



# MOHAWKS OF THE BAY OF QUINTE

## KENHTEKE KANIENKEHA

ADMINISTRATION, 24 Meadow Drive, Tyendinaga Mohawk Territory K0K 1X0  
Phone: 613-396-3424 Fax: 613-396-3627

January 19, 2021

Marcia Wallace  
Chief Administrative Officer  
Prince Edward County  
332 Main Street  
Picton, ON K0K 2T0

Dear Ms Wallace,

**Re: Official Plan Amendment Application and Zoning By-law Amendment Application, Fourward Holdings Inc. (Quinte Isle Campark Expansion), 558 Welbanks Road, Part of Lots 19, 20, and 21, Concession 1 and 2, South Side of East Lake, Township of Athol**

We write on the behalf of the Mohawks of the Bay of Quinte ("MBQ") to claim our right to participate in the Prince Edward County (the "County") assessment process as it relates to the Quinte Isle Campark Expansion (the "Campark").

The application involves the re-zoning of lands at 558 Welbanks Road to permit the development of 337 Park Model Seasonal Camping Sites. The proposed Zoning By-law Amendment would alter the land designation from Rural 2 (RU2) to Special Trailer Park Commercial (TPC-12). The proposed Official Plan Amendment would alter the land designation from Rural to Shore Land and introduce hundreds of new seasonal and permanent residents to the County and thousands of recreational visitors.

With regard to the County's Official Plan, we write to advise that the problem of consultation with First Nations is directly related to the existing Official Plan's near silence with respect to First Nations rights, sacred places, land use (present, historic and ancient) heritage, culture and landscapes.

In the 219-page County Official Plan, which was used to evaluate this development proposal, the words "Indigenous," "First Nations," "sacred" and "aboriginal" do not appear. The term "native people" occurs once, but not in relation to any policy, only history. MBQ is inexplicably excluded from consideration with respect to land use planning decisions. Compounding this problem is the persistent lack of notice as caused by the out-dated and unconstitutional requirements of the Ontario *Planning Act* that requires notice of proposed Official Plan Amendments and Zoning By-law Amendments to be sent to local residents, school boards, conservation authorities and utilities such as Hydro One and natural gas utilities, but only ever to First Nations if the development occurs within one kilometre of a Reserve. For example, for Official Plan Amendments - O. Reg. 543/06, Section 3(9) states:

(9) Notice shall be given, by personal service, ordinary mail, fax or email, to all the following persons and public bodies, except those who have notified the clerk of the municipality or the secretary-treasurer of the planning board that they do not wish to receive notice:

15. The chief of every First Nation council, if the First Nation is located on a reserve any part of which is *within one kilometre of the area to which the proposed official plan or plan amendment would apply* [emphasis added].

This must change in Prince Edward County – there is nothing preventing the County from requiring enhanced Notice to First Nations for projects proposed throughout the County, not just 1km from our Territory.

The Provincial Policy Statement, Section 4.0, “Implementation and Interpretation” states that, “in accordance with section 3 of the Planning Act, a decision of the council of a municipality, a local board, minister of the Crown and the ministry, board, commission, or agency of the government, including the municipal Board, in respect of the exercises of any authorities that effect a planning matter, “shall be consistent with” this Provincial Policy Statement.”

Furthermore, section 4.3 states that the Provincial Policy Statement shall be implemented in a manner that is consistent with the recognition and affirmation of existing Aboriginal and Treaty rights, as upheld under section 35 of the *Constitution Act, 1982*. Thus, Prince Edward County’s Official Plan, as guided by the Provincial Policy Statement, must uphold Aboriginal and Treaty rights.

In addition to this requirement, there is a Duty to Consult with First Nations as delegated by the Crown down to Ministries, municipalities, and townships. The Crown has a legal obligation concerning the Duty to Consult as established by the Supreme Court of Canada decisions *Haida*, *Taku River*, *Mikisew Cree*, *Tsilhqot’in* and *Clyde River*. The Duty to Consult is invoked when the Crown contemplates conduct that might interfere with or have an adverse effect on established or potential Aboriginal rights which are recognised and affirmed in section 35 of the *Constitution Act, 1982*. The Duty to Consult requires timeliness for the review of a project and engagement in meaningful consultation. The scope and content of consultation and accommodation must be proportionate to the strength of the potential right and the seriousness of the potential adverse affect of the contemplated activity; and, in some cases, consent must be obtained.

