

Attachment 1: Fort McKay First Nation's Responses to Guiding Questions for this Comment Period

Suncor Base Mine Extension Project

Canadian Impact Assessment Registry File No.: 80521

The Agency encourages you to use the "Submit a Comment" feature on the Agency's Registry website using reference number: 80521

Potential Effects and Impacts

1. Please identify any effects of the Project that are of concern to your community. Also please identify any effects that you are aware of that are not listed in the initial project description. Note: *Information on effects and direct and incidental effects as well as effects within federal jurisdiction are defined in section 2 of IAA¹.*

Suncor provided a list on pdf page 10 of its Initial Project Description of topics raised by indigenous groups and a separate list of concerns raised by Indigenous groups. From our perspective both of these lists are concerns about effects, direct and incidental effects and effects within federal jurisdiction.

Fort McKay's initial list of concerns is based on our understanding of specific issues related to oil sands mining operations and our experience of the cumulative development within our Traditional Territory. Please see Figure 1 (at the end of this document) that shows oil sands development in our Traditional Territory.

The following is a preliminary list of effects of concern to Fort McKay. Please note that other issues may arise in the course of engagement and consultation with Suncor, Alberta and Canada. For all of these issues we are concerned about cumulative (existing, approved, project & planned developments – see Figure 1) and project-specific effects:

- Taking up of lands and direct loss of land and cultural landscapes on which to exercise rights, practice traditional land uses and cultural practices and indirect effects
- Tangible and intangible effects on Traditional Use Values
- Effects on air quality, Ongoing and potentially increased odours, air emission deposition and dust - on our Reserves, including at our Community at the Hamlet of Fort McKay, and within our Traditional Territory
- Noise, light and visual effects on our Reserves and traditional land use areas
- Loss of wildlife habitat, changes in habitat effectiveness, effects on wildlife populations (e.g., moose, boreal caribou, migratory birds, white-tailed deer, gray wolves), wildlife movement, loss of stop-over areas, and wildlife health (e.g. mercury content in eggs) both locally and regionally need assessment. Fort McKay is especially concerned about culturally important and cultural keystone species, including moose, boreal caribou, bison, beaver, muskrat, wolverine, bears, lynx, fisher, marten, caribou, grouse, ptarmigan, ducks, and geese. Local and regional assessment of impacts to species at risk (federally and provincially) and ecologically important species including boreal caribou, Canada warbler, olive-sided flycatcher, common nighthawk, yellow rail, rusty blackbird, wood bison, coyotes, gray wolf, white-tailed deer, whooping crane, bat species, barred owl, osprey, bald eagle, great blue heron, woodpecker species, toad species, and swallow species.
- Assessment of change to predator/prey balance (wolves and deer) and wildlife communities (e.g., old growth and mixed wood bird communities).
- Direct loss of vegetation and further degradation of already compromised harvesting sites, especially culturally important species for gathering (including cranberry species, blueberry species, strawberries, pin-berries, Saskatoon berries, chokecherries), food, medicine (including rat root), firewood, spiritual and cultural practices,
- Direct and indirect effects on groundwater, lakes, streams, and rivers, including on aquatic and fish habitat, fish populations, fish health, water and sediment quality, and implications for exercise of rights including fishing, navigation, water use on the land and other traditional uses and practices

¹ A link to IAA text can be found here: <https://www.canada.ca/en/impact-assessment-agency/corporate/acts-regulations/legislation-regulations.html>

- Impacts on fish, wildlife and plant health, quality, nutrition and suitability for human consumption and cultural and spiritual purposes
- For project-specific activities that have the potential to cause a harmful alteration, disruption or destruction of fish habitat requiring *Fisheries Act* approval – consultation and accommodation with Fort McKay and implementation of Fort McKay's Treaty rights, consideration of Indigenous knowledge, impacts on Treaty rights and interests, biodiversity, species and habitats of cultural importance including pickerel and jackfish, and consultation and accommodation, including how Treaty rights will be protected, offsetting measures applied within the region, including complementary measures and habitat banks/credits, fisheries management objectives, and monitoring/reporting.
- Environmental and safety risks from tailings impoundments, tailings management, waste management and proposed releases of process-affected water to the Athabasca River and its tributaries, which support our Reserve lands and are important locations for fishing and navigation
- Health and environmental risks from planned and unplanned events, including to enjoyment of Reserve lands
- Risks, uncertainties, time of tailings management and reclamation and return of landscapes suitable for exercise of Treaty rights, and cultural and spiritual purposes
- Impacts to health including broader determinants of health and well-being
- Impacts to family dynamics with respect to work/life balance affected by shift work schedules and traditional cultural values such as hunting, fishing and gathering. Shifting values from traditional cultural values to economic values.
- Impacts on social and economic impacts such as pressure on regional and First Nation-delivered services.
- Increased population in the region and the existence of many industrial camps – concerns about increased competition for resources, increased non-Indigenous land users, recreational use, potential for vandalism, littering, and concerns about safety and security while on the land.
- Changes in behaviour, due to poor air quality in Fort McKay and fear due of the unknown potential health impacts (acute and chronic), is a very real social impact experienced by Fort McKay. For example if the air quality starts to stink and students at school in Fort McKay are outside playing (a healthy activity), they are brought inside due to concerns about the air quality.

