

# The potential role of offsets in the mitigation hierarchy for caribou conservation in Alberta

Nikki Way  
Pembina Institute

# Leading Canada's transition to a clean energy future

The Pembina Institute is a national non-profit think tank that advances clean energy solutions through research, education, consulting and advocacy.

We advocate for strong, effective policies to support Canada's clean energy transition.



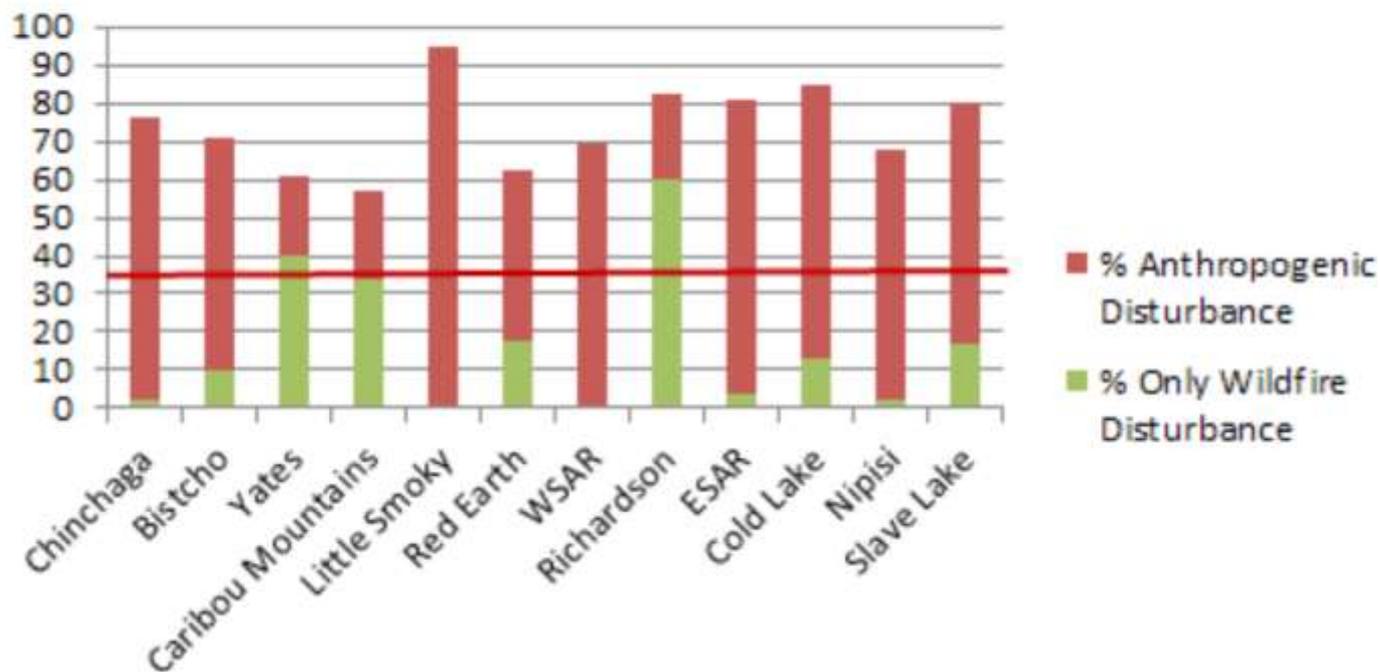
# Are we meeting Alberta Caribou Policy?

...stabilizing, recovering and sustaining woodland caribou populations is an investment in maintaining Alberta's diverse natural environment. Successfully achieving this result will require the identification, *maintenance* and *restoration* of sufficient caribou habitat.

*Alberta Woodland Caribou Policy (2011)*

# Need for restoration

## Percent of Range Disturbed



# Restoration < New Disturbance



# Halting leasing in caribou range

**Electronic Transfer System**

User Name:   
Password:

Save my user name

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AICPA  
Society of Certified Organizational Accountants  
SOC  
Formerly SAS 70 Reports

**Support:** Report problems or questions to [Crown Land Data Support](#) at (780) 422-1395

**Bulletin**

**Map Displaying all Caribou Ranges in Alberta**

Further to Information Letter 2016-34 Alberta Energy has prepared a map outlining all caribou ranges in Alberta. Refer to [http://www.energy.alberta.ca/Org/pdfs/CaribouRange\\_ForExternal.pdf](http://www.energy.alberta.ca/Org/pdfs/CaribouRange_ForExternal.pdf)

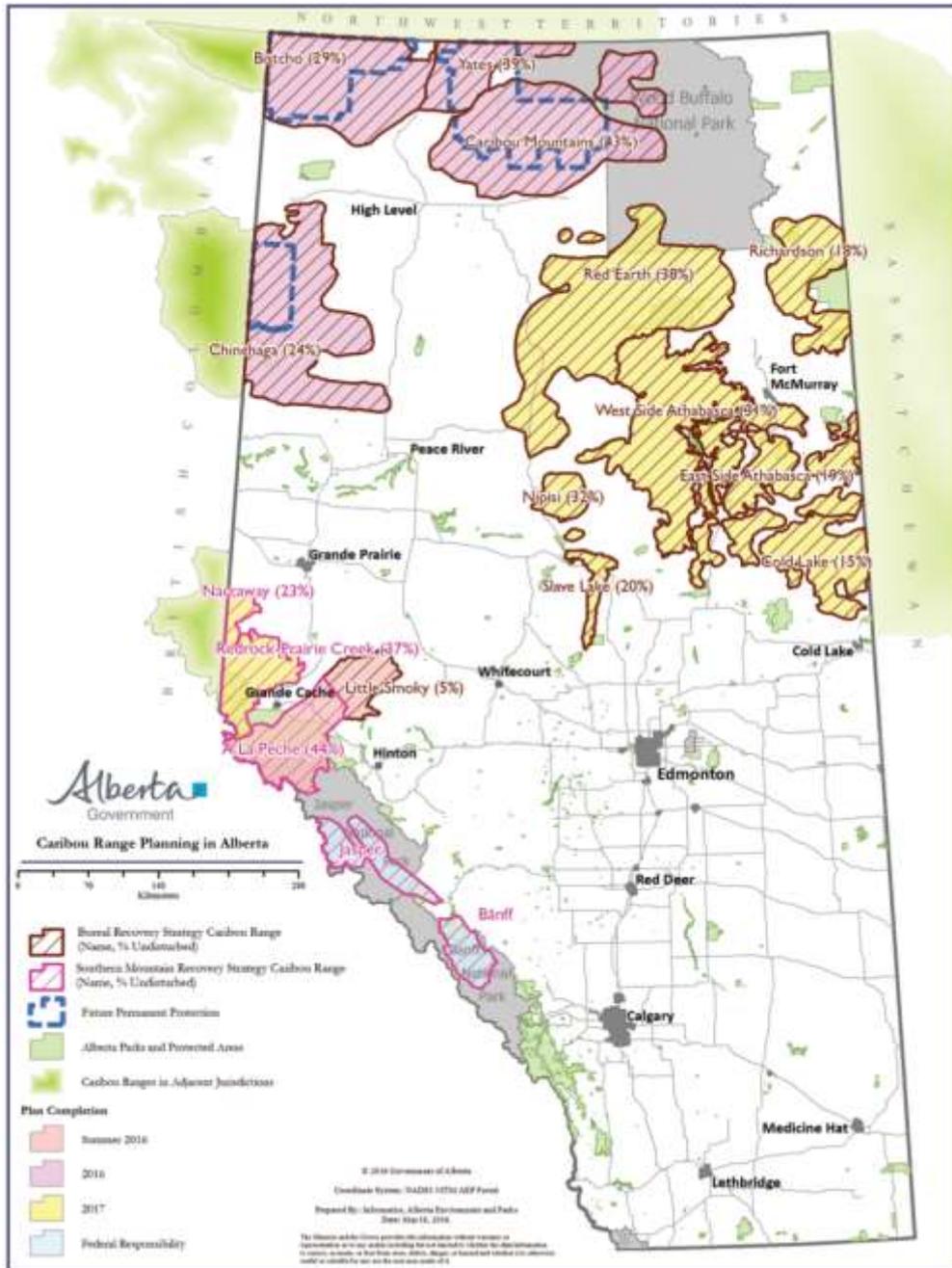
Last Update November 21, 2016 at 04:30 PM

**Interim Posting Restriction in all Caribou Ranges**

Alberta Energy is committed in establishing Alberta as Canada's leader in permanent protection of caribou ranges. Effective immediately, an interim restriction has been placed on the sale of mineral rights within all caribou ranges in Alberta. This restriction applies to petroleum and natural gas, oil sands, coal and metallic and industrial mineral rights. The restriction is expected to remain in place until stringent operating practices have been defined, through directives or changes to the Enhanced Approval Process Integrated Standards and Guidelines, or upon approval of the appropriate range plan. Alberta Energy intends to resume mineral sales as range plans are released (so long as this aligns with the specific range plan details). This page on ETS will provide information on the release of the range plans as they occur.

