CONSULTATION, ACCOMMODATION & EXTORTION at SIX NATIONS

Introduction: A group of Six Nations members who call themselves "land defenders" and their "supporters" have occupied the McKenzie Meadows land development project in Caledonia, Ontario since July 2020. This project, which would see upwards of 200 new homes built, had received the go ahead from the Haldimand County Council and that of the Six Nations Elected Council (SNEC).

The "land defenders" have made two assertions in defense of their actions.

1) They maintain that the land is unceded / unsurrendered land. In other words in their view the land still belongs to the Six Nations of the Grand River. In actual fact, the land was surrendered on 18 December 1844 by the unanimous decision of the 45 Chiefs in Council at Onondaga. The author has written an extensive report on this subject which can be found here.
2) Furthermore, this group asserts that despite SNEC's decision to approve of the development, that there was not enough "consultation". It is the goal of the present study to explore the validity of this assertion.

It is important to note that the protesters are affiliated with the Hereditary Confederacy Chiefs Council (HCCC) who refuse to accept the authority of SNEC under any circumstance. SNEC is the legally constituted body that interfaces with the governments of Ontario and Canada, and effects day to day matters such as waste disposal, education, and virtually every aspect of life on the Six Nations of the Grand River Reserve. The latter lost this right in 1924 after multiple petitions from residents about incompetence and corruption. The Federal Government acceded to the request of the petitioners and established an Elected Council. The acrimony between the two bodies has built since 2006 when a group of HCCC supporters took over an earlier housing development at Douglas Creek Estates (DCE) on the west side of Argyle Street in Caledonia. Their acts of domestic terrorism (theft, assault, vandalism, arson, harassment, etc.), and especially the erection of barricades across Argyle Street opposite DCE, were enabled in 2006 when the Ontario Government purchased DCE from the developers and allowed the protesters to remain there. The HCCC and their "enforcement arm" known as the Haudenosaunee Development Institute (HDI) have been there since 2006 and have used DCE as a staging area for civil disobedience and illegal acts each and every year from then, lasting to the day of writing of this report. Furthermore, for the past 96 years, the supporters of the Hereditary Confederacy Chiefs Council (HCCC) continue to maintain that they and only they have the right to represent the Six Nations, and therefore refuse to cooperate with SNEC for any reason.

Consultation and Accommodation: As to whether there was "consultation", the author saw multiple notices on the matter go out to all concerned parties and it was the choice of the HCCC to not participate in the negotiations – but they are now claiming that they weren't consulted.

That is a claim that cannot be supported. However, ironically, there is no legal reason why a developer needs to "consult" with any group at Six Nations, it is merely a courtesy.

To understand where we are today, it will be necessary to go back to the year 2014 when the terms "consultation" and "accommodation" begin to enter the picture in not only Haldimand County, but at one point, all of Southwestern Ontario. So here the story of "Enbridge" also applies directly to any developer, or any party being told by Six Nations that they "need" to consult. However since the "story" is lengthy and may be peripheral to the concerns of the readers of the present report, the relevant data has been summarized here.

It appears that the Six Nations are referring to one of following three documents:

1) "Grand River Notification Agreement" which was instituted in 1998, and every 5 years must be renewed or abandoned. The original document, as described by Indian and Northern Affairs Canada can be found here.
2) "Aboriginal Consultation and Accommodation - Updated Guideline for Federal Officials to Fulfill the Duty to Consult - March 2011". See here for details. Perhaps the Council's position that Enbridge was mandated in some way to consult might come under the Federal Government's purview. However, this document appears to apply only to instances where the Federal Government is the primary party - which does not appear to be the case with the Enbridge matter where the problem appears to be only between Enbridge and Six Nations. Besides, this provision applies only to Aboriginal groups (the Mississauga, not the Six Nations are "Aboriginal" to the Haldimand Tract); nor do they have a valid treaty with either the Crown or Canada.
3) "Consultation and Accommodation Policy (CAP)" - see here for the details of the Agreement, as per the Six Nations perspective. Here the various municipalities within the Grand River Haldimand Tract, and the Grand River Conservation Authority (GRCA) agreed to "consultation about land use issues", this might be the club the Elected Council was wielding against Enbridge. However since this agreement about consultation is with local municipalities and the GRCA, it would appear unlikely that this document is pertinent to the present situation of "leaning on" a developer. - especially since the clause, "This agreement is not legally binding on any of the Parties" would seem to rule out its application to the conflict between Six Nations and Enbridge – or perhaps they are not using a legal rationale, only one involving threats and intimidation.

