

CROWN CONSULTATION AND ACCOMMODATION REPORT
for the
NOVA Gas Transmission Ltd. North Corridor Expansion Project
(GH-002-2019)

Prepared by Natural Resources Canada

May 2021

Disclaimers

If there is any inconsistency or ambiguity between this Report and the Canada Energy Regulator Recommendation Report (GH-003-2019), the Canada Energy Regulator Recommendation Report (GH-003-2019) shall prevail.

This document (Section 6.0) contains confidential third party information that should not be disclosed without prior consultation with the Major Projects Management Office at Natural Resources Canada.

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1.0 Introduction and Overview

Canada is committed to advancing reconciliation and renewing its relationship with Indigenous peoples to one based on a recognition of rights, respect, cooperation, and partnership. This commitment places an emphasis on ensuring that the Crown fulfills its duty to consult and, where appropriate, accommodates Indigenous peoples in a manner that is reasonable and meaningful. This includes fostering two-way dialogue in a manner that upholds the honour of the Crown.

With this commitment in mind, the Crown sought to work with potentially impacted Indigenous groups to better understand how Aboriginal and Treaty rights recognized under s.35 of the *Constitution Act, 1982* (s.35), whether asserted or established, could potentially be impacted by the proposed NOVA Gas Transmission Ltd. (NGTL) North Corridor Expansion Project (Project). For the Project, the Major Projects Management Office (MPMO) at Natural Resources Canada (NRCan) served as Crown consultation coordinator and relied upon the Canada Energy Regulator (CER; formerly the National Energy Board or NEB) Hearing process, to the extent possible, to fulfil its duty to consult. Through supplemental consultations, the Crown consultation team sought to consult with Indigenous groups to understand any potential outstanding impacts to s.35 rights and Indigenous interests not otherwise addressed by Project conditions and proponent mitigations and commitments. The Crown consultation team sought to discuss with Indigenous groups how any outstanding impacts could reasonably be avoided, reduced, or mitigated.

Where the duty to consult did not exist, or there was insufficient information for the Crown to determine if the duty might exist, NRCan chose to engage with Indigenous groups, on a policy/good governance basis, to understand their concerns with the Project and how it might affect their Indigenous interests.

1.1 Purpose of the Crown Consultation and Accommodation Report

This Crown Consultation and Accommodation Report (CCAR), including the Indigenous group-specific annexes, describes the outcome of the Crown's consultation and engagement processes with potentially impacted Indigenous groups with respect to the Project. This CCAR was developed based on consideration of information obtained from the CER and supplemental consultations between the Crown and potentially affected Indigenous groups.

This Report includes:

- Section 1: An overview of the Project and relevant legislation
- Section 2: A summary of NGTL's engagement with Indigenous groups and Indigenous involvement in the CER Hearing
- Section 3: An overview of the supplemental Crown consultation process
- Section 4: A summary of findings and outstanding concerns raised by Indigenous groups
- Section 5: The Crown consultation team assessment and conclusions
- Section 6: Indigenous group-specific annexes

The CCAR plays an important role in informing the Governor in Council's (GiC) decision to direct the CER as to whether or not to issue a Certificate of Public Convenience and Necessity (Certificate) authorizing the construction and operation of the Project. The GiC also considers the Indigenous group-specific annexes, as well as independent submissions provided by Indigenous groups.

1.2 Project Description

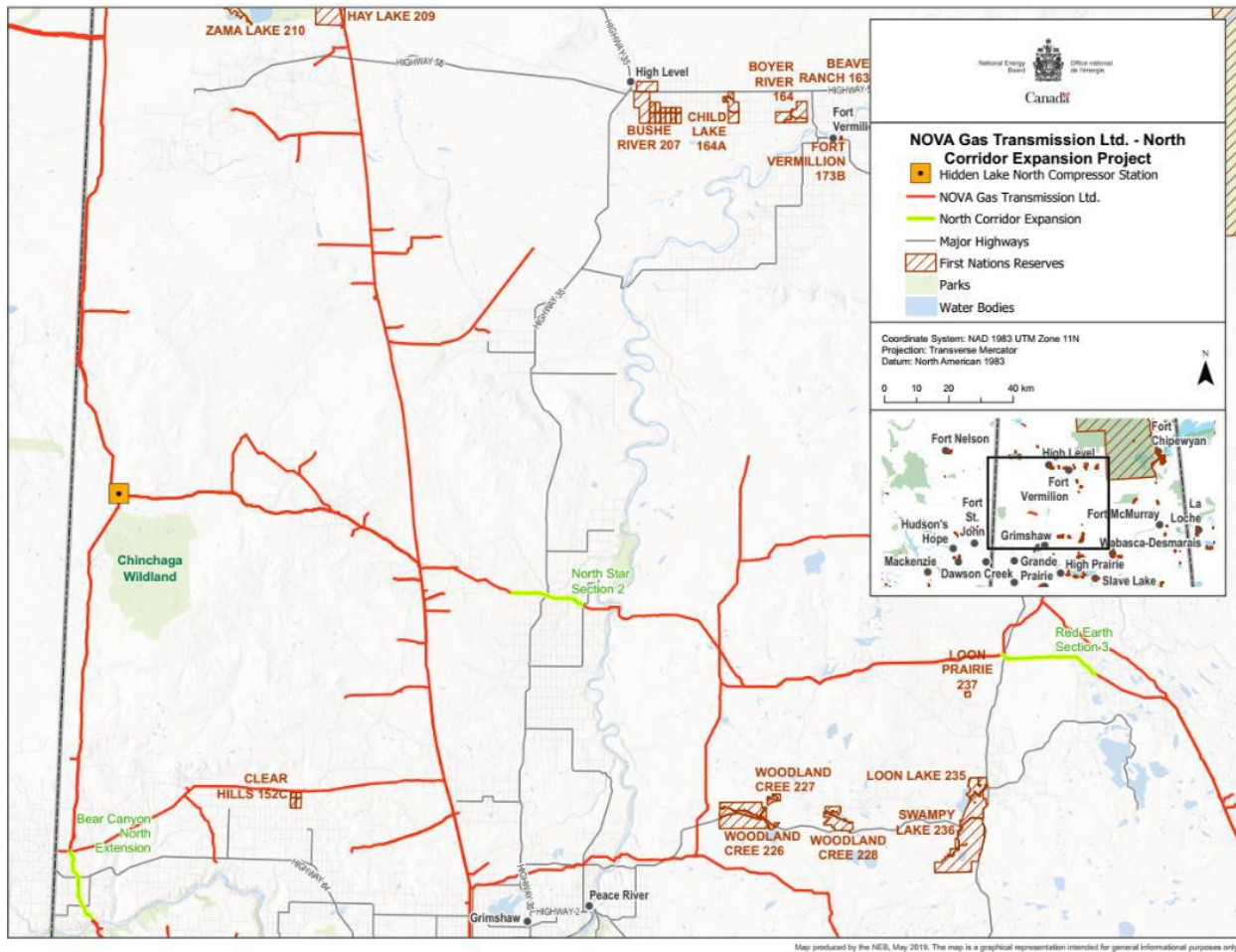
On April 4, 2019, NGTL, a wholly owned subsidiary of TC Energy Corporation (formerly TransCanada Corporation), filed an application with the CER for approval to construct and operate the NGTL North Corridor Expansion Project as part of its existing NGTL natural gas pipeline system that spans much of Alberta and parts of British Columbia. In its application, NGTL stated that the Project is required to increase pipeline capacity to transport natural gas from the Peace River area to growing markets. The current proposed in-service date for the Project is April 2023.

The Project consists of approximately eighty-one kilometres (km) of new pipeline in three sections, one compressor station, and related components and facilities in northwestern Alberta. If approved, the Project would “loop” (add new pipeline parallel to and tied-in to the main gas pipeline) parts of the existing NGTL pipeline system in three areas: 1) the North Central Corridor Loop (North Star Section) – approximately twenty-four km; 2) the North Central Corridor Loop (Red Earth Section 3) – approximately thirty-two km; and, 3) the Northwest Mainline Loop No. 2 (Bear Canyon North Extension) – approximately twenty-five km.

Of the eighty-one km of proposed pipeline, NGTL stated that approximately ninety-five per cent (seventy-six km) would run parallel to existing NGTL rights-of-way (RoW) or other existing linear disturbances (e.g., pipelines, roads, power lines). Approximately sixty per cent of the pipeline would cross provincial Crown lands and the remainder would cross private freehold lands. None of the new pipeline route will cross provincial parks, protected areas or ecological reserves, reserve lands, or federal Crown lands.

Figure 1 shows the location of the proposed NGTL North Corridor Expansion Project. The Project is located within Treaty 8 territory, as well as within the lands of the Métis Nation of Alberta, Regions 5 and 6.

Figure 1: Location of the Proposed NGTL North Corridor Expansion Project



1.3 Legislative Framework for the Project Review

NGTL filed the application for this Project before the *Canadian Energy Regulator Act* (CERA) came into force. As such, the Project included an application for a Certificate of Public Convenience and Necessity, filed under section 52 of the now repealed *National Energy Board Act* (NEB Act), and an application for an exemption order under section 58 of the NEB Act, together with related authorizations and exemptions.

NGTL's section 52 application was assessed by the Commission of the CER (Commission) after which a Recommendation Report was provided to the Minister of Natural Resources. Under the NEB Act, Canada has three months from the release of the CER Recommendation Report to make a decision via the GiC. The GiC may extend the timeline to make a decision should it determine, for example, that more time is needed to meaningfully consult Indigenous groups. The GiC may approve or deny the CER recommendation or refer the recommendation, or any of the conditions, back to the Commission for reconsideration. As a result of recent Federal Court of Appeal decisions, the GiC may also add to or modify the conditions recommended by the CER in response to issues raised by Indigenous groups related to s.35

Aboriginal and Treaty rights. Should the GiC approve this Project, the CER would subsequently issue a Certificate authorizing the Project to be constructed and operated, in accordance with the appropriate conditions.

The Project is also a designated project under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012). As a result, an environmental assessment (EA) was conducted by the NEB, which was designated the responsible authority for conducting EAs on NEB Certificate applications. The CER was also required to adhere to the requirements of the *Species at Risk Act* (SARA) when considering the Project's implications for species listed under that Act. Finally, the Project was also assessed in accordance with the 2016 *Interim Measures for Major Projects* (the Interim Principles), described further below. The Project, therefore, had to be assessed and approved in accordance with the NEB Act, CEAA 2012, SARA, and the Interim Principles.

On September 3, 2020, the Commission of the CER issued its report, determining that the Project is in the public interest and is not likely to cause significant adverse environmental effects and, after mitigation, there would be no significant impacts on the rights and interests of Indigenous peoples. This recommendation is subject to thirty-four conditions that relate to, among other things, construction activities, safety measures and standards, environmental monitoring, caribou habitat protection, and matters related to Indigenous peoples.

If the GiC accepts the recommendation of the Commission and approves the Project, it will be regulated over its lifecycle by the CER, under the relevant legislation, regulations, and instruments issued with respect to the Project.

Due to the timing of NGTL's application for the Project (June 2018), the Project was subject to the *Interim Measures for Major Projects*. In January 2016, as part of a longer-term plan to renew the federal environmental assessment process and modernize the NEB, the Government of Canada put in place interim measures.

The five principles and the assessment for the Project are outlined in Table 1.

Table 1 – Assessment of the North Corridor Expansion Project against the Principles included in the <i>Interim Measures for Major Projects</i> (2016)
Principle #1: No project proponent will be asked to return to the starting line — project reviews will continue within the current legislative framework and in accordance with treaty provisions, under the auspices of relevant responsible authorities and Northern regulatory boards.
<i>As the Project application was filed prior to the coming into force of the Canadian Energy Regulator Act (CER Act) and the Impact Assessment Act on August 28, 2019, the Project was considered under the NEB Act and CEAA 2012.</i>

Principle #2: Decisions will be based on science, traditional knowledge of Aboriginal peoples and other relevant evidence.