Last Update September 27, 2016 at 10:30 AM

# Largest conservation announcement in Alberta since 1922

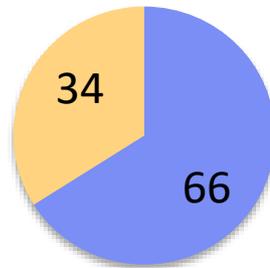
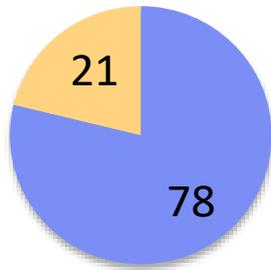


# Canadian Boreal Forest Agreement – Al-Pac

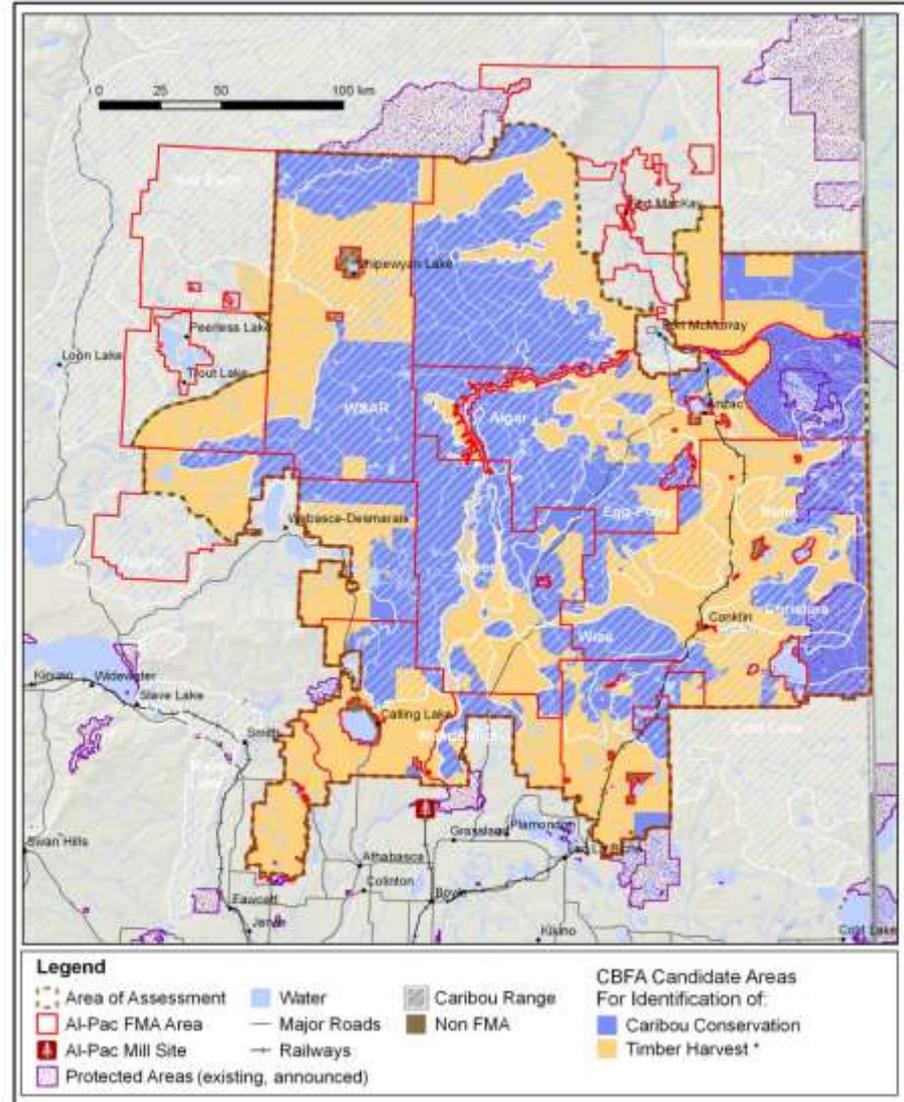
-  **Forestry Deferral**
-  **Timber Harvest**

WSAR

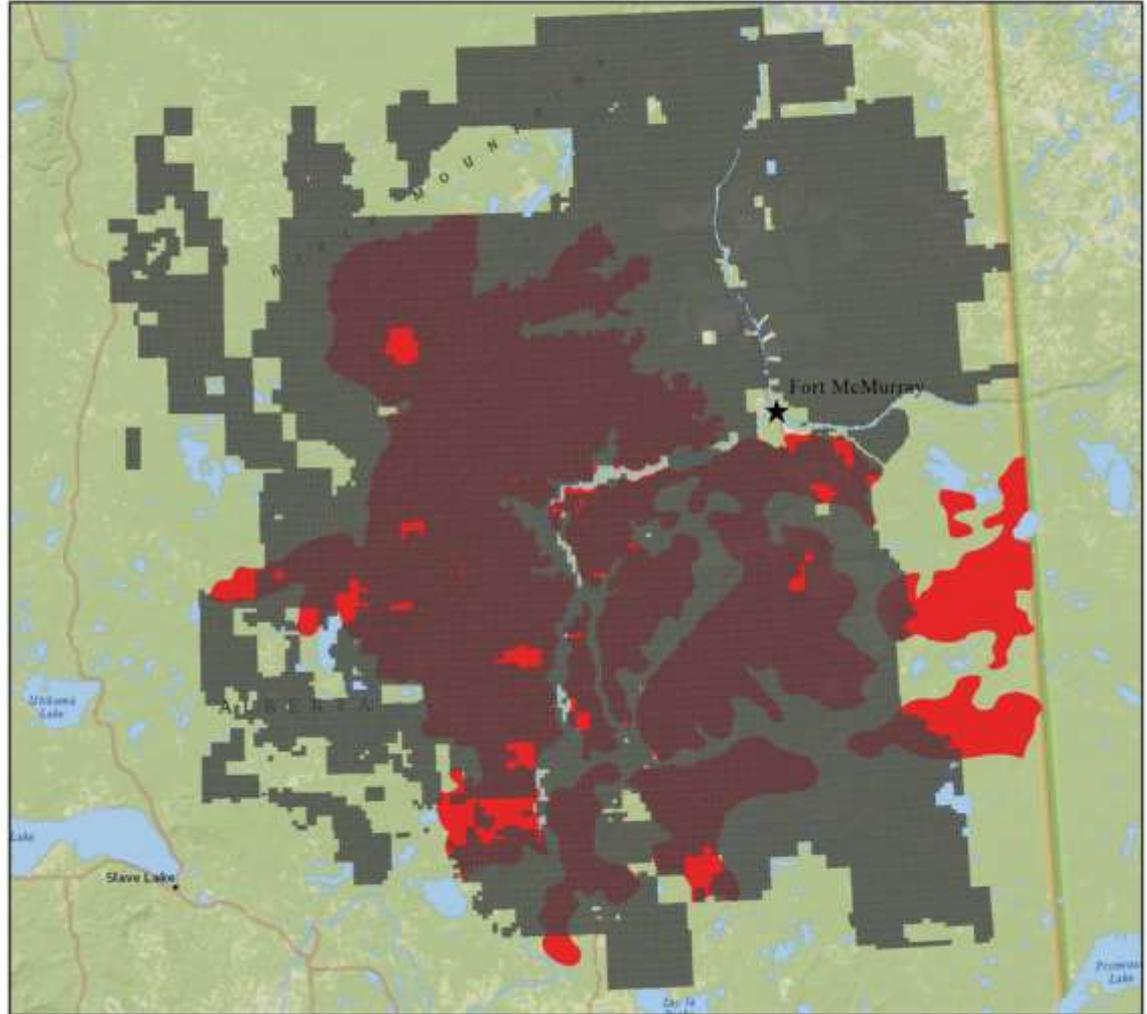
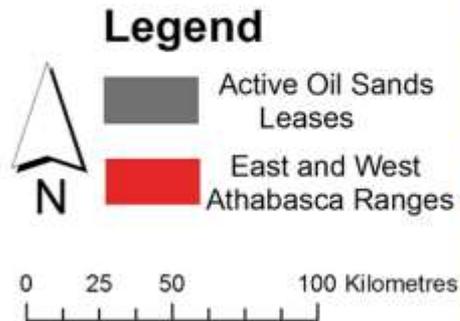
ESAR



