PRIVATE LANDOWNERS ADJACENT TO PARCELS TO BE TRANSFERRED TO THE ALGONQUINS OF ONTARIO
Suite 995, 7-B Pleasant Blvd., Toronto, ON M4T 1K2
Email: ontprivatelandowners@gmail.com

July 16, 2013

Honourable Kathleen Wynne
Premier of Ontario
Legislative Building
Queen's Park
111 Wellesley Street West, Room 281
Toronto, ON M7A 1AS

Honourable David Orazietti
Ministry of Natural Resources
Suite 6630, 6th Floor, Whitney Block
99 Wellesley Street West
Toronto, ON M7A 1W3

Honourable David Zimmer
Minister of Aboriginal Affairs
160 Bloor Street East, 4th Floor
Toronto, ON M7A 2E6

Honourable Linda Jeffrey
Minister of Municipal Affairs and Housing
College Park
777 Bay Street, 17th Floor
Toronto, ON M5G 2E5

Dear Honourable Premier and Honourable Ministers:

Re: Algonquin Land Claim Preliminary Draft Agreement-in-Principle, and
Re: Impacts of Algonquin Land Claim on Private Landowners

We are a group of private landowners adjacent to parcels of Crown land proposed to be transferred to the Algonquins of Ontario as part of the settlement of Algonquin land claims in southeastern Ontario. We are writing this letter to express concerns regarding the Preliminary Draft Algonquin Land Claim Agreement-in-Principle released in December, 2012. The issues raised in this letter affect more than one million Ontarians who live in the lands subject to the negotiations.

We ask that you arrange a meeting with us, to include representatives of your respective offices and the Algonquins of Ontario, to discuss and advance the proposal (set out later in this letter) to develop a formal process to be put in place now to address the impact of Algonquin land selections on private landowners before the next stage of a more conclusive Agreement-in-Principle is reached.

Copies of this letter are being delivered to:

- each Member of the Provincial Parliament in the land claim area;
- Ron Doering, Chief Negotiator for the Federal Government;
- Brian Crane, Chief Provincial Negotiator for Ontario; and
- Robert Potts, Lead Negotiator for the Algonquins of Ontario,

with the request that each also responds to the issues and to our request for the meeting set out in this letter.

We advise that a copy is also being sent to the Prime Minister of Canada, the Minister of Aboriginal Affairs and Northern Development, and to each Member of Parliament in the land claim area.

COLLABORATIVE APPROACH

We do not write this letter in adversarial mode. Rather, we are a group of sincere and responsible people who, like other private landowners in the Province, are directly impacted by negotiations in which we have had no direct part or representation. We seek a process to be put in place now through which our views will be heard, given due and proper regard and addressed in a timely fashion. We seek to ensure that the Agreement-in-Principle becomes precisely that - an agreement in principle - not the apparent binding arrangement with which we are now confronted.

The Algonquin people as original occupants are entitled to fair arrangements to accommodate their long-term needs and aspirations in their traditional territory. We respect that. We are cognizant of the pressures on the Federal and Provincial Governments to demonstrate positive action on aboriginal land claims. We appreciate the complexity of the discussions.

At the same time, there is an urgent need for a formal process to address impacts, some of them potentially severe, of Algonquin land selections on private landowners. At the moment, there is a mounting backlash of concern and uncertainty among many non-Algonquin private landowners in the Province who are directly impacted.

We believe that long-term goodwill between the Algonquin people and existing (and future) landowners should be a priority. This will be achieved by responsible changes in process now that will not grind negotiations to a halt but rather build on good neighbour principles already in the Agreement-in-Principle. If the right mechanism is developed now, it can be both effective and efficient. We want to work with the parties to the Agreement-in-Principle to develop and advance such a mechanism.

OUR CONCERNS

The following are among our concerns:

(i) Principles Only:

As an Agreement-in-Principle, the document should be confined to principles; it should **not** provide for specific property selection or allocation. **How** lands will be selected and acceptable uses for selected land (including, without limitation, compatibility of land use, commitments to future use, conservation, safety, management, and access) should be key **principles**.

We believe that land allocation without either consultation or clearly articulated principles at this time is premature.

(ii) Populated Southeastern Ontario and the Need for Adaptation of Treaty Models:

The Ontario land claims are different than others of the land claims in other provinces. In other areas of Canada, there are vast tracts of unpopulated land at issue. That is not the case in heavily populated southeastern Ontario. Satisfaction of the Algonquin land claims in Ontario is complicated by the fact that Ontario aggressively sold and granted patents of Crown land in the early 1900s. That has left less Crown land available than optimal to satisfy the Algonquin claims. The availability of lands is exacerbated by the fact that Algonquin Park is "off the table".

