

## **Enclosure 2: Guiding Questions for this Comment Period**

**Please respond by December 9, 2020**

### **Value Chain Solutions Heartland Complex Expansion Project**

Canadian Impact Assessment Registry File No.: 81148

*The Agency encourages you to use the "Submit a Comment" feature on the Agency's Registry website using reference number: 81148*

Indigenous group: Alexander Industry Relations Corp. on behalf of Alexander First Nation			
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*We request that you carefully review this form and that you refine your input as appropriate.*

### **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 IAA<sup>1</sup>.**

The Alexander First Nation's (Alexander) Alexander Industry Relations Corp. (AIRC) and the Alexander Business Centre Inc. (ABC) have conducted a preliminary technical review of the information provided by the IAAC including:

- the IAAC November 19, 2020 letter regarding the opportunity to comment on the potential impact assessment of the proposed Value chain Solutions (VCS) – Heartland Complex Expansion Project, the "Initial Project Description Summary," the "Enclosure 2: Guiding Questions for this Comment Period",
- previous correspondence and communications on file with the AIRC between the IAAC and Alexander.
- Information gathered from online searches for public documents on Government of Alberta website, the Alberta Energy Regulator website, and the IAAC website.

Generally, based on this initial review, Alexander expects that potential effects of the Project include:

- Changes to the health, social or economic conditions of Alexander and our members; and, significant cumulative environmental effects, which may result in impacts and changes to Alexander's health and socio-economic conditions,
- fish and fish habitat (i.e.: trout, suckers)
- physical and cultural heritage,
- the current use of the lands and resources for traditional purposes
- potential archaeological findings
- Alexander's Treaty and Aboriginal rights, and Alexander's land interests.

Using available knowledge and information, Alexander identifies the following initial issues and concerns regarding Project related impacts below in subsequent questions.

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

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

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

Land disturbance in the Project Area may disturb or destroy archaeological evidence to support the oral Indigenous Knowledge of Alexander Elders in relation to an historic site because potential impacts could include impacts on Alexander's Indigenous Knowledge transmission. According to the oral Indigenous Knowledge of our Elders, the Project area is generally located to the east of a historic campsite and canoe making site that is significant to Alexander. More specifically, the site was located on the west side of the North Saskatchewan River, near the North West Upgrader location (and across the river from the Total Upgrader Project – however, this proposed project was later shelved).

Although it states on Page 23 of the Project Description that,

- Indigenous communities are open to combine technical review and traditional land use studies, as appropriate, for cost savings and time effective reviews.

No previous exploratory work had been undertaken in regards to this historic site as Alexander requests for capacity funding to conduct a traditional land use study relevant to the North West Upgrader Project, were denied and the current Project Proponent has not appeared to offer capacity funding to Alexander to date. Although this historic site is outside of the Project Area, the Project Area may contain archaeological evidence related to the use of trails and travel ways that would support the oral Indigenous Knowledge of our Elders in relation to this historic site.

On page 23-24 of the Project Description it states,

An historical, archaeological, paleontological study including ground reconnaissance was conducted for VCS-H Project 1 which included part of the Expansion Project area in the 2004 EIA. An *Historical Resources Act* Clearance was granted for VCS-H Project 1 following the Historical Resource Impact Assessment. A record review is currently underway for the Expansion through a screening application to the Alberta Culture, Multiculturalism and Status of Women.

VCS will gather information, including potential impacts, related to Indigenous physical and cultural heritage, traditional land use and historical, archaeological, paleontological or architectural significance for the proposed Expansion during the consultation process with Indigenous communities. Collected information will help VCS to avoid or mitigate any potential adverse impacts of the proposed Project activities to the Indigenous communities.

As such, Alexander requests capacity funding to conduct exploratory work in relation to this historic site, trails and travel ways; as well as, requests to be notified in regards to any new findings that arise from the current record review and/or any additional Historical Resource Impact Assessment reviews required for the Project.

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

Determining the potential effects of the Project that could result in changes to Alexander's current use of lands and resources for traditional purposes, requires capacity funding to conduct a Traditional Land and Resource Use Study to gather site specific information and data to show how the scale of industry development in the area known as the "Alberta Industrial Heartland" located within our asserted traditional territory has resulted in massive changes to the land, air and water which our ancestors and previous generations of members depended on culturally and further resulted in Alexander being dispossessed from the land in the Project Area. Further, this dispossession from our traditional territory has failed to be considered by federal and provincial regulatory bodies in the past.

