Measures Plan should clearly demonstrate that habitat restoration is feasible and that restoration success will be verified through a follow-up program. Final habitat offset amounts and locations should be provided in those documents to support mitigation measures directed at reducing the risk to the survival or recovery of caribou. ECCC recommends that air photo alignment sheets be provided demonstrating the exact measures to be implemented. ECCC requested that it be given the opportunity to review and comment on the Final Caribou Habitat Restoration and Offset Measures Plan, Follow-up and Monitoring Plans, and reports.

### ***Views of NGTL***

NGTL stated that it has a strong understanding of the Project interactions and potential effects on caribou and caribou habitat as summarized in the ESA and Caribou Habitat Restoration and Offset Measures Plan. The EA methodology complies with the filing requirements and is aligned with and follows well-established federal environment assessment methods appropriate for the scope and nature of this Project. NGTL does not believe an additional baseline report is needed to understand the potential Project impacts to caribou as it has sufficient data to conclude with reasonable certainty that its proposed restoration and offset measures will effectively contribute to the recovery of caribou habitat.

NGTL stated that the methodology in the Caribou Habitat Restoration and Offset Measures Plan is a defensible, science-based approach to restoration and offsets. NGTL indicated that methodology and proposed measures reflect an adaptive management framework that has been under development since the start of its Northwest Mainline Expansion Project. NGTL noted that this approach has also been enhanced from knowledge, experience and lessons learned during the development of numerous linear corridors across western Canada and that practices are based on a continuous improvement process. NGTL committed to continue to integrate learnings and findings including information provided by Aboriginal groups, as appropriate, into projects within caribou range.

NGTL's routing for the Project focused on maximizing the amount of overlap between the Project ROW and previously disturbed land within caribou range in order to minimize the amount of new disturbance in sensitive areas. NGTL stated that the development of a project alignment parallel to an existing alignment results in the disturbance within caribou habitat being increased by a relatively small amount.

NGTL noted that existing permanent disturbance areas were not included in the quantification of the Project's incremental direct disturbance, however seedling planting within these disturbed areas is expected to accelerate the habitat restoration to a forested state resulting in a reduction of Project residual effects. NGTL stated that habitat restoration will enhance the existing ecological condition of existing disturbance in the Project Construction Footprint and additional restoration on-site would reduce the Project's residual effect and initial offset value. NGTL noted that although it has used this approach on previous NGTL project Caribou Habitat Restoration and Offset Measures Plans, the area restored has never exceeded the area of the project direct disturbance as it does in this situation. NGTL noted that should it choose not to restore habitat within the areas of existing disturbance in the Project Construction Footprint, those ROWS

would be excluded from the calculation of initial offset value and the total initial offset value for Red Earth Section 3 would increase from 1.73 to 3.84.

NGTL noted that the Project Construction Footprint parallels the existing NGTL North Central Corridor for 95 per cent (approximately 14.1 km) of its length within the Red Earth caribou range. The remaining 5 per cent (approximately 0.7 km) requires a minor deviation from paralleling the existing North Central Corridor, to improve the constructability of a crossing of an unnamed tributary to the Loon River. As noted in the Caribou Habitat Restoration and Offset Measures Plan, NGTL explained how it used an inherent effect multiplier to consider the differences between the two development scenarios and whether the effects of a linear disturbance already exist or not. NGTL explained that parallel alignment is assigned a 20 per cent inherent effect accounting for the already reduced habitat value or function associated with the existing ROW and buffered 500 m indirect disturbance zone. By comparison, new cut alignment is not afforded a reduction (100 per cent inherent effect) since it results in a much larger increase of new disturbance within caribou habitat associated with the combination of a new ROW footprint plus a 1 km disturbance buffer. NGTL also noted that the inherent effect multiplier provides an incentive to avoid creating new permanent disturbance and to parallel existing disturbances.

NGTL indicated that it calculated the initial offset value for the Project to be 2.81 with the inherent effect multiplier and 8.42 without the multiplier. It recommended the initial offset value metrics without an inherent risk multiplier be interpreted with caution. NGTL expressed that using the offset calculation method in the Caribou Habitat Restoration and Offset Measures Plan, the inherent risk multiplier is applied to both the initial offset value calculation (the Project residual effect), and the final offset value calculation (the area of on-the-ground offsets). In this way, the inherent effect multiplier provides a mechanism for addressing the equivalence principle of conservation offsets, as it accounts for habitat value or function (in terms of the ecological response of predators/prey to linear disturbance features) at the Project footprint and the offset locations. NGTL indicated that it intends to locate offsets within existing NGTL ROW features, where it has full operational control, so that habitat restoration can be implemented across the full ROW width. NGTL also suggested that if it were to implement offsets on a corridor with limitations to restoration across the full width, an unmitigated linear disturbance corridor would remain and an inherent effect multiplier of 5 (the inverse of 0.2) would be applied to the final offset value resulting in a much higher area of on-the-ground offsets. NGTL noted that with this approach, offsets implemented on its ROW are under the operational control of NGTL and therefore access management, habitat restoration and other activities would be protected, have a higher value for caribou for the long-term.

NGTL stated that the Caribou Habitat Restoration and Offset Measures Plan considers identified risks and uncertainties when implementing habitat restoration measures. NGTL noted that the total disturbance area has been calculated to reflect the Project's direct and indirect disturbances outside existing permanent disturbances and associated 500 m buffers. NGTL also noted that the temporal risk multipliers account for time lag associated with habitat restoration on the Project footprint and offsets, and the delivery risk multipliers account for uncertainty in success of habitat restoration for restored and offset habitats. NGTL further noted that the inherent effect multiplier accounts for differences in the condition (quality) of the restored and offset habitats. NGTL stated that the precautionary principle is applied, as reflected by NGTL's routing and siting criteria to avoid and minimize Project effects as much as practicable.

NGTL indicated that it will implement access control measures such as rollback and mounding following construction. In addition, NGTL committed to implement offset measures at the same time or before footprint restoration in conjunction with other NGTL offsetting programs, as soon as is feasible.

NGTL indicated that the preliminary offsets proposed for the Project are within the Chinchaga and Red Earth caribou range, which is where Project effects will occur and it will continue to work with Alberta Environment and Parks to identify the best offset locations within the those ranges. Habitat restoration measures will be based on expected effectiveness, site conditions, availability of appropriate materials, and NGTL's habitat restoration experience from other projects.

With respect to ECCC's recommended offset ratio of 4:1, NGTL submitted that its restoration and offset valuation method is not based on ratios and includes the use of several multipliers to account for delivery, spatial and temporal risks specific to the proposed restoration or offset habitat, the specific measures proposed, as well as an inherent effect multiplier to account for habitat condition. NGTL stated this approach accounts for variation in specific habitat conditions and treatments, thereby providing a mechanism to quantify the amount and value of habitat losses and offsets, relative to a generic 4:1 ratio which does not account for site-specific conditions or treatments.

NGTL indicated that it uses different multipliers to account for delivery, spatial and temporal risks specific to the proposed restoration or offset habitat. NGTL indicated that the multipliers and offset quantification method used in the Caribou Habitat Restoration and Offset Measures Plan for the Project was originally developed in 2014 by conducting a survey of 36 caribou experts representing government, industry, academia, and consulting professionals. The survey asked 45 questions pertaining to range utility (the ecological response of predator/prey populations to landscape conditions), mitigation effectiveness and uncertainty. The inherent effect multiplier was derived from respondents' answers to a subset of questions pertaining to range utility, linear disturbance and line width.

NGTL noted that at present, there is a lack of a standardized regulatory framework for the calculation and implementation of offsets within woodland caribou ranges. Further, NGTL is not aware of any additional scientific literature that recommends a method for the use of multipliers or derivation of ratios specific to woodland caribou that would account for variations in habitat equivalence and incorporate differences in risk factors associated with time lags or effectiveness of different restoration methods.

NGTL noted ECCCs recommendation to implement access control measures across the full width of any and all other adjacent ROW dispositions. NGTL submitted that there may be opportunity for it to do so on its own adjacent dispositions, as appropriate, provided that no other third-party parallels that adjacent disposition. NGTL noted that access management measures are most effective when implemented on non-contiguous segments of the ROW and at intersections of the pipeline with existing perpendicular linear features. Therefore, the ROW is under the operational control of NGTL, maintaining the long-term protection of access management, habitat restoration and other activities. NGTL stated that for the Project, access management will be limited to intersecting perpendicular access on the new cut side of the ROW as well as targeting access management measures where there is evidence of existing human access.

NGTL stated the Caribou Habitat Restoration and Offset Measures Plan clearly demonstrates that habitat restoration is feasible as it includes a literature review of available restoration methods and associated considerations and limitations and considers NGTL's experience in implementing restoration measures. NGTL committed to preparing a Caribou Habitat Restoration and Offset Implementation Report and Caribou Habitat Restoration and Offset Measures Monitoring Program to detail what caribou habitat restoration and offset measures were implemented, and how those measures will be monitored for effectiveness.

NGTL stated that the goal of its Aboriginal Engagement Program for the Project is to provide Project information and seek feedback from Aboriginal groups in order to anticipate, prevent, mitigate and manage situations that have the potential to affect Aboriginal groups. NGTL also stated that it strives to meet this goal in part by initiating engagement activities as soon as possible in the planning of the Project. This early and proactive engagement, combined with NGTL's extensive experience implementing the environmental mitigation measures detailed in the Project EPP and ESA, including those specific to Caribou Habitat Restoration and Offset Measures Plan, help to determine that situations with the potential to affect Aboriginal groups have been prevented, mitigated and/or managed by the time a project reaches the operations phase of its lifecycle. NGTL indicated it is available to meet with interested Indigenous peoples and will consider input provided during engagement for the Project throughout the finalization of the Caribou Habitat Implementation Plan and the Caribou Habitat Restoration and Offset Measures Monitoring Program. NGTL noted that it will continue to integrate learnings and findings including information provided by Indigenous peoples, as appropriate, into projects within caribou range and will continue to share its caribou plans and reports with ECCC. NGTL also noted that all monitoring reports filed with the CER are available for review through the CER's electronic repository at their convenience.

### ***Views of the Commission***

The Commission notes that NGTL's ESA concluded that cumulative effects on boreal caribou are already significant and that ECCC considers the cumulative effects in the Red Earth and Chinchaga ranges already high in magnitude and high in geographic extent. The Commission agrees that cumulative effects on the Red Earth and Chinchaga caribou ranges are already significant and understands the importance of protecting caribou critical habitat.

The Commission is of the opinion that disturbances within caribou ranges should firstly be avoided and secondly minimized, with measures taken before, during and after construction to help minimize the disturbance and accelerate the restoration of caribou habitat. Given the already substantial ongoing cumulative effects on the landscape and on caribou in the Chinchaga and Red Earth caribou ranges due to both direct and indirect habitat disturbance, all residual effects on caribou habitat should be considered and fully offset to avoid any further contribution to already existing significant cumulative effects in these ranges. The Commission has considered the impact of the Project on the Red Earth and Chinchaga caribou ranges and is of the view that, with the mitigation proposed by NGTL and the conditions that would be imposed by the Commission, the impacts to caribou habitat within the Chinchaga and Red Earth caribou ranges would be mitigated and would not affect the status of the existing cumulative effects.

The Commission notes that it is important to consider the particular impacts that are at issue. The Commission recognizes NGTL's routing of the pipeline to parallel the existing

ROW as avoiding the creation of new linear disturbance within the Chinchaga and Red Earth caribou ranges, as well as minimizing overall disturbance.

The Commission has also considered NGTL's preliminary Caribou Habitat Restoration and Offset Measures Plan and amended preliminary Caribou Habitat Restoration and Offset Measures Plan which were filed during the proceeding. With respect to Driftpile Cree Nation's question of how the Caribou Habitat Restoration and Offset Measures Plan differs from caribou protection plans, the Commission notes that the Caribou Habitat Restoration and Offset Measures Plan includes offsetting of any residual effects in addition to on site ROW restoration as in standard caribou protection plans.

The Commission is of the view that NGTL has filed the appropriate information within the Caribou Habitat Restoration and Offset Measures Plan to demonstrate an understanding of the Project interactions and potential effects on caribou habitat. Further, NGTL's mitigation methodology has been under development since the start of its Northwest Mainline Expansion Project, and has been tested and continues to be refined over the course of several years, projects and hearings. While the Commission takes note of NGTL's proposal to restore the areas that overlap with existing NGTL ROWs, the Commission does not agree with classifying those areas as a habitat type in order to include them in the calculation of a smaller initial offset value, especially since those areas are removed from the initial calculation of direct project disturbance. The Commission is of the view that if the existing adjacent ROW has regeneration on it, then any clearing would first count as a direct project impact and require on-ROW restoration. The Commission finds that the revised calculation of total initial offset value for Red Earth Section 3 of 3.84 excluding the restored habitat within the areas of existing permanent disturbance in the Project Construction Footprint to be more appropriate in this situation.

Conversely, the Commission is of the view that if there is no existing regeneration on the overlapping ROWs, any restoration treatments would be considered offsets and included in such calculation accordingly. The Commission is interested in ensuring that treatments that are to be accounted for as offsets be placed in locations and at sites most appropriate and effective for caribou rather than for convenience of implementation. The selection of such sites and locations is to be reviewed through the offset measures portion of condition filings and is subject to approval of the Commission. While the Commission supports any potential for additional restoration measures that may readily be implemented as part of on-site restoration treatments, if NGTL wishes habitat treatment measures along portions of the existing ROW that overlap with the proposed new ROW to count as credit (for offsets) then it will need to file, for approval in advance, details on proposed offset measures and locations prior to construction.

The Commission notes NGTL's intention to locate offsets within existing NGTL ROW features within the Chinchaga and Red Earth caribou ranges. As these offsets would be on CER-regulated ROWs the Commission will be seeking to obtain a better understanding of, and greater transparency around, the methodology for the selection of offset locations, and expects the offset measures portion of the Caribou Habitat Restoration and Offset Measures Plan to provide this. The Commission notes that offset placement for optimal benefit of caribou habitat should consider spatial scale, including macro level landscape considerations, intermediate level factors such as which disturbances to treat, as well as more local site treatment considerations. The Commission also notes that to the extent any

offsets are placed on NGTLs' own existing ROWs, they would be under NGTL's operational control and responsibility in terms of long term protection of offset measures.

The Commission has heard the concerns of ECCC with discounting or reducing Project effects where the project footprint parallels existing disturbances by applying an inherent effect multiplier. The Commission notes ECCC's statement that the Government of Alberta has a longstanding policy of requiring linear features to parallel existing disturbances and it may be interested in reviewing the details around this 2018 policy with respect to future applications. The Commission also acknowledges NGTL's statement that, at present, there is a lack of a standardized regulatory framework for the calculation and implementation of offsets within boreal woodland caribou ranges. The Commission notes that NGTL's use of multipliers has been used in a number of other Projects<sup>18</sup> and is of the view that without standard methodology it is the most appropriate approach at this time. The Commission notes, however, that the initial offset value varies from 2.81 to 8.42 with and without the use of the inherent effect multiplier respectively and that this demonstrates the need for a commonly agreed-on standardized offsets framework as noted in its 2021 recommendation to GIC<sup>19</sup>.

The Commission remains of the same view as the previous NEB typically did in its decisions on pipeline projects, namely, that a fixed 4:1 ratio recommended by ECCC does not allow for different time lag circumstances or varying levels of uncertainty, nor does it ensure that the offset measures selected would be effective, account for the timing of implementation or proximity of the offset location. The Commission is of the view that NGTL's multipliers, as set out in its evidence, account for a wide variety of mitigation and habitat related variables and provide different multipliers for inherent values, as well as delivery, temporal, and spatial risks encountered under different circumstances which could potentially result in a ratio greater than 4:1, where and when the risks are greater to the environment.

As noted above, the Commission expects NGTL to offset all potential direct and indirect residual effects of the Project in order to ensure no net loss of caribou habitat and no incremental increase in adverse cumulative effects on habitat. The Commission is of the view that offsets should be located in areas that could provide the greatest benefits to the herds in order to diminish risk to the survival or recovery of the affected local population. The Commission is of the view that implementation of restoration and offset measures as quickly as possible is key to reducing a project's residual effects to caribou habitat.

Accordingly, the Commission recommends **Condition 30 (Caribou Habitat Restoration Implementation Report and Status Update)** and **Condition 31 (Caribou Habitat Offset Measures Implementation Report)** for the Section 52 Pipeline and Related Facilities to review the results of the measures implemented to compensate for all Project related residual effects from directly and indirectly disturbed habitat and verify the calculations for the total required offset area. The plans must include a reconsideration of the initial offset value calculations as noted above. The Commission notes NGTL's commitment to monitor the effectiveness of restoration methods as well as to implement adaptive management to

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18 2017 NGTL System Expansion Project, Northwest Mainline Loop Boundary Lake North Section, Liege Lateral Loop, North Montney, North Central Corridor Loop (North Star Section 1), 2021 NGTL System Expansion Project

19 CER Report GH-003-2018, dated February 2020 – 2021 NGTL System Expansion Project

address any issues that arise. In order to oversee this monitoring, the Commission recommends **Condition 32 (Caribou Habitat Restoration and Offset Measures Monitoring Program)** for the Section 52 Pipeline and Related Facilities, to monitor and verify the effectiveness of the caribou habitat restoration and offset measures implemented as part of the Caribou Habitat Restoration and Offset Measures Plan. In addition, the Commission recommends **Condition 33 (Caribou Monitoring Reports)** for the Section 52 Pipeline and Related Facilities, to file caribou monitoring reports which would outline the results of the Caribou Habitat Restoration and Offset Measures Monitoring Program.

The Commission acknowledges the comments received from Dene Tha' First Nation, Driftpile Cree Nation, and Peerless Trout First Nation on the potential conditions and NGTL's commitment to consider input provided by Indigenous peoples, throughout the finalization of the Caribou Habitat Implementation Plan and the Caribou Habitat Restoration and Offset Measures Monitoring Program. Having considered these comments, the Commission has included a requirement in **Condition 31 and 32** for NGTL to consult, plan and engage with Indigenous peoples that expressed an interest in being involved with the Caribou Habitat Offset Measures Implementation Report and related filings during the GH-002-2019 hearing process, regarding the development and finalization of the Caribou Habitat Offset Measures Implementation Report.

The Commission is of the view that with implementation of these conditions, and the Commission's regulatory oversight of them, the Project's potential for impacts to caribou habitat within the Chinchaga and Red Earth caribou ranges would be effectively mitigated, and not contribute further to existing cumulative effects.

Subsection 77(1) of SARA requires the Commission to consult with the competent Minister whenever the Commission may authorize an activity that may result in the destruction of any part of the critical habitat of a listed wildlife species. The Commission is also required to consider the impact on the species' critical habitat and reach the opinion that: a) all reasonable alternatives to the activity that would reduce the impact on the species' critical habitat have been considered and the best solution has been adopted; and b) all feasible measures would be taken to minimize the impact of the activity on the species' critical habitat. Through its letter identifying the potential effects on species listed under the SARA, dated 12 June 2019, the Commission has consulted with the competent Minister and considered the impact on the species' critical habitat. The Commission is of the view that, with the mitigation proposed by NGTL and the conditions that would be imposed by the Commission, the impacts to caribou within the Chinchaga and Red Earth caribou ranges would be minimized.

#### **8.7.3.2 Indigenous Monitoring Advisory Committee on Caribou Habitat Restoration, Offsets and Monitoring**

Peerless Trout First Nation submitted that an Indigenous Monitoring Advisory Committee allowing for direct involvement in Caribou Habitat Restoration and Offset Measures Plan and other environmental and cultural value monitoring plan be established.

##### ***Views of NGTL***

NGTL is of the view that a separate Indigenous Monitoring Advisory Committee is not appropriate for the scope, scale and nature of this Project. NGTL indicated that it is available to meet with Peerless Trout First Nation to discuss the Caribou Habitat Restoration and Offset

Measures Plan and opportunities for participation in the design and implementation of caribou habitat restoration, offsetting and monitoring for the Project.

### ***Views of the Commission***

The Commission is of the view that while an Indigenous Monitoring Advisory Committee can be potentially valuable, that such participation and input can be accomplished through various other avenues. The Commission recognizes the importance of involvement and engagement of Indigenous peoples and recommends **Condition 6 (Construction Monitoring Plan for Indigenous Peoples)** and **Condition 28 (Post-Construction Monitoring Plan for Indigenous Peoples)** for the Section 52 Pipeline and Related Facilities and imposes the same conditions (**Conditions 6 and 22**) related to the Section 58 Facilities and Activities. These conditions provide opportunities for Indigenous peoples input into the Project, including monitoring by Indigenous peoples for things like caribou habitat restoration and offsetting activities. The Commission refers to Chapter 7 for further discussion on monitoring opportunities for Indigenous peoples. Accordingly, the Commission is of the view that a distinct Indigenous Monitoring Advisory Committee condition is not warranted in this instance.

### **8.8 Follow-Up Program**

CEAA 2012 requires a follow-up program. The Commission recommends that **Conditions 29 (Post-Construction Environmental Monitoring Reports), 32 (Caribou Habitat Restoration and Offset Measures Monitoring Program)** and **33 (Caribou Monitoring Reports)** for the Section 52 Pipeline and Related Facilities be implemented as a follow-up program. Please refer to Subsection 8.7.3.1 for more detailed information.

### **8.9 Commission Conclusion**

The Commission has conducted an EA of the Project and is of the view that overall, with the implementation of NGTL's environmental protection procedures and mitigation measures and the Commission's recommended conditions, the Project is not likely to cause significant adverse environmental effects. Therefore, pursuant to the CEAA 2012, the Commission recommends that the GIC decide that the designated Project is not likely to cause significant adverse environmental effects.



## **9 Infrastructure, Services, Employment and Economy**

The Filing Manual sets out the expectations for applicants regarding direct socio-economic impacts caused by the existence of a project. Applicants are expected to identify and consider the impacts a project may have on infrastructure, services, employment and economy. Applicants are also expected to provide mitigation of negative impacts and enhancement of positive benefits of the project.

Potential socio-economic effects that are caused by changes to the environment are included in Chapter 8. Other economic effects are addressed in Chapter 3. Direct socio-economic effects caused by the existence of the Project itself are discussed below. Employment and economic benefits, as they specifically relate to Indigenous peoples, are discussed in Chapter 7.

### **9.1 Infrastructure and Services**

NGTL provided its assessment of the potential effects on infrastructure and services and discussed its proposed mitigation measures in the ESA and EPP. NGTL also identified and evaluated the predicted residual and cumulative effects from the Project.

In the ESA, NGTL identified the key indicators of potential effects and residual effects on physical infrastructure and capacity of community infrastructure and services including: transportation infrastructure (e.g., roads, rail and air), accommodation, recreational amenities, emergency, health care and social services, and, water supply, waste and power supply infrastructure. NGTL provided the baseline conditions of these indicators for each of the rural municipal districts, counties, and community service centres in the socio-economic study area.

NGTL identified the interactions and potential effects on infrastructure and services resulting from Project construction and operations activities, such as increased demand on transportation infrastructure, accommodations, waste disposal sites, and emergency, health care and social services.