The treaty model developed for remote Northern Canada simply does not fit in developed and populated southeastern Ontario. Other negotiation models need adaptation in Ontario to allow early input by all stakeholders including private landowners.

(iii) Representative Government:

We believe that, while respecting the legal imperative that the Crown is required to honour aboriginal rights, the Federal negotiation team and the Ontario negotiation team are also responsible for representing the interests of non-Algonquins in the land claim area. There are approximately 1.4 million non-Algonquin residents of the land claim area, and approximately 8000+ Algonquins. We note the three party "Statement of Shared Objectives" signed by Canada and Ontario in 1994 and re-affirmed by Canada and Ontario in 2006 in which the Federal, Provincial, and Algonquin negotiators developed eight shared objectives. The final of these was "to continue to consult with interested parties throughout the negotiation process and to keep the public informed of the progress of the

negotiations." We submit that neither Canada nor Ontario has done so insofar as individual landowners are concerned. This must change.

While an Advisory Group of NGOs was struck to have reciprocal input to and from the negotiating parties, by all accounts there has been no meaningful representation of the individual landowners. There has been a lack of meaningful consultation by the Federal and Provincial representatives on the negotiating team with affected municipalities and their non-aboriginal residents. These residents are the people who have strived to sustain the area over the years by hard work, dedication and payment of significant taxes (at three levels – federal, provincial and municipal). It is extremely important that their voices be heard in order to obtain acceptance of the Agreement.

It is not enough for the government to invite public comment on an Agreement-in-Principle which is a "done deal". There need to be specific arrangements in place to receive and address the legitimate concerns of affected property owners and residents of the impacted areas.

(iv) Inconsistent Confidentiality

We are told that the Ontario government represents all people – aboriginal and non-aboriginal – yet when we ask about land selection, or historic uses, or cultural connections, or specific negotiations, we are faced with confidentiality agreements that deny us access to information. This is inconsistent and goes to the root of our confidence.

In particular, the land selection process was conducted in such secrecy that we have been told by our local municipal elected officials that when Ontario chose to meet with municipal officials, after the land selection process was complete, those officials were only allowed to attend if they first swore a declaration of confidentiality. In essence, a premature land selection process has been completed with no public consultation and input. This is unacceptable.

(v) Imbalanced Negotiation

At the information meetings conducted earlier this year, it was stated that such meetings were "not an information meeting but rather the commencement of a comprehensive consultation and dialogue process." That statement of commitment strains credibility given the fact that Ontario's own web site makes it clear that changes in the draft would require the consent of the Algonquins of Ontario. How can meaningful consultation and dialogue take place to deal with the non-Algonquin public's concerns if the Algonquins of Ontario have a veto over any changes? What incentive is there for the Algonquin people to have discussions? None of the "consultation" sessions have been such … they have, in reality, been little more than information sessions with little to no consideration given to issues that have been raised to date. That needs to change to achieve the harmony required.

There are public reports of some $20 million plus having been advanced toward negotiations. The fees to negotiate have been paid for (not by) the Algonquins. Currently, there is an unbalanced playing field in which an individual landowner must incur prohibitive personal expense to secure a voice. There needs to be a fiscally responsible way of the government also funding negotiations for private landowners as the government has done for the Algonquins of Ontario.

(vi) Land Selection and Land Uses

These are not isolated lands. They have been occupied for generations by non-Aboriginal private landowners. Many issues emerge for us specifically regarding land selection and land use, including:

A. Process:

We understand that the Algonquins identified parcels they preferred, the government narrowed down the number of parcels to reach the agreed amount of land to be turned over, and then the government accepted the remaining parcels without apparent meaningful consideration of the particular parcels or input from local residents.

There is no mechanism in the current process to allow existing private landowners to make their concerns (very real concerns) known regarding selected lands in any meaningful way. We are told that specific uses of selected lands will be matters for discussion in the future. We are being told to wait, trust, and hope that in due course there will be an opportunity for the interests of impacted private landowners to be raised and addressed. It is unacceptable that consideration of selection or issues of use are to be addressed much later.

By the time they are subject to discussion, in the current protocol, there will be vested rights and certainly expectations. Such a process does not promote harmony.

