



The North Boundary of the Tsuut'ina Nation Reserve

v1.5 | August 16, 2021

Jesse Salus

Table of contents

- 1 Table of contents
- 2 Introduction
- 3 Origins of the Tsuut'ina Nation reserve boundaries
- 4 What is a Township?
- 5 Shortfall of the original reserve grant
- 5 Road allowances and the reserve
- 6 North boundary adjacent to the City of Calgary
- 7 North boundary adjacent to Rocky View County
- 8 Fencing, encroachment and close proximity
- 9 Summary
- 10 Endnotes

Introduction

The Lands Administration of the Tsuut'ina Nation is planning to construct a fence along a portion of the North boundary of the Tsuut'ina Nation reserve in order to help address illegal trespass and dumping on reserve land. This fence extends approximately 10km, from Tsuut'ina Trail adjacent to the City of Calgary in the east, to a point adjacent to Rocky View County in the west.

In preparation for this work, Stantec was engaged to undertake a boundary maintenance survey of the route in 2019, and to establish and mark the boundary at 30m intervals.¹ The work resulted in an accounting of encroachments along this boundary, as well as a clear indication of where the officially-accepted North boundary of the reserve lies.

There are indications that what has traditionally been accepted as the extent of the Tsuut'ina Nation reserve may not be entirely accurate, and in order to be certain that the fence is being planned on the correct line, a review of contemporary and historical issues which inform this boundary has been undertaken. This report will serve to address these issues.



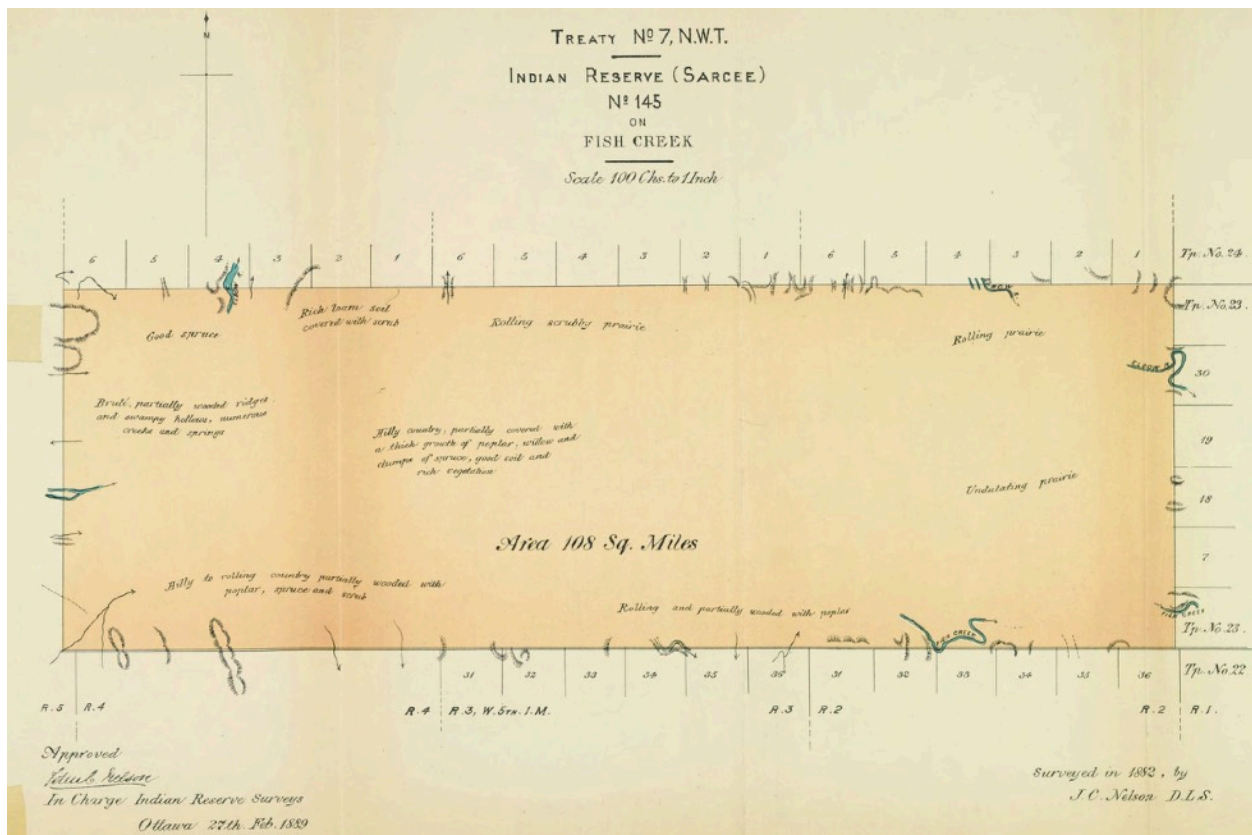
The extent of the proposed North boundary fence is shown above in red. The fence adjoins the City of Calgary for approximately 3.5km, and Rocky View County for approximately 6.5km.

