



O'CHIESE FIRST NATION-

Box 2127 Rocky Mountain House, Alberta – T4T 1B6
Phone: (403) 989-3943 Fax: (403) 989-3795 Toll Free: 1-888-256-3884

November 4, 2022

Frédéric Caron

Premier Tech Horticulture Ltd.
1 Avenue Premier
Rivière-du-Loup (Québec)
Canada G5R 6C1

Submitted via e-mail: <email address removed>

Dear Mr. Caron,

RE: O'Chiese First Nation Comments on Premier Tech Horticulture Ltd. Clearwater Peat Harvesting Project Biophysical Report and Peat Development and Operations Plan and Identification of Impacts

This letter is sent on behalf of O'Chiese First Nation's Chief and Council. The Chief and Council of O'Chiese First Nation have the elected authority and responsibility to protect the Inherent and Treaty rights of O'Chiese First Nation. The Inherent and Treaty rights of O'Chiese First Nation are set out in Treaty 6 and protected by Section 35, *Constitution Act, 1982*.

O'Chiese First Nation is bound by *Kaa-Ke-Chi-Ko-Moo-Nan*, O'Chiese First Nation's Great Binding Law ("Natural Laws"). As such, O'Chiese First Nation operates under its own distinct set of legal principles and laws that have been in place since time immemorial, which we understand and expect are protected by Treaty 6 and Section 35 of the *Constitution Act, 1982*. Our Natural Laws are the foundation for O'Chiese First Nation Peoples.

O'Chiese First Nation submits this letter to Premier Tech Horticulture Ltd. ("Premier Tech") regarding its intent to construct and operate the Clearwater Peat Harvesting Project (the "Project").¹ O'Chiese First Nation has sought to engage in good faith with Premier Tech and has expressed clear concern for the proposed Project impacts, as well as concern for the consultation and engagement process that has occurred to date.²

We have further made our concerns known to the Aboriginal Consultation Office ("ACO") as well as Alberta Environment and Parks ("AEP") however, our requests for engagement with the

¹ Project notification and information package first sent via email on July 5, 2022. O'Chiese First Nation was notified at this time that the Aboriginal Consultation Office had designated the Project as requiring Level 3 Consultation.

² Correspondence between O'Chiese First Nation and Premier Tech includes letters sent/ received on July 5, 2022; July 20, 2022; July 25, 2022; August 30, 2022; September 6, 2022; September 15, 2022; October 6, 2022. Meeting held between O'Chiese First Nation and Premier Tech on August 29, 2022.

Government of Alberta have had little success, with no response from either party to date, despite the Project being assessed as requiring Level 3- Extensive Consultation by the ACO.

While we are deeply troubled with the process for consultation and engagement that has occurred since Premier Tech’s inception of this Project,³ we recognize that it is vital to continue to participate in this process to ensure there is record of our attempts to engage in good faith and to ensure impacts to O’Chiese First Nation are identified, mitigated, and accommodated.

We therefore provide the following review and comments, without any capacity funding being provide by Premier Tech,⁴ in efforts to protect our Inherent and Treaty rights from future harm.

The following documents were provided by Premier Tech on July 13, 2022 to O’Chiese First Nation:

1. *Biophysical Report and Peat Development and Operations Plan – 2022 Update*
2. *Wetland Assessment and Impact Report – 2022 Update*
3. *Conservation and Reclamation Plan – 2022 Update*

O’Chiese First Nation has conducted a preliminary review of the *Biophysical Report and Peat Development and Operations Plan* (the “Biophysical Report”) and provides comments and questions in a detailed review table below.⁵ The focus of our preliminary review was to evaluate the contents of the Biophysical Report to determine if and by what methodology an identification of impacts to Inherent and Treaty rights was undertaken by Premier Tech and specifically what gaps or deficiencies remain.

However, it is important to note that the consultation and engagement to date lacks procedural fairness; the outright refusal to provide appropriate capacity funding to O’Chiese First Nation has limited O’Chiese First Nations ability to conduct a more thorough review of the Project. This remains outstanding.

Below is a summary of some of the key concerns found throughout our review; additional comments are included in the table provided in Appendix A and the assessment conducted in Appendix B. Our submission includes the following:

Appendix A Document Review	Review and comment on the <i>Biophysical Report and Peat Development and Operations Plan – 2022 Update</i>
Appendix B Preliminary Impact Review	Preliminary assessment of impacts from the Project including an assessment of lands unavailable for the meaningful exercise of rights
Appendix C Invoice	Invoice for O’Chiese First Nation’s efforts to date including meeting attendance, document review and preliminary mapping

³ As stated within the Biophysical Report, Premier Tech has been working on completing an application for this Project since 2010, with environmental assessments conducted in 2017.

⁴ Premier Tech’s refusal to provide capacity funding to support meaningful engagement has challenged O’Chiese First Nation’s ability to provide a fulsome review of Project information as well as to identify potential impacts from the Project on O’Chiese First Nation Inherent and Treaty rights

⁵ See Appendix A

Lack of Involvement of O’Chiese First Nation in the Impact Assessment Process

Throughout the Biophysical Report it is clear that affected Indigenous Nations are an afterthought in Premier Tech’s assessment of Project interactions and impacts. While the Project is located entirely within the Government of Alberta’s recognized consultation area for O’Chiese First Nation, there is no mention of O’Chiese First Nation throughout the entire Biophysical Report. This resulted a grossly deficient assessment.

There is only one section within the Biophysical Report that mentions Indigenous Nations, and even then Sunchild First Nation is the only Nation mentioned. There is no further assessment of impacts, rather Sunchild is only identified in a section of the Biophysical Report which identifies nearby populations and potential labour force characteristics. It is clear by this omission that impacts to O’Chiese First Nation, including any assessment on impacts to Inherent and Treaty rights have not been assessed to date.

Inappropriate Valued Components Selected to Assess Impacts to Rights

The omission of O’Chiese First Nation becomes additionally clear in Premier Tech’s selection of the Valued Components (VCs). The VCs and the respective indicators focus solely on biophysical effects, which fail to account for any potential impact to rights. There is also no acknowledgment or mention of Indigenous Nations or rights within the “Rationale” for any VC/Key Indicator.⁶ Hunting and land use activities are generalized underneath the “Social, Cultural and Land Use” VC and fail to consider the potential impacts to constitutionally protected Section 35 rights.

As stated in *Clyde River (Hamlet) v Petroleum Geo-Services Inc.* 2017 SCC 40 at para 45 it is inappropriate to use biophysical components as a proxy for rights.

...the consultative inquiry is not properly into environmental effects per se. Rather, it inquires into the impact on the right. No consideration was given in the NEB’s environmental assessment to the source – in a treaty – of the appellants’ rights to harvest marine mammals, nor to the impact of the proposed testing on those rights.

Therefore, assessment of rights specifically must be undertaken as part of this impact assessment. O’Chiese First Nation was not consulted to identify a VC suitable for assessing Project impacts to O’Chiese First Nation Inherent and Treaty rights. This remains outstanding.⁷

Inadequate Mitigation Measures Identified

Without a proper assessment of impacts to rights, the mitigation measures proposed by Premier Tech within the Biophysical Report remain inadequate.

⁶ For example, “Regulatory Requirement” and “Potential Public Concern” are the only rationales given for the Aquatic Resources VC in Table 2.2-2 (p.19).

⁷ In its initial Project Information Package sent July 5, 2022 states “Apart from the harvest area, the Clearwater Project is not expected to interfere with the First Nations rights to hunt, fish and gather. The peat operation will hinder hunting and gathering activities within the harvest area footprint while the 135.9 ha site is harvested (duration approximately 21 years)” (p.5). It is unclear to O’Chiese First Nation how Premier Tech is able to make this assumption when its Biophysical Report does not mention any First Nation or assess potential impacts to First Nation rights.

Current mitigation measures proposed focus solely on biophysical effects and do not contemplate mitigation or accommodation to eliminate, reduce or control the impacts to O'Chiese First Nation Inherent and Treaty rights.

O'Chiese First Nation has identified additional mitigation measures for Premier Tech's consideration, which are further detailed within Appendix A and Appendix B.

Additional Assessment Required

As O'Chiese First Nation demonstrates below in Appendix A and Appendix B, the Project will negatively impact O'Chiese First Nation's Inherent and Treaty rights and interests. O'Chiese First Nation reiterates that there is no evidence to show that O'Chiese First Nation was consulted at any stage in this Project. Nor did O'Chiese First Nation have any influence over the impact assessment conducted for the Project.

Additional assessment will be required before the Government of Alberta can make a determination on this Project. Any assessment conducted hereon in should involve O'Chiese First Nation meaningfully.

We hope that the above comments as well as the comments provided in Appendix A and Appendix B can further discussion between O'Chiese First Nation, Premier Tech and the Government of Alberta (including the ACO and AEP) to allow for an identification of these effects and ensure fair mitigation is identified, and where residual effects remain accommodation is provided.

Sincerely,

<Original signed by>

Andrew Scott
Consultation Director
O'Chiese Consultation Office

cc: Toni Hafso toni.hafso@gov.ab.ca;
Stephen Shenfield stephen.shenfield@gov.ab.ca
Frédéric Caron <Email address removed>
André Fafard <Email address removed>
Jacques Gagnon <Email address removed>
Julia Wachowski Julia.wachowski@gov.ab.ca
Terrina Perley terrina.perley@gov.ab.ca
Amanda Tangedal amanda.tangedal@gov.ab.ca

Appendix A

O'Chiese First Nation Review and Comment: Biophysical Report and Peat Development and Operations Plan 2022- Update

#	Report/ Section	Excerpt	Comment
1	1.0 Introduction (PDF p. 9)	<p>Premier Tech Horticulture (Premier Tech) commissioned Golder Associates Ltd. (Golder) to respond to Premier Tech's Supplemental Information Requests (SIRs) received from Alberta Environment and Parks (AEP) on May 28, 2019 and September 15, 2021.</p> <p>Ultimately this report will support the Public Lands Act and Water Act Approval required to construct and operation the Project, associated with AEP file numbers SML090026 WA00387959.</p> <p>The original Development Plan and surface material lease (SML) application (Premier Tech 2010) included six harvest sections. The Project has since been updated to be developed in two phases.</p>	<p>This Project is located well within O'Chiese First Nation's Consultation Area⁸ where O'Chiese First Nation has Inherent and Treaty rights, and <i>Natural Resource Transfer Agreement, 1930</i> ("NRTA") rights. O'Chiese First Nation has two Indian Reserves ("IRs") 203 and 203A set aside under the terms of Treaty 6. IR 203 is located approximately 60 km from the Project and IR203A is located approximately 10 km from the Project.</p> <p>It is deeply concerning that O'Chiese First Nation was not made aware of the Project when it was first initiated in 2010, nor was O'Chiese First Nation involved at any stage, including in the development of the Biophysical Report, in 2017.</p> <p>In our meeting with Premier Tech in August 29, 2022 we were given the impression that any work conducted prior to Alberta's release of its Peat Harvesting Policy in 2016 was not relevant to this application. However, the information contained within this Biophysical Report contradicts this understanding. O'Chiese First Nation has no record of any previous work or reports conducted by Premier Tech including past work of Premier Horticulture Ltd. or AEP supplemental information requests.</p> <p>A. Please provide further rationale for why O'Chiese First Nation was not contacted or engaged on this Project prior to July 5, 2022, including whether directed by the Government of Alberta to do so.</p> <p>B. Please confirm if the AEP file reference numbers refer to Premier Tech's current application or previous lease holdings under Premier Horticulture Ltd.</p>