The bottom line is that there is absolutely no required consultation between Six Nations and developers, it is entirely **voluntary** and only a matter of courtesy. Furthermore, there is nothing in the above documents that would require a developer to hand over cash and land – and any demand to do so smacks of extortion (either you do as we say, or we will make your life miserable with work stoppages and worse).

In the Caledonia situation of 2006, the Provincial and Federal Governments, as well as the Ontario Provincial Police, have acted as enablers, as if allowing adolescent children to test the limits. Apparently there are no limits, and in only one instance has there been any significant consequences to illegal actions taken by Six Nations. Hence the latter have been quick to capitalize on this weak willed, weak kneed group to embark on an array of self-serving and quite arbitrary (but always about money, land and control) plans which have the potential to harm local people, and more particularly corporate entities.

In the midst of the swirling chaos of 2006, two groups, noted below, use the above underlined matters as rationales to demand that, for example, developers and utility companies throughout Southwestern Ontario consult with them, and pay a fee for the privilege of having demands forced down their throats. One obtains its authority via the Hereditary Council faction, and the other via the Elected Council faction. Two groups potentially requiring, in their view, mandatory consultation by Enbridge (and green energy and land developers) include:

1) The "Haudenosaunee Development Institute (HDI)" and their successors. This is an entity which has arisen from the ashes of the "reclamation" of 2006. A Wikipedia article, apparently written by an HDI official, has been removed from the Internet as of the writing of this report. In relation to development of any kind, it acts (or acted) as an enforcer for the Hereditary Confederacy Chief's Council (HCCC, the "shadow cabinet" to the present Elected Council which claims historical and moral authority in all conceivable matters at Six Nations). Here the HDI claims the right to extract application fees from developers, and to insert paid archaeological monitors to sites within Southwestern Ontario despite already having Elected Council approved individuals, trained by the Professional Archaeological Association of Ontario, on site. The monies derived from these "deals", often emerging after a van load of goons appears on the developer's doorstep, go into a fund where there is absolutely no transparency. No one at Six Nations outside the HDI has any idea where these "community funds" go. In any other jurisdiction they would be shut down, and taken to Court to answer charges of possible fraud and extortion - but this is Six Nations, and this is post 2006, so Six Nations makes their own rules, and oddly few seem willing to challenge them. A 2010 "settlement" and the fines levied by the Superior Court of Ontario due to a violation of a Court Injunction has brought this matter into focus, and has effectively neutered the HDI. However, the radicals at Six Nations, without any formal structure, have continued the legacy, focusing their "efforts" and restricting their activities to the Caledonia area. It is the inheritors of HDI who have occupied the lands at McKenzie Meadows.
2) The "Six Nations Elected Council", aware of the financial success of the HDI, has developed a "team" called CAP to serve their own interests (the Hereditary Council and the Elected Council are generally not on speaking terms - which means that the Federal Government is at a loss as to who should be consulted in virtually any matter of consequence). The Consultation and Accommodation Policy (CAP), while not explicitly

mentioned in the newspaper article above, is apparently being used as a club to beat Enbridge into submission. This "policy" of SNEC has impacted, for example, Samsung of Korea, in this case concerning their plans to install wind turbines along the Lake Erie shore. The "Team" claims authority within the bounds of the fraudulent Nanfan document of 1701, and more particularly within lands in the Haldimand Tract ceded by Six Nations 176 years ago.