Of utmost concern to Fort McKay are the outstanding cumulative effects on air, water, land and wildlife within our Traditional Territory and that are adversely affecting our Treaty rights and have not been adequately and appropriately managed, mitigated and accommodated by Alberta and Canada. Canada continues to rely on its participation in the Oil Sands Monitoring Program as a means to address the cumulative effects on Fort McKay. This is wholly insufficient; monitoring does not equal mitigation or accommodation measures, nor does it prevent the impacts caused by the taking up of lands and processing of bitumen that takes place surrounding Fort McKay.

Fort McKay and Suncor have a long-standing, positive and effective working relationship and Suncor has initiated consultation with us in the early planning stages of the assessment to begin to identify issues of concern and potential impacts on Fort McKay. Fort McKay is looking forward to participating in the assessment and working collaboratively with Suncor to develop meaningful and effective mitigation measures to address project-specific issues and the contribution of the project to cumulative effects. While Suncor will have responsibilities to address project-specific impacts, Suncor is unable to address necessary actions to respond to the significant cumulative effects on our Treaty rights, which is the responsibility of the Crown and therefore actions by Alberta and Canada will be necessary.

2. Please describe how the potential effects of the Project could result in changes to your community's:

(a) physical and cultural heritage (e.g. ceremonial sites, burial sites, cultural landscapes)

Fort McKay is concerned about the potential for the Project to result in changes on physical and cultural heritage. The Project will remove and further degrade traditional lands in relatively close proximity to Fort McKay, which are available for the exercise of Fort McKay's treaty rights including harvesting for domestic, social, cultural and spiritual purposes. The potential loss and degradation of traditional lands is described in the Initial Description at section 21 and 22. These changes will result

in the following:

- Direct and further loss of land in our Traditional Territory and cultural landscapes on which to exercise rights, practice traditional land uses and cultural practices and indirect effects of the Project;
- Direct and further loss and changes in traditional trails and access to lands of historical importance;
- Tangible and intangible effects on Traditional Use Values including impacts such as on the transmission of cultural knowledge, forced acculturation and culture loss, including the ability to transmit language, all of these which are life experience teachings that must occur and be experienced on the land;
- Effects on Fort McKay First Nation's values of self-reliance and determination, cultural and spiritual traditions, and sense of community; and
- Potential loss and diminution of value of ceremonial sites, burial sites and historical and archeological sites.

(b) current use of lands and resources for traditional purposes (e.g. hunting, fishing, trapping)

The Project's proposed removal of 20,000 ha of land in Fort McKay's Traditional Territory will directly impact all traditional uses within the project footprint and further reduce the land base in Fort McKay's Traditional Territory available for the exercise of Treaty rights, for the duration of the project, but also into the future and after project reclamation due to the permanently changed landscape.

The Project is located within 20km of Fort McKay's Reserves at Fort McKay, a core area of Fort McKay's exercise of Treaty 8 rights.

Fort McKay has completed a traditional land use study (TLUS) regarding Suncor's BMX Project (June 2019). The study identified past, current (within living memory) and future TLU values within the local study area:

TLU values that are within the project area or intersected by it include:

- Wildlife/Ecological Values (e.g. wildlife habitat),
- Transportation Values (e.g., trails/access to traplines, river navigation),
- Trapping Values
- Habitation Values (e.g. historic trapping cabins, camping sites),
- Subsistence Values (e.g. berry gathering, hunting and fishing sites, food processing areas, plant gathering areas)
- Indigenous Landscape Values
- Spiritual Values

As reported in the TLUS study:

Within the current context of the rapid growth of oil sands development, Fort McKay members are already experiencing a diminished number of areas where they can access an intact and healthy environment for TLU activities. An assessment of the cumulative effects of industrial development in the region indicates that as a result of existing, approved, and planned industrial projects in Fort McKay's Traditional Territory, 307,762 hectares (ha) of land was unavailable for traditional land use practices as of 2017 (Lagimodiere 2017:8).⁶ The LSA, which represents a moderate estimate of the area upon which direct and indirect Project effects may be experienced, is 71,746 ha. If constructed, the anticipated effects of the Project would add to the cumulative effects of other oil sands developments in an area that is already under significant stress. Fort McKay is highly concerned that the additional impacts of the proposed Project will further limit areas where TLU activities may be conducted. (p.2)

While Fort McKay continues to exercise their Aboriginal and Treaty Rights in their Traditional Territory, if available and relatively undisturbed by industrial or recreational activities, the Fort McKay First Nation is facing a highly disturbed and fragmented landscape that has experienced recent and dramatic environmental change, as well as a significant increase in competition (hunting and fishing pressure) from increased recreational hunting, fishing, and trapping. Areas where Fort McKay First Nation members can access an intact and healthy environment suitable for TLU activities, and where they can avoid hunting competition and other recreational land users, are becoming increasingly limited. The impacts of the proposed Project area within Fort McKay's Traditional Territory, which is already under considerable stress, would work in conjunction with other oil sands developments to create substantial changes to Fort McKay land use. As a result, the Project-related changes to Fort McKay's overall use of lands or resources is considered substantial for the Fort McKay First Nation. (p. 3)