⁸ The Government of Alberta's designated consultation area

#	Report/ Section	Excerpt	Comment
2	<p>1.0 Introduction (PDF p. 9)</p> <p>2.1 Site Location and Project Description (PDF p. 10)</p> <p>(PDF p. 14)</p>	<p>Phase 1 of the Project will include the clearing and drainage of approximately 135.9 ha of peatland for horticultural purposes. The total Project footprint of Phase 1, including harvest sections, access roads, harvest roads, sedimentation ponds and drainage ditches is 155.5 ha.</p> <p>The Project footprint for Phase 1 will consist of five harvest sections, six sedimentation ponds, culverts, one yard site, maintenance roads, and access roads.</p> <p>The Project will be developed in five stages over the course of five years, at one stage per year.</p> <p>The harvest area represents approximately 87% of the Project footprint.</p>	<p>The Project proposed by your company will “take up lands” within O’Chiese First Nation’s territory. The taking up of lands by this project will convert lands in to lands that are incompatible with the exercise of O’Chiese First Nation’s Inherent and Treaty rights and interests.</p> <p>When a <i>Public Lands Act</i> disposition is granted to your company, your company will have priority rights within the boundaries of that disposition. O’Chiese First Nation members will require your permission to access lands within your disposition area and will not have a right of access. This is a negative impact on O’Chiese First Nation’s Inherent and Treaty rights and interests, as it reduces the amount of unoccupied Crown land available to O’Chiese First Nation. The Government of Alberta nor Premier Tech has considered whether there is sufficient unoccupied Crown lands compatible with the exercise of O’Chiese rights.</p> <p>The Biophysical Report does not detail the process for selecting the Project location, or how what criteria was chosen to reflect the consideration of O’Chiese First Nation Inherent and Treaty rights. Nor is there any description of what feedback or input was received from Indigenous Nations including O’Chiese First Nation, or how feedback or input was considered in selecting and refining the Project area.</p> <p>C. Please describe the feedback or input received from Indigenous Nations including O’Chiese First Nation and how this input was considered in selecting and refining the Project area. If none was received, please identify reasons for the absence of comments.</p> <p>D. Please identify how O’Chiese First Nation’s Inherent and Treaty rights (including rights to hunt, fish, trap, gather and the associated cultural and ceremonial aspects of these rights) on all unoccupied Crown lands were considered in the determination of the Project area.</p> <p>E. Please confirm if Premier Tech considered minimizing the impacts to the fen ecosystem when it determined the Project location.</p>
3	2.1 Site Location and Project Description	Premier Tech will use two different methods for peat harvesting: vacuuming and Haku. Vacuums are used to	O’Chiese First Nation has historically been, and continues to be, concerned with the lack of protection over the watersheds and wetlands within O’Chiese First

#	Report/ Section	Excerpt	Comment
	(PDF p. 15)	harvest fibrous peat and the Haku method is used to harvest peat that is more humified.	<p>Nation territory. Peat harvesting creates deep and permanent scars on the landscape (including biophysical and cultural landscapes) and significantly diminishes the ability for O’Chiese First Nation to live according to the Treaty promises – in accordance with our Natural Laws and with continued ability to exercise our Inherent and Treaty rights.</p> <p>These harvesting practices described in the project proposal require the complete destruction of the wetland, which will take years to re-establish vegetation and thousands of years to re-establish peat, if at all. Peat is an important carbon sink, vital to combat the increased impacts from climate change.</p> <p>If approved, the project would create conditions that do not align with O’Chiese First Nation’s Natural Laws pertaining to the exercise of Inherent and Treaty rights. These conditions include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dust <input type="checkbox"/> Unnatural noises <input type="checkbox"/> Unnatural smells <input type="checkbox"/> Mechanical/chemical clearing of vegetation <input type="checkbox"/> Alterations to natural landscapes <input type="checkbox"/> Pollution or contamination (real and/or perceived) <input type="checkbox"/> Increased traffic <input type="checkbox"/> Increased presence of signs, fences, and/or gates <input type="checkbox"/> Increased access to area for recreational users <p>F. Please confirm if the disturbance of peat releases carbon dioxide back into the atmosphere and if climate change impacts have been assessed and mitigation measures identified to specifically address these impacts.</p>

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			G. Please provide detailed mitigations that are direct and proportionate to the conditions noted above.
4	2.1 Site Location and Project Description (PDF p. 15)	All harvesting will stop when wind is blowing over 50 km/h as a dust and air quality control measure.	<p>Potential impacts from dust are of concern to O’Chiese First Nation as high concentrations can potentially impact subsistence vegetation and displace potential harvesters who would otherwise use the area in the exercise of their rights.</p> <p>H. Please confirm what wind measurements have been taken at the proposed Project site during the proposed peat harvesting months?</p> <p>I. From these measurements, how often was the wind above 50 km/hour?</p> <p>J. Please confirm your process for testing wind speed and communicating the shut down process during operations.</p>
5	2.1 Site Location and Project Description (PDF p. 15)	The estimated hauling transfer is an estimated 1000 trucks per year. Hauling will occur year-round with the exception of January portion when the facility is shut down for maintenance.	<p>O’Chiese First Nation is concerned about the potential impacts around increased traffic to the area to both O’Chiese First Nation members, as well as wildlife mortality. With increased traffic comes increased safety concerns on the roads and backroads used by members exercising their rights as well as increased dust from travel on gravel roads.</p> <p>K. Please confirm if Premier Tech has done a thorough traffic assessment including mitigating increased risk to O’Chiese First Nation members such as harvesters who may be affected by the increase in trucks in the area, as well as wildlife mortality.</p> <p>L. Please identify how dust from the road will be managed.</p>
6	Table 2.1-1: Clearwater Project Operational Activities	Stockpiling: Peat will be stockpiled along the harvest roads until processing. Stockpiling and loading will be completed using front-end loaders. Stockpiles are monitored to ensure temperature of the stockpiles is stable as a result of decomposition from high humidity organic matter coming into contact with oxygen.	Stockpiled peat is highly combustible. O’Chiese First Nation is deeply concerned about the increased fire risk from the Project, including the potential fueling of forest fires. This region has seen an increasing number of forest fires each summer. With the nearby towns’ firefighting services already at capacity to respond to forest fires in the region, the increased risk is significant.

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			<p>M. Please clarify how has this risk been assessed and the mitigation measures proposed to addressed increased forest fire potential.</p> <p>N. Please confirm if Premier Tech will have fire fighting capabilities on site, including emergency response.</p>
7	Table 2.1-1: Clearwater Project Operational Activities	Monitoring: Water quantity and quality monitoring will be conducted throughout the life of the Project.	<p>While monitoring the quantity and quality of water is extremely important, this section does not indicate where water monitoring will take place or how these locations were selected.</p> <p>See Comment #12</p> <p>O. Please describe the feedback or input received from Indigenous Nations including O’Chiese First Nation on water monitoring and how this input was considered in selecting and refining water monitoring locations.</p>
8	2.1.2 Schedule (PDF p. 17)	Table 2.1-2 Project Schedule identifies the Project will span approximately 24 years.	<p>The expected life cycle of the Project will render the site unavailable, unusable and unsuitable for the exercise of rights. This is a generational impact to the area, where reclamation will not be able to account for the loss in use and knowledge transmission.</p> <p>Premier Tech has indicated the application is currently for Phase 1 of the Project, however the lease requested encompasses the area where Phase 2 is expected.</p> <p>If approved, the project will also contribute to the cumulative effects already experienced by O’Chiese First Nation within Treaty 6 and O’Chiese First Nation’s territory. The cumulative effects currently experienced by O’Chiese First Nation already significantly diminish Nation members’ ability to exercise their Inherent and Treaty rights freely and in accordance with Natural Laws. This has impacted the way-of-life of O’Chiese First Nation members, to which we were promised continuation as part of signing of Treaty 6.</p>

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			<p>P. Please clarify why the lease application is for a larger area than Phase 1 of the Project and why Premier Tech is only applying for Phase 1 at this time.</p> <p>Q. If Phase 2 were to be included, how much longer would the Project persist?</p>
9	2.2 Assessment Approach (PDF p. 17-18)	<p>This section describes the approach and methods used to carry out the assessment of environmental effects for the Project. The purpose of this assessment is to determine whether the Project will have a residual effect on the biophysical and socio-economic elements after the application of mitigation measures. Key elements of the assessment approach include:</p> <ul style="list-style-type: none"> - Identifying Valued Components (VCs) - Identifying the range of spatial scope for each VC and temporal boundaries - Identifying Project interactions, mitigations, and plan(s) to mitigate potential environmental effects from the Project due to construction, operation and reclamation - Outlining monitoring programs that may be required 	<p>This Project is located well within O’Chiese First Nation’s Consultation Area⁹ where O’Chiese First Nation has Inherent and Treaty rights, and <i>Natural Resource Transfer Agreement, 1930</i> (“NRTA”) rights. O’Chiese First Nation has two Indian Reserves (“IRs”) 203 and 203A set aside under the terms of Treaty 6.</p> <p>R. Please confirm how Premier Tech sought to engage O’Chiese First Nation in the following:</p> <ul style="list-style-type: none"> ○ Identification of VCs, including VCs appropriate for assessing impacts to rights. ○ Identification of the spatial scope appropriate to assess impacts to rights. ○ Identification of Project interactions, mitigations and plans to mitigate and or accommodate impacts to rights. ○ Development of monitoring programs that involve O’Chiese First Nation.
10	2.2.1 Spatial Boundaries Table 2.2-1 Study Areas Used in the Environmental Setting and Effects Assessment (PDF p. 18)	<p>Social, Cultural and Land Use</p> <p>The Social and Cultural communities are those communities identified along the transportation corridor likely used for the Project.</p> <p>The land use LSA boundary was defined based on the Terrestrial LSA, which is a contiguous 100 m buffer surrounding the footprint.</p> <p>The RSA boundary was defined based on wildlife considerations and extends 5 km from the footprint.</p>	<p>The total lease area of 323 ha is equivalent to 603 football fields.</p> <p>O’Chiese First Nation was not consulted on the identification of the LSA or RSA boundaries for the Social, Cultural and Land Use VC assessments, which appears to be Premier Tech’s closest attempt at a VC to identify any possible impact or Project interaction with Indigenous peoples and their rights.</p> <p>The Inherent and Treaty rights of O’Chiese First Nation are recognized by Treaty No. 6, protected by Section 35 of the <i>Constitution Act, 1982</i>, and guided by <i>Kaa-Ke-Chi-Ko-Moo-Nan</i> or O’Chiese First Nation’s Great Binding Law. These protected rights require specific assessment and cannot be considered covered underneath a generic VC of “social, cultural and land use”.</p>

⁹ The Government of Alberta’s designated consultation area

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			<p>S. Please provide detailed rationale for how the LSA and RSA spatial parameters were chosen and please confirm how this boundary was influenced by engagement with potentially affected Indigenous Nations; specifically O’Chiese First Nation.</p>
11	2.22 Temporal Boundaries (PDF p. 19)	The temporal boundaries for the assessment encompass the construction, operation, decommissioning and reclamation phases of the Project. The Project will be constructed in a phased approach...	See Comment # 8
12	2.2.3 Valued Components (PDF p. 19)	<p>Aquatic Resources</p> <ul style="list-style-type: none"> - Fish and Fish Habitat <ul style="list-style-type: none"> o Change in habitat quality or quantity o Change in abundance and distribution of fish populations 	<p>The rationale for assessing Aquatic Resources must also include its importance to Indigenous Nations including the treaty right to fish.</p> <p>Fish and fish habitat are integral in supporting O’Chiese First Nation’s treaty right to fish and the exercise of this right. Therefore, this should be connected and assessed.</p> <p>Additionally, it has linkages to Indigenous rights through preferred conditions of use and ability to impact Indigenous Nations through perception or avoidance behaviours.</p> <p>O’Chiese First Nation was not consulted to identify important waterbodies and waterways and important fish species or to discuss indicators to appropriately identify impacts to O’Chiese First Nation’s right to fish.</p> <p>T. Please identify how these linkages to Indigenous rights, specifically rights held by O’Chiese First Nation were considered.</p>
13	2.2.3 Valued Components (PDF p. 19)	<p>Wildlife</p> <ul style="list-style-type: none"> - Ungulates, Mammals, Raptors, Amphibians, Breeding Birds <ul style="list-style-type: none"> o Change in habitat availability o Change in wildlife movement patterns o Change in wildlife abundance due to increased mortality risk 	<p>The rationale for assessing Wildlife should have also included its importance to Indigenous Nations including the right to hunt, harvest and trap. Wildlife are integral in supporting O’Chiese First Nation’s treaty right to hunt and the exercise of this right. Therefore, it should be connected and assessed.</p> <p>Additionally, it has linkages to Indigenous rights through preferred conditions of use and ability to impact Indigenous Nations through perception or avoidance behaviours.</p> <p>O’Chiese First Nation was not consulted to identify important wildlife species or habitat, or to discuss indicators to appropriately identify impacts to O’Chiese First Nation’s right to hunt.</p>