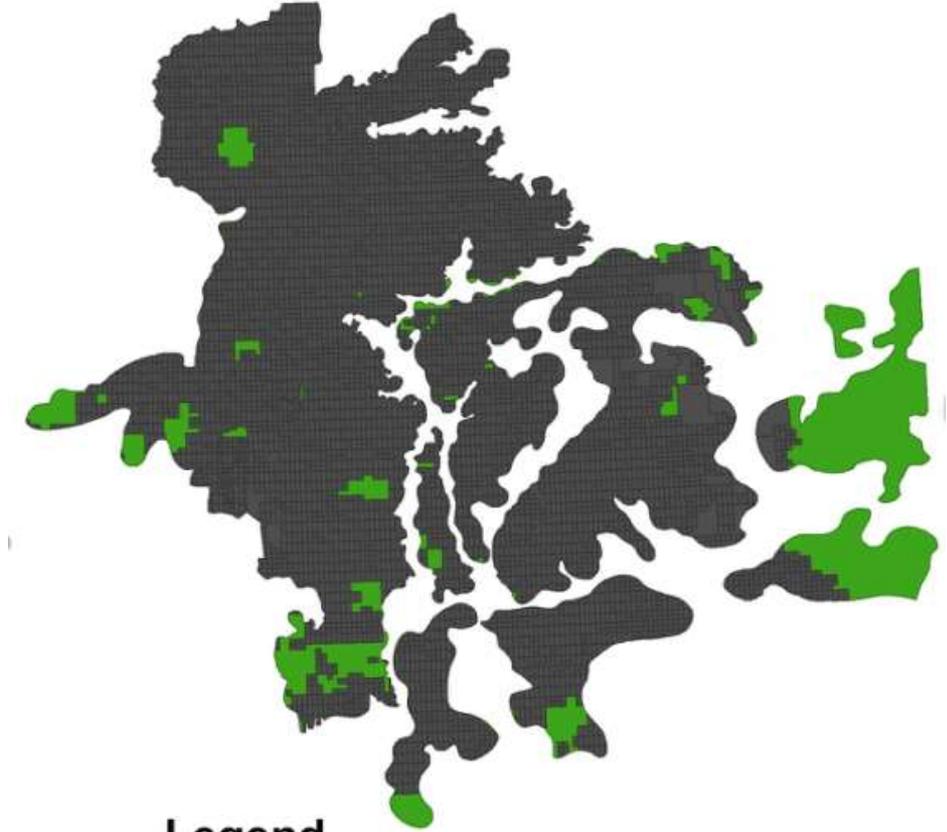
40,484 km of seismic lines in forestry deferral areas



