AUC
Alberta Utilities Commission

310-4AUC
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www.auc.ab.ca

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Calgary, Alberta
T2P 0G5

Statement of intent to participate for Indigenous groups

Proceeding 31058 (Hoole Power Generation Facility Project Application– Armada Nowlit Energy Ltd. (the "**Project**"))
Application(s): 31058-A001
Applicant(s): **Bigstone Cree Nation ("BCN")**

Instructions:

The Alberta Utilities Commission has the authority to consider and address potential adverse impacts to Aboriginal and treaty rights as provided in Section 35 of the *Constitution Act*, 1982, when deciding whether approval of a utility project is in the public interest.

The purpose of this new form is to help Indigenous groups provide the necessary information to demonstrate to the Commission how the rights being asserted may be directly and adversely affected by the Commission's decision on an application. Indigenous groups can use the new form effective immediately. The AUC is piloting the form and is seeking feedback on the format and its effectiveness.

After a statement of intent to participate is received, the AUC will consider your standing in the proceeding based on a two-part test (Section 9(2) of the *Alberta Utilities Commission Act*).

1. The first part of the test is legal: you must demonstrate that your right(s) or interest(s) is recognized in law.

2. The second part of the test is factual: you must provide information that shows the Commission's decision on the application may directly and adversely affect your right(s) or interest(s). In other words, tell us who is using the land in question, how they are using the land and how a decision on the application or proposed project may affect that use.

Tips for filling out a statement of intent to participate:

- Be aware of deadlines. The notice of application indicates that any party who has concerns with a proposed project should make a submission to the AUC by a certain date.

- Be specific about how the approval of the application may directly and adversely affect your right(s) or interest(s). You do not need to provide a lengthy summary of case law but you must identify a legal right and describe how your exercise of it may be directly and adversely affected.

- Provide clear supporting documentation (i.e., a traditional land use map that is legible and has the area of the proposed project clearly overlaid).

Questions:

1. **Please provide information about your Indigenous group.**

   Bigstone Cree Nation

   Margo Auger, Chief: (margo.auger@bigstone.ca; (780) 891-3836)

   Troy Stuart, Land Manager: (troy.stuart@bigstone.ca; (780) 891-3836)

   Gilmen Cardinal, Consultation Manager: (gilmen.cardinal@bigstone.ca; (780) 891-3836)

   Amyn Lalji, Legal Counsel: (alalji@mltaikins.com; (604) 608-4551)

a) Do you have a reserve(s), settlement or other land interests within the consultation and/or notification radius identified in Rule 007 or Rule 020? If so, please provide the legal land description and the distance in metres to the proposed project.

   No.

b) Is the proposed project within an area for which the Crown normally consults with you about potential adverse impacts to Section 35 rights? If so, you may want to provide a copy of a traditional land use map and/or a recent copy of the Alberta government's Landscape Analysis Indigenous Relations Tool(LAIRT) report (https://www.alberta.ca/proponent-led-indigenous-consultations.aspx).

   Yes, the proposed Project is within an area for which BCN has been consulted by the Crown.

   Attached Appendix "A": Proximity Map

   Attached Appendix "B": Traditional Land Use Maps

c) Do you have other information to demonstrate that you have right(s) or interest(s) that are recognized in law that have the potential to be adversely impacted. (Please limit this to 250 words or less.)

An Indigenous group may have to provide additional information if the Section 35 rights asserted are not yet recognized by law or by the Alberta government.

Bigstone Cree Nation (ᐅᐸᔭᑯᓂᐘ, *opasikoniwew*) is a sovereign, self-determining Woodland Cree Nation, and a signatory to Treaty No. 8. We are Sakaw Nêhiyawak, a nation of more than 9,000 members, with our own Constitution, laws, and governance and a direct Nation-to-Nation relationship with the Crown through Treaty No. 8. BCN holds inherent Indigenous rights as well as Treaty No. 8 rights and Aboriginal rights which are recognized and affirmed by section 35 of the *Constitution Act, 1982*

(collectively, "BCN Rights"). In accordance with BCN's Treaty No. 8 rights, BCN and its members have used, and continue to use, the lands, waters and resources in their traditional territory, and across Treaty No. 8 territory, for traditional purposes which include hunting, fishing, trapping, ceremony, and harvesting.

The proposed Project's location is situated within BCN's traditional territory, and is only 2,380 metres from BCN's reserve lands, where BCN members not only exercise BCN rights, but where members live, work, and engage in cultural ceremony on a day to day basis. A decision by the Commission whether to approve the Project will cause direct and cumulative impacts to BCN's inherent and Treaty No. 8 rights.

d) Are you submitting this form on behalf of a Métis or other Indigenous group registered as a not-for-profit society under the *Societies Act* or a body corporate under another statute? Yes/No

No.

e) Are you a Métis group that asserts it has Métis harvesting rights to exercise in the project area, as recognized in *R v Powley, 2003 SCC 43*? Yes/No

No.

f) Are you a Métis group that represents individuals with Métis harvesting rights, as recognized in *R v Powley, 2003 SCC 43*? Yes/No

No.