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			U. Please identify how these linkages to Indigenous rights, specifically rights held by O'Chiese First Nation were considered.
14	2.2.3 Valued Components (PDF p. 20)	Vegetation and Wetlands <ul style="list-style-type: none"> - Vegetation Communities and Composition <ul style="list-style-type: none"> o Change in area of vegetation (e.g. treed cover, wetlands) important to wildlife o Loss or alteration of wetland area and functions o Change in area of habitat with potential to support listed plant species o Introduction and spread of regulated weed species 	<p>The rationale for assessing Vegetation and Wetlands should have also included its importance to Indigenous Nations as an important cultural landscape that supports O'Chiese First Nation Inherent and Treaty Rights.</p> <p>Wetlands are integral in supporting O'Chiese First Nations way of life and the exercise of their rights. Therefore, it should be connected and assessed.</p> <p>Additionally, it has linkages to Indigenous rights through preferred conditions of use and ability to impact Indigenous Nations through perception or avoidance behaviours.</p> <p>O'Chiese First Nation was not consulted to identify the importance of wetlands or to discuss indicators to appropriately identify impacts to O'Chiese First Nation.</p> <p>V. Please identify how these linkages to Indigenous rights specifically rights held by O'Chiese First Nation were considered.</p>
15	2.2.3 Valued Components (PDF p. 20)	Hydrology <ul style="list-style-type: none"> - Flow in the receiving Creek <ul style="list-style-type: none"> o Change in flow regimes in the downstream creek (Mud Creek) o Change in channel morphology 	See Comment #12
16	2.2.3 Valued Components (PDF p. 20)	Water Quality <ul style="list-style-type: none"> - Physical, chemical and microbiological characteristics of the water 	See Comment #12
17	2.2.3 Valued Components (PDF p. 20)	Social, Cultural and Land and Resource Use <ul style="list-style-type: none"> - Agriculture - Other Land Use - Hunting, trapping and fishing activities - Visual aesthetics - Water use 	<p>Prior to European contact, and up until the signing of treaties, Indigenous peoples in Canada were part of self-governing nations. Section 35(1) is not limited to Treaty rights and recognizes and affirms "...the existing aboriginal and treaty rights of the aboriginal peoples of Canada..."</p> <p>These existing rights included elements of their society (practices, traditions, and customs) that made them self-governing nations such as their own laws and justice, language rights, governance rights, rights to control membership, education rights, wealth, and health care distribution rights as well as lands and resource rights.</p>

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			<p>It is an impoverished view to assume that impacts to rights will be properly captured within a Social, Cultural and Land and Resource Use VC as it presumes the only potential impact would be on hunting, trapping, or fishing “activities”.</p> <p>Additional work with O’Chiese First Nation must be undertaken to assess potential impacts to their rights, pathways of impact must be identified at that time which align with the valued components to be assessed based on their interconnectivity with rights. This may include rights not expressed by the exercise of harvesting rights.</p> <p>Indicators listed currently within this VC focus on biophysical effects only. There is no acknowledgement or mention of Indigenous Nations or Indigenous Rights within this VC. Hunting and land use activities are generalized and fail to consider the potential impacts to constitutionally protected Section 35 rights.</p> <p>It is further inappropriate to use biophysical components as a proxy for rights. This approach was struck down in <i>Clyde River (Hamlet) v Petroleum Geo-Services Inc.</i> 2017 SCC 40 at para 45 which states “...the consultative inquiry is not properly into environmental effects per se. Rather, it inquires into the impact on the right. No consideration was given in the NEB’s environmental assessment to the source – in a treaty – of the appellants’ rights to harvest marine mammals, nor to the impact of the proposed testing on those rights.”</p> <p>Therefore, assessment of rights specifically must be undertaken for this IA.</p> <p>O’Chiese First Nation was not consulted to identify a VC suitable for assessing Project impacts to O’Chiese First Nation Inherent and Treaty rights. This remains outstanding within Premier Tech’s IA.</p>
18	2.2.3 Valued Components (PDF p. 21)	<p>Infrastructure and Services</p> <ul style="list-style-type: none"> - Transportation and Traffic - Emergency and Protective Services 	<p>O’Chiese First Nation was not consulted to identify potential impacts or concerns relating to increased traffic from the Project, which may also pose additional safety risks on roads frequented by community members.</p>
19	2.3.2.2 Methods (PDF p. 25)	<p>Prior to the vegetation survey, a preliminary desktop review of plant communities within the LSA was completed using recent aerial imagery and available spatial data...</p>	<p>W. Please identify the specific date of the “recent the aerial imagery” used.</p> <p>O’Chiese First Nation is concerned with the position taken by Premier Tech that due to the large size of the project area, a ground assessment was not feasible. This is an important wetland, home to many diverse wildlife and vegetation species. If Premier Tech is not going to conduct a thorough ground truthing</p>

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		<p>It was not feasible to ground truth the full extent of the wetland because of its large size (i.e., it covers parts of 14 quarter sections) ...</p> <p>Vegetation surveys focused on collecting key information for site classification and mapping. Wetland surveys were also completed on June 9 and 10, 2017.</p>	<p>exercise, reclamation processes will be deficient as it will not be feasible to reclaim lands to a similar landscape post construction and operation.</p> <p>O'Chiese First Nation is concerned for the use of outdated vegetation assessments conducted in 2017. It is likely that vegetation types and/or locations have changes that should be documented from 2017-2022.</p>
20	2.3.2.3.1 Wetland Plant Communities (PDF p. 27)	Details provided in this section describe land cover and plant types.	X. Please confirm how input from O'Chiese First Nation was sought during plant and land cover surveys. If O'Chiese First Nation was not engaged, please provide rationale.
21	2.3. Fish and Fish Habitat (PDF p. 34)	Mud Creek and an unnamed tributary to Mud Creek flow eastward along the northern boundary of the Project footprint approximately 10 km upstream from where Mud Creek enters the Clearwater River. This location has been identified as within the range of Bull Trout, which is a species at risk in Alberta.	<p>O'Chiese First Nation was not provided capacity to document current use of land and resources in the Project area.</p> <p>Y. Please confirm how input from O'Chiese First Nation was sought during fish and fish habitat assessments. If O'Chiese First Nation was not engaged, please provide rationale.</p>
22	Figure 2.3-6 (PDF p. 36) 2.3.4.2.1 Desktop Review	<p>Map of spring and winter survey sites along the Mud Creek.</p> <p>Bull Trout have been captured in the Clearwater River in close proximity to Mud Creek but have not been documented in Mud Creek.</p>	<p>Additional fish assessments should be conducted along the Clearwater River to establish a baseline which can then be assessed if the Project is approved and the wetland is destroyed. It is important to understand the true scope of impact including if the draining of the wetland has long term impacts on nearby rivers, creeks, and streams in terms of supporting fish or alterations in neighboring fish habitat.</p> <p>Z. As Bull Trout have been identified as a species at risk, please confirm DFO involvement in understanding potential impacts to Bull Trout in the Clearwater River resulting from the draining of the wetland. If DFO is not involved, please provide additional rationale.</p>
23	2.3.4.2.4 Fish Inventory (PDF p. 41)	Backpack electrofishing was the most successful fishing method.	The use of electrofishing as a tool to capture fish is against O'Chiese Natural Laws, as it may cause unacceptable harm to living fish.
24	2.3.5 Wildlife (PDF p. 42)	Land uses in the Lower Foothills Natural Subregion include timber harvesting, open-pit coal mining and oil and gas exploration and development.	There is no mention or acknowledgement of land use, access, or the exercise of Inherent and Treaty rights, which a significant gap in understanding potential impacts to Indigenous Nations, including O'Chiese First Nation.

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			<p>The cumulative effects of resource development within this region leaves remaining undisturbed lands vulnerable. Viable wildlife habitat continues to diminish as does lands available for the exercise of rights.</p> <p>AA. Community members have identified the potential for moose licks to be present in the project area. Please confirm if surveys revealed moose licks.</p>
25	2.3.5 Wildlife (PDF p. 43)	<p>The majority of information for the desktop review was gathered as follows:</p> <ul style="list-style-type: none"> - A review of the Fish and Wildlife Internet Mapping Tool to identify species of management concern and wildlife management areas in the RSA. 	<p>The Northern Saskatchewan Regional Land Use Plan is incomplete and there are no announced plans by the GOA to complete it. As such, regional land management and appropriate consideration for land use planning and cumulative effects remains outstanding.</p>
26	2.3.5.1.1 Winter Track (PDF p. 43)	Description of winter track surveys.	<p>Community members have identified this area as currently suitable moose habitat. It is important to note this area will not be suitable for moose, post approval.</p> <p>BB. What is Premier Tech’s assessment of wildlife migration patterns that intersect the Project footprint, LSA, and RSA and how these migration patterns will be impacted by the Project?</p>
27	2.3.5.1.2 Autonomous Recording Unit Survey (PDF p. 46)	<p>However due to the time being set incorrectly on the ARU at site PTCBA04, these time periods were not recorded. Amphibian and breeding bird surveys were conducted at the closest available times given the faulty recording schedule; amphibian surveys were conducted between 0200h and 0300h and breeding bird surveys between 0400h and 0500 at this site as a result. Additionally, one ARU failed to record during the nocturnal survey period.</p>	<p>Faulty surveys results should require additional surveys to be conducted to ensure proper baseline data collection.</p> <p>This lack of data should not be considered acceptable within the Biophysical Report.</p>
28	2.3.5.2.1 (Winter Track) (PDF p. 47)	Human use was noted on transect 8, which intersects both Phase 1 and Phase 2.	CC. Please provide additional details on the human use detected.
29	2.3.7 Hydrology (PDF p. 52)	<p>Premier Tech previous submitted a Water Act application to AEP in 2010. The documents provided with the application include the surface water runoff charts and a hydrological assessment of effects of the Project Drainage.</p>	<p>In O’Chiese First Nation’s discussion with Premier Tech – Premier Tech had noted the Project assessment was re-started following the Government of Alberta’s Peat Harvesting policy in 2016. It is unclear how or why Premier Tech is able to rely on a study conducted in 2010 and studies conducted in 2013. Updated hydrology assessments should be required for these studies.</p> <p>This comment stands for all outdated sources and studies.</p>

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29	2.3.7.2 Hydrology of the Peatland and Water Balance (PDF p. 53)	Climate The Lower Foothills Subregion, where the Project is located, is characterized by a cooler and moist growing season when compared to the boreal forest (Natural Regions Committee 2006).	Outdated sources such as this should not be relied upon for climate descriptions as we have seen changes to the regional climate and weather systems due to impacts from climate change that must be assessed. DD. Please confirm how data was collected for Table 2.3-15 Summary of Climate Information for the Project Site as well as the date the data was collected.
30	2.3.8.2 Proposed Water Quality Monitoring (PDF p. 60)	Water quality monitoring is proposed to be completed during spring freshet, mid-summer, and fall during seasonal low flow conditions at two reference stations and three receiving water stations in Mud Creek, and three sedimentation pod stations. Annual reports will also be prepared that include relevant annual statistical summaries of water quality data.	See Comment # 7 At a minimum, O'Chiese First Nation requires involvement in water quality monitoring activities and requires access to all monitoring reports.
31	2.3.9 Social, Cultural and Land Use (PDF p. 61)	A desktop review was conducted to collect baseline information for the Social and Cultural Study Area.	See Comment # 1 EE. Please explain why a desktop review of potentially impacted Indigenous Nations was not conducted as part of Premier Tech's assessment.
32	2.3.9.2 Results Social and Cultural Setting (PDF p. 61)	Table 2.3-17: Population Data for the Socio-Economic Study Area Communities	See Comment # 1 and # 31 O'Chiese First Nation is deeply concerned that it is not listed as a community within Table 2.3-17, however "Sunchild Cree Indian Reserve #202" is mentioned within the table. O'Chiese First Nation IR 203A is approximately 10 km from the Project. Premier Tech has essentially erased O'Chiese First Nation from their own territory. FF. Please explain why O'Chiese First Nation, a conjoined Indian Reserve with Sunchild First Nation, is not listed within the Table.
33	Land Use, Non-Renewable Resource Use and Agriculture (PDF p. 61-62)	The Project is located entirely within Crown Land and within the White Area of Alberta. The LSA overlaps with one discontinued High Press Pipeline and a few oil and gas facilities.	The Project proposed by your company will take up lands within O'Chiese First Nation's territory. The taking up of lands by this project will convert lands in to lands that are incompatible with the exercise of O'Chiese First Nation's Inherent and Treaty rights and interests. When a <i>Public Lands Act</i> disposition is granted to your company, your company will have priority rights within the boundaries of that disposition. O'Chiese First

