



Oral presentation

Written submission from the Algonquins of Pikwàkanagàn First Nation

In the Matter of the

Canadian Nuclear Laboratories (CNL)

Application from the CNL to amend its Chalk River Laboratories site licence to authorize the construction of a near surface disposal facility

Commission Public Hearing Part 2

May and June 2022

Exposé oral

Mémoire de la Première Nation des Algonquins de Pikwàkanagàn

À l'égard des

Laboratoires Nucléaires Canadiens (LNC)

Demande des LNC visant à modifier le permis du site des Laboratoires de Chalk River pour autoriser la construction d'une installation de gestion des déchets près de la surface

Audience publique de la Commission Partie 2

Mai et juin 2022



*Algonquins of Pikwàkanagan
First Nation*

AOPFN Written Submission on
Canadian Nuclear Laboratories' Proposed Near Surface Disposal Facility

Date Submitted: April 11, 2022

**CNSC Public Hearing on the Proposed Near Surface Disposal
Facility**

Public Hearing

Scheduled for:
May 31, 2022

Regarding: Written Submission from Intervenors for Canadian Nuclear Laboratories Proposed Near Surface Disposal Facility at Chalk River Laboratories

Submitted by:
Intervenor – Algonquins of Pikwàkanagan First Nation (Chief Wendy Jocko)

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Submission Summary

This is the Algonquins of Pikwàkanagàn First Nation's (AOPFN) written submission for the Canadian Nuclear Safety Commission's (CNSC or the Commission) environmental assessment and licencing decision for Canadian Nuclear Laboratories' proposed Near Surface Disposal Facility (NSDF) at the Chalk River Laboratories.

The AOPFN have reviewed the evidence on the public record and engaged with and consulted with Canadian Nuclear Laboratories (CNL), Atomic Energy of Canada Limited (AECL), and the Canadian Nuclear Safety Commission (CNSC or the Commission), in the development of this submission. In addition, the AOPFN have conducted four studies and filed evidence on the public record with the Commission.

The AOPFN is not ready to provide our free, prior and informed consent (FPIC) for the proposed NSDF at this time. Additional evidence of appropriate planning, mitigation and accommodation is necessary before we make our required FPIC decision. We request that the CNSC call for additional evidence and consultation/engagement to occur and be presented before the Commission makes its legislated decision on whether the NSDF should proceed and under what conditions. We also ask that all parties respect and adhere to the AOPFN FPIC decision when it is made.

Should the Commission choose to make a decision prior to the AOPFN's FPIC decision, we have identified specific recommendations, some of which are directed to the proponent (CNL) and the land owner on behalf of Canada (AECL) and some of which are directed to the CNSC for potential licence conditions or other actions. They are broken down into the following ten topics; greater detail can be found in the body text of the submission and the AOPFN's recommendations are summarized in Appendix A.

1. Consultation by AECL and CNSC and engagement by CNL;
2. Proximity of the NSDF Project to the Kichi-Sibì and lack of meaningful engagement of the AOPFN in NSDF Project planning and siting;
3. Lack of adoption of a "Willing Host" model for the NSDF Project, and associated lack of commitment to adhere to the AOPFN's FPIC decision;
4. Importation of radioactive waste into AOPFN territory for emplacement in the NSDF;
5. Inadequate consideration of Algonquin Knowledge leading to inaccurate assessment of Project effects on the AOPFN's traditional land and resource use;
6. Inadequate assessment of Project effects on AOPFN culture and well-being;
7. Inadequate accommodation for likely residual Project impacts on the AOPFN's rights and title;
8. Inadequate consideration of total cumulative effects loading on multiple valued components;
9. Adequacy of monitoring and adaptive management mechanisms; and
10. Lack of evidence of benefits to offset adverse changes - past, present and future.

The AOPFN appreciates the opportunity to provide the Commission with its evidence and recommendations in relation to the proposed NSDF Project and we hope that the Commission treats our recommendations and expectations seriously in its deliberations and decisions.

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Acronyms

AAC	Algonquins of Pikwàkanagàn First Nation Advisory Committee
AECL	Atomic Energy of Canada Limited
AEK	Algonquin Ecological Knowledge
AKLUS	Algonquin Knowledge & Land Use Study
AOO	Algonquins of Ontario
AOPFN	Algonquins of Pikwàkanagàn First Nation
CEAA	The Canadian Environmental Assessment Act, 2012
CMD	Commission Member Documents
CNSC	Canadian Nuclear Safety Commission
CNL	Canadian Nuclear Laboratories
CRL	Chalk River Laboratories
EA	Environmental Assessment
EAFMP	Environmental Assessment Follow-up Monitoring Program
EIS	Environmental Impact Statement
FNMPCC	First Nations Major Project Coalition
FPIC	Free, Prior and Informed Consent

GBA +	Gender-Based Analysis +
IAA	Impact Assessment Act, 2019
IER	Indigenous Engagement Report
LLW	Low Level Radioactive Waste
LSA	Local Study Area
LTRA	Long Term Relationship Agreement
MOU	Memorandum of Understanding
NSDF	Near Surface Disposal Facility
RIA	Rights Impact Assessment
RSA	Regional Study Area
TLRU	Traditional Land and Resource Use
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples



1. Introduction

1. The Algonquins of Pikwàkanagàn First Nation (AOPFN) are pleased to provide this written submission to the Canadian Nuclear Safety Commission (CNSC or the Commission) in relation to the environmental assessment and licence request for Canadian Nuclear Laboratories' (CNL or the Proponent) proposed Near Surface Disposal Facility (NSDF or the Project) at the Chalk River Laboratories (CRL), which is wholly located in unceded Algonquin territory.
2. The AOPFN provides this submission to update the Commission on the AOPFN's involvement in the environmental assessment of the proposed NSDF, and to provide evidence and recommendations relevant to Commission's decision-making scope to determine, from a federal Crown perspective, whether the NSDF should be allowed to proceed and under what conditions.
3. Supporting the AOPFN Chief and Council and Consultation Team on this file was The Firelight Group, an Indigenous-owned consulting firm, and Mr. Tony Brown, an engineer with a strong background in the nuclear sector. The AOPFN relied on these resources and our reading of technical issues and concerns from other parties, as well as what we learned from engaging with the CNSC, CNL and Atomic Energy of Canada Limited (AECL), the site owner on behalf of Canada, to understand the potential risks of the NSDF on the environment, our people and our rights. In addition, we engaged our Algonquins of Pikwàkanagàn Advisory Committee (AAC) and other community members in gathering Algonquin Knowledge and Algonquin perspectives on the proposed NSDF, through studies and other engagement settings.
4. The AOPFN provides this evidence and recommendations to the Commission notwithstanding AOPFN's position that our Nation has the right to make its own free, prior and informed consent (FPIC) decision in relation to the proposed NSDF, and to have that FPIC decision respected and adhered to by CNL and AECL. This position is informed by Canada's commitment to fully implement the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP). As a proposed permanent hazardous waste disposal facility, the proposed NSDF fits under section 29.2 of UNDRIP, which requires that

“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.”
5. AOPFN has yet to make our required FPIC decision in relation to the proposed NSDF. This submission outlines further information and evidence of mitigation, monitoring and accommodation that the AOPFN requires before making our FPIC decision. Further discussion on FPIC is provided in Section 6b of this submission.

6. The AOPFN has been subject to improved engagement in the environmental assessment of the proposed NSDF - by the CNSC and CNL - only since mid-2020. Prior to that, both CNL and the CNSC were primarily engaging and consulting with the Algonquins of Ontario (AOO), an umbrella organization created to represent Algonquin groups in certain matters related to modern treaty negotiations with Canada and Ontario. Since being informed by the AOPFN that project-specific engagement and consultation with the AOPFN must occur directly with the AOPFN Consultation Team, the CNSC and CNL have provided participant funding and contribution agreement funding, respectively, to AOPFN to fuel this engagement and consultation. In addition, CNSC staff and CNL have since mid-2020 engaged in consultation and engagement activities and funded AOPFN studies to support a better understanding of likely impacts¹ of the NSDF on AOPFN rights and interests, and the resources those rights and interests rely upon. Evidence of this consultation and engagement has been filed with the Commission in the form of CNSC staff filings and CNL filings (e.g., sections of the final Environmental Impact Statement (EIS – CNL, 2021a), and the Commission Member Documents (CMD) filed by CNL (2022) and CNSC (staff) (2022)).² Section 4 of this submission will speak in more detail to the AOPFN’s stance on the adequacy of this consultation and engagement to date.
7. With funding provided by CNL and the CNSC, the AOPFN has conducted studies and developed reports with substantive evidence on four distinct topics:
 - a. AOPFN Knowledge and Land Use (AKLUS) (Taylor et al, 2020);
 - b. Culture and Rights (Malone et al, 2021);
 - c. Diet and Harvest (Fediuk et al, 2021); and
 - d. a Rights Impact Assessment (AOPFN and CNSC, 2021).³
8. A summary of evidence and analysis from these four reports has been integrated into this submission where appropriate, and each report has been filed with the Commission, some of them under confidential cover.
9. The AOPFN does not introduce new evidence in this document; all of the issues raised have been flagged and evidence shared with CNL, AECL and CNSC staff during the course of this environmental assessment. While we provide some analysis below about the implications of the four studies for the Commission’s deliberations, we strongly encourage the Commission to review these documents in their entirety. We are prepared to answer questions about them and their implications at the forthcoming hearing.
10. In addition, the AOPFN has reviewed the final Environmental Impact Statement (EIS) for the NSDF Project (CNL 2021a) and other materials on the public record for this Project proposal. In this submission, the AOPFN identifies critical issues flagged in the AOPFN’s Comments on the draft EIS (Two-Axe Kohoko, 2020), evidence presented by

¹ The terms “impacts” and “effects” mean the same thing in this written submission.

² The AOPFN notes that the CMD (CNSC (staff), 2022) contains several reports in one 590 page document. In this submission we will refer to page numbers in that CMD and the one filed by CNL (2022) by PDF page numbers, e.g., 17 of 590.

³ This Rights Impact Assessment is built into the CNSC (staff), 2022 CMD. As a result, page numbers for AOPFN and CNSC (2021) will be referred to as “(.PDF pg. xx of 590, CNSC (staff), 2022)”.

the AOPFN, CNL and CNSC in relation to each issue/concern, their resolution status, and any outstanding issues/concerns as of April 11, 2022.

11. The following ten key AOPFN concerns and issues are the focus of this submission:
 - I. Consultation by AECL and CNSC and engagement by CNL (Section 4);
 - II. Proximity of the NSDF Project to the Kichi-Sibì and lack of meaningful engagement of the AOPFN in NSDF Project planning and siting (Section 6a);
 - III. Lack of adoption of a “Willing Host” model for the NSDF Project, and associated lack of commitment to adhere to the AOPFN’s FPIC decision (Section 6b);
 - IV. Importation of radioactive waste into AOPFN territory for disposal at NSDF (Section 6c);
 - V. Inadequate consideration of Algonquin Knowledge leading to inaccurate assessment of Project effects on the AOPFN’s traditional land and resource use (Section 6d);
 - VI. Inadequate assessment of Project effects on AOPFN culture and well-being (Section 6e);
 - VII. Impacts on the AOPFN’s rights (Section 6f);
 - VIII. Inadequate consideration of total cumulative effects loading (Section 6g);
 - IX. Adequacy of monitoring and adaptive management mechanisms (Section 6h); and
 - X. Lack of evidence of benefits to offset adverse changes - past, present and future (Section 6i).
12. The CNSC staff (2022) has identified a number of matters that it suggests are beyond the scope of this proceeding. These include consideration of the transportation of radioactive waste to the CRL facility for impoundment in the NSDF, the pre-existing cumulative effects context within which the NSDF is proposed, and consideration of impacts on intangible elements of Indigenous culture and how perceived risk impacts on Indigenous traditional land and resource use (TLRU). We disagree with the extremely narrow scope with which the CNSC staff (and by extension, CRL) has assessed the NSDF proposal, and we flag evidence and good practice considerations in this submission to this effect. The AOPFN encourages the Commission not to adopt such a narrow perspective when making a decision on whether this Project as proposed should proceed, and under what conditions, because the honour of the Crown requires consideration of the totality of the proposed Project and the context it is proposed in.
13. For each issue/concern, the AOPFN will be asking the Proponent to revisit its assessment and engage further with the AOPFN to find proactive solutions, and/or request the Commission to:
 - a. Require additional work from CNL prior to the Commission making its decision;
 - b. Take these issues into consideration when determining on behalf of Canada whether the NSDF should be accepted as proposed and issued a Licence; or
 - c. Build conditions into the Licence, the License Handbook, or other mechanisms at the Commission’s disposal, that address these conditions, should the Commission recommend the Project proceed.
14. As noted elsewhere in this submission, AOPFN’s FPIC decision has not yet been made. Yet AOPFN is nevertheless aware that too often in the past, Crown decision makers have

imposed decisions which cause adverse impacts on AOPFN's rights, on us, without fulfilling their constitutional duties. In light of that reality, we provide some recommended conditions. Should the Commission choose to issue a licence to construct the NSDF, a number of additional conditions to protect the environment and Indigenous peoples' rights and interests need to be attached. Recommendation by the AOPFN of any conditions is notwithstanding that AOPFN's specific position is that currently CNL's NSDF proposal and EIS have flaws and gaps that merit further attention. Therefore, it is premature for the Commission to approve the NSDF Project as proposed at this time.

15. The AOPFN supports certain aspects of the overall purpose stated by CNL behind the NSDF proposal, which is stated to be:

“to provide the permanent disposal of current and future low-level waste at the CRL site, as well as a percentage of waste volume from off-site locations, in a manner that is protective of both the public and the environment” (CNL, 2021a, pg. ES-1).
16. The AOPFN is acutely aware of and has been disproportionately subjected to the harms that have been done to the environment and to our rights by Canada's development of the CRL. We agree wholeheartedly that this legacy needs to be cleaned up. That said, as of the filing of this submission it has not been shown that the NSDF, as proposed, is the right - or even acceptable - means to accomplish this overarching goal. Also outstanding are questions related to the accuracy of estimations of impacts from the NSDF and adequacy of mitigation and accommodation measures to avoid, minimize or compensate for them. In addition, as discussed further in Section 6c below, the AOPFN is opposed to the importation of “a percentage of waste volume from off-site locations” if those locations are outside of Algonquin territory.
17. At this time, the AOPFN finds that we do not have enough information to make our required FPIC decision on whether this permanent hazardous waste disposal facility should be allowed on our unceded Algonquin territory. What we do know is that the Project Case will likely cause additional adverse effects as measured by Indigenous peoples. We know those effects will be spread over a longer period of time due the permanent nature of this new hazardous waste disposal facility, on AOPFN rights, interests and the resources we rely upon. We also know that CNL has not adequately recognized, mitigated or accommodated for those additional adverse effects as of yet. We encourage the Commission to consider the substantial evidence filed by the AOPFN about these potential impacts when making its federal decision on whether the NSDF as proposed should be allowed to proceed and under what conditions. The AOPFN will consider the same when making our required FPIC decision.
18. In the interim prior to the hearing, the AOPFN encourages CNL, AECL and the CNSC staff to proactively consult and engage with the AOPFN to identify a full and proper slate of mitigation, monitoring and accommodation measures to deal with remaining outstanding issues. The AOPFN will present both on the outstanding issues flagged herein, and any changes in their resolution status, at that hearing.
19. AOPFN's submission is laid out as follows:
 - a. About the AOPFN (Section 2);

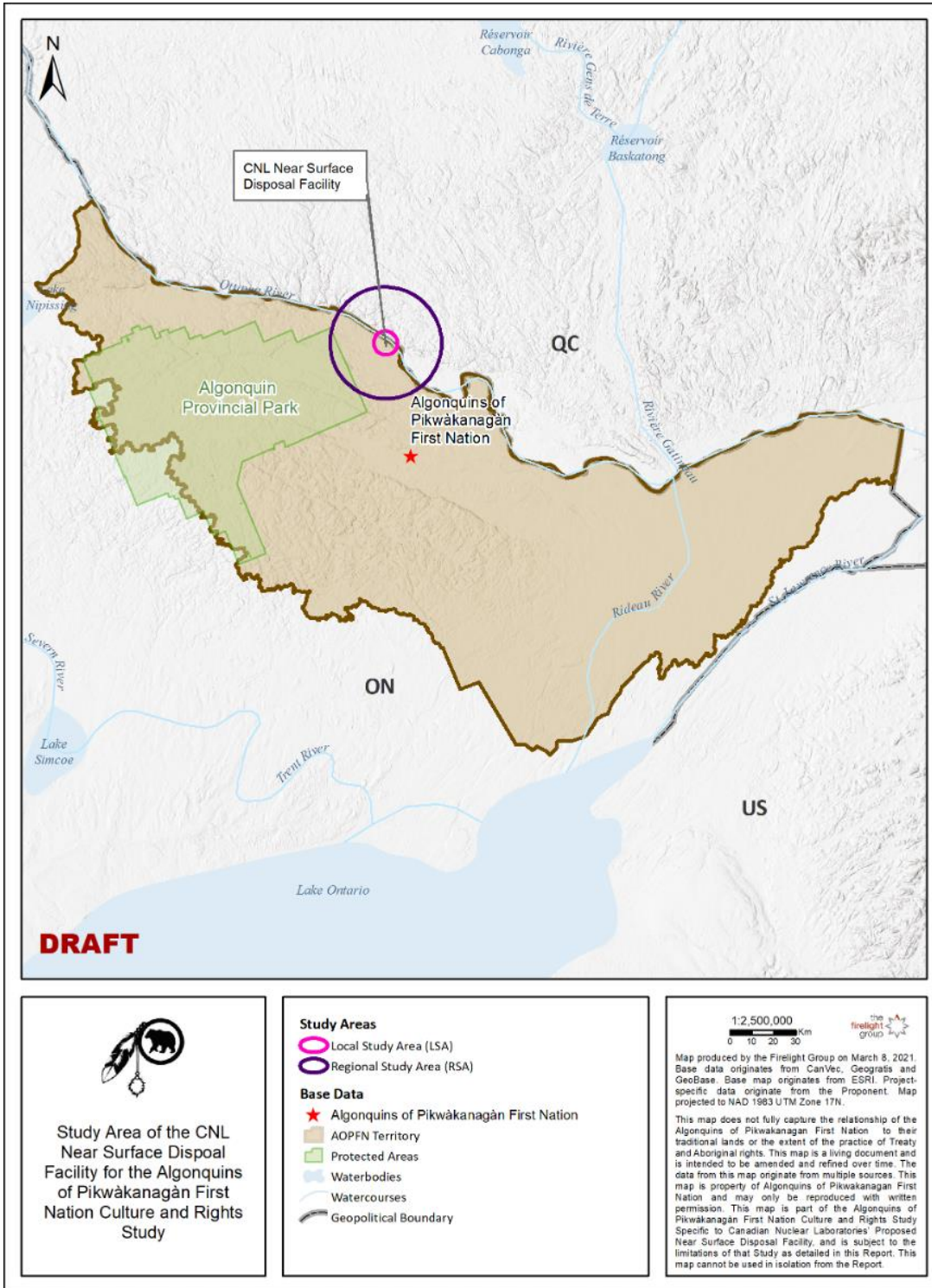
- b. The AOPFN's understanding of the proposed NSDF Project (Section 3);
 - c. The AOPFN's engagement and consultation on the proposed NSDF Project (Section 4);
 - d. The pre-NSDF Project context - cumulative effects to date (Section 5);
 - e. Identification of issues/concerns raised by the AOPFN in this environmental assessment, evidence associated with these issues/concerns, and their status (Section 6);
 - f. A summary of AOPFN findings re: the proposed NSDF Project, including the AOPFN's position on whether as currently proposed it should be allowed to proceed and under what conditions (Section 7); and
 - g. A closing statement (Section 8).⁴
20. The AOPFN respects the Commission's requirement at law to make its legislated decision on behalf of the federal Crown, and we have provided conditions that should be required in any Licence to proceed, if the federal government does approve of the NSDF. This cannot be read as AOPFN consenting to the NSDF Project as proposed proceeding if those recommended conditions are met. AOPFN considers the federal environmental assessment and licensing process to be a necessary, but not sufficient, aspect of decision-making on the proposed NSDF. The AOPFN FPIC process, given the location of the Project, its nature, Canada's commitment to fully implement UNDRIP, and our inalienable right to make decisions about how lands and resources should be used and protected in unceded AOPFN territory, is equally as important and essential to ultimate decision-making.

⁴ A series of Appendices with relevant supporting information are also provided.

2. About the AOPFN

21. The AOPFN are Algonquin peoples of the Ottawa River (Kichi-Sìbì in our language) Valley. Algonquin people have lived in the Ottawa River Valley for at least 10,000 years before Europeans arrived in North America. Historically and today, Algonquins lived on both sides of the Kichi-Sìbì.
22. The AOPFN's current registered population is 2,979, with 452 members living at Pikwàkanagàn, on the southeast shore of Golden Lake.
23. The AOPFN mother tongue is Anishinaabemowin, a Central Algonquin language. Anishinaabemowin is spoken throughout Algonquin territory with varying dialects.
24. The AOPFN Chief and Council, with some responsibilities delegated to the AOPFN Consultation Team, represents the rights and interests of our First Nation members in our traditional territory. As our First Nation community is a recognized band under the Indian Act it is our responsibility to act responsibly and take this obligation serious. Therefore, projects within unceded Algonquin territory require full direct engagement and accommodation of the AOPFN's rights.
25. AOPFN members have, since time immemorial, exercised their rights to hunt, trap, fish, gather, and perform other activities integral to their culture and way of life throughout our unceded traditional territory, including in the area where CRL is now situated. Members of the AOPFN have long exercised governance and stewardship activities in Algonquin territory.
26. Figure 1 below shows the location of the CRL (home of the proposed NSDF) in unceded Algonquin territory.

Figure 1- Study Area of the CNL Near Surface Disposal Facility in relation to the AOPFN's Traditional Territory



(Source: Malone et al, 2021, pg. 15)

27. The AOPFN has never ceded any of our traditional Algonquin territory in Treaty with the Crown. The AOPFN actively represents the interests of our members in modern day treaty negotiations. The AOPFN is currently working towards negotiating a Final Land Claim Agreement/Settlement with the Government of Ontario and the Government of Canada. The AOPFN proposed treaty settlement area is located within the watersheds of the Kichi-Sìbì and Mattawa River in Ontario.
28. We are a self-defined people. The AOPFN continues to assert and exercise Algonquin aboriginal title and aboriginal rights to and in all parts of AOPFN unceded traditional territory, including lands under water. The AOPFN has an obligation to our members to plan for the future and to ensure self-determination, self-reliance, and self-governance. The AOPFN is committed to respecting and protecting our unceded traditional territory and the rights and interests of our members.
29. In addition to Algonquin aboriginal title, the AOPFN's rights in unceded Algonquin territory include but are not limited to Algonquin aboriginal rights:
 - a. To hunt, fish and trap, to harvest plants for food and medicine;
 - b. To protect and honour burial sites and other sacred and culturally significant sites;
 - c. To sustain and strengthen its spiritual and cultural connection to the land;
 - d. To protect and steward the environment that supports our members' survival, to govern ourselves; and
 - e. To participate in all governance and operational decisions about how the land and resources will be managed, used, and protected.
30. Section 6f of this submission speak in more detail to AOPFN rights that are likely to be adversely affected – alone and in combination with other cumulative effects causing agents - by the NSDF Project should it proceed.
31. Our laws require the AOPFN to preserve and enhance a mutually respectful relationship with the Environment, to co-exist with Mother Earth and protect this relationship. We have the responsibility to care for our unceded Algonquin territory for future generations, and to preserve and protect wildlife, lands, waters, air and resources. We rely on the health of the environment in our territory for our survival. The health of the lands and waters is essential to the continued existence of the AOPFN as a people and our members' health, culture, laws, livelihood, and economy. The AOPFN must be recognized as a rightful, respected, and principled steward of the environment.
32. Section 5 of this submission discusses in further detail the cumulative effects context within which the NSDF is proposed. AOPFN rights and interests, despite being subject to multiple and damaging infringements since contact, remain unextinguished, and our members insist that they be protected and promoted moving forward.

3. The AOPFN's Understanding of the Proposed NSDF Project

33. The NSDF is a proposed engineered permanent near surface disposal facility for solid, low-level radioactive waste (LLW), which CNL proposes to be located within the CRL.
34. The CRL site is entirely in Renfrew County within the Algonquin Settlement Area, bordering on the west bank of the Kichi-Sìbì. The CRL is located approximately 55 kilometers northwest of Pikwàkanagàn's primary residential community. The Chalk River Laboratories is approximately 3700 hectares and is currently inaccessible to the public, including AOPFN members. Nuclear operations, research, and development have been occurring at the CRL facility since 1944.
35. The physical footprint of the NSDF Project site is approximately 37 hectares. Most of this area is currently a forested environment, 33 hectares of which would need to be cleared to build the NSDF.
36. The NSDF is proposed to be situated approximately only 1,100 metres from the Kichi-Sìbì (CNL, 2021a, pg. ES-10), an issue of high concern to AOPFN (see Section 6a).
37. According to CNL, the NSDF would facilitate the remediation of the CRL site including the decommissioning of more than 100 buildings, relocation of certain radioactive wastes in interim storage to a permanent facility, and clean-up of contaminated lands. This is understood to be a critical element of AECL's ongoing 10-year, \$1.2 billion CRL revitalization project.
38. The NSDF Project is based on the mandate of AECL, a federal Crown corporation, to substantially reduce the risks associated with radioactive waste at, and to create conditions for the revitalization of, the CRL site. CNL is a private-sector entity that is contractually responsible for the management and operation of nuclear sites, facilities and assets owned by AECL. CNL's stated purpose for the NSDF Project is to provide the permanent disposal of current and future LLW at the CRL site in a manner that is protective of both the public and the environment.
39. The proposed NSDF would include both the construction of an Engineered Containment Mound (ECM) with ten waste disposal cells built over the operations phase of the project, and the placement of approximately 1,000,000 cubic metres of LLW in the ECM (CNSC (staff), 2022, PDF pg. 16 of 590). The intention is to use the facility to accommodate wastes currently in interim storage and future wastes that will be generated until the CRL facility's closure. The site would remain fenced with limited access to ensure the waste goes undisturbed. After closure, NSDF would go into institutional control and remain fenced off in a controlled, unnatural condition for at least 300 years after closure is complete, which is expected +/- 80 years from the start of operations (CNSC (staff), 2022, PDF pg. 17 of 590). The site will be considered a permanent hazardous waste disposal facility.⁵

⁵ CNL (2022, pg. 25 of 171): "While other areas of the CRL site may be re-used, the NSDF Project site will continue to be restricted as a waste disposal facility."