# Allocations undermine caribou conservation



# Initial Lease Coverage



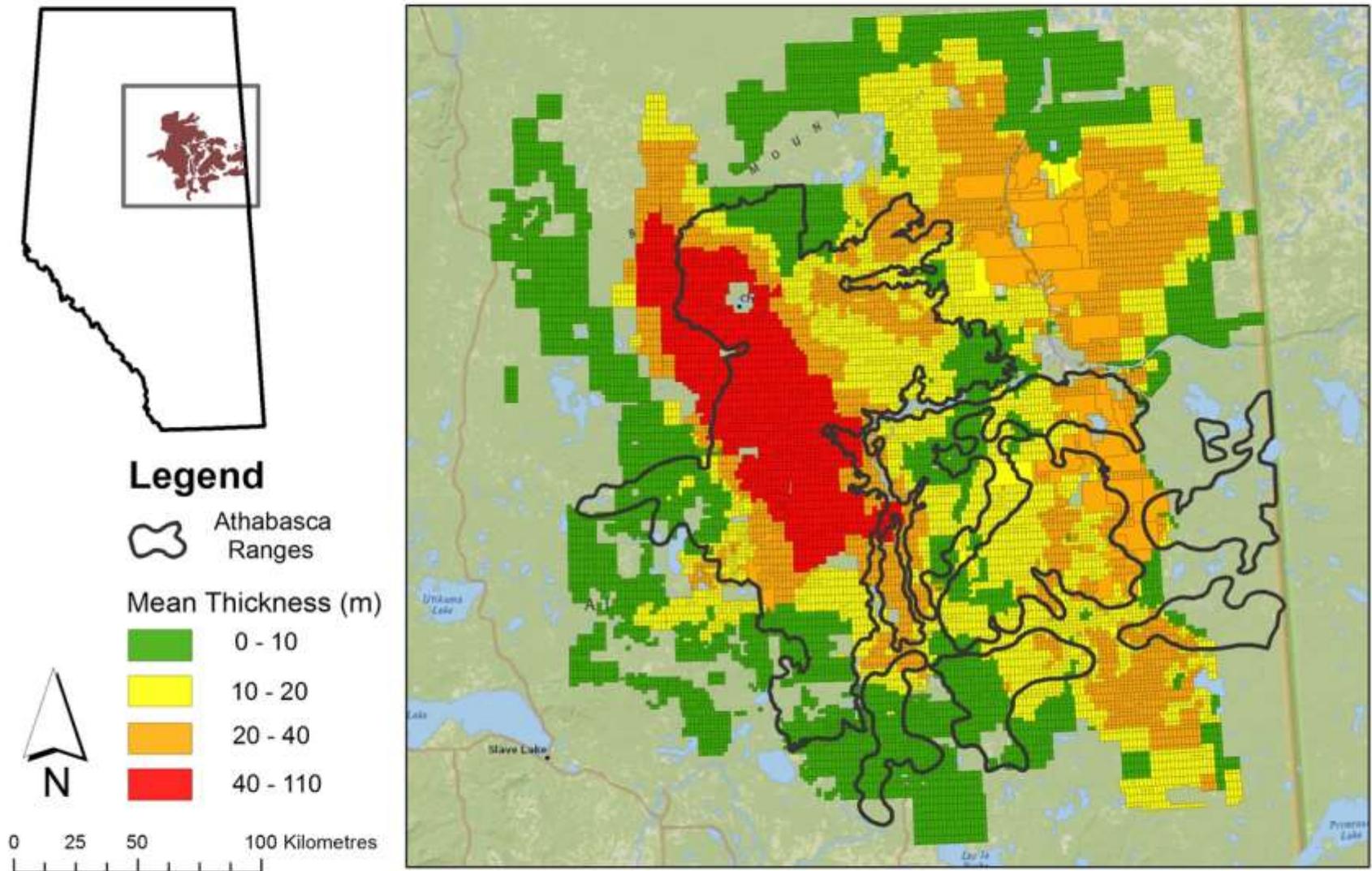
## Legend

- Remaining Leased Area
- Non Leased Area

0 30 60 120 Kilometres

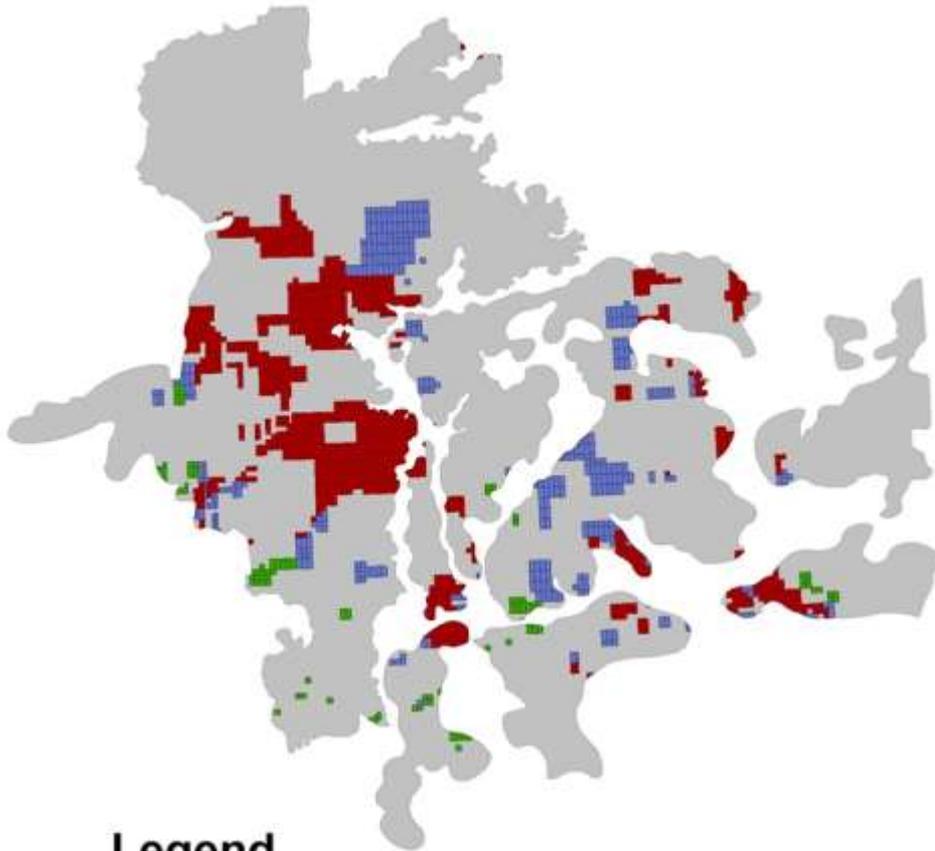


# Mean Bitumen Thickness Beneath Active Leases



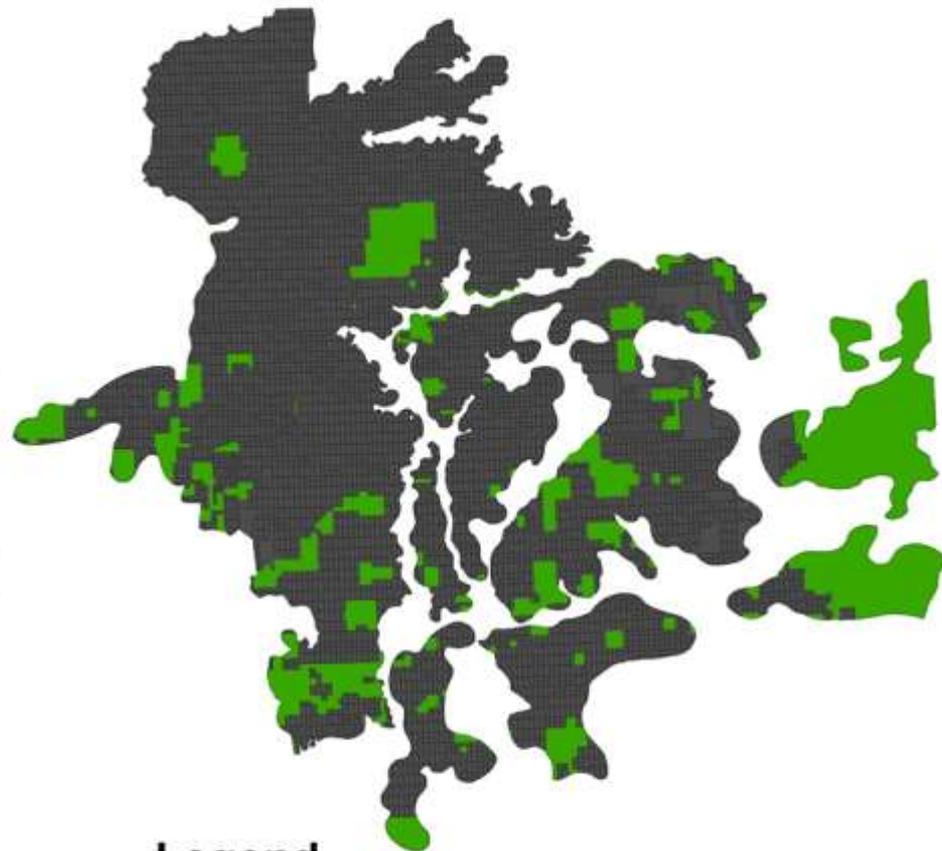
# 2016-2019

## Remaining Leases



### Legend

- Leases Under 10m Bitumen Thickness
- Bottom 30% of Remaining Leases
- Leases to be Renewed
- West and East Athabasca Ranges



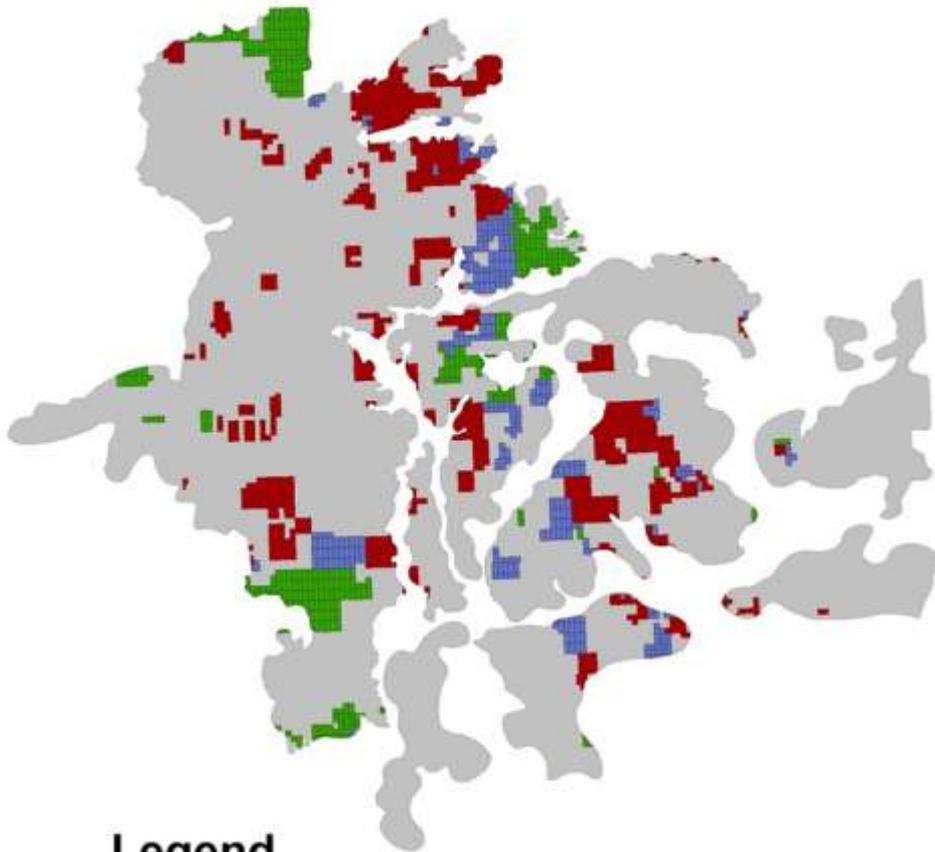
### Legend

- Remaining Leased Area
  - Non Leased Area
- 0 30 60 120 Kilometres



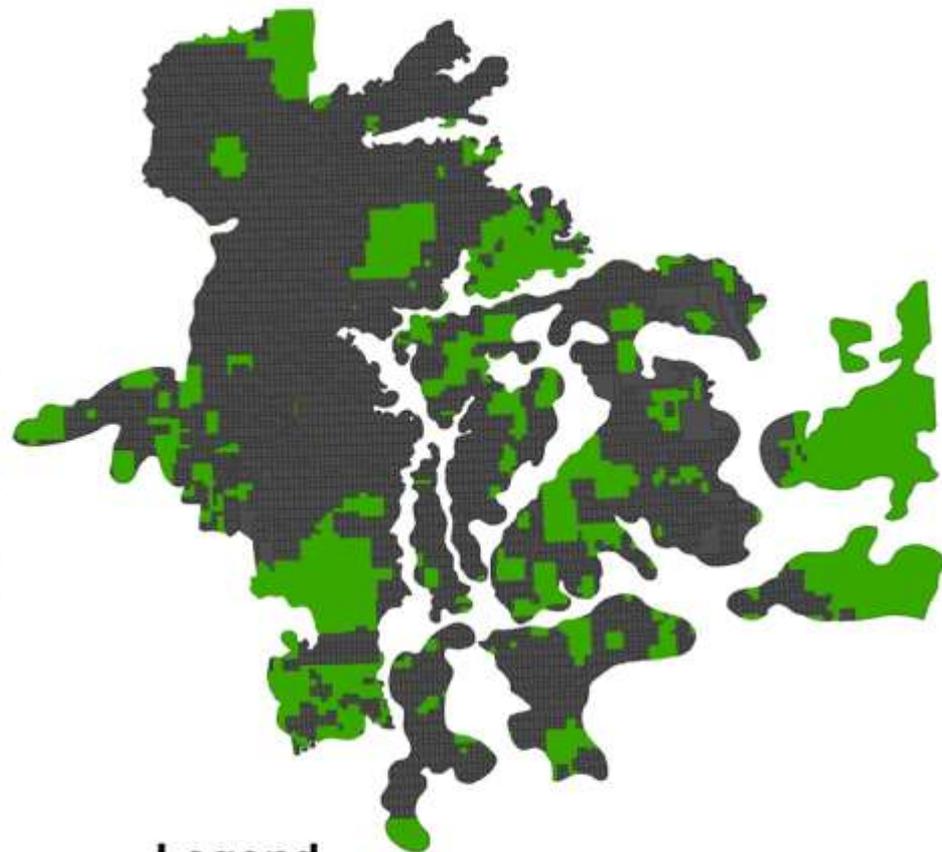
# 2020 - 2023

## Remaining Leases



### Legend

- Leases Under 10m Bitumen Thickness
- Bottom 30% of Remaining Leases
- Leases to be Renewed
- West and East Athabasca Ranges