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		A review of satellite imagery indicated that the southern portion of the project (the access road), overlaps with agricultural land.	<p>Nation members will require your permission to access lands within your disposition area. This is an impact on O'Chiese First Nation's Inherent and Treaty rights and interests.</p> <p>GG. Please confirm the percent of land that overlaps with the High Press Pipeline and oil and gas facilities.</p> <p>HH. Please confirm the percent of land that overlaps with agricultural land.</p>
34	Hunting, Trapping and Fishing (PDF p. 62)	Details of hunting and trapping seasons.	II. Please confirm how engagement with Indigenous Nations, including O'Chiese First Nation supported Premier Tech's baseline data collection for hunting, trapping, and fishing.
35	Consultation (PDF p. 64)	Consultation for the Project has been ongoing since November 2010.	<p>O'Chiese First Nation disagrees with this statement, as it is incorrect. There is no mention of O'Chiese First Nation in the Biophysical Report. O'Chiese First Nation was only contacted about this project on July 5, 2022.</p> <p>Due to the significant amount of time that has past sine Premier Tech's initial application it is unacceptable that public notices submitted in 2010 would have any merit in the Project application process today.</p>
36	Consultation (PDF p. 65)	Premier Tech is committed to engaging with First Nations and Indigenous consultation is in the early planning stages.	<p>See Comment #35</p> <p>Premier Tech has refused to provide capacity to support any form of meaningful consultation or engagement and has not sought to involve Indigenous Nations including O'Chiese First Nation early in the Project. If this were true, O'Chiese First Nation would have been involved when Premier Tech first expressed interest in the Project in 2010.</p> <p>Premier Tech has imposed unreasonable deadlines on O'Chiese First Nation to identify impacts from the Project since first notifying O'Chiese First Nation about the Project in July 5, 2022 at their own expense. This is not procedural fairness, and if not addressed, will not support upholding the Honour of the Crown.</p>
37	3.0 Peat Development and Operations Plan (PDF p. 65)	<p>Premier Tech completed initial peat exploration work in 2008</p> <p>Premier Tech completed supplemental exploratory work in 2017.</p>	See Comment #1, #35, #36

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		Golder completed additional soil surveys in 2020 and 2021	
38	Detailed Description of the Peatland Profile (PDF p. 65)	The Clearwater Project fen is approximately 7.5 km in length and 2.5 km in width... The entire fen is approximately 1,100 ha based on visual boundaries using satellite imagery.	O'Chiese First Nation is not only concerned by the impacts to O'Chiese First Nation's Inherent and Treaty rights resulting from the land that will be both taken up and disturbed, but O'Chiese First Nation is equally concerned for the generational impacts that will persist from the extraction of harvestable peat below the surface. This peat will be forever destroyed. The harvestable peat volumes list 3,899,560m ³ of peat that will be removed, which will be un-reclaimable. A loss to O'Chiese First Nation as well as a loss to combatting climate change impacts.
39	Assessment of the Extractable Peat Resource (PDF p. 66)	Table 3.1-1 Peat Volume Estimate Total Volume of peat (initial) m ³ : 3,899,560 Total Volume of (Harvestable) m ³ : 1,797,856	See Comment # 38
40	3.2.3 Water Management Systems and Monitoring Plan (PDF p. 67)	Specific requirements for the sedimentation pond design are not provided in both Guide to Surface Materials Lease Information Requirements for Peat Operations (GOA 2017) and Requirements for Conservation and Reclamation Plans for Peat Operations (GOA 2016). Hence, the sedimentation pond design specifications are based on the Guidelines for Peat Mining Operations in New Brunswick...	Given the variation between Alberta's and New Brunswick's landscape and climate, it is inappropriate that sedimentation ponds and other project design components are not being developed specific to the Alberta context, including landscape, climate, and Historic Treaties, including Treaty #6. New Brunswick is presumably wetter than Alberta, so overall its peatlands would be less vulnerable to climate change tipping points than Alberta's. As we know, the past is not an indication for future climate and water conditions it would be important to ensure the specific project designs are taking the local context into consideration.
41	3.2.3 Water Management Systems and Monitoring Plan (PDF p. 67)	Depending on local conditions, two methods are available to minimize the risk of discharging excessive quantities of peat particles in the environment.	II. What is the risk of discharging excessive quantities of peat particles in the environment? JJ. Please describe the term "excessive". KK. How would success of the sedimentation ponds be determined/ monitored/ reported? LL. What considerations are given to selecting the location of the sedimentation pond? MM. What is the risk of a sedimentation pond overflow in a heavy rainfall?

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42	Rates of Discharge (PDF p. 70)	Discharge of water will be required during construction and operations.	NN. Please confirm what type of barrier is placed between the project and the remainder of the wetland to ensure no unnecessary drainage of wetlands outside the Project footprint?
43	Water Quality Changes (PDF p. 71)	If annual reporting of temperature data indicates that the Project may be causing temperature change sin Mud Creek at the proposed monitored stations downstream of the Project, Premier Tech will develop and include the following in an updated surface monitoring program.	It is concerning to see a water temperature reporting structure based on an annual cycle. If impacts are detected within the annual report, the impacts could be substantial by the time any action is taken to mitigate the impact. Wording such as "Project may be causing temperature change" in this section is additionally of concern. Premier Tech appears to be taking a very noncommittal approach to real time monitoring and reporting, and additionally has not provided us with confidence that appropriate action will be taken in a timely manner to eliminate, reduce or control temperature changes. OO. Please confirm the monitoring and mitigation plans Premier Tech has in place for ensuring in-stream temperature thresholds are not reached, and/or what actions will be put in place if thresholds are exceeded.
44	Closure and Drainage Plan (PDF p. 72)	The proposed closure plan is to reclaim the Project site to a state where it will look and function like a natural peatland. The site will be reclaimed using techniques stated in the Peatland Restoration Guide (2 nd Edition by Quinty and Rochefort 2003)	See Comment # 38 The use of an outdated study on reclamation techniques from 2003 is unacceptable. New research must be utilized in reclamation and wetland reconstruction. This is deficient.
45	Closure and Drainage Plan (PDF p. 73)	The main target plan community after donor material re-introduction is a wooded coniferous fen.	PP. How does Premier Tech ensure similar diversity to the fen types to the original landscape that has been destroyed? QQ. Where does the donor material come from?
46	3.2.4 Fire Protection and Suppression during Operations (PDF p. 78)	Peat dust suspended in the air represents a risk of fire at the Project site.	See Comment #6
47	3.2.5 Dust and Air Quality Management (PDF p. 78)	A treed buffer zone of 40 m around the lease will help provide a natural wind break.	RR. Please confirm if this treed buffer zone already exists or if it will need to be constructed?

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			SS. Please identify if this buffer is within the requested lease/disposition area.
48	3.2.5 3.2.5 Dust and Air Quality Management (PDF p. 78)	Harvest fields and ditches will be oriented at right angle to prevailing winds.	TT. Please confirm the direction of prevailing winds and how far dust / particulate matter can travel outside of the Project footprint.
49	Hazardous Waste Management and Spill Treatment	Accidental spills or leaks of hydrocarbons (e.g., gasoline, diesel fuel, oil, and lubricants) could occur during equipment operation, maintenance, fuelling, or fuel storage during construction and operation.	UU. Given the porous nature of peat compared to compacted soil, what is the risk for further contamination into the water table from a spill or leak?
50	3.2.7 Additional Operation Items Weed Management (PDF p. 78)	Weed monitoring will be carried out, and weeds within 200 m of the peat fields will be managed manually, mechanically, and with herbicide application if needed.	The application of herbicides within 200 m of the peat fields is unacceptable as it has the potential to contaminate the ground and nearby plants including medicines and berries that are important to O'Chiese First Nation. VV. Please identify alternatives to chemical application methods.
51	3.3.1 Fish and Fish Habitat (PDF p. 79)	Effects to fish and fish habitat were assessed for the duration of construction and operation of the Project. Overall, residual effects to fish and fish habitat are predicted to be negligible due to the implementation of mitigation measures. Therefore, taking into account the limited habitat for Bull Trout in Mud Creek and the unmade tributary, the mitigation measures, and the fish and fish assessment results, no short or long term residual effects on Bull Trout and Bull Trout habitat in the vicinity of the Project are predicted as a result of the Project works.	O'Chiese First Nation is not confident that Premier Tech properly assessed the potential for the drainage in the wetland as well as reduced flow from Mud Creek to impact the Clearwater River, which is home to Bull Trout. Downstream effects need to be properly understood before such a conclusion can be made about the Projects' potential to impact Bull Trout. All fish and fish habitat are important to O'Chiese First Nation and a requirement to offset impacts from the project to fish and fish habitat as well as the wetland should be required prior to approval to ensure no net loss of fish or fish habitat occurs within this region. OCFN requires in depth consultation on any conditions of approval related to Fish and Fish Habitat compensation plans that may be required as O'Chiese First Nation has established rights to fish in the Project area under Treaty No. 6
52	Table 3.3-1 Potential Effects, Mitigation and Predicted Residual Effects for Fish and Fish Habitat (PDF p. 80-83)	Predicted Residual Effects - Effects to flow regimes, channel morphology, and water quality are anticipated to be negligible if the proposed mitigation are implemented; as a result, effects on fish and fish habitat are also anticipated to be negligible.	Mitigation measures identified within Table 3.3-1 are problematic. If approved, the project will contribute to the cumulative effects already experienced by O'Chiese First Nation within Treaty 6 and O'Chiese First Nation's territory. The cumulative effects currently experienced by O'Chiese First Nation already significantly diminish Nation members' ability to exercise their Inherent and Treaty rights freely and in accordance with Natural Laws. This has impacted

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		<ul style="list-style-type: none"> - Effects on fish health and populations are expected to be negligible if proper decontamination procedure is implemented. 	<p>the way-of-life of O'Chiese First Nation members, to which we were promised continuation as part of signing of Treaty 6.</p> <p>Mitigation measures contemplated by Premier Tech focus on biophysical effects and rather fail to consider impacts to O'Chiese First Nation Inherent and Treaty rights.</p> <p>If the Project were approved the amount of human footprint within with Project area would increase. This increase in disturbance will result in a decrease in the required conditions that will support the exercise of O'Chiese First Nation Inherent and Treaty rights.</p> <p>O'Chiese First Nation Proposed Mitigation/Accommodation:</p> <ul style="list-style-type: none"> • Compensate for the taking up of unoccupied Crown land and new disturbance caused by the Project. • Compensate for the area of avoidance as a result of the Project. • Identification and avoidance of all culturally sensitive sites, including gravesites. • O'Chiese First Nation requests Premier Tech's support in ensuring a field visit and appropriate Elder and member communication occurs to identify and verify culturally sensitive sites including gravesites prior to approval of the Project. • Offset hectares of disturbance and lands taken up from the Project to ensure no net loss of land use and access by a ratio of 3:1. Lands must be equivalent unoccupied Crown land suitable for the exercise of rights by O'Chiese First Nation.
53	3.3.2 Wildlife (PDF p. 84)	<p>Effects to wildlife were assessed for the duration of construction and operation of the Project.</p> <p>Western toads appear to be common breeders in the LSA based on ARU data collected in 2020. The Project is predicted to remove 155.5 ha of potentially suitable habitat for western toads (i.e., wetland plant communities). The effect of removal of this habitat is expected to within the</p>	<p>The assessment of adaptability and resilience limits for the western toad appear to be well understood by Premier Tech. A similar assessment for the adaptability and resilience limits to the exercise of rights could be undertaken to discuss the effects of removing 155.5 ha of land suitable for the exercise of rights.</p> <p>WW. Please provide additional detail for Premier Tech's methodologies for understanding adaptability and resilience standards.</p>