The location of the Project has been used by Fort McKay for the exercise of its Treaty and Aboriginal Rights to hunt, fish, trap and gather traditional resources, and to engage in related Traditional Land Use (TLU) practices, including cultural, spiritual and social activities. However, TLU within and near the Project footprint has already been impacted by the cumulative effects of existing nearby development, including the nearby Suncor Base Plant and the Suncor Millennium Mine. The Project is also in close vicinity to Syncrude Mildred Lake Mine. (p.1)

Respondents interviewed for this TLUS reported a decline in TLU in the LSA between the 1980s and the early 2000s, reflecting the direct and cumulative impacts of large-scale oil sands development on Fort McKay's drinking water, fisheries, and other resources during this time (see Longley 2015; FMTA 1983; Surrendi & Associates 1998; Fort McKay Industry Relations Corporation 2010).⁵ Current TU practices in the LSA, therefore, do not represent historical pre-development or planned future levels of seasonal land use. (p.2)

The proposed Project will adversely affect 313 Site-Specific TU Values directly and, as a result, adversely affect Fort McKay's Aboriginal and Treaty Rights. The Project footprint will render many of these TU Values unusable or eliminate them because Fort McKay members will not have access to their lands within the footprint, and the Project may further have indirect effects, including noise and air pollution, on areas in proximity to the footprint. Each of these development-driven changes will reduce or eliminate the available areas where TLU can be practiced within the LSA, as well as contribute to the existing and cumulative effects that are already limiting TLU within the LSA. (p.44)

The Project intersects Registered Fur Management Area #587, which is a trapline held by a Fort McKay First Nation member. Traplines have been areas of intensive use for the exercise of treaty rights and traditional land use for Fort McKay families. They are used in all seasons for trapping for food and domestic purposes; gathering berries and traditional use plants for food, cultural, health spiritual purposes; hunting; camping and habitation; and for social, cultural and spiritual purposes.

The Project is located adjacent to the Athabasca River and would impact several tributaries. The Aboriginal fisheries in the Athabasca River and its tributaries have historically been very important to Fort McKay for the exercise of its rights to fish, navigation and related cultural activities.

The Project intersects numerous traditional trails, transportation corridors and access routes, which are highly valued for traditional land use and cultural heritage. Trails are important locations of hunting, gathering and importantly, the transmission of traditional knowledge, a reasonably incidental Treaty 8 right protected by s.35 of the Constitution.

The project will eliminate habitat for culturally important wildlife species and populations and gathering areas and will likely lead to further degradation of already compromised wildlife habitat and gathering areas necessary for exercise of Treaty rights and cultural practices (see Section 1 above for more detail).

(c) structures, sites or things of historical, archaeological, paleontological or architectural significance (e.g. artifacts, important historic buildings or symbols)

The Project is located within Fort McKay's Traditional Territory and the TLUS identified intersection with historic cabin and camping sites and Indigenous landscapes. Accordingly, it will be important for Suncor to involve Fort McKay in historic resources studies and to engage regarding TU values so that important 'structures, sites of things of historical, archaeological, paleontological or architectural significance' can be identified and mitigation plans developed collaboratively.

3. Please describe how the Project may result in changes (both positive and negative) to your community's:
 - (a) health, social or economic conditions (e.g. employment opportunities, easier access to goods and services, economic development, accessibility to health-care services);

At this early stage in the planning project we are unable to provide specific comments to offer regarding the BMX project. Our experience with past similar projects within our traditional lands is that there may be positive effects or opportunities related to employment, educational opportunities, small businesses, First Nation-run businesses, and

other benefit agreements to help address project-specific effects on social, economic and environmental issues. Specifically, Fort McKay has been successful in obtaining business opportunities in collaboration with Suncor including a significant equity interest in Suncor's East Tank Farm in 2016.

The potential negative environmental, health, social and economic conditions have been described above.

Potential negative effects (social and economic) of large mining projects, such as BMX, would include:

- Increased traffic, collisions and safety concerns;
- Pressure on public services in the Regional Municipality of Wood Buffalo (e.g. hospital, social services, education);
- Pressure on First Nation-delivered services (e.g. health, daycare, Elder care, education, housing);
- Increased cost of living;
- Anxiety, stress, and impacts on mental health
- Increased access to drugs and alcohol and addictions
- Increased prostitution
- Increase in domestic violence and sexual violence.
- Impacts to family dynamics with respect to work/life balance affected by shift work schedules and traditional cultural values such as hunting, fishing and gathering. Shifting values from traditional cultural values to economic values.
- Ability of working parents being able to pass on their culture and traditions may be diminished by further reduced opportunities for traditional land use near the Community
- Reliance on the wage economy and impacts on traditional practices and mixed economy, changes in educational requirements for employment;
- Changes in social and community structure and cohesion and daily life (e.g. less visiting due to shift work, changes in raising children, changes in education, role of Elders). Fort McKay's Cultural Heritage Assessment Baseline, which was done as part of the Fort McKay Specific Assessment (for the Shell Jackpine Mine Expansion Project) describes these effects and linkages to industrial development in more detail.
- Effects to women: participating in the workforce and changes in traditional family dynamics
- Increased population in Fort McMurray and the existence of many industrial camps has had negative effects on ability to practice traditional land use, increased competition for resources (e.g. fishing, hunting), increase recreational users, vandalism (e.g. at cabins, traplines), littering, feeling unsafe and unsecure on the land due to the increased presence of non-indigenous users, this is particularly concerning for women.

(b) Indigenous knowledge, indigenous language or indigenous culture.

See comments in 1) and 2) above

Indigenous language programs in our community have a positive influence on maintaining languages, which as described below are grounded in land-based experiential activities.

Fort McKay's own initiatives, collaborations with industry; multi-stakeholder initiatives and collaborations with some government agencies have included various studies using Indigenous knowledge independently or along-side science. Some successful and informative studies have included:

- Fort McKay reclamation studies - key cultural species & cultural landscapes
- Fort McKay - WBEA Berry health study
- Reclamation guidance documents incorporating Indigenous values
- Numerous frameworks and guidance documents developed through the Cumulative Environmental Management Association (CEMA), such as the following:
 - Surface Water Management Framework
 - Terrestrial Ecosystem Management Framework
 - Air Emission Management Frameworks: Ozone, Acid Deposition, Trace Metals, Nitrogen (interim), and Air Contaminants
 - Reclamation guidance documents: Landscape Design Checklist, Guideline for Wetlands Establishment on Reclaimed Oil Sands Leases, Land Capability Classification System for Forest Ecosystems, End Pit Lakes, Best Management Practices for Conservation & Reclamation Materials
 - Indigenous Traditional Knowledge Framework - Principles for the Inclusion of Indigenous Traditional Knowledge in Environmental Decision-Making for North East

Alberta– note that this Framework has not yet been fully developed, which is an essential component of completing LARP

We are also working on various initiatives with Suncor independently and with other Indigenous groups on areas of mutual interest such as on reclamation and closure plans and research, studies on traditional plants and wetlands, and the McClelland Lake Wetland Complex Sustainability Committee.

4. Please describe how the Project may result in any change (positive or negative) to:

- (a) the intersection of sex and gender with other identity factors (would there be effects to different sub-groups within your community, identified based on factors such as gender, age, race, religion etc.. For example, to women, youth, elders);

To date projects have not been required to examine the intersection of sex and gender along with other identify factors and subgroups within a community. Specific groups within our community that may experience differentially the direct and indirect impacts of the existing cumulative projects and the proposed BMX project include: women, children, youth, Elders, and people with pre-existing health conditions. There may be other subgroups and it will be important for the Agency and Suncor to consult with us regarding the scope of this assessment.

One area that we have found in the past has not addressed the unique circumstances and subgroups within our community and Indigenous communities have been health impact assessments. In general these have been narrowly focused on contaminant-based risk assessments and have not addressed the broader determinants of health, including impacts on social, cultural and spiritual aspects.

We note that UNDRIP Article 29 states the following:

Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

We offer some preliminary input here on approaches to health assessment, which could include assessing human health impacts and risks to traditional land users (Indigenous community members) both related to the proposed project and from existing cumulative impacts rather than inferring human health impacts through assessment of environmental impacts (as has historically been conducted in EIAs). Information provided by incorporating the following would allow Indigenous communities to better understand potential risks from the proposed project and meaningfully engage on project specific risk management, mitigation and monitoring.