If yes, please provide:

(i) The source of, or basis for the Métis group's authority to represent those individuals (this should be written confirmation of such authority such as signed letters of authorization by membership).

(ii) The number of individuals with Métis harvesting rights that the Métis group represents (i.e., membership list or at least the number of individuals holding valid memberships).

(iii) The total number of, or an estimate of the total number of, Métis harvesters based in the area, regardless of whether the harvester is or is not a member of the Métis group (i.e. Statistics Canada or other source of statistics).

2. Please describe your interest in this proceeding.

a) Explain how the Commission's decision on the application(s) may affect your Aboriginal and/or treaty rights as provided in Section 35 of the Constitution Act, 1982, or other right(s) that you may have. (Please limit this to 500 words or less.)

If approved, the construction and operation of the Project will cause direct and cumulative impacts that will restrain BCN and its members' ability to exercise BCN

Rights within its traditional and Treaty No. 8 territories. The Project's impacts would be an infringement of BCN Rights, and cause adverse impacts to BCN and its peoples.

BCN's territory is deeply impacted by the direct and cumulative effects of resource development in Alberta. As a result, BCN members' ability to exercise their rights have been significantly impacted due to increasing resource development throughout Treaty No. 8 territory. Due to the close proximity of the proposed Project area to BCN's reserve lands, there are strong concerns surrounding the proposed Project's direct and cumulative effects to the environment and to BCN Rights.

It is critical for BCN to be consulted on all projects which adversely impact its lands, waters, and ecosystems, as well as BCN's members' ability to exercise BCN Rights throughout BCN's traditional and treaty territories.

The proponent's application does not consider how the construction and operation of the Project within BCN's traditional territory will impact Indigenous interests, including the impacts to wildlife and plant abundance in and around the Project area.

There is no assessment detailing how the Project activity in close proximity to BCN's reserve lands, will impact wildlife abundance or wildlife movement patterns. There is also no assessment of how the Project development and operation over many years will impact plant species and abundance. The proponent has failed to consider how these impacts will impact BCN's ability to access the resources it needs to practice its BCN Rights.

Furthermore, BCN has significant concerns that the Project will impact BCN's ability to transfer culture, Indigenous knowledge, ceremonies, language, to its future generations. BCN and its members currently practice and possess the ability to transfer culture and Indigenous knowledge from generation to generation. BCN members seek solitude on its lands, and this sacred connection is a significant pillar within the community. The connection to the land is integral to the ability for BCN members to practice their treaty rights, which is directly impacted by any proposed projects within BCN's traditional lands. If BCN members have diminished access to its traditional territories due to the proposed Project, or its right to meaningfully exercise BCN Rights within its traditional territories is diminished, or BCN members can no longer hunt and harvest due to diminished wildlife populations and plant species, there is a correlating impact on BCN's members ability to teach their children about the area, the resources found in that area, or practice the language used to describe these areas.

Therefore, not only does the Commission's decision on this application expected to have serious consequences and impacts to current BCN Rights, it is expected to impact BCN members for generations to come.

b) Have your members historically and contemporarily used the area where the project is proposed?

If yes, please provide a brief description of the traditional use or activity, such as hunting, fishing, or trapping and describe how the project has the potential to affect your Section 35 rights.

You must show some degree of location or connection between the work proposed and the right(s) asserted. You are not required to reveal the exact locations of sites of spiritual or cultural importance; it is sufficient to describe the existence of such a site and its approximate distance from the project boundary.

Yes, BCN members have historically and contemporarily exercised BCN Rights in and around the proposed Project area. While the proponent's application states that the specific proposed area for the Project will operate behind a fence, BCN members consistently exercise BCN Rights directly surrounding the proposed Project area.

Members from Bigstone Reserve 166A have two trap lines in the area directly surrounding the Project area. BCN members regularly trap rabbits, pick medicines, and harvest blueberries in the areas directly surrounding the proposed Project area. BCN trappers and land users consistently express their anguish and frustration to the lands department as a result of the impacts industry and development have had on their trap lines. Specifically, the trappers who have the Registered Fur Management Areas RFMA #975, and RFMA #158.

As illustrated in the attached Traditional Land Use maps, there are BCN trails, spiritual sites, gathering sites, and trapping locations in the vicinity of the proposed Project area. BCN members track the Big game that traverse the lands in proximity to the proposed Project area as well.

BCN is concerned with the adverse impacts the construction and operation of the Project will have on BCN's traditional land uses. The Project's immediate and long-term disturbances, such as noise, and physical disturbance, will have an impact on BCN's traditional land uses in and around the Project area. These disturbances will have an impact on wildlife pattern movements, which BCN members rely on for their hunting and trapping.

In addition, the proposed Project area is in close proximity to the water courses that BCN members depend on for fishing. BCN is also concerned about the Project's impact to the ground water BCN members rely on.

BCN understands that the proposed Project is located on provincial Crown land, and specifically, is proposed to be located on an existing leasehold well site.