NGTL stated that there are no identified interactions that would cause an adverse effect between the Project and accommodation and recreation amenities and facilities for the North Star Section 2 and the Hidden Lake North Unit Addition, given the use of full-service construction camps for these components which would avoid any use of community services. NGTL indicated that the Project anticipates using construction camps away from communities for these components, which will effectively eliminate pathways associated with the presence of temporary workers and community interactions.

NGTL indicated that a potential effect of the Project is increased demand on accommodations and recreational facilities as a result of the temporary workforce associated with the Bear Canyon North Extension and the Red Earth Section 3. NGTL submitted that the temporary workforce associated with the Bear Canyon North Extension would be on average 330 workers with 450 workers at its peak, that are anticipated to use available accommodations in the City of Fort St. John, BC, which is located approximately 53 km west of the Bear Canyon North Extension. NGTL indicated that for the Bear Canyon North Extension, the City of Fort St. John,

BC has over 16 hotels and motels with an approximate 1,300 rooms, over 6 campgrounds, bed and breakfast accommodations and rental accommodations available for potential use.

NGTL submitted that the temporary workforce associated with the Red Earth Section 3 is anticipated to use existing open camp accommodations in the Hamlet of Red Earth Creek, if available, or a new temporary camp or a combination of camps. The Hamlet of Red Earth Creek is located approximately 42 km south of the Red Earth Section 3.

NGTL indicated that for the Red Earth Section 3, the nearest accommodation centre would be the Hamlet of Red Earth Creek, AB which has various available accommodations including one motel with 50 rooms, an open camp accommodation including the Red Earth R.E.A.L. camp with approximately 90 rooms, Red Earth Lodge camp with approximately 180 rooms, Iron Eagle camp with 15 rooms, Civeo Red Earth Lodge camp (previously Noralta camp), Black Gold camp and Ace Open camp.

NGTL indicated that a potential project interaction and potential effect on infrastructure and services is increased traffic volumes as a result of transporting workers, supplies and equipment which could lead to an increase in current traffic levels, disrupt traffic, reduce safety and increase noise and emission levels.

NGTL stated that the predicted residual effects of the Project are likely to interact with other existing developments and activities causing cumulative effects on infrastructure and services, including cumulative change in traffic on highways and local roads, and cumulative increase in demand on accommodation and recreational facilities. NGTL stated that roads in the Community Regional Study Area include highways, collector roads, and resource and recreational roads comprised of paved and gravel roads. NGTL said that major transportation corridors used to access the Project are designed to handle increases in traffic, and private roads would be used under agreements with the road owners. NGTL submitted that the use of work camps located close to work sites would also reduce the effect of increased traffic associated with construction of the North Star Section 2, Hidden Lake North Unit Addition and possibly the Red Earth Section 3 (if a new camp is required), as the distance travelled and thus time on local roads on a daily basis related to workforce commuting would be reduced.

NGTL stated it would implement a Traffic Control Management Plan and speed limits would apply on all roads, accesses and ROWs, and mitigation such as using multi-passenger vehicles and directing construction personnel to obey traffic, road use, and safety laws would be implemented during construction activities.

NGTL indicated it would have various mitigation measures to decrease traffic concerns such as restricting all construction activities to the approved construction footprint. In addition, all construction traffic would adhere to safety and road closure regulations.

### ***Views of Participants***

Peerless Trout First Nation provided a recommendation to establish and enforce speed limits for all motorized vehicle traffic associated with the project activities. Duncan's First Nation raised concerns related to the effects of traffic and its impact on their use of the land. For specific issues and concerns raised by Indigenous peoples regarding infrastructure and services, see Chapter 7.

## ***Views of Commission***

The Commission finds that the measures planned by NGTL would adequately address the potential impacts of the Project on local infrastructure and services, including effects on traffic and the effect on accommodations and recreational facilities as a result of the temporary workforce. The Commission notes that NGTL has committed to implement mitigation and management plans, including a Traffic Control Management Plan.

Given that the Project is spread across multiple locations and would require the use of existing accommodations for only two project components, Bear Canyon North Extension and Red Earth Section 3, in already established communities with available accommodations, the Commission finds that Project demands are unlikely to exceed the available capacity of community infrastructure and services, or impact the quality of local services.

## **9.2 Employment and Economy**

NGTL stated that the Project would increase employment opportunities, contract and procurement opportunities and local, provincial and federal revenues.

NGTL stated that the Project would generate a demand for goods, services and workers through direct and indirect opportunities during construction and operations in the Community Regional Study Area, as well as extending beyond the Regional Study Area. NGTL submitted that the Project would involve substantial capital expenditures on goods and materials, which would drive economic benefits locally, regionally, and nationally. If approved, NGTL estimated that the total capital expenditures for the Project on design, planning, and construction activities (development) is expected to be over \$630 million (2018 dollars), with the expenditures taking place over a 6-year period, from 2018 to 2023. NGTL estimated that approximately \$429 million (or 67.9 per cent) of this total would be spent in Canada, with over 98.5 per cent being spent directly in AB.

NGTL anticipated that Project construction would generate GDP of over \$529 million, with 80 per cent of this economic activity occurring in AB (\$425 million). NGTL stated that the Project is expected to generate over 4,600 full time equivalent person-years of employment across Canada during development and construction, with most employment effects occurring in AB (75 per cent or 3,480 full-time equivalent person-years of employment). The Project is anticipated to result in increased labour income of over \$374 million throughout Canada (direct, indirect, and induced labour income), and almost \$308 million of this increased labour income would occur in AB. NGTL stated that most employment would be generated during Project construction, although operations, specifically site-specific maintenance, would also need workers albeit to a much lesser extent.

NGTL stated that given a limited regional labour force is available to participate in Project opportunities, temporary workers are anticipated during construction to meet the labour needs of the Project. NGTL stated that the Project would require a peak construction workforce of approximately 500 workers for each pipeline component and 240 workers for the Hidden Lake North Unit Addition. NGTL stated that there would be direct employment opportunities (jobs directly related to Project pipeline construction and operations), indirect employment opportunities (jobs related to supply chain impacts as firms purchase additional inputs from other firms), as well as induced employment opportunities (related to increased wage spending due to direct and supply chain employment).

NGTL stated that major categories of goods and services likely to be purchased in Canada included engineering and other professional/technical services, construction inputs including iron and steel parts, industrial buildings, fabrication, and electronic and electronic controls, and accommodations. NGTL provided examples of direct contracting opportunities for the Project which include project management and construction management, office administration, safety inspection, welding inspection, and general inspection. NGTL also provided examples of subcontracting opportunities related to Project pipeline construction such as construction ROW clearing, temporary workspace clearing, water hauling, security services, and emergency medical services.

NGTL indicated that the positive predicted residual effects of increased contracting and procurement, increased employment opportunities and increased local, provincial and federal revenue, would extend throughout the Community Regional Study Area and beyond the Regional Study Area and would offer short-term and long-term economic benefits.

NGTL noted concerns raised through engagement with Indigenous peoples included employment opportunities and the prequalification process relating to contracting services and the recommendation that partnerships and employment opportunities be included in the Project scope. NGTL stated that the demand for personnel and equipment would provide contracting and employment opportunities for qualified local and Indigenous-owned businesses and individuals. NGTL submitted that the Project would maximize hiring of local and Indigenous peoples from within the Community Regional Study Area, as a first priority, and elsewhere in AB as a second priority.

NGTL provided an assessment of the Project's potential effects on employment and economy, enhancement measures (rather than mitigation measures), and predicted residual effects in its ESA. Examples of its enhancement measures include, but are not limited to:

- inform appropriate municipalities, Indigenous communities, and economic development agencies of the Project developments and workforce details, as warranted;
- collecting information on local businesses and interested individuals, organizing that information, sharing the information with prime contractor(s) once selected and sharing the prime contractor(s) information with local communities and Indigenous communities, as appropriate, to support local contracting and employment;
- encourage the participation of local and Indigenous workers and businesses on the Project;
- implement TransCanada's *Aboriginal Relations Policy*;
- NGTL's Indigenous Business Engagement team would engage with interested communities to provide information on how they may participate in Project opportunities. This team would also work with NGTL's prime contractor(s) to confirm that qualified and competitive Indigenous-owned businesses and individuals are considered for material and services subcontracts in accordance with NGTL's *Aboriginal Contracting and Employment Program*;
- the prime contractor would submit a participation plan for Indigenous peoples to NGTL that outlines the processes that it would follow to facilitate productive opportunities for qualified and competitive local Indigenous-owned businesses and peoples on the Project; and

- NGTL would provide support and resources to Indigenous communities to increase their ability to participate in Project activities and to support their long-term goals for skills development and training.

NGTL stated it would implement TransCanada's *Aboriginal Relations Policy*, which would be an underpinning guide to labour force decisions across the Project, namely that TransCanada strives to create short and long-term employment opportunities for Indigenous communities impacted by TransCanada's activities. In addition, NGTL stated it provides opportunities for training and other capacity initiatives in communities and Indigenous communities in the Community Regional Study Area through initiatives such as TransCanada's Empower Communities Scholarships Program. NGTL indicated that this program includes TransCanada Trades Scholarships, Aboriginal Legacy Scholarships, and Community Leaders Scholarships which would further support and enhance local/regional and Indigenous peoples employment opportunities related to the Project.

NGTL stated that positive residual effects are predicted from the Project on employment and the economy. These include positive residual effects on increased contract and procurement opportunities, increased employment opportunities and increased revenue for local, provincial and federal governments. NGTL noted that the enhancement measures listed in the ESA are measures to maximize positive effects on employment and economy key indicators.

Given the scope of the Project and the existing socio-economic conditions in nearby communities, as well as the rest of AB, NGTL determined that the Project would only create positive effects on employment and the economy and that there would be no interactions that could create adverse economic effects.

NGTL stated that Project operations would generate revenue in the form of increased municipal property taxes to host counties and Municipal Districts. Within AB, the municipalities (Municipal Districts and Counties) in which the Project is located would receive increased property taxes of an estimated \$2,080,000 annually throughout operations. In regards to contract procurement opportunities, NGTL stated that once construction for the Project is complete, contracting opportunities will revert to similar to existing operations. NGTL stated that most employment would be generated during Project construction, although operations, specifically site-specific maintenance, would also need workers albeit to a much lesser extent.

In regards to the condition related to reporting on employment, contracting, and procurement issued for comment, NGTL stated that it was unclear on the scope of its reporting requirement since it viewed the condition's title to indicate a limited reporting scope focused only on Indigenous peoples employment and contracting. NGTL explained that it believed this to be the appropriate reporting scope relative to the nature and scale of the Project, the limited scope of the employment and contracting issues raised by Indigenous peoples that participated as Intervenor during the hearing, and consistency with the scope of potential condition regarding Indigenous peoples employment, contracting, and procurement planning updates. As a result, NGTL requested the removal of references to local and regional reporting requirements.

### ***Views of Participants***

Driftpile Cree Nation, Duncan's First Nation, Peavine Métis Settlement, Peerless Trout First Nation and Whitefish Lake First Nation #459 expressed interest in employment and economic benefits as a result of the Project.

During their oral Indigenous knowledge sessions, members of Driftpile Cree Nation, Peavine Métis Settlement and Peerless Trout First Nation discussed concerns regarding the lack of employment opportunities for Indigenous peoples.

*“I know my people are suffering, when you look at the incarceration rates, and you look at the diabetes, and you look at all the health indicators, we’re the highest on everything, and the only thing that we’re the lowest on is employment. And those are all facts.”*

-- Elder Theresa Campiou, Driftpile Cree Nation. Transcript Volume 4[1203]

*“I would like to put a challenge out there to the company that’s going to be doing this project, that you’d be the first company to open doors, to open up your hearts and find a way to maximize the knowledge that our people have, and maximize the resources so they all can have a chance to go out and earn a dollar, instead of what I see happening now. And some of you might be from the East or even overseas, that the government is supporting to bring them into our country and taking over some of the jobs, some opportunities of our people that could be working and making a living, because it’s getting tougher to live off the land.”*

-- Elder Peter Freeman, Driftpile Cree Nation. Transcript Volume 4[1207]

*“It’s from that divine concept, you know, we need to do and work in good faith, work from an understanding that’s going to be mutually beneficial to not only the landscape, to our communities, to our people, you know, to a prosperous Alberta.”*

-- Mr. Karl Giroux, Driftpile Cree Nation. Transcript Volume 4[1225]

*“I’m just going to ask you people, see if we can enlarge for work wise and Peavine Métis Settlement from outskirts of Peavine and maybe we can create something and get more jobs instead of just a small settlement. So that will increase more work for Métis people.”*

-- Elder Charles Gauchier, Peavine Métis Settlement. Transcript Volume 5[1794]

*“Same with revenue. Like, a lot of times they bring people from outside that they have – work partners, with them – they have work, they’re good buddies. But when they come to our land, their good buddies come, but our people can’t have the employment. Those are the concerns we have.”*

-- Elder Emile Houle, Peerless Trout First Nation. Transcript Volume 1[131]

For specific issues and concerns raised by Indigenous peoples regarding employment and economy and comments on **Condition 27 (Training, Employment, Contracting, and Procurement Report)**, see Chapter 7.

### ***Views of the Commission***

The Commission finds that the Project would benefit local, regional, provincial and federal economies. The Commission finds that the socio-economic benefits related to the construction phase of the Project, through direct, indirect and induced employment, and contract and procurement opportunities, would benefit local communities as well as workers from elsewhere in AB. The Commission notes the commitment from NGTL to maximize hiring of local and Indigenous peoples from within the Community Regional Study Area, as

a first priority, and elsewhere in AB as a second priority. The Commission supports this commitment because turning impacted people into beneficiaries will strengthen the human and social capital of local communities. The Commission also expects this commitment to be applied to operations and maintenance activities, such as site-specific maintenance, where appropriate.

The Commission is of the view that the Project would result in increased employment for Indigenous peoples and contracts for Indigenous-owned businesses. The Commission notes NGTL's *Aboriginal Contracting and Employment Program* and its commitment that qualified and competitive Indigenous peoples and businesses be considered for material and services subcontracts and to engage with Indigenous peoples. The Commission also notes NGTL's commitments to work with interested Indigenous peoples to identify opportunities for education and training initiatives.

The Commission notes the comments from NGTL concerning the scope of the condition regarding the reporting of local and regional employment and business opportunities. The Commission has a broad public interest mandate, and as a lifecycle regulator often seeks to understand the impact of specific Projects in those areas. The Commission also seeks to increase the transparency of NGTL's programs at providing benefits to Indigenous peoples. In addition, baseline information improves the CER's enforcement of conditions. This holistic approach includes reporting on training, employment, contracting, and procurement for the Project which includes information on employment of Indigenous peoples as well as local and regional employment and business opportunities. In response to this reporting requirement, the Commission recommends **Condition 27 (Training, Employment, Contracting, and Procurement Report)** for the Section 52 Facilities and Related Activities and imposes the same condition (**Condition 21**) for the Section 58 Facilities and Activities with a revised condition title to better reflect the intended scope of the condition.

Additional views regarding Indigenous peoples, including the recommended conditions regarding employment, contracting and procurement, can be found in Chapter 7.

# Appendix I – Conditions for the Section 52 NEB Act Certificate

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In this Appendix, the meanings of the terms and expressions below (in bold) are described in the Glossary.

## **1. Condition Compliance**

NGTL shall comply with all of the conditions contained in this Certificate, unless the Commission otherwise directs.

## **2. Section 52 Pipeline and Related Facilities Design, Location, Construction and Operation**

NGTL shall cause the **Section 52 Pipeline and Related Facilities** to be designed, located, constructed, and operated in accordance with the specifications, standards, commitments made and other information included in its Application and otherwise made on the GH-002-2019 hearing record.

## **3. Environmental Protection**

NGTL shall implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its Application and otherwise made on the GH-002-2019 hearing record.

### **Prior to Construction**

## **4. Report on Engagement with Indigenous Peoples**

- a) NGTL shall file with the Commission, **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, and every **3 months thereafter** until completing construction, a report summarizing NGTL's engagement with all potentially affected Indigenous peoples. The first reporting period should include updates from 8 April 2020 onward<sup>20</sup>. These reports shall include but not be limited to:
  - i. the methods, dates, and locations of consultation activities, including site visits;
  - ii. a summary of the concerns raised by Indigenous peoples;
  - iii. a description of how NGTL has addressed or will address the concerns raised;
  - iv. a description of any outstanding concerns; and
  - v. a description of how NGTL intends to address any outstanding concerns,

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<sup>20</sup> NGTL's most recent engagement update was for the period of 20 February 2020 to 7 April 2020, as filed with [C05684](#), NGTL's Reply Evidence, pages 2-8 (PDF pages 6-12 of 94)



or an explanation as to why no further steps will be taken.

- b) NGTL shall also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **5. Indigenous Peoples Employment, Contracting, and Procurement Plan Update**

- a) NGTL shall file with the Commission **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, an update on employment, contracting and procurement for Indigenous peoples that includes:
  - i. a copy of the Prime Contractor's Aboriginal Participation Plan;
  - ii. a copy of NGTL's Aboriginal Contracting and Employment Program; and
  - iii. a summary of how the Prime Contractor's Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.
- b) NGTL shall also provide a copy of the plan to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **6. Construction Monitoring Plan for Indigenous Peoples**

- a) NGTL shall file with the Commission, **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, a plan describing the participation of Indigenous peoples in monitoring activities during construction. Activities would include monitoring for adverse environmental impacts, heritage resources, areas related to traditional land and resource uses, and areas of cultural significance. The plan shall include, but not be limited to:
  - i. summary of engagement and planning activities undertaken with Indigenous peoples to develop opportunities for their participation in monitoring activities;
  - ii. a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, or an explanation as to why any results have not been incorporated;
  - iii. a list of Indigenous peoples who have reached agreement with NGTL to participate as monitors;
  - iv. a description of the anticipated training and participant requirements, including potential certifications for the Indigenous peoples monitors;
  - v. the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii., including those elements of construction and geographic locations that will involve monitors;
  - vi. a description of how NGTL will use and incorporate the information gathered through the participation of monitors and apply it to the Project; and
  - vii. a description of how, what form, and the timeframe in which NGTL will provide the information gathered through the participation of monitors to

the participating Indigenous peoples.

- b) NGTL shall provide a copy of the plan to those Indigenous peoples identified in a) iii.; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **7. Outstanding Traditional Land and Resource Use Investigations**

- a) NGTL shall file with the Commission for approval, **at least 45 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**, a report on any outstanding traditional land and resource use investigations for the Project. The report shall include, but not be limited to:
  - i. a summary of the status of investigations undertaken for the Project, including Indigenous community-specific studies or planned supplemental surveys;
  - ii. a description of how NGTL has considered and addressed information from any investigations on which it did not report during the GH-002-2019 hearing process;
  - iii. a description of any outstanding concerns raised by potentially-affected Indigenous peoples regarding potential effects of the Project on the current use of lands and resources for traditional purposes, including a description of how these concerns have been or will be addressed by NGTL, or a detailed explanation why these concerns will not be addressed by NGTL;
  - iv. a summary of any outstanding investigations or follow-up activities that will not be completed prior to commencing construction, including an explanation why they are not being completed prior to construction; an estimated completion date, if applicable;
  - v. a description of how NGTL has already identified, or will identify, any potentially-affected sites or resources if the outstanding investigations will not be completed prior to construction; and
  - vi. a description of how NGTL has incorporated any revisions necessitated by the investigations or follow-up activities into the Environmental Protection Plan for the Project, or, if appropriate, into NGTL lifecycle oversight.
- b) NGTL shall also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it provided those copies.

## **8. Heritage Resource Clearances**

- a) NGTL shall file with the Commission, **at least 30 days prior to commencing construction of the Section 52 Pipeline and Related Facilities**:
  - i. confirmation, signed by the Accountable Officer of the company, that NGTL has obtained all of the required archaeological and heritage resource clearances from the Alberta Ministry of Culture, Multiculturalism and Status of Women;
  - ii. a description of how NGTL will meet any conditions and respond to any

comments and recommendations contained in the clearances referred to in i.; and

- iii. a description of how NGTL has incorporated additional mitigation measures into its Environmental Protection Plan as a result of conditions, comments, or recommendations referred to in ii.
- b) NGTL shall also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy of this information; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **9. Geological Hazards**

NGTL shall file with the Commission, **at least 60 days prior to commencing construction**, a Geological Hazard Assessment(s) report(s). The report(s) shall include, but not be limited to:

- a) an assessment of all the geological hazards that the Project crosses along the ROW;
- b) the risks associated with the identified hazards;
- c) the mitigation and monitoring methods to control the identified hazards;
- d) a list of the locations identified as high risk areas during the construction stage; and
- e) NGTL's proposed monitoring plans during operation at the high hazard location and the monitoring techniques that NGTL will implement at those locations.

Monitoring techniques that the CER will be assessing for high hazard slope and landslide locations will include remote continuous slope monitoring methods and similar approaches.

## **10. Emergency Management Continuing Education Program**

- a) NGTL shall file with the Commission, **at least 30 days prior to commencing construction**, a Project-specific plan (Plan) that outlines the development of a continuing education program for the Project (Program) and how it would be incorporated into the broader continuing education program required by section 35 of the OPR (SOR/99-294). The Plan shall include:
  - i. a list of potentially affected Indigenous peoples, first responders (for example, police, fire departments, medical facilities), and any other appropriate organizations, government authorities or agencies (for example, municipalities) that have been identified for consultation and the results of consultation to date;
  - ii. the goals, principles and objectives for consultation for the development of the Program including evidence of how consultation feedback was integrated into the Program;
  - iii. a description of how information provided by potentially affected Indigenous peoples, first responders or any other appropriate organizations, government authorities or agencies will be incorporated into the Program, including a description of NGTL's procedure to communicate to potentially affected parties how their information will be incorporated into the Program and justification for why any information may not have been incorporated into the Program;
  - iv. a description of how Program information would be communicated or

distributed to potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies, including how NGTL will address any requests from potentially affected Indigenous peoples to have Program information translated into the local Indigenous language; and

- v. a summary of the information to be included in the Program, including:
  - a. potential emergency situations involving the **Section 52 Pipeline and Related Facilities**, including but not limited to, spills or releases and incidents as defined by the NEB Event Reporting Guidelines;
  - b. the safety procedures to be followed in the case of an emergency;
  - c. a description of how NGTL will conduct annual testing of emergency contact information, including with Indigenous peoples, and how NGTL will ensure the group being contacted has up-to-date company emergency contact information as well;
  - d. the methods by which potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in the case of an emergency situation; and
  - e. the methods by which NGTL can contact potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies in the case of an emergency situation.
- b) NGTL shall also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

### ***11. Programs and Manuals***

NGTL shall file with the Commission, **at least 30 days prior to commencing construction**, confirmation that a Construction Safety Manual(s) pursuant to section 20 of the OPR that includes a description of the roles and responsibilities of the company representatives and its contractor(s) supervisory roles is in place for the Project. This confirmation shall be signed by the Accountable Officer of the Company.