Origins of the Tsuut'ina Nation reserve boundaries

The land that constitutes the Tsuut'ina Nation reserve was formally agreed to with the signing of the supplementary Treaty 7 between the Nation and the Crown on June 27, 1883. The Treaty provided for three Townships of land, described therein as "...Township Twenty Three in Ranges two (2) three (3) and four (4), West of the fifth (5th) principal meridian in the North West Territories of Canada, to have and to hold the same unto the use of the said Sarcee Indians for ever."²

The previous year, in 1882, this land had been surveyed, and was recorded by the Government of Canada in plan 308 CLSR AB. This survey, and the accompanying description of the reserve as three Townships of land, was confirmed by Canada in 1889, and became the officially-recognized extent of the Tsuut'ina Nation reserve.³

While the reserve has been expanded as a result of the Tsuut'ina Trail land swap in 2015, the newer portions of the reserve do not relate to the proposed fence line.



Plan of original 1882 survey of Tsuut'ina Nation (Sarcee) reserve, to accompany Order-in-Council 1889-1151, May 17, 1889. Source: FB6062 CLSR AB.

These reserve boundaries have been confirmed in a number of subsequent surveys over the years, and most recently accepted as the Natural Resources Canada Land Description for Tsuut'ina Nation Reserve No.145, prepared under the First Nations Land Management Act.⁴

Although surveyed and confirmed by Canada on numerous occasions, as we will see, these boundaries may not be entirely correct.

What is a Township?

The extent of the Tsuut'ina Nation reserve as agreed in Treaty 7 was defined as three Townships of land in size. Therefore, to understand the extent of the reserve, the extent of a Township must be understood first.

In the 19th century, the Government of Canada set out to open the prairies for farming, ranching and other types of settlement. The first step in that process was to divide large parts of the country into areas known as 'Townships', and surveyors were instructed and dispatched to survey the land under the Federal "Dominion Lands Act".

Under the third survey of the Dominion Lands Survey, under which most of Alberta was surveyed, Townships are approximately 6-miles square, and are subdivided into 36 'Sections', one-square-mile in size. The land is crossed at regular intervals by 66-foot-wide Government road allowances which provides public access to every Section within a Township. Townships in Alberta contain six north-south road allowances, located one mile apart, and three east-west road allowances located every two miles. While the 36 Sections of land were to be made available for private ownership, road allowance land was to be retained by the Government for the construction of roads, in order to provide public access throughout Western Canada.⁵