The CER conducted a thorough review of the Project and based its decisions on scientific evidence and Indigenous traditional knowledge.

Principle #3: The views of the public and affected communities will be sought and considered.

The CER conducted a public Hearing for the Project. NRCan also hosted a public survey for the Project, which was posted on its website from October 22, 2020 to November 6, 2020, to gather the views of the public. NRCan sent the survey link to all parties of the proceeding and all Indigenous groups on the Crown list. No report was prepared, as only six replies to the survey were received.

Principle #4: Indigenous peoples will be meaningfully consulted, and where appropriate, impacts on their rights and interests will be accommodated.

This CCAR provides an overview of the consultation process for the Project. The Crown worked to meaningfully consult with Indigenous groups from June, 2019 to March, 2021 and address impacts on Indigenous rights and interests. The Government also extended the timeline for making a decision on the Project to ensure that the duty to consult with Indigenous groups could be meaningfully fulfilled in light of the impacts of the COVID-19 pandemic on Indigenous groups.

Principle #5: Direct and upstream greenhouse gas (GHG) emissions linked to the Project will be assessed.

A direct and upstream GHG assessment of emissions linked to the North Corridor Expansion Project was not required as the Project's expected emissions did not meet the thresholds as outlined in the Interim Measures for Major Projects.

2.0 Indigenous Engagement

The proponent's engagement with Indigenous groups is a critical part of the development of a proposed project and a key matter for consideration in the regulatory process. This is because the proponent is often in the best position to respond to concerns about project design and development. Timely, accessible, and inclusive engagement between the proponent and Indigenous groups can help to facilitate the exchange of information and provide important opportunities for improvement and collaboration. Early engagement with Indigenous groups allows for discussion on how Indigenous concerns can be addressed through project design, and on development of measures to avoid, reduce, or mitigate the effects a project may have on s.35 rights and Indigenous interests.

In accordance with the CER Filing Manual, NGTL was required to identify, engage, and consult with potentially impacted Indigenous groups prior to filing an application for the Project. NGTL was also required to provide information on these activities, and provide a description of any issues or concerns raised by Indigenous groups as part of its application. In the CER Recommendation Report, the Commission provided its view that NGTL had designed and implemented appropriate engagement activities that met the requirements and expectations set out in the CER Filing Manual. The Commission's understanding and views on the various steps taken by NGTL to engage potentially impacted Indigenous groups on the Project is outlined in Section 7.1, pages 65-69 and Section 7.6.1, pages 144-147 of the CER Recommendation Report.

2.1 NGTL's Engagement with Indigenous Groups

NGTL stated that engagement with Indigenous groups on the Project began on August 2, 2018, and will continue throughout the Project lifecycle. NGTL's Aboriginal Engagement Program (AEP) 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.

2.2 Indigenous Involvement in the CER Hearing Process

The CER is an independent regulator, whose mandate includes making decisions and recommendations on energy projects that fall under federal jurisdiction. The CER possesses the necessary technical and subject-matter expertise to assess proposed energy projects as well as the necessary authorities to regulate approved projects. The application for the Project was assessed by the CER, and if approved, the Project will be regulated by the CER over its lifecycle.

The CER identified a total of twenty-six Indigenous groups as being potentially affected or having an interest in the Project and invited these groups to participate in the Hearing process. Twelve Indigenous groups that applied to be Intervenor were granted Intervenor status in the Hearing and were offered participant funding from the CER to support their participation in the CER Hearing process for the Project, as noted in the table below. Intervening in a CER Hearing is the most active way to participate. Intervenor are able to provide evidence, ask questions of, and respond to questions from other Intervenor.

Applicant	Amount Available
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
Foothills First Nation	\$25,000 ¹
Gift Lake Métis Settlement	\$40,000
Louis Bull Tribe	\$40,000
Papaschase Cree Nation	\$40,000
Peavine Métis Settlement	\$40,000
Peerless Trout First Nation	\$40,000
Whitefish Lake First Nation #459	\$40,000
Total	\$465,000

¹ Foothills First Nation applied to participate late in the CER Hearing process and was subsequently offered less than \$40,000 .

Through the CER Hearing process, potentially impacted Indigenous groups were provided with opportunities to:

- learn about the Project and its potential impacts;
- evaluate the Project in relation to their asserted or established rights and Indigenous interests;
- communicate their concerns directly to the CER and the Crown; and,
- propose potential mitigation and accommodation measures.

On April 22, 2020, the CER issued potential conditions it might apply to the Certificate, should the Project be approved, for comment by participants in the Hearing process. Five Indigenous groups expressed concerns or proposed amendments to some of the potential conditions. The Commission subsequently amended seven potential conditions and recommended four additional conditions as part of its Recommendation Report.

The CER issued its Recommendation Report on the Project on September 3, 2020, and this marked the start of the supplemental Crown consultation process. As noted in the CER Report (page 3), the Commission was of the view that any potential Project impacts on the rights and interests of affected Indigenous peoples would not likely be significant and could be effectively addressed with the implementation of the mitigation measures and commitments made by NGTL, and the conditions recommended by the Commission.

3.0 Supplemental Crown Consultation Process

The Government of Canada has a duty to consult and accommodate, as appropriate, Indigenous groups where the Crown contemplates conduct that might adversely affect asserted or established Aboriginal or Treaty rights recognized under s.35 of the *Constitution Act, 1982*.

In making the decision to consult a particular group, Canada is not recognizing that the right or title asserted is established. Rather, the Crown is only recognizing that, at a minimum, the group has asserted a potential Aboriginal or Treaty right which could be adversely affected by the Project. It is important to note that consultations and the consultation process are not rights recognition or rights-determining processes.

Where the Government of Canada assessed that there was no duty to consult, or where there was insufficient information provided to the Crown to determine if a duty was triggered, NRCansought, on a policy basis, to engage affected Indigenous groups where they had expressed concerns or Indigenous interests in the Project.

3.1 Development of the Crown List

To identify Indigenous groups that may have s.35 rights that could be impacted by the Project, the Crown consultation team used information obtained from the CER, Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC), and the proponent. The Crown consultation team then considered the following criteria:

- **if and when an Indigenous group asked to be included** in Crown consultations on the Project;
- **boundaries of traditional territories** and intersections between traditional territories and the Project RoW;
- **information from other government departments** regarding recent interactions with the Indigenous groups or previous commitments to consult on behalf of the Crown;
- **affiliations between Indigenous groups**, including historic linkages between groups, and the extent to which affiliations between groups with different proximities to the RoW could impact the s.35 rights and Indigenous interests of more distant groups;
- **involvement in the CER process** and concerns raised regarding the impact of the Project;
- **engagement with the proponent** to better understand Indigenous group concerns, asserted rights, and Indigenous interests in the Project; and,
- **asserted or established authority of** an Indigenous group to speak on behalf of s.35 rights-holders.

The Crown consultation team also conducted a preliminary impact analysis to better understand the extent to which the Project could impact each group. The preliminary impact analysis considered the following:

- the strength of the Indigenous group's claim to Aboriginal rights or title that may be adversely affected by the proposed Project; and,
- the potential magnitude of Project-related impacts to those s.35 rights.

Initially, the Crown consultation team determined it had a duty to consult with nineteen Indigenous groups. In November 2020, the Athabasca Chipewyan First Nation and the Mikisew Cree First Nation were added to the Crown list based on the potential Project impacts on caribou and caribou habitat and their interest in boreal caribou, specifically the Red Earth caribou herd. In January 2021, Cadotte Lake Métis was also added to the Crown list based upon its request.

The Crown consultation team determined that it had a duty to consult with the following twenty-two Indigenous groups:

- Athabasca Chipewyan First Nation
- Beaver First Nation
- Bigstone Cree Nation
- Cadotte Lake Métis
- Dene Tha' First Nation
- Doig River First Nation
- Driftpile Cree Nation
- Duncan's First Nation
- East Prairie Metis Settlement
- Gift Lake Metis Settlement
- Horse Lake First Nation
- Kapawe'no First Nation
- Loon River First Nation
- Métis Nation of Alberta (Regions 5 and 6)
- Mikisew Cree First Nation
- Paddle Prairie Metis Settlement
- Peavine Metis Settlement
- Peerless Trout First Nation
- Sawridge First Nation
- Swan River First Nation
- Tallcree First Nation
- Whitefish Lake First Nation #459

NRCan was of the view that it had no legal duty to consult with two other Indigenous groups with respect to the Project, based on information provided by the groups. However, NRCan remained open to engage with these Indigenous groups and hear about how the proposed Project might affect their Indigenous interests and what, if any, steps might be taken to address those Project-related concerns. NRCan's engagement with an Indigenous group on a proposed project is not a rights recognition or a rights determining process. NRCan engaged with the following two Indigenous groups:

- Foothills First Nation
- Papaschase First Nation

3.2 Participant Funding

NRCan's Participant Funding Program is designed to help facilitate the meaningful participation of Indigenous groups in consultation and engagement activities with the federal Crown. NRCan's participant funding is in addition to and separate from the CER's participant funding. NRCan's Participant Funding Program for this Project aimed to be responsive to the needs of Indigenous participants through measures such as:

- ninety per cent was available up-front to reduce the administrative burden on Indigenous groups allowing them to maximize participation and input into the process;
- eligible expenses incurred by Indigenous groups from June 20, 2020 could be covered under the program, irrespective of the date of application for participant funding; and,
- the Crown remained open to increase funding offers, upon request, to support consultation activities.

The preliminary impacts analysis and the Crown's preliminary understanding of rights and potential impacts to rights informed the funding amount offered to each Indigenous group. The Crown consultation team remained flexible in its approach to consultations by tailoring the process, to the extent possible, to be responsive to each Indigenous group.

NRCan offered approximately \$684,000 in participant funding to Indigenous groups. The final NRCan participant funding offers ranged from \$27,000 to \$36,000 per Indigenous group. NRCan also provided participant funding to the two engage-only groups.

Indigenous group	Amount Offered
Athabasca Chipewyan First Nation	\$27,000
Beaver First Nation	\$27,000
Bigstone Cree Nation	\$36,000
Cadotte Lake Métis	\$27,000
Dene Tha' First Nation	\$27,000
Doig River First Nation	\$36,000
Driftpile Cree Nation	\$27,000
Duncan's First Nation	\$27,000
East Prairie Metis Settlement	\$27,000
Foothills First Nation	\$27,000
Gift Lake Metis Settlement	\$27,000
Horse Lake First Nation	\$27,000
Kapawe'no First Nation	\$27,000
Loon River First Nation	\$36,000
Métis Nation of Alberta (Regions 5 & 6)	\$27,000
Mikisew Cree First Nation	\$27,000
Paddle Prairie Metis Settlement	\$27,000

Papaschase First Nation	\$27,000
Peavine Metis Settlement	\$27,000
Peerless Trout First Nation	\$36,000
Sawridge First Nation	\$27,000
Swan River First Nation	\$27,000
Tallcree First Nation	\$27,000
Whitefish Lake First Nation #459	\$27,000
Total	\$684,000

3.3 Approach to Supplemental Crown Consultation

The Crown consultation team undertook its consultation efforts with Indigenous groups with a number of objectives, including:

- supporting the Government’s commitment to reconciliation and renewed relationships with Indigenous peoples; and,
- fostering informed and sound decision-making for the Project.

While developing the consultation objectives and approach for the Project, the Crown consultation team considered the views of Indigenous groups, in addition to recent jurisprudence, such as guidance from the 2018 Federal Court of Appeal’s *Tsleil Waututh Nation* (TWN) decision addressing ways in which to carry out meaningful and responsive two-way dialogue.

The Crown relied on the CER assessment of the Project to inform the Crown consultation process and fulfill the Crown’s duty to consult, to the extent possible. The Crown confirmed its reliance on the CER assessment and its approach to supplemental Crown consultations in letters to potentially impacted Indigenous groups sent in June 2019 and February 2021.