### ***12. Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities***

- a) NGTL shall file with the Commission, for approval, **at least 45 days prior to commencing construction**, an updated EPP (including Environmental Alignment Sheets) specific to the **Section 52 Pipeline and Related Facilities**. The updated version of the EPP is to include revisions based on evidence provided during the hearing process. The updated EPP must include, but not be limited to, the following:
  - i. environmental protection procedures (including site-specific plans), criteria for implementing these procedures, mitigation measures and monitoring applicable to all Project phases and activities;
  - ii. any updates to contingency plans and management plans;

- iii. a description of the condition to which NGTL intends to reclaim and maintain the rights-of-way, once construction has been completed, and a description of measurable goals for reclamation;
  - iv. a list of measures to be taken during construction to minimize disturbance to caribou and caribou habitat and help accelerate habitat restoration, including:
    - a. any provincial and federal best practices, requirements and timing restrictions specifically related to minimizing construction disturbance; and
    - b. the criteria for where those measures will be taken;
  - v. all specific mitigation related to species at risk and their habitat, and Key Wildlife and Biodiversity Zones;
  - vi. a list of any site-specific mitigation measures that were developed, if any, in response to traditional land and resource use sites identified by Indigenous peoples;
  - vii. updated environmental alignment sheets;
  - viii. evidence demonstrating that consultation took place with relevant government authorities, where applicable; and
  - ix. a revision log of the updates made, the reference where the updates can be found in the revised document, as well as the reference from the hearing evidence for each update.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

### ***13. Commitments Tracking Table***

NGTL shall:

- a) File with the Commission and post on its Project website, within 90 days from the date of this Certificate and at least 30 days prior to commencing construction on the Section 52 Pipeline and Related Facilities, a Commitments Tracking Table listing all commitments made by NGTL, including all commitments made to Indigenous peoples, in its Application, and otherwise made on the GH-002-2019 hearing record, and that includes references to:
  - i. the documentation in which the commitment appears (for example, the Application, responses to Information Requests, hearing transcripts, permit requirements, condition filings, or other);
  - ii. traditional land and resource use information from potentially affected Indigenous peoples;
  - iii. the accountable lead for implementing each commitment; and
  - iv. the estimated timelines associated with the fulfillment of each commitment.
- b) Update the status of the commitments in a) on its Project website and file these updates with the Commission on:

- i. a monthly basis until commencing operations; and
  - ii. every six months until the end of the fifth year following the commencement of operations.
- c) Maintain at its Project site during the life cycle of the Project:
  - i. the Commitments Tracking Table listing all regulatory commitments and their completion status, including those commitments resulting from NGTL's Application and subsequent filings and conditions from permits, authorizations and approvals;
  - ii. copies of any permits, approvals or authorizations issued by federal, provincial or other permitting authorities, which include environmental conditions or site specific mitigation or monitoring measures; and
  - iii. any subsequent variances to permits, approvals or authorizations in c) ii.

#### **14. Construction Schedule**

- a) NGTL must, **at least 14 days prior to the commencement of construction of the approved Section 52 Pipeline and Related Facilities**, file with the Commission a detailed construction schedule or schedules identifying major construction activities and must notify the Commission of any modifications to the schedule or schedules as they occur.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **15. Construction Emergency Management Preparedness and Response Planning**

- a) NGTL must file with the Commission, **at least 60 days prior to commencing construction**, the Emergency Response Plan, specific to the **Section 52 Pipeline and Related Facilities** that will be implemented during the construction phase of the **Section 52 Pipeline and Related Facilities**. The plan must include spill contingency measures that NGTL will employ in response to accidental spills attributable to construction activities, 24-hour medical evacuation, fire response and security.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **16. Terrain, Geotechnical and Hydrotechnical Assessments update**

NGTL shall file the hydrotechnical studies for the Project with the Commission **at least 60 days prior to commencing construction**. NGTL shall ensure that these studies address the following:

- a) the proposed pipeline burial depth at the Notikewin River provided that the scour depth is 1.9 m for a 1 in 100 year flood event and details of the selected installation method; and
- b) justification for the selected installation method at the Notikewin River and the Loon River based on the scour depth assessments at both watercourse crossings.

## **During Construction**

### **17. Loon River Contingency Crossing Attempt**

In the event that initial and contingency Horizontal Directional Drill crossing attempts at Loon River fail and NGTL resorts to an alternative crossing method to cross the Loon River, NGTL shall file a detailed description of the alternative crossing method, including design drawings, and any feasibility or engineering studies. This shall be filed with the Commission **15 days prior to implementing the alternative crossing method.**

### **18. Execution Plan and Engineering Drilling Fluid Plans for Loon River Horizontal Directional Drill**

NGTL shall file with the Commission, **at least 30 days prior to the commencement of Horizontal Directional Drill activities**, the Horizontal Directional Drill Execution Plan and Engineered Drilling Fluid Plan for Loon River. The plans should include but not limited to:

- a) detailed description of the construction operation and schedule, pipe pullback details, and casing plans; and
- b) a description of the drilling fluid selected, drilling fluid disposal plans, and how the drilling fluid will be used to manage the identified risks.

### **19. Sunset Clause**

This Certificate shall expire on [*three years from the date the Certificate is granted*], unless construction in respect of the **Section 52 Pipeline and Related Facilities** has commenced by that date.

### **20. Finalized Watercourse Crossing Inventory**

NGTL shall file with the Commission, **at least 60 days prior to commencing construction of any watercourse crossing**, the following:

- a) an updated inventory of all watercourses to be crossed, including, for each crossing:
  - i. the name of the watercourse being crossed and an identifier for the crossing;
  - ii. the location of the crossing;
  - iii. the primary crossing methods;
  - iv. timing of construction
  - v. information on the presence of fish and fish habitat;
  - vi. the fisheries timing window of least risk for each crossing; and
  - vii. an indication of whether there is potential for harmful alteration, disruption or destruction of fish or fish habitat, as defined by the *Fisheries Act*, as a result of the proposed watercourse crossing.
- b) For each watercourse crossing where there is potential for harmful alteration, disruption or destruction of fish or fish habitat, as indicated above in a) part vii, provide:
  - i. detailed crossing-specific design drawings;

- ii. photographs of the crossing location, including both upstream and downstream;
  - iii. a description of the fish species and habitat that is present at the crossing location, and whether fish spawning is likely to occur within the immediate area;
  - iv. the site-specific mitigation and habitat enhancement measures to be used to minimize impacts to fish;
  - v. any potential residual effects;
  - vi. proposed reclamation measures;
  - vii. a discussion of potential impacts to local fisheries resources within the immediate area as a result of the crossing construction; and
  - viii. a description of how NGTL has taken traditional land and resource use information from potentially affected Indigenous peoples into consideration in developing the watercourse crossing designs.
- c) NGTL must provide a copy of the condition filing to all Indigenous peoples who may be potentially affected by a watercourse crossing; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **21. Contingency Watercourse Crossing Method for the Loon River**

- a) Should NGTL employ a contingency crossing method, instead of its proposed primary crossing method for the Loon River, and where there is no potential harmful alteration, disruption or destruction of fish or fish habitat, as defined in the *Fisheries Act*, NGTL shall file with the Commission, a notification to this effect, **at least 10 days prior to commencing the contingency crossing**. In the notification, NGTL shall explain why the contingency method is being employed and provide a summary of the differences between the primary and contingency watercourse crossing methods.
- b) Should NGTL employ a contingency crossing method for the Loon River watercourse crossing, instead of its proposed primary method, and where the contingency crossing method poses a potential harmful alteration, disruption or destruction of fish or fish habitat, as defined in the *Fisheries Act*, NGTL shall file with the Commission **at least 30 days prior to commencing construction of the contingency watercourse crossing**:
  - i. confirmation of the contingency watercourse crossing method being employed, the rationale for employing that method, and a summary of the differences between the primary and contingency watercourse crossing methods;
  - ii. the following site-specific information:
    - a. detailed crossing-specific design drawings;
    - b. photographs of the crossing location, as well as upstream and downstream;
    - c. a description of the fish species and habitat that is present at the crossing location, and if fish spawning is likely to occur within the immediate area;



- d. the site-specific mitigation and habitat enhancement measures to be used to minimize impacts;
  - e. any potential residual effects;
  - f. proposed reclamation measures;
  - g. a discussion of the potential impacts to local fisheries resources within the immediate area as a result of the crossing's construction; and
  - h. a description of how NGTL has taken traditional land and resource use information from potentially affected Indigenous peoples into consideration in developing the watercourse crossing designs.
- c) NGTL shall file with the Commission, **at least 30 days prior to commencing construction of the contingency crossing method**, a summary of the consultation undertaken with appropriate government authorities, stakeholders and potentially affected Indigenous peoples in regard to a) and b) above, that includes:
- i. a description of the engagement activities undertaken;
  - ii. a summary of the comments and concerns raised; and
  - iii. how NGTL intends to address any outstanding concerns or an explanation of why no further steps will be undertaken.
- d) In any event that a contingency crossing method is employed, NGTL shall provide a notification to any Indigenous peoples potentially affected by the contingency crossing, **30 days prior to commencing construction of the contingency crossing**.
- e) In the event NGTL does not implement a contingency crossing at the Loon River, it must notify the Commission of such, **no later than 10 days after the commencement of operations**.

## **22. Authorizations under paragraph 35(2)(b) of the Fisheries Act**

- a) For any instream activities that will require an authorization under paragraph 35(2)(b) of the *Fisheries Act*, NGTL shall file with the Commission, **at least 10 days prior to commencing the respective instream activities**, a copy of the authorization under paragraph 35(2)(b) of the *Fisheries Act*;
- b) NGTL shall confirm, **within 30 days after commencing operations**, that any required *Fisheries Act* authorizations were obtained from Fisheries and Oceans Canada and were filed with the Commission pursuant to a), or notify the Commission if no Authorizations were required.

## **23. Hydrostatic Testing Plan**

NGTL shall file with the Commission, **at least 30 days prior to pressure testing**, a Hydrostatic Testing Plan for the **Section 52 Pipeline and Related Facilities** that includes:

- a) the location(s) of water withdrawal and discharge;
- b) clearing activities or any other associated works, if required, to allow for transport of the hydrostatic test water to the **Section 52 Pipeline and Related Facilities**;
- c) the rate(s) of water withdrawal;

- d) the volume(s) of water withdrawal;
- e) the flow rate/volume of water at withdrawal location(s); and
- f) any site-specific mitigation measures to be used at the water withdrawal and discharge locations, or at any other locations required to allow for the transport of hydrostatic test water.

#### **24. Construction Progress Reports**

NGTL must file with the Commission, **by the 16th day and by the last day of each month during construction**, construction progress reports. The report must include:

- a) information on the activities carried out during the reporting period;
- b) any environmental, socio-economic, safety and security issues and issues of noncompliance; and
- c) the measures undertaken for the resolution of each issue and noncompliance.

#### **25. Working within the Red Earth Caribou Range Restricted Activity Period**

- a) Clearing and construction activities within the Red Earth caribou range must occur outside of the Restricted Activity Period (RAP) for woodland caribou of 15 February to 15 July. In the event that working within the RAP for the Red Earth caribou range is unavoidable, NGTL must file with the Commission for approval, **at least 15 days prior to activities occurring within the RAP**:
  - i. a summary of consultation with Alberta Environment and Parks, Environment and Climate Change Canada, and any Indigenous peoples that expressed interest in the Red Earth caribou ranges during the GH-002-2019 hearing process, including a list of concerns and how these have been addressed, or a rationale for why the concerns have not been addressed;
  - ii. a description of the remaining and proposed work activities including, but not limited to the following:
    - a. a description of the scope of the work activities;
    - b. the proximity of each of the work activities to greenfield and other sensitive locations;
    - c. the predicted environmental effects of working within the RAP;
    - d. the specific mitigation that will be implemented to reduce the effects on the caribou; and
    - e. the predicted residual effects of the construction activities;
  - iii. a comparison of the alternatives to working within the RAP that were considered and assessed, including the potential impacts of each;
  - iv. a construction schedule for the remainder of the Project that includes each week NGTL intends to work within the RAP and includes but is not limited to the following:
    - a. each work activity;

- b. the dates each work activity will be conducted;
  - c. the workforce and equipment required for each work activity;
  - d. the location of each work activity with reference to the Environmental Alignment Sheets by Kilometre Post and Latitude and Longitude; and
  - e. if helicopters are required, the purpose of the helicopter plus the location and frequency of use;
- v. a report on the results from a caribou survey (including but not limited to telemetry) of the ROW and an appropriate buffer zone surrounding the area where activities will occur during the RAP. The survey will be conducted between three weeks to a month prior to the start of construction within the RAP. The report will include:
- a. timing of survey and method(s) used;
  - b. locations (Kilometre Post and Latitude and Longitude), dates and numbers of individual caribou sighted;
  - c. location and description of evidence of caribou use; and
  - d. description of the specific mitigation to be implemented and for how long;
- vi. documentation from a senior Alberta Environment and Parks manager authorizing activities between 15 February and 15 July. This documentation will include:
- a. minutes of meetings, conversation records, and letters with regard to approval of construction activity as described in part iv.; and
  - b. evidence that NGTL has contacted an appropriate qualified professional to discuss alternatives and potential mitigation and monitoring plans; and
- vii. any other pertinent information that may be relevant to the above.
- b) NGTL must also provide a copy of the information required by this condition to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

The Commission notes that although Alberta Environment and Parks has authority over certain activities occurring in the Red Earth caribou range, the Commission maintains jurisdiction and oversight of the work being conducted on federally regulated Rights-of-way. The Commission expects NGTL to make every effort possible to avoid work during the RAP in the Red Earth caribou range.

### **Post-construction and Operations**

#### **26. Condition Compliance by the Accountable Officer**

**Within 30 days of the date that the approved Project is placed in service**, NGTL shall file with the Commission confirmation that the approved Project was completed and constructed in

compliance with all applicable conditions in this Certificate. If compliance with any of these conditions cannot be confirmed, NGTL shall file with the Commission details as to why compliance cannot be confirmed. The filing required by this condition shall include a statement confirming that the signatory to the filing is the accountable officer of NGTL, appointed as Accountable Officer pursuant to section 6.2 of the OPR.

### ***27. Training, Employment, Contracting, and Procurement Report***

- a) NGTL shall file with the Commission, **within 3 months after the date that the last Order for Leave to Open is issued**, a report on all employment, contracting, and procurement for the Project, that shall include, but is not limited to:
  - i. a summary of any training needs identified by Indigenous peoples to be able to access contracting and employment opportunities for the Project, and a description of how NGTL has or will support Indigenous peoples in meeting these training needs;
  - ii. a summary of the employment, contracting, and procurement elements or indicators monitored;
  - iii. a summary of local and regional employment and business opportunities, including for Indigenous peoples, created during the reporting period;
  - iv. the numbers of self-identified Indigenous-owned businesses and individuals employed; and
  - v. a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous peoples and local, regional, community, and industry groups or representatives, regarding potential training, employment and business opportunities on the Project.
- b) NGTL shall also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it provided those copies.

### ***28. Post-Construction Monitoring Plan for Indigenous Peoples***

- a) NGTL shall file with the Commission, **within 90 days after the date that the last Order for Leave to Open is issued**, a plan describing participation by Indigenous peoples in monitoring activities during post-construction of the **Section 52 Pipeline and Related Facilities**. The plan shall include, but not be limited to:
  - i. a summary of engagement and planning activities undertaken with Indigenous peoples to develop opportunities for their participation in monitoring activities;
  - ii. a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, or an explanation as to why any results have not been incorporated;
  - iii. a list of the Indigenous peoples that have reached agreement with NGTL to participate as monitors;
  - iv. a description of the anticipated training and participant requirements, including potential certifications;

- v. the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii, including those elements of post-construction and operation, and geographic locations that will involve monitor(s);
  - vi. a description of how NGTL will use the information gathered through the participation of monitors; and
  - vii. a description of how NGTL will provide the information gathered through the participation of monitors to the participating Indigenous peoples.
- b) NGTL shall provide a copy of the plan to those Indigenous peoples identified in a) iii; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **29. Post-Construction Environmental Monitoring Reports**

- a) On or before the 31 of January following each of the first, third and fifth complete growing seasons after completing final clean-up, NGTL shall file with the Commission a post-construction environmental monitoring report (report) that:
- i. describes the methodology used for monitoring, including any relevant methodology or criteria identified in the Post-Construction Monitoring Plan for Indigenous peoples (Condition 28), the criteria established for evaluating success and the results found;
  - ii. identifies any modifications for the criteria established for evaluating reclamation success described in its Environmental Protection Plan and the rationale for any modifications;
  - iii. identifies the issues to be monitored, including but not limited to any issues identified by the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 28), any unexpected issues that arose during construction, and their locations (e.g. on a map or diagram, in a table);
  - iv. describes the current status of the issues (resolved or unresolved), any deviations from plans and corrective actions undertaken;
  - v. assesses the effectiveness of mitigation measures, both planned and corrective, against the criteria for success;
  - vi. includes a detailed summary of NGTL's consultation undertaken with the appropriate provincial and federal authorities, and affected Indigenous peoples and a detailed description of how this consultation informed and/or modified NGTL's environmental monitoring program;
  - vii. a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous peoples, including:
    - a. a summary of monitoring opportunities for Indigenous peoples created during the reporting period; and
    - b. the numbers of self-identified Indigenous-owned businesses and individuals employed;
  - viii. provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns; and

- ix. includes an evaluation of the effectiveness of access control measures.

The report shall include, but is not limited to, information specific to the effectiveness of mitigation applied to minimize effects on: soils, weeds, watercourse crossings, wetlands, wildlife and wildlife habitat, Key Wildlife and Biodiversity Zones, wildlife species at risk and of special concern, including caribou, and fish and fish habitat.

- b) NGTL shall provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing**, provide confirmation to the Commission that it has provided those copies.

### ***30. Caribou Habitat Restoration Implementation Report and Status Update***

- a) NGTL shall file with the Commission for approval, a Caribou Habitat Restoration Implementation Report and Status Update on the implementation and status of caribou habitat restoration measures undertaken on the Project ROW in areas of the Project within caribou habitat. This report shall be filed **on or before 1 November after the implementation of the restoration measures** and shall include, at a minimum:
  - i. a table of caribou habitat restoration measures implemented including their location on the ROW, their distance or spatial extent, the site-specific method applied at each location, a description of the adjacent off-ROW habitat, as well as any site-specific challenges;
  - ii. updated Environmental Alignment Sheets showing the types of measures implemented and at what locations;
  - iii. a quantitative assessment and populated tables of the total remaining disturbance (direct and indirect) that was carried into the initial offset value calculation, including the disturbance before restoration, the restored footprint and the total remaining disturbance;
  - iv. updates to consultation logs;
  - v. offset measures planning status; and
  - vi. updates or considerations, if any, from any relevant federal and/or provincial range or action plans.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy, to Environment and Climate Change Canada, and to all appropriate provincial authorities; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

### ***31. Caribou Habitat Offset Measures Implementation Report***

- a) NGTL shall file with the Commission for approval, a Caribou Habitat Offset Measures Implementation Report (CHOMIR) demonstrating how all Project related residual effects from directly and indirectly disturbed caribou habitat have been offset. This implementation report shall be filed **on or before 31 March after the implementation of offset measures** and shall include:
  - i. a summary of consultation, planning and engagement activities with Indigenous peoples that expressed an interest in being involved with the CHOMIR and related filings during the GH-002-2019 hearing process,

regarding development and finalization of the CHOMIR. These summaries shall include but not be limited to:

- a. any recommendations or input provided regarding the development of the CHOMIR for the Project, how any input or recommendations informed and were incorporated into the final report, and an explanation, as applicable, why any input or recommendations were not incorporated;
  - b. any comments and concerns raised specific to the CHOMIR;
  - c. a description of how NGTL has addressed or will address the concerns or comments raised;
  - d. a description of any outstanding concerns; and
  - e. a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken;
- ii. an inventory of what measures were implemented, at what map locations, for what distance or spatial area, and on what type of previous disturbance (e.g., type, width, age, condition);
  - iii. a description of factors considered when determining the location for offset measures, including consideration of both site-specific factors, landscape-level factors and how the selected locations optimized landscape restoration or preservation;
  - iv. how the measures at those locations met the Offset Measures Plan criteria for offsets;
  - v. a quantitative assessment of the final offset value calculations, based on the revised Caribou Habitat Restoration and Offset Measures Plan and inventory of measures implemented from a), and demonstrating how the offset measures have offset the previously calculated residual effects; and
  - vi. evidence of how consultation feedback was integrated into the implementation of offsets, including:
    - a. any feedback from federal or provincial authorities; and
    - b. any potentially affected Indigenous peoples whose traditional territory is located where the offset measures may be implemented.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy, to Environment and Climate Change Canada, and to all appropriate provincial authorities; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

### ***32. Caribou Habitat Restoration and Offset Measures Monitoring Program***

- a) NGTL shall file with the Commission for approval, **on or before 31 March after the second complete growing season after commencing operation of the Project**, a Caribou Habitat Restoration and Offset Measures Monitoring Program for monitoring and verifying the effectiveness of the caribou habitat restoration and offset measures

implemented as part of the Caribou Habitat Restoration and Offset Measures Plan. This Caribou Habitat Restoration and Offset Measures Monitoring Program shall include, but not be limited to:

- i. a summary of consultation, planning and engagement activities with Indigenous peoples that expressed an interest in being involved with the Caribou Habitat Restoration and Offset Measures Monitoring Program and related filings during the GH-002-2019 hearing process, regarding development and finalization of the Caribou Habitat Restoration and Offset Measures Monitoring Program. These summaries shall include but not be limited to:
  - a. any recommendations or input provided regarding the development of the Caribou Habitat Restoration and Offset Measures Monitoring Program for the Project, how any input or recommendations informed and were incorporated into the final report, and an explanation, as applicable, why any input or recommendations were not incorporated;
  - b. any comments and concerns raised by Dene Tha First Nation, Driftpile Cree Nation, and Peerless Trout First Nation specific to the Caribou Habitat Restoration and Offset Measures Monitoring Program;
  - c. a description of how NGTL has addressed or will address the concerns or comments raised;
  - d. a description of any outstanding concerns; and
  - e. a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken;
- ii. the scientific methodology and protocols for short-term and long-term monitoring of the restoration and offset measures, including the appropriate duration of monitoring for each type of measure implemented;
- iii. sufficient sampling and control locations to provide statistical validity for each measure, accounting for ecological conditions;
- iv. protocols for how restoration and offset measures will be adapted, as required, based on the monitoring results from either this Program or other NGTL Caribou Habitat Restoration and Offset Measures Monitoring Plans or Programs;
- v. a quantitative assessment that demonstrates how the previously calculated residual effects have been offset by the measures implemented, to be updated in each report based on monitoring results; and
- vi. a schedule for filing reports of monitoring results and the adaptive management responses, to the Commission, Environment and Climate Change Canada and provincial authorities to be contained in the Caribou Habitat Restoration and Offset Measures Monitoring Program as well as at the beginning of each report filed.



- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

### **33. Caribou Monitoring Reports**

NGTL shall file with the Commission for approval, in accordance with the schedule referred to in the Caribou Habitat Restoration and Offset Measures Monitoring Program (Condition 32), Caribou Monitoring Report(s), outlining the results of the Caribou Habitat Restoration and Offset Measures Monitoring Program. NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing** provide confirmation to the Commission that it has provided those copies.

### **34. Pipeline Geographic Information System (GIS) Data**

NGTL must file with the Commission, **within one year after commencing operations**, as built GIS data in the form of Esri® shapefiles. This must include:

- a) a file that contains all pipeline segment center lines (with line geometry type), where each segment has unique attribute values of outside diameter, wall thickness, maximum operating pressure, external coating, field-applied girth weld coating, pipe manufacturing specification and depth of cover. If above values of the pipeline change at any point along the pipeline, the pipeline must be segmented at that point. Spatial reference specification: GCS\_North\_American\_1983\_CSRS. WKID: 4617, Authority: EPSG, Unit of Measure for linear attributes: Metric. This file must include details on the degree of accuracy of the GIS data: better than +/- 0.1m (8 Decimal Digits for geometry); and
- b) a file that depicts point locations and names of compressor stations, terminals, custody transfer meters, and block valves, as applicable. The datum must be NAD83 and projection must be geographic (latitudes and longitudes).

The filing required by the condition must include a statement confirming that the signatory to the filing is the Accountable Officer of NGTL.

# Appendix II – Conditions for the Section 58 NEB Act Order

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In this Appendix, the meanings of the terms and expressions below (in bold) are described in the Glossary.

## **General**

### **1. Condition Compliance**

NGTL shall comply with all of the conditions contained in this Order, unless the Commission otherwise directs.

### **2. Section 58 Facilities and Activities Design, Location, Construction and Operation**

NGTL shall cause the **Section 58 Facilities and Activities** to be designed, located, constructed, and operated in accordance with the specifications, standards, commitments made and other information included in its Application and otherwise made on the GH-002-2019 hearing record.

### **3. Environmental Protection**

NGTL shall implement or cause to be implemented all of the policies, practices, programs, mitigation measures, recommendations, procedures and its commitments for the protection of the environment included in or referred to in its Application and otherwise made on the GH-002-2019 hearing record.

## **Prior to Construction**

### **4. Report on Engagement with Indigenous Peoples**

- a) NGTL shall file with the Commission, **at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, and every **3 months thereafter** until completing construction, a report summarizing NGTL's engagement with all potentially affected Indigenous peoples. The first reporting period should include updates from 8 April 2020 onward<sup>21</sup>. These reports shall include but not be limited to:
  - i. the methods, dates, and locations of consultation activities, including site visits;
  - ii. a summary of the concerns raised by Indigenous peoples;
  - iii. a description of how NGTL has addressed or will address the concerns raised;
  - iv. a description of any outstanding concerns; and

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<sup>21</sup> NGTL's most recent engagement update was for the period of 20 February 2020 to 7 April 2020, as filed with [C05684](#), NGTL's Reply Evidence, pages 2-8 (PDF pages 6-12 of 94)

- v. a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.
- b) NGTL shall also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **5. Indigenous Peoples Employment, Contracting, and Procurement Plan Update**

- a) NGTL shall file with the Commission **at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, an update on employment, contracting and procurement for Indigenous peoples that includes:
  - i. a copy of the Prime Contractor's Aboriginal Participation Plan;
  - ii. a copy of NGTL's Aboriginal Contracting and Employment Program; and
  - iii. a summary of how the Prime Contractor's Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.
- b) NGTL shall also provide a copy of the plan to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **6. Construction Monitoring Plan for Indigenous Peoples**

- a) NGTL shall file with the Commission, **at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, a plan describing the participation of Indigenous peoples in monitoring activities during construction. Activities would include monitoring for adverse environmental impacts, heritage resources, areas related to traditional land and resource uses, and areas of cultural significance. The plan shall include, but not be limited to:
  - i. a summary of engagement and planning activities undertaken with Indigenous peoples to develop opportunities for their participation in monitoring activities;
  - ii. a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, or an explanation as to why any results have not been incorporated;
  - iii. a list of Indigenous peoples who have reached agreement with NGTL to participate as monitors;
  - iv. description of the anticipated training and participant requirements, including potential certifications for the Indigenous peoples monitors;
  - v. the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii, including those elements of construction and geographic locations that will involve monitors;
  - vi. a description of how NGTL will use and incorporate the information gathered through the participation of monitors and apply it to the Project; and
  - vii. a description of how, what form, and the timeframe in which NGTL will

provide the information gathered through the participation of monitors to the participating Indigenous peoples.

- b) NGTL shall provide a copy of the plan to those Indigenous peoples identified in a) iii; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **7. Outstanding Traditional Land and Resource Use Investigations**

- a) NGTL shall file with the Commission for approval, **at least 45 days prior to commencing construction of the Section 58 Facilities and Activities**, a report on any outstanding traditional land and resource use investigations for the Project. The report shall include, but not be limited to:
  - i. a summary of the status of investigations undertaken for the Project, including Indigenous community-specific studies or planned supplemental surveys;
  - ii. a description of how NGTL has considered and addressed information from any investigations on which it did not report during the GH-002-2019 hearing process;
  - iii. a description of any outstanding concerns raised by potentially-affected Indigenous peoples regarding potential effects of the Project on the current use of lands and resources for traditional purposes, including a description of how these concerns have been or will be addressed by NGTL, or a detailed explanation why these concerns will not be addressed by NGTL;
  - iv. a summary of any outstanding investigations or follow-up activities that will not be completed prior to commencing construction, including an explanation why they are not being completed prior to construction; an estimated completion date, if applicable;
  - v. a description of how NGTL has already identified, or will identify, any potentially-affected traditional land and resource use sites or resources if the outstanding investigations will not be completed prior to construction; and
  - vi. a description of how NGTL has incorporated any revisions necessitated by the investigations or follow-up activities into the Environmental Protection Plan for the Project, or, if appropriate, into NGTL lifecycle oversight.
- b) NGTL shall also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it provided those copies.

## **8. Heritage Resource Clearances**

- a) NGTL shall file with the Commission, at least 30 days prior to commencing construction of the Section 58 Facilities and Activities:
  - i. confirmation, signed by the Accountable Officer of the company, that NGTL has obtained all of the required archaeological and heritage resource clearances from the Alberta Ministry of Culture, Multiculturalism and Status of Women;

- ii. a description of how NGTL will meet any conditions and respond to any comments and recommendations contained in the clearances referred to in i; and
  - iii. a description of how NGTL has incorporated additional mitigation measures into its Environmental Protection Plan as a result of conditions, comments, or recommendations referred to in ii.
- b) NGTL shall also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy of this information; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **9. Construction Camp Management Plan**

- a) NGTL shall file with the Commission, **at least 45 days prior to commencing construction at any of the temporary construction camp sites**, a Construction Camp Management Plan that applies to all construction camps, including:
- i. a list of any applicable legislative requirements;
  - ii. a copy of the Code of Conduct for camp residents;
  - iii. confirmation that camp residents will be provided all appropriate orientation materials including information regarding Indigenous culture, history and traditional land use and best practices regarding conducting work activities with integrity, mutual respect and collaboration with Indigenous peoples;
  - iv. confirmation that NGTL has inquired with Indigenous peoples with traditional territory in the vicinity of the temporary construction camp sites regarding their potential interest in providing any elements of training regarding Indigenous culture, history and traditional land use as referenced in iii above, outline the steps that NGTL has taken to facilitate feedback, and summarize how feedback was considered in the finalization of the training material; and
  - v. a summary of training that will be specifically provided to camp residents regarding gender-based issues or impacts.
- b) NGTL shall also file a summary of NGTL's and/or its Prime Contractor(s)' consultation activities regarding the camps and/or the Construction Camp Management Plan with the relevant municipalities, regional authorities, and any potentially affected stakeholders and Indigenous peoples not already reported in the GH-02-2019 proceeding, including:
- i. a summary of any comments and concerns raised specific to the camps and/or the Construction Camp Management Plan;
  - ii. a description of how NGTL has addressed or will address the concerns or comments raised;
  - iii. a description of any outstanding concerns; and
  - iv. a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken.

- c) NGTL shall provide a copy of the plan and consultation summary to those who raised issues or concerns in b); and NGTL shall, **within 7 days of the filing of a) and b)**, provide confirmation to the Commission that it provided those copies.

**10. Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about Temporary Infrastructure Locations**

NGTL shall file with the Commission, **at least 30 days prior to commencing construction of the Section 58 Facilities and Activities**, an update on planning and engagement activities conducted with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation regarding temporary infrastructure locations (e.g., construction camps, equipment and staging areas) approved pursuant to this Order. The update shall include:

- a) a list of the locations and dimensions of temporary infrastructure locations (e.g., construction camps, equipment and staging areas);
- b) a summary of consultation and planning activities with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation regarding temporary infrastructure locations (e.g., construction camps, equipment and staging areas). The first reporting period should include updates from 19 February 2020 onward.<sup>22</sup> These reports shall include but, not be limited to:
  - i. a summary of any recommendations or input provided by Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation regarding the siting of temporary infrastructure locations (e.g., equipment and staging areas) including construction camp locations for the Project, how any input or recommendations informed the final temporary infrastructure and workspaces locations, and an explanation, as applicable, why any recommendations were not incorporated;
  - ii. a summary of any comments and concerns raised by Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation specific to temporary infrastructure locations (e.g., construction camps, equipment and staging areas);
  - iii. a description of how NGTL has addressed or will address the concerns or comments raised;
  - iv. a description of any outstanding concerns;
  - v. a description of how NGTL intends to address any outstanding concerns, or an explanation as to why no further steps will be taken; and
  - vi. a summary showing how input from Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation has influenced the design, construction or operation of the Project specific to temporary infrastructure locations (e.g., construction camps, equipment and staging areas).
- c) NGTL shall also provide a copy of the update to Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation, if desired; and NGTL shall, **within 7**

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<sup>22</sup> NGTL's most recent engagement update was for the period of 2 November 2019 to 19 February 2020, and was filed with [C04972-1](#), NGTL Response to CER IR No.3, IR 3.4, pages 1-18 (PDF pages 11-28 of 94).

**days of the filing in a)**, provide confirmation to the Commission that it provided, or offered to provide, those copies.

### **11. Emergency Management Continuing Education Program**

- a) NGTL shall file with the Commission, **at least 30 days prior to commencing construction**, a Project-specific plan (Plan) that outlines the development of a continuing education program for the Project (Program) and how it would be incorporated into the broader continuing education program required by section 35 of the OPR (SOR/99-294). The Plan shall include:
- i. a list of potentially affected Indigenous peoples, first responders (for example, police, fire departments, medical facilities), and any other appropriate organizations, government authorities or agencies (for example, municipalities) that have been identified for consultation and the results of consultation to date;
  - ii. the goals, principles and objectives for consultation for the development of the Program including evidence of how consultation feedback was integrated into the Program;
  - iii. a description of how information provided by potentially affected Indigenous peoples, first responders or any other appropriate organizations, government authorities or agencies will be incorporated into the Program, including a description of NGTL's procedure to communicate to potentially affected parties how their information will be incorporated into the Program and justification for why any information may not have been incorporated into the Program;
  - iv. a description of how Program information would be communicated or distributed to potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies, including how NGTL will address any requests from potentially affected Indigenous peoples to have Program information translated into the local Indigenous language; and
  - v. a summary of the information to be included in the Program, including:
    - a. potential emergency situations involving the **Section 58 Facilities and Activities**, including but not limited to, spills or releases and incidents as defined by the NEB Event Reporting Guidelines;
    - b. the safety procedures to be followed in the case of an emergency;
    - c. a description of how NGTL will conduct annual testing of emergency contact information, including with Indigenous peoples, and how NGTL will ensure the group being contacted has up-to-date company emergency contact information as well;
    - d. the methods by which potentially affected Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies can contact NGTL in the case of an emergency situation; and
    - e. the methods by which NGTL can contact potentially affected

Indigenous peoples, first responders, and any other appropriate organizations, government authorities and agencies in the case of an emergency situation.

- b) NGTL shall also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

## **12. Programs and Manuals**

NGTL shall file with the Commission, **at least 30 days prior to commencing construction**, confirmation that a Construction Safety Manual(s) pursuant to section 20 of the OPR that includes a description of the roles and responsibilities of the company representatives and its contractor(s) supervisory roles is in place for the Project. This confirmation shall be signed by the Accountable Officer of the Company.

## **13. Environmental Protection Plan (EPP) for Section 58 Facilities and Activities**

- a) NGTL shall file with the Commission, for approval, **at least 45 days prior to commencing construction**, updated EPPs (including Environmental Alignment Sheets) specific to the **Section 58 Facilities and Activities**. The updated version of the EPP is to include revisions based on evidence provided during the hearing process. The updated EPP must include, but not be limited to, the following:
- i. environmental protection procedures (including site-specific plans), criteria for implementing these procedures, mitigation measures and monitoring applicable to all Project phases and activities;
  - ii. any updates to contingency plans and management plans;
  - iii. a description of the condition to which NGTL intends to reclaim and maintain the rights-of-way, once construction has been completed, and a description of measurable goals for reclamation;
  - iv. a list of measures to be taken during construction to minimize disturbance to caribou and caribou habitat and help accelerate habitat restoration, including:
    - a. any provincial and federal best practices, requirements and timing restrictions specifically related to minimizing construction disturbance; and
    - b. the criteria for where those measures will be taken;
  - v. all specific mitigation related to species at risk and their habitat, and Key Wildlife and Biodiversity Zones;
  - vi. a list of any site-specific mitigation measures that were developed, if any, in response to traditional land and resource use sites identified by Indigenous peoples;
  - vii. updated environmental alignment sheets;
  - viii. evidence demonstrating that consultation took place with relevant government authorities, where applicable; and
  - ix. a revision log of the updates made, the reference where the updates can



be found in the revised document, as well as the reference from the hearing evidence for each update.

- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **14. Construction Schedule**

- a) NGTL must, **at least 14 days prior to the commencement of construction of the approved Section 58 Facilities and Activities**, file with the Commission a detailed construction schedule or schedules identifying major construction activities and must notify the Commission of any modifications to the schedule or schedules as they occur.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **15. Construction Emergency Management Preparedness and Response Planning**

- a) NGTL must file with the Commission, **at least 60 days prior to commencing construction**, the Emergency Response Plan, specific to the **Section 58 Facilities and Activities** that will be implemented during the construction phase of the **Section 58 Facilities and Activities**. The plan must include spill contingency measures that NGTL will employ in response to accidental spills attributable to construction activities, 24-hour medical evacuation, fire response and security.
- b) NGTL must also provide a copy to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL must, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

#### **16. Commitments Tracking Table**

NGTL shall:

- a) File with the Commission and post on its Project website, within 90 days from the date of this Order and at least 30 days prior to commencing construction on the Section 58 Facilities and Activities, a Commitments Tracking Table listing all commitments made by NGTL, including to Indigenous peoples, in its Application, and otherwise made on the GH-002-2019 hearing record, and that includes references to:
  - i. the documentation in which the commitment appears (for example, the Application, responses to Information Requests, hearing transcripts, permit requirements, condition filings, or other);
  - ii. traditional land and resource use information from potentially affected Indigenous peoples;
  - iii. the accountable lead for implementing each commitment; and
  - iv. the estimated timelines associated with the fulfillment of each commitment.
- b) Update the status of the commitments in a) on its Project website and file these updates with the Commission on:
  - i. a monthly basis until commencing operations; and

- ii. every six months until the end of the fifth year following the commencement of operations.
- c) Maintain at its Project site during the life cycle of the Project:
  - i. the Commitments Tracking Table listing all regulatory commitments and their completion status, including those commitments resulting from NGTL's Application and subsequent filings and conditions from permits, authorizations and approvals;
  - ii. copies of any permits, approvals or authorizations issued by federal, provincial or other permitting authorities, which include environmental conditions or site specific mitigation or monitoring measures; and
  - iii. any subsequent variances to permits, approvals or authorizations in c) ii.

### **During Construction**

#### **17. Sunset Clause**

This Order shall expire on [*three years from the date the Order is granted*], unless construction in respect of the **Section 58 Facilities and Activities** has commenced by that date.

#### **18. Construction Progress Reports**

NGTL must file with the Commission, **by the 16th day and by the last day of each month during construction**, construction progress reports. The report must include:

- a) information on the activities carried out during the reporting period;
- b) any environmental, socio-economic, safety and security issues and issues of noncompliance; and
- c) the measures undertaken for the resolution of each issue and noncompliance.

#### **19. Technical Specification Updates**

NGTL must file any technical specification updates for the components listed in the Section 58 Order **concurrently with applicable Leave to Open application(s)**. Technical specification updates are limited to differences in pipe length, diameter, wall thickness, grade or material that do not impact any other aspect of the Project as approved.

### **Post-constructions and Operations**

#### **20. Condition Compliance by the Accountable Officer**

**Within 30 days of the date that the approved Project is placed in service**, NGTL shall file with the Commission confirmation that the approved Project was completed and constructed in compliance with all applicable conditions in this Order. If compliance with any of these conditions cannot be confirmed, NGTL shall file with the Commission details as to why compliance cannot be confirmed. The filing required by this condition shall include a statement confirming that the signatory to the filing is the accountable officer of NGTL, appointed as Accountable Officer pursuant to subsection 6.2 of the OPR.

## **21. Training, Employment, Contracting, and Procurement Report**

- a) NGTL shall file with the Commission, within 3 months after the date that the last Order for Leave to Open is issued, a report on all employment, contracting, and procurement for the Project, that shall include, but is not limited to:
  - i. a summary of any training needs identified by Indigenous peoples to be able to access contracting and employment opportunities for the Project, and a description of how NGTL has or will support Indigenous peoples in meeting these training needs;
  - ii. a summary of the employment, contracting, and procurement elements or indicators monitored;
  - iii. a summary of local and regional employment and business opportunities, including for Indigenous peoples, created during the reporting period;
  - iv. the numbers of self-identified Indigenous-owned businesses and individuals employed; and
  - v. a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous peoples and local, regional, community, and industry groups or representatives, regarding potential training, employment and business opportunities on the Project.
- b) NGTL shall also provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it provided those copies.

## **22. Post-Construction Monitoring Plan for Indigenous Peoples**

- a) NGTL shall file with the Commission, **within 90 days after the date that the last Order for Leave to Open is issued**, a plan describing participation by Indigenous peoples in monitoring activities during post-construction of the **Section 58 Facilities and Activities**. The plan shall include, but not be limited to:
  - i. a summary of engagement and planning activities undertaken with Indigenous peoples to develop opportunities for their participation in monitoring activities;
  - ii. a description of how the results from its engagement with Indigenous peoples were incorporated into the plan, or an explanation as to why any results have not been incorporated;
  - iii. a list of the Indigenous peoples that have reached agreement with NGTL to participate as monitors;
  - iv. a description of the anticipated training and participant requirements, including potential certifications;
  - v. the scope, methodology, and justification for monitoring activities to be undertaken by NGTL and each participant identified in a) iii, including those elements of post-construction and operation, and geographic locations that will involve monitor(s);
  - vi. a description of how NGTL will use the information gathered through the

- participation of monitors; and
  - vii. a description of how NGTL will provide the information gathered through the participation of monitors to the participating Indigenous peoples.
- b) NGTL shall provide a copy of the plan to those Indigenous peoples identified in a) iii; and NGTL shall, **within 7 days of the filing in a)**, provide confirmation to the Commission that it has provided those copies.

### **23. Post-Construction Environmental Monitoring Reports**

- a) On or before the 31 of January following each of the first, third and fifth complete growing seasons after completing final clean-up, NGTL shall file with the Commission a post-construction environmental monitoring report (report) that:
- i. describes the methodology used for monitoring, including any relevant methodology or criteria identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22), the criteria established for evaluating success and the results found;
  - ii. identifies any modifications for the criteria established for evaluating reclamation success described in its Environmental Protection Plan and the rationale for any modifications;
  - iii. identifies the issues to be monitored, including but not limited to any issues identified the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 22), any unexpected issues that arose during construction, and their locations (e.g. on a map or diagram, in a table);
  - iv. describes the current status of the issues (resolved or unresolved), any deviations from plans and corrective actions undertaken;
  - v. assesses the effectiveness of mitigation measures, both planned and corrective, against the criteria for success;
  - vi. includes a detailed summary of NGTL's consultation undertaken with the appropriate provincial and federal authorities, and affected Indigenous peoples and a detailed description of how this consultation informed and/or modified NGTL's environmental monitoring program;
  - vii. a summary of NGTL's engagement efforts, undertaken during the reporting period, with relevant Indigenous peoples, including:
    - a. a summary of monitoring opportunities for Indigenous peoples created during the reporting period; and
    - b. the numbers of self-identified Indigenous-owned businesses and individuals employed;
  - viii. provides proposed measures and the schedule that NGTL would implement to address ongoing issues or concerns; and
  - ix. includes an evaluation of the effectiveness of access control measures.

The report shall include, but is not limited to, information specific to the effectiveness of mitigation applied to minimize effects on: soils, weeds, watercourse crossings, wetlands, wildlife

and wildlife habitat, Key Wildlife and Biodiversity Zones, wildlife species at risk and of special concern, including caribou, and fish and fish habitat.

- b) NGTL shall provide a copy of the report to all Indigenous peoples who have expressed an interest in receiving a copy; and NGTL shall, **within 7 days of the filing**, provide confirmation to the Commission that it has provided those copies.