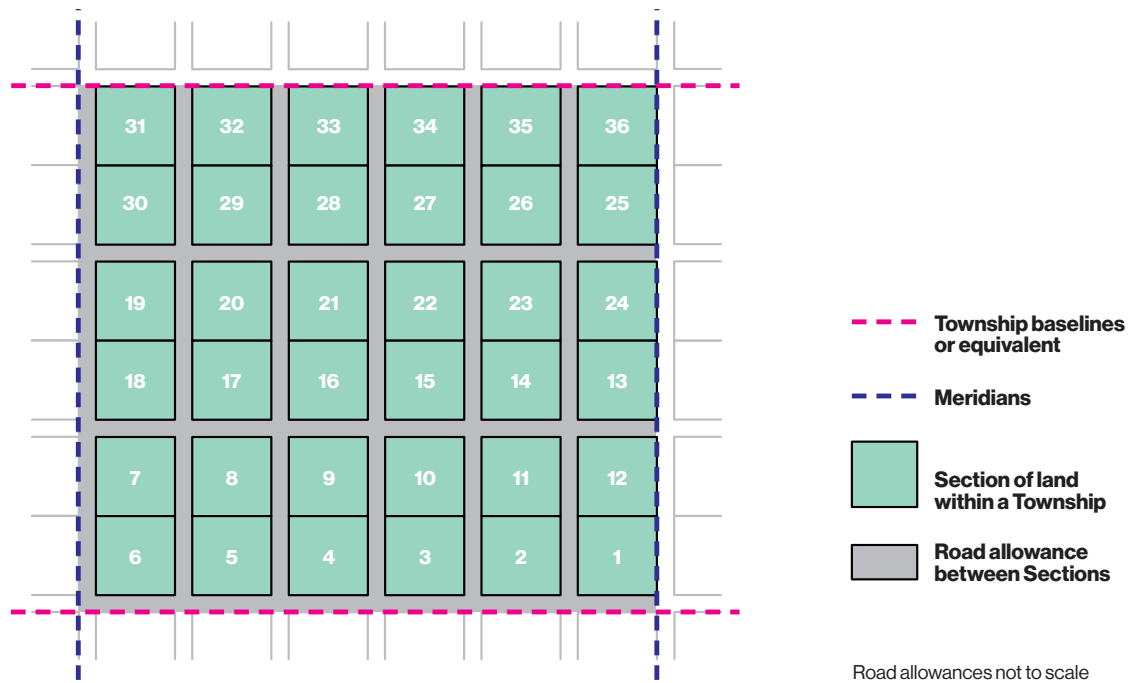


Diagram showing a typical Township in Alberta as surveyed and divided under the third survey of the Dominion Land Survey.

Townships are laid out along 'Baselines' and 'Meridian lines', with the western and southern limits of the perimeter road allowances being positioned along these lines. Markers are placed on these lines, and they define the boundaries and corners of the Township.⁶

Along with the 36 Sections of subdivided land and the road allowances between these Sections, the southern and western road allowances along the perimeter are part of that Township. Road allowances to the north and east of a given Township are included with adjacent Townships.⁷

Shortfall of the original reserve grant

The Tsuut'ina Nation reserve was first surveyed in 1882⁸ under instructions from the Indian Commissioner, and at that time the decision appears to have been made to exclude all of the road allowances around the perimeter of the three identified Townships. While the road allowances to the north and east of the reserve belonged to adjacent Townships and would not have been included in the proposed reserve, the southern and western perimeter road allowances should have been included based on the legislated extent of a standard Township.

When Treaty 7 was agreed to in 1883, it noted that the new reserve would be comprised of three Townships of land, and included no exclusions or other caveats that might have reasonably prevented the granting of these Townships in full. There was also no notification that the decision had already been taken the previous year to exclude the perimeter road allowances from the reserve, and that the surveyed reserve therefore did not constitute three full Townships. It would appear that the Crown withheld this information from the Nation at the time of Treaty, and had no intention of granting the full three Townships as agreed.

The exclusion of the road allowances represents a shortfall of approximately 194 acres from the originally promised three Townships of land.

While there is clear indication that the full allotment of reserve land as agreed in Treaty 7 was not provided to the Nation due to the exclusion of the perimeter road allowance lands, the shortfall would fall along the western and southern borders of the reserve, and does not impact the North boundary.

Road Allowances and the reserve

The Government's decision to retain ownership of the perimeter road allowances meant that all four sides of the Tsuut'ina Nation reserve, as originally surveyed, only adjoined public Government lands. Whether the perimeter road allowance contained an actual road or not, the presence of the road allowances meant that the reserve was located no closer than 66-feet to any privately-owned parcels. However, this situation would not remain absolute.