The potential effects of the Project could also result in changes to the North Saskatchewan River resulting in impacts on fish and fish habitat; more specifically, on trout and suckers (i.e.: white suckers) which are culturally significant to Alexander. Alexander requests information from the Proponent in regards to detailed measures dedicated to protecting the North Saskatchewan River in relation to fish and fish habitat throughout the Project life. Alexander also requests information pertaining to the North Saskatchewan River, groundwater, and surface water being required to be withdrawn from or drained into the North Saskatchewan River or other rivers for construction and operations of the Project to better understand potential impacts on trout and suckers in Alexander's traditional territory. More specifically, whether the Project activities throughout the life of the Project could impact the quality and quantity of trout and other fish such as suckers that are used for traditional purposes and/or if these project activities could impact Alexander's members' ability to access preferred locations for harvesting.

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The potential effects of the Project could also result in impacts on wildlife and birds; more specifically, on ducks, geese and ungulates. Thus, Alexander also requests information in regards to potential impacts on – and- mitigation plans in regards to the protection of duck, geese, and ungulates.

Cumulative effects are not discussed in the Project Description however a number of past and existing projects already occurring, and future projects being planned in and adjacent to the Project area are of concern to Alexander. The potential cumulative effects arising from this Project and other projects taking place in Alexander's asserted traditional territory, all have the potential to significantly alter the terrestrial and aquatic environment and impact Alexander's treaty rights and traditional uses. As such, Alexander requests that cumulative effects are fully assessed in the current context of the Edmonton Metropolitan Region and Alberta's Land Use Framework.

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

Alexander is one of two First Nation communities identified in the Project Description as being in close proximity to the Project. In relation to Alexander's response to question 2(a) above, on Page 23-24 of the Project Description it states,

An historical, archaeological, paleontological study including ground reconnaissance was conducted for VCS-H Project 1 which included part of the Expansion Project area in the 2004 EIA. An *Historical Resources Act* Clearance was granted for VCS-H Project 1 following the Historical Resource Impact Assessment. A record review is currently underway for the Expansion through a screening application to the Alberta Culture, Multiculturalism and Status of Women.

VCS will gather information, including potential impacts, related to Indigenous physical and cultural heritage, traditional land use and historical, archaeological, paleontological or architectural significance for the proposed Expansion during the consultation process with Indigenous communities. Collected information will help VCS to avoid or mitigate any potential adverse impacts of the proposed Project activities to the Indigenous communities.

As such, Alexander requests capacity funding to conduct exploratory work in relation to this historic site, trails and travel ways; as well as, requests to be notified in regards to any new findings that arise from the current record review and/or any additional Historical Resource Impact Assessment reviews required for the Project.

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**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);**

Alexander's wellbeing is not only interconnected to the wellbeing of the natural environment, but the physical environment as well. In regards to the physical environment, Project activities could have significant impacts on the day-to-day lives of Alexander members living in its asserted traditional territory, including in the cities of Edmonton, St. Albert and Fort Saskatchewan; the towns of Morinville, Bon Accord, Gibbons and Redwater; the hamlet of Sherwood Park; and, the Strathcona County. The Project may contribute to an influx of workers in the Alberta Industrial Heartland area, which could result in increased service and housing pressures in cities and towns. The Project could adversely impact the health and wellbeing of Alexander members.

The Alexander Business Centre Inc. (ABC) working with Alexander Industry Relations Corporation (AIRC) on behalf of Alexander, make note that VCS has not engaged with Alexander in regards to training, employment, business or economic opportunities on the current expansion or original project, despite the Proponent stating in the Project Description on page 5 that, "The consultation process is intended to establish a positive foundation for building respectful and effective relationships that can help shape and guide the longer-term commercial development of Proposed Expansion;" and, "In September 2019, VCS alongside leading Alberta First Nations, jointly announced an Alliance Agreement for meaningful participation and investment interests in the VCS-H Project. This alliance hopes to extend beyond the initial First Nation communities."