Should the Crown fail to consult or fail to consult adequately with effected First Nations, industry and proponents increase the risk of having their projects delayed, hindered, or even suspended. As a result, developers must be intimately involved in the process of consultation and engagement and undertake significant efforts to ensure the process occurs.

The Mohawks of the Bay Quinte’s interests include the following:

### **Archaeology of Prince Edward County**

The County possesses a rich history of occupation by First Nations. An estimated one hundred so-called “ancient mounds” are thought to be present in the County. Some of these mounds were excavated and the contents recorded by Thomas C. Wallbridge, in *On Some Ancient Mounds Upon the Shores of the Bay of Quinte*, 1860. At that time, these mounds were hypothesized to have been constructed by “different people,” but could have been Huron-Wendat, Mohawk or the so-called St. Lawrence Iroquois. Most importantly, these mounds contain human burials purposely arranged in a manner consistent with the practice used at other burials excavated. Our Nation has never been consulted regarding these mounds, or any other matter relating to the archaeology of the County.

MBQ has not been consulted regarding archaeology found on the proposed Campark site. No archaeological reports are available on-line, while every other technical report is available. Whether there has been a Stage II archaeological assessment or what recommendations have been made for a future, more detailed Stage III assessment is unknown to MBQ. We were never consulted concerning this assessment, and it is my understanding neither were the Huron-Wendat, who share a cultural affiliation with the site. This is a significant omission, as it frustrates our ability to evaluate the significance of the site, including in its necessarily wider landscape context.

## Cultural Heritage Landscape Preservation

The proposed use of this property, as it relates to these amendments, will introduce a significant amount of new development, including roads, sewage works, and impermeable surfaces such as rooftops and foundations, etc. All of this development will occur on Soup Harbour, which is one of the last remaining natural and agricultural shorelines in the County.

It is our understanding that community residents engaged Michael McClelland (OAA, AAA, FRAIC, CAHP), a registered architect with experience in assessing cultural heritage buildings and landscapes, to peer review the Cultural Heritage Impact Assessment Report. In this peer review, Mr. McClelland wrote:

This letter has been prepared to assist in a review of the Heritage Impact Assessment. Based on my review of the documents submitted to date, it is my opinion the subject property and surrounding lands have significant cultural heritage value, and the MHBC Cultural Heritage Impact Assessment does not demonstrate the proposed rezoning will not impact the cultural value of the site and its context, nor does the MHBC study justify the development in the context of the Vision articulated in the PEC Official Plan. *This assessment cannot be completed without consultation with directly impacted First Nations.*<sup>1</sup> [emphasis added].

The MBQ have never been contacted by any consultants for the developer, whether the study concerned natural heritage and wildlife, archaeology, cultural heritage or any other discipline. MBQ has not been consulted, therefore we have grave doubts that the impact assessments concerning our shared landscapes have been performed appropriately.

We were dismayed to learn that PEC commissioned (and paid for) a *Peer Review of heritage conservation documents for Fourward Holdings development proposal for 558 Welbanks Road, Prince Edward County*, prepared by Mr. Owen Scott. Mr. Scott agreed the “larger context of Soup Harbour may have a cultural history worth conserving” but failed to say how this can be achieved in the context of introducing a new settlement equal in size to Wellington to Soup Harbour. Furthermore, it is our understanding this peer review was conducted quite quickly, and was only published on-line in late December, during the holiday period, and fails to reference First Nations. MBQ was not consulted by Mr. Owens and, apparently, he never visited the site.

Notwithstanding the fact the PEC Official Plan is silent with respect to including Indigenous people, land use, sacred sites, spiritual places, etc. in the consideration of landscape protection, according to Mr. McClelland the PEC Official Plan identifies Soup Harbour, the South Shore and all the shore land and associated water bodies of Prince Edward County as a landscape feature of significant aesthetic, ecological and cultural value. It was his opinion:

The subject site should not be developed unless it can be demonstrated a Campark will help make an important contribution in defining, maintaining and supporting the character of the area, and that area would be the larger context of Soup Harbour, an area that in my opinion has a remarkable cultural history worth preserving.