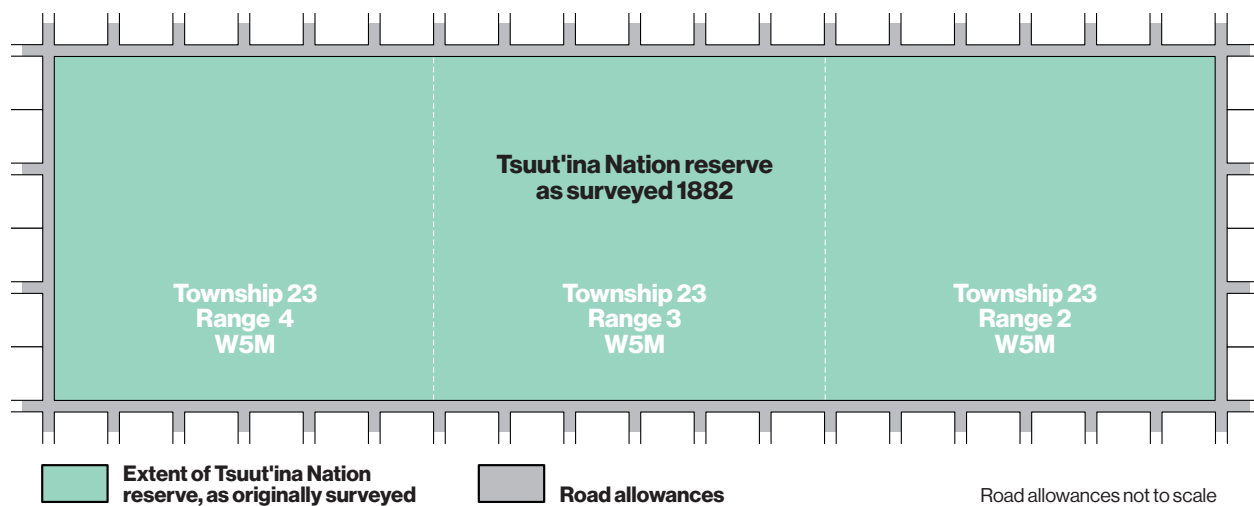


Diagram showing the extent of the reserve as surveyed in 1882. Note that the entire perimeter of the reserve adjoined Government road allowance lands when first laid out.

Up to 1906, all road allowance land in what is now Alberta was owned by the Government of Canada. The passing of the 'Saskatchewan and Alberta Road Act' in that year had the effect of transferring ownership of the surface rights of these lands to the Province of Alberta⁹, while mineral rights followed in 1930¹⁰. Beginning in 1968, the Province's Municipal Government Act transferred the ownership of the roads and road allowances within Edmonton and Calgary to those cities, while the vast majority of roads and road allowances that exist outside of these cities continued to be owned by the Province.¹¹

Under various Federal and Provincial laws that have been enacted over the years, authorities responsible for the road allowances have the power to close undeveloped road allowance lands that are considered surplus to the requirement of providing roads within a given district. Closure of road allowances are typically made for the purpose of selling the land to adjoining landowners.

In addition to a full closure, the governing authorities also have the power to lease undeveloped road allowances to adjacent landowners for set periods of time.

North boundary adjacent to the City of Calgary

Approximately 3.5km of the proposed North boundary fence adjoins the City of Calgary, next to the community of Discovery Ridge.



When the community of Discovery Ridge was originally conceived, it was partially founded on the concept of encroachment on Tsuut'ina Nation reserve land. When first publicized and sold to prospective homeowners, the development plan included the use of hundreds of acres of land within the Tsuut'ina Nation reserve for use as a private ski-hill and golf course. The Nation had not been consulted on these plans despite being displayed prominently in the sales centre and published in local media.¹²

Upon the subdivision and build-out of Discovery Ridge in the late 1990s and 2000s, the reserve portion of the plan was removed. The original road allowance that separated the reserve from the new community was not included in the development, and the City continues to own the road allowance land by virtue of the Municipal Government Act. The presence of the road allowance means that there is currently no private land within the jurisdiction of the City of Calgary that directly adjoins the reserve's North boundary.

