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June 16, 2010

Ms. Barbara Jeffrey, MCIP, RPP
Manager, Land Use Policy and Environment
Long Range and Strategic Planning
17250 Yonge Street,
Newmarket, ON L3Y 6Z1

Dear Ms. Jeffrey,

**Re: York Region Proposed Regional Official Plan Amendments 1, 2 and 3
Huron-Wendat Nation Consultation**

We act for the Huron-Wendat Nation in all matters pertaining to their cultural heritage in Ontario. I am writing to you in response to your June 10, 2010 e-mail regarding York Region's Official Plan, proposed Amendments 1, 2 and 3 to this Plan, and the June 16, 2010 statutory meeting in which they will be discussed.

As York Region contemplates amendments to its Official Plan that would authorize the urban expansion of the Town of East Gwillimbury, the City of Vaughan, and the Town of Markham, I would like to remind you of York Region's duty to consult and accommodate the Huron-Wendat Nation and other First Nations concerning matters of cultural heritage. The Huron-Wendat Nation has a constitutional right to be consulted and accommodated with respect to its cultural heritage interests. These rights have been recognized in the successful prosecution of the Ontario Realty Corporation in *R. v. Ontario Realty Corporation* (17 May 2004), Toronto (Ont. Ct. Jus.) and in *Hiawatha First Nation v. Ontario (Minister of Environment)*, [2007] 2 C.N.L.R. 186. As the Supreme Court of Canada stated in *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, [2005] 3 S.C.R. 388 [Para. 54] "[c]onsultation that excludes from the outset any form of accommodation would be meaningless."

The reports regarding Amendments 1, 2 and 3 - posted online in preparation for the June 16, 2010 statutory meeting - contain no references to Huron-Wendat cultural heritage in the area, nor do they set out any framework for consultation or accommodation. This is in direct contrast to the cultural heritage policies outlined in section 3.4 of the Regional Official Plan adopted by Council on December 16, 2009 which state, among other things, that it is the policy of Council to "require local municipalities to adopt official plan policies to conserve significant *cultural heritage resources*." Policies 10 and 11 laid out in s. 3.4 state that it is the policy of Council:

10. To prepare, in partnership with First Nations, the Métis Nation, and other stakeholders a York Region Archaeological Resources Management Plan which considers:
 - a. the locations of significant or potentially significant archaeological resources, cultural heritage sites, ceremonial sites and sacred sites; and,
 - b. protocols for the protection and management of significant or potentially significant archaeological resources, cultural heritage sites, ceremonial sites and sacred sites.
11. That prior to approval of development or site alteration on lands containing significant or potentially significant archaeological resources, a plan for the protection and/or management of these resources will be developed, in co-operation with the local municipality and the Region, in accordance with provincial legislation and guidelines. If the archaeological resources pertain to First Nations and/or Métis Nation heritage, the protection and/or management plan will be developed in consultation with appropriate First Nations and Métis Nation communities. In situations where archaeological resources are to be preserved on site, the Region in consultation with local municipalities shall consider regulatory tools such as zoning restrictions and heritage easements.

The Huron-Wendat Nation cannot endorse the Regional Official Plan as adopted by Council on December 16, 2009, as it does not require the suspension of all Stage 3 and 4 archaeological licences issued without notification and consultation of the Huron-Wendat Nation or adopt the ossuary model for all authorized archaeological procedures.

The Regional Official Plan is deficient in many respects regarding the consultation and accommodation of Huron-Wendat cultural heritage interests. However, it is strange to note that even those policies contained within the Regional Official Plan that are geared towards recognition and protection of Huron-Wendat cultural heritage assets and consultation of the Huron-Wendat Nation, do not seem to have been implemented in Amendments 1, 2 and 3 themselves.

The Huron-Wendat Nation has lost thousands of cultural heritage sites to development over the past several decades. Millions and millions of artifacts, some of profound religious and historical value, have been scattered across private collections, warehoused improperly, abandoned and in a few notorious cases, thrown in the garbage.