### Legend

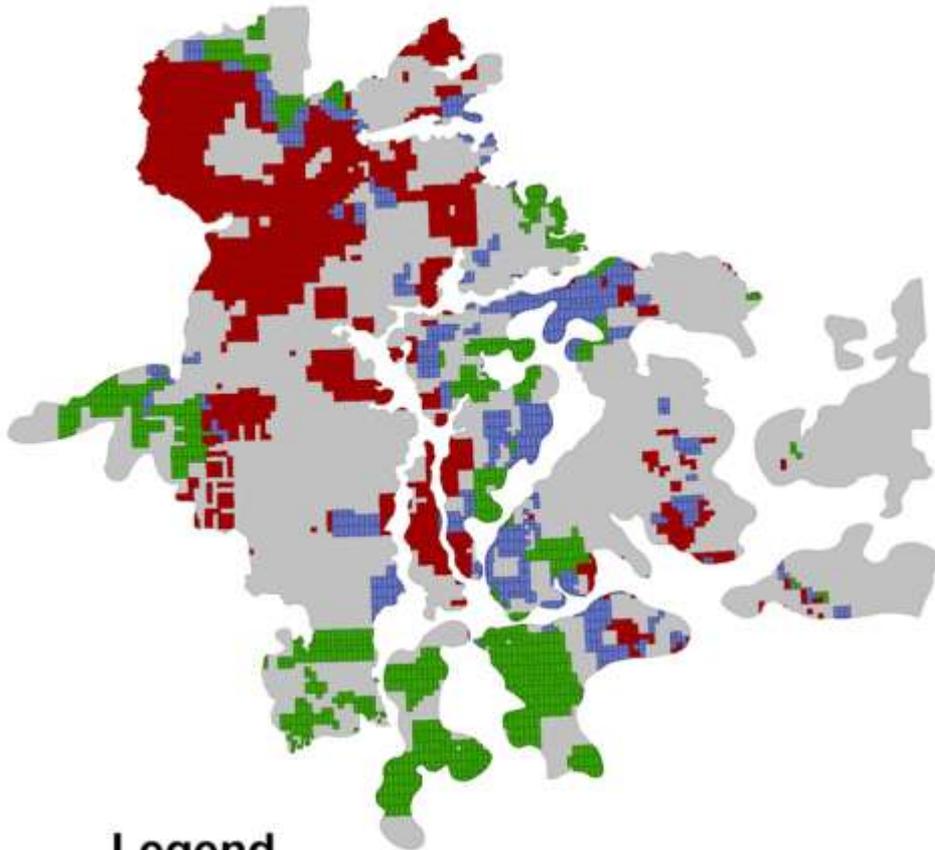
- Remaining Leased Area
- Non Leased Area

0 30 60 120 Kilometres



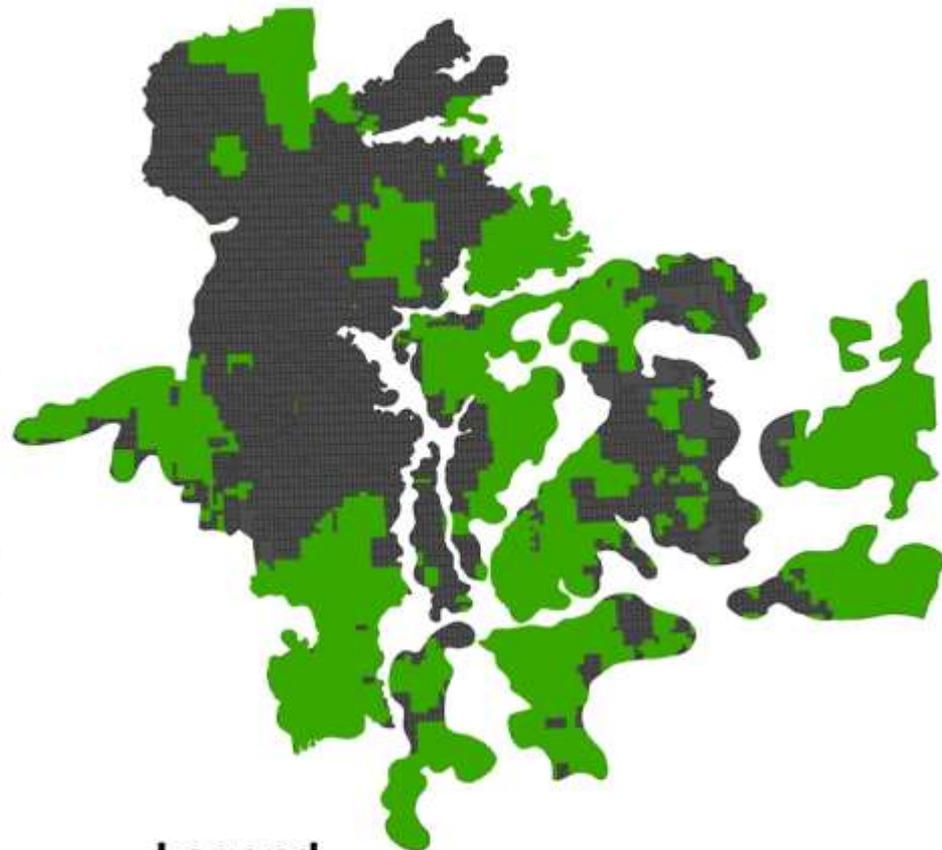
# 2024-2027

## Remaining Leases



### Legend

-  Leases Under 10m Bitumen Thickness
-  Bottom 30% of Remaining Leases
-  Leases to be Renewed
-  West and East Athabasca Ranges