## Appendix III – Rulings, Procedural Directives and Other Commission Statements

Date	Filing ID	Description
31-May-2019	A99730	<p>Notice of Hearing</p> <ul style="list-style-type: none"> <li>• Established the Application to Participate process.</li> <li>• Granted Indigenous peoples potentially impacted by the Project Pre-Decided Standing in the process at the level of their choosing.</li> <li>• Sought comments on preliminary List of Issues, the preliminary Factors and Scope of Factors to be considered in the Environmental Assessment and the tentative hearing process from interested parties.</li> <li>• Includes Errata that corrects the deadline for NGTL to file reply to any comments received from interested parties on the above issues.</li> </ul>
12-Jun-2019	A99909	<p>Letter to Environment and Climate Change Canada</p> <ul style="list-style-type: none"> <li>• Notification to Minister of the Environment that the Project may affect species listed on Schedule 1 of the <i>Species at Risk Act</i>.</li> </ul>
16-Aug-2019	C01057	<p>Ruling No. 1</p> <ul style="list-style-type: none"> <li>• Determined participation (or standing) and the manner of participation in the hearing.</li> <li>• Established the List of Parties (NGTL and Intervenors) and the List of Commenters.</li> </ul>
26-Aug-2019	C01209	<p>Hearing Order/Application Completeness</p> <ul style="list-style-type: none"> <li>• Established the hearing process steps and provided deadlines for the initial hearing steps.</li> <li>• Finalized the List of Issues and the Factors and Scope of Factors to be considered in the Environmental Assessment.</li> <li>• Application was deemed complete and a time limit of 15 months for the NEB/Commission to issue its Report was established.</li> </ul>
18-Sept-2019	C01703	<p>Ruling No. 2</p> <ul style="list-style-type: none"> <li>• Accepted the late Application to Participate Form of Peerless Trout First Nation and granted them Intervenor status in the hearing.</li> </ul>

7-Oct-2019	C02109	<p>Errata to C01209</p> <ul style="list-style-type: none"> <li>• Correction to the amount of Participant Funding awarded for the Project.</li> </ul>
22-Oct-2019	C02359	<p>Procedural Directive No. 1</p> <ul style="list-style-type: none"> <li>• Invited all Indigenous peoples who were Intervenor in the hearing process to share oral Indigenous knowledge in Peace River, AB from 3 – 8 February 2020.</li> <li>• Offered alternative dates for sharing of oral Indigenous knowledge via remote participation.</li> <li>• Provided some process information related to the oral Indigenous knowledge sessions.</li> <li>• Requested Indigenous peoples who participated in the hearing process as Intervenor to file a Notice of Intent to share oral Indigenous knowledge.</li> </ul>
3-Dec-2019	C03394	<p>Ruling No. 3</p> <ul style="list-style-type: none"> <li>• Revised the written evidence deadline for Peerless Trout First Nation.</li> </ul>
19-Dec-2019	C03827	<p>Procedural Directive No. 2</p> <ul style="list-style-type: none"> <li>• Set the schedule for oral Indigenous knowledge sessions.</li> <li>• Established an Information Request opportunity for NGTL and Intervenor to test Intervenor evidence, including oral Indigenous knowledge.</li> <li>• Established deadlines for the remaining hearing process steps.</li> </ul>
23-Jan-2020	C04260	<p>Ruling No. 4</p> <ul style="list-style-type: none"> <li>• Allowed for filing of confidential evidence from Dene Tha' First Nation.</li> </ul>
27-Jan-2020	C04312	<p>Ruling No. 5</p> <ul style="list-style-type: none"> <li>• Granted late participation in the oral Indigenous knowledge sessions for Peerless Trout First Nation and Papaschase Cree Nation.</li> <li>• Procedural Directive No. 3</li> <li>• Updated the oral Indigenous knowledge session schedule to include Peerless Trout First Nation and Papaschase Cree Nation.</li> </ul>
5-Feb-2020	C04559	<p>Ruling No. 6 (oral ruling at oral Indigenous knowledge session)</p> <ul style="list-style-type: none"> <li>• Allowed for the sharing of oral Indigenous knowledge from Bigstone Cree Nation to be in confidence.</li> </ul>

5-Feb-2020	C04543	Ruling No. 7 <ul style="list-style-type: none"> <li>Allowed for the late filing of evidence from Peavine Métis Settlement.</li> </ul>
6-Feb-2020	C04569	Ruling No. 8 (oral ruling at oral Indigenous knowledge session) <ul style="list-style-type: none"> <li>Allowed for the sharing of a portion of the oral Indigenous knowledge from Driftpile Cree Nation to be in confidence.</li> </ul>
10-Mar-2020	C05126	Ruling No. 9 <ul style="list-style-type: none"> <li>Granted an extension to the deadline to respond to NGTL Information Request No. 1 to Duncan's First Nation.</li> <li>Revised the deadline for NGTL to file Reply Evidence to 26 March 2020.</li> </ul>
13-Mar-2020	C05216	Ruling No. 10 <ul style="list-style-type: none"> <li>Granted an extension to the deadline to respond to NGTL Information Request No. 1 to Driftpile Cree Nation, Louis Bull Tribe and Whitefish Lake First Nation #459.</li> </ul>
23-Mar-2020	C05405	Ruling No. 11 <ul style="list-style-type: none"> <li>Granted Intervenor status in the proceeding to Foothills First Nation.</li> <li>Allowed for Foothills First Nation to participate in the remaining hearing steps.</li> </ul>
25-Mar-2020	C05450	Procedural Directive No. 4 <ul style="list-style-type: none"> <li>Revised the schedule for the remaining hearing process steps.</li> </ul>
25-Mar-2020	C05451	Ruling No. 12 <ul style="list-style-type: none"> <li>Granted a second extension to the deadline to respond to NGTL Information Request No. 1 to Duncan's First Nation.</li> </ul>
22-April-2020	C05833	Potential Conditions <ul style="list-style-type: none"> <li>Commission issued for comment potential conditions it may apply to a section 52 NEB Act Certificate and a section 58 NEB Act Order.</li> </ul>
29-Apr-2020	C05999	Ruling No. 13 <ul style="list-style-type: none"> <li>Allowed for the filing of confidential information from NGTL in response to CER Information Request No. 3.</li> </ul>
20-May-2020	C06382	Procedural Directive No. 5 <ul style="list-style-type: none"> <li>Required the filing of affidavits for written evidence</li> </ul>



		pursuant to subsection 37(4) of the <i>National Energy Board Rules of Practice and Procedure, 1995</i> .
19-Jun-2020	C06934	<p>Ruling No. 14</p> <ul style="list-style-type: none"> <li>• Commission denied placing a late filing from NGTL (synopsis of TC Energy's Fugitive Emissions Management Program) on the Record.</li> </ul>
13-Jul-2020	C07290	<p>Ruling No. 15</p> <ul style="list-style-type: none"> <li>• Accepted late filing of affidavit from Whitefish Lake First Nation #459.</li> <li>• Indicated that the record closed on 11 June 2020 and that no further filings would be accepted with respect to the Application unless accompanied by a motion.</li> </ul>

# Appendix IV – List of Issues

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## NOVA Gas Transmission Ltd. Application for the North Corridor Expansion Project

### List of Issues

The NEB [now the Commission] identified the following issues, including but not limited to, for consideration in the hearing with respect to the construction and operation of the proposed North Corridor Expansion Project (Project):

1. The need for the Project.
2. The economic feasibility of the Project.
3. The potential commercial impacts of the Project.
4. The appropriateness of the toll and tariff methodology 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 [now CER] 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<sup>23</sup> interests.
8. Potential impacts of the Project on owners and users of lands.
9. The suitability of the design of the Project.
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 NEB [now the CER] may issue for the Project.

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<sup>23</sup> "Indigenous" has the meaning assigned by the definition of Aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*:

(2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada.

## Appendix V – Summary of Concerns from Indigenous Peoples, Responses from NGTL, and Commission Analysis

This Appendix provides a summary of the general and specific concerns and issues raised by Indigenous peoples through this proceeding, as well as summaries of the responses to these concerns provided by NGTL, analysis by the Commission (including conditions), and applicable requirements provided through regulation and/or legislation. The issues and concerns include those raised directly by Indigenous peoples through their participation in the hearing, as well as summaries of Indigenous concerns and interests as recorded by NGTL in its evidence. Table 7-3 in the Report refers to the written and oral submissions by Indigenous peoples who were Intervenor in the hearing. The Commission notes that identifying and referring to issues and concerns as contained within the record (as provided in this Appendix) may have resulted in some issues being categorized in a summary manner. Some direct and indirect references within the record of the hearing may therefore not be exhaustively listed in the issues below. Anyone wishing to fully understand the context of the information and evidence provided by Indigenous peoples, as well as the applicable responses to these concerns by NGTL, should therefore familiarize themselves with the entire record of the hearing.

Concern	Indigenous Peoples	NGTL response	Commission analysis (including recommended conditions, and applicable regulatory and legislative requirements)	Report Section (Views of the Commission)
<b>Engagement by the Applicant</b>				
<p>Adequacy of engagement by NGTL throughout the various phases of the Project.</p> <p>Importance of engagement between NGTL and Indigenous peoples</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Louis Bull Tribe</li> </ul>	<p>NGTL stated that it began engagement with potentially affected Indigenous communities about portions of the Project in August 2018, and since that time, it has worked closely with each potentially affected community to provide information about the Project, make opportunities available for the group to provide information to NGTL</p>	<p>In order to ensure the Commission remains informed about any ongoing or new issues and in particular those related to monitoring and additional traditional land and resource use information, as well as how NGTL has responded to these, the Commission recommends and imposes Condition 4 for the Section 52 Pipeline and Related Facilities and the Section 58 Facilities and Activities requiring NGTL to file reports on its engagement with Indigenous peoples.</p> <p>The Commission also recommends</p>	<p>7.1</p> <p>7.6.1.1</p>

	<ul style="list-style-type: none"> <li>• Paddle Prairie Métis Settlement</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>about potential issues and concerns, including through Traditional Knowledge studies, and development of mutually acceptable solutions and benefits.</p> <p>NGTL noted that its level of engagement with each community was informed, in part, on the feedback it received from the community about their level of interest in the Project and the scope of potential Project effects on their rights and interests.</p> <p>NGTL indicated that the design of its Aboriginal Engagement Program, is consistent with the CER's guidance on consultation as set out in its Filing Manual, and is intended to foster productive dialogue and exchange of information with potentially affected Indigenous communities interested in the Project. NGTL indicated that this program was designed, developed and adapted according to the scope, nature, location, and potential effects of the Project, and to the identified interests, information needs and concerns of Indigenous communities.</p>	<p>Condition 6, Condition 7, and Condition 28 for the Section 52 Pipeline and Related Facilities and imposes the same conditions (Condition 6, Condition 7 and Condition 22) for the Section 58 Facilities and Activities. These conditions require NGTL to include in its condition filings summaries of engagement activities undertaken with Indigenous peoples regarding monitoring opportunities and reports describing any outstanding concerns following receipt of any outstanding traditional land and resource use investigations.</p> <p>The Commission finds that with these conditions and NGTL's commitments, NGTL would continue to engage with Indigenous peoples to learn more about their interests and concerns, demonstrate how it has considered and addressed information provided in outstanding traditional land and resource use investigations in its Environmental Protection Plans, and, address Project-related issues, to the extent possible, that may arise throughout the lifecycle of the Project.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Outstanding Traditional Land and Resource Use Investigations</i></li> <li>• <i>Construction Monitoring Plan for Indigenous Peoples</i></li> <li>• <i>Report on Engagement with Indigenous Peoples</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
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		NGTL committed to continuing engagement throughout the life of the Project and incorporating any additional input that it receives outside of the regulatory process into the Project plans, as appropriate.		
<b>Engagement by the Crown</b>				
<p>Adequacy of Government of Canada's consultation process with Indigenous peoples</p> <p>Importance of engagement between the Crown and Indigenous peoples</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Louis Bull Tribe</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL noted that a recurring theme in the arguments from Indigenous peoples who were Intervenor in the hearing process is the assertion that Crown consultation on the Project is not yet adequate. NGTL stated that in some cases, such arguments reflect misunderstandings about the role of the Commission's hearing process in the broader Crown consultation process. As NGTL explained in its final argument, the Crown may rely on the CER hearing process to fulfill aspects of its duty to consult, but the Crown (i.e., the federal Government) retains the ultimate responsibility for ensuring the adequacy of consultation before the Project is approved.</p>	<p>The Commission is of the view that there has been reasonable consultation and accommodation for the purpose of the Commission's recommendation on this Project under section 52 of the NEB Act, and its decision under section 58 of the NEB Act, in keeping with section 35 of the <i>Constitution Act, 1982</i>, and the honour of the Crown.</p> <p>In the context of this Project, the Commission is also of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples are not likely to be significant and can be effectively addressed by the implementation of the mitigation measures and commitments made by NGTL, and the conditions and accommodations recommended and imposed by the Commission.</p>	<p>7.2</p> <p>7.6.1.2</p> <p>7.6.8</p>

<b>Environmental and Socio-Economic Assessment Methodology</b>				
<p>Adequacy of NGTL's Environmental and Socio-Economic Assessment methodology and assessment of Project impacts to traditional land and resource use sites and activities as well as to asserted and established Indigenous and Treaty rights</p> <p>Adequacy and effectiveness of NGTL's proposed mitigation measures</p>	<ul style="list-style-type: none"> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Louis Bull Tribe</li> <li>• Peerless Trout First Nation</li> <li>• Swan River First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL stated its view that the Environmental and Socio-Economic Assessment methodology complies with the requirements of section 52 of the NEB Act, NEB Filing Manual guidance, and followed standard assessment methods appropriate for the scope and scale of the Project. NGTL is of the view the Environmental and Socio-Economic Assessment accurately reflects the potential and residual effects of the Project on Indigenous communities.</p> <p>NGTL stated the Project Environmental and Socio-Economic Assessment conservatively assumed that traditional land and resource use sites, areas, and activities have the potential to occur throughout the region, including the Project area, and that traditionally used species identified as being present within the area could be hunted, fished, trapped, or gathered by Indigenous communities, even if information identifying specific activities,</p>	<p>The Commission is of the view that NGTL's assessment of, and proposed mitigation measures for, the potential Project impacts on the rights and interests of Indigenous peoples as well as on TLRU sites and activities were reasonable and broad enough to encompass the full scope of potential effects of the Project. The Commission is also of the view that NGTL provided opportunities for Indigenous peoples to raise concerns, and has committed to sufficient and appropriate mitigation measures, as well as best practices, to mitigate the potential adverse effects on TRLU identified.</p> <p>The Commission is of the view that NGTL has included sufficient baseline information supported by a description of the methodology used and the rationale for that methodology.</p> <p>The Commission is also of the view that NGTL's Environmental and Socio-Economic Assessment appropriately analyzed and characterized the level of significance of potential adverse environmental effects as a result of the Project, in a manner consistent with the CER's Filing Manual.</p> <p>Overall, based on the scope, scale and nature of the Project, the Commission is of the view that NGTL's approach, including its methodology, for assessing the Project's potential effects on the current use of lands and resources for traditional purposes by potentially affected Indigenous peoples was appropriate.</p>	<p>7.6.7.1</p> <p>8.2</p> <p>8.7.1</p>

		<p>species, or sites had not been received from Indigenous communities.</p> <p>The Environmental and Socio-Economic Assessment of traditional land and resource use considered potential effects on traditional land and resource use activities, not simply the environmental resources that those activities rely on. For example, the Environmental and Socio-Economic Assessment considered potential effects on plant gathering activities, fishing activities, hunting and trapping activities, and use of trails and travelways, habitation sites, gathering places and sacred sites. These assessments were much broader than simply biophysical impacts.</p> <p>NGTL also stated that where specific information was provided by Indigenous communities, NGTL considered this information in the Environmental and Socio-Economic Assessment and, where appropriate, for incorporation into Project planning.</p> <p>NGTL argued its evidence</p>		
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		demonstrates that its assessment of Project effects on traditional land and resource use has considered all available information to date. NGTL stated that as new information continues to be made available, NGTL has committed to continue to review and consider that information, and will continue to document and address Traditional Knowledge and related concerns identified by Indigenous communities through the Project's ongoing Aboriginal Engagement Program.		
Inclusion of Traditional Knowledge and Indigenous concerns into Project planning	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL stated it works with interested Indigenous communities to collect and incorporate Traditional Knowledge into Project planning, as appropriate.</p> <p>NGTL indicated that it has provided capacity funding to 15 Indigenous communities being engaged on the Project to complete Project-specific Traditional Knowledge studies. NGTL stated that the information in the Traditional Knowledge Report has been used to inform Project planning,</p>	The Commission recommends Condition 7 for the Section 52 Pipeline and Related Facilities and imposes the same condition (Condition 7) for the Section 58 Facilities and Activities. These conditions require NGTL to submit a report on any outstanding traditional land and resource use investigations for the Project, including a description of how NGTL has revised its Environmental Protection Plan and its lifecycle oversight as a result of the investigations. The Commission is of the view that this condition will increase both accountability and transparency regarding NGTL's ongoing commitments, and will also enhance opportunities for Indigenous peoples to contribute to decision-making with respect to NGTL's engagement with	7.6.7.2



		<p>including regulatory permitting, and construction planning for the Project. NGTL also stated that information received from potentially-affected Indigenous communities is considered including route selection and refinement and the development of site-specific mitigation measures to avoid or reduce effects on traditional land and resource use sites and activities.</p> <p>NGTL stated it will continue to document Traditional Knowledge and address Project-related concerns identified by Indigenous communities during activities associated with the Project's broader Aboriginal Engagement Program.</p>	<p>them.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Outstanding Traditional Land and Resource Use Investigations</i></li> </ul>	
<b>Effects on the Rights and Interests of Indigenous Peoples</b>				
Project impacts on the rights and interests of Indigenous peoples	<ul style="list-style-type: none"> <li>• Beaver First Nation</li> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis</li> </ul>	<p>NGTL stated it complied with all applicable legal requirements and retained an environmental consultant, Jacobs, who conducted an Environmental and Socio-Economic Assessment in accordance with the NEB Filing Manual and accepted best practices for federally-regulated pipelines.</p> <p>NGTL stated the</p>	<p>The Commission is of the view that NGTL designed and implemented appropriate and effective engagement activities for the Project, and is also of the view that the hearing process enhanced the information flow to potentially impacted Indigenous peoples and provided greater opportunities for meaningful participation of Indigenous peoples.</p> <p>The Commission is of the view that there has been adequate consultation and accommodation for the purpose of the</p>	<p>7.6.7</p> <p>7.6.8</p> <p>8.6</p> <p>8.6.3</p> <p>8.6.4</p>

	<p>Settlement</p> <ul style="list-style-type: none"> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Sawridge First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>Environmental and Socio-Economic Assessment considered potential effects of the Project on Indigenous and Treaty rights through an assessment of effects on traditional land and resource use, including indicators such as availability of access to sites and resources as well as impacts on relevant biophysical components. NGTL stated this assessment considered all publicly available information about Indigenous land and resource use in the Project area, as well as all information provided to NGTL through its Aboriginal Engagement Program.</p> <p>NGTL stated that the Environmental Protection Plan include both general and project-specific environmental protection measures which have been developed and refined over time based on past project experience, input from stakeholders (e.g., municipalities; regulators), landowners and Indigenous communities during consultation, and reflect current industry best management practices</p>	<p>Commission's decision on this Project. In the context of this Project, the Commission is of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples, after mitigation, are not likely to be significant and can be effectively addressed.</p> <p>The Commission has also determined it is necessary to include conditions in relation to Indigenous peoples' concerns and the potential impacts on the rights and interests of Indigenous peoples.</p> <p>As a result of the above, and considering all of the findings in this Report, the Commission is of the view that that sufficient information has been submitted to allow the Commission to assess how the Project will affect Indigenous and treaty rights and that an approval of this Project is consistent with the requirements of section 35 of the <i>Constitution Act, 1982</i> and the honour of the Crown.</p>	
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		<p>where applicable to Project activities.</p> <p>NGTL also noted that the proposed pipeline routes have been designed to parallel existing NGTL Rights-of-Way or other linear disturbances for approximately 95 per cent of their length. Paralleling existing disturbances allows the Project footprint to be reduced by using temporary work space on the adjacent disposition and minimizes fragmentation of the landscape. As a result, by paralleling existing or proposed disturbances, potential effects of the Project on the environment and on traditional land and resource use are minimized.</p> <p>NGTL confirmed that with the exception of localized areas during the short period of active construction, the ROW will remain available for traditional use during construction and operation of the Project.</p> <p>NGTL argued its evidence demonstrates that the Project will only have short-term, low magnitude and reversible residual effects on traditional land and resource use and, by extension, the</p>		
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		exercise of Indigenous and Treaty rights.		
<p>Project impacts on traditional land and resource use activities including Project impacts on the current use of lands and resources for traditional purposes, including, but not limited to hunting, fishing, trapping, gathering, and culture</p> <p>Project impacts on traditional land and resource use sites including Project impacts on the current use of lands and resources used for, but not limited to ceremonial, habitation, plant gathering, burial, spiritual, historical and other cultural sites</p>	<ul style="list-style-type: none"> <li>• Beaver First Nation</li> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Sawridge First Nation</li> <li>• Swan River First Nation</li> </ul>	<p>NGTL stated that potentially affected Indigenous communities were engaged and provided opportunities to identify traditional land and resource use activities and sites potentially affected by the Project. NGTL stated that this information is used to establish how Indigenous communities use the land, and move on the land and locations of activities or areas of cultural importance such as cultural sites and sacred areas.</p> <p>NGTL stated that the suite of mitigation measures identified in the Project-specific Environmental Protection Plans are designed to address effects to these traditional land and resource use activities, resources, and features, and no new mitigation is required to address these concerns. NGTL also stated that traditional use sites or features which require site-specific mitigation additional to the existing measures in the Environmental Protection Plans will be included in the</p>	<p>Considering the evidence on the record, including NGTL's proposed mitigation measures to reduce the adverse effects of the Project on traditional land and resources use, and the Commission's recommended and imposed conditions, as well as the recommended Condition 7 for the Section 52 Pipeline and Related Facilities and the same imposed condition (Condition 7) for the Section 58 Facilities and Activities,, the Commission finds that effects of the Project on traditional land and resources use area are low to moderate in magnitude. Given the above, the Commission finds that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples are not likely to be significant.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Outstanding Traditional Land and Resource Use Investigations</i></li> </ul>	<p>7.6.7</p> <p>8.6</p> <p>8.6.3</p> <p>8.6.4</p>

	<ul style="list-style-type: none"> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>Environmental Protection Plans and Environment Alignment Sheets filed prior to construction.</p> <p>NGTL also noted that the proposed pipeline routes have been designed to parallel existing NGTL ROWs or other linear disturbances for approximately 95 per cent of their length. NGTL stated that paralleling existing disturbances allows the Project footprint to be reduced by using temporary work space on the adjacent disposition and minimizes fragmentation of the landscape and as a result, potential effects of the Project on the environment and on traditional land and resource use are minimized.</p> <p>NGTL confirmed that with the exception of localized areas during the short period of active construction, the ROW will remain available for traditional use during construction and operation of the Project.</p> <p>NGTL stated that with implementation of its proposed mitigation measures, the Environmental and Socio-Economic Assessment</p>		
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		concluded that the residual effects on traditional land and resource use will not be significant. This conclusion is supported by NGTL's operating experience, as well as the evidence from several Indigenous peoples who were Intervenor in the hearing process that they continue to undertake traditional land and resource use activities throughout the Project area, including along other existing NGTL Rights-of-Way.		
<p>Project-related cumulative effects on traditional land and resource use</p> <p>Post-contact cumulative effects on traditional land and resource use</p> <p>Adequacy of NGTL's cumulative effects assessment for traditional land and resource use</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis</li> </ul>	<p>NGTL stated that cumulative effects are and have been assessed for all of NGTL's facility applications in accordance with applicable filing requirements using methodology that follows the Canadian Environment Assessment Agency's <i>Technical Guidance for Assessing Cumulative Effects</i> under the CEAA 2012. NGTL stated that conclusions are detailed in each project application at a level of detail commensurate with their scope and scale.</p> <p>NGTL also stated the assessment includes consideration of the applied-for project's predicted</p>	<p>The Commission recognizes that the cumulative effects of all types of developments in a given area can have lasting implications for those who live and/or hold rights and interests there. To minimize or avoid to the extent possible, specific Project-related cumulative effects on traditional land and resource use, the Commission has considered NGTL's mitigation measures to address effects on the biophysical resources that support traditional land and resource use activities, NGTL's mitigation measures to address effects on traditional land and resource use activities, and the Commission's additional related recommended conditions mentioned in Subsection 7.6.7.4. As a result, the Commission is of the view that the Project would not likely result in significant adverse cumulative effects on traditional land and resource use.</p>	<p>7.6.7.5</p> <p>8.6</p> <p>8.6.3</p> <p>8.6.4</p>