The approach noted the Crown would:

1. consult in a way that is fully consistent with meeting Canada’s obligations under s.35 of the *Constitution Act, 1982* and the Government’s commitments to advance reconciliation with Indigenous peoples;
2. engage in substantive, meaningful two-way dialogue in order to fully understand concerns raised and the nature and seriousness of potential impacts on rights and to work collaboratively to identify and provide accommodations, where appropriate; and,
3. be flexible in tailoring consultation approaches, to the extent possible, in a way that is responsive to the potential impacts and capacities of each group, and to the known concerns with the Project. This includes following any signed consultation protocol agreements with Indigenous peoples, to the extent possible.

The supplemental Crown consultation process was designed to allow the Crown and potentially impacted Indigenous groups to participate in substantive, meaningful two-way dialogue in order to understand outstanding concerns about potential impacts on s.35 Aboriginal and Treaty rights and to discuss broader Indigenous interests, as appropriate. NRCan's Crown consultation team facilitated a whole-of-government approach to consultation, working with other relevant federal authorities, most notably Environment and Climate Change Canada (ECCC), to leverage federal expertise and connect Indigenous groups with any relevant programs across the Government of Canada.

Throughout supplemental consultations, the Crown consultation team worked collaboratively with Indigenous groups to better understand the outstanding impacts of the proposed Project on s.35 rights and Indigenous interests, building on the findings of the CER Recommendation Report. The Crown consultation team worked collaboratively with Indigenous groups to discuss the sufficiency of existing measures and to identify and provide specific measures to address outstanding impacts to s.35 rights, where appropriate.

Specific discussion points with Indigenous groups varied, however, special attention was given to understanding the CER Report and examining the conditions. The Crown consultation team strived to:

- discuss the CER Report and identify any potential impacts that may not be addressed by existing mitigations, commitments or recommended conditions;
- engage in a meaningful, two-way dialogue;
- collaborate to better understand Project-related impacts to group-specific Indigenous interests;
- consult in a manner that was responsive to the Indigenous group's individual needs; and,
- discuss and consider measures to avoid or mitigate impacts, as appropriate.

The Crown consultation team and Indigenous groups worked collaboratively to discuss proposed or potential mitigation measures, and new conditions/potential condition amendments that could address outstanding impacts to rights. Where impacts could not be mitigated, the Crown consultation team sought to provide an explanation as to why that was the case.

3.4 Revised Timelines and Approach to Supplemental Crown Consultation due to COVID-19

In a letter to Indigenous groups dated June 30, 2020, the Crown consultation team informed Indigenous groups that, in light of COVID-19, and to ensure the health and safety of Indigenous groups and the Crown consultation team, supplemental consultations could not be conducted in person and would be conducted virtually using teleconferences and videoconferences. This modified approach allowed Indigenous groups and the Crown consultation team to proceed with the consultation process, while following key public health advice to limit the spread of COVID-19. The letter affirmed the willingness and interest of the Crown consultation team to work with Indigenous groups to find alternative ways to meet during the global pandemic, as possible and reasonable.

The Crown consultation team actively reached out to Indigenous groups regarding their availability to consult, however, many groups indicated the need to prioritize their response to COVID-19 and the health of their members. Due to the challenges associated with COVID-19, several Indigenous groups formally requested an extension to consultation timelines to ensure meaningful consultations.

In a letter to Indigenous groups dated November 30, 2020, the *Minister of Natural Resources Canada*, the Honourable Seamus O'Regan Jr., advised that the GiC's decision timeline on the Project had been extended from December 3, 2020 to no later than May 3, 2021, to ensure that the duty to consult with Indigenous groups could be meaningfully fulfilled in light of the impacts of the COVID-19 pandemic on Indigenous communities.

Issue Tracking Tables

To facilitate consultation, the Crown consultation team developed an Issue Tracking Table for each Indigenous group that included specific issues raised during supplemental consultations. The Issue Tracking Tables helped the Crown consultation team and Indigenous groups ensure that concerns and proposals were captured appropriately, in a timely manner, and that a clear response was provided. This tool set out information about the concern raised by the Indigenous group, the mitigation measures and commitments proposed by NGTL, the findings of the Commission including the recommended conditions that could potentially address the issue, and whether the concern had been addressed to the satisfaction of the Indigenous group. The Issue Tracking Tables were shared with Indigenous groups on an ongoing basis throughout the consultation process in order to work collaboratively and to ensure that the information was accurate, dialogue was meaningful, and to seek further views regarding whether any potential Project impacts were missing, and, if so, to help Indigenous groups identify the impacts.

Information Sessions

In response to concerns raised about the size, complexity, and technical nature of the CER Recommendation Reports for other projects, the Crown consultation team organized a virtual information session for Indigenous groups with the CER on October 28, 2020. Over fifteen Indigenous groups participated, and representatives of the CER, NRCan, ECCC, and NGTL, attended the session. It served as an opportunity to learn more about the CER Recommendation Report and the CER's role as a lifecycle regulator, and for Indigenous groups to ask questions about the Project to the CER and NGTL.

In December 2020, the Crown consultation team invited Indigenous groups to attend a virtual Project-related information session on caribou and caribou habitat scheduled for January 20, 2021. Fifteen Indigenous groups participated, and representatives of NGTL, the CER, NRCan, ECCC, and Justice attended the session. At the session, NGTL presented to Indigenous groups about the mitigations it proposes to implement to address potential impacts to caribou and caribou habitat, including its Caribou Habitat Restoration and Offset Measures Plan (CHR&OMP). The CER also attended and provided an overview of how it assessed the potential impacts to caribou and caribou habitat of this Project, how it considered the mitigations proposed by NGTL, what conditions it has recommended to address outstanding impacts, and its role as a lifecycle regulator, including ensuring condition compliance and enforcement, should the Project be approved. Indigenous groups had the opportunity to ask questions of both NGTL and the CER.

Provision of Draft Annexes and Documents

The Crown consultation team developed a draft annex for each Indigenous group to facilitate meaningful two-way dialogue on Indigenous groups' concerns raised during supplemental consultations. These draft annexes included a summary of the following:

- the Indigenous group's concerns raised during supplemental consultations;

- NGTL’s mitigation measures and commitments that could address the concern;
- the CER Recommendation Report findings and recommended conditions that could further address the concern;
- the Indigenous group’s assessment of whether the concern would be satisfactorily addressed;
- the Indigenous group’s proposed solutions if it considered the concern was still outstanding; and,
- the Crown consultation team’s preliminary response to outstanding impacts to s.35 rights and Indigenous interests, including the proposed new conditions and proposed amendments to recommended conditions and draft conclusion regarding whether the concern would be addressed.

On February 16, 2021, the Crown consultation team wrote to Indigenous groups to provide them with draft annexes in order to foster a transparent and meaningful dialogue and to ensure groups had sufficient time to review and provide comments on the preliminary responses to outstanding impacts to s.35 rights and/or Indigenous interests, as appropriate. The Crown consultation team also informed Indigenous groups that supplemental consultations for the Project would close on March 9, 2021. Following the sharing of draft annexes with Indigenous groups, the Crown consultation team worked directly with Indigenous groups on sections of the draft annex to discuss any potential outstanding concerns and to ensure the information it contained accurately represented the views and perspectives of the Indigenous group.

Independent Submissions by Indigenous Groups

In addition to the opportunities to submit information through the CER Hearing process or directly to the Crown consultation team, Indigenous groups were offered the opportunity to provide an independent submission for Ministers. The Crown consultation team received six independent submissions.

3.5 Natural Resources Canada Engagement with the Proponent

As Crown consultation coordinator for the Project, NRCan is responsible for undertaking and facilitating the Crown consultation process to ensure that any duty to consult and accommodate owed to Indigenous groups on the Project is met.

In support of this role, the Crown consultation team established frequent and consistent communications with NGTL. The purpose of these communications was to facilitate the sharing of information and encourage the resolution of outstanding issues and concerns that the Crown consultation team heard from Indigenous groups. As a part of this, the Crown consultation team sought authorization from specific Indigenous groups to disclose information, as appropriate, when bringing forward a specific outstanding issue or concern to NGTL. Through these discussions, the Crown consultation team also facilitated the proponent’s direct involvement in Crown consultation meetings with certain Indigenous groups, where it was requested by a group.

4.0 Summary of Findings and Outstanding Impacts to s.35 Rights and Indigenous Interests

On September 3, 2020, the CER released its Recommendation Report for the Project which recommended that the Project be approved and that a Certificate be issued under section 52 of the NEB Act. 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 CER was also responsible for conducting the EA which, as required, included an assessment of social and cultural impacts of the Project on Indigenous groups. As required, species at risk issues were also considered as part of the assessment and recommendation.

As part of its assessment, the Commission evaluated the sufficiency of NGTL's engagement with Indigenous peoples and found it to have been adequate. The Commission encouraged NGTL to continue to improve 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 also considered the views and concerns of Indigenous peoples participating in the Hearing process, the potential impacts on the rights and interests of Indigenous peoples, and proposed measures to avoid or mitigate those impacts. Indigenous groups that did not participate had their views and concerns, including with respect to potential impacts on rights, brought forward through the Indigenous engagement logs that were filed by NGTL as part of the application and updated in a filing on the CER Hearing record.

The Commission was of the view that any potential Project impacts on s.35 Aboriginal and Treaty rights, after mitigation, would not likely be significant and could be successfully addressed.

In the CER Report, the Commission also recommended conditions in relation to Indigenous engagement, environmental, economic, and safety matters. The Commission recommended thirty-four legally-binding conditions that would attach to the section 52 Certificate for the Project, should the Project be approved.

Summary of Key Impacts on Indigenous Rights and Indigenous Interests

This section summarizes the outstanding impacts to s.35 rights and Indigenous interests and concerns raised by Indigenous groups through supplemental Crown consultations that took place following the release of the CER Recommendation Report on September 3, 2020. This section does not reiterate information regarding key concerns and potential impacts raised by Indigenous groups through the CER Hearing process as detailed in the CER Recommendation Report. The Crown consultation team's understanding of the issues and concerns of Indigenous groups on the Project was developed based on supplemental consultations with Indigenous groups on the Project as well as a review of the CER Report and the Hearing record. The majority of the issues identified are based on potential Project impacts to s.35 Aboriginal and Treaty rights, while others relate to broader Indigenous interests.

The CER set out two over-arching legally-binding conditions in response to potential Project-related impacts. Should the Project be approved by the GiC, the proponent, NGTL, must adhere to applicable conditions throughout the lifecycle of the Project. Through **Condition 2**, NGTL would be required to

design, locate, construct, and operate the Project in accordance with, among other things, any commitments made through the regulatory process. These commitments would be set out in a Commitments Tracking Table, to be filed with the Commission pursuant to **Condition 13 – Commitments Tracking Table**.

Note that **Conditions 2** and **13** apply to each issue of outstanding concern raised by Indigenous groups referred to below.

The issues of outstanding concerns raised by Indigenous groups are the following:

Impacts to s.35 Rights

4.1 Caribou and Caribou Habitat

During supplemental consultations, Indigenous groups noted the importance of caribou to their communities and identified concerns about impacts from the Project to two woodland boreal caribou herds: the Chinchaga caribou herd, and the Red Earth caribou herd. Specific concerns related to: the welfare and recovery of the herd; the disturbance and destruction of critical caribou habitat, including caribou lichen which is an important food source for caribou; increased predation due to increased access; excessive human access and intrusion in caribou habitat; and, insufficient Indigenous involvement in measures identified by NGTL in its CHR&OMP.

The Boreal Woodland Caribou are listed as Threatened on Schedule 1 of the SARA, and as endangered under the *Alberta Wildlife Act*. ECC's *Report on the Progress of the Recovery Strategy Implementation for the Woodland Caribou, (Rangifer tarandus caribou), Boreal population in Canada for the Period 2012-2017* indicates 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 report states that the Chinchaga herd is not self-sustaining and that the Red Earth herd is unlikely to be self-sustaining.

The Crown consultation team notes that NGTL's primary mitigation measures to reduce the Project's impacts on caribou habitat are avoiding creation of new access, paralleling existing linear disturbances, and minimizing the Project construction footprint. The Crown consultation team also notes that NGTL developed a CHR&OMP outlining NGTL's proposed 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.