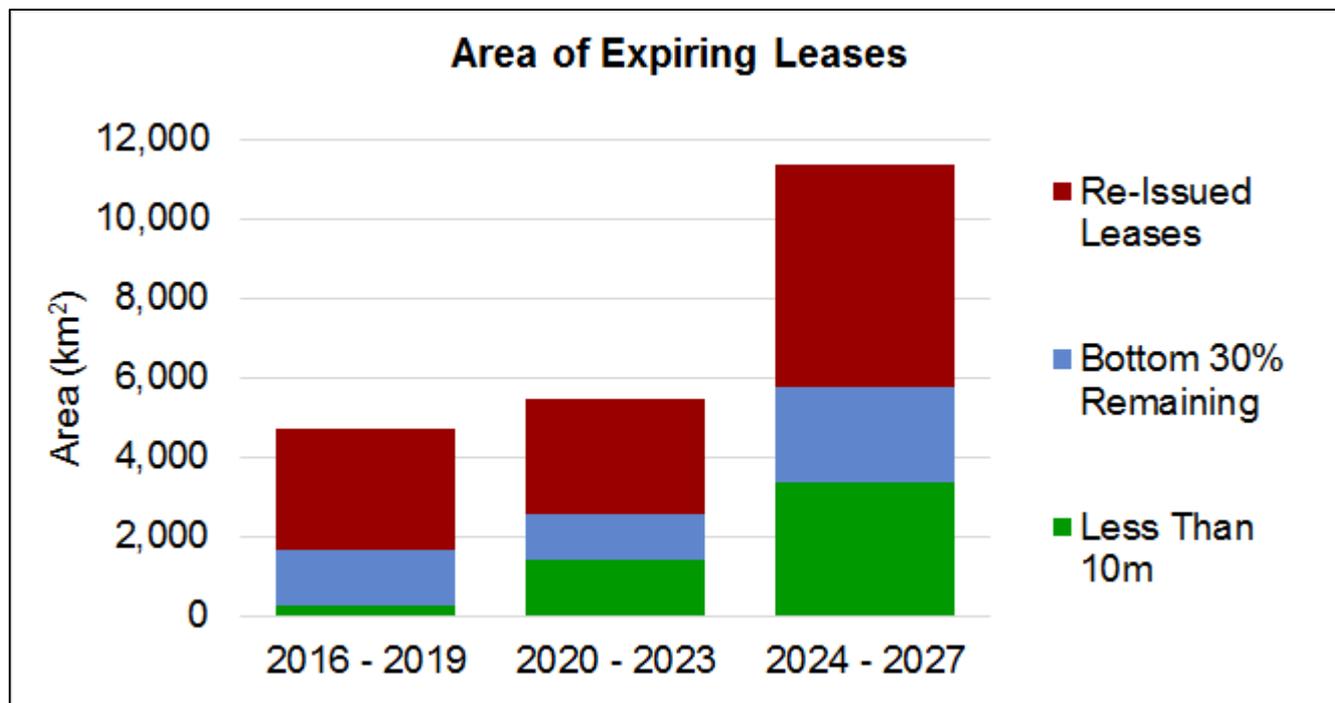
### Legend

-  Remaining Leased Area
-  Non Leased Area

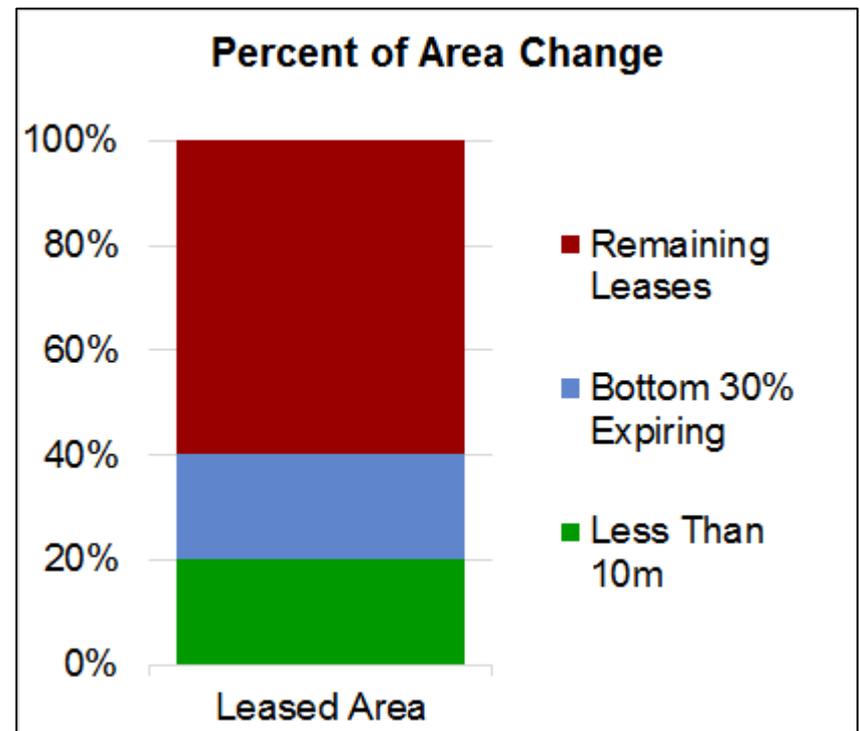
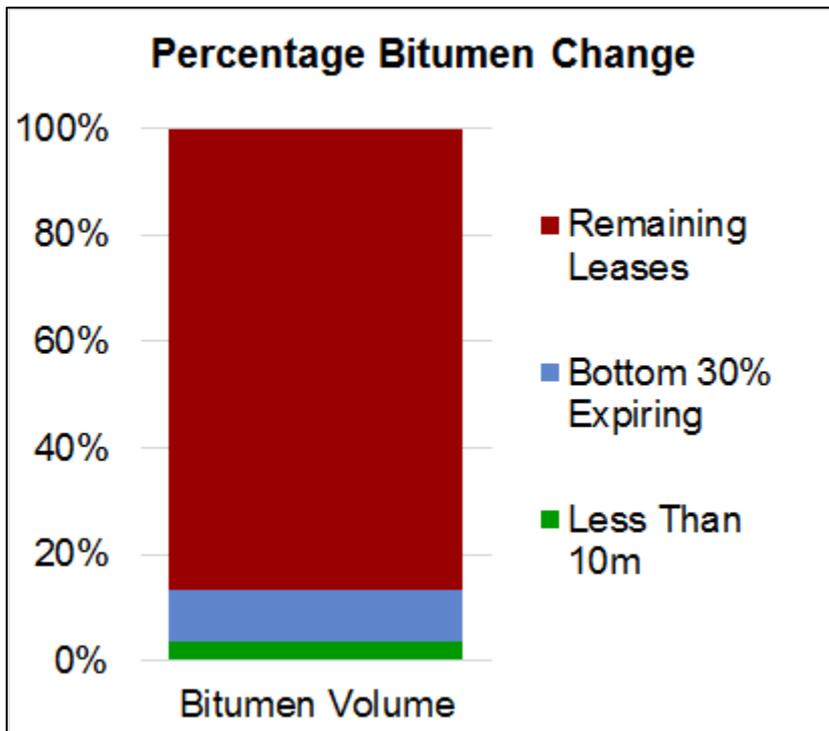
0 30 60 120 Kilometres



# 10 years could return 10,000 km<sup>2</sup> of caribou habitat



# 86% bitumen = 60% of landscape



# Potential Mechanisms to drive linear restoration caribou ranges

- Regional plans (2/7, announced in 10 years)
- Biodiversity Management Framework (under development 4 years)
- Conservation Offset Framework (under development 4 years)
- ***Interim direction under s.67 REDA – immediate decision-making***

# Offsets – limiting factor

- Substantial efforts on voluntary actions, science assessment, restoration as an effective management tool
- Need clear consistent, policy signal that restoration is necessary in caribou ranges and a mandatory requirement for further activity in caribou ranges