40. As currently proposed by CNL, approximately 90% of the waste stream in the NSDF will come from the CRL site. Another 5% is estimated to come from medical facilities, and 5% from other jurisdictions (such as the Whiteshell Laboratories in Manitoba).
41. The AOPFN recognizes and agrees with the importance in principle of consolidating radioactive waste in as few locations as possible, which is what the NSDF is proposed to do at the CRL. The AOPFN also recognizes that LLW is the least potentially damaging of radioactive wastes, with reduced potential for human and ecological health impacts in comparison to intermediate and high-level radioactive wastes. From a technical perspective, CNL estimates that the LLW material impounded in the NSDF will reduce in radioactivity relatively quickly.
42. In summary, the AOPFN understands that CNL proposes to create a previously unplanned, near-surface, permanent radioactive waste disposal facility on an area within the CRL that is currently high-quality forested habitat for a variety of plant and animal species cherished by AOPFN members. This facility would, as currently proposed, not only consolidate wastes from at the CRL site, but would also import LLW from other jurisdictions, increasing rather than decreasing the radioactive materials inventory at the CRL.
43. The NSDF would render this particular area of the CRL unusable to AOPFN members on a permanent basis. It is also very close to the Kichi-Sibì, a waterway that is critical to Algonquin well-being and way of life. While AOPFN members cannot currently use this area because it has been blocked off by Canada's past and present actions, the AOPFN still respects and values the land and the life in this area and has a right and responsibility to both protect and use it in the future. That will not be possible in the Project Case. We also know that AOPFN members have flagged strong concerns about contamination from the NSDF extending beyond the physical fence line of the CRL. Its presence may extend the temporal scope of an already existing geographic scope of alienation, loss of use, inability/unwillingness to conduct cultural practices, and psychological impacts from the CRL on AOPFN members.
44. Our submission explores these serious issues in more detail, and we hope the CNSC treats them as seriously in its required decision as we will in our required FPIC decision.

4. Engagement and Consultation of AOPFN in the NSDF Environmental Assessment

Engagement with CNL and Consultation with AECL

45. Canada, including AECL and CNL, do not have a strong track record of consulting and engaging with the AOPFN in relation to the CRL or other nuclear developments in unceded Algonquin territory. From the outset, consent to build and operate nuclear facilities within AOPFN territory - of which CRL is the oldest - was never sought by the Crown. The AOPFN notes that Canada (what is now AECL) did not consult the AOPFN before the Chalk River Laboratories were converted from farmlands and Crown lands, some of which our members lived on and harvested from, prior to expropriating these lands in the 1940s. Canada did not consult us before the area was converted into Canada's largest nuclear research facility, with the importation of and manufacturing of, long-lived and environmentally damaging radioactive materials on site. AOPFN was never asked to provide its consent for these highly invasive and damaging land uses and would almost certainly not have consented if asked.
46. Based on information provided in Taylor et al (2020), Malone et al (2021) and from AAC input, the Rights Impact Assessment identifies that:

“in the time before and since the construction of CRL, AOPFN members were not adequately consulted about projects on site. AOPFN considers this to be an ongoing violation of their unceded governance and stewardship rights; Inadequate consultation and involvement in decisions regarding CRL site activities has been a key factor” (AOPFN and CNSC, 2021, at PDF pg. 449 of 590, CNSC (staff), 2022)
47. AOPFN members have suffered the brunt of cumulative effects to an as-yet unassessed and indeterminate degree over the past 80 years as a result. The CRL has had long-term implications for AOPFN members, including alienation, loss of use, increased fear and stigma associated with the site, its surroundings, country foods, and the waters and fish of the Kichi-Sìbì. These harms have never been calculated, let alone recognized by the Crown or accommodated for.
48. Emblematic of the lack of engagement and consultation over time is that we still do not fully know how many AOPFN families were impacted by the development of the CRL. Starting in 2021, the AOPFN, using funds provided by CNL and AECL, is starting to investigate this issue in a cumulative effects assessment. However, the results will not be complete until at least 2023. Decisions on future land uses should not be expedited in non-emergency situations, in such a cumulative effects assessment vacuum (see Sections 5 and 6g).
49. Compounding these unquantified and unassessed but clearly ever-present pre-existing harms is the fact that, until quite recently, engagement by CNL and consultation by AECL with AOPFN has been limited and inadequate in relation to the NSDF itself. CNL did not seriously or consistently engage the AOPFN directly on this file until 2020, and only then at the AOPFN's prompting.

50. After the engagement was initiated at the AOPFN's prompting in 2020, CNL has done a reasonable job engaging with and providing capacity to the AOPFN to engage, as is expected by the AOPFN and the CNSC. For the NSDF environmental assessment, CNL has provided extensive capacity funding to the AOPFN through a Project-specific Contribution Agreement, which has funded engagement, data collection and analysis by the AOPFN.
51. In addition, CNL has made a number of additional commitments since 2021 that the parties agree are material to improving the relationship between CNL and the AOPFN, and to monitoring and management of some adverse effects. These commitments should improve the role of the AOPFN in Project monitoring and management should the Project proceed. Those commitments are provided in CNL's NSDF Project Consolidated Commitment Lists (CNL, 2021b). The AOPFN is appreciative of efforts made by CNL to engage with AOPFN on commitments to improve Project monitoring and management, should it proceed, and to CNL's overall commitment to more meaningfully include the AOPFN in future CRL site planning, monitoring and management. Where appropriate in the submission below, the AOPFN identifies commitments made by CNL that are relevant to reducing the AOPFN's concerns or avoiding, mitigating, monitoring or accommodating for effects that may occur as a result of the NSDF Project, should it proceed.
52. The AOPFN would like to clearly state that the commitments made by CNL do not, in all cases, match the remedy sought by the AOPFN. Just because CNL has made a commitment does not mean that commitment meaningfully addresses the issue or concern at hand. For example, CNL has made commitments related to Willing Host/FPIC and the importation of waste into AOPFN territory, that the AOPFN does not consider to be at all meaningful compared to the commitments sought by the AOPFN.⁶ Where there are differences between the commitments made and what the AOPFN considers adequate measures to protect the environment and AOPFN rights and interests, these will be pointed out in the topic-specific sections below. Addressing the substantive rights-based concerns of AOPFN is not a situation where getting close, but not quite all the way, to the goal, is helpful. If AOPFN rights are infringed by CNL's project and CNSC's decisions, making the infringement slightly smaller will still leave the rights infringed.
53. The parties have also attempted to build relations beyond the NSDF environmental assessment. In 2021, AECL and CNL signed a Memorandum of Understanding (MOU) with the AOPFN, committing the parties to negotiate towards a Long-term Relationship Agreement (LTRA). The MOU also commits funds for AOPFN to work on cumulative effects data gathering, develop our Neya Wabun Guardian Program and Algonquin

⁶ For example, a April 7, 2021 letter from Amanda Two-Axe Kohoko (2021) of the AOPFN to Meggan Vikerd of CNL states: "AOPFN has reviewed both Attachment A and B to CNL's letter of March 29, 2021. AOPFN can confirm that the summary of commitments, except for the couple of small items noted in marginal comments in the attached .pdf document, is an accurate summation of CNL's commitments as currently understood for this stage in the Project assessment... this acknowledgment does not indicate that AOPFN is in support for the NSDF Project, which is a decision that must be made later by AOPFN Chief and Council. Certain commitments, particularly those related to the concepts of "Willing Host" (32) and AOPFN expectations that AOPFN will have the right of free, prior and informed consent prior to any additional radioactive waste being brought into AOPFN territory (44), remain outstanding." (pg. 1)

Country Foods Monitoring and Risk Communication Program, and relocation support for the AOPFN Omamiwinini Pimadjowin Cultural Centre. Negotiations toward an LTRA are ongoing. It is the AOPFN's position that the act of negotiation is not a form of accommodation; only completed commitments and final measures fit that category.

54. In other ways, the engagement by CNL and consultation by AECL have been inadequate. AOPFN notes that both AECL and CNL to date have not been willing to agree with AOPFN's two priority requests related to the NSDF Project regarding AOPFN governance and stewardship:
 1. Adoption of a "Willing Host" requirement and respect for AOPFN's FPIC decision in relation to the proposed NSDF on AOPFN territory (see Section 6b); and
 2. Requirement for co-approval by AOPFN of any import of waste bound for the NSDF from any sources outside AOPFN territory (see Section 6c).
55. These gaps and the fact that CNL has not made substantive revisions to its Project proposal (e.g., not moving the site further away from the Kichi-Sibi and not removing the imported waste stream) indicate legitimate AOPFN concerns about the quality of engagement and more particularly the quality of accommodations/changes made in relation to the NSDF proposal by CNL and AECL based on concerns raised by the AOPFN.
56. In 2021, the AOPFN Chief and Council adopted *Consultation, Engagement, and Accommodation Requirements for all Nuclear Sector Proposed Developments in AOPFN Territory*.⁷ This AOPFN policy provides a consistent set of expectations and requirements to nuclear proponents and regulators. This document was provided to CNL, AECL and CNSC staff. Appendix D to this submission discusses the degree of adherence of the proposed NSDF Project to the *Consultation, Engagement, and Accommodation Requirements for all Nuclear Sector Proposed Developments in AOPFN Territory*. Appendix D shows that the NSDF as proposed does not adhere to many of AOPFN's requirements.
57. Overall, the AOPFN remains concerned that engagement by CNL and consultation by the AECL has emerged more as an afterthought than as integral to Project planning. The absence of early and proactive engagement for the NSDF Project impacted on the ability for AOPFN to engage at the earliest stages of Project planning, which should have been the case. This lack of CNL and AECL engagement of the AOPFN in early NSDF-specific project planning is echoed and amplified by the lack of any meaningful engagement of the AOPFN by the same parties in the overall, ongoing 10-year, \$1.2 billion revitalization project at CRL, of which the NSDF is an integral component. Only in 2022 did the AOPFN find out from CNL and AECL that this revitalization project is actually mid-way to being complete, without any meaningful engagement of the AOPFN in its planning.
58. The following outstanding issues suggest gaps in the adequacy of CNL's engagement and AECL's consultation with the AOPFN:
 - a. AECL and CNL did not substantively engage the AOPFN prior to starting the ongoing revitalization of the CRL, which the NSDF proposal is an integral part

⁷ Included as Appendix C to this submission.

- of. Indeed, even to date no substantive engagement of the AOPFN on this revitalization project has been entered into;
- b. CNL and AECL have indicated no willingness to reconsider the location of the NSDF further away from the Kichi-Sibì, despite concerns raised by the AOPFN;
 - c. CNL and AECL did not substantively engage AOPFN prior to making a determination of their preferred location and means of situating this permanent radioactive waste disposal facility;
 - d. CNL and AECL have not committed to respecting AOPFN's right to FPIC in relation to the NSDF;
 - e. CNL and AECL have not been willing to remove the imported waste stream from the NSDF Proposal, in whole or in part; and
 - f. CNL and AECL have not shown adequate evidence of offsetting benefits to the AOPFN for the creation of this permanent hazardous waste disposal facility on unceded Algonquin territory.
59. When the Crown and its representatives engage in consultation without being willing to make changes to the project in response to Aboriginal concerns, the consultation cannot be meaningful, and becomes nothing more than an opportunity for the First Nation to 'blow off steam', as the Crown proceeds to make the decision it planned to make all along.
60. Overall, the AOPFN would characterize engagement by CNL as improved since 2020, but without adequate evidence of accommodation for impacts likely to be caused should the NSDF Project proceed. The AOPFN recommends the following in relation to engagement with CNL and consultation with the AECL for the proposed NSDF Project:
- AOPFN Recommendation #1: The Commission should require AECL and CNL to file an update, post-hearing, illustrating where and how AECL and CNL have substantively identified and accommodated for Project-specific impacts of the proposed NSDF on AOPFN rights and interests, prior to closing the public record and making a decision on the proposed NSDF.⁸**

Consultation with CNSC Staff⁹

61. Similar to the situation with the proponent and land owner, consultation between the AOPFN and the CNSC got off to a slow start, with early CNSC efforts to consult on the process focusing on the AOO. Consultation efforts by CNSC staff increased in 2020, and since then can be labeled as improved. The AOPFN and the CNSC have set up a Working Group that meets monthly on this and other files. The CNSC has provided participant funding to the AOPFN to engage in the environmental assessment process, and CNSC staff and the AOPFN worked together - in a process funded by the CNSC - to develop the Rights Impact Assessment (AOPFN and CNSC 2021) that has been filed into

⁸ In any instance where the AOPFN recommends the CNSC require CNL and/or AECL to do something, the AOPFN is extending this request to AECL and CNL to directly and proactively commit to this action as well and provide supporting evidence to this effect to the Commission.

⁹ Throughout this written submission, the AOPFN makes efforts like this to distinguish between CNSC staff and the Commission itself, given the different roles played by each in this process.

evidence with the Commission Members. The CNSC also funded the AOPFN AKLUS (Taylor et al, 2020). The AOPFN appreciates the participant funding provided by the CNSC to engage in the technical review and hearing stages of this proceeding, and the work done with CNSC staff on the Rights Impact Assessment.

62. The CNSC has also committed to enter into a Long-term Relationship Agreement with the AOPFN. This will hopefully increase the role that the AOPFN plays in the CNSC's Independent Environmental Monitoring Program (IEMP), allow for earlier engagement in environmental assessments and regulatory processes in the future, and increase the role of Algonquin Knowledge in CNSC planning, data collection, assessment and decision making in the future. The development of this LTRA, which has yet to be signed, is a promising concept, but it remains just that – a concept – at this time. It cannot be considered evidence of accommodation by the CNSC for impacts associated with the NSDF Project.
63. Consultation with CNSC staff has not been without hiccups and hurdles. The AOPFN and CNSC staff have often not agreed on environmental assessment scope or methods, and do not agree on the adequacy of several aspects of the EIS. For example, the AOPFN and CNSC staff have fundamentally disagreed over the importance of establishing the degree of pre-existing cumulative adverse effects in the Project-affected area, and what role that should play in Project-related determinations (this will be discussed further in Sections 5 and 6g of this submission).
64. Another area where there has been disagreement is over whether to use best practice of federal impact assessment in this environmental assessment. The AOPFN's position throughout has been that a federally proposed project on federal lands, being adjudicated by a federal environmental assessment body, should be using the most up-to-date federal impact assessment requirements. In this case, that would be requirements under the Impact Assessment Act of 2019.
65. Instead, the CNSC staff and CNL have applied an outdated environmental assessment approach from the Canadian Environmental Assessment Act, 2012 (CEAA 2012). This has meant that impacts in the federal jurisdiction today, such as all impacts on Indigenous peoples (not just those caused by a physical change to the environment), cultural considerations, sustainability assessment, and Gender-Based Analysis+ (GBA+) have not been meaningfully scoped into the NSDF environmental assessment. By extension, this means that important impact pathways on culture, mental health and well-being of Indigenous peoples, have received minimal if any attention in this assessment. This does not reflect best, or even acceptable, current practice of impact assessment in Canada. This narrow scoping of the assessment has led to improper assessment of impacts on AOPFN traditional land and resource use, culture, and well-being in particular, subjects taken up in further detail in Sections 6d and 6e, respectively.
66. Overall, the combination of defaulting to the narrow scoping allowed under CEAA 2012, despite the Proponent acting on behalf of the Crown, and the highly technical-focused environmental assessment process run by the CNSC, has severely hamstrung the ability for the AOPFN and other impacted Indigenous groups to get Indigenous Knowledge and Indigenous perspectives on impacts considered in this process. A disconcerting outcome of this is that the CNSC staff (2022), in its CMD, has chosen to accept, largely verbatim,

the findings of the EIS on Indigenous TLRU, culture and well-being. This from an EIS that itself produced no Indigenous Knowledge, only re-interpreted Indigenous Knowledge through a western, scientific lens. And this from an EIS that directly contradicts what AOPFN studies have found and what AOPFN members have said the impacts from the NSDF Project are likely to be for them. This reflects a remarkable lack of deference to the true experts on Indigenous Knowledge and impacts felt by Indigenous peoples – those people themselves.

67. The AOPFN is appreciative that the CNSC committed to and conducted a rights impact assessment with the AOPFN for the NSDF Project. While the CNSC staff and the AOPFN did not always agree on the approach or findings of the rights impact assessment, its very existence is indicative of a recently heightened level of consultation by the CNSC with Indigenous peoples and we welcome that.
68. Offsetting this progress, the AOPFN notes that CNSC staff did not identify much in the way of concrete “complementary measures” in the rights impact assessment that will assist in avoiding, minimizing or offsetting impacts on AOPFN rights. The primary commitment made by CNSC is to increase the role of AOPFN in the IEMP, in a yet to be defined manner. No other complementary measures of any substance have been put forward. The AOPFN considers this not to be accommodation of any sort, but rather something that should have happened 10 or 20 years ago – catch up measures.
69. In addition, the joint findings of the AOPFN-CNSC staff Rights Impact Assessment appear to have been re-interpreted in portions of the CMD (CNSC (staff), 2022), in ways that the AOPFN does not agree with. Impacts of the NSDF on AOPFN rights, their implications and what needs to be done about them, and these “reinterpretations” in the CMD, are discussed in more detail in Section 6f below.
70. We look forward to discussing points of agreement and disagreement in the hearing and have flagged several in sections below. We strongly encourage the Commission to consider Indigenous evidence to be expert evidence, especially in relation to impacts on Indigenous peoples themselves, in its deliberations.
71. Overall, the AOPFN would characterize engagement by CNSC staff as improved since 2020, but without adequate evidence of accommodation for impacts likely to be caused should the NSDF Project proceed. Consultation without accommodation is just talking, and does not protect AOPFN’s constitutionally guaranteed rights, TLRU, culture, and well-being.
72. As a result, the AOPFN recommends the following:

AOPFN Recommendation #2: Should it approve the NSDF to proceed, the Commission require CNSC Staff to conduct additional consultation with the AOPFN with a focus on identifying and implementing complementary accommodation measures re: impacts on AOPFN rights.

5. Context of cumulative effects and existing conditions at and around the Proposed NSDF Site

Cumulative Effects to Date

73. This section of the submission is provided as an overview of the cumulative effects context into which the proposed NSDF Project would be situated. Inadequacies in the cumulative effects assessment in the EIS and in the CNSC's approach to cumulative effects are discussed further in Section 6g below.
74. It is critical for the Commission to properly understand this cumulative effects context, which is neglected in the EIS and the CNSC staff's CMD. This context lays the foundation for understanding what the AOPFN has lost already in the area where NSDF is proposed, and how vulnerable the AOPFN's rights and interests are to further impacts, in both their geographic and temporal implications. The CRL has a history of AOPFN use and occupancy, loss of this use in the "nuclear era", and continued desire for reconnection by AOPFN members, all of which is material context that requires consideration when making decisions about future land uses like the proposed NSDF.
75. Decision makers like the CNSC cannot simply assume that others will address cumulative impacts, that they will be addressed in another process, at other times, or by other decision makers. Whenever the Crown (or its agents, such as CNSC) makes a decision it must consult on, and accommodate for, cumulative impacts to the affected aboriginal peoples, including the AOPFN.
76. The AOPFN is conscious that in the past, cumulative impacts of development have not factored significantly into CNSC's decision-making. They are rarely discussed, and in the few occasions when they are discussed, it is most often for the Commission to simply accept recommendations made by a proponent or CNSC staff.
77. Consideration of cumulative effects in the Commission's process must be improved. While each iterative impact may only add a small amount to the total volume of cumulative impacts, when CNSC approves a project, it must consider not only the iterative added impacts of that project, but also the total cumulative impacts which the AOPFN is left to struggle under, after the project is approved.
78. Information was gathered about this historic use and loss of use, and the harms this has created for AOPFN and its members, in the AOPFN's AKLUS, Culture and Rights, and Diet and Harvest Study and is further enumerated in Section 3 of the Rights Impact Assessment.
79. AOPFN ancestors had full access to their unceded territory prior to the establishment of the European fur trade in the 1600's. However, AOPFN harvesting and traditional use, governance and stewardship, and cultural continuity have all been seriously constrained throughout Algonquin territory over the last several hundred years due to cumulative effects including displacement, settlement, cultural disruption, lack of consultation with the AOPFN, and racism. As noted in the AOPFN Diet and Harvest Study:

"The Royal Proclamation of 1763 asserted that 'the Indians should not be molested on their hunting grounds' and asserted "Dominion" lands could only be

occupied or used by non-Aboriginals if there was a treaty in place. Despite no treaty materializing between the Algonquin and the Dominion of Canada, lands have been removed from Algonquin harvesting grounds over multiple generations.” (Fediuk et al, 2021, pg. 90)

80. The CRL site where the NSDF is proposed is an area that had high importance to the AOPFN in the past. Before the nuclear research facility was established, Algonquins lived in, used, and cared for the area, and the environment looked much different than it does presently. The centrality of the location in unceded Algonquin territory, its bordering on the vital Kichi-Sìbì, the abundance of aquatic, riparian, and terrestrial resources in the area, all were values that led to the area being highly valued and heavily used by AOPFN families. Indeed, many families had homes and preferred harvesting and camping sites at and in the near vicinity to the CRL into the 1940s. (Malone et al 2021, pg. 30)
81. The Crown has supported the transformation of the landscape to suit settlers needs since contact. The CRL and adjacent Canadian Forces Base Petawawa military base is a clear example of this. AOPFN families residing in (and practicing rights in) the NSDF and CRL sites were displaced from the larger federal CRL site in the 1940s, and AOPFN members have since had essentially no access to the CRL site, and thus no ability to practice their rights at the site for close to 80 years.
82. The expropriation of the lands for the development of a nuclear research facility, and effectively all actions taken since then by Canada at the site, was conducted without any consultation of the AOPFN or its members, and certainly without AOPFN’s permission.
83. As noted in the Diet and Harvest Study, the removal of access to, and alteration of lands, at the CRL site:

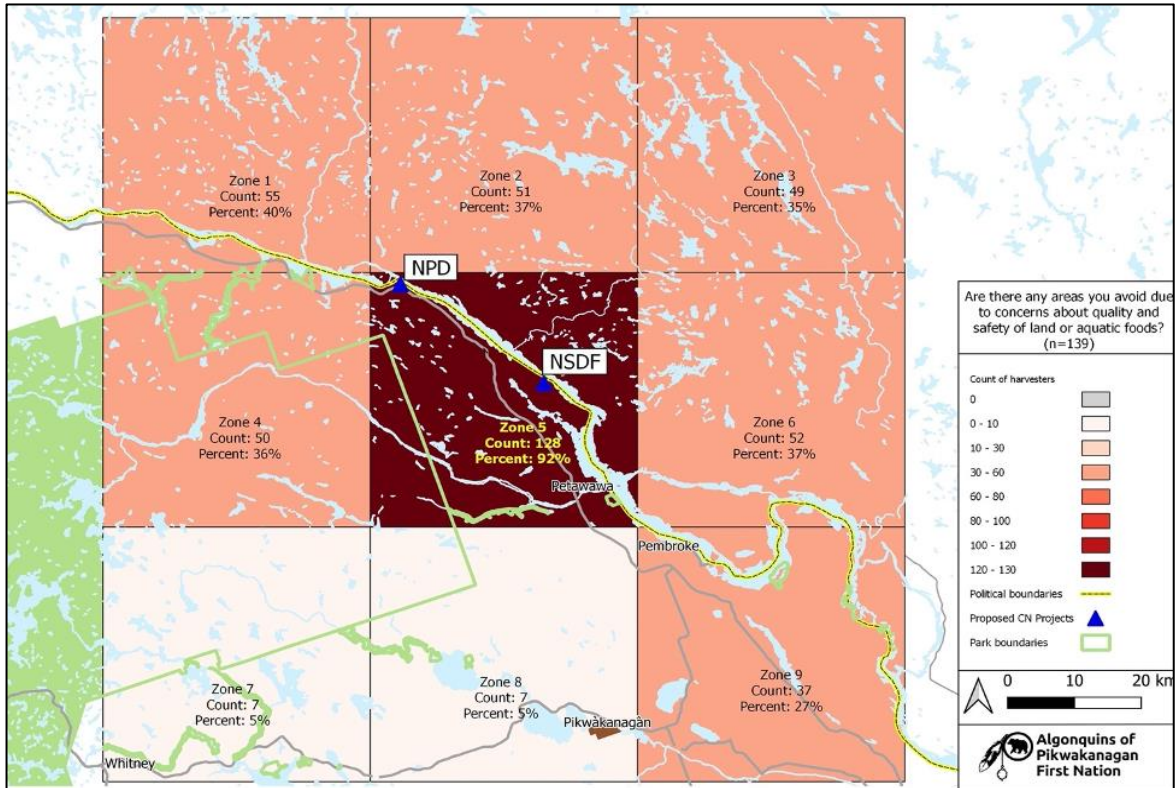
“has resulted in significant barriers to access to traditional harvesting grounds, physically via the installation of fencing around properties, legally, via the imposition of fines or trespassing offences should AOPFN members access these lands, and psychosocially, through the identification of real and perceived risks associated with accessing the area and its surroundings due to the activities that occur there. This has served to alienate AOPFN members from these sites”.

(Fediuk et al, 2021, pg. 90)
84. As noted in the AOPFN AKLUS, alienation over the past 80 years from the CRL area did not happen in isolation from other cumulative effects causing agents. AOPFN members have also explained how major cities such as Ottawa, privately held land, and other development projects like hydro and logging have impacted the community and their ability to live on and harvest from the lands and waters throughout their unceded Algonquin territory. AOPFN members have witnessed changes to the plants and animals that share the environment. These changes include a decline in some animal populations and changes in their movement patterns on the land, or the health of some species. In many cases, the combination of these changes and increasing development have impacted the ability of AOPFN members to practice their culture and traditions on the land (Taylor et al, 2020, pg. 61).