B. Compatibility of Land Use:
Government representatives have said that they will respond to Algonquin requests for change of allocated lands if, for example, the topography of particular allocated lots is inconsistent with Algonquin objectives. While public health and safety *might* be another reason to substitute other lands in the context of incompatibility, in this case the government refers more to contamination that would harm the Algonquins. It has been acknowledged that the proposed environmental assessment might also manifest incompatibility of land uses but the Agreement-in-Principle (in the current process, i.e. absent change) will be ratified before any environmental assessment even begins. Without the municipality and existing adjacent private landowners involved at this time, assessments of incompatibility are done only from the perspective of the Algonquins. In fact, in the current process, Algonquin expectations re lot selection will be entrenched before uses even come into deliberation. The possibility of thoughtful consideration and perhaps of substitution/ exchange of other more appropriate lands will then be "much more difficult" and probably not be possible. This is unacceptable.

C. Impact of Indigenous Rights:
The Algonquin land awards will be in fee simple. The lands awarded will not become reserve lands. We are told that the lands will be subject to all the same zoning, municipal planning and other limitations that apply to private landowners now. The reality is, however, that the native people of Canada have indigenous rights to hunt, fish and harvest that cannot be abrogated. There is no certainty that the Algonquins will be bound by the "usual limitations" when indigenous rights cannot be abrogated.

D. No Common Vocabulary:
In fact, there is no common vocabulary. We (as private landowners) talk of zoning and by-laws. The Algonquins talk of cultural, economic, and indigenous uses. This disparity in communication needs to be clarified and addressed into the principles of the Agreement-in-Principle.

E. Uncertainty of Uses:
Designated land uses of the proposed parcels have not been determined. While the Algonquin people have indicated some **possible** uses, they are subject to change.

We understand that there is a register that keeps track of the land uses that are "proposed" by the Algonquins for parcels but that such proposed uses are always subject to change. There is a selection of word descriptors – offered (subject to change) by the Algonquins. The current consideration of uses is abstract at best and not consistently understood or applied even by representatives of the Ministry of Natural Resources themselves. Consistency and clarity are required.

A truly representative process, that addresses uses now, will build confidence for all parties. A mechanism that leads to an agreement to be bound by the rules and a commitment to specific uses for parcels would go a long way.

F. Conservation:
This is a modern day treaty being settled in southeastern Ontario where fish and wild life resources are critically important to the economy and culture of the area. Scientific data have driven well-founded conservancy standards for the non-aboriginal people. Where is the protection in this draft Agreement-in-Principle for the unique species of trout in Ontario or the carefully nurtured fisheries in the lakes in the land claim area? For example, our particular lake has been designated by the Ministry of Natural Resources as a highly sensitive cold water trout lake. Unabrogated fishing rights are at best inconsistent and at worst will lead to the compromise of a lake that is currently a significant source of fish stocking for other already-depleted Ontario lakes. If everyone represented by the three parties to this draft Agreement-in-Principle is committed to responsible conservation measures, why would anyone want the legal right to fish or hunt without limitation of numbers, species, season or methods of harvesting? Why would Canada and Ontario not, as part of the negotiating process, insist on some protection for these resources? Local municipalities and local landowners can identify and speak best to these issues. They need to be at the table.

G. Safety and the Implications:
The draft Agreement-in-Principle provides for unlimited hunting, harvesting and fishing on all Crown Land in the land claim area 365 days per year by all Algonquins of Ontario for their own or bartering purposes. That activity is subject only to the requirement that if conservation, public health or safety becomes an issue then "Ontario or Canada would consult with the Algonquins prior to implementing any measure necessary."

The government contends that that is the law now and nothing changes by virtue of the Agreement-in-Principle. In fact, allocation of land in residential areas increases convenience and frequency of use. Access drives risk.

It is the responsibility of our government representatives to anticipate and protect the safety of its people or face the risk of actionable accountability later. How can they have done this if there was no discerning consideration by the government of the now specifically proposed selected lands or input from respective local residents? Land use must be taken into account now and agreed to by all parties.

H. Management:
We have learned that title to allocated lots will be taken in an Algonquin "institution" to be held for the Algonquin community. If the respective lots will be communal property, lack of maintenance of buildings and docks and the properties, in general, is a real possibility, particularly because there is no apparent dedication of financial resources to ongoing maintenance of allocated lands.

I. Economic Impact:
It has been stated to the municipalities that Algonquin settlement lands will bring new revenues to municipalities. The statement does not take into account the cost of servicing these lands which are forecasted to far outweigh the revenues. The costs of land use planning and zoning will be ongoing. Access roads to isolated lands year round for the use of ambulance, fire and police will be costly both to create and maintain. While there are monetary awards to the native people in addition to land allocations, the monetary amounts are already earmarked to other purposes than maintenance of properties or access roads. Assumption by the municipalities of private roads to allow uninterrupted access by private landowners over lands allocated to the Algonquins will add to municipal costs. Undoubtedly all of these additional costs will then be punitively passed on to the local landowners, respectively, in higher taxes.