BCN submits that BCN members historically exercised BCN Rights in the Project area before it was characterized a leasehold well site. Notwithstanding BCN's historical use, BCN members continue to exercise BCN Rights on Crown land surrounding the Project

area. BCN is concerned about the decline in available Crown land on its Treaty No. 8 territory, which further hinders BCN's ability to exercise its Treaty No. 8 rights.

In the current context, constructing and operating the Project represents a significant contribution to cumulative effects which adversely impacts BCN Rights.

The development of this Project would add to the demand of building future data centres, artificial-intelligence, and cloud-service infrastructure projects within the vicinity of Treaty No. 8 territory and beyond, all which would further impact BCN Rights.

The peoples of BCN, have existed since time immemorial, we have occupied, travelled upon, cared for, governed, and used BCN traditional lands, waters, resources throughout history. The relationship BCN has with its lands should not be limited to one simple use or occupation. This relationship is intergenerational, and is grounded in who we are as a peoples. Our identity is connected to our treaty and traditional lands.

3. Please indicate whether the Crown (provincial or federal government) has undertaken consultation with your Indigenous group on related approvals for this utility project (i.e., Water Act, Environmental Protection and Enhancement Act, Public Lands Act) or for approvals by another agency for a related project (i.e., Alberta Energy Regulator for oil sands projects or National Energy Board/ Canada Energy Regulator for pipeline projects). Yes/No

If yes, please provide a brief summary, including relevant information such as:

(i) the status of the consultation,

(ii) the concerns or objections you have raised,

(iii) the mitigation that you may have proposed,

(iv) the Crown or proponent's response, and

(v) any outstanding concerns or objections that you may have.

(Please limit this to 500 words or less.)

BCN has not engaged in material or face-to-face consultations with the Crown relating to this Project. BCN intends to submit its comments to the Impact Assessment Agency of Canada in respect of the summary of the initial Project Description relating to this Project. Additionally, BCN intends to submit a Statement of Concern to the Alberta Consultation Office, as BCN leadership has not been meaningfully consulted on this Project, nor are their voices being heard and responded to adequately or at all.

BCN has strong concerns about the Project, due to both its close proximity to BCN's reserve lands, and the proposed location being situated within BCN's traditional territory.

BCN intends to participate in the process to ensure BCN Rights are protected, and BCN's concerns inform the Commission's decision on whether to approve or not approve the Project application.

Participating in the process, such as submitting information, attending information meetings, providing comments, or engagement with different levels of governments and officials is not a waiver of any of BCN's inherent, Aboriginal, Treaty No. 8 rights.

4. Briefly describe the issues you would like the Commission to consider when making its decision and indicate whether in your opinion, further process is required. (Please limit this to 500 words or less.)

BCN intends to participate in the Project's regulatory proceeding to ensure that:

- **BCN's position, identity, laws, and its treaty relationship with the Crown are all clearly stated from the outset;**
- **BCN is provided sufficient information and consultation to meaningfully understand the Project's scope, impacts to the environment (including to water and wildlife), and the impacts to BCN's reserve, traditional, and Treaty No. 8 lands;**
- **BCN's concerns are considered by the Commission regarding the direct and cumulative impacts expected to cause adverse impacts to BCN's way of life, culture, Indigenous Knowledge transfer, and BCN's inherent and Treaty rights, lands, waters, ecosystems;**
- **Any Project approval must follow a robust hearing process in which BCN has the opportunity to fully participate. Following a robust hearing process which facilitates the following outcomes:**
    - **the Project's contribution to cumulative effects is appropriately mitigated by effective Project conditions;**
    - **the Project's plans for environmental protection include mitigation strategies that protect critical species' habitats, and which properly consider those species' habitats in a wholistic manner; and**
    - **the Project's reclamation and restoration plan includes input from BCN to ensure appropriate measures are implemented.**

The hearing process for the Project should include an opportunity for BCN to present its members' oral Indigenous knowledge in a session held in BCN.

BCN members are stewards of the land, and it is crucial that we are involved in the management and decision making surrounding activities that will impact our lands. To date, participation opportunities have not been presented to BCN.

Consultation requires significantly more than the provision of notice. BCN expects consultation to include, but is not limited to:

- **understanding the conditions that supports and protects BCN Rights;**
- **understanding how BCN Rights have been impacted by cumulative development; and**
- **assessing how the activity in question will directly, or indirectly, impact BCN members, and the resources upon which they depend on for the practice of their rights.**

At this time, none of these steps have taken place. The potential impacts within BCN's traditional and Treaty No. 8 territories, and those in close proximity to BCN's reserve lands, have not been adequately assessed and addressed.

5. Do you want to personally participate if a hearing is held on this matter? Yes/No

Yes.