- 1 Identify human health legislation in policy and regulatory oversight components;
 - Impact Assessment Act
 - Canada Health Act
 - The Indian Act
 - Alberta Health Act
 - 2 Require human health regulators to actively participate in the process and decision making;
 - Health Canada
 - First Nation and Inuit Health Branch
 - Alberta Health
 - 3 Require the proponent to use HIA methods to assess direct and indirect human health impacts (rather than relying solely on EIA methodology). For example, the following guidance could be used;
 - Health Canada (2019) Guidance for Evaluating Human Health Impacts in Environmental Assessment: HUMAN HEALTH RISK ASSESSMENT
 - Health Canada (2016) Guidance for Evaluating Human Health Impacts in Environmental Assessment: DRINKING AND RECREATIONAL WATER QUALITY
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- Health Canada (2018) Guidance for Evaluating Human Health Impacts in Environmental Assessment: COUNTRY FOODS
 - Health Canada (2017) Guidance for Evaluating Human Health Impacts in Environmental Assessment: AIR QUALITY
 - Canadian guide to Health Impact Assessment (<https://www.canada.ca/en/indigenous-services-canada/services/first-nations-inuit-health/reports-publications/health-promotion/canadian-handbook-health-impact-assessment-health-canada-2004.html>)).
 - <http://publications.gc.ca/collections/Collection/H46-2-04-343E.pdf> (Volume 1: The basics)
 - <http://publications.gc.ca/collections/Collection/H46-2-04-361E.pdf> (Volume 2: Approaches and Decision-making)
 - <http://publications.gc.ca/collections/Collection/H46-2-04-362E.pdf> (Volume 3: The Interdisciplinary team)
 - <http://publications.gc.ca/collections/Collection/H46-2-04-363E.pdf> (Volume 4: Health Impacts by Industry Sector)
- 4 Assess and consider existing cumulative impacts to the environment through analysis and interpretation of available monitoring data and condition reporting;
- ECCC, AEP, AEMERA, LTRN, RAMP, WBEA, JOSM, OSM, CBM, LARP
- 5 Assess and report on existing health status of Indigenous communities using available health statistics data:
- Wood Buffalo health data summary report: <https://open.alberta.ca/dataset/62df29fc-7d98-4893-b6ce-1d03def3740e/resource/eb2ad230-b15f-480f-852f-95e0fadcd361/download/phc-profile-wood-buffalo-2017.pdf>
 - Alberta Health database: http://www.ahw.gov.ab.ca/IHDA_Retrieval/selectCategory.do
 - Alberta Congenital Anomaly Surveillance Report: <https://open.alberta.ca/dataset/f8b42b59-ffc6-4b34-9156-27d832bb781c/resource/8bc10915-2fa5-4ccd-8522-a70a132f3feb/download/congenital-anomalies-report-11-2017.pdf>

Fort McKay requests that provincial and federal health authorities (Alberta Health, Health Canada) be *required* to review application materials and that their comments, recommendations and decisions be posted on the Registry.

- (b) sustainability, considering, for example, the interconnectedness and interdependence of human-ecological systems and the well-being of present and future generations.

The TLUS notes the following:

... Fort McKay is experiencing the largescale taking up of land by industrial development. The cumulative environmental impacts caused by this development have already led to the loss of numerous suitable areas for practicing TLU. Industrial development and impacts to land, plants, and animals in particular areas, as well as the direct loss of land, have diminished Fort McKay's access to intact, safe and culturally appropriate resources.

Fort McKay has experienced significant cumulative effects on Rights and culture, which are interconnected with the loss of land base and the outstanding cumulative effects in the region. In particular, cumulative effects on air quality, wetlands, wildlife, fish and fish habitat, biodiversity and landscapes need to be addressed.

Risks, uncertainties, long time-periods (many decades and spanning multiple generations) and lack of inclusion of Indigenous values in tailings management and reclamation are major concerns. The methods and timing of tailings reclamation and final reclaimed areas directly affects when, and if, the lands will once again support Fort McKay's traditional land use and be safe for people and wildlife.

Human-ecological risk assessments of oil sands process water (OSPW) treatment systems are necessary, in consultation with Fort McKay to assess potential impacts on Treaty rights and to mitigate and accommodate potential impacts. Environment and Climate Change Canada (ECCC) needs to consult with Fort McKay in any potential policy related to treatment and

release of OSPW, which both Canada and Alberta appear, determined to allow to take place.

All of these are inextricably linked to the health, well-being, Treaty rights and intergenerational transmission of culture in Fort McKay.

Cumulative effects are not being adequately managed and monitored. These have not been addressed adequately by Alberta and Canada. The Lower Athabasca Regional Plan (LARP) is incomplete. In 2015, the LARP Review Panel, established pursuant to the Alberta Land Stewardship Act, concluded that LARP as it currently exists does not manage activity to meet the reasonably foreseeable needs of current and future generations of Aboriginal peoples. Shamefully, none of the recommendations made by the Review Panel have been implemented by Alberta or Canada, including the following recommendations:

- Alberta Health and Health Canada complete a regional baseline health study targeting at aboriginal communities and that considers environmental exposure and exposure pathways;
- Completion of all the land management strategies in LARP. This includes the Biodiversity management framework a landscape management plan, and conservation areas (in close proximity to First Nation and Metis communities).
- Completing all the management frameworks in LARP including air, water, land and adequate inclusion of Aboriginal peoples in planning
- The panel concluded that “The Lower Athabasca Regional Plan does not contain any outcomes, strategies, thresholds, frameworks or management plans for managing adverse impacts to the Applicant’s [Fort McKay First Nation and Fort McKay Metis] Lands or for adverse effects on opportunities to exercise Treaty and Aboriginal rights and Traditional Land Use. “ This has not been addressed by Alberta.
- The Panel concluded: “The LARP has not taken adequate measures to protect the Applicant’s Treaty and Aboriginal rights, Traditional Land Use and culture. In fact, it has done quite the opposite.” This has not been addressed by Alberta.
- Implementation of the recommendations of the Joint Review Panel of the Jackpine Mine Expansion Project, for example the following with respect to wildlife:
 - Completing recovery strategies for Species-at risk – including but not necessarily limited to Wood Bison, Canada Warbler, Olive-sided Flycatcher, Common Nighthawk and Rusty Blackbird.
 - Expeditious completion of range plans for caribou in the oil sands region to ensure that immediate action occurs as prescribed in the federal recovery strategy monitoring. Achieve self-sustaining populations of caribou. Since the Jackpine Mine decision caribou populations have continued to decline and caribou range plans have not been completed. Alberta is conducting a 3-year socio-economic study on the effects of caribou conservation rather than implementing caribou conservation.
 - Monitor and report on any future changes to the distribution and abundance of caribou, deer, moose and their predators (primarily wolves) along with waterfowl and other migratory birds in the oil sands region. Currently, the Oil Sands Monitoring (OSM) does not include dedicated systematic monitoring of species at risk populations or the estimate the regional populations of birds or mammals (except moose)
 - Conduct moose management with Indigenous peoples and inclusion in the draft BMF and develop a program to monitor the health and sustainability of moose populations. Moose should be included as an indicator in the BMF and managed with Fort McKay and other Indigenous peoples. OSM projects that incorporate Indigenous knowledge should be funded.
 - The BMF should provide clear direction on the management objectives for old-growth forests in the Lower Athabasca planning region, identify acceptable levels of disturbance (thresholds) for different areas of the region that reflect the permitted land uses and management objectives for those areas, and provide specific direction on the role of conservation offsets within the planning region
 - Governments of Canada and Alberta, industry, Aboriginal groups and other key stakeholders, work together to assess the return of wildlife to reclaimed oil sands affected landscapes. Regional multi-stakeholder group that addressed reclamation, Cumulative Effects Management Association ceased

operations in 2015 and Alberta and Canada have not address how the recommendation regarding reclamation will be achieved.

Development and implementation of a comprehensive plan for the Moose Lake Area remains a gap to preserve a culturally important area to Fort McKay for future generations, and to accommodate the cumulative effects to Fort McKay First Nation's Treaty rights and protect Fort McKay's rights to hunt, traditional way of life and ability to transmit culture to future generations.

Fort McKay's view is that the protection of the health, safety and use and purpose of Fort McKay's Reserve lands for the meaningful opportunity to hunt, fish, trap and gather for consumptive, social, spiritual, and cultural purposes falls within federal responsibility, which the federal Crown has not taken enough action to ensure in response to the cumulative effects of development on Fort McKay.

The Governments of Canada and Alberta are both responsible to play their part to achieve sustainable or responsible energy development. Fort McKay's view is that specific clear tangible commitments and actions need to be developed between Fort McKay Canada, and Alberta jointly to address and accommodate the existing cumulative effects and impacts on sustainability of Fort McKay's culture and its rights.

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5. If you expect the Project may impact your community's rights as protected under section 35 of the *Constitution Act, 1982*, please describe how.

The people of Fort McKay have statutory and common law rights, but in addition to their rights as Canadians, they have constitutional, communal, and individual rights as first peoples of Canada. Their constitutional rights are as follows:

1. **Treaty rights**; as guaranteed by the text of Treaty 8 (1899) and the oral assurances made on behalf of the Crown at the time the Treaty was negotiated. These Treaty rights include:
 - a. the meaningful right to hunt, trap, fish and harvest natural resources within their Traditional Territory for food, social, spiritual, health and cultural purposes;
 - b. to the continuity and non-interference of their way of life;
 - c. to teach their traditions to younger generations; and
 - d. to the use, enjoyment and control of lands reserved for them.

Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage), [2005] 3SCR 388; *R. v. Badger*, [1996] 1 SCR 771; *R. v. Côté*, [2011] 3 SCR 215; *Dr. McCormack Historical Report*.

2. As an Indigenous people, Fort McKay has an **inherent right to maintain, protect and develop its heritage** protected by its Treaty and Aboriginal Rights and recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Article 11. As citizens of Alberta, the *Historical Resources Act* exists to **protect and preserve Fort McKay's heritage**, and Fort McKay's values must be considered in Historical Resource management decisions.
3. While Alberta has the ability to "take up" lands for oil sands development and other purposes pursuant to Treaty 8, this right is limited by the Honour of the Crown; Fort McKay's procedural rights, including the right to be consulted and accommodated before the take up of land; and the protection of **substantive rights, including to sufficient lands, and access to them, within their Traditional Territory, of a quality and nature sufficient to support the meaningful exercise of their Treaty rights**: *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 SCR 388.
4. The **right to hunt for food in all seasons** with a corresponding right to a supply of game pursuant to the Natural Resources Transfer Agreement (Schedule 2 of the Constitution Act, 1930).
5. The right to **participate in the co-management of its Traditional Territory**: *There is Still Survival Out There (1994)*; *Dr. McCormack Historical Report*.
6. Fort McKay's statutory and Treaty 8 rights include **the right to the use and enjoyment of their reserve lands** pursuant to section 18(1) of the *Indian Act* (R.S. 1985, C. I-5) with a corresponding fiduciary obligation on Canada to protect these land rights and their value to the First Nation.

