



July 15, 2013

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**Re: EOWC Comments on the Preliminary Draft Agreement in Principle**

In this letter I am providing preliminary comments on your letter of June 28, 2013 on behalf of the Eastern Ontario Wardens Caucus.

A recurring theme in your letter relates to the application of provincial and municipal laws to the Algonquins and to Algonquin Settlement Lands. It is fundamental to Ontario's position, which has been accepted by Canada and the Algonquins, that lands transferred to the Algonquins will be held in fee simple with mineral rights and that such lands will be subject to municipal taxation and municipal planning regimes and procedures. Algonquin Settlement Lands therefore will not have special land rights. The legal language of the Preliminary Draft Agreement in Principle may tend to obscure this rather straight forward idea and we are trying to improve and clarify the language as best we can.

There is one exception to this. In the case of three large land parcels (described in Chapter 12 as Specified Algonquin Lands) the Algonquins will have the benefit of a property tax exemption provided the lands remain unimproved and provided also that in advance of the final treaty there is a financial arrangement in place with the appropriate

municipal authority to cover the cost of anticipated services. These lands were identified by the Algonquins as lands which would not likely be developed in the future but would be held in their natural state. I note for completeness that the Algonquins may also have other tax benefits unrelated to land, including the possibility of using a Settlement Trust to hold land claim monies pursuant to federal tax policy.

I now address the specific questions in your letter.

## **LAND USE PLANNING**

### **1. Applicability of Provincial Statutes**

As mentioned above, provincial laws and policies will generally apply to Algonquin Settlement Lands. This includes the Building and Fire Codes which are regulations under Ontario law.

### **2. Municipal Building Permit Processes**

All municipal building permit and planning processes will also apply to Algonquin Settlement Lands. This follows logically from the application of municipal planning laws and regulations.

### **3. Lands Sold to Non-First Nation Individuals or Corporations**

The Algonquins will be free to sell Settlement Lands or to grant interests in lands, such as leases, to Algonquin or to non-Algonquin individuals or corporations. The property tax exemption applicable to the three tax exempt parcels will terminate should lands be disposed of to an entity other than an Algonquin institution. This will be specified in the taxation chapter. In other words, the tax exemption cannot be transferred from one land owner to another but is only available to an Algonquin Institution which holds the lands collectively for the Algonquins. To put this another way, the tax exemption is not an interest in land which runs with the land on transfer.

#### 4. Hunt Camps

Recreational or hunt camps which are located on Algonquin Settlement Lands are now recognized in Land Use Permits issued by MNR. These Land Use Permits will terminate once the lands have been transferred to the Algonquins. The Algonquins are required under the Agreement in Principle to enter into negotiations with hunt camp operators so that they can continue to enjoy their camps and hunting areas for a reasonable time. Ontario will participate in these negotiations which will take place prior to the final treaty. We have not worked out specific clauses to govern the application of municipal laws to hunt camps and to constructions on Algonquin lands. However, there is nothing in the Agreement in Principle which would prevent the application of municipal laws to Algonquin Settlement Lands and constructions thereon (except for the tax exempt parcels referred to above). Thus, as a matter of principle, municipal laws and policies applicable to hunt camps would apply.

#### 5. Emergency Services

We anticipate that emergency services would continue to be provided by local governments as they are now. Such emergency services would be funded as at present by local governments or the province. In the respect of the three parcels of tax exempt lands, the cost of emergency services would be dealt with in the financial arrangement discussions prior to treaty. Municipalities have raised with us the issue of cost recovery for fire protection services presently provided by MNR. This issue may need further study and if necessary will be addressed in the treaty.

#### 6. Zoning or Pre-Zoning of Settlement Lands

We are in the process of reviewing the land use planning provisions (including 5.7.2) to provide greater clarity. It is Ontario's intention when transferring Crown lands to the Algonquins to provide that the lands transferred will be given a designation in order to fit them into existing official plans and zoning by-laws. In the vast majority of cases, the designation would be compatible, if not identical, with neighbouring private lands. There will be a process established after the AIP to establish such designations and relevant

local governments will be fully consulted in that process. The lands will also be examined in an environmental assessment under the Algonquin Declaration Order which might influence the designation.