J. Expropriation:
Agreement was reached in early meetings of the parties to the Agreement-in-Principle to not make land awards of privately-owned land. There "would not be expropriation" of private landowner rights.

Isolating a privately-owned parcel is arguably tantamount to expropriation without recompense, as is making a parcel unsalable because of uncertainty regarding uses for the next 20+ years while the native arrangements and uses are finalized. Lack of a clear and accountable process and expectations now could adversely and unfairly affect marketability for existing owners indefinitely. Similarly dramatic changes of use and enjoyment of the current landowners by Algonquin uses that impact safety or otherwise are tantamount to expropriation without recompense. This is unfair.

K. Additional Land Claims:
There are apparently other possible indigenous peoples' claims that are pending. Without limiting the generality, there are the Williams Treaty Claim, the Métis claim and the claims of the Algonquins of Quebec.

Recognizing that there are finite Crown lands available, it is imperative that all possible claims are settled concurrently. In particular, the Algonquins of Quebec have overlapping hunting and harvesting rights into eastern Ontario. We have no clarity regarding the possibility of those claims and how they will also impact non-native people. Surely it is incumbent on the Ontario government to ensure that the process with the Algonquins should run to concurrent completion with such other possible claims.

OUR PROPOSAL

We believe that there should be a negotiator appointed now, who joins the other negotiators immediately and represents all private landowners across Ontario. Such negotiator should be at the table throughout. It should be a responsibility of such person to engage in learning the concerns of the private landowners and to develop a strategy to ensure they are heard and addressed. Such negotiator should be responsible for, and to, private landowners.

The province should be prepared to provide reasonable funding to appoint such a negotiator. Such an appointment, that would promote good neighbour arrangements between the Algonquins and their future neighbours and neighbouring municipalities, would not make excessive demands on limited public resources. There is a precedent in the Pickering Airport expropriation model where the legal fees of individual landowners were subsidized. Our situation is no different than the Algonquins of Ontario whose legal expenses are subsidized by the Ontario taxpayers. Our suggested model of appointing a government-paid dedicated individual negotiator for private landowners would go a ways to leveling what is otherwise a very unbalanced playing field.

The Agreement-in-Principle should be confined to principles. Land selection should be segregated and dealt with later, though principles should be added now that address **how** land selection will occur and **how** land use issues will be settled.

This framework, if adopted by Ontario, would ensure that private landowner concerns will be addressed in a fair and timely way. It would also be efficient and avoids duplication of legal counsel by numerous individual landowners.

The framework for the work of such an appointee would logically include, among others, the following components:

1. due diligence on selection of land to be turned over to the Algonquin people (including where is the land? what is nearby? what is the topography? what are the possible contaminants? what is the surrounding land use and zoning and why?);

2. mutual assessments of compatibility of land use (rather than what is now unilateral selection by the Algonquin people);

3. assessments of safety (including, as noted above, increased risks associated with placement in otherwise residential areas);

4. confirmation that land selections will be subject to the same official plan and zoning as adjacent uses without prospect of change; or

   alternatively, if that is not the case
   a) arriving at committed uses, and
   b) reaching agreement re same

   but if there are incompatible uses, identification of alternate land selections to meet Algonquin objectives;

5. achieving a framework agreement between the Algonquins and the municipality with respect to Official Plan, zoning, taxation and, where applicable, services;

6. achieving agreement between the Province, the Algonquins and existing private landowners with respect to private roads on permitted Crown land or, where applicable, utility corridors, with dedicated financial resources;

7. ensuring, where appropriate, rights of first refusal for adjacent private owners if Algonquin lands are offered for sale in the future (this would continue existing Ontario policy with respect to disposition of Crown lands);

8. environmental protection - e.g. requirements for sanitary systems;

9. fisheries and wildlife monitoring and conservation; and

10. other matters as required.

Dealing with problems in advance is far better than leaving concerns (that may or may not be well-founded) to fester, or waiting until real disputes arise. With the process that we propose, both municipalities and their residents will know there will be good neighbour arrangements with the Algonquins as an important component of the Algonquin land claims settlement. Disruptive changes in land selection and/or land use patterns will be avoided.