Fort McKay's exercises its rights at the Project location. Existing cumulative effects and potential Project effects are related to rights in many ways including the following:

Deteriorated air quality affects:

- 1) the quality of vegetation and berries that are harvested by Fort McKay through impacts to the soil (acidity, eutrophication) and direct impacts of air emission and dust deposition on leaves, flowers and fruit);
- 2) the quality of wildlife species harvested by Fort McKay;
- 3) the water quality of fishing bearing and supporting bodies and water bodies used for drinking and other domestic purposes;
- 4) the use and enjoyment of traditional lands and Reserve lands; and
- 5) the human health of members while out on the land exercising their Treaty rights and the use and enjoyment of their Reserve lands.

Deteriorated quality of a natural landscape to an industrial landscape results in the loss to:

- 1) use and enjoyment of Reserve lands and traditional lands for the exercise of Treaty rights;
- 2) a meaningful opportunity to exercise Treaty rights;
- 3) the ability to transmit culture to future generations in a culturally appropriate context, including the transmission of spiritual teachings; and
- 4) can adversely affect wildlife, reducing opportunities for the exercise of Treaty rights.

Impacts to lakes, streams and rivers cause effects to:

- 1) to sources of drinking water which is a necessary resource for exercising Treaty rights;
- 2) plants especially littoral zone and aquatic traditional use plants;
- 3) habitat for fish (harvesting) and aquatic mammals (trapping); ;
- 4) navigating/travelling within Traditional Territory while exercising Treaty rights; and
- 5) to restore landscape for traditional land use after mine closure.

Impacts to groundwater cause adverse effects on:

- 1) drinking water sources (e.g. springs, direct from muskeg), which is a necessary resource for exercising treaty rights;
- 2) wetland ecosystems and groundwater-dependent plants, which are essential for harvesting (e.g. berries, medicinal plants), hunting (habitat and food sources that supports birds and mammals), trapping (habitat and plants that are part of the food chain that support furbearers), spiritual and cultural purposes (e.g. spiritually significant plants such as rat root); and
- 3) base flow to rivers and streams, impacts all uses associated with surface waters.

Impacts to water quality and aquatic resources cause adverse effects on:

- 1) the quality and quantity of fish harvested by Fort McKay;
- 2) the quality and quantity of wildlife species harvested by Fort McKay;
- 3) the quality of water sources used for drinking and other domestic purposes; and
- 4) the human health of members while out on the land exercising their Treaty rights and the use and enjoyment of their Reserve lands.

Impacts to vegetation ecosites, traditional plants, wetlands, and old growth forests cause losses to:

- 1) those resources directly harvested by Fort McKay;
- 2) the habitats necessary to support wildlife species that are hunted and trapped; and
- 3) provide the landscapes and vegetation communities that are necessary areas for cultural continuity and for teaching and passing down traditions and skills to the next generation.

Impacts to wetlands and old growth forests are particularly acute because losses of these ecosystems are essentially permanent and irreversible.

Impacts to wildlife and wildlife habitat cause losses to:

- 1) the quality and quantity of wildlife hunted and harvested by Fort McKay; and
- 2) the human health of members.

A healthy environment and freedom from exposure to health risks is a protected by Fort McKay's Treaty rights. Exercise of Treaty rights within their Traditional Territory includes for food, social, spiritual, health and cultural purposes.

The proposed mine pits and storage areas take up land and result in direct long-term losses of the traditional lands and resources. Tailings management also poses risks to groundwater and surface water resources. Conservation & reclamation plans, closure plans and tailings management and the reestablishment of lands to a state suitable are related to resumption of exercise of Treaty rights.

Impacts to historical resources cause losses and damage to Fort McKay's cultural heritage.

Increased population in the RMWB and in worker camps and increased recreational use results in:

- 1) increased competition of resources resulting in reduced opportunities for the exercise of rights;
- 2) unwanted encounters in the bush, resulting in fears, insecurities and discomfort; and
- 3) loss of use and enjoyment of quite and natural landscape which is integral component of rights.

Lack of and inappropriate management of cumulative effects results on Fort McKay's rights through:

- 1) direct take up of land;
- 2) impacts on individual and community health; and
increased severity of impacts on air, water, land, and aquatic and terrestrial resources and therefore further impacts on the rights connected to these resources

Approach to Consultation and Engagement

6. If a federal impact assessment is required for the Project, the Agency will be developing a draft Indigenous Engagement and Partnership Plan and, if applicable, will contact you to seek your comments. Please provide information on how you would like to be consulted by the Agency (for example, does your community have specific cultural practices, traditions or protocols, etc.).

The Fort McKay Sustainability Department (FMSD) is the focal point for consultation with Government and industry. For the BMX Project please contact Bori Arrobo, Senior Manager, Environmental & Regulatory Affairs.

Briefly, consultation on large projects such as this one includes participation of other FMSD staff, and legal and technical support. Chief and Council provide leadership and direction to the FMSD. Any community engagement is led by the Fort McKay Sustainability Department, typically using a focus group format, but other approaches may be used as applicable. Community meetings include ceremonial presentation of tobacco to Elders, honoraria to acknowledge and thank knowledge-holders for sharing their knowledge and sharing of a meal. Community meetings are organized and conducted by the FMSD staff and, in certain circumstances, meetings will include the participation of project proponent representatives.