6. Will you be submitting additional information as part of this statement of intent to participate? Yes/No

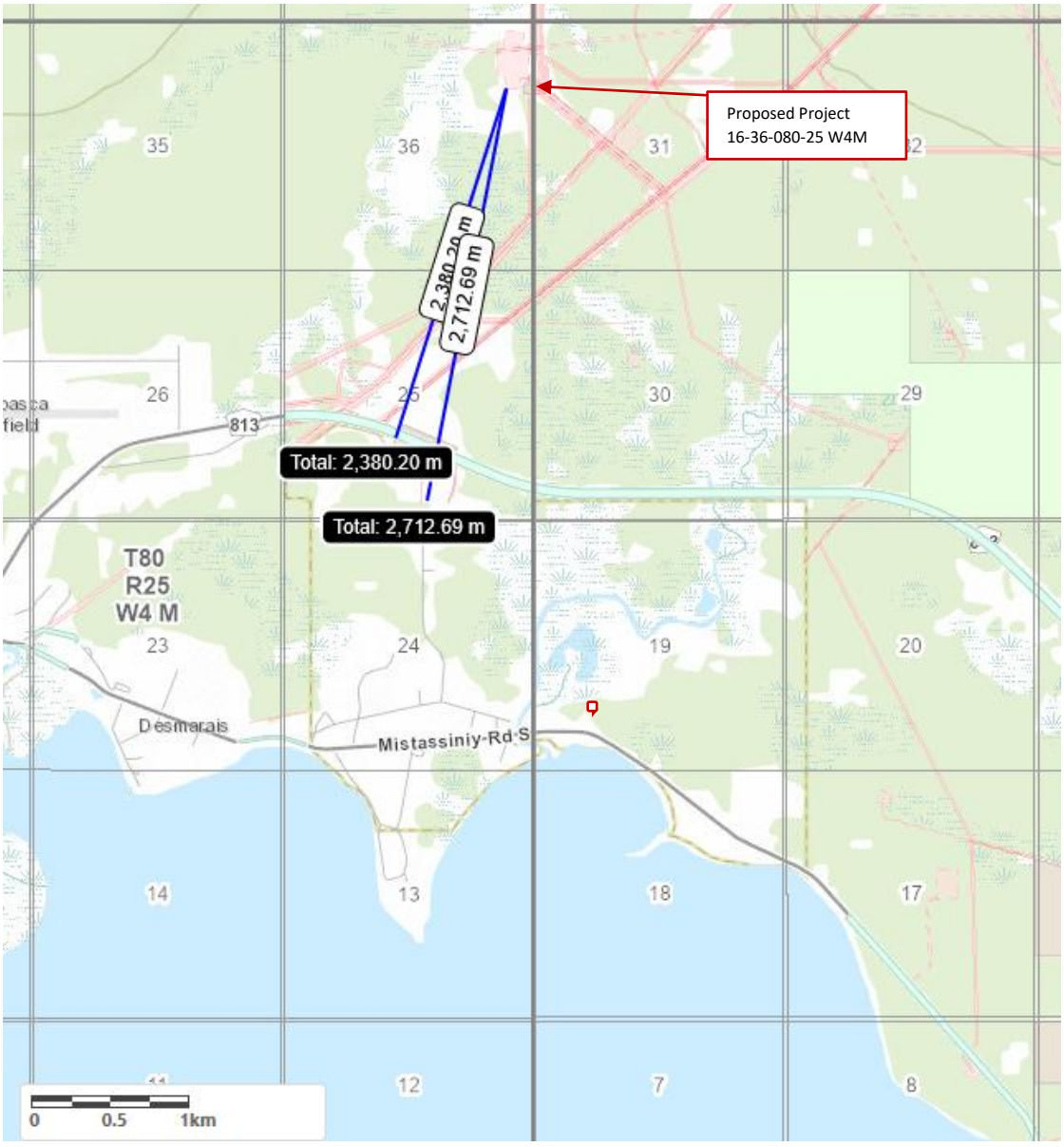
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Appendix "A"
Proximity Map

See attached:

Proximity Map illustrating the proposed Project area's close proximity to the boundary of BCN's reserve lands, and situated within BCN's traditional lands.

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Proximity Map – Shortest distance from Project Boundary

- **Bigstone Cree Nation Reserve North Boundary – 2,380m**
- **Bigstone Cree Nation Nearest Residence – 2,712 m**

Map compiled with project overlay by;

Troy Stuart
Land Manager
Bigstone Cree Nation

Source: Geodiscover Alberta Map Viewer

Appendix "B"
Traditional Land Use Maps

See attached:

Traditional Land Use – Big Game

Traditional Land Use – Fish

Traditional Land Use – Trails

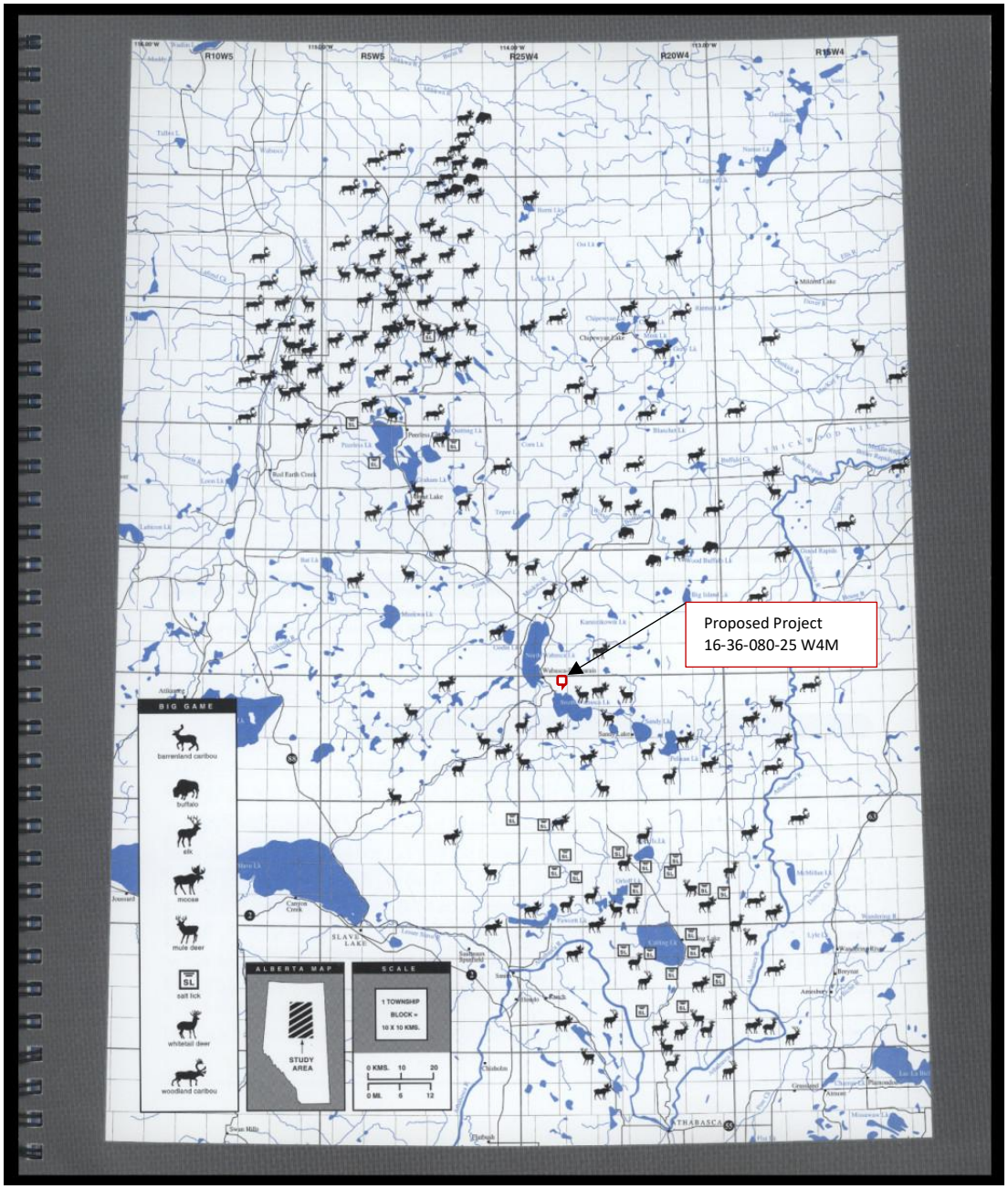
Traditional Land Use – Gathering

Traditional Land Use – Spiritual

Traditional Land Use – Settlements

Traditional Land Use – Trapping

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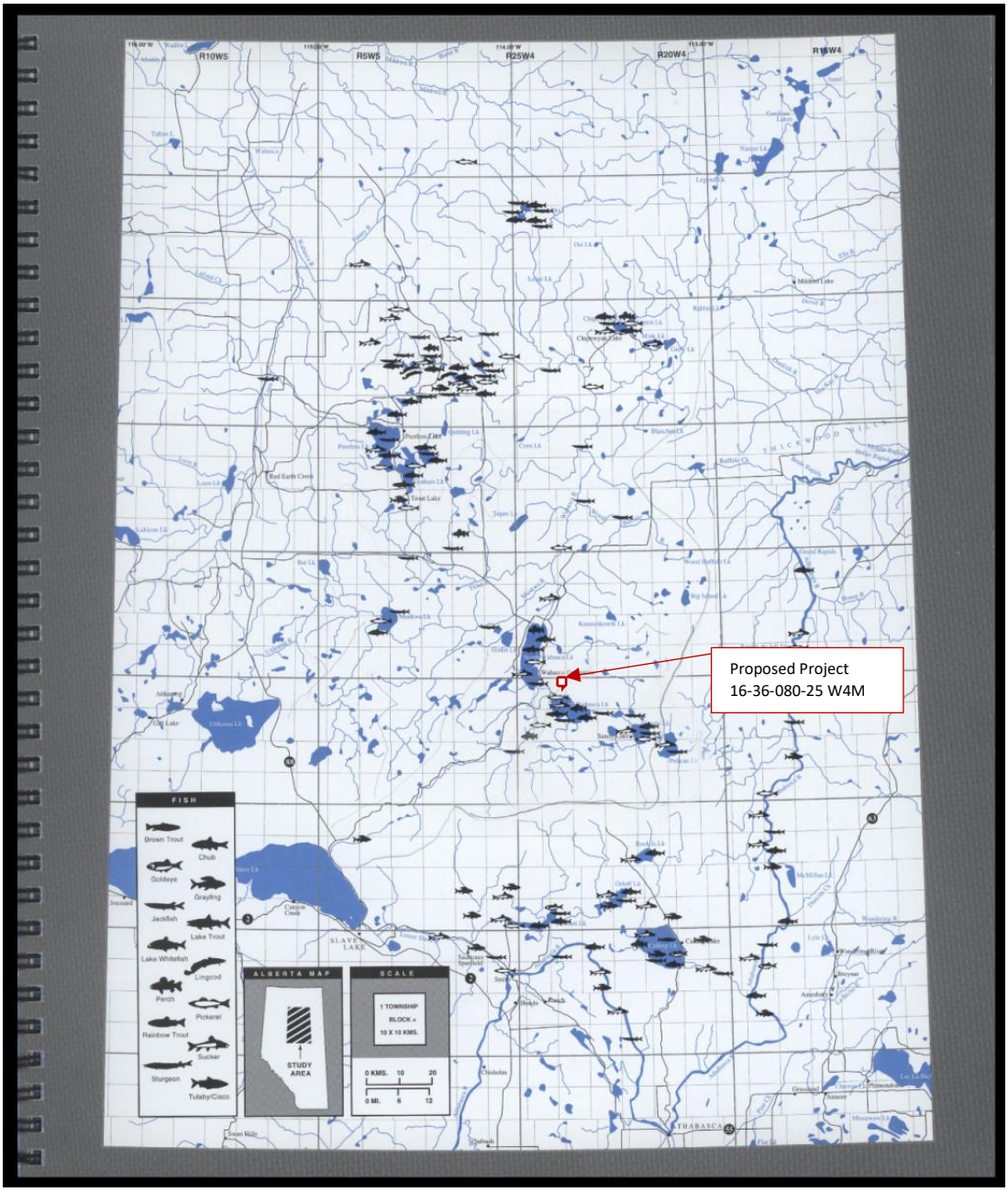