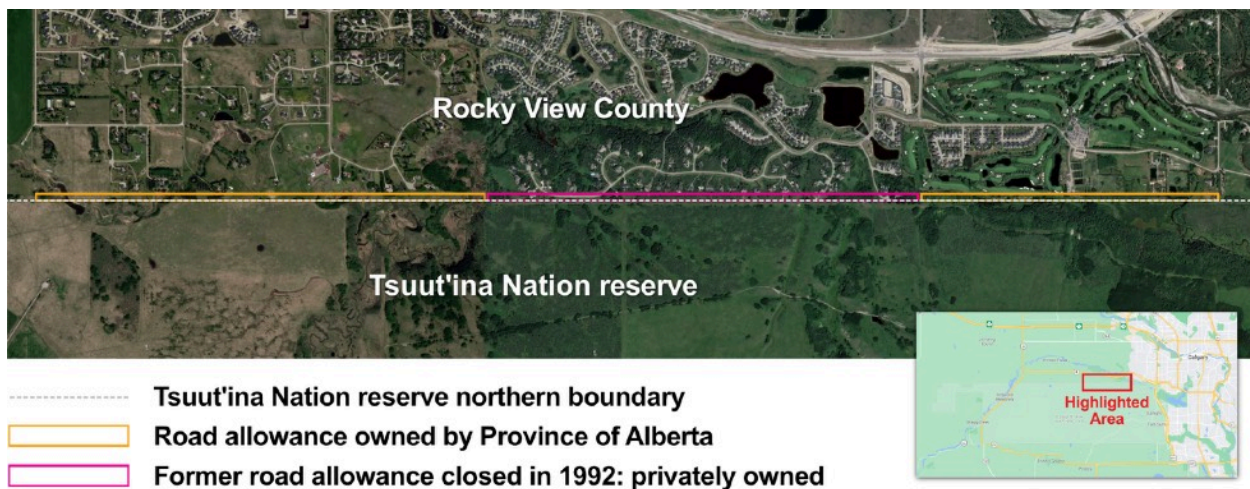
The undeveloped road allowance corridor is largely publicly accessible by foot and bicycle as part of the City's Griffin Woods Park and the City's pathway system.

The western-most 750m portion of the road allowance has been fenced off and is being encroached upon by the adjoining landowner to the north without lease or other agreement by the City. That land was surveyed in 2010 with the intention of closing it, but to date, no action has been taken in this regard and the land remains owned by the City.¹³

North boundary adjacent to Rocky View County

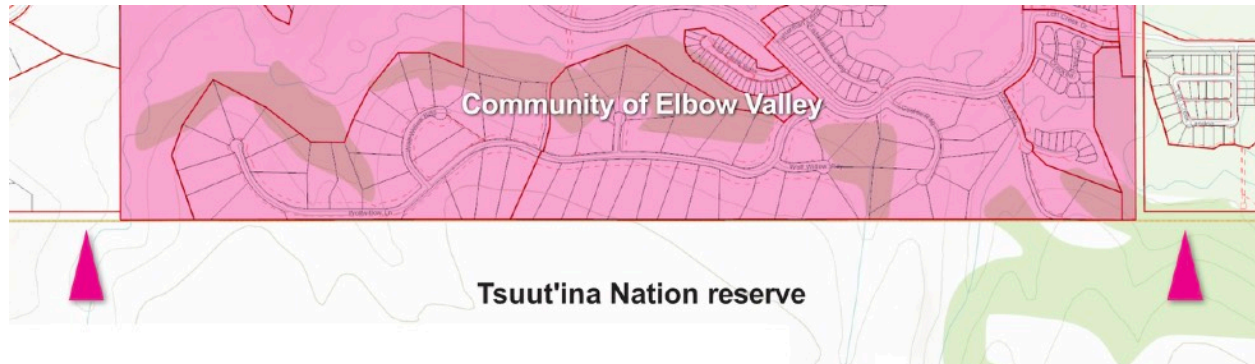
Approximately 6.5km of the proposed fence adjoins Rocky View County.