PRACTICALITIES

Federal government land claims processes include requirements for First Nations dialogue with their future neighbours, and agreements with municipalities on land use, taxation and services. This is good practice that Ontario should follow. At the moment, however, the Algonquins are 8000+ people, in approximately 10 tribes. The Algonquins are working on their own constitution. By all accounts, this process is in its early days. The relevant decision-makers will change. We have suggested that land selection and use be segregated from the Agreement-in-Principle. By deferring land selection and uses until the Algonquin constitution is finalized, decision-makers for the Algonquins will be determined and allow definitive negotiations to advance where issues of compatibility, safety, and use generally can be addressed.

COMPROMISE POSSIBLE

We do not seek to grind the overall process to a halt. The Ministry of Natural Resources has done an excellent job mapping the relevant lands of southeastern Ontario (and their topography). It seems that perhaps over 100,000 acres of the mapped acres may not be subject to controversy. We do not object to the Agreement-in-Principle proceeding as it relates to non-controversial land allocation. Excluding the "easy to resolve" 100,000 (plus or minus) acres might help to make this more practical (including for the new negotiator that we propose be appointed for private landowners).

CONCLUSION

It seems many are resigned to this draft Agreement-in-Principle being a "done deal". We are not. We take the government at its word to be consultative and representative. We search for its demonstration of earnest.

The rules of natural justice demand fair process, without bias, with a true opportunity to be heard. Due process, within the rules of natural justice, inspires confidence and harmony. The local private landowners need a voice at the negotiation table as the Agreement-in-Principle is now finalized and afterward too, including if as we believe to be appropriate, land selection and use is segregated to be later determined on principles into which we must have input now.

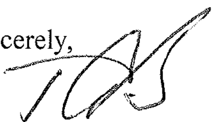
These negotiations have been going on for twenty years. The end result will be a "final agreement" that has constitutional protection under the Canadian Constitution. This is the only chance to get it right. What will happen to the social fabric of southeastern Ontario if we do not get it right?

We sincerely believe it is necessary that Ontario now, though belatedly, take the lead in amending the go-forward process to allow truly open dialogue with the non-Algonquin public in the land claim area – a process that will mitigate the public backlash that has developed. This is the obligation of a truly representative government. It will be time consuming and intense but it is much more likely (and very important) to achieve community harmony. We wish to work with the government and the Algonquins to find good solutions that build confidence (through a process of listening and being heard) and achieve this harmony.

It may take a little longer if a new negotiator is inserted into the process but, we submit, the end result will be better and more sustainable.

We reiterate our request at the beginning of this letter that you arrange a meeting with us, to include representatives of your respective offices and the Algonquins of Ontario, to discuss and advance our proposal to develop a formal process to be put in place now to address the impact of Algonquin land selections on private landowners before the next stage of a more conclusive Agreement-in-Principle is reached. We look forward to a favourable response to our proposal and to productive dialogue.

Sincerely,



for Private Landowners Adjacent to Parcels to be Transferred
to the Algonquins of Ontario

** Grateful acknowledgement is here noted of the letter of Michael J. Johnson, Eganville, ON dated April 18, 2013 parts of which are here incorporated *verbatim*

and of the letter of Henry Hogg, Reeve Township of Addington Highlands to Premier Kathleen Wynne dated May 21, 2013 parts of which are here also incorporated *verbatim*

cc:
Hon. Bob Chiarelli, MPP, Ottawa West-Nepean
Grant Crack, MPP, Glengarry-Prescott-Russell
Victor Fedeli, MPP, Nipissing
Randy Hillier, MPP, Lanark-Frontenac-Lennox and Addington
Jack MacLaren, MPP, Carleton-Mississippi Mills
Lisa MacLeod, MPP, Nepean-Carleton
Jim McDonell, MPP, Stormont-Dundas-South Glengarry
Phil McNeely, MPP, Ottawa-Orleans
Hon. Madeleine Meilleur, MPP, Ottawa-Vanier
Hon. Yasir Naqvi, MPP, Ottawa Centre
John Yakabuski, MPP, Renfrew-Nipissing-Pembroke
Steve Clark, MPP, Leeds-Grenville
Todd Smith, MPP, Prince Edward-Hastings

Brian A. Crane, Q.C., Ontario Chief Negotiator
Ron Doering, Federal Chief Negotiator
Robert Potts, Chief Negotiator for Algonquins of Ontario
David MacDonald, Manager, Claims Negotiations Support Unit, Aboriginal Policy Branch, MNR, Ontario
Kim Finley, Policy Liaison Officer , Lands Specialist, Claims Negotiation Support Unit, Aboriginal Policy Branch, MNR, Ontario

✓ Federation of Ontario Cottagers' Associations
Ontario Federation of Anglers and Hunters
Michael Johnson

Henry Hogg, Reeve, Township of Addington Highlands