Fort McKay has its own project specific protocol and an agreed upon consultation process with Suncor that we ask that the Agency respects and enforces this (see below, Section 7 for specific consultation requests).

Fort McKay would like to develop a specific consultation protocol with Canada that includes input to the Tailored Impact Assessment Guidelines; assessment of the adequacy of IA; assessment to include studies made by Fort McKay and a tangible process to develop accommodation measures with Canada (and where appropriate, Alberta) at the conclusion of the assessment.

We note that in Section 18 of the Initial Project Description that Suncor describes the jurisdictions that have powers and duties related to the project's potential effects. Suncor focuses on environmental aspects of the assessment. In addition, the federal government has duties in an assessment related to Indigenous peoples and Reserves:

- Crown consultation/duty to consult
- Direct and indirect effects on Reserves – Fort McKay's reserves could potentially be affected, for example, by effects on air and water quality
- Impacts on Rights – see our detailed comments on rights in Section 5 of this document
- Management of cumulative effects – see our comment in Section 4b)

In Section 21 of the IPD, Suncor indicates no effects on Reserves are expected. This will need to be assessed in the environmental assessment as there very likely will be continued be effects on Fort McKay Reserves -- on air quality and odours, deposition of air emissions on land, and water quality

(Athabasca River).

7. Please also provide your views on how you would like the proponent to engage your community during all phases of the Project.

Fort McKay and Suncor have a long-established positive working relationship. Suncor has started consultation with us early regarding this project and has indicated that it intends to continue doing so throughout the pre-application and federal and provincial assessments, and should the project be approved, throughout construction, operation, reclamation and closure. We are working with Suncor to develop and implement a robust consultation plan specific to this project. FMFN and Suncor have an existing relationship to engage on environmental, skills, education, training and business issues and opportunities, which has proven to be successful in addressing our project-specific concerns on previous projects.

Suncor and Fort McKay worked together early to determine the scope for a community-led Traditional Land Use study for the BMX project, which Suncor funded. The TLUS has been completed:

- We request and expect that Suncor will use the TLUS, in collaboration with the Fort McKay Sustainability Department, to inform the Tailored Impact Assessment Guidelines and Impact Assessment and to clearly demonstrate this in the Impact Statement report.

With regard to the impact assessment, we request that Suncor consult with us on impact assessment approaches, including specifically:

- assessment cases (specifically including a pre-development case and for some components a current case)
- air assessment to include modeling and comparison to Fort McKay's Air Quality Objectives
- selection of Valued Components (VC) and assessment approaches especially wildlife species and traditional plants
- input into the approach for the health assessment as described above in Section 4 and ecological health assessment including indicator species
- review of planned wildlife data to be used (historical and current)
- integration or influence of Traditional Use information in the assessment of environmental resources
- other aspects of the assessment to be determined during early planning

Development of plans that support the assessment including

- access management
- monitoring & follow-up including for air quality, wildlife, wetlands, surface and groundwater, reclamation and fish and fish habitat (including offsets)
- tailings management, reclamation & closure plan

We also request to work collaboratively on developing the scopes of work and approach for:

- Historical resources field studies and impact assessment
- Rights assessment
- Human health and risk assessments (using a Health Impact Assessment approach that addresses broader health impacts, assess and report on Indigenous communities using available health statistics, use health Canada guidance etc.)
- Oil Sands Process-affected Water (OSPW) treatment assessments and ecological and human health risk assessments

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8. If a federal impact assessment is required for the Project, the Agency will act as the Crown Consultation Coordinator and will be responsible for implementing the Duty to Consult. Do you have any views on how the Agency should work with your community in relation to the assessment of impacts on the rights of your community, as protected under section 35 of the *Constitution Act, 1982*?

It is Fort McKay's position and understanding that a federal impact assessment is required for the Project and Fort McKay should take the lead in an assessment of impacts on our Rights but would be willing to work in a collaborative way with the Agency and Suncor. An important aspect of a rights assessment is to identify mitigation and accommodation measures and actions from Canada and Alberta

to address existing cumulative effects and the effects of the Project on Treaty Rights and take actions to protect the promises made by Treaty 8 in a manner consistent with the Honour of the Crown.

Fort McKay requests that a consultation and accommodation plan be agreed to with Canada that clearly identifies an honourable process to address and accommodate impacts to Fort McKay's Treaty 8 rights and protect their continuity.

Fort McKay requests a regional assessment be conducted. This assessment should include participation of Indigenous groups including Fort McKay, Canada, Alberta, Suncor and other companies in the region and stakeholders. The regional assessment should focus cumulative effects and sustainability with deliverables being concrete actions and management plans to address cumulative effects and to address and accommodate impacts on Treaty and Aboriginal rights.

Suncor Base Mine Extension Project
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Figure 1: Existing and Approved Oil Sands Projects in Fort McKay's Traditional Territory