Along this border, 4.1km of the original road allowance continues to be owned by the Province of Alberta, although little of it is accessible by the public. Many of the landowners that adjoin the road allowance encroach upon that land with fencing, driveways, landscaping and other improvements as if it were a continuation of their private property. The Elbow Springs Golf Club, for example, occupies the road allowance with the teeing areas of holes two and three on their nine-hole 'Springs' course. According to a recent Freedom of Information request, Rocky View County has not leased any of the road allowances adjacent to the proposed fence line, and the private use of these lands is unauthorized.¹⁴



In addition to the publicly-owned land along this boundary, a further 2.4km portion of the original road allowance has been formally closed and sold to private owners. In 1992, Rocky View County approved a road closure bylaw and the land was consolidated with private land to the north¹⁵. The area is now part of community of Elbow Valley; a bare land residential condominium development.

Elbow Valley contains 23 residential lots that directly adjoin the property line of the Tsuut'ina Nation reserve, and these lots are the only private lands that directly adjoin the North boundary of the reserve. Three of these lots contain houses that have been constructed within the former road allowance lands, and access roads, a driveway and various landscaping improvements are also located in this previously-public land.



Map showing the southern edge of the Elbow Valley community directly abutting the Northern boundary of the Tsuut'ina Nation reserve. Certain original road allowances have been incorporated into this area, while intact road allowances can be seen to the east and west of the community (pointed out by arrows).

In 2005 the 'Lott Creek Landowners Land Use Concept' was added to the County's 'Elbow Valley Area Structure Plan'¹⁶, relating to a small portion of the overall Elbow Valley development area adjacent to the City of Calgary. This plan includes a number of policies that support the preservation of the road allowance along the north boundary of the Tsuut'ina Nation reserve as a buffer between the homeowners and the Nation's lands.

For instance, Policy 6.2.1 states: *"The Municipal District of Rocky View and the landowners within the Plan Area shall respect the Township Road 240 (50th Avenue) government road allowance as a buffer between the Tsuu T'ina Nation and the Plan Area, which is contained entirely within the Municipal District of Rocky View."*

Despite the thoughtfulness of a number of these policies, they do not appear to apply to, nor have been enacted along, the majority of this road allowance.

Fencing, encroachment and close proximity

Various types of fencing exists along the portion of the North boundary of the Tsuut'ina Nation reserve that has been earmarked for new fencing, the majority of which is a 1.2m barbed-wire fence. This fencing is missing in several places, and where it does exist, it largely does not conform to the true property line of the reserve. The fencing meanders along the boundary, and in places it encroaches into the reserve by as much as 3.17m.¹⁷

A significant encroachment occurring along the North boundary of the reserve is a shelter and ramp structure that has been built as part of an unauthorized off-road cycle track in Discovery Ridge within the City of Calgary. While the cycle-track is largely located on City-owned water department land, the ramp structure is located fully on reserve land, upwards of 2.5m over the property line.¹⁸

Other improvements have been constructed close to the reserve boundary but do not encroach onto the reserve itself. In addition to those portions of the Elbow Springs golf course and a number of private driveways, these include: a tennis/sports court located 2.35m from the property line, a transformer located 1.88m from the property line, a shed located 0.91m from the property line and a lean-to connected to an existing fence that is just 0.21m from the property line.

There are a total of 14 utility poles that have been erected just North of the proposed fence line. While none of the poles encroach onto the reserve, many are extremely close to the property line, in some cases located as close as 0.1m to the boundary.

Summary

There is a clear issue with the quantity of reserve land provided to the Tsuut'ina Nation compared to what was agreed to in Treaty 7, due to the exclusion of road allowance lands from the agreed Townships. The issue of the excluded road allowances appears to be suitable for further investigation, and it is recommended that this matter be pursued to fully understand the impacts and potential resolutions to this shortfall.