Traditional Land Use – Big Game

Map compiled with project overlay by;

Troy Stuart
Land Manager
Bigstone Cree Nation

Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary

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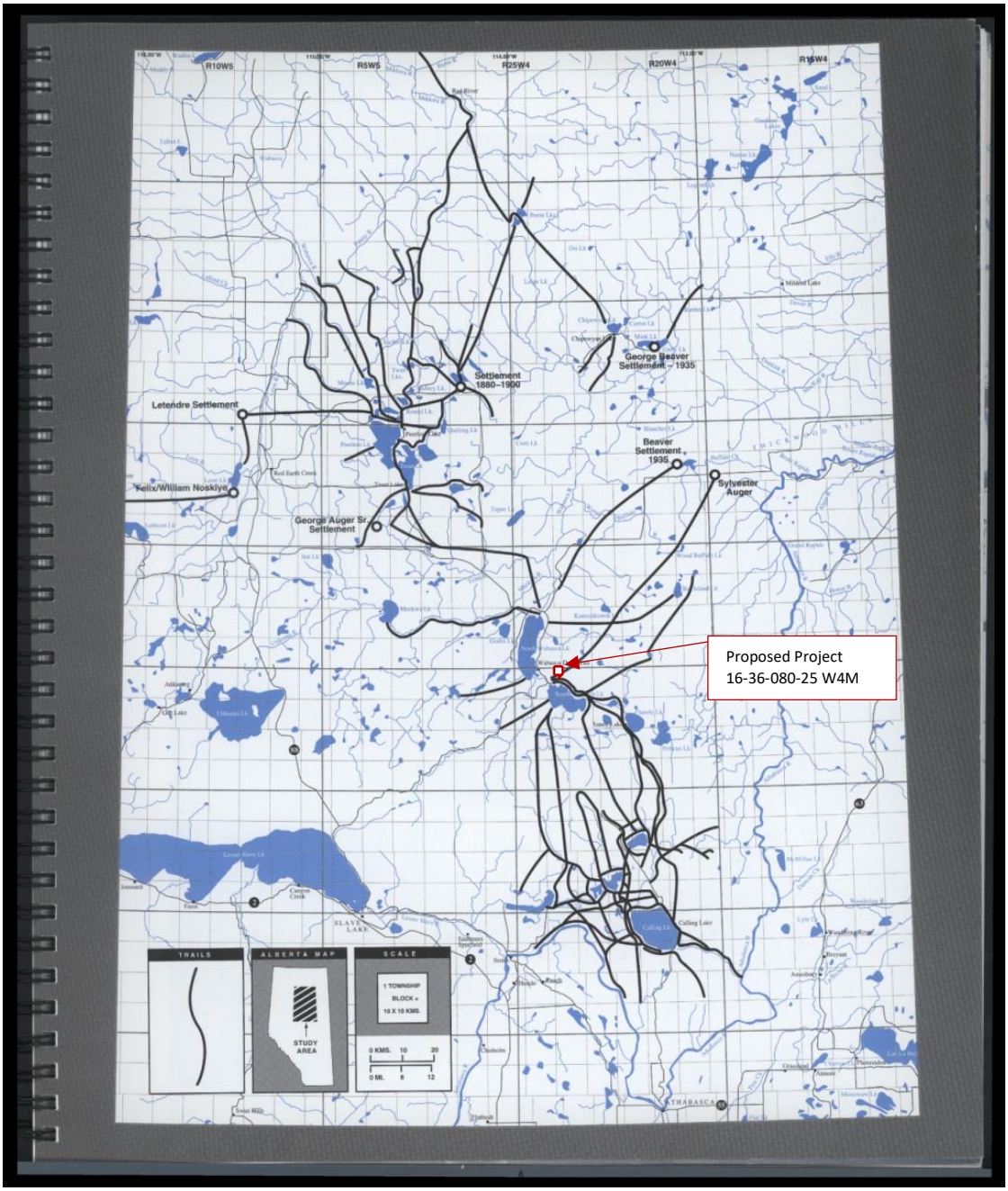
Traditional Land Use – Fish