In addition to this, the Crown consultation team notes that NGTL committed to implement a suite of other mitigation measures including: controlling access and predator line-of-sight; implementing measures to restore vegetation; and, developing a Caribou Habitat Restoration and Offset Implementation Report (CHOMIR) and a Caribou Habitat Restoration and Offset Measures Monitoring Program (CHROMMP). NGTL also committed to meet with interested Indigenous groups to consider Indigenous input for the finalization of the CHOMIR and the CHROMMP. For the Red Earth caribou, NGTL committed to employing an 'early in and early out' approach to avoid the 15 February to 15 July Restricted Activity Period (RAP) that the Government of Alberta has imposed to reduce disturbance on the herd.

With respect to caribou habitat, the Crown consultation team notes the Commission's conclusions that, with the mitigation proposed by NGTL and the conditions recommended 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.

With respect to the Chinchaga caribou, the Crown consultation team notes the Commission's view that, given that existing industrial activity at the location of the Hidden Lake North Unit Addition in the Chinchaga caribou range, the proposed mitigations, and the commitment from NGTL to commence construction prior to the RAP, the Project effects to caribou and caribou habitat within the Chinchaga caribou range would be minimized.

With respect to the Red Earth caribou, the Crown consultation team notes the Commission's view that sensory disturbance from the Project to caribou would be further minimized by restricting construction activities taking place with the RAP and that NGTL committed to avoiding work within the RAP, to the extent possible, and to consulting with Alberta Environment and Parks should construction activities extend longer than anticipated and into the RAP.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding potential impacts of the Project on caribou.

- **Conditions 6 and 28**, regarding Construction and Post-Construction Monitoring Plans for Indigenous Peoples, would require NGTL to file plans describing participation by Indigenous groups in monitoring activities both during and post-construction.
- **Condition 25**, regarding working within the Red Earth Caribou Range RAP, would require NGTL to file a summary of consultation with Alberta Environment and Parks, ECCC and interested Indigenous groups that would include a list of concerns and how these have been addressed or a rationale for why the concerns have not been addressed.
- **Condition 30** would require NGTL to file a Caribou Habitat Restoration Implementation Report and Status Report on the implementation and status of caribou habitat restoration measures.
- **Condition 31** would require NGTL to file a CHOMIR that would include a summary of consultation with Indigenous groups that expressed an interest in being involved and evidence of how feedback from Indigenous groups was integrated into the implementation of the offsets.
- **Condition 32**, regarding a CHROMMP, would require NGTL to file a program for monitoring and verifying the effectiveness of the caribou habitat restoration and offset measures implemented that would include a summary of consultation with Indigenous groups that expressed an interest in being involved, as well as information regarding any input or recommendations provided, how the input or recommendations informed and were incorporated into the final report, and why any input or recommendations were not incorporated.
- **Condition 33**, regarding Caribou Monitoring Reports, would require NGTL to file reports outlining the results of the CHROMMP.

The Crown consultation team acknowledges the concerns raised by Indigenous group regarding the potential impacts of the Project to caribou and caribou habitat.

In addition to the considerations raised by Indigenous groups, the Crown consultation team has considered the proponent's commitments, together with the conclusions of the Commission, and the conditions that the Commission recommended with respect to the potential impacts of the Project on caribou and caribou habitat.

The Crown consultation team acknowledges that NGTL committed to several mitigation measures to reduce the impacts to caribou and caribou habitat, and committed to implementing as much restoration onsite during construction as possible to mitigate the overall Project effects on caribou and caribou habitat.

Further, the Crown consultation team notes that NGTL stated that its intention is to prevent, mitigate, and/or manage activities with the potential to affect Indigenous groups, including impacts to caribou and caribou habitat, by the time the Project reaches the operations phase of its lifecycle through early and proactive engagement with groups. NGTL also committed to meet with interested Indigenous groups and said that it would consider input provided during engagement for the Project in advance of the finalization of its mitigation plans for impacts to caribou and caribou habitat.

The Crown consultation team heard from Indigenous groups that there is a lack of incorporation of Indigenous knowledge, including cultural ceremonies, into the planning, implementation, and monitoring of mitigation measures to respond to impacts to the two affected caribou herds and ranges, the Chinchaga and Red Earth Caribou Ranges. In addition, Indigenous groups noted that there is no structured role for ongoing involvement of Indigenous groups in the management of these herds and their habitats. Indigenous groups told the Crown consultation team that they are supportive of the Indigenous Working Group (IWG) established in response to concerns raised by Indigenous groups for the Little Smoky Caribou Range for the NGTL 2021 System Expansion Project and that they see the need to establish a similar IWG for the two caribou ranges impacted by the NCE Project to provide a transparent and structured role for incorporating Indigenous knowledge and people into the mitigations and ongoing management of these herds and their habitat.

Outstanding Impact: There is currently no structured process for Indigenous groups to provide input into the planning, implementation, and monitoring measures in response to potential Project impacts on rights to caribou. A structured process that ensures consistent and clear information exchange is important given the potential severity of Project adverse impacts on caribou-related rights.

Rationale for New Condition: The mitigation of impacts to these herds and their habitats is complex and Indigenous groups have expressed the need to ensure their involvement in ongoing mitigations given the importance of caribou to their culture, traditional land and resources use, and intergenerational transfer of knowledge. While several existing conditions recommended by the Commission include a requirement for the proponent to update Indigenous consultation logs with input on caribou and caribou habitat concerns, or discuss how consultations have been integrated into the planning or reporting, they do not support a role for meaningful and ongoing or iterative participation of Indigenous groups in the

implementation, monitoring, and mitigation of impacts to caribou and their habitat. An IWG would ensure that NGTL undertake structured engagement with Indigenous groups and facilitate a role for Indigenous participation in all stages of the proponent's CHR&OMP and related detailed planning concerning restoration, access management, offsets, and monitoring measures, and for the development of other filings relating to caribou. The IWG would also ensure the collection and incorporation of caribou-specific Indigenous knowledge into these processes and require ongoing reporting on the progress of the IWG and its activities. This condition would also require NGTL to report on how the incorporation of cultural ceremonies was included in the filings for this new condition.

In considering whether to recommend new or amended conditions, the Crown consultation team took into account the interpretation and guidance provided by the Federal Court of Appeal in *Gitxaala* (2016 FCA 18) and *Tsleil-Waututh Nation* (2018 FCA 153).

The proposed new **Condition 36 – Indigenous Working Group for the Chinchaga and Red Earth Caribou Ranges** is:

For the purpose of informing the planning and implementation of caribou habitat restoration, offsets and monitoring, and for the development of other filings relating to caribou required under Conditions 30, 31, 32, and 33, including ensuring the collection and incorporation of caribou-specific Indigenous knowledge, NGTL must seek to establish an Indigenous Working Group (IWG) for the Chinchaga and Red Earth Caribou Ranges with any interested Indigenous groups who are potentially affected by the Project and who express an interest in participating.

a) NGTL must file with the Commission within four months of issuance of the certificate for the Project, a plan for the establishment of an IWG. The plan is to be developed in collaboration with those Indigenous groups who are potentially affected by the Project and who expressed an interest in participating, and must include at a minimum:

- i) a summary of any activities undertaken to-date for the development of the plan to establish an IWG; and,**
- ii) the planned steps for establishing an IWG, including an outline and timeline of activities for collaboration on the development of the IWG and its working documents.**

For clarification, this plan is not required to be filed prior to the commencement of construction nor are any of the conditions that require filings for approval prior to construction contingent upon the filing of this plan.

b) NGTL must file with the Commission, within eight months of issuance of the certificate for the Project, and annually thereafter throughout the lifespan of the IWG, a report on the progress of the establishment and activities of the IWG:

- i) if one or more of the Indigenous groups agree to participate in the IWG, the report**

must confirm the establishment of the IWG and describe:

- 1) the membership of the IWG;
- 2) the collaboratively-developed working documents of the IWG, including, as agreed to by the membership of the IWG,:
 - any terms of reference;
 - the scope of the IWG, including confirmation of any aspects of the CHR&OMP that have already been implemented or irreversibly committed to, or are necessary to achieve at least the same level of protection for caribou and its habitat as committed to during the Commission hearing and in the CHR&OMP, and are thus not open to change;
 - decision-making protocol;
 - dispute resolution process;
 - work plan; and
 - the lifespan of the IWG;
- 3) a summary of any issues or concerns raised by the Indigenous groups regarding the functioning of the IWG, including plans or mechanisms for collaborative resolution of those issues, or an explanation as to why any issue or concern identified by the Indigenous groups will not be addressed. NGTL must include any correspondence from the Indigenous groups, provided upon request from an Indigenous group and subject to any confidentiality agreements, that outlines any issue or concern raised;
- 4) a summary of specific input on offsets, if provided by the IWG, and confirmation that these have been provided to the Government of Alberta, or if not an explanation as to why not;
- 5) a description of the process used to share information received from the Government of Alberta with the IWG and to provide the IWG with the opportunity to provide comments to the proponent, including how these comments were addressed, or if not an explanation as to why not;
- 6) a description of the resources, including funding that NGTL has provided, that will be available to support the participation of the Indigenous groups in the IWG; and,
- 7) a summary of the activities implemented by the IWG; or,

- ii) **if none of the Indigenous groups agree to participate, or the Indigenous groups do not come to agreement on the terms necessary to establish an IWG within eight months of issuance of the certificate for the Project, the report must include an explanation of NGTL's efforts to create an IWG and a summary of any reasons given by the Indigenous groups for their non-participation. If no IWG is formed within 8 months of the issuance of the certificate for the Project, then no further actions with respect to the IWG are required.**

If **Condition 36** – *Indigenous Working Group for the Chinchaga and Red Earth Caribou Ranges* is approved by the GiC and an IWG is established for these two ranges, the Crown consultation team also recommends amending **Conditions 30, 31, 32, and 33** to require NGTL to report to the CER on the collaboration that has occurred with the IWG with respect to the development of the filings for each of these conditions, including how caribou-specific Indigenous knowledge has been incorporated into the filing, including the incorporation of cultural ceremonies. Specifically, amendments would be required to the following conditions:

- **Condition 30** – *Caribou Habitat Restoration Implementation Report and Status Report*;
- **Condition 31** – *Caribou Habitat Offset Measures Implementation Plan*;
- **Condition 32** – *Caribou Habitat Restoration and Offset Measures Monitoring Program*; and,
- **Condition 33** – *Caribou Monitoring Reports*.

The Crown consultation team notes NGTL also developed a CHR&OMP, in consultation with the appropriate agencies of the Government of Alberta, and submitted it to the Commission on the Hearing record. The CHR&OMP outlined NGTL's proposed 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.

The Crown consultation team heard that Indigenous groups are not satisfied with the CHR&OMP, especially in terms of how the offsets are to be calculated and implemented, how long it would take affected lands around the RoW to return to a state where caribou can thrive thereby enabling members to practice traditional rights, and where the offset lands would be located. Indigenous groups also noted the importance of ensuring that all caribou-specific Indigenous knowledge that has or would be provided to NGTL be reflected in its proposed approach to mitigating impacts to caribou and caribou habitat to address potential infringements to s.35 rights and Indigenous interests.

Indigenous groups stated that they believe that the proposed approach to offsets in the CHR&OMP would be insufficient and that an offset ratio of thirty ha restored for every one ha of habitat destroyed would be an adequate resolution in mitigating the impacts on the caribou herds. Several Indigenous groups asked to be informed as to where the offset would be located and raised concerns about the length of time that would be required for restored caribou habitat to become functional, i.e., the timing between habitat loss and rehabilitation of proposed offset lands. Several Indigenous groups asked for a more direct role in the development and implementation of the CHR&OMP and how NGTL would incorporate traditional and indigenous knowledge into the CHR&OMP.