	<p>Settlement</p> <ul style="list-style-type: none"> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Swan River First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>residual effects in combination with the residual effects of past, present and reasonably foreseeable projects and activities.</p> <p>NGTL stated reasonably foreseeable developments may act cumulatively with the Project to alter the land and resource base available for subsistence activities, to alter accessibility to areas used for hunting, fishing, plant gathering, and trapping, to create sensory disturbance for traditional land users through noise and air emissions, or to alter the resources that traditional land users rely on.</p> <p>NGTL stated its assessment concluded that cumulative effects associated with the Project on the environmental and socio-economic elements assessed in the Environmental and Socio-Economic Assessment will be not significant, with the exception of cumulative effects on boreal caribou that are already significant and that NGTL will address through its Caribou Habitat Restoration and Offset Management Plan.</p>	<p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Outstanding Traditional Land and Resource Use Investigations</i></li> <li>• <i>Construction Monitoring Plan for Indigenous Peoples</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
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<p>Project impacts on heritage resources</p>	<ul style="list-style-type: none"> <li>• Doig River First Nation</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Swan River First Nation</li> </ul>	<p>In its Application, NGTL stated that the primary mitigation measure in protecting heritage resources is avoidance through routing and siting, and secondarily, site-specific mitigation developed in consultation with appropriate provincial regulatory authorities and approved by these authorities in fulfillment of permit obligations. NGTL stated that the discovery of an archaeological, historical or paleontological site or features during construction is an unlikely event. Should this unlikely event occur, the Cultural Resource Discovery Contingency Plan will be implemented. NGTL stated that it prohibits the collection of heritage resources by Project personnel.</p> <p>NGTL is committed to completing any requirements issued by Alberta Culture and Tourism (now Alberta Ministry of Culture, Multiculturalism and Status of Women) in order to obtain <i>Heritage Resources Act</i> clearance for all Project components prior to construction.</p>	<p>The Commission is of the view that, with the following:</p> <ul style="list-style-type: none"> <li>• measures and commitments made by NGTL to avoid all sites where possible;</li> <li>• commitment made by NGTL to implement its Cultural Resource Discovery Contingency Plan in the event cultural resource sites are encountered during construction;</li> <li>• evidence and Indigenous knowledge identifying potential sites of concern provided by Indigenous peoples; and</li> <li>• regulatory oversight of provincial authorities that issue final clearances for lands involved for the Project,</li> </ul> <p>the potential effects of the Project on physical and cultural heritage resources would be confined to the Project footprint, would be short- to long-term, reversible to permanent, and of low to moderate magnitude.</p> <p>To ensure that the Commission and all Parties, including potentially affected Indigenous peoples, are aware of any approvals or conditions imposed by provincial authorities for the Project, the Commission recommends Condition 8 for the Section 52 Pipeline and Related Facilities and imposes the same condition (Condition 8), for the Section 58 Facilities and Activities, requiring NGTL to file confirmation that all heritage resource clearances have been obtained from the relevant provincial ministry prior to commencing construction, including a</p>	<p>7.6.4 8.6.3</p>
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			<p>description of how NGTL will address any conditions / recommendations in these clearances and make any relevant updates to its Environmental Protection Plans.</p> <p>In addition, the Commission notes NGTL's commitment to include its final version of NGTL's Cultural Resource Discovery Contingency Plan in its updated Environmental Protection Plans. Given all of the above, the Commission is of the view that the potential adverse effects of the Project on heritage resources are not likely to be significant.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Heritage Resource Clearances</i></li> </ul>	
<p>Reduction in the availability of Crown lands for conducting traditional land and resource use activities</p> <p>Restricted access to traditional use areas for Indigenous peoples</p> <p>Increased access by non-Indigenous peoples</p> <p>Reduction in hunting success due to increased ease of access by non-Indigenous hunters.</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First</li> </ul>	<p>NGTL confirmed that with the exception of localized areas during the short period of active construction, the ROW will remain available for traditional use during construction and operation of the Project. NGTL stated it will provide Indigenous communities with the proposed construction schedule and maps prior to the start of construction to avoid potential conflicts between construction crews and traditional users.</p> <p>NGTL stated no new permanent access is required for the Project and that adjacent pipeline Rights-of-Way will be used</p>	<p>The Commission accepts NGTL's evidence that during construction, access to the ROW for traditional users would not be physically impeded except when there is active construction or other identified safety risks (e.g., open trench or excavations). The Commission also accepts NGTL's evidence that, after construction is completed, access to the ROW would be unchanged (except for temporary interruptions during brief periods of routine maintenance, and for access control management measures, where applicable, to deter an increase in motorized public access along new pipeline ROWs, on new temporary construction access, and into existing linear disturbances that intersect the Project ROW).</p> <p>The Commission notes that no new gates or fences will be constructed for the Project on Crown land where they do not already exist, and that plant harvesting, fishing, hunting,</p>	<p>7.6.7.3</p> <p>8.6.3</p> <p>8.6.4</p>

	<p>Nation #459</p>	<p>to the extent practical for storage and access, and existing disturbed sites will be used for temporary ancillary facilities where possible. NGTL stated these measures will reduce the severity of potential effects related to changes in access on hunting, fishing, trapping, and recreational activities.</p> <p>NGTL also noted that the proposed pipeline routes have been designed to parallel existing NGTL Rights-of-Way or other linear disturbances for approximately 95 per cent of their length. Paralleling existing disturbances allows the Project footprint to be reduced by using temporary work space on the adjacent disposition and minimizes fragmentation of the landscape. As a result, by paralleling existing or proposed disturbances, potential effects of the Project on the environment and on traditional land and resource use are minimized.</p> <p>NGTL stated it does not have the ability to enforce access control or restrict or access within the Regional Study Area outside of NGTL dispositions. It stated that no</p>	<p>trapping, ceremonial practices, travel, and use of cultural sites would still be possible.</p>	
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		new gates or fences will be constructed for the Project on Crown land where they do not already exist.		
Project monitoring and opportunities for Indigenous peoples to monitor the Project	<ul style="list-style-type: none"> <li>• Beaver First Nation</li> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL stated that in consideration of the requests made by Indigenous communities throughout engagement on the Project, for participation in the Project through monitoring during construction, NGTL will be developing an Aboriginal Construction Participation Program for the Project. NGTL stated the Aboriginal Construction Participation Program will facilitate the participation of members of potentially-affected Indigenous communities to be on-site, and directly observe pipeline construction activities and the implementation of mitigation measures. NGTL stated the Aboriginal Construction Participation Program offers employment opportunities, including compensation and on the job training, for individuals from potentially-affected Indigenous communities that express an interest in participating. NGTL also stated the Aboriginal</p>	<p>The Commission is of the view that the involvement of Indigenous peoples in monitoring is a valuable and meaningful opportunity for the sharing of and incorporation of the knowledge of Indigenous peoples in the planning, pre-construction, construction, post-construction, and operational lifecycle activities of the Project.</p> <p>The Commission is also of the view that the involvement of Indigenous peoples in monitoring would be of value in relation to their Indigenous knowledge in assessing mitigation measure effectiveness as well as other aspects of the implementation of the Project plans.</p> <p>The Commission acknowledges NGTL's Aboriginal Construction Participation Program as a positive mechanism to promote employment opportunities, but does not have sufficient details about the Project-specific Aboriginal Construction Participation Program and post-construction monitoring activities to know whether these would promote meaningful monitoring opportunities.</p> <p>As such, the Commission recommends Conditions 6 and 28, for the Section 52 Pipeline and Related Facilities, and imposes the same conditions (Condition 6 and 22) for the Section 58 Facilities and Activities, requiring NGTL to file its monitoring plans</p>	7.6.6

		<p>Construction Participation Program aims to grow its participants' skills, exposure and understanding of NGTL's construction activities and environmental protection measures, with a view to advancing interests in environmental stewardship.</p> <p>NGTL stated that specifics around the Aboriginal Construction Participation Program, including which Project components it will be offered on, and what types of opportunities will be offered will be developed closer to construction and will be informed by NGTL's engagement with Indigenous communities for the Project, results of the biophysical field programs for the Project, engagement with federal and provincial government agencies, feedback obtained from participants during construction activities on past NGTL projects, and experience gained from other pipeline projects.</p>	<p>for Indigenous peoples related to both the Project's construction and post-construction.</p> <p>In consideration of the comments received, the Commission has also revised Condition 29/23, to include requirements for NGTL to include methodology, criteria, and issues identified in the Post-Construction Monitoring Plan for Indigenous Peoples (Condition 28/22). Condition 29/23 has also been revised to include a summary of NGTL's engagement efforts with Indigenous peoples and a description of how this engagement has informed and / or modified NGTL's environmental monitoring program. The Commission is of the view that these revisions will allow for a more transparent link between the Post-Construction Indigenous Monitoring Plan and the Post-Construction Environmental Monitoring Reports as the latter will explicitly include the outcomes of the participation of Indigenous monitors.</p> <p>The Commission is of the view that these conditions would enhance the involvement of Indigenous peoples to participate more meaningfully in monitoring opportunities. NGTL is welcome to submit the project-specific Aboriginal Construction Participation Program and post-construction monitoring activities to fulfill these conditions. However, the Commission is of the view that NGTL must demonstrate that meaningful monitoring opportunities are built into the Aboriginal Construction Participation Program and post-construction monitoring activities so that Indigenous cultural, traditional land and resource use, and environmental interests, are effectively</p>	
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			<p>addressed in monitoring activities.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Construction Monitoring Plan for Indigenous Peoples</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> <li>• <i>Post-Construction Environmental Monitoring Reports</i></li> </ul>	
<p>Indigenous Advisory Monitoring Committee</p> <p>Desire for the establishment of an Indigenous monitoring committee with direct involvement in Caribou Habitat Restoration and Offset Management Plan and other environmental and cultural value monitoring plans</p>	<ul style="list-style-type: none"> <li>• Peerless Trout First Nation</li> </ul>	<p>NGTL stated it is of the view that an Indigenous monitoring advisory committee is not appropriate for the scope, scale and nature of the Project given that most of the Project parallels existing ROW and utilizes existing disturbance, where possible.</p> <p>NGTL stated the goal of NGTL's Aboriginal Engagement Program for the Project is to provide Project information and seek feedback from Indigenous communities in order to anticipate, prevent, mitigate and manage situations that have the potential to affect Indigenous communities. NGTL strives to meet this goal in part by initiating engagement activities as soon as possible in the planning of the Project.</p> <p>NGTL submitted that this</p>	<p>The Commission is not recommending that the Government of Canada create an Indigenous Monitoring Advisory Committee for this Project at this time. However, the Commission encourages NGTL to offer to engage with Indigenous peoples to gather input on how meaningful monitoring opportunities can be built into NGTL's Aboriginal Construction Participation Program, post-construction monitoring and ongoing engagement. The Commission would expect to see a summary of any such engagement included in the condition filings.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Construction Monitoring Plan for Indigenous Peoples</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	<p>7.6.6</p> <p>8.7.2.2</p>

		early and proactive engagement, combined with NGTL's extensive experience implementing the environmental mitigation measures, are detailed in the Project Environmental Protection Plan and Environmental and Socio-Economic Assessment, help to ensure that situations with the potential to affect Indigenous communities have been prevented, mitigated and / or managed by the time a project reaches the operations phase of its lifecycle.		
<b>Social and Cultural Well-being</b>				
<p>Project impacts on the transfer of knowledge, including language</p> <p>Threat to cultural existence</p> <p>Project impacts on community life and safety as a result of Project contractors and workers, construction camp(s), and traffic</p> <p>Lack of gender-based analysis for the Project</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Louis Bull Tribe</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL stated that since the transmission of culture and knowledge of the land is intimately connected to the ability to practice subsistence activities, the effects of Project activities on the intergenerational transfer of knowledge through subsistence activities were considered in its assessment.</p> <p>NGTL concluded that given the short-term duration of the effects on subsistence activities and resources the Project is not anticipated to</p>	<p>Having considered all of the evidence filed on the record, the Commission is of the view that the anticipated construction period for the Project is short-term in duration and that access to the ROW would likely remain unchanged following the construction period (save for temporary interruptions as discussed in Subsection 7.6.7.3), and that as such, the potential adverse effects on social and cultural well-being of Indigenous peoples are not likely to be significant, in the context of this Project.</p> <p>In response to the concerns raised, the Commission has imposed Condition 9 related to the Section 58 Facilities and Activities, which would require NGTL to include a summary of training that will be</p>	<p>5.2.7</p> <p>7.6.2</p>

		<p>affect the intergenerational transfer of knowledge through subsistence activities.</p> <p>NGTL noted it has a range of policies and management approaches that will ensure its camps, as with all NGTL worksites, are operated in a safe and secure manner. NGTL also noted that standard practices that intend to reduce the potential for adverse effects on community life related to temporary workers includes on-going engagement with local Indigenous and non-Indigenous communities to follow-up on any unanticipated issues or concerns.</p> <p>NGTL stated that it applied to the NEB, predecessor to the CER, pursuant to section 52 of the NEB Act, and as such, the Application and related filings were prepared by NGTL in accordance with the NEB Act and the requirements of applicable Filing Manual, including its Guide A. NGTL noted these filings preceded the coming-into-force date of the CER Act and the applicability of the CER's Interim Filing Guidance which</p>	<p>specifically provided to the construction camp workforce regarding gender-based issues or impacts. As such, the Commission is of the view that NGTL adhered to the appropriate filing guidance under section 52 of the NEB Act for this Project and that the imposed condition, in combination with the NGTL's policies and procedures for employees and contractors, will address any potential gender-based issues and impacts in relation to the temporary construction camps.</p> <p>In addition, the Commission recommends Condition 4 for the Section 52 Pipeline and Related Facilities, and imposes the same condition (Condition 4) for the Section 58 Facilities and Activities, requiring NGTL to file its reports on its on-going engagement with Indigenous peoples.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Construction Camp Management Plan</i></li> <li>• <i>Report on Engagement with Indigenous Peoples</i></li> </ul>	
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		<p>contemplated gender-based analysis. NGTL stated it is of the view that the applicable filing guidance properly adhered to remains the prevailing Filing Manual under the NEB Act, which does not contain any requirements to conduct gender-based analysis for the Project. NGTL also stated that in accordance with applicable filing guidance it conducted a comprehensive impact assessment that evaluated the potential socio-economic effects from the Project relative to its scope and scale, existing socio-economic conditions in nearby communities and the implementation of policies and management procedures by NGTL for safety and well-being.</p>		
<p>Safety Concerns</p> <p>Event and notification response time</p> <p>Impacts of contamination on wildlife, lands, water quality, etc.</p> <p>Inclusion of Indigenous</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Peavine Métis Settlement</li> </ul>	<p>NGTL stated that as part of its Project consultation activities it provides information concerning Emergency Preparedness and Response to potentially affected stakeholders, emergency responders, landowners and Indigenous communities.</p> <p>NGTL stated its emergency</p>	<p>The Commission is satisfied with NGTL's commitment to ensure Indigenous peoples have the information they need regarding emergency response and response times, including opportunities for capacity building, appropriate contact information, site-specific Construction Emergency Response Plans, contingency planning, and accidents or malfunctions, as related to the Project as well as receive adequate information on the procedures to follow during emergency incidents that could occur along the</p>	<p>4.4</p> <p>7.6.9.1</p>



<p>communities in training and development</p> <p>Collection of traditional land and resource use data to inform emergency response</p> <p>Hazards on the ROW</p>	<ul style="list-style-type: none"> <li>• Peerless Trout First Nation</li> <li>• Swan River First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>response procedures will be included in the Emergency Management Plans for the Project. The Emergency Management Plans will include communications protocols, including current contact information for all potentially affected Indigenous communities. NGTL stated that in the event of an emergency, the regionally-based Aboriginal and Community Liaisons will contact the appropriate individuals via telephone and / or email to notify them of the nature of the emergency.</p> <p>NGTL stated that it recognizes the importance of timely response to pipeline-related emergency events in order to minimize environmental impacts. Emergency response times are detailed within TC Energy's Emergency Management Corporate Program Manual that will be applicable to the Project.</p> <p>NGTL stated that established response times reflect the minimum likely mobilization that accounts for unforeseen circumstances. Contingency planning processes and</p>	<p>pipeline, and have the opportunity to consult and provide input with respect to Emergency Response Plans.</p> <p>Many of the safety concerns raised were related to potential effects of oil spills; however, the Project will transport sweet natural gas.</p> <p>The Commission acknowledges NGTL's Emergency Management Plans for the Project which include its emergency response procedures, as well as communications protocols relating to Indigenous peoples.</p> <p>Having considered all of the evidence filed on the record, the Commission is satisfied with NGTL's approach to addressing the safety concerns of Indigenous peoples.</p>	
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		<p>frameworks governing both emergency preparedness and emergency response however, are adhered to in accordance with the Emergency Management Corporate Program Manual. Response time averages have been and are expected to be shorter than committed time frames for all phases of response.</p> <p>NGTL indicated that it is committed to discussing specific issues with Indigenous peoples and what the communities would like to receive notification about. NGTL submitted that it will work with Indigenous peoples to determine the appropriate information sharing process (i.e. through ongoing engagement or formal notifications, as appropriate). NGTL also indicated that it has been contributing to community investment initiatives with Indigenous peoples in the Project area and will continue to work with them to identify community initiatives for capacity development, which supports the immediate and/or longer-term training</p>		
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		<p>needs and their long term goals.</p> <p>NGTL indicated that it anticipates providing notice of the nature of the emergency event, including its scope, scale and hazards. NGTL stated that the company would also inquire on the immediate or pending level and type of traditional land use in the affected area by community members. If immediate land use is confirmed or expected, NGTL said it would provide information to local first responders and work collaboratively with them and community emergency representatives in efforts to advise individuals or groups of land users about any appropriate actions to take.</p>		
<b>Human Health</b>				
<p>Project Impacts on human health, including physical, mental, and spiritual health</p> <p>Potential Project effects to berries, food plants and medicinal plants, affecting human</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan’s First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Paddle Prairie Métis</li> </ul>	<p>NGTL stated that the use of herbicides must comply with the Project Environmental Protection Plans, and is prohibited on the construction footprint unless otherwise approved by NGTL. The Project Environmental Protection Plans indicated that the use</p>	<p>With respect to perceptions of contamination that could have a negative effect on traditional harvesting and food consumption, the Commission has considered both the potential environmental effects of the Project on biophysical resources relied on by Indigenous peoples for traditional land and resource use, as well as the effects of the Project on those uses.</p> <p>The Commission concurs with NGTL’s</p>	<p>7.6.3</p> <p>8.6.3</p>

<p>health</p>	<p>Settlement</p> <ul style="list-style-type: none"> <li>Peerless Trout First Nation</li> </ul>	<p>of herbicides is prohibited near rare plants and rare ecological communities; however spot spraying, wicking, mowing or hand-picking would be acceptable weed control measures in these areas. Herbicide use is also prohibited within 30 m of an open body of water unless the application is conducted by ground application equipment, or otherwise approved by the responsible regulatory agency. During operations, herbicides may be used on an as-needed basis along the pipeline ROW, pending the type of vegetation to be controlled, site conditions or other restrictions.</p> <p>NGTL stated that in order to commit to restricting the general application of herbicides near traditional land use sites, it requires specific locations of those sites that are located on or adjacent to the Project footprint and that can be clearly delineated and mapped.</p> <p>NGTL also stated that should Indigenous communities identify the locations where spraying and herbicide application are</p>	<p>conclusion regarding traditional land and resource use, and is of the view that any residual effect is likely to be limited to the period during construction, restricted primarily to the Project footprint, and low in magnitude. Given all of the above, The Commission is of the view that the potential adverse effects of the Project on human health are not likely to be significant.</p>	
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		of interest to them then NGTL will notify the community regarding timing and locations of scheduled spraying and herbicide applications for those locations during construction and operation.		
<b>Employment and Benefits</b>				
<p>Opportunities for employment, contracting, training, and economic benefits for Indigenous Peoples, communities, and businesses</p> <p>Opportunities for non-economic benefits for Indigenous Peoples (e.g., energy security, housing, decision-making, etc.)</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Kapawe'no First Nation</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL stated it is committed to supporting local Indigenous communities by providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL stated the Project will maximize local and Indigenous hiring from within the Community RSA, as a first priority, and elsewhere in Alberta as a second priority.</p> <p>NGTL stated it recognizes the importance of providing opportunities for Indigenous participation in the Project and stated it will provide support and resources to Indigenous communities to increase their ability to participate in Project activities and to support their long-term goals for skills development and training.</p> <p>NGTL also stated that it</p>	<p>The Commission is of the view that the Project would benefit local, regional, and provincial economies. The Commission is also of the view that the Project would result in increased employment and economic benefits for Indigenous individuals and contracts for Indigenous-owned businesses.</p> <p>To increase the transparency of NGTL's commitments regarding contracting and employment opportunities, the Commission recommends Condition 5 for the Section 52 Pipeline and Facilities and imposes the same condition (Condition 5) for the Section 58 Facilities and Activities requiring NGTL to file an update to its Employment, Contracting and Procurement Plan, which would include the submission of its Prime Contractors Aboriginal Participation Plan, and a summary of how this Aboriginal Participation Plan aligns with NGTL's Aboriginal Contracting and Employment Program.</p> <p>The Commission further recommends Condition 27 for the Section 52 Pipeline and Related Facilities and imposes the same condition (Condition 21) for the Section 58 Facilities and Activities, requiring NGTL to</p>	<p>7.6.5</p> <p>9.2</p>