85. CRL operations have caused nearly 80 years of lost land use and the removal of a culturally important area. The AKLUS and Diet and Harvest studies show that alienation and loss of use extends outside of the CRL site, most notably but not exclusively, to the use of and harvesting from the Kichi-Sìbì.¹⁰ In addition to reductions in their ability to practice the Algonquin way of life, these outwardly enforced changes have impacted on the food security of the AOPFN. The Diet and Harvest Study states:
- “It is important to recognize that the information shared by AOPFN members for this study reflects an already heavily impacted diet and harvest baseline. AOPFN has long been concerned about the sufficiency to practice Indigenous cultural rights related to food sovereignty, including sustaining relationships with the water, plants, and animals in AOPFN territory and ensuring that Algonquin foods are safe to eat. Colonialism, privatization, and the transformation of the landscape in AOPFN’s territory wrought large changes to the seasonal round and reliance on local foods... Specific to NSDF, there has been long term alienation from the CRL site since 1944. AOPFN members have identified it as high-quality habitat for moose and deer and a common fishing area” (Fediuk et al, 2021, pg. 3).
86. The Diet and Harvest Study goes on to note that:
- “The long-term alienation of AOPFN members from much of their territory, including complete alienation from the CRL site, has substantially reduced accessible areas for harvesting and a concomitant decline in the frequency and use of the traditional food system, at the expense of nutrition and food security as evidenced by the high degree of food insecurity reported by AOPFN members (Fediuk et al, 2021, pg. 4).
87. Both access restrictions at - and heightened fears and stigma associated with the area around - the CRL have contributed to this alienation, loss of use, and spin-off effects on AOPFN diets and well-being:
- “Today, the Kichi-Sìbì is perceived by many AOPFN members as contaminated, resulting in poor water and fish quality. Industrial development in the area, and the CRL site in particular are perceived to have played a major role.” (Fediuk et al, 2021, pg. 26)
88. A survey of 250 AOPFN community members for the Diet and Harvest Study asked about areas in Algonquin territory avoided due to concerns about the quality and safety of foods. Figure 2 below identifies that the CRL (shown with the term “NSDF” in Figure 2) is part of an “AECL-CNL Nuclear Corridor” along with the Nuclear Power Demonstration (NPD) Project site to the northwest, which is the area with the largest amount of harvesting avoidance in Algonquin territory.

¹⁰ See for example Figure 2 below.

Figure 2 - Avoidance Areas for AOPFN Members Due to Quality and Safety Concerns



(Source: Fediuk et al 2021, pg. 70)

89. The AOPFN Diet and Harvest Study states that “Key informant interviews also repeated the pattern identified in the figure above, flagging that concerns about localized contamination from the CNL projects drive the avoidance of harvesters in the area.” (Fediuk et al, 2021, pg. 70, speaking to Figure 2 above)
90. As a result of these impositions, territorial and local, the ability to maintain a high level of reliance on and access to Algonquin food has long been constrained. As a result, cumulative effects on the land end up impacting on AOPFN homes and families, not least through reduced food security. The Diet and Harvest Study (Fediuk et al 2021) found that the Algonquin food system is made up of well over 100 kinds of fish, birds, large and small mammals, and plants to which AOPFN members have a deep and ongoing connection and reliance upon. But these connections are at risk. The Diet and Harvest Study found that within the last year (around 2020), one in every four AOPFN respondent families experienced challenges in purchasing adequate amounts of food to feed their families (Fediuk et al, 2021).
91. In addition to loss of use of the land and waters and reduced food security as a result of the development of the CRL site, impacts on Indigenous mental well-being need to be recognized. In the case of CRL, AOPFN have experienced loss of use, psychosocial impacts, and heightened risk perception from the facility for three-quarters of a century. This can lead to deteriorating psychological and social health for individuals, families, and the community in general (Fediuk et al. 2021 p. 91). This topic was not broached in

any meaningful way by CNL, AECL or CNSC in the NSDF environmental assessment, a major gap discussed further in Section 6e below.

Current conditions

92. Today, the CRL remains completely off-limits to AOPFN members, due to physical constraints - fencing and security - and AOPFN concerns related to safety, as principal but not exclusive factors. While it is unclear how long AOPFN members will remain unable to access and meaningfully practice their Aboriginal rights at the CRL site, there are no indications that nuclear research activities at CRL are slowing down. Indeed, Canada is in the middle of a ten-year, \$1.2 billion revitalization project at the CRL (CNL, 2021a, p. 5 – 852).
93. What does this cumulative effects context mean for AOPFN rights and interests in the pre-Project circumstance? It means that should it proceed, the NSDF would be situated in a local and regional study area that already exhibits the following adverse cumulative effects, when compared to a pre-CRL context (Fediuk et al, 2021. pg. 96):
- Diminished quantities and qualities of game and fur-bearing species in preferred hunting and trapping areas, as well as diminished ability to access preferred harvesting areas;
 - Lack of confidence in drinking water and water quality in water bodies;
 - Lack of access to the CRL site since 1944;
 - Pervasive AOPFN community stigma about the CRL site and its surroundings, in both the aquatic and terrestrial environment;
 - Lack of confidence in health of animals, fish, plants, medicines, and water in the area at and around CRL due to lack of access to data about the health of these resources;
 - Diminished ability to teach and transfer knowledge about harvesting and traditional use rights, and governance rights and responsibilities; and
 - AOPFN members have not been provided opportunities to input into how the CRL site is being planned and managed.
94. In summary, according to AOPFN members, the AOPFN harvesting and traditional use, cultural and governance and stewardship rights and interests in the NSDF and larger CRL areas have already been heavily adversely affected by long-term physical alienation from the land, and the creation of public concern about contamination of water, land, plants, and wildlife at and around the CRL site.

Implications of current conditions and cumulative effects context

95. This cumulative effects context can be read a couple of ways. The way it has been interpreted by CNL, and apparently endorsed by CNSC staff, this reality of severe pre-existing adverse effects on AOPFN rights and the resources they rely upon in the CRL site area, effectively absolves the NSDF Project of any potential to contribute to additional adverse effects on TLRU, culture or AOPFN rights. The argument of the Proponent appears to be that the area is already fully alienated from the AOPFN, so it can't get worse in the Project Case.

96. This is a cynical, inaccurate and misleading finding. It is cynical because instead of the responsible parties focusing on identifying and ameliorating the harms that have been done to AOPFN, those very harms are being used as an argument for why additional adverse effects, including the importation of additional radioactive wastes and conversion of a portion of the CRL to a permanent radioactive waste disposal facility, should be contemplated as not bringing any new harms. This conceptual and physical conversion of the NSDF area to a “permissible loss” zone is not a perspective shared by the AOPFN. Our people reject any argument that uses these previous and existing harms, imposed by Canada on the AOPFN without our permissions and without apology, to justify either bringing in more radioactive liabilities or writing off this area as a default permanent waste disposal facility. The ramifications of previous bad actions cannot be used to justify additional potentially harmful actions. This for us is the very definition of “death by 1000 cuts”.
97. The erroneous aspect of the finding is the assumption that things cannot get worse. They in fact can get worse, especially if the amount of time which the CRL is “off limits” to AOPFN members is extended, as it is in the Project Case. As will be discussed further in Sections 6e and 6e below, the NSDF Project will extend the time period where impacts on AOPFN rights, traditional land use, culture and well-being are likely to be measurable from the CRL, from “temporary” to “permanent” by design. This reality is not contemplated in the EIS or the CMD (CNSC (staff), 2022) in any meaningful way.
98. The misleading aspect of this argument is that CNL has used the existing of prior cumulative effects as an argument not only for ignoring changes that may occur in the Project Case, but also to ignore the implications of the harms that have already occurred in the pre-Project circumstance. What the evidence tells us is that AOPFN rights-based activities have been radically reduced at and around the CRL site over the past 80 years. Those rights, though vastly reduced in practicability over this period of time, have not been extinguished. AOPFN members retain values at and around the CRL site, and have expressed a desire to reconnect to this area as soon as possible. To reconnect, those values need to be subject to improvements, not merely avoidance of deepening of adverse effects, in the Project Case. The Project Case must be gauged against this need to improve conditions back toward where they were when the rights were practicable for AOPFN members.
99. And the amount of additional change that is acceptable must take into account the already heavily impacted baseline. The worse the pre-existing conditions are, the greater the onus must be placed on the Proponent, the landowner, and the statutory decision-maker to require improvements to conditions for valued components, not merely seek to avoid additional significant Project-specific contributions to effects loading on the valued components in question. Good practice of environmental assessment requires recognition that any new measurable project-specific effects on what are already severely cumulative impacted valued components, must be considered significant in and of themselves.
100. The AOPFN notes that this is not the first time that the Commission has been asked to consider in a more meaningful way the pre-existing cumulative effects context in making its decisions. The Sagkeeng Anicinabe First Nation (2019, pg. 32) in its submission to the CNSC in relation to a proposed licence renewal for the Whiteshell Laboratories in Manitoba, raised similar concerns:

“These impacts and infringements have never been admitted by the Crown, consulted on in a meaningful way, or accommodated, over the past half century of loss, and they certainly are not raised in any of the documents provided to the Commission by CNL or CNSC. They also need to be understood in the context of extensive past infringement of Sagkeeng Treaty rights by multiple cumulative effects causing agents, including hydro-electric development, non-Indigenous hunting and fishing, extensive land privatization, and other industrial, commercial and residential development activities on our territory. As less and less of our land has been available for us to meaningfully practice our Treaty rights on, our culture, way of life, food security and connection to land have all suffered. Any future Crown decisions must be made with this heavily damaged existing context in mind.”

101. The AOPFN requests the Commission keep this heavily damaged cumulative effects context and the heavily damaged rights practicability context front of mind. The AOPFN further recommends that the Commission carefully consider in its decision whether a future with the NSDF will actually make things better for valued components at risk, and AOPFN rights and interests, rather than simply avoiding significant ‘new’ adverse effects on an already significantly adversely affected biophysical and human environment.

102. The AOPFN recommends:

AOPFN Recommendation #3: The Commission to consider cumulative effects as presented herein in making its NSDF decision, and describe in its reasons for decision how that consideration factored into the decision.

103. Additional AOPFN recommendations in relation to cumulative effects are included in Sections 6d, 6e, and 6g below.

6. Issue and Concerns Raised by the AOPFN about the Proposed NSDF

104. This section focuses on the following specific AOPFN issues and concerns related to the NSDF Project:
- a. Proximity of the NSDF Project to the Kichi-Sìbì and lack of meaningful engagement of the AOPFN in NSDF Project planning and siting (Section 6a);
 - b. Lack of adoption of a “Willing Host” model for the NSDF Project, and associated lack of commitment to adhere to AOPFN’s FPIC decision(Section 6b);
 - c. Importation of radioactive waste into AOPFN territory (Section 6c);
 - d. Inadequate consideration of Algonquin Knowledge leading to inaccurate assessment of effects on the AOPFN’s traditional land and resource use (Section 6d);
 - e. Inaccurate assessment of effects on AOPFN’s culture (Section 6e);
 - f. Impacts on the AOPFN’s rights (Section 6f);
 - g. Inadequate consideration of total cumulative effects loading (Section 6g);
 - h. Adequacy of monitoring and adaptive management mechanisms (Section 6h); and
 - i. Lack of evidence of benefits to offset adverse changes - past, present and future (Section 6i).
105. For each of these items, the following is provided in sequence:
- a. A description of the issue or concern as raised by the AOPFN;
 - b. Supporting evidence behind the issue or concern;
 - c. Commitments made and/or additional evidence provided by the Proponent and/or CNSC staff to deal with this issue or concern;
 - d. Status of the issue or concern at the time of this written submission, including in some instances CSNC staff perspectives on status; and
 - e. Conditions and other actions recommended by the AOPFN to deal with the outstanding issue or concern.
106. Inevitably due to the interconnected nature of Algonquin peoples and the environment we live in and rely upon, some of the issues overlap. For examples, there are implications for impacts on AOPFN rights across many different issues and concerns. These issues and concerns need to be read as a single set of conjoined concerns, all of which require serious redress moving forward.

A. Proximity of the Proposed NSDF Project to the Kichi-Sìbì and lack of meaningful engagement of AOPFN in Project planning and siting

AOPFN Issues and Evidence

107. The Kichi-Sìbì is of the highest possible historical and cultural significance to AOPFN.
- “The Ottawa River, the whole thing is a sacred site because the Ottawa River watershed was the main hunting territory for the Algonquin people and, and

technically, today it still is. ... basically the whole Ottawa River is, again, super important to the Algonquin people, the Algonquin Nation. — Pikwàkanagàn Knowledge Holder (Taylor et al, 2020, pg. 16)

108. Today, the Kichi-Sìbì remains a critical location for Algonquins. In addition to continuing practices such as fishing, gathering, and hunting in the area, the Kichi-Sìbì is deeply connected to a number of Algonquin cultural sites and is the circulatory system of the Algonquins. As noted in the AOPFN AKLUS, many community members continue to gather at, travel along, and harvest from the Kichi-Sìbì:
- “Historically, the Kichi-Sìbì and surrounding lands were used, cared for, and occupied by Algonquin ancestors for travel, harvesting, gathering, trading and other purposes, and provided a network of “highways” used for accessing different areas throughout their territory.” (Taylor et al, 2020, pg. 35)
109. AOPFN members continue practice their rights and interests all along the Kichi-Sìbì, but these practices have been eroded over time, including especially in the “Nuclear Corridor” between the NPD and CRL sites. Several AOPFN members in the AKLUS, Culture and Rights Study and Diet and Harvest Study spoke of not taking fish from the Kichi-Sìbì, especially not downstream of the CRL site. Impacts to the Kichi-Sìbì, fish, and bioaccumulation are changing AOPFN members' feelings of safety on the Kichi-Sìbì and overall trust in the fish and water in it.
110. The AOPFN AKLUS discusses concerns about the Kichi-Sìbì, fish and bioaccumulation:
- “Given the importance and ongoing use of the Kichi-Sìbì, the proximity of nuclear facilities to the waterway and its tributaries was a concern expressed by a number of interviewees. One participant expressed alarm at this location and the potential for the facilities to compromise the integrity of the Kichi-Sìbì and the Petawawa River specifically, potentially impacting people who live and fish nearby” (Taylor et al, 2020, pg. 42).
111. In the AOPFN AKLUS, a member reported that when fishing near the existing nuclear facilities, they are “always concerned about the safety of consuming what they catch and are conscious of trying to limit their intake because of this. Additionally, this participant expressed concerns surrounding the bioaccumulation of contaminants in larger species of fish that live longer and have more time to build up toxins” (Taylor et al, 2020, pg. 42). Other interview participants explained it is common for who fish along the Ottawa River to release what they catch because of the potential for contamination from the nuclear facilities located nearby (Taylor et al, 2020, pg. 43).
112. Reflective of the importance of the Kichi-Sìbì in particular, and surface waters in general, and pervasive concerns about radioactive contamination of those waters, the AOPFN has made efforts to protect waters from future nuclear (including nuclear waste disposal) projects. In 2017, the AOPFN was part of the Anishinabek/Iroquois Declaration on Nuclear Wastes, one of the principles of which is that nuclear waste is not to be stored near water (Anishabek and Iroquois Caucus, 2017): “Radioactive wastes must not be stored beside major water bodies for the long-term”. The Kichi-Sìbì is explicitly named as one of those major water bodies. In the *Consultation, Engagement, and Accommodation Requirements for all Nuclear Sector Proposed Developments in AOPFN*

Territory, Principle #9 states, “Water must be clean, readily accessible and trusted by AOPFN members”. Such trust is unlikely to increase in the Kichi-Sìbì in a future with a permanent radioactive waste disposal facility close to its shore.

113. It is in this context of high value and strong concern for the waters of the Kichi-Sìbì that the NSDF is proposed. According to CNL, the NSDF as proposed, would be located only 1,100 metres from the Kichi-Sìbì (CNL, 2021a, pg. ES-10). This is clearly out of compliance with AOPFN’s principles and requirements and cause for a high degree of concern by AOPFN members and leadership. On top of existing, long-standing concerns raised by Algonquin peoples about the effects of the CRL on the Kichi-Sìbì, the proposed NSDF’s proximity to the Kichi-Sìbì has already led to - and in a future will the project will continue to lead to - additional stress and anxiety for our community members, skepticism about the state of contamination and alienation of the waterway far beyond the area where the CRL is situated.
114. In particular, in the Rights Impact Assessment (AOPFN and CNSC, 2021) it is identified that AOPFN members have raised concerns about the proximity of the NSDF Project to the Kichi-Sìbì, and the lack of revisions to the planned location by CNL after these concerns were raised by AOPFN members, including a Council member, in limited discussion on this topic with CNL. In the AOPFN’s comments on the 2019 draft EIS, Comment #3 on Alternative Means, an AOPFN member indicates that he raised concerns of the location of the Project, not liking the fact the Near Surface Disposal Facility was located so close to the Ottawa River, in conversations with CNL. This AOPFN individual later told AOPFN representatives that he felt like his comment was not seriously considered by CNL, leaving him with the impression, “why did they bother asking”. (Two-Axe Kohoko, 2020)
115. The AOPFN also provided technical critique of the approach taken by CNL in its alternative means assessment (Two-Axe Kohoko, 2020, see AOPFN EIS Comment #3), but the primary focus of our concern is on the lack of integration of AOPFN perspectives into the alternative means assessment. The AOPFN indicated that the approach to alternative means assessment does not meet best or acceptable practice for projects where Indigenous groups may be impacted. For example, the alternatives assessment methodology had no engagement of Indigenous Peoples or Indigenous values, principles or criteria. Indigenous peoples - our members - know the land and waters of our territory intimately and are well situated (and have the right) to engage in consideration of alternative means to undertake the proposed Project. There is little to no evidence this was the case. In fact, the one “focus group” used in the alternatives assessment process explicitly called for people with qualifications that few if any of our members have, thus exempting us from this process entirely.
116. This raises concern about a lack of control over activities proposed to occur in AOPFN territory by AOPFN members and leadership. Substantial concerns have been raised about whether AOPFN providing inputs into this environmental assessment process will actually lead to meaningful changes to the Project proposal.
117. That AOPFN’s concerns, principles and requirements for siting of the proposed NSDF have not been carefully gathered, considered and adhered to, is disappointing but not surprising to the AOPFN. There is an almost 80-year history of inadequate engagement

and consultation of the AOPFN in relation to the Chalk River Laboratories, by the Crown and its agents. In the Rights Impact Assessment, the AOPFN found that:

“Pre-existing cumulative effects on AOPFN Governance and Stewardship rights are of high severity in the LSA¹¹ and of moderate to high severity in the RSA¹². These effects include lack of permissions sought from and (until very recently) lack of meaningful engagement and consultation with AOPFN on the conversion of what is now the CRL site into a nuclear facility and ongoing management of the CRL site, displacement of AOPFN families from homes and preferred lands as a result of the establishment of the CRL site, no recognition of nor accommodation for loss of use, no uncontrolled access to the CRL site for AOPFN members, and lack of confidence that AOPFN input will be adequately considered and accommodated by the proponent” (AOPFN and CNSC, 2021, in CNSC (staff), PDF pg. 480 of 590).

118. In the AOPFN Culture and Rights Study, an AOPFN Knowledge Holder shared a common AOPFN perspective that by the time “engagement” starts, proponents like CNL already have their minds made up on location and means associated with their proposed project, limiting the agency that AOPFN has in the process:
- “[From] the project manager or project leader, you get a sense of... we’re just doing it because we got mandated to it. It doesn’t really matter. We’re going to go ahead. You know that the feedback and, and everything that you get, it won’t really, really matter, matter that much and then the respect isn’t there.” (Malone et. al, 2021, pg. 57)
119. This pre-existing pattern of lack of meaningful engagement and consultation was echoed in the early planning and siting process for the NSDF. Since the beginning of AOPFN’s serious involvement in the NSDF assessment, in mid-2020, the AOPFN has raised concerns about the lack of meaningful engagement of the AOPFN by CNL in NSDF Project planning and siting, and AOPFN members have consistently raised concerns that the NSDF Project is located too close to the Kichi-Sibi.

CNL Responses and Commitments

120. In response to the AOPFN’s concerns about lack of engagement in NSDF Project alternatives assessment, particularly siting, CNL provided further information about how a preferred location for the permanent hazardous waste disposal facility was completed. CNL indicated as well that it is the Proponent’s prerogative to conduct the alternative means assessment under direction provided by the federal government in relation to CEAA 2012.
121. In the final CNL Dispositions to AOPFN’s Comments on the 2019 Draft EIS (CNL 2021c), in response to AOPFN’s Comment #3, CNL committed only to including AOPFN AAC input from the alternative means approach discussion into the NSDF Indigenous Engagement Report.

¹¹ A Local Study Area consisting of a 5km radius centred on the NSDF Project.

¹² A Regional Study Area consisting of a 25km radius centred on the NSDF Project.

122. CNL has not indicated any interest to revisit its preferred siting for the NSDF Project with the AOPFN. CNL did not move or even consider movement of the NSDF further away from the Kichi-Sìbì after the AOPFN raised concerns, and did nothing substantive to act on AOPFN's concerns about the adequacy of the assessment of alternative means and locations to dispose of on-site LLW.

Status of the Issue and Required Conditions/Actions

123. The Proponent's sole commitment on this issue was to enumerate the AOPFN's concerns about Project siting and the alternative means assessment in its Indigenous Engagement Report. The AOPFN does not consider this any form of meaningful engagement, and certainly it offers nothing re: accommodation. The proximity of the proposed NSDF site to the Kichi-Sìbì and the lack of meaningful engagement of AOPFN in consideration of alternative sites remain outstanding issues for AOPFN. Thus, this issue remains outstanding for the AOPFN.
124. The Project's nature and permanence is likely to impact on future land use options available to AOPFN and infringe on AOPFN's aboriginal rights and title. The process by which the specific site was chosen by AECL and CNL as the proposed location for a permanent radioactive waste disposal facility, which effectively completely excluded the AOPFN, is reflective of a continued withholding by Canada and its contractor of agency for AOPFN in regard to governance, stewardship, and decision-making in relation to this expropriated, unceded land, and a lack of recognition of AOPFN as a legitimate governance authority on these unceded lands. This enforced subservience to federal government agencies is emblematic of, and extends further into the future, adverse effects on AOPFN governance and stewardship rights.
125. CNL insists they have abided by the requirements of the CNSC in its alternative means, and the CNSC staff agrees. However, good practice of alternative means assessment suggests that when a project is likely to be a cause of a heightened degree of public concern, and this public concern is made evident by parties, that greater effort is required to show integration of perspectives of those parties in the alternative means assessment.
126. The permanence of the facility is also linked to the outstanding issue of the future of the CRL site. The AOPFN has never ceded any of its Algonquin territory, including this vital location on the west shore of the Kichi-Sìbì. To date, there has been a lack of engagement of the AOPFN by CNL and AECL in the determination of appropriate desired end land use state(s) for the CRL. We note for example that we are now about halfway into a 10-year, \$1.2 billion revitalization program at CRL, the planning for which AOPFN was never integrated. This failing needs to be corrected. The current reality is that CNL is proposing the NSDF without ever engaging the AOPFN on what the future of the CRL - within which the NSDF would be situated - should look like. This is the very definition of putting the cart before the horse.
127. Some of the commitments made by CNL are peripherally relevant to reducing perceived risk of contamination, such as the commitment to work with AOPFN on risk communication. Such commitments, however, do not directly deal with the fundamental underlying issues of placing this material so close to the Kichi-Sìbì, or to the lack of engagement by CNL of AOPFN in the process for making the determination that this is the best location and way to permanently dispose of these wastes.

128. The AOPFN recommends the following in relation to this issue/concern:

AOPFN Recommendation #4: CNSC require CNL to reconsider alternative locations and means of disposing of all LLW waste at the CRL site, including evidence that CNL meaningfully engaged Indigenous parties in this process, prior to approving of the current NSDF proposal.

AOPFN Recommendation #5: AECL and CNL to engage AOPFN in a planning process regarding the desired end land use state for the CRL as a whole, prior to making determinations on where and how to permanently dispose of radioactive wastes currently at the site.

B. Lack of Willingness to Adhere to the “Willing Host” Principle or Commit to Respect for AOPFN’s Free, Prior and Informed Consent Decision

AOPFN Issues and Evidence

129. The AOPFN has been consistent since early in our engagement in the review of the proposed NSDF Project that a couple of key principles must be respected by CNL, AECL and CNSC. They are the “Willing Host” principle and the principle of proponents and the Crown respecting and adhering to Indigenous FPIC decisions. The AOPFN posed written questions on this topic to CNL, AECL and CNSC staff in March 2021, and expressed the following positions in that document (AOPFN 2021d):

“It is AOPFN’s position that for all proposed projects in its traditional territory, AOPFN has the right to provide or withhold consent, following the principle of Free, Prior and Informed Consent, as identified in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)... AOPFN’s position is that the “Willing Host” approach should be applied to both NSDF and NPD with respect to AOPFN.”

130. The “Willing Host” principle holds that industrial facilities, especially facilities like the NSDF, which would be a permanent hazardous waste disposal facility, should only be built if they have the aforementioned “Willing Host” - the people who live around and have rights in the area that would be impacted need to support the facility being situated there.

131. The AOPFN has identified that we need to be a “Willing Host” for this permanent hazardous waste disposal facility. This is backed by Canada’s UNDRIP commitments and supported by the precedent decision of Ontario Power Generation to honour the Saugeen Ojibway Nation plebiscite to reject the Bruce Deep Geological Repository (DGR). It is also consistent with less formal, but no less clear, opportunities provided by the Nuclear Waste Management Organization to Indigenous and non-Indigenous communities alike to accept or reject the opportunity to host the DGR.