In response to the concerns and proposals raised by Indigenous groups regarding the impacts to s.35 rights that would result from Project-specific impacts to caribou and caribou habitat, the Crown consultation team proposed a new condition that would require NGTL to refile its CHR&OMP. The refiled CHR&OMP would need to include substantive details on how all caribou-specific Indigenous knowledge that has been or will be provided has been reflected in the plan, the offset measures to be undertaken, and outline a requirement for a minimum amount of hectares (ha) of new, undisturbed habitat consistent with the definition in the *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal population, in Canada*. If the new proposed condition is included, existing **Conditions 30** and **31** would also require amendments.

Outstanding Impact: Indigenous groups require assurance that all caribou-specific Indigenous knowledge that has been provided to NGTL has been reflected in its proposed approach to mitigating impacts to caribou and caribou habitat to address potential infringements to their s.35 rights and Indigenous interests. This assurance would need to include additional information, including:

- How caribou-specific Indigenous knowledge and concerns were incorporated into this updated plan;
- a description of offsetting measures that will be taken outside of the Project area in addition to the restoration measures along the pipeline to address the total amount of caribou habitat disturbance of the Project;
- specific targets reflecting the amounts recommended by Indigenous groups regarding the amount of on-the-ground offsetting measures to be undertaken by the proponent in each of the impacted caribou ranges;
- the length of time (time lag) anticipated for the restored caribou habitat to become fully functional which could increase adverse impacts to caribou herds in the interim, risking the continued survival of the herd.

Rationale for New Condition: The new condition would require NGTL to revise the CHR&OMP as a result of consultation undertaken with any interested Indigenous groups who are potentially affected by the Project and who expressed an interest in participating, including any additional caribou-specific Indigenous knowledge that was gathered. It would also require a description of the offset measures that would be taken outside the Project area, in a manner consistent with the *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal population, in Canada* and ensure minimum amounts of new, undisturbed habitat in both caribou ranges, within a specified timeframe. The Federal Recovery Strategy sets the strategic direction to arrest or reverse the decline of the species, including identification of critical habitat to the extent possible. The recovery goal for boreal caribou is to achieve self-sustaining local populations in all boreal caribou ranges throughout their current distribution in Canada, to the extent possible. Achieving the recovery goal would allow for local population levels sufficient to sustain traditional Indigenous harvesting activities, consistent with existing Aboriginal and treaty rights. The Condition would also require NGTL to consult with the Government of Alberta, or provide a rationale as to why consultation was not possible, to ensure that NGTL can consider the

Government of Alberta's Caribou Range Planning in the CHR&OMP and confirm appropriate provincial Crown lands for offset.

The proposed new **Condition 37 – Revised Caribou Habitat Restoration and Offset Measures Plan (CHR&OMP)** is:

a) NGTL must file with the Commission for approval, at least 60 days prior to commencing construction of the Section 52 Pipeline and Related Facilities, a revised version of the CHR&OMP. The updated version of the CHR&OMP is to include a summary of consultation with any interested Indigenous peoples who are potentially affected by the Project and who expressed an interest in participating to confirm that all caribou-specific Indigenous knowledge that has been provided has been reflected. The revised CHR&OMP will include:

- i) a revision log of the updates made and the reference where the updates can be found in the revised document;**
- ii) a summary of caribou-specific Indigenous knowledge, comments and concerns received from Indigenous communities and the reference where the updates can be found in the revised document. In its summary, NGTL must provide a description and justification for how it has incorporated the results of its consultation, including any recommendations from those consulted, into the CHR&OMP; and,**
- iii) a description of what type of offsetting measures will be taken outside of the Project area, in addition to the restoration measures along the pipeline, to address the total amount of caribou habitat disturbance of the Project, and, in a manner consistent with the *Recovery Strategy for the Woodland Caribou (Rangifer tarandus caribou), Boreal population, in Canada*. This must include the anticipated timeframe for when the offset lands will be identified and remediation will commence and a schedule that illustrates how the offsets would be implemented. Specifically, NGTL must ensure that it implements an amount of on-the-ground offsetting measures, as defined in the Recovery Strategy, for restoration of legacy footprint:
 - a. within the Chinchaga Caribou Range, that will achieve (post-offset) a minimum amount of 183 hectares of new, undisturbed habitat consistent with the definition in the Federal Recovery Strategy;**
 - b. within the Red Earth Caribou Range, that will achieve (post-offset) a minimum amount of 603 hectares of new, undisturbed habitat consistent with the definition in the Federal Recovery Strategy; and,****
- iv) NGTL must consult with the Government of Alberta, or provide a rationale as to why consultation was not possible;**

b) NGTL must also provide a copy of the revised plan to all Indigenous peoples who have expressed an interest in receiving a copy, and to Environment and Climate Change Canada and to all appropriate provincial authorities; and NGTL must, within 7 days of the filing described in paragraph a), provide

confirmation to the Commission that it has provided those copies.

Note: Only if Proposed New Condition 36: Indigenous Working Group for the Chinchaga and Red Earth Caribou Ranges and Proposed New Condition 37: Revised Caribou Habitat Restoration and Offset Measures Plan are added as per suggestions previously in this document, the following changes are required to Conditions 30, 31, 32, and 33.

Condition 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;]~~
 - iii) updates to consultation logs;
 - iv) **a summary of the input received from the Government of Alberta regarding the identification of suitable locations for offsets, if available;**
 - v) offset measures planning status; and
 - vi) updates or considerations, if any, from any relevant federal and/or provincial range or action plans.
- b) **If a Project-specific Indigenous Working Group has been formed, the report shall include:**
- i) **a description of the collaboration with the IWG that has occurred with respect to the development of the filing, including how caribou-specific Indigenous knowledge has been incorporated into the filing, including the incorporation of cultural ceremonies; and,**
 - ii) **a summary of any issues or concerns raised by interested Indigenous groups regarding the filing, including how NGTL has addressed the issue or concern in the filing, any ongoing collaborative attempts to resolve the issue or concern, or an explanation as to why the issue or concern will not be addressed; and,**

- c) 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.

Condition 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 measures implemented from a) and]~~ **demonstration as to** how the offset measures have offset the ~~previously calculated Project~~ 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; **and**
- b) **If a Project-specific Indigenous Working Group has been formed, the report shall include:**
- i) **a description of the collaboration with the IWG that has occurred with respect to the development of the filing, including how caribou-specific Indigenous knowledge has been incorporated into the filing, including the incorporation of cultural ceremonies; and,**
 - ii) **a summary of any issues or concerns raised by interested Indigenous groups regarding the filing, including how NGTL has addressed the issue or concern in the filing, any ongoing collaborative attempts to resolve the issue or concern, or an explanation as to why the issue or concern will not be addressed; and,**
- c) 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.

Condition 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) If a Project-specific Indigenous Working Group has been formed, the report shall include:

- i) a description of the collaboration with the IWG that has occurred with respect to the development of the filing, including how caribou-specific Indigenous knowledge has been incorporated into the filing, including the incorporation of cultural ceremonies; and,**
- ii) a summary of any issues or concerns raised by interested Indigenous groups regarding the filing, including how NGTL has addressed the issue or concern in the filing, any ongoing collaborative attempts to resolve the issue or concern, or an explanation as to why the issue or concern will not be addressed; and,**
- c) 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.

Condition 33: Caribou Monitoring Reports

- a) 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. **The Caribou Monitoring Report(s), if a Project-specific Indigenous Working Group has been formed, shall include:**

- i) **a description of the collaboration with the IWG that has occurred with respect to the development of the filing, including how caribou-specific Indigenous knowledge has been incorporated into the filing, including the incorporation of cultural ceremonies; and,**
 - ii) **a summary of any issues or concerns raised by interested Indigenous groups regarding the filing, including how NGTL has addressed the issue or concern in the filing, any ongoing collaborative attempts to resolve the issue or concern, or an explanation as to why the issue or concern will not be addressed; and,**
- 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 provide confirmation to the Commission that it has provided those copies.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, and the existing, new, and amended CER conditions are capable of addressing the potential impacts to the s.35 rights and Indigenous interests related to caribou and caribou habitat. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to caribou and caribou habitat are included in Indigenous group-specific CCAR annexes.

4.2 Cultural and Traditional Rights

During supplemental consultations, Indigenous groups raised concerns regarding the impacts of the Project in relation to their cultural and traditional rights, including intergenerational teaching and knowledge transfer, known and unknown sites of spiritual and ceremonial importance, interactions with hunting, trapping, gathering, and trail access.

The Crown consultation team notes NGTL proposed a suite of mitigation measures to reduce the adverse effects of the Project on Traditional Land and Resource Use (TLRU) which includes: a Cultural Resource Discovery Contingency Plan; construction orientation topics that include information about cultural and environmental sensitivities; providing Indigenous groups with the construction schedule; review and consideration of new Traditional Knowledge (TK) in project planning; cultural and environmental orientation training; and, avoidance of cultural heritage sites.

The Crown consultation team also notes that NGTL confirmed that, with the exception of localized areas during the short period of active construction, the RoW would remain available for traditional use during construction and operation of the Project. NGTL stated it would provide Indigenous groups with the proposed construction schedule and maps prior to the start of construction to avoid potential conflicts between construction crews and traditional users. NGTL committed to work with interested Indigenous

groups to collect and incorporate TK into Project planning and that, as new information is made available, NGTL would continue to review and consider that information and would continue to document and address TK and related concerns expressed by Indigenous groups.

The Crown consultation team notes the Commission's view that the potential adverse effects of the Project on the social and cultural well-being of Indigenous groups would not likely be significant, given that: NGTL's approach 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; the anticipated construction period for the Project is short-term; and, access to the RoW would likely remain unchanged following the construction period.

The Crown consultation team also notes a number of conditions that could address the concerns of Indigenous groups regarding potential impacts of the Project on the cultural and traditional rights.

- **Condition 7** would require NGTL to file a report on outstanding TLRU investigations that would include details regarding how NGTL has considered TLRU information, as well as outstanding concerns and how they will be addressed and how NGTL would identify potentially-affected sites or resources if outstanding TLRU investigations are not complete prior to construction.
- **Condition 8** would require NGTL to file confirmation that it obtained all the required archaeological and heritage resource clearances from the Alberta Ministry of Culture, Multiculturalism and Status of Women.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding the potential effects to cultural and traditional rights activities in the Project area as outlined above.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, and the existing, new, and amended CER conditions are capable of addressing the potential impacts to the s.35 rights and Indigenous interests related to cultural and traditional rights. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to cultural and traditional rights is included in Indigenous group-specific CCAR annexes.

4.3 Cumulative Effects on the Environment

During supplemental consultations, Indigenous groups raised concerns that the Project would contribute to direct and indirect cumulative effects on the environment that could lead to impacts on the ability to practice Treaty rights, including hunting, trapping, fishing, and gathering, to maintain culture, and to share knowledge.

The Crown consultation team notes cumulative effects were evaluated by NGTL through its Environmental and Socio-Economic Assessment (ESA) and that NGTL stated that its cumulative effects assessment methodology followed the guidance provided in the NEB Filing Manual and the *Operational Policy Statement for Assessing Cumulative Environmental Effects* under CEEA 2012. The Crown consultation team notes that the ESA concluded that the Project components and the construction and operation of

the Project would not likely result in significant adverse environmental or socio-economic effects, with the exception of cumulative effects on boreal caribou that NGTL would address through its CHR&OMP.

The Crown consultation team notes the Commission's view that, based on the nature of the Project and its environmental context, most of the cumulative interactions and effects would be short-term, reversible, minor, and limited in spatial extent and that any potential effects could be mitigated by measures to be undertaken and the recommended conditions. The Crown consultation team notes the Commission's conclusion that the Project would not likely result in significant adverse cumulative effects.

The Crown consultation team also notes a number of conditions that could address the concerns of Indigenous groups regarding potential impacts of the Project on cumulative effects on the environment.