		<p>implements many measures that enhance the opportunity for local and Indigenous communities to participate in the Project, including requirements in contracts with Prime Contractors to hire qualified and competitive, local, Indigenous contractors and employees.</p> <p>NGTL noted the Prime Contractor will have to submit an Aboriginal Participation Plan to NGTL that outlines the processes that it will follow to facilitate productive opportunities for qualified and competitive local Indigenous businesses and people on the Project. NGTL stated it then sets obligations in its Prime contracts to ensure that contractors fulfill the commitments they made in their proposal that were a consideration in their contract award through Aboriginal Participation Plans.</p> <p>NGTL stated the record demonstrates that the Project has been designed to create meaningful economic benefits for Indigenous communities by providing contracting and</p>	<p>file a report once construction is complete, summarizing the training, employment, contracting, and procurement elements or indicators monitored.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Indigenous Employment, Contracting, and Procurement Plan Update</i></li> <li>• <i>Training, Employment, Contracting, and Procurement Report</i></li> </ul>	
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		employment opportunities to Indigenous businesses and individuals, with a view to developing a suite of participation measures appropriate for the scope and scale of the Project.		
<b>Environmental Effects</b>				
<p>Effects on wildlife and wildlife habitat, including effects on moose and their habitat, bison,</p> <p>Effects on breeding birds and species at risk due to habitat loss, change in movement patterns and noise</p> <p>Protection of bird species of cultural importance</p> <p>Cumulative effects on moose and caribou and consultation re: mitigation measures</p>	<ul style="list-style-type: none"> <li>• Beaver First Nation</li> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peavine Métis</li> </ul>	<p>With regards to moose, NGTL stated that an assessment of residual Project effects and cumulative effects was completed for moose and their habitat, and that moose were included as a focal species given they have resource management (e.g., hunting, trapping) and cultural importance, which was confirmed in oral Indigenous knowledge testimony. NGTL committed to consult with Alberta Environmental Protection in the event Project activities occur or extend into the Key Wildlife Biodiversity Zone timing restriction in the North Star Section 2.</p> <p>NGTL noted that the standard mitigation measures included in the Project Environmental Protection Plan are applicable to wood bison,</p>	<p>The Commission is of the view that NGTL has committed to appropriate standard and site-specific mitigation for effects on wildlife and birds.</p> <p>The Commission also notes NGTL's commitment to parallel existing disturbances, implement access control measures, reduce disturbance within the forested habitat, riparian areas and wetlands, and to implement minimal disturbance during construction (e.g., limited grubbing and grading). The Commission is of the view that these measures would reduce the effects of loss and alteration of moose habitat while also mitigating the Project's impacts to moose from increased human access and predation or hunting.</p> <p>The Commission agrees with NGTL's rationale that the standard mitigation measures included in the Project Environmental Protection Plan are applicable to wood bison, and updates to the Environmental Protection Plan are not warranted based on evidence of wood bison (i.e., scat) identified during the 2019 wildlife surveys.</p>	<p>8.6.3</p> <p>8.7.3</p>

	<p>Settlement</p> <ul style="list-style-type: none"> <li>• Peerless Trout First Nation</li> <li>• Sawridge First Nation</li> <li>• Swan River First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>and updates to the Environmental Protection Plan are not warranted based on evidence of wood bison (i.e., scat) identified during the 2019 wildlife surveys.</p> <p>NGTL stated that mitigation measures for furbearers are included in its standard mitigation measures as described in the Environmental Protection Plan, and it addresses concerns raised by Peavine Métis Settlement.</p> <p>With regards to Peavine Métis Settlement's concerns, NGTL committed to report any previously unidentified listed or sensitive wildlife species or their site-specific habitat (e.g. nests) to the Environmental Inspector(s) and to implement the Wildlife Species of Concern Discovery Contingency Plan. NGTL also stated that construction is scheduled to occur outside of the Primary Migratory Bird Nest Period and that it will deliver an environmental orientation that will include identification processes for environmentally sensitive features, and awareness of wildlife near the Project,</p>	<p>The Commission believes that, with the commitments made throughout the process and the measures proposed in the Environmental Protection Plans, appropriate mitigation is in place for the Project.</p> <p>The Commission expects NGTL to continue its consultations with Alberta Environment and Parks when planning construction schedules within the Chinchaga caribou range to identify those sensitive periods and avoid conducting construction activities with the most sensory disturbance potential during those sensitive periods.</p> <p>The Commission is of the view that sensory disturbance from the Project to caribou within the Red Earth caribou range would be further minimized by restricting construction activities taking place within the 15 February to 15 July restricted activity period. The Commission recommends Condition 25 for the Section 52 Pipeline and Related Facilities, should it be required for NGTL to work within the restricted activity period in the Red Earth caribou range.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Working within the Red Earth Caribou Range Restricted Activity Period</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 58 Facilities and Activities</i></li> <li>• <i>Post-Construction Environmental Monitoring Report</i></li> </ul>	
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		<p>such as bears and wolves.</p> <p>NGTL committed to marking all sensitive resources on Environment Alignment Sheets and on other documents prior to the start of construction activities and to have Environmental Inspectors confirm the accuracy of all environmentally sensitive resource locations. NGTL stated that findings of unidentified listed or sensitive wildlife species or their site-specific habitat are identified during construction, the findings will be reported to the Environmental Inspector and the appropriate contingency plan will be implemented.</p> <p>NGTL stated that it will implement access management measures across the ROW to inhibit human and predator access and to promote the establishment and development of vegetation communities. NGTL stated that some access control measures proposed are better suited to narrower seismic lines than to pipeline ROWs.</p> <p>NGTL stated that the Project is scheduled to be cleared</p>	<ul style="list-style-type: none"> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
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		<p>outside of the migratory bird nesting window to avoid potential impacts to nesting birds. However in the event that activities occur during the nesting period a Wildlife Resource Specialist will compile a list of relevant setback distances to inform site-specific mitigation.</p> <p>NGTL stated that in the event that Project activities are scheduled to occur within the Primary Migratory Bird Nesting Period (May 6-Aug 8) the Breeding Bird and Nest Management Plan will be referred to.</p> <p>NGTL noted the Government of Alberta has in place, a Restricted Activity Period from February 15 to July 15 where activities should be avoided within caribou ranges.</p> <p>NGTL also noted that frozen conditions are necessary for construction in the Red Earth caribou range, owing to extensive wetlands in the region. Construction would commence in the fourth quarter of 2021, with expected completion in the first quarter of 2022. NGTL will employ an early in/early out approach to avoid the Restricted Activity Period</p>		
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		<p>and reduce disturbance to caribou within the Red Earth caribou range.</p> <p>NGTL indicated that in the event that work is required within the Restricted Activity Period, it would expedite construction through addition of resources and equipment to limit the duration and intensity of sensory disturbance. NGTL indicated it would consult with Alberta Environment and Parks should construction activities for Red Earth Section 3 extend longer than anticipated into the Restricted Activity Period to confirm a course of action and implementation of mitigation.</p> <p>NGTL stated that to reduce potential barriers to wildlife, it would 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 would be determined in the field by the Environmental Inspector(s) or designate(s).</p>		
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		NGTL stated that post-construction monitoring for soils, vegetation, and wetlands will address monitoring the success of restoration of wildlife habitat.		
<p>Effects on soil and soil productivity</p> <p>Soil surveys and incorrect classification of soils and ecological value of the soils in terms of traditional land use</p> <p>Permafrost concerns</p> <p>Compaction and rutting that may restrict vegetation from re-establishing</p> <p>Sediment runoff</p> <p>Temporary work space and soil surveys</p>	<ul style="list-style-type: none"> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Peavine Métis Settlement</li> <li>• Swan River First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL stated that a desktop review of soil information for Green Area pipeline projects is industry standard practice and has previously been accepted and approved by the NEB, and provincial regulators. The proposed mitigation outlined in the Environmental and Socio-Economic Assessment and Environmental Protection Plans has been developed based on best management practices, industry standard practice and regulatory guidelines, with consideration of municipal and regional development plan objectives and post-construction monitoring of previous pipeline projects in comparable environments.</p> <p>NGTL also indicated that affected lands would be assessed prior to and during construction by a qualified Environmental Inspector, and that soil handling practices would be adjusted as required to effectively</p>	<p>The Commission finds NGTL's proposed mitigation measures acceptable. The Commission notes the concerns raised by Louis Bull Tribe around the classification of soils, including wetlands, forested soils, and permafrost locations. The Commission agrees with NGTL that the proposed mitigation measures outlined in the Environmental and Socio-Economic Assessment and Environmental Protection Plans are based on best management practices and industry practices.</p> <p>The Commission acknowledges that NGTL has not finalized the locations for all temporary infrastructure, however it expects NGTL to continue its efforts to reduce the amount of temporary work space required, avoid sensitive environmental and socio-economic features and use existing disturbances where feasible. The Commission has included Condition 10 on the Order, which requires NGTL to engage with Louis Bull Tribe, among other Indigenous peoples, with respect to planning and engagement activities relating to the locations of temporary work space.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about</i></li> </ul>	8.6.3

		<p>apply mitigation measures in the Environmental Protection Plans.</p> <p>NGTL stated that it has not finalized the locations for all temporary infrastructure, but that it would work to reduce the amount of temporary work space required, and would use existing disturbances where feasible. NGTL acknowledged that it would evaluate the need for additional field studies should any areas be identified outside of the areas assessed as part of the Project's Environmental and Socio-Economic Assessment.</p>	<p><i>Temporary Infrastructure Locations</i></p> <ul style="list-style-type: none"> <li>• <i>Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 58 Facilities and Activities</i></li> <li>• <i>Post-Construction Environmental Monitoring Report</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
<p>Effects on water quality and quantity including methods to monitor water quality, beaver dam removal and mitigation effectiveness</p> <p>Increased sedimentation</p> <p>Development of a water monitoring plan with input from Indigenous communities</p>	<ul style="list-style-type: none"> <li>• Beaver First Nation</li> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Horse Lake First</li> </ul>	<p>NGTL stated that its water quality monitoring plan, including the selection of locations of water quality monitoring sites, would adhere to applicable regulatory guidance, such as the <i>Code of Practice for Pipelines and Communication Lines</i>. The Environmental Protection Plans also describes mitigation measures, including the Drilling Mud Release Contingency Plan, that would be implemented in the event of sediment or</p>	<p>The Commission is of the view that NGTL has provided adequate mitigation measures to address the concerns raised by the Participants. With respect to concerns over increased sedimentation from construction activities, NGTL has proposed a variety of mitigation and restoration measures that are aimed at reducing sedimentation and erosion from construction, including the use of isolation methods when water is present (with the exception of the Notikewin River crossing) or open cut methods if the watercourse is dry or frozen at the time of construction and restoring any disturbed areas to similar pre-construction conditions. In the Commission's view these measures will greatly reduce the potential for</p>	8.6.3

	<p>Nation</p> <ul style="list-style-type: none"> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Sawridge First Nation</li> <li>• Swan River First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>deleterious substance releases during the construction of the trenchless crossings.</p> <p>NGTL indicated that its Project-specific Environmental Protection Plans outline the environmental protection measures that NGTL would employ to avoid or reduce potential adverse effects of the Project on water quality.</p> <p>NGTL stated that beaver dam removal is an instream construction activity and, as such, water quality monitoring for sediment events and/or dissolved oxygen would occur where required by the applicable regulatory approvals or as identified by a Qualified Aquatic Environment Specialist. The Environmental Protection Plan outlines mitigation measures for beaver dams or lodges encountered by the Project.</p> <p>NGTL stated that water withdrawal activities would be undertaken as per the <i>Alberta Code of Practice for the Temporary Diversion of Water for Hydrostatic Testing of Pipelines</i> and as per conditions of the</p>	<p>environmental impact from sedimentation.</p> <p>With respect to hydrostatic testing, the Commission recommends Condition 23 for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a hydrostatic testing plan for the Project at least 30 days prior to pressure testing.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Hydrostatic Testing Plan</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 58 Facilities and Activities</i></li> <li>• <i>Post-Construction Environmental Monitoring Report</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
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		Temporary Diversion License issued by Alberta Environment and Parks for the Project. Section 8.7 of the Environmental Protection Plan outlines mitigation measures for minimizing effects of water withdrawal on source waterbodies.		
Effects on aquatic resources, including fish and fish habitat and aquatic species at risk  Watercourse crossing methods	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Louis Bull Tribe</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL explained that proposed watercourse crossing methods have taken into consideration the sensitivity and fisheries values of the watercourses and the drainages, including habitat characteristics, fish species present, construction schedule (e.g., duration and season) and technical feasibility of each crossing.</p> <p>NGTL has proposed that the Loon River be crossed using a trenchless method and indicated that the results of the feasibility study determined that a trenchless crossing is feasible. The proposed contingency crossing of the Loon River is an isolated open cut method.</p> <p>NGTL stated that monitoring (i.e., drilling mud pressure and return monitoring,</p>	<p>The Commission is of the view that NGTL has, in general, proposed watercourse crossing methods, including mitigation measures that, if implemented as proposed, will ensure that the proposed watercourse crossings are safely constructed with minimal risk to the environment.</p> <p>The Commission notes that residual effects to fish and fish habitat (i.e., localized alteration or loss of riparian habitat, temporary alteration of instream habitat, temporary increased risk of fish mortality or injury, and combined residual effects) would result from the proposed watercourse crossings. The Commission has concluded that the residual effects would not be significant.</p> <p>The Commission notes that NGTL has provided reasonable mitigation measures that will reduce impacts to riparian buffers, avoid issues of fish passage and limit mortality of fish during winter fish salvages to a negligible level.</p> <p>The Commission finds the proposed open wet cut of the Notikewin River acceptable. With respect to the Notikewin River, the</p>	8.6.3 8.6.4.1

		<p>instream turbidity monitoring) will allow frac-outs to be detected early, so corrective measures can be implemented or, if necessary, drilling activities can be temporarily suspended to limit the duration and volume of drilling mud released, thereby reducing the potential for a drilling mud release to affect water quality.</p> <p>NGTL has proposed that the Notikewin River be crossed using an open wet cut. NGTL determined that a trenchless crossing was not feasible due to the required length and depth of the drill path as a result of the necessary placement of entry and exit points above the valley break.</p> <p>NGTL indicated that with the successful implementation of mitigations measures, including the scheduling of construction for the proposed crossing outside of the restricted activity period and reducing stream flow through the proposed worksite by employing a partial flow bypass system, potential harm to fish and fish habitat could be</p>	<p>CER issued a letter to Fisheries and Oceans Canada, pursuant to the Memorandum of Understanding, requesting they confirm the open wet cut of the Notikewin River will require an authorization under the <i>Fisheries Act</i>. The Commission notes that should Fisheries and Oceans Canada confirm an authorization would be required, Fisheries and Oceans Canada would undertake further consultation with impacted Indigenous peoples and NGTL would be required to offset any residual impacts to aquatic resources.</p> <p>The Commission recommends Condition 22 for the Section 52 Pipeline and Related Facilities, requiring NGTL to provide a copy or copies of any <i>Fisheries Act</i> authorization(s) required for the construction of the Project.</p> <p>The Commission has revised the contingency crossing condition. Condition 21 is now specific to the Loon River and includes a requirement to engage with potentially affected Indigenous peoples should the contingency crossing need to be implemented. The CER would use the information provided in the condition to exercise its responsibilities under the Memorandum of Understanding with Fisheries and Oceans Canada.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Contingency Watercourse Crossings Method for the Loon River</i></li> <li>• <i>Authorizations under paragraph 35(2)(b) of the Fisheries Act</i></li> <li>• <i>Environmental Protection Plan (EPP) for</i></li> </ul>	
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		<p>minimized or avoided.</p> <p>NGTL indicated that it has been engaging with Indigenous groups on the Project since 2018, including opportunities to provide input of fish species and abundance within watercourses associated with the Project and will continue to address questions and concerns through its ongoing engagement efforts should any rise.</p> <p>NGTL stated it is aware of the changes to of the <i>Fisheries Act</i> and that the new Fish and Fish Habitat Protection Provisions and regulations that came into force on August 28, 2019 and is of the view that the assessment of serious harm considers the harmful alteration, disruption or destruction of fish habitat. As such, the existing assessment aligns with the new <i>Fisheries Act</i> and NGTL anticipates it will support a review under the amended <i>Fisheries Act</i>.</p> <p>NGTL indicated that Environmental Inspectors or designate(s) assigned will be present during construction and that the</p>	<p><i>Section 52 Pipeline and Related Facilities</i></p> <ul style="list-style-type: none"> <li>• <i>Environmental Protection Plan (EPP) for Section 58 Facilities and Activities</i></li> <li>• <i>Post-Construction Environmental Monitoring Report</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
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		<p>main responsibility is to ensure that all environmental commitments, undertakings and approval conditions are met and that work is completed in compliance with applicable environmental legislation and company policies, procedures and specifications.</p> <p>NGTL reaffirmed that it has a Drilling Mud Release Contingency Plan to be implemented in the event of a sediment or deleterious substance release during construction of the trenchless crossing.</p>		
<p>Effects on vegetation and wetlands, including, vegetation clearing and reseeded using native seed mixtures and natural recovery in wetlands</p> <p>Use of herbicides for vegetation control</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Gift Lake Métis Settlement</li> <li>• Horse Lake First Nation</li> <li>• Louis Bull Tribe</li> </ul>	<p>NGTL indicated that based on results from post-construction monitoring of similar NGTL pipeline projects, its standard mitigation and best practices were effective in reducing residual effects on vegetation, and that natural recovery is an acceptable reclamation technique.</p> <p>NGTL stated that minimal ground disturbance construction practices (i.e., no salvage or grubbing outside of trench line in wetlands, and level, upland forests) would limit the</p>	<p>The Commission notes NGTL's commitment to provide affected Indigenous peoples with the Project schedule and maps prior to construction. The Commission agrees that this would help to reduce or avoid potential conflicts between construction personnel and traditional users. The Commission expects that NGTL would provide this information to Indigenous peoples in a timely manner to allow for traditional plants to be harvested in the areas prior to construction.</p> <p>The Commission notes that where Indigenous peoples have identified specific locations of concern for herbicide spraying to NGTL, it has committed to notifying them regarding timing and locations of scheduled spraying and herbicide applications for</p>	8.6.3

	<ul style="list-style-type: none"> <li>• Métis Nation of Alberta – Region 5</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Sawridge First Nation</li> <li>• Swan River First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>alteration of native vegetation and facilitate natural regeneration.</p> <p>NGTL said that wetland and vegetation monitoring is included as part of its post-construction monitoring methodology. NGTL indicated that where reclamation monitoring activities determine that natural recovery is not achieving the desired results, NGTL would use adaptive management (e.g., active revegetation) and continue monitoring the site until measures are considered to be effective and the issues resolved.</p> <p>NGTL stated that the use of herbicides must comply with the Project Environmental Protection Plans, and is prohibited on the construction footprint unless otherwise approved by NGTL. The Project Environmental Protection Plans indicated that the use of herbicides is prohibited near rare plants and rare ecological communities; however spot spraying, wicking, mowing or hand-picking would be acceptable weed control measures in these areas.</p>	<p>those locations during construction and operation.</p> <p>With respect to the permanent loss of 1.6 ha of wetland function at the proposed Hidden Lake North Unit Addition, the Commission is of the view that the commitment to undertake wetland replacement in lieu of fees (offsets) in compliance with the <i>Alberta Wetland Policy and Alberta Water Act</i> would satisfy the goal of no net loss of wetland function under the Federal Policy on Wetland Conservation.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 58 Facilities and Activities</i></li> <li>• <i>Post-Construction Environmental Monitoring Report</i></li> <li>• <i>Post-Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
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		<p>NGTL committed to engage with Alberta Environment and Parks on the permanent loss of 1.6 ha of wetland function within the Hidden Lake North Unit Addition, and would be undertaking wetland replacement in lieu of fees (offsets) in compliance with the Alberta Wetland Policy and Alberta <i>Water Act</i>. NGTL would apply for any necessary approvals under the <i>Water Act</i> or notifications under the associated Codes of Practice for construction in wetlands.</p>		
<p>Project impacts on the acoustic environment</p> <p>Effects of noise related to wildlife and wildlife habitat</p> <p>Noise and recreational impacts affecting a cabin identified near Kilometer Post 30.0 (Red Earth Section 3)</p>	<ul style="list-style-type: none"> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Duncan's First Nation</li> <li>• Métis Nation of Alberta – Region 5</li> <li>• Peerless Trout First Nation</li> <li>• Swan River First Nation</li> <li>• Tallcree First Nation</li> </ul>	<p>NGTL stated that construction-related noise will be addressed through the use of codified practices, standard mitigation measures and best management practices. Additionally, the results of the Impact Assessment found that the Hidden Lake North Unit Addition's predicted sound levels fall within the permissible range established by Alberta Energy Regulator Directive 038: Noise Control.</p> <p>NGTL stated it has undertaken engagement with potentially affected</p>	<p>The Commission finds that the proposed standard mitigation, restoration and monitoring measures are appropriate and would effectively reduce the potential adverse environmental effects on the valued environmental and socio-economic components.</p>	8.6.3

		<p>stakeholders, landowners and Indigenous communities and will continue to engage throughout Project planning and construction to identify any specific concerns and implement appropriate mitigation measures. NGTL stated it provides prior notification of project construction to all potentially affected stakeholders, landowners and Indigenous communities.</p>		
<p>Effects on air quality including greenhouse gas emissions on plant gathering, hunting, fishing and trapping activities and resources.</p> <p>Potential effects of dust</p>	<ul style="list-style-type: none"> <li>• Doig River First Nation</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peerless Trout First Nation</li> </ul>	<p>NGTL indicated that it primarily mitigates potential effects on air quality through equipment selection, construction practices (e.g., reduced idling of equipment and minimizing size and duration of burn piles) and through adherence to applicable guidelines.</p> <p>NGTL stated that the results of the air dispersion modelling indicated that the maximum predicted NO<sub>2</sub>, CO, and PM2.5 concentrations, including contributions from the existing and planned Project sources at Hidden Lake North Compressor Station, were lower than their corresponding ambient air quality objectives for all</p>	<p>The Commission notes that the results of the air dispersion modelling indicated that the maximum predicted NO<sub>2</sub>, CO, and PM2.5 concentrations, including contributions from the existing and planned Project sources at the Hidden Lake North Unit Addition, were lower than their corresponding ambient air quality objectives for all applicable averaging periods. The Commission recognizes that NGTL would continue to implement fugitive emissions management processes such as the ongoing annual leak detection and repair program.</p> <p>The Commission notes that although the construction and operation of the Project will result in greenhouse gas emissions, the Project contribution of these emissions is small relative to provincial and national greenhouse gas totals. The Commission is satisfied with NGTL's proposed mitigation measures, and is of the view that the contribution of Project's greenhouse gas</p>	<p>8.6.3 8.7.2</p>

		<p>applicable averaging periods. NGTL submitted that the predicted residual effect is not significant.</p> <p>NGTL indicated that it will follow ECCC's <i>Regulations Respecting Reduction in the Release of Methane and Certain Volatile Organic Compounds (Upstream Oil and Gas Sector)</i> to address methane reduction. NGTL stated that it is continuing to implement fugitive emissions management processes such as the ongoing annual leak detection and repair program focused on equipment such as the seals on valves.</p>	<p>emissions will not result in a material change to national or provincial greenhouse gas totals. The Commission recognizes that as part of the NGTL's existing management process, methane as an identified greenhouse gas is monitored and reported annually to the federal government using Leak Detection and Repair Surveys during operations.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Environmental Protection Plan (EPP) for Section 52 Pipeline and Related Facilities</i></li> <li>• <i>Environmental Protection Plan (EPP) for Section 58 Facilities and Activities</i></li> </ul>	
<p>Effects on woodland caribou and its habitat in the Chinchaga and Red Earth caribou ranges</p> <p>Opportunity to review and participate in proposed future caribou monitoring and management plans, including the Caribou Habitat Restoration and Offset Implementation</p>	<ul style="list-style-type: none"> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Peerless Trout First Nation</li> </ul>	<p>NGTL submitted a Preliminary Caribou Habitat Restoration and Offset Measures Plan with its Application which quantifies the effects of the Project and outlines the approach to restoration and offsets in order to reduce the predicted residual Project effects and minimize the Project's contribution to cumulative effects on caribou and caribou habitat.</p> <p>NGTL stated that it has a strong understanding of the Project interactions and</p>	<p>The Commission is of the opinion that disturbances within caribou ranges should firstly be avoided and secondly minimized, with measures taken before, during and after construction to help minimize the disturbance and accelerate the restoration of caribou habitat. Given the already substantial ongoing cumulative effects on the landscape and on caribou in the Chinchaga and Red Earth caribou ranges due to both direct and indirect habitat disturbance, all residual effects on caribou habitat should be considered and fully offset to avoid any further contribution to already existing significant cumulative effects in these ranges.</p> <p>The Commission has considered the impact</p>	<p>8.6</p> <p>8.7</p>