132. Linked to the “Willing Host” principle but enhanced because it is a recognized requirement under Canadian and international law, is the idea that AOPFN’s FPIC should be sought and when that determination is made - regardless of whether the consent is provided or withheld - should be adhered to. The concept of FPIC is central to AOPFN’s *Consultation, Engagement and Accommodation Requirements for all Nuclear Sector Proposed Development in AOPFN Territory*:

“Principle 1: As a self-governing Indigenous Nation, AOPFN’s right of free, prior and informed consent for nuclear projects will be respected.” (AOPFN, 2021b)

CNL Responses and Commitments

133. CNL and AECL have not endorsed the need for a “Willing Host”, nor have they indicated that they will respect AOPFN’s FPIC decision in relation to the NSDF proposal.
134. CNL and AECL have suggested that the “Willing Host” principle may not apply for the NSDF, in part because the vast majority of the radioactive wastes are already at the CRL site. CNL’s rationale for not endorsing the need for a “Willing Host” is as follows:

“CNL has an obligation to address federal nuclear liabilities and carry out activities which support the goal of responsibly managing radioactive waste. It is not possible for CNL to commit to “willing host” as a requirement for the NSDF Project to proceed. CNL is of the opinion that the NSDF Project is necessary to enable environmental remediation and will result in general improvement of the current conditions at the CRL site”. (CNL, 2021b)
135. In response to direct questioning re: respect for AOPFN FPIC, the CNSC has also responded, most recently in the Rights Impact Assessment:

“CNSC’s view with regards to FPIC is that processes for consultation and engagement with Indigenous peoples, including public Commission proceedings, are mindful of the principles articulated in UNDRIP, including FPIC. In conducting its consultation, regulatory and decision-making processes, CNSC staff follows existing legal frameworks including the Canadian Environmental Assessment Act 2012, the Nuclear Safety and Control Act, and the common law duty to consult”. (AOPFN and CNSC 2021, in CNSC (staff), 2022, PDF pg. 459 of 590)
136. CNSC staff also indicated in the Rights Impact Assessment they “cannot endorse” the Willing Host concept as “licensees or applicants are responsible for the site selection process.” (AOPFN and CNSC 2021, in CNSC (staff), 2022, PDF pg. 459 of 590)

Status of the Issues and Required Conditions/Actions

137. These closely linked issues are outstanding as of the filing of this written submission. CNL and AECL have declined to respect either AOPFN’s right to be a “Willing Host” or to confirm they will respect AOPFN’s FPIC decision in relation to the NSDF Project. From AOPFN’s perspective, this means that the Project as proposed has the potential to undercut AOPFN’s governance and stewardship rights and is contrary to Canada’s commitment to fully implement UNDRIP, and to reconciliation with Indigenous peoples. Lack of support and agreement to AOPFN’s requests reflects a lack of the establishment of a potential meaningful role for AOPFN in the governance and stewardship for the NSDF Project.
138. AECL and CNL’s suggestion is that the presence of the bulk of the radioactive wastes at the site already means that “Willing Host” and FPIC do not really apply. AOPFN holds the contrary is true. The NSDF’s circumstances are among the strongest where FPIC needs to be recognized as a the very real need to garner Indigenous consent, instead of an approach that sees FPIC fall backwards to Canada’s old and outdated policy of Free,

Prior and Informed Consultation. In the NSDF instance, the following characteristics are in play:

- a. Canada is committed to implementing UNDRIP in all federal laws and practice of reconciliation with Indigenous peoples, and FPIC is a requirement under UNDRIP;
 - b. The proposed location is on unceded Algonquin territory;
 - c. The proposed Project is not required as an emergency solution;¹³
 - d. The proposed project could be undertaken successfully and safely in other locations on and off the Chalk River Laboratories; and
 - e. The proposed project is in a special class of developments - hazardous waste disposal facilities - that are subject to heightened FPIC requirements under Section 29(2) of UNDRIP.
139. As a result, the AOPFN holds that in the NSDF instance the need to respect and adhere to Indigenous FPIC is elevated, not reduced. It is the responsibility of the Crown to seek FPIC and to identify what it will do if that FPIC is withheld. The issue of how to achieve FPIC for NSDF, like the issue of the CRL overall, is a problem of Canada's making, not the AOPFN's.
140. AECL and CNL may claim that the AOPFN is seeking a veto over the NSDF Project. This is an unfortunately typical twisting of the concept of FPIC. This notion is a red herring, designed to cause fear from industry, government, and the public that Indigenous peoples will make decisions contrary to the public interest. What it really seeks to do is deflect responsibility away from the Proponent needing to convince Indigenous peoples that the Project should merit consent, and to suggest FPIC is a desirable rather than a mandatory requirement. What CNL and AECL are really saying is that they do not respect the "consent" aspect of FPIC, and that despite Canada creating this problem by not properly engaging Indigenous peoples in the past, an agent of the Crown is willing to further impact on Indigenous peoples by unilaterally choosing where and how to store the radioactive mess created in unceded Algonquin territory.
141. The AOPFN also disagrees with CNL and AECL's stance on "Willing Host". The question of where the wastes are currently found does not eliminate the need to identify a "Willing Host" for their permanent disposal. The AOPFN was never consulted when the facility was developed and radiation-bearing materials were initially brought in or created on site. The AOPFN did not consent to the construction of a nuclear research facility on our traditional lands, nor have we consented to the disposal of radioactive wastes from that facility - let alone from other facilities outside Algonquin territory (see Section 6c below) - on unceded Algonquin territory.
142. The AOPFN agrees with CNSC staff that the identification of a proposed site for a new facility is the responsibility of the Proponent. However, the determination of whether that site is acceptable is part of the CNSC's purview, and a big part of that determination should be the degree of public concern about the proposed site, along with impacts on

¹³ CNSC staff (2022, PDF pg. 16 of 590) notes that "The majority of waste proposed for disposal in the NSDF is either currently in safe storage at the CRL site or would be generated from future operational, decommissioning and environmental remediation activities mainly at the CRL site."

people and the environment. Dealing in a meaningful way with the importance of public concern is at the essence of the “Willing Host” principle. In this case, there is strong evidence of public concern in relation to the location of the NSDF Project as currently proposed, and this needs to be central to the Commission’s deliberations. The absence of a “Willing Host” and the absence of FPIC at this time for the NSDF as proposed therefore should be central facts in the Commission’s deliberations, not peripheral or ignored.

143. The AOPFN remains concerned with the dismissive approach taken to the consent aspect of FPIC by AECL and CNL in particular. At its base, consent means something very simple - the right to make a decision that gets implemented and respected - whether that decision is yes, no, or yes with conditions. Reasonable people do not parse the term “consent” in any other way. Relationships are not built to last where some parties say, “we will respect your consent, unless you withhold it”.
144. In the end, the AOPFN is insisting on the decisions we make having meaning and purchase. The days of provision by Indigenous peoples of refusable advice on projects that impact on our territories should be over. Concerns about “vetos” are misplaced and put the blame on the shoulders of Indigenous peoples who have not created the problem in the first place. Canada has to be committed for FPIC to actually mean something. If the AOPFN can’t say “no” to a proposal like NSDF, how can the AOPFN say “yes”?
145. The AOPFN recognizes that the CNSC has a legislated mandate to make one level of government decision on whether NSDF should proceed and under what conditions. The AOPFN is contributing meaningfully to that required decision and asks that the federal Crown respects AOPFN’s required FPIC decision as well.
146. AOPFN reiterates the importance of CNL, AECL and other agents of the Crown adhering to AOPFN’s FPIC decision when it is provided. AOPFN will pursue the protections Canada has committed to when it signed on to UNDRIP with all necessary vigour.
147. In addition, the AOPFN notes that CNL and AECL have never talked with the AOPFN about what process would be entered into if the AOPFN decides to withhold FPIC for the NSDF. If CNL and AECL are truly committed to building a relationship, planning for the possibility of both paths – what happens if the AOPFN gives consent and what happens if the AOPFN withholds consent – should be a priority focus in relationship-level discussions.
148. AOPFN recommends the following:

AOPFN Recommendation #6: AOPFN requests that CNL, AECL and the CNSC all respect and adhere to AOPFN’s Free, Prior and Informed Consent decision on the NSDF Project proposal when it is made.

AOPFN Recommendation #7: CNL and AECL are requested to work with the AOPFN, prior to the hearing, to identify a process that will be implemented should AOPFN’s Free, Prior and Informed Consent be withheld for the NSDF Project.

C. Importation of nuclear waste from outside AOPFN territory

AOPFN Issues and Evidence

149. The AOPFN recognizes that LLW at CRL need to be permanently disposed of, though it is an open question whether the proposed NSDF is the best approach. However, CNL has also proposed to add as much as 10% of the total waste stream from off-site sources. These wastes may be imported to the NSDF for approximately 50 years (CNSC (staff), 2022, PDF pg. 16 of 590).
150. The importation of radioactive waste from other facilities, is opposed to the AOPFN's nuclear sector principles and the Anishinabek Nation and Iroquois Caucus (2017) *Declaration on Nuclear Wastes* which calls for “no imports or exports” of nuclear wastes.
151. In the AOPFN AKLUS, one interview participant expressed alarm at the idea that the NSDF could be taking waste from other nuclear sites throughout Canada, as this poses additional risk to the areas it would be traveling through and adding to, rather than reducing, the amount of radioactive waste (and associated risk) at the CRL site:

“The idea that it’s going to house toxic or radioactive waste from other sites other than just what Chalk River produces also is alarming to me.” (Taylor et al, 2020, pg. 48)
152. Another AKLUS participant was concerned about waste being transported to the site for disposal from other facilities. They felt that each site should take care of their own “garbage” and not inundate their Nation’s territory with waste from other areas:

“Please don’t accept waste from other places would be the big one, because no amount of money – like, they’re not accepting the waste out of the goodness of their heart, and they’re not – no amount of money is worth transporting radioactive waste from wherever it is. [...] Why is our site – and I say “our site” because they are in our Nation – why is our site the best site, the most protected site, you know what I mean, like the safest site for someone else’s radioactive waste to go? Cheapest site probably. But I don’t know, I think they should take care of their own garbage. That’s just my thoughts... everyone should take care of their own garbage. (Taylor et al, 2020, pg. 51)
153. The AOPFN is deeply concerned by the inclusion of up to 10% of wastes from sources outside of Algonquin territory into its NSDF waste stream. Canada has made a big mess in AOPFN territory and now is asking to bring more waste in as part of a plan to ‘clean CRL up’? The AOPFN has made it clear that unceded Algonquin territory should not be a dumping ground for the Crown’s garbage, and asked CNL and AECL to commit not to import any off-site wastes to the NSDF without AOPFN permissions. Specifically, the AOPFN asked CNL to commit to requiring AOPFN co-approval for any import of radioactive materials from off the CRL site to the NSDF Project, in line with Principle #10 in *Consultation, Engagement and Accommodation Requirements for all Nuclear Sector Proposed Development in AOPFN Territory*.¹⁴

¹⁴ See Appendix C; the specific Principle #10 states “No nuclear wastes will be moved into or out of AOPFN territory without AOPFN explicit permissions.”

154. The AOPFN is particularly concerned about importing radioactive wastes from outside of Algonquin territory. The AOPFN agrees in general with the principle of concentration of wastes within a jurisdiction. In this case, the jurisdiction that the AOPFN is concerned about is unceded Algonquin territory. As a result, wastes from facilities within Algonquin territory could be considered by the AOPFN for permissions to be placed in the NSDF, including from facilities like NPD, BWX Technologies, SRB Technologies, or hospitals and universities within Algonquin territory.
155. And the AOPFN also notes that what we have called for is not a blanket refusal to allow the movement of radioactive wastes into and around Algonquin territory, but rather the requirement of AOPFN permissions whenever this is contemplated. The AOPFN has a rightful governance and stewardship role in our territory that makes this co-management role a critical one. We will make informed choices, but we must have the choice that Canada has withheld from us to date.

CNL Responses and Commitments

156. To date, CNL and AECL have made no such commitment. AOPFN has requested that CNL and AECL commit to getting AOPFN support before bringing any radioactive wastes from other off-site facilities to the NSDF. In its response to this commitment sought by AOPFN, CNL has indicated that it is committed to achieving understanding and support from the AOPFN with respect to the proposed off-site waste streams as described in the NSDF Project EIS. CNL has also indicated that if it was to contemplate receipt of any waste stream not currently described in the NSDF EIS or licensing basis documents for NSDF, CNL is committed to early engagement and support from the AOPFN on the receipt of a new waste stream, prior to pursuing regulatory approvals.
157. CNL and AECL have indicated that the importation of waste will be subject to regulatory requirements. In CNL's Dispositions to the AOPFN's comments on the 2019 draft EIS, in response to the AOPFN's comment #4, CNL has indicated that:
- “Transportation of waste at the CRL site is currently a routine operation for CNL and is not an activity that will be new as a result of the NSDF project. Similarly, transportation of waste from off-site locations is also not specific to the NSDF project. The transportation of waste on and off-site of the CRL site is an activity covered by the existing CRL site licence and other additional transport regulations”. (CNL 2021c)
158. In the same comment, CNL says:
- “The transportation of waste from external sites to the NSDF is outside the scope of the Environmental Assessment for the NSDF and is managed by Transport Canada's *Transportation of Dangerous Goods Regulations* and CNSC's *Packaging and Transport of Nuclear Substances Regulations*. Approximately ten percent of the waste volume will come from off-site sources (e.g., Whiteshell Laboratories, commercial waste sources such as hospitals and universities). At present, waste transported to CRL from off- site generators is incorporated into

the existing Integrated Waste Strategy and is part of routine operations at the CRL site; transportation of waste from off-site locations is not specific to the NSDF Project.” (CNL, 2021c)

Status of Issues and Required Conditions/Actions

159. As of the filing of this written submission, the “external waste stream” remains an outstanding issue for the AOPFN. What we have asked for in relation to the NSDF is reasonable and rightful, and it has not been adopted by CNL/AECL as yet. If the NSDF does proceed, it does not need to involve Canada importing new wastes into unceded Algonquin territory; there is no technical or economic requirement for this to happen. Algonquin peoples are in support of cleaning up the mess that Canada has made in our territory. Bringing in new waste in no way helps accomplish this goal, and in fact is contradictory to it.
160. CNL has committed only to not add any additional new waste streams for NSDF without consultation with the AOPFN. This does not deal with the 10% of off-site waste already in the NSDF’s proposed waste stream that is AOPFN’s concern. This up to 100,000 cubic metres of LLW; it is not an insignificant amount. CNL and AECL have provided no rationale for why importing these wastes is important to either project economics or feasibility, and no compelling argument for why AOPFN should accept more waste at the CRL site, which is the opposite of a “solution” for reducing radioactive waste risks in unceded Algonquin territory.
161. It is notable that none of the existing waste movement policies, licences and permits CNL is talking about, have involved extensive engagement or consultation with the AOPFN. What CNL is essentially saying is “we already do this without really sharing that information with you or involving you in decisions about how it happens, so why not just let us keep going, and trust the system”? Using the argument that current activities conducted without the knowledge or approvals of Indigenous peoples already occur, as a rationale for why this should continue into the future because “this is currently a routine operation”, is weak and falls well beneath the honour of the Crown.
162. As the British Columbia Supreme Court has found:

“Consultation does not mean explaining, however fulsome, however respectfully, what actions the government is going to take that may or may not ameliorate potential adverse effects. Such a means of dealing with an admittedly difficult issue looks very like “we know best and have your best interests at heart”. First Nations, based on past experience, quite rightly are distrustful and even offended at such an approach. In any event, the Supreme Court of Canada has made abundantly clear, this is a paternalistic and now discredited means of attempting to give meaning to s. 35 rights. Consultation, to be meaningful, requires that affected First Nations be consulted as policy choices are developed on how to deal with potential adverse effects of government action or inaction. Hobson’s choices are no longer sufficient.” (Coastal First Nations v BC 2016 BCSC 34 at para 209)
163. The system must be fixed so that that all importation of radioactive waste into unceded Algonquin territory is subject to Algonquin approvals, not just ceding to the status quo.

The CNL argument only reinforces the importance of this required shift, rather than rebutting it. The "We do it already and have done it for years without your permission" argument fall flat. Relationship building, if that is what CNL and AECL truly want with the AOPFN, starts with recognizing that CNL and AECL need to change NOW, not say "let us do this thing, and then we will change later". The AOPFN addresses this additional gap, which includes but goes beyond the NSDF Project proposal, in our Recommendation #11 below.

164. In the end, the AOPFN finds that in the NSDF proposal CNL and AECL have chosen to rely on the status quo re: importation of waste – the old system where they decide how to act without meaningfully engaging Indigenous peoples beforehand. This system is no longer acceptable; just because CNL and AECL may not like the answer from Algonquins, is no longer an excuse not to ask the question.

165. The AOPFN requests the following:

AOPFN Recommendation #8: CNL proactively remove the 10% of potential "off-site" waste from its proposed NSDF waste stream.

AOPFN Recommendation #9: CNL commit to not contemplate importing any wastes from outside AOPFN territory to the NSDF without written AOPFN permission.

AOPFN Recommendation #10: If the CNSC issues permission for the NSDF to be developed, these permissions be made contingent on the 10% of off-site waste being removed from the NSDF Project stream. The CNSC should further identify that it will not allow for the importation of off-site wastes in any operations stage licence for the NSDF without evidence of Indigenous support for these off-site waste streams.

AOPFN Recommendation #11: CNL and AECL to proactively, or in the absence of this, the Commission to require these parties, to conduct an engagement/consultation exercise with impacted Indigenous groups, where all known and suspected locations at the Chalk River Laboratories where radioactive waste is currently housed, and the nature, current storage, and proposed future storage, transportation, and disposal plans for those wastes, are transparently communicated. In addition, the CNSC should require that a report of this consultation process, verified by the Indigenous groups and showing their recommendations and associated CNL and AECL commitments, be filed with the CNSC within the next two years.

D. Inadequate Consideration of Algonquin Knowledge leading to inaccurate assessment of effects on AOPFN traditional land and resource use

AOPFN Issues and Evidence

I) Inadequate Consideration of Algonquin Knowledge in the Assessment Process

166. One of the key reasons that CNL has underestimated impacts on traditional land and resource use (TLRU), culture and Algonquin well-being in the NSDF Project Case is because CNL does not hold or understand Algonquin Knowledge, nor did it integrate Algonquin Knowledge adequately into its assessment.

167. Algonquin Ecological Knowledge (AEK), an aspect of Algonquin Knowledge, is described in the AKLUS:

“[AOPFN members] hold deep and specialized knowledge of the ecology of their territory, from the waterways that extend across these lands to the seasonal patterns of the animals that live throughout them. This understanding is built through years of firsthand experience, as well as inherent cultural understandings of the relationships between humans, animals, the lands and waters. Participants have also come to understand the ecology of their environment through knowledge and teachings that have been passed down through relations, or generations, within their community... In many ways, the AEK of participants is connected to cultural and land-based harvesting practices such as hunting, fishing, trapping, and gathering foods, medicines, or other natural materials. AEK is woven into the fabric of AOPFN’s culture in many different ways as it can be deeply connected to ceremony, harvesting, and other cultural or traditional practices.” (Taylor et al, 2020)

168. AOPFN has flagged concerns about the adequacy of Algonquin Knowledge integration into the CNSC process in prior submissions to the CNSC. For example, AOPFN (2020) spoke directly to the Commission, asking that in the future, the Commission put forth greater effort to seek, understand, and include consideration of Indigenous Knowledge in all regulatory decisions and reviews for Projects.
169. It is against this expected higher standard that AOPFN reviewed the integration of Algonquin Knowledge in the NSDF Project assessment process. Unfortunately, these standards have not been met, and that has impacted on the credibility of some of the effects predictions by the Proponent. Gaps in the incorporation of Algonquin Knowledge by CNL in this case include:
 - a. Determination of impacts on AOPFN TLRU, culture, and well-being prior to the conduct of any AOPFN studies. We note that the Draft EIS for the NSDF was completed and filed prior to the completion of the AOPFN AKLUS Report. This is symptomatic of the fact that the EIS was largely developed without the benefit of AOPFN Algonquin Knowledge;
 - b. Not including Algonquin Knowledge holders in the assessment of effects on TLRU, culture, and well-being at any point in the assessment process, despite Algonquin Knowledge holders being the clear experts on these valued components;¹⁵ and
 - c. Not revising the ultimate findings of the EIS to recognize likely adverse impacts on TLRU, culture, and well-being, even after AOPFN provided compelling evidence of their existence in its studies.

¹⁵ AOPFN noted in our EIS Comment #15 that Indigenous peoples played no role in the residual effects classification process itself (of the EIS), either in the identification of the methods used or in the conduct of the exercise on a Valued Component-specific basis: “This goes against the expectation, identified as a primary goal of the EA process at the start of Section 5 (pg. 5-1), to “engage Indigenous peoples”. Indigenous peoples are the only ones with Indigenous knowledge to bring to the effects classification process, so an entire realm of knowledge was not included in this process. In addition, the Indigenous worldview brings different lenses to the effects classification process that would enrich it. In the absence of a role for Indigenous peoples in this process, the confidence that is held in the Proponent’s effects predictions must be downgraded”. (Two-Axe Kohoko, 2020) We note as well that no changes were made to the final EIS to deal with this AOPFN concern.

170. The AOPFN notes that both CNL (for the Diet and Harvest, and Culture and Rights studies) and the CNSC staff (for the AOPFN AKLUS and the Rights Impact Assessment), ended up providing capacity support for the AOPFN to gather Algonquin Knowledge. Lack of capacity is always an issue for Indigenous Nations like ours who do not have self-funding capacity, and we are grateful for the capacity funding provided in this instance.
171. Where the key gap emerges is between the data gathered and presented and how – and especially by whom – it is re-interpreted. Both CNL and CNSC staff have weighed in with their own re-interpretations of impacts on valued components – namely Indigenous TLRU, culture, and Indigenous well-being. And in doing so, they have underestimated impacts on these valued components, all the while ignoring inputs from the experts themselves -Algonquin peoples, the holders of Algonquin Knowledge – that show there will be measurable adverse residual impacts on these valued components from the Project. It is this gap between data, interpretation and ultimate findings that is the primary source of AOPFN’s remaining concerns on this topic.

As an aside to the main thrust of this submission, the AOPFN would like to take this opportunity to flag a process improvement for the Commission moving forward. Our members, staff and leaders find the CNSC hearing process to be quite alienating, with its legalistic setting, narrowly constrained scope, focus on scientific expertise, and pre-defined and short time limits for presentations. Moving forward, we recommend that for major project hearings like the NSDF and NPD, that the CNSC consider holding less formal, more welcoming “Indigenous Knowledge” portions of your hearings. Our members want to tell your our stories of change, loss and desired futures. They want to tell you to hear directly from them on what needs to be done to protect the land and promote healing. But the current process, including the proposed hearing structure for NSDF, is not conducive to this desire. The AOPFN recommends the following:

AOPFN Recommendation #12: The Commission build discrete “Indigenous Knowledge” settings into future hearing processes, where panels from Indigenous Nations can present their Indigenous Knowledge, findings and recommendations to the Commissioners in an Indigenous-appropriate, welcoming setting.

II) Inadequate Assessment of Impacts to Algonquin Traditional Land and Resource Use

172. AOPFN has from the outset fundamentally disagreed with the approach taken to the assessment of TLRU by CNL. As we noted in our EIS Comment #26:

“The assessment of Traditional Land and Resource Use in Section 6.4 is based upon limited to no AOPFN Traditional Knowledge, and thus it is premature for the Proponent to suggest that there are limited to no impacts on AOPFN Traditional Land and Resources Use and that a cumulative effects assessment is not required.” (Two-Axe Kohoko, 2020)

173. AOPFN has flagged to CNL and the CNSC these substantial gaps that exist in the EIS in the approach used for the assessment on TLRU. Firstly, the EIS places a strong focus on biophysical factors and physical access, ignoring other factors that may diminish or

impede AOPFN Traditional use such as sensory experience (changes in noise, smell, visual appearance of the landscape) and AOPFN members sense of safety on the land (fears of contamination real or perceived). The AKLUS for NSDF captures many of these concerns which should have been incorporated in the EIS' effects assessment. The AOPFN also communicated to CNL that good practice dictates that all potential impact pathways should be considered, and that for impacts on the human environment they should be considered by the people who would be impacted themselves, not solely outsiders with no traditional knowledge of how we use and value the location and its surroundings. (AOPFN, 2021c).

174. AOPFN presented a large amount of evidence about existing impacts from the CRL on AOPFN TLRU (discussed previously in Section 5). This evidence establishes, as CNL correctly asserts, that current and longstanding alienation and loss of use of AOPFN members from “inside the CRL fence-line” is total. AOPFN members cannot access the CRL. Therefore, on-site alienation, in a geographic sense, is not a new impact from the NSDF Project.
175. In the Culture and Rights Study, Diet and Harvest Study, and Rights Impact Assessment, the AOPFN has shown that what the NSDF would contribute, however, is high potential for further adverse residual impacts on AOPFN TLRU in the following ways:
 - a. Increase the length of time into the future where portions of the CRL facility will likely be inaccessible to AOPFN use – due to permanent access restrictions and habitat alterations;
 - b. Increasing the length of time, severity and possibly even the geographic area, where AOPFN willingness to use areas off the CRL site are impacted by the permanent presence of radioactive wastes in the NSDF, including especially through concerns about contamination risks on wildlife, plants and waters; and
 - c. Slightly reducing the area of natural forested habitat for important animal and plant species; 33 hectares of cleared forest is not insignificant to the AOPFN.
176. The AOPFN's concerns about the NSDF revolve around contamination and the potential impact on flora and fauna of the area and highlight the anxiety, stress, and skepticism around the current state of contamination from past CRL development and future projects like the NSDF proposal. The AOPFN Diet and Harvest Study (Fediuk et al 2021, pg. 86) lists as high priority TLRU-related concerns about the NSDF raised by AOPFN members:
 - a. Concerns about further contamination of water, land, wildlife from placing radioactive materials permanently into the earth in a near surface location near the Kichi-Sìbi; and
 - b. Lack of trust in claims by the site owner and operator about contamination.¹⁶
177. These concerns are pervasive amongst AOPFN members and have not been removed by assertions made by CNL that the NSDF will not have physical or biophysical impacts

¹⁶ One AOPFN member stated, “I need confirmation that there will be no leaching of toxic products and that the construction and operation will not affect the volatile ecosystem in and around the site” (Fediuk et al, 2021, pg. 86).

beyond the CRL site boundaries. The gulf between what CNL is claiming and what Indigenous peoples believe, feel, and act on remains large and is a viable impact pathway moving forward.