- **Conditions 6 and 28**, regarding Construction and Post-Construction Monitoring Plans for Indigenous Peoples, would require NGTL to file plans describing participation by Indigenous groups in monitoring activities both during and post-construction.
- **Condition 7** would require NGTL to file a report on outstanding TLRU investigations for the Project, including a description of how NGTL has revised its Environmental Protection Plan (EPP) and its lifecycle oversight as a result of the investigations.
- **Condition 12** would require NGTL to file an updated EPP that would include a list of any site-specific mitigation measures that were developed in response to TLRU sites identified by Indigenous groups, requirements and timing restrictions specifically related to minimizing construction disturbance, and all specific mitigation related to species at risk and their habitat.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, and the existing, new, and amended CER conditions are capable of addressing the potential impacts to the s.35 rights and Indigenous interests related to cumulative effects on the environment. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to cumulative effects on the environment are included in Indigenous group-specific CCAR annexes.

4.4 Cumulative Impacts on Indigenous Rights

During supplemental consultations, Indigenous groups expressed concerns about cumulative impacts in the Project area due to the existing and increasing levels of industrial development. However, the Crown consultation team notes that this is not a Project-specific concern, and the Crown consultation team's mandate cannot fully address the legacy of cumulative impacts on s.35 rights arising from historical, current, or future development. The Crown consultation team notes that future projects will be subject to their own regulatory or approval processes and project-specific impacts for these should be dealt with in the appropriate forum.

The Crown consultation team notes that the cumulative impacts of all types of developments in a given area can have lasting implications for those who live and/or hold rights and interests there. The Project

involves the looping of an existing pipeline, in an area of substantial development which has been acknowledged by NGTL, the CER, and the Crown consultation team. As such, conditions on specific projects (such as those for NGTL North Corridor Expansion) cannot fully address the legacy of cumulative environmental effects and any resulting cumulative impacts on s.35 rights arising from historical development.

Crown consultation team conclusion:

The Crown consultation team acknowledges that many concerns raised by Indigenous groups may be longstanding and unaddressed concerns arising from historical development. The Crown consultation team understands that the Commission stated that its mandate is limited to Project-specific impacts and that it could only consider the Project-related cumulative effects and not the broader scope of cumulative impacts to rights. The Crown consultation team acknowledges that its mandate is to understand outstanding Project impacts to s.35 rights and Indigenous interests and to provide accommodations, as appropriate. While consultations are not required to address the historical impacts of past projects, existing cumulative effects form part of the context in which the Crown assesses the potential severity of Project-related impacts.

4.5 Freshwater and Fishing

During supplemental consultations, Indigenous groups raised concerns regarding potential impacts of the Project on freshwater and water quality, (including beaver dam removal, watercourse crossing methods, changes in sedimentation due to construction, hydrostatic testing, and monitoring activities) and, on fishing rights (including fish, fish habitat, and aquatic species at risk).

The Crown consultation team notes that NGTL proposed a suite of mitigation measures to reduce the adverse effects of the Project on freshwater and fishing including: implementing mitigation measures for wetlands, watercourse crossings, erosion control and secondary containment, fish, and fish habitat; developing an Access Management Plan; forbidding Project personnel from fishing on the construction footprint; and avoiding disturbance to environmentally sensitive features during clearing.

The Crown consultation team also notes that NGTL proposed mitigation specific to certain issues raised by Indigenous groups. For example, NGTL committed to only remove beaver dams where the dams would create an impediment to construction, and that in the event that a beaver dam would be disturbed or removed, NGTL would engage the registered trappers and would breach the dam slowly to avoid the rapid release of water that could cause flooding, fish entrapments, or erosion resulting in silt appearing downstream. To minimize the effects of water withdrawal used for hydrostatic testing, NGTL's EPP outlines specific mitigation measures. NGTL also stated that for watercourse crossings, such as the Loon River, it conducts assessments to determine the appropriate crossing methods to avoid or reduce the impact of construction activities.

With respect to fishing rights, fish, fish habitat and aquatic species at risk, the Crown consultation team notes that NGTL provided Indigenous groups with opportunities for input on fish species and abundance within watercourses associated with the Project and NGTL committed to continue to address questions and concerns Indigenous groups raise. The Crown consultation team also notes that NGTL stated its

assessment with regard to fish and fish habitat aligns with the new *Fisheries Act* and 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. The Crown consultation team notes that NGTL indicated that with the successful implementation of mitigation measures, potential harm to fish and fish habitat would be minimized or avoided.

The Crown consultation team notes the Commission's view that NGTL's proposed measures will greatly reduce the potential for environmental impact from sedimentation and the view that, in general, proposed watercourse crossing methods, including mitigation measures that, if implemented as proposed, would ensure that the proposed watercourse crossings are safely constructed with minimal risk to the environment. The Crown consultation team notes the Commission's conclusion that residual effects to fish and fish habitat that would result from the proposed watercourse crossings would not be significant.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding freshwater and fishing.

- **Condition 7** would require NGTL to file a report on outstanding TLRU investigations for the Project, including a description of how NGTL has revised its EPP and its lifecycle oversight as a result of the investigations.
- **Condition 8** would require 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 EPP.
- **Condition 12** would require NGTL to file an updated EPP and to provide interested Indigenous groups with a copy.
- **Condition 16** would require NGTL to file hydrotechnical studies and results for the Loon and Notikewin Rivers and the resulting crossing methods prior to construction.
- **Conditions 17 and 21**, relating to the Loon River crossing, would require NGTL to file detailed information regarding an alternative crossing method or a contingency watercourse crossing method for the Loon River, if required.
- **Condition 22** would require NGTL to file copies of any *Fisheries Act* authorization(s) required for the construction of the Project.
- **Condition 23** would require NGTL to file a hydrostatic testing plan for the Project to verify that proper procedures for the protection of the environment would be used during the hydrostatic testing.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding the potential impacts of the Project on freshwater and fishing rights. The Crown consultation team anticipates that, with the full implementation of NGTL's mitigations and commitments, and the Project conditions, the majority of the project effects on freshwater and fish will be temporary and confined to the construction period.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions are capable of addressing the potential impacts to s.35 rights and Indigenous interests related to freshwater and fish. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to freshwater and fish are included in Indigenous group-specific CCAR annexes.

4.6 Traditional Land and Resource Use (Land Rights)

During supplemental consultations, Indigenous groups raised concerns about the potential for the Project to impact their TLRU and, as a result, impact their access and availability to land to exercise their rights and interests. These rights and interests can pertain to cultural and traditional purposes, including hunting and trapping, fishing, gathering/harvesting, use of trails and travel ways, and ceremonial practices.

The Crown consultation team notes that NGTL stated that the route selection of the pipeline was one of its primary mitigation options for balancing the requirements of the Project and biophysical, socio-economic, and cultural resources. NGTL stated that the proposed Project route was applied because it reasonably minimizes impacts on the environment, landowners and land users, while also providing the most efficient design for construction and operation. NGTL also stated that the Project had been designed to reasonably avoid or minimize impacts on TLRU and cultural activities. Further, the Project was designed to parallel existing linear disturbances, overlap existing RoW to the extent practical, and restrict construction activities mainly to the Project RoW to reduce the amount of Project clearing and disturbance to adjacent lands and to reduce any related impacts to TLRU.

The Crown consultation team notes that NGTL engaged Indigenous groups to identify TLRU activities and important sites within the Project area and that NGTL used this information to establish how Indigenous groups use and move on the land, and the location of activities or areas of cultural importance such as cultural sites and sacred areas. This information was incorporated in the ESA. NGTL stated that when new information was received after the ESA was completed, it was reviewed and assessed to determine whether the conclusions of the ESA changed. NGTL also stated that in the event that previously unidentified cultural, heritage, or TLRU sites are discovered during construction, NGTL would implement the Cultural Resource Discovery Contingency Plan to avoid or minimize potential effects on those sites. NGTL stated that traditional use sites or features that require site-specific mitigation (additional to the existing measures) would be included in the updated EPP and ESA filed prior to construction.

The Crown consultation team notes that NGTL stated that with the implementation of its proposed mitigation measures, the residual effects on TLRU would not be significant.

The Crown consultation team notes that the Commission acknowledged that NGTL proposed a comprehensive suite of mitigation measures to reduce the adverse effects of the Project on TLRU and that the Commission concluded that the effects of the Project on TLRU would be short-term to medium-term, reversible in the long-term, limited to the local study area and low to moderate in magnitude.

The Crown consultation team also notes the Commission accepted that, after construction is completed, access to the RoW would be unchanged (except for access control measures where applicable to deter an increase in motorized public access along the new RoW) and that plant harvesting, fishing, hunting, trapping, ceremonial practices, travel, and use of cultural sites would still be possible.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding potential impacts of the Project on TLRU.

- **Conditions 6 and 28**, regarding Construction and Post-Construction Monitoring Plans for Indigenous Peoples, would require NGTL to file plans describing participation by Indigenous groups in monitoring activities both during and post-construction.
- **Condition 7** would require NGTL to file a report on outstanding TLRU investigations for the Project, including a description of how NGTL has revised its EPP and its lifecycle oversight as a result of the investigations.
- **Condition 8** would require 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 EPP.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding TLRU and the potential Project-related impacts to the access and the use of lands for the purpose of exercising s.35 rights.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, and the existing, new, and amended CER conditions are capable of addressing the potential impacts to s.35 rights and Indigenous interests related to Traditional Land and Resource Use. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to Traditional Land and Resource Use are included in Indigenous-group specific CCAR annexes.

4.7 Indigenous Project Monitoring

During supplemental consultations, Indigenous groups noted the critical importance of ensuring that Indigenous knowledge, perspectives, and concerns would be considered over the lifecycle of the Project. This includes ensuring that there is involvement with Indigenous groups throughout all stages of the Project and that TK is considered and incorporated into project planning and lifecycle monitoring.

The Crown consultation team notes that NGTL used its AEP to provide Indigenous groups with information and seek feedback in order to anticipate, prevent, mitigate and manage concerns from Indigenous groups, including those related to monitoring. NGTL stated it would be developing an Aboriginal Construction Participation Program (ACPP) for the Project to facilitate the participation of members of potentially-affected Indigenous groups to be on-site, and to directly observe pipeline construction activities and the implementation of mitigation measures. NGTL stated the development of the ACPP would be informed by NGTL's engagement with Indigenous groups and noted this would also provide employment

opportunities and job training with the objective to grow the participants' skills and understanding of NGTL's construction activities and environmental protection measures, with a view to advancing environmental stewardship.

The Crown consultation team notes the Commission's decision not to recommend that the Government of Canada create an Indigenous Advisory Monitoring Committee (IAMC) for the Project at this time and also notes the Commission encouraged NGTL to offer to engage with Indigenous peoples to gather input on how meaningful monitoring opportunities could be built into NGTL's existing ACPP.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding lifecycle monitoring.

- **Conditions 6 and 28**, regarding Construction and Post-Construction Monitoring Plans for Indigenous Peoples, would require NGTL to file plans describing participation by Indigenous groups in monitoring activities both during and post-construction.
- **Condition 29**, regarding Post-Construction Environmental Monitoring Reports, would require NGTL to file reports that include a summary of NGTL's engagement efforts with Indigenous groups and a description of how this engagement informed and/or modified NGTL's environmental program.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding lifecycle monitoring for this Project and agrees with the Commission's view that the involvement of Indigenous people in monitoring is a valuable and meaningful opportunity for sharing and incorporating the knowledge of Indigenous peoples in the planning, pre-construction, construction, post-construction, and operational lifecycle activities of the Project.

In February 2021, the CER announced a plan for an engagement and partnering initiative with Indigenous Monitors for the NGTL 2021 Project and made a commitment to do the same for the proposed North Corridor Project, should this Project be approved by the GiC. The plan builds on the CER's work with Indigenous Monitors for the Trans Mountain Expansion Project, Enbridge Line 3 Replacement Program, and TC Energy Keystone XL Project where Indigenous Monitors from impacted Indigenous groups partner with CER Inspection Officers to actively participate in its inspections, emergency response exercises, and compliance verification meetings. The intention is to allow the CER to better integrate Indigenous perspectives in its compliance and oversight activities with the aim to have Indigenous knowledge, world views, and insights of Elders and Knowledge-keepers respectfully integrated into all stages of a project's design, construction, and operation.