The ABC expresses Alexander's interest in the project in regards to business/employment opportunities, as stated in the Project Description on page 24, "It is expected that the Indigenous People of Canada will benefit

from business/employment opportunities from the Project construction and potential partnership for direct economic benefits to uplift Indigenous wellbeing and wellness, all in harmony with sustainable growth of the Oil Sands upgrading industry.” As such, the ABC requests information from VCS regarding how it plans to include and engage with Alexander First Nation in regards to employment, business, and economic opportunities arising from the Project, as VCS has stated on page 6-7 of the Project Description that, “Overall, VCS has been met with broad general acceptance on proposed Expansion. Most Indigenous communities have expressed interest in contract/service and/or investment opportunities. Future engagement will include regular Project updates to Indigenous communities on key upcoming activities, such as VCS-H Project 1 sanction, service bidding opportunities, employment/apprentice training programs and the Expansion progress.” To date, Alexander and ABC have yet to be engaged.

The ABC further requests information from the Proponent in regards to the processes that the Proponent will utilize to address the inclusion of Indigenous groups in economic and business opportunities related to the Project which may benefit the Alexander First Nation. More specifically, the ABC requests information regarding how the Proponent engages with Indigenous communities and how the Proponent tracks and reports on these processes. For example, whether the Proponent utilizes a Database where Indigenous businesses can submit information to make an application to become an approved vendor.

Additionally, the ABC requests detailed information on the Proponent’s views on how it differentiates between Indigenous communities in close proximity to the Project, as well as, how the Proponent differentiates between 100% Indigenous owned entities, Joint Ventures, and Band Member owned businesses. More specifically, the ABC requests details regarding the measurable components of Indigenous business in their Supply Chain (quality, safety, schedule, price and indigenous inclusion and special consideration based on proximity and majority owned businesses).

Further, the ABC requests that should the Project be approved, that conditions be placed on the Proponent to:

- Provide a preferential opportunity for Indigenous groups in close proximity to the Project and majority owned businesses to submit bids on pre-construction and construction work; and, any other activities that these Indigenous groups have capacity for.
- Make a formal commitment to contact Indigenous groups in close proximity and majority owned businesses and provide regular, monthly updates to report on employment and training opportunities, and business opportunities.
- To provide information to Indigenous groups in regards to long-term operation and maintenance activities, at least 3 months prior to activities taking place and to provide any other additional business opportunities to qualified majority owned Indigenous businesses that are in close proximity to the Project.
- Provide capacity building support commitments i.e.: funding for more equipment, changing net terms.

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

The Project may result in changes (both positive and negative) to Alexander’s Indigenous Knowledge, Indigenous Language or Indigenous culture.

Potential negative changes to Alexander’s Indigenous Knowledge have already been identified above in Question 2.

Alexander is also concerned about how the Project may result in changes to Alexander’s Indigenous (Cree) language and/or culture; and, how the Proponent provides support to Indigenous communities. As such, Alexander requests information from the Proponent in regards to its community investment programs that aim to increase the participation of Indigenous communities potentially affected by the Proponent’s activities, such as how VCS supports Indigenous community initiatives that bring communities together through initiatives such as cultural and language preservation, community events, as well as, health and wellness.

Alexander also requests information from the Proponent in regards to its efforts to support individual Alexander members in achieving educational and/or training goals, i.e. through scholarship programs and/or training initiatives, and career development activities delivered by the Proponent; or whether the Proponent offers training and employment opportunities for Indigenous people.

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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);**

Alexander requests information on whether the Proponent has inclusive policies in place to reduce discrimination against the rights of Indigenous people who identify as Lesbian, Gay, Bisexual, Transgender, Queer and/or Questioning, Intersex, Asexual, Two-Spirit, etc. (LGBTQIA2S+); and, how the Proponent includes or supports Indigenous people who identify as LGBTQIA2S+ in accessing and retaining employment, training and career development opportunities.

Additionally, Alexander is requesting information on the intended scope of gender inclusion by the Proponent for Indigenous women, and whether such policies addresses external interactions with Indigenous peoples in or around the Project.