178. The CRL and the surrounding area already experiences a stigma of being unhealthy and polluted, much of it associated with nuclear activities. The concerns stated about the NSDF build off that stigma and extrapolate them long into the future, because of the permanent nature of the Project. The Diet and Harvest Study found:
- “Continuing the ongoing alienation of AOPFN members from accessing this part of their unceded territory for an additional several hundred years, and the imposition of a permanent radioactive waste disposal facility at CRL, is highly likely to exacerbate mental health, food security, and nutrition concerns. Dominating the survey, focus group and interview results was a high degree of AOPFN member uncertainty about the relative contamination of the water, wildlife, plants and medicines as well as what could additionally happen as a result of the NSDF. There is currently a lack of sufficient data to allow members to trust that CNL is not damaging the environment.” (Fediuk et al, 2021, pg. 104)
179. For AOPFN members, TLRU and food security are closely linked. In the Diet and Harvest Study, AOPFN members were asked about their concerns in relation to the project and its effects on diet and harvesting. Key themes include:
- Avoidance due to safety/contamination concerns and habitat changes;
 - Continuation of lack of access to portions of the CRL site into the farther future, including lack of access to good moose and deer habitat on site;
 - Lack of confidence in health of animals, fish, plants, medicines, and water both within and outside of CRL boundaries; and
 - Impacts on the ability of future generations to practice cultural activities” (Fediuk et al, 2021, pg. 85)
180. When asked to identify which of several factors act to limit traditional food use and harvesting by AOPFN families, the Diet and Harvest Study found that 39% of all respondents and 47% of active harvesters indicated that “uncertain quality/safety of food from nuclear facilities” was a contributing factor (Fediuk et al, 2021, pg. 69). This ranked as the second largest factors limiting traditional food use and harvesting.
181. The results of the Diet and Harvest Study and the associated NSDF Culture and Rights Study (Malone et al. 2021) indicate that the NSDF is likely to contribute to the continuation, possible exacerbation, and temporal extension of chronic ongoing alienation from portions of the CRL site (Malone et al. 2021) and contribute to uncertainty about the safety of Algonquin foods in the territory.
182. The Culture and Rights Study concurred:
- “Barriers to access that have been in place for over 75 years will remain in place for the lifetime of the Project (300 years), preventing AOPFN members from accessing this part of their unceded territory for the duration of the Project. This is a much longer timeframe for impacts from the CRL site than has previously been communicated to AOPFN members by the Crown. This likely temporal extension to existing lack of access will likely prevent AOPFN members from practicing

Harvesting and Traditional Use rights because they cannot access the NSDF portion of the CRL site to harvest resources or partake in other cultural activities, for a longer period of time.” (Malone et al, 2021, pg. 87)

183. In summary, according to AOPFN members the NSDF Project is likely to impact AOPFN TLRU at the NSDF and surrounding areas by contributing to and potentially exacerbating on a longer-term basis, physical alienation from the land, and exacerbating concerns about contamination of water, land, plants, and wildlife in proximity to the Project. Both should be considered valid Project-specific residual effects on AOPFN TLRU. The AOPFN provided the three relevant AOPFN studies to CNL and sent CNL an “AKLUS Implications Letter” which identified:

“We do not find these findings in agreement with the Proponent’s assertion in the EIS that the Project is unlikely to have any adverse effects on AOPFN traditional land and resource use or Aboriginal rights. The evidence indicates that AOPFN members have values in the Project-affected vicinity, and AOPFN members have flagged concerns about impacts specific to the Project. In AOPFN’s opinion, the proper course of action is for CNL to revise its impact assessment on TLRU to recognize that the Project is likely to cause additional incremental adverse effects on AOPFN traditional land and resource use.” (AOPFN, 2021c)

CNL Responses and Commitments

184. AOPFN’s study findings and issues/concerns have not led to any update in the Proponent’s findings on TLRU in the final EIS. While CNL did provide some further detail about AOPFN land use in the final EIS, CNL still claims that the NSDF will cause no measurable adverse effects on TLRU, despite the evidence of the Algonquin Knowledge holders and land users themselves.
185. CNL argues and notes the following in its final EIS (as summarized at PDF pg. 98 of 171 in CNL’s (2022) CMD):
- “...residual effects from the NSDF Project on traditional land and resources use are not significant. CNL acknowledges the AOO and the AOPFN disagree with this conclusion and contend there are project specific activities that may directly impact traditional land uses and Aboriginal rights and interests beyond the CRL site. Thus this concern will remain unresolved between CNL and the AOO and the AOPFN”.
186. While the final EIS does incorporate some new baseline information from the AOPFN studies, and the final EIS identifies areas of disagreement between the AOPFN and CNL on this valued component, no meaningful revisions are made to the assessment methodology or outcomes on the basis of the AOPFN’s expert inputs from the studies. In the final EIS, the Proponent suggests that a future with the NSDF Project will not result in any measurable adverse effects on Indigenous TLRU. The argument used by CNL is essentially that because the NSDF is not predicted by them to have any biophysical adverse effects outside of the CRL, and the CRL is already completely off limits to Indigenous TLRU, it is impossible that the NSDF could make conditions for TLRU worse than they already are.

187. CNL has since seen and has said it has integrated the results into its EIS of the three AOPFN studies (Diet and Harvest, Culture and Rights, and AKLUS). Each of these three studies clearly identify Project-specific impact pathways on AOPFN TLRU. Regardless, the final EIS notes only that the AOPFN and CNL disagree on this topic, and the final EIS and still finds **no** residual adverse effects on Indigenous TLRU.
188. Despite these continued gaps, to its credit CNL has made a series of commitments to the AOPFN that will lead to a marked increase in the role that the AOPFN will play in future planning, monitoring and adaptive management of the proposed NSDF. Those commitments are laid out in CNL’s NSDF Project “Consolidated Commitment Lists” (CNL 2021b), and include:
- a. Involvement of the AOPFN in the Sustainable Forest Management Plan for the Chalk River Laboratories;
 - b. Funding for, and implementation of, the AOPFN Neya Wabun Guardian Program, with the NSDF as a pilot project;
 - c. Joint development of additional habitat and other protective measures for monz (moose), wawashkeshi (deer);
 - d. Joint development of a TLRU Site Discovery Plan;
 - e. Four-season Algonquin Knowledge data collection by AOPFN with opportunities for harvesting resources prior to any site clearing; and
 - f. Application of a new AOPFN-led Country Foods Monitoring and Risk Communication Program, with the NSDF as a pilot application site if it proceeds
189. One area where CNL commitments are likely to reduce impacts on TLRU is the commitment made to support an AOPFN-led Country Foods Monitoring and Risk Communication Program for AECL-owned, CNL-operated facilities within Algonquin territory, using the NSDF Project as a pilot project. CNL and AECL have provided funding for AOPFN to develop a scope and structure for this program, which will be closely linked to both the AOPFN’s fledgling Neya Wabun Guardian Program and CNL’s on-site technical monitoring and reporting system.
190. This Country Foods Monitoring and Risk Communication Program will hopefully reduce AOPFN members’ contamination and other risk perception concerns, in part by adding Algonquin Knowledge and AOPFN members to data collection and communications on this topic.
191. These commitments will be a step in the right direction toward re-establishing the AOPFN as stewards of the land and waters at and around the CRL. It should be noted, however, that these measures are primarily of a “catch up” nature and are not a ‘magic bullet’ remedy. This means that they really should have been in place some time ago, but the AOPFN has been effectively shut out of governance and stewardship of the CRL since the 1940s.

Status of Issues and Required Conditions/Actions

192. This issue is still outstanding as of the filing of this submission. The AOPFN notes that in its CMD, CNSC staff echoes the CNL estimations and effectively dismissed the

AOPFN's. CNSC staff found the following in relation to impacts on Indigenous TLRU: "With [a number of biophysical] measures also applied to address effects on Indigenous uses, CNSC staff have found that there will be no significant adverse environmental effects to access and the quality and quantity of hunting, fishing, trapping and gathering activities, during all phases of the NSDF Project." (CNSC (staff), 2022, PDF pg. 273 of 590). The AOPFN continues to disagree with these findings.

193. The AOPFN notes that CNL has made some meaningful revisions to its NSDF Project monitoring, implementation, and adaptive management planning that may be relevant to reducing impacts on AOPFN TLRU. This is to be applauded but this is not a cure-all solution. Pg 316 of 590 CNSC staff (2022) states "With respect to concerns around fear and avoidance, CNSC staff understand that CNL has committed to engaging AOPFN in relation to follow-up and monitoring plans and programs for the Project.". Here the CNSC staff is conflating a partial mitigation measure with a solution. AOPFN members have very low tolerance for using lands impacted by, or even near, radioactive waste, especially near water, the NSDF is likely to increase fear, stigma and alienation associated with the CRL rather than reduce it, and this will last longer into the future. We cannot assume that risk communication will remove these fears and stigmas, even if it is essential to do this work. Fear and avoidance are unlikely to be removed in their entirety by even the most effective follow up monitoring and risk communication programs. There will still be residual adverse effects on TLRU, something that should have been recognized in both the Proponent's and CNSC staff's filings.
194. Despite these changes, CNL has refused to recognize in the face of the available evidence that residual adverse effects on AOPFN TLRU are likely in the Project Case. Despite the provision of ample evidence by the AOPFN that the NSDF Project will have measurable adverse effects on AOPFN TLRU, the final EIS sticks to the original claim by CNL that no such impacts are likely to occur. This makes the Proponent's estimation of effects on these critical values incorrect, and they should not be credited by the CNSC. The AOPFN is disappointed that despite the evidence filed by the AOPFN, and despite the consistent impact pathways on TLRU flagged in engagements of AOPFN staff, Chief and Council and community members with CNL, the Proponent has refused to recognize these as valid impact pathways. This suggests an unwillingness to consider Algonquin Knowledge – the expert perspectives of the impacted peoples themselves - equally alongside western science.
195. Biophysical risk and impact reduction is just one part of the TLRU puzzle. Also emphasized in the AOPFN studies is the potential for impacts to extend beyond the physical risks of contamination. CNL's EIS does not provide an ample amount of information or suggest CNL understands the dynamics that shape traditional land and resources use and, critically, loss of use and alienation. CNL's characterization of AOPFN's TLRU and values is weak. The CNL depiction doesn't even come close to depicting how AOPFN members are connected and disconnected from the CRL site or the NSDF location within it, how they feel about the site or what impacts there have been and will be or their magnitude, and what should be done to fix these problems. The AOPFN's detailed concerns with this characterization are provided below.
196. CNL has effectively ignored the AOPFN's evidence or attempted to use it to suggest that "the damage is already done" and that the NSDF will not make existing alienation

(already total on site at CRL) any worse, by definition. CNL argues that because it is their technical, scientific opinion that no measurable adverse effects will occur outside of the CRL, and the inside of the CRL site is not accessible to AOPFN members for TLRU purposes nor will it be for the foreseeable future, that no adverse effects on TLRU are possible.

197. The AOPFN recommends that CNL revise its estimation of effects on TLRU to reflect the lived experience and perspectives of Indigenous peoples, as expressed in the AOPFN studies. We also recommend that the Commission find that the NSDF, as proposed, is likely to have measurable residual adverse effects on TLRU and develop conditions and/or require the Proponent to work with Indigenous peoples to develop conditions to minimize and accommodate for these likely residual adverse effects on TLRU. The AOPFN is not suggesting that Project-specific adverse residual effects on TLRU will necessarily be significant. However, they clearly exist, as low to moderate residual Project-specific adverse effects on AOPFN harvesting and traditional use rights are recognized by both the CNSC staff and AOPFN in the Rights Impact Assessment (see Section 6f below). And once a measurable residual adverse effect is found on a valued component, a cumulative effects assessment must be completed as well, and this is necessary for TLRU in relation to the NSDF.
198. In light of remaining gaps in the assessment of Project effects on TLRU, the AOPFN recommends the following:

AOPFN Recommendation #13: CNL recognize on the basis of the evidence filed by the AOPFN that measurable adverse residual effects on AOPFN traditional land and resource use are likely from the NSDF Project, and as a result, that a proper cumulative effects assessment is required and will be conducted by CNL in collaboration with impacted Indigenous groups.

AOPFN Recommendation #14: Should CNL adhere to AOPFN Recommendation #13, the Commission is requested to find that measurable adverse impacts on AOPFN traditional land and resource use are likely from the NSDF Project, and require CNL to conduct a proper cumulative effects assessment on traditional land and resource use in collaboration with impacted Indigenous groups.

AOPFN Recommendation #15: Should it allow the NSDF to proceed, CNSC to implement specific traditional land and resource use-related conditions into the Project licence, and/or require a formal traditional land and resource use effects consultation and accommodation identification process prior to final permissions to construct.

E. Impacts on AOPFN Culture and Well-Being

AOPFN Issues and Evidence

199. Indigenous culture goes far beyond physical heritage resources. “For many AOPFN members, their culture is the foundation of their personal identity, and the values, beliefs, knowledge, skills, symbols and activities that are built into their culture provides the “glue” for their well-being and connection to other members of their community and culture group”. (Malone et al, 2021, 14)

200. The AOPFN flagged for CNL that the following culture-related values were not adequately considered in the draft EIS: bald eagle, culturally important plants, key cultural sites, Kich-Sibi as a cultural landscape and AOPFN member cultural continuity and way of life. (Two-Axe Kohoko, 2020; AOPFN, 2021c) In particular, the AOPFN noted that the focus in the EIS on “culture” is almost exclusively on physical heritage resources. This is only a small part of the concept of “culture” from an Algonquin perspective.
201. The AKLUS supports AOPFN’s concern that the Proponent has underestimated the Project’s impacts on AOPFN culture and heritage resources. The AKLUS demonstrates that highly valued key cultural areas exist in close proximity to the Project such as:
- Pointe au Baptême – both a historic and highly valued gathering place for AOPFN members and AOPFN ancestors;
 - Kichi-Sibi (Ottawa River) – a highly valued cultural, spiritual and historic area due to its historic use as a major travel route by Algonquin ancestors and its use as a travel route to other cultural sites, providing access to these locations; and
 - Oiseau Rock – an Algonquin cultural and spiritual site located across from Chalk River Laboratories, important for ceremony and a sacred area. (AOPFN, 2021c)
202. The Rights Impact Assessment details concerns that the AOPFN has about current conditions and change over time related to culture in the NSDF Project area:
- “AOPFN does not consider impacts to culture to be automatically negligible or low magnitude, however, because AOPFN does not agree with using a current, “damaged” baseline, as the proper measurement of change in the Project Case. From AOPFN’s perspective, this is an existing, largely to completely unrecognized and completely unaccommodated for, cultural rights infringement, and does not excuse the accumulation of additional, even longer-term (permanent) adverse effects on AOPFN’s cultural rights. AOPFN was alienated from the CRL site by government actions; that alienation was never voluntary and at the present day, AOPFN members have indicated they want to reconnect culturally with the CRL site. From AOPFN’s perspective, impacts on culture need to be considered in light of this desired reconnection to the practicability of the right in this location, not solely to current practice of the right(s).” (AOPFN and CNSC, 2021, PDF pg.467 of 590 in CNSC (staff), 2022)
203. The AOPFN also found that the draft and final EIS do not do an adequate job scoping, assessing, or mitigating impacts on overall AOPFN well-being. For Indigenous peoples, well-being is intricately tied to the experience and perception of the lands, waters, resources, and spirit imbued in unceded Algonquin territory. These aspects of well-being were not meaningfully considered in the EIS.
204. One of the critical gaps in relation to the assessment of effects on Indigenous well-being is the absence of consideration of psychosocial effects – fear, stigma, uncertainty, lack of agency – associated with radioactive waste disposal in general and the CRL site in particular. These psychosocial effects can and do have real world adverse health outcomes for Indigenous peoples and are particularly pronounced in relation to nuclear sector project. (Narratives Inc., 2020)

205. The Diet and Harvest Study (Fediuk et al, 2021, pg. 87) found that health concerns related to the NSDF focus around continued fears over the health and well-being AOPFN members from long-term exposure to contaminants. Perceived risk plays a critical role in the well-being of Indigenous peoples. It makes people change their practices and influences the acceptability of the project. The Diet and Harvest Study found that “without addressing underlying anxiety and alienation concerns, these feelings are likely to increase as a result of the project” (Fediuk et al, 2021, pg. 99). Continued and possibly even heightened perceived risk as a result of placement of a permanent radioactive waste disposal facility via the NSDF will likely continue to lead to real outcomes on the ground in terms of preferential avoidance of areas by AOPFN harvesters. These effects cannot be discounted from their impact on food security, culture, and health.
206. AOPFN notes that there is support for the contention that perceived risk has real life effects on Indigenous peoples’ well-being and ability to enjoy their way of life. The concerns raised about the AOPFN from the NSDF are echoed by evidence from other operations and jurisdictions. There are many examples in Canada where the mere presence of hazardous waste has exerted adverse psychological impacts on Indigenous peoples (e.g., the abandoned Port Radium, Colomac and Giant Mines, the Whiteshell Laboratories in Manitoba – Narratives Inc. 2020).
207. The lack of trusted, easily available, and easy to understand information about Project risks was also a source of concern for AOPFN members:
- “An additional barrier is the lack of access AOPFN participants feel they have to information about the site, in the form of accessible, digestible and trusted data pertaining to the health of water, wildlife, plants, and medicines, as well as overall human health. Based on their experiences with the CRL site and its operations up to this point in time, AOPFN participants are not confident that they will have access to information about accidents, malfunctions, and spills that may occur during the lifetime of the NSDF Project that could impact the land and resources.” (Malone et al, 2021, pg. 87)

CNL Responses and Commitments

208. To its credit, CNL has made several commitments to help offset the impacts on AOPFN culture and well-being. For example, CNL will facilitate opportunities for AOPFN involvement and collaboration in CNL’s cultural resources management program. CNL has also committed to multiple mitigation and monitoring measures in relation to AOPFN cultural practices. The Rights Impact Assessment (AOPFN and CNSC, 2021, PDF pg. 467 of 590 in CNSC (staff), 2022) summarizes some of these measures, including:
- a. Maintaining access to Pointe au Baptême;
 - b. In order to mitigate changes to the landscape, the NSDF Project site will be graded to minimize visibility from the Ottawa River, AOPFN members’ nearest vantage point;
 - c. Development of a co-written, CNL-AOPFN Chance Find Procedure for culture and heritage resources;
 - d. Development of a Project-specific Site Access Plan with AOPFN, to allow for AOPFN members to have higher access to the NSDF Project location, and to support

- location-specific commemoration and/or cultural recognition activities by AOPFN with respect to the NSDF Project, prior to construction and prior to operations;
- e. AOPFN conducting a site inventory at and around the NSDF SSA prior to construction, and harvesting materials where appropriate, prior to clearing activities;
 - f. Development of an Eagle Feather Protocol with AOPFN, with eagle feathers found on site being donated to the Algonquin Way Cultural Centre; and
 - g. Co-development with AOPFN of a Project-specific Cultural Protection Plan.
209. These processes and commitments will increase the likelihood that AOPFN is involved in mitigating and monitoring effects from the NSDF Project on AOPFN cultural practices. Some of these measures, in addition to CNL’s proposed mitigation measures and commitments regarding greater inclusion of AOPFN in the NSDF Project and CRL site monitoring, will work to build trust with AOPFN community members and decrease stigma and perceived contamination concerns. Others may assist in increasing reconnection of AOPFN families that used the site prior to its expropriation and support cultural healing.
210. Notwithstanding the proactive measures flagged above, CNL’s final EIS still does not recognize that the NSDF Project is likely to adversely impact on AOPFN culture and cultural practices. This, despite the AOPFN’s EIS Comments, study results, and consistent flagging of impacts on culture – beyond physical heritage resources – in the Project Case.

Status of Issues and Required Conditions/Actions

211. While AOPFN appreciates CNL and AECL’s willingness to adopt the mitigation measures above, we consider this issue still outstanding. CNL’s commitments to date are appreciated and represent a step forward to “catch up” to the type of collaborative planning, monitoring and management steps that should have been in place at the CRL a long time ago. However, these commitments will not avoid or fully mitigate all cultural and well-being impacts from the Project. The AOPFN has provided evidence in its studies that the NSDF will likely cause the temporal extension of lack of access to and (in the future) willingness to reconnect to the CRL, due to the creation of a permanent hazardous waste disposal facility at the site. It will also likely contribute to and possibly exacerbate psychosocial impacts already associated with the CRL.
212. These assessment problems are echoed and amplified in the CNSC’s staff (2022, pg. 273 of 590) assessment where, using a very narrow scope of cultural impact assessment limited almost exclusively to physical heritage resources, they “conclude that there will be no residual adverse effects to changes in access to cultural resources for ceremonial purposes, including Pointe au Baptême given the proponent’s commitment to continue to provide access to Indigenous Nations and communities.” In addition, in Section 7.4 of its CMD, CNSC staff (2022) do not even consider whether impacts on Indigenous health outside of biophysical sources are likely to occur in the Project Case.
213. AOPFN respectfully disagrees with the CNL EIS and CNSC staff’s findings. AOPFN is disappointed that the EIS and CMD both have nothing to offer about intangible elements of AOPFN culture, despite evidence of the deep cultural connection between AOPFN and the land and waters being shared in AOPFN studies.

214. Some Project-specific impacts, like those on physical heritage resources, are likely to be adequately dealt with through commitments made by CNL. Other Project-specific impacts, such as long-term impacts on AOPFN cultural connection to the area within and near the CRL site and continuation on a longer-term of existing fear and stigma associated with the site, are unavoidable in the Project Case due to its permanence and radioactive nature. The long-term implications of these impacts are neither seriously contemplated nor mitigated in the EIS or CMD.
215. The AOPFN is also disappointed with the narrow reading of what constitutes “health” in the EIS and CNSC CMD. The narrow focus is on radiological and non-radiological contaminants, without considering critical Indigenous determinants of health such as mental health factors like fear, stigma, risk perception, reduced willingness to harvest and consume country foods, loss of connection to the AOPFN cultural landscape, reduced traditional practices and Algonquin Knowledge sharing opportunities, and an overall loss of agency over Algonquin territory. All are effectively ignored by CNL and CNSC staff. A more nuanced approach that embraces an Indigenous determinants of health model, which is increasing becoming the expected norm in Canada, should have been adopted by was not, despite it being flagged by the AOPFN in our EIS Comment #32 (Two Axe Kohoko 2020). This is another example of the detriments, particularly to Indigenous peoples, of narrow assessment scoping beyond our control.
216. In the end, the only credible evidence on likely impacts on AOPFN culture has been provided by AOPFN members and studies. These expert findings have been almost or completely ignored or explained away without merit by CNL and CNSC staff in their impact assessment findings. For one example only, psychosocial impacts are among the biggest issue for Indigenous cultural continuity and well-being, especially given the extremely low tolerance Indigenous peoples have for measurable, observed and perceived contamination. Psychosocial impacts have been completely ignored by Crown and Proponent in this instance, emblematic of the failings of the assessment of NSDF impacts on Indigenous culture and well-being.
217. In relation to impacts on culture and well-being, AOPFN recommends the following:
- AOPFN Recommendation #16: CNL recognize on the basis of the evidence filed by the AOPFN that measurable adverse residual impacts on AOPFN culture and well-being are likely from the NSDF, and conduct a cumulative effects assessment on these valued components prior to the completion of this CNSC process.**
- AOPFN Recommendation #17: If CNL refuses to act on Recommendation #16, the Commission is requested to find that measurable adverse residual impacts on AOPFN culture and well-being are likely from the NSDF, and require CNL to conduct a cumulative effects assessment on these valued components prior to making its required environmental assessment and licensing decision.**
- AOPFN Recommendation #18: Should it allow the NSDF to proceed, CNSC is requested to implement specific Indigenous culture and well-being-related conditions and/or require a formal consultation and accommodation identification process for these valued components prior to final permissions to construct.**

F. Impacts on AOPFN rights

AOPFN Issues and Evidence

218. The evidence provided by the AOPFN in this environmental assessment has established the very clear and very strong rights and title¹⁷ claims of the AOPFN in relation to the area that is likely to be impacted by the NSDF should it proceed.
219. The AOPFN flagged potential adverse impacts on AOPFN rights in its EIS Comment #22 (Two Axe Kohoko 2020). The AOPFN also communicated to CNL that assertions made by CNL in its EIS Comment Responses (CNL 2021c) that the NSDF Project “will not impact” on AOPFN rights are unsupported.
220. It was determined by the AOPFN and the CNSC that the more appropriate venue for assessment of impacts on AOPFN rights was through a bilateral AOPFN-CNSC (2021)¹⁸ Rights Impact Assessment. Some key findings from that assessment are included in this section.
221. As described earlier in Section 5, AOPFN members have, since time immemorial, exercised their rights to hunt, trap, fish, gather, and perform other activities integral to their culture and way of life throughout our unceded traditional territory, including in the CRL area and its surroundings.
222. As described in the Rights Impact Assessment (AOPFN and CNSC, 2021), the AOPFN’s rights related to harvesting and traditional use include:
- Hunting;
 - Trapping;
 - Fishing;
 - Gathering food plants and medicines;
 - Gathering plants and other natural materials for crafting and other cultural activities; and
 - Habitation of camps and camping sites.
223. AOPFN Governance and Stewardship rights include:
- Right to self-determination;
 - Right to participate in decision-making matters which would affect their rights;
 - Right to use traditional Algonquin government structure in decision-making;
 - Right to exercise traditional land tenure systems (e.g. who can access resources in which locations);
 - Right to exercise traditional stewardship systems (e.g. using protocols to protect species), and to protect and conserve lands and resources for future generations; and

¹⁷ As it was not a major focus of the Project-specific rights impact assessment, impacts on AOPFN title are not a focus of this submission. However, the AOPFN notes that Indigenous title is a very real and outstanding question throughout unceded AOPFN territory, currently subject to modern treaty negotiations with Canada and Ontario.

¹⁸ The AOPFN and CNSC (2021) Rights Impact Assessment for the NSDF Project is located at pgs. 425-485 of 590 in the CNSC staff’s (2022) CMD.