During supplemental consultation, the Crown consultation team heard from Indigenous groups that it is important for them to be meaningfully engaged and involved throughout the Project lifecycle with respect to those mitigations and accommodations made in response to potential impacts to group-specific s.35 rights. The Crown consultation team notes that eighteen of the thirty-four conditions (section 52, Pipelines and Facilities) recommended by the Commission for the Project require the proponent to provide a copy of the condition filing to Indigenous groups who have expressed an interest in receiving it (**Conditions 4, 5, 6, 7, 8, 10, 12, 14, 15, 20, 25, 27, 28, 29, 30, 31, 32, and 33**). In addition,

the proposed new **Condition 37** would require the proponent to provide a copy of the condition filing to Indigenous groups who have expressed an interest in receiving it. These conditions are designed to mitigate potential impacts to s.35 Aboriginal and Treaty rights.

The Crown consultation team notes that Indigenous groups expressed concern regarding the way these conditions are worded, specifically requiring them to express an interest in receiving copies of the filings. Indigenous groups expressed a concern that they may miss receiving an important filing, given the fact that as currently worded, the onus would rest with them to inform the proponent if they wish to receive a filing. The Crown consultation team also heard from Indigenous groups that the requirements of reviewing post-certificate filings are onerous on Indigenous groups since they are numerous, lengthy, and often very technical. Indigenous groups have stated that they require resources, including funding, in order to participate meaningfully in reviewing post-certificate filings.

Outstanding Impact

A number of Indigenous groups indicated that they lack the resources to review numerous and often technical filings from the proponent post-certificate which limits their opportunities to make the proponent aware of and have the Commission consider group-specific concerns about potential Project impacts to rights throughout the Project lifecycle. Additionally, as currently written, conditions that require the proponent to copy Indigenous groups on condition filings place the onus on Indigenous groups to request the filings and monitor whether they have received all the filings they wish to review.

Rationale for New Condition

The Commission of the CER has responded to many concerns raised by Indigenous groups by recommending conditions that require NGTL to report on many of the mitigations and commitments that respond to s.35 rights. Many of these conditions already expressly require NGTL to engage with Indigenous groups and/or provide Indigenous groups with copies of filings required by the conditions. It is important to ensure that Indigenous groups receive copies of post-certificate filings that they wish to review in order for them to ensure that the impacts to their rights are appropriately addressed and to remove the onus from them having to ask to proactively express their interest in receiving these filings. It is also important to ensure that Indigenous groups have the required resources, including funding, to be active in the review of post-certificate filings.

The proposed new **Condition 35: Support for Indigenous Groups to Review NGTL Filings Related to Conditions** is:

Upon request, NGTL shall offer funding to Indigenous peoples to support their review of NGTL's filings related to conditions.

- 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 6 months until the conditions identified are filed, a summary of the discussions it has had with Indigenous peoples regarding filings related to conditions. This shall include discussions on funding to support the review of filings related to**

Conditions 4, 5, 6, 7, 8, 10, 12, 14, 15, 20, 25, 27, 28, 29, 30, 31, 32, 33, and 37, and other conditions for which Indigenous peoples express an interest in receiving copies of filings, with a description of any outstanding concerns raised by Indigenous peoples regarding NGTL's offer of funding to support their review, including a description of how these concerns have been or will be addressed by NGTL, or a detailed explanation of why these concerns will not be addressed by NGTL.

- b) NGTL must also provide a list of Indigenous peoples who have expressed an interest in receiving a copy of filings related to any of Conditions 4, 5, 6, 7, 8, 10, 12, 14, 15, 20, 25, 27, 28, 29, 30, 31, 32, 33, and 37, and other conditions for which Indigenous peoples express an interest in receiving copies of filings, and which Indigenous peoples expressed an interest in which filings.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions, and the CER plan for an engagement and partnering initiative with Indigenous monitors, are capable of addressing the potential impacts to s.35 rights and Indigenous interests related to lifecycle monitoring of the Project. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to lifecycle monitoring of the Project are included in Indigenous-group specific CCAR annexes.

4.8 Vegetation and Plant Gathering

During supplemental consultations, Indigenous groups raised concerns regarding the potential Project impacts to vegetation and plant harvesting and specifically, about the availability and health of vegetation that is important for plant harvesting as well as the importance of vegetation for wildlife sustenance and wildlife habitat.

The Crown consultation team notes that NGTL stated it would employ construction practices that minimize ground disturbances to limit effects on native vegetation and that its standard mitigation and best practices would be effective in reducing residual effects on vegetation, and that natural recovery was an acceptable reclamation technique. NGTL also stated that given the short-term duration of effects, the Project is not anticipated to affect the intergenerational transfer of knowledge through subsistence activities and that over the long-term, with the Project's end of life and revegetation, the landscape would be restored for plant gathering activities with the overall effect anticipated to be low in magnitude and not significant. NGTL stated that since the pipeline would be buried and the RoW reclaimed, no further effects on TLRU are expected during pipeline operation, other than the occasional and isolated short-term disturbance during small-scale maintenance activities.

The Crown consultation team notes that NGTL committed to provide Indigenous groups with the proposed Project construction schedule and maps to reduce or avoid potential conflicts between Project construction and traditional use.

The Crown consultation team notes that with respect to herbicides, NGTL stated that 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 stated that near rare plants, the use of herbicides would be prohibited. NGTL also stated it would consider information gathered during ongoing engagement in Project planning, including the EPP and ESA filed prior to construction, and will continue to address questions and concerns from Indigenous groups regarding vegetation management.

With respect to wetland vegetation, the Crown consultation team notes that NGTL committed to undertake measures to mitigate impacts such as minimizing the removal of vegetation in wetlands; conducting ground level cutting, mowing and mulching of wetland vegetation instead of grubbing; minimizing grading within wetland boundaries; and, promoting natural recovery as the preferred method of reclamation in wetlands.

The Crown consultation team notes that NGTL committed to continue engagement with Indigenous groups and that new information would be reviewed in the context of the ESA and EPP. If previously unidentified rare plants are found during construction, NGTL would implement the Plant Species and Ecological Communities of Concern Discovery Contingency Plan and clearly mark identified rare plant locations. NGTL stated it would review mitigation for rare plants/rare ecological communities with Contractor personnel in advance of procedures. NGTL stated the RoW would remain available for traditional use during construction and operation of the Project, with the exception of localized areas during the period of active construction where access may be restricted for safety reasons.

The Crown consultation team notes that NGTL committed to conduct post-construction monitoring that would include a focus on vegetation and wildlife habitat as a key element of vegetation re-establishment. NGTL indicated that in instances where reclamation monitoring activities determine that natural recovery is not achieving the desired results, NGTL would use adaptive management practices and continue monitoring the site until the measures were considered to be effective.

The Crown consultation team notes the Commission's conclusion that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous groups would be low to moderate, and that in light of NGTL's commitments and mitigations, and the Commission's recommended **Condition 7**, that impacts to rights would not likely to be significant.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding potential impacts of the Project on vegetation and plant harvesting.

- **Conditions 6 and 28**, regarding Construction and Post-Construction Monitoring Plans for Indigenous Peoples, would require NGTL to file plans describing participation by Indigenous groups in monitoring activities both during and post-construction.
- **Condition 7** would require NGTL to file a report on outstanding TLRU investigations for the Project, including a description of how NGTL has revised its EPP and its lifecycle oversight as a result of the investigations.

- **Condition 12** would require NGTL to file an updated EPP including requirements and timing restrictions specifically related to minimizing construction disturbance.
- **Condition 14** would require NGTL to provide a copy of a detailed construction schedule to Indigenous groups who have expressed an interest in receiving a copy.
- **Condition 29** would require NGTL to file Post-Construction Environmental Monitoring Reports that include information regarding the effectiveness of mitigation.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding the potential effects on vegetation and plant gathering in the Project area. The Crown consultation team understands the importance of TLRU information and encourages Indigenous groups to share this information with NGTL so that the company may further evaluate ways to avoid or mitigate effects on those sites through site-specific mitigations currently set out in the EPP and the ESA, or seek to develop site-specific mitigations responsive to Indigenous groups' concerns.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions are capable of addressing the potential impacts to s.35 rights and Indigenous interests related to vegetation and plant harvesting. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to vegetation and plant harvesting are included in Indigenous group-specific CCAR annexes.

4.9 Wildlife, Hunting and Trapping

During supplemental consultations, Indigenous groups raised concerns about the potential impacts of the Project on the right to hunt and trap wildlife due to landscape and noise disturbances caused by the Project as well as a lack of appropriate engagement by NGTL.

The Crown consultation team notes that NGTL committed to implement a suite of mitigation measures to reduce the potential adverse effects of the Project on wildlife, wildlife habitat, and TLRU, including: restricting the Project's footprint; implementing minimum surface disturbance; avoiding sensitive wildlife timing windows; developing an Access Management Plan; forbidding Project personnel from hunting and trapping on the construction footprint; avoiding disturbance to environmentally sensitive features during clearing; providing the construction schedule to Indigenous groups; and, notifying trappers in the region 10 days prior to construction activities.

The Crown consultation team notes the Commission's conclusions that effects of the Project on TLRU would be low to moderate in magnitude and that the potential adverse effects of the Project on the current use of lands and resources for traditional purposes by Indigenous peoples would not likely be significant.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding potential impacts of the Project on the right to hunt and trap wildlife.

- **Conditions 6 and 28**, regarding Construction and Post-Construction Monitoring Plans for Indigenous Peoples, would require NGTL to file plans describing participation by Indigenous groups in monitoring activities both during and post-construction.
- **Condition 7** would require NGTL to file a report on outstanding TLRU investigations for the Project, including a description of how NGTL has revised its EPP and its lifecycle oversight as a result of the investigations.
- **Condition 12** would require NGTL to file an updated EPP which include requirements and timing restrictions specifically related to minimizing construction disturbance, as well as all specific mitigation related to species at risk and their habitat and Key Wildlife Biodiversity Zones and species of special concern such as caribou.
- **Condition 14** would require NGTL to provide a copy of a detailed construction schedule to Indigenous groups who have expressed an interest in receiving a copy.
- **Condition 29** would require NGTL to file Post-Construction Environmental Monitoring Reports that include information specific to the effectiveness of mitigation applied to minimize effects on wildlife and wildlife habitat.

The Crown consultation team acknowledges the preference of Indigenous groups to exercise rights on undisturbed lands, including rights related to wildlife, hunting, and trapping. The Crown consultation team anticipates that Indigenous groups would be able to continue to exercise these rights over the Project footprint, with the exception of in the short-term during construction and Project maintenance.

The Crown consultation team anticipates that, with the full implementation of the Project conditions, and NGTL's commitments, the majority of the Project effects on wildlife and wildlife habitat would be temporary and confined to the construction period.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions are capable of addressing the potential impacts to s.35 rights and Indigenous interests related to wildlife, hunting, and trapping rights. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to wildlife, hunting and trapping rights are included in Indigenous group-specific CCAR annexes.

Other Indigenous Interests

4.10 Economic Benefits

During supplemental consultations, Indigenous groups expressed interest in accessing economic benefits associated with the Project including, community investment, training, employment, and contracting and procurement opportunities.

The Crown consultation team notes that NGTL committed to providing contracting and employment opportunities to qualified Indigenous and local businesses and individuals. NGTL also stated 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 Alberta as a second priority, and that contracts with Prime Contractors would include requirements to hire qualified and competitive, local, Indigenous contractors and employees. NGTL stated that it requires bid responders to include an Aboriginal Participation Plan that outlines the processes it would use to facilitate opportunities for qualified and competitive local Indigenous businesses and people on the Project. The Crown consultation team also notes that NGTL stated its Indigenous Relations Business Engagement activities sought to increase the participation of Indigenous businesses and that Indigenous business representation on NGTL projects in northern Alberta generally represent eight to twelve per cent of the total construction contract values on past projects.