However, as the shortfall of land would fall along the western and southern edges of the reserve, it does not impact the North boundary nor the position of the proposed fence. The North boundary, as indicated in the 2019 Stantec boundary maintenance survey, follows not only the line recognized by the Government of Canada, but also the correct line as originally described in Treaty 7.

The closure and private use of portions of the original Government road allowance adjacent to the North boundary of Tsuut'ina Nation reserve within Rocky View County presents a number of issues for the Nation, especially questions around adequate consultation and the loss of traditional uses of these lands. Further research will be necessary to evaluate the private uses of road allowance lands and their impacts on the Nation's rights, as well as the processes and consultation that was followed when enacting earlier road closures and changes of land-use of the adjoining lands.

Under Provincial law, Municipalities must inform adjacent land owners of any road closure requests, and it is recommended as a matter of course that any future road closures adjacent to the reserve be investigated and evaluated by the Nation so as to ensure the protection any constitutionally-protected treaty or indigenous rights.

With that noted, any purported closure and private use of adjacent lands does not appear to impact the narrow focus of this specific issue, that is, the location of the North boundary of the Tsuut'ina Nation reserve. The discussed use of adjacent lands should not impede the Nation's construction of a new boundary fence along the line as surveyed and marked by Stantec, and it is recommended that the surveyed property line be utilized for the new fence.

Endnotes

1. Survey Report – Tsuut'ina Boundary Maintenance and Encroachment Survey. Johnathan Tingley, CLS, ALS, P. Eng. Stantec Consulting Ltd. Survey General File SM8209-06639. March 19, 2019.
2. Articles of Surrender and Treaty (Supplemental Treaty 7) June 27, 1883. National Archives of Canada, RG-10, Vol. 1848, IT 332, Indian Affairs' Consecutive Number 204.
3. Order of the Privy Council of Canada, 1889-1151, Approved May 17, 1889.
4. Land Description for Tsuu T'ina Nation Reserve No.145, Tsuu T'ina Nation. Prepared under the First Nations Land Management Act (S.C. 1999, c.24). Natural Resources Canada, Surveyor General Branch. September 2, 2015. Canada Lands Survey Records FB40825.
5. Understanding Western Canada's Dominion Land Survey System. Robert B. McKercher and Bertram Wolfe. 1986
6. Consolidated Dominion Lands Act, 1879, amended 1880, 1881. See Section 13, (1), (2).
7. Letter from Al Film, A.L.S., Acting Director of Surveys/Boundary Commissioner, Manager, Survey Section, Lands Division, Land Policy. And Program Branch, AEP, Government of Alberta. July 26, 2021.
8. Field Notes of the Survey of the Sarcee Indian Reservation #145 on Fish Creek, Bow River (sic). Chief Bull's Head. Surveyed in July 1882 by John C. Nelson, DLS. Canadian Lands Survey FB386.
9. Saskatchewan and Alberta Roads Act 6 E. VII., c. 45, s. 1. Revised Statutes of Canada, 1906
10. Alberta Natural Resources Act, S.C. 1930, c. 3
11. An Act respecting Municipal Government, S.A. 1968, c . 68
12. 'Discovery Ridge - Developers face annexation angst over state-of-the-art project'. Frank King. July 30, 1994. Calgary Herald.
13. Letter from Aliyyah Mohamed, B.A, Executive Advisor, Calgary Approvals Coordination. City of Calgary. July 22, 2021.
14. Letter from Rajdeep Dhillon, FOIP Coordinator, Rocky View County. July 30, 2021. File 07-05-2021-01.
15. By-law No. C-3642-91, Municipal District of Rocky View No. 44. Approved third reading May 5, 1992.
16. Lott Creek Landowners Land Use Concept. Elbow Valley Area Structure Plan. Updated September 27, 2005, by By-law No. C-6127-2005.
17. Survey Report – Tsuut'ina Boundary Maintenance and Encroachment Survey. Johnathan Tingley, CLS, ALS, P. Eng. Stantec Consulting Ltd. Survey General File SM8209-06639. March 19, 2019.
18. Site visit July 6, 2021.