Regulations under the *Planning Act*, R.S.O. 1990, c. P. 13 (the "*Planning Act*") do not require notification of First Nations before a planning decision is made by a municipal council or the Minister, unless the development site is located within one kilometre of a reserve. The Huron-Wendat reserve is located outside Ontario. This means that the Huron-Wendat Nation has never and will never receive notice that sites of cultural significance to the Huron-Wendat Nation are scheduled for development or destruction. This violates the Huron-Wendat Nation's constitutional right to be consulted and accommodated with respect to its cultural heritage interests.

It is shocking to us that regulations governing all aspects of the planning process such as consent applications (O. Reg. 197/96), plans of subdivision (O. Reg. 544/06), zoning by-laws (O. Reg. 545/06) and official plans (O. Reg. 543/06) all limit notification of First Nations to those First Nations living within one

kilometre of a reserve. In fact, these regulations put the rights of municipalities, ratepayers, school boards, conservation authorities, utilities, and in the case of O. Reg. 544/06, telecommunications infrastructure providers before the constitutionally entrenched rights of First Nations.

We request that York Region fully recognize its duty to consult and accommodate the Huron-Wendat Nation with respect to its cultural heritage interest in the York Region by informing the Huron-Wendat Nation of all cultural heritage assets that are put at risk through the urban expansion schemes put forward by Amendments 1, 2 and 3, and by ensuring that these assets are protected through consultation with the Huron-Wendat Nation for the implementation of effective protection and/or management plans.

George Smitherman, former Minister of Energy and Infrastructure, has encouraged city officials to consult Aboriginal communities regarding land use planning issues (see Attachment 1: Letter from George Smitherman to Linda Jackson (26 March 2009)). However, York Region has been slow to recognize its duty to consult and accommodate the Huron-Wendat Nation regarding their cultural heritage. We look forward to discussing these issues with you and beginning the process of meaningful consultation.

Yours Truly,

A handwritten signature in dark ink, appearing to read 'D. Donnelly', written over a horizontal line.

David R. Donnelly

Attachment.

cc. L. Lainé
H. Bastien
K. Sioui
C. Strahl

Minister of Energy
and Infrastructure

Ministre de l'Énergie
et de l'Infrastructure

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MAR 26 2009

Her Worship Linda D. Jackson
Mayor, City of Vaughan
2141 Major Mackenzie Drive
Vaughan ON L6A 1T1

Dear Mayor ^{Linda} Jackson:

At the Places to Grow summit on November 5, 2008, I presented my vision for a greener, more competitive and prosperous future for the Greater Golden Horseshoe. I was also pleased to announce this government's interest in investing in public infrastructure and working together with those municipalities that share this vision to implement the Growth Plan for the Greater Golden Horseshoe.

The *Places to Grow Act*, 2005 requires a council or municipal planning authority to amend its official plan to conform to the policies in the Growth Plan within three years of it coming into effect. The deadline for this work is June 16, 2009.

I recognize that lower-tier municipalities require certain planning work to be done by upper-tier municipalities before they can complete their own conformity amendments. Therefore, in certain circumstances, I am willing to consider an extension for lower-tier municipalities to bring official plans into conformity. In order to be considered for an extension of no more than one year, please provide a letter outlining the status of your conformity process, the reason for the required extension, how much time is needed to finalize conformity work and a brief work plan detailing the steps required to achieve conformity.

In the mean time, however, there is significant work that lower-tier municipalities can continue with in preparation for official plan amendments related to conformity, including an analysis of intensification opportunities and development of local policies to achieve complete, well-designed, transit-supportive and pedestrian-oriented communities.

In carrying out this Growth Plan conformity work, I strongly encourage you to engage those Aboriginal communities who have an interest in land use planning in your community, to ensure they have an opportunity to participate in this process.

If you have any questions regarding my announcement or the process and expectations for conforming to the Growth Plan, please feel free to contact Brad Graham, Assistant Deputy Minister for the Ontario Growth Secretariat, at 416-325-5803 or 1-866-479-9781.

Sincerely,

George Smitherman
Deputy Premier, Minister