<p>Report and the Caribou Habitat Restoration and Offset Measures Monitoring Program and any other applicable plans.</p> <p>Governments of Canada and Alberta must put in place a caribou recovery plan and binding measures that will see caribou within the Red Earth and Chinchaga ranges stabilize and recover.</p> <p>Adopt the authority and recommendation of ECCC which propose a blanket 4:1 offset ratio for all caribou disturbed by this Project.</p> <p>Methodology for assessing effects on caribou for both project effects and cumulative effects</p> <p>Establishment of Indigenous monitoring committee allowing</p>		<p>potential effects on caribou and caribou habitat as summarized in the Environmental and Socio-Economic Assessment and Caribou Habitat Restoration and Offset Management Plan.</p> <p>NGTL does not believe an additional baseline report is needed to understand the potential Project impacts to caribou as it has sufficient data to conclude with reasonable certainty that its proposed restoration and offset measures will effectively contribute to the recovery of caribou habitat.</p> <p>NGTL indicated it is available to meet with interested Indigenous peoples and will consider input provided during engagement for the Project throughout the finalization of the Caribou Habitat Implementation Plan and the Caribou Habitat Restoration and Offset Measures Monitoring Program. NGTL noted that it will continue to integrate learnings and findings including information provided by Indigenous peoples, as appropriate, into projects within caribou range and will</p>	<p>of the Project on the Red Earth and Chinchaga caribou ranges and is of the view that, with the mitigation proposed by NGTL and the conditions that would be imposed by the Commission, the impacts to caribou habitat within the Chinchaga and Red Earth caribou ranges would be mitigated while the status of the existing cumulative effects would remain unchanged.</p> <p>The Commission is of the view that NGTL has filed the appropriate information within the Caribou Habitat Restoration and Offset Management Plan to demonstrate an understanding of the Project interactions and potential effects on caribou habitat.</p> <p>The Commission remains of the same view as the previous NEB typically did in its decisions on pipeline projects, , that the fixed 4:1 ratio recommended by ECCC does not allow for different time lag circumstances or varying levels of uncertainty, nor does it ensure that the offset measures selected would be effective, account for the timing of implementation or proximity of the offset location. The Commission is of the view that NGTL's multipliers, as set out in its evidence, account for a wide variety of mitigation and habitat related variables and provide different multipliers for inherent values, as well as delivery, temporal, and spatial risks encountered under different circumstances which could potentially result in a ratio greater than 4:1, where and when the risks are greater to the environment.</p> <p>The Commission is of the view that implementation of restoration and offset</p>	
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<p>for direct involvement in Caribou Habitat Restoration and Offset Management Plan and other environmental and cultural value monitoring plan.</p>		<p>continue to share its caribou plans and reports with ECCC. NGTL also noted that all monitoring reports filed with the CER are available for review through the CER's electronic repository at their convenience.</p> <p>NGTL is of the view that a separate Indigenous monitoring committee is not appropriate for the scope, scale and nature of this Project. NGTL indicated that it is available to meet with Peerless Trout First Nation to discuss the Caribou Habitat Restoration and Offset Management Plan and opportunities for participation in the design and implementation of caribou habitat restoration, offsetting and monitoring for the Project.</p>	<p>measures as quickly as possible is key to reducing a project's residual effects to caribou habitat.</p> <p>The Commission recommends Condition 30 for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a Caribou Habitat Restoration Implementation Report and Status Update and Condition 31 for the Section 52 Pipeline and Related Facilities requiring NGTL to file and Caribou Habitat Offset Measures Implementation Report to review the results of the measures implemented to compensate for all Project related residual effects from directly and indirectly disturbed habitat and verify the calculations for the total required offset area.</p> <p>The Commission recommends Condition 32 for the Section 52 Pipeline and Related Facilities, requiring NGTL to file a Caribou Habitat Restoration and Offset Measures Monitoring Program to monitor and verify the effectiveness of the caribou habitat restoration and offset measures implemented.</p> <p>The Commission recommends Condition 33 for the Section 52 Pipeline and Related Facilities, to file Caribou Monitoring Reports which would outline the results of the Caribou Habitat Restoration and Offset Measures Monitoring Program.</p> <p>The Commission acknowledges the comments received from Dene Tha' First Nation, Driftpile Cree Nation, and Peerless Trout First Nation on the proposed conditions and NGTL's commitments to consider input provided by Indigenous</p>	
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			<p>peoples, throughout the finalization of the Caribou Habitat Implementation Plan and the Caribou Habitat Restoration and Offset Measures Monitoring Program. Having considered these comments, The Commission has included a requirement in Condition 31 and 32 for NGTL to consult, plan and engage with Indigenous peoples that expressed an interest in being involved with the Caribou Habitat Offset Measures Implementation Report and related filings during the GH-002-2019 hearing process.</p> <p>The Commission recognizes the importance of involvement and engagement of Indigenous peoples notes that the Section 52 Pipeline and Related Facilities Conditions 6 and 28 for Construction and Post-Construction Monitoring Plans for Indigenous Peoples, respectively, provide opportunities for Indigenous monitoring opportunities and input into the Project including caribou habitat restoration and offsetting activities. The Commission is of the view and that a distinct Indigenous monitoring committee condition is not warranted in this instance.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Caribou Habitat Restoration Implementation Report and Status Update</i></li> <li>• <i>Caribou Habitat Offset Measures Implementation Report</i></li> <li>• <i>Caribou Habitat Restoration and Offset Measures Monitoring Program</i></li> <li>• <i>Caribou Monitoring Reports</i></li> </ul>	
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			<ul style="list-style-type: none"> <li>• <i>Post-Construction Environmental Monitoring Report</i></li> <li>• <i>Construction Monitoring Plan for Indigenous Peoples</i></li> <li>• <i>Post – Construction Monitoring Plan for Indigenous Peoples</i></li> </ul>	
<b>Cumulative Effects</b>				
<p>Cumulative effects on species hunted including moose, caribou and grizzly bears.</p> <p>Proposed mitigation measures</p>	<ul style="list-style-type: none"> <li>• Bigstone Cree Nation</li> <li>• Cadotte Lake Métis Local #1994</li> <li>• Dene Tha' First Nation</li> <li>• Doig River First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>• Louis Bull Tribe</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peavine Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Swan River First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL provided a detailed activity inclusion list that included both existing and foreseeable future developments that have the potential for spatial and temporal interaction of effects, and therefore potential for cumulative effects. This list included a reservoir, agriculture, forestry, energy generation and transmission, mines and mineral resource projects, oil and gas developments, rural and urban development, and transportation and infrastructure.</p> <p>In response to the concerns raised by Indigenous peoples with respect to NGTL's assessment of cumulative effects, NGTL submitted the Commission should give substantial weight to NGTL's effects assessment conclusions</p>	<p>Although there are possible cumulative effects for a number of biophysical and socioeconomic elements, the Commission is of the view that most of these cumulative interactions and effects would be limited in spatial extent, short-term during construction, reversible and minor in nature, and would be mitigated by NGTL's environmental protection and mitigation measures and by the Commission's additional related conditions. Therefore, the Commission concludes that for most of these elements the Project would not likely result in significant adverse cumulative effects.</p>	8.7

		given that they reflect NGTL's extensive operating experience, uses accepted and defensible methodologies, incorporates the detailed and field-proven mitigation measures provided in the Environmental Protection Plans, and will be verified through NGTL's proposed post-construction monitoring.		
<b>Emergency Management</b>				
<p>Consultation, notification and involvement in emergency management, preparedness and response planning</p> <p>Education, training and capacity-building</p> <p>Emergency response readiness</p> <p>Potential spills and equipment leaks during construction</p> <p>Information on potential spills during construction (mitigation and prevention)</p> <p>NGTL's incident</p>	<ul style="list-style-type: none"> <li>• Beaver First Nation</li> <li>• Cadotte Lake Métis</li> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Doig River First Nation</li> <li>• Duncan's First Nation</li> <li>• Métis Nation of Alberta – Region 6</li> <li>• Paddle Prairie Métis Settlement</li> <li>• Peerless Trout First Nation</li> <li>• Tallcree First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>As part of Project consultation activities NGTL stated it provides information concerning Emergency Preparedness and Response to potentially affected stakeholders, emergency responders, landowners and Indigenous peoples.</p> <p>NGTL stated that TransCanada's Public Awareness Program continues providing stakeholders and communities with current, relevant information on pipeline safety and emergency response planning on a regular basis throughout the entire life of all assets. In addition, NGTL</p>	<p>The Commission is of the view that consultation, communication, continual improvement in notification and capacity building between NGTL and Indigenous peoples needs to continue. These conversations must be transparent, genuine, ongoing, structured, collaborative and respectful.</p> <p>The Commission is satisfied with NGTL's commitment to ensure Indigenous peoples have the information they need regarding emergency response and response times, including opportunities for capacity building, reviewing appropriate contact information, site-specific Construction Emergency Response Plans, contingency planning, and accidents or malfunctions, as related to the Project as well as receive adequate information on the procedures to follow during emergency incidents that could occur along the pipeline, and have the opportunity to consult and provide input with</p>	4.4.1

<p>response</p> <p>Notification of Indigenous communities in the event of an incident</p>		<p>provides contact information for regional representatives that are responsible for ensuring that questions and concerns regarding operational topics such as accidents and malfunctions are addressed appropriately.</p> <p>NGTL indicated that it is committed to discussing specific issues with Indigenous peoples and what the communities would like to receive notification about. NGTL stated it will work with the communities to determine the appropriate information sharing process (i.e., through ongoing engagement or formal notifications, as appropriate).</p> <p>NGTL indicated that it has been contributing to community investment initiatives with Indigenous peoples in the Project area and will continue to work with them to identify community initiatives for capacity development, which supports the immediate and/or longer-term training needs and their long term goals.</p> <p>NGTL stated before construction, the prime contractor for each Project</p>	<p>respect to Emergency Response Plans.</p> <p>The Commission is recommending Condition 10 (Section 52 Pipeline and Related Facilities) and imposing the same condition (Condition 11) for the Section 58 Facilities and Activities in order to ensure that NGTL continues to proactively plan to incorporate Project-specific elements within its continuing education program required by section 35 of the OPR.</p> <p>The Commission also recommends Condition 15 for the Section 52 Pipeline and Related Facilities and imposes the same condition (Condition 15) for the Section 58 Facilities and Activities requiring NGTL to file Emergency Response Plans for the construction phase of the Project and to share them with Indigenous peoples who have expressed an interest in receiving a copy.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Emergency Management Continuing Education Program</i></li> <li>• <i>Construction Emergency Management Preparedness and Response Planning</i></li> </ul>	
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		<p>component will be responsible for developing and implementing an Emergency Response Plan to cover potential emergencies at their worksite and while travelling and hauling to and from their worksite during construction. This plan will be communicated during the site-specific safety orientation before accessing the site. NGTL stated it will also consult with regional emergency response agencies to help ensure that an appropriate understanding of roles and cooperation are in place for the Project during construction and that if appropriate, construction Emergency Response Plans are reasonably linked into any response plans maintained by affected response agencies.</p> <p>NGTL stated that with respect to the construction phase of the Project, the risk of minor spills that may occur on site during construction activities (e.g., coolants, lube oils, etc.), are subject to both preventive equipment checks and processes, and the Project's</p>		
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		Environmental Protection Plans, which includes a contingency spill plan.		
<b>Land Matters</b>				
Temporary workspace and temporary infrastructure locations	<ul style="list-style-type: none"> <li>• Driftpile Cree First Nation</li> <li>• Louis Bull Tribe</li> <li>• Peerless Trout First Nation</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL said that throughout the various phases of the Project, it has acknowledged that while TWS is required to safely and efficiently construct the Project, NGTL would work to reduce the amount of TWS required and would use existing disturbances where feasible.</p> <p>NGTL confirmed that known temporary work space was considered in the Environmental and Socio-Economic Assessment, which was identified based on the proposed pipeline routes, the compressor station unit addition and standard NGTL temporary work space requirements. NGTL stated that it had not finalized the locations for all temporary infrastructure and was currently assessing the locations. NGTL indicated that if additional temporary workspace was determined to be necessary following the Application submission outside of the areas assessed as part of the</p>	<p>The Commission finds that NGTL's anticipated requirements for permanent and temporary land rights are acceptable.</p> <p>The Commission notes that NGTL's submissions that it would be engaging Indigenous peoples on temporary infrastructure and workspace for the Project.</p> <p>The Commission notes the concerns from Indigenous peoples regarding the location of temporary infrastructure sites including construction camps within their traditional territory. In response to these concerns, the Commission imposes Condition 9 related to the Section 58 Facilities and Activities, which requires NGTL to file a Construction Camp Management Plan that applies to all construction camps for the Project.</p> <p>The Commission also imposes Condition 10 related to the Section 58 Facilities and Activities requiring NGTL to file an update on planning and engagement activities conducted with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation regarding all temporary infrastructure locations (e.g., construction camps, equipment and staging areas) for the Project.</p> <p>The Commission finds that the requested ROW and temporary work space land requirements, as described in the</p>	5.2.7

		<p>Project's Environmental and Socio-Economic Assessment, NGTL would conduct a desktop study and evaluate the need for additional field surveys to determine if any new potential effects would result from the temporary workspace. . In the event additional mitigation measures are identified, they will be added to NGTL's proven mitigative strategies for soils and wetlands in the updated Environmental Protection Plans prior to construction.</p> <p>NGTL stated that it would be engaging Indigenous communities on temporary infrastructure and workspace locations for the Project with a view to understanding and addressing any residual concerns</p>	<p>Application, and as amended, allow for the construction and operation of the Project in a safe and efficient manner. The Commission finds that NGTL's anticipated requirements for permanent and temporary land rights are acceptable.</p> <p><i>Conditions noted:</i></p> <ul style="list-style-type: none"> <li>• <i>Construction Camp Management Plan</i></li> <li>• <i>Engagement with Driftpile Cree Nation, Whitefish Lake First Nation #459 and Peerless Trout First Nation about Temporary Infrastructure Locations</i></li> </ul>	
<p>Routing Fragmentation of lands</p>	<ul style="list-style-type: none"> <li>• Dene Tha' First Nation</li> <li>• Driftpile Cree Nation</li> <li>• Duncan's First Nation</li> <li>•</li> <li>• Louis Bull Tribe</li> <li>• Peerless Trout First</li> </ul>	<p>NGTL explained that adding loop sections generally limits the area for routing consideration to the areas on either side of the existing pipelines, as well as constraining the locations where connections to the existing NGTL System can be made.</p>	<p>The Commission acknowledges NGTL's efforts to minimize the potential environmental impact of the Project by proposing a route that parallels existing ROWs, and minimizes the taking up of new lands.</p> <p>The Commission notes that NGTL's route selection criteria minimizes potential adverse effects, including avoiding sensitive environmental areas and minimizing</p>	<p>5.1.3 8.6.3 8.7.3.1</p>

	<p>Nation</p> <ul style="list-style-type: none"> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL indicated that for this Project, approximately 76 km (95 per cent) of the proposed pipeline route parallels existing NGTL ROW or other existing linear disturbances such as pipelines, roads and electrical power lines.</p> <p>NGTL stated that paralleling existing disturbances allows the Project footprint to be reduced by using TWS on the adjacent disposition and minimizes fragmentation of the landscape and as a result, potential effects of the Project on the environment and on traditional land and resource use are minimized.</p>	<p>environmental and social impacts and fragmentation as much as possible. The Commission finds that NGTL's route selection process and the criteria used to determine the route to be reasonable and justified.</p> <p>After considering the evidence filed on the Record, the Commission finds the route proposed by NGTL to be appropriate.</p>	
<b>Abandonment</b>				
<p>Potential impacts and cumulative effects from unattended abandoned / orphaned pipelines, wells, and other sites.</p> <p>Abandonment in-place versus removal of pipelines</p> <p>Potential for contamination</p>	<ul style="list-style-type: none"> <li>• Dene Tha' First Nation</li> <li>• Peavine Métis Settlement</li> <li>• Whitefish Lake First Nation #459</li> </ul>	<p>NGTL noted that it is difficult at this time to predict when or how the pipeline will be decommissioned or abandoned at the end of the Project's life. However, it can be anticipated that any of the following three scenarios may occur during pipeline decommissioning or abandonment: pipeline removal, abandonment in-place, or a combination of abandonment in-place and pipeline removal. NGTL</p>	<p>The Commission notes that the methods for decommissioning or abandonment of a pipeline at the end of its lifecycle would have to be considered in light of conditions prevailing at that time, and that any decommissioning or abandonment activities would be subject to approval, by the Commission, or its successor.</p> <p>The Commission further notes that the requirements for decommissioning and / or abandoning a pipeline are set out in the Filing Manual and involve separate regulatory requirements from the current Project application, including a separate Environmental and Socio-Economic</p>	<p>7.6.9.3</p>



Rehabilitation / Restoration  Legal Responsibilities		stated these methods would have to be considered in light of conditions prevailing at the time of decommissioning or abandonment and would be subject to approval at that time, by the Commission, or its predecessor.	Assessment and consultation activities.	
<b>Project Splitting</b>				
Impacts to consultation process  Impacts to environmental studies  Impacts to cumulative effects studies	<ul style="list-style-type: none"> <li>• Duncan’s First Nation</li> <li>• Peerless Trout First Nation</li> </ul>	<p>NGTL stated that while each NGTL project is an addition to the integrated NGTL System, this does not take away from the fact that the Project is designed to respond to a specific System requirement independent of those driving other projects on the system.</p> <p>NGTL stated that cumulative effects are and have, in fact, been assessed for all of NGTL’s facility applications in accordance with applicable filing requirements using methodology that follows CEAA 2012.</p> <p>NGTL noted the Commission has held that in addition to cumulative effects, consultation requirements are not generally affected by whether project applications</p>	<p>The Commission acknowledges that the Project is designed to respond to a specific system requirements independent of other projects on the system.</p> <p>Regarding cumulative effects, the Commission the Project Environmental and Socio-Economic Assessment considered other industrial infrastructure, including past and current NGTL projects.</p> <p>The Commission notes that consultation is required by proponents for all project applications, and the consultation requirements are the same regardless of whether or not projects are assessed in aggregate or individually.</p> <p>The Commission is satisfied that NGTL’s method for applying for the Project is reasonable and appropriate and based on the requirements set out in the Filing Manual.</p>	7.6.9.2

		<p>proceed in aggregate or individually. NGTL stated the Commission has held, for instance, that consultation requirements are based on potential impacts to the exercise of Indigenous and Treaty rights, and remain the same whether or not projects are assessed in aggregate or individually; and, all project applications, regardless of under which section of the NEB Act they are submitted (section 58 or section 52) require consultation if there are potentially impacted parties identified.</p>		
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**Participant Funding**

Participant Funding was raised as an issue (i.e., funding model and approach, insufficient funding provided by the CER, timing of provision of funding, and stipulations attached to funding) by Cadotte Lake Métis Local #1994 and Louis Bull Tribe.

The CER provides a Participant Funding Program, which is administered independently of the hearing process and the Commissioners. The Participant Funding Program provides financial assistance to individuals, Indigenous peoples, landowners, and non-industry not-for-profit groups to facilitate participation in certain project hearings and environmental assessments of designated projects. On 31 May 2019, it was announced that funding would be available to assist individuals and groups with their participation in the hearing for the Project. The Participant Funding Program received ten applications and recommended awarding \$400,000 in total to all ten eligible groups (\$40,000 per group). Indigenous peoples who participated in the hearing process accounted for 100 per cent of the funding awarded for the hearing. Table 7-2 in the Report sets out the recipients and the amounts awarded. Further information regarding eligible costs and associated contribution agreements is available in the Participant Funding Program section of the CER’s website<sup>24</sup>.

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24 [www.cer-rec.gc.ca/pfp](http://www.cer-rec.gc.ca/pfp)

## Appendix VI - Criteria, Ratings and Definitions Used in Evaluating the Likelihood of Significant Effects

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Criteria	Rating	Definition
All criteria	Uncertain	When no other criteria rating descriptor is applicable due to either lack of information or inability to predict.
Temporal Extent	Short-term	An effect, either resulting from a single project interaction or from infrequent multiple ones, whose total duration is usually relatively short-term and limited to or less than the duration of construction, or one that usually recovers immediately after construction. An effect usually lasting in the order of weeks or months.
	Medium-term	An effect, either resulting from a single or infrequent project interaction or from multiple project interactions each of short duration and whose total duration may not be long-term but for which the resulting effect may last in the order of months or years.
	Long-term	An effect, either resulting from a single project interaction of long lasting effect; or from multiple project interactions each of short duration but whose total results in a long lasting effect; or from continuous interaction throughout the life of the project. An effect usually lasting in the order of years or decades.
Reversibility	Reversible	An effect expected to, at a minimum, return to baseline conditions within the lifecycle of the Project.
	Permanent	An effect that would persist beyond the lifecycle of the project, or last in the order of decades or generations. Some social or cultural effects that persist beyond a single generation may become permanent.
Geographic Extent	Project Construction Footprint	Effect would be limited to the area directly disturbed by the Project development, including the width of the ROW and the temporary workspace.

	Local Study Area	Effect would generally be limited to the area in relation to the Project where direct interaction with the biophysical and human environment could occur as a result of construction or reclamation activities. This area varies relative to the receptor being considered.
	Regional Study Area	Effect would be recognized beyond the Local area and that might be affected on the landscape level. This area also varies relative to the receptor being considered.
	Global	Effects would be recognized at the global level.
Magnitude	Low	Effect is negligible, if any; restricted to a few individuals/species or only slightly affects the resource or parties involved; and would impact quality of life for some, but individuals commonly adapt or become habituated, and the effect is widely accepted by society.
	Moderate	Effect would impact many individuals/species or noticeably affect the resource or parties involved; is detectable but below environmental, regulatory or social standards or tolerance; and would impact quality of life but the effect is normally accepted by society.
	High	Effect would affect numerous individuals or affect the resource or parties involved in a substantial manner; is beyond environmental, regulatory or social standards or tolerance; and would impact quality of life, result in lasting stress and is generally not accepted by society.
Evaluation of Significance	Likely to be significant	Effects that are either: (1) of high magnitude; or (2) long-term, permanent, and of beyond the Regional Study Area.
	Not likely to be significant	Any adverse effect that does not meet the above criteria for "significant".