The Crown consultation team notes that 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.

The Crown consultation team notes that NGTL stated it would develop an ACPP for the Project to facilitate the participation of Indigenous monitoring to be on-site and to directly observe construction activities and the implementation of mitigation measures. The ACPP would aim to offer employment opportunities, including compensation and on the job training and 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.

The Crown consultation team notes that NGTL stated it would provide support and resources to Indigenous groups to increase their ability to participate in Project activities and to support long-term goals for skills development and training.

The Crown consultation team notes the Commission's finding that the Project would result in increased employment and economic benefits for Indigenous peoples and contracts for Indigenous-owned businesses and noted NGTL's commitments to work with interested Indigenous peoples to identify opportunities for education and training initiatives.

The Crown consultation team notes the Commission recommended specific conditions to increase the transparency of NGTL's commitments regarding contracting and employment opportunities for Indigenous peoples.

The Crown consultation team also notes a number of recommended conditions that could enhance transparency regarding NGTL's efforts to promote economic opportunities for Indigenous groups in the Project.

- **Condition 5** would require NGTL to file an update regarding its Indigenous Peoples Employment, Contracting, and Procurement Plan prior to construction.
- **Condition 27**, regarding Training, Employment, Contracting, and Procurement Reports, would require NGTL to file reports describing participation by Indigenous peoples in employment and business opportunities.

The Crown consultation team acknowledges the interests raised by Indigenous groups regarding economic benefits arising from the Project and also acknowledges that NGTL's commitments can contribute to satisfying these interests. The Crown consultation team acknowledges the Commission's conclusion that the Project would result in increased employment and economic benefits for Indigenous peoples and contracts for Indigenous-owned businesses. The Crown consultation team also acknowledges that participation by Indigenous groups in monitoring may result in employment and contracting opportunities.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions are capable of being suitably responsive to Indigenous interests related to economic opportunities for Indigenous groups. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to economic opportunities for Indigenous groups are included in Indigenous group-specific CCAR annexes.

4.11 Emergency Management

During supplemental consultations, Indigenous groups raised concerns regarding emergency response, management, and planning related to the Project. The groups noted the importance of taking steps to ensure adequate, preventative, and safety measures are adopted, and of providing a strong role for Indigenous groups in emergency response, management, and planning.

The Crown consultation team notes that NGTL stated the Project would 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 has a suite of policies and programs regarding emergency management including: TC Energy's Security Policy; TC Energy's Damage Prevention and Integrity Management programs; and, TC Energy's Emergency Management Corporate Manual.

The Crown consultation team notes that NGTL committed to discussing specific issues regarding emergency response, management and planning with Indigenous groups, including identifying what type of information should be provided to them through notifications. NGTL committed to working with specific Indigenous groups to determine the appropriate mechanism for sharing information. In addition,

based on community interest and questions, NGTL is exploring options for Indigenous group attendance and/or participation in its emergency response exercises.

The Crown consultation team notes the Commission was satisfied with NGTL's commitment in ensuring Indigenous groups have the information they need regarding emergency response and response times, including opportunities for capacity building and was also satisfied with the measures proposed by NGTL to engage Indigenous groups on emergency-related matters throughout the lifecycle of the Project.

The Crown consultation team also notes a number of recommended conditions that could address the concerns of Indigenous groups regarding emergency management.

- **Condition 9** would require NGTL to file a Geological Hazard Assessment Report that identified risks associated with the hazards and the mitigation and monitoring methods to control the hazard.
- **Condition 10** would require NGTL to file a Project-specific plan outlining the development of a continuing education program that includes consulting with potentially affected Indigenous groups.
- **Condition 15** would require NGTL to file an Emergency Response Plan prior to construction that includes information on spill contingency measures, 24 hour medical evaluation, fire response and security.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding emergency response, management, and planning.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions are capable of being suitably responsive to concerns regarding emergency management. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to emergency management are included in Indigenous group-specific CCAR annexes.

4.12 Socio-Economic Effects

During supplemental consultations, Indigenous groups raised concerns regarding the potential impacts to the health and well-being of members due to negative impacts from the development of resources in and around their traditional territory, including the potential indirect negative effects on their communities and members from construction activities and temporary population increases due to temporary construction camps.

The Crown consultation team notes that NGTL assessed the potential changes to the health of local Indigenous populations with respect to changes in water quality and quantity, air quality, and noise levels and that NGTL stated it found no residual effects to human health would occur as a result of the Project.

With respect to water quality and quantity, the Crown consultation team notes NGTL concluded that no health effects are anticipated as there would be no significant adverse effects on water quality or quantity.

The Crown consultation team notes that NGTL committed to minimizing emissions during construction and operation by using well-maintained equipment, reducing idling time of equipment and using multi-passenger vehicles where feasible. Further, NGTL committed to using nitrogen dioxide (NO₂) technology at the compressor station unit to minimize carbon monoxide (CO) emissions.

The Crown consultation team notes that NGTL concluded that no health effects are anticipated related to changes in noise levels related to the Hidden Lake North Unit Addition compressor station and that noise from construction activities would occur during the day with the exception of the Loon River trenchless crossing which may be conducted over a twenty-four hour period.

The Crown consultation team notes the Commission was of the view that the potential adverse effects of the Project on human health, regarding water quality and quantity, air quality and noise levels, would not likely be significant.

The Crown consultation team acknowledges the concerns raised by Indigenous groups regarding the potential socio-economic effects of the Project, and specifically, the impacts to human health.

Crown consultation team conclusion:

The Crown is of the view that, given the role of the CER as a regulator throughout the lifecycle of the Project and the powers of the CER through compliance verification activities and enforcement actions, the mitigations proposed and commitments made by NGTL, the existing, new, and amended CER conditions are capable of being suitably responsive to concerns regarding the potential socio-economic effects of the Project. The Crown's response to group-specific concerns and proposals raised by Indigenous groups in relation to the potential socio-economic effects of the Project are included in Indigenous group-specific CCAR annexes.

5.0 Crown Consultation Team Assessment and Conclusions

In response to the proposed NGTL North Corridor Expansion Project, Canada believes it has conducted a responsive consultation process characterized by genuine efforts to acknowledge, document, and respond meaningfully to potential impacts to s.35 Aboriginal and Treaty rights and Indigenous interests identified by Indigenous groups.

Throughout the CER Hearing process, Indigenous groups that chose to participate were provided with opportunities to describe their views on the nature and scope of potential impacts of the Project on Indigenous rights and Indigenous interests, and on mitigation or other measures that could be applied to address those potential impacts.

The supplemental consultation process, undertaken by NRCan's Crown consultation team between June 2020 and March 2021, provided potentially affected Indigenous groups with opportunities to provide their perspectives on outstanding Project concerns about potential impacts to s.35 Aboriginal and Treaty rights and Indigenous interests and to have substantive two-way dialogue about ways in which those potential impacts could be avoided or mitigated. Indigenous groups were offered participant funding to support their meaningful participation in consultation and engagement activities with the Crown consultation team. The Crown consultation team is appreciative of the manner in which Indigenous groups approached and participated in these discussions, especially during the COVID-19 pandemic.

The Crown consultation team made every effort, as a first principle, to listen, to understand, and to respect Indigenous views and perspectives, and to be responsive to those views and perspectives.

In response to concerns raised by Indigenous groups about the size, complexity, and technical nature of the CER Recommendation Report, the Crown consultation team organized a virtual information session with the CER and NGTL. This session assisted Indigenous groups in learning more about the CER Recommendation Report and the CER's role as a lifecycle monitor, and encouraged Indigenous groups to ask questions about the Project to the CER and NGTL.

Given the importance of caribou and caribou habitat to Indigenous groups, the Crown consultation team organized another virtual information session with the CER and NGTL where Indigenous groups could learn more about mitigations NGTL proposes to implement to address potential impacts to caribou and its habitat and about how the CER would ensure condition compliance and enforcement should the Project be approved.

The Crown consultation team developed tools such as the Indigenous group-specific Issue Tracking Tables and annexes that facilitated substantive, meaningful two-way dialogue between the Crown and Indigenous groups.

The Crown held virtual meetings, via teleconferences and videoconferences, with interested Indigenous groups to listen to and understand what Indigenous groups' concerns were and what proposed mitigations might be appropriate.

The Crown consultation team proposed three new conditions and amendments to four conditions recommended by the Commission in response to what the team heard from Indigenous groups about potential Project impacts to their s.35 Aboriginal and Treaty rights.

The Crown consultation team encouraged Indigenous groups to provide the GiC with independent submissions to supplement this report and to share their views and concerns about the Project, in their own words, directly with decision-makers.

The Crown consultation team believes that the entirety of the consultation process, including the supplemental consultation process, has resulted in a meaningful and responsive two-way dialogue between Canada and potentially impacted Indigenous groups to support participation and meaningful discussion of concerns.

In this report, including the group-specific annexes, Canada has provided its understanding of the potential impacts of the Project on each of the twenty-two Indigenous groups' s.35 rights and Indigenous interests, and Indigenous interests of the two groups that were engaged on a policy basis, and it bases this understanding on a thorough and meaningful consultation and engagement process. Canada has also set out how certain initiatives would avoid, reduce, or mitigate adverse Project impacts including: proponent mitigations and commitments; the Commission of the CER's findings and conditions that would be legally binding on the proponent (if approved); existing federal initiatives; and, additional measures proposed by the Crown consultation team through the amendments to conditions, and the proposed new conditions.

The Crown consultation team believes it has conducted the consultation process in good faith; has offered opportunities for meaningful two-way dialogue; has been responsive to Indigenous groups; and, has recommended additional mitigations (i.e., proposed new conditions and condition amendments) to address potential impacts on s.35 Aboriginal and Treaty rights. Accordingly, this report concludes that Canada has met its duty to consult Indigenous groups for the NGTL North Corridor Expansion Project.

This report, including annexes and independent submissions from Indigenous groups, was submitted to Ministers to inform their judgement on whether the Crown's duty to consult and accommodate Indigenous groups has been met. Canada is committed to continuing the meaningful relationship with Indigenous groups established throughout the consultation process for this Project.

6.0 Indigenous Group-Specific Annexes

There are twenty-four annexes attached to this CCAR.

Twenty-two annexes are for each of the Indigenous groups for which there was a duty to consult on this Project, and two of the twenty-two annexes are for Indigenous groups that are outside of the Project area but that have s.35 Aboriginal and Treaty rights related to the Chinchaga and Red Earth caribou ranges that are potentially impacted by this Project. These twenty-two annexes provide a summary of the Crown consultation process with the Indigenous group on the Project. Specifically, this includes a summary of the Crown consultation team's understanding of the issues and concerns raised by the Indigenous group. Each annex includes the Crown consultation team's assessment as to whether outstanding issues and concerns have been reasonably addressed through the existing conditions, the new and amended conditions, and mitigation measures.

Two annexes are for the each of the two Indigenous groups that NRCan engaged on this Project. These two annexes provide a summary of NRCan's understanding of the Indigenous groups' Indigenous interests in the Project as well as NRCan's assessment as to whether their interests have been reasonably addressed.

Annexes:

1. Athabasca Chipewyan First Nation
2. Beaver First Nation
3. Bigstone Cree Nation
4. Cadotte Lake Métis
5. Dene Tha' First Nation
6. Doig River First Nation
7. Driftpile Cree Nation
8. Duncan's First Nation
9. East Prairie Métis Settlement
10. Gift Lake Métis Settlement
11. Horse Lake First Nation
12. Kapawe'no First Nation
13. Loon River First Nation
14. Métis Nation of Alberta (Regions 5 and 6)
15. Mikisew Cree First Nation
16. Paddle Prairie Métis Settlement
17. Peavine Métis Settlement
18. Peerless Trout First Nation
19. Sawridge First Nation
20. Swan River First Nation
21. Tallcree First Nation
22. Whitefish Lake First Nation #459
23. Foothills First Nation (Engage group)
24. Papaschase Cree Nation (Engage group)