- Right to access information about the health of animals, fish, plants, medicines, and water, to be able to make informed decisions about harvesting and consumption of resources.
224. AOPFN Cultural Continuity rights include:
- Right to practice AOPFN culture, including the right to revive AOPFN cultural practices and sustain them into the future;
 - Right to transfer knowledge between generations about the practice of AOPFN traditional use, harvesting and culture;
 - Right to freely travel across the land and waters of AOPFN territory; and
 - Right to have solace from and a spiritual connection to natural settings (including specific preferred locations). (AOPFN and CNSC, 2021, PDF pgs. 442-443 of 590, in CNSC (staff), 2022)
225. In the Rights Impact Assessment (AOPFN and CNSC, 2021), AOPFN has presented evidence that the NSDF will have residual adverse effects, some of them serious in nature when combined with pre-existing cumulative effects, on AOPFN members' ability to meaningfully practice these rights. This is the only credible evidence on impacts to AOPFN rights on the public record for this proposed Project.
226. In Section 3 of the Rights Impact Assessment, the AOPFN provided evidence that there have been substantial pre-existing adverse cumulative effects on these three "pools" of AOPFN rights. Those pre-existing adverse cumulative effects were characterized as follows:
- "In the period between 1944 and the present day, at the CRL site and to a lesser but still moderate to high severity in its surroundings in the LSA and RSA, AOPFN Aboriginal rights have been infringed upon.
 - The magnitude of this loss diminishes the further out from the CRL site one goes, but remains measurable for many kilometres in both the terrestrial and aquatic environments.
 - There exists now long-standing (75+ years), continuous and ongoing severe cumulative adverse effects on AOPFN rights practices in the project footprint and LSA used for this RIA and, at minimum, impacts on rights of a moderate (and in some cases high) severity at the RSA level.
 - This alienation of AOPFN rights is most severe at and in the immediate surroundings of the CRL site. While CRL represents only a small portion of AOPFN territory, it is in a critical cultural area on the west bank of the Kichi-Sìbì. This is critical rights practice territory for AOPFN that has been lost from use for over 75 years.
 - In the Pre-NSDF Project cumulative effects context, AOPFN members' ability to access game, fish, edible and medicinal plants and ability to transmit culture has already been reduced by industrial development in this portion of AOPFN's traditional territory and is therefore highly sensitive/vulnerable to any additive change regardless of magnitude." (AOPFN and CNSC, 2021, PDF pgs. 252-3 of 590, in CNSC (staff), 2022)

227. The Rights Impact Assessment also found evidence that the NSDF Project will contribute incremental additional adverse effects on AOPFN rights. For Harvesting Rights, impact pathways include (AOPFN and CNSC, 2021):
- a. At least 37 hectares of wildlife habitat to become permanently inaccessible for hunting and harvesting and will have reduced habitat values as it will not return to a forested state;
 - b. Continued but longer-term perceived contamination of animals, water and plants near the CRL site due to the presence of a permanent radioactive waste disposal facility is likely to cause avoidance behaviour due to low trust in quality of resources; and
 - c. The NSDF footprint of permanently anthropogenically changed, non-forested area, and a yet to be determined buffer zone around the NSDF Project will likely be alienated from AOPFN due to access restrictions and increased stigma that occur around a nuclear waste facility, no matter the category or level of risk of the wastes.
228. CNL’s EIS explains that security fencing and gates in the area will remain through the decommissioning period and into post-closure, which is expected to last at least until the year 2400. This means that there will not be any harvesting rights practiced on the project footprint or in the buffer zone for many generations of AOPFN members, if ever.
229. It is also likely that the creation of a permanent radioactive waste facility would increase already existing perceived risks about water and fish contamination and could result in continued reduced use of and harvesting (of fish, water and vegetation) from the Kichi-Sibi by AOPFN members, which is a critical part of the AOPFN cultural landscape and considered a critical spiritual and cultural area along its entire length.
230. AOPFN and CNSC staff agreed to the following finding in relation to Project-specific impacts on AOPFN Harvesting Rights:
- “With respect to impacts to harvesting rights, with the full and proper application of CNL’s and CNSC’s committed-to mitigation and monitoring measures, it is predicted that the Project will have a high likelihood, low magnitude, low severity adverse impact on the amount of land and wildlife resources, starting in approximately 2100, available to support AOPFN rights practices. This impact will be limited to the LSA and focused primarily in the SSA. With the full and proper application of CNL’s and CNSC’s committed-to mitigation and monitoring measures, it is predicted that the Project will have a moderate likelihood, low to moderate magnitude, low to moderate severity adverse impact on AOPFN perception of contamination of wildlife, water, vegetation and land in the LSA and potentially portions of the RSA. Taken together, **the total Project contribution to adverse impacts on AOPFN harvesting rights is estimated to be of low to moderate severity.**” (AOPFN and CNSC, 2021, at PDF pg. 477 of 590, CNSC (staff), 2022, emphasis added)
231. The Rights Impact Assessment found the following NSDF-specific impacts on AOPFN Stewardship and Governance rights:
- a. Lack of AOPFN involvement and access to information regarding monitoring and adaptive management system structures;

- b. Lack of adherence to AOPFN’s principles for nuclear projects, including Willing Host, FPIC, and importation of radioactive waste; and
 - c. The permanence of the NSDF Project in AOPFN’s traditional territory further reducing AOPFN’s ability to manage lands in manner agreeable to AOPFN.
232. According to AOPFN members the Project is likely to impact AOPFN members’ ability to participate in decision-making and to practice stewardship in the NSDF and CRL site areas. This is due to continued long-term physical alienation of AOPFN members from the NSDF and CRL sites, feelings of powerlessness due to alienation from lands and waters, lack of trust in the consultation process, lack of trust in AOPFN’s ability to be heard during decision-making processes regarding the Project, and lack of access to information about the Project and associated impacts.
233. The AOPFN and CNSC staff disagreed about the directionality and severity of Project-specific impacts on AOPFN Stewardship and Governance Rights, with AOPFN finding (AOPFN and CNSC, 2021, at PDF pg. 477 of 590, CNSC (staff), 2022):
- “AOPFN is of the view that the Project will have a high likelihood, moderate to high magnitude and severity, adverse impact on adherence to AOPFN’s stated nuclear principles and right to free, prior and informed consent. CNL has indicated that the Project may proceed with or without AOPFN’s FPIC, and that they cannot commit to a “Willing Host” requirement. In addition, CNL and AECL have not committed to AOPFN’s direct request that they receive AOPFN support before bringing any radioactive wastes from other off-site facilities to the NSDF. The permanent, irrevocable nature of the Project also impacts on AOPFN’s ability to manage its unceded territory, now and into the very long-term future, and this impact is estimated to be of moderate severity. Taken together, the total Project contribution to adverse impacts on AOPFN governance and stewardship rights is estimated to be of moderate to high severity.”
234. In contrast, CNSC staff suggested that the NSDF is likely to have moderate beneficial impacts on AOPFN governance and stewardship rights, through an increased role in monitoring and development of a meaningful relationship with AECL and CNL.
235. The following Project-specific impacts on AOPFN Cultural Continuity rights were identified in the Rights Impact Assessment:
- a. Altering the physical characteristics of a portion of the CRL site, shifting from a forested ecosystem to a cleared, an engineered structure, visibly different from its surroundings, impacting on ability to connect to the site spiritually and culturally;
 - b. Increasing the stigma of contamination in culturally important and teaching areas, creating a barrier to the transmission of Algonquin Knowledge and to ability to practice culture at important sites; and
 - c. Potential disturbances of any unfound heritage resources during construction of the NSDF Project. (AOPFN and CNSC, 2021)
236. The NSDF would extend operations of the CRL by creating a permanent radioactive waste disposal facility with an institutional control period of at least 300 years. In our

studies, AOPFN members expressed that their rights related to cultural continuity would be adversely impacted by continued long term loss of access to the CRL site. Participants had concerns around perceived contamination of food and cultural resources, important cultural sites, and avoidance of areas for cultural purposes due to contamination concerns and associated stigma. These impacts to the future of condition of the land and resources were associated with the ability of future generations to learn and practice their culture or harvest resources at and near the CRL site to AOPFN participants. (Fediuk et al, 2021, pg. 96)

237. According to AOPFN members the Project is likely to impact AOPFN cultural continuity rights in the NSDF site (and CRL site) area due to continued (and potentially longer-term) loss of access to this piece of their land base and impacts to the future condition of the land and resources, thus impacting future generations' ability to learn and practice their culture or harvest resources at and near the NSDF site. (Malone et al 2021, pg. 4)
238. With respect to impacts to AOPFN Cultural Continuity Rights, the Rights Impact Assessment found the following (AOPFN and CNSC, 2021, at PDF pg. 478 of 590, CNSC (staff) 2022):

“With the full and proper application of CNL’s committed-to mitigation and monitoring measures, it is predicted that the Project will have a high likelihood, low magnitude, low adverse impact on AOPFN cultural connection to the land in the SSA and LSA and ability to pass on place-based cultural knowledge between generations, as a result of physical changes to the SSA. In addition, given AOPFN concerns about contamination and health effects of radioactive waste, there is likely to be a long-term, low to moderate magnitude impact on AOPFN cultural continuity associated with fear and stigma from the NSDF Project. With the full and proper application of committed-to mitigation and monitoring measures, it is predicted that the Project will have a moderate likelihood, low magnitude, low adverse impact on cultural and heritage resources exposed during the clearing of the site for NSDF operations. Only the SSA would be subject to these impacts. The time period where this impact can occur would be short-term, during construction (clearing activities) only, and be subject to co-developed mitigation, monitoring and accommodation rules developed between AOPFN and CNL through the Project plans identified above. Taken together, the total Project contribution to adverse impacts on AOPFN cultural continuity rights is estimated to be of low [to moderate?] severity.”

239. While the CNSC staff deemed consideration of total cumulative effects on rights outside their scope, the AOPFN also assessed them, as they are the most accurate reflection of the lived experience of impacts. Total cumulative effects on rights include impacts from past, present, and reasonably foreseeable future projects, including the NSDF Project.
240. The AOPFN found in the Rights Impact Assessment the following likely total cumulative effects loading in the Project Case on AOPFN rights:

Harvesting and Traditional Land Use Rights: “In the Project Case, total cumulative effects on AOPFN Harvesting and Traditional Use Rights are of high

severity in the LSA and moderate to high severity in the RSA”. (AOPFN and CNSC, 2021, PDF pg. 479-80 of 590, in CNSC (staff), 2022)

Stewardship and Governance Rights: “In the Project Case, total cumulative effects on AOPFN governance and stewardship rights are considered by AOPFN to be of high severity in both the LSA and RSA, with the NSDF Project contributing moderate to high severity Project-specific impacts on top of pre-existing high severity impacts in the LSA and moderate to high severity impacts in the RSA. It is important to note that while there are both adverse and beneficial effects to consider, the adverse effects are higher in magnitude. The beneficial effects of greater information flows about the impacts of the NSDF to AOPFN members is more than offset by the exacerbation of existing adverse effects on AOPFN’s ability to see its expectations, principles, laws and norms, and governance rights and responsibilities, due to multiple parties not committing to adhere to AOPFN’s nuclear principles and expectations re: the location of the facility, the importation of nuclear waste without AOPFN permissions, and lack of commitment to Willing Host or AOPFN FPIC.” (AOPFN and CNSC, 2021, PDF pg. 480 of 590, in CNSC (staff), 2022)

Cultural Continuity Rights: “In the Project Case, total cumulative effects on AOPFN Cultural Continuity rights are of high severity in the LSA and moderate to high severity in the RSA.” (AOPFN and CNSC, 2021, PDF pg. 480 of 590, in CNSC (staff), 2022)

241. Overall, the AOPFN found that:

“[while] the Project by itself is unlikely to cause high severity adverse impacts on AOPFN rights, decisions made about it must be considered with recognition that it is proposed for development in a context of already heavily impacted AOPFN rights. As a result, any additional adverse effects on AOPFN rights brings with it the risk of further alienation/infringement of AOPFN rights, already sensitive to pre-existing changes. Because of this existing sensitivity, it is AOPFN’s finding that for each of the three pools of rights, there is in the LSA a high likelihood of high severity impacts on AOPFN rights in the Project Case, and in the RSA there is a moderate to high likelihood of moderate to high severity impacts on AOPFN rights in the Project Case.” (AOPFN and CNSC, 2021, PDF pg. 481 of 590, in CNSC (staff), 2022)

CNL Responses and Commitments

242. Neither CNL nor AECL have yet met with the AOPFN to discuss any impacts on AOPFN rights from the proposed NSDF Project, despite the AOPFN and CNSC Rights Impact Assessment being filed on the public record on January 24, 2022 (CNSC (staff) 2022). As a result, as of the filing of this submission neither CNL nor AECL have recognized, engaged with the AOPFN on, or developed specific accommodation measures for impacts on AOPFN rights identified in the Rights Impact Assessment.
243. Despite this, AOPFN notes that the Proponent has made some important commitments that have the potential to reduce impacts on each of the three pools of AOPFN rights.

- a. Harvesting: Mitigation measures in CNL's EIS are designed to address potential biophysical impacts (including offsetting of habitat lost) from the Project in relation to wildlife, with CNSC oversight; CNL commits to engaging AOPFN in NSDF Project Follow-up programs including the EAFMP, Sustainable Forest Management Plan and creation of an AOPFN Guardian Program to help address concerns raised regarding fear and avoidance behaviours; and CNL committed to increased communication/ information sharing with AOPFN community members.
 - b. Stewardship and Governance: CNL, AECL and AOPFN have signed an MOU towards developing a long-term relationship agreement that will help to enhance the relationship and foster greater collaboration and inclusion; CNL has committed to engaging the AOPFN in their NSDF Project Follow-up programs including the EAFMP, Sustainable Forest Management Plan and creation of an AOPFN Guardian Program to be applied at the NSDF Project.
 - c. Cultural Continuity: CNL will grade the NSDF so that it is not visible from the Kichi-Sibi; Engagement of AOPFN in development of Sustainable Forest Management Plan and consideration of off-site land offsets put forward by AOPFN; CNL will continue to maintain access to Pointe au Baptême; CNL, AECL and AOPFN have signed an MOU towards developing a long-term relationship agreement that will help to enhance the relationship and foster greater collaboration and inclusion; CNL committed to increased communication/ information sharing with AOPFN community members; CNL-AOPFN collaboration on Chance Find Procedure for heritage resources, and on a Traditional Land and Resource Use Discovery Plan (AOPFN and CNSC, 2021, PDF pgs. 469-476, in CNSC (staff), 2022)
244. All of these CNL mitigations were integrated into the Rights Impact Assessment itself, so they do not further reduce the Project-specific or total cumulative effects on AOPFN rights from the findings noted above.

Status of Issue and Required Conditions/Actions

245. This issue is outstanding as of the filing of this submission for several reasons:
- a. CNSC staff and AOPFN findings differ in relation to Stewardship and Governance Rights, and the role that total cumulative effects on rights plays in the assessment of the NSDF;
 - b. CNSC staff have made statements in the CMD re: impacts on rights do not correspond with the findings of the Rights Impact Assessment;
 - c. CNSC has not identified much in the way of complementary measures for low to moderate measurable adverse residual impacts on AOPFN rights from the NSDF;
 - d. CNL and AECL have never met with the AOPFN to discuss the implications of the Rights Impact Assessment; and
 - e. The AOPFN has found that total cumulative effects on AOPFN rights, even with the application of Project-specific mitigation measures, will be of high severity in the Local Study Area and moderate to high severity in the larger Regional Study Area. These cumulative effects on rights have not been recognized or dealt with by CNL, AECL or the CNSC.

246. The AOPFN finds it difficult to credit the CNSC staff's suggestion that the NSDF as proposed will provide more benefits than adverse effects on AOPFN governance and stewardship rights. It is not reasonable to assume benefits to governance and stewardship will accrue to a party – AOPFN - that was: 1. Left out of the planning for the NSDF; 2. Left out of the siting for the NSDF; 3. Whose rightful expectations re: “Willing Host” and FPIC are not being committed to by the Crown or the proponent; and 4. Where the reasonable ask to remove incoming wastes from coming to this new facility, which is in line with AOPFN's nuclear principles and requirements, have been ignored to date. Promises without agency; relationship without a modicum of control; engagement without decision powers; these are not benefits to governance of stewardship of any party. They are more suggestive of continuation of the adverse status quo, rather than a signal of any beneficial change.
247. The AOPFN remains highly concerned with the lack of consideration of total cumulative effects on rights by CNL, AECL and the CNSC in this assessment. For their part, CNL and AECL must show that they understand and will do something about findings of the AOPFN-CNSC Rights Impact Assessment.
248. The AOPFN also finds that CNSC staff's focus on the absence of “new impacts on rights” in its CMD plays fast and loose with language and does not correspond with the joint findings of the Rights Impact Assessment. AOPFN notes that in the CMD, “CNSC staff conclude that there will be no new impacts on any potential or established Indigenous and/or treaty rights as a result of the NSDF Project.” (CNSC (staff) 2022, pg. 30 of 590). This statement undermines the good work that the AOPFN did with CNSC staff in the rights impact assessment and is misleading to the Commission. "No new impacts" is hardly a useful statement to use in an area where all parties agree that rights have been subject to previous heavy infringement. A more accurate statement would be that "the Project will contribute additional adverse effects over a longer time period on Indigenous rights through permanent removal of habitat, the potential to increase alienation associated with contamination at and around the facility, long-term (effectively permanent) loss of a portion of the site to future traditional land and resource use and cultural practices, and associated spin off effects on Algonquin food security and well-being.” The proposed NSDF would not be a costless transaction for Algonquin rights, but the CNSC staff is not showing that by parsing this issue as if it should focus on only "new impacts" on rights, not their spatial and temporal breadth and depth. This statement is effectively contradictory to the findings of the Rights Impact Assessment, which did indeed find measurable adverse residual effects on AOPFN rights from the NSDF to be likely to occur.
249. The AOPFN applauds the Commission for conducting, for the first time, rights impact assessments with impacted Indigenous groups. It is important that the conduct of such studies not be treated as the ultimate outcome, however. The Commission needs to seriously consider the findings of the AOPFN-CNSC Rights Impact Assessment and identify appropriate accommodative and complementary measures for adverse residual impacts on rights. Accommodative measures may be required from the Proponent and AECL, while complementary measures such as government funding, programs, plans, policies or other actions may need to be contemplated by the CNSC, alone or in combination with other members of the ‘federal family’. We encourage the Commission

to follow through and not treat rights impact assessment as a paper exercise. Rather, it should be seen as an opportunity to recognize and avoid, reduce and accommodate for Project-specific and cumulative harms on Indigenous peoples' rights from permissions contemplated by the CNSC, an agent of the federal Crown. It is action that is the remaining missing piece of this reconciliation puzzle. In AOPFN's opinion, more needs to be done in order to start recognizing and reconciling total cumulative effects on AOPFN rights, which have been severely undermined in the LSA (and to a lesser degree the RSA), as a result of decisions, physical works and activities, by CNL and AECL over time.

250. In light of the above, the AOPFN recommends the following:

AOPFN Recommendation #19: CNL and AECL engage/consult with the AOPFN prior to the Public Hearing, re: the implications of the AOPFN-CNSC Rights Impact Assessment, and report back to the Commission at the hearing on any additional committed-to accommodation measures.

AOPFN Recommendation #20: The Commission is requested to find that measurable adverse residual impacts on AOPFN rights are likely in the Project Case, and should it allow the NSDF to proceed, require a formal accommodation identification process prior to final permissions to construct.

G. Inadequate consideration of total cumulative effects loading

AOPFN Issues and Evidence

251. According to CNSC staff, this environmental assessment was required to consider “any cumulative environmental effects that are likely to result from the designated project in combination with other physical activities that have been or will be carried out” (CNSC (staff) 2022, pg. 197 of 590). The AOPFN does not feel this has actually occurred to date in this process.
252. The AOPFN has raised concerns since getting involved in this environmental assessment that establishing the previous harms done by Canada at and around the CRL is relevant to consideration of effects from the Project, because already harmed values are more vulnerable to Project effects.
253. The AOPFN raised concerns about the absence of a cumulative effects context in our EIS Comment #15 (Two Axe Kohoko, 2020):
- “CEAA 2012 guidance indicates that context is a required component for characterization: The context within which environmental effects occur should be taken into account when considering criteria in relation to determining whether a Project is likely to cause a significant adverse environmental effect under CEAA 2012. From the AOPFN perspective there is no more important consideration in the characterization of residual effects than properly considering the cultural, ecological and historical context within which Project effects will occur. It has become standard in recent environmental assessments to include context as a criterion out of recognition, in particular, that total cumulative effects on the Valued Component (VC) in question are rarely actually meaningfully captured in

the gathering of baseline data tied to present-day conditions, despite the Proponent's claim in Section 5.1.4 (pg. 5-21) that, "Existing environment or baseline conditions represent the historical and current environmental selection pressures that have shaped the observed patterns in VCs." In reality, focusing primarily to exclusively on existing (current day) conditions often serves to mask changes over time and the pressures that have caused vulnerability in a VC".

254. The AOPFN has also repeatedly raised concerns with how narrowly the CNSC scopes cumulative effects assessment, in such a way that CNL was able to adopt a "damaged baseline" approach to valued component-specific assessments in its EIS, rather than focusing on a past baseline and change over time to date as a way to set a meaningful cumulative effects context. In addition, the AOPFN is – as are other Indigenous groups - concerned at the approach taken by the CNSC of primarily to exclusively "concerning itself only with iterative cumulative effects added by a particular project, rather than also considering total cumulative effects loading".¹⁹
255. And the AOPFN has raised concerns that CNL has conducted little if any cumulative effects assessment as part of its EIS, focusing instead almost exclusively on assessing effects of the Project from the current, damaged baseline, thus creating three major linked problems: 1. avoiding establishing the existing cumulative effects context; 2. underestimating Project-specific effects, and 3. Avoiding conducting cumulative effects assessment on several key valued components as a result.
256. As a result of the unwillingness of CNL and the CNSC to do the work or require it to be done, the AOPFN has conducted more cumulative effects assessment in relation to the NSDF Project than any other party to this assessment process. Examples from the four AOPFN studies are peppered throughout this submission, and the cumulative effects context at and around the proposed NSDF location was the subject of Section 5.
257. The AOPFN AKLUS demonstrates that AOPFN members are highly concerned with cumulative effects from the CRL and other cumulative effects causing agents impacting on the same valued components, especially traditional land and resource use, Algonquin culture, and Algonquin well-being. Alienation of AOPFN members due to access restrictions and fears/stigma associated with contamination of game, plants and waters from this nuclear facility are among the key contributors to reduced AOPFN use of lands and waters in the vicinity of the Chalk River Laboratories over time. The AOPFN Diet and Harvest Study clearly shows that a broad cross section of AOPFN members currently have elevated avoidance behaviours around the CRL, and reduced faith in country foods in an area much larger than the boundaries of the Chalk River Laboratories. The AOPFN Culture and Rights Study and the joint AOPFN-CNSC Rights Impact Assessment establish that even prior to the NSDF Project, there are moderate to severe pre-existing adverse effects on AOPFN culture, traditional land use, and rights in the CRL area.
258. Conducting a proper cumulative effects assessment is not a 'blame game'. The Rights Impact Assessment notes that:

¹⁹ This concern, shared by the AOPFN as to the CNSC approach to cumulative effects, was flagged by the Ya'thi Nene Land and Resource Office (2022) in Saskatchewan in a separate CNSC hearing process in Saskatchewan.

“With the exception of governance and stewardship rights at the RSA level, the proposed [NSDF] Project does not change the overall severity findings in relation to cumulative adverse effects. In almost all instances, NSDF itself is not the primary contributor to total cumulative effects on AOPFN rights in the Local or Regional Study Areas. That said, AOPFN considers it critical to focus on total cumulative effects loading, and notes that much, and perhaps the majority, of cumulative effects in the LSA have been and will continue to be caused by the same landowner, Canada and site operator, CNL”. (AOPFN and CNSC, 2021, in CNSC (staff), 2022, PDF pg. 482 of 590)

259. What proper cumulative effects assessment is, is a tool to help understand what has been lost and the fragility – the vulnerability to additional change in the Project Case – of key valued components. In particular, the AOPFN has communicated to CNL, AECL and CNSC that existing high cumulative effects have increased the sensitivity and vulnerability of AOPFN’s TLRU to additional change which must be acknowledged and addressed in the development of mitigation of Project-specific effects. The past and the cumulative effects of the presence of the CRL and other nuclear developments in AOPFN territory has had undeniable impacts on AOPFN member traditional ways of life by virtue of the size of the land use and closing off of these spaces from AOPFN access, the real and perceived contamination of the sites, and the impacts on the environment on site and likely beyond the site through water and air, among other impact pathways.

CNL Responses and Commitments

260. The final EIS integrates only a very small amount of additional cumulative effects context information from the large amount gathered by the AOPFN. Despite this additional evidence, CNL refused to conduct cumulative effects assessments on valued components for which the AOPFN requested this occur – this includes on AOPFN TLRU and culture. In the end, air quality, surface water quality, and Blanding’s turtle ended but being only the valued components that CNL deigned to conduct a cumulative effects assessment on. CNL attempted to justify not conducting additional cumulative effects assessment work on the basis of its (faulty in the AOPFN’s estimation)²⁰ position that the NSDF will have no measurable adverse residual effects on these valued components.
261. The AOPFN does note that AECL and CNL have made more substantive steps outside of the NSDF Project-specific process on the issue of cumulative effects. One of the priorities under the MOU between AOPFN, CNL and AECL is that the parties have agreed to gather cumulative effects information to help establish the degree of harms on AOPFN rights and interests that have occurred as a result of the development of the Chalk River Laboratories over the past three quarters of a century. The first year of what is envisioned as a multi-year cumulative effects assessment is nearing completion. This is a signal of progress, but only an early step in an overall recognition and reconciliation process. It does not solve the gulf in this Project assessment’s consideration of cumulative effects.
262. The AOPFN notes as well that CNSC staff has indicated that their perspective is that total cumulative effects are largely to completely outside of the scope of this environmental

²⁰ See Sections 6d and 6e above on this topic.

assessment. For example, CNSC staff refused to engage in consideration of total cumulative effects on AOPFN rights in the Rights Impact Assessment for this reason.

Status of Issues and Required Conditions/Actions

263. The AOPFN's concerns about the way cumulative effects have been treated in this CNSC process remain outstanding, as:
- a. CNL has not meaningfully updated its assessment of cumulative effects in the final EIS and has not considered total cumulative effects since the pre-nuclear era (pre-1940s) on any valued components. This means that the environmental assessment has adopted a "damaged baseline" approach that is not in keeping with good or acceptable practice of environmental assessment;
 - b. CNL has not conducted any cumulative effects assessment on AOPFN traditional land and resource us, culture, or well-being, even though the AOPFN has provided compelling evidence of Project-specific residual adverse effects on these valued components;
 - c. The CNSC has taken a very narrow approach to the consideration of cumulative effects in its Project assessment process and as a result there has been very little and only superficial cumulative effects characterization in the CMD (CNSC (staff), 2022);
 - d. More needs to be done in order to start recognizing and reconciling total cumulative effects on AOPFN rights, which as shown in Sections 5 and 6 f herein, have been severely undermined as a result of decisions, physical works and activities by CNL, AECL and Canada over time; and
 - e. There has not been a cumulative effects assessment completed for the Chalk River Laboratories or the CNL-AECL "Nuclear Corridor" in unceded Algonquin territory, to inform Project-specific assessment such as this.²¹
264. Overall, these cumulative effects assessment failings are an egregious gap in the assessment process. No reasonable person would conclude that a project designed to last for several hundred years and almost certainly will post-date the active use by Canada of the CRL facility, that emplaces permanently in a near surface location radioactive materials from both this site and other sites, and which is in an area that has already been subjected to adverse residual cumulative effects on these values, will not contribute adversely to total cumulative effects on these valued components. Certainly, no Indigenous person would make this finding.
265. AOPFN finds the CNSC staff's "assessment" of cumulative effects in section 8.4 of the EAR inadequate, noting that it simply parrots the approach taken by the Proponent, and ignores concerns raised by the AOPFN entirely. Listing a concern is not the same as addressing a concern. For example, the finding by CNSC staff (pg 304 of 590) that an upstream radioactive waste disposal project, the NPD Project, will have no residual adverse effects on the same VCs as NSDF, discounts the development of two brand new,

²¹ As AOPFN noted in its original EIS Comments (Two Axe Kohoko, 2020): "AOPFN has never been engaged directly by Canada in any meaningful examination of total cumulative effects from the Chalk River Site on our environment, our rights and our interests."

permanent, radioactive waste disposal facilities along the shore of the Kichi-Sibi. Both projects in combination are in reality likely to contribute to, and may well be amongst the primary contributors to, alienation, loss of use, fear, stigma, and reduced willingness to harvest and consume country foods along the Kichi-Sibi. By scoping out the valued components of TLRU, culture and Indigenous well-being, CNL and by extension CNSC staff have managed to avoid even considering this primary cumulative effects pathway and multiple contributing physical works and activities toward what is one of the most important decision-making factors in this process. This is another instance where narrow scoping is to the detriment of good process and fails to recognize or protect Indigenous rights and interests.