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		adaptability and resilience limits of western toad population in the RSA. Suitable habitat will remain for adjacent to the Project and other areas in the RSA.	
54	3.3.2 Wildlife (PDF p. 84)	To limit effects to grizzly bears, Premier Tech would prefer to gate the access road to discourage entry by vehicles but still allow access to the Crown Land for ATVs and snowmobiles, as per the Master Schedule of Standards and Conditions.	O'Chiese First Nation is confused about how this measure will limit effects to grizzly bears. Rather the gating of the access road, but still allowing access for ATVs and snowmobiles appears to be a measure to limit effects to recreational users of the area. This statement further dismisses the fact that the Project itself will be an impact to grizzly bear and rather blames effects on grizzly bear to recreational use of the area.
55	Table 3.3-2 Potential Effects, Mitigation and Predicted Residual Effects for Wildlife (PDF p. 85-88)	<p>Predicted Residual Effects</p> <ul style="list-style-type: none"> - The Project is predicted to remove 155 ha of wetland and <1 ha of upland plant communities; the area to be drained varies from about 44 ha in phase one of harvest to 11 ha in phase five. - Residual effects from the Project are expected to fall within the resilience and adaptability limits of all wildlife VCs because connectivity with the larger wetland complex and adjacent plant communities will be maintained within the RSA. - Changes to local surface water hydrology and water quality are anticipated to be negligible once mitigations are implemented. - Air and dust emissions and deposition are expected to increase with construction and operation of the Project. - Sensory disturbance will increase during Project construction and operations. - While chemical spills may occur, application of preventative measures and effective mitigation is expected to keep effects within the resilience and adaptability limits of wildlife VCs. - Application of effective mitigation is expected to keep effects within the resilience and adaptability limits of wildlife VCs because of the large amount of human disturbance in the RSA. That is, wildlife 	<p>See Comment # 52 and # 53</p> <p>Mitigation measures identified within Table 3.3-2 are problematic. However, these comments seem to corroborate O'Chiese First Nation's characterization that current cumulative impacts are already at alarming levels.</p> <p>Premier Tech appears to rationalize in many of its mitigation measures that the effects to wildlife from surrounding development including agriculture and oil and gas activity have already impacted wildlife enough that additional impacts will be negligible. The current level of cumulative effects from development within this region are significant. This makes any remaining available land for wildlife as well as for the exercise of rights all the more vital to preserve and protect. Premier Tech is failing to take responsibility for its Project-specific impacts.</p> <p>The Project will further exacerbate habitat fragmentation. "The Project does not appear to be located in high quality / effective grizzly bear habitat" is not an appropriate mitigation measure, nor is it a correct characterization of this area.</p> <p>XX. Please provide details on Premier Tech's assessment of viable, high quality grizzly bear habitat exists within the Project Footprint, LSA, and RSA including the percentages of high quality, middle quality and low quality habitat.</p> <p>YY. Please provide Premier Tech's understanding of how much undisturbed habitat is required for wildlife such as grizzly bear to maintain stable populations?</p> <p>ZZ. Please provide additional assessment details for moose habitat.</p>

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		<p>in the RSA are expected to have adapted to relatively high levels of sensory disturbance associated with agricultural and oil and gas activities in the RSA.</p> <ul style="list-style-type: none"> - The effects of a wildlife could be quite large - Implementation of preventative measures is expected to minimize risks, and implementation of fire suppression measures in the even of a fire is expected to limit the extent and effects of wildlife on Wildlife VCs. 	
56	Table 3.3-3 Potential Effects, Mitigation and Predicted Residual Effects for Vegetation and Wetlands (PDF p. 90-93)	<p>Predicted Residual Effects</p> <ul style="list-style-type: none"> - Phase 1 would affect 153.4 ha of wetland and <1 ha of upland plant communities, residual effects from the Project are expected to fall within resilience and adaptability limits of the vegetation and wetlands VC because connectivity with the larger wetland complex and adjacent plant communities will be maintained within the RSA. - While changes to local surface water hydrology and water quality may occur, application of effective mitigation is expected to keep effects within the resilience and adaptability limits of the vegetation and wetlands VC. - While air and dust emissions and deposition are expected to increase with construction and operation of the Project, application of effective mitigation is expected to keep effects within the resilience and adaptability limits of the vegetation and wetlands VC. - While introduction and spread of weed species may occur, application of effective mitigation is expected to keep effects within the resilience and adaptability limits of the vegetation and wetlands VC. 	<p>See Comment # 52</p> <p>The total lease area of 323 ha is equivalent to approximately 603 football fields.</p>

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		<ul style="list-style-type: none"> - While changes to local availability and quality of listed plant habitat may occur, application of effective mitigation is expected to keep effects within the resilience and adaptability limits of the vegetation and wetlands VC. - There is uncertainty regarding the population of western toad in the RSA and a more in depth baseline program and monitoring program is recommended to be implemented to limit effects on this species. 	
57	Table 3.3-4 Potential Effects, Mitigation and Predicted Residual Effects for Soils (PDF p. 95-98)	<p>Predicted Residual Effects</p> <ul style="list-style-type: none"> - While changes to terrain and elevations will occur after closure and reclamation, the application of effective mitigation is expected to keep the function of terrain and soils in maintaining the resilience and adaptability limits of groundwater, vegetation and wildlife. - The Project will affect approximately 155.5 ha of soils. While changes to soil distribution and quality may occur through erosion and sedimentation throughout the life of the Project, the application of effective mitigation is expected to keep the function of terrain and soils in maintaining the resilience and adaptability limits of groundwater, vegetation, and wildlife. - While there will be a loss and change to area of soil map units after Project closure and reclamation the application of effective mitigation is expected to keep the function of terrain and soils in maintaining the resilience and adaptability limits of groundwater, vegetation and wildlife. - While changes to terrain and soil will occur after reclamation, the application of effective mitigation is expected to keep the function of terrain and soils 	<p>See Comment #52</p> <p>Closure and reclamation activities cannot be seen as an appropriate mitigation to impacts caused by the Project.</p> <p>The total lease area of 323 ha is equivalent to approximately 603 football fields.</p>

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		<p>in maintaining the resilience and adaptability limits of groundwater, vegetation and wildlife.</p> <ul style="list-style-type: none"> - While chemical spills may occur, the application of effective mitigation is expected to keep the function of terrain and soils in maintaining the resilience and adaptability limits of groundwater, vegetation and wildlife. - While the effects of a wildfire could be significant, implementation of preventative measures is expected to minimize risk, and implementation of fire suppression measures in the event of a fire is expected to limit the extent and effects of wildlife on the function and terrain and soils to maintain the resilience and adaptability limits of groundwater, vegetation and wildlife. 	
58	3.3.5 Hydrology and Water Quality (PDF p. 100)	<p>The effect of dewatering and peat harvesting will have limited effects on the remaining fed area located between the Project area and Mud Creek and its tributaries...</p> <p>Once harvesting operations are complete within a peat field, restoration activities will begin, and the natural water table will be restored to near the restored peat surface. Therefore, the change in water balance of the Project area post closure will be negligible.</p>	<p>There is no listed linkage between surface water and the assessment of potential impacts to Indigenous peoples.</p> <p>Changes in the assessment should include identifying how surface water quality and or quantity can affect the exercise of Indigenous rights and O'Chiese First Nation's ability or desire to exercise those rights in the Project vicinity.</p> <p>Changes to mean annual flows is not explored in relation to potential impacts to Indigenous rights such as changes to preferred conditions of use and perceptive effectives resulting from changes in mean annual flow. Changes in perception related to water flows and quality can result in increased avoidance behaviour, particularly if the changes are linked to the Project and outside of natural variation.</p> <p>While the residual effects to are noted to be localized to the Project area, there still must be consideration of how this residual effect can affect Indigenous rights and their exercise in the area. Significant changes to water quantity (streamflow) has the potential to effect Indigenous rights through changes to preferred conditions of use and perceptive effects. Perceptive effects in particular can result</p>

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			in increased avoidance behavior of the area should changes be linked with the Project.
59	Table 3.3-8 Potential Effects, Mitigation and Predicted Residual Effects for Hydrology and Water Quality (PDF p. 109- 111)	<p>Predicted Residual Effects</p> <ul style="list-style-type: none"> - Effects to flow regimes, channel morphology and water quality are anticipated to be negligible if the proposed mitigation are implemented. - Effects to water quality are anticipated to be negligible if the proposed mitigations are implemented. 	See Comment # 52
60	Table 3.3-9 Potential Effects, Mitigation and Predicted Residual Effects for Social, Cultural and Land Use Issues (PDF p. 113-118)	<p>Mitigation Measures</p> <ul style="list-style-type: none"> - Premier Tech will work with local emergency service providers so that they are aware of the Project and able to respond to work-related emergencies if necessary. - Premier Tech will respect the rights of disposition holders in the Land Use LSA and will reach agreements with non-renewable resource users in the Land Use LSA, as applicable. - Notify registered trappers at least 10 days prior to construction. - Premier Tech will work with the AEP (who administers the Crown Resource Land), and existing users of the surrounding Crown resource Land to develop the best approach to managing access to the Project (e.g., Access Management Plan. Premier Tech's preference would be for the access road to be gated to discourage public vehicle access. - Signs will be placed at the access road and potential access locations surrounding the Project site to identify industrial activity and warn of the dangers of discharging firearms along the access corridor and on the Project site. 	<p>See Comment # 52</p> <p>Premier Tech's mitigation measures are problematic and assume that trappers and disposition holders are the only parties that require notification of Project activities. This again erases O'Chiese First Nation from this Project.</p> <p>Premier Tech further fails to recognize that the Project will impact O'Chiese First Nation's ability to access the area to exercise rights.</p> <p>Signs and fences and gates are problematic for the exercise of rights. If approved, the Project will also contribute to the cumulative effects already experienced by O'Chiese First Nation within Treaty 6 and O'Chiese First Nation's territory. The cumulative effects currently experienced by O'Chiese First Nation already significantly diminish Nation members' ability to exercise their Inherent and Treaty rights freely and in accordance with Natural Laws. This has impacted the way-of-life of O'Chiese First Nation members, to which we were promised continuation as part of signing of Treaty 6.</p> <p>If approved, the project would create conditions that do not align with O'Chiese First Nation's Natural Laws pertaining to the exercise of Inherent and Treaty rights. These conditions include, but are limited to:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dust <input type="checkbox"/> Unnatural noises <input type="checkbox"/> Unnatural smells

#	Report/ Section	Excerpt	Comment
		<ul style="list-style-type: none"> - Site closure activities ...will be completed as soon as possible following the end of operations. <p>Predicted Residual Effects</p> <ul style="list-style-type: none"> - Negligible once mitigation is implemented 	<ul style="list-style-type: none"> <input type="checkbox"/> Mechanical/chemical clearing of vegetation <input type="checkbox"/> Alterations to natural landscapes <input type="checkbox"/> Pollution or contamination (real and/or perceived) <input type="checkbox"/> Increased traffic <input type="checkbox"/> Increased presence of signs, fences, and/or gates <input type="checkbox"/> Increased access to area for recreational <p>Further, closure and reclamation activities cannot be seen as an appropriate mitigation to impacts caused by the Project.</p> <p>Assessment of the impacts to rights and appropriate mitigation and accommodation measures remain outstanding.</p> <p>AAA. Please confirm how Premier Tech will ensure local communities including Indigenous Nations have input and access to emergency response plans.</p> <p>BBB. How has Premier Tech considered ensuring the safety and ensuring proper communication with O’Chiese First Nation members exercising rights within the vicinity of the Project in the Emergency Response Plan?</p> <p>CCC. Please confirm if there are any registered trappers within the LSA and RSA.</p> <p>DDD. Please provide a map which identifies the location Premier Tech is proposing to gate the access road.</p>
61	4.0 Conclusion (PDF p. 119)	The potential environmental effects of the Project are considered negligible and can be readily mitigated by standard and specific environmental protection measures.	<p>Assessment of the impacts to rights and appropriate mitigation and accommodation measures remain outstanding.</p> <p>If standard mitigation measures were successful for mitigating impacts to rights then O’Chiese First Nation would not be experiencing the cumulative effects of development and human footprint on O’Chiese First Nation’s Inherent and Treaty rights that we are today.</p>

#	Report/ Section	Excerpt	Comment
62	5.0 Closure (PDF p. 119)	Golder has relied upon the representations or opinions of persons contacted during the preparation of this report.	O'Chiese First Nation was not consulted on or contacted during the development of this Biophysical Report.
63	7.0 References	Stantec Reports (2005, 2006) Reports completed for "Premier Horticulture Ltd."	It appears from the reference list that Premier Tech is using reports completed for Premier Horticulture Ltd. In O'Chiese First Nation's opinion it is inappropriate to use these reports within the current application process under different company name. We require clarification on the use of information for work done for a previous company including rationale for why this data is being utilized within this assessment.
64	Appendices	NA	Note- Due to a lack of capacity O'Chiese First Nation was unable to conduct further review on appendices as well as the Conservation and Reclamation Plan – 2022 Update and the Wetland Assessment and Impact Report – 2022 Update. O'Chiese First Nation requires capacity funding to retain technical experts to review the technical components within these reports.