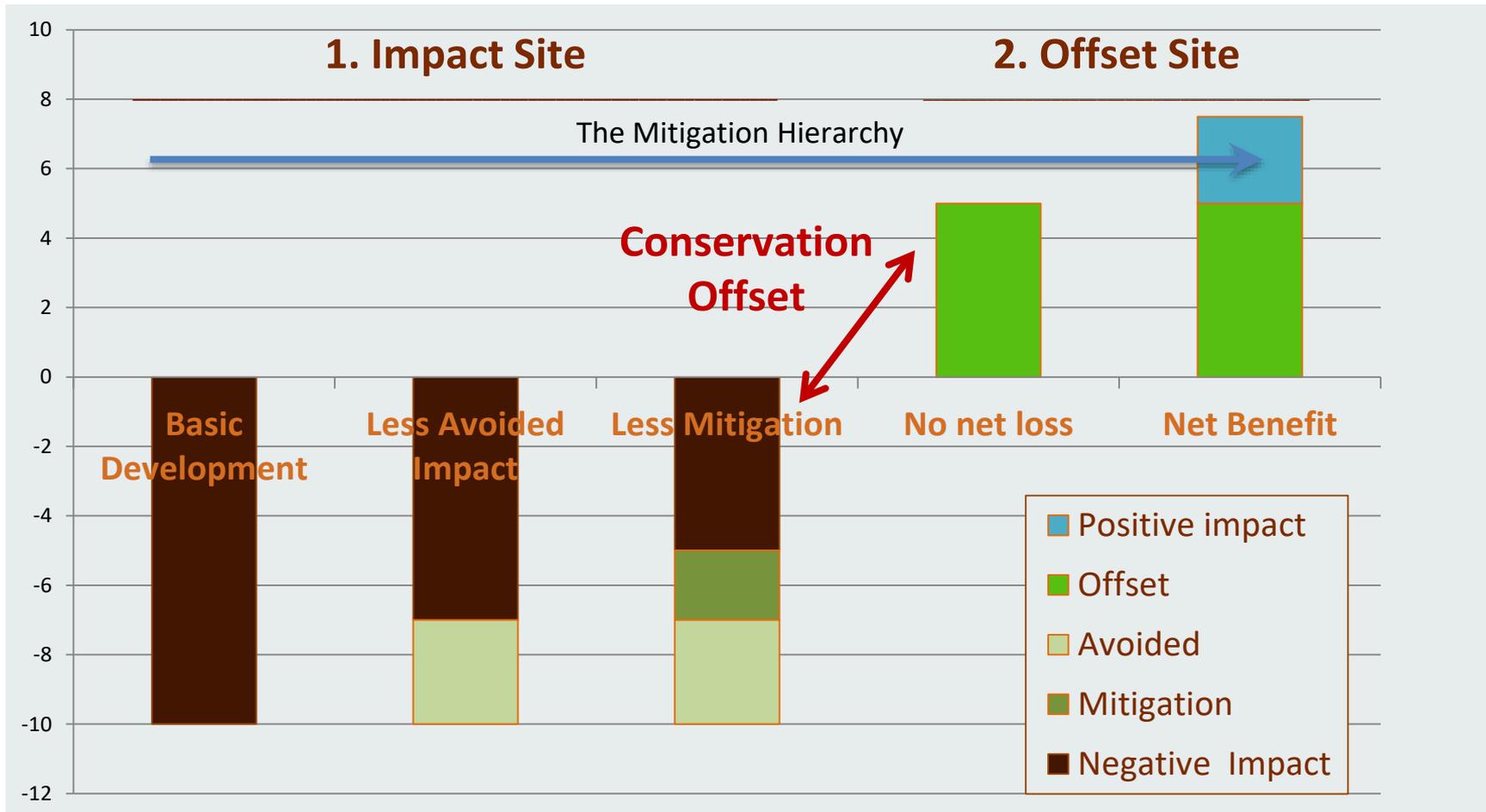
# Conservation Offsets

*“[M]easurable conservation outcomes resulting from actions designed to compensate for significant residual adverse biodiversity impacts arising from project development after appropriate prevention and mitigation measures have been taken.”*

Business and Biodiversity  
Offset Programme, 2013

AKA “Biodiversity Offsets”, “Habitat Compensation”,  
“Compensatory Mitigation”, “Conservation Allowance”

# Conservation Offsets



# Restoration mandatory?

**The White House**

Office of the Press Secretary

For Immediate Release

November 03, 2015

## Presidential Memorandum: Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment

MEMORANDUM FOR THE SECRETARY OF DEFENSE  
THE SECRETARY OF THE INTERIOR  
THE SECRETARY OF AGRICULTURE  
THE ADMINISTRATOR OF THE ENVIRONMENTAL  
PROTECTION AGENCY  
THE ADMINISTRATOR OF THE NATIONAL OCEANIC  
AND ATMOSPHERIC ADMINISTRATION

“Agencies shall each adopt a clear and consistent approach for avoidance and minimization of, and *compensatory mitigation* for, the impacts of their activities and the projects they approve.”

# Regulatory use of offsets

NEB 2010 – 2012: 3 decisions on NGTL pipeline proposals in Horn River area: caribou habitat offsets

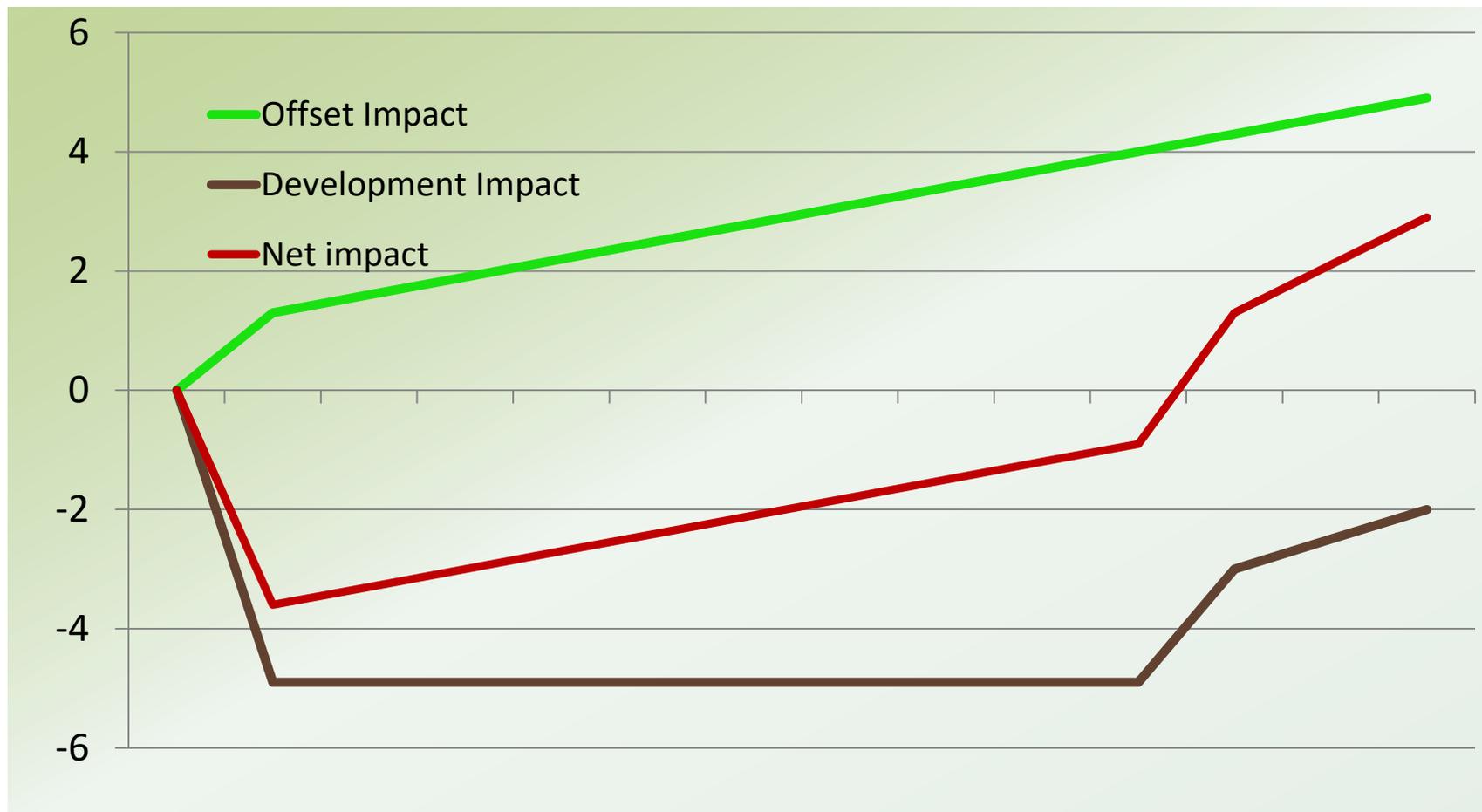
JRP 2011: Total Joslyn oilsands mine: offsets for species at risk

JRP 2013: Shell Jackpine Expansion oilsands mine: wide range of offsets recommendations