266. The AOPFN is not the only Indigenous group raising alarm at the way cumulative effects are treated in the CNSC system. Our experience echoes and amplifies the following concern raised by the Yathi Nene Lands and Resources Office in relation to a recent CNSC hearing in Saskatchewan Yathi Nene Lands and Resources Office (2022, 27-8):

“CNSC does not appear to have processes for assessing cumulative impacts. As the British Columbia Supreme Court recently explained was the Government of British Columbia’s failing in this area, CNSC’s primary concern being specific permits and their specific impacts, becomes an artificial and self-imposed fetter on CNSC’s discretion. Cumulative impacts always seem to be a concern for another time, another process, or another decision maker, the result of which is that those impacts are never considered, and they are left to accumulate, as the rights of YNLR members continue to be denuded.”

267. Overall, the elephant in the living room here is that the NSDF Project has the potential to take a cumulative effects situation that has already been catastrophic for the Algonquin peoples through 80 years of alienation, loss of lands, fear and stigma associated with Canada’s largest nuclear research facility and make things worse from the perspective of the impacted peoples themselves. Despite this, in this CNSC process, the Proponent has managed to not only avoid calculation of total cumulative effects on Algonquin peoples in the Project Case, but has used the very pre-existence of significant cumulative adverse effects as its argument for why Project effects on valued components like TLRU are “non-existent”. Thus, both cumulative effects and Project-specific effects are masked by a narrow and indefensible approach embraced by CNL and allowed by the CNSC. This is not acceptable to the AOPFN. It is time for the masks to come off and the parties to speak plainly about cumulative effects at CRL, and their implications for this and future Crown and FPIC decisions.

268. In addition to prior AOPFN recommendations re: valued component-specific cumulative effects assessments required, the AOPFN recommends that:

AOPFN Recommendation #21: The Commission identify in its decision statement that there has yet to be a formal process by the Crown for identifying cumulative harms on Indigenous peoples from the Chalk River Laboratories, and that establishing these harms and reconciling for them should be a high priority for the federal government.

AOPFN Recommendation #22: The Commission consider total cumulative effects on the valued components of Indigenous traditional land and resource use, Indigenous culture,

and Indigenous well-being in its deliberations, and describe in its decision statement both its considerations and findings on this topic.

AOPFN Recommendation #23: The CNSC find that the NSDF Project is likely to add additional measurable adverse residual effects on Indigenous traditional land and resource use, Indigenous culture, Indigenous well-being, and Indigenous rights on top of pre-existing significant adverse cumulative effects on these valued components, and that therefore the Project is contributing to significant total cumulative effects on these valued components.

H. Adequacy of monitoring and adaptive management mechanisms

AOPFN Issues and Evidence

269. AOPFN raised concerns that there are currently no (nor has there ever been any) dedicated Algonquin Knowledge monitoring programs at and around the CRL site, and that nothing specific on this topic was committed to in the EIS. Comment #6 of the AOPFN's Comments on the draft EIS states:
- “CNL is requested to identify both the current role for Indigenous independent environmental monitoring in CRL site monitoring, as well as what is committed to in the Project Case; CNL is requested to identify what role affected Indigenous groups have had and will have, in the Project case, in determination of appropriate effluent quality criteria/threshold development; CNL is requested to engage directly with AOPFN on its overall site monitoring systems (including how information is collected, what information is collected, how often, how it is used in relation to adaptive management, and what role Indigenous peoples and Indigenous knowledge play in this site monitoring program), and report back to CNSC any recommendations made by AOPFN and associated CNL commitments in relation to Chalk River Site monitoring in the Project case.” (Two-Axe Kohoko, 2020)
270. The AOPFN must be meaningfully involved in the planning, monitoring and management of the CRL and projects within it. That has not been the case to date. Decisions have and are still being made behind the scenes or at least without our meaningful involvement, so the AOPFN in many cases has no idea how the Project is being managed in ways that are technically sound, and respectful and in line with AOPFN expectations and requirements. Proper management of this site must not only be done, it must be seen by the Indigenous rights holders to be done. And Algonquin Knowledge and perspectives can add critical insight to project planning, implementation, assessment and management.
271. The Culture and Rights Study found that the AOPFN has not been consulted until very recently on anything to do with the management of the CRL site. And while the AOPFN is currently being consulted about the proposed NSDF and NPD Closure Projects, AOPFN members do not yet have confidence that their input will be adequately considered and accommodated by the Proponent. (Malone et al, 2021, pg. 59)

CNL Responses and Commitments

272. To its credit, CNL has now committed to funding an AOPFN Guardian Program in relation to the NSDF Project and involving AOPFN extensively in the development of

environmental monitoring and management plans. These commitments are still being developed so AOPFN cannot report on their full extent or implementation success yet. However, progress has clearly been made.

273. A full list of relevant monitoring and management commitments made to date by CNL is included in CNLs “Consolidated Commitments Lists” (CNL, 2021b). Among them are the following:
- a. CNL has committed to engage AOPFN in the development of the Project Environment Protection Plan and Follow-up Monitoring Plan, including development of appropriate thresholds and responses for impacts on wildlife and wildlife habitat.
 - b. CNL’s commitment to implement AOPFN’s Guardian Program in relation to the Project should ensure that AOPFN will have involvement from the outset in protecting the LSA from Project effects on wildlife, plants and habitat.
 - c. CNL has committed to continuing to fund the AOPFN NSDF Working Group and AOPFN Advisory Committee (AAC), until a CRL site-wide agreement is established, ensuring AOPFN is involved in the Environmental Assessment Monitoring Framework, Sustainable Forest Management Plan and other mitigation, monitoring and management plans.
 - d. CNL has also committed to develop additional communication materials for AOPFN community members and communicate NSDF Project details more clearly and frequently including funding for a full-time, AOPFN employed communications specialist. This increased communication and opportunity for AOPFN to provide input into follow-up and monitoring activities for the NSDF is expected to build trust and mitigate concerns with respect to perceived contamination and risk.
 - e. CNL and AECL have also committed funds for AOPFN to start developing a AOPFN-led Country Foods Monitoring and Risk Communication Program in 2021. The purpose of such a program is to make sure that AOPFN members have access, in a form that works for them, to accurate and trusted information about the quality of wildlife, plants, and water in the Project-affected area. (AOPFN and CNSC, 2021, pg. 37-38)
274. And AOPFN, CNL and AECL have also signed a MOU to support discussions regarding the development of a Long-term Relationship Agreement for the broader CRL site, which may include provisions for AOPFN’s involvement in environmental and cultural stewardship and monitoring. This LTRA has not yet been completed so is not evidence re: Project or relationship-level monitoring and management adequacy at this time.
275. In addition, AOPFN is working with the CNSC to increase the role of Algonquin peoples and Algonquin Knowledge in the Independent Environmental Monitoring Program.

Status of Issues and Required Conditions/Actions

276. The AOPFN is cautiously optimistic about CNL and AECL’s commitments re: Project monitoring and management. This issue has been dealt with largely adequately by commitments made by CNL and AECL, although AOPFN notes that the quantum of commitment is still to be determined.
277. Notwithstanding our cautious optimism, the AOPFN recommends the following:

AOPFN Recommendation #24: The CNSC is recommended to increase the frequency of, level of effort conducting, and degree of Algonquin Knowledge embedded in its Indigenous Environmental Monitoring Plan for the area around Chalk River Laboratories.

AOPFN Recommendation #25: Should the NSDF Project proceed, the CNSC is recommended to require CNL to report annually on how it has integrated Algonquin Knowledge and Algonquin peoples into its Project monitoring and management system.

I. Lack of Evidence of Benefits to Offset Adverse Changes - Past, Present and Future

AOPFN Issues and Evidence

278. When it comes to commitments made by proponents and the Crown in a Project planning process, the AOPFN separates them into four categories. The first is **environmental assessment capacity funding**. This is simply a requirement because capacity and funding limited Indigenous groups cannot self-fund their engagement and consultation. This is not considered accommodation. The second is what we call **‘catch up’ measures**. These are the building of programs, plans, policies, actions and relationships that should have been in place many years ago for project and land use management and monitoring but had been previously withheld from Indigenous groups. Because these systems should have been in place as a matter of course a long time ago, the AOPFN does not consider these accommodation measures either. The third type of commitment is to **foundational co-management or co-governance mechanisms**, like joint decision-making on certain aspects of a Project or land use. This is accommodation because it recognizes the inherent right and responsibility of the AOPFN to governance and stewardship on our lands. The final type of commitment we call **‘true accommodation’**. These are measures that recognize that all Projects have likely adverse effects on Indigenous rights and interests through their uptake of lands and waters and their adverse impacts on the environment. It is reasonable for the AOPFN to expect and receive true accommodation measures – financial offsets for harms that have or will occur as a result of a land use – as measured by our members and leadership.
279. Given the degree of harm that has already been caused and continues to be caused at the CRL, to the physical, biophysical and human environment, AOPFN holds that any new proposed Project must not only be shown to not cause significant adverse effects on the environment (alone or in combination with cumulative effects causing agents), but must also demonstrate overall positive benefits, especially to Algonquin peoples who have borne the brunt of past, present and likely future nuclear development.
280. CNL (2022, pg. 98 of 171) suggests that its NSDF Project would “have the potential to positively affect employment and income, economic development and government finances through the employment of personnel, procurement of goods and services, and expenditures.” It is not clear from the EIS, however, whether and what portion of the benefits from this \$425 million capital cost, \$275 million dollar operating cost, project would “trickle down” to impacted Indigenous peoples.
281. AOPFN has pointed out that there is minimal evidence of benefits (financial, procurement, employment) for Indigenous peoples, especially highly impacted Algonquin peoples, in the Project EIS. This is contrary to the environmental assessment

principle of 'impact equity', which holds that those most adversely impacted by the Project should have access to preferential benefits as well.

282. There is not yet an adequate base of offsetting benefits for these additional adverse effects likely to be loaded on the AOPFN. While CNL has made some commitments to increase the role that the AOPFN will play in planning, monitoring and management of the proposed NSDF should it proceed, these commitments can be considered "catch up" commitments - things that should have been in place 20 years ago, but were withheld from AOPFN and Indigenous peoples in general. They are not true accommodations.
283. In terms of true accommodations - benefits to offset the risks that keep piling up on the Algonquin peoples at the CRL - there is little confirmed at this time. Employment, education, training, infrastructure, and procurement all need to be spoken to in a more detailed fashion between CNL, AECL and the AOPFN. For example, there has yet to be any structured discussion between the parties on how to remove structural barriers that are systemically in place that keep our Indigenous people and businesses from having the same ability to take advantage of opportunities, in our own lands, that non-Indigenous peoples do.

CNL Responses and Commitments

284. CNL has identified only generic provisions in its EIS and Consolidated Commitment Lists that could possibly lead to increased employment, training, and business procurement for Indigenous peoples. It is not clear how success of these measures will be calculated and tracked.

Status of Issues and Required Conditions/Actions

285. At the time of this submission, this issue is outstanding because there is very little evidence of true accommodation for the AOPFN to consider against the risks the Project inevitably brings. CNL and AECL have made some limited, very high-level commitments to work with AOPFN to identify and remove systemic barriers to employment and procurement for AOPFN members and AOPFN-tied businesses, but there are no details on the public record or in bilateral or trilateral agreements specifying how this overall goal will be accomplished. Currently, there is no evidence provided by CNL in the EIS or its commitments that suggests that - other than a very small increase in employment related to monitoring and communications linked to the Project - AOPFN is likely to benefit from this large project with long-term implications for land use and Algonquin well-being in unceded AOPFN territory.
286. That is simply not enough in exchange for a permanent, \$750 million, radioactive waste disposal facility to be situated in unceded Algonquin territory.
287. CNL will rightfully refer to the ongoing AOPFN-CNL-AECL Working Group, designed to move the parties towards a Long-Term Relationship Agreement, as a positive development. AOPFN agrees. However, the CNSC (and AOPFN) cannot consider as evidence intentions and goodwill. As a result, AOPFN finds that at the present time, there is unlikely to be benefits to AOPFN commensurate with the additional risks, over a long - even permanent - time frame, likely to occur from the NSDF.
288. The AOPFN requests AECL and CNL do more to show how the AOPFN will share in the prosperity associated with CRL and the NSDF; we never have in the past.

289. If there is no evidence by the time of the hearing on the above-noted request AOPFN recommends the following:

AOPFN Recommendation #26: The CNSC is recommended to require CNL to provide further concrete evidence of the benefits that are likely to accrue to impacted Indigenous groups, prior to the CNSC making its required decision on the NSDF Project.

7. AOPFN Findings and Conclusions

290. The following AOPFN issues and concerns with the proposed NSDF Project have been dealt with to AOPFN's satisfaction:
- a. CNL has made adequate commitments re: improvements in the role of AOPFN and Algonquin Knowledge in Project-specific planning, policies, monitoring and adaptive management
291. CNL and AECL have also made several commitments relevant to reducing impacts on the biophysical environment, traditional land and resource use and culture. While these will not reduce these impacts to levels where accommodations is not required, the AOPFN appreciates the efforts and our relationship with CNL and AECL has improved during this process.
292. Despite this, several of AOPFN concerns have not been dealt with to AOPFN's satisfaction and merit further attention during this environmental assessment process:
- a. The proximity of the NSDF to the Kichi-Sibi and lack of meaningful engagement of AOPFN in Project planning, especially siting, decisions
 - b. CNL's lack of willingness to commit to respect an AOPFN "Willing Host"/FPIC decision
 - c. Importation of radioactive waste into Algonquin territory from other jurisdictions
 - d. The inadequate role that Algonquin Knowledge played in the Proponent's assessment, leading to an under-estimation of effects on AOPFN traditional land and resource use and culture
 - e. Existing and likely Project Case impacts on AOPFN rights have not been meaningfully accommodated
 - f. Inadequate consideration of cumulative effects in the environmental assessment
 - g. The lack of evidence of benefits to AOPFN to offset adverse changes - past, present and future
293. Consultation cannot just be a chance for the AOPFN to "blow off steam", a concern our members often raise, and which emerges again in looking at CNL and AECL's unwillingness to change things of substance about the proposed Project. Consider the pattern re: issues of substance:
- a. AOPFN has indicated it doesn't want the NSDF so close to the Kichi-Sibi. CNL and AECL have not considered moving it.
 - b. The AOPFN has identified measurable adverse effects on TLRU, culture and well-being. CNL has not integrated this finding into its EIS.
 - c. The AOPFN doesn't want the NSDF to import wastes. CNL and AECL have made no revisions to the waste stream plan as a result of this.
294. In the AOPFN's view, as currently proposed and with the currently committed-to measures in place, the NSDF would continue and likely incrementally exacerbate a pattern of past infringements on AOPFN rights and interests. It does not give the AOPFN additional control over decisions about how unceded Algonquin territory can be used, extending the lack of agency that Canada has thrust upon the AOPFN and its members.

The NSDF extends the lifetime and makes permanent, some of the radioactive risks Canada has brought into and created in unceded Algonquin territory. It also increases the timeframe within which the fear, stigma, and other psychological risks created by the CRL will extend across an area of unceded Algonquin territory that is much larger than the CRL fence line. This would directly impact on the AOPFN's harvesting and cultural practices and associated rights.

295. As currently proposed, not only does the NSDF not remove these radioactive risks from Algonquin territory (which would obviously be AOPFN's preference, to leave the land in the state it was found in the 1940s), but it would actively import additional radioactive risks into AOPFN territory. For obvious reasons, this importation of additional wastes as part of a project supposedly designed to reduce radioactive risks, is in direct contradiction to the desires, expectations, rights and policies of the AOPFN and our members. The issue of importation of waste from other jurisdictions is a troubling one for the AOPFN. Canada has already, without AOPFN consultation or consent, created a large radioactive legacy in unceded Algonquin territory. Now, by pushing for a waste stream that includes up to 10% new wastes, imported from other locations, some to the majority of them from outside Algonquin territory, without consulting AOPFN before making this plan and without committing to respect AOPFN's consent or withholding of consent for this plan, Canada is effectively doubling down on past poor consultation and engagement practices.
296. To the AOPFN, the only acceptable solution if the NSDF Project is allowed to proceed is to remove any incoming waste streams to the NSDF and to seek AOPFN approval before reinstating them. This is not an unreasonable ask; by CNL's own admission it is only up to 10% of the NSDF waste stream. Without such controls in place, our members have indicated that they have little to no faith that the NSDF will not later be opened to additional waste streams.
297. The lack of willingness by CNL and AECL to confirm they will respect AOPFN's "Willing Host"/FPIC decision in relation to the proposed NSDF remains troubling. We know that many parties, including the AOPFN, have raised concerns about the proximity of the proposed permanent hazardous waste disposal facility to the Kichi-Sibi, among other concerns. And we know that this is not an emergency situation, where the waste in question is posing an imminent and critical hazard where it is currently situated, and where there is no time to get public input or a "Willing Host" decision from rights-bearing Indigenous groups. As a result, we see no reason for CNL, AECL and the CNSC to not commit to respecting the AOPFN's FPIC decision and taking the necessary time to get the Project right. If AOPFN withholds its consent, we expect all three parties to respect that decision, and will seek all available remedies to protect our rights and interests if this is not the case. The time is now for the parties to make this commitment; prior to AOPFN making its FPIC decision. Waiting until AOPFN makes an FPIC decision and only respecting it if it agrees with what CNL and AECL would prefer to do for waste management, would not be acceptable.
298. The AOPFN continues to fundamentally disagree both with the approach taken by CNL in its assessment of effects on Indigenous TLRU and culture, and by extension its findings that the NSDF will have no measurable adverse effects on TLRU and culture. Although the AOPFN continues to encourage CNL to change its approach and findings, the Proponent has given no indication it is willing to do so. As a result, we ask the CNSC

to consider the evidence and find with AOPFN that the proposed NSDF is indeed likely to have residual adverse impacts on Indigenous TLRU, culture and well-being. We do not suggest that all these Project-specific impacts are significant, but all merit further attention and cumulative effects assessments.

299. Similarly, measurable adverse residual effects on AOPFN rights in the Project Case remain improperly accounted and accommodated for by CNSC staff, CNL, and AECL. We applaud the Commission for conducting Rights Impact Assessments with Indigenous groups for the first time. But we ask the Commission to take the next step and incorporate the findings into its decision-making and consultation and accommodation process with the AOPFN.
300. The AOPFN Chief and Council have yet to make an FPIC decision in relation to the proposed NSDF Project. At the present time, the AOPFN does not see enough Project revisions, commitments, and conditions in place to offset the impacts and concerns raised by AOPFN members and staff, for our Chief and Council to provide its FPIC to building this permanent hazardous waste disposal facility in unceded Algonquin territory. This does not mean that AOPFN's consent will be either provided or withheld; only that a decision cannot yet be made without more evidence and action.
301. The AOPFN recognizes that the CNSC is required by law to make a decision on any proposal before it. As a result, and without prejudice to the AOPFN's future FPIC decision, the AOPFN recommends that if the CNSC does make a determination that the NSDF Project should be allowed to proceed, it attaches the numbered AOPFN recommendations from this submission that are addressed to the CNSC as conditions to any such decision and all associated licences and permits.
302. A final note on commitments: Given the over 200 commitments CNL has made (CNL 2021xy) are integral to the Project's ability to protect the environment, people, and Indigenous rights and interests, it is critical that all of them be implemented fully and transparently, should the Project proceed. The AOPFN notes that one of the recommended conditions of the CNSC staff (2022, PDF pg. 344 of 590) is that "the implementation of CNL's list of identified mitigation measures and follow-up monitoring program measures, as identified and included in the proposed document titled "Near Surface Disposal Facility Project Consolidated Commitment Lists", become an enforceable condition that is set out in the Commission's decision". The AOPFN agrees this is an important condition. However, even if they are all included, there is no current condition requiring that the Commitments List be publicly reported on and subject to annual compliance, verification, and – as necessary – remedial action work. The latter is important in cases where commitments are not implemented and/or are not meeting their desired outcomes. Therefore, the AOPFN recommends:

AOPFN Recommendation #27: Should the Project proceed, the Commission include a condition requiring the Proponent to report annually on the implementation of its Near Surface Disposal Facility commitments, and support a public review and comment process, facilitated by the CNSC, of this annual reporting.

8. Closing Statement

303. As the priority Constitutional rights-holding First Nation located closest to the proposed NSDF Project, the AOPFN is committed to working with CNL and CNSC to ensure a meaningful assessment of effects is undertaken, and adequate mitigation and accommodation measures will be adopted that ensure the protection of our rights, traditional use and interests.
304. We sincerely appreciate the opportunity to present our issues, concerns and recommendations. We have taken time and invested our energy into the process and we hope the CNSC is willing to not only seriously consider our words, but as an agent of the Crown responsible for consulting and accommodating the AOPFN, will integrate them into its decision in a meaningful way. The worst possible outcome, the one least contributing to reconciliation between the Crown and Indigenous peoples, would be for the CNSC to state “we hear you” to the AOPFN, and then refuse to act in a meaningful way. The essence of reconciliation can be found when listening results in acting meaningfully on what is heard.
305. AOPFN looks forward to discussing the implications of this submission with CNL, AECL and the CSNC (both staff and Commission members). Follow up discussions should be coordinated with our Consultation Coordinator, Amanda Two-Axe Kohoko – consultation@pikwakanagan.ca. We will come to the hearing prepared to present to the Commission on this submission as well as update the Commission with any relevant information gathered in the interim.

Meegwetch,
Chief Wendy Jocko
Algonquins of Pikwakanagan First Nation

Appendix A. AOPFN Recommendations

AOPFN Recommendation #1: The Commission should require AECL and CNL to file an update, post-hearing, illustrating where and how AECL and CNL have substantively identified and accommodated for Project-specific impacts of the proposed NSDF on AOPFN rights and interests, prior to closing the public record and making a decision on the proposed NSDF.

AOPFN Recommendation #2: Should it approve the NSDF to proceed, the Commission require CNSC Staff to conduct additional consultation with the AOPFN with a focus on identifying and implementing complementary accommodation measures re: impacts on AOPFN rights.

AOPFN Recommendation #3: The Commission to consider cumulative effects as presented herein in making its NSDF decision, and describe in its reasons for decision how that consideration factored into the decision.

AOPFN Recommendation #4: CNSC require CNL to reconsider alternative locations and means of disposing of all LLW waste at the CRL site, including evidence that CNL meaningfully engaged Indigenous parties in this process, prior to approving of the current NSDF proposal.

AOPFN Recommendation #5: AECL and CNL to engage AOPFN in a planning process regarding the desired end land use state for the CRL as a whole, prior to making determinations on where and how to permanently dispose of radioactive wastes currently at the site.

AOPFN Recommendation #6: AOPFN requests that CNL, AECL and the CNSC all respect and adhere to AOPFN's Free, Prior and Informed Consent decision on the NSDF Project proposal when it is made.

AOPFN Recommendation #7: CNL and AECL are requested to work with the AOPFN, prior to the hearing, to identify a process that will be implemented should AOPFN's Free, Prior and Informed Consent be withheld for the NSDF Project.

AOPFN Recommendation #8: CNL proactively remove the 10% of potential "off-site" waste from its proposed NSDF waste stream.

AOPFN Recommendation #9: CNL commit to not contemplate importing any wastes from outside AOPFN territory to the NSDF without written AOPFN permission.

AOPFN Recommendation #10: If the CNSC issues permission for the NSDF to be developed, these permissions be made contingent on the 10% of off-site waste being removed from the NSDF Project stream. The CNSC should further identify that it will not allow for the importation of off-site wastes in any operations stage licence for the NSDF without evidence of Indigenous support for these off-site waste streams.

AOPFN Recommendation #11: CNL and AECL to proactively, or in the absence of this, the Commission to require these parties, to conduct an engagement/consultation exercise with impacted Indigenous groups, where all known and suspected locations at

the Chalk River Laboratories where radioactive waste is currently housed, and the nature, current storage, and proposed future storage, transportation, and disposal plans for those wastes, are transparently communicated. In addition, the CNSC should require that a report of this consultation process, verified by the Indigenous groups and showing their recommendations and associated CNL and AECL commitments, be filed with the CNSC within the next two years.

AOPFN Recommendation #12: The Commission build discrete “Indigenous Knowledge” settings into future hearing processes, where panels from Indigenous Nations can present their Indigenous Knowledge, findings and recommendations to the Commissioners in an Indigenous-appropriate, welcoming setting.

AOPFN Recommendation #13: CNL recognize on the basis of the evidence filed by the AOPFN that measurable adverse residual effects on AOPFN traditional land and resource use are likely from the NSDF Project, and as a result, that a proper cumulative effects assessment is required and will be conducted by CNL in collaboration with impacted Indigenous groups.

AOPFN Recommendation #14: Should CNL adhered to AOPFN Recommendation #13, the Commission is requested to find that measurable adverse impacts on AOPFN traditional land and resource use are likely from the NSDF Project, and require CNL to conduct a proper cumulative effects assessment on traditional land and resource use in collaboration with impacted Indigenous groups.

AOPFN Recommendation #15: Should it allow the NSDF to proceed, CNSC to implement specific traditional land and resource use-related conditions into the Project licence, and/or require a formal traditional land and resource use effects consultation and accommodation identification process prior to final permissions to construct.