Appendix B

O'Chiese First Nation Preliminary Impact Review

O'Chiese First Nation is bound by Kaa-Ke-Chi-Ko-Moo-Naan.

Kaa-Ke-Chi-Ko-Moo-Naan is the foundation of the Treaty agreement. Kaa-Ke-Chi-Ko-Moo-Naan binds us all together in taking care of Mother Earth. It binds all living beings together and requires us to respect each others' way of life.

It is not just O'Chiese First Nation's responsibility to take care of Mother Earth; it is all our responsibility.

Background

O'Chiese First Nation is the only Anishnaabek Nation in Alberta. We are a distinct Nation with values and beliefs that are distinct and rooted within O'Chiese First Nation Inherent and Treaty rights.

Prior to Treaty No. 6, O'Chiese First Nation peoples lived and travelled throughout their territory, which included lands within the present-day borders of the provinces of Alberta and Saskatchewan.

O'Chiese First Nation peoples took great care of the lands and waters in their territory and harvested carefully; mindfully managing the land to ensure abundant resources for future generations. O'Chiese First Nation families travelled seasonally and had their own governance systems and laws, which were deeply connected to the plants, animals, and water.

O'Chiese First Nation adhered to Treaty No. 6 in 1950. Treaty No. 6 included a specific and important right to set aside lands to be the permanent place for the Nation. For O'Chiese First Nation, Indian Reserve ("IR") #203 and #203A were set aside as part of this process.

To fully understand the context of the treaties, one must understand the 'spirit and intent', meaning, what the spirit was and what the intentions were at the time of treaty-making. The oral history component of First Nations peoples' perspectives must be understood along with the written record of the treaties. It is O'Chiese First Nation's understanding that by adhering to Treaty No. 6, it guaranteed that we would be able to continue to live as we always had, that we would be able to continue living in accordance with our own governance systems and laws and that we would be able to maintain our relationship and connection with the lands and resources.

Outside of the specific reserve land set aside through Treaty No. 6, O'Chiese First Nation has its own defined territory boundary which represents the ancestral and contemporary connections our Nation has to the land.¹⁰ The Government of Alberta has, however, delineated a specific area in which it recognizes consultation requirements for O'Chiese First Nation. Beyond this area, it is well accepted that O'Chiese First Nation holds Inherent and Treaty rights as recognized and agreed to by Treaty No. 6 and affirmed under Section 35 of the *Constitution Act, 1982*. Decisions

¹⁰ Including kinship ties, occupation, seasonal travel routes, trade networks, management of resources, and cultural and linguistic connections to places.

made by the Government of Alberta outside of this administrative boundary, however, do not consider how they will negatively impact the rights held by O'Chiese First Nation.

Lands Taken Up Assessment Approach

To understand Project impacts on O'Chiese First Nation Inherent and Treaty rights, it is important to understand the conditions that are necessary to support a meaningful exercise by O'Chiese First Nation of their Inherent and Treaty rights. This is particularly important in the context of the Crown's ability under the Treaty to exercise what is referred to by the Crown as the 'taking up' clause. Treaty No. 6 specified the Crown's treaty right to "take up land" as follows:

...and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the ...and saving and excepting such tracts as may from time to time be required or taken up for settlement, mining, lumbering or other purposes by Her said Government of the Dominion of Canada, or by any of the subjects thereof duly authorized therefor by the said Government (Treaty No. 6 1876).

However, the total amount of lands that could be taken up by the Crown was not recorded.¹¹ In *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69 ("*Mikisew*") the Supreme Court of Canada determined that "the Crown was and is expected to manage the change honorably", even without specifics to the amount of the land allowed to be taken up.¹² *Mikisew* also states that "the Crown, while it has a treaty right to 'take up' surrendered lands, is nevertheless under the obligation to inform itself on the impact its project will have on the exercise... of treaty hunting, fishing and trapping rights and to communicate its findings" to the impacted Nation.¹³

Therefore, it is the responsibility of the Government of Alberta, which in cases may be delegated to a proponent, to understand the impacts of the taking up of lands on O'Chiese First Nation's Inherent and Treaty rights, and to inform O'Chiese First Nation of what these impacts may be.

Grassy Narrows First Nation v. Ontario (Natural Resources) 2014 SCC 48 further clarifies how the Crown must act when lands are taken up, including the extent to which lands can be taken up by the Crown. The Supreme Court outlined the extent to which the taking up of land will result in treaty infringement, noting that infringement will arise if the taking up of land leaves the signatory Nation "with no meaningful right to hunt, fish or trap in relation to the territories over which they traditionally hunted, fished and trapped."¹⁴

As noted in the recent *Yahey (Blueberry River First Nations) v. British Columbia* 2021 BCSC 1287 decision, a provincial government's power to take up lands "is not infinite. The province cannot take up so much land such that a First Nation can no longer meaningfully exercise its rights to hunt, trap, and fish in a manner consistent with its way of life. The province's power to take up lands must be exercised in a way that upholds the promises and protections in the Treaty."¹⁵ Therefore, based on this decision, the test for treaty infringement is not whether there is no ability left to exercise rights, but whether a First Nation's rights have been significantly diminished. A

¹¹ *British North America Act*, 1867, s. 109 (Ont.), [1888] J.C.J. No. 1 at para 16.

¹² *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69 at para 31.

¹³ *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)* 2005 SCC 69 at para 55.

¹⁴ *Grassy Narrows First Nation v. Ontario (Natural Resources)* 2014 SCC 48 at para 52.

¹⁵ *Yahey v. British Columbia* 2021 BCSC 1287 at para 1809.

Nation's exercise of rights must remain meaningful in the face of the Crown's ability to take up lands.¹⁶

This is not considered within Premier Tech's Biophysical Report, nor is it clear if the Government of Alberta has taken this into proper consideration. The lack of consideration to Treaty promises, cumulative effects, and lands taken up thresholds places the province of Alberta at risk for infringing upon O'Chiese First Nations Inherent and Treaty rights.

Specifically, there is failure within the Government of Alberta's regulatory system, where the duty to consult and accommodate process is imbedded, in that it proports to identify impacts to Inherent and Treaty rights only on a project-by-project basis. Project-specific impacts are usually classified as 'negligible' or 'insignificant', which is further seen within Premier Tech's Biophysical Report. As a result, significant diminishment of the ability to exercise rights is likely to occur over time if a project-by-project assessment is used. When impacts, such as disturbance or 'lands taken up' are viewed collectively through a cumulative effects lens, however, infringement to Inherent and Treaty rights can be put into context.

Regulatory approval processes are restricted to considering adverse effects resulting from a project within a defined spatial scope specific to that project. Therefore, the consequences of taking up of land from the approval of a project is not considered in a comprehensive way to ascertain whether a meaningful right to hunt, fish or trap remains post-approval. Anything outside of the defined spatial scope is considered out of scope, which prevents an identification of cumulative effects.

It is O'Chiese First Nation's view that neither the Government of Alberta, nor Premier Tech have an understanding of the total amount of Crown lands that have been taken up under Treaty 6, nor the amount of lands where biophysical conditions were changed to render them unsuitable for the exercise of Inherent and Treaty rights. The Government of Alberta has not informed itself of the land needed by O'Chiese First Nation to exercise their rights in a meaningful way. The Government of Alberta has not determined the total amount of Crown lands that can be taken up before treaty infringement occurs. It is the opinion of O'Chiese First Nation that, based on the extent of lands taken up and the cumulative effects in Treaty 6 and O'Chiese First Nation's territory, that infringement may have already occurred.

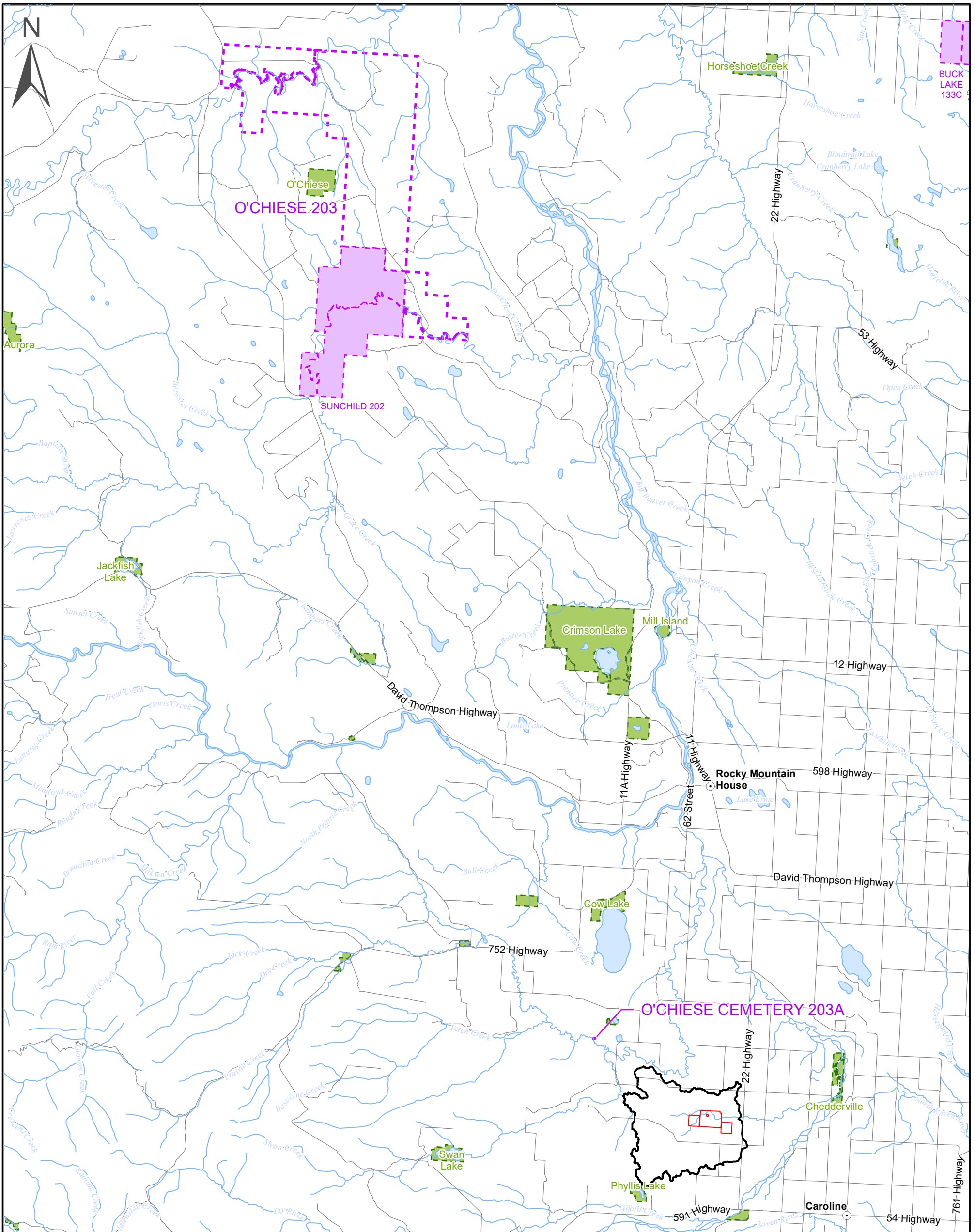
The Project

The Project is located approximately 10 km NW of the Town of Caroline and about 26 km S of the Town of Rocky Mountain House. Figure 1 shows the Project in relation to O'Chiese First Nation IR #203 and #203A approximately 60 SE and 10 km SE respectively.