As it stands, SNEC can coerce a company, and force them to "consult" (be raked over the coals if they do not see the wisdom of agreeing to everything Six Nations "proposes"), and "accommodate" which roughly translated means bowing to Six Nations wishes ("or else") and pay up. The Six Nations are laughing all the way to the bank as the rich corporations are willing to cough up whatever is demanded rather than take Six Nations to Court and expose this illegal "policy" for what it is.

The subtitle of CAP is, "A Policy to obtain free, prior and informed consent of the peoples of the Six Nations of the Grand River". Free? So that means all of the wind turbine companies paid nothing - which is not true. So now can a company such as Enbridge or Samsung expect that by "consulting", that part of the "accommodation" will NOT involve paying money? The answer should be self-evident. In looking at the 7 page CAP description of their policies and procedures (above), they refer to the United Nations policies on aboriginal peoples (Six Nations are not aboriginal to the Grand River, only the Mississauga can make that valid claim), International Laws, and duties of the Crown (which has "failed in their fiduciary duty"), and certain procedures need to be followed. They further state that they expect that they will be fully funded by others, and that others have responsibilities and duties - and that Six Nations have rights and entitlements (but no responsibilities). To add to the narcissism of the document, it dictates that the Policy does not apply to third party private land owners - but only those who are "Members of Six Nations within the SNGR Territory". This document is a unilateral declaration, it has no weight in law or precedence, it is simply a rationalization for what Six Nations have already been doing since 2006. They state that they "fully expect" that "all Proponents, municipalities and The Crown to respect the terms of this policy". Here in the CAP policy manual they refer to "inherent rights, treaty rights, and title". In effect none of these three apply, but if they can coerce companies to believe these assertions are true, then they win.

To repeat, because it bears repeating, the Six Nations are not aboriginal to Southwestern Ontario and the Haldimand Tract, they are Loyalist refugees who were given a specified territory in which they could reside, but that the title to the Grand River lands is vested in the Crown - never has the latter been successfully challenged. On 18 December 1844, all lands within the Haldimand Tract except those the Chiefs wished to reserve were ceded, surrendered and yielded up such that the only lands to which they have any rights is Indian Reserve Number 40, the Six Nations of the Grand River Reserve of about 53,000 acres. However, there is even an "Enforcement" clause in CAP whereby if anyone fails to abide by Six Nations views in the matter, they will take actions including, "dispute resolution, legal action; and any other action

deemed reasonable". As to the latter, in the past Six Nations have included violence in the category of "deemed reasonable".

The only groups who would agree to having anything to do with CAP are those who are extremely naïve, or believe that giving in to strong arm interests is just the price of doing business, and that to stand on moral and legal grounds is simply more trouble than it is worth.

Conclusion: The developer/owner of Lot 3 Range West of the Caledonia to Townsend (McKenzie) Road has engaged in the unnecessary process of "consultation and accommodation" and agreed to turn over $385,000 and 42 acres of land at Little Buffalo near Hagersville – for no legal reason whatsoever. However even this gesture did not satisfy some at Six Nations who asserted that there was "not enough" consultation – despite the many notices and meetings over the last couple of years. When the old Haudenosaunee Development Institute of the Hereditary Confederacy Council of Chiefs affiliates saw the development proceeding as the land was being prepared for the building of houses, they decided that they would act. They termed the land "unceded" and that they were not consulted or accommodated which provided a rationale for what is trespassing and vandalism of private property. Yet the media and supporters in the Toronto area, and even local people, appear to have great sympathy for their cause. The protesters are basically saying that they feel they have the right to occupy any land they consider to be unceded (despite evidence to the contrary) and return it to Six Nations for the use of future generations.

However the important point here is that the process of consultation and accommodation is entirely voluntary – there is no legal basis in any category that would permit asserting rights under the CAP agreement. So both the first assertion, that the land is unceded, as well as the second presumption, that the developer was required to consult and accommodate, are without any foundation in the law or in reality.

Dr. David K. Faux
Caledonia, Ontario
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