

January 10, 2023

FNC 202108622

Sent via EMAIL: <email address removed>

Andrew Scott
O'Chiese First Nation
P.O. Box 2127
Rocky Mountain House, Alberta T4T 1P2

Dear Mr. Scott,

**Re: FNC 202108622
Response to O'Chiese First Nation November 4th, 2022 letter.**

We thank O'Chiese First Nation ("OCFN") for its correspondence of November 4, 2022, and comments concerning the Clearwater Peat Harvesting Project (the "Project").

Premier Tech Horticulture Ltd. ("Premier Tech") recognizes that OCFN holds Treaty rights to hunt, fish, trap for food and gather for traditional uses and that these rights are protected by Section 35 of the *Constitution Act, 1982* ("Treaty Rights"). We are committed to working with OCFN to gather more details on how the Project may impact your Treaty Rights and to discussing a path forward consistent with the guidelines and requirements set by the *Government of Alberta's Guidelines on Consultation with First Nations on Land and Natural Resource Management (2014)* ("**Alberta's Guidelines**").

Earlier last year, Premier Tech was, for the first time, directed by the provincial Crown, through the Aboriginal Consultation Office ("ACO") to consult with OCFN on the proposed Project. Thereafter, on July 5th, 2022, we provided OCFN with an information package that included information detailing the nature of the Project and identifying potential temporary impacts to hunting and gathering.

Consistent with the Alberta's Guidelines, our initial letter also requested that OCFN identify site-specific concerns about how the Project may adversely impact OCFN's Treaty Rights and provide the location of where these Treaty Rights are exercised with reference to the Project footprint. The objective was to first determine where and how OCFN community members use the proposed Project site so as to inform the development of mitigation measures. Despite requesting this information several times¹ since then, no site-specific details have been provided by OCFN at this time. Our expectation was that OCFN's preliminary review (provided on November 4, 2022) would have included an identification and confirmation of OCFN community members' land use within the proposed peat harvesting areas.

¹ Correspondence between Premier Tech and O'Chiese First Nation including letters sent on July 25, 2022; September 15, 2022; October 6, 2022. Virtual meeting on August 29, 2022.

Without putting the blame on anyone and recognizing the potential for misunderstanding, we do not agree with the assertion in your most recent letter that the consultation to date has been unfair. Premier Tech has been flexible, acted in good faith and extended the deadlines contemplated in the Alberta Guidelines to accommodate OCFN. In reference to the lack of capacity funding from Premier Tech, although we recognize that we have not reached an agreement on this to this date, we never refused to offer such support. Based on our discussions with the ACO, we understood that the Alberta Indigenous Consultation Capacity Program provided OCFN with the necessary funds to support its participation in consultation activities related to resource development and land management activities, and that OCFN was at liberty to allocate such funds to cover the costs of project-specific consultations such as map reviews or site visits.

We reiterate our objective to conduct Project consultation in good faith, with flexibility and openness consistent with the province's requirements. In that respect, and although we understood that sufficient funds were already available to conduct meaningful consultation, Premier Tech is prepared to offer OCFN capacity funding for up to \$35,000 to support your participation in activities to assess potential site-specific impacts and engage in discussions on mitigation measures.

Premier Tech's proposal would be to cover the costs of a site visit and mapping of Indigenous use sites within the Project harvesting area. Assuming such sites are identified, Premier Tech proposes we work together to develop mitigation measures, including an access management plan to maximize continued access by OCFN members to the Project harvesting area to the extent possible in a safe manner at specific times of the year, and to ensure ongoing positive communication between the Nation and Premier Tech.

The November 4th letter attached your preliminary review of the Biophysical Report and Peat Development and Operations Plan including 56 questions. We thank you for these questions and OCFN's related comments, which we have carefully considered in developing our responses.

Accordingly, please find attached Premier Tech's comments and answers to the 56 questions presented in your review table under Appendix A. Of note, two themes arising from your comments are reflected in the attached document. The first refers concerns the commencement of the consultation process in 2022, after the completion of the studies included in the application materials. The second concerns the Alberta's Guidelines and more specifically the scope of the consultation process. Key in the process is the identification of the location and nature your community members' land use, including site-specific concerns about how the Project may adversely impact your Treaty Rights.

Impact Assessment Process

OCFN expressed concern about the steps leading up to the filing of the Surface Materials Lease (SML) and *Water Act* application material. Premier Tech is bound by provincial legislation, regulations, and policies. Pursuant to the applicable regulatory guidance, Premier Tech conferred with Alberta Environment in 2017 to obtain direction on the nature and scope of information required to support the applications. The application material, including the Biophysical Report, Peat Development and Operations Plan, the Wetland Assessment and Impact Report, and the Conservation and Reclamation Plan were compiled based on the advice of Alberta Environment. Once completed and prior to undertaking First Nation consultation, Premier Tech met with ACO for a pre-consultation assessment. The ACO determined that OCFN needed to be consulted at a level 3 – extensive consultation.

The omission of the OCFN's reserve lands from Table 2.3-17 in the Biophysical Report was a mistake for which Premier Tech apologizes, but it has had no impact on the Alberta consultation process currently underway. Within this process, Premier Tech has and will continue to consult with and seek feedback from potentially impacted Indigenous communities, including OCFN, to ensure the potential impacts to Treaty rights are understood and mitigated to the extent possible.

Mitigation Measures

We agree with OCFN that the mitigation measures identified to date will not be complete until we have an understanding of potential impacts on Treaty Rights. The purpose of the consultation process currently underway is to identify those impacts and devise additional mitigation measures.

Additional assessment to determine OCFN site-specific impacts

For the purposes of reconciling our interests, it is important that we gain an understanding with some level of detail if and how the peat harvesting lands are used by your members to exercise Treaty Rights and if they overlap with other culturally sensitive areas.

We agree with OCFN that an assessment to obtain this information would be a first step in the right direction and this is what we were expecting to receive from your preliminary review. Candidly, we agreed with the recommendation initially made by OCFN², to proceed with community consultation interviews and, potentially, with a field visit to identify potential impacts.

Appendix B potential protections

OCFN provided us with a comprehensive overview of your "Lands Taken Up Approach" and the potential impact of surrendered land on the exercise of Treaty Rights. OCFN also reports increased activity and development on the land that was once available to your community members to exercise Treaty Rights. Premier Tech fully acknowledges and endorses the importance of determining if the Project has a **meaningful** impact on the exercise of OCFN Treaty Rights. Once determined, mitigation and compensation measures can be identified, discussed, and developed.

Respectfully, until OCFN identifies with some detail how its members use the peat harvesting area, we would consider it premature to identify some of the compensation and off-setting measures outlined in your November 4th comments.

² Letter from Andrew Scott to Frédéric Caron dated August 30, 2022.

Moving forward with the consultation process

We remain committed to continuing to engage in a meaningful respectful dialogue with OCFN in accordance with governing policies and with the object of reconciling our interests.

Please reach out to André Fafard if you have questions. We look forward to your feedback regarding our comments, our proposed initiatives, and the capacity funding offer.

Sincerely,

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