According to Premier Tech's Biophysical Report:

Phase 1 of the Project will include the clearing and drainage of approximately 135.9 ha of peatland for horticultural purposes. The total Project Footprint of Phase 1 including harvesting sections, access roads, harvest roads, sedimentation ponds and drainage ditches is 155.5 ha (1).

¹⁶ *Yahey v. British Columbia* 2021 BCSC 1287 at para 534.



Premier Tech Horticulture Clearwater Peat Harvest Project

Overview Map

- Lease Boundary
- Regional Study Area
- O'Chiese Reserve Land
- Reserve Land
- Park
- Highway or Major Road
- City, Town, or Village

Created: November 2022 by Inlailawatash; Coordinate System: NAD 1983 UTM Zone 12N
 Map Scale: 1:275,000; Overview Map Scale: 1:20,000,000 | Data Sources: O'Chiese First Nation, AltaLis, Province of Alberta, Government of Canada | Basemap Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

0 5 10 Kilometers



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Assessment Area

The Project area overlaps land defined by O’Chiese First Nation as “ancestral” ground, where O’Chiese First Nation members lived prior to moving to the current IR. During the mid-20th century, some Nation members lived part-time or full-time on lands around the Project Regional Study Area (“RSA”), exercising their Inherent and Treaty rights and participating in a mixed economy¹⁷ supported by ranging, trapping, and lumbering.

For duty to consult and assessment purposes and to understand the current level of cumulative effects, O’Chiese First Nation used the spatial parameters provided by Premier Tech, where possible, to ensure a comparable assessment approach to the Biophysical Report.¹⁸

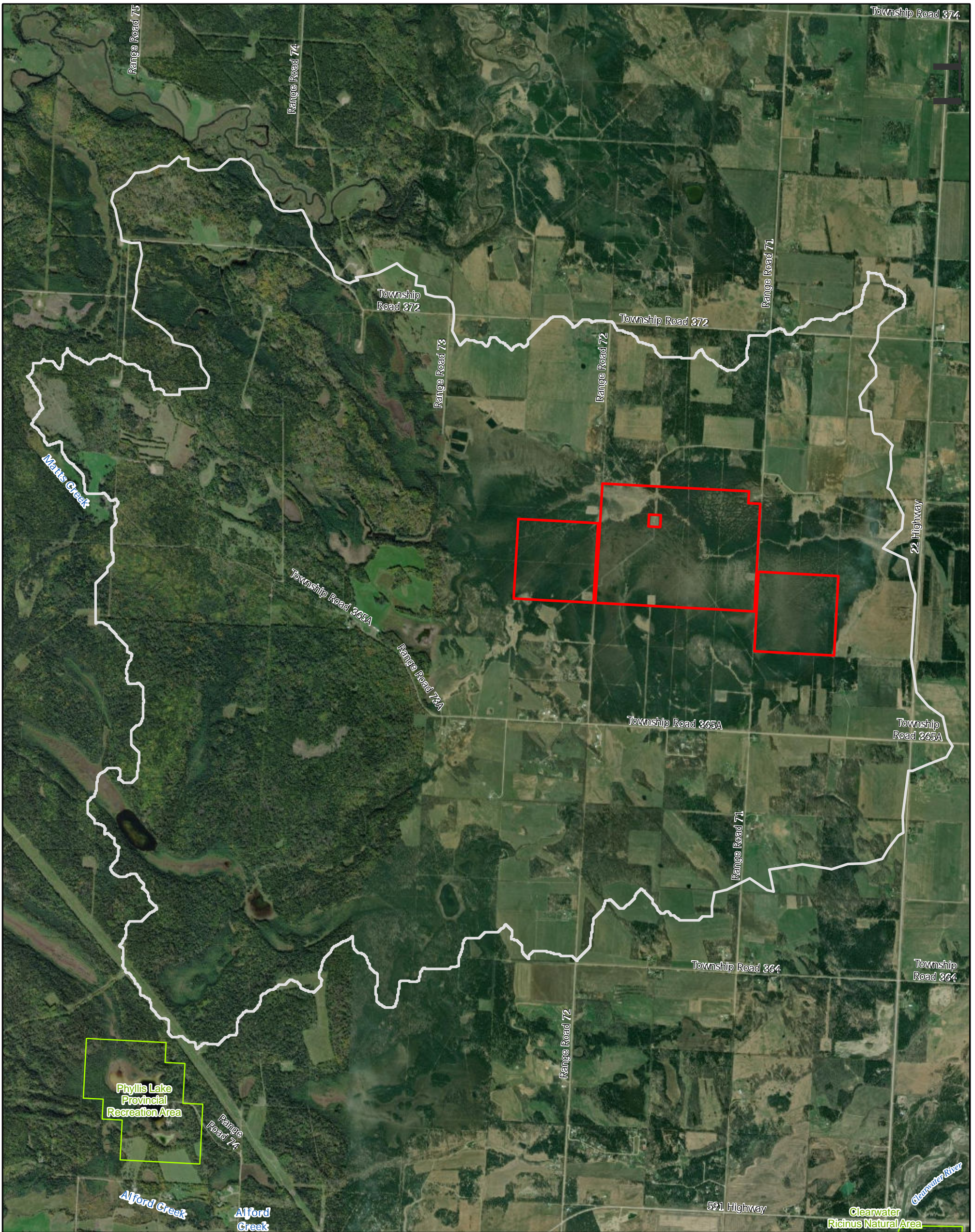
For the purposes of this assessment, O’Chiese First Nation utilized the Project’s defined wetland catchment area as its RSA. The total areas of the Project Footprint, Lease Boundary and the Wetland Catchment Areas are listed below in Table 1. Figure 2 shows the wetland catchment area boundary in relation to the Project.

Table 1 Total Area

Spatial Component	Total Area (hectares)
Project Footprint	138.66 ha
Lease Boundary	321.12 ha
Wetland Catchment Area (RSA)	5,294.81 ha

¹⁷ Mixed economy refers to the practice of using wage labour/commercial activities to support traditional Indigenous economies.

¹⁸ On October 21, 2022 upon O’Chiese First Nation’s request, Premier Tech provided O’Chiese First Nation with shapefiles of the Project Footprint, Terrestrial Local Study Area (“LSA”), Lease Boundary, and the Wetland Catchment Area. Shapefiles for the RSAs used by Premier Tech were not provided.



Premier Tech Horticulture Clearwater Peat Harvest Project

Regional Study Area Map

- Lease Boundary
- Regional Study Area
- Park

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 Map Scale: 1:37,000; Overview Map Scale: 1:19,000,000 | Data Sources: O'Chiese First Nation, AltaLis,
 Province of Alberta, Government of Canada | Basemap Source: Esri, Maxar, GeoEye,
 Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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Lands Unavailable for the Exercise of Rights

Due to limited capacity, O'Chiese First Nation chose to demonstrate Project impacts to O'Chiese First Nation Inherent and Treaty rights through the use of one Valued Component (VC).

- VC: Lands Available for the Exercise of Rights

O'Chiese First Nation contracted an independent GIS consultant to prepare a set of maps and calculations pertaining to the areas affected by this Project within the RSA.

To assess the VC, O'Chiese First Nation conducted a 'lands taken up' analysis; meaning an analysis of the land that is currently unavailable for the meaningful exercise of rights within the Lease Boundary and the RSA.

O'Chiese First Nation has confirmed that all development projects, including peat harvesting, create biophysical disturbances to the land and resources that interfere with the conditions required by O'Chiese First Nation to meaningfully exercise their rights. O'Chiese First Nation requires quiet, uncontaminated, and unaltered lands, away from development and any accompanying noise, sights, or smells to meaningfully exercise Inherent and Treaty rights. Lands and waters must also be in proper health to maintain wildlife, vegetation, medicines, and fish habitats and facilitated healthy population sizes of all species for the exercise of O'Chiese First Nation Inherent and Treaty rights to continue to be carried out in a preferred manner.

When these conditions are not met, O'Chiese First Nation defines these lands as unavailable.

For the purposes of this assessment, lands classified as available for the exercise of rights include:

- 1) Lands not classified as private land or lands not under provincial or federal dispositions
- 2) Lands under provincial or federal disposition that expressly allow for the exercise of activities related to Inherent and Treaty rights
- 3) Private land where permission has been specifically obtained

Lands considered unavailable for the exercise of rights include:

- 1) Lands under provincial or federal disposition¹⁹
- 2) Private lands
- 3) Lands visibly incompatible for the exercise of rights, including cultivated lands, fenced areas, etc.

Public land dispositions interfere with the exercise of Inherent and Treaty rights. This assessment measures the change in available lands for the exercise of Inherent and Treaty rights (hectare and %) resulting from the Project.

¹⁹ Public lands with public land dispositions along with private lands held by fee simple land holders have been moved from the inventory of lands where Indigenous Nations have an unrestricted right of access to exercise their Inherent and Treaty rights to the inventory of lands where they can no longer exercise these rights without interference, where they now require permission, or where their right of access is limited compared to disposition holders. According to the Government of Alberta, the application under the *Public Lands Act* conveys an interest or priority access to a third-party disposition holder, in this case Premier Tech, and can restrict or limit O'Chiese First Nation's access to the Project Lease during construction and operations.

Data analyzed for the assessment was derived from a variety of publicly available sources and private data sets including Alberta Digital Integrated Dispositions Information (“DIDs”), and Canadian Land Cover, Circa 2000 (Vector) - GeoBase Series, 1996-2005.²⁰

Limitations

In mapping and calculations, not all land is considered equal for the exercise of Inherent and Treaty rights. While some land remains available for the exercise of rights, much of the land surrounding the land currently displayed as unavailable fall within a 500 m buffer. As demonstrated in *Yahey*, a 500 m buffer constitutes lands unavailable for the exercise of rights. “The use of a 500-metre zone of influence is considered conservative because avoidance is generally related to the level of activity rather than the features themselves” (para 1054).

Area calculations further include waterbodies, which distort the total lands that can truly be considered “available”. Accessibility or suitability were not assessed in these calculations. Additional assessment is required to refine study results.