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

Within the spectrum of accommodation and benefits related to the duty to consult, Alexander is concerned that most accommodation and benefits of proposed projects do not address long term relationships with Indigenous communities. Most accommodation and benefit measures normally do not extend beyond construction activities. Alexander requests information regarding the Proponent's accommodation and benefits aimed at long term relationship building with Indigenous communities that strive to sustain Alexander's interconnectedness with the natural and physical environments.

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5. **If you expect the Project may impact your community's potential and/or established rights, please describe how.**

As a signatory to Treaty No. 6, Alexander First Nation holds and exercises Treaty and Aboriginal rights within its asserted traditional territory, which encompasses the Project Area. The Project area and areas adjoining it were used historically by Alexander's ancestors that used the land and resources in the Astotin watershed in relation to Alexander's treaty rights, Aboriginal rights and traditional uses which have been previously identified and outlined throughout this document.

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#### 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.).**

Covid-19 has significantly impacted Alexander's cultural protocols and cultural practices in regards to how we interact and engage in regulatory processes, such as the IAAC early engagement IA process. Normally, Alexander would engage with representatives of our members according to protocol to assist in initial reviews of project notification packages and initial assessments regarding potential impacts and effects of a proposed project.

Alexander was not meaningfully engaged by the IAAC, nor the Proponent, Alberta's Aboriginal Consultation Office or the AER prior to the November 19, 2020 letter our AIRC received from the IAAC.

Alexander acknowledges and appreciate the recent attempts by the IAAC in regards to engagement in the IAAC IA process planning phase for this Project. However, two (2) concerns arise:

- 1) In the November 19, 2020 letter, the IAAC informed of the December 9, 2020 deadline date to provide comments and to identify Alexander's key issues or initial concerns that Alexander may have regarding the Project, including potential or positive or negative impacts on the environment, human health, socio-economic conditions, and Alexander's interests including cultural considerations and the exercise of our potential and/or established rights; in order to be factored into the Summary of Issues to be prepared by the IAAC. Less than three (3) weeks to complete this massive undertaking has been significantly impacted by covid-19 and current covid-19 restrictions within Alberta and Alexander.
- 2) At present, Alexander has only been engaged by the IAAC. Neither the Proponent, Alberta's Aboriginal Consultation Office, nor the AER has engaged with Alexander in regards to this Project. This is concerning because of the apparent conflict between federal and provincial legislation in regards to environmental assessments on projects that has resulted in Alexander's concerns, issues and interests only being considered in the federal regulatory process but not the provincial regulatory process.

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

From the Project Description, Alexander acknowledges that (on page 5) it states that the ACO determined that no Indigenous consultation was required; however, this resulted in Alexander not receiving notification of the project prior to being engaged by the IAAC in the IA planning phase. As such, Alexander has no records to support the Proponent's statements of Alexander being involved in the September 2019 Alliance Agreement, or being engaged by the Proponent through the "distribution of letters and Public Disclosure Documents," or being invited by the Proponent to meet to receive more information on the Project or to hear our concerns, issues or interest about the Project (as indicated on pages 5-7). As such, Alexander requests information from the Proponent, such as a record of consultation log to understand why Alexander has not been engaged to date. Had Alexander been continuously engaged by the Proponent, Alexander would have informed the Proponent during the Proponent's early engagement with Indigenous communities of our issues, concerns and interests pertaining to the Project.

Alexander First Nation is one of two (2) First Nations communities identified by the Proponent and the IAAC as being in the closest proximity to the Project (approximately 60 km). The Project area and the North Saskatchewan river have been utilized by countless generations of Alexander members and our ancestors. Alexander has expressed previously on prior proposed projects; more specifically the North West Upgrader Project and Total Upgrader Project (mentioned previously in this document at 2 (a)) that Alexander may be potentially impacted by those previous projects. In addition, Alexander may potentially be impacted by the current Project and had Alexander been aware of the Project by the Proponent, Alexander would have expected to be consulted by the Government of Alberta. In Alexander's AIRC VCS-HC Project File (File opened in February 2020 when AIRC was first made aware of the Project), the AIRC has not received any correspondence or communications from the Government of Alberta or the Alberta Energy Regulator (AER) pertaining to this Project.