Of course, this cultural heritage involves more than just Loyalist settlers, but includes thousands of years of First Nations occupation. Until such time as MBQ Council has been consulted and our interests respected, that is also our submission to PEC Council.

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<sup>1</sup> <https://haveyoursay.thecounty.ca/14191/widgets/65565/documents/44475/download>

## Hunting and Impacts to Wildlife Habitat

The MBQ rely on the wild game of the County for part of our staple diet. This requires measures to be taken to ensure biodiversity is protected by means such as protecting breeding habitat, foraging places, migration staging areas and connectivity between areas of high productivity. We are in possession of the peer review prepared by Ms. Kari Gunson, MSc. that concluded:

It is my expert opinion that the proposed mitigation recommended by Beacon 2020 and reviewed by Michalski and Nielson (2020) and the associated planning amendments by RFA Planning (Oct. 2020) *will not adequately mitigate negative impacts the proposed development will have on the existing natural heritage and Species-at-Risk in the Soup Harbour area of the South Shore.*<sup>2</sup> [emphasis added]

The proposed new Campark will introduce higher traffic volumes with heavier loads on County Road 18 and Welbanks Road, and will open increased access to protected wetlands, along with year-round occupancy to the area, all of which has the potential to interfere with the existing migration of wildlife, which in turn affects our right to hunt. Ms Gunson concluded in her report:

The development of 337 trailer sites and their associated human use will significantly degrade these natural features and their habitat and will present barriers to wildlife movement because wild animals will naturally avoid human use areas, fragmenting their habitat.

We were never consulted about the impacts of the project to wildlife.

## Planned Corridors & Transportation System

On busy summer weekends, the new trailer park will attract thousands of visitors anxious to reach their destination. This increase of transport traffic on Highway #49 and Skyway Bridge would require engagement from the Ministry of Transportation. Increased transportation through the Tyendinaga Mohawk Territory subjects our roads to wear and tear and the possibility of an increase in collisions, in the absence of compensation. Further, Tyendinaga Mohawk Territory used as a highway through-route does not contribute to the character of our neighbourhoods and makes our residents more vulnerable to traffic safety concerns.

## Impacts to Fish and Fish Habitat

As defined by the *Fisheries Act*, spawning grounds, nursery rearing, food supply and migration areas are what all fish depend on directly or indirectly in order to carry out life process, and changes to these habitats impact fish at all stages of their life cycles. The MBQ rely on the fish in the Bay of Quinte, Picton Bay and Lake Ontario, as part of our staple diet. It has not been demonstrated to us, as users of Soup Harbour, how the introduction of hundreds or thousands of new recreational users (including fishers) onto the shore via Welbanks Road will enhance or protect fish stocks and habitat.

## Conclusion

MBQ looks forward to continuing our conversation regarding the Official Plan Amendment Application and Zoning by-law Amendment Application for the Quinte Isle Campark Expansion. We appreciate your participation in our endeavours to determine proper use of lands of interest to our communities, the prevention or mitigation of anticipated and non-anticipated effects of the proposed project, and effort to ensure maximum benefit to our communities for generations to come.

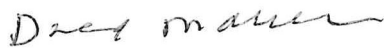
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<sup>2</sup> <https://haveyoursay.thecounty.ca/14191/widgets/65565/documents/44476/download>

We include in this statement an invitation to consult with MBQ concerning the lack of proper notice for future developments that may impact our rights and interests. This is a necessity in light of the progress made by your Council in drafting the new 2020 Official Plan, that sets out in the Intent Section the following, "*recognize and respect the intrinsic value that these features [of the natural environment] have to indigenous peoples*" (section 3.1). It will be very hard to accomplish this goal if MBQ and other First Nations are not notified of proposed developments and meaningfully consulted.

The above shall not be construed so as to derogate from or abrogate any inherent, Aboriginal, treaty, constitutional, or legal rights of the Mohawks of the Bay of Quinte.

Sincerely,



R. Donald Maracle, Chief  
Mohawks Bay of Quinte

Cc: Tyendinaga Mohawk Council  
Michael Michaud, PEC Manager of Planning  
Mayor Steve Ferguson  
Grand Chief Rémy Vincent