## **PROPERTY TAXATION**

### **1. Interpretation of 12.2.1**

I believe that from the wording of Chapter 12 and the statements about the application of laws in Chapter 2, it is clear that the property tax exemption only applies to the three parcels of Specified Algonquin Lands. Our lawyers have reviewed the text and are satisfied that the language is clear.

### **2. Property Tax Arrears**

As noted, Algonquin Settlement Lands will not be Indian reserves and will be subject to the provisions of Ontario tax statutes. We anticipate that Settlement Lands will be held by an Algonquin institution or institutions. Thus, it is very likely that Algonquin Settlement Lands will be held in the name of an Algonquin land holding trust or corporation which will be responsible for the administration of those lands including the payment of property taxes. Should taxes fall into arrears the local government will be able to look to the Algonquin land holding institution for payment. These matters are not addressed in the AIP since the Algonquins have not yet settled on the form of their institutions. If necessary, the treaty can provide additional language to address the concerns of local governments. We certainly will be exploring this issue further with municipal governments after the AIP.

### **3. Assessment**

The Assessment Act and related statutes will apply to Algonquin Settlement Lands. There is nothing in the AIP which would suggest that the assessment methodology currently followed by MPAC would be different in relation to Algonquin Settlement Lands.

#### 4. Property Tax and Forestry

We anticipate that Algonquin Settlement Lands which are subject to existing Forest Management Plans will not actually be transferred to the Algonquins until the forestry work under those plans on Settlement Lands has been completed. We have established a Working Group with participation from the Algonquins and industry to review and advise upon the transition arrangements.

After transfer, the Algonquins might be eligible for the Managed Forest Tax Incentive Program but under the general principles referred to above they would have to satisfy the requirements of that program. There is no proposal on the table with respect to the MFTIP. The Algonquins have indicated they want to discuss the application of taxation, including property tax, to forestry operations on Algonquin Settlement Lands. This discussion will take place after the Agreement in Principle.

#### 5. Transfer of Settlement Lands

As discussed above, if Settlement Lands are transferred by the Algonquins, the new owners would be subject to the general law, including municipal planning and taxation laws. Under Chapter 12, the property tax exemption which is applicable to the three parcels of Specified Algonquin Lands will only apply if the land is held by an Algonquin institution.

#### 6. Indian Act

I would like to mention one further point concerning the application of the Indian Act. Your legal counsel Mr. Fairbrother has pointed out that there appears to be a contradiction between 2.2.3 and 12.4.1. Our lawyers will look into clarifying this potentially conflicting language.

It is important to note that pursuant to 2.2.3 Settlement Lands will not be reserves under the Indian Act, but instead will be lands in fee simple. Therefore, s.87 of the Indian Act will not apply to Settlement Lands.

The AIP will provide that self-government will be discussed before the Final Agreement but this will be limited to the community of Pikwakanagan. 12.4.1 reminds the Algonquins that the s. 87 Indian Act tax exemption will be discussed in the context of those self-government negotiations. The federal government has made its position clear that according to Canada's policy after a self-government agreement has been negotiated for Pikwakanagan the Pikwakanagan Reserve will cease to exist and the s. 87 tax exemption will no longer apply.

As a final note, I would stress that the AIP is a non-binding agreement which is intended to guide future treaty negotiations. In that sense nothing in the AIP is final. Further, as you know, the AIP must still be approved by the Algonquins (in a ratification vote) and by Canada and Ontario before it is executed.

I have provided your comments to legal counsel assigned to the claim for their further review, particularly the detailed comments of Mr. Fairbrother.

Yours sincerely,



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Chief Ontario Negotiator

c.c. Ron Doering, Chief Federal Negotiator  
Norm Lemke