Without additional information that should have been provided through the provincial regulatory process and the provincial consultation process, Alexander and its entities (the ABC and the AIRC) only recourse or redress has been to search for publicly available information about the Project. As a result of our searches, Alexander raises the following:

- In the June 25, 2019 Alberta Energy Regulator letter to Cindy-Xing Yin (Coordinator for the Value Creation Group of Companies), Charles MacDonald (Manger Oil Sands West, Mining, Authorizations, (Designated Director under EPEA)) clearly indicated that this Project is a mandatory activity pursuant to *EPEA*, to prepare and submit an EIA report for this Project. However, the March 10, 2020 Final Terms of Reference (FTOR), the requirement placed on the Proponent by Alberta provincial legislation did not specifically require an assessment of the Project's impacts to Treaty rights, Aboriginal rights and traditional uses that would have complemented federal legislation with provincial legislation and (provincial consultation) policy on this matter; rather, the FTOR only requires assessment on social and environmental factors. Further, the FTOR only provides vague guidance on how impacts are to be identified, assessed

and addressed by government agencies (i.e. the AER and the IAAC). The FTOR does not specify how the provincial EIA will support or inform how Canada and Alberta will approach the duty to consult with Alexander First Nation such as including methods that allow for capacity funding or the inclusion of Alexander members to be able to conduct site assessments or traditional land and resource studies.

- On December 7, 2020 Alexander also made a request to Camille Almeida, AER to enquire if the AER could provide Alexander with information that the AER could share about the Project. Ms. Almeida informed that because the ACO determined that no Indigenous consultation was required, that Alexander would not have been notified directly by the AER about the proposed or final Terms of Reference (FTOR) and other activities under the Alberta Environment's (AEP) Assessment Registry that provides information about milestones on projects. Thus, Alexander has no record of correspondence or has been communicated by the AER regarding the Project. The AER did provide information to Alexander in regards to submitting a request to the AEP to get on the AEP Assessment Registry's email mailing list which Alexander joined on December 8, 2020.
- On December 7, 2020, Alexander made a request to Linda Jabs, Consultation Officer, with the ACO (who's name was provided by Camille Almeida, AER) via our AIRC office for information as to whether provisions under the *Water Act* could potentially trigger a duty to consult. Alexander was informed that VCS has not submitted a *Water Act* application yet, so the ACO does not know what will happen; and, that the determination also depends on whether the VCS will make an application for a renewal or for an amendment to their original *Water Act* approvals. Alexander is of the belief that if the Government of Alberta was aware that the *Water Act* provisions could potentially trigger a duty to consult at the time that the ACO made its determination relevant to EPEA provisions, then the Government of Alberta should have engaged with Alexander since that time, because it was aware all the factors triggering the duty were still at play. The ACO did provide information to Alexander in regards to submitting a request to the AEP to get on the AEP Assessment Registry's email mailing list which Alexander joined on December 8, 2020.

Alexander only being engaged in the federal IA process and not the provincial EIA process is concerning as it put an additional burden on Alexander to locate additional information about the Project to make an initial assessment of our issues, concerns and interests to inform the IAAC IA planning phase.

VCS stated in the Project Description (on page 6) that,

VCS will continue to prepare application information and public notices for distribution to Indigenous communities in culturally sensitive, non-technical, plain-language formats. VCS will ensure that information on the proposed Expansion is directly provided to engaged Indigenous groups, at key regulatory milestones through a variety of methods, including:

- hand-delivery;
- mail and/or courier;
- web-based material; and
- email.

In addition to the above, VCS will continue engagement with Indigenous groups via in person meetings and/or tele- and video-conferences, or other methods, as needed. The consultation will synchronize with the planning stage and possible Impact Assessment stage during the Impact Assessment Process led by the IAAC. VCS will actively participate in the Engagement Process involving Indigenous communities as regulated by the *Impact Assessment Act* led by the IAAC.

As such, Alexander requests that VCS start to include and engage with Alexander according to the Project Description, with respect given for Alexander cultural protocols.

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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 potential and/or established rights of your community?**
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Alexander highlights that we should not only be included in the federal IA process, but also the provincial EIA process in these early phases, because consultation could still be triggered according to provincial legislation and / or the provincial First Nation's consultation policy.

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<original signed by>

Colette Arcand  
Print Name of responder

Senior Regulatory Coordinator  
Title of responder

AIRC

Dec 11, 2020  
Date

Signature

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