Map compiled with project overlay by;

Troy Stuart
Land Manager
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Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary

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Traditional Land Use – Historical Trails

Map compiled with project overlay by;

Troy Stuart
Land Manager
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Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary

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Traditional Land Use – Gathering

Map compiled with project overlay by;

Troy Stuart
Land Manager
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Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary

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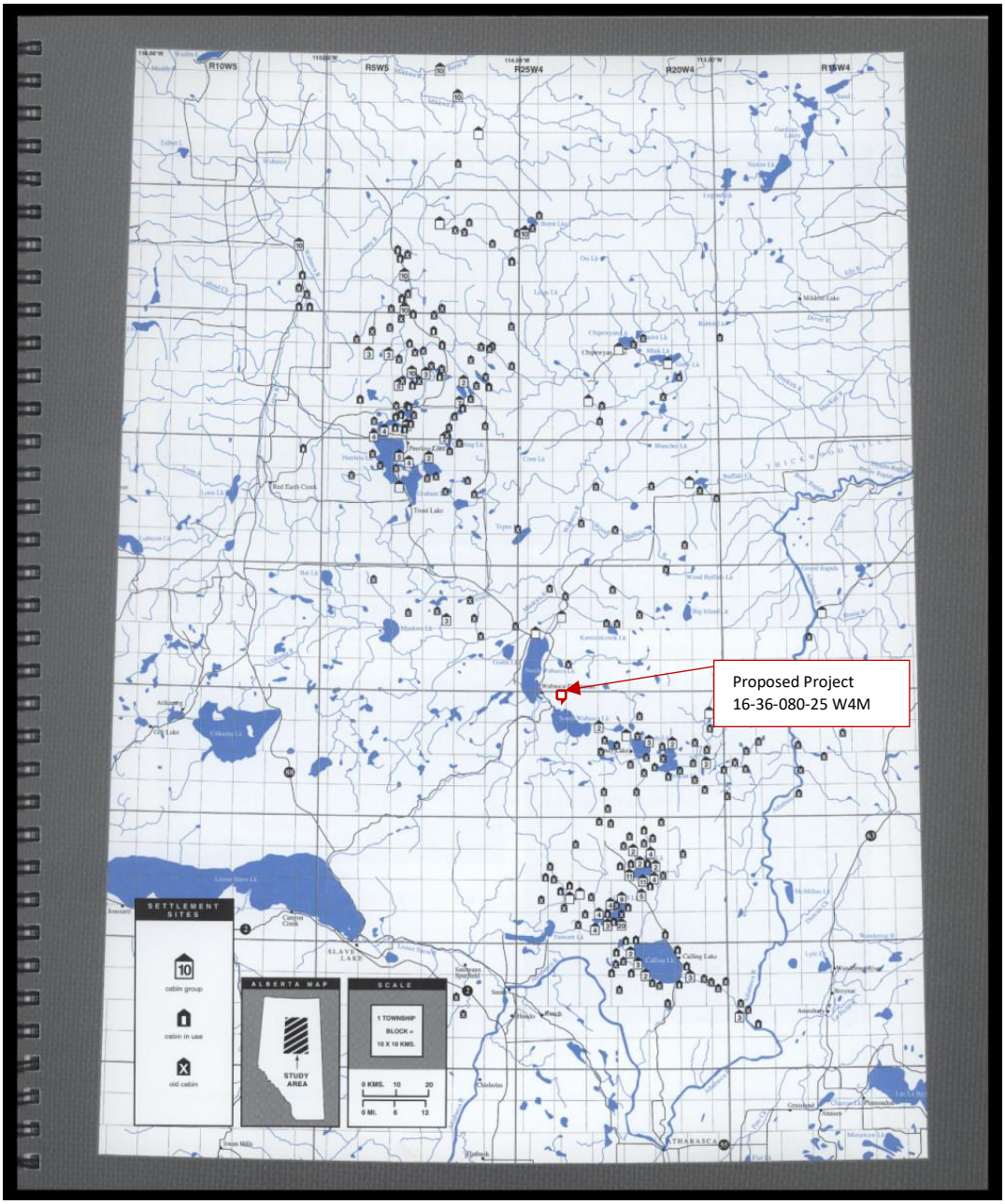
Traditional Land Use – Spiritual & Historical Sites