Current Conditions

As described in the Biophysical Report, the Project is located “entirely within Crown Land and within the White Are of Alberta” (53). Table 2 and Figure 3 identifies the current amount of land unavailable in the Lease Boundary and RSA.²¹

Table 2 Amount of Land Available for the Exercise of Rights Prior to Project Approval

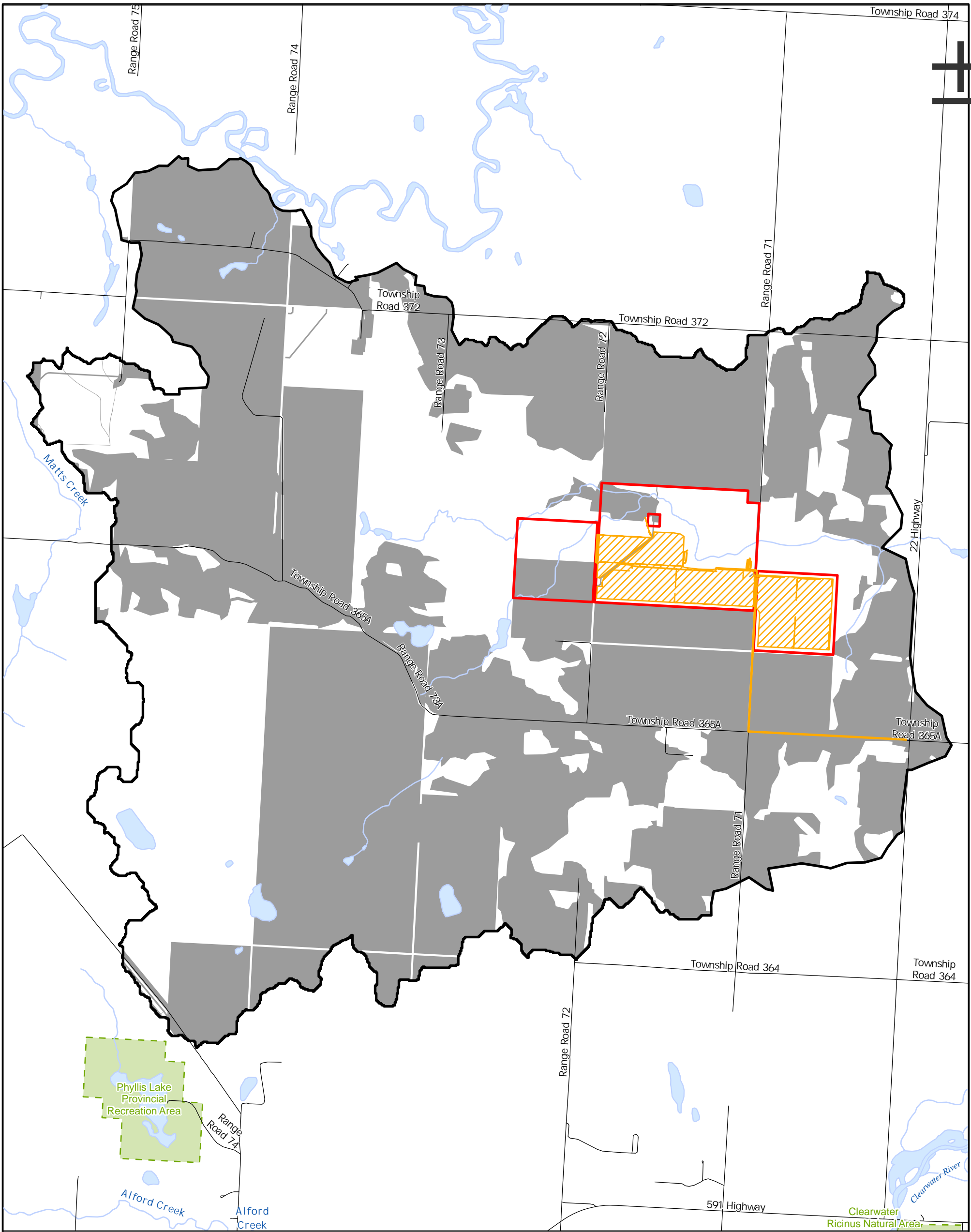
Spatial Component	ha	%
Lease Boundary Area	321.12 ha	
Lands Unavailable Prior to Project Approval	51.31 ha	16%
Wetland Catchment Area (RSA) Area	5,294.81 ha	
Lands Unavailable Prior to Project Approval	3,415.68 ha	65%

Table 2 demonstrates that prior to Project approval approximately 84% of the lands within the Lease Boundary Area currently are available for the exercise of O’Chiese First Nation Inherent Rights.

Within the RSA, only 35% of the land remains available for the exercise of rights.

²⁰ <https://open.canada.ca/data/en/dataset/97126362-5a85-4fe0-9dc2-915464cfd9b7>; Government of Alberta Digital Integrated Dispositions information retrieved from: <https://www.alberta.ca/digital-integrated-dispositions.aspx>.

²¹ A review of currently available disposition data shows Premier Horticulture Ltd. holds dispositions within the Lease Boundary. This information is not identified within the Biophysical Report, and Premier Tech has not made this information available. As the data currently pertains to the area in question for this Project, O’Chiese First Nation must assume that if the Project were not approved, the land would remain unoccupied Crown land.



Premier Tech Horticulture Clearwater Peat Harvest Project

- Lease Boundary
- Project Footprint
- Regional Study Area
- Park
- Lands Unavailable Prior to Project Approval



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 Map Scale: 1:37,000; Overview Map Scale: 1:19,000,000 | Data Sources: O'Chiese First Nation, AltaLis, Province of Alberta, Government of Canada | Basemap Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community



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Cumulative Effects and Project Impacts

Cumulative effects are the combined effects of development and human activities within a delineated geographic extent that occur over time (past, present, and future). Assessing cumulative effects involves analyzing how specific impacts caused by each development activity or disturbance interacts with each other and how they collectively create changes (positive or negative).^{22, 23}

O’Chiese First Nation members have not had an opportunity to comment on the Premier Tech Project due to capacity limitations; however, O’Chiese First Nation members have commented in the past that they have noticed an increase in the amount of development within O’Chiese First Nation’s territory; noting that there are not many places left that are free from development. Many Nation members have admitted their frustration with how increased activity and development on the land has affected access to the areas that were once available. They have lost their traplines, and now have difficulty accessing areas to hunt, trap, fish or gather.

O’Chiese First Nation members have indicated that land disturbances, including direct disturbances created by industrial development, violates Kaa-Ke-Chi-Ko- Moo-Nan, undermines O’Chiese First Nation’s connection to culture, and interferes with the exercise of Inherent and Treaty Rights. O’Chiese First Nation members stated the amount of existing industrial development is unacceptable, noting there are not many places left that are free from disturbance.

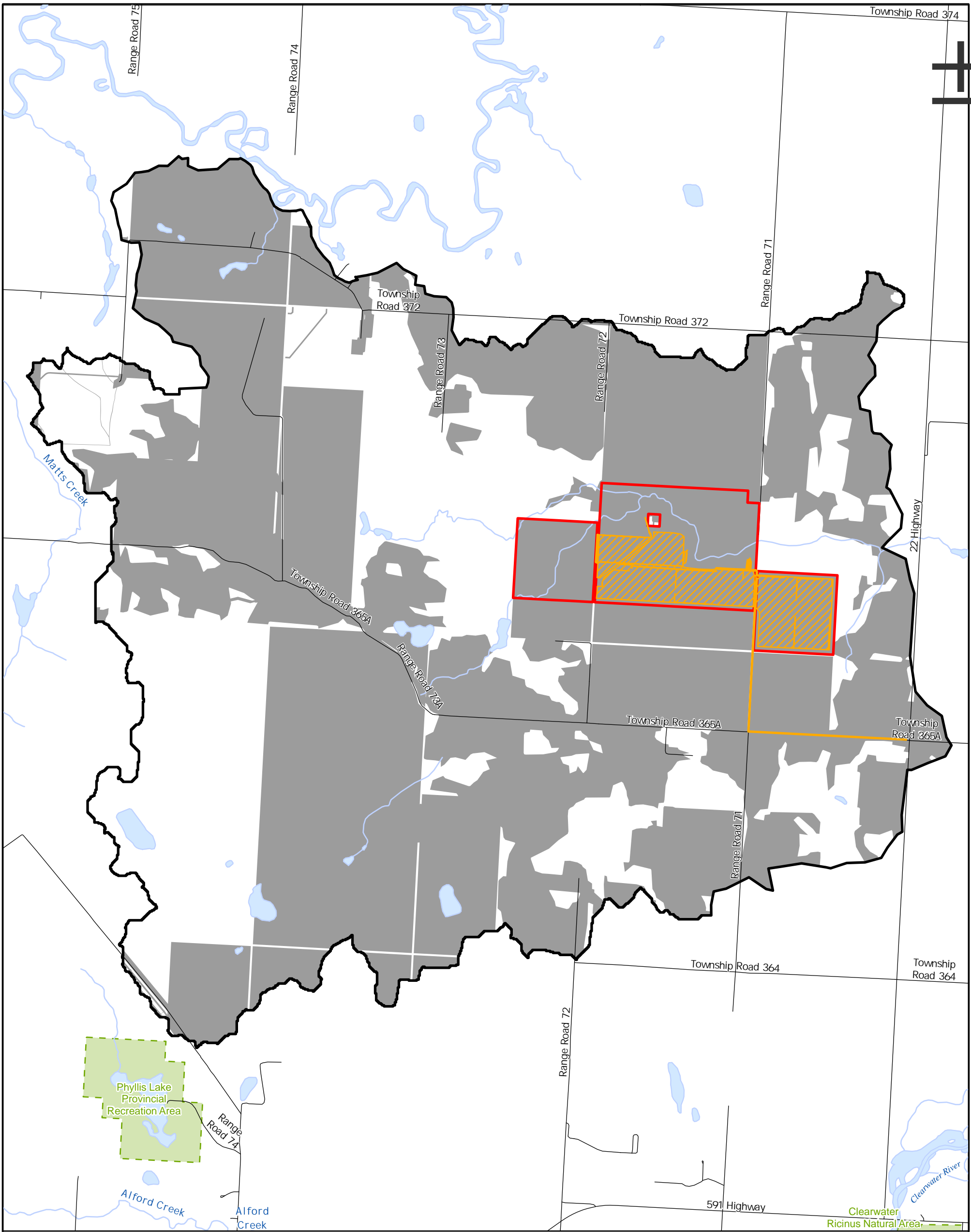
If the Project were approved, it would add to the amount of lands that are unavailable for the exercise of rights. See Table 3 and Figure 4 for the change in lands available post Project approval.

Table 3 Change in Land Available for the Exercise of Rights Post Project Approval

Spatial Component	ha	%
Lease Boundary		
Lands Unavailable Prior to Project Approval	51.31 ha	16%
Lands Unavailable Post to Project Approval	321.12 ha	100%
Change in Lands Unavailable	+269.81 ha	+84%
Wetland Catchment Area (RSA)		
Lands Unavailable Prior to Project Approval	3,415.68 ha	65%
Lands Unavailable Post to Project Approval	3,685.49 ha	70%
Change in Lands Unavailable	+269.81 ha	+5%

²² Government of Canada. *Cumulative effects in Canada’s boreal forests* (2021) <https://www.nrcan.gc.ca/our-natural-resources/forests/sustainable-forest-management/cumulative-effects-canadas-boreal-forests/23568>

²³ Indigenous Centre for Cumulative Effects. *Cumulative Effects* (n.d.) <https://www.icce-caec.ca/cumulative-effects/>



Premier Tech Horticulture Clearwater Peat Harvest Project

- Lease Boundary
- Park
- Project Footprint
- Lands Unavailable Post Project Approval
- Regional Study Area



Mitigation and Accommodation

Within the Biophysical Report Premier Tech identifies a set of standard mitigation measures to address the impacts identified. According to Premier Tech there are no residual effects remaining after mitigation measures are applied. O'Chiese First Nation has demonstrated in Appendix A and B that impacts to O'Chiese First Nation have not been properly assessed within the Biophysical Report, and as such, none of Premier Tech's mitigation measures will correct the impacts and violations to O'Chiese First Nation resulting from Project.

It is important that impacts to O'Chiese First Nation are fully identified and then mitigation measures to eliminate, and reduce impacts are developed in collaboration with O'Chiese First Nation. Any residual effects that remain will require further accommodation.

O'Chiese first Nation has identified the following potential protections for O'Chiese First Nation.

- Offset land damages through the setting aside of other lands meeting the required means of O'Chiese First Nation.
- Offset land damages through compensation or other benefit frameworks to be identified collaboratively with O'Chiese First Nation.

It is the expectation of O'Chiese First Nation that Premier Tech, the ACO and AEP will meaningfully collaborate with O'Chiese First Nation to ensure that these corrections are in place if the Project is approved.

Appendix C



<personal information removed>

**O'Chiese
Consultation Office**
INVOICE

[Redacted]

[Redacted]

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[Redacted]