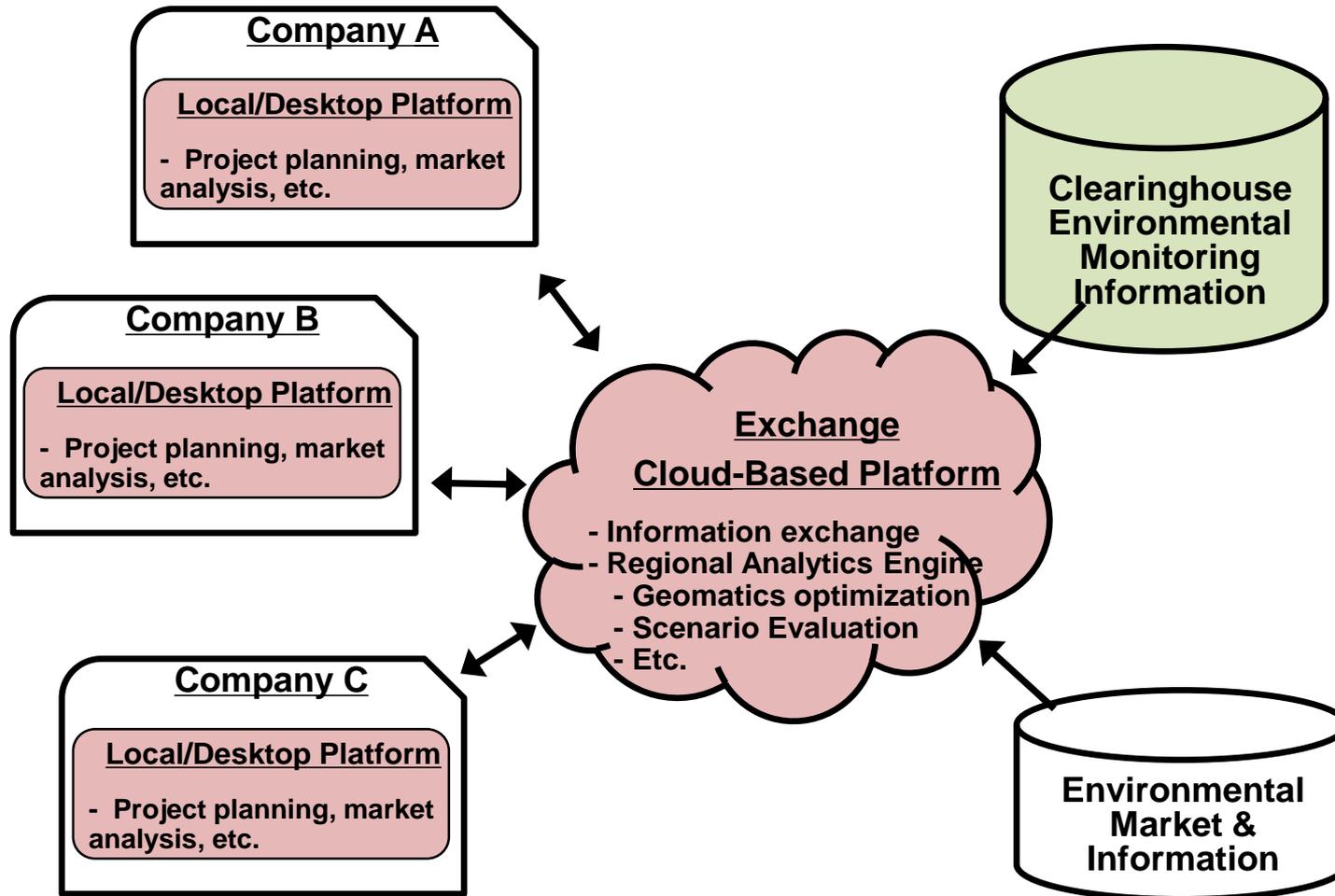
NEB 2013: Enbridge Northern Gateway pipeline conditions: 10 conditions for 4 different types of offsets (wetlands, freshwater fish habitat, marine habitat, caribou habitat).

NEB 2016: Kinder Morgan Trans Mountain Expansion: caribou habitat, spotted owl, rare plant communities, grasslands, old growth management areas, wetlands, riparian

# Timing and Duration Issues



# Conservation Clearinghouse and Exchange



# Alberta Policy

## References:

*Alberta Land-Use Framework  
Responsible Action (Alberta Oilsands Strategy)  
A Woodland Caribou Policy for Alberta  
Lower Athabasca Regional Plan  
South Saskatchewan Regional Plan*

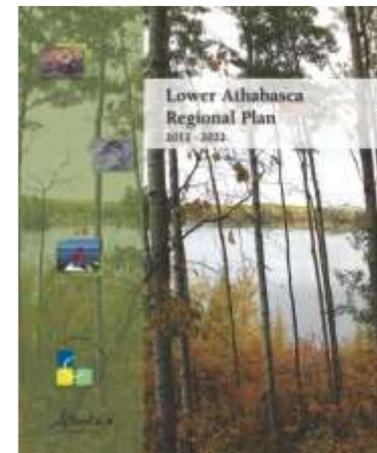
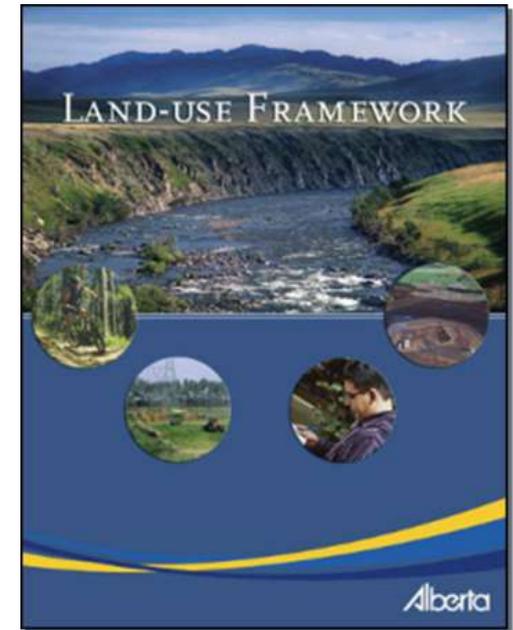
## *Alberta Land Stewardship Act*

s 45-47 provide for exchange to be established dealing in “stewardship units” to “counterbalance” adverse effects of activity on the land

## *Alberta Wetland Policy (2013)*

Pilot program conducted in SE Alberta

Alberta Conservation Offset Framework



# Addressing policy disconnect between AEP and AER



...stabilizing, recovering and sustaining woodland caribou populations is an investment in maintaining Alberta's diverse natural environment. Successfully achieving this result will require the identification, *maintenance* and *restoration* of sufficient caribou habitat.

*Alberta Woodland Caribou Policy (2011)*

# Responsible Energy Development Act

67(1) When the Minister considers it to be appropriate to do so, the Minister may by order give directions to the Regulator for the purposes of

(a) providing priorities and guidelines for the Regulator to follow in the carrying out of its powers, duties and functions, and....

# Are ALSA/REDA and land use planning hampering environmental protection

REDA requires the AER to “act in accordance with any applicable ALSA regional plan” (s.20) and in issuing an approval or making a decision, the AER can direct a person (ie company) to comply with an ALSA plan.

Problem – regional plans require no protection of caribou

# Regional plans take away discretion to protect environment

LARP forbids AER from “adjourning, deferring, denying, refusing or rejecting any application ...or making any decision” because any portion of the strategic plan or implementation plan is incomplete or the crown does not comply with these portions of the plan. (see s. 7(3) of LARP Regulatory Details).

# AER Decision 014 (2013) Dover In Situ Project

“Dover to work with other in situ operators and ESRD to develop and implement appropriate, regionally-based monitoring and compensation programs that would offset the effects of oil sands development on caribou habitat. These plans could inform the decisions of regulatory agencies issuing surface dispositions on Crown lands.”

# A glimmer of hope Section 67 of REDA:

67(1) When the Minister considers it to be appropriate to do so, the Minister may by order give directions to the Regulator for the purposes of

(a) providing priorities and guidelines for the Regulator to follow in the carrying out of its powers, duties and functions, and....

(b) ensuring the work of the Regulator is consistent with the programs, policies and work of the Government in respect of energy resource development, public land management, environmental management and water management.

# Sample S.67 order

Energy		
Environment and Sustainable Resource Development		
Office of the Minister of Energy	400 Legislative Building Edmonton, Alberta Canada T5K 2B6	Telephone 780-427-5140 Fax 780-423-0155
Office of the Minister of Environment and Sustainable Resource Development	400 Legislative Building Edmonton, Alberta Canada T5K 2B6	Telephone 780-427-2381 Fax 780-423-0288

## DEPARTMENT OF ENERGY

### DEPARTMENT OF ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT

#### *RESPONSIBLE ENERGY DEVELOPMENT ACT* SA 2012, c. R-17.3

Energy Ministerial Order 106/2014  
Environment and Sustainable Resource Development Ministerial  
Order 53/2014

We, Frank Oberle, Minister of Energy, and Kyle Fawcett, Minister of Environment and Sustainable Resource Development, pursuant to section 67 of the *Responsible Energy Development Act*, make the Aboriginal Consultation Direction, in the attached Appendix.

Energy Ministerial Order 141/2013 is repealed.

DATED at the City of Edmonton, in the Province of Alberta, this 31<sup>st</sup> day of October, 2014.

Original signed by Minister Frank Oberle

Frank Oberle  
Minister

Original signed by Minister Kyle Fawcett

Kyle Fawcett  
Minister

# Conclusions

- Caribou range plans – October 2017 must provide mechanisms to achieve 65% undisturbed habitat
- Mitigation hierarchy will need to involve permanent protection, tenure changes, strategic sequencing of industrial activities and mechanisms to drive restoration (offsets)

# Conclusions II

- There will be no widespread deployment of offsets in caribou habitat until AEP gives explicit direction that thresholds in caribou habitat are binding either under an ALSA plan or through other legal direction to decision-makers at AER.
- Priority action required.

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