Map compiled with project overlay by;

Troy Stuart
Land Manager
Bigstone Cree Nation

Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary

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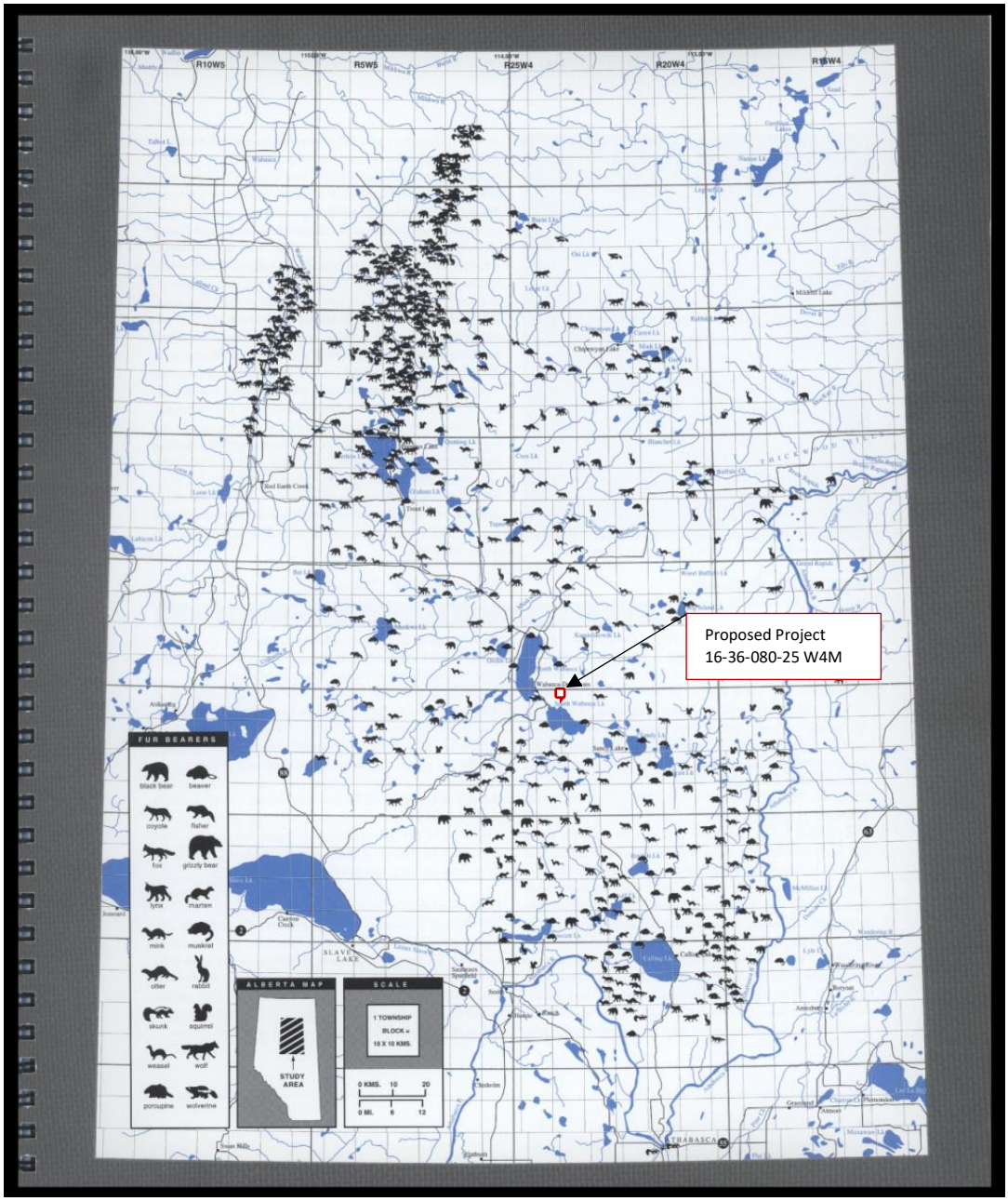
Traditional Land Use – Historical Settlement sites

Map compiled with project overlay by;

Troy Stuart
Land Manager
Bigstone Cree Nation

Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary

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Traditional Land Use – Fur Bearing Animals

Map compiled with project overlay by;

Troy Stuart
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Source: Keetuskeenow Land Use Occupancy Study – Bigstone Cree Nation / University of Calgary