AOPFN Recommendation #16: CNL recognize on the basis of the evidence filed by the AOPFN that measurable adverse residual impacts on AOPFN culture and well-being are likely from the NSDF, and conduct a cumulative effects assessment on these valued components prior to the completion of this CNSC process.

AOPFN Recommendation #17: If CNL refuses to act on Recommendation #16, the Commission is requested to find that measurable adverse residual impacts on AOPFN culture and well-being are likely from the NSDF, and require CNL to conduct a cumulative effects assessment on these valued components prior to making its required environmental assessment and licensing decision.

AOPFN Recommendation #18: Should it allow the NSDF to proceed, CNSC is requested to implement specific Indigenous culture and well-being-related conditions and/or require a formal consultation and accommodation identification process for these valued components prior to final permissions to construct.

AOPFN Recommendation #19: CNL and AECL engage/consult with the AOPFN prior to the Public Hearing, re: the implications of the AOPFN-CNSC Rights Impact Assessment, and report back to the Commission at the hearing on any additional committed-to accommodation measures.

AOPFN Recommendation #20: The Commission is requested to find that measurable adverse residual impacts on AOPFN rights are likely in the Project Case, and should it

allow the NSDF to proceed, require a formal accommodation identification process prior to final permissions to construct.

AOPFN Recommendation #21: The Commission identify in its decision statement that there has yet to be a formal process by the Crown for identifying cumulative harms on Indigenous peoples from the Chalk River Laboratories, and that establishing these harms and reconciling for them should be a high priority for the federal government.

AOPFN Recommendation #22: The Commission consider total cumulative effects on the valued components of Indigenous traditional land and resource use, Indigenous culture, and Indigenous well-being in its deliberations, and describe in its decision statement both its considerations and findings on this topic.

AOPFN Recommendation #23: The CNSC find that the NSDF Project is likely to add additional measurable adverse residual effects on Indigenous traditional land and resource use, Indigenous culture, Indigenous well-being, and Indigenous rights on top of pre-existing significant adverse cumulative effects on these valued components, and that therefore the Project is contributing to significant total cumulative effects on these valued components.

AOPFN Recommendation #24: The CNSC is recommended to increase the frequency of, level of effort conducting, and degree of Algonquin Knowledge embedded in its Indigenous Environmental Monitoring Plan for the area around Chalk River Laboratories.

AOPFN Recommendation #25: Should the NSDF Project proceed, the CNSC is recommended to require CNL to report annually on how it has integrated Algonquin Knowledge and Algonquin peoples into its Project monitoring and management system.

AOPFN Recommendation #26: The CNSC is recommended to require CNL to provide further concrete evidence of the benefits that are likely to accrue to impacted Indigenous groups, prior to the CNSC making its required decision on the NSDF Project.

AOPFN Recommendation #27: Should the Project proceed, the Commission include a condition requiring the Proponent to report annually on the implementation of its Near Surface Disposal Facility commitments, and support a public review and comment process, facilitated by the CNSC, of this annual reporting.

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Appendix C. AOPFN's Consultation, Engagement and Accommodation Requirements for all Nuclear Sector Proposed Development in AOPFN Territory

June 30, 2021

Preamble

The Algonquins of Pikwakanagan First Nation (AOPFN) have lived in our unceded traditional territory since time immemorial, practicing our ways and living according to our laws and culture. We are a self-defined people. AOPFN continues to assert and exercise Algonquin aboriginal title and aboriginal rights to and in all parts of AOPFN unceded traditional territory, to which AOPFN has not been a party to a treaty, including lands under water (see map attached as Annex 1 for AOPFN unceded traditional territory boundaries). AOPFN has an obligation to our members to plan for the future and to ensure self-determination, self-reliance, and self-governance. AOPFN is committed to respecting and protecting our unceded traditional territory and the interests of all our members and therefore AOPFN understands the value of establishing relationships while ensuring our Algonquin aboriginal rights, title and interest are fully recognized, respected and protected.

In addition to Algonquin aboriginal title, AOPFN's Algonquin aboriginal rights and interests in AOPFN traditional territory include Algonquin aboriginal rights to hunt, fish and trap, to harvest plants for food and medicine, to protect and honour burial sites and other sacred and culturally significant sites, to sustain and strengthen its spiritual and cultural connection to the land, to protect the Environment that supports our members survival, to govern ourselves, and to participate in all governance and operational decisions about how the land and resources will be managed, used and protected. Our laws require AOPFN to preserve and enhance a mutually respectful relationship with the Environment, to co-exist with Mother Earth and protect this relationship. We have the responsibility to care for our unceded traditional territory for future generations, and to preserve and protect wildlife, lands, waters, air and resources. We rely on the health of the Environment in AOPFN Traditional Territory for our survival. The health of the lands and waters is essential to the continued existence of AOPFN as a people and our members' health, culture, laws, livelihood, and economy.

AOPFN must be recognized as a rightful, respected and principled steward of the Environment. Our input and perspective in any consultation and accommodation process will include the use of traditional ecological and cultural knowledge alongside knowledge from western scientific and technical sources.

AOPFN territory, since the 1940s, has seen the rise of one of Canada's largest nuclear sectors. This has been done without AOPFN consultation until recently, and without our consent in every instance to date. The importation, production, use and disposal of radioactive materials has had adverse impacts on the environment and constitutes an infringement of our Algonquin aboriginal rights, title, and interests to a degree that has yet to be assessed let alone recognized or compensated for. The nuclear sector has brought change to our lands and waters, closing off of traditional areas from our access, real and perceived health risks, and alienation and fear associated with the wildlife, vegetation and waters that our members rely on to practice their Algonquin culture and way of life on the land.

As priority Algonquin aboriginal rights holders under the *Constitution Act, 1982*, and as the traditional stewards of the land, these impacts on our Algonquin aboriginal rights, title and interests have always been and remain unacceptable.

With the rise of recognition by Canada that reconciliation with Indigenous peoples is essential to Canada's future, and the embracing of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), we are entering a new era. We have developed the requirements below to reflect our expectations as a Nation, to share openly and transparently with Canada and all proponents who would seek to build, conduct, and decommission nuclear sector-related projects in our AOPFN traditional territory.

AOPFN will update these requirements and communicate changes to Proponents at our discretion. AOPFN expects Proponents and government to stay informed of and respect AOPFN protocols and requirements and their evolution over time.

Evaluation of adherence to the following requirements must be determined jointly between AOPFN and the Proponent. Adherence to these requirements includes respect for AOPFN Free, Prior, and Informed Consent decisions. Accordingly, Proponents cannot assume AOPFN consent; it must be actively sought and explicitly provided. Importantly, while adherence to these requirements does not guarantee AOPFN Free, Prior, and Informed Consent, it does represent a positive initial step in the process for seeking Free, Prior, and Informed Consent and development of a relationship with AOPFN.

Requirements for Nuclear Developments in AOPFN Territory

AOPFN expects that each Proponent seeking to conduct a nuclear sector physical work or activity²² in AOPFN territory, will adhere to the following requirements. While these requirements may be scaleable to the size, nature and location of a proposed development, this can only be determined through engagement with AOPFN.

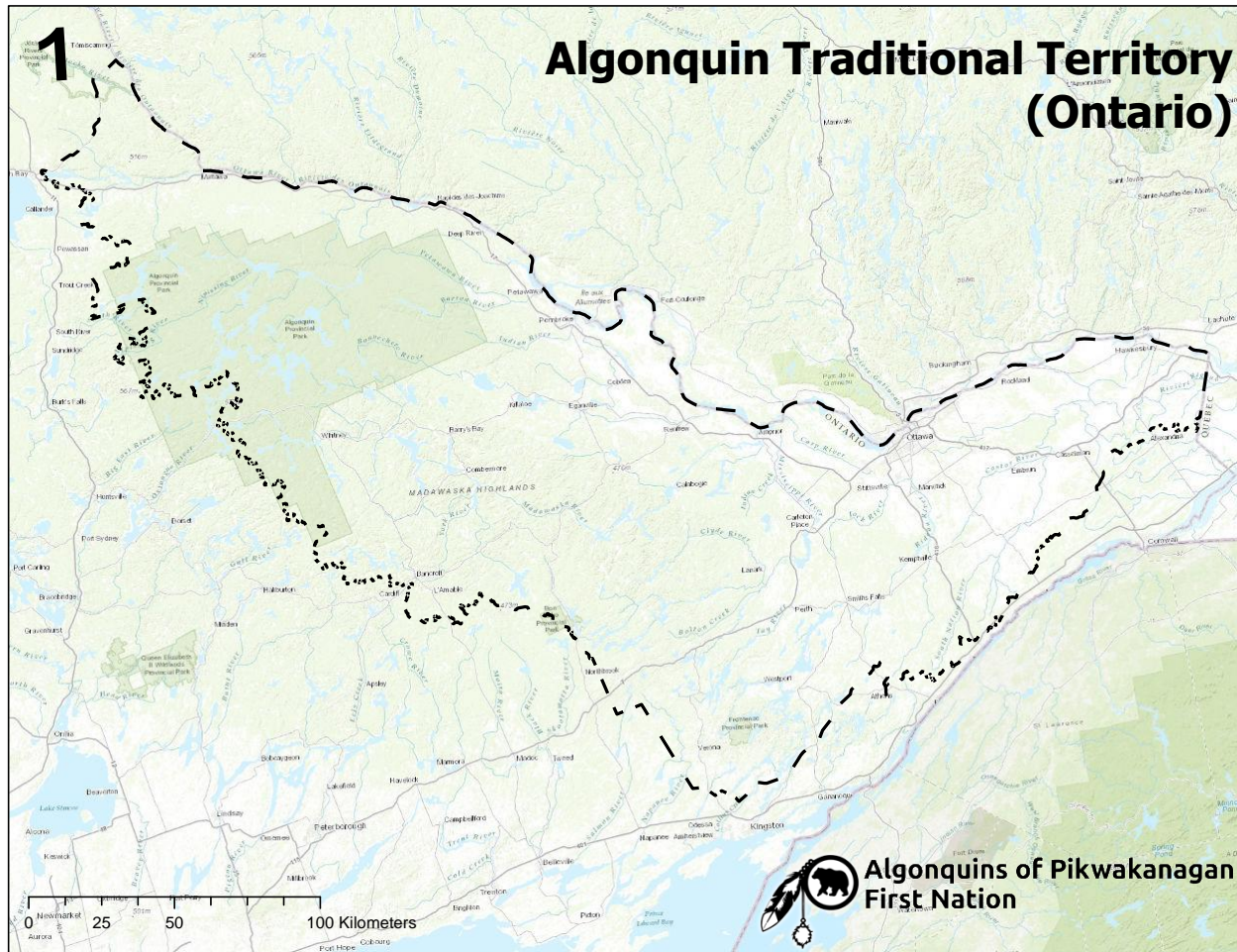
1. Adherence to AOPFN Principles Related to Nuclear Sector Projects (See Annex 2).
2. Adherence to AOPFN's Consultation and Engagement Protocol (Annex 3) and recognition that because only AOPFN can speak for our members, engagement must occur directly with AOPFN.
3. Recognition of AOPFN participation and capacity constraints that may arise from time to time (e.g. Covid-19 or other unforeseen circumstances) and a commitment to both negotiate solutions to accommodate these participation and capacity constraints and to respect the time required for AOPFN to make informed decisions.
4. Commitment to cover all reasonable costs of AOPFN engagement in relation to the planning, assessment, and licencing of the proposed physical work and activity, including process and studies costs as required, through a Contribution Agreement negotiated as early as possible in the planning stage for the proposed project.
5. Commitment to co-develop a collaboration framework to guide engagement for any provincial or federal impact assessment or regulatory process required for the Project. Any collaboration framework developed for a full impact assessment process will require at minimum a commitment for monthly meetings.
6. Commitment to conduct the environmental impact assessment according to the highest current standard of law and practice, and to respect and support AOPFN's expectations for the Nation's involvement in that assessment.
7. Commitment to provide opportunity to AOPFN to participate in a meaningful way in any "alternatives to" and or "alternative means" assessment early in project planning.
8. Commitment to provide right of first refusal and financial support for AOPFN to identify and lead or collaborate on studies or research relevant to the assessment of impacts from the Project. Required studies will be determined by AOPFN on a case-by-case basis but examples include:
 - a. Algonquin Knowledge and Land Use Studies
 - b. Culture and Rights Studies
 - c. Participation in early biophysical fieldwork and site assessment or inventories.

²² For greater clarity, this includes any new physical work and activity, or relicensing of existing facilities, that involves the importation, storage, disposal, handling, manipulation or creation of radioactive materials, whether for research, energy production, medical or other purposes, and includes decommissioning of existing facilities that meet the above criteria.

9. Commitment to provide meaningful opportunities for AOPFN to identify, develop, and implement mitigations or offsets for project impacts specific to AOPFN members. This includes involving AOPFN in a meaningful way in monitoring and management of the proposed project including via AOPFN's Neya Wabun (Guardian) Program (See also requirement 13a).
10. Commitment to provide meaningful opportunities for AOPFN to identify, characterize, and determine the significance of effects from impacts occurring to AOPFN members and or values in AOPFN territory.
11. Adherence to the requirements of UNDRIP, including but not limited to adhering to free, prior and informed consent decisions made by AOPFN in relation to the project.
12. Negotiation in good faith toward a Reconciliation Agreement with AOPFN, with the value of that agreement to be commensurate with the scope of the proposed physical work and activity.²³
13. Financial contributions, commensurate with the scope of the proposed physical work and activity, to:
 - a. Support AOPFN's Neya Wabun Guardian Program;
 - b. Support AOPFN's Risk Communication Program;
 - c. Support and participation in AOPFN Cultural Awareness Training Program;
 - d. Support AOPFN's Skill Inventory and Proficiency Collection Program;
 - e. Support AOPFN's Cultural Revitalization Program; and
 - f. Support AOPFN Community Infrastructure needs.
14. Working with AOPFN to develop a Project-specific AOPFN Indigenous Benefits Maximization Plan for employment, education, training and business procurement opportunities associated with the proposed Project.

²³ Where the parties have an existing agreement, the proponent is expected to commit to update it to reflect any change in scope of the relationship associated with the newly proposed physical work and activity.

Annex 1 – Map of AOPFN Unceded Traditional Territory



Annex 2 – AOPFN Principles Related to Nuclear Sector Projects

Endorsed by AOPFN Chief and Council, June 22, 2021

AOPFN Principle
1. As a self-governing Indigenous Nation, AOPFN's right of free, prior and informed consent for nuclear projects will be respected.
2. AOPFN, as a government retrenching its rightful stewardship and governance responsibilities, will have a co-management role for nuclear projects in AOPFN territory.
3. All projects will contribute positively to educational opportunities critical to AOPFN self-sufficiency, governance and relationships with other parties.
4. To meet the expectation of sustainable development, risks will not be passed on to future generations; radioactive materials cannot ever be abandoned and forgotten in AOPFN territory.
5. AOPFN must be meaningfully involved in any provincial or federal impact assessment for developments occurring in AOPFN territory and any associated studies supporting assessment. Meaningful involvement requires adequate funding and reasonable timelines for participation activities.
6. Study Areas and Valued Components for any impact Assessment must be identified in collaboration with AOPFN knowledge Keepers and based on the extent of potential impacts associated with the proposed project.
7. AOPFN will have a meaningful role in monitoring the effects of nuclear projects in AOPFN territory.
8. Algonquin knowledge will be used alongside western science in planning, monitoring and management of nuclear facilities; Indigenous monitors will require access to skills in both Algonquin knowledge and technical monitoring fields.
9. Water must be clean, readily accessible, and trusted by AOPFN members.
10. No nuclear wastes will be moved into or out of AOPFN territory without AOPFN explicit permissions.
11. AOPFN members Algonquin aboriginal rights, title, and connection/relationship to the lands and waters will be protected and promoted, and AOPFN will play a key role in this process.
12. Wildlife and wildlife habitat will be protected and promoted, and AOPFN will play a key role in this process.
13. AOPFN will be meaningfully involved in all aspects of decision-making related to nuclear project planning.
14. AOPFN's cultural and spiritual values and resources will be vigilantly protected and promoted, and AOPFN will play a leading role in this process.
15. AOPFN will be accommodated for Project-specific and cumulative impacts that do occur as a result of nuclear projects, on biophysical and human environmental values and AOPFN Algonquin aboriginal rights, title, interest.
16. AOPFN must be provided adequate and timely access to funding and resources for exercise of its jurisdiction in relation to nuclear projects.
17. AOPFN has the right to preferentially economically benefit from projects that occur on its territory; in order to do so, systemic barriers need to be proactively removed
18. Nothing is more important to AOPFN members than safe and plentiful Algonquin foods and resources. Impacts on these will be monitored and communicated to AOPFN members in ways that have meaning to them.
19. Reconciliation between Indigenous peoples and Canada will underpin the Nation-to-Nation relationship; each proponent to present to AOPFN and work to refine a "Reconciliation Plan", showing how they will contribute to making life better and a healthy and mutually beneficial relationship with AOPFN.

Appendix D. Comparison of AOPFN’s Nuclear Principles to the Proposed NSDF

The AOPFN has adopted a set of principles for all proposed nuclear-related projects in Algonquin territory in our *Consultation, Engagement and Accommodation Requirements for all Nuclear Sector Proposed Development in AOPFN Territory*. The current level of adherence of the NSDF to these principles is included in the table below. Please note that the level of adherence cannot be unilaterally interpreted by any outside party; any reinterpretation must be conducted in consultation with the AOPFN, the holders of the principles.

AOPFN Principle	NSDF Adherence
1. As a self-governing Indigenous Nation, AOPFN’s right of free, prior and informed consent for nuclear projects will be respected.	Inadequate. CNL and AECL have explicitly refused to commit to respecting AOPFN’s FPIC decision.
2. AOPFN, as a government retrenching its rightful stewardship and governance responsibilities, will have a co-management role for nuclear projects in AOPFN territory.	Partially adequate. CNL has made a number of relevant commitments to co-management for AOPFN in relation to the NSDF. Co-management goes to decision-making as well. CNL has thus far failed to adhere to AOPFN’s request to have decision-making over the importation of LLW radioactive wastes from other territories into the NSDF.
3. All projects will contribute positively to educational opportunities critical to AOPFN self-sufficiency, governance and relationships with other parties.	Inadequate. There are no commitments from CNL to educational opportunities directly from NSDF. There are ongoing discussions re: benefits like this at the AOPFN-CNL-AECL Working Group looking to develop a Long-term Relationship Agreement, but nothing has been finalized.
4. To meet the expectation of sustainable development, risks will not be passed on to future generations; radioactive materials cannot ever be abandoned and forgotten in AOPFN territory.	Partially adequate. The NSDF would extend the length of time that portions of the CRL will need to be subject to Institutional Control and will mean that a portion of the CRL will become a permanent hazardous waste disposal facility. This does not adhere to the “no abandonment” portion of this AOPFN principle. Partially mitigating this fact is that the materials are all LLW, and will likely reduce in faster than other radioactive materials.

AOPFN Principle	NSDF Adherence
<p>5. AOPFN must be meaningfully involved in any provincial or federal impact assessment for developments occurring in AOPFN territory and any associated studies supporting assessment. Meaningful involvement requires adequate funding and reasonable timelines for participation activities.</p>	<p>Partially adequate. AOPFN was not engaged from the outset in a meaningful way, shortening the time period available to engage in the environmental assessment by at least half. Since the middle part of 2020, funding and timelines have been adequate for participation activities.</p>
<p>6. Study Areas and Valued Components for any impact Assessment must be identified in collaboration with AOPFN knowledge Keepers and based on the extent of potential impacts associated with the proposed project.</p>	<p>Inadequate. CNL identified its study areas and valued components prior to meaningful engagement with the AOPFN and did not adjust them thereafter. The LSA and RSA for traditional land and resource use were both inadequate in the EIS as a result, in particular. And that LSA and RSA were not based on areas where NSDF may have measurable impacts on people, but rather on biophysical VCs. This “biophysical proxy” has been rejected by Indigenous peoples for some time.</p>
<p>7. AOPFN will have a meaningful role in monitoring the effects of nuclear projects in AOPFN territory.</p>	<p>Partially adequate. CNL and AECL’s commitments to a Guardians Program and Risk Communication Program with AOPFN, are evidence of recognition that AOPFN has a right to be involved in all future monitoring at and around NSDF. The quantum of support by CNL has yet to be fully determined, however.</p>
<p>8. Algonquin knowledge will be used alongside western science in planning, monitoring and management of nuclear facilities; Indigenous monitors will require access to skills in both Algonquin knowledge and technical monitoring fields.</p>	<p>Partially adequate. While inroads are being made with regard to monitoring and management of the NSDF by utilizing Algonquin Knowledge, CNL did not include Algonquin Knowledge in the planning for the NSDF Project from the outset, nor is Algonquin Knowledge and its logical outcomes, the preferences of AOPFN members in relation to the proposed NSDF Project, included in the current proposal. Algonquin Knowledge holds that a radioactive waste disposal facility should not be close to the Ottawa River, nor should sites be ‘cleaned up’ by adding more new wastes into them. In reality, none of the requests made by AOPFN for changes to the Project Description itself (i.e., what the Project looks like, where it is located, how it works) have been adhered to.</p>

AOPFN Principle	NSDF Adherence
<p>9. Water must be clean, readily accessible, and trusted by AOPFN members.</p>	<p>Partially adequate. There is technical evidence that supports the assertion by CNL that the NSDF will not, by itself, be likely to adversely affect water quality in the Kichi-Sìbì . The NSDF does not impact on accessibility to the Kichi-Sìbì . However, the NSDF is unlikely to increase already low trust of AOPFN members in water and fish quality in the Kichi-Sìbì , and in fact may have the opposite effect.</p>
<p>10. No nuclear wastes will be moved into or out of AOPFN territory without AOPFN explicit permissions.</p>	<p>Inadequate. CNL has refused to change its LLW stream for NSDF to remove the 10% from offsite sources, and has refused to provide AOPFN any sort of approval status for incoming wastes to NSDF, even after direct requests for this by AOPFN.</p>
<p>11. AOPFN members Algonquin aboriginal rights, title, and connection/relationship to the lands and waters will be protected and promoted, and AOPFN will play a key role in this process.</p>	<p>Inadequate. The Rights Impact Assessment identifies that the NSDF will have measurable adverse effects on AOPFN rights. However, no meaningful accommodation by CNL, AECL or CNSC has been committed to in order to offset these Project-specific effects such that the Project will not add additional incremental adverse effects on AOPFN rights and title. CNL has not engaged AOPFN on the results of the Rights Impact Assessment.</p>
<p>12. Wildlife and wildlife habitat will be protected and promoted, and AOPFN will play a key role in this process.</p>	<p>Partially adequate. The NSDF will clear an area of 33 hectares of forested habitat. This may be partially or fully offset by development of a Sustainable Forest Management Plan for the Chalk River Laboratories, which CNL has committed to meaningfully engage AOPFN in, as well as committing to integration of Algonquin Knowledge into Project and site monitoring via the AOPFN Guardian Program and other commitments.</p>
<p>13. AOPFN will be meaningfully involved in all aspects of decision-making related to nuclear project planning.</p>	<p>Inadequate. AOPFN was not engaged or consulted in a meaningful way on: a. the currently ongoing 10 year, \$1.2 billion revitalization of the Chalk River Laboratories, which the NSDF is an integral part of; b. the alternative means assessment by which CNL and AECL determined to propose the NSDF so close to the Kichi-Sìbì; and c. the decision to include the “10% import” waste stream. While CNL has made some commitments to AOPFN re: future planning (e.g,</p>

AOPFN Principle	NSDF Adherence
	commitment for involvement in final construction plans for NSDF), these do not make up for these fundamental gaps in relation to the NSDF’s planning process.
14. AOPFN’s cultural and spiritual values and resources will be vigilantly protected and promoted, and AOPFN will play a leading role in this process.	Partially adequate. CNL has made meaningful commitments to integrate AOPFN into development of cultural protection programs and monitoring specific to the NSDF, should it proceed. CNL has also committed to site commemoration activities with AOPFN. However, CNL has not assessed in its EIS how the NSDF is likely to impact on AOPFN’s long-term cultural connection to the site, and has in fact suggested that the impacts will be negligible despite AOPFN presenting evidence to the contrary.
15. AOPFN will be accommodated for Project-specific and cumulative impacts that do occur as a result of nuclear projects, on biophysical and human environmental values and AOPFN Algonquin aboriginal rights, title, interest.	Inadequate. The NSDF EIS does not include any meaningful cumulative effects contextual materials and very little cumulative effects assessment overall. This is particularly notable in relation to effects on AOPFN traditional land and resource use, culture, and well-being. Nor has a historic recognition and reconciliation process between AOPFN, CNL and AECL been initiated.
16. AOPFN must be provided adequate and timely access to funding and resources for exercise of its jurisdiction in relation to nuclear projects.	Partially adequate. CNL (and to a lesser degree AECL) have since mid-2020 provided adequate funding for AOPFN to engage in this environmental assessment process. However, this funding came quite late into the Project planning process and had AOPFN playing “catch up” since that time.
17. AOPFN has the right to preferentially economically benefit from projects that occur on its territory; in order to do so, systemic barriers need to be proactively removed	Inadequate. CNL has not as yet provided any evidence of meaningful benefit to AOPFN from the proposed NSDF. While some high level commitments have been made and early stage Long-Term Relationship Agreement discussions have begun between AOPFN, AECL and CNL, this is not evidence of meaningful outcomes that will see commensurate benefits to AOPFN to offset adverse changes from the proposed Project.

AOPFN Principle	NSDF Adherence
<p>18. Nothing is more important to AOPFN members than safe and plentiful Algonquin foods and resources. Impacts on these will be monitored and communicated to AOPFN members in ways that have meaning to them.</p>	<p>Adequate. Should the Project proceed, CNL and AECL have committed to supporting and funding an AOPFN-led Algonquin Foods Monitoring and Risk Communication Program and have funded a specific AOPFN Communications Specialist position. These actions, linked to the overall AOPFN Guardian Program’s role in monitoring the proposed Project, will go a long way to effective risk communication about the NSDF (should it proceed) and overall CRL site activities.</p>
<p>19. Reconciliation between Indigenous peoples and Canada will underpin the Nation-to-Nation relationship; each proponent to present to AOPFN and work to refine a "Reconciliation Plan", showing how they will contribute to making life better and a healthy and mutually beneficial relationship with AOPFN.</p>	<p>Inadequate. This has not occurred yet. While the Long-term Relationship Agreement has the potential to integrate such a plan, aspirations are not evidence.</p>